



Planning Inspectorate

Peartree Hill Solar Farm – EN010157

RWE Renewables UK Solar & Storage Ltd

Section 51 advice regarding draft application documents

Issued on 26 November 2024

On 11 October 2024 RWE Renewables UK Solar & Storage Ltd 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.

General

Ref No.	Comment or question
1.	The applicant is advised to review the draft application documents for any typographical/grammatical errors prior to submission.
2.	It is noted that parts of the draft Development Consent Order are incomplete. The observations provided as part of this feedback table are based on the submitted draft information only.
3.	Where the draft Development Consent Order includes wording derived from other made Development Consent Orders, the Explanatory Memorandum should explain why that wording is relevant to the proposed draft Development Consent Order, for example explaining what is factually similar for both the relevant consented nationally significant infrastructure project and the proposed development. The Examining Authority and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in the wording from the consented Development Consent Order drafting should also be explained. Further guidance on this matter is set out in Paragraph 019 (Reference ID 04-019-20240430) of the 'Content of a Development Consent Order'.
4.	The applicant may wish to review/expand the scope of which definitions should be included in the draft Development Consent Order.
5.	The Explanatory Memorandum should explain briefly why the proposed development is a nationally significant infrastructure project within sections 14 and 15 of the Planning Act 2008. It should then go on to justify why no upper limit on capacity has been provided. A further section could also be helpfully provided setting out the approach to the parameters of the Order and the use of the 'Rochdale Envelope' with reference to Paragraph 008 (Reference ID 04-008-20240430) of the aforementioned guidance.

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
1.	Articles	There are several provisions in the draft Development Consent Order where the local planning authority has 28 days to notify the undertaker of its decision otherwise consent is deemed to have been given (e.g. article 17(2)). The applicant is encouraged to discuss this time period with the relevant local planning authority to ensure that it gives the local planning authority sufficient time to make a decision, including in circumstances where it may be necessary for consultation with other parties to take place as part of the 28 day period.
2.	Article 2	'authorised development' – Bearing in mind the wide scope of the authorised development as set out in schedule 1, could the Explanatory Memorandum justify the need in this case for the reference to 'and any other development authorised by the Order...'. Why is such a broad definition required for the proposed development?
3.	Article 2	'maintain' – The Explanatory Memorandum notes that some flexibility must be built-in, including to keep up with advances in technology. Further explanation should be provided in respect of whether this definition might encompass the potential for the large-scale replacement of panels during the operational period and any implications arising from this. What are the implications of the use of the term 'the whole of' given that the use of this term would not prevent the replacement of, for example, 95% of the authorised development?
4.	Article 3	In respect of article 3(1), the Explanatory Memorandum should make clear how the provisions of Order will ensure that the authorised development is only consented within the Order Limits, subject to any exception. Whilst noting the explanation provided in the Explanatory Memorandum for the inclusion of article 3(2), the list of legislation in schedule 3 is currently blank. As much information as possible should be provided about 'any enactments' together with clarification about how far from the Order limits the provision might apply.

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
5.	Article 5	Should the power to maintain the authorised development be limited to maintenance works 'within the Order limits' as in other made solar Development Consent Orders? If not, justification should be provided in the Explanatory Memorandum.
6.	Article 6	Whilst noting the listed precedents, the Explanatory Memorandum should include justification of why this provision is specifically necessary for the proposed development, including reference to any specific drainage works that are expected to be required.
7.	Article 7	Why is this provision necessary in the circumstances of the proposed development given that the works plans already appear to include flexibility within them?
8.	Article 7	Limits of deviation have been referred to in the draft Development Consent Order but have not been explained within Environmental Statement Chapter 3. Where limits of deviation have been used in the draft Development Consent Order these should be clearly explained within the Environmental Statement and appropriately assessed.
9.	Article 9	<p>Article 9(3)(b) would allow the benefit of all or any part of the Order to be transferred or granted to a holding company or subsidiary of the undertaker without the written consent of the Secretary of State.</p> <p>A similar provision was removed by the Secretary of State in the recently made Mallard Pass 2024 and Gate Burton 2024 Orders and there does not appear to be any relevant justification for the inclusion of this provision in this case. The Secretary of State commented in the Gate Burton decision (paragraph 9.7) that if the applicant is to transfer the benefit of the Order to a holding company or subsidiary, the Secretary of State would expect that company to be a holder of a licence under section 6 of the Electricity Act 1989 and therefore considers this additional exemption from the need for consent to be unnecessary.</p>

