

The Planning Act 2008

OAKLANDS FARM SOLAR PARK

Examining Authority's Report
of Findings and Conclusions
and

Recommendation to the
Secretary of State for
Energy Security and Net Zero

Examining Authority

Stuart Cowperthwaite

19 MARCH 2025

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OVERVIEW

File reference: EN010122

The application, dated 8 February 2024, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on that date.

The Applicant is Oaklands Farm Solar Limited.

The application was accepted for Examination on 5 March 2024.

The Examination began on 10 July 2024 and was completed on 19 December 2024.

The Proposed Development comprises the construction, operation, maintenance, and decommissioning of an energy generating facility comprising ground mounted solar photovoltaic arrays and an on-site substation, together with an associated Battery Energy Storage facility and supporting infrastructure including a below ground electrical connection to the National Grid substation at the former Drakelow Power Station.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State for Energy Security and Net Zero should make the Order in the form attached at Annex C.

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ANNEX A: ABBREVIATIONS

ANNEX B: KEY LEGISLATION AND POLICY

ANNEX C: RECOMMENDED DEVELOPMENT CONSENT ORDER



ERRATA SHEET – Oaklands Farm Solar Park Ref. EN010122

**Examining Authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for the Department of
Energy Security and Net Zero, dated 19 March 2025**

**Corrections agreed by the Examining Authority prior to a decision
being made**

PDF Page No.	Para	Error	Correction
24	3.2.72	"I find that the Applicant provides a GHG assessment for the stages of the Proposed Development in accordance with <u>paragraphs</u> 5.3.4 and 5.3.8 of NPS EN-1."	Reference included relates to the Secretary of State decision-making. Correct to: "I find that the Applicant provides a GHG assessment for the stages of the Proposed Development in accordance with <u>paragraph</u> 5.3.4 5.3.8 of NPS EN-1."
46	3.3.92	"NE [REP7-005] is satisfied that should cables be left in situ after the decommissioning stage, that provided <u>that</u> are buried at a minimum depth of 0.9m they would not impact the future agricultural use of the land."	"NE [REP7-005] is satisfied that should cables be left in situ after the decommissioning stage, that provided <u>these</u> are buried at a minimum depth of 0.9m they would not impact the future agricultural use of the land."
51	3.3.115	"Councillor Amy Wheelton [REP1-039] says staff who work at Oaklands Farm have openly	"Councillor Amy Wheelton [REP1-039] says staff who work at Oaklands Farm have openly stated the dairy farm would cease, and that sheep never graze solar sites

		stated the dairy farm would cease, and that sheep never graze solar sites because the farmers must pay for any damage to the arrays <u>and</u> sheep rub and chew."	because the farmers must pay for any damage to the arrays ~~and~~ sheep rub and chew."
244	7.3.20	"Responding to my query the Applicant updated Article 26(1) to limit temporary possession for the purposes of Article 26(1) (b)-(f) to the carrying out of site preparation works, construction and decommissioning."	Should include reference to document PD-010: Examining Authority's Written Questions (ExQ1).

1. INTRODUCTION

1.1 BACKGROUND

- 1.1.1 An application (the application) for an Order granting Development Consent for the Oaklands Farm Solar Park Project (the Proposed Development) was submitted to the Planning Inspectorate by Oaklands Farm Solar Limited (the Applicant) on 8 February 2024. The application was made under section 31 (s31) of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 5 March 2024 [\[PD-001\]](#).
- 1.1.2 The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project were considered by the Secretary of State for the Department of Levelling Up, Housing and Communities in its decision to accept the application for Examination [\[PD-001\]](#).
- 1.1.3 This report sets out the Examining Authority's findings, conclusions, and recommendations to the Secretary of State for Energy Security and Net Zero (SoS). It includes consideration of:
- whether the application complies with relevant legislation, policy and guidance;
 - the powers sought by the Applicant, including in relation to land rights;
 - how the Proposed Development would be controlled;
 - the balance of benefits and disbenefits of the Proposed Development; and
 - whether development consent should be granted.
- 1.1.4 This report does not contain extensive summaries of all documents and representations received, although full regard is had to them and all important and relevant matters arising in all my conclusions and the recommendations. Key written sources are set out further below. References in square brackets (e.g. [\[PD-001\]](#)) are to documents catalogued in the [Examination Library](#). I typically refer to the latest version of a document submitted to the Examination.

1.2 APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1 On 14 March 2024 I, Stuart Cowperthwaite, was appointed as the Examining Authority for the application under s61 and s79 of the PA2008 [\[PD-005\]](#).

1.3 THE APPLICATION

THE SITE AND SETTING OF THE PROPOSED DEVELOPMENT

- 1.3.1 The location of the Proposed Development is shown in Figure 1.3.1 below and in the Land Plan [\[REP6-003\]](#) and Works Plan [\[AS-003\]](#).
- 1.3.2 The site is wholly in England, lies within the Derbyshire County Council (DCC) and South Derbyshire District Council (SDDC) administrative areas and in proximity to the Staffordshire County Council (SCC), East Staffordshire Borough Council (ESBC), and Lichfield District Council administrative areas.

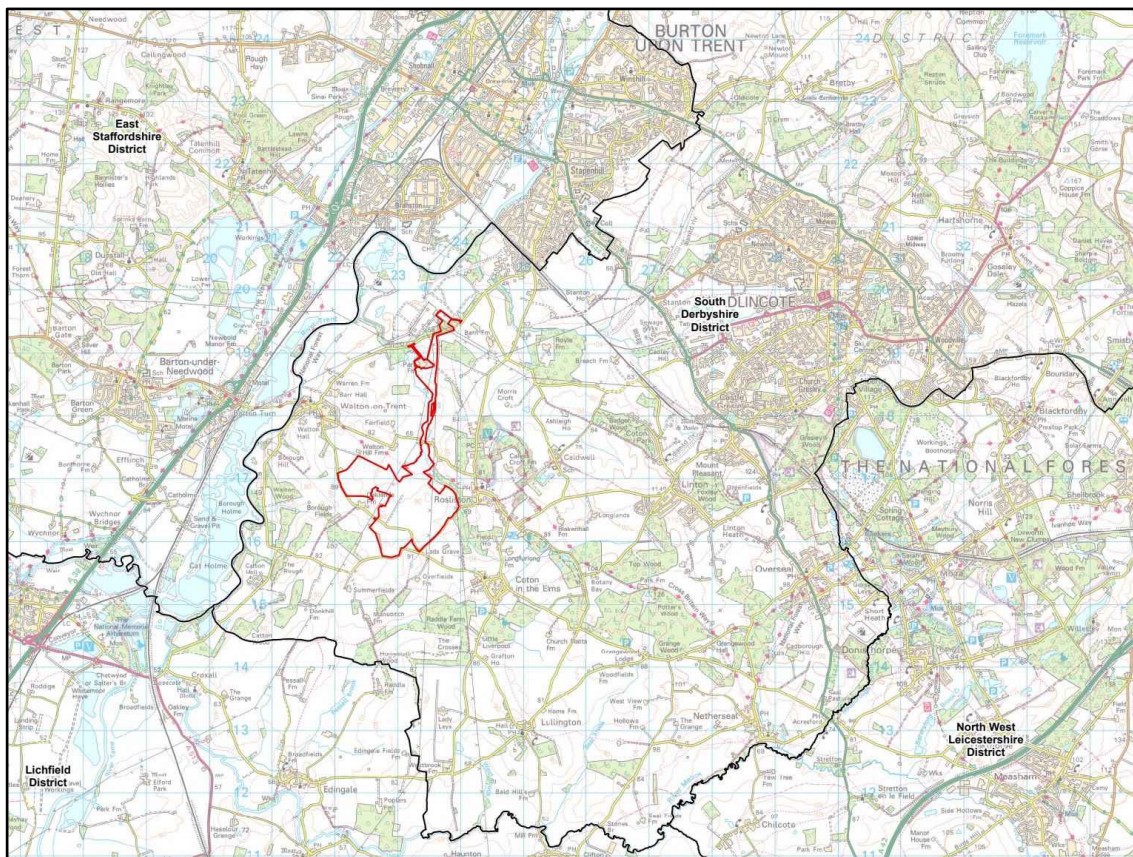


Figure 1.3.1: Location Plan [extract from [APP-005](#)]

1.3.3 Environmental Statement (ES) Chapter 5 [\[AS-027\]](#) provides a detailed description of the baseline condition of the site and surrounding area.

1.3.4 In summary, the site is located within a broad, gently rolling agricultural landscape and mainly comprises medium-large scale fields of mixed arable and pastoral uses. To the west is the low-lying Trent valley and to the east is a former coalfield area. The River Trent is approximately 0.4 kilometres (km) north of the site at its closest point. The Trent and Mersey Canal runs to the west of this, and the Pessall Brook runs along the south-eastern edge of the site and crosses through its middle before running along the north-western edge. There are several disused gravel pits, many of which are now filled with water and restored to wetland habitats. The site is located within the western half of the National Forest and there are areas of deciduous and mixed woodland throughout the area, often on shallow hill slopes and associated with farms and settlements. The designed landscape of The National Memorial Arboretum is approximately 4km from the site, just east of the A38.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.5 ES Chapter 4 [\[REP6-031\]](#) provides a detailed description of the Proposed Development.

1.3.6 In summary, it comprises a proposed solar farm with an associated Battery Energy Storage System (BESS). The Proposed Development would have a generating capacity of over 50 megawatts (MW) and would be situated on 191 hectares of land. The solar farm itself, comprising photovoltaic (PV) solar panel arrays, a central electricity substation and BESS together with access, landscaping and other works would be on 135 hectares of agricultural land currently in use for arable production and grazing. A high voltage underground electricity cable would run through land to the

north to connect the Proposed Development to the national grid via an electricity substation at the former Drakelow Power Station, south of Burton Upon Trent.

1.3.7 An indicative layout is provided in Figures 1.3.2 and 1.3.3:

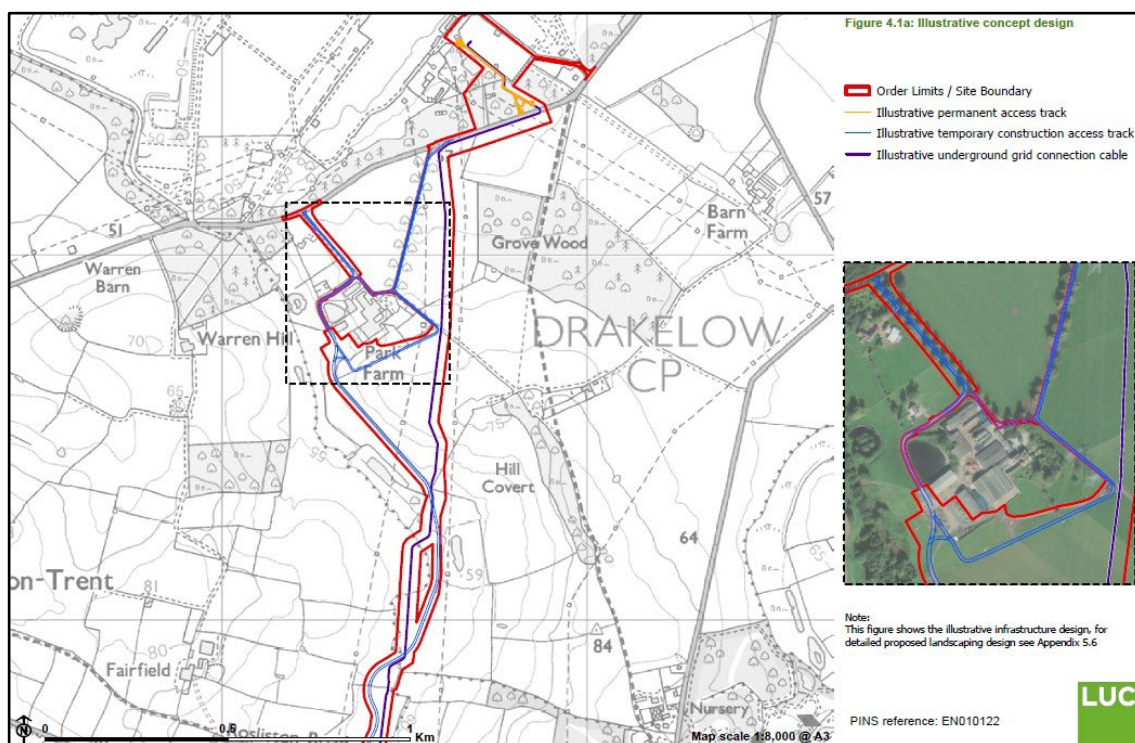


Figure 1.3.2: Indicative layout of the northern area [extract from Figure 4.1a of [APP-097](#)]

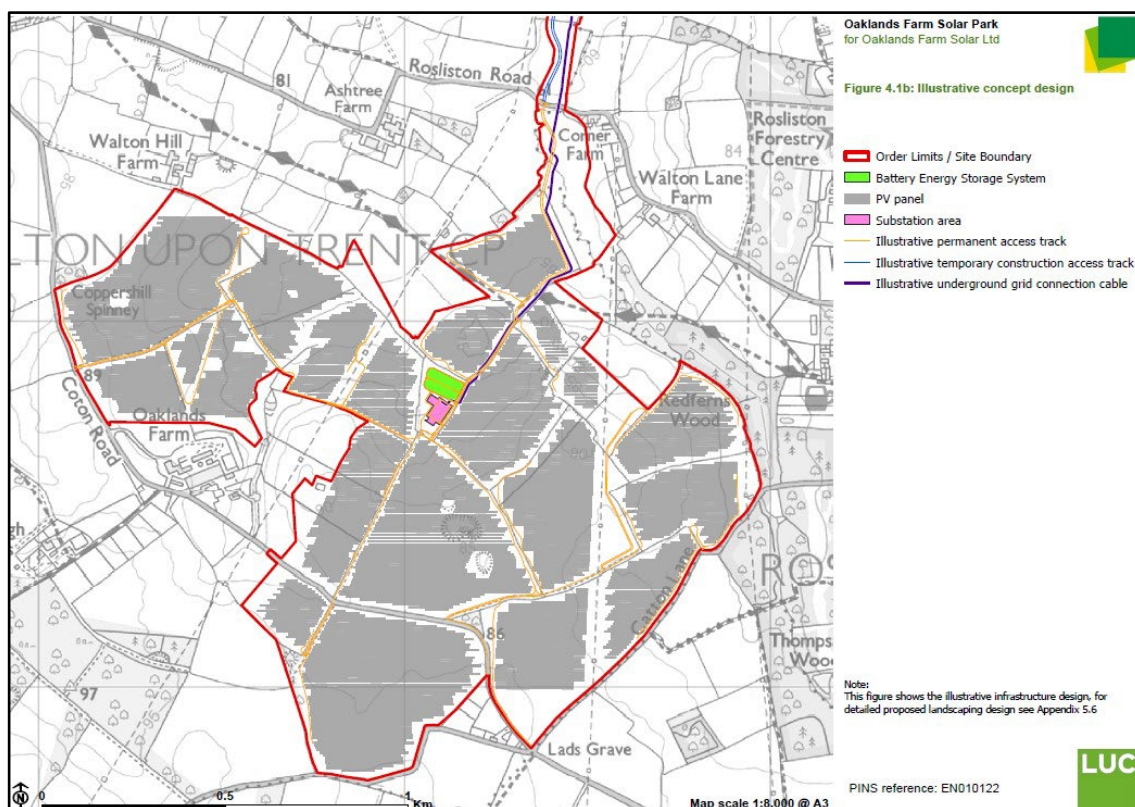


Figure 1.3.3: Indicative layout of the southern area [extract from Figure 4.1b of [APP-097](#)]

- 1.3.8 The proposed works are detailed in Schedule 1 of my recommended Development Consent Order in Annex C to this report, and comprise:

Principal development

- **Work No. 1** - a ground mounted solar PV generating station.

Associated Development

- **Work No. 2** - a BESS compound;
- **Work No. 3** - works in connection with a new on-site substation;
- **Work No. 4** - 132kV electrical cables connecting Work No. 3 to Work No. 5;
- **Work No. 4A** - crossing Rosliston Road with electrical cabling;
- **Work No. 4B** - temporary stopping up of water courses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses;
- **Work No. 4C** - crossing Walton Road with electrical cabling;
- **Work No. 4D** - crossing Coton Road with electrical cabling;
- **Work No. 5** - connection and installation works to the existing substation;
- **Work No. 5A** - access for Work No. 5;
- **Work No. 5B** - access to National Grid operational land for Work No.5;
- **Work No. 6** - construction and decommissioning of access tracks and compounds;
- **Work No. 7** - general works;
- **Work No. 8** - works to facilitate access for all works excluding Work No. 5;
- **Work No. 9** - works for areas of habitat management;
- **Work No. 10** - works to implement a new permissive path; and
- other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development, as described in Schedule 1.

- 1.3.9 Paragraph 2.10.16 of the National Policy Statement for Renewable Energy Infrastructure states that Associated Development should be considered on a case-by-case basis, giving examples of energy storage and security arrangements such as flood defences, fencing, lighting, and surveillance.

- 1.3.10 I consider that Associated Development is included appropriately as, in accordance with s115 of the PA2008, paragraph 1.3.11 of the Overarching National Policy Statement for Energy, paragraph 2.10.16 of the National Policy Statement for Renewable Energy Infrastructure, and Government guidance on [Planning Act 2008: associated development applications for major infrastructure projects](#):

- it is associated with and subordinate to the principal development;
- it would either support the construction or operation of the principal development, or help address its impacts; and
- it is proportionate to the nature and scale of the principal development and is not only necessary as a source of additional revenue for the Applicant.

THE KEY BENEFITS OF THE PROPOSED DEVELOPMENT

- 1.3.11 The Applicant sets out what it considers to be the key benefits of the Proposed Development [[APP-181](#), [REP3-021](#), [REP6-043](#)]. In summary these are:
- the ability to generate 3,815,246 megawatt hours (MWh) of electricity over the 40-year lifetime, from a renewable energy source, contributing to the urgent need for new low and zero carbon energy infrastructure in the United Kingdom (UK) and delivering a Critical National Priority development;
 - energy storage that would help to improve the resilience of the wider electricity network by allowing electricity to be imported and stored before being released;
 - a Biodiversity Net Gain of 125% in habitat units, 20% in hedgerow units and 20% in river units, through a scheme of landscaping and biodiversity improvements;
 - a new permissive path through the Proposed Development to provide connectivity across the site and improve the connectivity of the Public Rights of Way network;
 - employment opportunities and economic activity, including the expected delivery of an average of 114 full-time equivalent jobs and approximately 91 more indirect induced full-time equivalent jobs during the construction stage; and
 - an estimated £80 million in construction expenditure, of which £20 million would be retained within the UK.

RELEVANT PLANNING HISTORY

- 1.3.12 Relevant planning history is set out in the Planning Statement [[APP-181](#) Appendix A]. Applications within the site include agricultural developments, a dwelling extension, tree pruning, and felling, and the installation of a high-pressure steel gas pipeline.
- 1.3.13 Other applications near the site are primarily in the vicinity of the grid connection point at the former Drakelow Power Station and include a residential-led development, a 18MW Renewable Energy Centre, a solar park over an area of around 11ha, and a 1220MW Combined Cycle Gas Turbine.

1.4 THE EXAMINATION

- 1.4.1 The Preliminary Meeting took place on 10 July 2024 [[EV1-002](#), [EV1-004](#)]. My procedural decisions and the Examination Timetable took full account of matters raised at the PM, as set out in my Rule 8 Letter [[PD-009](#)] of 16 July 2024.
- 1.4.2 The Examination began on 10 July 2024 and concluded on 19 December 2024.
- 1.4.3 My procedural decisions are included in the [Examination Library](#) and referenced [PD-XXX]. They detail my decisions relating to the procedure of the Examination and do not bear on my consideration of the planning merits of the Proposed Development.
- 1.4.4 I asked three rounds of written questions ExQ1 [[PD-010](#)], ExQ2 [[PD-012](#)], and ExQ3 [[PD-014](#)]. I held two Open Floor Hearings [[EV2-002](#), [EV5-002](#)], one Issue Specific Hearing (ISH1 [[EV4-003](#), [EV4-005](#), [EV4-007](#), [EV4-009](#), [EV4-011](#)]) and one Compulsory Acquisition Hearing [[EV6-002](#)].
- 1.4.5 I carried out two Unaccompanied Site Inspections [[EV3-001](#), [EV7-001](#)]. I [[PD-011](#)] visited locations suggested by SDDC on an unaccompanied basis, including to places not accessible to the general public where access was provided by relevant parties.

- 1.4.6 Statements of Common Ground (SoCG) were concluded and signed between the Applicant and DCC and SDDC [\[REP8-017\]](#), the Environment Agency [\[REP8-018\]](#), Historic England [\[REP7-006\]](#), and Natural England [\[REP7-005\]](#).

1.5 CHANGES TO THE APPLICATION

- 1.5.1 The Applicant submitted various updates to the application documents during the Examination, including to the wording of the draft Development Consent Order [\[REP8-003\]](#). These updates sought to address matters identified during the Examination, including points raised by Interested Parties and me. They are set out in the [Examination Library](#) and the Applicant's Application Guide [\[REP8-002\]](#). The Applicant has not requested a change to the application.

1.6 OTHER UNDERTAKINGS, AGREEMENTS AND CONSENTS

- 1.6.1 During the Examination, the Applicant made a Unilateral Undertaking for a Skylark Mitigation Strategy [\[REP7-010\]](#) to s106 of the Town and Country Planning Act 1990.
- 1.6.2 During the Examination some parties confirmed that they reached private agreements with the Applicant regarding protection of their assets and/ or interests.
- 1.6.3 The Consents and Agreements Position Statement [\[REP8-007\]](#) provides information on the consents and licences required in addition to the consents under the PA2008.
- 1.6.4 Other undertakings, obligations, agreements, and/ or consents are considered as necessary in the relevant sections of this report.

1.7 THE STRUCTURE OF THIS REPORT

- 1.7.1 The structure of the remainder of this report:
- **Chapter 2** identifies how the application is to be determined, introduces the legislative and policy context, concludes on the adequacy of the Environmental Impact Assessment, and considers transboundary impacts;
 - **Chapter 3** sets out my findings and conclusions on the principle of development and the planning issues arising from the application and during the Examination;
 - **Chapter 4** provides a record of considerations relevant to the Habitats Regulations Assessment;
 - **Chapter 5** sets out the balance of planning considerations and provides my reasoning and conclusions on the case for making a Development Consent Order;
 - **Chapter 6** considers whether the land rights powers requested by the Applicant should be granted;
 - **Chapter 7** addresses the Development Consent Order;
 - **Chapter 8** summarises my findings, conclusions, and recommendations;
 - **Annex A** provides a list of abbreviations;
 - **Annex B** identifies key relevant legislation and policy; and
 - **Annex C** comprises my Recommended Development Consent Order.

2. HOW THE APPLICATION IS DETERMINED

2.1 INTRODUCTION

- 2.1.1 This chapter identifies the key legislation, policy, and Local Impact Reports (LIR) that my recommendations are made against. It includes my consideration of the overall adequacy of the Applicant's Environmental Impact Assessment, the Habitats Regulations Assessment (HRA), and transboundary effects.

2.2 LEGISLATION AND NATIONAL POLICY

THE PLANNING ACT 2008

- 2.2.1 Paragraph 1.1.2 identifies that the Proposed Development is a Nationally Significant Infrastructure Project (NSIP). It is therefore to be determined under the Planning Act 2008 (PA2008). PA2008 provides different decision-making processes for NSIP applications where a relevant National Policy Statement (NPS) is designated and has effect (s104), and where s104 does not apply (s105).
- 2.2.2 The Proposed Development is a solar photovoltaic electricity generating station with Associated Development including a 132 kilovolt underground electricity distribution system. It is considered against s104 of the PA2008 because it is within the scope of the following NPSs (each dated November 2023 and designated on 17 January 2024):
- paragraph 3.3.60 of the Overarching National Policy Statement for Energy (NPS EN-1);
 - paragraph 1.6.1 of the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3); and
 - paragraphs 1.6.1 and 1.6.4 of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5).
- 2.2.3 In deciding this application, s104(2) of the PA2008 requires the Secretary of State for Energy Security and Net Zero (SoS) to have regard to any:
- NPS which has effect in relation to development of the description to which the application relates (a 'relevant NPS');
 - LIR (within the meaning given by PA2008 s60(3)) submitted to the SoS before the specified deadline;
 - any matters prescribed in relation to development of the description to which the application relates; and
 - other matters which the SoS thinks are both important and relevant to the decision.
- 2.2.4 Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8):
- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;

- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the Proposed Development would outweigh its benefits; and/ or
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.5 This report sets out my findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008. I give more consideration to the application of s104 in Chapter 5.

THE EQUALITY ACT 2010

2.2.6 The Equality Act 2010 includes a Public Sector Equality Duty. This requires public authorities to have due regard in the exercise of their functions to:

- the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not in respect of the protected characteristics of age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion and belief, sex, and sexual orientation; and
- foster good relations between people who share a protected characteristic and those who do not.

2.2.7 The SoS (as decision-maker) must pay due regard to the aims of the Public Sector Equality Duty. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

2.2.8 I have due regard to this duty, including by holding blended meetings and hearings, producing guidance on holding those meetings, and ensuring that participants were provided with hard copy correspondence, where requested. I have not identified any people with a protected characteristic that might be discriminated against if the decision is taken to grant consent to the Proposed Development.

2.2.9 I am confident that, in making my recommendations, I have paid due regard to Public Sector Equality Duty when considering the potential impacts of granting or refusing consent. I find no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. I find no breach of the Public Sector Equality Duty.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

2.2.10 As evidenced by this report, I fulfil my biodiversity duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006 by having due regard to conserving and enhancing biodiversity when making my recommendations.

OTHER NATIONAL LEGISLATION

- 2.2.11 Information on the Human Rights Act 1998 and the Climate Change Act 2008, and a list of other relevant legislation is provided in Annex B. Noting the inland location of the Proposed Development, I consider that there would be unlikely to be any impacts to the marine environment and consequently give no further consideration to marine legislation or policy in this report.
- 2.2.12 I consider all applicable legislation as required and the findings and recommendations in this report are framed to identify and enable the SoS to discharge all applicable statutory considerations and duties.

NATIONAL POLICY STATEMENTS FOR ENERGY INFRASTRUCTURE

- 2.2.13 NPSs EN-1, EN-3 and EN-5 are relevant NPS for the Proposed Development and provide the primary basis for determining whether consent should be granted.
- 2.2.14 The NPSs include policies for the principle of development (including the need case) and for the planning issues (including the assessment of potential benefits, adverse impacts, and mitigation). These are addressed in Chapter 3.
- 2.2.15 The NPSs also set out general policies and considerations in relation to the planning balance and the case for development. These are addressed in Chapter 5.

OTHER NATIONAL POLICY AND GUIDANCE

- 2.2.16 The latest National Planning Policy Framework (NPPF) was published on 12 December 2024. The NPPF, and the accompanying Planning Practice Guidance, set out the planning policies for England and how these are to be applied. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs. Other key national policies and guidance are listed in Annex B.
- 2.2.17 In accordance with s104(2) of the PA2008, I address compliance with other national policies and guidance that I consider to be important and relevant to the decision, but only to the extent that they are relevant to the Proposed Development.

2.3 LOCAL IMPACT REPORTS AND LOCAL POLICY

- 2.3.1 The Applicant summarises relevant local policies in its Planning Statement [[APP-181](#)]. Derbyshire County Council and South Derbyshire District Council refer to local policies in their joint LIR [[REP2-001](#)]. Leicestershire County Council also submitted an LIR [[REP2-002](#)]. Other key relevant local policy documents are listed in Annex B.
- 2.3.2 In accordance with s104(2) of the PA2008, I give regard to matters raised in the LIR and address compliance with local policies that I consider to be important and relevant to the decision. I refer to specific local matters and policies as required.

2.4 ENVIRONMENTAL IMPACT ASSESSMENT

- 2.4.1 On 14 April 2022 the Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) of its intention to provide an Environmental Statement (ES). With

reference to Regulation 6(2) of the EIA Regulations, I am satisfied that the Proposed Development is EIA development.

- 2.4.2 On 20 August 2021, the Applicant submitted a Scoping Report [[APP-079](#)] to the Secretary of State for the Department of Levelling Up, Housing and Communities under Regulation 10 of the EIA Regulations to request an opinion about the scope of the ES to be prepared (a Scoping Opinion).
- 2.4.3 On 30 September 2021 the Planning Inspectorate provided a Scoping Opinion [[APP-080](#)] on behalf of the Secretary of State.
- 2.4.4 I consider representations made by Interested Parties about the adequacy of the ES in Chapter 3. Overall, I consider that the ES submitted with the application and as updated during the Examination is sufficient to enable the Secretary of State to take a decision in compliance with the EIA Regulations.
- 2.4.5 I consider that the updates and changes to the ES during the Examination do not individually or cumulatively prejudice the adequacy of the ES.

2.5 HABITATS REGULATIONS ASSESSMENT

- 2.5.1 The SoS, as decision maker, is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.5.2 A Report to Inform the HRA [[APP-122](#)] was included in the application. The Proposed Development is identified as having the potential for likely significant effects on European sites and hence is subject to an HRA. A record of considerations relevant to the HRA is set out in Chapter 4.

2.6 TRANSBOUNDARY EFFECTS

- 2.6.1 A [transboundary screening](#) under Regulation 32 of the EIA Regulations was undertaken by the Planning Inspectorate on behalf of the Secretary of State on 2 December 2021. This concludes that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State.
- 2.6.2 The Regulation 32 duty is an ongoing duty, and I am satisfied that no facts have emerged up to the end of the Examination to change the Planning Inspectorate's screening conclusions.

2.7 INITIAL ASSESSMENT OF PRINCIPAL ISSUES

- 2.7.1 As required by s88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, I made an Initial Assessment of Principal Issues arising from the application. This assessment followed my consideration of relevant legislation and policy, the application documents, and the Relevant Representations. My Initial Assessment of Principal Issues is in Annex E of the Rule 6 letter [PD-006].
- 2.7.2 I consider that the issues raised by Interested Parties are broadly in line with the Initial Assessment of Principal Issues and where necessary I subjected them to written and oral questioning during the Examination. My findings and conclusions are set out in the following chapters.

3. PRINCIPLE OF DEVELOPMENT AND PLANNING ISSUES

3.1 INTRODUCTION

- 3.1.1 This chapter sets out my consideration of the principle of the development and the planning issues. It is structured to firstly examine the need, alternatives, project lifetime, and decommissioning timing and funding before addressing other topics. The order that topics are presented is not intended to imply any order of importance.
- 3.1.2 The Environmental Impact Assessment (EIA) Regulations require an assessment of the likely significant effects of the Proposed Development on the environment, covering the direct effects and any indirect, secondary, cumulative, transboundary, short, medium, and long-term, permanent, and temporary, positive, and negative effects at all stages of the project. They also require consideration of measures for avoiding or mitigating adverse effects. I consider the Applicant's assessment in this chapter.
- 3.1.3 Paragraph 4.1.5 of the Overarching National Policy Statement for Energy (NPS EN-1) states that the Secretary of State for Energy Security and Net Zero (SoS) should:
- consider potential benefits including its contribution to meeting the need for energy infrastructure, job creation, reduction of geographical disparities, environmental enhancements, and any long-term or wider benefits; and
 - consider potential adverse impacts, including on the environment, including long-term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate, or compensate for any adverse impacts, following the mitigation hierarchy.
- 3.1.4 For each topic, I provide a selected summary of legislation, policy, and the application documents for that topic as context for the Examination and to assist the reader. I take account of the full text of all relevant and important legislation, policy, guidance, application documents and submissions when making my conclusions.
- 3.1.5 References to mitigation secured by management or mitigation plans are based on provisions in the recommended Development Consent Order (rDCO) in Annex C:
- Article 34 and Schedule 12 which certify the Outline Construction Environmental Management Plan (Outline CEMP) [\[REP6-018\]](#), Outline Construction Traffic Management Plan (Outline CTMP) [\[REP6-028\]](#), Outline Landscape and Ecological Management Plan (Outline LEMP) [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A], Outline Operational Environmental Management Plan (Outline OEMP) [\[REP6-020\]](#), Outline Decommissioning Environmental Management Plan (Outline DEMP) [\[REP6-022\]](#), and Outline Battery Safety Management Plan (Outline BSMP) [\[APP-093\]](#);
 - Requirement 8 - implement a LEMP that includes specified details, accords with the Outline LEMP, and is approved by the local planning authority (LPA) in consultation with Natural England (NE);
 - Requirement 9 - implement a CEMP that includes specified details, accords with the Outline CEMP, and is approved by the LPA in consultation with the Environment Agency (EA) and NE;
 - Requirement 10 - implement a CTMP that includes specified details, accords with the Outline CTMP, and is approved by the LPA in consultation with the highway authority;

- Requirement 11 - implement a OEMP that includes specified details, accords with the Outline CTMP, and is approved by the LPA;
- Requirement 12 - implement a BSMP that includes specified details, accords with the Outline BSMP or details such changes as the undertaker considers are required, and is approved by the LPA in consultation with Derbyshire Fire and Rescue Service (DFRS); and
- Requirement 22 - implement a DEMP and Decommissioning Traffic Management Plan that includes specified details, substantially accords with the Outline DEMP, and is approved by the LPA.

3.1.6 Note that Appendix A of the latest version of the Outline LEMP [\[REP4-040\]](#) is blank. It appears likely that the Illustrative Landscape Strategy Plan (Figures 1a-f) provided in Appendix A of the penultimate version of Outline LEMP [\[REP3-025\]](#) is omitted accidentally. I consider that the Illustrative Landscape Strategy Plan should be included in the Outline LEMP as it locates and describes much of the key mitigation. I therefore refer to the Outline LEMP [\[REP4-040, REP3-025 Appendix A\]](#) and update the reference to the Outline LEMP in Schedule 12 of the DCO [\[REP8-003\]](#) accordingly.

3.1.7 For each topic I give weight for or against the making of the Order on the scale of:

- neutral weight that does not affect the balance of the Order being made;
- a little weight;
- moderate weight;
- great weight; and
- very great weight.

3.1.8 The conclusions and weights for each topic are then taken forward to Chapter 5 for my overall consideration of the planning balance and the case for development.

3.1.9 My conclusions take account of all relevant legislation and policy, and of all written and oral submissions. I focus on matters that I consider to be important and relevant to the decision and when I consider that it is necessary to address compliance with relevant policy or legislation, there may be implications for the planning balance, and/ or compelling, or potentially compelling, support or challenge is provided. I do not necessarily report on matters that I consider are either not controversial, are agreed between the parties, or are adequately justified by the Applicant.

3.2 NEED, ALTERNATIVES, ELECTRICITY GENERATION, AND DECOMMISSIONING

INTRODUCTION

3.2.1 This section addresses the overall need for the Proposed Development, the alternatives considered in the site selection, electricity generation, the grid connection, and decommissioning timing and funding. The planning balance and the case for development are considered in Chapter 5.

3.2.2 The effects of the Proposed Development on climate change, including Greenhouse Gas (GHG) emissions, are an intrinsic part of the need case and are therefore addressed in this section. The effect of climate change on the Proposed Development,

including climate change adaptation and resilience, are addressed in Section 3.10. The implications of climate change for flooding are considered in Section 3.9.

- 3.2.3 This section concentrates on the alternatives considered in relation to site selection and overall layout. Requirements to consider alternatives for specific planning, Habitats Regulations, or land rights issues are considered as necessary later in this report. Other decommissioning matters are covered in the following sections of the report.

LEGISLATION AND POLICY CONSIDERATIONS

Need case, including effects on climate change

Climate Change Act 2008

- 3.2.4 The Climate Change Act 2008 sets a target for the year 2050 for the reduction of targeted GHG emissions and to provide for a system of carbon budgeting (amongst others). The Climate Change Act 2008 (2050 Target Amendment) Order 2019 amends the 2050 target in the Climate Change Act 2008 to net zero i.e., that the net United Kingdom (UK) carbon account, in terms of carbon dioxide and other targeted GHG, for the year 2050 is at least 100% lower than the relevant baseline year. A series of Carbon Budgets Orders set the carbon budgets for relevant periods.

NPS EN-1

3.2.6	Urgent need for the types of infrastructure covered by this NPS.
3.2.7	The weight to be given to the need.
3.3.20	The role of wind and solar.
3.3.26	The role of energy storage.
4.2.2	Delivery of energy security, net zero, and low carbon sources of energy.
4.2.5	Definition of low carbon infrastructure.
5.3.3	Climate change impacts.
5.3.4	Matters for a GHG assessment.
5.3.8	Assess GHG emissions.
5.3.9	Reduce GHG emissions.
5.3.10	Mitigate or offset emissions. Residual emissions.

Alternatives

EIA Regulations

- 3.2.5 Regulation 14(2)(d) requires the Environmental Statement (ES) to describe the reasonable alternatives studied by the Applicant that are relevant to the Proposed Development and its specific characteristics, and an indication of the main reasons for the option chosen, considering the effects of the development on the environment.

NPS EN-1

4.3.9	Consideration of alternatives.

4.3.15	Reasonable alternatives and the choice.
4.3.17	Alternatives for compliance with policy or legal requirements.
4.3.25	Alternatives not among the main alternatives.

NPS EN-3

2.10.25	Site choice and nearby available grid export capacity.

Electricity generation and grid connection

NPS EN-1

4.11.12	Network connection arrangements.

NPS EN-3

2.10.22	Capacity of local grid network.
2.10.50	Total capacity of a solar farm.
2.10.55	Generating capacity over time.
2.10.67	Solar panel efficiency and replacement.

Decommissioning timing and funding

NPS EN-3

2.10.65	Solar panel efficiency and the period of consent.
2.10.66	Time limited consent.
2.10.147	Setting the time limit.
2.10.148	Removal of inoperative plant.
2.10.149	Upper time limit.
2.10.150	Consideration of the time limit.

Local policy

- 3.2.6 The Derbyshire County Council (DCC)/ South Derbyshire District Council (SDDC) Local Impact Report (LIR) [\[REP2-001\]](#) identifies relevant local policy, including:
- the provision of renewable energy is supported in principle by SDDC and DCC;
 - SDDC Policy S6 sets out the support for renewable and energy developments;
 - SDDC declared a Climate Emergency in June 2019, recognising the threat that the climate emergency places on communities, environment, and economy;
 - SDDC adopted a Climate and Environment Strategy in April 2021;

- in 2021, DCC recognise that there is a climate crisis and commits to becoming net zero by 2032 or sooner and county-wide net zero by 2050; and
- in 2019 the DCC published the Derbyshire Climate Change and Carbon Reduction Manifesto, Environment and Climate Change Framework and the Low Emission Vehicle Infrastructure Strategy.

3.2.7 SDDC Policy S1: Sustainable Growth Strategy, Policy S2: Presumption in Favour of Sustainable Development, Policy E7: Rural Development, and Policy SD6: Sustainable Energy and Power Generation.

3.2.8 SDDC Policy SDT1: Settlement Boundaries and Development, Policy BNE5: Development in Rural Areas, and Policy BNE7: Trees, Woodland, and Hedgerows.

THE APPLICATION

3.2.9 The Applicant's case is set out in documents including the Planning Statement [[APP-181](#)], ES Chapter 3 - Site Selection and Design Strategy [[APP-086](#)], ES Chapter 13 - Climate Change [[REP3-021](#)], Grid Connection Statement [[APP-183](#)], and the Funding Statement [[APP-020](#)].

Need case, including effects on climate change

3.2.10 The Applicant [[APP-086](#), [APP-181](#)] identifies the need established in the NPS and considers that substantial weight should be given to this need. It refers to National Planning Policy Framework (NPPF) policies for renewable and low carbon energy. It notes that the Derbyshire Spatial Energy Study (2022) identifies an important role for solar photovoltaic (PV) and identifies the support provided in other local policies and strategies, including the Vision Derbyshire Climate Change Strategy (2022 - 2025), the D2N2 Local Enterprise Partnership Energy Strategy, and SDDC's Local Plan.

3.2.11 Referring to wider context of the UK's approach to energy generation and net zero the Applicant [[APP-086](#), [APP-181](#)] refers to the Climate Change Act 2008, the Net Zero Strategy (2021), and the British Energy Security Strategy (2022), which it considers add to the need case for low carbon and renewable energy generation.

3.2.12 The Applicant [[APP-086](#)] suggests that the Proposed Development would make a significant contribution towards the UK's national energy policy aims of decarbonisation and reducing carbon emissions, energy security, and affordability. It would do this by providing a large scale, low carbon, renewable energy generating asset to contribute towards achieving net zero by 2050, providing a secure supply of energy with direct connection to the National Grid transmission network and with the integration of Battery Energy Storage System (BESS), and by providing affordable, large scale, generation with value for money for end-use consumers.

3.2.13 The Applicant [[APP-181](#)] says that national policy establishes an overriding and urgent need for all new large scale, ground mounted solar generation schemes that is Critical National Priority (CNP) infrastructure. It considers that national policy establishes a presumption in favour of granting consent for that infrastructure and that is the starting point from which the Proposed Development must be assessed.

3.2.14 The Applicant [[REP3-021](#)] identifies potential effects on climate change in relation to:

- the construction stage - GHG emissions from the transportation of materials and waste and workers, and the embodied carbon in construction related products and materials;

- the operation stage - GHG emissions from worker transportation, maintenance activities, and operational energy consumption; and
- the decommissioning stage - GHG emissions from the transportation of materials and waste and workers.

3.2.15 Cumulative effects on climate change during the construction, operation, and decommissioning stages are scoped out of the detailed assessment.

3.2.16 The assessment uses Institute of Environmental Management and Assessment (IEMA) guidance on Assessing GHG Emissions and Evaluating their Significance (2022), Department for Business, Energy and Industrial Strategy Green Book supplementary guidance: valuation of energy use and GHG for appraisal (2021), Department of Energy and Climate Change Guidance on Annual Verification for emissions from Stationary Installations (2013), British Standards Institution PAS 2050 Specification for the assessment of the life cycle GHG emissions of goods and services (2011), and World Business Council for Sustainable Development The GHG Protocol: A Corporate Accounting and Reporting Standard (2015).

3.2.17 The construction stage assessment is based on:

- 114 people working on-site during the 16-month construction period, each having a one-way distance of 30 kilometres (km) per journey to the site;
- consideration of the solar panels, solar inverters, transformers, substations and BESS containers, and assuming a likely worst-case country of origin of China, with distances estimated from manufacturing facilities in Shanghai of 21,880km for sea freight and 350km for heavy goods vehicles (HGVs);
- the embodied carbon of the solar panel modules is estimated by taking their indicative size and weight data from comparable supplier product information for a comparably sized module manufactured in China;
- the embodied carbon within the inverters and on-site substation is estimated based on the typical material composition breakdown and unit weights, and using embodied carbon factors for each material from the University of Bath and Circular Economy (2019) Embodied Carbon Institution of Civil Engineering Database; and
- the embodied carbon of the BESS energy storage cells is estimated using embodied carbon benchmarks and data on lithium-ion batteries.

3.2.18 The operation stage assessment is based on:

- operational energy generation data is estimated by applying an industry standard capacity factor for solar PV to the indicative capacity specifications to estimate a 105,996 megawatt hours (MWh) for the first year of the operation stage with an industry standard degradation factor of 0.55% for each subsequent year, giving estimated total energy generation of 3,815,246MWh over the 40-year lifetime;
- operational energy use based on recent comparable schemes and assuming that this would be met by energy imported from the National Grid; and
- embodied carbon emissions resulting from the replacement of product components estimated emissions on a pro rata basis from the equivalent embodied and transportation emissions for the construction stage.

3.2.19 The decommissioning stage assessment is based on:

- an average distance of 50km for HGV transportation of materials and waste to their disposal point;
- 114 people working on-site, each having a one-way distance of 30km per journey to the site;
- recycling of reclaimed materials adhering to EA guidelines, noting that solar panel infrastructure is highly recyclable, with current rates approximately at 96% of the material but that the energy required for disposal and recycling are not assessed due to uncertainty of processes and quantity of material required;
- by the estimated end of the operation stage, recycling technologies and efficiencies are likely to have significantly improved, and any remaining decommissioning stage GHG emissions associated with energy generation, transportation, operation of plant and waste disposal are anticipated to be much lower because of grid decarbonisation of machinery and vehicle electrification in line with the UK's net zero carbon emissions target for 2050; and
- it is likely that a significant proportion of the materials following the decommissioning stage would be recycled and re-claimed and not require disposal.

3.2.20 The magnitude of effect on the climate is assessed by the change in mass of GHG emissions in units of tonnes of carbon dioxide equivalent, (tCO₂e), aligning with IEMA Guidance. The significance of effect for the construction and decommissioning stages considers how the net annual GHG emissions compare with the relevant annual National Carbon Budget. The significance of effect for the operation stage considers operational GHG intensity (operational emissions divided by the energy generation) compares with that of the 2022 GHG intensity of the grid and with the relevant annual decarbonised grid GHG intensity.

3.2.21 Embedded mitigation in the Outline CEMP [\[REP6-018\]](#) and Outline CTMP [\[REP6-028\]](#) include increasing recyclability by segregating construction waste to be re-used and recycled where reasonably practicable, minimising the creation of waste and maximising the use of alternative materials with lower embodied carbon, such as locally sourced products and materials with a higher recycled content where feasible, reusing suitable infrastructure and resources already available in the site where possible, implementing staff minibuses to transport construction personnel to site or using car sharing options where possible, implementing a Travel Plan to reduce the number of trips, switching vehicles and plant off when not in use, ensuring vehicles conform to current UK emissions standards, and conducting regular planned maintenance of the construction plant and machinery.

3.2.22 The Applicant considers that during the construction stage:

- the greatest GHG impact during the construction stage would be due to the embodied carbon in construction materials which accounts for 97% of the total of 85,055 tCO₂e, or 63,791 tCO₂e per annum for the 16-month construction period;
- this is 0.0163% of the relevant annualised UK carbon budget of 390,000,000 tCO₂e; and
- on that basis GHG emissions from the construction stage would have a negligible to minor adverse effect on the climate that would not be significant.

3.2.23 The Applicant considers that during the operation stage:

- the greatest GHG impact would be because of maintenance activities and the embodied and transport of replacement parts and equipment which accounts for 99% of the total of 89,875 tCO₂e, or 2,247 tCO₂e per year of operation;
- the average operational GHG intensity of 23.6 grams of CO₂ equivalent per kilowatt hour would be well below the 2022 GHG intensity of the grid of 152 grams of CO₂ equivalent per kilowatt hour;
- the solar energy generation would have an average operational GHG intensity of 2.3 grams of CO₂ equivalent per kilowatt hour, which would be well below the forecasted 2022 GHG intensity of the grid and below the projected decarbonised grid GHG intensity;
- 579,917 tCO₂e would be emitted to generate the equivalent amount of electricity over the operational lifetime of the Proposed Development from the projected grid energy mix if it was supplied by the National Grid;
- the avoided GHG emissions would therefore be 490,042 tCO₂e or 571,041 tCO₂e when considering the GHG emissions for the solar energy generation only; and
- on that basis the operation stage would have a moderate to major beneficial effect on GHG emissions that would be significant and help deliver the UK's ambitious targets for emissions reductions.

3.2.24 The Applicant considers that the GHG emissions from the decommissioning stage would be 378 tCO₂e, or 0.4% of the construction stage emissions, and would have a negligible to minor adverse effect on the climate that would not be significant.

3.2.25 The Applicant states that any cumulative GHG emissions from other schemes would also be considered by the UK carbon budgets, which it considers to be inherently cumulative as national budgets are managed centrally.

Alternatives

3.2.26 The Applicant's Site Selection and Design Strategy [[APP-086](#)] sets out the criteria used to assess feasible sites, the scope of its UK-wide site search, the identification of the site at Oaklands Farm, and the consideration given to the feasibility of developing at that location and of including the BESS.

3.2.27 Noting that it considers a grid connection of more than 4km to be uneconomical, the Applicant [[APP-086](#)] made a more detailed assessment of alternative sites within 10km of Drakelow Power Station. Two sifting exercises looked at the quality of agricultural land, existing land uses, previously developed land, designations in the Local Plan, flood zones, sites designated for landscape, biodiversity, or heritage reasons, physical constraints, and visual impact. It concluded that none of the areas identified would be less sensitive or otherwise more suitable than the Oaklands Farm area.

3.2.28 The Applicant [[APP-086](#)] provides an overview of the evolution of the design through a series of options from 2021 to 2023. This included the consideration given to the layout of solar panels, the location of the substation and the BESS, site access points and the grid connection route. The design considerations influencing the design choice included landscape and visual, noise, ecology, utilities, hydrology, traffic, and access for recreation. The Applicant said that it made changes in response to feedback provided during consultation, including in relation to the location of the substation, the incorporation of a new permissive footpath, and the construction access routes.

- 3.2.29 In considering alternatives the Applicant [[APP-086](#)] considers that the close proximity to Drakelow Substation and the undergrounding of the grid connection cable would reduce the visual impact and the amount of infrastructure to a minimum. It states that the design evolution addressed potential environmental effects and consultation feedback and avoided and minimised effects wherever possible.

Electricity generation and grid connection

- 3.2.30 The Applicant [[APP-183](#)] states that the Proposed Development would have a generating capacity of over 50 megawatts (MW). Solar PV panel arrays would generate electricity which would be collected and directed to the on-site substation to be in the centre of the solar array area. A BESS located adjacent to the on-site substation would store the electricity generated for it then to be released to the national electricity grid when appropriate. The on-site substation would be connected to the national grid at Drakelow Substation via an underground 132kV cable. The Applicant explains that the Drakelow Substation is owned and operated by National Grid Electricity Transmission plc (NGET) on land owned by E.ON UK plc.
- 3.2.31 As noted above, the Applicant [[REP3-021](#)] estimates that 105,966MWh of electricity would be generated for the first year of the operation stage with a degradation of 0.55% for each subsequent year, giving an estimated total energy generation of 3,815,246MWh over the 40-year lifetime.
- 3.2.32 The Applicant [[APP-183](#)] says that it made an application to the Office of Gas and Electricity Markets authority on the 11th July 2022 for an electricity generation licence under the Electricity Act 1989. Notice was given on the 26 September 2022 that the electricity generation licence had been granted. The Applicant states that it separately secured a grid connection agreement with NGET to import and export the full electrical capacity of the Proposed Development.

Decommissioning timing and funding

- 3.2.33 Requirement 21 of the draft Development Consent Order (dDCO) [[APP-016](#)] included with the application provides that the decommissioning stage would commence no later than 40 years following the date of final commissioning of the first phase of the generating station.
- 3.2.34 The Applicant [[APP-020](#), [APP-181](#), [REP6-031](#)] explains that the decommissioning stage would be expected to take between 12 and 24 months and funding would be sourced from the Applicant's shareholders, or a combination of the Applicant's shareholders and third-party debt finance.

ISSUES ARISING DURING THE EXAMINATION

Need case, including effects on climate change

- 3.2.35 Several Interested Parties do not support the need for the Proposed Development. Andrea Barnes [[RR-020](#)] says that the UK needs to expand its renewable energy including solar power and onshore wind but this location and scheme are not the answer to the UK's energy needs. Andrew Brady [[RR-022](#)] says that there is no need for it in the area. Denise Ann Walsh [[RR-077](#)] is supportive of the need for renewable energy but does not support the proposal to locate the solar farm in this location.
- 3.2.36 A smaller number of Interested Parties, including Chris Grice [[RR-054](#)], David Owen [[RR-068](#)], and Simon Troy Hartland [[RR-292](#)] support the need for the Proposed Development.

- 3.2.37 Responding to the Relevant Representations, the Applicant [\[REP1-023\]](#) says that NPS EN-1 confirms a CNP for the provision of nationally significant low carbon infrastructure including solar generation which is key for the Government to achieve its energy objectives and net zero. The Applicant considers that the Proposed Development would be capable of making an important but proportionate contribution to solar generation needed in the UK.
- 3.2.38 The Applicant [\[REP8-020\]](#) says that the Proposed Development would provide energy storage to manage electricity flows to/from the grid, whilst reducing network reinforcement costs and contributing to the resilience and flexibility of the wider electricity network, in line with the Government's stated need for huge increases in grid-scale battery storage. It considers that the Proposed Development would reduce the dependence on imported energy supplies.
- 3.2.39 The DCC/ SDDC LIR [\[REP2-001\]](#) includes that:
- construction and decommissioning would involve the use of fossil fuels in plant and machinery, although the periods would be of short duration and the emissions would be more than offset by carbon savings from energy generation;
 - while the energy generated would be fed into the national grid and not used directly by local residents and businesses, the operation stage of the Proposed Development would contribute to a national reduction of emissions; and
 - while climate change is discussed in the Outline CEMP [\[REP6-018\]](#), a Carbon Management Plan, which aligns with the requirements set out in PAS 2080: 2023 Carbon management in infrastructure, should ideally be developed for a scheme of this nature and size as part of the CEMP.
- 3.2.40 The Applicant [\[REP3-033\]](#) says that the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#) include measures to minimise adverse effects on climate change effects, embodied carbon and emissions, and that it is not considered necessary to include a specific Carbon Management Plan within the Outline CEMP [\[REP6-018\]](#).
- 3.2.41 In the Statement of Common Ground (SoCG) between the Applicant, DCC and SDDC [\[REP8-017\]](#) the parties agree that:
- there is an urgent need for this type of development;
 - a negligible to minor adverse effect on GHG emissions and resultant climate change during the construction stage;
 - a negligible to minor adverse effect during the decommissioning stage; and
 - an overall moderate to major significant beneficial effect on GHG emissions and resultant climate change.
- 3.2.42 Towards the end of the Examination the Applicant [\[REP8-020\]](#) refers to the Government's Clean Power 2030 Action Plan that was published on 13th December 2024 and sets out the pathway to achieving a new era of clean electricity with energy security, lower bills, jobs and climate action. The Applicant considers that with the ability to generate and export a significant amount of clean solar energy by 2028, alongside the provision of a grid-scale BESS, the Proposed Development aligns entirely with the goals of the Clean Power 2030 Action Plan.

Alternatives

- 3.2.43 In their Relevant Representations, a number of Interested Parties, including Alan Edward Timmins [\[RR-006\]](#), Alex Wolfe [\[RR-010\]](#), Andrew Passey [\[RR-025\]](#), Gerard Francis Grady [\[RR-105\]](#), James Drew Silcock [\[RR-132\]](#), Joanne Harris [\[RR-149\]](#), Lindsay Earp [\[RR-174\]](#), Nathan Bull [\[RR-226\]](#), Nicola Johnston [\[RR-236\]](#), and Stephen Tempest [\[RR-299\]](#), suggest alternative locations for solar panels, such as on the roofs of buildings, at previously developed or brownfield sites, away from villages and towns, or on a spread of smaller sites over a much wider area. Gillian Mary Holland [\[RR-108\]](#) thinks that there are far better ways of harvesting the sun's energy.
- 3.2.44 Responding to the Relevant Representations, the Applicant [\[REP1-023\]](#) says solar generation can only be delivered where there is capacity at existing grid connection points, such as at Drakelow Substation and that while it identified that a grid connection of more than 4km would be uneconomical, a search radius of 10km was selected as being sufficient to ensure a range of potential options could be considered.
- 3.2.45 Diane Abbott [\[REP5-049\]](#) submits that:
- the site selection is not adequately justified and claims that it would have no overriding environmental constraints have not been sufficiently proven;
 - the survey area for other suitable sites of only 10km is unrealistically limiting;
 - the actual reason for selecting this site is that the developers had found landowners near to Drakelow Substation that were willing to commence the project;
 - there are multiple sites nearby that would be more suitable for solar power generation and these not being available to the Applicant is not good enough justification to use Best and Most Versatile (BMV) agricultural land; and
 - there have been many large warehouse developments in the local area that could also have been identified as suitable locations for a rooftop solar development, or sites in proximity to other sub-stations could have been investigated.
- 3.2.46 In reply, the Applicant [\[REP6-041\]](#) refers to its previous submissions and says that ES Chapter 3 [\[APP-086\]](#) provides details of the approach taken to the site selection and design, including assessment of available brownfield sites.

Electricity generation and grid connection

- 3.2.47 I [\[PD-010\]](#) queried whether the electricity generation figures in ES Chapter 13 [\[REP3-021\]](#) is consistent with the definition in paragraph 2.10.50 of NPS EN-1, which states that total capacity of a solar farm can be measured either in terms of the combined capacity of installed solar panels (measured in direct current) or in terms of combined capacity of installed inverters (measured in alternating current). I also asked if ES Chapter 13 [\[REP3-021\]](#) sets out the electricity generation that should be considered for the planning balance.
- 3.2.48 The Applicant updated the estimates of electricity generation during the Examination [\[REP3-021\]](#), to the figures noted above, to provide “... a conservative estimate, as the site's footprint could potentially deliver a greater capacity if maximised.”
- 3.2.49 The Applicant [\[REP1-025, REP4-011\]](#) provides evidence of a secured grid connection agreement with National Grid Electricity System Operator Limited for an export capacity of 162.3MW (alternating current) and an import capacity of 37.5MW (alternating current).

Decommissioning timing and funding

Start and duration of the decommissioning stage

- 3.2.50 Alex Wolfe [RR-010] is of the view that the timescale of the project is most concerning and that the lack of certainty for the land use after the decommissioning stage adds a legacy of worry and lasting environmental degradation.
- 3.2.51 I [PD-010, PD-012, PD-014] asked whether the dDCO [REP8-003] should include a requirement for decommissioning and restoration to be completed within a specified timescale and whether it is necessary to secure that the decommissioning stage must start no later than a specific period following generation or supply of electricity stopping, including to limit the duration of any periods when the benefits of electricity generation and storage of all or part of the Proposed Development would not offset adverse impacts at that time.
- 3.2.52 DCC [REP1-026] considers that a dDCO [REP8-003] requirement for decommissioning and restoration to be completed within a specified timescale would add certainty to the decommissioning process and give assurance to landowners about the return of the land and commencement of future uses. SDDC [REP1-029] states that such a requirement should be provided and that up to two years is acceptable. The EA [REP1-032] suggest that such a requirement would ensure that decommissioning is done and would enable enforcement.
- 3.2.53 DCC [REP1-026] considers that commencement and completion of the decommissioning stage should be linked to the cessation of energy generation if earlier than 40 years following the date of final commissioning of the first phase of Work No. 1. SDDC [REP1-029] considers that timescales should be identified in case a unit fails or is left dormant/ derelict some time before the 40-year life expires. The EA [REP1-032] suggest that it be required for the decommissioning stage to be completed within two years of energy generation ceasing or within two years after the 40-year expiry date, whichever is sooner.
- 3.2.54 The Applicant [REP1-025, REP3-032, REP4-011] was initially of the view that a requirement to secure the decommissioning and restoration of the site within a specified timescale is not necessary as there are factors outside the control of the Applicant that could lead to delay and that no timescale is required other than for the decommissioning stage to commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1. The Applicant considered that its approach was consistent with recent precedent, that s161 of the Planning Act 2008 (PA2008) would ensure that decommissioning would be completed and that any breach of Requirement 22 could be properly enforced.
- 3.2.55 Decommissioning timescales were discussed at Issue Specific Hearing 1 (ISH1) [EV4-003, EV4-005, EV4-007, EV4-009, EV4-011], during which the Applicant took actions [EV4-002] to consider securing that the decommissioning stage must start no later than a specific period following generation or supply of electricity stopping, and that it must be completed within a specified period, for example two years unless otherwise agreed with the LPA. The Applicant [REP5-026, REP6-042] then amended Requirement 22 to require the decommissioning stage to be completed within two years unless otherwise agreed with the LPA.
- 3.2.56 Responding to my request [PD-014] for suggested wording for Requirement 22 to secure that it applies when any part of the solar farm works and grid connection works is no longer required for the generation, storage, or transmission of electricity, the Applicant [REP6-042] provided a new Requirement 22(2). I included the Applicant's

wording in my Schedule of Changes to the dDCO [\[PD-015\]](#) with a suggested adjustment to limit delays to the decommissioning stage due to maintenance delays.

- 3.2.57 The Applicant [\[REP7-008\]](#) accepts my amendment. SDDC [\[REP8-023\]](#) welcome the inclusion of the provision and are content with the wording.

Funding for the decommissioning stage

- 3.2.58 In their Relevant Representations, Interested Parties including Diane Abbott [\[RR-080\]](#), Denise Ann Walsh [\[RR-077\]](#), Jacqueline Shirley Bott [\[RR-129\]](#), Lullington Parish Meeting [\[RR-179\]](#), and Martin David William Abbott [\[RR-190\]](#) raise concerns about the costs, commitment to decommissioning and risks of a failure to fund decommissioning. Councillor Amy Wheelton [\[RR-063\]](#) says that a bond should be set up. Diane Abbott [\[REP1-043\]](#) considers it imperative that a bond is put in place to ensure timely and complete decommissioning of the site at the end of the 40 year term, or beforehand if solar generation ceases earlier. Tracy Hiatt [\[REP1-048\]](#) requests that the decommissioning process in 40 years is legally processed and completed. James Robert Blackwell [\[REP5-051\]](#) asks that a fund/ bond be set up and properly funded to enable the careful dismantling and clearing of the site, the reinstatement of the land back to its present agricultural state and to deal with any pollution issues. He asks who is to say what will happen in 40 years, says that bankrupt entities cannot clean up, and that a fund should be set up to be accessible by public authorities.
- 3.2.59 During the Examination I [\[PD-010, PD-012\]](#) explored the potential for decommissioning not to be completed if funding is not secured in advance, asked whether a provision should be added to the dDCO [\[REP8-003\]](#) to secure funding for the decommissioning stage, and what form that security should take.
- 3.2.60 DCC [\[REP1-026\]](#) and SDDC [\[REP1-029\]](#) say that a provision should be added to the dDCO [\[REP8-003\]](#) to secure funding for the decommissioning stage to provide certainty that adequate funding arrangements are in place to reinstate the land appropriately. They suggest that all works can be costed now and that this amount can then be held in an index/ inflation linked escrow account or bond and secured.
- 3.2.61 The Applicant [\[REP1-025, REP3-031, REP3-032, REP4-011\]](#) is of the view that it is not necessary to include a provision to secure funding for the decommissioning stage, as the decommissioning of the site is secured through Requirement 22 of the dDCO [\[REP8-003\]](#) which is legally enforceable, and that its approach is consistent with recent precedent. As regards the ability to fund decommissioning, the Applicant considers that the information provided in its Funding Statement [\[APP-020\]](#) is comprehensive and demonstrates that it has sufficient funds to construct, operate and decommission.
- 3.2.62 Funding for the decommissioning stage was discussed at ISH1 [\[EV4-005\]](#), during which I indicated that I was minded to secure funding in the dDCO [\[REP8-003\]](#). The Applicant [\[REP5-026\]](#) then confirmed that its starting position is that it is inappropriate to secure funding for the decommissioning stage and said that it is not a subject that has come up before in the context of renewable energy DCOs. It said that the controls between the landowner and the Applicant, including to return the land to the beneficial use of the landowner, are going to be strongly enforced. However, the Applicant [\[REP5-026\]](#) acknowledges the comments at ISH1 and proposes wording for a new Requirement 27 (Decommissioning fund), based on what it says is used commonly as a condition in s36 consents in Scotland.
- 3.2.63 SDDC [\[REP6-047\]](#) says that it welcomes the inclusion of measures to build up a decommissioning fund during the operation stage.

- 3.2.64 I included the Applicant's wording in my Schedule of Changes to the dDCO [\[PD-015\]](#).
- 3.2.65 The Applicant [\[REP7-008, REP7-009, REP8-019\]](#) and DCC [\[REP7-011, REP8-021\]](#) suggest that references to "decommissioning fund" are amended to "decommissioning fund or other form of financial guarantee" to allow more flexibility in identifying the most appropriate and efficient financial mechanism.
- 3.2.66 SDDC [\[REP8-022, REP8-024\]](#) welcomes the inclusion of Requirement 27 and the flexibility provided for the financial mechanism. However, it considers that any such guarantee must be explicitly approved by the Council to ensure accountability and requests greater clarity on the timeline for implementing financial guarantees and monitoring throughout the operation and decommissioning stages to avoid risks associated with delayed or insufficient commitments.
- 3.2.67 The Applicant [\[REP8-020\]](#) says that the securing of decommissioning funds within the dDCO [\[REP8-003\]](#) is a clear departure from how solar farms have been developed to date and that there is no precedent in comparative schemes.

CONCLUSIONS ON NEED, ALTERNATIVES, ELECTRICITY GENERATION, AND DECOMMISSIONING

Need case, including effects on climate change

- 3.2.68 In Section 2.2 I set out that the Proposed Development, being a solar PV electricity generating station with Associated Development, falls within the scope of NPSs EN-1, EN-3 and EN-5. I consider whether there is a CNP for the Proposed Development, and the implications of that, in Chapter 5.
- 3.2.69 I find that the Proposed Development is low carbon infrastructure in accordance with paragraph 4.2.5 of NPS EN-1 as it would generate electricity without fossil fuel generation, includes power lines and a substation within the scope of NPS EN-5, and has storage infrastructure (the BESS) within the normal definition of 'low-carbon'.
- 3.2.70 In considering paragraphs 3.2.6, 3.2.7, 3.3.26 and 4.2.2 of EN-1, I find that there is an urgent need for the Proposed Development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that the electricity storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.
- 3.2.71 In relation to objections to this location, I agree with DCC and SDDC that there is an urgent need and consider that the NPSs do not specifically preclude the Proposed Development based purely on location. I consider all adverse impacts or benefits in the vicinity of the Proposed Development later in this report in accordance with relevant legislation and policy tests.
- 3.2.72 I find that the Applicant provides a GHG assessment for the stages of the Proposed Development in accordance with paragraphs 5.3.4 and 5.3.8 of NPS EN-1. Overall, and noting the mitigation measures provided in the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#) and Outline DEMP [\[REP6-022\]](#), I am satisfied that the Applicant takes reasonable steps to reduce GHG emissions required by paragraph 5.3.9. I am content that GHG emissions are identified in line with paragraphs 5.3.3 and 5.3.10.
- 3.2.73 DCC and SDDC [\[REP2-001\]](#) say that a Carbon Management Plan which aligns with the requirements set out in PAS 2080: 2023 Carbon management in infrastructure should ideally be developed as part of the CEMP. I note that neither party has any

other outstanding concerns about the mitigation measures to reduce GHG emissions set out in Section 2.7 of the Outline CEMP [REP6-018] and I note that Requirement 9 of the dDCO [REP8-003] stipulates that the CEMP is to be submitted to and approved by the LPA. The NPSs do not require the production of a Carbon Management Plan. I note DCC's and SDDC's comment that a Carbon Management Plan should ideally be developed (my emphasis) and am content that the DCC and SDDC would have sufficient opportunity to raise their concerns when the CEMP is finalised.

- 3.2.74 I am content with the Applicant's assessment of GHG emissions during the construction stage of 0.0163% of the relevant UK carbon budgets, a proportion which leads me to have no concerns in relation to the Climate Change Act 2008.
- 3.2.75 DCC and SDDC support the proposed provision of renewable energy as set out in SDDC Policy S6 and do not raise any matters that lead me to have any concerns about compliance with local policy in relation to effects on climate change.
- 3.2.76 I find that the GHG emissions of 490,042 tCO₂e that would be avoided by the Proposed Development when compared with the GHG intensity of the grid during the operation stage are substantially higher than the GHG emissions, which include 85,055 tCO₂e during the construction stage and 378 tCO₂e during the decommissioning stage.
- 3.2.77 I have no reason to disagree with effects agreed between the Applicant, DCC and SDDC of a negligible to minor adverse effect on GHG emissions and resultant climate change during the construction stage, a negligible to minor adverse effect during the decommissioning stage, and an overall moderate to major significant beneficial effect on GHG emissions and resultant climate change.

Alternatives

- 3.2.78 Although alternative locations for solar panels and other ways of generating solar electricity are suggested by some Interested Parties, paragraphs 4.2.21, 4.3.25 and 4.3.9 of NPS EN-1 lead me to conclude that the Applicant's approach is satisfactory as other potential projects do not need to be treated as alternative solutions, there is no obligation to establish whether the Proposed Development represents the best option, and alternatives are considered to the extent that they are important and relevant.
- 3.2.79 I find that Regulation 14(2)(d) of the EIA Regulations and paragraphs 4.3.15 of NPS EN-1 and 2.10.23 of NPS EN-3 are complied with as the Applicant demonstrates that it considers reasonable alternatives in the vicinity of available grid export capacity at the nearby Drakelow Substation and the Applicant's sifting process provides sufficient indication of the reasons for its choice. In relation to paragraph 4.3.17 of NPS EN-1, I address any other relevant policy or legal requirement to consider alternatives elsewhere in this report as necessary.

Electricity generation and grid connection

- 3.2.80 I am satisfied that the Applicant's evidence of a secured grid connection agreement with National Grid Electricity System Operator Limited is sufficient for the purposes of paragraph 4.11.12 of NPS EN-1.
- 3.2.81 The Applicant applies an annual degradation of 0.55% for electricity generation and updated the estimate of electricity generation during the Examination such that I have no reason for concern about the estimate in relation to paragraphs 2.10.50, 2.10.55 or 2.10.67 of NPS EN-3.

Decommissioning timing and funding

- 3.2.82 Noting DCC's comments and that the provisions are agreed by SDDC and the Applicant, I am satisfied with the updates to Requirements 22(2) and 22(6) of the dDCO [\[REP8-003\]](#) to secure timescales for the submission of relevant management plans, for the decommissioning of any part of the authorised development that stops generating electricity for specified periods before the 40th anniversary of final commissioning, and for decommissioning of any part to be completed within 2 years of approval of the decommissioning plan for that part. I consider that these provisions are appropriate to avoid unnecessary delay in a return to agricultural uses, and to limit the duration of any periods when adverse impacts in any area would not be offset by the benefits of electricity generation or storage in that area.
- 3.2.83 Requirement 27 of the dDCO [\[REP8-003\]](#) provides for a decommissioning fund or other form of financial guarantee that secures the cost of all decommissioning obligations and was developed during the Examination in response to my concerns and those raised by Interested Parties, including DCC and SDDC. The wording of the Requirement is provided by the Applicant, agreed by DCC and SDDC welcomes its inclusion. The provisions include for timescales for implementation and review and approval by the LPA, on which basis I am satisfied that SDDC would have an opportunity to address any outstanding concerns that it might have about clarity before it approves the Applicant's decommissioning fund or other form of financial guarantee.
- 3.2.84 The Applicant considers that Requirement 27 is not necessary as Requirement 22 would be legally enforceable and the controls between the landowner and the Applicant, including to return the land to the beneficial use of the landowner, are going to be strongly enforced. It also says that this is a clear departure from how solar farms have been developed to date and that there is no precedent in comparative schemes.
- 3.2.85 I have not seen any related agreements between the Applicant and landowners or have any evidence about how firmly they secure that decommissioning would be completed appropriately, and whether there would be any penalties if it is not. As such, I am not able to rely on those agreements. Regrading the lack of precedent I note that each project needs to be considered on its own merits and that just because an issue has not been identified previously does not mean that it shouldn't be considered later.
- 3.2.86 I note that the temporary nature of the Proposed Development is a prominent thread that is relied on throughout the application and I am of the view that it can only be considered temporary if decommissioning is secured robustly. I consider that there is some uncertainty about the commercial and financial considerations that the undertaker, which may not be the Applicant, might have at the time of the decommissioning stage. I am concerned that this could have a bearing on whether the decommissioning stage would be completed appropriately at a time when the undertaker is expected to have no further income from providing electricity to the grid. I also note that the Applicant does not give any reasons why decommissioning fund or other form of financial guarantee provisions would cause it significant difficulty.
- 3.2.87 Following from the above, and notwithstanding that Requirement 22 would be legally enforceable, I find that Requirement 27 is necessary to ensure that the undertaker's financial resources would be available for decommissioning and thereby provide key security that it would be carried out appropriately, consistent with ensuring that the Proposed Development is temporary, and consistent with the ES. I consider that it is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other circumstances. In my view it addresses the related material concerns raised by many Interested Parties.

Matters to be taken to Chapter 5 and the planning balance

3.2.88 For the purposes of Chapter 5 and the planning balance, I conclude that:

- the Proposed Development is low carbon infrastructure under paragraph 4.2.5 of NPS EN-1;
- paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the Proposed Development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that should be developed at speed;
- paragraph 3.3.26 of NPS EN-1 includes that the energy storage provided by the Battery Energy Storage System (BESS) is needed to reduce the costs of the electricity system and increase reliability; and
- the combination of the urgent need for the Proposed Development and beneficial impacts on climate change bring very great weight for the making of the Order.

3.3 AGRICULTURE AND SOILS

INTRODUCTION

3.3.1 This section considers agriculture, land use, soils, ground contamination, ground conditions, mineral resources, geological conservation, and land use after decommissioning. Other socio-economics and employment matters are addressed in Section 3.10. Water quality, drainage and flooding are covered in Section 3.9.

POLICY CONSIDERATIONS

Agriculture and soil health

3.3.2 The [Statement by SoS Department for Energy Security and Net Zero \(DESNZ\) on 15 May 2024](#) addresses the use of BMV land for solar development.

NPS EN-1

5.11.12	Impacts on BMV agricultural land. Use of land in areas of poorer quality.
5.11.13	Soil health and soil quality.
5.11.34	Justification of use of BMV agricultural land.

NPS EN-3

2.10.29	Use of previously developed, brownfield, contaminated, industrial land.
2.10.30	Whether the use of BMV agricultural land is allowed.
2.10.31	Use of agricultural land and choice of site.
2.10.32	Efficiency of land use.
2.10.33	ALC and field surveys.
2.10.34	Soil Resources and Management Plan.

2.10.81	Soil stripping.
2.10.127	Damage to soil.
2.10.145	Benefits of BMV agricultural land. Impacts on soils or soil resources.

Land use after the decommissioning stage

NPS EN-1

4.3.5	Environmental, social, and economic effects from decommissioning.

NPS EN-3

2.10.68	Decommissioning panel arrays and underground cabling.
2.10.69	Removal or retention. Ecology and socio-economics considerations.
2.10.146	Plans for decommissioning and restoring the land to a suitable use.

Land contamination

NPS EN-1

5.11.5	Consideration of contaminated land statutory guidance.
5.11.15	Contributing to and enhancing the natural and local environment.
5.11.17	Suitability of site: ground conditions, land instability, contamination.
5.11.18	Land contamination risks and opportunities for remediation.

NPS EN-3

2.10.34	Soil Resources and Management Plan.

Mineral safeguarding

NPS EN-1

5.11.19	Safeguarding mineral resources.
5.11.28	Mineral Safeguarding Area and mitigation measures.

Other national policies and local policies

- 3.3.3 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy BNE4 and Policy BNE5.

