



The Planning Inspectorate

Dean Moor Solar Farm – EN010155

FVS Dean Moor

Section 51 advice regarding draft application documents

Issued on 29 November 2024

On 22 October 2024 FVS Dean Moor submitted the draft documents listed in the tables below for review by the Planning Inspectorate as part of its [Pre-application Service](#).

The advice recorded in the tables below relates solely to matters raised from the Planning Inspectorate's review of the draft application documents. The advice is limited by the maturity of the documentation provided by the applicant and the time available for consideration and is raised without prejudice to the acceptance decision, the decision about admission to the Fast Track procedure (where relevant) or the final decision about whether development consent should be granted. The applicant has been given the opportunity to comment on the Inspectorate's draft record of advice before it was published.

Draft Development Consent Order (DCO)

Ref No.	Article / Schedule / Requirement	Comment or question
	Article 2. Interpretation	<p>Minor Error</p> <p>The drafting of the definition for the “limits of definition” in Article 2(1) cross refers to ‘article [6] (limits of deviation)’. The limits of deviation are contained in Article 7 of the draft Order.</p>
	Article 3. Development consent etc. granted by this Order	<p>Signposting</p> <p>Article 3. is cross referenced in Schedule 1. It would be helpful if Schedule 1 was signposted in Article 3.</p>
	Article 7. Limits of deviation	<p>Limits of deviation not clearly represented on Works Plans</p> <p>The draft Works Plans do not appear to meet the requirements of Regulation 5(2)(j)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 as the draft Works Plans do not clearly show the limits of deviation described in Article 7 of the draft Order.</p> <p>Limits of deviation are not represented in the legend shown on the Draft Works Plans. Overall, it is unclear where limits of deviation apply to individual works.</p>
	Article 11. Defence to proceedings in respect of statutory nuisance	<p>Discrepancies when cross referencing management plans</p> <p>The construction environmental management plan is approved under paragraph 4 (Construction environmental management plan) of Schedule 2 [Requirements].</p> <p>The decommissioning environmental management plan is approved under paragraph 12 [Decommissioning] of Schedule 2 [Requirements].</p> <p>The drafting of Article 11 indicates that both plans are approved under paragraph 13 [Requirement for written approval] of Schedule 2.</p>

Draft Development Consent Order (DCO)

Ref No.	Article / Schedule / Requirement	Comment or question
	Article 12. Street Works	<p>Provisions too broadly drawn</p> <p>Para. 3.48 of the Explanatory Memorandum states that the drafting of Article 12 is as substantially found in the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and the Mallard Pass Solar Farm Order 2024.</p> <p>The articles contained in the made Orders referenced in Para. 3.48 of the Explanatory Memorandum [Article 12 - Street Works] signpost to Schedules specifying the streets that may be subject to works.</p> <p>The provisions of Article 12 of the draft Order are too broadly drawn. References to relevant Schedules should provide a bar to the limitlessness of 'any of the streets'.</p>
	Article 19. Traffic regulation measures	<p>Discrepancy when referring to the commissioning stage</p> <p>Throughout the text of the draft development order reference is made to the developmental stages through which the project will evolve to the end of its lifecycle.</p> <p>In articles 10, 11, 13, 14, 18, 20, 21, 28, 40, 42, and 43 of the draft Order the developmental stages of the project are described with phrasing such as the 'construction', 'use', operation', 'maintenance', and 'decommissioning' of the 'authorised development'.</p> <p>Article 19 refers to the 'commissioning' of the 'authorised development'. The use of the word 'commissioning' in this article should be checked for consistency with the articles referred to above.</p> <p>Provisions too broadly drawn</p> <p>Para. 3.78 of the Explanatory Memorandum states that the drafting of Article 19 is similar to The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.</p>

Draft Development Consent Order (DCO)