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
10.	Article 11	<p>It is unusual for made solar Development Consent Orders to include paragraphs (d) and (ga) within this article. The Explanatory Memorandum should explain why this is required in this case. Why is this additional provision necessary over and above the broad defence in section 158 of the Planning Act 2008?</p> <p>Notwithstanding the above, the drafting of article 11(1) should be checked as it is unclear why the part in brackets (noise emitted from premises...) is referenced when the provision also includes other nuisances under paragraph (d) of the Environmental Protection Act 1990.</p>
11.	Article 13	Notwithstanding that this article is included in other made solar Orders, the Explanatory Memorandum should make clear why it is necessary based on the particular circumstances of the proposed development.
12.	Article 14	<p>The extent of street alteration works set out in article 14(2) are wide ranging. The applicant should provide justification for why such a wide range of alteration works are necessary in this case.</p> <p>For clarity, should article 14(4) include the wording 'without the prior written consent...'? This may also need clarification in other articles.</p> <p>There appears to be some inconsistency between article 14(4) and other articles requiring the written consent of the <i>street authority</i> and article 17 requiring the written consent of the <i>local planning authority</i>.</p>
13.	Article 16	Schedule 5 needs to be correctly referenced.
14.	Article 17	The wording of article 17(b) needs amending as it is currently unclear.
15.	Article 18	A definition of 'private road' would be helpful in the context of this article to remove ambiguity as to what would qualify as a private road. A plan identifying such private roads that the applicant intends to use could also be helpfully provided in order that those with an interest in the private roads can be made aware of any implications that might arise can be properly assessed.

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
		Although the Explanatory Memorandum explains that this article is required for the temporary passage of private roads by the applicant, the drafting of the article does not wholly reflect this, as it would allow use of private roads during the entirety of the construction or maintenance of the authorised development.
16.	Article 19	Whilst this is generally precedented, other Development Consent Orders regularly include reference to a schedule of known traffic regulation measures that will be required for this development (e.g. temporary speed limits, road closures and traffic signals). Can a schedule therefore be included for where such measures are known? This will help Interested Parties and the Secretary of State to understand the effect of the measures on highway users.
17.	Article 21	The precedents in the Explanatory Memorandum do not all extend this power to buildings outside of the Order limits. It should therefore make clear why this is required and be justified based on the particular circumstances of this case.
18.	Article 26	<p>Article 26(1) includes general provision for the acquisition of rights or the imposition of restrictive covenants (in addition to those set out in schedule 7). Notwithstanding the reasons for this set out in the Explanatory Memorandum, details should also be provided to demonstrate that persons with an interest in the Order land are aware that undefined new rights and covenants are being sought over all the Order land and have been consulted on this basis. Also refer to the relevant guidance in Paragraph 11 (Reference ID 04-011-20240430) of the 'Content of a DCO' guidance.</p> <p>A clear indication of the sorts of restrictions that would be imposed and the justification for them, rather than generic reasons, should be provided in order that the Secretary of State can consider whether the imposition of restrictive covenants is necessary for the purposes of implementing the Development Consent Order and is appropriate in human rights terms.</p>

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
		Explanation should also be provided for why the provisions of article 26(3) are necessary in the circumstances of the proposed development. Note that the paragraph referencing in the Explanatory Memorandum appears to need amending.
19.	Article 34	<p>Article 29(10) provides that ‘the undertaker may not compulsorily acquire the land under this Order referred to in paragraph (1)(a)(i)’. Does this drafting need to be extended to also make clear that the undertaker may also not acquire new rights or imposed restrictive covenants over the land referred to in paragraph (1)(a)(i)? This would be to prevent any power, if not previously consulted on, to create undefined new rights in the land described as being for temporary possession.</p> <p>Given that this article potentially allows for powers of temporary possession across the Order land (not just the land specified in schedule 9), should this also be reflected in the Land Plans by altering the description in the key for land coloured pink? This would help to make clear to those with an interest in that land, that this land may also be subject to powers of temporary possession?</p> <p>The notice period for temporary possession of 14 days is very short and should be further justified in the circumstances of the proposed development including with reference to the implications of such a short notice period upon those with an interest in the land.</p>
20.	Article 37	The applicant may wish to review the drafting of this article which appears to include a typo after ‘altered’.
21.	Article 39	Noting the explanation in the Explanatory Memorandum, the supporting justification in the Statement of Reasons should include the identification of the persons in whom the land is vested and other persons, if any, entitled to rights of common or other rights, and clarifying the extent of public use of the land.
22.	Article 44	The use of the wording ‘near the Order limits’ is ambiguous and lacks precision and could lead to unexpected works outside of the Order limits. Consideration should be given to amending this. For example, so that it only applies to trees or shrubs ‘within or encroaching upon the Order limits’.