THE APPLICATION

- 3.3.4 The Applicant's case is set out in documents including the Planning Statement [\[APP-181\]](#), ES Chapter 4 - Project Description [\[REP6-031\]](#), ES Chapter 9 - Ground Conditions [\[APP-146\]](#), and ES Chapter 15 - Agriculture and Soils [\[REP6-033\]](#).

Agriculture and soils

Assessment scope, methodology, study area and baseline

- 3.3.5 The assessment [APP-169] provided with the application considers effects on agricultural land quality, soil structure, local farm businesses, and the rural economy.
- 3.3.6 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - temporary or permanent loss of function or land from construction activities, disturbance or damage to soil structure affecting ALC grade, and effects on farming activities;
 - operation stage - effects on land quality from operational activities, effects on soils from long-term grassland uses, economic effects on farm businesses and related businesses, and effects on the rural economy including on food production and changes in enterprise; and
 - decommissioning stage - disturbance or damage to soil structure affecting ALC grade.
- 3.3.7 The study area for potential effects on agricultural land quality and soils is the area of the site. The study area for potential effects on agricultural businesses is the whole of Oaklands Farm, and the parts of Fairfield Farm and Park Farm within the site area.
- 3.3.8 The baseline conditions are established through a combination of desk based research using NE's provisional ALC (2010, 2020) and likelihood of BMV land maps (2017), the Soil Survey of England and Wales (1983), farm impact questionnaires, and field surveys of Oaklands Farm in July 2020 [APP-170] and of Park Farm in April 2021 [APP-171]. The ALC for the site identified in the application is set out in Figure 3.3.1:

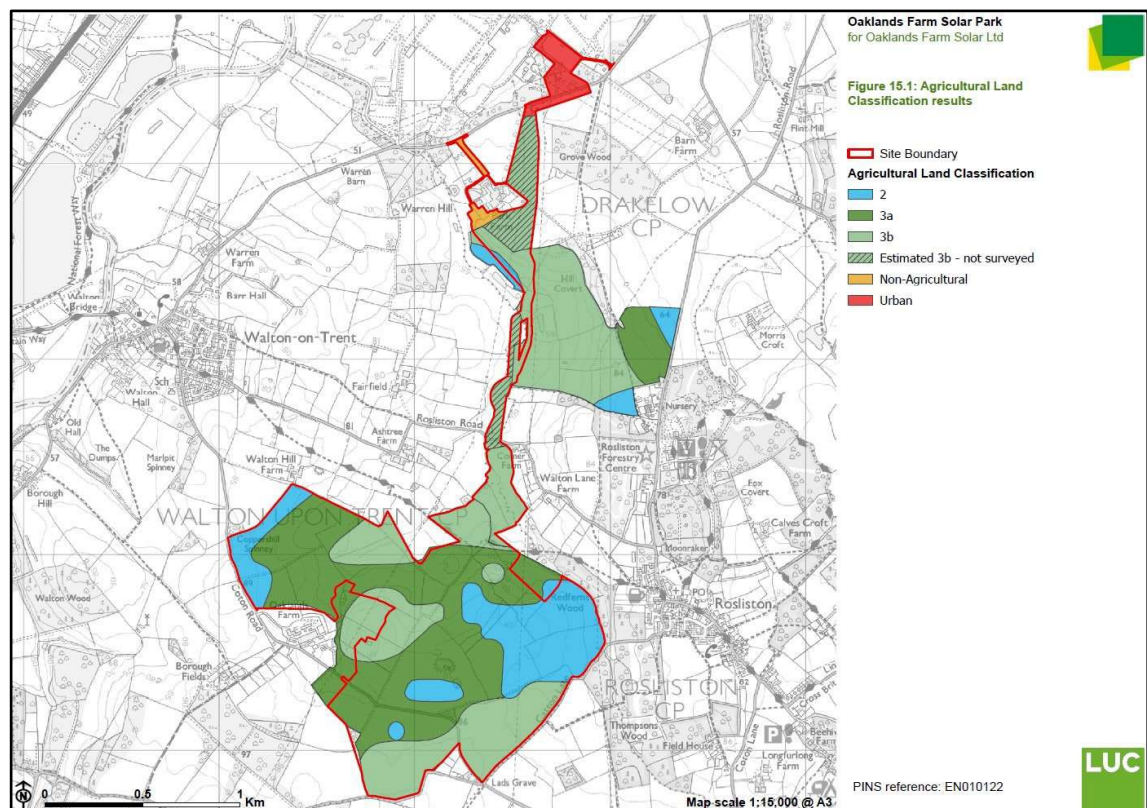


Figure 3.3.1: ALC identified in the application [extract from APP-168]

- 3.3.9 Oaklands Farm is a mixed arable and livestock farm, extending to 185 hectares (ha). Most of this is in agricultural use, with a few small woodland/ copse areas, and an area of farm buildings. The farm has a milking herd of 320 Jersey cows which are mostly housed and which the landowner/ farmer anticipates would continue during the operation stage. Most of the farm is arable land, including fodder production to support the dairy. Some land is rented out. The farm employs three full-time workers and two part-time workers, who mostly work on the dairy unit.
- 3.3.10 The Applicant considers that climate change would not significantly change the baseline conditions, although it may affect how well the farm can grow crops.
- 3.3.11 The assessment of magnitude and significance of impacts for ALC and soils are based on IEMA's New Perspective on Land and Soil in Environmental Impact Assessment (2022) guidance, as are the magnitude and sensitivity thresholds used to identify the significance of effect. Professional judgement is used to identify the receptor sensitivity and magnitude criteria for agricultural businesses. Use is made of NE's Guide to Assessing Development proposals on Agricultural Land (2021).
- 3.3.12 The BESS and on-site substation would be largely located on grade 3a agricultural land with the very southern part on grade 3b and represent the only potential 'permanent' loss of agricultural land. The Applicant considers that it is not possible to site this infrastructure completely within grade 3b due to the need to balance with minimising visual and noise effects on neighbouring residential properties.

Construction stage

- 3.3.13 An Outline Soil Management Plan (Outline SMP) [[REP6-018](#) Appendix 1] sets out mitigation for installing the panels, including in relation to the risks of travelling on the land in unsuitable conditions and of any rectification required in the main traffic areas. The Applicant considers that land quality and soils would not be affected as the machinery involved in installing the solar PV arrays would be smaller than most farm machinery, so there would not be a significant risk of compaction.
- 3.3.14 The panels would typically be supported on steel legs driven into the ground, although some would be mounted in stone or concrete pad bases. The cables between the panels and the on-site substation would be installed in a similar way to field drainage.
- 3.3.15 Access tracks would remain for the operation stage would be 3.5m to 6m wide, constructed of up to 200mm of compacted gravel. The transformers and on-site substation would be on areas of hard standing or concrete foundations. Estimates of temporary land take from fixed equipment during the construction stage are:

	Areas in ha by ALC Grade			
Component	Grade 2	Grade 3a	Grade 3b	Total
Tracks	0.8	2.0	2.5	5.3
Transformers	<0.1	0.1	<0.1	0.1
Substation/ BESS	0	0.8	0.3	1.1
Totals	0.8	2.9	2.8	6.5

Table 3.3.1: Temporary land take from fixed equipment [based on Table 15.7 of [REP6-033](#)]

- 3.3.16 The cable route connecting the on-site substation to the grid would involve trenching. Topsoil would be removed for a working width of typically 16m, with the cable trenching

being up to about 1.5m wide. The Applicant considers that this would disturb the soils but would be a short-term and temporary effect and would not result in the sealing or downgrading of agricultural land. The cable would be buried at a depth that the Applicant considers would not affect ongoing agricultural use of the land once installed. Once the cable is installed the subsoil and topsoil would be replaced.

3.3.17 There would be a reduction in the amount of land being used to grow cereals and winter forage. The Applicant considers that there would be considerable changes to the farm business, but it would not be rendered unviable and the rental income from the Proposed Development would provide support to maintain the farm business.

3.3.18 The Applicant considers that the construction stage effects would be:

- the installation of the solar PV arrays, and related localised cabling would be temporary and would not affect land quality or soils adversely. This would be an impact of negligible magnitude, on land of very high (grade 2), high (grade 3a) and medium (grade 3b) sensitivity, which would result in a negligible effect that would not be significant;
- the installation of the fixed equipment would amount to a low magnitude impact on resources of very high or high sensitivity, equating to moderate or minor adverse effects which would not be significant. The effect on soils would be a low magnitude effect on soils of medium sensitivity, which would result in a minor adverse effect that would not be significant;
- the installation of the cable between the on-site substation and the Drakelow Substation would be on land quality of medium sensitivity (grade 3b) and the magnitude of impact would be negligible. The effect on land quality and soils would be negligible and not significant;
- the effects on soils from construction traffic and works and trenching would generally be temporary, the soils are of medium sensitivity, with medium resilience to structural damage. The magnitude of effects would be low or negligible, resulting in minor or negligible effects, which would not be significant; and
- the significant changes to the day-to-day operation of the business would amount to a medium magnitude of change on a resource of medium sensitivity, which would be a minor adverse effect and not significant.

3.3.19 Embedded mitigation would be provided by the Outline SMP [[REP6-018](#) Appendix 1] and residual construction stage effects would remain as noted above.

Operation stage

3.3.20 The assessment states that there would be no need for heavy machinery to traffic the soils during the operation stage. It considers that there would be no compacting of soils and that the combination of increasing organic matter levels and lack of machinery activity would allow a natural enhancement of the soil.

3.3.21 Maintenance and cleaning machinery would normally be a van or small tractor, and generally lighter than standard farm machinery. Panel cleaning would take place once a year using clean, chemical-free water. The Applicant considers this would have no significant adverse effects on soils or land quality.

3.3.22 The current arable land is intensively managed. It would be sown to grassland and managed, including grazing with sheep, for the duration of the operation stage, which the Applicant expects to have a positive benefit for the soils.

- 3.3.23 Farm business would be able to continue throughout the operation stage. It would need to adapt and would need to either rent land for fodder production or buy-in more winter fodder and straw, but the dairy unit is expected to continue throughout the operation stage. The Applicant considers there would be significant changes to the way the farm operates day to day, although it would continue to operate as a full-time farm and the rental income from the Proposed Development would provide support to maintain the farm business. There may be opportunities for enterprise development for sheep, which is expected to form part of the land management during the operation stage.
- 3.3.24 In the national context, the Applicant considers that there is no policy or initiative to require agricultural land to be actively used for food production, agri-environmental schemes have taken large areas of land out of production for other benefits, there are about 8.8 million ha in active agricultural use of which an estimated 3.7 million ha are of BMV quality, and there is no food security concern, and therefore considers that food production is not a concern governed by specific policy.
- 3.3.25 The Applicant states the total potential yield of 1,150 tonnes would be negligible compared to the 24 million tonnes of cereals the UK produced in 2022. The Oaklands Farm area extends to 160ha, which the Applicant considers a negligible proportion of the County (0.066%) and a minor proportion of the District (0.5%).
- 3.3.26 The Applicant considers that the operation stage effects would be:
- a negligible magnitude of impact on land quality, on land of very high, high or medium sensitivity, partially reversible on decommissioning, which would be a negligible effect and not significant;
 - a negligible adverse effect on soils from operational work from an impact of negligible magnitude, on soil resources of medium or low sensitivity that would not be significant;
 - a benefit to the soils from being rested from intensive arable use, and of high magnitude. Soil biodiversity is a resource of low sensitivity, and the overall effect would be minor beneficial and not significant;
 - an impact of medium magnitude on the farm business, which is a resource of medium sensitivity, resulting in a minor adverse effect on the farm business, which would not be significant; and
 - minor or negligible adverse economic and food production effects at national and local level, which would not be significant.
- 3.3.27 The Applicant considers that no additional mitigation would be required and that residual operational effects would remain as presented above.
- Decommissioning stage
- 3.3.28 An Outline SMP [[REP6-022](#) Appendix 1] provides mitigation for decommissioning.
- 3.3.29 The solar PV panels would be dismantled by hand and removed on trailers. The steel legs would then be pulled out using machinery like that which installed them. There would be trafficking by the machinery, which would be likely to have tracks to dissipate ground pressure and would be operated in dry conditions. The Applicant considers that the removal of the panels would not damage the soils or alter land quality.
- 3.3.30 Deeply buried cables would be left in situ or removed. These would be below the depth of any farm machinery and cause no limitations for farming in the future. Shallow

buried cables would be removed by digging a narrow trench, removing topsoil to one pile, subsoil to another, removing the cable then reinstating the soils. The Applicant considers that this would not result in long-term loss or downgrading of the land.

- 3.3.31 Soils across the solar PV module areas would then be loosened with normal agricultural machinery to alleviate any minor compaction. The land would then be returned to the farmers for continued agricultural use.
- 3.3.32 The bases for the fixed infrastructure would be removed, if required. Any concrete pads would be lifted and removed, and the ground reinstated for agricultural use. It may be that the tracks would be retained as they may be useful for the farming operations. If the tracks and transformer bases were to be removed, the operation stage would involve removing the crushed stone bases, loosening the soil to remove compaction, then returning topsoil to the areas. The topsoil would then be lightly cultivated with normal agricultural machinery and returned to use for agriculture.
- 3.3.33 The assessment assumes that the 1.5ha of grade 3a, and 0.3ha of grade 3b land in the areas of the substation and the BESS may not be restored back to the same grade.
- 3.3.34 The Applicant says that decommissioning would have negligible magnitude effects on resources of high and medium sensitivity, resulting in a negligible significance of effect, which would not be significant. It considers that the permanent loss of the BESS and on-site substation area would be a low magnitude effect on resources of high or medium sensitivity, which would be minor adverse effects and not significant.

Cumulative and combined effects

- 3.3.35 The Applicant considers cumulative effects with other developments, including a solar farm at Haunton and residential schemes. It anticipates that there would be no significant cumulative effects, and that no additional mitigation would be required. It identifies no combined effects of relevance to agriculture and soils.

Land use after the decommissioning stage

- 3.3.36 Requirement 22 of the dDCO [\[REP8-003\]](#) provides that decommissioning must be implemented in accordance with a DEMP that is approved by the LPA and that is substantially in accordance with the Outline DEMP [\[REP6-022\]](#).
- 3.3.37 The Applicant [\[APP-181, REP6-031\]](#) explains that the land where the ground mounted Solar PV panels would be installed would be returned to its original use after the decommissioning stage. All above ground plant, machinery and equipment would be removed together with all perimeter fencing and concrete hard standing. All internal access tracks would be removed unless the landowner wishes them to remain. Areas of habitat and biodiversity mitigation and enhancement would be left in situ to avoid disturbance of established and protected species. An assessment would be undertaken prior to the decommissioning stage to establish whether any aspects of the development (for example a buried cable) should be left in situ because the impact of removal would outweigh the benefit of removal at the time of the decommissioning stage. The cabling on or near the surface, inverters, transformers, switch gear, fencing, other ancillary infrastructure and the BESS would be removed and, recycled and disposed of following best practice following the waste hierarchy. All waste would be disposed of following the legislation at the time of the decommissioning stage.
- 3.3.38 The Outline DEMP [\[REP6-022\]](#) sets out the principles of decommissioning, environmental considerations, the intended methods of disposal of the principal site infrastructure materials, potential mitigation and management measures, monitoring

and reporting. It includes an Outline SMP which sets out principles and procedures for good practice (embedded mitigation measures) and bespoke mitigation measures in soil handling, storage, and reinstatement to be used.

Land contamination and mineral safeguarding

Assessment scope, methodology, study area and baseline

- 3.3.39 The assessment [APP-146] considers potential effects on the ground conditions beneath the site due to the direct interaction of the works with the ground, including potential for contamination, disturbance and erosion of the ground, and the consideration of effects on groundwater quality due to mobilisation of contamination.
- 3.3.40 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - leaks and spills of pollutants, erosion of sediment and soils, compaction of soils, disturbance of the ground to install foundations and access tracks, construction works encountering contaminated materials within potential historical backfill to former gravel pits and marl pits, the potential for mobilisation of materials in air and in groundwater, and potential mineral resource sterilisation; and
 - operation stage - most operational effects are scoped out of detailed assessment, however, effects on groundwater and soils due to the change from intensive arable agriculture to low intensity grazing beneath the panels are considered further.
- 3.3.41 Operation stage effects on ground conditions and, with the agreement of the Coal Authority, interaction with coal mining and associated potential land instability, are scoped out of the assessment.
- 3.3.42 The assessment makes use of EA Land Contamination Risk Management Guidance (2023) and Land Contamination Technical Guidance (2022), British Standard (BS) 5930, BS 10175, and Construction Industry Research and Information Association C532 guidance on Control of Pollution from Construction Sites (2001).
- 3.3.43 The study area extends to 500 metres (m) outside the site boundary. Baseline conditions are established through environmental database reports and a coal mining report [APP-145], and field surveys in July 2021 and June 2022.
- 3.3.44 Historical Ordnance Survey mapping indicates the presence of former gravel pits and marl pits and the location of several former ponds and a former reservoir, which are no longer present and hence have likely been filled in.
- 3.3.45 British Geological Survey geological mapping and historical boreholes confirm the geology to have limited to no superficial deposits overlying 333m to 500m of Triassic strata. Superficial deposits are absent from the northern portion of the Oaklands Farm area and from the central-southern section of the Park Farm area. Glacial till is recorded as covering the southern half of the Oaklands Farm area, the northern half of Park Farm and the far east of the Park Farm area. A small area of glacio-fluvial deposits is recorded around field P2. The stream corridor that crosses the south-west of Fairfield Farm and connects the two farms is shown as covered in alluvium. River Terrace Deposits are present to the north around the former Drakelow Power Station. Some peat is shown off-site to the west, but none on the site itself.
- 3.3.46 DCC advised the Applicant that the site initially included a small area identified for inclusion as a Sand and Gravel Safeguarding Area in the Draft Derbyshire and Derby Minerals Local Plan.

- 3.3.47 The British Geological Survey list of geohazards are classed as 'no hazard' to 'low hazard' apart from compressible ground, which is assessed as posing a 'moderate hazard'. This is thought to relate to the presence of alluvium along the stream corridor.
- 3.3.48 Current agricultural practice includes permanent grass for grazing, arable rotation and ploughing, and grass pasture. The Applicant states that the site has been in agricultural use throughout its history and that this provides little potential sources for contamination. The historic marl and gravel pits and infilled reservoir and ponds provide the potential for localised made ground on-site which may provide limited point sources of contamination. The use of pesticides and fertiliser as part of the ongoing agricultural practice may have increased nutrient and chemical loading of shallow soils and subsequently impacted local groundwater, watercourses, and water features.
- 3.3.49 The alluvium and glaciofluvial deposits beneath some areas of the site are classified by the EA as Secondary A Aquifers - permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. The Edwalton Member bedrock beneath the site is classified as a Secondary B Aquifer - predominantly lower permeability layers which may store and yield limited amounts of groundwater due to localised features such as fissures, thin permeable horizons, and weathering.
- 3.3.50 The predicted significance of the effect is determined through assessment based on professional judgement, considering both sensitivity and magnitude of change. Major and moderate effects are considered significant.

Construction stage

- 3.3.51 The Applicant considers that the Outline CEMP [\[REP6-018\]](#), including the following elements, would minimise the impacts on soil and ground conditions:
- phasing of works, including of any required turf and topsoil strip, such that as little bare soil is exposed at any one time;
 - sealing of all soils in storage areas using an excavator bucket at the end of each shift, to minimise the potential for sediment to be washed off during a rainfall event;
 - where long-term storage of soil is planned, allowing vegetation on stockpiles to naturally regenerate and/ or be seeded to facilitate a cover of vegetation;
 - daily monitoring of the weather forecast to predict periods of likely heavy rainfall;
 - additional precautions in accordance with current best practice in areas susceptible to sediment run-off, and some works may need to be suspended; and
 - the Outline SMP [\[REP6-018\]](#) Appendix 1] outlines measures to reduce any detrimental impact and degradation.
- 3.3.52 A programme of intrusive investigation would be carried out during pre-commencement, targeting potential areas of made ground infill to former pits, reservoirs/ ponds, and around former buildings. Soil sampling and laboratory analysis would be used to assess the potential risk posed to ground conditions, human health, and the wider environment. If this determines that remediation or risk management is required then remediation options appraisal, remediation strategy, remediation implementation and verification would be used to reduce risks to acceptable levels.
- 3.3.53 Key sensitive receptors are identified as the superficial and bedrock strata including the presence of mineral resources on-site and the groundwater.

- 3.3.54 Construction would have the potential to cause changes to ground conditions, if unchecked by proper environmental controls. These impacts could take the form of pollution from fuels, oils and other chemicals that are being used and/ or stored on-site entering the soils and groundwater following spills, leaks or accidental releases and erosion of sediment/ silt due to exposed soils being eroded by rainfall.
- 3.3.55 Construction would involve the use of heavy machinery and plant within the agricultural fields on-site. Whilst this would represent an intensive period of trafficking on the soil, it is not considered any greater in magnitude than would occur from use of heavy agricultural plant and machinery in a typical growing season for arable crops.
- 3.3.56 The Applicant considers that the foundation works would not significantly alter the soil structure or the nature of the underlying geology. Potential point sources of contamination would be investigated, assessed and, if necessary, remediated.
- 3.3.57 The Applicant reports that DCC advised that the site is largely excluded from a sand and gravel mineral safeguarding area other than a short section of cable routing that is unlikely to impact resource availability. The Applicant considers that the superficial geology and solid geology are such that key minerals are not present. It concludes that the development would not sterilise a significant reserve of mineral resources.
- 3.3.58 The Applicant is of the view that a change from agricultural to pastureland around the solar PV panels would increase the soil organic content and that a reduction in heavy machinery trafficking over the soils would reduce compaction. The stripping of topsoil and subsoil to create access trackways, the on-site substation and the BESS would result in the removal and degradation of the receptor over an area of 5.3ha.
- 3.3.59 The Applicant considers that the construction stage effects would be:
- pollution from fuels, oils and other chemicals would be an impact of medium magnitude on soil and groundwater of medium sensitivity and bedrock of low sensitivity, which would result in a negligible effect that would not be significant;
 - erosion of sediment/ silt created by exposed soils would be an impact of medium magnitude on soil and groundwater of medium sensitivity and superficial deposits and bedrock of low sensitivity, which would result in a negligible effect that would not be significant;
 - soil compaction from heavy plant/ machinery and alteration to soil structure/ geology would be impacts of negligible magnitude on soil and groundwater of medium sensitivity and superficial deposits and bedrock of low sensitivity, which would result in a negligible effect that would not be significant;
 - interaction of the Proposed Development with contaminated made ground causing effect on receptors would be an impact of negligible to small beneficial magnitude on soil and groundwater of medium sensitivity and superficial deposits and bedrock of low sensitivity, which would result in a negligible to minor beneficial effect that would not be significant;
 - mineral sterilisation would be an impact of negligible magnitude on resources of low sensitivity, which would result in a negligible effect that would not be significant;
 - effect of leaving soils in-situ under panels would be an impact of negligible magnitude on topsoil of low sensitivity, which would result in a negligible beneficial effect that would not be significant; and

- stripping topsoil and subsoil from trackways, the on-site substation and the BESS would be an impact of negligible magnitude on topsoil of low sensitivity, which would result in a negligible effect that would not be significant.

Operation stage

- 3.3.60 The Applicant states that land surrounding and beneath the solar panels would become grassland grazing and would be grazed less intensively than currently. Fields that currently used to produce arable crops would become vegetated year-round. Pesticides and fertiliser application would also be none or minimal. The sward within the site would be allowed to grow and would not be cropped or harvested. The reduction/ removal of pesticide and fertiliser use would prevent potential contaminants from entering groundwater receptors. The Applicant considers this to be a small beneficial magnitude of change on water quality in the Secondary A aquifer (of medium sensitivity) under the site that would be minor beneficial and not significant.

Decommissioning stage

- 3.3.61 The Applicant considers that the mitigation included in the Outline DEMP [\[REP6-022\]](#), including the Outline SMP at Appendix 1, would lead to effects being similar to the construction stage and therefore negligible to minor and not significant.

Cumulative and combined effects

- 3.3.62 The Applicant considers cumulative effects with other developments, including other energy storage schemes, substations, and a renewable energy centre. It anticipates that the cumulative effects would range from negligible to minor and not significant.
- 3.3.63 The Applicant considers that the combined effects of water quality impact due to groundwater and surface water would be sufficiently mitigated such that they would remain of a similar significance to those posed individually.

ISSUES ARISING DURING THE EXAMINATION

ALC

- 3.3.64 NE [\[AS-022\]](#), [\[REP1-037\]](#) raise various concerns regarding ALC, including:
- where BMV agricultural land is not expected then a semi detailed survey (1 auger per 2ha plus representative pits) would suffice, and where it is expected then a full ALC (1 auger per ha plus representative pits) must be undertaken;
 - it does not concur with the assumption that land quality is mostly 3b within the cable route and an ALC survey should be undertaken on the cable route;
 - in the absence of a detailed survey for most of the cable corridor it is impossible to provide an accurate baseline and demonstrate the likely potential impacts;
 - the survey requires an experienced ALC surveyor to make the correct professional judgements and detail should be provided of the professional credentials and experience required of soil scientists (surveyors) experience carrying out ALC; and
 - the ALC survey is required to inform the SMP.
- 3.3.65 SDDC [\[REP1-029\]](#) considers that the Applicant's ALC and surveys meet the minimum criteria of the Ministry of Agriculture, Fisheries and Food 1988 but say that the soil survey work was not supervised/ observed.

3.3.66 The Applicant [[REP1-023](#), [REP1-025](#), [REP3-032](#), [REP4-011](#)] replies that:

- the approach and methodology for the ALC and surveys is robust and appropriate;
- the results of further survey work will be provided for the cable route;
- the ALC of Oaklands Farm was carried out and supervised by qualified persons, one with 13 years of experience and another with 25 years;
- the ALC plan is revised to address the matters raised by NE;
- the ALC of Park Farm, and as now extended to cover the whole of the cable route corridor, was carried out by a person with MSc, FI Soil Sci, CSci qualifications and 35 years' experience;
- all fieldwork and ALC analysis were carried out by experienced professionals; and
- the Applicant's position is that it is not normal practice for soil survey work to be supervised or observed, and not necessary for supervision or observation when the professionals undertaking the work are experienced and professionally qualified.

3.3.67 NE [[AS-033](#)] then advises that it has no further concerns regarding ALC survey methodology and SDDC [[REP5-039](#)] says it is content that the surveyors work was to an acceptable standard and undertaken by appropriate surveyors.

3.3.68 The Applicant submits an Additional Land Classification Survey at Park Farm October 2024 [[REP5-036](#)] which focusses on the cable route. The Applicant updated ES Chapter 15 [[REP6-033](#)] to advise that the additional survey results in the 12ha area of land estimated in the application [[APP-169](#)] as grade 3b land being identified as 8ha of grade 3a (an increase from 79 to 87ha) and 4ha of grade 3b (an increase from 58 to 62ha). The updated ALC for the site is as set out in Figure 3.3.2:

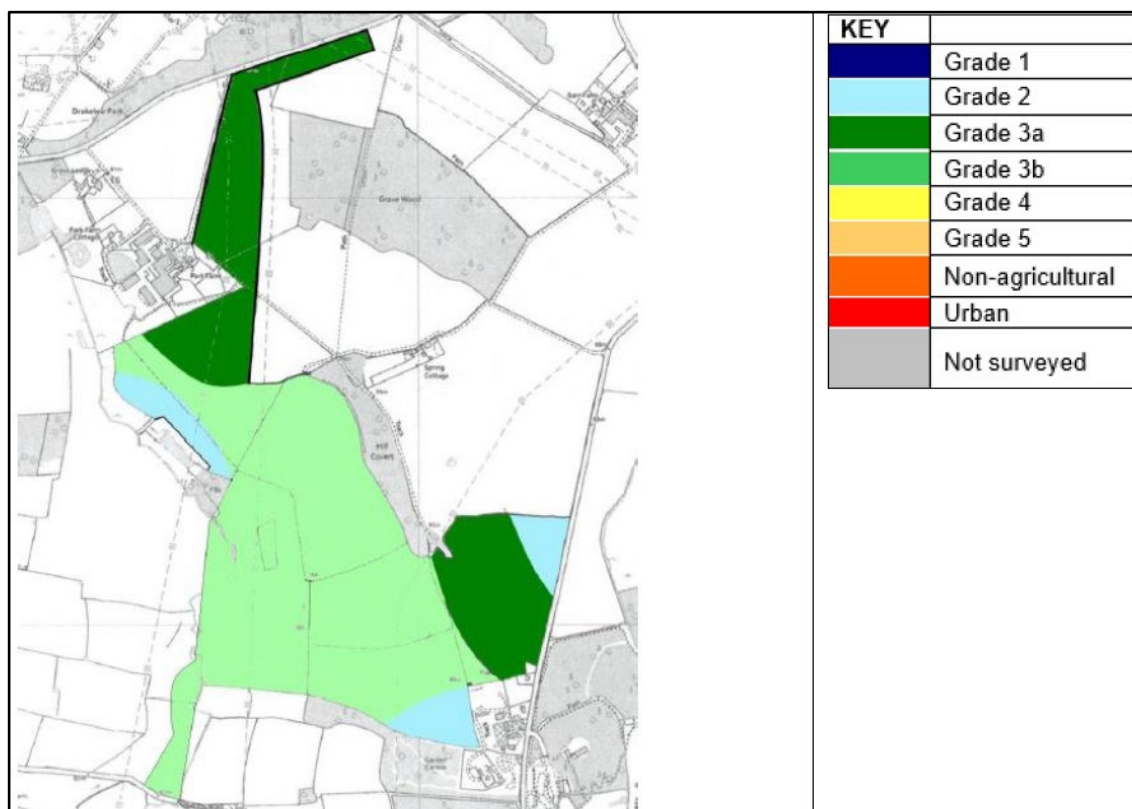


Figure 3.3.2: ALC update [extract from Plate 15.4 of [REP6-033](#)]

- 3.3.69 NE [\[REP6-054, REP7-014\]](#) welcome the additional ALC survey on the cable route that informs the Outline SMP and says that its concerns are addressed.
- 3.3.70 SDDC [\[REP6-047, REP8-022\]](#) accept that the additional ALC survey was undertaken by an appropriate professional. It is of the view that the total impacted area of BMV agricultural land is significantly more when the additional survey area is considered, more than double, and this increases its concerns regarding the loss of BMV agricultural land resulting from the Proposed Development.
- 3.3.71 In the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) it is agreed that:
- the additional ALC studies confirm that of the 191ha comprising the site and cable route, 36ha are grade 2 (very good), 87ha are grade 3a (good), 62ha are grade 3b (moderate), 1ha is non-agricultural, and 5ha are urban; and
 - these findings provide an accurate assessment of the agricultural land across the site and that the area of BMV agricultural land impacted by the proposals significantly increases from the original assessment.

Use of agricultural land

- 3.3.72 In their Relevant Representations, Interested Parties including Amy Nicola Green [\[RR-019\]](#), Andrew Baker [\[RR-021\]](#), Barton under Needwood Parish Council [\[RR-033\]](#), Brian Poole [\[RR-038\]](#), Councillor Amy Wheelton [\[RR-063\]](#), Gary Rooney [\[RR-099\]](#), Judith Beresford-Clarke [\[RR-154\]](#), Laura Smith [\[RR-168\]](#), Lynda Joan Cooper [\[RR-180\]](#), Sandra Evitts [\[RR-274\]](#), and many others, object to the Proposed Development, feel that it is an inappropriate use of agricultural land, and/ or consider that food security should be prioritised. David M Brown [\[PDA-003\]](#) says that this is prime agricultural land and exceptionally poor use of greenfield land, and national guidance is that the use of good quality agricultural land for large scale solar farms should be avoided. SDDC [\[RR-295\]](#) considers that development should be directed to areas of lower soil quality.
- 3.3.73 The Applicant [\[REP1-023, REP3-031, REP3-033, REP8-020\]](#) responds that:
- the Government's strategy includes delivering solar energy on brownfield sites and rooftops but this only forms part of the strategy, NPS EN-3 recognises that the use of some agricultural land to deliver projects of a nationally significant scale is inevitable and does not prohibit the use of BMV agricultural land for the development of ground mounted solar arrays as it seeks to deliver up to 70 Gigawatt of solar generation;
 - the location of ground mounted solar generation is limited by a number of factors and technical considerations, including agricultural land classification and land type, as set out in NPS EN-3, and a factor in this instance is needing to be in proximity to a grid connection point which has available capacity such as the one at Drakelow;
 - ES Chapter 3 [\[APP-086\]](#) demonstrates that there are no other preferable sites within 10km of Drakelow Substation which would be able to deliver the Proposed Development and that this study of alternatives includes an assessment of previously developed and lower quality agricultural land, when taking reasonable account of other constraints and considerations;
 - the UK does not have an identified food security concern and there is no mandate to farmers which requires land to be used for food production, as stated by the SoS in July 2024, "*the biggest threat to nature and food security and to our rural communities is not solar panels or onshore wind; it is the climate crisis, which*

threatens our best farmland, food production and the livelihoods of farmers”, and the Proposed Development seeks directly to address the climate crisis;

- the 115ha of BMV land within the Oaklands Farm Area represents 0.003% of the BMV land in England and therefore the temporary loss of 115ha is insignificant in the national context;
- the Proposed Development represents some 0.066%, and some 0.5% of the BMV land available within South Derbyshire, which is negligible; and
- the Proposed Development forms part of a wider diversification plan for the farms to ensure their long-term viability.

Outline SMP

3.3.74 The Outline SMP for the construction stage is Appendix 1 of the Outline CEMP [\[REP6-018\]](#), and the Outline SMP for the decommissioning stage is Appendix 1 of the Outline DEMP [\[REP6-022\]](#).

3.3.75 NE [\[AS-022\]](#) comments that the Outline SMP should:

- comply with paragraph 5.1 of the Department for the Environment, Food and Rural Affairs (DEFRA) Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (2009) and follow the Institute of Quarrying’s Good Practice Guide for Handling Soils in Mineral Working;
- clarify the level of professional qualification and experience required of the site foreman to ensure that soil handling and storage of soils adhere to the DEFRA Construction Code of Practice;
- set out the target specification for the proposed end uses based on pre-construction ALC grade;
- where topsoil is to be stripped the soil handling methodology (movement, storage & replacement) and soil protection proposals should ensure that there is appropriate mitigation to allow for the restoration of the land to the baseline ALC grade;
- avoid soil handling during October to March inclusive, irrespective of soil moisture conditions;
- only allow soils in a dry and friable condition to be handled; and
- limit stockpile heights to avoid compaction of soils, typically a maximum of 3m for topsoils and 5m for subsoils.

3.3.76 SDDC [\[REP5-039\]](#) generally concur with NE’s comments, adding that the site foreman should be a suitably qualified soil scientist, and that soil handling should be avoided during the months of October to March (inclusive) irrespective of soil moisture conditions, except in special circumstances that have been agreed.

3.3.77 The Applicant [\[REP6-042\]](#) replies that:

- the Outline SMP for the construction stage [\[REP6-018\]](#) Appendix 1] is updated to address NE’s points;
- updates to the Outline SMP [\[REP6-018\]](#) Appendix 1, [\[REP6-022\]](#) Appendix 1] secure that soil handling would be overseen by a suitably qualified and experienced person who would be called to site as needed, and the site foreman would need to be aware of soil issues but would not need to be a soil scientist;

- the Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1] set out that soil should not be handled except when it passes suitability tests based on the Institute of Quarrying methodology;
- updates to the Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1] specify that between October and March inclusive the advice should be taken of a soil surveyor to advise on the suitability of the soil for being trafficked and handled, and this would include inspections of the site and the examination and consistency tests set out in the Institute of Quarrying Good Practice Guide; and
- the Applicant agrees with SDDC that the period of October to March is when soil handling should generally be avoided, but in the last few years soil handling in that period would have been perfectly possible, and accordingly considers that the above text provides the special circumstances that SDDC seek.

3.3.78 NE [[REP7-014](#)] welcome the Applicant's changes to the Outline SMP for the construction stage [[REP6-018](#) Appendix 1] and that, together with the additional ALC survey that inform the Outline CEMP, these changes address NE's concerns. SDDC did not respond to my invitation [[PD-014](#)] to set out any remaining concerns.

Piling, underground cables, and land drainage

3.3.79 DCC [[REP1-026](#), [REP2-001](#)] and SDDC [[REP1-029](#), [REP2-001](#)] consider that:

- leaving underground cables in place would prevent suitable reinstatement of land drains, or appropriate decompaction of the soil, may inhibit mole ploughing/ subsoiling, and prevent the land from being returned to BMV condition;
- the decomposition of cabling materials could leach contaminants into the soil and water resources;
- the DCO should require the underground cables and ducting to be removed , although SDDC [[REP1-029](#)] advise that removal would undo soil improvements that have taken place during the 40 fallow years;
- it is inevitable that land drains would be compromised by piling, cabling, and other infrastructure, and these may alter localised drainage patterns by interrupting flow during the construction, operation, and decommissioning stages;
- in the absence of land drains, nutrients would be washed out of the soil and the soil would no longer be BMV agricultural land quality;
- soil compaction on soil structure would lead to reduced permeability to water and air as well as increased surface runoff and erosion; and
- the impacts on soil would not be practically reversible in respect of BMV land and that the Proposed Development would result in the permanent loss of BMV land of a scale that would be a critical impact.

3.3.80 The EA [[REP1-032](#), [REP4-017](#)] says that the approach to installing and decommissioning cables should depend upon site-specific risk assessments and expects to work with operators to agree best available environmental options. It suggests that leaving cables in place could fall under the definition of waste.

3.3.81 Councillor Amy Wheelton [[REP1-039](#)] considers that:

- leaving the cables in place would make the land incapable of returning to agricultural use due to the implications for drainage, whereas if they are dug out the previous 40 years fallow would be rendered a waste of time;
- manure not being added back to the soil to increase the organic matter content raises concerns about the impact of the piling on the soil structure and land drainage, and
- the land would be incapable of returning to BMV or any agricultural use as it would no longer be drained.

3.3.82 The Applicant [[REP3-031](#), [REP3-032](#), [REP3-033](#), [REP4-011](#)] replies that:

- it seeks an appropriate level of flexibility which would allow some cables to be left in place should an assessment of the situation at the decommissioning stage determine that to leave cables in place would be environmentally preferable, having regard to factors such as the condition of the land at that time, potential disturbance from the removal of the cables, and any contamination risks which could arise from the cables being left in place;
- it considers how cables could be installed to mitigate adverse effects most effectively, and is confident that electrical cables would be buried to such depth (0.7m minimum) so as not to interfere with typical agricultural activities or preclude the use of drainage solutions such as land drains or mole ploughing (plough depth is widely considered to be 0.2 - 0.4m depth);
- leaving cables in situ at greater depths, would not prevent drainage measures such as land drains, or mole ploughing at shallower depths, from being utilised beyond the decommissioning stage and therefore leaving cables in situ would not adversely impact the ability of the land to return to agricultural use;
- the minimum cable depth of low and medium voltage cables would be 0.7m, the high voltage cable from the on-site substation to the Drakelow Substation would have a minimum depth of cable at 0.9-1.0m;
- warning tape would be placed at approximately 0.4m depth for safety purposes, and a very thin earthing cable would be placed at approximately 0.5m depth, however, these features would have no impact on agriculture or drainage;
- it agrees with the EA that the approach to decommissioning cables should depend upon a site-specific risk assessment being carried out prior to the decommissioning stage;
- alongside other considerations, such as ecology and soil impacts, such risk assessment would include consideration of drainage to ensure that the land would be capable of hosting agricultural activity once the decommissioning stage is complete;
- the drainage assessment would consider if electrical cables needed to be removed to facilitate drainage measures such as land drains (installing new, or improving existing drains), and if mole ploughing/ subsoiling would be possible with the cables in situ;
- based on this risk assessment as part of decommissioning planning, a decision would be made on whether cables are to be removed or left in situ;
- it does not consider the DCO should require the underground cables and ducting to be removed as a blanket rule, the approach to leaving cabling in situ would ensure the improvements to soil quality during the operation stage are not undone, and this

approach is in accordance with Paragraph 2.10.69 of NPS EN-3 which states *“Applicants should set out what would be decommissioned and removed from the site at the end of the operational life of the generating station, considering instances where it may be less harmful for the ecology of the site to keep or retain certain types of infrastructure, for example underground cabling...”*;

- it considers this approach is consistent with recent solar DCO precedent, whereby contamination from cables left in situ is not considered a significant risk;
- cables are usually cut, capped, and left in the ground, and there are no known issues with leaching of contaminants, oil or fluid filled cables can be drained, flushed and capped and left in situ with ongoing monitoring and inspection, and waste associated with removal of cables (if required) would also be considered in the DEMP and follow best practice at the time of the decommissioning stage;
- the requirement to undertake full assessment, including drainage, prior to decommissioning is secured through Requirement 22 of the dDCO [\[REP8-003\]](#);
- through the preparation of the final DEMP, it may be determined by the LPAs and the Applicant that it is optimal for the environment to remove all underground cables, however, this should be determined with knowledge of the relevant legislation and best practice at the time of the decommissioning stage;
- it has added text to the Outline DEMP [\[REP6-022\]](#) to provide a firm commitment to considering drainage at the point of decommissioning and has also added a minimum depth of cables to Table 4.2 in ES Chapter 4 [\[REP6-031\]](#);
- although piling may disturb or break up land drains, the number affected is expected to be minimal and in the unlikely event that any significant drainage issue emerges due to construction activity, it would use measures such as Sustainable Drainage Systems (SuDS), replacing or repairing land drains to rectify the situation;
- it considers it likely that there would be an improvement to soil quality as the ground beneath the solar panels would be permanently vegetated whereas with the existing agricultural use there are periods of bare and compacted earth which increase levels of the surface water runoff, the land would be returned to an appropriate condition following the decommissioning stage without compromising soil quality, and the lease requires it to make good the land in no worse state or condition prior to implementing the Proposed Development;
- the Outline CEMP [\[REP6-018\]](#) requires rectification of construction-related surface drainage issues, including solutions such as repairing or replacing land drains, or alternative measures such as SuDS, as appropriate; and
- the Outline OEMP [\[REP6-020\]](#) secures that the proposed drainage system should be regularly cleaned and maintained to ensure its function.

3.3.83 DCC [\[REP4-012\]](#) and SDDC [\[REP4-014\]](#) then consider that cables should be installed in such a manner as to mitigate the overall likely adverse impacts most effectively.

3.3.84 DCC [\[REP4-012\]](#) adds that:

- the approach to decommissioning cables should depend upon a site-specific risk assessment carried out prior to the decommissioning stage;
- as the solar farm is expected to operate for 40 years, techniques for the removal of underground cables and for the conservation of soils are likely to have progressed and the impacts better understood at the time of the decommissioning stage;

- the application of measures such as SuDS are proposed to manage drainage during the operation stage while reinstatement of drainage may be considered at the decommissioning stage, however the use of SuDS would remove land from agricultural use (and therefore BMV status) and it remains to be demonstrated whether SuDS would be the most appropriate drainage system following the decommissioning stage; and
- land drainage reinstatement works may be required following the decommissioning stage to return the land to the BMV condition.

3.3.85 SDDC [[REP4-014](#), [EV4-003](#)] adds that:

- the location of existing land drains is not known;
- broken land drains and ditches need to be maintained to avoid waterlogging/ pooling of water as this could cause compaction and be detrimental to BMV;
- SuDS measures may remove BMV ground due to excavation and SuDS measures may not be appropriate as they are not agricultural drainage systems; and
- cables left in place after the decommissioning stage could conflict with future agricultural land uses including in relation to the reinstatement of land drainage.

3.3.86 Following further consideration, the EA [[REP5-043](#)] says that the requirement to remove cables, in line with the Definition of Waste, would only exist where there is an imminent risk of pollution which could adversely affect human health or the environment. Cables in general, unless oil filled, would be unlikely to be considered as a waste if left in the ground. However, the Applicant would need to carry out risk assessments and demonstrate that leaving cables in situ would not result in pollution.

3.3.87 NE [AS-033](#) says that, with the exception of peats, the maximum possible depth of a soil profile is generally considered to be 1.2m. Therefore, the cables may be laid partially within the depth of the natural soil profile but would be well below the topsoil layer and the minimum depth of cover over the cables is not considered to compromise the ability of the overlying agricultural crops to produce a functioning and effective root system. This depth is expected to be consistent with the industry standard of 0.9m.

3.3.88 Councillor Amy Wheelton [[REP5-047](#)] says that

- the Applicant wishes to leave the decision of how to deal with the problem of buried infrastructure for 40 years and leave it in the ground, polluting the soil forever;
- the Applicant states that the cutting of cables at 0.7m deep would allow land drainage, that land drainage is 1.1m deep at her farm, and the Agriculture and Horticulture Development Board Field Drainage Guide quotes 1.1 to 1.2m depth in permeable soils;
- a mole drain would operate at 0.6m deep and run into the drains; and
- if the land cannot be drained then it would no longer be BMV.

3.3.89 The Applicant [[REP5-024](#), [REP5-026](#), [REP6-041](#), [REP6-042](#)] states that:

- it broadly knows where the land drains are based on information from the landowner and that it had been through the site field by field and recorded them;
- it provides a map identifying where land drains are understood to be present [[REP5-017](#) paragraph 4.2.5];

- the land drainage is generally at lower parts of fields, nearer watercourses, where farmers try to speed up water flow through a land drain;
- due to the expected low number of land drains on the site, and the very small area of the site affected by cable trench excavations (approximately 2% of the site, with trenches almost exclusively routed around the perimeter of fields), the main source of damage to any existing land drains is expected to be piling for the solar panel mounting structure legs;
- some of the detailed information regarding depth of pipes would need to be investigated using a digger and this could be dealt with in the SMP post-consent;
- any problem post-construction would be obvious as there would be a damp area that could be rectified in the same manner as farmers would;
- it would not immediately install SuDS, and a stepwise approach would be taken to investigate, and mitigation measures would depend on what was found;
- SuDS would not be appropriate for localised damages to a land drain by a pile and would be better suited if there was a perceived overland flow problem, a strip/ filter drain would be used;
- new land drains and other drainage features can be installed under and around the piling for the solar panels and buried cables to address any issues identified from land drains found to have been damaged during the construction stage;
- the exact locations of piles and buried cables installed by the Applicant would be known and recorded, and these features can therefore be avoided by careful design and installation of the new drainage;
- it agrees that all cables should be laid to a minimum depth of 0.9m and has updated Table 4.2 of ES Chapter 4 [\[REP6-031\]](#) accordingly; and
- agrees with the EA's comments about leaving cables in situ, and has updated the Outline DEMP [\[REP6-022\]](#) to include that *"Prior to the removal of buried cables, the Applicant will conduct a risk assessment to be reviewed by the local planning authority and in consultation with the Environment Agency or its successor, to ensure that risks to the environment are understood and mitigated. Cables can only be left in situ if the local planning authority, in consultation with the Environment Agency or its successor, are satisfied that the Applicant has demonstrated that leaving the cables will not result in pollution."*

3.3.90 The Outline CEMP [\[REP6-018\]](#) includes that *"During construction of the Proposed Development, piling of solar panel mounts and / or the installing underground electrical cabling via trenching may result in disturbance or damage to existing land drains. Where this occurs and creates an unacceptable surface drainage issue, other measures (e.g., repairing or installing new land drains) would be available to rectify such drainage issue. Once established, the drainage on-site will be monitored, and drainage measures altered or improved as necessary."*

3.3.91 The Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1] includes that *"The Applicant commits to the repair of land drains or the installation of new land drains where removal of solar panel mounts and/or the removal of underground electrical cabling results in damage or disturbance to existing land drains and where an unacceptable surface water issue occurs as a result. Once established, the drainage on-site will be monitored for up to 5 years, and drainage measures altered or improved as necessary."*

- 3.3.92 NE [\[REP7-005\]](#) is satisfied that should cables be left in situ after the decommissioning stage, that provided that are buried at a minimum depth of 0.9m they would not impact the future agricultural use of the land.
- 3.3.93 The EA [\[REP6-049, REP6-050\]](#) has no remaining concerns as cables in general would be unlikely to be considered as a waste if left in the ground, it is to be consulted on the DEMP, and at the decommissioning stage the Applicant would need to demonstrate that leaving cables in situ would not result in pollution to ground or surface water.
- 3.3.94 DCC [\[REP7-011\]](#) has no outstanding issues about damage to existing land drainage.
- 3.3.95 In the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) it is agreed that:
- there is a low chance that trenching for underground electrical cabling would cut across existing land drains;
 - given the commitment made by the Applicant to return the land to its former condition for agricultural use, the Applicant commits to maintaining the existing land drain network across the site;
 - the land drain network would be maintained by using construction methods which minimise the potential of damage to land drains, having a drainage advisor on site during the construction stage, installing new land drains between panel arrays if needed, repairing land drains where damage is apparent and monitoring surface water and drainage during the operation stage;
 - cables would be installed at a minimum depth of 0.9m, ensuring that agricultural activities, including ploughing, can continue during the operation stage;
 - the Applicant commits to removing buried cables and associated infrastructure at the decommissioning stage unless specific circumstances at that time suggest it would be better to leave them in situ, and in either case, the minimum cable depth of 0.9m would ensure that agricultural activities could continue unaffected;
 - damage to land drains may result in an adverse effect on soil quality;
 - the retention, repair, and installation of new land drains would be necessary to support the restoration of the site to its pre-commencement agricultural quality, and the measures set out in the Outline SMP [\[REP6-018 Appendix 1, REP6-022 Appendix 1\]](#) are agreed to provide a mechanism to ensure land drains are retained and remain operational throughout the lifetime of the Proposed Development and following the decommissioning stage; and
 - DCC accepts the proposals for the reinstatement of agricultural drainage during the decommissioning stage and that land drainage would be monitored and where necessary, improved during the operation stage.
- 3.3.96 SDDC [\[REP6-047, REP8-022, REP8-024\]](#) is of the view that:
- it is important to understand and fully consider at this stage whether cables would be removed or not, since cable removal during the decommissioning stage is likely to have a significant adverse impact on soil quality at that time; and
 - if, as stated by the Applicant, damage to land drains would reduce off-site flows, thus reducing off-site flood risk, the damage may adversely impact soil quality.

Other decommissioning matters

- 3.3.97 Parties including SDDC [\[RR-295\]](#), Lullington Parish Meeting [\[RR-179\]](#), Diane Abbott [\[RR-080\]](#), and Tracy Hiatt [\[RR-321\]](#) raise concerns about decommissioning and whether the land would be returned to farm land.
- 3.3.98 The Applicant considers that it is not necessary to add a requirement to secure the end state after the decommissioning stage, refers to the requirement for a DEMP to be submitted for approval and says that decommissioning would be carried out in accordance with the relevant legislation and policy at the time of the decommissioning stage, and it is not necessary or appropriate to include further detail in the DCO.
- 3.3.99 SDDC [\[REP1-029\]](#), [\[REP4-014\]](#) considers that it is necessary, reasonable, and appropriate for the definition of the end state after the decommissioning stage to be secured by the DCO.
- 3.3.100 DCC [\[REP1-026\]](#), [\[REP4-012\]](#) considers that it is necessary to understand the end state of the land following the decommissioning stage, and its suitability of other uses, including agriculture, if the full impact of the proposal is to be understood prior to consenting, and suggests that this must be addressed in the DEMP. It says that the design should take account of the likely impacts and scale of works required for decommissioning, with a view to reducing those impacts so that the land can reasonably expected to be returned to the original agricultural use. It says that further details, of the exact means of remediation, can be approved at the time of the decommissioning stage and should be based on actual ground conditions prevailing and techniques available at that time.
- 3.3.101 The EA [\[REP4-017\]](#) has no issues with the end state principles being identified in the DCO and request that the Applicant takes the ecological enhancements achieved during the development's lifetime into account.
- 3.3.102 In the context of the protection afforded to BMV agricultural land and that the Applicant [\[APP-169\]](#) states that the area of the BESS and on-site substation may not be restored back to the same ALC grade during the decommissioning stage, I [\[PD-010\]](#) ask if enough consideration is given to avoiding permanent loss of BMV agricultural land.
- 3.3.103 The Applicant [\[AS-017\]](#), [\[REP1-025\]](#), [\[REP3-032\]](#), [\[REP4-011\]](#) initially says that:
- it is not necessary to add a requirement to secure the end state after the decommissioning stage and refers to the requirement for a DEMP to be submitted for approval and the end state definitions in the Outline DEMP [\[REP6-022\]](#);
 - Requirement 22 of the DCO requires the submission of a DEMP for approval by the LPA and ensure that it has the opportunity at that time to determine the acceptability of the end state after the decommissioning stage;
 - decommissioning would be carried out in accordance with the relevant legislation and policy in force at the time of the decommissioning stage and it is not necessary or appropriate to include further detail in the DCO, and this approach is consistent with recent precedent;
 - the BESS and on-site substation are proposed within a relatively small field that could be restored to BMV status during the decommissioning stage, but it cannot be certain of restoration back to the same ALC grade;
 - it would not be possible to relocate the BESS and on-site substation to a parcel of land within the Order Limits which is similarly flat and unobstructed to avoid BMV

agricultural land, without giving rise to potentially significant environmental impacts in terms of matters such as landscape and visual impacts, arboriculture and ecological impacts or residential amenity; and

- it takes a precautionary approach by assuming that the BMV land in the BESS and on-site substation areas (1.5ha of grade 3a, and 0.3ha of grade 3b) may not be restored back to the same ALC grade.

3.3.104 During ISH1 [\[EV4-003\]](#) I refer to the [Cottam Solar Project decision letter](#) in relation to the commitments on that project to restore the agricultural land to the same ALC grade following the decommissioning stage and similarly for cable trenches following the construction stage, together with a commitment to monitor soil health for the lifetime of the Proposed Development to inform remediation.

3.3.105 NE [\[AS-022, AS-033\]](#) sets out a number of concerns regarding the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1], including that it should set out the target specification for the end uses based on pre-construction ALC grade, and include an aftercare programme for all land to be restored, which would enable a satisfactory standard of agricultural after use to be reached.

3.3.106 Following ISH1 and responding to the ISH1 Action Points [\[EV4-002\]](#) and NE, the Applicant [\[REP5-024, REP5-025, REP5-026, REP6-042\]](#):

- says that soils would be restored to the pre-construction ALC grade and that a programme of monitoring for up to five years post-decommissioning would be set out to ensure the correct ALC criteria have been reached and that the habitats created are in a suitable condition;
- updated the Outline CEMP [\[REP6-018\]](#) to include that “*The Temporary Construction Haul Road would be removed following construction and reinstated for decommissioning. Following removal of the Temporary Construction Haul Road (after construction and decommissioning), the land will be restored to its current condition*”;
- updated the Outline SMP for the construction stage [\[REP6-018\]](#) Appendix 1] to include that it “*commits to ensuring that land quality is not adversely affected, and where moved and restored soils are brought back to the pre-existing land quality, as recorded in the ALC reports*”, that “*following construction, areas within the Site within agricultural land that are utilised temporarily during construction (e.g., temporary haul road, temporary construction compounds, underground cable routes), will be restored to the same ALC grade*”;
- amends the Outline SMP for the construction stage [\[REP6-018\]](#) Appendix 1] to provide greater clarity on the areas that would not be able to be restored following the construction stage because they will form part of the operational area;
- updated the Outline OEMP [\[REP6-020\]](#) to include that the “*detailed OEMP will set out a programme of soil health monitoring to be undertaken throughout the operation of the Proposed Development, to rectify any significant adverse impacts on soil health. Soil will be sampled every five years by suitably qualified personnel*”;
- updated the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1] to include that “*following decommissioning, soils will be restored to the pre-construction ALC grade, without exception. A programme of monitoring for up to 5 years will be set out, to ensure that the correct ALC criteria have been reached (on land restored to agriculture) and the habitats created are in a suitable condition*”;

- says that if SuDS is implemented on the site as a preferred drainage mitigation solution to address drainage issues in limited areas, the SuDS features would be decommissioned at the end of the life of the Proposed Development in line with the Outline DEMP [\[REP6-022\]](#) and therefore, the Applicant does not agree with DCC that land employed for SuDS would not be able to be returned to agricultural use, and the use of SuDS should not be removed from the Outline OEMP [\[REP6-020\]](#);
- states that in line with established planning policy and the temporary nature of the Proposed Development, the Applicant commits to returning the land to agricultural use after the operation stage, which would have a maximum term of 40 years;
- says that any mitigation or habitats created as a result of the Proposed Development would be implemented only to address temporary environmental impacts caused by its implementation and temporary operation and the Applicant is not aware of any policy, mechanism or precedent requiring it to maintain mitigation or habitats created as part of the development after the expiration of the planning consent, and therefore such features would be removed as necessary to deliver the site back to the landowner in the condition present prior to the implementation of the Proposed Development, unless otherwise agreed with the landowner;
- says that the landowner would choose how to use the land after the decommissioning stage, subject to the landowner's objectives, market conditions and other considerations at that time; and
- does not consider that generalised post-decommissioning (i.e. permanent) control over habitats established as part of a temporary consent can reasonably be justified where these exceed what is reasonably necessary to address the impacts of the development itself.

3.3.107 NE [\[REP6-054\]](#), [\[REP7-005\]](#), [\[REP7-014\]](#):

- notes that in relation to an aftercare programme the Outline OEMP [\[REP6-020\]](#) includes a commitment to monitoring soil health every five years;
- welcomes the Applicant's changes to the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1] which, together with the additional ALC survey, address NE's concerns; and
- notes that the Outline DEMP [\[REP6-022\]](#) commits to restoring land quality to its pre-construction condition at the end of the operation stage, and that it also commits to alleviating localised impacts which would enable them to reinstate land to its original use and ALC grade and NE is satisfied with the measures proposed.

3.3.108 The EA [\[REP6-049\]](#) notes that the Applicant has amended Requirement 22 of the dDCO [\[REP8-003\]](#) to ensure the DEMP is approved by the LPA in consultation with the EA and on that basis has no remaining concerns.

3.3.109 DCC [\[REP6-046\]](#) agree that further description of the end state is not necessary as it is adequately set in the Outline DEMP [\[REP6-022\]](#), and accepts the undertakings set out in the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1] which commits the Applicant to restoration to the pre-construction ALC grade.

3.3.110 SDDC [\[REP6-047\]](#), [\[REP8-022\]](#), [\[REP8-024\]](#):

- is of the view that the review and agreement of updates to the end state after the decommissioning stage during the construction and operation stages could ensure that the end state is appropriately described;

- seeks greater clarity on the anticipated end state of the site post-decommissioning and recommends periodic reviews during the operation stage to ensure the end state aligns with environmental and agricultural restoration objectives;
- is concerned that the Outline DEMP [\[REP6-022\]](#) does not adequately address potential conflicts between restoring land to agricultural use and maintaining biodiversity gains established during the operation stage;
- maintains its objection to the Proposed Development due to the loss of BMV agricultural land, including 36ha of grade 2 and 87ha of grade 3a land and considers this loss a significant and unjustified adverse impact;
- asserts that the Applicant does not sufficiently minimise BMV loss or provided evidence that alternatives are properly considered;
- has concerns regarding the loss of a sizeable area of high-quality agricultural land to the access track, which would result in the unnecessary loss of the agricultural land for the lifetime of the development and questions the viability of restoring this land after 40 years due to disturbance and compaction;
- considers there is a lack of clarity regarding the specific methods, timescales, and costs for restoring agricultural land, raising concerns about the enforceability of commitments in the Outline DEMP [\[REP6-022\]](#);
- highlights that further assessments have revealed an increased extent of BMV land loss, undermining previous conclusions about its necessity; and
- objects to the cumulative loss of high-quality agricultural land.

Water runoff from the solar panels and onto bare soil

- 3.3.111 DCC and SDDC [\[RR-078, REP2-001\]](#) raise concerns about erosion due to increased surface water run off rates from solar panel edges, saying that the water runs into the soil in a concentrated drip line, that focusses percolation and exacerbates leaching.
- 3.3.112 SDDC [\[REP5-040\]](#) considers that the impact on soils both short and long term, is not fully considered, particularly during the construction and decommissioning stages, where bare soil can quickly erode due to surface water runoff. It refers to a ADAS/ Welsh Government report which says there are likely to be instances of run-off from the solar panels which could result in compaction of soils at the base of the panels, that over time rivulets can form along the trailing edge of panels with a risk of soil erosion creating rills and gullies across the site.
- 3.3.113 The Applicant [\[REP6-042\]](#) refers to mitigation for surface water impacts to soil during the construction and decommissioning stages in the Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#). It says that rivulets would not form along the trailing edge of the solar panels as the proposed panels would be a series of smaller panels bolted to a larger frame, the multiple gaps at the joining points of the solar panels would allow water to run off the solar panels at multiple points underneath and on the edges of the row of panels, disperse water that falls onto the solar panel area, and not concentrate the flow to a single discharge point along the bottom edge. The Applicant states that grass would be maintained below the solar panels throughout the life of the Proposed Development, and this would help slow down and absorb water flow compared to bare ground, which it considers appears to be a contributing factor to the issue described in the ADAS/ Welsh Government document which shows what appear to be two small channels in bare soil presumably created by falling water. The Applicant provides photographs from existing solar farms, not developed by the Applicant, showing the ground at the bottom edge of solar panels that have been in place for more than five

years, with no evidence of any indentation caused. It says that similar panel and mounting structures would be used in the Proposed Development, that similarly grass would be maintained underneath the panels, and therefore indentation would not occur because of the Proposed Development.

Farming businesses and food production

- 3.3.114 DCC and SDDC [\[REP2-001\]](#) consider that the Proposed Development would result in the permanent loss of BMV land that is a valuable source of sustainable locally produced food. They say that most of the site comprises of grade 2 and 3a quality soil, which would impact on opportunities for food production and wider impacts on the rural agricultural economy and suggest that the impact of this loss must be given significant consideration in the determination of the proposal. The Applicant [\[REP3-033\]](#) refers to NPS EN-1 which identifies that the urgent need for CNP Infrastructure to achieving energy objectives, that together with the national security, economic, commercial, and net zero benefits, in general outweigh any other residual impacts not capable of being addressed by the application of the mitigation hierarchy. It says that NPS EN-1 is clear that Government strongly supports the delivery of CNP Infrastructure, and it should be progressed as quickly as possible.
- 3.3.115 Councillor Amy Wheelton [\[REP1-039\]](#) says staff who work at Oaklands Farm have openly stated the dairy farm would cease, and that sheep never graze solar sites because the farmers must pay for any damage to the arrays and sheep rub and chew. The Applicant [\[REP3-031\]](#) replies that the 40 year operational lifespan is typical of solar developments of this scale and compliant with the typical lifespan in NPS EN-1. It says that after the operation stage the site would be returned to the landowner and would be again available for agriculture. The Applicant states that the landowners would be able to farm sheep and would be able to continue farming dairy cattle, and this would be supported by income from the Proposed Development. It considers that grazing of sheep alongside solar panels is common practice.
- 3.3.116 David M Brown [\[PDA-003\]](#) says that there would be no benefit to the tenant farmers who currently work the land and that the loss of productive acreage could threaten the viability of some tenanted farms who may be under pressure not to object. The Applicant [\[REP3-031\]](#) responds that the proposal is for existing farms to continue to operate as farms and there would not be a loss of livelihood.
- 3.3.117 I [\[PD-010\]](#) observe that ES Chapter 15 [\[REP6-033\]](#) concentrates on Oaklands Farm and request clarification about Park Farm and Fairfield Farm. The Applicant [\[REP1-025\]](#) says that:
- ES Chapter 15 [\[REP6-033\]](#) deals with the potential effects on agricultural business at Oaklands Farm, which is more directly impacted as it hosts the solar panels, the BESS and substation elements of the Proposed Development;
 - the installations and activity on Park Farm and Fairfield Farm would either be temporary or situated underground in a manner that would have no discernible impact on arable or grazing activity during the operation stage;
 - it has discussed the intended development activity on the land with the landowners of Park Farm and Fairfield Farm during Options Agreement negotiations, and accordingly, rental income and compensation for temporary disruption or loss to the existing agricultural businesses has been negotiated with the respective landowners to ensure that the agricultural businesses can continue throughout the operation stage and beyond the decommissioning stage;

- this includes commitments from the Applicant to reinstate the land to an agreed condition under agreed timescales, and to repair damage to relevant existing infrastructure because of the Proposed Development;
- the underground cabling would be installed and operated at a depth which would allow ongoing arable cropping or grazing, and no permanent above-ground infrastructure would be installed on Park Farm or Fairfield Farm, save for markers and access manholes for servicing the underground electrical cabling;
- while portions of the surface currently used for arable cropping or grazing would be temporarily occupied during the construction and decommissioning stages of the Proposed Development, the availability of alternative land in the farm holdings and remuneration agreed by the parties means the potential effects on the agricultural businesses at Park Farm and Fairfield Farm are mitigated and negligible; and
- the Proposed Development is therefore considered to constitute a minor temporary inconvenience to agricultural business on Park Farm and Fairfield Farm.

3.3.118 Responding to my [\[PD-010\]](#) questions about the likelihood that the land would be farmed during the operation stage and whether sheep grazing is a firm undertaking, the Applicant [\[REP1-025\]](#) replies that:

- sheep grazing within solar farms is an established practice on solar developments that are not Nationally Significant Infrastructure Projects (NSIPs), the Proposed Development would support this practice on a larger scale if desired and the grazing of sheep is considered commercially viable;
- the Oaklands landowner has indicated ongoing dairy farming would be possible on property not covered by the solar panels, the BESS or substation infrastructure as it is largely an indoor herd, the youngstock are raised at a rented unit three miles away, and only a modest proportion of the herd graze seasonally near to the farm;
- the wider farm is used in part for producing winter fodder, and this could continue from land retained within the farm and rented elsewhere, and there would be expected to be a need to either rent additional land to produce winter fodder or, as many farms do, to purchase winter fodder produced from other farms;
- sheep are currently grazed in the winter, and this would be unchanged although, as noted, there is the potential for year-round sheep grazing and the landowner has the relevant expertise to judge this possibility;
- the landowner would not be obliged to continue dairy farming, may decide to pursue alternative business practices to maximise the use of its property and the rental income from the Proposed Development would provide an alternative means of supporting any ongoing business endeavours if desired;
- dairy farming is not proposed to continue within the Proposed Development, but this activity on other property would be supported by rental income;
- sheep grazing may occur within the Proposed Development, with a positive but limited impact on agriculture and soils in terms of natural animal activity;
- the main benefit to soils comes from the change in use from intensive arable farming, allowing the soils to rest and becoming managed grassland and wildflower meadows, this improvement would happen without sheep grazing, sheep grazing is not essential, and the worst-case assessment is presented;
- it is not appropriate or proportionate to secure the future use of the site, the Applicant cannot compel the landowner/ farmer to use the land in a particular way,

it is not within the gift of the DCO regime or the SoS's powers to do the same, it is outside the scope of compulsory acquisition powers and it is only for the landowner/ farmer to determine how to use the land alongside the Proposed Development; and

- there is currently no legal obligation on the landowner/ farmer to keep the land in agricultural use, there is no policy or legislative justification for a requirement to be placed on the land to this effect following the construction stage, and there are also many things outside the control of the Applicant and the landowner/ farmer that could render it impossible to comply with such a requirement, for example, in the event of another foot and mouth outbreak.

3.3.119 The Applicant [\[REP1-025\]](#) sets out its consideration of the statement made on 15 May 2024 by the SoS for Energy Security and Net Zero in relation to solar and protecting food security and BMV agricultural land, including that:

- It considers the issue of food security and BMV agricultural land in detail [\[APP-174\]](#) and in ES Chapter 15 [\[REP6-033\]](#) concludes that there is not a food security concern in the UK while recognising that BMV agricultural land is a finite resource which needs to be managed carefully;
- the statement does not state that BMV agricultural land must be avoided entirely;
- it takes an appropriate and proportionate approach through careful site selection and then through design embedded mitigation and additional mitigation secured through the dDCO to manage and minimise the impacts on BMV agricultural land;
- the statement acknowledges that even in the most ambitious scenarios the total area of UK agricultural land used for solar would be very small (i.e. 1%) and the Applicant says that the Proposed Development would use 0.003% of the national resource of all classifications of BMV;
- the statement identifies the need for accurate and fair soil surveys to allow for a robust and consistent approach to agricultural land classification, and as set out in ES Chapter 15 [\[REP6-033\]](#) the Applicant considers its approach to be robust;
- solar parks directly combat the biggest cause of climate change, which is the use of carbon-intensive energy sources, and by supporting the transition to low-carbon energy, the Proposed Development would help UK food security in the long term;
- there would be some minor beneficial effects from soils being rested from intensive arable use and the long-term, predictable rental payments from solar parks offer diversification of income for farmers to support ongoing agricultural businesses, such as at the Proposed Development where the intention is to graze sheep and promote the continued operation of the existing dairy business; and
- based on the above, the Proposed Development is consistent with the statement.

3.3.120 DCC and SDDC [\[REP2-001\]](#):

- refer to the SoS's statement and consider that it stresses that meeting energy goals should not be used to justify the unnecessary use of high-quality agricultural land and note the statement includes that "*... any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence*"; and
- agricultural land in the site contains soil that is particularly good to produce potatoes as it is potato cyst nematode free, local farms provide potatoes for

national food production businesses, and the current impacts of climate change including wetter winters is resulting in lower potato harvests.

Impacts on agriculture and soils

- 3.3.121 The Applicant updated ES Chapter 15 [\[REP6-033\]](#) towards the end of the Examination, including in response to the Additional Land Classification Survey at Park Farm October 2024 [\[REP5-036\]](#) and the Outline SMP [\[REP6-018\]](#) Appendix 1, [\[REP6-022\]](#) Appendix 1] commitments for soil to be restored to its pre-construction ALC grade.
- 3.3.122 Following the updates, the Applicant considers that the construction stage effects on agriculture and soils would be:
- the installation of the solar PV arrays, and related localised cabling would be temporary and would not affect land quality or soils adversely, and would be an impact of negligible magnitude, on land of very high (grade 2), high (grade 3a) and medium (grade 3b) sensitivity, which would result in a negligible effect which would not be significant;
 - the installation of the fixed equipment would amount to a temporary low magnitude impact on resources of very high or high sensitivity, and these areas would be fully restored to the pre-construction ALC grade during the decommissioning stage, resulting in no permanent loss of agricultural land, and no permanent downgrading of land. Accordingly, the effect would be negligible, which is not significant. The effect on soils would be a low magnitude effect on soils of medium sensitivity, which would result in a minor adverse effect that would not be significant;
 - the installation of the cable between the on-site substation and the Drakelow Substation would be on land quality of high (grade 3a) or medium sensitivity (grade 3b) and the magnitude of impact would be negligible. The effect on land quality and soils would be negligible and not significant;
 - the effects on soils from construction traffic and works and trenching would generally be temporary, the soils are of medium sensitivity, with medium resilience to structural damage. The magnitude of effects would be low or negligible, resulting in minor or negligible effects, which would not be significant; and
 - the significant changes to the day-to-day operation of the Oaklands Farm business would amount to a medium magnitude of change on a resource of medium sensitivity, which would be a minor adverse effect and not significant.
- 3.3.123 The operation stage effects on agriculture and soils would be unchanged:
- a negligible impact on land quality that would not be significant;
 - a negligible impact on soils from operational work and on soil resources that would not be significant;
 - a minor beneficial impact on soils from being rested from intensive arable use that would not be significant;
 - a minor adverse impact on farm business that would not be significant; and
 - a minor or negligible adverse impact on economic and food production effects at national and local level that would not be significant.
- 3.3.124 Paragraph 15.147 of ES Chapter 15 [\[REP6-033\]](#) is updated to remove the assumption that the land in the area of the substation and the BESS may not be restored back to

the same ALC grade, and replace it with the BESS and on-site substation areas being returned to the original ALC grade with no permanent loss or downgrading.

3.3.125 Following the updates, the Applicant considers that the decommissioning stage effects on agriculture and soils would be:

- a negligible impact on soils that would not be significant; and
- a minor adverse impact from permanent loss in the BESS and on-site substation area that would not be significant.

Land contamination

3.3.126 Section 1.23 of the Outline CEMP [REP6-018] secures a programme of intrusive targeted site investigation pre-commencement. The Applicant [AS-017] states that appropriate remediation would be secured where found to be necessary, and that remediation must be carried out in accordance with the approved scheme.

3.3.127 The EA [REP1-032] is content that the Applicant's approach follows EA guidance on land contamination risk management and notes that Requirement 13 of the dDCO [REP8-003] includes measures to follow if unsuspected contamination is found and requires that the contamination risk assessment be submitted to the LPA for approval in consultation with the EA.

3.3.128 Requirement 13 of the dDCO [REP8-003] provides that remedial measures must be carried out in accordance with the approved scheme, and that a verification report following completion of those remedial measures must be submitted to the LPA.

3.3.129 DCC and SDDC [REP2-001, REP8-017] have no concerns about land quality, provided the site investigation is agreed and the agreed mitigation measures are subsequently implemented, and agree that there are no potential effects in relation to ground contamination subject to the mitigation measures which are proposed being employed.

Mineral safeguarding

3.3.130 DCC [RR-078, REP1-026, REP2-001, REP8-017] says that:

- the nature of the Proposed Development means it could be removed relatively easily and it is unlikely therefore that it would lead to the permanent sterilisation of the sand and gravel resource;
- the temporary nature of the Proposed Development and availability for mineral working should a resource be found, suggest no adverse mineral implications; and
- the Proposed Development would not impact identified Mineral Safeguarding Areas or identified economic mineral resources.

CONCLUSIONS ON AGRICULTURE AND SOILS

3.3.131 The Applicant updated ES Chapter 15 [REP6-033] during the Examination following the additional ALC survey on the cable route and that this results in the 12ha area of land estimated in the application [APP-169] as grade 3b land being identified as 8ha of grade 3a (an increase from 79 to 87 ha) and 4ha of grade 3b (an increase from 58 to 62ha). I am content with the updates.

3.3.132 NE and SDDC are content with the ALC surveys. DCC and SDDC agree with the Applicant that of the 191ha comprising the site and cable route, 36ha are grade 2 (very

good), 87ha are grade 3a (good), 62ha are grade 3b (moderate), 1ha is non-agricultural, and 5ha are urban. I have no reason to disagree and find that agricultural land is graded in accordance with paragraph 2.10.33 of NPS EN-3.