Ref No.	Article / Schedule / Requirement	Comment or question
		<p>The articles contained in the made Orders referenced in Para. 3.78 of the Explanatory Memorandum [Article 19 – Traffic regulation measures] signpost to Schedules specifying the roads that may be subject to traffic regulation measures.</p> <p>The provisions of paragraph 1 of Article 19 of the draft Order are too broadly drawn. References to relevant Schedules should provide a bar to the limitlessness of ‘any road’.</p>
	<p>Article 20. Discharge of water</p>	<p>Protective Provisions</p> <p>Article 20(5) refers to provisions for the Environment Agency and United Utilities that are contained in Part 5 or Part 6 respectively of Schedule 10 (protective provisions).</p> <p>Parts 4, 5 and 6 of Schedule 10 are not yet included in the Order.</p> <p>In order that all the Protective Provisions can be examined from the onset of the Examination, the Applicant should ensure that the missing Protective Provisions are added to the Order.</p>
	<p>Article 39. Special category land</p>	<p>Minor error</p> <p>Article 39(2) contains an extraneous closing parenthesis ‘]’.</p>
	<p>Article 45. Certification of documents, etc.</p>	<p>Make plans or documents available in electronic form</p> <p>Given that it is important that access to certified documents is made as straight forward as possible, it might assist if there was a condition that following certification of the plans or documents that those plans or documents must be made available in electronic form for inspection by members of the public.</p>
	<p>Article 47. Arbitration</p>	<p>Arbitration</p> <p>Article 47 describes the process by which a single arbitrator would be appointed by the President of the Institution of Civil Engineers. Where the need arises for a single arbitrator to be appointed under the provisions</p>

Draft Development Consent Order (DCO)

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		of this article the Inspectorate would expect the appointment to be made by the Secretary of State. Reference to the President of the Institution of Civil Engineers in the drafting of the arbitration provision should be checked.
	Article 48. Requirements , appeals etc.	<p>Minor error</p> <p>Paragraph 4.19 of the Explanatory Memorandum explains that Part 2 (Procedure for discharge of requirements) of Schedule 2 clarifies the procedure which applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Part 1 of Schedule 2 or under any other provision of the Order.</p> <p>The drafting of Article 48(2) states that the procedures for the discharge of requirements are contained in Part 3 of Schedule 2. This is a drafting error - Part 2 of Schedule 2 is mislabelled as Part 3.</p>
	Schedule 1 — Authorised Development	<p>Generating capacity for the proposed development</p> <p>The draft Order refers to the generating station having a capacity of over 50 megawatts (MW), for example Schedule 1 [Authorised Development] referring to Work No.1.</p> <p>As drafted, article 3 (1) would authorise the undertaker to operate the generating station without limitation. However, from paragraph 2.1 of the Explanatory Memorandum it is stated that the application is seeking to achieve the potential to export up to 150MW.</p> <p>This maximum output must therefore be reflected in the way the Order is drafted. The applicant is therefore advised to alter Work No. 1 in Schedule 1 as having a maximum design generation capacity of up to 150MW.</p>
	Schedule 3 — [Article 10.]	<p>No information</p> <p>Paragraph 4.20 of the Explanatory Memorandum explains that Schedule 3 lists the local legislation that the Order will disapply.</p>

Draft Development Consent Order (DCO)

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	Legislation to be disapplied	<p>Details of the local legislation to be disapplied is not yet included in the Order.</p> <p>So that the reasonableness of disapplying the local legislation referred to in Article 10 can be examined from the onset of the Examination, the Applicant should ensure that the missing details are added to the Order.</p>
	Schedule 6 — [Article 17.] Access to works	<p>No information</p> <p>Paragraph 4.23 of the Explanatory Memorandum explains that Part 1 of Schedule 6 sets out the locations of permanent means of access and Part 2 of Schedule 6 sets out the locations of temporary means of access.</p> <p>Details of the locations of permanent and temporary means of access are not yet included in the Order.</p> <p>So that the powers to form the permanent and temporary means of access referred to in Article 17 can be examined from the onset of the Examination, the Applicant should ensure that the missing details are added to the Order.</p>
	Schedule 7 — [Article 26.] Land in which only new rights etc. may be acquired	<p>No information</p> <p>Paragraph 4.24 of the Explanatory Memorandum explains that Schedule 7 sets out areas of land over which only new rights may be acquired and the nature of the rights that may be acquired.</p> <p>Details of the areas of land over which only new rights may be acquired are not yet included in the Order.</p> <p>So that the powers to compulsorily purchase the areas of land referred to in Article 26 can be examined from the onset of the Examination, the Applicant should ensure that the missing details are added to the Order.</p>
	Schedule 9 — [Article 34.] Land of which temporary	<p>No information</p> <p>Paragraph 4.26 of the Explanatory Memorandum explains that Schedule 9 sets out the land referred to in Article 34 which the Applicant may temporarily occupy and the purpose for which that temporary occupation may be taken.</p>

Draft Development Consent Order (DCO)

