

Helios Renewable Energy Project

Responses to S51 advice

The DCO seeks powers to acquire permanent acquisition of new rights (article 23), acquisition of subsoil (article 26) and temporary use of land to permit construction and maintenance (articles 30 and 31). The land related to all these powers sought is shown edged red and shaded blue on the land plans. Greater clarification as to whether all powers are sought for the whole area or if different powers relate to individual plot numbers would be beneficial.

The Applicant is not seeking the permanent acquisition of any land through the draft DCO. Whilst powers of temporary possession and use are sought across the Order land, there are no areas within which such powers are sought in isolation. Rather, for the reasons given below, where the Applicant is seeking powers of temporary possession and use, powers for the permanent acquisition of rights are also sought. As such, all of the Order land is shown shaded blue on the Land Plans.

The Land Plans, the Book of Reference and the Statement of Reasons should be read in conjunction with the draft DCO (and, in particular, Schedule 7 thereto). Article 23 of the draft DCO authorises the undertaker to permanently acquire rights or impose restrictive covenants over the Order land. It further provides that, in respect of the Order land set out in Schedule 7, the undertaker's powers of compulsory acquisition are limited to the permanent acquisition of such rights and the imposition of restrictive covenants for the purposes specified in that Schedule.

Schedule 7 sets out each area of land over which new rights may be permanently acquired by the undertaker, as well as the nature of those rights. The permanent acquisition of rights and imposition of restrictive covenants are sought in respect of the entirety of the Order land (i.e. each plot of land identified on the Land Plans and set out in the Book of Reference). Such rights are, however, sought for different purposes in respect of each plot. The Applicant has chosen to categorise these purposes based on various activities that will require to be undertaken in connection with the construction, operation and maintenance of the authorised development, with each category of rights defined within Schedule 7.

The plot numbers in column (1) of the table within Schedule 7 correlate with the Land Plans and the Book of Reference, and column (2) with the work numbers comprised within the authorised development and set out in Schedule 1 to the draft DCO. Finally, column (3) of the table explains the purposes for which rights may be acquired.

Article 26 authorises the undertaker to acquire, or create rights in, just the subsoil below land. As the Applicant is not proposing the permanent acquisition of any land, this power will be limited to the permanent acquisition of rights provided for in article 23 of, and Schedule 7 to, the draft DCO. The article provides that, where the undertaker permanently acquires rights in the subsoil of any land, they will not be required to acquire an interest in any other part of the land.

Given that the authorised development will involve the laying of cabling underground, the Applicant considers that this power will enable the undertaker to minimise (in so far as possible) the extent of any rights to be acquired, thereby reducing the potential impact on landowners. Whether rights will be permanently acquired specifically in the subsoil, as opposed to in the land more generally, would be a matter to be determined by the undertaker on a case-by-case basis when seeking to exercise the powers, informed by relevant surveys and investigations and having regard to the practicability of doing so.

Articles 30 and 31 authorise the temporary possession and use of land for the carrying out and maintenance of the authorised development respectively. Such powers are sought in respect of

the entirety of the Order land. The reason for seeking temporary use powers over all other land within the Order land is that it allows the undertaker to go onto land for particular purposes (including site preparation works) in advance of any vesting of the relevant rights. This enables the undertaker to only compulsorily acquire the minimum amount of rights over land required to construct, operate and maintain the authorised development, because, for example, the undertaker could exercise the temporary possession powers to undertake site investigation works to inform and minimise the land within the Underground Connection Corridor (as defined in Chapter 3 of the Environmental Statement) over which permanent rights are needed.

Article 30 would authorise the undertaker to take temporary possession of part of the Order land where it has not yet exercised powers of compulsory acquisition. This would, for instance, allow the undertaker to initially take temporary possession of the whole width of the land required for the Underground Cable Corridor. Once the undertaker has carried out the detailed surveys and installed the relevant apparatus (such as cables), the undertaker can then acquire new rights within only a narrower strip in which permanent rights are required, within the wider construction corridor.

This phased approach to occupation and acquisition allows the permanent rights corridor to be defined after construction, and to be only that which is necessary for the operation, maintenance and protection of the apparatus. Such an approach has precedent amongst other DCOs authorising linear forms of development, including the Longfield Solar Farm Order 2023.

The Applicant considers that there are clear and robust safeguards on the exercise of such powers. There are limits on the length of time for which land may be possessed and use, notice requirements, and provisions for the payment of compensation. Moreover, such powers may not be exercised in relation to any house or garden belonging to a house, or any building other than a house if it is occupied for the time being.

The Statement of Reasons notes that the Applicant is not seeking the permanent acquisition of any land, rather acquisition of rights is relied upon as part of the proposed development. The Applicant is advised to provide clarification as to any potential implications this approach may have on ensuring all land necessary for the development could be secured and any potential implications for securing funding for the proposed development.

The Applicant is committed to a proportionate approach to the exercise of compulsory acquisition powers, and to considering all reasonable alternatives to such powers. The Applicant is seeking to ensure that the extent of any compulsory acquisition authorised by the draft DCO is no more than is reasonably necessary for the construction, operation and maintenance of the authorised development.

To that end, the Applicant is not seeking the permanent acquisition of land through the draft DCO. Rather, the Applicant is satisfied that it will be able to secure all necessary leasehold interests within the Solar Farm Zone and for the Substation and BESS Compound (as defined in Chapter 3 of the Environmental Statement) through voluntary agreement with the relevant landowners.

Moreover, the Applicant has (wherever possible) sought to acquire new rights and powers for the temporary use of land through voluntary agreement. It has not yet been possible, however, to acquire the necessary interests in all of the Order land, including rights and the temporary use of land, by agreement as at the date of the DCO application. In addition, the Applicant requires certain rights to be suspended, overridden or extinguished within the Order land so as to ensure that there are no impediments to the construction, operation and maintenance of the authorised development.

The Applicant will continue to negotiate with landowners and persons with interests in land affected by the authorised development. However, it is necessary for the Applicant to seek compulsory acquisition powers to secure such rights and interests in land, and to ensure that any third-party interests or encumbrances affecting such land, rights and interests may be acquired, overridden or extinguished pursuant to the draft DCO, thereby ensuring that the authorised development can be constructed, operated and maintained.

The Applicant is satisfied that the permanent acquisition of rights and powers of temporary possession and use in the draft DCO are both necessary and proportionate, and shall be sufficient for the purposes of constructing, operating, and maintaining the authorised development. As such, the Applicant does not consider that the absence of powers to permanently acquire land will affect the undertaker's ability to secure funding for the authorised development.