- 3.3.133 In Section 3.2 of this report, I conclude that I am satisfied with the Applicant's consideration of alternative sites and choice of site. Although land type was not a predominating factor in determining the suitability of the site, this is acceptable to paragraph 2.10.29 of NPS EN-3, and the choice of site is consistent with solar arrays not being prohibited on BMV agricultural land (paragraph 2.10.30 of NPS EN-3) and in line with the expectation that it is likely that developments would use some agricultural land (paragraph 2.10.31 of NPS EN-3). I am therefore satisfied that the use of agricultural land is necessary, and that appropriate consideration is given to land quality in the selection of the site in accordance with paragraph 2.10.29.
- 3.3.134 I find that the Applicant considers the impacts of the use of BMV agricultural land in accordance with paragraph 5.11.34 of NPS EN-1 and paragraph 2.10.31 of NPS EN-3. It follows that I am satisfied that paragraph 2.10.31 of NPS EN-3 is addressed in relation to the choice of site being explained, that siting on BMV agricultural land is justified in accordance with paragraph 5.11.34 of NPS EN-1.
- 3.3.135 The Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1] secure mitigation in relation to soil health, soil stripping, soil storage, soil replacement, and for following DEFRA's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. NE raises several matters that the Applicant responds to, and which NE says address its concerns. SDDC did not respond to my invitation towards the end of the Examination to set out any remaining concerns.
- 3.3.136 The depths of buried cables were increased to a minimum of 0.9m during the Examination following concerns about implications for agricultural land uses, including ploughing and drainage. NE is satisfied that cables buried at that depth would not impact the future agricultural use of the land and on that basis I am content with the related updates to the cable depth design parameters in Table 4.2 of ES Chapter 4 [[REP6-031](#)], which is referenced by the dDCO [[REP8-003](#)]. I therefore find that cable depths are secured appropriately.
- 3.3.137 I accept the potential for damage to existing land drains, including from piling and buried cable installation, and that this could potentially harm soil health. The Outline CEMP [[REP6-018](#)] and Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1] secure measures which DCC and SDDC agree provide a mechanism to ensure that land drains remain operational throughout the lifetime of the Proposed Development and following the decommissioning stage. The Outline OEMP [[REP6-020](#)] secures measures to monitor, investigate, and address damage to drainage caused by piling or buried cables. I am therefore satisfied that the potential for harm to soil health from damage to existing land drainage is mitigated and secured appropriately.
- 3.3.138 There are pros and cons for whether buried cables should be removed during the decommissioning stage. Their removal is likely to result in adverse effects from the resulting disturbance, whereas leaving them in place could potentially limit future land uses and to result in contamination in relation to buried waste. The Outline DEMP [[REP6-022](#)] secures that the Applicant would conduct a risk assessment to be reviewed by the LPA in consultation with the EA to ensure that risks to the environment are understood and mitigated and that buried cables would only be left in situ if it is demonstrated that this would not result in pollution. The EA has no remaining concerns as buried cables would be unlikely to be considered as a waste and it is to be consulted on the DEMP. DCC accepts the proposals. SDDC considers it important to

understand and fully consider at this stage whether cables would be removed, since cable removal is likely to have a significant adverse impact on soil quality at that time.

- 3.3.139 The Applicant updated Requirement 22(4)(b) of the dDCO [\[REP8-003\]](#) to secure pre-decommissioning surveys of protected species, and I consider that is necessary to ensure that protected species are identified at the time of the decommissioning stage. The Applicant also updated Requirement 22(5) to require decommissioning plans to be approved by the LPA in consultation with the EA and NE, which given the range of matters involved I consider to be consistent with EA's and NE's statutory duties.
- 3.3.140 The Outline DEMP [\[REP6-022\]](#) Appendix 1] secures reinstatement of soils to the pre-construction ALC grade, without exception.
- 3.3.141 I find it reasonable that there is uncertainty about whether it would be better for cables to be left in place or removed during the decommissioning stage, including because the condition of the cables, land and surrounding environment in 40 years cannot be predicted precisely and neither can the priorities of relevant policy or legislation at that time. I find that appropriate measures are secured for the pros and cons of the removal of buried cables to be assessed appropriately during the decommissioning stage and that following restoration there would be unlikely to be significant adverse impacts on soil health or agriculture in relation to buried cables at that time.
- 3.3.142 I am content that concerns about the potential for the use of SuDS to adversely impact BMV agricultural land would be addressed through the completion of the CEMP and SMP, which are to be approved by the LPA.
- 3.3.143 The Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#) secure measures for the restoration of land after the construction stage, for the monitoring of soil health and rectification of issues during the operation stage, and for the restoration of land during the decommissioning stage. I note that NE is satisfied with the commitment to monitor soil health every five years, with the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1], and considers that the Outline DEMP [\[REP6-022\]](#) would enable the reinstatement of land to its original use and ALC grade. DCC agrees that further description of the end state is adequately set in the Outline DEMP [\[REP6-022\]](#), and that it accepts the Outline SMP for the decommissioning stage [\[REP6-022\]](#) Appendix 1].
- 3.3.144 On balance, I note the dDCO provisions for the decommissioning plan and the Outline DEMP [\[REP6-022\]](#), and find that it is appropriately secured for land to be reinstated to its original ALC grade and to be suitable for agricultural uses after decommissioning. I am therefore content that no further definition of the end state is necessary.
- 3.3.145 In terms of addressing potential conflicts between restoring land to agricultural use and maintaining biodiversity gains established during the operation stage, I note the provisions in the Outline DEMP [\[REP6-022\]](#) for the consideration of impacts and am satisfied that potential conflicts are better considered at the time of the decommissioning stage when the site environment and relevant policy or legislation at that time are better understood. I note the measures secured to protect species during the decommissioning stage and am satisfied with the Applicant's reasoning that mitigation or habitats created by the Proposed Development would be temporary and there is no requirement to maintain mitigation, or habitats created as part of the development after consent expires. I am also satisfied that the specific measures to restore agricultural land would be best identified at the time of the decommissioning stage in the context of methods available at that time.

- 3.3.146 Following from the above, I am satisfied with the consideration given to decommissioning and restoration in relation to agriculture and soils, and with the related mitigation measures. I am content in relation to compliance with paragraph 4.3.5 of NPS EN-1 and paragraphs 2.10.68-69 and 2.10.146 of NPS EN-3.
- 3.3.147 The Applicant explains how water run-off from the solar panels and onto bare soil are mitigated and I have no concerns in that regard.
- 3.3.148 I am satisfied that the impacts of reduced availability of land for dairy farming grazing and fodder on Oaklands Farm would be mitigated by rental income from the Proposed Development and the availability of the land around the solar panels for sheep grazing. Further to the Applicant's clarifications, I find that potential impacts on Park Farm and Fairfield Farm are considered adequately. I am satisfied with the consideration given to continued agricultural use and the benefits of BMV agricultural land in accordance with paragraphs 2.10.32 and 2.10.145 of NPS EN-3.
- 3.3.149 The EA is satisfied that appropriate land contamination guidance is followed. Site investigations are secured in the Outline CEMP [\[REP6-018\]](#) and mitigation for contamination are secured by Requirement 13 of the dDCO [\[REP8-003\]](#), on which basis the EA is content and both DCC and SDDC have no concerns about land contamination. I have no reason to disagree and am content in relation to paragraphs 5.11.5, 5.11.15, and 5.11.17-18 of NPS EN-1 and paragraph 2.10.34 of NPS EN-3.
- 3.3.150 I accept the Applicant's assessment that, following the mitigation, there would not be any significant effects on agriculture, soils, or food production. However, I do note that there would be short-term temporary loss of agricultural land during the construction stage in the areas of construction-related activity, the long-term temporary loss of agricultural land during the construction stage in the areas of fixed equipment, and related adverse impacts on farming businesses and food production, which while not being significant I find combine to require consideration in the planning balance.
- 3.3.151 Following from the above, I am satisfied with the Applicant's assessment of potential impacts on agriculture, soils, and land contamination and with the mitigation secured in Requirements 9, 11, 13, and 22 the dDCO [\[REP8-003\]](#), the Outline CEMP [\[REP6-018\]](#), the Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#). On that basis, I am satisfied that there is compliance with paragraphs 5.11.12-13 of NPS EN-1 and I have no concerns in relation to consistency with the [Statement by SoS Department for Energy Security and Net Zero \(DESNZ\) on 15 May 2024](#), or compliance with SDDC Policy BNE4 or Policy BNE5.
- 3.3.152 DCC considers that the Proposed Development would not impact identified Mineral Safeguarding Areas or identified economic mineral resources, on which basis I have no concerns in relation to compliance with paragraphs 5.11.19 or 5.11.28 of NPS EN-1.

Matters to be taken to Chapter 5 and the planning balance

- 3.3.153 For the purposes of Chapter 5 and the planning balance, I conclude that short-term temporary loss of agricultural land in the areas of construction activity during the construction stage, the long-term temporary loss of agricultural land in the areas of fixed equipment during the operation stage, and related adverse impacts on farming businesses and food production bring a little weight against the making of the Order.

3.4 BIODIVERSITY

INTRODUCTION

- 3.4.1 This section considers biodiversity, including air quality and water-borne impacts. The Habitats Regulations Assessment (HRA) is considered in Chapter 4, the National Forest in Section 3.6. BESS fire risk, emergency response and pollution in Section 3.9.

POLICY CONSIDERATIONS

Assessment, mitigation, and protection

NPS EN-1

5.4.17	Effects on designated sites, protected species, habitats, other species.
5.4.35	Avoidance, mitigation, compensation, and enhancement measures.
5.4.39	Environmental Improvement Plan 2023 and Environment Act 2021.
5.4.43	Weight given to residual harm.
5.4.44	Delivering and maintaining mitigation and Biodiversity Net Gain (BNG).
5.4.45	Mitigation agreed with Statutory Nature Conservation Bodies, licences.
5.4.48	Weight for designated sites, protected species, habitats, other species.
5.4.54	Species and habitats of importance for the conservation of biodiversity.
5.4.55	Harm to a protected species and relevant habitat.

NPS EN-3

2.10.82	Security, lighting, and closed-circuit television (CCTV).
2.10.83	Site boundaries, hedges, and fencing.
2.10.130	Ecological monitoring.

Sites of Special Scientific Interest (SSSI)

NPS EN-1

5.4.7	Protection of SSSI.
5.4.8	Adverse effect on SSSI.
5.4.50	Mitigation, conservation, and enhancement.

Regional and local sites

NPS EN-1

5.4.12	Sites of regional and local biodiversity interest.
5.4.52	Regional and local designations.

Ancient woodland, ancient trees, veteran trees, and other irreplaceable habitats

NPS EN-1

5.4.14	Definition of irreplaceable habitats.
5.4.32	Ancient woodland, ancient and veteran trees, irreplaceable habitats.
5.4.53	Loss or deterioration of irreplaceable habitats.

Enhancements and BNG

NPS EN-1

4.6.1	Environmental net gain.
4.6.3	Application of BNG policy.
4.6.6	Opportunities to enhance the natural environment.
4.6.7	Use of the biodiversity metric to calculate BNG.
5.4.19	Conserving and enhancing the natural environment.
5.4.46	Weight given to environmental and biodiversity enhancements.
5.4.47	Reasonable opportunities for enhancement.

Local policies

- 3.4.2 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy BNE3 and Policy INF7. SDDC declared an ecological emergency in September 2023.

THE APPLICATION

- 3.4.3 The Applicant's case is set out in documents including ES Chapter 6 - Ecology [\[APP-135\]](#), Sites and Features of Nature Conservation Statutory [\[APP-009\]](#), Sites and Features of Nature Conservation Non-Statutory [\[APP-010\]](#), Habitats Plan [\[APP-011\]](#), Important Hedgerows Plan [\[APP-014\]](#), Report to Inform HRA [\[APP-122\]](#), BNG Report [\[APP-131\]](#), and the Arboricultural Survey Report [\[REP6-026\]](#).

Assessment scope, methodology, study area and baseline

- 3.4.4 The assessment [\[APP-135\]](#) considers effects on designated sites, habitats, invasive non-native species (INNS), bats, reptiles, badger, otter, and breeding birds.
- 3.4.5 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - direct habitat loss, severance, mortality, physical disturbance, noise and lighting disturbance, and contamination;
 - operation stage - physical disturbance, noise and lighting disturbance, and changes in habitat management; and
 - cumulative effects during construction and operation stages in relation to ecology.
- 3.4.6 Effects on ancient woodland are scoped out of the detailed assessment as none are recorded within the site or in line with NE and Forestry Commission standing advice.

- 3.4.7 Great crested newt, reptiles (excluding the Drakelow Power Station area), water vole, dormouse, wintering birds, fish and aquatic species are scoped out of the detailed assessment as none were identified during field surveys and in considering suitable habitats the Applicant concludes there would be no potential for significant impacts to occur to these species.
- 3.4.8 Protected and notable plant species are scoped out as the Applicant considers that there is no potential for significant effects to occur to them due to the simplicity and/ or intensive management (e.g. arable and pastoral habitat) of potentially affected habitats.
- 3.4.9 Adverse impacts arising during the operation stage are scoped out as the Applicant considers that there is no potential for significant effects to occur for all ecological receptors given the embedded mitigation, including provision of mammal gaps in fencing during the construction stage and the only lighting proposed is alarm lighting located on top of the transformer units that would only operate in the event of a security breach. The Applicant considers that no significant disturbance or road mortality impacts would occur because there would be very low-level activity on-site with traffic volumes kept to a minimum and a total of three site operatives present each day.
- 3.4.10 The Applicant [[APP-135](#) paragraph 6.25] says that assessment is in accordance with principles contained within guidance documents including: Chartered Institute for Ecology and Environmental Management Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Marine, and Coastal. (2018), Chartered Institute of Ecology and Environmental Management Guidelines for Preliminary Ecological Appraisal (2017), BS 42020:2013, Joint Nature Conservation Committee Handbook for Phase 1 habitat survey (2010), DEFRA Hedgerow Survey Handbook (2007), and NE and Forestry Commission Standing Advice - Ancient woodland, ancient trees and veteran trees: advice for making planning decisions (2022).
- 3.4.11 The study areas are:
- desk based review studies: the site plus a 2km buffer for non-statutory designated sites, the site plus a 2km buffer for protected species survey, the site plus a 5km buffer for statutory designated sites, and the site plus a 15km buffer for European statutory designated sites;
 - the site for the habitats, INNS, and bat surveys, and the Drakelow Power station area of the site for reptile field surveys; and
 - the site plus a 50m buffer for the badger field survey and the site plus a 500m buffer for the breeding birds field survey.
- 3.4.12 The baseline conditions are established through a combination of desk based research using various data sources and as set out in ES Appendix 6.3 [[APP-123](#)] and ES Appendix 6.4 [[APP-124](#)], and a series of surveys carried out between May 2020 and September 2023, including an extended phase 1 habitat survey, hedgerow assessment, bat roost assessment, and surveys of bat roosts, bat activity, bat static activity, great crested newt, reptile, badger, water vole, otter, and breeding bird.
- 3.4.13 The River Mease Special Area of Conservation (SAC) and SSSI are 4.4km to the south of the site. ES Figure 8.1 [[APP-144](#)] shows that the River Mease catchment covers the southern tip of the site. No other statutory designated sites are identified within 5km of the study area. The approximate location of the River Mease is shown in Figure 3.4.1:

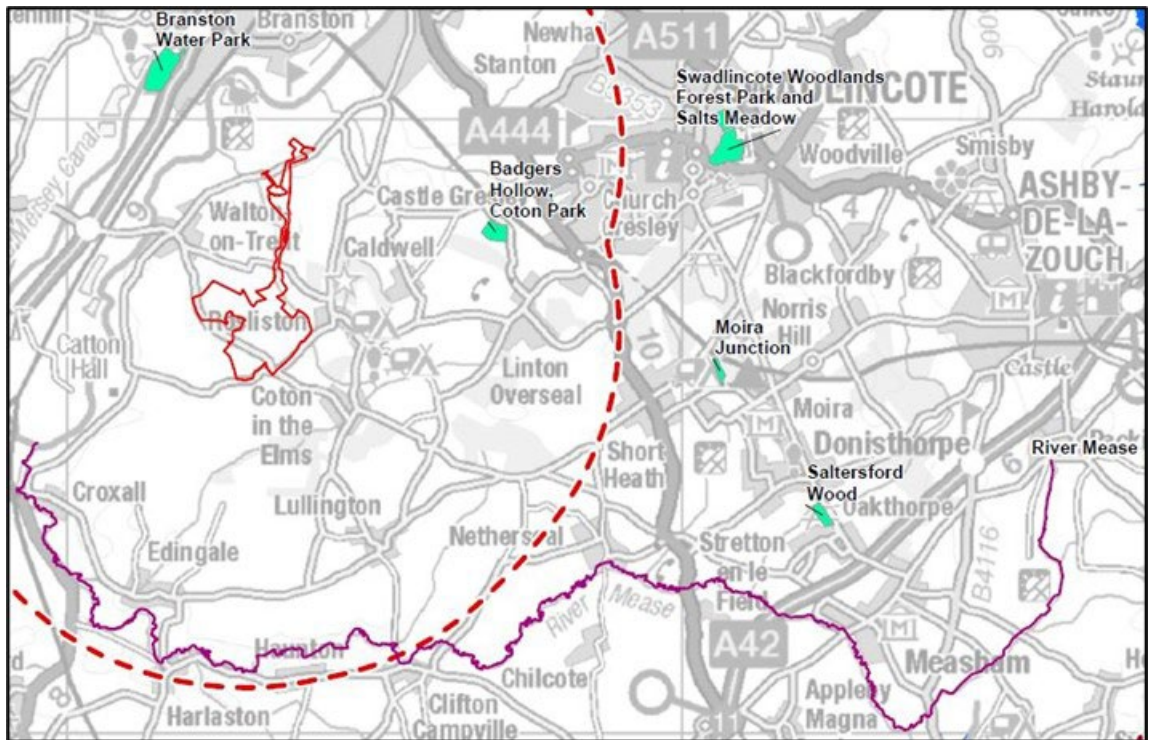


Figure 3.4.1: Approximate location of the River Mease [extract from [APP-009](#)]

- 3.4.14 Cannock Chase SAC, which is designated for bat species, is identified 20km to the west of the site.
- 3.4.15 In relation to non-statutory designated sites, 14 Local Wildlife Sites (LWS), four potential LWS (pLWS) and one nature reserve are within 2km of the site. This includes Grove Wood LWS, which is within the site and Coppershill Spinney pLWS adjacent to the site. The remaining LWS and pLWS are approximately 480m or more from the site.
- 3.4.16 The site supports a range of habitats, including the following main habitat types: arable fields and improved grasslands with smaller areas of semi-improved neutral grasslands, ponds, standing water, running water, species-rich and species-poor hedgerows, scrub, woodland, tall ruderal vegetation, and bare ground.
- 3.4.17 The site supports a number of ancient and veteran trees [[REP6-026](#)].
- 3.4.18 There are INNS within the site [[APP-123](#), [APP-125](#)].
- 3.4.19 Four bat species are found within 2km of the site. Most of the site comprises species-poor shortly grazed improved pastures and arable fields of low suitability for bats. Habitats of increased value relate to linear field boundaries and watercourses and woodlands. 84 trees are identified as having bat roost suitability, including one tree with a confirmed roost, at Drakelow Park and Power Station [[APP-123](#)]. The mosaic of habitats within, and in the vicinity of, the site, including hedgerows, woodlands, and waterbodies, are said to provide opportunities for bat species to forage and commute.
- 3.4.20 Drakelow Power Station supports areas of scrub, woodland and rough grassland considered to provide optimal habitat for reptiles to forage, shelter, bask and disperse.
- 3.4.21 Badgers are identified within 2km of the site and signs of badger and their setts were recorded within, and near the site. The site supports optimal habitats for badger to forage and create setts, including woodland, scrub and hedgerows and grasslands.

- 3.4.22 Otters are identified within 2km of the site. An unnamed watercourse that runs through the site and two off-site ponds provide opportunities for this species for forage and shelter. Incidental records of otter prints and feeding remains and a potential otter holt with an associated slide are identified on the unnamed watercourse. Dense vegetation with scrub, trees or woodland are said to provide cover and resting opportunities and are connected to good quality habitat for otter in the wider landscape, including the River Trent, River Tame, River Mease, Trent and Mersey Canal and lakes to the west.
- 3.4.23 The site supports suitable habitat for a range of farmland bird species [[APP-124](#), [APP-128](#)]. 56 bird species, including 22 species of conservation concern are identified during breeding bird surveys of the southern part of the site at Oaklands Farm. The study area is considered to have limited potential for Schedule 1 bird species, apart from barn owl, which is recorded. 28 skylark territories were recorded within the study area with a total of 19 skylark territories (singing males). The Applicant states that skylark is widespread as a breeding species in Derbyshire and not included as a Priority Species in the South Derbyshire Action Plan for Nature (2021). The land at Oaklands Farm is intensively managed for crop production and grassland pastures are subject to agricultural improvement and intensive cattle grazing and the Applicant considers it highly unlikely that the nineteen observed singing males represent nineteen successful breeding pairs within the Oaklands farm area. It considers that current land use at Oaklands Farm is likely to reduce the success of ground nesting species. A relatively low diversity of bird species comprising mainly common species of low conservation value are identified in the Park Farm area where low numbers of farmland birds of conservation concern are recorded.
- 3.4.24 Impacts are assessed against standard parameters as set out within the Chartered Institute of Ecology and Environmental Management guidance and through professional judgement with reference to effects in relation to nature conservation objectives and policy, extent, magnitude, duration, frequency, timing, and reversibility. The significance of impact also takes account of the likelihood of an impact occurring and consideration is given to mitigation.
- 3.4.25 Embedded mitigation includes locating the Proposed Development in areas with habitats of local value or below, retaining ancient and veteran trees and ancient woodland habitat, retaining species-rich hedgerows where possible, providing a 5m buffer between the infrastructure and the retained hedgerows, retaining trees with high and moderate bat roost suitability and having buffers during the works, restoring and creating hedgerows, woodland understory planting with trees and species-rich grassland, reducing surface run-off and nutrient enrichment associated with current cattle/ sheep farming to provide water quality benefits to minor watercourses and ditches in the locality, and providing mammal gaps at the base of the fencing around the solar arrays to allow dispersal of mammals, including badger and hedgehog.

Construction stage

- 3.4.26 The Applicant considers that the construction stage effects would be:
- designated sites - the predicted impact of contamination on the River Mease SAC and SSSI would be extremely unlikely, negligible, and not significant;
 - non-statutory designated sites - impacts from direct habitat loss, physical disturbance and contamination would be extremely unlikely, negligible and not significant;
 - habitats - direct habitat loss impacts would be a minor effect at the site and local levels that would not be significant, a minor adverse effect at the county level would

be significant prior to mitigation, impacts in relation to physical disturbance and contamination would be extremely unlikely, negligible and not significant;

- INNS - direct habitat loss impacts would be extremely unlikely, negligible and not significant;
- bats - the impacts from direct habitat loss would be minor and not significant, impacts from mortality and noise, lighting and vibration disturbance would be extremely unlikely, negligible and not significant;
- reptiles - mortality impact would be extremely unlikely, negligible and not significant.
- badger - impacts from direct habitat loss, physical disturbance, and habitat fragmentation would each result in a minor adverse effect that would not be significant, impacts in relation to mortality and noise and vibration disturbance would be extremely unlikely, negligible and not significant;
- otter - impacts in relation to direct habitat loss impacts, mortality, noise and vibration disturbance, and contamination would be extremely unlikely, negligible and not significant;
- skylark - direct habitat loss that would be a minor adverse effect and not significant, mortality and noise and vibration disturbance would each be negligible and not significant; and
- other breeding birds - direct habitat loss, mortality and noise and vibration disturbance would each be negligible and not significant.

3.4.27 Mitigation measures are included in the Outline CEMP [\[REP6-018\]](#), including in relation to potential contamination, dust, water runoff, water discharges, drainage, silt management, mud, tree protection, tree felling methodology, badger and otter disturbance, the bird nesting season, INNS, biosecurity measures, chemical storage, spillages, location of refuelling and maintenance, security, and implementation of monitoring, inspection and remedial measures.

3.4.28 Measures in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] include in relation to the impact of habitat loss, damage, disturbance, and contamination during the construction stage, replacement roost features such as bat boxes, the provision of tree, scrub and hedgerow planting, the replacement of grassland habitat, provision of bird boxes, additional hedgerow and tree planting to mitigate the loss of nesting bird habitats, other habitat creation and management, including for skylark and badger.

3.4.29 The Applicant considers that following mitigation there would be beneficial effects for INNS, minor adverse effects at the local level for skylark, and no significant construction stage effects.

Operation stage

3.4.30 The Applicant clarifies that although the assessment of adverse effects during the operation stage is scoped out, in relation to the residual minor adverse effect on skylark at the local level due to direct habitat loss during the construction stage, no additional habitat loss would arise during the operation stage.

3.4.31 The Applicant considers that the predicted beneficial operational effects to ecological features would be negligible without the implementation of the measures proposed to provide BNG [\[APP-131\]](#).

- 3.4.32 The Applicant considers that the operational effects including BNG and specifically through habitat creation, management and monitoring would be:
- non-statutory designated sites - a beneficial effect at the district level that would be moderate and significant;
 - habitats - a beneficial effect at the county level that would be moderate and significant;
 - bats - a beneficial effect at the local level that would be minor and not significant;
 - badger - a beneficial effect at the local level that would be minor and not significant;
 - reptiles - a beneficial effect at the site level that would be minor and not significant;
 - otter - a beneficial effect at the site level that would be minor and not significant;
 - skylark - an adverse effect at the local level that would be a minor and not significant;
 - other breeding birds - a beneficial effect at the site level that would be minor and not significant; and
 - invertebrates - a beneficial effect at the site level that would be minor and not significant.
- 3.4.33 The Applicant notes that the delivery of BNG is expected to be mandatory for DCO applications accepted from November 2025 and as such the Proposed Development is not legally required to secure BNG. DEFRA is encouraging projects to adopt BNG earlier on a voluntary basis and it is considered best practice to do so. The Proposed Development would deliver BNG and as such the Applicant intends to manage created and enhanced habitat for a minimum of 30 years to achieve target condition.
- 3.4.34 The Applicant summarises the overall BNG benefits as:
- a net gain of 565.51 habitat units, a 125.07% increase from the baseline units;
 - a net gain of 37.92 hedgerow units, a 20.02% increase from the baseline units; and
 - a net gain of 4.18 river units, a 19.82% increase from baseline units.

Decommissioning stage

- 3.4.35 The Applicant assumes that effects during the decommissioning stage would be no greater than during the construction stage.
- 3.4.36 The Applicant notes that during the decommissioning stage, most of the developed footprint may revert to previous land uses. Any modifications to remaining areas created and enhanced for BNG would need to be cognizant of the habitats and species that are present within those habitats and must be undertaken in line with any statutory legislative requirements afforded to protected species and habitats at that time. It states that details would be provided as part of the final Decommissioning Strategy.

Cumulative and combined effects

- 3.4.37 The Applicant considers it highly unlikely that the list of sites/ applications requiring consideration in relation to cumulative effects would be likely to result in significant cumulative ecological effects with the Proposed Development given the nature of the Proposed Development and the efficacy of the avoidance and mitigation measures.

ISSUES ARISING DURING THE EXAMINATION

River Mease SAC and SSSI

- 3.4.38 NE [\[AS-022, REP1-037\]](#) is initially not satisfied with the Applicant's assessment of the impacts on the River Mease SAC or that it can be ascertained beyond reasonable scientific doubt that the Proposed Development would not have an adverse effect on its integrity. NE notes a potential pathway for the mobilisation of sediment during the construction and operation stages. It also considers that there is a lack of clarity around the maintenance strategy, including the use of chemicals in the cleaning of the panels which could potentially impact the designated features. It says there are mitigation measures available to prevent impacts on the designated features using SuDS.
- 3.4.39 SDDC [\[REP1-029, REP2-001\]](#) raises concerns about mobilisation of sediment and the use of chemicals, and suggest incorporating SuDS as mitigation, as does DCC [\[REP1-026\]](#). SDDC provides evidence of the presence of otter on the watercourses connected with the Proposed Development and the potential for adverse impacts on them, including in combination with the proposed Energy Storage System at Fairfield's Farm.
- 3.4.40 The Applicant [\[REP1-023, REP1-025, REP3-032, REP4-011\]](#):
- adds a commitment to the Outline LEMP [\[REP4-040, REP3-025 Appendix A\]](#) for the area of the site within the River Mease catchment to be sown with species-rich grassland at the earliest opportunity to further minimise any interaction with the River Mease SAC, and for the timing of this to be confirmed in the full LEMP;
 - suggests that there would not be an increase in the mobilisation of sedimentations as rainfall would be intercepted and buffered by the vegetation growing underneath the panels and retained prior to infiltration as with the greenfield situation;
 - considers that the impact of the panels on runoff would be positive as vegetation would be in place all year round and the underlying soil would not be left bare or compacted by agricultural activities;
 - adds a commitment to the Outline OEMP [\[REP6-020\]](#) for the solar panels to be cleaned using a solution similar to a household detergent and that the final OEMP would include precise details of the cleaning product to be agreed with SDDC;
 - says that SuDS would not be required in relation to the River Mease;
 - considers that the removal of annual inputs from intensive agriculture would provide an overall improvement in water quality; and
 - predicts no adverse effects of the Proposed Development on the integrity of the SAC either alone or in-combination with other plans and projects.
- 3.4.41 NE [\[AS-033, REP6-054, REP7-005, REP7-014\]](#):
- note the mitigation measures set out in Section 2.6 of the Outline CEMP [\[REP6-018\]](#) to avoid water pollution during the construction stage, say that with these measures, an impact on the River Mease SAC could effectively be avoided;
 - welcome the plan to seed the area of the site that is within the River Mease SAC catchment as soon as possible and say that this would ensure that any sediment that could be mobilised would be trapped and not enter the SAC;
 - note the mitigation in the Outline OEMP [\[REP6-020\]](#) in relation to the cleaning of the panels, welcome the clarification that the panels would be cleaned with

domestic strength cleaner, and consider that this kind of activity would be unlikely to impact the designated features of the River Mease SAC;

- is happy to be a required consultee on the final CEMP and final LEMP; and
- is satisfied that it can be ascertained beyond reasonable scientific doubt that the project would not have an adverse effect on the integrity of the River Mease SAC.

3.4.42 DCC defer to the advice and comments provided by NE in relation to the River Mease SAC and SSSI and say that it has no further comment.

3.4.43 Requirements 8 and 9 of the dDCO [\[REP8-003\]](#) provide that the CEMP and LEMP must be approved in consultation with NE.

Habitats Constraints Plan

3.4.44 SDDC [\[REP1-029\]](#) recommended that a Habitat Constraints Plan is produced to clarify buffer zones to sensitive features such as woodland, trees, hedgerow, ponds, and watercourses.

3.4.45 The Outline CEMP [\[REP6-018\]](#) includes provisions for a Habitats Constraint Plan and buffers and the Applicant provides an Habitats Constraint Plan [\[REP5-030\]](#) with a series of interpretable maps of habitat constraints, which it subsequently adds to the Outline CEMP [\[REP6-018\]](#) Appendix 4].

3.4.46 SDDC [\[REP6-047\]](#) says that the interpretable maps provide useful clarity.

Trees, woodland, and hedgerows

Woodland categorisation

3.4.47 The Forestry Commission [\[RR-095\]](#) considers that the woodland bordering the former Drakelow Power Station site, listed on the Arboricultural Report as Woodlands 8, 9 & 10, are Lowland Mixed Deciduous Woodland on the Priority Habitat Inventory (England) and therefore recognised under the UK Biodiversity Action Plan as being the most threatened and requiring conservation action.

3.4.48 The Applicant [\[REP1-023\]](#), [\[REP3-030\]](#), [\[REP5-024\]](#), [\[REP5-026\]](#) applies the habitat type of Other Woodland, Broadleaved rather than Lowland Mixed Deciduous Woodland due to the quality of the habitat present, which it considers do not meet the criteria for the Lowland Mixed Deciduous habitat type, including because of the presence of dominant and non-native sycamore and the mixture of broadleaved and coniferous species and remains of this view following a site visit. It advises that the definition would not alter the mitigation proposed and that as much of the woodland is open it is confident that a cable route could be found through the woodland and the impacts minimised.

3.4.49 SDDC [\[REP4-014\]](#), [\[REP5-039\]](#) considers that the presence of sycamore doesn't necessary restrict the classification and neither does the presence of mixed coniferous woodland, depending on the percentage of coverage. It is content with the Applicant's explanation for categorisation as Other Broadleaved Woodland.

Woodland and trees

3.4.50 The Woodland Trust [\[RR-316\]](#), [\[REP1-049\]](#) question whether various trees in the Arboricultural Survey Report provided in the application [\[APP-133\]](#) that are not identified as veteran/ ancient should be. The Applicant [\[REP1-023\]](#), [\[REP3-031\]](#) provides its reasoning for each tree and says that it would engage with SDDC and

DCC regarding the identification and classification of veteran trees. SDDC [REP4-014] considers that it is essential that every tree is classified accordingly and subsequently [EV4-005] says that it is happy with Arboricultural Survey Report [REP4-042], including in relation to ancient, veteran and highly valuable trees.

- 3.4.51 The Forestry Commission [RR-095] says there is no ancient woodland within the proposed site, and the nearest is unlikely to be affected as it is 50m from the site boundary and outside the minimum recommended buffer zone for ancient woodlands. It says that a fenced construction exclusion zone as mentioned in the plans should be followed and dust prevention measures utilized during the construction stage to avoid any potential contamination of the ancient woodland. It notes that there are several Ancient and veteran trees identified within the site and the planned fenced buffer zones and fenced construction exclusion zones for the ancient and veteran trees to avoid any potential loss or deterioration.
- 3.4.52 NE [AS-022, REP7-005] refers to the ancient woodland near the site boundary and consider that the implementation of the dust and air quality mitigation in the Outline CEMP [REP6-018] would make impacts to ancient woodland unlikely.
- 3.4.53 The Outline LEMP [REP4-040, REP3-025 Appendix A] secures tree protection fencing in line with BS 5837 and a protection buffer at least 15 times larger than the diameter of any veteran and ancient trees. The Woodland Trust [RR-316, REP1-049] notes that veteran tree buffers are provided in line with NE and Forestry Commission's standing advice. DCC [REP1-026] finds the buffer distances acceptable. SDDC [REP1-029] says that a minimum 50m buffer should be maintained to ancient woodland particularly Grove Wood. The Applicant clarifies that the Order Limits are greater than 50m from Grove Wood such that this buffer is naturally provided through the design of the scheme.
- 3.4.54 The Applicant [REP1-025, REP3-032] considers that the broad powers provided by Articles 36 and 37 of the dDCO [REP8-003] to fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, without the LPA's consent is to ensure that the Proposed Development could be delivered in good time and without unreasonable delay. DCC [REP1-026] and SDDC [REP1-029] considers it necessary for SDDC's prior consent to be required for the removal to fell or lop trees.
- 3.4.55 I [PD-012, EV4-002, PD-014, PD-015]:
- ask if consent is required, whether it would be helpful for consent to be deemed if it isn't provided within 28 days of an application for consent:
 - ask whether a provision regarding the quality of the works might be helpful, as provided for Sunnica Energy Farm: *"to ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards"*;
 - refer to [guidance on the content of a DCO](#), to identify trees subject to a Tree Preservation Order (TPO) that would be affected and the works permitted to each tree in a schedule to the dDCO and invite the Applicant to justify where this is not possible; and
 - suggest adding a provision to Article 37 of the dDCO [REP8-003] for no veteran or ancient tree to be felled or lopped a without the prior approval of the LPA.
- 3.4.56 The Applicant [REP4-011, REP5-024, REP5-026, REP7-008, REP8-019, REP8-020]:

- adds the Sunnica Energy Farm text to Article 36 of the dDCO [\[REP8-003\]](#);
- revises Article 37 of the dDCO [\[REP8-003\]](#) to limit the powers granted by that article to trees identified in Schedule 13;
- maintains that consent is not required to undertake works to trees subject to a TPO under Article 37 and that this approach is consistent with recent precedent; and
- considers the proposed amendment for approval of any felling or lopping of veteran or ancient trees to be proportionate and updated Article 37 accordingly.

- 3.4.57 DCC [\[REP4-012, REP6-046, REP7-011, REP8-021\]](#) accepts the survey and considers that the assessment of veteran trees is carried out appropriately, considers that provisions relating to works affecting veteran trees should be removed from the dDCO to reflect their irreplaceable nature, and maintains that prior consent of the LPA should be required for works to TPO trees.
- 3.4.58 SDDC [\[REP8-023, REP8-024\]](#) welcome the inclusion of the proposed change for approval for works to ancient or veteran trees but wish to see this extended to include TPO trees as well. It says there are unresolved issues related to ancient and veteran trees and maintains that its approval should be required for works to TPO trees.
- 3.4.59 DCC [\[REP6-046\]](#) says that ancient Oak,T56, requires a greater root protection zone than is indicated and suggests that it should be fenced to ensure adequate protection. The Applicant [\[REP8-019\]](#) replies that there is sufficient space in the cable corridor to provide appropriate tree protection measures and details of the root protection zone, would be confirmed in the Arboricultural Method Statement, for approval by the LPA.
- 3.4.60 SDDC [\[REP5-039, REP6-047\]](#) asks for more details of the proposed tree works, says that Schedule 13 of the dDCO identifies works to trees within W4 that are afforded protection by TPO 122, and asks for clarification if any veteran or ancient trees occur within W4 and, if so, for those trees to be identified, afforded special protection, and/or avoided completely. The Applicant [\[REP6-041, REP7-009, REP8-020\]](#) then provides a further update to the Arboricultural Survey Report [\[REP6-026\]](#) with more details of trees and proposed works. The Applicant says that although the final cable route would be subject to the approval of National Grid, there would be sufficient space in the cable corridor to provide appropriate tree protection measures, and the dDCO provides that the detailed design of the final cable route and Arboricultural Method Statements would need to be approved by SDDC.
- 3.4.61 Diane Abbott [\[RR-080, REP4-022\]](#) raises concerns that the construction compound south of Coton Road would potentially impact the Twin Oak (T105). She says that tree protection zone would be 15 times the diameter and yet the proposed construction route to the compound would pass less than 5m from the tree. The Applicant [\[REP5-025\]](#) says that ES Figure 4.9 [\[APP-099\]](#) shows an indicative design for that access and that the proposed access track would sit to the west of the Twin Oak, that it would be possible to use features like no dig construction to prevent impacts on that tree, and that the location and extent of those features would be defined during detailed design.

Hedgerow

- 3.4.62 NE [\[REP1-037\]](#) says that hedgerows should be retained where it is feasible to do so. Derbyshire Ornithological Society [\[RR-079\]](#) would be concerned if any existing hedgerows were removed or damaged, with the consequent degradation of the habitats on site. Councillor Amy Wheelton [\[REP1-039, REP1-040\]](#) says that not enough information is provided of how hedgerows would be managed in relation to biodiversity and mitigation for landscape, visual, glint and glare effects, and provides

detailed examples of good practice. I [PD-010] ask the Applicant what length of hedgerow would be removed, how much would be replaced, and how this is secured.

3.4.63 The Applicant [REP1-023, REP1-025, REP3-031, REP3-032, REP3-033] replies that:

- it seeks to retain most hedgerows with the exception of two hedgerows to accommodate visibility splays and short sections of hedgerow to allow for widening of gateways and installation of access tracks and cabling;
- the ES [APP-131] identifies 0.25km loss of hedgerow, the creation of 2.86km of native species rich hedgerow, and enhancement of 3.18km of hedgerow; and
- the Outline LEMP [REP4-040, REP3-025 Appendix A], details how retained hedgerows would be protected and where and how new hedgerow would be established and managed.

3.4.64 Diane Abbott [RR-080, REP4-022] says that the Applicant plans a hedge protection zone of 5m for existing hedges, that for new hedges it specifies an offset from the security fencing by 2m, and asks the Applicant to maintain these hedges if they are this close to the security fence as there would not be enough room for a tractor in the gap. The Applicant [REP5-025] replies that where there is not sufficient room for a tractor to access the gap between a hedge and a fence then a tractor with an extended reach cutting arm, combined where necessary with manual cutting, would be used.

Other habitats

3.4.65 During the Examination the Applicant [REP1-023] clarifies that the impact on LWSs is assessed in ES Chapter 6 [APP-135], indicating no significant effects on any of the LWSs apart from Grove Wood LWS and Copperhill Spinney located within and adjacent to the site where there would be moderate beneficial effect during the operation stage.

3.4.66 The EA is quoted [APP-121] as stating that if crops are to be replaced by wildflower meadows, a management plan must be agreed which should include when and where any grazing is permitted, as well as an annual cut and removal of wildflowers in August to allow species to fully establish. The Applicant [REP1-025] refers to the Outline LEMP [REP4-040, REP3-025 Appendix A] for detail on management and enhancement measures during the operation stage. The EA [REP1-032] has no outstanding concerns.

Skylark

3.4.67 NE [REP1-037] recommends that any potential negative effects to skylark should be identified as early as possible and designed out to avoid impacts, and refers to its standing advice on best practice for surveys, methods, and mitigation, to avoid negative impacts for breeding birds such as skylark.

3.4.68 SDDC [REP1-029, REP2-001, REP4-014] says that:

- the supporting baseline for the Preliminary Environmental Information Report, identified 28 breeding territories for skylark within the Oakland Farm part of the site and that this has dropped to an estimate of 19 pairs, and to remove a degree of uncertainty, it would be best to assume the maximum population estimate;
- it questions the impact of the operation stage on the skylark population and the capacity of the surrounding area to accommodate any dispersed birds;

- there would be an adverse impact on ground nesting birds as while the total area of suitable habitat may have increased, the fragmented form of that habitat, broken up by solar panels, may no longer be suitable for some species; and
- the Proposed Development would harm skylark or other ground nesting birds and that specific mitigation for skylark would be appropriate in the form of skylark plots to be created within arable fields adjacent to Oakland Farm.

3.4.69 The Applicant [[REP1-025](#), [REP3-032](#), [REP5-024](#), [REP5-026](#), [REP6-042](#), [REP7-009](#), [REP8-020](#)] replies that:

- of the 28 territory holding males identified in the study area, only 19 were recorded within the site;
- the loss of potential nesting habitat would have a very minor effect on the local population of skylark within the site and study area that would not be detrimental to the conservation status of the species in the area beyond the site;
- specific mitigation for skylark is not necessary, but acknowledging SDDC's differing position, submits a Unilateral Undertaking [[REP7-010](#)] under s106 of the Town and Country Planning Act 1990 to provide off-site mitigation in the form of skylark plots;
- the Unilateral Undertaking [[REP7-010](#)] includes that the development would not commence until a Skylark Mitigation Strategy is submitted to and approved in writing by SDDC, the Skylark Mitigation Areas would be managed in accordance with the approved Skylark Mitigation Strategy for a period of up to 40 years from commencement, and that no other activities would be permitted in the Skylark Mitigation Areas during the lifetime of the Development other than those in the approved Skylark Mitigation Strategy;
- the Proposed Development would provide improved foraging for skylark in the area, given in its current form the site is sub-optimal habitat for that species;
- the Proposed Development would deliver further enhancement to the skylark population of the area in the form of at least 38 skylark plots being created on land in the vicinity of the site, as secured by the Unilateral Undertaking [[REP7-010](#)]; and
- this would be a significant benefit directly delivered by the Proposed Development.

3.4.70 SDDC [[REP6-047](#), [REP8-017](#), [REP8-022](#), [REP8-024](#)] accepts the principle of utilising a s106 Unilateral Undertaking to secure off-site mitigation of skylark plots to benefit skylark and other farmland birds, considers the Unilateral Undertaking [[REP7-010](#)] acceptable, is now content that the impact on skylark is suitably addressed, and considers the mitigation sufficient to result in a net benefit for the species.

Barn owl

3.4.71 ES Appendix 6.4 [[APP-124](#)] states that no records of barn owl were returned during the desk study or during a search of publicly available data sources, no records were found within the Site Boundary, and no suitable nest sites were noted during the field survey. ES Appendix 6.9 [[APP-128](#)] records that a barn owl was recorded leaving a tree on 29 July 2021 within the Park Farm site, adding that no specific survey was undertaken for this species, but it is considered a probable breeding species due to its presence and suitable nesting sites both within mature trees and within the Park Farm buildings.

3.4.72 SDDC [[REP1-029](#), [REP2-001](#), [REP4-014](#)] says:

- the Applicant should clarify if barn owl is identified as nesting within a site tree and, if nesting is identified, mitigation and compensation measures should be prescribed to adhere to statutory legislation and best practice guidelines;
- refers to inconsistencies in the Breeding Bird Survey Report and considers that there would be an adverse impact on barn owl as while the total area of suitable habitat may have increased, the fragmented form of that habitat, broken up by solar panels, may no longer be suitable for some species;
- breeding and foraging barn owls would be particularly sensitive to disturbance of the landscape especially during the construction stage and under NE advice these should be identified as early as possible and designed out to avoid impacts; and
- a survey by a licensed barn owl worker or specialised ecologist might be better to quantify the barn owl population in the surrounding area and identify the impact.

3.4.73 NE [\[REP1-037\]](#) recommends that any potential negative effects to barn owl should be identified as early as possible, designed out to avoid impacts. NE refers to its standing advice on best practice for surveys, methods, and mitigation, to avoid negative impacts for breeding birds such as barn owl. Diane Abbott [\[REP4-022\]](#) says she is aware of two breeding sites for barn owl within 600m and 700m of the site and has seen barn owl on the site in recent weeks.

3.4.74 I [\[PD-010, PD-014\]](#) ask the Applicant to address any inconsistencies in the ES and consider whether a barn owl survey and update of mitigation measures is required before the start of the site preparation works.

3.4.75 The Applicant [\[REP1-025, REP3-032, REP4-011, REP5-024, REP5-025, REP5-026, REP5-031, REP7-009, REP8-019, REP8-020\]](#) states that:

- the survey reported in ES Appendix 6.4 [\[APP-124\]](#) relates to Oaklands Farm plus a 2km buffer does not identify any records of barn owl through either desk study or field survey, the survey reported in ES Appendix 6.9 [\[APP-128\]](#) relates to barn owl recorded during bat surveys at Park Farm, and so the information is for different areas of the site and is not inconsistent;
- disagrees with SDDC that full barn owl surveys should have been undertaken as barn owl ecology and behaviour is well understood at the site;
- the site provides suitable habitat for barn owl to nest but no nesting activity was recorded during the bird surveys and the Proposed Development would not result in a reduction in the availability of foraging habitat during the construction or operation stages;
- the primary risk to barn owl relates to disturbance at nesting sites during the construction stage and mitigation has a high success rate;
- the Outline CEMP [\[REP6-018\]](#) is updated to detail additional precautions for barn owl to ensure a precautionary approach, and include pre-construction checks of potential nesting features prior to works, the provision of new nesting boxes in suitable locations away from potentially disturbed locations, sensitive timing of works and implementation of appropriate working buffers to avoid disturbance during nesting, use of an Ecological Clerk of Works to ensure compliance with the plan, retention and protection of field margin habitats which provide suitable hunting habitat, and appropriate grassland management to ensure that grasslands within the site are suitable for hunting barn owl during the operation stage;

- the commitment to a barn owl survey before the start of the site preparation works would ensure a full understanding of the presence of barn owl and that appropriate mitigation measures are defined, prior to site preparation works;
- the [Barn Owl Conservation Trust](#) say that solar farms have the potential to be of great benefit to barn owl as the array frameworks are typically at a height from which barn owl can perch-hunt, and solar farms can not only successfully mitigate lost barn owl foraging habitat, but they can enhance the foraging opportunities for owls, and even give rise to a net gain in biodiversity; and
- the Proposed Development is expected to be of benefit to barn owl through the provision of suitable foraging habitat.

3.4.76 SDDC [[REP8-017](#), [REP8-022](#), [REP8-024](#)] remain of the view that a survey to quantify the barn owl population in the surrounding area and fully identify the degree of impact on the barn owl population should have been undertaken, says that information would ensure that the determine the appropriate level of necessary mitigation is provided for, and considers that pre-construction checks alone are insufficient to fully assess potential impacts and determine appropriate mitigation.

3.4.77 NE signed a SoCG with the Applicant [[REP7-005](#)] and raises no outstanding concerns.

Other birds

3.4.78 SDDC [[RR-295](#), [REP1-029](#)] has concerns about the likely significant adverse impacts to ground nesting birds, particularly priority species, as well as the compensation measures. It says that the Applicant details most breeding bird interest was within the agricultural buildings at Park Farm which support house sparrow, swallow, and house martin, and asks if this would be given due consideration in relation to the disturbance during the construction stage and the possibility of enhancement for these species.

3.4.79 The Derbyshire Ornithological Society [[RR-079](#)] seeks assurance that any work would be performed at a time of year which would not impact on nesting birds. It says that few studies have been completed about the impact of solar farms on birds and would welcome information on the bird monitoring which is planned to take place.

3.4.80 Diane Abbott [[REP4-022](#)] says she has seen or heard brambling, bullfinch, Cetti's warbler, fieldfare, peregrine and redwing on or within 500m of the site in the last 3 years, is aware of the presence of spotted flycatcher, greenfinch, redpoll, starling, house martin, mistle thrush, yellowhammer, linnet, skylark and house sparrow, and has seen a pair of lapwing on the site.

3.4.81 The Applicant [[REP1-023](#), [REP1-025](#), [REP3-032](#), [REP8-020](#)] says:

- ES Technical Appendix 6.4 [[APP-124](#)] and ES Appendix 6.9 [[APP-128](#)] provide detail on the breeding bird survey undertaken to inform the proposed scheme;
- of the 56 bird species identified it is only skylark with the potential to have an adverse impact due to its dependence on open habitat;
- impact on the remaining species is expected to be positive, as they would benefit from habitat creation and site management (predominantly hedgerows), and the Outline CEMP [[REP6-018](#)] ensures impacts would be avoided during the construction stage;
- the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] secures monitoring of enhancements and mitigation; and

- says that the mitigation measures embedded in the design of the Proposed Development and through the management plans to be secured through the dDCO are appropriate and sufficient to ensure harm to ground nesting birds during the construction, operation and decommissioning stages would be avoided.

3.4.82 NE signed a SoCG with the Applicant [\[REP7-005\]](#) and raises no outstanding concerns.

Great crested newt

3.4.83 SDDC [\[RR-295\]](#), [\[REP1-029\]](#), [\[REP2-001\]](#), [\[REP4-014\]](#), [\[REP6-047\]](#) says:

- it is not content that great crested newt was scoped out of the detailed assessment;
- great crested newt is not fully surveyed and that this should be addressed;
- there are a total of 15 off-site ponds within 250m of the site boundary, which have not been surveyed as no access was obtained from the landholders, therefore, presence or absence of great crested newt in these ponds is not fully determined;
- given the number and proximity of ponds it is unlikely that great crested newts are absent in the locality;
- a nearby planning application refers to need for a great crested newt licence;
- considers that additional compensation and mitigation measures may be required to control the potential for killing and injuring great crested newt during the construction stage and sets out what could be included in a mitigation strategy; and
- precautionary checks immediately before site preparation works of potential refuges and marginal areas adjacent to potential newt habitat including ponds/ scrub would be appropriate particularly in the vicinity of Park Farm and Hill Covert to help conclude that mobile individuals would not be at risk from proposed works.

3.4.84 Diane Abbott [\[REP4-022\]](#) says great crested newt are known to be able to travel distances of up to 1km when colonising new habitats, when siting new ponds the typical guidance is to ensure they are within 250m of each other for easy access, and the surveying of ponds only within 100m of the site therefore seems unduly restrictive.

3.4.85 I [\[PD-012\]](#) suggest that the Applicant update the Outline CEMP [\[REP6-018\]](#) to include mitigation for great crested newt.

3.4.86 Responding to my observation that pre-construction is not necessarily before the site preparation works, the Applicant [\[REP6-042\]](#) updated the Outline CEMP [\[REP6-018\]](#) to secure that an updated great crested newt survey, and any subsequent update of mitigation measures that is identified as being required following that survey, would be undertaken before the start of the site preparation works.

3.4.87 The Applicant [\[REP1-025\]](#), [\[REP3-032\]](#), [\[REP4-011\]](#), [\[REP5-024\]](#), [\[REP5-025\]](#), [\[REP5-026\]](#), [\[REP7-009\]](#) responds:

- the surveys indicate that great crested newt is likely to be absent from the site;
- nine surveys of waterbodies located within and close to the site boundary with suitability for supporting great crested newt confirmed its absence;
- of the 15 off-site waterbodies identified by SDDC, 12 are over 100m from the site, reducing the likelihood of any great crested newt (if present) travelling from these waterbodies into the largely unsuitable habitats within the site;

- great crested newt is highly unlikely to be affected and therefore no mitigation is required other than standard avoidance measures as part of a highly precautionary approach secured by Requirements 9 and 21 of the dCO [\[REP8-003\]](#);
- great crested newt readily moves to and colonise new ponds and would be recorded in the optimal water bodies in the site if present in off-site ponds;
- if they are close enough to be affected by then they would have been picked up in the Applicant's environmental deoxyribonucleic acid surveys; and
- updated the Outline CEMP [\[REP6-018\]](#) to secure mitigation for great crested newt through pre-construction surveys and best practice construction methods including storage of soils away from habitats of high suitability for reptiles and amphibians, fencing to prevent sheltering within temporary soil piles during the construction stage, measures to protect waterbodies such as safe storage of chemicals and pollution prevention, supervision by an Ecological Clerk or Works, and preparation of emergency protocol in the event of encountering a reptile or amphibian.

3.4.88 NE signed a SoCG with the Applicant [\[REP7-005\]](#) and raises no outstanding concerns about great crested newt. SDDC [\[REP8-017, REP8-024\]](#) agrees with precautionary surveys before site preparation works and notes NE's position.

Otter

3.4.89 SDDC [\[REP1-029, REP2-001, REP4-014\]](#):

- provides evidence of the presence of otter on the watercourses connected with the Proposed Development and the potential for adverse impacts on them, including cumulatively with a proposed Energy Storage System at Fairfields Farm, which is also mentioned by Councillor Amy Wheelton [\[REP1-038\]](#);
- considers that clarification is required on the importance of the site for otter and what mitigation measures are in place, particularly for site works and water crossings in relation to otter disturbance;
- say that the Outline OEMP does not show mitigation for otter;
- considers that even with mitigation for otter, including managed crossing and no night-time operations, some disturbance is still likely during the construction stage, and otter may abandon the area;
- considers that the ideal objective is to ensure that the Proposed Development would not result in the loss of any holts and that it fully incorporates the otters foraging needs; and
- says that no works of any kind, including clearance of vegetation and storage of materials, should take place within the protection zones, unless a licence is issued permitting such activities, any well-established trails should be identified, and during the construction stage machinery which could harm them should be made safe or cordoned off with temporary fencing at the end of the working day.

3.4.90 I [\[PD-012\]](#) ask the Applicant to ensure that the mitigation for otter is clearly identified in the outline management and mitigation plans and that all mitigation for otters in ES Chapter 6 [\[APP-135\]](#) and the Schedule of Mitigation [\[APP-179\]](#) is secured in the outline management and mitigation plans.

3.4.91 The Applicant [\[REP3-031, REP3-032, REP3-033, REP5-024, REP5-026, REP5-031\]](#):

- says that the riparian habitats that would be directly affected are highly localised and likely to represent a very small proportion of an otter's territory which often extends across several miles of watercourse, and construction in those locations would be temporary and short in duration;
- considers it likely that otter uses the unnamed watercourse and ponds for foraging and shelter but that given the size of their territory it is "incredibly unlikely" for them to have a holt in the vicinity of the works during the construction stage, "incredibly unlikely", but not impossible, that otter would be impacted and that pre-construction checks would resolve the residual low level of impact;
- updated the Outline CEMP [\[REP6-018\]](#) to detail specific precautions in relation to otter, including pre-construction surveys to identify otter shelters or recent signs of presence, the development of an otter protection plan, sensitive timing of works and implementation of appropriate working buffers to avoid disturbance if signs of otter are identified, fencing to protect otter habitat from encroachment and disturbance, retention and protection of riparian habitats, appropriate design of temporary culverts to ensure safe passage by otter during flood conditions, an Ecological Clerk of Works and preparation of emergency protocol in the event of an otter being encountered during works, and best practice construction measures including pollution prevention and safe storage of material;
- also refers to mitigation in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] and Outline DEMP [\[REP6-022\]](#);
- says that the efficacy of the mitigation should be seen in the context of otter being highly mobile and would ensure that significant impacts would be avoided; and
- concludes that therefore there is no mechanism by which cumulative impacts with the proposed Energy Storage System at Fairfields Farm could occur.

3.4.92 Responding to my [\[PD-014\]](#) suggestion, the Applicant [\[REP6-042\]](#) updated the Outline CEMP [\[REP6-018\]](#) to secure that an updated otter survey, and any subsequent update of mitigation measures that is identified as being required following that survey, would be undertaken before the start of the site preparation works.

3.4.93 NE signed a SoCG with the Applicant [\[REP7-005\]](#) and raises no outstanding concerns about otter. SDDC [\[EV4-005\]](#) is satisfied.

Badger

3.4.94 NE [\[AS-022\]](#), [\[REP1-037\]](#) says that the Proposed Development may impact a badger sett and that it may be possible to avoid impacts by the development of the design.

3.4.95 DCC [\[REP1-026\]](#), [\[REP4-012\]](#) states that consideration should be given to the ground level fencing design to enable the passage of badger and that badger setts should be given greater consideration in respect of buffer zones to minimise disturbance.

3.4.96 SDDC [\[REP4-014\]](#) says that the proposed buffer for badger/ badger sett of 30m should be adequate in most circumstances but that a detailed scope of works in relation to badger/ badger setts would help clarify the appropriate buffer and other mitigation.

3.4.97 The Applicant [\[REP1-023\]](#), [\[REP3-032\]](#), [\[REP3-033\]](#), [\[REP4-011\]](#), [\[REP5-024\]](#), [\[REP6-042\]](#):

- says that indicative locations of the mammal gaps set out in ES Figure 6.3 [\[APP-136\]](#) would allow badger to disperse through the site, and the final detail would be provided in the LEMP;

- (I [PD-012] note that Figure 6.3 is referenced by the Outline LEMP [REP4-040, REP3-025 Appendix A], which includes that the gaps would be 20-30cm in size);
- submits a Letter of No Impediment from NE [REP5-032], with the measures set out in that letter, including buffer zones around badger setts and the design of mammal gaps in perimeter fencing, reasonable and deliverable;
- adds the details of the Letter of No Impediment to the Outline CEMP [REP6-018] with a commitment to the details to be provided in the license application; and
- updated the Outline CEMP [REP6-018] to secure an updated badger survey, and any subsequent update of mitigation identified as being required following that survey, to be undertaken before the start of the site preparation works.

3.4.98 NE [REP7-014] clarifies that a Letter of No Impediment is to provide the relevant authorities and the SoS with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of the proposed works. Following the Applicant's submission of the draft licences it sees no impediment to a licence being issued, should the DCO be granted.

Other mammals

3.4.99 DCC and SDDC [REP2-001] say that fencing and changes to hedgerow and drainage patterns may adversely impact on the passage of larger mammals through the site and consideration should be given, particularly to the lower sections of fencing, to ensure that the passage of mammals is not inhibited for, for example, but not limited to, fox, and hedgehog, as well as deer. They note that the species surveys identify that the habitats on site were determined to have the potential to contain bats and water vole. DCC [REP1-026] says that bat roosts should be given greater consideration in respect of buffer zones to minimise disturbance.

3.4.100 The British Hedgehog Preservation Society [RR-039] states that hedgehog numbers are declining and that a major factor in this is fragmentation of their habitat. It suggests that it is important to ensure that as few as possible existing hedgerows are disturbed or removed, that the presence of hedgehogs is checked for at the time where this does have to happen, and that where hedges must be removed, the planting of new native hedges would help in the long term.

3.4.101 The Applicant [REP1-023, REP3-032, REP3-033, REP5-026] says:

- muntjac deer are an invasive species and have no bearing in ecology terms;
- indicative locations of the mammal gaps set out in ES Figure 6.3 [APP-136] would allow small mammals to disperse through the site, and the final detail would be provided in the LEMP;
- the design of the fencing ensures hedgehogs would be able to move throughout the site without restriction;
- most hedgerows would be retained and 2.86km of native species rich hedgerow would be created; and
- ES Chapter 6 [APP-135] provides a robust assessment of the impact on wildlife and protected species and sets out the relevant mitigation and enhancement measures, including those set out in the Outline LEMP [REP4-040, REP3-025 Appendix A].

INNS

3.4.102 The EA [\[REP4-017\]](#) says:

- the ES [\[REP4-043\]](#) states Himalayan balsam, rhododendron, cherry laurel and buddleia were recorded within the site boundary, where possible these should be removed and replaced with native species of local provenance during the works, and if this is not possible then the risk of managing and spreading INNS can be appropriately controlled during the works e.g. providing toolbox talks;
- works near the watercourse should be timed appropriately to avoid spreading Himalayan balsam when it's in seed (August to October) or the area should be cleared of Himalayan balsam before the works begin; and
- it has no further concerns at this stage as management of INNS are part of the normal working method procedures stated within the Outline CEMP [\[REP6-018\]](#).

3.4.103 Responding to my [\[PD-010\]](#), [\[PD-014\]](#) suggestions, the Applicant [\[REP5-024\]](#), [\[REP6-042\]](#) updated the Outline CEMP [\[REP6-018\]](#) to clarify what it means by INNS and address the species highlighted by the EA, and secure that an updated survey of INNS, and any required update of mitigation measures following that survey, would be undertaken before the start of the site preparation works.

3.4.104 SDDC [\[REP4-014\]](#) is content provided mitigation measures are adhered to and robustly enforced, including for invasive species associated with watercourses.

BNG and enhancement

3.4.105 SDDC [\[RR-295\]](#) [\[REP1-029\]](#) raises concerns about whether the biodiversity metric utilises the most up to date NE calculator tool and suggest that any alterations to the BNG metric be completed before the commencement of any development. The Applicant [\[REP1-023\]](#) says Metric 3.1 is used for the assessment rather than the most recent Metric 4.0 or Statutory Metric due to surveys and BNG condition assessments being conducted using the Metric 3.1, and being completed prior to the release of the Metric 4.0 and the Statutory Metric. It considers that is in accordance with advice from NE at the time of the assessments for the continuation of use of previous metrics for a project duration, prior to the adoption of mandatory BNG.

3.4.106 DCC [\[REP1-026\]](#) and SDDC [\[REP1-029\]](#) say they would welcome the submission of a BNG Strategy prior to commencement and SDDC. NE [\[REP1-037\]](#) welcomes the BNG set out in the BNG Report [\[APP-131\]](#) and advises that as BNG is not mandatory it would be unable to agree a BNG Strategy if it was a requirement of the dDCO. The Applicant [\[REP1-023\]](#), [\[REP1-025\]](#), [\[REP3-032\]](#) states that it is following best practice, and that its BNG offering is provided through the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] and greater than it is legally obliged to provide.

3.4.107 DCC and SDDC [\[REP2-001\]](#) say that the Proposed Development would have a negative ecological impact on the surrounding environment during the construction, operation and decommissioning stages. The Applicant [\[REP3-033\]](#) considers that ES Chapter 6 (Ecology) of the ES [\[APP-135\]](#) provides a robust assessment of impact on wildlife and protected species and that with the mitigation and enhancement measures in the OLEMP [\[REP6-020\]](#), and as set out in the BNG Report [\[APP-131\]](#), the Proposed Development would result in a BNG of 125% for habitat units, 20% in hedgerow units and 19.8% for river units.

- 3.4.108 I [EV4-001, EV4-002, EV4-005] refer to commitments secured for minimum BNG in recently made solar farm Orders and ask the Applicant to advise what it is proposing for the planning balance and how that should be secured. The Applicant [REP5-026] updated Requirement 8 of the dDCO [REP8-003] to require the LEMP to include how it would secure a minimum of 20% biodiversity net gain in habitats units, 10% biodiversity net gain in hedgerow units, 10% biodiversity net gain in river units during the operation stage. The Applicant believes there is the potential to deliver more but commits to these figures to allow flexibility for detailed design.
- 3.4.109 The National Forest Company [REP1-046] says there is a need to comply with the requirement for National Forest planting in SDDC Policy INF8 and demonstrate a biodiversity net gain, suggesting that it may be possible for habitat creation to count towards both National Forest policy requirements and net gain requirements, such as on-site tree and woodland planting. The Applicant [REP3-031] replies that planting of new native tree species and creation of woodland areas is proposed in the Outline LEMP [REP4-040, REP3-025 Appendix A] in line with the National Forest's objectives and ensures that it meets relevant policy requirements. The Applicant says the planting of new native tree species and creation of woodland areas contribute to BNG.
- 3.4.110 The Applicant [REP1-025, REP3-033, REP8-020] says:
- the BNG Report [APP-131] quantifies the reasonable opportunities taken to maximise biodiversity enhancements and increase biodiversity value in accordance with paragraph 5.4.47 of NPS EN-1 and paragraph 2.10.89 of NPS EN-3;
 - it is widely acknowledged that solar farms can deliver biodiversity enhancements, and the Proposed Development can make a significant ecological and biodiversity improvement to address the ecological emergency declared by SDDC; and
 - biodiversity and nature benefits include strengthening ecological connectivity through the creation and enhancement of linear movement corridors, improving habitats for pollinators across an area that is currently intensively farmed by establishing grassland and wildflower meadow, decreasing the use of fertilisers and herbicides during the operation stage, and delivering a significant enhancement to the skylark population by providing up to 38 new skylark plots on land adjacent to the Proposed Development.
- 3.4.111 NE [REP7-005] concludes that it has no concerns about BNG. SDDC [REP8-017] [REP8-024] concludes by calling for ongoing monitoring of biodiversity gains during the operation stage to ensure the success of habitat restoration measures, and raises concerns that BNG would be undone when land would be returned to agricultural use.
- 3.4.112 The Applicant [REP1-025 response to question 7.16] summarises the regard given to the Environmental Improvement Plan 2023 against goals relating to thriving plants and wildlife, clean air, clean and plentiful water, managing exposure to chemicals and pesticides, maximising resources, minimising waste, using resources from nature sustainably, mitigating and adapting to climate change, reducing risk of harm from environmental hazards, enhancing biosecurity, and enhancing beauty, heritage and engagement with the natural environment. With reference to paragraph 5.4.39 of NPS EN-1, it considers that the Proposed Development has appropriate regard to the Environmental Improvement Plan 2023.
- Construction haul road**
- 3.4.113 DCC and SDDC [REP2-001] say that the creation of the main vehicular access track and temporary construction access roads would result in substantial environmental

impact due to the loss of trees and habitat in an area that is very high in biodiversity. They consider that the impacts would not be reversible during the decommissioning stage and would result in an everlasting adverse impact on the local environment.

- 3.4.114 SDDC [[EV4-005](#), [REP5-040](#)] considers that the proposed haul road would pass through the wildest part of the site, cutting a swath through the valley bottom, crossing the watercourse three times, and dissecting and disconnecting areas of dense and mature vegetation and habitat where there are known to be otters, barn owls and bats. It adds that the Health and Safety Executive (HSE) recommends haul roads should be three and a half times the width of the widest vehicle using them.
- 3.4.115 Councillor Amy Wheelton [[REP5-047](#)] considers that the temporary haul track would decimate mature woodland and cause ecological devastation.
- 3.4.116 The Applicant [[REP3-033](#), [REP5-024](#), [REP5-026](#), [REP5-031](#), [REP6-041](#), [REP6-042](#), [REP8-019](#), [REP8-020](#)] says:
- the design includes retention and protection of features of greatest ecological importance, avoidance of the loss of designated wildlife sites, ancient woodlands, ponds, bat roosts, trees with potential to support important bat roosts, trees suitable for supporting roosting or nesting barn owl, badger setts, and otter shelter;
 - river corridor crossing locations are selected where the extent of semi-natural habitat is narrowest and are aligned perpendicular to the watercourse or linear habitat feature to reduce the habitat loss footprint;
 - the exception is the crossing point at Rosliston Road where the alignment is necessary to accommodate key considerations such as road traffic safety and where a slightly wider (c.20m) area of scrub would be affected, which would be mitigated by scrub planting to reduce construction stage impacts to not significant;
 - road alignment is focused within fields characterised by ploughed arable crop or improved species-poor heavily grazed pastures of low ecological value and grasslands of higher value are deliberately avoided;
 - the alignment avoids trees of increased value, and mitigation includes tree root protection zones and buffers to watercourses, waterbodies and woodlands;
 - the Proposed Development would result in the temporary loss of localised sections of the unnamed watercourse, the small loss of discrete sections of hedgerow, scrub, trees and watercourse habitats, and small areas of vegetation would be temporarily disturbed at the watercourse crossings;
 - the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] seeks to mitigate the effects of habitat loss and on retained habitat, including by minimising habitat loss, damage, disturbance and contamination, enhancements to existing habitats and the creation of new habitats through additional planting;
 - it updated the Outline CEMP [[REP6-018](#)] and Outline DEMP [[REP6-022](#)] to include that the haul road would be removed following the construction stage and reinstated for the decommissioning stage, removed after the decommissioning stage, and that following reinstatement after the construction and decommissioning stages the land would be restored to its current condition;
 - the haul road and associated structures would be in place for the construction and decommissioning stages only, and therefore for the vast majority of the 40-year life of the Proposed Development the land and vegetation impacted by the temporary installations would be allowed to re-grow and return to its natural condition;

- the management plans ensure that retained habitats would be suitably protected during the construction stage and the provision of mitigation alongside other habitat enhancements would result in a positive residual effect during the operation stage;
- the 6m track minimises the footprint of the haul road and the environmental impacts and HGV movements may be timed and scheduled for one-way use; and
- the haul road would be of significant benefit by limiting the impact of vehicles by removing them from the road network at the earliest opportunity and preventing HGVs from travelling through the villages of Walton-on-Trent and Rosliston.

CONCLUSIONS ON BIODIVERSITY

Designated sites of ecological importance

- 3.4.117 I note that the River Mease SAC and SSSI are 4.4km to the south of the Proposed Development and that the River Mease catchment covers the southern tip of the Proposed Development. The Applicant says that there is potential for them to be hydrologically connected to the Proposed Development site and as such be adversely affected by contamination. The evidence leads me to conclude that there are unlikely to be any other causes of adverse impacts on the River Mease SAC or SSSI. The HRA in relation to the River Mease SAC is addressed in Chapter 4.
- 3.4.118 I note that NE is satisfied with the mitigation secured in relation to the River Mease SAC and, given the importance of this mitigation, I am content that NE is added to Requirement 8(1) of the dDCO as a required consultee on the CEMP.
- 3.4.119 For the planning balance, I note that with the mitigation secured in the Outline CEMP [\[REP6-018\]](#) and Outline OEMP [\[REP6-020\]](#), including to address potential impacts from sedimentation flow and panel cleaning, NE is satisfied that it can be ascertained beyond reasonable scientific doubt that the Proposed Development would not have an adverse effect on the integrity of the River Mease SAC. I accept NE's view and, noting that the same causes of potential impacts are also relevant to the SSSI, I am content with the assessment of effects on internationally and nationally designated sites and find that adverse effect on the River Mease SAC or SSSI would be unlikely, and I have no related concerns regarding paragraphs 5.4.7-8, 5.4.17 or 5.4.50 of NPS EN-1.
- 3.4.120 I am content with the assessment of effects on regional and local sites and accept that there would be no significant effects on LWS apart from a moderate beneficial effect on Grove Wood LWS and Copperhill Spinney during the operation stage. I have no related concerns in respect of paragraphs 5.4.12-13, 5.4.17, 5.4.48, or 5.4.52 of NPS EN-1.

Trees, woodland, and hedgerows

- 3.4.121 I accept the reasoning provided by the Applicant and SDDC for the woodland bordering the former Drakelow Power Station site, listed on the Arboricultural Report as Woodlands 8, 9 & 10 to be categorised as Other Woodland, Broadleaved and consider that the sensitivity of that woodland is assessed appropriately. I accept NE's view that with the mitigation in the Outline CEMP [\[REP6-018\]](#) there would be unlikely to be adverse impacts on ancient woodland.
- 3.4.122 Buffer and fencing protection is provided for ancient/ veteran trees in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A]. I note DCC's concerns about ancient Oak T56, SDDC's about ancient or veteran trees within W4 that are afforded protection by TPO 122, and Diane Abbott's concerns about the Twin Oak T105. I am satisfied that there is appropriate mitigation to avoid likely impacts on ancient or veteran trees through the

provisions for LPA's approval of any felling or lopping of veteran or ancient trees, the detailed design of the cable route and Arboricultural Method Statement secured by Article 37 and Requirements 5 and 7 of the dDCO [\[REP8-003\]](#).

- 3.4.123 DCC and SDDC consider that prior consent of the LPA should be required for works to all TPO trees. I note the context of LPA approval being required for an Arboricultural Method Statement, mitigation provided for veteran and ancient trees, recent precedent where LPA approval for works to TPO trees is not required, and the need for low carbon sources of energy to be enabled at speed. I am content with the regard given to guidance to identify trees subject to a TPO that would be affected and the works permitted to them through Schedule 13 of the dDCO [\[REP8-003\]](#). On balance, I find that it is not necessary for the prior consent of the LPA to be required for works to TPO trees other than veteran and ancient trees and I am satisfied with the provisions of Article 37 of the dDCO for works to trees subject to TPO.
- 3.4.124 I accept that 0.25km hedgerow loss is necessary. I note the creation of 2.86km of native species rich hedgerow, and the enhancement of a further 3.18km. I am satisfied with the mitigation for retained hedgerows and new hedgerow in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A].
- 3.4.125 It follows from the above that I have no concerns in relation to paragraphs 5.4.14, 5.4.32, 5.4.48, or 5.5.53 of NPS EN-1.