Ref No.	Article / Schedule / Requirement	Comment or question
	possession may be taken	<p>Details of the land of which temporary possession may be taken is not yet included in the Order.</p> <p>So that the proposals for temporary possession of land can be examined from the onset of the Examination, the Applicant should ensure that the missing details are added to the Order.</p>
	Schedule 10 — [Article 50] Protective Provisions	<p>Minor error</p> <p>Article 49. [Protective Provisions] should be cross-referenced in Schedule 10, not Article 50. [Funding].</p>
	Schedule 11 [Article 46] — Documents to be certified	<p>Minor error</p> <p>Article 45. [Certification of documents, etc.] should be cross-referenced in Schedule 11, not Article 46. [Service of notices].</p>
	Schedule 12 [Article 44] — Hedgerows to be removed	<p>Minor error</p> <p>Article 43. [Felling or lopping of trees and removal of hedgerows] should be cross-referenced in Scheule12, not Article 44. [Removal of human remains].</p> <p>No information</p> <p>Paragraph 4.29 of the Explanatory Memorandum explains that Schedule 12 lists the hedgerows that the Applicant is allowed to remove along with the specific purpose of each removal.</p> <p>Details of the hedgerows to be removed and the purpose of their removal are not yet included in the Order.</p> <p>So that the effects on hedgerows can be examined from the onset of the Examination, the Applicant should ensure that the missing details are added to the Order.</p>

Draft DCO Explanatory Memorandum

Ref No.		Comment or question
1.	Para. 3.4	<p>Deemed consenting regime</p> <p>It is possible that the 28-day timescale which is used in various articles listed in Para. 3.4 may not be considered appropriate by the consenting authorities, especially where the consenting authorities may have to carry out their own surveys and investigations.</p> <p>The 28-day timescale should be adequately justified.</p>
	Para. 3.20.1	<p>Typographical error</p> <p>Typographical error - 'removed' to be substituted with 'removes'.</p>
	Para. 3.22	<p>Part 2 – Principal Powers</p> <p><i>Article 3 – Development consent granted by the Order</i></p> <p>The explanations given for Article 3 of the draft Order not referring '<i>to development consent being granted “within the Order limits”</i>.' needs further justification. In particular, the authority to carry out protective works to buildings and to survey and investigate land. Notwithstanding the fourteen-day notice period, the provisions could mean affecting a party that has not been consulted with about the Proposed Development. Definition is needed of land outside the order limits that would be affected by the provisions of Article 3 of the draft Order, the extent of the land, who it belongs to, have they been consulted etc.</p>
	Para 3.48	<p>Typographical error</p> <p>Typographical error - 'part' to be substituted with 'Park'.</p>
	Para. 3.123	<p>Part 5 – Powers of acquisition</p> <p><i>Article 32 – Modification of the 2017 Regulations</i></p>

Draft DCO Explanatory Memorandum

Ref No.		Comment or question
		The explanatory memorandum provides no information on the drafting precedent of Article 32. Guidance in the government issued 'Content of a DCO' Paragraph 003, Reference ID 04-003-20240430, as well as Advice Note 15 should be followed. In particular, Section 1.2, and to note that as well as explaining why the inclusion of the provision in Article 32. is appropriate for the proposed development, to provide justification that is sufficiently thorough and proportionate to the novelty of that provision.
	Para. 3.140	Typographical error Typographical error - comma needed between '2020' and 'The'.
2.	Para. 3.150	Typographical error Typographical error - extraneous closing parenthesis ']'.]

Draft sample Works Plans and Land Plans

Ref No.	Plan Name and Ref	Comment or question
1.	Work Plans	The colours used to identify the different works taking place make it difficult to distinguish the types of works taking place in each area, for example where Works plans 1 and 3 overlap each other. The legend in the Work plans does not include a description of the works taking place to match those described in the DCO.
2.	Land Plans	Some of the boundaries of the plots on the first page of the Land plans are not clearly identifiable, for example where there are small strips of land such as plots 1-01 to 1-16.

Draft sample Works Plans and Land Plans

Ref No.	Plan Name and Ref	Comment or question
		The Book of Reference only refers to plots on page 1 of the Land plans map and nothing beyond this; this may be because only a partial draft has been submitted as this stage but please ensure it is complete by submission.
3.	Land Plans (sheet 2)	This seems to show permanent acquisition of public highway (plots 2-01 and 2-02) which may be an error. If it is correct we would expect clarification and justification of this to be included in the application.

Draft Consultation Report, including section 42 consultee list

Ref No.	Paragraph / Section	Comment or question
1.	4.2 (6)	There is a minor discrepancy in legislation numbering. Ensure that all such references are checked before submission of the final version.
2.	4.8 (and 5.6.6)	The comments regarding the error in the published Statement of Community Consultation (SoCC) and consequent impact on compliance with its commitments are noted. This does seem to be more than a 'typo' as referred to in the section header. It is noted that correspondence with the Council regarding this matter is contained in Appendix 4.6, which was not included with the draft Consultation Report. The Council's views on whether the error had a significant detrimental impact on the adequacy of consultation will be an important factor in our consideration of this matter, therefore we cannot provide further comments in the absence of that additional information. The Applicant may wish to provide some additional commentary on the results of its discussions with the Council in this section of the report, to ensure clarity on any impacts of the error.
3.	5.3.18	As a host authority, Cumberland Council should be category 'B'. Category 'A' relates to neighbouring lower-tier authorities, as correctly identified in 5.3.19.