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
		The relevant links are noted to requirement 9 (landscape and ecological management plan). The content of outline landscape and ecological management plan should be drafted accordingly to include reference to appropriate protection and management measures.
23.	Article 44 (3)	The applicant may wish to review whether article 44(3) references the correct paragraph.
24.	Article 45	It is noted that this has been included as the applicant has not been able to rule out the presence of human remains within the Order limits given the archaeological history of the site. It is relevant to note that the Secretary of State has recently removed similar articles from made solar Development Consent Orders, in the case of Mallard Pass 'because there are no known burial grounds within the Order limits, and the provisions for any remains should be included in the written scheme of investigation'.
25.	Article 48	<p>The approach to arbitration is different to that provided for in recently made solar Development Consent Orders where a separate schedule has set out the rules for arbitration. An explanation should be provided for why a different approach is being taken in this case.</p> <p>It is unlikely that a consenting Secretary of State would allow arbitration provision wording to apply arbitration to decisions he/she may have to make on future consents or approvals within their remit. This could be made clear in the article.</p>
26.	Schedule 1	<p>The approach to the proposed Works could be more clearly set out in schedule 1 and explained in the Explanatory Memorandum.</p> <p>It is not clear why Work No.1 includes both a ground mounted solar generating station and associated battery energy storage system and subsequently Work No.2 also includes a battery energy storage system. In accordance with relevant Planning Act 2008 guidance on associated development, as far as practicable, the applicant should explain which parts of their proposal are associated development and why.</p>

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
27.	Schedule 1	<p>In Work No.3 reference is made to 'the balance of solar system'. Should this be 'the balance of solar plant' to be consistent with the earlier interpretation?</p> <p>The list of further associated development at the end of schedule 1 is very extensive. It is important to ensure that such works all amount to associated development in order to accord with section 115 of the Planning Act 2008.</p>
28.	Schedule 1	Consideration should be given to whether further definitions are necessary to cover the various terms used?
29.	Schedule 2 Requirements	<p>Several requirements relate to a 'part of the authorised development'. Paragraph 3.6.3 of the Proposed Development Description (Volume 1, Chapter 3 of the Environmental Statement) states that the land areas and cable routes would be constructed in phases. Taking account of the potential implications of a phased construction, is a requirement needed for the submission and approval of construction phasing, including a timetable?</p> <p>Is a requirement relating to the control/management of noise necessary in this case?</p> <p>Is a separate requirement needed to secure the provision and maintenance of the permissive paths?</p>
30.	Schedule 2 Part 1 Requirement 3	<p>Requirement 3(1)(g) includes 'power and communications cables' but does not include 'electrical cables' that are included in schedule 1. Does requirement 3(g) therefore need to include 'electrical cables' so that the siting and effects of these can be appropriately considered by the local planning authority?</p> <p>In requirement 3(2), does the 'design parameters document' need defining? It is noted that the certified documents in schedule 12 include an 'outline design parameters document'. This needs clarification as presumably the design parameters document should be a final detailed document following the principles of the outline design parameters document?</p>

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		<p>In requirement 3(3) the use of the term 'substantially' is vague, open to interpretation and is likely to lead to a lack of clarity as to the final design of the development. It is not clear why the use of this term is necessary for the proposed development.</p> <p>Requirement 3(4) removes the need for approval under requirement 3 where matters have been consented under separate articles. This potentially creates inconsistency in how different approvals would be dealt with and who is responsible for the approval.</p> <p>Should requirement 3(4) refer to article 17 (Access to works) rather than article 18?</p>
31.	Requirement 7	For consistency, does the outline site waste management plan need to be included in the Interpretation section (1) and should it be a certified document?
32.	Requirement 8	<p>Should 'local Fire and Rescue Service' be defined?</p> <p>Whilst the undertaker would want to carry out its own pre-submission consultation with the local Fire and Rescue Service, should the requirement require the local planning authority to carry out consultation with it prior to its determination of an application?</p>
33.	Requirement 10	<p>For consistency should 'outline rights of way and access management plan' be defined in the Interpretation section (1)?</p> <p>It is also noted that the certified documents (schedule 12) refers to an 'outline rights of way and access plan'.</p>
34.	Requirement 11	<p>The drafting of requirement 11(6) is unclear.</p> <p>There is also some overlap and potential confusion between the drafting of requirement 11(6) and 11(7).</p>