Species

- 3.4.126 I note that SDDC [\[REP1-029\]](#) recommend that a Habitat Constraints Plan is produced and I am content that this is added to the details to be included in the CEMP.
- 3.4.127 The Applicant adds Requirement 21 to the dDCO [\[REP8-003\]](#) to secure that no phase of the Proposed Development may commence until protected species surveys have been carried out by a suitably qualified person, that the surveys shall inform the mitigation measures required for the protection of such species and incorporated into a Species Protection Plan that must be agreed with the LPA in consultation with NE and implemented as approved. I am content with Requirement 21 in the context of the mitigation related to species survey and protection in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A].
- 3.4.128 The Applicant and SDDC agree that with the Unilateral Undertaking [\[REP7-010\]](#) the impact on skylark is suitably addressed, and mitigation is sufficient to result in a net benefit for the species. Based on this and the mitigation secured for skylark in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A], I am satisfied with the Applicant's assessment of very minor effect on the local population of skylark and that the harm to skylark suggested by SDDC would be mitigated to result in no overall harm to skylark and to the extent that there would be a likely residual beneficial effect to skylark.
- 3.4.129 The Applicant hasn't identified any records of barn owl through either desk study or field survey, although a full barn owl survey has not been carried out. Parties do report the presence of barn owl and therefore I find that there is the potential for them to be present. I find the Applicant's understanding of the behaviour of any potential barn owl on the site to be convincing. I note the mitigation for barn owl in the Outline CEMP [\[REP6-018\]](#), including the commitment to a barn owl survey before the start of the site preparation works, which would allow mitigation to be refined and approved before any potential harm. Given the mitigation in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A], I accept the Applicant's view that there would not be a reduction in the availability of foraging habitat during the operation stage, although with potential sheep farming I am not convinced that there would be an overall benefit to barn owl. On

balance, I consider the reasonable worst-case scenario is that barn owl is present, but the mitigation would result in it being unlikely that there would be any harm.

- 3.4.130 I am satisfied with the Applicant's assessment of potential impacts on other birds, note that NE raises no outstanding concerns, and therefore consider that with the mitigation in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A] any harm to other birds is likely to be avoided.
- 3.4.131 Noting the mobility of great crested newt and given the Applicant's surveys, including environmental deoxyribonucleic acid surveys, I find no compelling evidence that great crested newt is present on the site. I note the mitigation for great crested newt in the Outline CEMP [\[REP6-018\]](#), including the commitment to a great crested newt survey before the start of the site preparation works, which would allow mitigation to be refined and approved before there would be any potential harm. I also note that NE raises no outstanding concerns. On balance, I find that with the secured mitigation there would be unlikely to be any harm to great crested newt.
- 3.4.132 Although there is evidence of otter on the unnamed watercourse and ponds, I do not find any that suggests there are holts and find it likely that the presence of otter is for foraging. I find the explanations that otter have a large territory and that the unnamed watercourses and ponds that might be disturbed would be likely to form a small proportion of their territory. I note the mitigation for otter in the Outline CEMP [\[REP6-018\]](#), including the commitment to an otter survey before the start of the site preparation works, which would allow mitigation to be refined and approved before there would be any potential harm. Based on the above, I conclude that with the secured mitigation there would be unlikely to be any harm to otter.
- 3.4.133 The Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A] secure mitigation for badgers, including buffers, mammal gaps through fencing, and details to be provided in the license application. I note that NE provides a Letter of No Impediment for badger which confirms that it sees no impediment to a license being granted. On that basis I find it unlikely that there would be any harm to badger.
- 3.4.134 I accept the Applicant's assessment of potential impacts on other mammals and am therefore satisfied that with the mitigation in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A], including an increase in hedgerow, any harm to other mammals is likely to be avoided.
- 3.4.135 INNS are recorded on the site. I note the mitigation for INNS in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A], including the application of best practice guidance and a commitment to an INNS survey before the start of the site preparation works, which would allow mitigation to be refined and approved before there would be any disturbance. The EA and SDDC raise no outstanding concerns in relation to INNS and I have no reason to disagree.

BNG and enhancement

- 3.4.136 Paragraph 4.6.1 of NPS EN-1 clarifies that BNG is not an obligation and so I give it no weight as a legal requirement with reference to paragraph 4.6.3 or the Environmental Act 2021. I do, however, consider BNG in relation to policy for enhancements.
- 3.4.137 I note that the BNG assessment was carried out using the latest version of the biodiversity metric available at the time and that NE has no outstanding concerns about BNG. On that basis I consider that the calculations are carried out appropriately and in accordance with paragraph 4.6.7 of NPS EN-1.

- 3.4.138 I consider that the commitments secured in the dDCO [\[REP8-003\]](#) of a minimum of 20% biodiversity net gain in habitats units, 10% biodiversity net gain in hedgerow units, 10% biodiversity net gain in river units during the operation stage represent enhancement. In the absence of any compelling evidence to the contrary I accept that these commitments are reasonable by allowing flexibility for detailed design.
- 3.4.139 I also accept that other enhancements are considered, including in relation to improving habitats around the solar panels that is currently intensively farmed, decreasing usage of fertilisers and herbicides during the operation stage, and benefits to the skylark population by providing up to 38 new skylark plots on adjacent land.
- 3.4.140 Based on the above, I consider that reasonable opportunities are taken to enhance biodiversity and find that there is compliance with paragraphs 4.6.6, 5.4.19, and 5.4.46-7 of NPS EN-1. I have no concerns in relation to SDDC Policy BNE3 or Policy INF7.
- 3.4.141 I am also content with the Applicant's consideration of the Environmental Improvement Plan 2023 and am therefore satisfied in relation to paragraph 5.4.39 of NPS EN-1.

Construction haul road

- 3.4.142 There is compelling evidence that the haul road would result in adverse effects where it would cross watercourses and mature habitats. I accept the Applicant's reasoning for its route including that it avoids designated sites and other features of greatest ecological importance, and I accept that appropriate consideration is given to minimising adverse effects on biodiversity. I note that the haul road would bring benefits in terms of reducing adverse impacts on public roads. The commitments in the Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#) to remove the haul road and restore land to its current condition when it is not in use are appropriate to mitigate the impacts and ensure that they would be temporary. I am satisfied the residual impacts of the haul road are included in the above conclusions for habitats and species.

Other conclusions

- 3.4.143 Based on the above, I conclude that the Applicant's assessment methodology, baseline conditions, proposed mitigation and enhancement and how it is secured, assessment of effects, and restoration of land that would be used temporarily are acceptable. I am therefore satisfied in relation to paragraphs 5.4.35, 5.4.44-45, 5.4.48, and 5.4.54 of NPS EN-1, and paragraphs 2.10.82-83, and 2.10.130 of NPS EN-3.
- 3.4.144 I find that there would be no harm to designated sites or protected species and therefore have no concerns in relation to paragraph 5.4.55 of NPS EN-1.
- 3.4.145 On balance, I agree with the Applicant's assessment that following mitigation there would be no significant adverse effects during the construction or decommissioning stages, and that there would be significant beneficial effects during the operation stage in relation to BNG and enhancement. I consider that those beneficial effects would be temporary and need to be balanced against the combination of adverse effects on habitats during the construction and decommissioning stages and reinstatement.

Matters to be taken to Chapter 5 and the planning balance

- 3.4.146 For the purposes of Chapter 5 and the planning balance, I conclude that the combination of temporary beneficial effects from BNG and enhancement during the operation stage with temporary adverse effects on habitats during the construction and decommissioning stages and the following periods of reinstatement bring a little weight for the making of the Order.

3.5 HISTORIC ENVIRONMENT

INTRODUCTION

- 3.5.1 This section addresses the effects on above ground historic assets and archaeology. The landscape and visual impact assessment is considered in Section 3.6.

LEGISLATION AND POLICY CONSIDERATIONS

General considerations

NPS EN-1

5.9.9	Likely significant heritage impacts and the mitigation hierarchy.
5.9.17	Loss of whole or part of a heritage asset's significance.
5.9.18	Written Scheme of Investigation (WSI).
5.9.22	Significance of any heritage asset and the setting.
5.9.25	Sustaining and enhancing the significance of heritage assets.
5.9.28	Weight given to the desirability of preserving heritage assets.

NPS EN-3

2.10.118	Large-scale solar farms and harm to the significance of heritage assets.
2.10.160	Impacts and the length of time of consent.

Designated heritage assets

The Infrastructure Planning (Decisions) Regulations 2010

- 3.5.2 Deals with matters including preserving listed buildings and their setting, preserving or enhancing conservation areas, and preserving scheduled monuments or their setting.

NPS EN-1

5.9.27	Weight given to the conservation of a designated heritage asset.
5.9.28	Harm or loss of significance of a designated heritage asset.
5.9.29	Substantial harm or loss of significance: grade II Listed Building.
5.9.30	Substantial harm or loss of significance: highest significance assets.
5.9.31	Substantial harm: designated heritage asset and refusal of consent.
5.9.32	Less than substantial harm to significance of designated heritage assets.
5.9.36	Preserving the setting of designated heritage assets.

NPS EN-3

2.3.8	Weighing public benefits against any loss or harm.

Non-designated heritage assets and archaeology

NPS EN-1

5.9.6	Non-designated heritage assets equivalent to scheduled monuments.
5.9.21	Undiscovered heritage assets with archaeological interest.
5.9.33	Weighing for non-designated heritage assets.

NPS EN-3

2.10.113	Assessment of heritage assets with archaeological interest.
2.10.137	Micro-siting during the construction stage.

Local policies

- 3.5.3 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies policy for development that affects South Derbyshire's heritage assets, including SDDC Policy BNE2 and Policy BNE10.

THE APPLICATION

- 3.5.4 The Applicant's case is set out in documents including ES Chapter 7 - Historic Environment [\[REP1-017\]](#), ES Appendix 7.1 - Historic Environment Assessment [\[REP1-019\]](#), and the Historic Environment Plan [\[APP-013\]](#).

Assessment scope, methodology, study area and baseline

- 3.5.5 The assessment [\[REP1-017\]](#) considers effects on the historic environment and its component heritage assets, including consideration of hedges [\[APP-134\]](#). Potential effects are identified to heritage assets arising from physical changes to assets lying within the site during the construction stage, and changes in the setting of assets within the study area during the operation stage, and cumulative effects. Cumulative effects during the construction stage, direct physical effects during the operation stage, direct effects to assets outside the site, and changes in the setting of assets outside the study area are scoped out of the detailed assessment.
- 3.5.6 A core study area of the site and up to 2.5km from the site boundary is used for data gathering and identification of heritage assets. A wider study area of 2.5km to 5km from the site boundary is used to identify any further designated heritage assets. Baseline conditions are established through a combination of desk based research including information from the geophysical survey report [\[APP-138\]](#), and visits, site surveys and geophysical surveys [\[REP1-019, APP-138\]](#).
- 3.5.7 The Applicant says that there are no designated heritage assets within the site. It says that assets recorded in the site are an unknown enclosure, a possible Roman road, a medieval deer park, a medieval ridge and furrow, post-medieval field boundaries, and post-medieval extraction/ quarrying pits (low or very low value). The Applicant considers the potential for below ground Neolithic to Roman period historic assets (low to high value if present) and archaeological remains relating to post-medieval field barns and other structures (very low value if present). Following discussions with the DCC Archaeologist, the Applicant says that the risk of there being such high value assets on the site is very low as the geophysical survey results suggest extensive disturbance of the site in the past.

3.5.8 Off-site assets susceptible to setting change effects are shown in Figure 3.5.1:

- Park Farm farmhouse (grade II listed);
- entrance to the former Drakelow Park with gate piers and wing walls (both grade II listed) and adjacent lodge building (non-designated);
- Walton-on-Trent Conservation Area and associated heritage assets including the Church of St Laurence and Walton Hall (both grade II*);
- Borough Walls Iron Age hillfort (SM);
- Oaklands Farm farmhouse and attached storage range plus Oaklands Farm Cottages (non-designated);
- Church of St Mary, Rosliston (grade II*); and
- Church of St Mary, Coton-in-the-Elms (grade II).

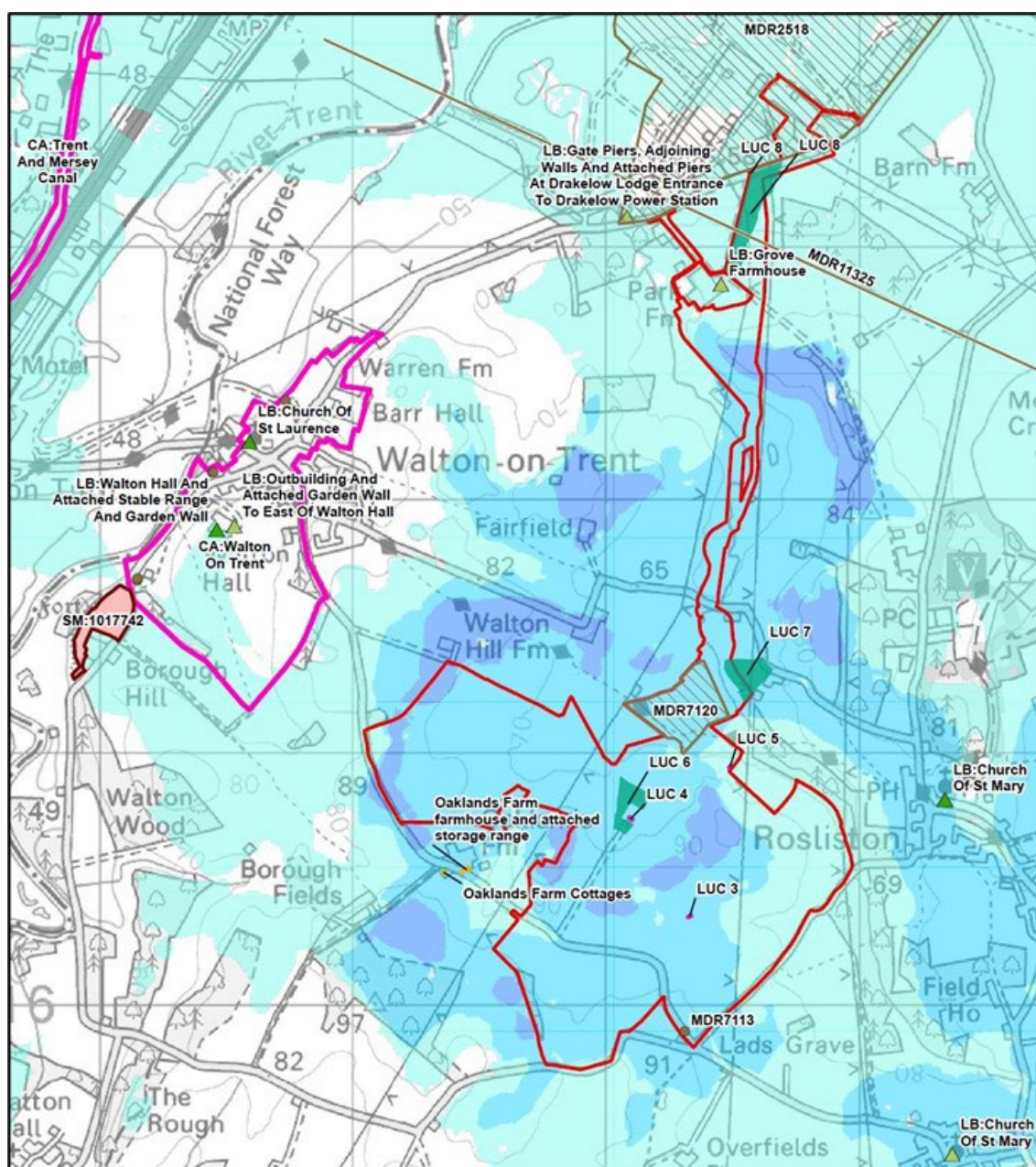


Figure 3.5.1: Heritage assets identified as potentially susceptible to effects [extract from APP-140]

- 3.5.9 The assessment makes use of guidance in the Historic Environment Planning Practice Guidance, IEMA Principles of Cultural Heritage Impact Assessment in the UK (2021), Historic England (HE) guidance on Managing Significance in Decision-Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017), English Heritage Conservation Principles, Policies and Guidance for the sustainable management of the historic environment (2008), and the Chartered Institute for Archaeologists Standard and Guidance for historic environment desk-based assessment (2017). The stages of assessment are to:
- identify which heritage assets may be affected;
 - explain the heritage significance and level of importance of the potentially affected assets, including the role of their setting;
 - explain the effect upon their heritage significance;
 - explore measures to reduce or avoid likely effects and any opportunities to better reveal or enhance significance; and
 - describe the overall effects upon heritage assets following the application of mitigation and enhancement measures.
- 3.5.10 The importance of an asset is established with reference to its heritage significance, whether it is designated, or would meet criteria for designation, and/ or what scale of importance it has (international, national, regional, or local). The effect to the asset is expressed with reference to the degree of harm that it would experience.

Construction stage

- 3.5.11 The Applicant considers that the direct physical effects during the construction stage and their significance would be:
- unknown enclosure of possible later prehistoric to Romano-British date - less than substantial harm to a low value asset that would not be significant;
 - non-designated possible Roman Road - a low level of less than substantial harm to a low value asset that would not be significant;
 - assets associated with Drakelow Park - a low level of less than substantial harm to a low value asset that would not be significant;
 - medieval ridge and furrow - a low level of less than substantial harm to a low value asset that would not be significant;
 - post-medieval field boundaries - could range from substantial harm to less than substantial harm to a very low value asset and would not be significant;
 - post-medieval extraction/ quarrying pits - likely to constitute less than substantial harm to a very low value asset and would not be significant;
 - hitherto unrecorded below-ground heritage assets of later prehistoric to Roman date - assets of medium value and lower would be subject to substantial harm or total loss which would not be significant, assets of high value subject to substantial harm or total loss brings potential for a significant adverse effect; and
 - hitherto unrecorded below-ground heritage assets related to post-medieval buildings including field barns - range from less than substantial harm to total loss of a very low value asset that would not be significant.

3.5.12 The Applicant says that during the construction stage there would be no harm or effect on the settings of the grade II listed buildings at Park Farm and the Drakelow Park entranceway, or on the non-designated farm buildings and cottages at Oaklands Farm.

3.5.13 The Applicant states that measures to avoid or address effects to heritage assets are incorporated, where appropriate, within the Outline CEMP [\[REP6-018\]](#). A suitable programme of mitigation to address harm to, or loss of, assets would be drawn up in consultation with the DCC Archaeological Officer, as archaeological advisor to SDDC. This would be likely to comprise a staged programme of archaeological works secured by Requirement 18 of the DCO and would be detailed in a WSI agreed following consultation with the DCC Archaeological Officer. This mitigation would not reduce the level of effects to the heritage assets but would provide a record of the features lost because of development, preserving them by record. The Applicant considers that this follows industry best-practice to address effects to heritage assets.

3.5.14 Following mitigation, the Applicant anticipates that the residual construction stage effects would be:

- potential below-ground heritage assets of later prehistoric to Roman date of medium value would be subject to substantial harm or total loss that would not be significant, while those of high value (which are considered at a low risk of being present) would be subject to substantial harm or total loss that brings potential for a significant adverse effect;
- hitherto unrecorded below-ground heritage assets related to post-medieval buildings including field barns - range from less than substantial harm to total loss of a very low value asset that would not be significant; and
- otherwise, there would be no significant effects during the construction stage.

Operation stage

3.5.15 The Applicant considers that during the operation stage and in relation to setting change, there would be:

- no harm or effect on Park Farm farmhouse, the entrance to the former Drakelow Park, assets at Walton-on-Trent, or Borough Walls Iron Age hillfort;
- less than substantial harm to the low value assets at Oaklands Farm that is considered not significant;
- a low level of less than substantial harm to the high value asset of Church of St Mary, Rosliston that is considered not significant; and
- a very low level of less than substantial harm to the high value asset of Church of St Mary, Coton-in-the-Elms that is considered not significant.

3.5.16 Relevant mitigation through the planting of hedgerows and woodland creation is secured in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A]. No additional heritage-asset specific mitigation is proposed to address effects arising because of setting change since no significant effects were identified by the assessment. Residual operation stage effects would remain as noted above.

Decommissioning stage

3.5.17 Not addressed in ES Chapter 7 - Historic Environment [\[REP1-017\]](#) or ES Appendix 7.1 - Historic Environment Assessment [\[REP1-019\]](#).

Cumulative and combined effects

- 3.5.18 The Applicant considers that there would be no significant cumulative effects of other sites/ applications with the Proposed Development.

ISSUES ARISING DURING THE EXAMINATION

Above ground heritage assets

- 3.5.19 In its Relevant Representation, HE [\[AS-021\]](#) says that the Proposed Development would:
- cause harm to the setting and visual interconnectivity of multiple heritage assets including the Scheduled Monument Hillfort southwest of Old Hall Cottages and several grade II* listed buildings, the Church of St Laurence and Walton Hall at Walton-on-Trent, Church of St Giles and Cauldwell Hall, Caldwell, Church of St Mary at Rosliston, and Catton Hall at Coton-in-the-Elms;
 - harm the setting of multiple grade II listed buildings within the villages of Walton-on-Trent, also a conservation area, Caldwell, Rosliston, and Coton-in-the-Elms; and
 - require suitable landscape mitigation, which is not adequately demonstrated, to resolve the impact on the setting of these heritage assets and the interconnectivity between them and the site.
- 3.5.20 Following a site visit on 17 July 2024, HE [\[REP4-018\]](#), [\[REP4-056\]](#), [\[REP7-006\]](#) subsequently agree with the Applicant's baseline and methodology and advise that the Proposed Development would not result in an effect that would constitute anything more than less than substantial harm, either on its own or cumulatively with other developments.
- 3.5.21 HE [\[REP6-051\]](#), [\[REP7-006\]](#) considers that due to the nature of the development, with metal security fencing, lighting and CCTV, there is potential for further landscape mitigation to be introduced to reduce the harm caused by these features in an overtly rural and agricultural landscape. HE says that there is scope to reinforce existing buffers along the redline boundary to Redfern Wood and to provide more robust screening along Coton Road while the landscape mitigation vegetation matures.
- 3.5.22 The Applicant [\[REP1-023\]](#), [\[REP3-033\]](#), [\[REP7-006\]](#):
- assumes that HE's reference to the need for additional mitigation in respect of Redfern Wood relates to the setting of the Church of St Mary in Rosliston, notes that there is significant woodland between the site and Rosliston, refers to recent residential development within the immediate setting of the church, notes that the Proposed Development sits 260m west of the housing, and that the limited views of the panels would be screened by planted trees;
 - is unable to identify which heritage asset HE is concerned about in relation to Coton Road, consider that upon maturation of the vegetation the views of the panels are almost entirely screened from the road, recognises that hedgerows in this location would take time to mature, but does not consider that there is a proportionate alternative to that proposed particular in the absence of any defined effect; and
 - considers that no heritage-asset specific mitigation is required beyond the landscape and boundary measures already proposed as no significant effects were identified by the assessment.

3.5.23 In their LIR, DCC and SDDC [\[REP2-001\]](#) say that:

- the site does not contain any listed buildings or any other designated heritage assets that would be directly impacted by the Proposed Development;
- the receptors most susceptible to change are likely to be Park Farm (grade II), Entrance to the former Drakelow Park - Gate piers and wing walls (grade II) and adjacent non-designated lodge building, Walton-on-Trent Conservation Area and associated heritage assets, Borough Walls Iron Age Hillfort (Schedule Ancient Monument (SAM)), building at Oaklands Farm (non-designated), Church of St Mary (grade II*), and Church of St Mary, Coton-in-the-Elms (grade II);
- the presence of construction activities may be visible from some of the listed building, however, the change experienced in the setting of these would be temporary and short, and therefore, no harm should arise;
- the operation stage, anticipated to last 40 years, would have the potential to impact upon the setting of the listed buildings, however these impacts would be reversible upon decommissioning and this impact is likely to be less than substantial, although 40/50 years would be a generational change;
- a landscape carpeted with a significant area of PV arrays would alter the perceptual qualities of their landscape setting because they are alien to this rural landscape, as industrial non-organic features, and the current sense of isolation as part of nucleated development patterns would be eroded to some degree;
- this effect may only represent a small harmful change, as the layout seems to have been designed so as not to be overly visible from the surrounding roads;
- screening would be provided by existing landscape features such as hedgerows and tree plantations and in the longer term the harm would be further reduced as new planting matures; and
- the amount of harm would be towards the lower end of less than substantial harm and there would be a neutral impact on heritage during the construction, operation, and decommissioning stages.

3.5.24 In the SoCG between the Applicant and HE [\[REP7-006\]](#) agree that the Proposed Development would cause a low level of less than substantial harm to the setting of all identified built heritage assets during the operation stage.

3.5.25 In the SoCG between the Applicant, DCC and SDDC [\[REP8-017\]](#) it is agreed that:

- a full assessment of the potential effects of the Proposed Development upon the setting of known heritage assets, including designated heritage assets, is undertaken by suitably qualified experts;
- at most, a low level of less than substantial harm to heritage assets because of change in their setting;
- the Walton-on-Trent Conservation Area would experience some change in setting as a result of the scheme, but this is assessed as not affecting how the conservation area is perceived or understood so no harm or effect would arise;
- Lullington Conservation Area is assessed as not susceptible to effects from the scheme as it would not result to change to its setting; and
- no cumulative effects are identified with other proposed or permitted development.

Archaeology

Archaeological assets present and impacts

- 3.5.26 Noting that the Applicant [\[REP1-017\]](#) considers there is a low risk of high value later prehistoric to Roman assets being present, and with reference to paragraphs 5.9.21 and 5.9.31 of NPS EN-1, I explored the potential for the presence of non-designated heritage assets of archaeological interest of demonstrably equivalent significance to Scheduled Monuments.
- 3.5.27 DCC [\[REP1-026, REP2-001\]](#) says that there are no recorded Roman assets within the site, there have been late Mesolithic and early Neolithic finds, further assets cannot be ruled out, and there is a potential for medieval features. It considers that the lack of information on archaeological assets is likely to reflect a lack of sustained investigation rather than an absence of archaeology.
- 3.5.28 DCC [\[REP4-012\]](#) later says that it seems very unlikely that archaeology of demonstrably equivalent value to a Scheduled Monument is present within the site. It has no data to suggest the presence of such archaeology and says that the Applicant's geophysical survey does not suggest the presence of any complex or high significance archaeology, and there is no other data e.g. on air/satellite photos or LiDAR providing an indication of unusual archaeological importance.
- 3.5.29 The Applicant [\[REP1-025, REP3-033\]](#) says that following analysis of the geophysical survey results which suggests extensive disturbance of the site in the past, it considers that assets of later prehistoric to Roman date of demonstrably equivalent value to designated heritage assets are unlikely to be present and there would not be any harm due to the controls in place.
- 3.5.30 In the SoCG between the Applicant, DCC and SDDC [\[REP8-017\]](#) it is agreed that:
- known buried archaeological deposits are of local importance and would experience less than substantial harm;
 - potential buried archaeological deposits could range from local to national importance and could be subject to as much as substantial harm or total loss;
 - the presence of buried archaeological deposits of national importance at the site is considered unlikely on the basis of survey and assessment and if deposits of national importance are present and subject to substantial harm or total loss, then this is a significant effect;
 - no cumulative effects are identified with other development; and
 - the harm created in archaeological terms would be less than substantial.
- 3.5.31 HE [\[AS-021, REP6-051\]](#) advise that sufficiency of field evaluation is vital because some features such as early medieval burial grounds or Roman high-status buildings would be both of high importance and high sensitivity to the insertion of panel mounting piles. It says that, to its knowledge, archaeological investigations have not identified additional sites of national importance.

WSI

- 3.5.32 DCC [\[REP1-026\]](#) agree with my suggestion [\[PD-010\]](#) to secure mitigation through the deposit of any analysis, reporting, publication, or archiving required as part of the WSI. The Applicant [\[REP1-025\]](#) updated dDCO [\[REP8-003\]](#) Requirement 18(3) accordingly.

- 3.5.33 DCC [REP1-026] also agree with my suggestions [PD-010] in relation to any archaeological remains not previously identified which are revealed when carrying out the authorised development:
- they must be retained in situ and reported to the relevant planning authority as soon as reasonably practicable from the date they are identified;
 - no construction is to take place within 10m of the remains for a period of 14 days from the date of any notice unless otherwise agreed in writing by the LPA; and
 - if the LPA determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10m of the remains until provision is made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the LPA.
- 3.5.34 The Applicant [REP1-025] says that if archaeological remains are found, this level of detail and any such buffers/ restrictions would be included in the WSI, which must be submitted to and approved by the LPA in consultation with the county archaeologist.
- 3.5.35 Responding to my query [PD-012], DCC [REP4-012] advise that a WSI and recording of archaeological remains within the site at the post consent stage could potentially allow archaeological significance to be identified and impacts designed out, thereby avoiding harm to archaeology.
- 3.5.36 I [PD-012] raised concerns about the potential for site preparation works to harm archaeology. DCC [REP4-012] considers that site preparation work such as remedial work and diversion and laying of services would have the potential to harm below-ground archaeological remains and that it is essential that the WSI and the on-site evaluation trenching is carried out first and before any other intrusive groundworks. DCC [REP5-037] then suggest wording for Requirement 18 of the dDCO [REP8-003] to clarify the WSI for the site preparation works.
- 3.5.37 The Applicant [REP4-011, REP6-042] updated Requirement 18(1) to secure that the site preparation works for any phase requiring archaeological works is not to commence until the relevant WSI is approved. The DCC archaeologist [REP6-046] has no further comments following the Applicant's updates.
- 3.5.38 DCC [REP7-011] says that it has no outstanding issues in relation to archaeology.
- Micro-siting
- 3.5.39 Referring to paragraph 2.10.137 of NPS EN-1, I [PD-010, PD-012] asked the Applicant to provide its consideration of the potential for micro-siting, the practical feasibility in relation to the foundations of the solar panels, alternative mitigation methods, and how any mitigation is secured.
- 3.5.40 DCC [REP1-026] considers that the use of micro-siting to enable the avoidance of harm to archaeological assets identified during pre-commencement and construction stages may be crucial to the protection of previously unrecorded assets.
- 3.5.41 The Applicant [REP1-025, REP4-011] explains that:
- it requires the ability to micro-site subject to no materially new or materially more adverse environmental effects to those identified in the ES arising;

- micro-siting would not be used if buried archaeological assets do not warrant preservation in situ;
- micro-siting would most likely apply to the solar PV arrays (including panels, mounting structures, and transformers), laying of electrical cables, vehicular access, internal access roads, fencing and security, landscaping including habitat creation areas, drainage, and the creation of a new permissive path;
- for the on-site substation and BESS compounds there would be flexibility to configure elements in different orientations and layouts, or to consolidate the layout which may reduce the footprint and offer a degree of micro-siting; and
- alternative construction methods would entail reduced foundation depths or no-dig foundation systems.

3.5.42 Micro-siting mitigation is secured in paragraphs 2.9.8 to 2.9.12 of the Outline CEMP [\[REP6-018\]](#). DCC [\[EV4-009\]](#) is content with the micro-siting mitigation.

3.5.43 DCC [\[REP7-011\]](#) says that it has no outstanding issues in relation to archaeology.

CONCLUSIONS ON THE HISTORIC ENVIRONMENT

General considerations

3.5.44 HE, DCC and SDDC are content with the Applicant's assessment methodology. I have no reason to disagree and find that there is compliance with paragraphs 5.9.9, 5.9.22 of NPS EN-1 and paragraphs 2.10.118 and 2.10.160 of EN-3.

3.5.45 In reaching my conclusions I:

- have regard to the desirability of preserving any listed building, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting (Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010);
- consider the desirability of sustaining heritage assets (paragraph 5.9.25 of NPS EN-1);
- give considerable importance and weight to the desirability of preserving all heritage assets (paragraph 5.9.25 of NPS EN-1);
- give great weight to the asset's conservation when considering the impact on the significance of a designated heritage asset (paragraph 5.9.25 of NPS EN-1);
- give appropriate weight to the desirability of preserving the setting of designated heritage assets (paragraph 5.9.36 of NPS EN-1); and
- make a balanced judgement regarding the scale of any harm or loss and the significance of non-designated heritage assets (paragraph 5.9.36 of NPS EN-1).

3.5.46 In considering compliance with national policy, I am also addressing SDDC Policy BNE2 and Policy BNE10.

Above ground heritage assets

3.5.47 Mitigation for above ground assets during the construction stage is provided in the Outline CEMP [\[REP6-018\]](#). The Applicant proposes no additional heritage-asset specific mitigation for the operation stage in addition to the planting secured in the

Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A]. DCC and SDDC note that screening would be provided by existing landscape features such as hedgerows and tree plantations and in the longer term the harm would be further reduced as new planting matures.

- 3.5.48 HE says that there is scope to reinforce existing buffers along the redline boundary to Redfern Wood and to provide more robust screening along Coton Road while the landscape mitigation vegetation matures. The Applicant notes that planted trees would provide additional screening in the vicinity of Redfern Wood and does not consider it proportionate to increase the mitigation alongside Coton Road given that it is not needed for any identified heritage. I note that the mitigation referred to by the Applicant is secured in the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] and am content with the Applicant's response to HE's comments.
- 3.5.49 Following from the above, I am content with the mitigation provided for above ground heritage assets.
- 3.5.50 HE says that, at most, there would be a low level of less than substantial harm to the setting of heritage assets either due to the Proposed Development on its own or cumulatively with other developments. DCC and SDDC consider that the amount of harm would be towards the lower end of less than substantial harm and there would be a neutral impact on heritage during the construction, operation, and decommissioning stages and no cumulative effects are identified with other developments.
- 3.5.51 Taking account of the views expressed by HE, DCC and SDDC and the Applicant's assessment, and taking a precautionary approach, I note that the effects would be temporary, long term, and reversible and find that there would be the following harm arising from changes to setting:
- less than substantial harm to non-designated assets at Oaklands Farm; and
 - no more than a low level of less than substantial harm to Borough Walls Iron Age hillfort Scheduled Monument, Church of St Mary, Rosliston (grade II*), Church of St Mary, Coton-in-the-Elms (grade II), and other above ground heritage assets.
- 3.5.52 As there would not be substantial harm, I have no concerns in relation to paragraphs 5.9.29-31 of NPS EN-1. I weigh the no more than a low level of less than substantial harm to designated heritage assets against the public benefits of the proposal in Chapter 5 in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.

Archaeology

- 3.5.53 The Applicant carried out a desk-based assessment and field evaluation in relation to archaeology and proposed schemes of investigation and design measures. I note that DCC and SDDC are content with the Applicant's impact assessment and have no concerns in relation to compliance with paragraph 2.10.113 of NPS EN-3.
- 3.5.54 Requirement 18 of the dDCO [[REP8-003](#)] was developed during the Examination to secure a WSI for site preparation works and the construction stage, and the related recording and publishing of any remains that might be found. The WSI is subject to approval by the LPA, and I am therefore satisfied that it would include the necessary detail, including in relation to the specific matters that I raised. I am satisfied with the mitigation secured for WSI in Requirement 18.

- 3.5.55 I note that DCC has no outstanding issues in relation to archaeology and I agree with DCC that a WSI and recording of archaeological remains within the site at the post consent stage could potentially allow archaeological significance to be identified and impacts designed out, thereby avoiding harm to archaeology.
- 3.5.56 Following from the above, I am content with the measures secured for a WSI, for the identification and treatment of any archaeology discovered during the construction stage, and for the recording and publishing of any archaeological remains that might be found. I am therefore satisfied that the related requirements of paragraphs 5.9.17-18 and 5.9.21 of NPS EN-1 are met.
- 3.5.57 Further to the submissions from Applicant, DCC and SDDC, I accept that:
- known buried archaeological deposits are of local importance and would experience less than substantial harm;
 - buried archaeological deposits of national importance are unlikely to be present but if present could be subject to as much as substantial harm or total loss; and
 - the harm created by the Proposed Development in archaeological terms would be less than substantial and no cumulative effects are identified with other developments.
- 3.5.58 Micro-siting mitigation is secured in the Outline CEMP [\[REP6-018\]](#). I note that DCC is content with the micro-siting mitigation and consider that its use may be crucial to the protection of previously unrecorded assets. In accordance with paragraph 2.10.137 of NPS EN-3, I consider micro-siting to be an important consideration when assessing the risk of damage to archaeology.
- 3.5.59 Addressing the potential harm to archaeology including in relation to paragraph 5.9.6 of NPS EN-1, as buried archaeological deposits of national importance are unlikely to be present and accounting for the secured mitigation and what constitutes a reasonable worst case, I agree with the Applicant, DCC and SDDC that the harm created by the Proposed Development in archaeological terms should be considered as less than substantial. Nevertheless, where there is harm, the SoS must give that harm considerable importance and weight. I weigh this less than substantial harm against the public benefits of the proposal in Chapter 5 in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.
- 3.5.60 In considering paragraph 5.9.25 of NPS EN-1, I do not find any appropriate means of enhancing heritage assets or their contribution to sustainable communities, other than the recording and publishing of any archaeological remains that might be found.

Matters to be taken to Chapter 5 and the planning balance

- 3.5.61 For the purposes of Chapter 5 and the planning balance, I conclude that:
- the harm to heritage assets and archaeology brings moderate weight against the making of the Order; and
 - the low level of less than substantial harm to designated heritage assets and the less than substantial harm in archaeological terms are to be weighed against the public benefits of the proposal in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.

3.6 LANDSCAPE AND VISUAL

INTRODUCTION

- 3.6.1 This section addresses landscape and visual, glint and glare and the effects on Public Rights of Way (PRoW) and non-motorised users (NMU). Historic assets are considered in Section 3.5, good design in Section 3.10, and design parameters in Chapter 7.

POLICY CONSIDERATIONS

General considerations

NPS EN-1

4.7.11	Functionality, aesthetics, and visual impacts on the landscape.
5.10.14	Visual effects on sensitive receptors.
5.10.17	Landscape character assessment and local policies.
5.10.19	Negative effects and opportunities for positive benefits.
5.10.21	Impacts on views and visual amenity, light pollution.
5.10.22	Landscape and visual effects of noise and light pollution.
5.10.24	Enhancing landscapes.
5.10.27	Siting, colour, materials, and sympathetic landscaping.
5.10.29	The level of detailed design.
5.10.30	Design content and future consenting.
5.10.35	Adverse landscape impact and the benefits, including need.
5.10.36	Temporary impacts.
5.10.37	Design and impact on the landscape.
5.10.38	Requirements to incorporate design details.

NPS EN-3

2.10.43	Visual impact: users of existing PRoW.
2.10.47	Visual impact: security measures including light pollution and CCTV.
2.10.48	Landscape and visual impact: security measures.
2.10.98	Landscape and visual impact: good design.
2.10.99	Landscape and visual impact: security and fencing.
2.10.100	Vegetation, hedges, and mature trees on site boundaries.
2.10.131	Screening with native hedges, trees, and woodlands.
2.10.132	Security fencing, use of existing features.
2.10.133	Security lighting and passive infra-red technology.

Locally valued landscapes

NPS EN-1

5.10.12	Local landscapes, local policies, and landscape character assessment.

Glint and glare

NPS EN-1

5.5.39	Bodies to be consulted.
5.5.55	Design of lighting.
5.5.60	Risks to national security and physical safety.

NPS EN-3

2.10.104	Assessment of glint and glare affecting receptors.
2.10.158	Impact on homes, motorists, PRoW, and aviation infrastructure.
2.10.159	Aircraft safety.

Other national and local policies

- 3.6.2 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies relevant local policy, including SDDC Policy SD6 regarding impact on landscape character, Policy BNE4 regarding careful design and impact on landscape character, visual amenity and sensitivity, and Policy SD6 relating to impacts on local amenity and safety concerns.

THE APPLICATION

- 3.6.3 The Applicant's case is set out in documents including ES Chapter 5 - Landscape and Visual [\[AS-027\]](#), and ES Chapter 14 - Glint and Glare [\[REP4-047\]](#).

Assessment scope, methodology, study area and baseline

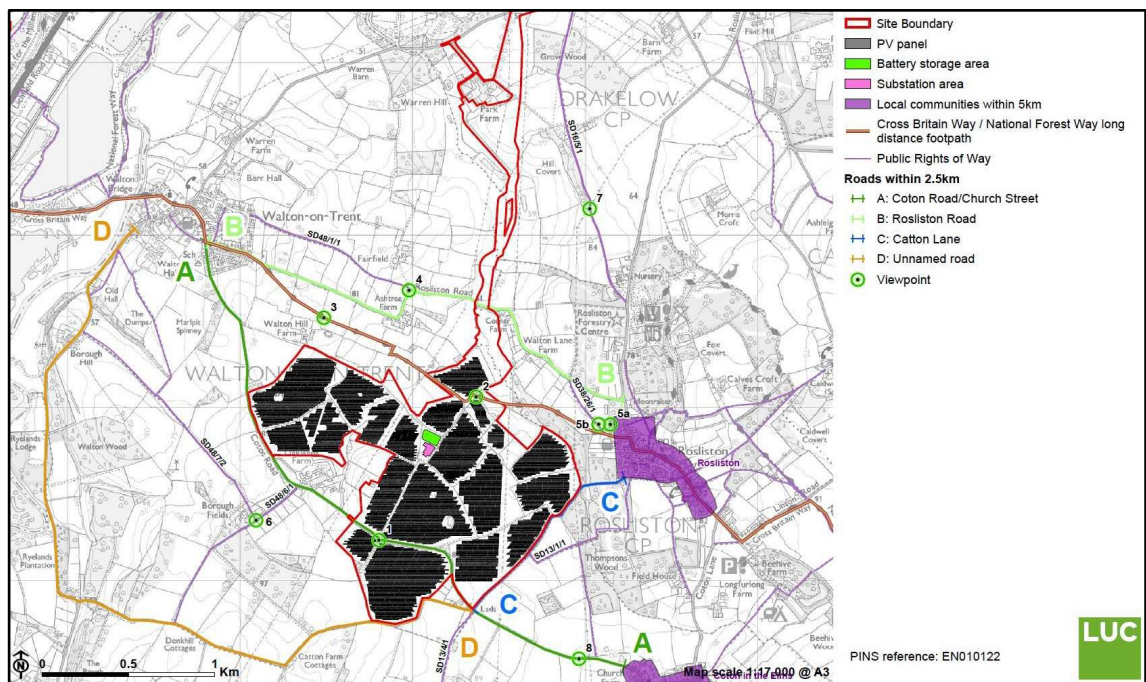
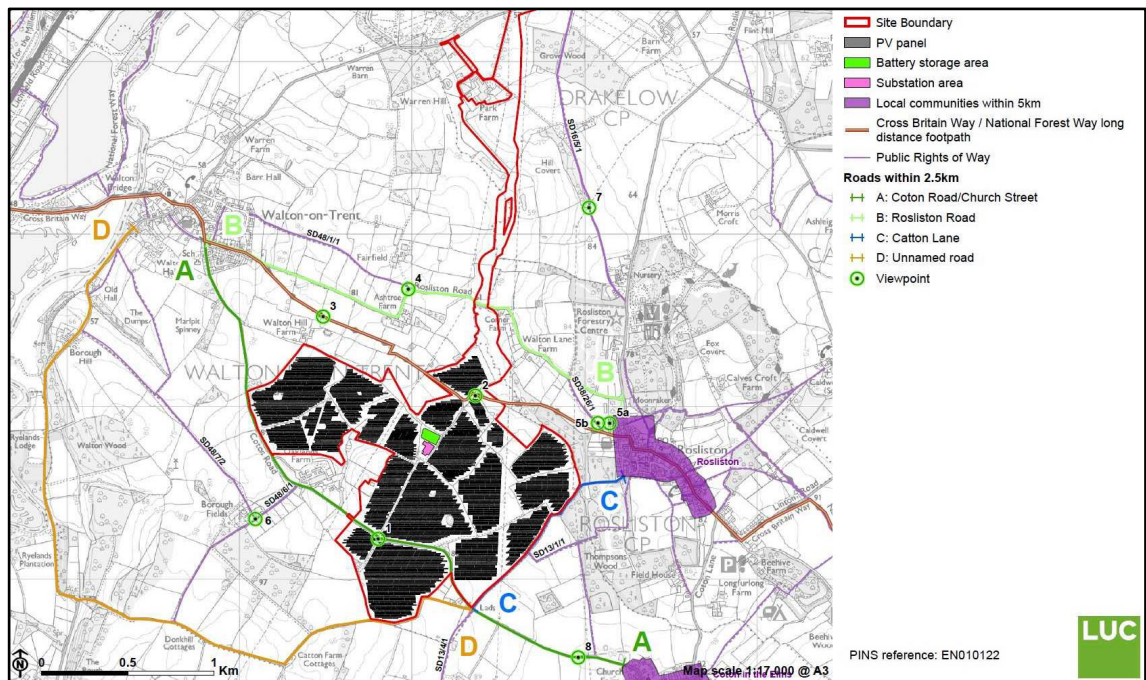
- 3.6.4 The assessment [\[AS-027\]](#), [\[REP4-047\]](#) considers effects on landscape and visual resources and glint and glare effects, including in relation to aviation and defence.

Landscape and visual

- 3.6.5 Potential effects are considered during the construction and operation stages on the landscape as a resource, including on the landscape character of the site, and on landscape character types (LCT) within the study area, and on views and visual amenity as experienced by people in the study area.
- 3.6.6 Effects on landscape and visual receptors and cumulative effects more than 5km from the site boundary are scoped out as the Applicant considers that significant effects would be unlikely at this distance. Effects on landscape and visual receptors that would have minimal or no theoretical visibility are scoped out as the Applicant considers them unlikely to be subject to significant effects.
- 3.6.7 The study area is the site and to 5km outside the site boundary [\[APP-107\]](#) Figure 5.1].

- 3.6.8 Having established the study area, the assessment:
- considers the visibility of the Proposed Development [[APP-107](#) Figures 5.5a - d];
 - analyses the landscape of the study area and identifies the landscape receptors;
 - records the visual baseline in terms of the people who may experience views, the places where they would be affected, and the nature of views and visual amenity;
 - selects viewpoints representing the visual receptors in agreement with relevant stakeholders; and
 - sets out the significance of landscape and visual effects with reference to the sensitivity of the receptor (susceptibility and value) and magnitude of change (a combination of the scale of effect, geographical extent, duration, and reversibility).
- 3.6.9 Professional judgement is used, including to identify the sensitivity of receptors to change and the magnitude of effects. Baseline conditions are established through:
- desk based research using NE's National Character Areas for England, DCC's The Landscape Character of Derbyshire (2014), Technical Support Documents (2013) and Derbyshire Spatial Energy Study (2023), CPRE's England's Light Pollution and Dark Skies (2016), Ordnance Survey maps and data, and terrain data; and
 - field survey work between June and October 2021.
- 3.6.10 The Applicant describes the site as being within a broad, gently rolling agricultural landscape [[APP-107](#) Figure 5.3]. To the west is the low-lying Trent valley and to the east is a former coalfield area which rises up to 126m AOD. Land use across the study area mainly comprises medium-large scale fields of mixed arable and pastoral use. The River Trent flows through the west of the study area approximately 0.4km from the site at its closest point), and the Trent and Mersey Canal runs to the west of this. Several tributary brooks flow through the study area. There are a number of disused gravel pits, many of which are now filled with water and restored to wetland habitats.
- 3.6.11 The site and study area are located within the western half of the National Forest area [[APP-107](#) Figure 5.1]. The National Forest Strategy sets out the priorities and shifts in key activities to deliver the National Forest to 2024, including an objective to maximise value of all types - commercial, landscape, recreational, heritage, and wildlife. Rosliston Forestry Centre is approximately 0.7km to the east of the site boundary. Areas of deciduous and mixed woodland (some of which are initiatives relating to the National Forest) are located throughout the area, often on shallow hill slopes and associated with farms and settlements. The designed landscape of The National Memorial Arboretum is approximately 4km from the site, just east of the A38.
- 3.6.12 The A38, A5189 and B5016 are within the study area and a network of minor roads and rural lanes connect villages, hamlets, residential properties, and farmsteads. Two railway lines exist within the study area. The Cross Britain Way/ National Forest Way cross the study area, which includes several local PRoW.
- 3.6.13 The Applicant says that the assessment follows principles in the Landscape Institute and the IEMA's Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (2013), and technical guidance notes on Residential Visual Amenity Assessment (2019), Visual Representation of Development Proposals (2019), and Assessing Landscape Value Outside National Designations (2021).

- 3.6.14 The pattern of settlement within the study area is typically defined by compact nucleated villages with sprawling larger towns in the north. There are numerous individual farmsteads and some isolated residential properties within the study area. There are three operational solar farms in the study area, ranging from 4ha to 13ha.
- 3.6.15 The Applicant states that there are no landscape designations covering the site or within the study area. The site is in National Character Area 72 Mease/ Sence Lowlands and 3 other National Character Areas are in the study area [APP-107 Figure 5.4a]. The county level character assessment divides National Character Area 72 into two LCT - the Village Estate Farmlands and Riverside Meadows.
- 3.6.16 The Applicant says that the management guidelines for the Village Estate Farmlands LCT are to promote linked extensions to ancient woodland by natural regeneration and planting, re-establish and enhance physical links between existing isolated woodland and hedgerows, enhance the visual and ecological continuity of river corridors by management, natural regeneration and planting of riparian trees, conserve and renew ornamental plantations and individual parkland trees, and refer to the National Forest Strategy and Guidance.
- 3.6.17 The Applicant considers the theoretical visibility of the Proposed Development from LCT and takes the Village Estates Farmland LCT and Coalfield Village Farmlands LCT in Derbyshire, and the Terrace Alluvial Lowlands LCT and Settled Plateau Farmlands (Estatelands sub-type) LCT in Staffordshire forward for detailed assessment.
- 3.6.18 The Applicant states that the site is within the 'least sensitive' area of DCC's strategic overview of the environmental sensitivity of the county outside of the Peak District National Park and could potentially to accommodate more change. The site is in an area of 'moderate landscape sensitivity' in the Derbyshire Spatial Energy Study.
- 3.6.19 The visual baseline establishes the Zone of Theoretical Visibility (ZTV) based on solar PV panels (2.7m high), the on-site substation and the BESS, and either on bare ground or with existing buildings (8m high) and woodland (15m high).
- 3.6.20 The Applicant considers visual receptors of people within local communities, travelling on roads, using recreational routes (including PRow), and visiting areas of interest. No visitor attractions are taken forward for detailed assessment due to very limited visibility. It considers the theoretical visibility of the Proposed Development when deciding to take the following visual receptors forward for detailed assessment:
- local communities - Rosliston, Coton-in-the-Elms, and Swadlincote; and
 - routes - Coton Road/ Church Street, Rosliston Road, Catton Lane, the unnamed road between Walton-on-Trent and Church Street, the Cross Britain Way/ National Forest Way, and users of PRow in the study area (apart from those 2.5-5km from the site south of the Cross Britain Way/ National Forest Way).
- 3.6.21 Eleven viewpoints that the Applicant considers representative of the receptors taken forward for detailed assessment, inform the assessment of visual effects. These were selected following desk study, field work and consultation with statutory consultees.
- 3.6.22 Locations of the assessed visual receptors and properties considered in the Residential Visual Amenity Assessment assessed are shown in Figures 3.6.1 and 3.6.2, below:



3.6.23 The Applicant states that the design strategy seeks to:

- integrate the design into the landscape and preserve the key qualities of landscape character, preserve field patterns;
- avoid losses of valued woodland and tree cover, avoid or minimise adverse effects on views from settlements (including Rosliston) and nearby residential properties;
- use existing tracks where possible and for new tracks to follow field boundaries, locate the substation and the BESS in a flatter area and away from residential

properties, integrate ancillary components into the agricultural landscape through careful selection of material and finishes;

- limit the operational lighting to alarm lights on transformer stations that would only be activated in case of theft, minimise visual intrusion along the Cross Britain Way/ National Forest Way and avoid changing or diverting its route; and
- mitigate adverse effects with new planting in character with the landscape and in accordance with the aims of The National Forest.

Glint and glare

- 3.6.24 Direct and cumulative effects from glint and glare during the operation stage are considered on roads, dwellings, and aviation activity associated with airfields and airstrips. Significant impacts on pedestrians or horse riders in community uses or along the PRow and bridleways are not predicted due to the sensitivity of the receptors in terms of amenity and safety being concluded to be low.
- 3.6.25 A study area is the site and up to 1km outside the site boundary for ground-based receptors and up to 10km outside the boundary for aviation receptors.
- 3.6.26 Baseline conditions are identified using a combination of online aerial and street view imagery, Ordnance Survey Digital Terrain Model, aeronautical charts, and a field survey on 13 June 2022.
- 3.6.27 The Applicant considers that the study area for ground-based receptors is semi-rural with some residential areas, regional roads, and local roads. The 10km study area for aviation contains the following aviation infrastructure:
- Grangewood Airfield - approximately 4.4km east-south-east of the Proposed Development;
 - Sittles Farm Airfield - approximately 6.8km south-west;
 - Fisherwick Airfield - approximately 8.2km south-south-west;
 - Streethay Farm Airstrip - approximately 9.7km south-west; and
 - Tattenhill Airfield - approximately 8.8km north-west.
- 3.6.28 The Applicant states that the assessment is carried out in accordance with the principles set out in Department of Levelling Up, Housing and Communities Guidance for Renewable and Low Carbon Energy (2015), Federal Aviation Administration Policy on the Review of Solar Energy System Projects on Federally-Obligated Airports (2021), and Pager Power Solar Photovoltaic Glint and Glare Guidance (2022).
- 3.6.29 The magnitude of change for road users predominantly depends on whether a solar reflection is predicted to be experienced, the type of road in the context of traffic speeds and likely densities, and location of the reflecting panels relative to a road user's direction of travel. The magnitude of effect on dwelling receptors predominantly depends on whether a solar reflection is predicted to be experienced, and the duration of the effects, relative to thresholds of 3 months per year and 60 minutes per day.
- 3.6.30 The magnitude of effect on the Air Traffic Control Tower receptors mainly depends on whether a solar reflection is predicted to be experienced and operationally significant in practice, and the glare intensity relative to the thresholds of low potential for temporary after-image, potential for temporary after-image, and potential for permanent eye damage. The magnitude of effect on air-borne aircraft on final approach or on the final

section of a visual circuit depends on whether a reflection is predicted to be experienced, the location of glare relative to a pilot's primary horizontal field of view, and glare intensity.

Construction stage

Landscape and visual

- 3.6.31 The Outline CEMP [\[REP6-018\]](#) includes arrangements for implementation of various aspects of the works such as turf, vegetation and soil removal, storage and replacement. The CEMP also sets out restoration of landscape earthworks, soils, and surface vegetation once the construction stage is complete.
- 3.6.32 The Applicant states that mitigation measures for the construction stage would include restoration of any areas disturbed during the construction stage immediately following completion, retaining existing trees and hedgerows as far as possible and protecting them in accordance with BS 5837, installing panels using methods to reduce the extent of excavation and concreting required, tidily storing materials and machinery, not leaving machinery in place for longer than required, and restricting lighting of construction compounds to agreed working hours and as necessary for security.
- 3.6.33 The Applicant considers that construction stage effects would result from clearance of vegetation and landcover including small sections of hedgerow and a small number of trees, provision of temporary construction and delivery compounds, works in relation to new and upgraded tracks, construction vehicles, installation of solar PV panels with associated transformers and fencing, security fencing and gates and portacabin, screening to mitigate glint and glare hazards until new hedgerow planting matures, construction and installation of the on-site substation and the BESS with palisade fencing, installation of underground cabling, temporary lighting at construction compounds and on top of storage containers, and site restoration.
- 3.6.34 The Applicant considers the landscape effects during the construction stage to be:
- the site - a major adverse effect that would be significant;
 - Village Estate Farmlands LCT - a major adverse effect that would be significant within 0.5km of the site and a minor adverse effect that would not be significant from 0.5-1km from the site; and
 - Coalfield Village farmlands LCT, Terrace Alluvial Lowlands LCT, and Settled Plateau Farmlands (Estatelands sub-type) LCT - a negligible effect that would not be significant.
- 3.6.35 The Applicant considers that the visual effects during the construction stage would be:
- Rosliston - a moderate adverse effect that would be significant from the elevated edge of the settlement at Coppice View and The Chase;
 - Coton-in-the-Elms - a low adverse effect that would not be significant;
 - Swadlincote - a negligible effect that would not be significant;
 - Coton Road/ Church Street between Walton-on-Trent and Coton-in-the-Elms - a major adverse effect that would be significant;
 - Rosliston Road between Walton-on-Trent and Rosliston - a moderate adverse effect that would be significant;

- Catton Lane between Rosliston and Church Street - a moderate adverse effect that would be significant;
- unnamed road between Walton-on-Trent and Church Street - a moderate adverse effect that would be significant;
- Cross Britain Way/ National Forest Way between Walton-on-Trent and Rosliston - a major adverse effect that would be significant;
- PRoW within 2.5km of the site north of the Cross Britain Way/ National Forest Way - a minor adverse effect that would not be significant;
- PRoW within 2.5km of the site south of the Cross Britain Way/ National Forest Way - a moderate adverse effect that would be significant;
- PRoW within 2.5-5km of the site north of the Cross Britain Way/ National Forest Way - a negligible effect that would not be significant; and
- lighting effects during the construction stage - a minor adverse effect that would not be significant.

Glint and glare

- 3.6.36 The Applicant considers that effects during the construction stage would be less than or equal to those during the operation stage (see below).

Operation stage

Landscape and visual

- 3.6.37 The Applicant states that the landscape measures in the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] complement the existing landscape character and aim to improve integration of the Proposed Development into the landscape and minimise visual effects. It considers that the proposed planting would, in time, bring additional amenity and biodiversity value to the local area, and comprise native species recommended in DCC's The Landscape Character of Derbyshire (2014).
- 3.6.38 The Applicant considers that operation stage effects would result from:
- solar PV panels with associated transformers and fencing;
 - security fencing and gates and portacabin;
 - screening to mitigate glint and glare hazards until new hedgerow planting matures;
 - the on-site substation and the BESS with palisade fencing;
 - new and upgraded tracks, access tracks and gates;
 - new planting;
 - a new permissive path connecting the Cross Britain Way/ National Forest Way to other PRoW in the area [[REP4-040](#)]; and
 - the occasional movement of maintenance vehicles.
- 3.6.39 The Applicant considers that the effects during the operation stage would be:
- the site - a major adverse effect that would be significant at Year 1, reducing to a moderate adverse effect that would be significant at Year 10;

- Village Estate Farmlands LCT - a major adverse effect that would be significant within 0.5km of the site at Year 1 reducing to a moderate adverse effect that would be significant at Year 10;
- Village Estate Farmlands LCT - a minor adverse effect that would not be significant from 0.5-1km from the site at Years 1 and Year 10; and
- Coalfield Village farmlands LCT, Terrace Alluvial Lowlands LCT, and Settled Plateau Farmlands (Estatelands sub-type) LCT - a negligible effect that would not be significant at Years 1 and 10.

3.6.40 The Applicant considers that the visual effects during the operation stage would be:

- Rosliston - a moderate adverse effect that would be significant from the elevated edge of the settlement at Coppice View and The Chase at Years 1 and 10;
- Coton-in-the-Elms - a minor adverse effect that would not be significant at Year 1 reducing to a negligible effect that would not be significant at Year 10;
- Swadlincote - a negligible effect that would not be significant at Years 1 and 10;
- Coton Road/ Church Street between Walton-on-Trent and Coton-in-the-Elms - a major adverse effect that would be significant at Year 1 reducing to a moderate adverse effect that would be significant at Year 10;
- Rosliston Road between Walton-on-Trent and Rosliston - a moderate adverse effect that would be significant at Years 1 and 10;
- Catton Lane between Rosliston and Church Street - a moderate adverse effect that would be significant at Years 1 and 10;
- unnamed road between Walton-on-Trent and Church Street - a moderate adverse effect that would be significant at Year 1 reducing to a minor adverse effect that would not be significant at Year 10;
- Cross Britain Way/ National Forest Way between Walton-on-Trent and Rosliston - a major adverse effect that would be significant at Year 1 reducing to a moderate adverse effect that would be significant at Year 10;
- PRow within 2.5km of the site north of the Cross Britain Way/ National Forest Way - a minor adverse effect that would not be significant at Years 1 and 10;
- PRow within 2.5km of the site south of the Cross Britain Way/ National Forest Way - a moderate adverse effect that would be significant at Year 1 reducing to a minor adverse effect that would not be significant at Year 10;
- PRow within 2.5-5km of the site north of the Cross Britain Way/ National Forest Way - a negligible effect that would not be significant at Years 1 and 10; and
- lighting during the operation stage - a negligible effect that would not be significant.

3.6.41 The Applicant considers that enhancements include the retention and enhancement of grassland, creation and enhancement of hedgerows, creation of woodland habitat and tree planting, including in areas along the riparian corridor in the north of Oaklands Farm, and creation of meadows along the field margins and in more open areas, and that these would improve landscape and ecological connectivity.

3.6.42 A Residential Visual Amenity Assessment [[APP-104](#)] describes the change in view that the Applicant considers likely to be experienced by residents at 14 properties adjacent

to and within 0.25km of the site and having a potential view of the Proposed Development. During Year 1 of the operation stage, one of the properties is assessed to experience a 'high' magnitude of change, six are assessed to experience a 'medium' magnitude of change, and seven are assessed to experience a 'low' magnitude of change. The property assessed as likely to experience a 'high' magnitude of change is Twin Oaks, the Oaklands Farm landowner's property, which the Applicant considers would not breach the Residential Visual Amenity Threshold and so the Proposed Development would not be so overwhelming, unpleasantly encroaching or inescapably dominant to render the property as an unpleasant place to live.

Glint and glare

3.6.43 The Applicant considers that the glint and glare effects during the operation stage before mitigation would be:

- two sections of an unnamed regional road north-west from Coton-in-the-Elms totalling approximately 300m, and approximately 300m of Coton Road - a major adverse effect that would be significant;
- other sections of road - a worst case of minor adverse effect that would not be significant;
- dwellings - a worst case of minor adverse effect that would not be significant; and
- aviation - a worst case of minor adverse effect that would not be significant.

3.6.44 Mitigation is identified for two sections of the unnamed regional road and a section of Coton Road, totalling approximately 600m in the form of new planting, hedgerow enhancement and hedgerow infilling in the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A]. The Applicant notes that it is good practice to ensure the surrounding existing vegetation is maintained at a height and density such that it provides adequate screening to the surrounding road users and dwellings. Temporary screening would be used to obscure the reflecting solar panels prior to the new planting reaching maturity.

3.6.45 The Applicant considers that the worst-case residual effects after mitigation would be a minor adverse effect that would not be significant.

Decommissioning stage

Landscape and visual

3.6.46 Although the effects during the decommissioning stage are scoped out of the detailed assessment, the Applicant considers that, in the long term, the planting would contribute positively to the landscape, respecting local distinctiveness and bring benefits to amenity, wildlife, and climate change.

Glint and glare

3.6.47 The Applicant considers that effects during the decommissioning stage would be less than or equal to those during the operation stage (see above).

Cumulative and combined effects

Landscape and visual

3.6.48 The Applicant states that the other projects would not interact with the Proposed Development to the extent that there would be any additional cumulative effects on

landscape character or visual amenity. It considers that there would be no additional cumulative effects over and above those identified above.

Glint and glare

- 3.6.49 The Applicant states that no cumulative effects are predicted upon road users and dwellings because any receptor which is predicted to experience solar reflections from the Proposed Development is not predicted to have inter-visibility of the Haunton Solar Farm. No cumulative effects are predicted upon aviation activity because the Applicant considers that Haunton Solar Farm is outside the ranges of which significant cumulative effects are considered appropriate for aviation receptors. No combined effects are identified.

ISSUES ARISING DURING THE EXAMINATION

Landscape and visual

Baseline and assessment methodology

- 3.6.50 The SoCG between DCC, SDDC and the Applicant [[REP8-017](#)] includes agreement of the study area, landscape characteristics, that there are no landscape designations covering the site or within the study area, the use of ZTV mapping, the selection of representative viewpoints, and that the visualisations demonstrate the worst-case scenario in terms of visibility.

Visualisations

- 3.6.51 Diane Abbott [[REP1-043](#), [REP4-022](#), [REP5-049](#), [REP6-057](#)] raises a number of concerns about the Applicant's visualisations, including:
- when compared with her own photos and measurements, which are provided in detail, the Applicant's visualisations do not seem to be accurately calibrated and misrepresent the effects;
 - in many of the visualisations, the distant hedges (typically 1.5 to 2.5m tall) are not fully obscured by the 2.7m high solar panels that are immediately in front of them;
 - the visualisations do not show the correct relationship between solar panel height, fence height and observer;
 - the Applicant fails to explain why the solar panels at the top of the hill are shown as less than half the height of the hedge and state that the portacabin is modelled at 2.3m tall which seems exceedingly low;
 - there is heavy reliance on computer modelling and a lack of focus on sense checking what can be seen in the visualisations;
 - it is essential to use on-site measurements and real-world visual markers to verify the camera angle, scaling and positioning within the composited images;
 - having viewed the Applicant's images (detail provided) it appears that the variance between the data sets might be larger than the 46cm stated by the Applicant; and
 - the Applicant's visualisations are misleading and do not provide a reasonable representation of how the solar farm would change the local environment and may have impacted the findings of the assessment.

- 3.6.52 The Applicant's responses [[REP3-031](#), [REP4-011](#), [AS-026](#), [REP5-025](#), [REP6-041](#), [REP7-009](#), [REP8-020](#)] include:
- responses to Diane Abbotts photos and measurements, concluding that the heights of existing elements are modelled at the correct scale;
 - the details raised are largely a function of perspective, but also due to the limitations of the digital terrain model (DTM) which provide a proxy for exact ground levels, and have a slight variation from what is 'true' to the actual landscape;
 - slight variations to ground level are normal limitations of the process and do not change the resulting assessment of effects;
 - solar panels have been set back by over 5m from the edges of fields and are not immediately in front of the field boundary hedgerows as suggested;
 - whilst measurement of heights within the landscape and their comparison with visualisation may appear useful, this does not account for perspective or how a panoramic image must be distorted to allow it to be viewed on screen or on paper;
 - the visualisations were checked in two ways, the Applicant is confident there are no unusual or unexpected variations, and the visualisations are a good representation of what the development would look like, albeit not an exact replica of reality;
 - none of the differences are appreciable in terms of the landscape and visual effects that they would lead to, and none would alter the levels of effects that the assessors have reached;
 - the visualisations have been prepared by experienced professionals, who are Chartered Members of the Landscape Institute, using industry standard software, data and industry guidance; and
 - the visualisations are fit for purpose as they are accurate to an appropriate degree.
- 3.6.53 I [[PD-012](#), [EV4-002](#)] asked the Applicant to set out the calibration undertaken of the DTM, quantify the difference in levels between the DTM and actual ground levels, and consider whether this should be demonstrated with a topographical survey, provide evidence of whether the datasets used for calibration (LiDAR) was derived independently of that used in the DTM (OST5).
- 3.6.54 Replying to my requests, the Applicant [[AS-026](#), [REP5-033](#)] says that:
- the visualisations use published terrain models, not detailed topographical surveys;
 - the visualisations were prepared using a model calibrated in accordance with industry guidance, and using an industry standard dataset;
 - the DTM was checked using digital markers placed into the virtual model and by cross checking the DTM against the alternative LiDAR dataset;
 - OST5 is produced by Ordnance Survey and based on terrain;
 - LiDAR data is available through DEFRA and based on data gathered from aircraft;
 - a comparison using available LiDAR, OST5 and a topographical ground survey show a variation across the ten spot checked heights of between 0.01cm and 0.46m, with OST5 typically sitting a little higher than the topographical survey and presenting in this case a worst-case scenario;

- the visualisations are accurate to an appropriate degree, within the normal limitations of the process;
- the visualisations are one of several tools used to determine levels of effect; and
- professional judgements are informed by inspections in the field, and examination of the ZTV to ensure that they are fully sense checked.

3.6.55 SDDC [\[REP4-014\]](#) is content with the landscape and visual assessment and considers that potential inaccuracies in the visualisations would not undermine the conclusions.

Security and lighting

3.6.56 DCC and SDDC [\[REP2-001\]](#) say that the introduction of high fencing and security cameras would contribute to a significant change to the landscape, resulting in an urbanising impact on a large area of land that is entirely rural in character.

3.6.57 The Applicant [\[REP3-033\]](#) replies that the Proposed Development would be secured with fencing and gates and would employ minimal lighting for security and personnel safety at specific operational points only, such as site entrances, and the BESS and on-site substation located in the centre of the site. It expects no light pollution issues.

3.6.58 The Applicant [\[REP3-033\]](#) adds that the BESS and on-site substation would be surrounded by steel palisade security fencing up to 3m high for added security and protection. Access points would be secured with metal gates and measures to prevent unauthorised access. CCTV mounted on 3.51m poles would be installed at appropriate locations around the Proposed Development. The rest of the site would be secured by 2.1m stock wire mesh deer fencing with wooden posts and may have a single line of barbed wire. Wire mesh fencing with steel posts would be installed where additional security is required along Coton Road. Other fencing would be 1.5m post and wire agricultural stock fencing for contain grazing animals within the site.

3.6.59 In the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) it is agreed that operational lighting to alarm lights on transformer stations would only be activated in case of theft and deer fencing along the edge of the site would be positioned behind existing/ proposed hedgerows to reduce its visibility.

Noise

3.6.60 Responding to my query about compliance with paragraph 5.10.22 of NPS EN-1, the Applicant [\[REP1-025\]](#) says that:

- the measures taken to mitigate the impacts of noise on sensitive receptors, as detailed in ES Chapter 11 [\[REP4-045\]](#) would prevent detrimental impacts from noise directly on receptors and their experience of landscape and visual matters;
- following mitigation, the residual noise effects from construction would be negligible to minor and minor from construction related traffic, and not significant;
- the residual noise effects during the operation stage of the Proposed Development would be negligible, with some low levels of sound potentially audible at times when the background noise from other sources is very low;
- footpath users are considered to have low sensitivity to noise and vibration, as transitory users, and mitigation measures would minimise impacts on them; and
- the residual effects would not be capable of having a significant impact on the experience of the landscape or of views from sensitive receptors.

The National Forest

3.6.61

The National Forest Company [\[RR-315\]](#) [\[REP1-046\]](#) [\[REP4-020\]](#) explains that it is a charity and Non-Profit Institution sponsored by DEFRA, says that its National Forest Strategy 2014-24 sets out the approach for the creation and management of the National Forest, and raises concerns, including that:

- to comply with the National Forest Strategy and Policy INF8 of the South Derbyshire Local Plan, the proposal must deliver significant woodland planting and not form a barrier to habitat connectivity;
- Policy INF8 requires that within the National Forest, the siting and scale of the Proposed Development is appropriately related to its setting, and respects and does not adversely affect the character and appearance of the wider countryside;
- anticipate significant woodland blocks being proposed which maximise habitat connectivity between the existing woodland blocks surrounding the solar farm, including Rosliston Forestry Centre, Redferns Wood and Thompsons Wood;
- the proposals for 5.51ha of woodland, 0.71ha of mixed scrub and 3.48ha of urban trees represents tree planting on a very small percentage of the site;
- for a development of over 10ha, at least 30% of the site should be woodland planting and landscaping to contribute to the creation of the Forest; and
- tree planting should be allowed to realise its potential rather than being restricted by the conflict between shading and the solar panels and should be in areas where the planting offers the highest benefits to both nature and people.

3.6.62

The Applicant [\[REP1-023\]](#), [\[REP3-031\]](#), [\[REP5-024\]](#) replies that:

- paragraphs 2.8 - 2.11 of the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] details the consideration given to the National Forest, how this influences the design approach, and consultation with the National Forest Company;
- Policy INF8 refers to National Forest Planting Requirements, which set out expected levels of landscaping and new planting for different types of developments and solar farms are not included as a development typology;
- the Proposed Development would also provide for 6.3ha of scattered tree planting, as shown on the landscaping scheme in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A];
- the proposed woodland and tree planting is considered appropriate and suitable for Proposed Development whilst contributing to the objectives of the National Forest;
- it appears that much of the proposed woodland planting correlates with the areas that the National Forest Company identifies as offering the highest benefit;
- the Illustrative Landscape Strategy Plan shows that the section of National Forest Way crossing the site would be enhanced with planting of woodland, species-rich grassland, new hedgerow, ditch creation and enhancing existing hedgerows;
- it would not be possible to substantially increase the level of woodland or scattered tree planting proposed without directly reducing the extent of the solar arrays and therefore the generating capacity of the solar farm; and
- the Proposed Development would make a significant contribution to the National Forest and is consistent with Policy INF8 for tree planting and connectivity.

3.6.63 SDDC [\[REP1-029\]](#) says that reasonable opportunities are taken to provide more woodland, and to support Policy INF8 in relation to potential landscape and visual effects. It considers that the Proposed Development is consistent with Policy INF8 in relation to tree planting and connectivity depending on the amount and extent of necessary tree felling for the safe delivery of the Proposed Development. Following the Applicant's updates to the Arboricultural Survey Report [\[REP6-026\]](#), which includes a Tree Removal and Retention Plan that identifies where trees would be removed, SDDC [\[REP6-047\]](#) advises that it has no further concerns in relation to compliance with Policy INF8 and would review detailed tree works once provided.

Design parameters

3.6.64 I [\[PD-010, PD-012\]](#) asked the Applicant to ensure that the design parameters relied on for the assessment are clearly identified and secured by the dDCO [\[REP8-003\]](#). The Applicant [\[REP1-025, REP4-011\]](#) then amended Requirement 5(2) and the definition of 'design parameters' in the dDCO [\[REP8-003\]](#) to reference Table 4.2 of the ES 'Design Parameters used in the EIA'. Responding to my request, it then added the ES Chapter 4 (Project Description) [\[REP6-031\]](#), which includes Table 4.2, to the list of documents to be certified under Schedule 12 of the dDCO [\[REP8-003\]](#).

3.6.65 Responding to my query [\[PD-010\]](#) whether the Applicant is content for solar panels, including any replacement, to be restricted to a maximum height of 2.7m during the 40 years of the operation stage, the Applicant [\[REP1-025\]](#) says that it is content. It adds that if there is valid case that taller panel height is necessary or in the national interest in future, then it would pursue amendments through the relevant regime at such time.

3.6.66 Responding to my query [\[PD-010\]](#) in relation to paragraph 5.10.38 of NPS EN-1, the Applicant [\[REP1-025\]](#) says that it appropriately provides for design details relating to landscape and visual impacts in the dDCO [\[REP8-003\]](#), for example, through:

- Requirement 5, which requires the Applicant to submit to and have approved in writing by the LPA details of the layout, scale, proposed finished ground levels and external appearance of the proposed infrastructure; and
- Requirements 6, 7, and 8, each of which place requirements to ensure landscape and visual impacts are avoided and mitigated as assessed within the ES.

3.6.67 SDDC and DCC [\[REP8-017\]](#) advise that the wording of Requirement 5 is appropriate and sufficient to ensure that final details of the Proposed Development are provided to the LPA for approval, and the identification of the design parameters in documents certified in the dDCO [\[REP8-003\]](#) provides sufficient clarity about the parameters against which the detailed design would be assessed.

Other mitigation

3.6.68 Responding to my requests [\[PD-010, PD-012\]](#) the Applicant [\[REP1-025, REP4-011\]](#) provides justification for why the effects at various receptors would reduce from Year 1 to Year 10, the specific mitigation measures necessary to achieve that, and how the mitigation is secured. The Applicant updated ES Chapter 5 [\[AS-027\]](#) accordingly.