Draft Environmental Statement (ES) project description chapter(s)

Ref No.	Paragraph / Section	Comment or question
1.	Figure 3.1	Figure 3.1 presents the four areas the Proposed Development site is divided into. This figure would be clearer if there was a greater contrast in the symbology of Area D (orange hatching) and the roads (filled in orange), particularly given some of the roads are included within the scope of Area D (Gilgarran Road and Branthwaite Edge Road) and others are not (Dean Cross Road). The Applicant is advised to adjust the symbology to address this.
2.	3.2.2, 3.2.6 and Figure 3.1	<p>Area D is said to include Gilgarran Road between Areas B and C, and Branthwaite Edge Road (paragraph 3.2.2). Figure 3.1 suggests that Area D also includes Branthwaite Road on the northern edge of the site. The Applicant is advised to clarifying this discrepancy.</p> <p>Paragraph 3.2.6 states that Dean Cross Road has been included within the Order Limits. Figure 3.1 suggests it falls outside the limits. The Applicant is advised to clarifying this discrepancy.</p>
3.	Figure 3.3	The pale green symbology used to denote existing woodland in Figure 3.3 does not show clearly against the satellite basemap. Similarly, the pale yellow symbology used for grazing land appears very differently to the legend when layered over the bright satellite basemap. The Applicant is advised to adjust the symbology (e.g. the opacity) on these figures to improve the coherence between the legend and the figure itself.
4.	Figure 3.4	All existing overhead lines (OHL) are indicated on this figure using a dashed line. The Applicant is advised to denote the 132 kV OHL and 11kV OHLs separately on the figure (using different symbology) to distinguish between them more clearly.
5.	3.2	The chapter is concise which is welcomed; to improve understanding of the site context, the Applicant is advised to provide further information on the environmental constraints to the site (going beyond land use). This would help to put other references (e.g. to waterlogging, presence of peat) into context. This should be

Draft Environmental Statement (ES) project description chapter(s)

Ref No.	Paragraph / Section	Comment or question
		very brief and high-level and cover information such as, for example, known heritage constraints, ecological features, flood risk, ground conditions, and landscape context.
6.	Table 3.2	<p>Table 3.2 sets out the parameters applied for the assessment. It is unclear how these parameters have been secured. The Applicant is advised to clarify this in the ES, and to consider including a table of parameters in the dDCO.</p> <p>Table 3.2 does not appear to set a limit on the number of Operation and Maintenance units. The Applicant must clarify what assumptions the ES has been based on in terms of number of such units, and set out how this has been secured.</p>
7.	Table 3.3	Table 3.3 sets out exclusion areas. The Applicant is advised to provide a figure to present the various exclusion areas in one location. The Applicant is also advised to indicate with reference to the DCO or other control mechanism, how these exclusion areas have been secured.
8.	5.2.1 and 5.3.3	Waterlogging of the site is mentioned twice as a risk to the construction and decommissioning of the Proposed Development. The Applicant is advised to provide further context to better explain this issue (see comment 5 above).

Draft Book of Reference (BoR)

Ref No.	Page / Plot Ref	Comment or question
1.		<p>1.9(a) wording of CA descriptors not consistent with the Land Plans e.g.</p> <ul style="list-style-type: none">• Pink shading – BoR refers to ‘permanent acquisition of’ and ‘Freehold acquisition to be compulsorily acquired’ versus ‘permanent acquisition of land’ on Land Plans• Blue shading – ‘Permanent acquisition of new rights over’ in BoR versus ‘Permanent acquisition of rights over’• No green shaded land found on Land Plans <p>As the documents should work in tandem, care should be given to ensure they are consistent and to avoid confusion over the intention for each plot.</p>
2.	5	<p>‘It should be noted that whilst the descriptions in this BoR refer to the principal land use power sought in the DCO, the Applicant also seeks the power to temporarily possess all of the land within the Order limits and to suspend the exercise of existing easements, servitudes and other rights over the land during any period in which it is temporarily possessed.’</p> <p>The Land Plans show ‘land excluded from the order limits’ however these are not mentioned in the BoR and the above sentence could be interpreted as the powers being sought also applying to these lands.</p>