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Ref No.	Article/ Schedule/ Requirement	Comment or question
35.	Requirement 15	<p>Does the 'date of decommissioning' need defining?</p> <p>Is more precise drafting necessary to ensure that the decommissioning of the authorised development must commence no later than 40 years following the date of final commissioning?</p>
36.	Requirement 17	<p>The drafting of this requirement goes beyond the justification provided in the Explanatory Memorandum. This is because the definition of 'Approved Documents' includes any document certified under article 46 as well as plans etc approved pursuant to any requirement. It therefore would potentially allow for amendments to any of the certified documents. Therefore, the Explanatory Memorandum should justify why such a wide-ranging provision is necessary in this case, noting section 153 of the Planning Act 2008 and the procedures for making any post consent (material or non-material) amendments to schemes as set out in the Government's Guidance 'Planning Act 2008: changes to Development Consent Orders.</p>
37.	Requirement 18	<p>Whilst precedents for this requirement are cited in the Explanatory Memorandum, specific justification would be helpful to clarify why it is necessary for this case. The example given regarding consultation on draft control documents would still leave it necessary for the final version of any such documents to be approved in writing following any grant of development consent.</p>
38.	Schedule 2, Part 2	<p>Paragraph 22(2)(c) (Appeals): Recently made solar Development Consent Orders have not included a specific time period for the Secretary of State to appoint a suitably qualified person. Similarly, justification should be provided in the Explanatory Memorandum of the 10 business day period provided in 22(2)(f) for the appointed person to make a decision, noting that the Mallard Pass DCO includes no such time period whilst the Cottam Development Consent Order includes a 30 day period.</p> <p>Paragraph 23 (Fees): Would the fees that would be required under 23(1) be sufficient, considering the likely nature of the submissions that the local planning authority would need to determine? Further discussion with the local planning authority is encouraged.</p>

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
		The reference to paragraph 2(1) under 23(2)(b) appears to be incorrect. Should it be paragraph 20(1)?
39.	Schedule 3	This schedule has not been completed. The Explanatory Memorandum should also include an explanation of the purpose of relevant legislation and a clear justification for its disapplication in the particular circumstances of the proposed development.
40.	Schedule 5	Should the heading for column 1 say 'Public right of way to be temporarily closed' rather than 'Street to be temporarily closed'?
41.	Schedule 7	Plot numbers 14-5, 14-6, 15-11 to 15, 17-22, 17-23 and 17-29 to 31: The description of the purpose for rights may be acquired or restrictive covenants may be imposed is unclear for these plots.
42.	Schedule 9	Column 2 needs to be completed, including the relevant work number(s).
43.	Schedule 10	To help the efficiency of the examination, if not already done so, the applicant should engage at the earliest opportunity with the relevant parties to seek to agree the form of the protective provisions. This should not be left until the commencement of the examination. Part 4 of the Protective Provisions is currently blank. Whilst it is not clear whether any further protective provisions need to be included, it is not acceptable to submit a draft DCO with blank schedules for protective provisions on the basis these will be supplied during the examination.
44.	Schedule 10	The applicant may wish to review 'utility undertaker' 2(d) and (e) which appear to be repeated
45.	Schedule 11	This Schedule is currently blank
46.	Schedule 12	The applicant may wish to review references to certified documents within the draft Development Consent Order and Explanatory Memorandum to ensure that titles are consistent. For example, schedule 12 refers to

Draft Development Consent Order

Ref No.	Article/ Schedule/ Requirement	Comment or question
		'outline landscape and ecological management plan' whilst article 35(12) refers to a 'landscaping and ecology management plan'.
47.	Schedule 12	This schedule could helpfully include a column with the date of each document. A check should also be carried out prior to submission that all relevant documents requiring certification are included in the schedule.
48.	Explanatory Note	It is noted that a deposit location has not been provided. Please note that, should the documents be made available at a third-party location, the applicant should confirm in writing that the stated third party has agreed.