3.6.69 Similarly, the Applicant [\[REP1-025\]](#) updated the Outline LEMP [\[REP4-040, REP3-025 Appendix A\]](#) so that it identifies and specifies the embedded mitigation relied on in ES Chapter 5 [\[AS-027\]](#) to ensure the proposed landscaping is secured such that there is sufficient confidence that the development would result in the residual effects identified in the ES. It also updated the Outline LEMP [\[REP4-040, REP3-025 Appendix A\]](#) following a review of requirements for further surveys, monitoring and maintenance to

ensure the residual effects identified in the ES remain as predicted throughout the 40 year development lifetime.

3.6.70 Diane Abbott [\[REP1-043\]](#) does not agree that the proposed mitigation (hedge and tree planting) is sufficient to minimise the impact within ten years due to the rolling topography, and considers that the proposed use of obscure netting or similar for ten years or more whilst hedgerows grow up is not designed to minimise landscape or visual effect. The Applicant [\[REP3-031\]](#) says that the solar panels are relatively low lying features, notes the distances from the Proposed Development and the features that separate the properties from them, says that solar panels were drawn back from properties to reduce the magnitude of change, and considers that the approach taken to assessing potential landscape is appropriate. It says that the netting is to reduce glint and glare effects rather than mitigate landscape and visual effects.

3.6.71 The Applicant [\[REP6-024\]](#) considers that there would be a reduction in magnitude of change in views and visual amenity because of the Proposed Development at Pennywort Cottage from medium to low-medium at Year 10 due to enhancements to hedgerows. I noted the elevation of solar panels above intervening hedgerows during a site inspection [\[EV7-001\]](#) and so I [\[PD-014\]](#) asked the Applicant to justify the claimed reduction in magnitude of change in views. The Applicant [\[REP6-042\]](#) replies that:

- the Residential Visual Amenity Assessment [\[REP6-024\]](#) acknowledges that solar panels (notably in fields O2 and O5) would be seen above field boundaries when viewed from the eastern façade and rear garden of Pennywort Cottage, because the land rises up to the east, away from the property;
- the solar panels would be approximately 350m away from Pennywort Cottage, with the intervening view remaining one of agricultural fields, hedgerows, and trees;
- there would be some filtering by trees along the western boundary of field O2 and by vegetation along the edge of the property;
- solar panels are not proposed on the western half of field O5, being the most prominent slope that is seen from the property;
- there would be a medium magnitude of change as solar panels would be clearly discernible from the eastern aspect of the property, driveway, and rear garden;
- the hedgerow between fields O1 and O2 would be enhanced further to assist in filtering views of PV panels on the rising landform within field O1 and a belt of woodland understorey planting with trees, would be planted around the western edge of the solar panels within fields O2 and O5; and
- planting would be well established by Year 10, filtering views of the Proposed Development and the adverse visual effects experienced from Pennywort Cottage would reduce the magnitude of visual change to low-medium at Year 10.

3.6.72 In the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) it is agreed that measures to reduce and mitigate landscape and visual effects included within the proposed layout are:

- setting solar panels back from field edges to preserve field patterns;
- avoiding loss of trees and hedgerows as much as possible;
- providing new native planting of local provenance in character with the landscape of the site and its surroundings and in line with the management guidelines of the Village Estate Farmlands LCT and the aims of The National Forest;

- reducing views from Rosliston by keeping the pastoral field partly visible from the edge of the settlement above the tree line in the foreground free from solar panels, using Redferns Wood to filter or screen views, planting new woodland to further filter views and provide a wooded backdrop against which solar panels would be seen on the skyline, and locating the on-site substation and the BESS in a lower lying area near the centre of the site so that they are not visible from the settlement;
- reducing views from Coton-in-the Elms by strengthening existing field boundaries within the site and changing the management of the hedgerow along south-eastern boundary (Catton Lane) by allowing it to grow significantly taller, providing filtering of the Proposed Development;
- setting solar arrays at least 100m away from residential properties and ensuring that the design of the Proposed Development was carefully considered;
- seeking to integrate ancillary components into the agricultural landscape through careful selection of material and finishes such as deer fencing around the solar arrays, using a dark and recessive colour for the BESS and transformers, and surfacing permanent access tracks with locally sourced gravel; and
- landscape and ecological proposals to help mitigate the landscape and visual effects are detailed in the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A].

Landscape and visual impacts

3.6.73 DCC and SDDC [[REP2-001](#)] consider that:

- the Proposed Development would represent a significant and fundamental change from an agricultural to an industrial use on a very substantial scale;
- its extent and form are wholly contrary to the character of the landscape and would have a significant adverse impact;
- the site is on the highest part of land between the villages of Walton-on-Trent and Coton-in-the-Elms, would be visible from several vantage points in the vicinity, and solar panels would be on the ridge line and erode the ridgeline;
- the Proposed Development would require substantial tree and hedgerow planting to help mitigate the visual impact, resulting in a substantial alteration to the landscape character of the area the effects of which would be permanent; and
- the Proposed Development would have a negative landscape and visual impact on the surrounding environment during the construction, operation, and decommissioning stages.

3.6.74 In the SoCG between DCC, SDDC and the Applicant [[REP8-017](#)] it is agreed that the landscape and visual effects of the Proposed Development would be:

- a major significant adverse effect on the landscape character of the site up to around 500m from the Proposed Development reducing to a moderate significant adverse effect once the proposed planting matures (>10 years);
- no significant effects on landscape character beyond around 500m;
- a major significant adverse effect on views experienced by road users of a short section of Coton Road/ Church Street and users of the Cross Britain Way for the section that passes through the site, reducing to a moderate significant adverse effect once the proposed planting matures (>10 years);

- a moderate adverse significant effect for residents at the Coppice View and The Chase in Rosliston;
- a moderate adverse significant effect on local road users surrounding the site and PRow users in the southern part of the study area, reducing to a minor (not significant) once the proposed landscaping matures (>10 years);
- a high magnitude of change for the Twin Oaks residential property 1(e) (Oaklands Farm landowner's property), although no residential properties would experience a breach of the Residential Visual Amenity Threshold; and
- no significant cumulative effects with other proposed or permitted development.

Glint and glare

Residential amenity, road, and PRow users

- 3.6.75 DCC [\[RR-078\]](#) initially set out concerns about potential impacts of glint and glare, including on local receptors and traffic. The Applicant [\[REP1-023\]](#) refers to the mitigation and impacts in ES Chapter 14 [\[REP4-047\]](#) and concludes that it is not aware of any potential for glint and glare to occur which would give rise to issues in terms of residential amenity or road safety.
- 3.6.76 Diane Abbott [\[REP1-043, REP4-022\]](#) raises concerns about the assessment, including:
- modelling reflections from mid-height of the panel rather than the top;
 - only considering the ground floor of dwellings as possible receptors;
 - only considering receptors within a 1km radius;
 - local road users are only given a low sensitivity;
 - local residents only have a medium sensitivity;
 - significance of effect thresholds not to best practice guidance;
 - the impact levels have been accepted on several projects in the UK and the assessment approach is considered appropriate;
 - in the absence of a BS, the Applicant defines its own thresholds which are roughly a doubling of the German guidance;
 - the Applicant's reliance that its criteria and methodology have been used on other projects does not necessarily give them credibility as this is a technical area, and it is possible that previous project stakeholders simply have not had the time, experience or expertise to be able to investigate and refute its findings; and
 - without empirical evidence of the validity of its models in real world situations, it is hard to evaluate whether its predictions are accurate.
- 3.6.77 In relation to those concerns I [\[PD-012, PD-014\]](#) ask the Applicant to:
- justify how consideration of modelling using the mid-point of the panel is a reasonable worst case rather than modelling using a higher point;
 - clarify how it considers visibility, screening, and impacts on the upper floors of dwellings;

- comment on the potential for the upper floors of dwellings to be subject to glint and glare when the ground floor isn't, for example when intervening hedgerows would mitigate effects on the ground floor but not the upper floors;
- provide evidence that any residential dwellings that could potentially be impacted do not have a main living space on an upper floor; and
- justify how it concludes low potential degradation of safety to users of local roads, including horse riders, agricultural vehicles, and lorries.

3.6.78 The Applicant [[REP3-031](#), [REP4-011](#), [REP5-034](#)] says that:

- the midpoint of the solar panel is used for the geometric modelling as the model uses just a single height, but visibility and screening recommendations for glint and glare effects are based on the maximum height of the panels;
- in almost all cases, the difference between assessing the midpoint and the top point of the panel would be negligible, in a very small number of cases the panel height being above the receptor can mean that the modelling output would show no solar reflections are geometrically possible;
- modelling the midpoint of the panel is the most robust approach to the assessment as it reduces the potential for effects to be overstated/ understated by assessing the top/bottom of the panel;
- it has run cross-checks on previous examples to determine the significance of assessing the midpoint of the panel vs the top point and these check show that difference in modelling results is negligible in most cases;
- geometric modelling uses a point on the ground floor of the dwelling, the modelling output is then used as a proxy for the output of the upper floors as the difference in the modelling results from the ground floor and from the first floor is negligible, and the judgement of visibility, screening, and impacts is then made qualitatively along with views from the ground floor using available imagery and site photography;
- the ground floor is used as this is typically the main living space during daylight hours, which also represents industry best practice, there is no evidence that any dwellings within the assessment area have living spaces above the ground floor, the properties are traditional houses and not blocks of flats where a main living space is likely on all floors, or an 'upside down house' where bedrooms are typically located on the ground floor and the main living spaces on the first floor, and no local residents have provided a response or evidence to suggest that they have a main living space above the ground floor;
- of the 85 dwelling receptors where solar reflections are geometrically possible, observers at 44 dwellings are not predicted to experience any effects, and no significant effects are predicted for any of the observers at the 41 dwellings that may experience effects from above the ground floor;
- a 1km study area for ground-based receptors is adopted because the proportion of an observer's field of vision taken up by the reflecting area diminishes as separation distance increases and although solar reflections could be experienced from the panels at further distances, they are not considered significant;
- the justification for local roads being of low sensitivity is provided in ES Chapter 14 [[REP4-047](#)], which says that they typically have the lowest traffic densities and low potential impact of a distraction or degradation to safety and/ or operation;

- low potential degradation is concluded as local roads have the lowest traffic densities and speeds, and a road user would require much greater level of concentration to safely travel along busy roads at high speeds, compared to the level of concentration required to safely travel along empty roads at slower speeds;
- the justification for dwellings being of medium sensitivity is provided in ES Chapter 14 [\[REP4-047\]](#), which says that there is some capacity for observers to experience solar reflections for certain durations throughout the year or on any given day without causing a significant reduction in residential amenity;
- the comparison to German guidance does not alter the appropriateness of the assessment and neither methodology necessarily presents the worst-case;
- the German guidance deems critical receptors (i.e. where significant effects can occur) mostly to be those within 100m of a site, for the Proposed Development the closest receptor is approximately 200m from the closest panel and therefore no dwellings could be considered critical under the German guidance;
- the German guidance only considers solar reflections that do not coincide with direct sunlight, for the Proposed Development solar reflections coinciding with direct sunlight is a common glare scenario for each receptor and the Applicant's methodology is more likely to over-predict glare, as opposed to under-predicting it when compared to the German Guidance; and
- the impact levels have been accepted on several projects in the UK and the assessment approach is considered appropriate.

3.6.79 Councillor Amy Wheelton [\[REP1-039\]](#) questions whether the assessment considers horse riders, agricultural vehicles and lorries that sit higher on the road than car users. Diane Abbott [\[REP1-043\]](#) suggests that impacts on horse-riders are not analysed. She says that road users are assessed at a height of 1.5m above ground level and considers that this does not come near to the height of horse riders, or drivers of farm equipment, vans, trucks, or HGVs. She questions whether the screening would be effective for drivers of tall vehicles.

3.6.80 The Applicant [\[REP3-031\]](#) replies that it is not aware of any potential for glint and glare to occur which would give rise to issues in relation to the safety of different road users. The Applicant updated paragraphs 5.43 and 5.44 of the Outline LEMP [\[REP4-040, REP3-025 Appendix A\]](#) to provide for screening for glint and glare to be maintained to at least 3m in height.

3.6.81 Responding to my [\[PD-012\]](#) request to clarify its assessment of potential effects on horse riders, agricultural vehicles, and lorries, and how it accounts for level differences compared with car users or pedestrians, the Applicant [\[REP4-011, REP5-034\]](#) says:

- the methodology, in accordance with industry standards, is to consider elevated road users in more detail on dual carriageways and motorways due to the typically higher densities of elevated drivers compared to other types of roads, and as the assessed roads are not dual carriageways or motorways it only considers potential impact on general road users;
- impacts on horse riders are not assessed as solar reflections from solar panels are of very similar intensity to those of common outdoor reflective surfaces, which are commonly encountered by horses and riders in a rural environment, and studies showing this are presented in ES Appendix 14.1 [\[REP4-034 Appendix B\]](#); and
- the approach is consistent with over 1,400 assessments using the same methodology and the British Horse Society recently stated in its 'Advice on solar

farms near routes used by equestrians' document [\[REP6-042\]](#) Appendix D] that "reflections are unlikely to be a direct problem to horses, riders, or carriage-drivers".

- 3.6.82 The British Horse Society advice [\[REP6-042\]](#) Appendix D] includes that photovoltaic panels "... are designed to absorb rather than reflect light for efficiency (reflected light is wasted energy) and although the amount of reflection varies with the component materials and the angle, the incidence of glare or dazzle is very low compared with glass and will not be uniform throughout a period of sunlight, assuming that the panel is static. Any reflection is unlikely to be a direct problem to horses, riders or carriage-drivers because of the angles and distances involved."
- 3.6.83 SDDC [\[REP4-014\]](#), [\[REP5-040\]](#) says that it does not have any concerns in relation to glint and glare and provides a detailed review [\[REP5-038\]](#) of the Applicant's assessment, which includes that:
- it agrees with modelling from the midpoint of the panel as opposed to the highest or lowest panel points, modelling of the highest or lowest panel points may under- or over-predict glare at receptors, and while this remains a limitation for modelling of panel midpoint heights the limitation is minimised as the potential difference between average modelled height and actual height is smaller;
 - there is no formal guidance for the assessment of solar reflections toward roads and residential dwellings and the guidance used by the Applicant for assessing road safety and residential amenity is considered robust;
 - considering the screening cover and mitigating factors through other months, the assessment conclusions for residential dwellings are robust; and
 - the analysis that the overall impact upon pedestrians and horse riders is low and no mitigation is required is reasonable and in line with industry guidance.
- 3.6.84 The Applicant [\[REP1-025\]](#) updated the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] to identify the landscaping mitigation, including fencing, identified in ES Chapter 14 [\[REP4-047\]](#) as being required to mitigate glint and glare effects.
- 3.6.85 In the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) it is agreed that:
- the further review of the vegetation screening at road receptors 15 and 56 and additional evidence regarding vegetation screening and line of sight at worst case residential dwelling receptors referred to DCC's and SDDC's LIR [\[REP2-001\]](#) would be addressed at detailed design stage as they are not matters of concern; and
 - to eliminate potential adverse effects on road users, two areas of c.300m in length along Coton Road and an unnamed road north west of Coton-in-the-Elms would be planted with new hedgerow and have temporary screening installed (until such time as the hedgerow matures) to obscure any glare from the panels on road users, and this is secured in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A].

Aviation and defence

- 3.6.86 DCC [\[RR-078\]](#) initially set out concerns about the potential impacts of glint and glare, including on aircraft associated with East Midlands International Airport, and Derby Airfield. The Applicant [\[REP1-023\]](#) with reference to the mitigation and impacts in ES Chapter 14 [\[REP4-047\]](#) and concludes that it is not aware of any potential for glint and glare to occur which would give rise to issues in terms of aviation.

- 3.6.87 Referring to paragraphs 5.5.39 of NPS EN-1 I [\[PD-010, PD-012\]](#), I invited the Applicant to provide evidence of consultation with the Ministry of Defence, Met Office, Civil Aviation Authority, NATS and any aerodrome likely to be affected by the Proposed Development and explain why it does not follow the recommendation of its specialist to consult with the aerodromes where a low impact is predicted and when aviation activity at those aerodromes is dynamic or the aerodrome is licensed.
- 3.6.88 The Applicant [\[REP1-025, REP4-011\]](#) considers that:
- paragraph 5.5.39 NPS EN-1 needs to be read in the context of paragraph 5.5.37, which states that an assessment of potential effects should be set out in the ES where there may be an effect on civil or military aviation communications, navigation, and surveillance, meteorological radars and/or other defence assets;
 - none of the parties listed in paragraph 5.5.39 NPS EN-1 provided a response at EIA Scoping or submitted a Relevant Representation, with the Civil Aviation Authority and NATS formally notified of the acceptance of the application;
 - on the basis that no aerodrome was identified as being likely to be affected, it was not considered necessary to consult the parties identified in NPS EN-1 for the assessment of effects on aviation, meteorological or other defence interests; and
 - a ‘low potential for temporary after-image’ is predicted for Grangewood Airfield, Sittles Farm Airstrip, Fisherwick Airfield, Streethay Farm Airstrip, and Tatenhill Airfield, the glare adheres to industry best practice guidelines, and the Applicant’s specialist would not recommend consultation on that basis.
- 3.6.89 I also requested that the Applicant set out how it identifies the most frequently flown flight paths and the most critical stages of flight for Grangewood Airfield and how the assessment can be considered robust.
- 3.6.90 The Applicant [\[REP4-011\]](#) replies that:
- the assessment considers the final sections of standard general aviation circuits and final mile approaches to the airfield as these are the standard receptors that are assessed unless specific circuit dimensions are found;
 - the methodology, which is an industry standard approach, is to capture the most critical stages of flight rather than to assess all potential stages of flight;
 - these receptors have been discussed with the Civil Aviation Authority Airfield Advisory Team and go beyond assessing the typical 2-mile approach paths, which is more suited to licensed aerodromes; and
 - it updated paragraph 4.2.2 of ES Appendix 14.1 [\[REP4-034\]](#) accordingly.
- 3.6.91 SDDC [\[REP4-014, REP5-040\]](#) says that it does not have any concerns in relation to glint and glare and it [\[REP5-038\]](#) has reviewed the guidance used by the Applicant for assessing aviation activity and considers it to be robust.
- Anti-reflective coating on the solar panels
- 3.6.92 With the quantity of solar panels, Lichfield District Council [\[RR-172\]](#) encourages the conditioning of low-reflective materials to address local amenity concerns. Responding to my invitation [\[PD-010\]](#) to comment on whether mitigation using anti-reflective glass or anti-reflective coating should be secured, DCC and SDDC [\[REP1-026, REP1-029, REP2-001\]](#) say that the Applicant models solar panels with anti-reflective coating and recommend that the Applicant confirm that an anti-reflective coating would be applied.

- 3.6.93 The Applicant [[REP3-032](#), [REP4-011](#)] subsequently updated Table 4.2 of ES Chapter 4 [[REP6-031](#)] and the Design Statement [[REP6-035](#) Appendix B] to secure the installation of dark blue or black solar modules with anti-reflective coating, before adding Requirement 5(k) to the dDCO [[REP8-003](#)] for no phase of the authorised development to commence until details of the anti-reflective coating to be used on the solar modules have been submitted to and approved in writing by the LPA.
- 3.6.94 SDDC [[REP4-014](#)] considers it appropriate for the LPA to approve details of the anti-reflective coating to be used on the solar modules.

Glint and glare impacts

- 3.6.95 In the SoCG between DCC, SDDC and the Applicant [[REP8-017](#)] it is agreed that there would be minor and not significant glint and glare effects on road users, public rights of way, nearby residences and aviation activity, and no significant cumulative effects with other proposed or permitted developments.

CONCLUSIONS ON LANDSCAPE AND VISUAL, GLINT AND GLARE

Landscape and visual

- 3.6.96 I note that DCC and SDDC agree with the Applicant's consideration of the study area, landscape characteristics and designations, use of ZTV mapping, and selection of representative viewpoints, and have no reason to differ.
- 3.6.97 Diane Abbott details concerns about the accuracy of the visualisations in the assessment, and I asked several related questions, which the Applicant responds to. I find that there is some imprecision in the visualisations, including inaccuracies of up to 0.46m from use of available information on ground levels rather than a topographical survey, and distortions from allowing the visualisations to be viewed on a screen. It is apparent that the visualisations are not an exact representation of reality. However, I find them sufficient and proportionate to the type and scale of the Proposed Development and as part of an assessment that I am content makes appropriate use of professional judgement. I agree with SDDC that inaccuracies in the visualisations do not undermine the conclusions of the landscape and visual assessment.
- 3.6.98 There is clear evidence of the assessment of the landscape and visual impact of the solar arrays, the BESS, transformers, CCTV, lighting, fencing and other security measures and equipment, and noise.
- 3.6.99 I note the Applicant's detailed responses to the concerns raised by the National Forest Company, that SDDC considers that reasonable opportunities been taken to provide more woodland, and to support SDDC Policy INF8 in relation to potential landscape and visual effects. Towards the end of the Examination, SDDC advises that it has no concerns in relation to compliance with Policy INF8. I have no concerns in relation to SDDC Policy SD6, Policy BNE4 or Policy INF8.
- 3.6.100 I am satisfied with the Applicant's responses to queries about the effectiveness of hedge and tree planting and the visual amenity assessment for Pennywort Cottage and am content that visual amenity is considered appropriately.
- 3.6.101 Based on the above I am satisfied that the assessment scope and methodology is sufficient for the purposes of paragraphs 5.10.12, 5.10.17 and 5.10.21 of NPS EN-1 and paragraph 2.10.47 of NPS EN-3.

- 3.6.102 I am content that the Applicant's updates to ES Chapter 5 [\[AS-027\]](#) justify why the effects at various receptors would reduce from Year 1 to Year 10 identifies the mitigation needed to achieve that. I also find that the updates to the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A] address my concerns about identifying and specifying the embedded mitigation relied on in ES Chapter 5 [\[AS-027\]](#) and that it includes sufficient measures for surveys, monitoring and maintenance.
- 3.6.103 I find that the Applicant considers functionality and aesthetics and how adverse effects would be mitigated by good design. I am content that Requirements 5-8 of the dDCO secure related mitigation appropriately through the design parameters referenced in the ES Chapter 4 [\[REP6-031\]](#), including in relation to size, number, location, colour and appearance, and through the need for detailed design and other approvals by the LPA. The Outline OEMP [\[REP6-020\]](#) secures mitigation measures for lighting. I also note the mitigation agreed between DCC and SDDC and the Applicant in their SoCG and the measures included in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A].
- 3.6.104 DCC and SDDC consider that the dDCO [\[REP8-003\]](#) ensures that final details of the Proposed Development are provided to the LPA for approval and secures design parameters with sufficient clarity for the assessment of the detailed design.
- 3.6.105 It follows that I am content in relation to paragraphs 5.10.27, 5.10.29-30, and 5.10.37-38 of NPS EN-1, and paragraphs 2.10.98-99 and 2.10.132-133 of NPS EN-3.
- 3.6.106 I am satisfied that the mitigation measures address the temporary nature of relevant impacts, and the timescales required for mitigation measures to become effective. I am content with the mitigation in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A], including hedgerow and woodland planting, that it secures and, overall, that appropriate mitigation is secured for landscape and visual impacts.
- 3.6.107 BNG is secured by Requirement 8 of the dDCO [\[REP8-003\]](#). The Applicant considers enhancements during the operation stage for grassland, hedgerows, woodland habitat, tree planting, and meadows, and long-term benefits of planting for the landscape and amenity, respecting local distinctiveness. I am satisfied with the BNG provisions in Requirement 8 and with the consideration given to benefits and enhancements.
- 3.6.108 My findings about the assessment, mitigation, benefits, and enhancements lead me to be satisfied in relation to paragraphs 4.7.11, 5.10.19, 5.10.22, 5.10.24 and 5.10.36 of NPS EN-1 and paragraphs 2.10.43, 2.10.48, 2.10.102 and 2.10.131 of NPS EN-3.
- 3.6.109 Further to the submissions from the Applicant, DCC and SDDC, I accept that the significant landscape and visual effects would be:
- major adverse effect on landscape character up to around 500m from the site reducing to a moderate adverse effect once planting matures (>10 years);
 - major adverse effect on the views of road users of a section of Coton Road/ Church Street and users of the Cross Britain Way reducing to a moderate adverse effect once planting matures (>10 years);
 - a moderate adverse effect for residents at Coppice View and The Chase in Rosliston; and
 - a moderate adverse effect on road users around the site and PRow users in the southern part of the study area until landscaping matures (>10 years).

Glint and glare

- 3.6.110 Diane Abbott details concerns about the glint and glare assessment, and I asked several related questions, all of which the Applicant responds to. My consideration of these concerns is somewhat hampered by an apparent lack of independent guidance on glint and glare impact assessments. It is also not clear to me what professional qualifications are appropriate for a glint and glare assessor. This leads me to rely on the Applicant's experience and SDDC's independent review.
- 3.6.111 The Applicant's responses illustrate that the assessment relies on a combination of a quantified assessment of geometric reflections combined with professional judgement. Although more quantification could arguably have been provided in the assessment, I note that SDDC has no concerns in relation to industry best practice or the use of professional judgement. I therefore conclude that I am content with the consideration given to residential amenity and that the effects would not be significant.
- 3.6.112 In relation to agricultural vehicles and lorries, I do not find the Applicant's suggestion that elevated road users require less concentration when using relatively narrow rural roads with blind corners than when using dual carriageways and motorways. I do, however, find the British Horse Society's advice about glare and dazzle helpful, note that SDDC is content, and note the updates to provide for screening for glint and glare to be maintained to at least 3m in height. On this basis I conclude that significant effects are unlikely for horse riders, agricultural vehicles, or lorries.
- 3.6.113 I am content with the Applicant's updates to the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] to identify the landscaping mitigation, including fencing, identified in ES Chapter 14 [[REP4-047](#)] as being required to mitigate glint and glare effects and with adding anti-reflective coating to Requirement 5(1)(k) of the dDCO [[REP8-003](#)].
- 3.6.114 SDDC raises no concerns in relation to aviation activity. Downward facing lighting is secured in the Outline CEMP [[REP6-018](#)] and Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] secures that operational lighting would be downward facing. Taking these with the Applicant's responses leads me to be content in relation to paragraphs 5.5.39 and 5.5.55 of NPS EN-1 and paragraphs 2.10.158-159 of NPS EN-3.
- 3.6.115 Based on the above, and noting the SoCG between DCC, SDDC and the Applicant [[REP8-017](#)], I consider that the assessment methodology is adequate and I am satisfied that appropriate mitigation is provided for glint and glare. I have no concerns in relation to paragraph 5.5.60 of NPS EN-1 or paragraph 2.10.104 of NPS EN-3. I note that the Applicant, DCC and SDDC do not find any significant impacts from glint and glare and recommend accordingly.

Matters to be taken to Chapter 5 and the planning balance.

- 3.6.116 For the purposes of Chapter 5 and the planning balance, I conclude that:
- the landscape and visual impacts of the Proposed Development bring great weight against the making of the Order;
 - the adverse visual effects on sensitive receptors are to be weighed against the benefits of the project in accordance with paragraph 5.10.14 of NPS EN-1; and
 - the judgement of whether any adverse landscape impact would be so damaging that it is not offset by the benefits (including need) of the project is to be made in accordance with paragraph 5.10.35 of NPS EN-1.

3.7 NOISE AND VIBRATION

INTRODUCTION

- 3.7.1 This section addresses noise and vibration effects on human receptors. Noise and vibration effects on biodiversity are considered as necessary in Section 3.4 and Chapter 4. Traffic and transport is covered in Section 3.8 and nuisance in Section 3.10.

POLICY CONSIDERATIONS

NPS EN-1

5.12.6	Matters that should be included in a noise assessment.
5.12.13	Mitigation of operational and construction noise.
5.12.14	Example mitigation measures.
5.12.15	Good design, plant selection, and containment of noise within buildings.
5.12.17	Grounds for granting consent.

NPS EN-3

2.10.139	Vehicle movements during the construction stage.
2.10.140	Requirements to control vehicle movements.

NPS EN-5

2.11.7	Assessment methodology, mitigation, significant noise impacts.

Noise Policy Statement for England

- 3.7.2 The underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. Guidance on defining ‘adverse effects’ by reference to the No Observed Effect Level, Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL). It states that the aims should be to avoid noise levels above SOAEL and take all reasonable steps to mitigate noise effects where development noise levels are between LOAEL and SOAEL.

Local policies

- 3.7.3 The DCC/ SDDC LIR [\[REP2-001\]](#) refers to SDDC Policy SD1: Amenity and Environmental Quality.

THE APPLICATION

- 3.7.4 The Applicant’s case is mainly set out in ES Chapter 11 - Noise [\[REP4-045\]](#).

Assessment scope, methodology, study area and baseline

- 3.7.5 The assessment [\[REP4-045\]](#) considers the effects on noise and vibration sensitive receptors.

- 3.7.6 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - direct noise effects on noise sensitive receptors from enabling works for the construction compounds, installation of the on-site substation and BESS units, construction of temporary construction access tracks, excavation, site preparation works such as soil stripping, site levelling, cable trenches, installation of the solar PV arrays using pile driven foundations, installation of panels, noise from on-site construction traffic using internal haul roads and access tracks, and noise from off-site construction traffic using local lanes to connect to main roads; and
 - operation stage - direct noise effects from plant.
- 3.7.7 Matters scoped out of the detailed assessment include noise arising from construction traffic on main roads, noise and vibration from maintenance activities and traffic during the operation stage, noise from overground cables, vibration from construction and decommissioning activities, vibration from vehicle movements on public roads and access tracks on resources and receptors, and vibration during the operation stage.
- 3.7.8 Noise and vibration effects on users of PRoW crossing the site are scoped out as the Applicant considers that as construction activity would move around the site it would be unlikely to result in high levels of noise or vibration for prolonged periods at the PRoW.
- 3.7.9 The Applicant states that the assessment is carried out in accordance with guidance contained in the IEMA Guidelines for Environmental Noise Impact Assessment (2014), the Planning Practice Guidance on Noise (2019), BS 4142 (2014), BS 5228 (2009), and BS 8233 (2014).
- 3.7.10 Potential receptors are identified in the site and within 300m of the site boundary [[APP-161](#) Figure 11.1]. The three scenarios for proposed transport corridors are assessed [[AS-015](#) Figures 10.2-4]. The receptors considered are:
- on-site construction noise - Drakelow Park (housing), Grove Lodge, Park Farm Cottages, Park Farm House, Spring Farm Cottage, Corner Farm, The Old Byre (Walton Lane Farm), Walton Hill Farm, houses on the north-west edge of Rosliston, Twin Oaks House, Boroughfields Cottage, Pennyworth Cottage and Ladsgrave;
 - off-site construction traffic noise - properties on Main Street/ Walton Road, properties on the edge of Stapenhill including Fallow Drive/ Drakelow House, Donkhill Cottages and Catton Farm Cottages on Unnamed Rd West of Catton Lane, The Wilderness (near Catton Hall) and New Lodge properties on Catton Hall Road North of A513, and Ladsgrave Cottage and properties facing onto Church Street within Coton-in-the-Elms and toward the junction with the A444; and
 - operational noise - Fairfield Farm, Old Barn Farm, Corner Farm, The Old Byre (Walton Lane Farm), Walton Hill Farm, houses on the north-west edge of Rosliston, Twin Oaks House, Boroughfields Cottage, Pennyworth Cottage and Ladsgrave.
- 3.7.11 Baseline conditions are identified through a combination of:
- desk based research using data from EirGrid Evidence Based Environmental Studies Study 8 (2016), Building Research Establishment planning guidance for the development of large-scale ground mounted solar PV systems (2013), SDDC Local Plan and Supplementary Planning Documents (2017), NE Open Data Geoportal, and DDC Derbyshire Mapping Portal; and
 - noise surveys undertaken in May 2021 and November 2021 [[APP-157](#)].

- 3.7.12 The Applicant considers that ambient and background noise levels are generally controlled by road traffic noise on local roads, farm animals and birdsong. Local roads are relatively lightly trafficked and consequently noise levels around the site are low. The busiest road is Walton Road to the north of Park Farm.
- 3.7.13 Daytime background noise levels at the nearest residential properties typically range between approximately 30-45 decibel (dB) L_{A90} , with average ambient noise levels of approximately 40-55 dB L_{Aeq} . Measured background noise levels range between 18 dB L_{A90} at night and 50 dB L_{A90} during the day.
- 3.7.14 The A38, approximately 2km to the north-west was not observed to be audible but may contribute to background noise levels under a north-westerly wind direction. The Litchfield/ Tamworth to Burton Upon Trent railway line was not audible. The line carries freight traffic and there are sidings at Barton-under-Needwood approximately 2km to the east, both of which may contribute to the ambient conditions especially at night.
- 3.7.15 One of the existing high voltage (400kV) overhead lines crossing the site was observed to generate noticeable 'corona discharge', a crackle noise during dry conditions, which was measurable above the background noise level at around 50m away and in one location was faintly audible beyond 200m.
- 3.7.16 Short term noise sources include farming activities and some of the farm buildings in the area contain industrial units. Ventilation fans on barns at Oaklands Farm run continuously which control background noise levels at this location.
- 3.7.17 No significant sources of vibration were observed during the initial survey.
- 3.7.18 The significance of an effect is determined by considering the sensitivity of the receptor and the magnitude and duration of the effect. The magnitude is assessed with reference to predicted noise levels at a receptor and compared to measured background noise levels in the area, and to absolute noise levels in relation to baseline criteria presented in BSs and guidelines. Magnitude criteria for noise and vibration varies for different types of receptors.
- 3.7.19 The consideration of construction noise and vibration uses the methods for calculating noise from construction sites and criteria for magnitude of effect in BS 5228 (2009).
- 3.7.20 For operational noise at dwellings the Applicant considers BS 4142 (2014), SDDC's standard approach and, where existing background sound levels are very low, the absolute sound levels provided in BS 8233. BS 8223 internal noise level limits for resting and sleeping are adjusted by + 10dB to allow for attenuation through a partially opened window. The Applicant adopts a LOAEL of 40 dB L_{Aeq} for both daytime and night-time and SOAEL of 45 dB L_{Aeq} . On considering World Health Organisation guidelines, 50 dB L_{Aeq} is adopted for the high magnitude threshold.
- 3.7.21 Professional judgement is used to predict significance of effect.
- 3.7.22 Embedded mitigation includes:
- locating of the BESS in the centre of the Oaklands Farm area to maximise the distance from residential properties;
 - placing of inverters and Medium Voltage transformers at least 100m from residential properties;

- in so far as possible, placing string inverters on row ends away from the site boundaries in proximity to residential receptors;
- placing the site access points and traffic routes away from the nearest villages of Rosliston and Walton-on-Trent;
- minimising soil stripping, trench building, drainage ditches and concreting;
- using BS 5228 principles to minimise construction noise;
- adopting the Best Practicable Means described in the Control of Pollution Act 1974;
- limiting construction working hours to 07:00-19:00 hours on weekdays during the summer (with reduced hours in winter months), 08:00-14:00 hours on Saturdays, and no working on Sundays, Bank or Public Holidays without LPA approval;
- selecting the quietest plant where other non-acoustic design considerations allow and providing oversizing and redundancy to ensure equipment is operating below maximum capacity;
- undertaking and submitting a noise assessment to the LPA prior to the commencement of works on the site; and
- adopting a noise complaint procedure.

Construction stage

3.7.23 Mitigation secured through the Outline CEMP [\[REP6-018\]](#) would include control of working hours and a requirement to liaise with the LPA and nearby affected stakeholders where works would be outside of these hours, appropriate control of access routes to the site, management of arrival of HGVs, appropriate noise and vibration action levels. The contractor would have a duty to follow the best practice recommendations set out in BS 5228 including training of site personnel to raise awareness of noise, the location of noise sensitive receptors nearby, and delivery/ access routes. The contractor would be required to make appropriate checks, keep records that the CEMP was followed, and have a clear complaints procedure.

3.7.24 The Applicant says that construction stage effects following mitigation would be:

- on-site construction noise - moderate temporary adverse night-time effects that would be significant at Corner Farm during a potential 48 to 60 hr period of directional digging, otherwise negligible or minor adverse effects that would not be significant; and
- off-site construction traffic noise - negligible or minor adverse effects that would not be significant.

Operation stage

3.7.25 The Applicant proposes no additional mitigation to that included as embedded mitigation and considers that the operational noise effects at all assessed receptors would be negligible and not significant.

3.7.26 Mitigation measures are set out in the Outline OEMP [\[REP6-020\]](#).

Decommissioning stage

3.7.27 The Applicant states that effects during the decommissioning stage are scoped out as they would be no greater than those during the construction stage.

3.7.28 Mitigation measures are set out in the Outline DEMP [[REP6-022](#)].

Cumulative and combined effects

3.7.29 The Applicant considers that there would be either no or negligible cumulative impacts for identified cumulative developments with the Proposed Development.

3.7.30 The Applicant considers that combined effects on users of PRow during the construction stage could arise because of the combination of noise, dust, and visual effects. These would be short term, transitory in nature, and could be avoided by temporarily using other PRow in the area during the construction stage. The Applicant considers the combination of these effects to be minor adverse effects that would not be significant and would not lead to any adverse health effects.

3.7.31 The Applicant considers that combined noise, dust, and visual effects on users of PRow during the operation stage would be negligible and not significant.

ISSUES ARISING DURING THE EXAMINATION

Noise assessment

3.7.32 Diane Abbott [[REP1-043](#), [REP4-022](#), [REP5-049](#), [REP6-056](#)] raises a number of concerns about the noise assessment, including:

- a need for long-term baseline noise surveys for properties near Oaklands Farm following the failure of a long-term sound recording meter at Twin Oaks;
- short-term, attended noise assessments carried out during rush-hour/ school rush hour are not representative of the tranquil nature of the area;
- using BS8233 and World Health Organisation guidance to identify baseline noise;
- LOAEL and SOAEL should be based on 5dB and 10dB increases above baseline;
- LOAEL and SOAEL should be derived from the mean of the measured baseline noise levels;
- magnitude of criteria for daytime construction noise with a starting threshold for “minimal” effect of 65dB seems unreasonably high for the tranquil surroundings;
- a lack of information and frequency data on electrical equipment manufacturers;
- whether a 3dB or higher modifier should be used for additional acoustic features such as whine, hiss, or screech;
- whether a 5dB modifier should be added for tonal noise from the equipment;
- insufficient consideration of acoustic screening and/ or housing;
- failure to review and address the potential for low frequency noise (< 200Hz);
- the potential for inverter fans to be used earlier than the assumed 7:00am;
- whether the inverter fans would be the dominant noise during day and night;
- whether the inverter fans should be located away from the nearest receptors including at Lad’s Grave and Rosliston; and
- it is unlikely that the expected >90dBA from operational equipment would have a negligible effect on properties that would be less than 500m away.

3.7.33 SDDC's comments [[REP6-047](#)] on Diane Abbotts's concerns:

- the monitoring undertaken is sufficient to characterise the existing noise climate, in terms of duration and locations, given the nature of the noise under consideration;
- planning guidance does not seek to prevent impact from noise, but prevent significant adverse impacts;
- the Applicant considers the relevant noise standards and the relevant guidance when determining the significance of potential noise impacts;
- it is appropriate to use a combination of both BS4142 and BS8233 in assessments;
- where background levels are very low, it is acceptable practice to consider the absolute levels with reference to the BS8233 standards to assess likely impacts;
- the ES sufficiently demonstrates that the installation is capable of being developed, in principle, without resulting in significant adverse impacts from noise;
- the Applicant should demonstrate whether any plant would include significant low frequency noise characteristics that might require further consideration;
- low frequency noise can be a significant issue for solar farms, however this can be suitably controlled through the submission of the operational noise assessment to the LPA prior to the start of works;
- in relation to noise from inverter cooling fans there is a potential for temperatures to exceed 20°C during noise sensitive hours on very rare occasions, and either further assessment or controls should be provided, or the Applicant should put measures in place to ensure that the system does not operate during noise sensitive hours if temperatures exceed 20°C;
- the developer would be required to submit an operational noise assessment to the LPA prior to the start of works (Requirement 15 of the dDCO [[REP8-003](#)]) to demonstrate that detailed design and plant selected do not demonstrably affect noise sensitive receptors in accordance with the assessment conclusions; and
- noise levels are sufficiently low to not have a significant adverse impact.

3.7.34 The Applicant's responses [[REP3-031](#), [REP5-025](#), [REP6-042](#), [REP7-009](#)]:

- two evening/night-time measurements taken close to Twin Oaks House and two close to Boroughfields Farm Cottage are representative of typical low background noise levels and a repeated long-term survey is not proportionate or necessary;
- there were only occasional cars passing on Coton Road near to Twin Oaks House and the background levels were controlled by ventilation fans on Oaklands Farm and therefore, the comment in relation to rush hour is not relevant;
- the Applicant is not aware of any areas on or bounding the site, which are specifically designated for their recreational or amenity value;
- BS8233 is referenced in the NPS EN-1, which states "*Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance*" and is considered appropriate;
- the criteria used in BS8233 is based on World Health Organisation guidelines;

- BS 4142 notes that “Where background sound levels and rating levels are low, absolute levels might be as, or more, relevant than the margin but which the rating level exceeds the background. This is especially true at night”;
- there is a minimum level for a noise source at which an observable adverse impact occurs, it not reasonable to assess the level of impact relative to background where the background level is significantly below this threshold, and the derivation of the absolute rating level of 40 dB is based on widely recognised guidance;
- it is not appropriate to average background noise levels across a large site area;
- typical frequency spectrums and reasonable worst-case assumptions for noise from equipment have used the available information;
- detailed frequency data for each piece of equipment to be installed specific to this project is not available, it is a standard approach to use informed assumptions on available noise data and to apply penalties to provide a conservative assessment;
- additional acoustic features are not expected;
- a penalty of 3 dB for intermittency and 2 dB for potentially ‘just perceptible’ tonality of the transformers is applied and it is not appropriate to apply a higher penalty where tonality is not likely to be perceptible;
- the assessment indicates that additional acoustic screening is not necessary;
- the only plant items that may potentially have significant low frequency character are the transformers, the most prominent tone at 100Hz from the transformers is not expected to be above the threshold of hearing at the nearest receptor, and low frequency sound is therefore assessed as likely to be inaudible at receptors;
- inverters would operate at approximately 50% of full load at 20°C, which would incur a lower noise output than the full load used for daytime noise modelling and exceeding 20°C before 7am is unlikely to be frequent in the foreseeable future;
- inverter cooling fans only need to operate with temperatures greater than 20°C and with sufficient solar generation;
- if the cooling fans are included the worst-case predictions of noise during night time, the assessment at all receptors remain negligible significance, except Twin Oaks House which increases to minor, however this assumes that the cooling fans would operate at 100%, however in practice the solar generation in the early hours would be closer to 50% and there would be a proportional reduction in noise output and the assessment of significance is therefore considered to remain negligible;
- placing inverters away from the site boundaries is not possible in all locations and a reasonable and proportionate approach to the siting of string inverters would be determined through detailed design and approved by the LPA;
- the position of the inverter units would be dictated by the location of underground cabling and would typically be on the row ends, around the field perimeters;
- at detailed design stage, the inverters may be located more centrally within the solar arrays however, doing so would be less efficient, reducing number of panels and solar output as field boundary buffers would need to be maintained; and
- it assesses the tranquillity of the site to a more detailed local level than the methodology used in the DCC (2013) Technical Support Document 2: Tranquillity.

3.7.35 In the SoCG between DCC, SDDC and the Applicant [[REP8-017](#)] it is agreed that:

- noise surveys were completed in accordance with industry guidance to measure and observe the existing noise climate and determine existing noise and vibration sources near to the site;
- monitoring locations were chosen which were likely to represent the noise climate experienced at noise sensitive receptors around the perimeter of the site;
- a desk study was undertaken to identify nearby noise sensitive dwellings and to establish the influence of existing noise sources;
- the noise chapter of the ES considers construction noise effects and operational noise effects and noise levels have been predicted by considering likely construction activity and likely worst case operational noise source levels;
- the only plant items which could potentially have a significant low frequency noise character are the transformers, but those would be inaudible at receptors and not have a significant contribution to the overall noise level at receiver positions; and
- in respect of cooling fans, a worst case scenario assessment is based on cooling fans on the inverters operating during the nighttime period at 100% but that situation would only occur in temperatures of 20 degrees Celsius and with sufficient solar generation, if that worst case scenario were to occur the significance of the impact would remain negligible, and design and specification of plant would be reviewed and approved by the LPA to discharge Requirement 5 of the dDCO [\[REP8-003\]](#).

3.7.36 Towards the end of the Examination, SDDC [\[REP8-022\]](#) says that it is content with the Applicant's noise assessment.

Construction and decommissioning stage mitigation

Piling

3.7.37 SDDC [\[REP4-045\]](#) is quoted as identifying piling as the most significant noise impact during the construction stage.

3.7.38 The Applicant [\[REP1-025\]](#) initially refers to mitigation including scheduling the work at times to minimise impact on nearest receptors, employing multiple rigs to reduce the time taken for piling in a given area, and screening or low-noise plant models.

3.7.39 Responding to my observation that not all of the mitigation mentioned by the Applicant was secured, the Applicant [\[REP4-011\]](#) added the measures to paragraph 2.2.3.9 of the Outline CEMP [\[REP6-018\]](#).

3.7.40 SDDC welcomes the inclusion of the mitigation measures for piling and advises that this addresses its concerns [\[REP6-047\]](#).

Construction hours

3.7.41 DCC [\[REP1-026\]](#) says that it has no concerns relating to construction hours and emphasises the need for coordination of delivery times (HGV movements) to reduce the potential impacts on the local road network.

3.7.42 SDDC [\[REP1-029\]](#) is satisfied with the "Construction Hours" section of Schedule 1, Part 2 of the dDCO [\[REP8-003\]](#), given that it sets out clearly defined construction hours with reasonable flexibility in the event of emergency and low impact activities.

Other construction stage mitigation

- 3.7.43 The Applicant [REP1-025, REP4-011] updated the Outline CEMP [REP6-018] following my requests to ensure that the mitigation measures are consistent with the dDCO [REP8-003] and firmly secured.
- 3.7.44 In the SoCG between DCC, SDDC and the Applicant [REP8-017] it is agreed that design measures are incorporated to mitigate or reduce effects, which includes standard noise pollution controls during the construction and decommissioning stages, and best practice construction measures to mitigate and minimise noise emissions during the construction and decommissioning stages are set out in the Outline CEMP [REP6-018] and the Outline DEMP [REP6-022].
- 3.7.45 Towards the end of the Examination, SDDC [REP8-022] says that it is content with the mitigation measures set out in the dDCO [REP8-003].

Operation stage mitigation

- 3.7.46 Responding to my [PD-010] reference to paragraph 5.12.18 of NPS EN-1, the Applicant says that the noise assessment [REP4-045] sets out a mechanism to ensure that adverse noise effects during the operation stage do not occur through the submission of an operational noise assessment to the LPA prior to the start of works to demonstrate that detailed design and plant selected do not demonstrably affect noise sensitive receptors in accordance with the conclusions of this assessment.
- 3.7.47 The Applicant [REP4-011] updated the Outline OEMP [REP6-020] following my requests to ensure that the mitigation measures are consistent with the dDCO [REP8-003] and include the mitigation for the operation stage that was included in the early versions of the Outline CEMP. SDDC [EV4-009] is content with the mitigation.
- 3.7.48 In the SoCG between DCC, SDDC and the Applicant [REP8-017] it is agreed that design measures are incorporated in the design of the Proposed Development to mitigate or reduce potential effects, which includes locating the BESS centrally within the solar array to maximise distance from residences, and Requirement 15 of the dDCO [REP8-003] requires the Applicant to demonstrate that the detailed design would accord with the operational noise emissions set out in the ES.
- 3.7.49 Towards the end of the Examination, SDDC [REP8-022] says that it is content with the mitigation measures set out in the dDCO [REP8-003].

Impacts

- 3.7.50 In the SoCG between DCC, SDDC and the Applicant [REP8-017] it is agreed that:
- the resultant effects of the Proposed Development are assessed as a potentially significant short-term effect at Corner Farm if night time work is required to install the grid connection cable under Rosliston Road, a negligible/minor effect on road traffic noise during the construction stage, and a negligible effect on nearby residences during the 40-year operation stage of the solar farm;
 - no significant cumulative effects with other proposed or permitted development have been identified; and
 - the Proposed Development is satisfactory in respect of noise, so long as it is commissioned and operated in a manner that ensures the noise exposure predictions in Tables 11.18 and 11.19 of the ES [REP4-045] are met and maintained for the duration of the development.

CONCLUSIONS ON NOISE AND VIBRATION

- 3.7.51 Both the Applicant and SDDC provide detailed responses to the concerns raised by Diane Abbott. In its response, SDDC initially suggest that the Applicant give more consideration to low frequency noise from plant and noise from inverter cooling fans during noise sensitive hours. I am satisfied with the Applicant's explanations that low frequency noise is unlikely to be audible at receptors and that given the low level of solar generation during noise sensitive hours the noise from inverter cooling fans at that time would be of negligible significance. Towards the end of the Examination SDDC say that it is satisfied with the Applicant's responses.
- 3.7.52 I note the matters agreed by SDDC in relation to noise surveys, monitoring, the design study, consideration of effects and that it is content with the Applicant's noise assessment. I have no reason to disagree and find that there is compliance with paragraph 5.12.6 of NPS EN-1. It follows that I have no concerns about the definitions of 'significant adverse effects' or 'adverse effects' or in relation to the Noise Policy Statement for England.
- 3.7.53 Requirements 9 and 11 of the dDCO [\[REP8-003\]](#) secure that the CEMP and OEMP would include measures to avoid or minimise noise impacts during the construction and operation stages. Requirement 15 requires the approval of an operational noise assessment containing details of how the design would incorporate mitigation to ensure the operational noise rating levels in the Outline OEMP [\[REP6-020\]](#) are to be complied with. Requirement 20 does not permit works, other than emergency works, that are audible at the boundary of the Order Limits outside normal working hours.
- 3.7.54 I am satisfied with the Applicant's updates to the Outline CEMP [\[REP6-018\]](#) and Outline OEMP [\[REP6-020\]](#) in response to matters that I raised during the Examination. I note that SDDC and DCC are satisfied that their concerns about mitigation, including in relation to piling, construction hours, and detailed design are addressed and that they are content with the measures secured for the construction and decommissioning stages in the Outline CEMP [\[REP6-018\]](#) and Outline OEMP [\[REP6-020\]](#) and that SDDC is satisfied with the proposed mitigation during the operation stage and secured in the dDCO [\[REP8-003\]](#). I have no reason to disagree and find that paragraphs 5.12.13-15 of NPS EN-1 and paragraph 2.11.7 of NPS EN-5 are satisfied.
- 3.7.55 With reference to paragraphs 2.10.139 to 2.10.140 of NPS EN-3, no local highway authority raises concerns about more mitigation measures being required in relation to noise from construction vehicles and I find that no more requirements are necessary.
- 3.7.56 I agree with the Applicant, DCC and SDDC that there would be a potentially significant adverse short-term noise effect at Corner Farm, a negligible/ minor adverse effect due to road traffic noise during the construction stage, a negligible effect on nearby residences during the 40-year operation stage of the solar farm, and that there would be no significant cumulative effects with other developments.
- 3.7.57 I note that the CEMP, OEMP, DEMP and operational noise assessment are to be approved by the LPA and therefore find it likely that the noise exposure predictions in Tables 11.18 and 11.19 of the ES [\[REP4-045\]](#) would be met. On that basis I note that DCC and SDDC would consider the Proposed Development to be satisfactory in respect of noise and I therefore have no concerns in relation to SDDC Policy SD1.

Matters to be taken to Chapter 5 and the planning balance

- 3.7.58 For the purposes of Chapter 5 and the planning balance, I conclude that adverse noise effects bring a little weight against the making of the Order.

3.8 TRAFFIC AND TRANSPORT

INTRODUCTION

- 3.8.1 This section considers the traffic and transport effects. Noise and vibration are covered in Section 3.7. NMU and air quality are addressed in Section 3.10.

POLICY CONSIDERATIONS

NPS EN-1

5.14.7	Travel plan including demand management and monitoring measures.
5.14.11	Demand management measures.
5.14.14	Requirements where there is likely to be substantial HGV traffic.
5.14.18	Impacts on transport infrastructure and mitigation measures.
5.14.21	Refusal on highways grounds.

NPS EN-3

2.10.39	Access routes for operation and maintenance.
2.10.123	Routes for delivery of materials and components.
2.10.125	Capacity of roads and bridges on the proposed delivery route.
2.10.139	Vehicle movements during the construction stage.
2.10.140	Requirements to control vehicle movements.

Local policies

- 3.8.2 The DCC/ SDDC LIR [[REP2-001](#)] refers to SDDC Policy INF2.

THE APPLICATION

- 3.8.3 The Applicant's case is set out in documents including ES Chapter 10 - Transport and Access [[APP-155](#)], and the Streets Access and Rights of Way Plan [[REP4-003](#)].

Assessment scope, methodology, study area and baseline

- 3.8.4 The assessment [[APP-155](#)] considers the impact of transport to and from the site.
- 3.8.5 The Applicant states that most effects would occur during the construction stage when materials and equipment would be taken to the site. The potential effects identified for the detailed assessment are:
- direct effects during the construction stage from a temporary rise in the amount of traffic travelling to and from the site on the local highway network;
 - indirect effects during the construction stage in relation to potential risk to the safety of vulnerable road users; and
 - cumulative effects from construction traffic in addition to nearby development traffic.

- 3.8.6 The study area includes the construction vehicle routes, and those sensitive receptors identified in proximity to them. This area is roughly within a 5km distance of the site but also considers areas in proximity to the construction routes outside the 5km radius [AS-015 Figure 10.6].
- 3.8.7 Guidance referred to for the assessment includes IEMA's Environmental Assessment of Road Traffic and Movement (2023), National Highways' Design Manual for Roads and Bridges (LA104) (2020), Planning Practice Guidance for Travel Plans, Transport Assessments and Statements (2014), The 6Cs Design Guide - Delivering Streets and Places (2017), and Department for Transport (DfT) Guidance: Reported road casualties in Great Britain (2022).
- 3.8.8 The assessment methodology is based on IEMA guidance. The scenarios are Baseline (2022), Construction Commencement Year (2026), and Opening Year (2027).
- 3.8.9 Three scenarios of proposed construction routes are considered in the assessment:
- Scenario 1 (preferred, but unlikely): Walton-on-Trent Bypass is built prior to the construction stage commencing and all construction traffic uses the Walton-on-Trent Bypass, Main Street and Walton Road [AS-015 Figure 10.2].
 - Scenario 2A (likely): Walton-on-Trent Bypass is not built before the construction stage, all Heavy vehicles route through Stapenhill via the A5189, Main Street and Rosliston Road, light vehicles (up to 7.5t) would be dispersed along four different routes, including the Chetwynd Bridge [AS-015 Figure 10.3]. Scenario 2A is shown in Figure 3.8.1, below.
 - Scenario 2B (back up in the event of any road closures or obstructions on the Heavy vehicle route through Stapenhill): Walton-on-Trent Bypass is not built before the construction stage, all Heavy vehicles would route through Coton-in-the-Elms via Coalpit Lane, and all Light vehicles would be dispersed along three different routes, including the Chetwynd Bridge and the HGV route [AS-015 Figure 10.4].

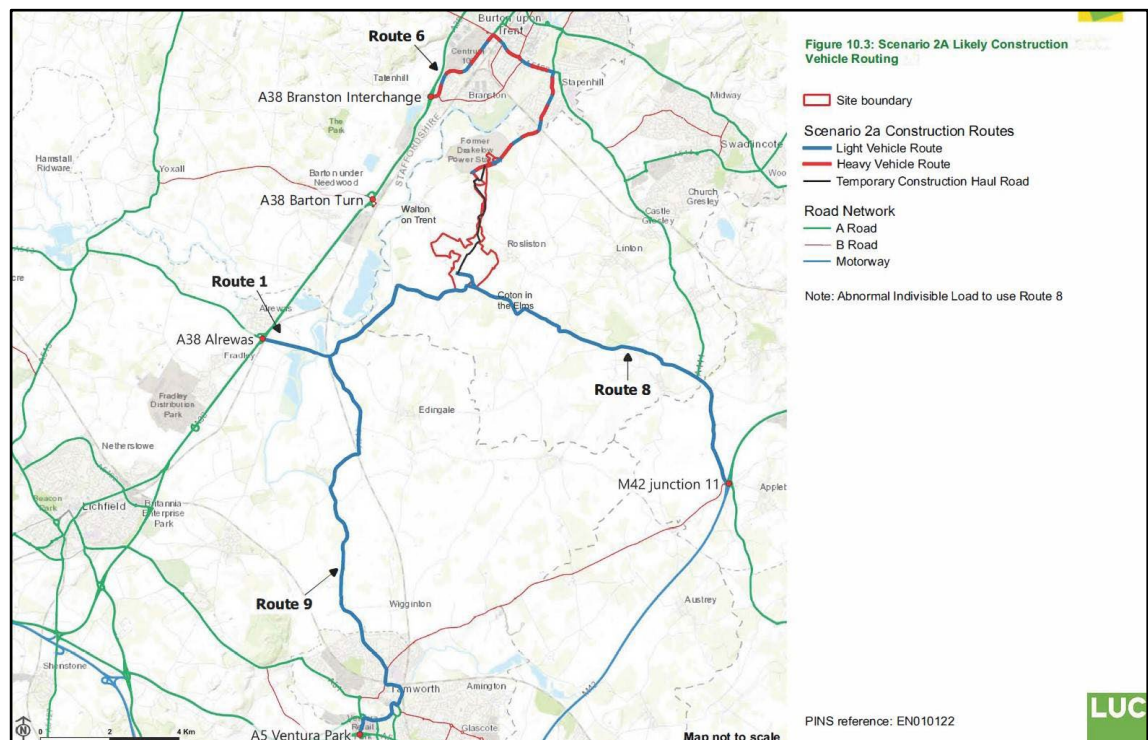


Figure 3.8.1: Scenario 2A likely construction vehicle routing [extract from Figure 10.3 of AS-015]

- 3.8.10 Baseline conditions are identified through a combination of:
- desk based research using data from Ordnance Survey maps, Google Maps, Open Street Map, Derbyshire Constabulary and SCC Personal Injury Data [\[APP-149\]](#), DfT traffic counters, and DCC highway boundary data; and
 - field surveys and visits, including the collection of traffic survey data [\[APP-150\]](#), between 8 October 2021 and 24 April 2023.
- 3.8.11 Automated traffic count data from 14 sites [\[AS-015 Figure 10.1\]](#) and A5121 and A5189 data from the DfT are used to understand the existing 24-hour Annual Average Daily Traffic and 24-hour Annual Average Weekday Traffic along the proposed construction routes [\[APP-152\]](#).
- 3.8.12 The baseline condition for Scenario 1 accounts for the traffic conditions anticipated once the Walton-on-Trent Bypass is available for use.
- 3.8.13 The 2026 future baseline in the absence of the Proposed Development is identified using growth factors obtained from the DfT's Trip End Model Presentation Program, which uses the National Trip End Model to predict traffic forecasts.
- 3.8.14 The criteria assessed are severance of communities, road vehicle driver and passenger delay, non-motorised user delay, non-motorised amenity, fear and intimidation on and by road users, road user and pedestrian safety, and hazardous/ large loads.
- 3.8.15 Professional judgement is used widely, including to assess road vehicle driver and passenger delay, non-motorised user delay, and non-motorised amenity. It is also used alongside assessment criteria when considering magnitude of impact in relation to Abnormal Indivisible Load (AIL) movements, severance of communities, fear and intimidation, and cumulative impacts. Professional judgement is used to determine the residual construction stage effects following mitigation.

Construction stage

- 3.8.16 The Construction Movements and Resource Plan [\[APP-153\]](#) states that the peak daily construction vehicle movements across the construction stage would be during month four with 104 two-way movements per day (50 deliveries), broken down as 28 two-way Heavy vehicle movements and 76 two-way Light vehicle movements. The average daily vehicle movements across the construction stage would be 81 two-way movements per day, broken down as 14 Heavy vehicle movements and 67 Light vehicle movements. There would be up to two AIL trips.
- 3.8.17 The Applicant uses the average daily vehicle movements (81) to assess the construction stage impact on the 2026 (Annual Average Weekday Traffic) background traffic on the local highway network as this would be persistent for the majority of the construction stage [\[APP-155\]](#).
- 3.8.18 Embedded mitigation for the construction stage includes:
- northern access: a priority bell mouth junction, from Walton Road east into Park Farm for Heavy and Light vehicle access, a delivery compound within the site, and Heavy vehicles exiting to the west using the existing farm access track;
 - southern access: light vehicles and AILs would enter the site via the upgraded field access from Coton Road and an existing 475m farm track heading north;

- temporary construction haul road: this would extend south from the delivery compound to Oaklands Farm to enable materials and equipment to be transported internally across the site without relying on the local highway network; and
- traffic management: the accesses from Walton Road would use temporary traffic lights and banksmen, temporary traffic lights would be used to manage vehicle movements across Rosliston Road, the southern crossroads on Coton Road would operate as a priority junction with visibility splays and traffic management, and additional traffic management would be subject to later discussion with DCC and secured through separate permit arrangements.

3.8.19 The Outline OEMP [\[REP6-020\]](#) sets out mitigation and control measures including community liaison between the Applicant and local residents, parking allocation within the site for construction workers, and a site waste management plan to ensure the control of waste on-site to reduce construction vehicle movements off-site.

3.8.20 The Applicant states that the Outline CTMP [\[REP6-028\]](#) ensures that those sensitive receptors that experience a significance of effect greater than 'negligible' can be reduced. Measures to be included within the final CTMP would include in relation to construction vehicle routing, temporary signage and traffic control, a haul road, a Delivery Management System, blackout and reduced construction vehicle movement days, limited working hours, heavy vehicle restrictions, AIL vehicle escorts, staggering of construction traffic movements, designated 'routing staff', an enforcing Traffic Management Group (TMG), route condition monitoring, information packs for contractors, and a new permissive path.

3.8.21 The Applicant considers there would be a moderate adverse effect before mitigation reducing to a minor adverse effect after mitigation that would not be significant for:

Scenario 1:

- non-motorised amenity, Walton Road, PRoW Route 9; and
- non-motorised amenity, Temporary Construction Haul Road, PRoW Route 9.

Scenario 2A:

- severance of communities, Main Street (Stapenhill), Croft Residential Home and Riverside Residential Home;
- severance of communities, Rosliston Road, The First Day Nursery;
- road vehicle driver and passenger delay, Main Street (Stapenhill), Croft Residential Home, Riverside Residential Home, retail and businesses along Main Street, residential dwellings fronting the carriageway along Main Street;
- road vehicle driver and passenger delay, Rosliston Road, The First Day Nursery, retail and businesses along Rosliston Road in Stapenhill, residential dwellings fronting the carriageway along Rosliston Road in Stapenhill;
- road vehicle driver and passenger delay, A513, National Memorial Arboretum on event days;
- road vehicle driver and passenger delay, unnamed road between A513 and Church Street, Catton Hall on event days;
- non-motorised user delay, Main Street (Stapenhill), Croft Residential Home and Riverside Residential Home;

- non-motorised user delay, Rosliston Road, The First Day Nursery;
- non-motorised amenity, Walton Road, PRoW Route 9;
- non-motorised amenity, Temporary Construction Haul Road, PRoW Route 9;
- road user and pedestrian safety, Main Street (Stapenhill), Collision Clusters, Croft Residential Home and Riverside Residential Home;
- road user and pedestrian safety, Rosliston Road, Collision Clusters, The First Day Nursery;
- road user and pedestrian safety, A5121, Collision Clusters; and
- road user and pedestrian safety, A513, Collision Clusters, retail units and businesses at Ventura Retail Park, Tamworth.

Scenario 2B:

- severance of communities, Mill Street, residential dwellings fronting the carriageway along Mill Street in Cotton-in-the-Elms;
- severance of communities, Church Street, residential dwellings fronting the carriageway along Church Street in Cotton-in-the-Elms;
- road vehicle driver and passenger delay, A513, National Memorial Arboretum on event days;
- road vehicle driver and passenger delay, unnamed road between A513 and Church Street, Catton Hall on event days; and
- road user and pedestrian safety, A513, Collision Clusters, retail units and businesses at Ventura Retail Park, Tamworth.

3.8.22 Otherwise, the Applicant considers that the construction stage effects before and after mitigation would be negligible or minor adverse and not significant.

Operation stage

3.8.23 Effects during the operation stage are scoped out as the Applicant considers that there would be a negligible number of vehicle trips at that time.

3.8.24 Mitigation measures are set out in the Outline OEMP [\[REP6-020\]](#).

Decommissioning stage

3.8.25 The Applicant states that effects during the decommissioning stage are scoped out as they would be equivalent to those during the construction stage.

3.8.26 Mitigation measures are set out in the Outline DEMP [\[REP6-022\]](#).

Cumulative effects

3.8.27 The Applicant considers that there would be either no cumulative impacts or negligible cumulative impacts for identified cumulative developments with the Proposed Development.

3.8.28 No additional mitigation, beyond that already set out to support the Proposed Development itself, is proposed for cumulative effects.

ISSUES ARISING DURING THE EXAMINATION

Construction traffic in Derbyshire

3.8.29 DCC and SDDC [[RR-078](#), [RR-295](#), [REP1-026](#), [REP2-001](#), [REP4-012](#), [REP4-014](#), [REP8-021](#)] raise matters including in relation to:

- infringement of the 7.5 tonne Environmental Weight Limit in the locality;
- further assessments are required to establish the impacts of HGV movements during the construction and decommissioning stages, particularly regarding the impacts of goods vehicle access through urban areas and along relatively quiet country roads;
- the Applicant to work in consultation with the highway authority and the organisers of events in the locality to ensure that vehicle movement routes and timings can be coordinated for the avoidance of congestion;
- weight and width restrictions on bridges, traffic control and monitoring to ensure compliance with routing and timing requirements, working in consultation with the highway authority to reduce the potential for congestion;
- a pinch point at Coton-in-the-Elms with very narrow local roads where residents park on either side of the road (reference construction route Scenario 2B);
- disruption to farm traffic and rural business through the increase of road usage by HGVs accessing the site during the construction stage;
- safe and satisfactory means of access to each of the individual compounds comprising the wider site;
- ensuring that there are no fundamental safety considerations regarding the wider highway network, including that suitable manoeuvring of HGV vehicles (swept-path analysis) can be readily achieved along the narrow country lanes;
- it is anticipated that the Applicant would be responsible for keeping the highway clear of debris, preventing the trafficking of mud onto the road, and rectifying of additional harm caused to the network assets demonstrably caused by the Applicant or its contractors to the satisfaction of the highway authority;
- the possibility of introducing traffic signals at the bridge on Rosliston Road (construction route scenario 2A) but believe that this may introduce wider negative impacts given the existing good visibility across the bridge;
- analysis of the proposed site access arrangements along Walton Road have been reviewed and SDDC therefore consider that the potential impacts at the site access locations have been appropriately considered by the Applicant; and
- once the abnormal load vehicle specification is confirmed, further analysis would be undertaken to confirm where temporary mitigation would be necessary, SDDC are content for this to be submitted later if the analysis is submitted and agreed with the planning and highways authorities, and DCC is content for the related temporary mitigation measures to be discussed once vehicle specifications are confirmed.

3.8.30 The Applicant's responses [[REP1-023](#), [REP1-025](#), [REP3-032](#), [REP4-011](#)] include that:

- DCC and/ or SDDC also require review or clarification of controls of vehicle movements during school pick up/ drop off times and highways incidents,

measures to address infringement of designated construction vehicle routes, communication plans, and cumulative impacts;

- HGVs would not be permitted to travel through the villages of Walton-on-Trent or Rosliston, table 3-3 of the Outline CTMP [REP6-028] identifies the sensitive built up areas to be avoided by construction traffic including Walton-on-Trent and outlines mitigation in the form of a signing strategy (Section 4), contractor information packs (paragraph 5.36), and compliance measures (paragraph 6.10);
- paragraphs 5.3-5.5 of the Outline CTMP [REP6-028] secures the need for agreements with highway authorities for alteration and maintenance of the highway;
- paragraph 5.44 of the Outline CTMP [REP6-028] includes a commitment to a detailed survey and review of the AIL route prior to commencement of construction when the haul vehicle specification established;
- paragraphs 6.3-6.4 of the Outline CTMP [REP6-028] deals with the establishment of the TMG 6 months prior to construction and meeting every 2 months;
- paragraph 6.6 of the Outline CTMP [REP6-028] provides for additional TMG engagement for events and other projects; and
- it is expected that full details of monitoring systems would be agreed with the relevant highway authorities in the preparation and approval of the CTMP.

3.8.31 DCC [REP5-037] says there should be a provision to enable the highway authority to recover costs for maintenance works should these be carried out by the highway authority rather than the Applicant's contractor where it can be demonstrated that traffic associated with the Proposed Development causes damage to the highway.

3.8.32 The Applicant [REP6-042] refers to mechanisms for payment in Article 12 of the dDCO [REP8-003] for works within the Order Limits, and updates to paragraphs 5.5 and 5.6 of the Outline CTMP [REP6-028] for works outside the Order Limits.

3.8.33 Overseal Parish Council [REP5-057] raises concerns about the enforceability of the prescribed construction routes, do not believe that HGVs would use the route through Coton-in-the-Elms, and consider that HGV construction traffic would potentially go through Overseal instead. The Applicant [REP6-041] replies that construction routes and mechanisms to enforce their use are secured in the Outline CTMP [REP6-028] and no construction routes would pass through the village or Parish of Overseal.

3.8.34 Walton-on-Trent Parish Council [REP5-062] considers that the local road infrastructure is not equipped to handle the construction traffic, narrow country lanes are already in urgent need of repair, the HGVs would severely disrupt local travel and pose a danger to residents and visitors, and uncertainty about the proposed new bridge at Walton-on-Trent further exacerbates the problem. The Applicant [REP6-041] refers to the assessment of potential impacts in ES Chapter 10 [APP-155] and says that it continued to refine the details with Highway Authorities throughout the Examination.

3.8.35 James Cowell [REP5-052], Lana Cowell [REP5-054] and Olivia Nicholls [REP5-056] refer to the proposed construction route (route 8, scenario 2B) through Church Street, Coton-in-the-Elms, saying that:

- it is relatively narrow, and sections have no pavements on one or other side;
- many of the houses on Church Street do not have driveways for parking so use the road to park their vehicles, substantially limiting visibility to oncoming vehicles and resulting in sections of single carriageway and 'leapfrogging' of through-traffic;

- the village children's recreation area exits onto Church Street via a track; and
- there are concerns about the risks from increases in traffic, including to pedestrians, children using the recreation area, parents with small children in pushchairs, OAPs, wheelchair owners, cyclists, and horse-riders.

- 3.8.36 DCC [\[REP4-012\]](#) says that its Public Rights of Way team have raised no objections to the impacts on non-motorised users. The Applicant [\[REP6-041\]](#) says that DCC agrees with the assessment methodology, that the potential impact of construction traffic would not surpass the threshold to change scoring for significant impact within ES Chapter 10 [\[APP-155\]](#), and the Applicant's position is that the risk to pedestrians is not significantly increased as a result of the Proposed Development.
- 3.8.37 Diane Abbott [\[REP4-022\]](#) says that the cumulative impact of the increased HGV and other vehicle movements from the many other proposed constructions projects (housing, energy storage, solar developments, bridge building etc) on the rural lanes and urban road network needs to be considered and are likely to have a negative safety impact on all road users, especially NMU using active travel.
- 3.8.38 Responding to my suggestion [\[EV4-002, EV4-009, PD-014\]](#), the Applicant [\[REP6-042\]](#) updated paragraphs 3.31 and 3.34 of the Outline CTMP [\[REP6-028\]](#) to include that the Walton-on-Trent Bypass would be the preferred route for construction traffic should it be open during the construction stage rather than only if opens before construction.
- 3.8.39 Towards the end of the Examination, Overseal Parish Council [\[REP7-015\]](#) suggest that there are errors in the Outline CTMP [\[REP6-028\]](#) in relation to the use of the A444 as a holding area for HGVs until they are permitted to enter the local road network serving the Proposed Development, and potential loss of A444 laybys should the second phase of Mercia Park at M42 J11 goes ahead.
- 3.8.40 At the end of the Examination, the SoCG between DCC, SDDC and the Applicant [\[REP8-017\]](#) says it is agreed that:
- ES Chapter 10 [\[APP-155\]](#) adequately characterises the baseline environment;
 - the impact assessment methodologies adopted in ES Chapter 10 [\[APP-155\]](#) is appropriate for assessing potential impacts and resultant effects;
 - construction traffic routing is considered adequately, subject to the further analysis and subsequent agreement of any remedial works secured in paragraph 5.44 of the Outline CTMP [\[REP6-028\]](#) once specification of AIL vehicle is known;
 - the potential cumulative effects arising from events and other projects in the defined study area are addressed adequately, noting the commitments to the TMG and related mechanisms in paragraphs 6.3-6.7 of the Outline CTMP [\[REP6-028\]](#);
 - the Outline CTMP [\[REP6-028\]](#) measures, as secured by Requirement 10 of the dDCO [\[REP8-003\]](#) are appropriate to mitigate the identified significant effects and ensure compliance with the assessed construction traffic routes; and
 - Requirement 10 of the dDCO [\[REP8-003\]](#) and the Outline CTMP [\[REP6-028\]](#) adequately protect SDDC's and DCC's transport and access interests.

Construction traffic in Staffordshire

- 3.8.41 SCC [\[REP1-030, REP1-031, AS-032\]](#) raises concerns, including in relation to:

- why routes 6 and 8 (scenarios 2A and 2B) could not be used in conjunction to spread the impacts of construction traffic across the network rather than focussing it on a particular route and suggest that there has been no work to demonstrate whether the impact on Stapenhill residents along route 6 (scenario 2A) can be lessened by spreading some of the HGV traffic onto route 8 (scenario 2B) without adverse impact along route 8;
- consideration to the movement of young pedestrians who would potentially need to cross and/ or walk along the construction traffic route on their way to/ from school for which the Outline CTMP [\[REP6-028\]](#) should restrict the movement of HGV traffic on route 6 (scenario 2A) during the morning and afternoon school runs;
- whether the construction of the Drakelow Park development is accounted for in the assessment of impacts due to construction traffic;
- the consideration given to potential delays at a narrow bridge on Rosliston Road over the railway as construction traffic route 6 (scenario 2A) enters Derbyshire;
- potential impacts from construction traffic not using prescribed construction routes in relation to which the Applicant should enhance the remedial/ enforcement measures to provide more resilience and deter consideration of breaching the agreed routing strategy;
- whether the dDCO [\[REP8-003\]](#) provides for works to remedy any damage caused and attributable to the Proposed Development to be undertaken by the developer or whether there are powers for the local highway authority to agree the detail of the works and approve the workmanship of any work undertaken;
- the Outline CTMP [\[REP6-028\]](#) should include provision for recouping of any costs incurred by the local highway authority in undertaking emergency repair work of damage caused by construction traffic; and
- the Outline CTMP [\[REP6-028\]](#) should set out that the developer would enter into agreement with SCC pursuant to Article 12 to agree the mechanisms to deal with both emergency repairs and repairs at the end of the scheme.

