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The Applicant

Your Ref:

Our Ref: EN010139

Date: 10 December 2024

Dear Mr. Baker,

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17

Application by RWE Renewables UK Solar and Storage Limited for an Order Granting Development Consent for the Byers Gill Solar project

Request for further information

The Examining Authority (ExA) is writing to request further information from the Applicant under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended), in relation to the Applicant's assessment of Landscape and Visual effects. The ExA has decided to make this request under Rule 17 to provide the Applicant with as much notice as possible to address the issues raised here by the ExA before the end of the Examination.

This request comes following the ExA's review of all the information and evidence submitted to the Examination and at hearings by all parties with an interest in Landscape and Visual effects, including Deadline 6 submissions. A Statement of Reasons is appended to this letter explaining the background to this request, as well as potential future implications for the remainder of the Examination and the recommendation to the SoS.

Landscape and Visual assessment

Darlington Borough Council (DBC) has identified those Visualisation Viewpoints presented in the Environmental Statement (ES) which it considers do not represent the worst-case outcome in landscape and visual impact terms [REP5-036]. This report provides a tabulated summary of the viewpoints presented in the ES. The table sets out the Council's position with regard to the viewpoints and worst-case and provides an analysis of the daylight conditions presented in the views. Photography is provided in this report to support this analysis. The photography comprises viewpoints illustrated in DBC Local Impact Report Landscape and Visual Amenity [REP1-021] and additional photography

where appropriate. The Applicant has contested DBC's view; however, this disagreement between two specialists in landscape and visual assessment means that the ExA cannot be confident at this point that the Applicant's viewpoints represent a worst-case scenario, as maintained in the Statement of Common Ground [REP6-004].

Additionally, DBC has maintained that the Applicant '*wrongly suggested that the effects on the setting of settlement could not be assessed independently in the ES Chapter 7 - Landscape and Visual but offered to assess the sensitivity of settlement character and the effects of the Proposed Development on settlement character. DBC has concerns about this approach as it limits the weight given to setting*' [REP1-021]. In response to ISH4 action point 5, DBC has provided examples of Landscape and Visual Impact Assessments (LVIA) for other proposed developments where landscape character setting of villages/settlements has been separately assessed, see [REP5-036].

Although this issue has been the subject of debate and questioning from the ExA at several points during the Examination, with the ExA having asked questions of the Applicant in relation to its approach and overall conclusions, the ExA does not feel that the Applicant's approach has been fully explained or justified.

Having reviewed and considered both the Applicant's submissions up to this point (including Deadline 6 submissions [REP6-021] and [REP6-019]), as well as oral and written submissions made by DBC [REP6-033] and other Interested Parties, namely Bishopton Villages Action Group (BVAG) [REP6-036], the ExA requests that the Applicant:

- using the worst-case views identified in the table at '2.0 Analysis of ES Viewpoints' provided by DBC [REP5-036], identifies impacts, mitigation and likely effects of the Proposed Development on Landscape and Visual receptors and provides an updated version of ES Chapter 7 Landscape & Visual [APP-030], in a comparable format clearly identifying any differences in the assessment of magnitude of change;
- assesses landscape character setting of villages/settlements separately in accordance with the examples of other Landscape and Visual Impact Assessments provided by DBC [REP5-036] and provides an updated version of ES Chapter 7 Landscape & Visual [APP-030], in a comparable format clearly identifying any differences in the assessment of magnitude of change;
- gives full consideration to DBC's Post-hearing submission of oral case of Stephen Laws - Glenkemp Landscape Architects [REP6-033] as well as BVAG's Post-hearing submission of oral case [REP6-036], particularly the points raised by Ms. Carly Tinkler CMLI in relation to Landscape and Visual effects under "Cumulative Effects", and provides an updated version of ES Chapter 13 Cumulative Effects [APP-036] in a comparable format clearly identifying any differences in the assessment of magnitude of change (please also see "Cumulative Effects" section of this letter below).

Cumulative Effects

The Applicant must also be aware that any changes to the overall assessment carried out under ES Chapter 7 - Landscape and Visual will then have repercussions on other parts of the ES, particularly ES Chapter 13 Cumulative Effects.

If any changes are made to the overall assessment of the Proposed Development under ES Chapter 7 - Landscape and Visual, the Applicant is then requested to also update ES Statement Chapter 13 Cumulative Effects [APP-036] as to take account of any changes resulting from the analysis described above. This is to be presented in a comparable form to Chapter 13 clearly identifying any differences in the assessment.