Draft DCO Explanatory Memorandum

Ref No.	Article/ Schedule/ Requirements /Paragraph	Comment or question
1.	Contents	The applicant may wish to consider expanding the contents to include subheadings and relevant page numbers.
2.	Schedule 1 – Authorised development Paragraphs 2.7 and 2.8	Paragraphs 2.7 and 2.8 of the Explanatory Memorandum explains that the applicant has chosen not to differentiate the nationally significant infrastructure project and the associated development works in schedule 1 of the Order and that all elements of the 'authorised development' either constitute part of the nationally significant infrastructure project or are 'associated development'. However, it is not clear how this relates to the way that the Work Nos. have been set out in schedule 1, including the battery energy storage system. See also the comments on schedule 1 above.

Draft DCO Explanatory Memorandum

Ref No.	Article/ Schedule/ Requirements /Paragraph	Comment or question
3.	Schedule 1 – Authorised development	More detail is recommended to be added to Explanatory Memorandum explaining the mechanics of the drafting of the schedule and how schedules 1 and 2 would ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement.
4.	Article 10 Paragraph 3.39	Paragraph 3.39 refers to article 6, whereas it appears that it should refer to article 10.
5.	Article 16 Paragraphs 3.65 – 3.69	The applicant may wish to review article 16 in the Explanatory Memorandum to ensure that it accurately cross references to the correct paragraphs in the draft Development Consent Order.
6.	Article 26 Paragraphs 3.98, 3.99 and 3.100	The applicant may wish to review article 26 in the Explanatory Memorandum to ensure that it accurately cross references to the correct paragraphs in the draft Development Consent Order.
7.	Article 49 Paragraph 3.171	Should this refer to article 49 being precedentated?

Draft Works Plans and Land Plans

Ref No.	Plan Name and Ref	Comment or question
1.	Land Plans Sheets 1, 3, 4, 10, 15, 16 and 17	The applicant should review details on the Land Plans. The following issues have been noted: land adjacent 1-5, 1-11, 16-12 and 16-17 appears to be missing a plot number. The applicant may wish to consider the inclusion of additional insets for the following plots 1-14, 3-6, 3-17, 4-5, 4-7, 10-9, 15-12, 15-13,15-14, 15-16, 15-18 and 17-29.
2.	Land Plans Sheets 1 and 14	Plot numbers 1-18, 14-10, 14-11, 14-12, 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22 are shown on the Land plans as 'land proposed for permanent acquisition of rights or imposition of restrictive covenants and to be used temporarily' but are not included in schedule 7 of the draft Development Consent Order.
3.	Land Plans Sheet 2	It would assist for clarity if a distinction could be made as to which part of the land continues on sheet 6 and which part on sheet 5.
4.	Land Plans	It is noted that plots coloured pink in the Land Plans and described as 'land proposed to be permanently acquired' in the description key are included in the draft Development Consent Order at column 1 of schedule 9 'land of which temporary possession may be taken'. Furthermore, it is noted that several plots coloured green in the Land Plans and described as 'land proposed for temporary possession' in the description key are not included in column 1 of schedule 9 of the draft Development Consent Order.
5.	Works Plans	The applicant should review the Works Plans to ensure that all works are labelled. For example, it is noted that at sheet 16, Work No.3 has not been labelled.

Draft Project Description Chapter of the Environmental Statement (Chapter 3)

Ref No.	Paragraph/ Section/Table	Comment or question
1.	Table 3-1	Table 3-1 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 Environmental Statement, and to consider including a table of parameters in the draft Development Consent Order.
2.	Table 3-10	Table 3-10 references enhancement areas that will remain free of solar PV development to provide continued availability of habitat for ground nesting birds as well as creating suitable habitat for wintering birds and a range of other species such as meadow grassland, legume rich sowing, hedgerows, and field margin sowing. Any enhancement areas should be clearly explained in the ES, displayed on appropriate figures and secured within the DCO.
3.	Paragraph 3.6.35	Paragraph 3.6.35 sets out the construction working hours. It would be beneficial to break down the construction hours to explain further information such as when would construction activities incurring the highest level of noise occur.