3.8.42 The Applicant's responses [\[REP3-031\]](#), [\[REP4-011\]](#) include that:

- during pre-application it was agreed with DCC and SCC that a hierarchy of routes would be supported for HGVs, whereas for lighter construction vehicles it was agreed the dispersion of these lighter vehicles across the network would be acceptable;
- a comparison of construction effects on route 6 (scenario 2A) through Burton Upon Trent and Stapenhill (passing from Derbyshire to Staffordshire) with route 8 (scenario 2B) (passing through Derbyshire and Leicestershire) including in terms of percentage increases in traffic, severance, fear and intimidation, demonstrate that route 6 (scenario 2A) currently caters for HGVs and is more suitable for construction traffic, that a prolonged use of the more rural route 8 (scenario 2B) by HGVs may result in significant effects, and that route 8 (scenario 2B) would only be suitable to use should an obstruction or closure make route 6 (scenario 2A) unusable;
- paragraph 5.9-10 of the Outline CTMP [\[REP6-028\]](#) is amended to require all HGV movements to occur outside of the traditional local highway network peak periods, including school drop off and school pick up, recognising that times vary along route 6 (scenario 2A) and would be confirmed following further engagement with SCC and the Local Education Authority;

- Drakelow Park is currently being built out and construction traffic is captured in the baseline traffic surveys that were undertaken in 2022;
- the anticipated construction stage of the Proposed Development would not start until 2026, by which time the construction phase of the Drakelow Park development is unlikely to be as intensive and the developer would be included in the TMG;
- the average of 14 HGV movements per day with restrictions to HGV movements to occur outside peak periods mean that there is unlikely to be material delays at the railway bridge above those occurring within baseline condition, the issue would be monitored and kept under review throughout the construction stage and DCC do not have any material concerns regarding this matter;
- paragraphs 4.1 to 4.4 of the Outline CTMP [REP6-028] are updated to include details regarding the potential wording that would be placed on temporary signs, along with indicative locations for temporary signage for each construction vehicle routing scenario, a commitment is included to provide a detailed signage schedule pre-construction; and
- to support the signage strategy, further detail is provided in Section 6 of the Outline CTMP [REP6-028] on remedial measures and contractual penalties should contractors not comply with the designated construction vehicle routes.

3.8.43 To ensure consistency with ES Chapter 10 [APP-155], I [PD-010, PD-012] asked whether the Outline CTMP should secure that construction route Scenario 2A to only be used if Scenario 1 (using the Walton-on-Trent Bypass) is not available, and construction route Scenario 2B to only be used if Scenarios 1 and 2A are not available. The Applicant [REP4-011] updated the Outline CTMP [REP6-028] accordingly. DCC [REP4-012] and SDDC [REP4-014] is content with those updates. SCC [REP4-015] reiterated its query why 2A and 2B could not be used in conjunction with one another if 1 is not available.

3.8.44 Towards the end of the Examination, SCC [REP7-012] says that it is content with the changes made to the Outline CTMP [REP6-028] and there is only one outstanding traffic and transport concern that should the Walton-on-Trent Bypass not be available for use for construction traffic, then routes 6 and 8 (scenarios 2A and 2B) should be used in conjunction with one another to lessen the impact of construction traffic on the residents of Stapenhill. SCC says objections would be likely to arise from elsewhere if a different conclusion was drawn, do not believe that this matter can be resolved by agreement, and is therefore a matter for the Examining Authority to judge.

Construction traffic in Leicestershire

3.8.45 Leicestershire County Council (LCC) [RR-170, REP1-027, REP2-002] raises concerns about the impact of AIL. It considers that surface protection, culvert reinforcement and temporary removal of street furniture would be required along the AIL route and seeks protection of its assets and recovery of any associated costs through DCO provisions.

3.8.46 The Applicant [REP1-023, REP3-033, REP4-011] says that the environmental effects for AIL are assessed in ES Chapter 10 [APP-155] and related mitigation measures are included in the Outline CTMP [REP6-028]. It does not identify any need for surface protection, culvert reinforcement, and temporary removal of street furniture and says that no mitigation measures are required on section of the AIL route within LCC's jurisdiction. The Applicant refers to a legal requirement for themselves under the Electronic Service Delivery for Abnormal Loads system to provide mitigation and says that AIL movements would be subject to a separate application and permitting scheme, currently administered by National Highways in consultation with the relevant highway

authorities and police, a process that would be supported by additional route assessment and validation, including additional surveys as required. The Outline CTMP [REP6-028] is also updated to address LCC's request for longer notice periods than those specified in the Electronic Service Delivery for Abnormal Loads system and its concerns about how the powers for highway alteration would be secured.

- 3.8.47 Paragraph 5.43 of the Outline CTMP [REP6-028] includes that in relation to any defects caused to any highway or street due to the extraordinary traffic created to facilitate the construction of the authorised development, the excess expenses, as defined within s59 of the Highways Act 1980, may be recoverable by the highway authority from the Applicant in accordance with the statutory provisions of that section.
- 3.8.48 LCC [AS-031] advise that its concerns are addressed following the updates to the Outline CTMP [REP6-028], together with Requirement 10 of the dDCO [REP8-003]. It says that the approach taken by the Applicant to agree a s278 agreement for works on Leicestershire's highway network outside the DCO process is unusual but cannot sustain an objection based on the Applicant's preference for working in this way.

Solar panel and battery storage replacement during the operation stage

- 3.8.49 Noting the potential for adverse impacts in relation to HGV movements during the operation stage, including for the replacement of solar panels and other equipment, in various chapters of the ES, I [PD-010, PD-012] sought to ensure that appropriate precision and clarity is provided for related mitigation. I noted that, when responding to similar concerns, paragraphs 2.2.3 and 2.2.5 of the Mallard Pass Solar Farm Outline OEMP limit the maximum number of daily HGV movements during the operation stage and requires the relevant planning authority to confirm that any maintenance activities involving panel replacement would not lead to such materially different effects.
- 3.8.50 The Applicant [REP1-025, REP4-011, REP5-024] states that solar panels are not expected to be replaced during the operation stage, save for individual instances of damage or unexpected failure, and that to account for this an annual replacement rate of 0.2% per year is assumed in the ES [REP3-021] and battery cell replacement is anticipated to be once every 8 to 10 years. The Applicant says there is no mention of limits to operational HGVs in the Outline OEMP for Gate Burton Energy Park or Cottam Solar Project and that for Sunnica Energy Farm it was concluded that HGV movements during planned maintenance would be agreed with the local planning authorities. The Applicant does not think it is necessary to limit the number of HGV movements and updated the Outline OEMP to clarify that replacement of all panels is not anticipated.
- 3.8.51 DCC [REP4-012] considers that a similar approach to that adopted for the Mallard Pass Solar Farm would be appropriate. SCC [REP4-015] support my recommendations. LCC [REP4-013] has no objection to the approach taken for the Mallard Pass Solar Farm. SDDC [REP6-047] would need to confirm that panel replacement would not lead to any materially new or materially more adverse environmental effects arising from any planned maintenance activities.
- 3.8.52 I [PD-014] sought firmer and more precise commitments in the Outline OEMP than initially suggested by the Applicant. The Applicant [REP6-042] provided updates to paragraphs 3.1.5 and 3.1.6 of the Outline OEMP [REP6-020] to secure that:
- during the operation stage the Applicant would provide notification of planned maintenance activities to the LPA for the forthcoming year with supporting information to evidence that there would be no materially new or materially more adverse environmental effects arising from any planned maintenance activities when compared to those identified in the operation stage assessment in the ES;

- the supporting information must confirm that the approach to planned maintenance set out in the notification would be consistent with the approved OEMP; and
- replacement of the solar panels cannot take place until the LPA agree that the activities would not lead to materially new or materially different environmental effects to those identified in the assessment of the operation stage in the ES.

Other traffic and transport

- 3.8.53 Several parties including Andrew Passey [RR-025], David Frost [RR-065], Gemma Price [RR-100], Martin David William Abbott [RR-190], Miriam Elizabeth Mary Campion [RR-212], and Richard Giddings [RR-259], raise concerns in relation to the existing condition of roads. The Applicant [REP1-023, REP1-025] says that condition surveys would be undertaken both before and after the construction stage to help ensure that damage to the roads as a result of the Proposed Development would be remedied and refers to the assessments [APP-155, REP4-045] which conclude that there would be no significant effects from additional traffic due to the Proposed Development on highway safety or in relation to noise or vibration.
- 3.8.54 The Applicant [REP1-025] explains the significance criteria and significance of effect matrix used in ES Chapter 10 [APP-155]. DCC [REP1-026] has no comments.
- 3.8.55 The Applicant [REP1-025, REP4-011] updated the Outline CTMP [REP6-028] in response to my queries and suggestions [PD-010, PD-012] to ensure that it includes mitigation to the same level of detail as in the ES, clarify the mitigation measures that it considers would reduce magnitude of effect from moderate adverse to minor adverse in several construction traffic scenarios and locations, and set out provisions for a Travel Plan, which DCC [REP4-012] is content with.
- 3.8.56 The Book of Reference [REP8-012] seeks the acquisition of the freehold of a section of verge on Rosliston Road. Responding to my questions [PD-010, PD-012], DCC [REP1-026] initially raise concerns about the maintenance of verges. The Applicant [REP1-025, REP3-032] clarifies that it is not seeking powers to stop up the adopted highway, that DCC's powers as highway authority would not be interfered with, and that DCC would continue to be able to maintain the verge as necessary. DCC [REP4-012] then advises that its concerns are resolved.
- 3.8.57 Article 10(1)(a) and (b) of the dDCO [REP8-003] does not require highway authority consent. Responding to my invitation to comment, DCC [REP1-026] says that it expects the Applicant to fully engage with the highway authority to ensure that any proposed temporary or permanent alterations to the road layout or structure are acceptable in terms of highway safety and long-term maintenance. The Applicant [REP4-011] replies that the works under Article 10(1)(a) and (b) are subject to detailed design approval under Requirement 5 and that the CTMP is subject to approval by the LPA in consultation with the relevant highway authority under Requirement 10. Following this clarification, DCC [EV4-009] then advises that it has no concerns.
- 3.8.58 Article 13 of the dDCO [REP8-003] seeks broad powers to authorise temporary traffic regulation measures, for which the Applicant sets out its reasoning [REP8-005]. DCC did not respond to my invitation to set out any concerns, while SDDC [REP1-029] says that it has no concerns in this respect, as long as the provisions remain to give notice and require written approval of the highway authority before utilising this power.
- 3.8.59 In their LIR, DCC and SDDC [REP2-001] say that the Proposed Development would have a neutral impact on the highway network during the operation stage, and a negative impact during the construction and decommissioning stages.

- 3.8.60 The Applicant [\[REP8-020\]](#) suggests that the Outline CTMP [\[REP6-028\]](#) provides effective mitigation for traffic impacts including traffic management controls, measures to ensure compliance with the stated routing, management of AIL, signing strategy, specification of appropriate core working and delivery hours, and creation of a TMG. It considers that the assessment of effects in ES Chapter 10 [\[APP-155\]](#) remains valid in that effects arising from construction traffic associated with the Proposed Development would be no more than negligible to minor residual effects and not significant, that vehicle movements during the operation stage would be low, and vehicle movements during the decommissioning stage would not be significant.

CONCLUSIONS ON TRAFFIC AND TRANSPORT

- 3.8.61 DCC and SDDC raised several matters in relation to construction traffic in Derbyshire. In considering the Applicant's responses and the agreement reached between the parties at the end of the Examination in relation to baseline, assessment methodology, cumulative impacts, and the secured mitigation, I am satisfied that their concerns and the cumulative impact matters raised by Diane Abbott are addressed sufficiently.
- 3.8.62 I find that the updates to the Outline CTMP [\[REP6-028\]](#) for securing and enforcing construction routes deals with Overseal Parish Council's concern to avoid construction traffic going through Overseal.
- 3.8.63 In relation to Walton-on-Trent Parish Council's concerns about impacts from HGVs, I note DCC's and SDDC's position and am satisfied with the Applicant's impact assessment and consideration of construction routes in the vicinity of Walton-on-Trent.
- 3.8.64 I am satisfied that the concerns raised by several parties in relation to the proposed construction route through Coton-in-the-Elms are reflected in the Applicant's safety assessment and that sufficient safety mitigation measures in the Outline CTMP [\[REP6-028\]](#). I consider that the need to enable the development of new low carbon sources of energy at speed in paragraph 4.2.2 of NPS EN-1 is relevant to the securing of alternative construction routes to avoid delays. Considering the above, I find it appropriate that, as secured in the Outline CTMP [\[REP6-028\]](#), a backup route (route 8, scenario 2B) is secured through Coton-in-the-Elms that is only to be used in the event that there are any road closures or obstructions on the route through Stapenhill rendering that route impassible for a prolonged period of time.
- 3.8.65 SCC maintains the view that routes 6 and 8 (scenarios 2A and 2B) should be used in conjunction with one another to lessen the impact of construction traffic on the residents of Stapenhill. I am satisfied with the Applicant's consideration of the relative merits of the routes, consider that route 6 (scenario 2A) is more suitable for HGVs than route 8 (scenario 2B) and should only be used when route 6 (scenario 2A) is not available, and recommend accordingly.
- 3.8.66 I am satisfied that routing and specified periods for HGV movements are addressed and do not consider it necessary to add more controls to the number of HGV movements given the predicted impacts and secured mitigation. Based on the above, I find that appropriate consideration is given to paragraph 5.14.14 of NPS EN-1 and paragraphs 2.10.123, 2.10.125, 2.10.139 and 2.10.140 of NPS EN-1.
- 3.8.67 I am content that the parties would have adequate opportunity to consider Overseal Parish Council's points about the A444 laybys and the second phase of Mercia Park during the finalisation of the CTMP, allowing for consideration of the latest position regarding Mercia Park at that time.

- 3.8.68 The Applicant responded to SCC's comments during the Examination. Other than as noted in relation to the use of routes 6 and 8 (scenarios 2A and 2B) above, SCC is content with the changes made to the Outline CTMP [\[REP6-028\]](#). I have no reason to disagree and am content with the consideration given to SCC's concerns.
- 3.8.69 I find that the provisions in the dDCO [\[REP8-003\]](#) and Outline CTMP [\[REP6-028\]](#) sufficiently address DCC's, SCC's and LCC's request for the highways authorities to be able to recover costs for maintenance works and the remedy of defects. Related to this, I note the provisions for condition surveys in the Outline CTMP [\[REP6-028\]](#) and am content that concerns about road condition are addressed appropriately.
- 3.8.70 There is some uncertainty in the extent to which panel replacement is likely to occur, particularly given the 40-year duration of the operation stage and the potential for advances in technology and other changes during that time. I note that the assessment assumes a low number of vehicle movements during the operation stage. I am therefore content that there should be some flexibility in those movements, including in relation to the extent of likely panel replacement during the 40-years of the operation stage, subject to the measures secured in the Outline CTMP [\[REP6-028\]](#) for there being no materially new or materially more adverse effects when compared to the ES. I have no concerns in relation to paragraph 2.10.39 of NPS EN-3.
- 3.8.71 I note that DCC raises no residual concerns about the maintenance of verges, engagement with the highway authority in relation to alterations to road structure, or temporary traffic regulation measures. SDDC's comment about notice being provided before temporary traffic measures would be applied is secured in Article 13 of the [\[REP8-003\]](#) and the Outline CTMP [\[REP6-028\]](#) requires temporary traffic measures to be agreed with DCC and SDDC. I am content with how these matters are addressed.
- 3.8.72 I consider that the Travel Plan measures secured in the Outline CTMP [\[REP6-028\]](#) are sufficient for the purposes of paragraph 5.14.7 of NPS EN-1 and I am satisfied with the related consideration given to demand management and mitigation of impacts during the construction stage in relation to paragraphs 5.14.11, 5.14.18 or NPS EN-1.
- 3.8.73 I am satisfied with the Applicant's updates to the Outline CTMP [\[REP6-028\]](#) in response to my queries and suggestions and, noting the above comments from DCC, SDDC, SCC and LCC, find that mitigation is secured appropriately.
- 3.8.74 I accept the Applicant's assessment that effects arising from construction traffic would be no more than negligible to minor residual effects and not significant, that vehicle movements during the operation stage would be low, and that vehicle movements during the decommissioning stage would similarly not be significant.
- 3.8.75 In relation to paragraph 5.14.21 of NPS EN-1, I consider that there would not be an unacceptable impact on highway safety and that cumulative impacts on the road network are unlikely to be severe. I find that adequate consideration is given to the provision of active, public, or shared transport and consider that consent should not be refused on highways grounds alone.
- 3.8.76 Based on the above, I have no compliance concerns in relation to relevant local policy, including SDDC Policy INF2.

Matters to be taken to Chapter 5 and the planning balance

- 3.8.77 For the purposes of Chapter 5 and the planning balance, I conclude that adverse traffic effects bring a little weight against the making of the Order.

3.9 WATER QUALITY, RESOURCES, DRAINAGE, AND FLOODING

INTRODUCTION

- 3.9.1 This section addresses the effects in relation to drainage, flooding, and water quality. It covers the Flood Risk Assessment (FRA) and battery storage fire risk and related emergency response and pollution.
- 3.9.2 Soils, ground conditions and the consideration of groundwater quality because of mobilisation of contamination by the works, and the impacts of piling and underground cables on existing drainage are covered in Section 3.3. Water related effects on biodiversity are considered as necessary in Section 3.4 and Chapter 4. The effects on climate change are addressed in Section 3.2. Climate change adaptation and resilience, and human health are covered in Section 3.10.

LEGISLATION AND POLICY CONSIDERATIONS

Water quality, resources, and the Water Framework Directive (WFD)

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the WFD Regulations)

- 3.9.3 The WFD Regulations require the appropriate agency to prepare River Basin Management Plans for each River Basin District, setting out statutory objectives for relevant water bodies, and the measures needed to achieve them. Regulation 3 places a general duty on the SoS and the EA to exercise their 'relevant functions' to secure compliance. These bodies, together with public bodies, have a specific duty to have regard to the relevant River Basin Management Plan.

NPS EN-1

4.12.15	Regulation of releases under the pollution control framework.
4.12.16	Grounds for refusal based on pollution.
5.16.7	Matters to be described in the ES.
5.16.14	River Basin Management Plans and the WFD Regulations.
5.16.15	Interaction with water resources management plans.
5.16.16	Mitigation of adverse effects and enhancement measures.

Drainage and flooding

NPS EN-1

4.10.13	Impacts of climate change and the latest UK Climate Projections.
5.8.9	The Sequential Test and locating the project in areas of lower flood risk.
5.8.10	Moving from the Sequential Test to the Exception Test.
5.8.11	Passing the Exception Test.
5.8.12	Increase in flood risk elsewhere, net loss of floodplain storage, flood flow.

5.8.13	When a site-specific FRA is required.
5.8.15	The minimum requirements for an FRA.
5.8.36	Matters for the SoS to be satisfied about.
5.8.41	Consent within Flood Zone 3b.

NPS EN-3

2.10.85	Access tracks.
2.10.86	Existing drainage systems and watercourses.
2.10.87	Culverting existing watercourses or drainage ditches.

Local policies

- 3.9.4 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy SD2: Flood Risk, Policy SD3: Sustainable Water Supply, Drainage and Sewerage Infrastructure, and Policy INF7: Green Infrastructure.

THE APPLICATION

- 3.9.5 The Applicant's case is set out in documents including ES Chapter 8 - Water Resources and Flood Risk [\[APP-143\]](#), Water Bodies Plan [\[APP-012\]](#), Flood Risk Assessment and Outline Drainage Strategy [\[REP7-003\]](#), and the Water Framework Directive Assessment [\[REP4-043\]](#).

Assessment scope, methodology, study area and baseline

- 3.9.6 The assessment [\[APP-143\]](#) considers the effects on water resources (including surface and ground water), drainage and flood risk.
- 3.9.7 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - potential effects arising from leaks and spills of pollutants, erosion of sediment and soils, compaction of soils, disturbance of the ground to install foundations and cable routes and access tracks, disturbance of watercourses to create crossings for plant and machinery, effects on the local hydrological regime due to construction works encountering potentially contaminated materials within areas of historical backfill and the potential for mobilisation of such materials in groundwater; and
 - operation stage - potential effects on groundwater and soils due to the change from intensive agriculture to low intensity grazing, potential effects on local flow regimes from alteration of infiltration rates due to the change in land use and introduction of new infrastructure, and potential impact on the hydrological regime brought about by the introduction of new infrastructure.
- 3.9.8 The study area includes the two sub-catchments in which the site is located, that of the Pessall Brook and that of the unnamed tributary of the River Trent which flow through the site. Where the site sits on the edge of these catchments, an additional 500m buffer is included around the site boundary which encompasses areas within the two wider catchments of the River Mease and River Trent [\[APP-144\]](#) Figure 8.2].

- 3.9.9 Water quality and resources receptors considered in the assessment are groundwater beneath the site, ordinary watercourses, the River Mease and the River Trent.
- 3.9.10 Baseline conditions are established through a combination of:
- desk based research using information from sources including EA guidance on the designation of main rivers (2017), SDDC Level 1 Strategic Flood Risk Assessment (2008), and environmental database and coal mining reports [\[APP-145\]](#), and
 - field surveys on 16 July 2021 and 23 June 2022.
- 3.9.11 The Applicant states that there are many localised changes in slope on the site, being more pronounced in the fields to the south which are undulating in nature. Some of these changes in slope are coincident with areas that are shown on historical mapping to be former gravel pits and marl pits [\[APP-147\]](#). Historical mapping also indicates the location of several former ponds that are no longer present and hence have likely been infilled. Structures labelled as New Barn were constructed in the 1880s and subsequently demolished in the 1990s.
- 3.9.12 Geology, contaminated land, soils, and agricultural land are as set out in Section 3.3.
- 3.9.13 The alluvium and glaciofluvial deposits beneath some areas of the site are classified by the EA as Secondary A Aquifers - permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. The Edwalton Member bedrock beneath the site is classified as a Secondary B Aquifer - predominantly lower permeability layers which may store and yield limited amounts of groundwater due to localised features such as fissures, thin permeable horizons, and weathering.
- 3.9.14 Most of the site drains to the River Trent through two adjacent catchments with the majority draining via the River Tame to River Dove waterbody catchment and a limited portion of the north-east of the site draining to the River Trent via the Darklands Brook catchment (a tributary of the Trent) Water Body. Drainage to the River Trent is via an unnamed tributary joins a small area of ponded water before crossing onto site in the area joining the two farms. The stream flows beneath Rosliston Road and forms the western site boundary before joining the River Trent approximately 1.4km north-west north of the site. A secondary tributary water from field ditches near Oaklands Farm before joining the main tributary immediately upstream of Rosliston Road.
- 3.9.15 The EA classifies the ecological status of the Darklands Brook waterbody as moderate and the River Tame to Dove catchment as poor.
- 3.9.16 A very small area of the far southern edge of the Oaklands Farm area drains into the catchment of the River Mease [\[APP-144\]](#) Figure 8.3]. The Applicant considers that whilst the topography is such that this small part of the site is in the catchment of the River Mease, there is no direct pathway to the River Mease itself as this area drains to ground with groundwater movement beneath Church Road before draining to a pond and if present, field ditches before draining to the Pessall Brook 1km to the south, which in turn then drains to the River Mease.
- 3.9.17 The EA classifies the ecological status of the River Mease catchment as moderate.
- 3.9.18 The Applicant considers that current flood risk is generally low (Annual Exceedance Probability [AEP] less than 0.1%) except for a corridor following the unnamed Ordinary Watercourse. The EA Flood Map for Planning indicates that most of the site is in Flood Zone 1 with an annual risk of fluvial flooding less than 1 in 1,000. However, small areas

bordering the Ordinary Watercourse are in Flood Zones 2 and 3, with an annual risk of fluvial flooding greater than 1 in 1,000 [REP7-003]. The Applicant considers that the likely depth of flooding in a medium risk event is, outside of the river channel, typically less than 300mm.

- 3.9.19 The assessment is carried out following the principles in the Planning Practice Guidance on land affected by contamination (2019), Planning Practice Guidance on water supply, wastewater, and water quality (2019), DEFRA and EA guidance on Rainfall Runoff Management for Developments (2013), Planning Inspectorate Advice Note on The Water Framework Directive, Construction Industry Research and Information Association SuDS Manual (2015), and NPPF Sections 14 and 15.
- 3.9.20 The Applicant identifies that current climate change projections (UKCP18) are for increased winter rainfall and an increase in heavy rain days which is likely to lead to increased soil loss through erosion and run-off and could potentially lead to increased leaching and run-off of contaminants. It considers that increased winter rainfall, in combination with the increased number of winter storms, could potentially lead to greater periods of saturated ground with a subsequent increased potential for overland flow and localised surface water flooding. Summer rainfall is predicted to decrease, however intensity of summer storms is predicted to increase which could potentially increase periods of localised surface water flooding and run-off.
- 3.9.21 The assessment considers the sensitivity of receptors and magnitude of change to identify the significance of effect.
- 3.9.22 Embedded mitigation includes:
- fields that currently are used to produce arable crops would become vegetated year-round and there would not be periods of exposed bare soil;
 - fields would not be accessed by heavy plant or machinery during the operation stage, reducing compaction effects on the soil;
 - all surface water run-off would be discharged to ground as close to the point of interception as possible - solar panel arrays would allow incidental run-off to infiltrate to ground below the panels, trackway construction would be permeable (i.e. unsealed), and where concrete pads are required a gravel-filled drainage trench would be constructed around the structure to provide soakaway capacity equivalent to the infiltration capacity lost beneath the structure;
 - the lowest part of the solar panels would be 800mm above ground level, above the estimated potential flood levels;
 - inverters, transformers and the on-site substation would not be sited within the fluvial or surface water flood risk areas;
 - to mitigate risks from contaminated water during a fire event at the BESS and the on-site substation compounds, these areas would be mostly impermeable, with water diverted into an underground storage area which could be isolated if required. Approximately 80% of the on-site substation footprint would be permeable with a gravel sub-base to allow natural drainage/ infiltration;
 - to mitigate a potential increase in flows due to reduced attenuation with the increase in impermeable surfaces, the storage areas at the BESS and the on-site substation compounds may include water flow technology, such as a Hydrobrake, to reduce outflows to the greenfield runoff rates for the same event; and

- potential surface water (pluvial) flood risk would be mitigated through design whereby all infrastructure such as the BESS and the on-site substation would be raised with a void beneath, the vast extent of the site includes elevated solar panels on discrete piled foundations, and the proposed cable route to the connection to the National Grid Drakelow Substation would be entirely underground.

Construction stage

3.9.23 The Outline CEMP [\[REP6-018\]](#) includes mitigation measures in relation to water quality and pollution management, including:

- there would be a minimum 8m buffer along all on-site watercourses, with the exception of water crossings;
- phasing of required turf and topsoil strip would ensure that little bare soil is exposed at any one time;
- soil stockpiles would be sealed using an excavator bucket at the end of each shift, to minimise the potential for sediment to be washed;
- stockpiles would be formed outside 8m buffer zones;
- vegetation on long-term stockpiles would be allowed to naturally regenerate and/ or be seeded to facilitate a cover of vegetation;
- a combination of ditches, berms and sediment traps would be employed in order to control the direction and to slow the flow of rainwater run-off as required;
- water would be allowed to drain to the watercourses if it is suitably free of visual evidence of silt or other contamination with the 8m buffer acting as a filter strip and supplemented as necessary with silt fencing;
- water that is visibly silt-laden or impacted by contaminants would be directed to a settlement pond to enable silt to fall out of suspension or treated prior to discharge;
- the weather forecast would be monitored daily throughout the construction stage and where heavy rainfall is predicted works may need to be suspended;
- ahead of forecasted heavy rain, the site works would be inspected to identify areas susceptible to sediment run-off and precautions implemented as necessary;
- pollution prevention measures would be put in place at each water crossing; and
- mitigation measures would be implemented to ensure the management of flood risk during the construction stage and the protection of sensitive receptors from potential contamination during the works.

3.9.24 The Applicant considers that the construction stage effects on groundwater, watercourses, the River Trent, and the River Mease would be:

- pollution from fuels, oils and other chemicals - a negligible effect that would not be significant;
- erosion of sediment/ silt created by exposed soils - a negligible effect that would not be significant;
- soil compaction from heavy plant/ machinery - a negligible to minor beneficial effect that would not be significant;

- alteration to existing land drainage, including by foundations - a negligible to minor beneficial effect that would not be significant;
- interaction with contaminated made ground causing mobilisation of contaminants and effect on receptors - a minor beneficial effect that would not be significant; and
- additional disturbance to shallow soils from underground cabling - a negligible effect that would not be significant.

Operation stage

3.9.25 The Applicant considers that no mitigation is necessary in addition to embedded mitigation and considers that the operational effects on groundwater, watercourses, the River Trent, and the River Mease would be:

- pollution from fuels, oils and other chemicals - a negligible to minor adverse effect that would not be significant;
- reduction in nutrient and pesticide load entering aquifer - a minor beneficial effect that would not be significant;
- erosion of sediment/ silt via surface water flow - a negligible to minor beneficial effect that would not be significant;
- alteration to existing land drainage regime by development - a negligible effect that would not be significant;
- alteration to surface water flow paths (potential for off-site flood risk) - a negligible effect that would not be significant; and
- pollution from contaminated firefighting water - interaction with contaminated made ground - a negligible effect that would not be significant.

Decommissioning stage

3.9.26 The Applicant states that effects during the decommissioning stage would be the same as those during construction. Mitigation is set out in the Outline DEMP [\[REP6-022\]](#).

Battery storage fire risk and related emergency response and pollution

3.9.27 During the operation stage there is a potential risk of fire associated with the battery cells used in the BESS, transformers containing oil, electrical cabling and components, fuels and flammable liquids stored on-site for maintenance and operations, and solar panels. The Applicant says that most of those are standard fire hazards associated with industrial developments and would be mitigated by the Outline OEMP [\[REP6-020\]](#).

3.9.28 The Applicant states that the fire hazard with the greatest potential impact is the BESS, which is approximately 650m from the closest residential property at Oaklands Farm, a location within the middle of the site that it considers reduces the likelihood of nearby properties being affected by fire. The Outline BSMP [\[APP-093\]](#) sets out risks related to fires from the BESS equipment and identifies how risks would be minimised including:

- internal fire detection and suppression systems built into each battery container;
- ensuring suitable separation distances between battery units to prevent the spread of fire or heat between units and allow emergency access and escape;
- 24-hour remote surveillance to ensure quick response times to potential fires;

- secure fencing with CCTV to restrict access to authorised personnel only;
- providing easy emergency vehicle access to the BESS;
- providing significant quantities of water within the BESS compound to douse and cool any battery units at risk of overheating;
- preventing risks to the environment from contaminated fire water;
- carrying out regular monitoring and maintenance of the BESS equipment; and
- producing an Emergency Response Plan and a Fire Service Site Specific Risk Assessment that would be consulted on with Derbyshire Fire and Rescue.

3.9.29 With this mitigation the Applicant considers that there would be a very low risk of a major accident or disaster because of the BESS, or other potential fire sources, and that there would be no significant effects.

Cumulative and combined effects

3.9.30 The Applicant considers that there would be either negligible or minor beneficial cumulative effects for identified cumulative developments with the Proposed Development. No additional mitigation, beyond that already set out to support the Proposed Development itself, is proposed for cumulative effects. The Applicant considers that the mitigation identified for water quality, ground conditions and ecology is sufficient to address the combined effects.

Water Framework Directive

3.9.31 The Applicant [[REP4-043](#)] considers that:

- the short-term construction stage impacts would be of sufficiently short duration and could be sufficiently well avoided, minimised and mitigated such that there would be no adverse effect on the status of the water bodies, nor the aims and objectives of the River Basin Management Plans; and
- the long-term operation stage impacts are considered likely to contribute to an improvement in the status of the River Trent (River Tame to River Dove) waterbody status through the reduction in nutrient and pesticide input that the Proposed Development would provide.

Sequential Test and Exceptions Test

3.9.32 The Applicant [[REP7-003](#)] notes that solar farms are essential infrastructure within the the NPPF. It says that the NPPF considers that essential infrastructure is acceptable in Flood Zones 1, 2 and 3, but in Zone 3 should be subject to an Exceptions Test.

3.9.33 The Applicant states that site layout is sequentially tested to steer development to areas of lowest flood risk, with panels, the BESS and the on-site substation within Flood Zone 1 and only buried cables and a short section of access track in Flood Zones 2 and 3. The access track and cables that pass through Flood Zone 3 provide the most direct route to the grid connection at Drakelow Power Station, minimising disruption. Emergency access to the site would also be provided here as it provides the shortest route from the public highway. As the track would already be in place during the construction stage, the Applicant considers that retaining this track would result in less impact than constructing a new emergency access route to the west of site outside of Flood Zone 3. The Applicant is of the view that development in Flood Zone 3 is unavoidable to provide a cable connection and emergency access route.

3.9.34 The location of the solar panels (in black) in relation to Flood Zone 3 (turquoise) is shown in Figure 3.9.1, below.

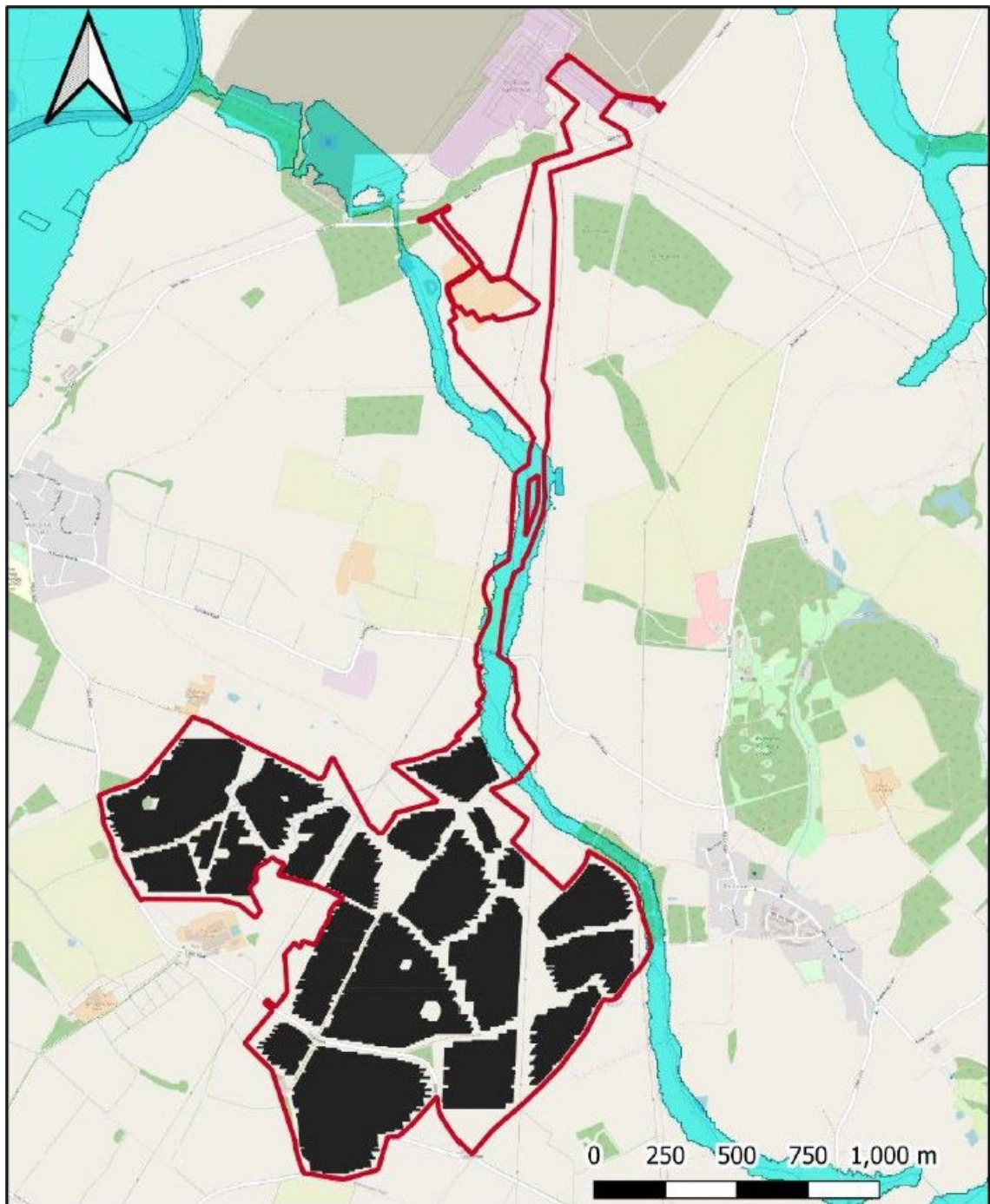


Figure 3.9.1: Flood Zone 3 [extract from Figure 4-1 of [REP7-003](#)]

3.9.35 The Applicant notes that the NPPF Exceptions Test for infrastructure within Flood Zone 3 (both 3a and 3b) requires that it is designed and constructed to remain operational and safe for users in times of flood, result in no net loss of floodplain storage, not impede water flows and not increase flood risk elsewhere. The Applicant considers that buried cables and the internal access track meet these requirements (with alternative access tracks outside of Flood Zones 2 and 3 useable during flood conditions) as no significant changes to land profiles are proposed.

ISSUES ARISING DURING THE EXAMINATION

WFD

- 3.9.36 The EA [[AS-019](#), [REP1-033](#), [REP3-001](#)] expect an update to the WFD Assessment submitted with the application [[APP-142](#)] to address matters that are not agreed.
- 3.9.37 The Applicant updated the WFD Assessment [[REP4-043](#)], which the EA [[REP4-016](#), [REP4-017](#), [REP5-043](#), [REP8-025](#)] says addresses the design of watercourse crossings to maintain fish passage and hydrological connection and assesses the groundwater body, as well as assessment of the three surface water bodies present locally. On this basis the EA says that it has no remaining concerns.

BESS fire risk, related emergency response and pollution

- 3.9.38 DCC and SDDC [[REP2-001](#)]:
- consider that there would be a significant risk of the battery storage fire suppression system failing, resulting in a major incident requiring a disaster response using water to extinguish the battery fires and thereafter their cooling;
 - say that any spent firewater would be likely to be contaminated and hazardous and would need to be contained to avoid significant impacts, including to aquifers; and
 - note that emergency calls to the fire service locally are directed to Staffordshire and that fire crews are required to cross the River Trent, which could result in delay in attending and reduce the potential to limit a damaging environmental incident.
- 3.9.39 The EA [[AS-019](#), [REP1-033](#), [REP3-001](#)] considers that the pollution risks of emergency response have not been appropriately assessed and that if the firewater isn't adequately controlled this could result in significant pollution risks and cause detrimental impact to the environment. It says that the Applicant should confirm that the flow control valves would close automatically if a fire were detected by the detection system and include any relevant routine maintenance required, to ensure this system remains functional, within the Outline Drainage Strategy.
- 3.9.40 Diane Abbott [[REP4-022](#)] questions whether there would be sufficient storage of fire suppression water and asks if there would be any risk of low water pressure having a bearing on the effectiveness of potential fire suppression systems.
- 3.9.41 Gillian and Paul Holland [[REP5-050](#)]:
- raise concerns regarding the size, proximity to villages, and fire/ post-fire air pollution risk of the BESS;
 - refer to reports with details of the consequences of battery fires and issues about awareness and understanding of BESS sites and their inherent fire risks;
 - say that massive solar farms with battery storage are an emerging concept;
 - consider that fire and subsequent toxicology need to be fully assessed; and
 - suggest that the nearest fire station only has two engines and questions whether they have the necessary capability to deal with battery fires.
- 3.9.42 The Applicant [[REP1-023](#), [REP3-033](#), [REP5-025](#), [REP5-026](#), [REP6-041](#), [REP6-042](#), [REP8-017](#)] says that:

- the BESS would be set within a bunded slab which drains to a pollution-controlled attenuation tank to contain any contaminated water in the event of a fire;
- all rainwater landing on those impermeable areas would be collected and directed to underground tanks, which have been sized to account for larger storm events, with additional contingency for climate change;
- the tanks would be fitted with automatic control valves which would close in the event of any incident and any water contained to allow the water to be tested for contaminants and if necessary pumped into a tanker to be taken away for disposal;
- the tanks would be fitted with a hydrobrake which would manage the flow of water out to an existing watercourse at existing greenfield run-off rates;
- the water storage capacity is designed to hold the largest volume between a standard 100-year scenario plus 25% climate change with discharge limited to greenfield runoff rate, and a combined 10 year plus 25% climate change, incorporating containment of firefighting water volumes and no discharge scenario;
- calculations for the sizing of the storage provided for the BESS [\[REP7-003\]](#) confirms that storage would generally be underutilised during normal conditions;
- the Outline BSMP [\[APP-093\]](#) provides further details on the procedure for dealing with potential contamination issues;
- design parameters for the BESS include measures to reduce the risk of fire by providing appropriate spacing between the battery units to mitigate fire spread and by locating the BESS in the centre of the site, away from residential properties;
- the final BSMP would sit alongside an emergency response plan and provide details of in-built safety features like internal fire suppression systems built into individual battery units, automatic detection and alert systems, remote shutdown, and procedures to alert local emergency services; and
- the drainage strategy [\[REP7-003\]](#) is updated to include that *“The BESS and substation pose a theoretical risk of fire, with the potential of contaminant mobilisation due to the chemicals within the electrical units and/or firefighting fluids. Therefore, the surface water system has been designed with an automated pollution control valve (linked to the fire detection system) such that surface water runoff will not be discharged during a fire event in these areas, preventing it from leaving the locality and allowing the potential contaminants to be removed/treated.”*

3.9.43 DCC and SDDC [\[REP4-014, REP7-011\]](#) are then content that their concerns in relation to the BESS, fire risk and related emergency response and pollution are addressed.

3.9.44 The EA [\[REP4-017, REP6-049, REP6-050\]](#) notes the Applicant’s undertaking that sufficient storage would be secured to retain the full capacity of the firewater system, and that an adequate maintenance plan would be implemented to ensure the system remains functional. It says an automated pollution control valve linked to the fire detection system would ensure that surface water runoff would not be discharged during a fire event, preventing it from leaving the locality and allowing the potential contaminants to be removed/ treated. The EA has no remaining concerns.

3.9.45 DCC [\[EV4-003\]](#) would welcome consultation by the applicant with DFRS regarding site safety and fire-fighting response at the BESS. The Applicant [\[REP1-023, REP3-033, REP5-026, REP6-042\]](#) replies that:

- DFRS provided advice during the preparation of the Outline BSMP [\[APP-093\]](#) regarding access for emergency vehicles and extinguishing fires;
- provided its previous correspondence with DFRS, which included the National Fire Chief's Council Grid Scale BESS Planning Guidance, as well as its standard letter on best facilities, and required the Applicant to confirm it had complied with this guidance, which it has; and
- Requirement 12 of the dDCO [\[REP8-003\]](#) requires the LPA to consult DFRS if changes are made to the final BSMP from the Outline BSMP [\[APP-093\]](#).

3.9.46 DCC [\[REP6-046, REP7-011\]](#) is content that the Applicant sought advice from DFRS and has no outstanding issues.

Other water quality mitigation

3.9.47 The EA [\[AS-019, REP1-033\]](#) says the Outline CEMP should include the need for an environmental permit for discharges, together with monitoring requirements, review procedures and details of corrective action.

3.9.48 DCC [\[REP1-026\]](#) suggest that Outline Water Quality and Silt Management Plans should be provided during the Examination to help ensure that those actions necessary to prevent adverse impacts on site drainage and local water courses can be fully considered at an early stage in the development process. The EA [\[REP2-003\]](#) does not require an Outline Water Quality and Silt Management Plan.

3.9.49 The Applicant [\[REP1-023\]](#) updated the Outline CEMP [\[REP6-018\]](#) to address monitoring and environmental permits and adds matters to be included in a Water Quality and Silt Management Plan.

3.9.50 DCC [\[REP4-012\]](#) says that the updates satisfy its concerns about water quality and silt management. The EA [\[REP4-016\]](#) is content with the Outline CEMP [\[REP6-018\]](#) in relation to water quality.

3.9.51 DCC and SDDC [\[REP8-017\]](#) agree that a full suite of water pollution prevention measures is set out in the Outline CEMP [\[REP6-018\]](#).

FRA

3.9.52 There was much engagement about flood risk throughout the Examination, including about the adequacy of the flood modelling, the climate change allowance, compliance with the Sequential Test and the Exception Test, the related potential for the three watercourse crossings of the construction haul road to increase flood risk, and other potential obstructions to flood flows.

Flood modelling, constriction of flood flow routes, and flood levels

3.9.53 I [\[PD-010\]](#) asked for comments on the potential for flood debris to build up on the legs supporting the solar panels and any related implications for flood risk.

3.9.54 The EA [\[REP1-032\]](#) says that if it is found that water is at sufficient depth to reach the solar panels then a Maintenance Plan would be required, which should be specified under the Outline OEMP and include

- periodic checks for penitential debris which could be moved by flood water (fallen trees etc) and removal;

- checks and clearance of all flood debris after a storm event; and
- checks of the structural integrity of the solar panels after a storm event to reduce the risk of falling and causing blockages.

- 3.9.55 DCC [\[REP4-012\]](#) agrees that there is little potential for the build-up of significant debris on the panel leg supports given the topography of the site but would support the inclusion of checks and debris removal in the site maintenance schedules to ensure that blockages, as well as damage to the infrastructure, does not occur. It supports the periodic checking for and removal of debris but does not consider it proportionate for the site to be checked after every storm. The Met Office does not have a specific definition of 'a storm' and therefore a requirement to check the site after every storm would also require a definition of 'storm' to be agreed.
- 3.9.56 The Applicant [\[REP1-025\]](#), [\[REP3-032\]](#), [\[REP5-024\]](#), [\[REP5-026\]](#) considers that there is no significant potential for debris to build-up on the legs of the solar panel support structures which could create any meaningful implications for flood risk and drainage. It updated the Outline CEMP [\[REP6-018\]](#) and Outline OEMP [\[REP6-020\]](#) to secure that legs of the solar panel mounts would be inspected for the build-up of debris which, if found, would be removed. It updated the FRA and Outline Drainage Strategy [\[REP7-003\]](#) to set out that routine inspections for blockages would be undertaken every quarter and after a storm event and all blockages would be cleared immediately.
- 3.9.57 The EA [\[REP5-042\]](#) says its concerns are addressed regarding maintenance of panels to ensure that they remain clear of debris and don't increase flood risk as a result.
- 3.9.58 DCC [\[REP1-026\]](#), as Lead Local Flood Authority, seek to be consulted prior to any stopping up or culverting of water courses, whether temporary or permanent, for the prevention of flooding or any adverse impacts attributable to the works. The Applicant [\[REP3-032\]](#) notes that Part 7 of Schedule 10 of the dDCO [\[REP8-003\]](#) requires the undertaker to consult with the drainage authority before beginning to construct any specified works and allows the drainage authority to impose reasonable requirements on the undertaker. DCC [\[REP4-012\]](#) is content that Part 7 of Schedule 10 contains adequate provisions for the protection of drainage authorities.
- 3.9.59 DCC and SDDC [\[REP2-001\]](#) say that most of the Proposed Development falls within Flood Zone 1, and therefore, at low risk of flooding, but there are parts, including access tracks and underground cabling routes that fall within Flood Zone 3. They say that water course crossings, whether new or amended, should ensure that flow is not impeded and that changes to the flow in ordinary watercourses may create the potential for increased localised flooding and exacerbate existing issues.
- 3.9.60 Diane Abbott [\[REP4-022\]](#) says that not enough consideration is given to flooding that occurs near Coppershill Spinney for much of the year, raises concerns about road safety during flooding, and says that mitigation is required for increased risk of run-off and flooding on roads, including from climate change, and refers to paragraphs 2.10.87-88 of NPS EN-3 and asks the Applicant whether any culverts would be removed after the construction stage.
- 3.9.61 With reference to paragraph 2.10.88 of NPS EN-3, I [\[EV4-001\]](#), [\[EV4-002\]](#), [\[EV4-003\]](#) invited the Applicant to demonstrate there were no reasonable alternatives to culverting for access and whether the culverts would only be in place during the construction stage.
- 3.9.62 The EA [\[AS-019\]](#), [\[REP1-033\]](#), [\[REP3-001\]](#), [\[REP4-016\]](#), [\[REP5-042\]](#), [\[REP5-043\]](#), [\[REP6-049\]](#), [\[REP6-050\]](#) says that:

- it has a series of concerns about flood modelling in the application documents and expects an updated FRA to address matters that have not been agreed;
- the correct climate change allowances are used;
- areas of additional flooding remain off-site to depth of up to 15cm that is against NPS EN-1 as there must not be an increase in off-site flood risk;
- modelling shows that it is the most downstream crossing that appears to impact on off-site flood risk the most and if it were removed from the proposals, this could potentially result in no notable increases to off-site flood risk; and
- there may be an opportunity to make all new crossings temporary, to be in situ for only the construction and decommissioning stages.

3.9.63 The Applicant [[REP1-023](#), [REP3-032](#), [REP3-033](#), [REP5-026](#), [REP7-009](#), [REP8-020](#)]

- refers to ongoing discussions with the EA and updates to the FRA;
- initially assesses three culvert crossings being provided for the lifetime of the Proposed Development, which the Applicant considers to be temporary, with the culverts being removed during the decommissioning stage;
- initially considers that maintaining culverts through the life of the Proposed Development would minimise the environmental disturbance of installing and removing the culverts at the construction stage and then again at the decommissioning stage and provide optionality for HGV and abnormal load access;
- says it would be possible to carry out maintenance without the culverts and without other significant effects, and it would consider these alternatives;
- having reviewed paragraph 2.10.88 of NPS EN-1, commits to removing the culverts after the construction stage, and secures this in the Outline CEMP [[REP6-018](#)];
- says the culverts would be reinstalled to enable decommissioning and thereafter removed, and secures this in the Outline DEMP [[REP6-022](#)];
- later proposes a single-span bailey bridge structure instead of a culvert at the downstream crossing and updated the flood modelling accordingly;
- concludes that a sequential approach is taken at site-level during the design process, with only buried cables and a short section of internal access track proposed to be located within Flood Zones 2 and 3; and
- the edge of one area of panel arrays is proposed to be in an area at risk of groundwater flooding with the lowest edge of those arrays being comfortably higher than the level of any flooding in that area and, as such, no specific mitigation is required beyond the design of those features.

3.9.64 The EA [[REP7-013](#), [REP8-025](#)] notes the updates, the commitment to removing the new watercourse crossings during the operation stage, and the design changes representing the third crossing as a single span bailey bridge which mean that off-site flood increases outside of the Order Limits are not observed.

3.9.65 SDDC [[REP8-024](#)] says that the FRA and mitigation measures address flood risk during the construction, operation, and decommissioning stages. DCC and SDDC [[REP8-017](#)] agree that the Proposed Development is designed, as far as possible, to avoid areas of flood risk.

The Sequential Test

3.9.66 The EA [[AS-019](#), [REP5-042](#), [REP5-043](#)]:

- says it is not within its remit to determine whether the Sequential Test is passed as it is unable to advise on whether alternative sites are reasonably available or whether they would be suitable for the Proposed Development;
- refers to paragraph 5.8.7 of NPS EN-1, which states that new energy infrastructure should only be necessary in flood risk areas in the exception, for example where there are no reasonably available sites in areas at lower risk; and
- says that according to the Planning Practice Guidance new development should be steered to areas with lowest risk of flooding, taking all sources of risk and climate change into account.

3.9.67 The Applicant [[REP6-041](#), [REP8-020](#)] submits a Sequential Assessment - Flood Risk [[REP6-045](#)] that it says demonstrates that there are no sites within a reasonable study area around Drakelow Substation that would be able to deliver a similar generating capacity to the Proposed Development at a lower risk of flooding, when taking account of wider sustainable development objectives and the very small area of the site (4% which equates to 8.3 ha) which lies outside Flood Zone 1. It therefore considers that the test at paragraph 5.8.36 of NPS EN-1 is met.

3.9.68 The EA [[REP7-013](#)] reaffirms that compliance with the Sequential Test is not within its remit and says that the LPA would need to determine if the test is passed. The EA says that Sequential Assessment - Flood Risk [[REP6-045](#)] addresses its concerns about the Sequential Test.

3.9.69 DCC and SDDC [[REP8-017](#)] agree that the sequential assessment follows a logical methodology and concludes that there are no sites within a reasonable study area which would be able to deliver the Proposed Development, having regard to other sustainable development objectives, which is sequentially preferable in flood risk terms to the proposed site. They agree that the Sequential Test is therefore met.

The Exception Test

3.9.70 Paragraph 5.8.11 of NPS EN-1 states that *“Both elements of the Exception Test will have to be satisfied for development to be consented. To pass the Exception Test it should be demonstrated that:*

- *the project would provide wider sustainability benefits to the community that outweigh flood risk; and*
- *the project will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall.”*

3.9.71 The EA [[REP5-042](#), [REP5-043](#), [REP8-025](#)] is only able to provide advice on whether the project would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible would reduce flood risk overall. It refers to its comments on the flood modelling (which are summarised above with the Applicant’s responses) and concludes that the Exception Test is agreed.

3.9.72 The Applicant [[REP6-042](#)] considers that wider sustainability benefits to the community would include:

- contributing to the urgent need for new low and zero carbon energy infrastructure and delivering a development which national policy identifies as being a CNP;
- production of clean renewable electricity which would make a significant contribution to local and national climate emergency goals;
- an expected 125% biodiversity improvement in habitat units, 20% increase in hedgerow units and 20% increase in river units across the site;
- hedgerow planting and management, and improving grasslands and wildflowers;
- improving links between existing paths and PRoW, and creating a new permissive path for use during the operation stage; and
- creating approximately 150 jobs during the construction stage, local contracting opportunities, direct, indirect and induced effects for businesses, payment of business rates.

3.9.73 DCC and SDDC [\[REP8-017\]](#) agree that:

- the Exception Test for ‘essential infrastructure’ within Flood Zone 3 (both 3a and 3b) requires that the infrastructure is designed and constructed to remain operational and safe for users in times of flood, resulting in no net loss of floodplain storage, not impede water flows and not increase flood risk elsewhere;
- the buried cables and internal access track meet these requirements (with alternative access tracks outside of Flood Zones 2 and 3 useable during flood conditions) as no significant changes to land profiles are proposed; and
- the Exception Test is therefore satisfied.

Other drainage

3.9.74 The EA [\[AS-019\]](#), [\[REP1-032\]](#), [\[REP1-033\]](#) says that although there are no main rivers on the site, an impoundment licence may still be required for an ordinary watercourse if it is part of the upper catchment of a main river system and it is unlikely that the Proposed Development would qualify under any exemption applying to the need for an impoundment licence. It doesn’t agree to disapply any requirement for impoundment licences and therefore considers that the proposed disapplication of s25 of the Water Resources Act 1991 should be deleted from the dDCO. The Applicant [\[REP3-032\]](#) then amended Article 6 of the dDCO [\[REP8-003\]](#) to remove s25 of the Water Resources Act 1991 from the list of statutory provisions being disapplied, following which the EA [\[REP4-016\]](#) advises that the matter is agreed.

3.9.75 The EA [\[AS-019\]](#), [\[REP1-033\]](#) says that the CEMP provides essential mitigation to prevent impacts from sedimentation and pollution from construction sites and often encounter construction sites that have caused pollution because their CEMP was either insufficient or not adhered to. It therefore requests that Requirement 9 of the dDCO is changed to provide that it would be consulted when the CEMP is submitted to the LPA for approval. The Applicant [\[REP1-023\]](#) then updated the dDCO [\[REP8-003\]](#) accordingly, following which the EA [\[REP3-001\]](#) says that its concerns are addressed.

3.9.76 DCC [\[REP1-026\]](#) says that an Outline Surface Water Management Plan should be provided during the Examination to help ensure that surface waters would be adequately managed for the prevention of flooding, conservation of ecology, and the prevention of pollution. The EA [\[REP2-003\]](#) feel that mitigation is provided sufficiently.

- 3.9.77 The Applicant [REP3-032] updated the Outline CEMP [REP6-018] to set out measures for the management of surface water during the construction stage and says that this performs the role of an Outline Surface Water Management Plan by identifying the expected measures to be used. It also updated Requirement 9 of the dDCO [REP8-003] to require that the CEMP must include details of surface water management measures. DCC [REP4-012] says that the updates address its concerns.
- 3.9.78 Responding to my [PD-010] query and reference to paragraphs 5.8.38-39 of NPS EN-1, the Applicant [REP1-025] updated Requirement 17 of the dDCO [REP8-003] to secure the maintenance of surface and foul water drainage during the operation stage.

Overall impacts

- 3.9.79 DCC and SDDC [REP8-017] consider that with the secured mitigation the Proposed Development would be predicted to result in:
- negligible adverse effects during the construction stage resulting from soil compaction, potential fuel spills, and mobilisation of soil/ sediment;
 - negligible effect from contaminated firefighting water associated with the BESS;
 - negligible effect on off-site flood risk and on the existing land drainage regime and surface water flow paths; and
 - negligible beneficial effects on water quality during the operation stage from reduced soil erosion and reduced nutrients and pesticide loading.

CONCLUSIONS ON WATER QUALITY, RESOURCES, DRAINAGE, AND FLOODING

- 3.9.80 The submissions from the EA, DCC, and SDDC leave me with no concerns about the water quality impact assessment [APP-143] methodology and I am satisfied in relation to paragraphs 5.6.17 and 5.16.15 of NPS EN-1.
- 3.9.81 The WFD Assessment [REP4-043] concludes that with the mitigation in the Outline CEMP [REP6-018] and Surface Water Management Plan, as secured by Requirement 9 of the dDCO [REP8-003] there would be no adverse effect on the status of the water bodies or on the aims and objectives of the River Basin Management Plan. The EA is content with the WFD Assessment. I agree and have no concerns in relation to the WFD Regulations or paragraph 5.16.14 of NPS EN-1.
- 3.9.82 The Applicant provides evidence of consulting with DFRS about fire risk at the BESS and updated the drainage strategy [REP7-003] with measures to address potential pollution from surface water runoff during a fire event. The EA, DCC and SDDC are content that their concerns are addressed and have no outstanding issues.
- 3.9.83 I am satisfied with the updates to the Outline CEMP [REP6-018] during the Examination, including in relation to monitoring and environmental permits and matters to be included in a Water Quality and Silt Management Plan that the EA and DCC raise and are content with. I have no reason to believe that any necessary pollution control permits would not be granted and am satisfied in relation to paragraphs 4.12.15-16 and 5.16.16 of NPS EN-1.
- 3.9.84 The FRA and Outline Drainage Strategy [REP7-003], Outline CEMP [REP6-018] and Outline OEMP [REP6-020] were updated to mitigate potential blockages to flood water flows that the EA is satisfied with, and so am I. The Applicant provides sufficient explanation that flows would not be impeded by the solar panels as they would be

comfortably above flood levels. The EA is satisfied with the updates to the flood modelling during the Examination, including the climate changes allowances. I have no concerns in relation to paragraphs 4.10.13 or 5.8.13-15 of NPS EN-1 or paragraph 2.10.87 of NPS EN-3.

- 3.9.85 The Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#) secure commitments to remove the new watercourse crossings during the operation stage and change the third crossing to a single span bailey bridge [\[REP7-003\]](#). Noting EA's comments, I am satisfied that there would not be an increase in flood risk because of the Proposed Development and that paragraphs 5.8.12 and 5.8.41 of NPS EN-1 are complied with.
- 3.9.86 I am content that the dDCO [\[REP8-003\]](#) does not disapply s25 of the Water Resources Act 1991 and that it includes appropriate provisions for consultation with the Lead Local Flood Authority, respectively addressing the EA's and DCC's concerns. Noting DCC's comments, I am satisfied with the mitigation provided for surface water management in the dDCO [\[REP8-003\]](#) and Outline CEMP [\[REP6-018\]](#).
- 3.9.87 Noting the comments from DCC, SDDC and the EA:
- I am satisfied that the Applicant addresses the Sequential Test and demonstrates that there are no suitable alternative sites at a lower risk of flooding;
 - I find that the Applicant demonstrates that there would be wider sustainability benefits to the community that outweigh flood risk and that the Proposed Development would be safe without increasing flood risk elsewhere, and thereby satisfies the Exception Test; and
 - I have no concerns in relation to paragraphs 5.8.9-11 of NPS EN-1.
- 3.9.88 I note that the BESS and on-site substation are in an area of lower flood risk and, following from the above, I am content in relation to paragraph 5.8.36 of NPS EN-1.
- 3.9.89 The temporary haul tracks would be permeable [\[REP7-003\]](#). In Section 3.3 I conclude that the mitigation in the Outline CEMP [\[REP6-018\]](#) and Outline SMP [\[REP6-018\]](#) Appendix 1, [\[REP6-022\]](#) Appendix 1] ensure that land drains would remain operational throughout the lifetime of the Proposed Development and following the decommissioning stage. It follows that I am satisfied in relation to paragraphs 2.10.85-86 of NPS EN-3.
- 3.9.90 Following from the above, I have no compliance concerns in relation to relevant local policy, including SDDC Policy SD2, Policy SD3, and Policy INF7.

Matters to be taken to Chapter 5 and the planning balance

- 3.9.91 For the purposes of Chapter 5 and the planning balance, I conclude that water quality, resources, drainage and flooding bring neutral weight that does not affect the balance of the Order being made.
- 3.9.92 On 22 January 2025, after the close of the Examination, the EA updated its [National Flood Risk Assessment](#). I do not take account of this update, but the SoS may wish to consider it.

3.10 OTHER PLANNING TOPICS

INTRODUCTION

- 3.10.1 This section considers the effects in relation to air quality, aviation and defence, climate change adaptation and resilience, human health, fire risk, safety, security, nuisance, socio-economics, NMU, waste, cumulative effects, and good design. Related matters are addressed earlier in this chapter.
- 3.10.2 The Applicant's case is set out in documents including the Planning Statement [[APP-181](#)], the Design Statement [[REP6-035](#)], and ES Chapter 16 - Other Issues [[APP-177](#)].

AIR QUALITY

Policy considerations

NPS EN-1

4.12.15	Regulation of releases under the pollution control framework.
4.12.16	Grounds for refusal based on pollution.
5.2.2	Legal limits, national objectives, and targets.
5.2.9	Matters that the ES should describe.
5.2.10	Fine particulate regulations and associated guidance.
5.2.12	Breaches and ability to achieve compliance.
5.2.13	Mitigation measures for operational and construction emissions.
5.2.16	Weight given to a deterioration in air quality and any breaches.
5.2.17	Weight given if near a sensitive receptor site.
5.2.18	Grounds for refusing consent: sensitive receptor sites.
5.2.19	Grounds for refusing consent: a statutory limit, objective, or target.

Local policies

- 3.10.3 The DCC/ SDDC LIR [[REP2-001](#)] identifies SDDC Policy SD1: Amenity and Environmental Quality.
- 3.10.4 Two Air Quality Management Areas (AQMA) were declared by East Staffordshire Borough Council (ESBC) for exceedances of the annual mean nitrogen dioxide (NO₂) objective relating to road traffic emissions back in 2007:
- AQMA 1, which is centred on the Derby Turn roundabout, Burton Upon Trent, and the road network that feeds into it, and the Applicant's construction route 6 passes through a short section of the southern end of it; and
 - AQMA 2, which is centred on St Peters Bridge roundabout in Stapenhill, and the Applicant's construction route 6 passes through the centre of it.

The application

- 3.10.5 The assessment [[APP-175](#), [APP-177](#)] considers the effects of dust and particulate matter during the construction stage and NO₂ and fine particulate matter emissions from transport.
- 3.10.6 The Applicant states that the dust risk assessment is carried out in accordance with Institute of Air Quality Management Guidance on the Assessment of Dust from Demolition and Construction (2023) and that emissions from road traffic considers Environmental Protection UK and Institute of Air Quality Management Guidance on Planning for Air Quality (2017).
- 3.10.7 Baseline conditions are identified using SDDC's Air Quality Annual Status Report (2022) and background pollutant concentration maps published by DEFRA.
- 3.10.8 Data from the NO₂ monitoring network [[APP-175](#) Figure 1] indicate no exceedances of the annual mean NO₂ objective between 2017 and 2021 and concentrations of 9.2-35.4 µg/m³. The DEFRA maps suggest that background concentrations of NO₂, particulate matter up to 10 microns in diameter, and particulate matter up to 2.5 microns in diameter at the site are well below the objectives/ standards.

Construction stage

- 3.10.9 The Applicant states there would be no demolition at the site and that the magnitude of dust would be medium for earthworks and small for construction and trackout. It says that there are no dust sensitive receptors within 100m of the works and the potential soiling and health effects of dust on receptors would be negligible or low.
- 3.10.10 The Applicant considers that the average daily traffic generated during the construction stage of 14 heavy vehicles and 67 light vehicles Annual Average Daily Traffic would, when considered against the screening criteria for areas outside an AQMA [[APP-175](#) Appendix 16.1], lead to insignificant potential health impacts due to construction stage transport emissions. It also considers that this is well below the screening threshold for areas within the AQMA within Stapenhill and Burton Upon Trent.
- 3.10.11 Mitigation measures in the Outline CEMP [[REP6-018](#)] include:
- displaying the details of person(s) accountable for air quality and dust issues;
 - recording all dust and air quality complaints, identifying cause(s), taking appropriate measures to reduce emissions in a timely manner, recording the measures taken, and making the complaints log available to the local authority;
 - recording any exceptional incidents that cause dust and/ or air emissions and the action taken to resolve them.
 - carrying out regular site inspections to monitor compliance, and increasing the frequency of site inspections when there would be high potential to produce dust;
 - locating machinery and dust-causing activities away from receptors, as far as is possible;
 - erecting solid screens or barriers around dusty activities or the site boundary;
 - avoiding site runoff of water or mud;
 - ensuring that vehicles switch off their engines when stationary;

- limiting the use of diesel or petrol-powered generators;
- using cutting, grinding or sawing equipment fitted or in conjunction with suitable dust suppression;
- ensuring an adequate water supply on the site for effective dust/ particulate matter suppression;
- using enclosed chutes, conveyors and covered skips; and
- having no bonfires and burning of waste.

Operation stage

- 3.10.12 Based on around two to three light vehicle visits per day during the operation stage, the Applicant considers that the impacts would not be significant.

Cumulative and combined effects

- 3.10.13 The Applicant considers that there would be no significant cumulative effects for identified cumulative developments with the Proposed Development.

Issues arising during the Examination

- 3.10.14 With reference to paragraphs 5.2.12 and 5.2.19 of NPS EN-1 and noting the proximity of construction route 6 to Burton Upon Trent AQMA1 and AQMA2 and the estimate of a maximum annual average daily trips of 14 heavy vehicles and 67 light vehicles, I [\[PD-010\]](#) asked the Applicant to:
- identify the screening threshold for areas within an AQMA and how these accord with any relevant guidance;
 - provide its reasoning about whether the increase in traffic due to the Proposed Development would be likely to lead to a breach of any relevant statutory air quality limits, objectives or targets; and
 - provide its reasoning about whether the increase in traffic due to the Proposed Development would be likely to affect the ability of a non-compliant area to achieve compliance within the timescales set out in the most recent relevant plan/ strategy.
- 3.10.15 The Applicant [\[REP1-025\]](#), [\[REP6-042\]](#) replies that:
- vehicle flows would be well below Institute of Air Quality Management guidance thresholds whereby an air quality assessment is typically required when a development would increase light vehicle flows by more than 25 heavy vehicle annual average daily trips or more than 100 light vehicle annual average daily trips within an AQMA;
 - ESBC Air Quality Report for 2023, states that AQMA2 has shown consistent compliance with the annual mean NO₂ target for the past twelve years and is therefore at a point where it can be revoked;
 - ESBC released a 2024 version of that report which confirms at various points, that ESBC intend to revoke AQMA2 in 2023 or 2024 and that it may be able to revoke AQMA1 if its continued trajectory continues;

- NO₂ objectives are annualised measurements and peak traffic flows associated with the Proposed Development are not predicted to occur over a full calendar year, such that their impact is less if annualised over this period; and
- there are no non-compliant areas through which traffic associated with the Proposed Development would route, and the Proposed Development would not lead to a breach of relevant statutory air quality limits, objectives or targets set out in the most recent relevant air quality plan/ strategy.

- 3.10.16 ESBC did not respond to my [\[PD-010\]](#) invitation to comment and the Applicant [\[REP6-042\]](#) says that it asked ESBC to confirm its position on 15 October 2024 and sent a further follow up email on 12 November 2024, but has not received a response.
- 3.10.17 The Applicant [\[REP1-025\]](#) refers to the air quality mitigation in the Outline DEMP [\[REP6-022\]](#) and says that the number of vehicles associated with the decommissioning stage would not be expected to give rise in itself to air quality impacts.
- 3.10.18 DCC and SDDC [\[REP2-001, REP8-017\]](#) say the potential effects are insignificant and any potential adverse impacts during the construction stage would be addressed through the CEMP.

Conclusions

- 3.10.19 The Applicant considers legal limits in the Air Quality Standards Regulations 2010, national objectives in the Air Quality (England) Regulations 2000, and fine particulate targets in The Environmental Targets (Fine Particulate Matter) (England) Regulations 202. It describes the change to existing air quality, significant effects, mitigation, residual effects, predicted absolute emissions, and concentration change after mitigation. Consideration is given to the proximity to sensitive receptors. I am content regarding paragraphs 5.2.2, 5.2.9-10, and 5.2.18 of NPS EN-1.
- 3.10.20 DCC and SDDC are content that potential adverse impacts during the construction stage would be addressed through the CEMP, as am I. Mitigation is secured in the Outline CEMP [\[REP6-018\]](#), including for the Outline Dust and Air Quality Management Plan, and in the Outline DEMP [\[REP6-022\]](#). I am satisfied with the secured mitigation and in relation to paragraph 5.2.13 of NPS EN-1.
- 3.10.21 I note that the predicted light and heavy vehicle flows are well within Institute of Air Quality Management guidance thresholds for AQMA, that ESBC's Air Quality Reports shows ongoing compliance with the annual mean NO₂ target for one AQMA and that the other AQMA may be revoked if its continuous trajectory continues. ESBC has not raised any concerns.
- 3.10.22 On the balance of probability, I conclude that the Proposed Development would be unlikely to lead to a breach of any relevant statutory air quality limits, objectives or targets, or affect the ability of a non-compliant area to achieve compliance within relevant timescales. It follows that I am satisfied in the matter of paragraphs 5.2.12 and 5.2.19 of NPS EN-1.
- 3.10.23 I have no reason to disagree with the Applicant's assessment that air quality impacts during the construction, operation, and decommissioning stages would not be significant and I am content regarding paragraphs 5.2.16-17 of NPS EN-1. I have no reason to believe that any necessary pollution control permits would not be granted and have no concerns regarding paragraphs 4.12.15-16 of NPS EN-1. I have no concerns in relation to local policy, including SDDC Policy SD1.

- 3.10.24 For the purposes of Chapter 5 and the planning balance, I conclude that potential impacts on air quality brings neutral weight that does not affect the balance of the Order being made.

AVIATION AND DEFENCE

- 3.10.25 Refer to Section 3.6 for consideration of glint and glare effects on aviation.

Policy considerations

NPS EN-1

5.5.39	Bodies to be consulted.
5.5.40	Effects to be assessed.
5.5.49	Matters for the SoS to be satisfied about.
5.5.50	The operation and safety of aerodromes.
5.5.60	When consent may be granted.

The application

- 3.10.26 The assessment [[APP-181](#)] states that the potential for impacts on civil and military aviation and defence interests are limited as solar energy generation does not involve any tall structures and does not generate any vibrations, bird strikes, or thermal plume turbulence.
- 3.10.27 The Applicant considers that in relation to other communications, navigation, and surveillance infrastructure, weather warning and forecasting infrastructure and other defence interests, the Proposed Development would have no adverse impact on these assets, infrastructure or interests as no tall structures are proposed that would interfere with its operation.

Issues arising during the Examination

- 3.10.28 Aviation and defence matters arising during the Examination were in relation to glint and glare and are set out in Section 3.6.
- 3.10.29 The Applicant [[REP1-025](#)] says that none of the parties listed in paragraph 5.5.39 of NPS EN-1 provided a response at EIA Scoping or submitted a Relevant Representation, with the Civil Aviation Authority and NATS formally notified of the acceptance of the application.
- 3.10.30 In the SoCG between DCC, SDDC and the Applicant [[REP8-017](#)] it is agreed that there would be minor and not significant glint and glare effects on aviation activity, and no significant cumulative effects with other proposed or permitted developments.

Conclusions

- 3.10.31 With reference to Section 3.6, I conclude that the glint and glare assessment methodology is adequate, I am satisfied that appropriate mitigation is provided for glint and glare, and I am satisfied that there would be unlikely to be significant glint and glare impacts on aviation.

- 3.10.32 No concerns are submitted by the Ministry of Defence, Met Office, Civil Aviation Authority, NATS or any aerodrome and I am content with the Applicant's assessment that the Proposed Development would be unlikely to result in any significant adverse effects.
- 3.10.33 Following from the above, I have no concerns in relation to paragraphs 5.5.39-40, 5.5.49-50, or 5.5.60 of NPS EN-1.
- 3.10.34 For the purposes of Chapter 5 and the planning balance, I conclude that potential impacts on aviation and defence bring neutral weight that does not affect the balance of the Order being made.

CLIMATE CHANGE ADAPTATION AND RESILIENCE

Introduction

- 3.10.35 This part of the report considers the effects of climate change on the Proposed Development, including climate change adaptation and resilience. The effects of the Proposed Development on climate change, including GHG emissions, are addressed in Section 3.2. The implications of climate change for flooding are considered in Section 3.9.