The ExA requests that the Applicant carries out this work as it requires this information in order to fully understand the potential Landscape and Visual, as well as Cumulative effects of the Proposed Development on the surrounding area.

Responses should be submitted by **Friday 20th December 2024**.

Other Interested Parties may also wish to respond to this request.

Yours sincerely,

Andre Pinto

Andre Pinto
Lead Member of the Panel of Examining Inspectors

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Annex A

Statement of Reasons

This Statement of Reasons explains the background to this request, as well as potential future implications for the remainder of the Examination, the recommendation by the ExA, and subsequent decision by the SoS.

1. The ExA has asked questions, both in rounds of written questions and in an Issue Specific Hearing, concerning whether the Applicant's selected viewpoints are representative of sensitive visual receptors, and about landscape character settings of relevant receptors including LSV.1.2, LSV.2.6, EV12-002, EV12-004, and EV12-006.
2. DBC expressed the opinion in the Local Impact Report Landscape and Visual Amenity [REP1-021] that the photography provided in the ES does not represent a reasonable 'worst-case' for some receptors, and that the approach to assessment of landscape character setting limits the weight given to setting. Having considered these submissions, the ExA remains unclear about whether this position is substantiable and also whether or not a conclusion that the LVIA in the ES does not represent a worst-case could in turn affect the conclusions that can reasonably be drawn from the ES or the solidity with which the Rochdale envelope for the proposed development has been firmly established in landscape and visual impact terms.
3. Further to ISH4 there were a number of actions [EV12-008] regarding Landscape & Visual matters including:
 - Action 6: Applicant to signpost to, or otherwise provide, a detailed explanation of the areas of disagreement with DBC regarding the Applicant's LVIA.
 - Action 7: DBC to provide list of specific viewpoints which are disagreed between the Applicant and DBC. This was provided by DBC [REP5-036].
 - Action 8: Applicant and BVAG to discuss and agree a SoCG on outstanding LVIA issues.
4. In addition the Consultant representing Bishopton Villages Action Group also expressed doubts concerning the Landscape & Visual Assessment provided in the ES [EV12-002-007].
5. Having reviewed and considered both the Applicant's submissions up to this point (including Deadline 6 submissions), as well as oral and written submissions made by DBC [REP6-033] and other Interested Parties, namely Bishopton Villages Action Group (BVAG) [REP6-036], the ExA is of the view that the Applicant has neither firmly addressed nor rebutted the submissions by DBC and BVAG on Landscape & Visual matters.
6. Where a credible worst-case analysis is not provided in an ES, the Rochdale envelope for the proposed development in relation to that topic has not been defined. This in turn can mean that the lawful extent of the proposed development in these terms is not clearly understood or understandable. The foundations upon

which to base development consent or to discharge relevant requirements can be uncertain as a consequence.

7. In the context of the NPSs (EN-1), and (EN-3) (November 2023), the Secretary of State (SoS) is required to consider the worst-case impacts in its consideration of the application, reference NPS (EN-1) paragraphs 4.3.12 and 4.3.18. Without the further information required above, the ExA does not consider that it has adequate information in the ES to advise the SoS with regard to acceptable harm with respect to Landscape & Visual, and Cumulative matters.
8. The ExA is conscious that the date for completion of the Examination of the application is 23 January 2025, and wishes to emphasise the importance of resolving these matters within the timescale of the Examination. The intention for issuing this Rule 17 request for further information is to give the Applicant the opportunity to provide sufficient information to enable the ExA to fully assess and address outstanding matters, or for reasons provide a clear rebuttal explaining and justifying that the existing assessment does address a credible worst-case.
9. The Applicant must also be alive to the fact that, if the ExA does not receive a satisfactory response to the questions raised in this letter, then it may have to consider the overall adequacy of the environmental statement and/or how this issue can best be reflected as part of the ExA's recommendation to the SoS in relation to the Applicant's assessment of Landscape & Visual effects and Cumulative matters.
10. The Applicant is also advised that the ExA considers that it is likely there will be a need for further Issue Specific Hearings regarding these matters during the week commencing 13 January 2025, certain days of which are already reserved for Hearings relating to the Applicant's request to make a change to the application. The ExA will, in due course, firm up its view on this matter and notify of any changes to the Timetable in a Rule 8 letter.