Legislation and policy considerations

NPS EN-1

4.10.8	The impacts of climate change.
4.10.9	Use of guidance, benchmarks, BSs, and the EIA Regulations.
4.10.13	Matters for the SoS to be satisfied about.
4.10.15	Radical changes to climate beyond that projected.

Local policies

- 3.10.36 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy INF7: Green Infrastructure.

The application

- 3.10.37 An assessment [\[REP3-021\]](#) is made of project resilience to consider the effects of a changing climate on the Proposed Development. An in-combination assessment considers the extent to which the climate worsens or improves the effects of the Proposed Development on the environment, on a topic-by-topic basis.
- 3.10.38 Potential effects for the detailed assessment are identified as in-combination effects on landscape and visual, and ecology. The assessment uses the IEMA EIA Guide to: Climate Change Resilience and Adaptation (2020).
- 3.10.39 The Applicant considers that receptors considered potentially sensitive to climate change are in relation to landscape and visual (operation stage) and ecology (construction and operation stages). The study areas used for the in-combination assessment are as defined in the relevant chapters of the ES.

- 3.10.40 The current climate is identified using Met Office data and the UK Climate Projections 2018 are used to establish future climate change projections. The assessment considers climate changes including:
- central estimate of a 2.4°C increase in winter mean temperature with a 90% probability of an increase exceeding 0.8°C and 10% probability of more than 4.2°C;
 - central estimate of a 3.4°C increase in summer mean temperature with a 90% probability of an increase exceeding 1.5°C and 10% probability of more than 5.4°C;
 - central estimate of a 15% increase in winter mean precipitation with a 90% probability of a decrease of up to 3% and 10% probability of a 35% increase;
 - central estimate of a 26% decrease in summer mean precipitation with a 90% probability of a decrease of up to 54% and 10% probability of a 2% increase; and
 - small changes in projected wind speed.
- 3.10.41 The effect is based on a combination of the likelihood of an effect occurring and the consequence of an effect occurring.
- 3.10.42 In relation to in-combination landscape and visual effects during the operation stage the Applicant considers that:
- mitigation would include the planting of new hedgerows, woodland understory belts with trees to filter views and species rich meadow grassland;
 - existing hedgerows would be enhanced and where necessary would also be strengthened with trees to screen or filter views;
 - consideration is given to measures to cope with climate change, including by planting resilient plant species in line with NE guidance;
 - projected climate change would not materially alter the predicted landscape and visual effects during the operation stage;
 - whilst it is possible that an in-combination climate change effect on landscape and visual amenity could occur during the operation stage the consequence of a climate effect would be low; and
 - a minor in-combination effect is predicted for landscape and visual amenity during the operation stage that would not be significant.
- 3.10.43 In relation to in-combination ecology effects during the construction and operation stages the Applicant considers that:
- higher summer temperatures and associated water stress may impact on the existing hedgerow and tree species within the site and cause an increase in the range and diversity of INNS, such as Japanese knotweed;
 - increased rainfall and flooding events, coupled with rising temperatures, are also likely to modify UK fauna and flora over time, with shifts in species' ranges and behavioural patterns such as breeding and hibernation;
 - the ecological mitigation and enhancements [\[REP4-040\]](#) would increase resilience to the ecological effects of climate change, through the creation and enhancements of hedgerows, creation of woodland understory planting with trees, and creation of meadows along the field margins and in more open areas;

- this would improve ecological connectivity and increase the ability of species to move and adapt and the provision of bird and bat boxes would be beneficial for both bat and bird species offering both new shelter and foraging opportunities;
- mitigation would prevent the spread of INNS [\[REP6-018, REP4-040\]](#);
- as the construction stage is due to commence in Spring 2026 for 16 months it is considered unlikely that there would be an increase in the species ranges occupied by flora and fauna and INNS during this period;
- a negligible in-combination climate effect on ecology is predicted during the construction stage that would not be significant;
- although an in-combination climate change effect on ecology could occur during the operation stage the consequence of a climate effect would be low; and
- a minor in-combination effect is predicted for ecology during the operation stage that would not be significant.

3.10.44 In relation to project resilience the Applicant considers that:

- solar PV panels are designed to withstand extreme climatic conditions;
- the general trend towards warmer winters and hotter, drier summers is taken into consideration when designing the landscaping strategy to ensure the species selected for planting on the site would be resilient to wildfires;
- the Proposed Development would be designed to deal with the maximum loading expected from increases in wind speed;
- to avoid employee discomfort, for example during periods of extreme temperatures or increased precipitation, construction and operational activities would be managed so that the hottest or wettest/ coldest parts of the day are avoided where possible to ensure worker safety;
- the design, orientation and positioning of welfare facilities for staff would be carefully considered;
- the risk of overheating/ hypothermia would be incorporated into the site risk assessment and all relevant UK legislation related to the work environment would be complied with and measures would be taken such as ensuring appropriate personal protective equipment is worn for the site conditions and adequate water supplies are available to ensure staff stay hydrated during hotter weather;
- while the consequence of a climate impact occurring would be high in the event of a wildfire, high winds or storm occurring, or medium for employee discomfort and extreme weather conditions, when the mitigation outlined above is taken into account, it is considered unlikely that these effects would occur; and
- minor effects are predicted in relation to the Proposed Development's resilience to climate change that would not be significant.

Issues arising during the Examination

3.10.45 Responding to my [\[PD-010\]](#) request, the Applicant [\[REP1-025\]](#) updated the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A) and Outline CEMP [\[REP6-018\]](#) to ensure that all mitigation is provided to the same level of detail as in ES Chapter 13 [\[REP3-021\]](#) and includes relevant provisions for monitoring and maintenance.

- 3.10.46 DCC and SDDC [\[REP8-017\]](#) agree with the Applicant that minor effects are predicted in relation to the Proposed Development's resilience to climate change.

Conclusions

- 3.10.47 The Applicant uses relevant IEMA guidance to assess the effects of climate change including from changes in temperature, precipitation, wind speed, and the potential for wildfires. It carries out an assessment of the in-combination effects of climate change on landscape and visual during the operation stage, and on ecology during the construction and operation stages. The Applicant assesses the resilience of the Proposed Development to climate change, including for the solar panels, other structures, and employees.
- 3.10.48 Following the updates during the Examination, I am content with the mitigation secured in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] and Outline CEMP [\[REP6-018\]](#). Following this mitigation, and noting DCC's and SDDC's comments, I find that there is the potential for adverse in-combination effects of climate change on landscape and visual, and on ecology that would each be no more than minor adverse. Although these would individually be not significant, I consider that taken together and in the absence of any beneficial effects they would result in an adverse effect for the planning balance.
- 3.10.49 Based on the above, I am satisfied with the assessment methodology, secured mitigation, compliance with paragraphs 4.10.8-9, 4.10.13 and 4.10.15 of NPS EN-1, and I have no concerns in relation to local policy, including SDDC Policy INF7.
- 3.10.50 For the purposes of Chapter 5 and the planning balance, I conclude that potential in-combination effects of climate change on landscape and visual, and on ecology bring a little weight against the making of the Order.

HUMAN HEALTH, FIRE RISK, SAFETY, AND SECURITY

Introduction

- 3.10.51 This part of the report considers effects in relation to human health, fire risk, safety, and security. Landscape and visual impacts are addressed in Section 3.6. Noise and vibration is in Section 3.7. Highway safety is considered in Section 3.8. Flooding, water quality, battery storage fire risk and related emergency response and pollution are addressed in Section 3.9. Air quality, aviation, defence, nuisance, PRoW, recreation, and socio-economics are set out elsewhere in this section.

Legislation and policy considerations

EIA Regulations

- 3.10.52 Regulation 5(4) requires the assessment of expected significant effects arising from the Proposed Development's vulnerability to major accidents.

NPS EN-1

4.4.4	Adverse health impacts and mitigation measures.
4.4.6	Local improvements to encourage health and wellbeing.
4.4.7	Mitigation of health impacts by separate regulation.

4.4.8	Health concerns and requirements.
4.12.2	Pollution control and impacts to human health.
4.13.5	Consultation with the HSE on safety matters.

NPS EN-3

2.10.46	Site security, natural defences, and perimeter security.

NPS EN-5

2.9.46	Underground cables and magnetic fields.
2.9.48	Health protection guidelines for non-ionizing radiation.
2.9.51	Electric and magnetic fields (EMF) from power lines and substations.

Local policies

- 3.10.53 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy SD1: Amenity and Environmental Quality.

The application

- 3.10.54 The Applicant [\[APP-177\]](#) considers potential effects in relation to human health, fire risk, safety and security, including in relation to major accidents and disasters.
- 3.10.55 The Applicant says that the assessment considers guidance in the IEMA's Major Accidents and Disasters in EIA: A Primer (2020).
- 3.10.56 The receptors considered include the occupants of Rosliston, Walton-on-Trent and Coton-in-the-Elms, other residents of farms/ properties within 0.25km of the site, drivers and cyclists using local roads that run through and around the site, users of PRoW running through and near the site, underground infrastructure services, and construction and operational staff on the site.
- 3.10.57 The Applicant refers to the potential for the theft of copper wiring and other materials and equipment and the potential for this to result in fire if persons are intent on damage/ sabotage. This is mitigated preventing unauthorised access to the site by measures including secure fencing and gated entrances, CCTV and remote monitoring, lighting of critical areas, and through the provision of site staff to act as a deterrent to criminal activity. As such the Applicant considers that there would be no significant effects because of criminal activity.
- 3.10.58 The Applicant considers that the risk of fire during the construction and decommissioning stages would be satisfactorily mitigated through measures in the Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#).
- 3.10.59 Taking account of the potential hazards and risks and the measures to avoid and minimise them, the Applicant concludes that the Proposed Development would not give rise to a major accident and/or disaster that would result in significant effects.
- 3.10.60 In relation to health and safety, the Applicant states that all components would be designed and manufactured to meet all appropriate engineering design, manufacturing,

operational and maintenance safety standards. It says that the Proposed Development, would comply with all relevant UK legislation including The Health and Safety at Work etc. Act 1974, The Construction (Design & Management) Regulations 2015, The Management of Health & Safety at Work Regulations 1999, and The Waste Batteries and Accumulators Regulations 2009.

3.10.61 The Applicant states that mitigation of health and safety risks would be provided by the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#), including that:

- a risk assessment would be undertaken for all major construction activities, with measures put in place to manage any hazards identified;
- security fencing would be erected around the site boundary during the construction stage, more robust palisade fencing would be erected around the on-site substation compound and the BESS, and CCTV would be installed;
- exclusion zones to existing electricity transmission and distribution lines passing through the site would be agreed in consultation with network operators to allow access to the pylons by network maintenance teams, while providing suitable construction access for the safe use of tall solar construction equipment;
- mitigating risks in relation to the underground 132kV cable connecting the on-site substation with the National Grid Drakelow Substation with the use of typical safety measures for underground utility installations;
- using banks men to monitor the Cross Britain Way/ National Forest Way and ensure users cross the construction works area safely and providing suitable warning signage and a site operative if a vehicle needs to cross a PRow during the construction stage;
- ensuring that the proposed new permissive path (for walking only) would only be usable by members of the public once the construction stage is complete;
- providing signage, gates and fencing to prevent unauthorised access to the site during the operation stage;
- ensuring a strict speed limit of 15 miles per hour on surfaced and 10 miles per hour on unsurfaced haul roads and work areas during the construction stage; and
- providing measures to control noise and dust to protect PRow users from experiencing adverse noise and dust effects.

3.10.62 Given the measures outlined above, the Applicant concludes that the risk to human health and safety, would be low and not significant during the construction and operation stages.

Issues arising during the Examination

3.10.63 The Applicant [\[REP1-023\]](#) clarifies that EMF guidelines confirm that no assessment is required for infrastructure or cables which are 132kV or below and therefore the EMF effects were scoped out of the ES assessment.

3.10.64 UK Health Security Agency [\[RR-323\]](#), also on behalf of the Office for Health Improvement and Disparities, says that earlier comments raised on 30th May 2022 have been addressed, it is satisfied with the methodology used for the environmental assessment, and the Proposed Development should not result in any significant adverse impact on public health.

3.10.65 The HSE [\[REP2-005\]](#) says that:

- according to its records the Proposed Development is not within the consultation zones of major accident hazard sites or major accident hazard pipelines;
- the presence of hazardous substances on, over or under land at or above set threshold quantities would probably require Hazardous Substances Consent under the Planning (Hazardous Substances) Act 1990 as amended;
- there are no additional requirements for any risk assessments submitted to and approved by the relevant planning authority to also be considered by HSE, although it may be beneficial for the Applicant to undertake a risk assessment as early as possible to satisfy themselves that the design and operation would meet the requirements of relevant health and safety legislation as the design progresses;
- there are no HSE Licensed explosive sites in the vicinity; and
- there are no comments on electrical safety from a planning perspective.

3.10.66 I [\[PD-010\]](#) raised a question referring to paragraph 4.13.8 of NPS EN-1 and a gas pipeline through the site. The Applicant [\[REP1-023, REP1-025\]](#):

- says the pipeline passes through the site along the alignment of Rosliston Road;
- refers to the Crossing Method Statement [\[AS-018\]](#) and says it engaged directly with the owner of the gas pipeline, Cadent, to discuss how the underground cable would cross the gas pipeline to ensure that its asset and the public are protected and that the crossing and the method for construction would not commence without Cadent being notified and the construction plans agreed prior to commencement;
- considers the works proposed around the gas pipeline are not unusual or unduly unsafe, and can be managed safely subject to the Applicant following the strict safe working procedures and consultation requirements as set out in Cadent and United Kingdom Onshore Pipeline Operator's Association guidance;
- includes protective provisions for Cadent in the dDCO and procedures are established to notify and agree designs, methodologies and construction timing to ensure safe working around the medium pressure gas asset, and to require compliance with Cadent's established safe working guidelines; and
- the relevant Competent Authorities (i.e. the HSE and EA) have been consulted and have not raised any safety objections.

3.10.67 Cadent Gas [\[REP5-041\]](#) accepts the Protective Provisions.

3.10.68 Responding to my [\[PD-010\]](#) question about safe access and egress during flooding the Applicant [\[REP1-025\]](#):

- considers potential flooding on Rosliston Road and Coton Road between Oaklands Farm and Lad's Grave would not exceed 300mm in a 1% surface water flood event, which construction and maintenance vehicles would be able to pass through safely;
- the Outline CEMP [\[REP6-018\]](#) includes provision for the weather forecast to be monitored throughout the construction stage, which would provide the ability to predict whether flooding might occur and multiple access routes could be temporarily employed should Rosliston Road or Coton Road become unpassable;
- the two Abnormal Indivisible Load deliveries would be rescheduled to avoid exceptional flood issues present on Coton Road until conditions allowed; and

- neither the EA, DCC (as the Lead Local Flood Authority) or SDDC have raised the issue of safety in respect of access.

3.10.69 In relation to security, the Applicant [[REP1-023](#), [REP3-033](#)] clarifies that the Proposed Development would be secured with fencing and gates and would employ minimal lighting for security and personnel safety at specific operational points only, such as site entrances, and the BESS and on-site substation. It adds that the BESS and on-site substation would be surrounded by steel palisade security fencing up to 3m high for added security and protection. Access points would be secured with metal gates and measures to prevent unauthorised access. CCTV mounted on 3.51m poles would be installed at appropriate locations around the Proposed Development. The rest of the site would be secured by 2.1m stock wire mesh deer fencing with wooden posts and may have a single line of barbed wire. Wire mesh fencing with steel posts would be installed where additional security is required along Coton Road. Other fencing would be 1.5m post and wire agricultural stock fencing to contain grazing animals. The Applicant says that drones are not intended to be used for surveillance purposes.

3.10.70 I [[PD-010](#)] raised a question referring to paragraph 4.4.6 of NPS EN-1 and promoting improvements to encourage health and wellbeing. The Applicant [[REP1-025](#)] says:

- ES Chapter 16 [[APP-177](#)] assesses impacts on health and wellbeing, together with the wider effects from landscape and visual, and transport and access;
- ES Chapter 12 [[APP-163](#)] sets out the recreation and tourism enhancements which would support health and wellbeing; and
- through the CEMP, OEMP, DEMP, and the creation of the new permissive path, it took the opportunity to mitigate indirect impacts on health and wellbeing, including impacts on those in vulnerable groups within society and with protected characteristics, such that there would be no related significant adverse effects.

Conclusions

3.10.71 No substantive concerns are raised by the councils or other statutory bodies about potential health risks from EMF during the Examination. I note that paragraph 2.9.51 of NPS EN-5 advises that the levels of EMFs produced by power lines in normal operation are usually considerably lower than the International Commission on Non-Ionizing Radiation Protection 1998 reference levels and that EMFs close to substations tend to be dictated by the overhead lines and cables entering the installation, not the equipment within the site. On this basis I accept that EMF effects were scoped out of the assessment and have no concerns in respect of paragraphs 2.9.46 or 2.9.48 of NPS EN-5.

3.10.72 I note that Cadent accept the Protective Provisions, which I consider provide sufficient mitigation for the safety of works in the vicinity of the gas pipeline.

3.10.73 I accept that monitoring, use of temporary alternative routes, and rescheduling of deliveries is appropriate mitigation for access and egress safety during flooding.

3.10.74 HSE does not raise concerns about major accidents and disasters. I have no reason to doubt the Applicant's assessment that there would be no significant effects and find that there is compliance with Regulation 5(4) of the EIA Regulations in relation to major accidents and disasters.

3.10.75 HSE say that the presence of hazardous substances on, over or under land at or above set threshold quantities would probably require Hazardous Substances Consent,

but I see no requirement to obtain that consent at this stage. I am satisfied that there is consultation with HSE, consistent with paragraph 4.13.5 of NPS EN-1.

- 3.10.76 Paragraph 4.4.7 of NPS EN-1 states that those aspects of energy infrastructure most likely to have a significantly detrimental impact on health are effectively mitigated by separate regulation. Paragraph 4.12.2 includes that the pollution control separate to the planning process ensures that ambient air, water, and land quality meet standards that guard against impacts to human health.
- 3.10.77 I am satisfied with the mitigation for both direct and indirect impacts on health, safety and wellbeing secured by the dDCO [\[REP8-003\]](#) and in the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#), including in relation to hazards, working methods, public safety, air quality, noise, visual effects, NMU, and the creation of a new permissive path. With reference to paragraph 4.4.8 of NPS EN-1, I do not consider that any additional requirements are necessary.
- 3.10.78 I note that the UK Health Security Agency and the Office for Health Improvement and Disparities are satisfied with the assessment methodology and say that the Proposed Development should not result in any significant adverse impact on public health.
- 3.10.79 Based on the above, I am satisfied with the assessment of health, safety, and well-being impacts and the secured mitigation and am content in relation to paragraphs 4.4.4 and 4.4.6 of NPS EN-1. I have no concerns in relation to compliance with local policy, including SDDC Policy SD1.
- 3.10.80 The Applicant sets out its consideration of the security of the Proposed Development and secures appropriate measures, including perimeter security. I am satisfied in relation to paragraph 2.10.46 of NPS EN-3.
- 3.10.81 Although appropriate mitigation is provided, I consider it likely that the Proposed Development would introduce new risks to human health, safety and security and that the resulting combined adverse effects would not be fully offset by the benefits of the new permitted path. Given the relatively small scale of the Proposed Development in national terms, any potential health benefits from its contribution to mitigating climate change on its own is not proven. I consider that the Proposed Development would be likely to introduce limited adverse effects to human health, safety and security.
- 3.10.82 For the purposes of Chapter 5 and the planning balance, I consider it likely that there would be some adverse effects to human health, safety, and security that together bring a little weight against the making of the Order.

NUISANCE

Introduction

- 3.10.83 This part considers the defence in any civil or criminal proceedings for nuisance. Visual impacts are considered in Section 3.6, and noise and vibration in Section 3.7. Dust is addressed earlier in this section.

Policy considerations

NPS EN-1

4.15.6	Nuisance under s79(1) of the Environmental Protection Act 1990.
4.15.7	The defence of statutory authority.

Local policies

- 3.10.84 The DCC/ SDDC LIR [[REP2-001](#)] identifies SDDC Policy SD1: Amenity and Environmental Quality.

The application

- 3.10.85 The Statement in Respect of Statutory Nuisance [[APP-184](#)] considers the potential for the release of a range of emissions such as odour, dust, steam, smoke, artificial light and infestation of insects. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under the Environmental Protection Act 1990.
- 3.10.86 The Applicant considers that dust issues would be low and with mitigation set out Outline CEMP [[REP6-018](#)] and Outline DEMP [[REP6-022](#)]. It is also of the view that the potential for odour, smoke, steam, or insect infestation is negligible because there would be no emissions or combustion associated with the generating process and there would be no requirement to import waste or food products to generate electricity. The Applicant considers that the presence of smoke, steam, or odour due to a serious malfunction of the equipment would be unlikely.
- 3.10.87 The Proposed Development includes artificial lighting across all stages. The Applicant proposes the construction compound would be lit one hour before sunrise and after sunset and that overnight security lighting would be downward facing and designed to limit light spill. The effects of construction lighting are assessed to be a short term minor adverse effect that would not be significant.
- 3.10.88 Once operational, the Applicant states that the only lighting of the solar panels would be alarm lights on transformer stations that would only be activated in case of theft. Other security lighting associated with the operational compound would also be activated in case of intruders. Operational lighting would only be used if there were employees on-site which would generally be during standard office hours or an emergency. The Applicant considers that the effects of lighting during the decommissioning stage would be like that of the construction stage which would be localised and short term. Mitigation of lighting effects is provided in the Outline CEMP [[REP6-018](#)] and Outline DEMP [[REP6-022](#)].
- 3.10.89 Following mitigation [[REP6-018](#), [REP6-020](#), [REP6-022](#)], the Applicant considers that the effects from noise and vibration would be negligible or minor adverse and not be significant, apart from moderate temporary adverse night-time construction noise effects that would be significant at Corner Farm during a potential 48 to 60 hr period.
- 3.10.90 The Applicant considers that reasonable steps have been taken to put mitigation measures in place to minimise the potential for detrimental impacts to occur and that with that in place no impacts would arise in respect of dust, artificial light, or steam, which would have the ability to have a detrimental impact on amenity. The Applicant says there would not be a breach of s79(1) of the Environmental Protection Act 1990.
- 3.10.91 Article 7 of the dDCO [[REP8-003](#)] provides for defence in relation to a nuisance falling within s79(1)(g) of the Environmental Protection Act 1990, in relation to noise emitted from premises so as to be prejudicial to health or a nuisance.

Issues arising during the Examination

- 3.10.92 Matters related to nuisance arising during the Examination are set out earlier in this chapter, including noise in Section 3.7.

Conclusions

- 3.10.93 Noting my conclusions elsewhere in this chapter, I am satisfied that sufficient consideration is given to the potential for nuisance and that appropriate mitigation is secured. I have no concerns in relation to paragraphs 4.15.6-7 of NPS EN-1 or local policy, including SDDC Policy SD1.
- 3.10.94 In Section 3.7 I conclude that there would be a potentially significant adverse short-term noise effect at Corner Farm, a negligible/ minor adverse effect due to road traffic noise during the construction stage, and a negligible noise effect on nearby residences during the 40 years of the operation stage. On this basis, I am content with the defence for noise emitted from premises provided by Article 7 of the dDCO [\[REP8-003\]](#).
- 3.10.95 For the purposes of Chapter 5 and the planning balance, I consider that compliance with general policies for nuisance bring neutral weight that does not affect the balance of the Order being made.
- 3.10.96 I consider nuisance matters for specific planning topics, including for the planning balance, elsewhere in this chapter as necessary.

SOCIO-ECONOMICS AND NMU

- 3.10.97 This part considers effects in relation to local and regional socio-economics, employment, tourism, and NMU.
- 3.10.98 Impacts on farming are considered in Section 3.3. User delay and amenity impacts on NMU in relation to traffic and transport are addressed in Section 3.8 and noise in Section 3.7. Landscape and visual impacts are covered in Section 3.6 and agriculture and land use in Section 3.3. The effects on climate change are addressed in Section 3.2. Climate change adaptation and resilience, fire risk, safety, security, human health, and nuisance are considered elsewhere in this section.

Policy considerations

Socio-economics

NPS EN-1

5.13.4	Matters that may be included in the socio-economic impact assessment.
5.13.5	Existing socio-economic conditions and local planning policies.
5.13.8	Mitigation of adverse impacts.
5.13.10	Weight given to assertions that are not supported by evidence
5.13.12	Employment and skills plan.

NMU

NPS EN-1

5.11.30	National Trails, PRoW, and opportunities to create new access.
5.11.31	Acceptability of mitigation measures.

NPS EN-3

2.10.41	Existing PRoW during the construction stage.
2.10.44	Enhancing PRoW and new opportunities to cross the site.
2.10.45	PRoW safety.

NPS EN-5

2.5.1	Connecting people to the environment.
2.9.19	Design, site substations, and effects on PRoW.

Local policies

- 3.10.99 The DCC/ SDDC LIR [[REP2-001](#)] identifies SDDC Policy INF2: Sustainable Transport, and SDDC Policy INF7: Green Infrastructure.

The application

Assessment scope, methodology, study area and baseline

- 3.10.100 The assessment [[APP-163](#)] considers effects in relation to employment, economic, public access, recreation, and tourism.
- 3.10.101 Potential effects for consideration in the detailed assessment are identified as:
- construction stage - generation of employment during construction works, noise and visual effects on tourism receptors, spending associated with construction workers, generation of employment from construction supply chain effects, and effects on the PRoW network and its users;
 - operation stage - economic benefits to the wider community, renewable energy and educational resource for the wider community, visual effects on tourism receptors, and effects on the PRoW network and its users; and
 - combined and cumulative effects with other developments on employment, public access and recreation and tourism during the construction and operation stages.
- 3.10.102 Operational employment and associated spending are scoped out of the detailed assessment due to the low numbers of staff on-site during the operation stage.
- 3.10.103 The following study areas are considered [[APP-164](#), Figure 12.1]:
- the administrative area for which socio-economic data is collected as standard, and where local effects could occur, and the East Midlands region to provide the strategic regional context, and national information for England for comparison, where relevant;
 - a study area of up to 5km from the site is used for effects associated with visual amenity, including facilities and notable focus points for visitor attraction; and
 - a study area up to 1km from the site for recreation, focusing on PRoW in the site.
- 3.10.104 The baseline conditions are established through desk-based research, including using data from the UK Government's Office of National Statistics and from consultation.

Visits were carried out to the local road and PRow network, local villages, and amenities including Rosliston Forestry Centre.

- 3.10.105 Current socio-economic conditions, labour supply and employment are described in relation to the size of population and economy, breakdown of employment by sector, working age population, economic activity rate, job density, and unemployment. South Derbyshire has a similar working age population to the East Midlands and England, but a higher-than-average rate of economic activity in that working age population, and a lower unemployment rate than the regional and national picture. Job density data suggests people may travel outside the local authority area for work. The Applicant considers that direct employment could include local contracting opportunities for fencing, civil works, testing and commissioning. 650 jobs are identified in agriculture, mining, quarrying and utilities in South Derbyshire.
- 3.10.106 Tourist sites are identified near to the site: Rosliston Forestry Centre (approximately 0.7km from the site), The National Forest (adjacent to the site boundary in various locations), Catton Hall (approximately 1.9km from the site), and National Memorial Arboretum (approximately 4.4km from the site).
- 3.10.107 The Applicant states that the only PRow within the site is the Cross Britain Way, which is also the route of the National Forest Way, and runs through the north of the Oaklands Farm area. There are various other PRow within 1km of the site [[APP-164](#), Figure 12.1]. Consultation on recreation and use of these PRow [[APP-162](#)] suggest that the Cross Britain Way/ National Forest Way is considered an important route in the local area. There is an annual National Forest Trek which uses the route and anecdotal evidence of use by some residents. The Applicant says that the National Forest Company states that it manages a group of volunteers who maintain the route.
- 3.10.108 The Applicant states that there are no standards or adopted guidance on how to assess socio-economic, tourism and recreational effects. Significance criteria are devised by the Applicant based on professional judgement and previous experience of undertaking socio-economic assessments. The criteria primarily consider the magnitude of effects, such as the number of people, recreational activities or economic activities affected, combined with the extent of the effect. Professional judgement is employed when applying the criteria and consideration taken of the receptor sensitivity, where appropriate. Specific values in terms of sensitivity are not attributed to the socio-economic receptors assessed due to their diverse nature and scale, however, the assessment takes account of the qualitative 'sensitivity' of each receptor and their ability to respond to change. The Applicant considers that the approach is proportionate given the likely effects.

Construction stage

- 3.10.109 The Applicant anticipates that there would be an average of 114 full-time equivalent jobs created during the 16-month construction period, of which 37.6 would be people coming into South Derbyshire, 28.5 displaced from other sectors, and 47.9 generated in the local economy.
- 3.10.110 The total construction expenditure is estimated to be around £80 million. Items of equipment such as solar panels and batteries would be sourced from abroad but suppliers in the UK and Derbyshire could provide other services such as transport, civil engineering, and general construction. The Applicant considers that, taking a conservative approach and based on other solar projects, it is reasonable to assume that about £20 million of construction expenditure would be retained within the UK.

- 3.10.111 The Applicant considers that there would be indirect employment and economic benefits including supply chain spin-offs for local businesses, sub-contracted work relating to transportation of construction workers and materials, use of suppliers further down the supply chain, and a proportion of the increased income being re-spent. The Applicant states that there would be a local indirect expenditure by local construction workers and benefits to the local economy through spending in local hotels, B&Bs, other accommodation, shops, and restaurants by construction workers not living locally. The Applicant considers that the spend from all construction workers would be £410,400 over the course of the 16-month construction period.
- 3.10.112 Construction works would directly affect the Cross Britain Way/ National Forest Way running through the north of the Oaklands Farm area. During construction of the access tracks the Applicant does not consider it necessary to divert those sections of PRow closest to the access track route as it would be monitored by a banksman and if walkers need to cross the construction area, they would be accompanied to ensure safe passage. The Applicant considers that would be a very short-term impact on users of the PRow outside the site if they were required to wait for a matter of minutes for a construction vehicle to pass, but where possible the PRow users would be prioritised.
- 3.10.113 The Applicant is of the view that, overall, studies indicate that tourists would not base their decision to visit an area on the presence of renewable energy and that detrimental effects on the tourism sector are not identified. It quotes a study which found that 56% of people living near solar farms support the schemes, with 25% opposing them and 17% neither supporting nor opposing.
- 3.10.114 The Applicant considers that the construction stage could lead to a decrease in the availability of tourist accommodation within the area surrounding the site as construction workers from outside the area would require accommodation for the duration of the construction stage. It considers that this would not be concentrated in the immediate vicinity of the site as the workers would be transported in minibuses from accommodation up to one hour away.
- 3.10.115 The Applicant says that construction stage effects following mitigation would be:
- construction jobs and expenditure - a minor positive effect on the local economy and employment in South Derbyshire that would not be significant;
 - indirect employment and economic benefits - a minor positive effect that would not be significant for the local economy, and a negligible effect that would not be significant for the regional economy;
 - recreation users of the Cross Britain Way/ National Forest Way - a minor adverse effect that would not be significant;
 - recreational users of PRow outside the site - a minor adverse effect that would not be significant; and
 - tourism and local tourism accommodation - a negligible effect that would not be significant.

Operation stage

- 3.10.116 The Applicant states that the Proposed Development would provide socio-economic benefits by providing enough clean renewable electricity to power in the region of 35,000 homes.

- 3.10.117 In relation to recreation, an operational access track would cross the Cross Britain Way/ National Forest Way to enable maintenance access. Site fencing would be designed to ensure the PRow remain open. With so few operational personnel on-site the Applicant considers that the frequency of a vehicle needing to cross the PRow would be very low and unlikely to be a daily occurrence.
- 3.10.118 The Applicant's considerations in relation to tourism are similar to those quoted for the construction stage above.
- 3.10.119 A proposed permissive path is included in the application, to connect the Cross Britain Way/ National Forest Way to other PRow in the area [\[REP4-040\]](#). The permissive path would be linked into the wider landscape and ecological management of the site with hedgerow and wildflower planting adding to the visual and biodiversity value of the path. An interpretation board on solar energy would be provided.
- 3.10.120 The Applicant states that it is committed to providing an annual community benefit fund of a minimum of £55,000 per year for the 40-year life of the Proposed Development for use by the local community to secure long-term benefits. The most likely model for administration of the fund is for an independent, local organisation/ foundation to administer the fund on behalf of the Applicant. The Applicant says that it is consulting with Foundation Derbyshire and South Derbyshire Community Volunteer Support regarding the fund.
- 3.10.121 The Applicant considers that the Proposed Development could provide a valuable educational resource for the local area and could be visited by schools and local community groups using the Cross Britain Way/ National Forest Way and proposed permissive path.
- 3.10.122 The Applicant considers that the residual effects during the operation stage following enhancement would be:
- socio-economic benefits - a moderate to major benefit that would be significant;
 - recreational users of PRow - a negligible effect that would not be significant; and
 - tourism industry - a negligible effect that would not be significant.

Decommissioning stage

- 3.10.123 Not addressed in ES Chapter 12 - Socio Economics, Tourism and Recreation [\[APP-163\]](#).

Cumulative and combined effects

- 3.10.124 The Applicant considers that the residual cumulative effects of other sites/ applications with the Proposed Development during the construction and operation stages would be negligible or minor beneficial and not significant.
- 3.10.125 The Applicant states that combined effects during the construction stage would be:
- recreational users of PRow - a minor adverse effect that would not be significant from the combination of effects identified in this section with dust, noise, and visual effects; and
 - tourism receptors - a negligible effect that would not be significant from the combination of effects identified in this section with construction traffic and construction noise effects.

3.10.126 Combined effects during the operation stage are assessed to be:

- recreational users of PRoW - a minor adverse effect that would not be significant from the combination of effects identified in this section with dust, noise, and visual effects; and
- tourism receptors - a negligible effect that would not be significant from the combination of effects identified in this section with operational traffic, noise, and visual effects.

Issues arising during the Examination

Socio-economics

3.10.127 Matters raised during the Examination in relation to impacts on farming are considered in Section 3.3.

3.10.128 Responding to my suggestions [PD-012, PD-014], and with reference to recent precedent, the Applicant [REP5-026, REP6-042] added Requirement 23 (Skills, supply chain and employment) to the dDCO [REP8-003] and submits an Outline Skills, Supply Chain and Employment Plan [REP6-043].

3.10.129 DCC and SDDC [REP2-001] and the Applicant [REP3-033, REP8-020] refer to proposals to provide community benefit payments to help the development of sustainable communities within the immediate area.

3.10.130 The Applicant [REP8-020] summarises the socio-economic benefits as:

- improving recreation by creating a new permissive path to improve the connectivity of the PRoW network in the vicinity of the site, together with an interpretation board on solar energy as a recreational and educational enhancement;
- creating employment opportunities and economic activity, particularly during the construction stage when it is expected that an average of 114 full-time equivalent jobs would be created together with approximately 91 additional indirect induced full-time equivalent jobs;
- an estimated £80 million in construction expenditure, of which £20 million would be retained within the UK, and indirect economic benefits of £170k for the local economy through construction worker spend; and
- support to the existing dairy business on the site with diversified income from annual land rental payments whilst enabling an income from the grazing of sheep amongst the solar panels through the life of the Proposed Development.

NMU

3.10.131 Noting that surveys were carried out in November 2021 and April 2023, I [PD-010, PD-014] asked if there were any concerns about whether the timing of these surveys is likely to provide sufficient understanding of the baseline conditions, including for NMU.

3.10.132 DCC [REP1-026] says that a summer survey would be appropriate to assess the use of the site, including by NMUs, particularly during the summer holiday period of July and August. SDDC [REP1-029] considers that the timing of the field work is not detrimental to the assessment work submitted.

- 3.10.133 The Applicant [[REP1-025](#), [REP3-032](#)] initially says that it adopts a proportional approach to assessing NMU that does not rely on NMU counts. It examines the local walking and cycling facilities and the sensitive receptors that are likely to act as an attractor for NMUs, and analyses the highway operation and the additional traffic, to assess a significance of effect.
- 3.10.134 Diane Abbott [[REP4-022](#)], as a local resident, advises that the area is heavily used by recreational cyclists and that a survey at any time of year (but especially during summer) would highlight this and is key in understanding how to provide mitigations to protect NMU during the construction and operation stages. She considers that it is not sufficient to assess only local facilities and attractions as most users are attracted by the scenic, rural road network rather than travelling to any particular destination.
- 3.10.135 The Applicant [[REP4-011](#), [REP5-025](#)] says:
- that it then agrees with DCC that NMU surveys would be undertaken during the school summer period, in locations near to a PRow and equestrian facilities;
 - on that basis, NMU surveys were undertaken at Walton Road/ PRow and Coton Lane/ PRow from Tuesday 27th August to Thursday 29th August 2024;
 - the results of the NMU survey [[REP4-011](#) Appendix A] were presented to DCC;
 - the number of NMU movements were relatively low, with a maximum of 59 over three days at Walton Road, and 81 at Coton Lane; and
 - the potential impact of construction traffic would not surpass the threshold to change the scoring within ES Chapter 10 [[APP-155](#)].
- 3.10.136 DCC [[REP4-012](#)] refers to the surveys, does not wish to raise any further concerns, and says that it raises no objections to the proposed changes to the off-road network or the impacts on NMU.
- 3.10.137 NE [[AS-022](#)] welcomes the mitigation set out in the Outline CEMP [[REP6-018](#)] to mitigate disturbance to the Cross Britain Way.
- 3.10.138 Responding to my [[PD-010](#)] request, the Applicant [[REP1-023](#)] amends Requirement 14 of the dDCO [[REP8-003](#)] to provide further detail on what the PRow Management Plan should include to ensure that appropriate mitigation is secured.
- 3.10.139 DCC and SDDC [[REP2-001](#)] say:
- the site is crossed by a limited PRow network which is accommodated within the site layout;
 - while the user experience of the landscape would undoubtedly be impacted by the proposal, those sections of the PRow are not extensive;
 - additional permissive routes are proposed with and through the Proposed Development creating greater potential for circular routes in the locality; and
 - there would be a neutral impact on the PRow network.
- 3.10.140 I [[EV4-001](#), [EV4-002](#), [EV4-009](#)] asked the Applicant:
- whether sufficient consideration is given to enhancing active, public and shared transport provision and accessibility in accordance with paragraph 5.14.18 of NPS-EN1, as referenced by Diane Abbott [[REP4-022](#)];

- to secure any enhancements to be relied on in the planning balance; and
- whether enhancing active, public, and shared transport provision and accessibility should be added to the remit of the Transport Management Liaison Group.

3.10.141 The Applicant [[REP5-025](#), [REP5-026](#), [REP5-035](#)]:

- refers to paragraph 5.14.21 of NPS EN-1 and says that the development addresses the first qualifying criteria in that the Proposed Development does not give rise to 'substantial or severe' traffic impacts due to embedded mitigation that limits the daily HGV demand to 14 movements per day and that an access strategy, and associated internal haul road, limits the interaction with NMU and an outline CTMP that controls, monitors and enforces construction traffic movements;
- considers that there is not an interpretation of paragraph 5.14.18 and paragraph 5.14.19 of NPS EN-1 that says regardless of the acceptability of impacts, if adequate active, public or shared transportation is not provided, a development is contrary to policy;
- says that it meets the policy requirement, referring to the temporary haul road to reduce construction traffic on the local road network, measures to ensure that the Cross Britain Way would remain open, the new permissive path that would remain open during the operation stage, and that the Outline CTMP [[REP6-028](#)] includes mitigation to ensure there would be no significant impacts to NMU;
- says it engaged with the British Horse Society;
- states that as detailed in ES Chapter 12 [[APP-163](#)], it redesigned the permissive path in response to comments from Leicestershire & Rutland Bridleways Association to ensure an off-road connection to the local PRoW network;
- considers that it gave considerable thought to the provision of adequate active public travel, that by connecting three PRoWs the permissive path is a demonstrable benefit rather than mitigation;
- updated the Outline CTMP [[REP6-028](#)] to add active public travel to the remit of the proposed Transport Management Liaison Group; and
- therefore, considers that it gives due consideration to active travel, as required by paragraphs 5.14.7 and 5.14.18-21 of NPS EN-1.

3.10.142 SDDC [[REP5-040](#)] would support the requirement for the provision of additional footways on Walton Road at Drakelow, and in the proximity of Coton Road, Walton-on-Trent, to enhance active travel, as referenced by Diane Abbott [[EV4-009](#)]. Overseal Parish Council [[REP5-057](#)] provide equestrian numbers for the area, totalling 203 and say that in many parts there is no off road riding.

3.10.143 Anna and Charles Simpson [[REP5-048](#)] say that there would be no permitted access over the site for equestrian users, and that there would be no tangible benefits for local residents with horses, or pedestrians or cyclists. They say that this is a clear illustration as to how insufficient consideration is given to enhancing active, public and shared transport provision and accessibility as per paragraph 5.14.18 of NPS-EN1.

3.10.144 Alan Edward Timmins [[REP5-045](#)] refers to narrow sections of road with bends, considers that there is a high risk of serious accident involving people riding horses in the National Forest, to frequent pelotons of up to 40 cyclists, numerous pedestrians usually with children and dogs and horses, and visits of motorbikes and annual marches from the National Memorial Arboretum visiting a memorial in Coton-in-the-

Elms churchyard. Similar concerns are expressed by Alex Penfold [\[REP5-046\]](#), Lynda Cooper [\[REP5-055\]](#), Olivia Nicholls [\[REP5-056\]](#), Tracy Moore [\[REP5-061\]](#), and Wendy Wadsworth [\[REP5-063\]](#).

3.10.145 The British Horse Society [\[REP6-055\]](#) says that:

- the bridleway network in the area is fragmented, therefore leaving limited access for equestrians unless they ride/ lead/ drive on the main roads;
- the additional traffic during the construction stage and the added complication of vehicles regularly turning into the access road would make the road higher risk for vulnerable road users in the absence of speed restrictions or other traffic calming measures;
- construction traffic may well coincide with times that equestrians are active on the bridleways and local highways network to reach the off-road routes;
- HGVs on the road network local to the site, would sandwich a horse and rider between the vehicle and the hedgerow or ditch along the route with little room for refuge which may cause panic;
- signage giving priority to users of the PRoW would be welcome and there should be additional signage during the construction stage to warn traffic of equestrians and other vulnerable road users;
- the AIL route would pass Grangewood livery and Sealbrook livery yards;
- inverters should be installed away from the highway as noise can be a hazard for equestrians as horses are flight animals;
- access locations to/ from the site are opportunities to mitigate impact by improving the safety on the road network with signage, refuge spaces and speed limits;
- equestrian access to the proposed permissive routes and permissive bridleways using existing footpaths for the life of the project would contribute to the community and provide off-road access for all vulnerable road users; and
- research in the area resulted in at least one Definitive Map Modification order application for bridleway being submitted in a neighbouring parish, which, if successful, would link well to the proposed permissive routes.

3.10.146 The Applicant [\[REP6-041\]](#), [\[REP7-009\]](#), [\[REP8-020\]](#) reiterates some of its previous responses, adding that:

- it considers that the risk to pedestrians is not significantly increased by the Proposed Development;
- during the construction stage, only two AIL trips are anticipated, the Outline CTMP [\[REP6-028\]](#) sets out how AILs would be appropriately managed and mitigated, and the assessment [\[APP-155\]](#) concludes that the level of construction traffic impact from AILs would result in a negligible effect on NMUs with mitigation;
- ES Chapter 11 [\[REP4-045\]](#) assesses the potential noise impacts and mitigation is embedded in the design, including locating the BESS away from receptors;
- the design places string inverters away from noise sensitive properties, where possible, good practice measures would be implemented when finalising the operational plant to be used on-site, such as limiting sound power in plant selection

and selection of string inverters, and the ES [REP4-045] concludes the operational noise as a result of the Proposed Development would be negligible;

- the assessment of the impact on NMUs [APP-155] concludes that the effect on vulnerable road users would be negligible to minor with mitigation; and
- it considered whether the new permissive path should be of suitable specifications for a bridleway and concluded [APP-163] that as it does not connect to any existing bridleways it is proposed to remain a footpath.

3.10.147 SDDC [REP8-017] says that:

- it has concerns regarding the temporary stopping up of PRow as provided for in the dDCO [REP8-003], particularly under Article 11 as it grants broad powers to stop up, divert, or alter public rights of way without extensive restrictions;
- whilst it is recognised that PRow may need to be temporarily obstructed to facilitate construction, the guidance suggests that such powers should be exercised with caution to minimise disruption to the public, whereas the dDCO [REP8-003] allows for the stopping up of rights of way without clearly defined or stringent criteria for restoring access or mitigating impacts;
- there is also flexibility for the Applicant to use PRow for temporary worksites, which may further inconvenience local communities;
- guidance emphasises that access for pedestrians and affected communities should be carefully managed to minimise disruption, and provisions for restoring rights of way after works should be clear and enforceable; and
- the absence of specific measures in the DCO for quickly reinstating public access, or for providing sufficient alternative routes, raises concerns about how public convenience and access would be safeguarded.

3.10.148 DCC [REP8-017] accepts that while the Applicant intends to enable access to the PRow network during the construction stage, there are likely to be periods where, for the reasons of public safety, PRow would have to be temporarily closed. It says that the Applicant stated that these periods would be kept to a minimum and that where possible, access controls and the use of banksmen would enable the PRow, and appropriate diversions, to remain open to the public throughout the construction stage.

3.10.149 The Applicant [REP8-017] maintains its position that the drafting of Article 11 is well precedented and provides adequate controls on the undertaker to provide comfort to SDDC and DCC that any disruption to PRow would be minimised so far as possible. Against that context, the Applicant considers it appropriate to follow precedent in the drafting of Article 11, to provide an appropriate level of flexibility. However, it does not expect to need to temporarily stop up the PRow in question, as other measures could be used during the construction stage to ensure that the PRow remains safe for use.

Decommissioning stage

3.10.150 Responding to my [PD-010] request to summarise the consideration given to potential effects on socio-economics and PRow during the decommissioning stage, the Applicant [REP1-025] says that:

- the decommissioning stage would give rise to a similar effect as during the construction stage;

- a positive effect, albeit not significant, would be expected to arise from job creation and expenditure;
- it is expected that local sourcing of equipment and contractors would be pursued where possible to capture those benefits at a local level;
- there are likely to be similar indirect employment and economic benefits during the decommissioning stage that would be expected to be negligible and not significant in the context of the regional economy; and
- a minor adverse effect at most (not significant) is anticipated in respect of the Cross Britain Public Right of Way, based on the PRow being monitored by a banksman and with walkers being accompanied where necessary.

Conclusions

Socio-economics

- 3.10.151 In Section 3.3 I conclude that short-term temporary loss of agricultural land during the construction stage in the areas of construction-related activity, the long-term temporary loss of agricultural land during the construction stage in the areas of fixed equipment, and related adverse impacts on farming businesses and food production bring a little weight against the making of the Order. They are not repeated in the balance here.
- 3.10.152 The Applicant identifies the existing socio-economic conditions and assesses impacts, including in relation to jobs and training, indirect supply chain impacts, and effects on tourism such as from the influx of workers. I am satisfied with the overall assessment methodology and, with the addition of Requirement 23 (Skills, supply chain and employment) to the dDCO [\[REP8-003\]](#), related mitigation. It follows that I am content regarding paragraphs 5.13.4-5, 5.13.8 and 5.3.12 of NPS EN-1 and I have no concerns in relation to compliance with local policy, including SDDC Policy INF7.
- 3.10.153 I accept the Applicant's assessment that there would be no significant socio-economic effects during the construction stage but consider that the benefits arising from construction jobs and expenditure and indirect employment and economic benefits would outweigh the adverse effects to recreation and tourism, leading to a limited overall beneficial effect.
- 3.10.154 During the operation stage the Applicant refers to proposals for community benefit payments and educational resources, which are not relevant to the decision about whether consent should be granted, and I therefore give these proposals no weight. I include considerations about the benefits of clean power generation separately and therefore do not repeat those effects here. I consider that the remaining socio-economic benefits during the operation stage, including those arising from a limited number of jobs, other indirect benefits and the new permissive path, would be likely to result in a net overall benefit during the operation stage, however, my view is that the Applicant's assessment of moderate to major benefit is likely to be an overstatement.

NMU

- 3.10.155 Noting that DDC has no concerns, I consider that the NMU surveys in November 2021, April 2023 and, as provided during the Examination, August 2024 are sufficient for the purposes of the assessment and indicate a relatively low level of NMU movements.
- 3.10.156 NE welcomes the mitigation for the Cross Britain Way, I note the addition of PRow Management Plan mitigation to the dDCO [\[REP8-003\]](#), and that DCC and SDDC consider that there would be a neutral impact on PRow.

- 3.10.157 SDDC raises concerns about the broad powers in the dDCO [\[REP8-003\]](#) to stop up, divert, or alter PRow. I accept the Applicant's view that some flexibility is appropriate and that there is precedent for these powers. I note that the Outline CEMP [\[REP6-018\]](#) requires approval of a PRow Management Plan, and that the Outline OEMP [\[REP6-020\]](#) requires access to be maintained to existing PRow. On balance, my view is that the CEMP and OEMP would provide an opportunity for SDDC's concerns, including to minimise disruption to the public, to be addressed appropriately. I am therefore content with the powers provided by the dDCO [\[REP8-003\]](#).
- 3.10.158 Based on the above, I am satisfied with the Applicant's assessment methodology, consideration of baseline conditions, and with the secured mitigation for PRow. I agree with the Applicant that there would be a minor adverse effect on recreational users of PRow during the construction, operation and decommissioning stages from the combination with dust, noise, and visual effects. I am content in relation to paragraphs 5.11.30-31 of NPS EN-1, paragraphs 2.10.41 and 2.10.44-45 of NPS EN-3, or paragraphs 2.5.1 and 2.9.19 of NPS EN-5. I have no concerns in relation to compliance with local policy, including SDDC Policy INF2.
- 3.10.159 There are existing concerns about the current safety of NMU on local roads and in villages. I consider that appropriate mitigation is provided in the Outline CTMP [\[REP6-028\]](#) including construction traffic routing and restrictions to heavy vehicle movements. I note the limited scale of current NMU movements together with the limited scale of increases in traffic movements due to the Proposed Development. On balance and noting that DCC raises no objections to the impacts on NMU, I accept the Applicant's assessment that the effect on vulnerable road users would be negligible to minor.

Matters to be taken to Chapter 5 and the planning balance

- 3.10.160 For the purposes of Chapter 5 and the planning balance, I consider that:
- socio-economic benefits bring a little weight for the making of the Order; and
 - adverse effects on users of PRow and NMU bring a little weight against the making of the Order.

WASTE

Policy considerations

NPS EN-1

5.15.14	System for managing waste.
5.15.15	Matters for the SoS to be satisfied about.
5.15.16	Waste management measures.
5.15.19	Resource efficiency and waste reduction targets.

The application

- 3.10.161 The assessment [\[APP-177\]](#) sets out the anticipated waste streams during the construction, operation and decommissioning stages and provides a qualitative assessment of the likely significant effects that may arise from waste.

- 3.10.162 The Applicant says that the assessment uses the IEMA's guidance on Materials and Waste in Environmental Impact Assessment (2020).
- 3.10.163 Following a review of the Derbyshire Waste Local Plan (2005), the Applicant considers that there would be plenty of locations within Derbyshire where waste from the site could be disposed of.
- 3.10.164 The Applicant states that as most of the equipment is classed as electrical it would fall under the Waste from Electrical and Electronic Equipment Regulations 2013 which is designed to reduce the amount of waste electrical and electronic equipment incinerated or sent to landfill sites. It notes that batteries are regulated through the Waste Batteries and Accumulators Regulations 2009, which make it compulsory to collect/ take back and recycle batteries and accumulators and prevent batteries and accumulators from being incinerated or dumped in landfill sites.
- 3.10.165 In respect of the BESS, the Applicant states that there are currently no large-scale recycling facilities for recycling batteries on this scale in the UK, but that such facilities do exist in Europe and as the UK battery market expands and matures, particularly in the electric car industry, it expects that UK opportunities for recycling will appear.
- 3.10.166 The Applicant states that solar panels typically consist of glass, silicon, aluminium and a small percentage of copper, tin, and lead, that the glass and metals are readily recycled, and that recycling of silicon is an emerging market but there are already specialists who offer this service.
- 3.10.167 The Applicant considers that all other components would be generally recyclable and that the general recycling rates for electrical equipment would be more than 90%. Mitigation of construction waste would be provided by a Site Waste Management Plan [REP6-018 Appendix 4.3], including that the waste hierarchy would be followed when processing waste, with re-use and recycling made a priority over disposal to landfill. All construction waste transported off-site would be delivered to a relevant licenced receiver of such materials. Waste minimisation would be a key procurement consideration with the aim to procure construction material made from recycled materials. Re-use and recycling of materials would be prioritised over landfill.
- 3.10.168 Following mitigation provided by the Outline CEMP [REP6-018], the Applicant considers that there would be no significant effects on landfill capacity in the County due to the very low volume of waste that would not be reused or recycled, and the very high (over 90%) recycling rates for electrical equipment.
- 3.10.169 The Applicant expects the waste generated from the maintenance personnel during the operation stage to be substantially less than that generated during the construction stage. With the mitigation provided in the Operational Waste Management Plan and other measures in the Outline OEMP [REP6-020], the Applicant anticipates that there would be no significant effects during the operation stage.
- 3.10.170 The Applicant states that through procurement agreements with BESS suppliers, the supplier would be obligated to take ownership for removal, recycling, and disposal of the BESS equipment at the end of operational life. It anticipates that the recycling streams during the decommissioning stage would be:
- solar modules -off-site recycling or reuse elsewhere of panels that would still be operationally viable, approximately 80% is currently recyclable;
 - supporting frames - off-site recycling;

- batteries - off-site recycling;
- electrical cabling and electrical connectors - off-site deconstruction with separated materials either recycled or disposed of;
- ducts - off-site recycling;
- inverters and transformers - off-site deconstruction with separated materials either recycled or disposed of;
- fencing and gates - off-site recycling with the potential for continued use of the fencing elsewhere on the agricultural land holding;
- hardstanding, foundations and access tracks - on and off-site reuse off aggregates and off-site recycling of concrete crushed for reuse as hardcore; and
- CCTV cameras - off-site deconstruction with separated materials either recycled or disposed of.

3.10.171 With the mitigation provided in the Outline DEMP [\[REP6-022\]](#), the Applicant anticipates that the majority of waste would be diverted from landfill with no adverse effects on landfill capacity in the County. It considers that there would be no adverse effects during the decommissioning stage.

Issues arising during the Examination

3.10.172 Following my request [\[PD-010\]](#), the Applicant [\[REP1-025\]](#) updated the Outline CEMP [\[REP6-018\]](#) to identify the measures to be included in a Site Waste Management Plan.

3.10.173 The EA [\[REP3-001\]](#) raises concerns regarding the Waste Management Strategy, including in relation to topsoil storage. The Applicant [\[REP4-011\]](#) then refers to the Waste Management Strategy in the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#), following which the EA [\[REP4-016\]](#), [\[REP4-017\]](#) advises that it has no remaining concerns as the topsoil bunds appear to be an appropriate height and profile.

Conclusions

3.10.174 Noting that the EA and DCC raise no outstanding concerns and that there are reasonable uncertainties about the available facilities and legislation likely to be in place during the decommissioning stage, I am content with the waste assessment methodology, and the consideration given to recycling. I consider that appropriate mitigation is secured, including in the Waste Management Strategy in the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#) and accept that there would be unlikely to be any adverse impacts on existing waste facilities. I am satisfied in relation to paragraphs 5.15.14-16 of NPS EN-1 and my conclusions have regard to potential impacts on the achievement of resource efficiency and waste reduction targets in accordance with paragraph 5.15.19 of NPS EN-1.

3.10.175 For the purposes of Chapter 5 and the planning balance, I conclude that waste-related impacts bring neutral weight that does not affect the balance of the Order being made.

CUMULATIVE EFFECTS

Introduction

3.10.176 Cumulative effects with other developments are considered as necessary for specific topics in the earlier sections of this chapter.

Legislation and policy considerations

EIA Regulations

- 3.10.177 The EIA Regulations require an assessment of the likely significant effects of the Proposed Development on the environment, covering any cumulative and long-term, permanent, and temporary, positive, and negative effects at all stages of the project, and of the measures envisaged for avoiding or mitigating significant adverse effects. (Paragraph 4.3.3).

NPS EN-1

4.1.5	Potential cumulative adverse impacts

NPS EN-3

2.10.26	Cumulative impacts in proximity to other energy infrastructure.

The application

- 3.10.178 The Applicant [[APP-082](#)] states that the ES considers the likely cumulative effects that the Proposed Development may have with other relevant developments in the vicinity of the site. Schemes considered for the cumulative assessment [[APP-082](#) Table 2.2] are identified within 5km of the site in consultation with DCC and SDDC and includes schemes which are at application stage, consented, under construction, or operational.
- 3.10.179 The Applicant says that it addresses detail on the cumulative assessment in each technical chapter of the ES.

Issues arising during the Examination

- 3.10.180 DCC and SDDC [[REP2-001](#), [REP4-012](#), [REP4-014](#)]:
- raise concerns regarding cumulative impacts with several developments coming forward in the surrounding area, including the construction of 2,200 homes on the site of the former Drakelow Power Station, various proposed BESS, and a waste incinerator nearby at Stanton;
 - say that the cumulative impacts of traffic generated by businesses, developments and festivals in the locality is considered in the Outline CTMP [[REP6-028](#)] and would be considered by the emerging TMG;
 - advise that issues associated with planned highway maintenance and impact on construction traffic access to the site have been discussed with the highway authority;
 - remain concerned that the cumulative impacts of traffic have the potential for congestion during the construction stage, but say that they are to be addressed through close working with interested parties; and
 - say that in addition to the traffic impacts, several developments in the locality would add to the visual impact on the landscape and the cumulative impact of these developments would significantly change the character of the landscape.
- 3.10.181 Councillor Amy Wheelton [[REP3-003](#), [REP4-021](#), [REP5-047](#)]:

- identifies other projects in the area, highlighting the residential development at the former Drakelow Power Station, saying that it is a 'big impact';
- says that a further 14,483 homes are proposed and refers to an increased area of up to 68ha of employment land at the former Drakelow Power Station;
- says that South Derbyshire is the fastest growing District in the UK, and that local infrastructure has not caught up, such as GPs and highways; and
- considers that the cumulative impact of traffic, heritage, landscape and character, is frightening for residents and on a scale wholly against the local plan and NPPF.

3.10.182 The Applicant [[REP3-033](#), [REP5-024](#), [REP5-025](#), [REP5-026](#)]:

- says that the ES provided with the application uses a list of developments agreed with DCC and SDDC;
- notes the additional potential cumulative projects identified and says that the presence of new schemes is not a surprise and says it is common for the cumulative baseline to move on once an application is submitted;
- confirms that it had collated an updated list of cumulative schemes for consideration in the assessment, which includes relevant schemes from Amy Wheelton and the LPA and new schemes identified during the Applicant's own searches of the LPA's planning portals; and
- says it is engaging with the LPAs regarding the updated list of cumulative schemes and is undertaking an updated assessment of the cumulative impacts.

3.10.183 The Applicant's Cumulative Effects Update [[REP6-044](#)] assesses cumulative impacts with 37 other schemes identified up to 18 August 2023 for a range of different planning issues for which it concludes:

- agriculture and land use - other schemes may result in a cumulative impact of negligible to major adverse significance, depending upon the details of soil handling and restoration, but the contribution of the Proposed Development to this effect is negligible and there would be no significant cumulative effects on this basis;
- ground conditions - it is reasonable to assume that the applications would consider the potential for adverse ground conditions including mining and contamination, suitable investigations and, if required, remediation such that it is considered that there are no changes to the potential cumulative effects in the ES;
- ecology - none of the additional schemes would affect the same ecological receptor, either temporally or spatially and therefore there is no mechanism by which cumulative effects could occur which are different from those in the ES;
- historic environment - the additional schemes would not result in interactions with the Proposed Development to the extent that there would be any additional cumulative effects on the historic environment, and there would be no additional cumulative effects to those in the ES;
- landscape and visual - the additional schemes would increase the development in the landscape around the site, but they would not interact with the Proposed Development to the extent that there would be any additional cumulative effects on landscape character or on visual amenity, there would be no additional cumulative effects over those set out in the landscape and visual impact assessment, and no significant cumulative effects;

- glint and glare - the cumulative assessment presented in the ES, of no cumulative effects, does not change;
- noise - the assessment of cumulative effects for construction traffic noise, construction noise on site, and operational noise does not change the significance of cumulative effects presented in the ES, and for noise these remain at negligible significance for the construction and operation stages;
- transport and access - the cumulative traffic demand resulting from the updated development list plus the Proposed Development traffic is assessed as negligible based on the traffic metrics that have been submitted by the discrete developments, the Outline CTMP [\[REP6-028\]](#) has provisions to manage changes to cumulative traffic demand to ensure that large scale impacts are not introduced, and it is therefore concluded, that the assessment of cumulative effects presented in this section does not change the significance of cumulative effects presented in the ES and that for transport and access these remain negligible;
- water resources and flood risk - no changes to the potential cumulative effects as presented in the ES are expected because each surrounding cumulative scheme would be required to demonstrate that they do not increase flood risk to off-site receptors and that all drainage is designed in accordance with current standard practice including the requirements of the NPPF and non-statutory guidance;
- air quality - the assessment does not change the conclusion of no significant cumulative effects in the ES;
- climate change adaptation - the other schemes are assumed to consider climate change adaptation in their design and comply with regulatory standards and relevant planning policy and as such significant cumulative effects are not considered likely and the assessment of cumulative effects does not change the conclusion of no significant cumulative effects in the ES;
- human health - the assessment does not change the conclusion of no significant cumulative effects in the ES;
- major accidents and disasters - the assessment does not change the conclusion of no significant cumulative effects in the ES;
- socio-economics and recreation - the assessment does not change the significance of cumulative effects presented in the ES, for socio-economics and recreation the cumulative effect in relation to local employment and spend during the construction stage remain minor beneficial (not significant) on the local economy and employment, but a negligible effect (not significant) at the regional level, and for recreation and tourism they remain negligible (not significant);
- telecommunications, television and utilities - the assessment does not change the conclusion of no significant cumulative effects in the ES; and
- waste - the assessment does not change the conclusion of no significant cumulative effects in the ES.

3.10.184 DCC and SDDC [\[REP8-017\]](#) consider that the list of projects on which the updated Cumulative Assessment is based is comprehensive and that all of those projects with a potential to result in likely significant effects when considered cumulatively with the Proposed Development are identified. DCC [\[REP7-011\]](#) has no outstanding issues in relation to cumulative effects. SDDC did not respond to my invitation towards the end of the Examination to set out any remaining concerns.

Conclusions

- 3.10.185 Cumulative effects are considered for individual topics elsewhere in this chapter.
- 3.10.186 During the Examination the Applicant provides an updated assessment of cumulative effects across the range of planning topics for an updated list of projects that DCC and SDDC agree is comprehensive. On this basis, I am satisfied that sufficient consideration is given to the other projects mentioned by Councillor Amy Wheelton.
- 3.10.187 For each planning topic the Applicant concludes no change in the significance of cumulative effects from the updated assessment. I note that neither DCC or SDDC raise any outstanding concerns, and I am satisfied with the updated assessment and find that it does not alter the conclusions that I reach elsewhere in this chapter.
- 3.10.188 I find that sufficient consideration is given to other energy projects and to cumulative adverse impacts, and I have no concerns regarding paragraph 4.1.5 of NPS EN-1 or paragraph 2.10.26 of NPS EN-3.
- 3.10.189 I consider cumulative effects for specific planning topics, including for the planning balance, elsewhere in this chapter as appropriate.

GOOD DESIGN

Introduction

- 3.10.190 This part of the report considers general matters in relation to good design. The need case and alternative site locations are addressed in Section 3.2 and landscape and visual aspects in Section 3.6. Other aspects of good design are considered as necessary elsewhere in this chapter under the relevant topic heading.

Legislation and policy considerations

PA2008

- 3.10.191 Section 10(2) requires the SoS to have regard to achieving good design.

NPS EN-1

4.6.1	Environmental net gain and opportunities for enhancement.
4.6.15	Environmental net gain and good design.
4.7.10	Sustainability, attractiveness, durability, and adaptability.
4.7.11	Functionality and aesthetics.
4.7.12	Requirements that the design must satisfy.
5.4.46	Weight given to environmental enhancements.
5.10.29	The level of detailed design.
5.10.30	Design content and future consenting.

NPS EN-3

2.5.2	Good design: landscape and visual amenity, noise, ecology, heritage.

Local policies

- 3.10.192 The DCC/ SDDC LIR [\[REP2-001\]](#) identifies SDDC Policy BNE1: Design Excellence.

The application

- 3.10.193 The Design Statement [\[REP6-035\]](#) and ES Chapter 3 - Site Selection and Design Strategy [\[APP-086\]](#) provides the Applicant's demonstration of how they achieve 'good design', including through how the site was selected, how the design process was followed, and how the proposed design evolved.
- 3.10.194 The Applicant says that it considers guidance in the National Infrastructure Commission's Design Principles for National Infrastructure (2020), the Solar Trade Association's Solar Energy UK: 11 Commitments on Solar Farms (2022) and the Building Research Establishment's planning guidance for the development of large-scale ground mounted solar PV systems.
- 3.10.195 The Applicant [\[REP6-035\]](#) states that the design process began by developing a comprehensive understanding of the site context, which form the basis for establishing design objectives which reflect those opportunities and constraints and the Proposed Development's aspirations. The Applicant states that the broad design objectives are:
- renewable energy - to use the land available in an efficient way to generate a significant amount of renewable energy to contribute to the UK meeting its national net zero targets and targets for the deployment of solar generation;
 - grid resilience - to contribute to the resilience of the grid by providing additional diversification of production and the storage of energy for when it is most needed;
 - agricultural land - to minimise where possible the temporary loss of and impact on BMV agricultural land;
 - landscape and visual impacts - to limit the impact on the wider landscape and on views from residential properties and users of the surrounding area;
 - ecology and biodiversity - to take account of existing ecological and biodiversity receptors on the site and to deliver a significant level of BNG;
 - heritage - to minimise impacts on heritage assets where those are present;
 - highways - to avoid adverse impacts on the local and wider highways network in the vicinity of the site, including on the users and the residents;
 - local amenity - to ensure that the Proposed Development does not adversely affect local residents and other users of the surrounding area by impacting on their safety or amenity through matters such as noise, and unexpected events;
 - flooding - to ensure that the Proposed Development does not adversely affect the local area by increasing the risk of flooding; and
 - PRoW - to protect and where possible enhance the local PRoW network.
- 3.10.196 The Applicant states that the design evolved and developed throughout the preparation of the application in the light of technical assessments and to reflect engagement with consultees and stakeholders through the development of the ES.
- 3.10.197 The Applicant provides a set of design parameters [\[REP6-035 Appendix B\]](#) which define the environmental envelope for assessing the environmental impacts and reflecting the Rochdale Envelope approach. It considers that these provide a realistic

basis for the assessment, whilst incorporating a reasonable level of flexibility as necessary to allow for technological advances in solar and BESS technologies.

- 3.10.198 The Applicant [\[REP6-035\]](#) considers that the design objectives are achieved. It is of the view that the Proposed Development is sensitive to its context and would ultimately be a well-designed scheme which fully, but sensitively, utilises the site area available to generate renewable energy and to deliver grid resilience.

Issues arising during the Examination

- 3.10.199 Design parameters in relation to landscape and visual impacts are considered in Section 3.6, which records that SDDC and DCC [\[REP8-017\]](#) advise that the wording of Requirement 5 is appropriate and sufficient to ensure that final details of the Proposed Development are provided to the LPA for approval, and the identification of the design parameters in documents certified in the dDCO [\[REP8-003\]](#) provides sufficient clarity about the parameters against which the detailed design would be assessed.
- 3.10.200 At my [\[PD-014\]](#) request, the Applicant [\[REP6-042\]](#) reviews compliance with Nationally Significant Infrastructure Projects: Advice on Good Design of 23 October 2024, and concludes that no updates are required to the Design Statement [\[REP6-035\]](#).
- 3.10.201 The Applicant [\[REP8-020\]](#) says that it consulted and engaged with a wide range of stakeholders, defined a set of key design aims, as set out in the Design Statement [\[REP6-035\]](#) and followed a logical process to reach and address those aims that informed the following changes to the Proposed Development which demonstrate that the scheme is appropriately designed:
- removal of a large area of solar panels and a reduction in the Order Limits;
 - relocation of the BESS and on-site substation to the centre of the site to address concerns about visual impact and noise from receptors;
 - revising the proposed construction vehicle routing subject to changes in transport constraints, with options if the Walton-on-Trent Bypass bridge is or is not available;
 - introduction of a temporary haul road across private land to minimise the impacts of construction and decommissioning vehicles on the surrounding road network and to prevent HGVs travelling through the villages of Walton-on-Trent and Rosliston;
 - altering the cable connection to be underground for its entire length, rather than overground as originally proposed, in response to local community feedback;
 - agreeing to utilise temporary culverts and a bridge to facilitate crossing of the watercourse with the haul road, to avoid increases to off-site flooding and to allow vegetation to regrow naturally during the operation stage; and
 - introducing a new permissive path across private land not previously accessible to the public to provide a new safe walking link between the existing PRoW.
- 3.10.202 DCC and SDDC [\[REP8-017\]](#) agree that:
- by seeking to achieve the Design Objectives identified in the Design Statement [\[REP6-035\]](#) the Proposed Development is shown to follow the policy relating to good design in EN-1 and EN-3; and
 - the principles of the design of the Proposed Development are captured through the design parameters set out in Chapter 4 of the ES and in the Design Statement

[\[REP6-035\]](#) and would be the basis on which the Local Authorities assess the detailed design through Requirement 5 of the dDCO [\[REP8-003\]](#).

Conclusions

- 3.10.203 The Applicant sets out relevant guidance, the design objectives, and how the design evolved, providing examples of how good design is achieved in response to comments from stakeholders.
- 3.10.204 Examples of net gain and enhancements are also identified elsewhere in this chapter, including for habitats, hedgerow, grasslands, PRow, and socio-economics, and I am therefore content regarding paragraphs 4.6.1, 4.6.15 and 5.4.46 of NPS EN-1.
- 3.10.205 Design parameters are secured in documents certified by dDCO [\[REP8-003\]](#), including in the Design Statement [\[REP6-035\]](#) and size, number, location, colour and appearance parameters. The local authorities are content that these are sufficiently clear for their consideration of the detailed design, and I have no concerns regarding paragraphs 5.10.29-30 of NPS EN-1.
- 3.10.206 DCC and SDDC say that the policy relating to good design in EN-1 and EN-3 is followed. I have no reason to disagree, find that appropriate consideration is given to sustainability, functionality, aesthetics, and the ultimate purpose of the infrastructure.
- 3.10.207 Based on the above, I consider that good design is demonstrated and am satisfied in relation to paragraphs 4.7.10-12 NPS EN-1 and paragraph 2.5.2 of NPS EN-3.
- 3.10.208 I have regard to the desirability of achieving good design in accordance with s104(2) of the PA2008. I have no concerns in relation to design excellence or local policy, including SDDC Policy BNE1.
- 3.10.209 For the purposes of Chapter 5 and the planning balance, I consider that compliance with general policies for good design bring neutral weight that does not affect the balance of the Order being made.
- 3.10.210 I consider good design matters for specific planning topics, including for the planning balance, elsewhere in this chapter as necessary.

4. HABITATS REGULATIONS ASSESSMENT

4.1 INTRODUCTION

- 4.1.1 This chapter sets out my analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoS) as the Competent Authority, in performing its duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 4.1.2 This chapter is structured as follows:
- Section 4.2: Findings in relation to Likely Significant Effects (LSE);
 - Section 4.3: Conservation Objectives;
 - Section 4.4: Findings in relation to Adverse Effects on Integrity (AEol); and
 - Section 4.5: HRA conclusions.
- 4.1.3 In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).
- 4.1.4 For this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas, potential Special Protection Areas, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 4.1.5 Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2.
- 4.1.6 I have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out its duties as the Competent Authority. I have sought evidence from the Applicant and the relevant Interested Parties, including Natural England (NE) as the Appropriate Nature Conservation Body, and through written questions and hearings.

REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES

- 4.1.7 My Report on the Implications for European Sites [\[PD-013\]](#) compiles, documents, and signposts HRA-relevant information provided in the application and Examination representations up to Deadline 5, on 31 October 2024. The Report on the Implications for European Sites sets out my understanding on HRA-relevant information and the position of the Interested Parties in relation to the effects of the Proposed Development on European Sites at that time. Consultation on the Report on the Implications for European Sites took place between 12 November and 10 December 2024. Comments were received from the Applicant [\[REP7-007\]](#) at Deadline 7 on 10 December 2024. These comments are considered in this chapter.
- 4.1.8 I recommend that the Report on the Implications for European Sites, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil its duties of consultation under Regulation 63(3) of the Habitats Regulations should the SoS wish to do so.

PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

- 4.1.9 The Proposed Development is described in Chapter 1.
- 4.1.10 The spatial relationship between the Proposed Development and European Sites is shown on Figure 6.2.1 of the Report to Inform HRA [\[APP-122\]](#), which I refer to as 'the Applicant's HRA Report'.
- 4.1.11 The Proposed Development is not directly connected with, or necessary to, the management of a European Site [\[APP-122\]](#). Therefore, the SoS must make an 'appropriate assessment' of the implications of the Proposed Development on potentially affected European Sites in light of their Conservation Objectives.
- 4.1.12 The Applicant's HRA Report [\[APP-122\]](#) includes an assessment of effects and does not identify any LSE on non-United Kingdom European Sites in European Economic Area States. Only one United Kingdom European Site is addressed in this report. No such impacts were raised for discussion by any Interested Parties during the Examination.

4.2 LIKELY SIGNIFICANT EFFECTS

- 4.2.1 Under Regulation 63 of the Habitats Regulations the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.
- 4.2.2 The European Sites and qualifying features considered in the Applicant's assessment of LSE are presented in the Applicant's HRA Report [\[APP-122\]](#) Appendix A] which sets out the methodology applied to determining what constitutes a 'significant effect'.
- 4.2.3 The Applicant's HRA Report [\[APP-122\]](#) identifies European Sites within 15 kilometres of the Proposed Development. This study area is expanded for sites identified as having functional ecological connectivity, for example hydrological.
- 4.2.4 Only one European Site is identified. This is the River Mease SAC. All other European sites are ruled out based on distance and absence of potential source-pathway receptor connectivity.
- 4.2.5 Section 5 of the Applicant's HRA Report [\[APP-122\]](#) presents screening conclusions.
- 4.2.6 No matters were raised about the Applicant's screening assessment during the Examination.

LSE FROM THE PROPOSED DEVELOPMENT ALONE

- 4.2.7 Chapter 3 of the Applicant's HRA Report [\[APP-122\]](#) identifies potential impacts of the Proposed Development alone that have the potential to result in LSE::
- changes to hydrology - water quantity during the construction stage;
 - changes to hydrology - water quality during the construction stage;
 - invasive non-native species during the construction stage; and
 - non-physical disturbance to otter.

LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

- 4.2.8 The Applicant's HRA Report [\[APP-122\]](#) addresses potential in-combination effects arising from the Proposed Development and sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in the Applicant's HRA Report [\[APP-122\]](#) Appendix C].
- 4.2.9 In many cases, where the Applicant's screening establishes the potential for LSE to arise from the Proposed Development alone, the potential for in-combination effects is also considered in the Applicant's HRA Report [\[APP-122\]](#). This approach as far as it has a bearing on the screening for LSE was not discussed during the Examination.

LSE ASSESSMENT OUTCOMES

- 4.2.10 The River Mease SAC is assessed by the Applicant to determine if it could be subject to adverse effects on integrity, because of the Proposed Development alone or in combination with other plans and projects, in view of its conservation objectives and the following qualifying features:
- Annex 1 habitats present as a qualifying feature but not a primary reason for site selection: water courses of plain to montane levels with Ranunculus fluitans and Callitriche-Batrachion vegetation; and
 - Annex II species: spined loach, bullhead, white clawed crayfish, and otter.
- 4.2.11 Based on the information provided, I am satisfied that the correct impact-effect pathways for the River Mease SAC are assessed, and I am satisfied with the approach to the assessment of alone and in-combination likely significant effects.
- 4.2.12 Following the reasoning set out above, I find that the Proposed Development is likely to have a significant effect from the impacts identified above on the qualifying features of the River Mease SAC when considered alone, or in combination with other plans or projects. This was not disputed by Interested Parties/ NE during the Examination.

4.3 CONSERVATION OBJECTIVES

- 4.3.1 The conservation objectives for the sites and features are identified in the Applicant's HRA Report [\[APP-122\]](#).
- 4.3.2 No matters regarding the sites identified or the conservation objectives were raised during the Examination.

4.4 ADVERSE EFFECTS ON INTEGRITY

- 4.4.1 This section discusses the conclusions regarding AEoI for the River Mease SAC.
- 4.4.2 The River Mease SAC and its qualifying features identified in the Applicant's HRA Report [\[APP-122\]](#) Appendix A] and were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the River Mease SAC [\[APP-122\]](#).
- 4.4.3 Based on the information provided, I am satisfied that the correct impacts are assessed.

- 4.4.4 The Applicant's approach to the in-combination assessment is set out in Chapter 4 of the Applicant's HRA Report [\[APP-122\]](#).
- 4.4.5 Based on the findings of the Examination, I am satisfied that an assessment of AEoI from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects are required to be considered.

MITIGATION MEASURES

- 4.4.6 The Applicant's HRA Report [\[APP-122\]](#) identifies both embedded and additional mitigation measures which would be secured through DCO requirements and confirms that mitigation measures were not taken into account during the screening stage, but were taken into account in the assessment of effects on integrity.

SITES FOR WHICH THE APPLICANT CONCLUDES THAT AEoI CAN BE EXCLUDED

River Mease SAC

- 4.4.7 The Applicant's HRA Report [\[APP-122\]](#) concludes that the Proposed Development would not result in AEoI of the River Mease SAC, either alone or in-combination with other plans and projects.
- 4.4.8 The Applicant's HRA Report [\[APP-122\]](#) identifies potential for impacts on water quality of the River Mease SAC due to surface water run off during the construction stage. It identifies potential for contaminated surface water to reach the River Mease SAC via existing watercourses, ditches and field drains. The Applicant's HRA Report [\[APP-122\]](#) concludes that potential impacts would only occur during the construction stage. Section 4.4 of the Applicant's HRA Report [\[APP-122\]](#) sets out the proposed mitigation measures to be included within the Construction Environmental Management Plan (CEMP) to avoid contaminated run-off entering overland flow paths.
- 4.4.9 Regarding potential for spread of invasive non-native species and non-physical disturbance to otters during the construction stage, Section 4.4 of the Applicant's HRA Report [\[APP-122\]](#) sets out the proposed mitigation measures within the CEMP. These measures include inspection checks for otter and invasive non-native species.
- 4.4.10 For the operation stage, the Applicant's HRA Report [\[APP-122\]](#) predicts improvements to water quality due to the removal of fertiliser and pesticide load attributed to the existing use of the site for agricultural purposes. Therefore, operational effects on water quality are scoped out from further assessment.
- 4.4.11 NE [\[AS-022, REP1-037\]](#) do not agree with the conclusions in the Applicant's HRA Report [\[APP-122\]](#) and consider there would be impacts as follows:
- impacts from construction because of sediment mobilisation;
 - impacts from operation because of sediment mobilisation which could transport sediments with a nutrient load via tributaries into the River Mease; and
 - impacts from operation because of the use of chemicals to wash the solar panels.
- 4.4.12 South Derbyshire District Council [\[REP1-029, REP2-001\]](#) and Derbyshire County Council [\[REP1-026\]](#) also raise concerns regarding potential for impacts on the River Mease SAC from the mobilisation of sediments and use of chemicals.

- 4.4.13 I [\[PD-012\]](#) asked the Applicant if there were any updates which addressed the concerns of NE, and to set out how mitigation in relation to chemical cleaning of the solar panels is secured. The Applicant [\[REP4-011\]](#) refers to mitigation in the Outline CEMP [\[REP6-018\]](#), which includes a soil management plan, site waste and materials management measures, pollution control measures to prevent the introduction of any hazardous substances, a water quality and silt management plan, a protocol requiring consultation with the Environment Agency if unexpected, contaminated land is identified during ground investigation or construction, and an environmental monitoring plan and flood risk management measures including surface water management. The Applicant [\[REP4-011\]](#) adds a commitment to not use harsh chemicals to clean solar panels to the Outline Operational Environmental Management Plan [\[REP6-020\]](#).
- 4.4.14 The Statement of Common Ground between the Applicant and NE [\[REP7-005\]](#) includes that the Applicant commits to pollution prevention measures within the Outline CEMP [\[REP6-018\]](#) regarding non-toxicity of cleaning chemicals. The Applicant updated the Outline Landscape and Ecological Management Plan [\[REP4-040\]](#) and Outline CEMP [\[REP6-018\]](#) to commit to seeding the area of the site within the River Mease catchment as soon as practically possible to minimise the potential for sediment run off.
- 4.4.15 The Applicant and NE [\[REP7-005\]](#) agree that, subject to the implementation of the mitigation measures, significant effects on the integrity of the River Mease SAC can be discounted.
- 4.4.16 Based on the above, I am satisfied that AEoI on the River Mease SAC and its qualifying features can be excluded.

4.5 CONCLUSIONS

- 4.5.1 The Proposed Development is not directly connected with, or necessary to, the management of the River Mease SAC European Site, and therefore the implications of the Proposed Development regarding adverse effects on potentially affected sites must be assessed by the SoS.
- 4.5.2 The River Mease SAC and its qualifying features are considered in the Applicant's assessment of LSE. LSE were identified for the River Mease SAC as set out in Chapter 2 of the Applicant's HRA Report [\[APP-122\]](#) both from the Proposed Development alone and in-combination with other plans or projects.
- 4.5.3 The site and features for which LSE are identified were not disputed by any Interested Parties during the Examination. I am satisfied that the correct European Site and qualifying features are identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects are identified.
- 4.5.4 My findings are that, subject to the mitigation measures secured in my recommended DCO in Annex C of this report, AEoI on the River Mease SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- 4.5.5 I consider that there is sufficient information before the SoS to enable them to undertake an appropriate assessment and to fulfil its duty under the requirements of the Habitats Regulations.

5. THE CASE FOR MAKING A DEVELOPMENT CONSENT ORDER

5.1 INTRODUCTION

- 5.1.1 This chapter sets out my reasoning and conclusions on whether there is a case for making a Development Consent Order (DCO) for the Proposed Development. It considers the matters to be taken into account as required by the Planning Act 2008 (PA2008) and other relevant legislation and policy, the principle of development and the need case, the planning issues, impacts, the planning balance, and conclusions.
- 5.1.2 Relevant legislation and policy are identified in Chapters 2 and 3, and Annex B. I consider the principle of development (including the need case) and the planning issues (including the assessment of potential benefits, adverse impacts, and mitigation) in Chapter 3. My conclusions are based on my recommended DCO (rDCO) in Annex C, which is discussed in Chapter 7. Land rights matters are addressed in Chapter 6.
- 5.1.3 My conclusions follow from my consideration of all evidence presented to the Examination, including the Environmental Statement (ES), the Habitats Regulations Assessment (HRA), the Local Impact Reports (LIR), Statements of Common Ground, written and oral submissions, and site inspections.

5.2 MATTERS TO BE TAKEN INTO ACCOUNT

- 5.2.1 In Section 2.2 I set out my reasoning for why there are designated National Policy Statements (NPSs) for the Proposed Development, and for which NPSs have effect.
- 5.2.2 I consider the Proposed Development against section 104 (s104) of the PA2008 because it is within the scope of the Overarching National Policy Statement for Energy (NPS EN-1), National Policy Statement for Renewable Energy Infrastructure (NPS EN-3), and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5). I find that these are relevant NPS, that they have effect, and that they provide the primary basis for determining whether development consent should be granted.
- 5.2.3 I find no evidence that deciding the application in accordance with the relevant NPS would lead to the United Kingdom (UK) being in breach of any of its international obligations, lead to the Secretary of State for Energy Security and Net Zero (SoS) being in breach of any duty imposed by or under any legislation, be unlawful, result in adverse impacts of the development outweighing its benefits or be contrary to legislation about how the decisions are to be taken. I therefore find that that s104(4) to (8) of the Planning Act 2008 would not apply and conclude that the application must be decided in accordance with relevant NPS in accordance with s104(3) of the PA2008.
- 5.2.4 In accordance with s104(2) of the PA2008, I have regard to the relevant NPSs, LIR, any matters prescribed in relation to the development, and any other matters which are both important and relevant to the decision. I have regard to human rights and Public Sector Equality Duty. I take all other relevant law and policy into account.
- 5.2.5 In Section 3.2, I conclude that the Proposed Development is low carbon energy infrastructure under paragraph 4.2.5 of NPS EN-1, from which it follows that the Proposed Development is Critical National Priority (CNP) Infrastructure in accordance with paragraph 3.3.62 of NPS EN-1.

- 5.2.6 My conclusions on the case for making a DCO are therefore reached within the context of the NPS policies relevant to the planning balance, including:

NPS EN-1

3.3.63	CNP Infrastructure, residual impacts, and delivery as quickly as possible.
4.1.3	Presumption in favour of granting consent.
4.1.7	Weighing residual adverse effects against benefits.
4.2.7	CNP policy to be considered by the Examining Authority.
4.2.16	Clear outweighing of harm, exceptionality, or very special circumstances.
4.2.17	CNP Infrastructure and tests for heritage assets.

NPS EN-3

2.1.8	CNP infrastructure and the mitigation hierarchy.

5.3 PRINCIPLE OF DEVELOPMENT AND PLANNING ISSUES

- 5.3.1 In this section I summarise my conclusions on each topic, focussing on the Applicant's assessment methodology and findings, key issues arising during the Examination, the adequacy of mitigation measures and how they are secured, compliance with policy, and matters counting in favour of or against the DCO being made.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 5.3.2 In Section 2.4 I conclude that the Proposed Development is EIA development, that I consider the ES submitted with the application and as updated during the Examination is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations, and I find that updates to the ES during the Examination do not individually or cumulatively prejudice the adequacy of the ES.
- 5.3.3 I am content that the Applicant adequately defines the Rochdale Envelope, and I consider that sufficient controls are secured by the rDCO in Annex C to appropriately mitigate the effects identified using the Rochdale Envelope.
- 5.3.4 I consider transboundary effects in Section 2.6, noting the conclusions that the Proposed Development was unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State, and that I am satisfied that no facts have emerged up to the end of the Examination to change those conclusions.

HABITATS REGULATIONS ASSESSMENT

- 5.3.5 In Chapter 4 I conclude that I am satisfied:
- that the evidence indicates that the Proposed Development, either alone or in combination with other plans or projects, would not be likely to give rise to any adverse effects on the integrity on European Sites due to the lack of effective pathways; and

- that there is sufficient information before the SoS to enable them to undertake an appropriate assessment and to fulfil its duty under the requirements under the Conservation of Habitats and Species Regulations 2017.

5.3.6 I see no reason for Habitats Regulations Assessment matters to prevent the making of the Order.

NEED CASE, ALTERNATIVES, ELECTRICITY GENERATION, AND DECOMMISSIONING

5.3.7 Matters arising during the Examination are addressed in Section 3.2 and include the need case and effects on climate change, alternatives, electricity generation and grid connection, and decommissioning timing and funding.

Need case and effects on climate change

5.3.8 I find that the Proposed Development is low carbon infrastructure in accordance with paragraph 4.2.5 of NPS EN-1 as it would generate electricity without fossil fuel generation, includes power lines and a substation within the scope of NPS EN-5, and has storage infrastructure (the Battery Energy Storage System (BESS)) that falls within the normal definition of 'low-carbon'.

5.3.9 In considering paragraphs 3.2.6, 3.2.7, 3.3.26 and 4.2.2 of EN-1, I find that there is an urgent need for the Proposed Development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that the electricity storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.

5.3.10 I find that the Applicant provides an appropriate Greenhouse Gas (GHG) assessment for the stages of the Proposed Development in accordance with paragraphs 5.3.4 and 5.3.8 of NPS EN-1.

5.3.11 Overall, and noting the mitigation measures provided in the Outline Construction Environmental Management Plan (Outline CEMP) [REP6-018], Outline Operational Environmental Management Plan (Outline OEMP) [REP6-020] and Outline Decommissioning Environmental Management Plan (Outline DEMP) [REP6-022], I am satisfied that the Applicant takes reasonable steps to reduce GHG emissions as required by paragraph 5.3.9 of NPS EN-1. I am content that GHG emissions are identified in line with paragraphs 5.3.3 and 5.3.10.

5.3.12 I am content with the Applicant's assessment of GHG emissions during the construction stage of 0.0163% of the relevant UK carbon budgets, a proportion which leads me to have no concerns in relation to the Climate Change Act 2008. I have no concerns about compliance with local policy, including SDDC Policy S6.

5.3.13 I find that the GHG emissions of 490,042 tCO₂e that would be avoided during the operation stage when compared with the GHG intensity of the grid are substantially higher than the GHG emissions from the Proposed Development.

5.3.14 I accept that there would be a negligible to minor adverse effect on GHG emissions and resultant climate change during the construction stage, a negligible to minor adverse effect during the decommissioning stage, and an overall moderate to major significant beneficial effect on GHG emissions and resultant climate change.

Alternatives

- 5.3.15 Paragraphs 4.2.21, 4.3.25 and 4.3.9 of NPS EN-1 lead me to conclude that the Applicant's approach is satisfactory as I consider that other potential projects do not need to be treated as alternative solutions, there is no obligation to establish whether the Proposed Development represents the best option, and alternatives are considered to the extent that they are both important and relevant to the decision.
- 5.3.16 I find that Regulation 14(2)(d) of the EIA Regulations and paragraphs 4.3.15 of NPS EN-1 and 2.10.23 of NPS EN-3 are complied with as the Applicant demonstrates that it considered reasonable alternatives in the vicinity of available grid export capacity at the nearby Drakelow Substation and the Applicant's sifting process provides sufficient indication of the reasons for its choice.
- 5.3.17 In relation to paragraph 4.3.17 of NPS EN-1, I do not have any concerns in relation to any other relevant policy or legal requirement to consider alternatives.

Electricity generation

- 5.3.18 I am satisfied that the Applicant's evidence of a secured grid connection agreement with National Grid Electricity System Operator Limited is sufficient for the purposes of paragraph 4.11.12 of NPS EN-1.
- 5.3.19 I accept the Applicant's estimate that 105,966 megawatt hours (MWh) of electricity would be generated for the first year of the operation stage with a degradation of 0.55% for each subsequent year, giving an estimated total energy generation of 3,815,246MWh over the 40-year lifetime. I have no reason for concern about the estimate in relation to paragraphs 2.10.50, 2.10.55 or 2.10.67 of NPS EN-3.

Decommissioning timing and funding

- 5.3.20 The temporary nature of the Proposed Development is a prominent thread that is relied on throughout the application. I am of the view that it can only be considered temporary if decommissioning is secured robustly.
- 5.3.21 Requirement 22(2) of the draft Development Consent Order (dDCO) [\[REP8-003\]](#) was updated during the Examination to secure timescales for the submission of relevant management plans and for the completion of decommissioning of any part of the authorised development that stops generating electricity for specified periods before the 40th anniversary of final commissioning. I consider that these provisions are appropriate to avoid unnecessary delay in a return to agricultural uses, and to limit the duration of any periods when adverse impacts in any area would not be offset by the benefits of electricity generation or storage in that area.
- 5.3.22 Requirement 27 of the dDCO [\[REP8-003\]](#) was added during the Examination to provide for a decommissioning fund or other form of financial guarantee that secures the cost of performance of all decommissioning obligations. I find that this is necessary to ensure that the undertaker's financial resources are available for the decommissioning stage and thereby provide key security that it would be carried out appropriately, consistent with ensuring that the Proposed Development is temporary, and to ensure consistency with the impact assessments. I consider that Requirement 27 is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other circumstances. In my view it addresses the related material concerns raised by many Interested Parties, including Derbyshire County Council (DCC) and South Derbyshire District Council (SDDC).
- 5.3.23 Other decommissioning matters are addressed for the planning topics later in this section, as necessary.

Matters to be taken to the planning balance and conclusions

5.3.24 For the purposes of the planning balance and conclusions, I find that:

- paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the Proposed Development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that it should be developed at speed;
- paragraph 3.3.26 of NPS EN-1 includes that the BESS energy storage is needed to reduce the costs of the electricity system and increase reliability; and
- the combination of the urgent need for the Proposed Development and beneficial impacts on climate change bring very great weight for the making of the Order.

AGRICULTURE AND SOILS

5.3.25 Matters arising during the Examination are addressed in Section 3.3 and include the Agricultural Land Classification (ALC), the use of agricultural land, the Soil Management Plan (SMP), land drainage, decommissioning, water runoff from the solar panels, farming businesses and food production, impacts on agriculture and soils, land contamination, and mineral safeguarding.

5.3.26 I am content with the ALC surveys and find that agricultural land is graded in accordance with paragraph 2.10.33 of NPS EN-3. Of the 191 hectare (ha) comprising the site and cable route, I find that 36ha are grade 2 (very good), 87ha are grade 3a (good), 62ha are grade 3b (moderate), 1ha is non-agricultural, and 5ha are urban.

5.3.27 Although land type was not a predominating factor in determining the suitability of the site, this is acceptable to paragraph 2.10.29 of NPS EN-3, and the choice of site is consistent with solar arrays not being prohibited on Best and Most Versatile (BMV) agricultural land (paragraph 2.10.30 of NPS EN-3), and in line with the expectation that it is likely that developments will use some agricultural land (paragraph 2.10.31 of NPS EN-3). I am therefore satisfied that the use of agricultural land is necessary, and that appropriate consideration is given to land quality in the selection of the site in accordance with paragraph 2.10.29. I find that the Applicant considers the impacts of the use of BMV agricultural land in accordance with paragraph 5.11.34 of NPS EN-1 and paragraph 2.10.31 of NPS EN-3. I am satisfied that paragraph 2.10.31 of NPS EN-3 is addressed in relation to the choice of site being explained, and that siting on BMV agricultural land is justified in accordance with paragraph 5.11.34 of NPS EN-1.

5.3.28 I am content that appropriate mitigation is secured in the Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1], including in relation to soil health, soil stripping, soil storage, soil replacement, for following the Department for the Environment, Food and Rural Affairs' Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. I find that the measures secured in the SMP and elsewhere in the Outline OEMP [[REP6-020](#)] provide appropriate mitigation of the potential for harm to soil health from damage to existing land drainage, including from piling or buried cables. I conclude that appropriate cable depth design parameters are secured in Table 4.2 of ES Chapter 4 [[REP6-031](#)], as referenced by the dDCO [[REP8-003](#)], in relation to potential impact on the future agricultural uses.

5.3.29 I consider it reasonable that there is uncertainty about whether it would be better for cables to be left in place or removed during the decommissioning stage, including because the condition of the cables, land and surrounding environment in 40 years cannot be predicted precisely. I am satisfied that appropriate measures are secured in

the dDCO [\[REP8-003\]](#) and the Outline DEMP [\[REP6-022\]](#) for pre-decommissioning surveys, risk assessments, for the pros and cons of the removal of buried cables to be assessed appropriately during the decommissioning stage, and for the reinstatement of soils to the pre-construction ALC grade. On that basis, I am satisfied that there would be unlikely to be significant adverse impacts on soil health or agriculture in relation to buried cables during the decommissioning stage.

- 5.3.30 The Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#) secure measures for the restoration of land after the construction stage, for the monitoring of soil health and rectification of issues during the operation stage, and for the restoration of land during the decommissioning stage. I find that it is appropriately secured for land to be reinstated to its original ALC grade and to be suitable for agricultural uses after the decommissioning stage.
- 5.3.31 I am satisfied that habitats created by the Proposed Development would be temporary and that potential conflicts between restoring land to agricultural use and biodiversity should be dealt with at the time of the decommissioning stage, as secured by the Outline DEMP [\[REP6-022\]](#) and other protection provided to species.
- 5.3.32 I have no concerns regarding the consideration given to decommissioning and restoration in relation to agriculture and soils, and with the related mitigation measures. I am content in relation to compliance with paragraph 4.3.5 of NPS EN-1 and paragraphs 2.10.68-69 and 2.10.146 of NPS EN-3.
- 5.3.33 I am satisfied that the business impacts of reduced availability of land for dairy farming grazing and fodder on Oaklands Farm would be mitigated by rental income from the Proposed Development and the availability of the land around the solar panels for sheep grazing. I find that potential impacts on Park Farm and Fairfield Farm are considered adequately, and I am satisfied with the consideration given to continued agricultural use and the benefits of BMV agricultural land in accordance with paragraphs 2.10.32 and 2.10.145 of NPS EN-3.
- 5.3.34 I consider that land contamination guidance is followed appropriately and I am content with the mitigation secured for contamination by Requirement 13 of the dDCO [\[REP8-003\]](#), and for site investigations in the Outline CEMP [\[REP6-018\]](#). I have no concerns about land contamination, and I am content in relation to paragraphs 5.11.5, 5.11.15, and 5.11.17-18 of NPS EN-1 and paragraph 2.10.34 of NPS EN-3.
- 5.3.35 I accept the Applicant's assessment that, following the mitigation, there would not be likely to be any significant effects on agriculture, soils, or food production. However, I do note that there would be short-term temporary loss of agricultural land during the construction stage in the areas of construction-related activity, the long-term temporary loss of agricultural land during the construction stage in the areas of fixed equipment, and related adverse impacts on farming businesses and food production, which while not being significant I find combine to require consideration in the planning balance.
- 5.3.36 I am satisfied with the Applicant's assessment of potential impacts on agriculture, soils, and land contamination and with the mitigation secured in Requirements 9, 11, 13, and 22 the dDCO [\[REP8-003\]](#), the Outline CEMP [\[REP6-018\]](#), the Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#). On that basis, I am satisfied that there is compliance with paragraphs 5.11.12-13 of NPS EN-1, I have no concerns in relation to consistency with [Statement by SoS Department for Energy Security and Net Zero \(DESNZ\) on 15 May 2024](#), or compliance with SDDC Policy BNE4 or Policy BNE5.

- 5.3.37 DCC considers that the Proposed Development would not impact identified Mineral Safeguarding Areas or identified economic mineral resources, on which basis I have no concerns in relation to compliance with paragraphs 5.11.19 or 5.11.28 of NPS EN-1.

Matters to be taken to the planning balance and conclusions

- 5.3.38 For the purposes of the planning balance and conclusions, I find that short-term temporary loss of agricultural land in the areas of construction activity during the construction stage, the long-term temporary loss of agricultural land in the areas of fixed equipment during the operation stage, and related adverse impacts on farming businesses and food production bring a little weight against the making of the Order.

BIODIVERSITY

- 5.3.39 Matters arising during the Examination are addressed in Section 3.4 and Chapter 4, and include River Mease Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI), the Habitats Constraint Plan, trees and woodland, hedgerows, other habitats, skylark, barn owl, other birds, great crested newt, otter, badger, other mammals, Invasive Non-Native Species (INNS), Biodiversity Net Gain (BNG), enhancement, and the construction haul road.
- 5.3.40 I am content with the assessment of effects on internationally and nationally designated sites and on regional and local sites. I find that adverse effects on the River Mease SAC or SSSI would be unlikely, and I have no related concerns regarding paragraphs 5.4.7-8, 5.4.17 or 5.4.50 of NPS EN-1. I accept that there would be no significant effects on Local Wildlife Sites apart from a moderate beneficial effect on Grove Wood Local Wildlife Site and Copperhill Spinney during the operation stage. I don't have any related concerns in respect of paragraphs 5.4.12-13, 5.4.17, 5.4.48, or 5.4.52 of NPS EN-1.
- 5.3.41 I consider that with the mitigation in the Outline CEMP [\[REP6-018\]](#) there would be unlikely to be adverse impacts on ancient woodland. I am satisfied that there is appropriate mitigation to avoid likely impacts on ancient or veteran trees through the provisions for local planning authority approval of any felling or lopping of veteran or ancient trees, the detailed design of the cable route and Arboricultural Method Statement secured by Article 37 and Requirements 5 and 7 of the dDCO [\[REP8-003\]](#).
- 5.3.42 I am content with the regard given to guidance to identify trees subject to a Tree Preservation Order that would be affected and the works permitted to them through Schedule 13 of the dDCO [\[REP8-003\]](#) and I am satisfied with the provisions of Article 37 of the dDCO for works to trees subject to Tree Preservation Order. I accept that 0.25 kilometres loss of hedgerow is necessary, note the creation of 2.86 kilometres of native species rich hedgerow and enhancement of 3.18 kilometres. I am satisfied with the hedgerow mitigation in the Outline Landscape and Ecological Management Plan (LEMP) [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A]. I have no concerns in relation to paragraphs 5.4.14, 5.4.32, 5.4.48, or 5.5.53 of NPS EN-1.
- 5.3.43 I consider that the impact on skylark is suitably addressed and that the mitigation secured in the Outline LEMP [\[REP4-040\]](#), [\[REP3-025\]](#) Appendix A] and Unilateral Undertaking [\[REP7-010\]](#) would be likely to result in no overall harm to skylark and a residual beneficial effect. Although a full barn owl survey has not been carried out, I find that the Applicant's understanding of the behaviour of any potential barn owl on the site together with the mitigation in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040\]](#) would result in it being unlikely that there would be any harm to barn owl. I consider that any harm to other birds is also likely to be avoided.

- 5.3.44 I am content with the mitigation secured for badgers in the CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A] and, noting that Natural England sees no impediment to a license being granted, I find it unlikely that there would be any harm to badger. I find no compelling evidence that great crested newt is present on the site. Although there is evidence of otter on the unnamed watercourse and ponds, I do not find any evidence that suggests there are holts and consider it likely that the presence of otter is for foraging. I consider that with the mitigation in the Outline CEMP [\[REP6-018\]](#), there would be unlikely to be any harm to great crested newt, otter, or other mammals. INNS are recorded on the site but I consider that INNS are appropriately mitigated by the measures secured in Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A].
- 5.3.45 Paragraph 4.6.1 of NPS EN-1 clarifies that BNG is not an obligation and so I give it no weight as a legal requirement with reference to paragraph 4.6.3 or the Environmental Act 2021, although I do consider any BNG in relation to policy for enhancements. I find that the BNG assessment is carried out using the latest version of the biodiversity metric available at the time and in accordance with paragraph 4.6.7 of NPS EN-1. I consider that the commitments secured in the dDCO [\[REP8-003\]](#) of a minimum of 20% biodiversity net gain in habitats units, 10% biodiversity net gain in hedgerow units, 10% biodiversity net gain in river units during the operation stage represent enhancement are reasonable, that reasonable opportunities are taken to enhance biodiversity, and that there is compliance with paragraphs 4.6.6, 5.4.19, and 5.4.46-7 of NPS EN-1. I have no concerns in relation to SDDC Policy BNE3 or Policy INF7.
- 5.3.46 I am content with the consideration given to the Environmental Improvement Plan 2023 and am therefore satisfied in relation to paragraph 5.4.39 of NPS EN-1.
- 5.3.47 I am satisfied that the temporary provision of a haul road during the construction and decommissioning stages is justified and that appropriate mitigation is secured in the Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#).
- 5.3.48 I conclude that the Applicant's assessment methodology, baseline conditions, proposed mitigation and enhancement and how it is secured, assessment of effects, and restoration of land that would be used temporarily are acceptable. I am therefore satisfied in relation to paragraphs 5.4.35, 5.4.44-45, 5.4.48, and 5.4.54 of NPS EN-1, and paragraphs 2.10.82-83, and 2.10.130 of NPS EN-3. I find that there would be no harm to designated sites or protected species and therefore have no concerns in relation to paragraph 5.4.55 of NPS EN-1.
- 5.3.49 On balance, I consider that following mitigation there would be unlikely to be significant adverse effects during the construction or decommissioning stages, and that there would be significant beneficial effects during the operation stage in relation to BNG and enhancement. I consider that those beneficial effects would be temporary and need to be balanced against the combination of adverse effects on habitats during the construction and decommissioning stages and the following periods of reinstatement.

Matters to be taken to the planning balance and conclusions

- 5.3.50 For the purposes of the planning balance and conclusions, I find that the combination of temporary beneficial effects from BNG and enhancement during the operation stage with temporary adverse effects on habitats during the construction and decommissioning stages and the following periods of reinstatement bring a little weight for the making of the Order.

HISTORIC ENVIRONMENT

- 5.3.51 Matters arising during the Examination are addressed in Section 3.5 and include above ground heritage assets and archaeology.
- 5.3.52 I am content with the Applicant's assessment methodology and find that there is compliance with paragraphs 5.9.9, 5.9.22 of NPS EN-1 and paragraphs 2.10.113, 2.10.118 and 2.10.160 of EN-3.
- 5.3.53 In reaching my conclusions I:
- have regard to the desirability of preserving any listed building, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting (Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010);
 - consider the desirability of sustaining heritage assets (paragraph 5.9.25 of NPS EN-1);
 - give considerable importance and weight to the desirability of preserving all heritage assets (paragraph 5.9.25 of NPS EN-1);
 - give great weight to the asset's conservation when considering the impact on the significance of a designated heritage asset (paragraph 5.9.25 of NPS EN-1);
 - give appropriate weight to the desirability of preserving the setting of designated heritage assets (paragraph 5.9.36 of NPS EN-1); and
 - make a balanced judgement regarding the scale of any harm or loss and the significance of non-designated heritage assets (paragraph 5.9.36 of NPS EN-1).
- 5.3.54 I am satisfied that the Outline CEMP [[REP6-018](#)] and Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] provide appropriate mitigation for above ground heritage assets. I find that there would be less than substantial harm to non-designated assets at Oaklands Farm; no more than a low level of less than substantial harm to Borough Walls Iron Age hillfort Scheduled Monument, Church of St Mary, Rosliston (grade II*), Church of St Mary, Cotton-in-the-Elms (grade II), and other above ground heritage assets, and that these harms would be temporary and long term. As there would not be substantial harm, I have no concerns relation to paragraphs 5.9.29-31 of NPS EN-1.
- 5.3.55 I am satisfied with the mitigation secured for a Written Scheme of Investigation in Requirement 18 of the dDCO [[REP8-003](#)] and for micro-siting mitigation in the Outline CEMP [[REP6-018](#)] I consider that the related requirements of paragraphs 5.9.17-18 and 5.9.21 of NPS EN-1 and paragraph 2.10.137 of NPS EN-3 are met. Following that mitigation, I consider that the harm created by the Proposed Development in archaeological terms would be less than substantial.
- 5.3.56 In considering paragraph 5.9.25 of NPS EN-1, I do not find any appropriate means of enhancing heritage assets or their contribution to sustainable communities, other than the recording and publishing of any archaeological remains that might be found.
- 5.3.57 I do not have any concerns about compliance with local policy, including SDDC Policy BNE2 and Policy BNE10, in relation to potential effects on the historic environment.

Matters to be taken to the planning balance and conclusions

- 5.3.58 For the purposes of the planning balance and conclusions, I find that:

- the harm to heritage assets and archaeology brings moderate weight against the making of the Order; and
- the low level of less than substantial harm to designated heritage assets and the less than substantial harm in archaeological terms are to be weighed against the public benefits of the proposal in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.

LANDSCAPE AND VISUAL

5.3.59 Matters arising during the Examination are addressed in Section 3.6 and include

- landscape and visual - visualisations, security and lighting, noise, the National Forest, design parameters, other mitigation, and impacts; and
- glint and glare - residential amenity, road and public rights of way (PRoW) users, aviation and defence, anti-reflective coatings, and impacts.

Landscape and visual

- 5.3.60 I am content with the Applicant's consideration of the study area, landscape characteristics and designations, use of Zone of Theoretical Visibility mapping, and selection of representative viewpoints. I find the visualisations sufficient and proportionate to the type and scale of the Proposed Development, consider that appropriate use is made of professional judgement in the assessment. I am satisfied with the scope of the assessment, including in relation to potential impacts of the solar arrays, the BESS, transformers, closed-circuit television, lighting, fencing, security measures, and noise. I am satisfied that the assessment scope and methodology is sufficient for the purposes of paragraphs 5.10.12, 5.10.17 and 5.10.21 of NPS EN-1 and paragraph 2.10.47 of NPS EN-3. I do not have any concerns about compliance with local policy, including SDDC Policy SD6, Policy BNE4 and Policy INF8, or in relation to the National Forest.
- 5.3.61 I am satisfied with the consideration given to functionality and aesthetics and how adverse effects would be mitigated by good design. I am content that Requirements 5-8 of the dDCO secure related mitigation appropriately through the design parameters referenced in the ES Chapter 4 [\[REP6-031\]](#), including in relation to size, number, location, colour and appearance, and through the need for detailed design and other approvals by the local planning authority. I am satisfied with the mitigation secured in the Outline OEMP [\[REP6-020\]](#), including for lighting, and the measures included in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A]. I consider that the dDCO [\[REP8-003\]](#) secures design parameters with sufficient clarity for the assessment of the detailed design. I am content in relation to paragraphs 5.10.27, 5.10.29-30, and 5.10.37-38 of NPS EN-1, and paragraphs 2.10.98-99 and 2.10.132-133 of NPS EN-3.
- 5.3.62 I am content with the mitigation in the Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A] and that it secures appropriate mitigation for landscape and visual impacts, including hedgerow and woodland planting, and that it addresses the temporary nature of impacts and the timescales required for mitigation measures to become effective.
- 5.3.63 I am satisfied with the consideration given to benefits and enhancements, including for grassland, hedgerows, woodland habitat, tree planting, and meadows, and long-term benefits of planting for the landscape and amenity, respecting local distinctiveness, and that these are secured by the dDCO [\[REP8-003\]](#).

- 5.3.64 My findings about the assessment, mitigation, benefits, and enhancements lead me to be satisfied in relation to paragraphs 4.7.11, 5.10.19, 5.10.22, 5.10.24 and 5.10.36 of NPS EN-1 and paragraphs 2.10.43, 2.10.48, 2.10.102 and 2.10.131 of NPS EN-3.
- 5.3.65 Following mitigation, I find that the significant landscape and visual effects would be:
- major adverse effect on landscape character up to around 500m from the site reducing to a moderate adverse effect once planting matures (>10 years);
 - major adverse effect on the views of road users of a section of Coton Road/ Church Street and users of the Cross Britain Way reducing to a moderate adverse effect once planting matures (>10 years);
 - a moderate adverse effect for residents at Coppice View and The Chase in Rosliston; and
 - a moderate adverse effect on road users around the site and PRow users in the southern part of the study area until landscaping matures (>10 years).

Glint and glare

- 5.3.66 I consider that the assessment methodology for glint and glare is adequate, and I am satisfied that appropriate mitigation is provided, including the anti-reflective coating secured by Requirement 5 of the dDCO [\[REP8-003\]](#). I have no concerns in relation to paragraph 5.5.60 of NPS EN-1 or paragraph 2.10.104 of NPS EN-3.
- 5.3.67 I am content with the consideration given to residential amenity and that the effects would not be significant. I conclude that significant effects are unlikely for horse riders, agricultural vehicles, or lorries. I have no concerns in relation to aviation activity following the securing of downward facing lighting in the Outline CEMP [\[REP6-018\]](#) and Outline LEMP [\[REP4-040, REP3-025\]](#) Appendix A) and I am content in relation to aviation and defence and paragraphs 5.5.39 and 5.5.55 of NPS EN-1 and paragraphs 2.10.158-159 of NPS EN-3. I do not find any significant impacts from glint and glare.

Matters to be taken to the planning balance and conclusions

- 5.3.68 For the purposes of the planning balance and conclusions, I find that:
- the landscape and visual impacts of the Proposed Development bring great weight against the making of the Order;
 - the adverse visual effects on sensitive receptors are to be weighed against the benefits of the project in accordance with paragraph 5.10.14 of NPS EN-1; and
 - the judgement of whether any adverse landscape impact would be so damaging that it is not offset by the benefits (including need) of the project is to be made in accordance with paragraph 5.10.35 of NPS EN-1.

NOISE AND VIBRATION

- 5.3.69 Matters arising during the Examination are addressed in Section 3.7 and include the noise assessment, piling, construction hours, mitigation, and impacts.
- 5.3.70 I am content with the noise assessment and I have no concerns regarding compliance with paragraph 5.12.6 of NPS EN-1 or the Noise Policy Statement for England.
- 5.3.71 I am satisfied that mitigation is secured appropriately, including:

- Requirements 9 and 11 of the dDCO [\[REP8-003\]](#) - measures to avoid or minimise noise impacts during the construction and operation stages;
- Requirement 15 - compliance with the operational noise rating levels in the Outline OEMP [\[REP6-020\]](#);
- Requirement 20 - for no works, other than emergency works, to be audible at the boundary of the Order Limits; and
- Outline CEMP [\[REP6-018\]](#) and Outline DEMP [\[REP6-022\]](#) - including in relation to piling, construction hours, and detailed design.

5.3.72 The secured mitigation leads me to being satisfied in respect of paragraphs 5.12.13-15 of NPS EN-1 and paragraph 2.11.7 of NPS EN-5. With reference to paragraphs 2.10.139 to 2.10.140 of NPS EN-3, no local highway authority raises concerns about more mitigation measures being required in relation to noise from construction vehicles and I find that no additional requirements are necessary. I am content with the consideration given to relevant local policy, including SDDC Policy SD1.

5.3.73 Following mitigation, I consider that there would be a potentially significant adverse short-term noise effect at Corner Farm, a negligible/ minor adverse effect due to road traffic noise during the construction stage, a negligible effect on nearby residences during the 40-year operation stage of the solar farm, and no significant cumulative effects with other developments.

Matters to be taken to the planning balance

5.3.74 For the purposes of the planning balance and conclusions, I find that adverse noise effects bring a little weight against the making of the Order.

TRAFFIC AND TRANSPORT

5.3.75 Matters arising during the Examination are addressed in Section 3.8 and include construction traffic in Derbyshire, Staffordshire, and Leicestershire, solar panel and battery storage replacement during the operation stage, and other matters.

5.3.76 I am satisfied with the Applicant's assessment methodology, including in relation to the consideration of heavy vehicles, construction routes, and cumulative impacts. I am content with the mitigation secured in the Outline Construction Traffic Management Plan (CTMP) [\[REP6-028\]](#), including for the priority given to alternative construction routes, and the periods specified for heavy vehicle movements. I find that appropriate consideration is given to paragraph 5.14.14 of NPS EN-1 and paragraphs 2.10.123, 2.10.125, 2.10.139, 2.10.140, 5.14.11, and 5.14.18 of NPS EN-1

5.3.77 I find that the provisions in the dDCO [\[REP8-003\]](#) and Outline CTMP [\[REP6-028\]](#) are sufficient in relation to condition surveys, maintenance of verges, alterations to road structure, temporary traffic regulation measures, and for the highways authorities to be able to recover costs for maintenance works and the remedy of defects. I consider that the Travel Plan measures secured in the Outline CTMP [\[REP6-028\]](#) are sufficient for the purposes of paragraph 5.14.7 of NPS EN-1.

5.3.78 The assessment assumes a low number of vehicle movements during the operation stage. I am content that there should be some flexibility in those movements, including in relation to the extent of likely panel replacement during the 40-years of the operation stage, subject to the measures secured in the Outline CTMP [\[REP6-028\]](#) for there being no materially new or materially more adverse effects when compared to the ES. I have no concerns in relation to paragraph 2.10.39 of NPS EN-3.

- 5.3.79 I accept that effects arising from construction traffic associated with the Proposed Development would be no more than negligible to minor residual effects and not significant, that vehicle movements during the operation stage would be low, and that vehicle movements during the decommissioning stage would not be significant.
- 5.3.80 In relation to paragraph 5.14.21 of NPS EN-1, I consider that there would not be an unacceptable impact on highway safety and that cumulative impacts on the road network are unlikely to be severe. I find that adequate consideration is given to the provision of active, public, or shared transport and consider that consent should not be refused on highways grounds alone.
- 5.3.81 I do not have any concerns about compliance with local policy in relation to traffic and transport, including SDDC Policy INF2.

Matters to be taken to the planning balance

- 5.3.82 For the purposes of the planning balance and conclusions, I find that adverse traffic effects bring a little weight against the making of the Order.

WATER QUALITY, RESOURCES, DRAINAGE, AND FLOODING

- 5.3.83 Matters arising during the Examination are addressed in Section 3.9 and include the Water Framework Directive (WFD), BESS pollution risk, water quality mitigation, the Flood Risk Assessment (FRA), other drainage matters, and overall impacts.
- 5.3.84 I am satisfied with the water quality impact assessment [\[APP-143\]](#) methodology and in relation to paragraphs 5.6.17 and 5.16.15 of NPS EN-1.
- 5.3.85 I find that with the mitigation in the Outline CEMP [\[REP6-018\]](#) and Surface Water Management Plan, as secured by Requirement 9 of the dDCO [\[REP8-003\]](#), there would be no adverse effect on the status of the water bodies or on the aims and objectives of the River Basin Management Plan. I agree and have no concerns in relation to the WFD Regulations or paragraph 5.16.14 of NPS EN-1.
- 5.3.86 The Applicant provides evidence of consulting with Derbyshire Fire and Rescue Service about fire risk at the BESS and updated the drainage strategy [\[REP7-003\]](#) with measures to address potential pollution during a fire event. The Environment Agency, DCC and SDDC are content that their concerns are addressed.
- 5.3.87 I am content with the Outline CEMP [\[REP6-018\]](#), including in relation to matters to be included in a Water Quality and Silt Management Plan. I have no reason to believe that any necessary pollution control permits would not be granted and am satisfied in relation to paragraphs 4.12.15-16 and 5.16.16 of NPS EN-1.
- 5.3.88 I find that the FRA and Outline Drainage Strategy [\[REP7-003\]](#), Outline CEMP [\[REP6-018\]](#) and Outline OEMP [\[REP6-020\]](#) include appropriate mitigation in relation to watercourse crossings and potential blockages to flood water flows. I am satisfied with the updates to the flood modelling during the Examination, including the climate changes allowances and have no concerns in relation to paragraphs 4.10.13, 5.8.13, or 5.8.15 of NPS EN-1 or paragraph 2.10.87 of NPS EN-3. I am satisfied that there would not be an increase in flood risk because of the Proposed Development and consider that paragraphs 5.8.12 and 5.8.41 of NPS EN-1 are complied with.
- 5.3.89 I am content that the dDCO [\[REP8-003\]](#) does not disapply s25 of the Water Resources Act 1991 and I am satisfied with the mitigation provided for surface water management in the dDCO [\[REP8-003\]](#) and Outline CEMP [\[REP6-018\]](#).

- 5.3.90 I am satisfied that the Applicant addresses the Sequential Test and demonstrates that there are no suitable alternative sites at a lower risk of flooding. I find that the Applicant demonstrates that there would be wider sustainability benefits to the community that outweigh flood risk and that the Proposed Development would be safe without increasing flood risk elsewhere, and thereby satisfies the Exception Test. I note that the BESS and on-site substation are in an area of lower flood risk. I have no concerns in relation to paragraphs 5.8.9-11 or 5.8.36 of NPS EN-1.
- 5.3.91 The temporary haul tracks would be permeable and I conclude that the mitigation in the Outline CEMP [[REP6-018](#)] and Outline SMP [[REP6-018](#) Appendix 1, [REP6-022](#) Appendix 1] ensure that land drains would be likely to remain operational. It follows that I am satisfied in relation to paragraphs 2.10.85-86 of NPS EN-3.
- 5.3.92 I have no compliance concerns in relation to relevant local policy, including SDDC Policy SD2, Policy SD3, and Policy INF7.

Matters to be taken to the planning balance

- 5.3.93 For the purposes of the planning balance and conclusions, I find that water quality, resources, drainage and flooding bring neutral weight that does not affect the balance of the Order being made.

OTHER PLANNING TOPICS

Air quality

- 5.3.94 The Applicant considers legal limits in the Air Quality Standards Regulations 2010, national objectives in the Air Quality (England) Regulations 2000, and fine particulate targets in The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023. It describes the change to existing air quality, significant effects, mitigation, residual effects, predicted absolute emissions, and concentration change after mitigation. Consideration is given to the proximity to sensitive receptors. I am content regarding paragraphs 5.2.2, 5.2.9-10, and 5.2.18 of NPS EN-1.
- 5.3.95 Mitigation is secured in the Outline CEMP [[REP6-018](#)], including for the Outline Dust and Air Quality Management Plan, and in the Outline DEMP [[REP6-022](#)]. I am satisfied with the secured mitigation and in relation to paragraph 5.2.13 of NPS EN-1.
- 5.3.96 In 2007 two Air Quality Management Areas were declared by East Staffordshire Borough Council for exceedances of the annual mean NO₂ objective relating to road traffic emissions. On the balance of probability, I conclude that the Proposed Development would be unlikely to lead to a breach of any relevant statutory air quality limits, objectives or targets, or affect the ability of a non-compliant area to achieve compliance within relevant timescales. It follows that I am satisfied in the matter of paragraphs 5.2.12 and 5.2.19 of NPS EN-1.
- 5.3.97 I have no reason to disagree with the Applicant's assessment that air quality impacts during the construction, operation, and decommissioning stages would not be significant and I am content regarding paragraphs 5.2.16-17 of NPS EN-1. I have no reason to believe that any necessary pollution control permits would not be granted and have no concerns regarding paragraphs 4.12.15-16 of NPS EN-1. I am satisfied in relation to local policy, including SDDC Policy SD1.

Aviation and defence

- 5.3.98 I am satisfied that the glint and glare assessment methodology is adequate, that appropriate mitigation is provided for glint and glare, and that there would be unlikely to be significant glint and glare impacts on aviation. No concerns are submitted by the Ministry of Defence, Met Office, Civil Aviation Authority, NATS or any aerodrome.
- 5.3.99 I am content that the Proposed Development would be unlikely to result in any significant adverse effects and I have no concerns in relation to paragraphs 5.5.39-40, 5.5.49-50, or 5.5.60 of NPS EN-1.

Climate change adaptation and resilience

- 5.3.100 The Applicant uses relevant Environmental Management and Assessment guidance to assess the effects of climate change including in-combination effects on landscape, visual and ecology. Resilience to climate change is assessed.
- 5.3.101 I am content with the mitigation secured in the Outline LEMP [[REP4-040](#), [REP3-025](#) Appendix A] and Outline CEMP [[REP6-018](#)]. Following this mitigation, I find that there is the potential for adverse in-combination effects of climate change on landscape and visual, and on ecology that would each be no more than minor adverse. Although these would individually be not significant, I consider that together and in the absence of any beneficial effects they would result in an adverse effect for the planning balance.
- 5.3.102 I am satisfied with the assessment methodology, secured mitigation, compliance with paragraphs 4.10.8-9, 4.10.13 and 4.10.15 of NPS EN-1, and I have no concerns in relation to local policy, including SDDC Policy INF7.

Human health, fire risk, safety, and security

- 5.3.103 I find it likely that there would be no significant effects in relation to major accidents and disasters and find that there is compliance with Regulation 5(4) of the EIA Regulations in that regard. I see no requirement to obtain Hazardous Substances Consent at this stage and I am satisfied that there is consultation with the Health and Safety Executive, consistent with paragraph 4.13.5 of NPS EN-1.
- 5.3.104 Paragraph 4.4.7 of NPS EN-1 states that those aspects of energy infrastructure most likely to have a significantly detrimental impact on health are effectively mitigated by separate regulation. I note that paragraph 4.12.2 includes that the pollution control separate to the planning process ensures that ambient air, water, and land quality meet standards that guard against impacts to human health.
- 5.3.105 I am satisfied with the mitigation in relation to major accidents and disasters, health, safety and wellbeing secured by the dDCO [[REP8-003](#)], Outline CEMP [[REP6-018](#)], Outline OEMP [[REP6-020](#)], and Outline DEMP [[REP6-022](#)], including in relation to flooding, gas pipelines, hazards, working methods, public safety, air quality, noise, visual effects, NMU, and the creation of a new permissive path. I do not consider that any additional requirements are necessary in relation to paragraph 4.4.8 of NPS EN-1.
- 5.3.106 I am satisfied with the assessment of health, safety, and well-being impacts and the secured mitigation and am content in relation to paragraphs 4.4.4 and 4.4.6 of NPS EN-1. I find that appropriate consideration is given to the security of the Proposed Development in accordance with paragraph 2.10.46 of NPS EN-3. I have no concerns in relation to compliance with local policy, including SDDC Policy SD1.
- 5.3.107 Although appropriate mitigation is provided, I consider it likely that the Proposed Development would introduce new risks to human health, safety and security and that the resulting combined adverse effects would not be fully offset by the benefits of the

new permitted path. Given the relatively small scale of the Proposed Development in national terms, any potential health benefits from its contribution to mitigating climate change on its own is not proven. I consider that the Proposed Development would be likely to introduce limited adverse effects to human health, safety and security.

Nuisance

- 5.3.108 Noting my conclusions elsewhere in this chapter, I am satisfied that sufficient consideration is given to the potential for nuisance and that appropriate mitigation is secured. I have no concerns in relation to paragraphs 4.15.6-7 of NPS EN-1 and I am content with the defence for noise emitted from premises provided by Article 7 of the dDCO [\[REP8-003\]](#). I have no concerns in relation to SDDC Policy SD1.

Socio-economics and NMU

- 5.3.109 I am satisfied with the socio-economic assessment methodology, including the consideration given to existing socio-economic conditions, jobs and training, indirect supply chain impacts, and effects on tourism such as from the influx of workers. I find that appropriate mitigation is secured, including Requirement 23 (Skills, supply chain and employment) of the dDCO [\[REP8-003\]](#). I am content regarding paragraphs 5.13.4-5, 5.13.8 and 5.3.12 of NPS EN-1 and I have no concerns in relation to compliance with local policy, including SDDC Policy INF7.
- 5.3.110 I find potential beneficial effects on socio-economics from construction jobs and expenditure and indirect employment and economic benefits. Although these would individually be not significant, I consider that together they would outweigh the adverse effects to recreation and tourism, leading to a limited overall beneficial effect.
- 5.3.111 I give proposals for community benefit payments and educational resources no weight as they are not relevant to the decision about whether consent should be granted. I include the benefits of clean power generation elsewhere. I consider it likely that there would be other socio-economic benefits during the operation stage, including from a limited number of jobs, other indirect benefits and the new permissive path.

NMU

- 5.3.112 I am satisfied with the assessment methodology, consideration of baseline conditions, and with the mitigation for PRow secured in the dDCO [\[REP8-003\]](#), Outline CEMP [\[REP6-018\]](#), and Outline OEMP [\[REP6-020\]](#). I agree with the Applicant that there would be a minor adverse effect on recreational users of PRow during the construction, operation and decommissioning stages from the combination with dust, noise, and visual effects. I have no concerns in relation to paragraphs 5.11.30-31 of NPS EN-1, paragraphs 2.10.41 and 2.10.44-45 of NPS EN-3, or paragraphs 2.5.1 and 2.9.19 of NPS EN-5. I have no concerns in relation to compliance with local policy, including SDDC Policy INF2. I am content with the powers to stop up, divert, or alter PRow provided by the dDCO [\[REP8-003\]](#).
- 5.3.113 I consider that appropriate mitigation for the safety of NMU on local roads is provided in the Outline CTMP [\[REP6-028\]](#) including construction traffic routing and restrictions to heavy vehicle movements, following which I consider that the effect on vulnerable road users would be negligible to minor.

Waste

- 5.3.114 I am content with the waste assessment methodology, and the consideration given to recycling. I consider that appropriate mitigation is secured, including in the Waste

Management Strategy in the Outline CEMP [\[REP6-018\]](#), Outline OEMP [\[REP6-020\]](#), and Outline DEMP [\[REP6-022\]](#) and accept that there would be unlikely to be any adverse impacts on existing waste facilities. I am satisfied in relation to paragraphs 5.15.14-16 of NPS EN-1 and my conclusions have regard to potential impacts on the achievement of resource efficiency and waste reduction targets in accordance with paragraph 5.15.19 of NPS EN-1.

Cumulative effects

- 5.3.115 I find that sufficient consideration is given to other energy projects and to cumulative adverse impacts, and I have no concerns regarding paragraph 4.1.5 of NPS EN-1 or paragraph 2.10.26 of NPS EN-3. I consider cumulative effects for specific planning topics elsewhere in this chapter as appropriate.

Good design

- 5.3.116 The Applicant sets out relevant guidance, the design objectives, and how the design evolved, and how good design is achieved in response to comments from stakeholders. Examples are provided of net gain and enhancements, including for habitats, hedgerow, grasslands, PRoW, and socio-economics. I am content regarding paragraphs 4.6.3, 4.6.15 and 5.4.46 of NPS EN-1.
- 5.3.117 Design parameters are secured by the dDCO [\[REP8-003\]](#), including in the Design Statement [\[REP6-035\]](#) and size, number, location, colour and appearance parameters. I am content that these are sufficiently clear for the local authorities' consideration of the detailed design, and I am content regarding paragraphs 5.10.29-30 of NPS EN-1.
- 5.3.118 I find that appropriate consideration is given to sustainability, functionality, aesthetics, and the ultimate purpose of the infrastructure. I consider that good design is demonstrated and am satisfied in relation to paragraphs 4.7.10-12 NPS EN-1 and paragraph 2.5.2 of NPS EN-3. I have regard to the desirability of achieving good design in accordance with s104(2) of the PA2008. I have no concerns in relation to design excellence or local policy, including SDDC Policy BNE1. I consider good design matters for specific planning topics elsewhere in this chapter as necessary.

Matters to be taken to the planning balance

- 5.3.119 For the purposes of the planning balance and conclusions, I find that:
- impacts in relation to air quality, aviation, defence, waste, compliance with general policies for nuisance, and compliance with general policies for good design each bring neutral weight that does not affect the balance of the Order being made;
 - in-combination effects of climate change on landscape and visual, and on ecology bring a little weight against the making of the Order;
 - adverse effects to human health, safety, and security bring a little weight against the making of the Order;
 - socio-economic benefits bring a little weight for the making of the Order; and
 - adverse effects on users of PRoW and NMU bring a little weight against the making of the Order.

OTHER CONSENTS AND LICENSES

- 5.3.120 I consider the available information bearing on other consents and licenses and, without prejudice to the exercise of discretion by future decision-makers, conclude that there are no apparent impediments to the implementation of the Proposed Development in this regard.

5.4 PLANNING BALANCE AND CONCLUSIONS

- 5.4.1 In this section I weigh residual adverse effects after mitigation against the benefits of the Proposed Development in accordance with paragraph 4.1.7 of NPS EN-1.
- 5.4.2 On 22 January 2025, after the close of the Examination, the EA updated its [National Flood Risk Assessment](#). My conclusions do not take account of this update, but the SoS may wish to consider it.
- 5.4.3 I conclude that impacts in relation to the following each bring neutral weight that does not affect the balance of the Order being made:
- water quality, resources, drainage and flooding;
 - air quality;
 - aviation and defence;
 - waste;
 - compliance with general policies for nuisance; and
 - compliance with general policies for good design.

MATTERS WEIGHING IN FAVOUR OF THE DCO BEING MADE

- 5.4.4 Paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the Proposed Development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that should be developed at speed. Paragraph 3.3.26 of NPS EN-1 includes that the energy storage provided by the BESS is needed to reduce the costs of the electricity system and increase reliability.
- 5.4.5 I find that:
- the combination of the urgent need for the Proposed Development and beneficial impacts on climate change bring very great weight for the making of the Order;
 - the combination of temporary beneficial effects from BNG and enhancement during the operation stage with temporary adverse effects on habitats during the construction and decommissioning stages and the following periods of reinstatement bring a little weight for the making of the Order; and
 - socio-economic benefits bring a little weight for the making of the Order.

MATTERS WEIGHING AGAINST THE DCO BEING MADE

- 5.4.6 I find that:
- landscape and visual impacts bring great weight against the making of the Order;

- harm to heritage assets and archaeology brings moderate weight against the making of the Order;
- short-term temporary loss of agricultural land in the areas of construction activity during the construction stage, the long-term temporary loss of agricultural land in the areas of fixed equipment during the operation stage, and related adverse impacts on farming businesses and food production bring a little weight against the making of the Order;
- adverse noise effects bring a little weight against the making of the Order;
- adverse traffic effects bring a little weight against the making of the Order;
- in-combination effects of climate change on landscape and visual, and on ecology bring a little weight against the making of the Order;
- adverse effects to human health, safety, and security bring a little weight against the making of the Order; and
- adverse effects on users of PRoW and NMU bring a little weight against the making of the Order.

THE PLANNING BALANCE

- 5.4.7 Paragraph 4.1.3 of NPS EN-1 establishes a presumption in favour of granting consent to energy NSIPs, and I am satisfied that applies to the Proposed Development.
- 5.4.8 The urgent need for the Proposed Development and beneficial impacts on climate change bring very great weight and are powerful factors for the making of the Order. These are supported by a little weight in relation to BNG, enhancements, and habitats and a little weight in relation to socio-economic benefits.
- 5.4.9 On the other side of the balance are landscape and visual impacts which bring great weight, harm to heritage assets and archaeology which bring moderate weight and other impacts that each bring a little weight, including in relation to agriculture, noise, traffic, effects of climate change, human health/ safety/ security, and users of PRoW and NMU.
- 5.4.10 Taking the above into account, I find that the matters in favour of the DCO being made, including the urgent need, outweigh those against. Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead me to a different conclusion.
- 5.4.11 I consider that the low level of less than substantial harm to designated heritage assets and the less than substantial harm in archaeological terms are outweighed by the public benefits of the proposal. I am satisfied that paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3 are complied with.
- 5.4.12 I find that the adverse visual effects on sensitive receptors are outweighed by the benefits of the project. I am content in relation to paragraph 5.10.14 of NPS EN-1.
- 5.4.13 I do not consider that any adverse landscape impact would be so damaging that it is not offset by the benefits (including need) of the project. I find that paragraph 5.10.35 of NPS EN-1 is complied with.
- 5.4.14 I am satisfied that the Proposed Development, either alone and in-combination with other plans or projects, would not be likely to give rise to any adverse effects on the

integrity on European sites due to the lack of effective pathways and see no reason for HRA matters to prevent the making of the DCO.

CNP considerations

- 5.4.15 In Section 5.2 I establish that Proposed Development is CNP Infrastructure in accordance with paragraph 3.3.62 of NPS EN-1.
- 5.4.16 Paragraph 3.3.63 of NPS EN-1 includes that subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will ‘in general outweigh’ any other residual impacts not capable of being addressed by application of the mitigation hierarchy. Page 173 of NPS EN-1 defines the mitigation hierarchy as a “*term to incorporate the avoid, reduce, mitigate, compensate process that applicants need to go through to protect the environment and biodiversity*”. I am satisfied with the application of the mitigation hierarchy and with the identification of residual impacts. I find no reason for the Proposed Development to fall outside the ‘general outweighing’ set out in paragraph 3.3.63 of NPS EN-1.
- 5.4.17 Paragraph 4.1.7 of NPS EN-1 states that for CNP Infrastructure it is likely that the need case will outweigh the residual effects in all but the most exceptional cases, but that this presumption does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero. I am satisfied that there would be unlikely to be any such unacceptable risks or interference and find no reason for the Proposed Development to be an exceptional case.
- 5.4.18 Paragraph 4.2.16 of NPS EN-1 states that CNP infrastructure is to be treated as if it has met any NPS tests which requires a clear outweighing of harm, exceptionality, or very special circumstances. Paragraph 4.2.17 of NPS EN-1 includes that CNP Infrastructure will meet the test where substantial harm to or loss of significance to heritage assets should be exceptional or wholly exceptional.
- 5.4.19 I consider CNP policy in accordance with paragraph 4.2.7 of NPS EN-1 and find that it does not change my conclusions.

6. LAND RIGHTS AND RELATED MATTERS

6.1 INTRODUCTION

- 6.1.1 The application includes proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. The Applicant is seeking the power to acquire land outright, the power to acquire rights over land, the power to extinguish rights over land, the power to occupy land temporarily, and the power to impose restrictive covenants.
- 6.1.2 This chapter discusses whether the evidence before the Examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing my conclusions and recommendations. Consideration is also given to Statutory Undertakers (SU) land, detriments to the undertakings of SU, and relevant protective provisions.
- 6.1.3 Chapter 2 sets out my summary description of the Proposed Development. The Applicant's description is in the Statement of Reasons (SoR) [\[REP8-010\]](#). Economic impacts on businesses are addressed in Sections 3.3 and 3.10.
- 6.1.4 In Chapter 5 I conclude that the case for making the Development Consent Order (DCO) for the Proposed Development is made.
- 6.1.5 Land over which powers are sought is referred to in this chapter as the Order land.

6.2 LEGISLATIVE REQUIREMENTS

- 6.2.1 CA powers can only be granted if the conditions set out in section 122 (s122) and s123 of the Planning Act 2008 (PA2008) are met.
- 6.2.2 Section 122(2) states that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. [Planning Act 2008: guidance related to procedures for the compulsory acquisition of land](#) (CA Guidance) states that in respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 6.2.3 Section 122(3) states that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 6.2.4 Section 123 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:
- (2) the application included a request for CA of the land to be authorised;
 - (3) all persons with an interest in the land consent to the inclusion of the provision; and
 - (4) the prescribed procedure is followed in relation to the land.
- 6.2.5 Section 127 and s138 of the PA2008 and relevant to SU land, rights, and apparatus.

- 6.2.6 Section 127 has provisions in relation to CA of land or rights over SU's land. If a SU makes a representation that is not withdrawn before the end of the Examination, then CA may only be authorised if there is no serious detriment to the carrying on of the undertaking.
- 6.2.7 Section 138 has provisions for the extinguishment of SUs' rights and removal of apparatus if the Secretary of State for Energy Security and Net Zero (SoS) is satisfied that it is necessary for the Proposed Development.
- 6.2.8 Several general considerations also must be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must have been explored;
 - the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
 - the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 6.2.9 No powers are requested for National Trust land, Crown land, open space, and allotments, which are covered by paragraphs s130 and s131, and therefore those paragraphs are not engaged, and I give them no more consideration.
- 6.2.10 Further to Part 1 of Schedule 5 to the PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers as, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. Based on the PA2008 and CA Guidance, TP requires:
- justification that the TP powers are needed to enable the construction of the Proposed Development;
 - demonstration that the TP powers are compatible with human rights tests; and
 - that there are suitable compensation provisions for interference with a relevant right or interest.
- 6.2.11 Article 6 of the recommended DCO (rDCO) in Annex C provides that the Neighbourhood Planning Act 2017 does not apply insofar as it relates to TP of land in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development.
- 6.2.12 I take all relevant legislation and guidance into account in my considerations.

6.3 REQUEST FOR LAND RIGHTS POWERS

- 6.3.1 The draft DCO (dDCO) included with the application [[APP-016](#)] and all subsequent dDCOs submitted by the Applicant to the Examination up to and including its latest draft version [[REP8-003](#)] include provisions intended to grant the Applicant powers of CA and TP of land and rights over land.

- 6.3.2 The application was also accompanied by an Explanatory Memorandum (EM) [\[APP-017\]](#), a Book of Reference (BoR) [\[APP-021\]](#), a SoR [\[APP-019\]](#), a Funding Statement [\[APP-020\]](#), and a Land Plan [\[APP-006\]](#).
- 6.3.3 The Examination and the Applicant's due diligence processes led to some of this documentation being updated during the Examination. By the close of the Examination, the most up-to-date versions are EM [\[REP8-005\]](#), BoR [\[REP8-012\]](#), SoR [\[REP8-010\]](#), Funding Statement [\[APP-020\]](#), and Land Plan [\[REP6-003\]](#).
- 6.3.4 These set out the land and rights sought by the Applicant, together with the reasons for their requirement and compensation provisions. Taken together with submissions made to the Examination, they form the basis of my considerations in this chapter.
- 6.3.5 Unless noted otherwise, references to the documents in this chapter should be read as references to the latest versions cited above.

DCO PROVISIONS

- 6.3.6 The main powers authorising CA are contained in Articles 17 and 19 of the rDCO (Annex C). Article 19 and Schedule 6 limit CA powers of specified land to the acquisition of such new rights and imposition of restrictive covenants for specified purposes. Article 25 allows for rights in land to be acquired as well as the land itself, and for new rights to be created over land. Article 20 provides for the extinguishment of private rights and restrictive covenants over land subject to CA and the suspension of private rights over land subject to TP. Article 22 allows the acquisition of subsoil or airspace only of land authorised for CA. Article 23 provides the power to override easements and other rights. Article 25 allows the Applicant to appropriate and use land above and below streets in the Order land without having to acquire any part of the street or any easement or right in it.
- 6.3.7 The main powers authorising TP are contained in Article 26 which would allow specified land, including that identified in Schedule 8, to be occupied temporarily and would allow the Applicant to remove any buildings or vegetation, construct temporary works and buildings and specified permanent works, and carry out mitigation works. It provides for TP for no longer than reasonably necessary and in any event no later than one year after final commissioning of the relevant part, unless agreed with the landowner or unless certain other stipulations are satisfied. Article 27 would allow the TP of any land within the Order Limits if reasonably required for the purpose of maintenance at any time during the maintenance period and for so long as may be reasonably necessary.
- 6.3.8 Article 28 allows rights over Order land belonging to SUs to be acquired or for new rights over it to be created. Article 36 deals with the recovery of costs of new connections to utilities or communications apparatus from the Applicant.
- 6.3.9 Article 42 provides that the undertaker must not exercise the powers conferred by Articles 17, 19, 20, 22, and 25-28 until guarantees or alternative forms of security are approved by the SoS in respect of the undertaker's liabilities to pay compensation.
- 6.3.10 Other Articles that may interfere with property rights and private interests include in relation to streets, protective works to buildings, and authority to survey and investigate land.
- 6.3.11 The rDCO (Annex C) has provisions for compensation and in case of dispute, including in Articles 5, 11, 15, 16, 19, 20, 23, 25, 26, 27, 30, 36, 37, and Schedules 7 and 10.

PURPOSES FOR WHICH THE POWERS ARE REQUESTED

- 6.3.12 The purposes for which the CA and TP powers are requested are set out in the rDCO (Annex C), SoR [\[REP8-010\]](#), and BoR [\[REP8-012\]](#).
- 6.3.13 In general terms, the Applicant [\[REP8-010\]](#) says that:
- the powers are required to secure the land and interests required to construct, operate, maintain, and decommission the Proposed Development comprising the work numbers in Part 1 of Schedule 1 of the dDCO [\[REP8-003\]](#);
 - it is in discussion with landowners with the intention of reaching a voluntary agreement for the land rights required, however CA powers are sought on a precautionary basis to ensure that the Proposed Development could be delivered should the required rights not be obtained through the voluntary agreements;
 - while it undertook a thorough and diligent land referencing and investigatory exercise, the possibility of unknown interests emerging in the land cannot be excluded and it needs to be able to acquire such interests where they emerge; and
 - it is seeking TP powers to temporarily occupy land required during the construction stage of the Proposed Development over which rights would not be required once the construction stage is completed.

6.4 EXAMINATION PROCESS

- 6.4.1 In examining the application I considered all written material in respect of CA and TP. I [\[PD-010\]](#), [\[PD-012\]](#), [\[PD-014\]](#) asked written questions of the Applicant, Affected Persons, and other relevant parties and further explored the issues at a CA Hearing [\[EV6-001\]](#), [\[EV6-002\]](#).
- 6.4.2 Two Unaccompanied Site Inspections [\[EV3-001\]](#), [\[EV7-001\]](#) helped me to develop my understanding of the land that would be subject to the requested powers.

6.5 OVERALL CASE FOR LAND RIGHTS POWERS

- 6.5.1 In this section I consider the Applicant's overall case for the request of land rights powers and the related matters arising during the Examination. I address individual objections in Section 6.6.

THE APPLICANT'S OVERALL CASE

- 6.5.2 The Applicant's case is mainly set out in the SoR [\[REP8-010\]](#). Detailed supporting information is provided in the Environmental Statement and alternatives are also considered in the Applicant's Site Selection and Design Strategy [\[APP-086\]](#).
- 6.5.3 The Applicant [\[APP-086\]](#) sets out the criteria used to assess alternative sites including the rationale for selecting a site in close proximity to an available grid connection, the scope of its UK-wide site search, identification of the site at Oaklands Farm, the consideration given to the feasibility of developing at that location, and how it responded to feedback provided during consultation. It [\[REP8-010\]](#) says that the objective to avoid or minimise CA was an important factor in selecting the location and considers that all reasonable alternatives to CA have been explored.

- 6.5.4 The Land Plan [\[REP6-003\]](#) shows the location of each plot and uses colour-coding to identify the land or rights proposed to be acquired permanently or used temporarily. The SoR [\[REP8-010\]](#) records the Works numbers that each plot would be used for, and the dDCO [\[REP8-003\]](#) Schedule 1] provides a description of each Works number.
- 6.5.5 The Applicant [\[REP8-010\]](#) considers that:
- the land over which CA powers are sought is the minimum necessary to ensure the delivery of the Proposed Development, and that it is designed to minimise detrimental impacts, whilst achieving its objectives;
 - the entitlement to compensation is provided by the existing compensation code and Article 43 and Schedule 7 to the dDCO [\[REP8-003\]](#), and any dispute in respect of the compensation payable can be referred to the Upper Tribunal (Lands Chamber);
 - it addresses potential infringements of human rights with respect to Article 1 of The First Protocol, Article 6 and Article 8 of the European Convention on Human Rights. In relation to Articles 1 and 8, it considers that there is the compelling public interest case for the CA powers. Regarding Article 6, it summarises the engagement with landowners and states that persons with an interest in the land have had full opportunity to comment on the proposals; and
 - it needs certainty that the rights and land can be obtained within a reasonable timeframe and that given the clear policy support for the development of renewable, clean energy projects, the granting of CA powers represents a proportionate and legitimate interference with private rights and to be in the public benefit.
- 6.5.6 The Funding Statement [\[APP-020\]](#) sets out the certainty of funding for the Proposed Development, including compensation claims. It says that the estimated cost is £88 million, including land acquisition and related compensation, and that funding would be sourced from the Applicant's shareholders, or a combination of the Applicant's shareholders and third-party debt finance. The Applicant states that it has access to sufficient funds to meet the costs of any claims for blight at whatever stage they are served. An Independent Audit Report [\[APP-020\]](#) Appendix 1] is provided for BayWa r.e. UK Limited, the head company of the group of the Applicant.
- 6.5.7 The Applicant [\[REP8-010\]](#) concludes that:
- there is a compelling case in the public interest for the CA of land or rights over the land given the Proposed Development's contribution towards delivering clean energy, decarbonising the electricity network, energy independence and its being Critical National Priority Infrastructure; and
 - inclusion of land rights powers within the DCO meets the requirements of s122 of the PA2008 and relevant guidance and that it would be appropriate and proportionate for the SoS to make the DCO including the grant of CA powers.
- 6.5.8 Appendix 1 of the SoR [\[REP8-010\]](#) and the Schedule of Progress on land rights in respect of Affected Persons [\[REP8-015\]](#) summarise the Applicant's discussions with landowners and occupiers to acquire the Land by agreement. Matters outstanding at the close of the Examination are considered in Section 6.6 of this report.

ISSUES ARISING DURING THE EXAMINATION

BoR, SoR, and Land Plan updates

- 6.5.9 During the Examination the Applicant [\[REP1-025\]](#), [\[REP4-011\]](#), [\[REP5-026\]](#), [\[REP5-028\]](#) updated the dDCO [\[REP8-003\]](#), BoR [\[REP8-012\]](#), SoR [\[REP8-010\]](#), and Land Plan [\[REP6-003\]](#), and reported on measures to identify unknown landowners, occupiers or persons with an interest in the land. Updates include:
- removing the reference to point AS-E1 from Schedule 8 of the dDCO [\[REP8-003\]](#) as it is outside the Order Limits;
 - including Derbyshire County Council (DCC) as a Category One occupier for the Cross Britain Way on plots 02-055 and 02-056;
 - adding various plot numbers for E.ON UK plc;
 - removing Barclays Security Trustee Limited as it no longer held an interest;
 - changing Openreach Limited's company address; and
 - minor formatting amendments, and correcting names and clerical errors.
- 6.5.10 The Applicant [\[REP5-028\]](#) clarifies that where it is not able to identify the owner of unregistered land, it includes adjacent freeholders as assumed freeholders.
- 6.5.11 Responding to my queries [\[PD-010\]](#), the Applicant [\[REP1-025\]](#) states that:
- identified third party interests are captured as Category 2 interests within the BoR, and are omitted from Parts 2 and 3 of the BoR where they are deemed to not hold rights to a relevant claim; and
 - it does not believe that there are any other Category 3 interests, being an interest entitled to make a relevant claim.

Alternatives

- 6.5.12 In Section 3.2 of this report, I conclude that the Applicant's approach is satisfactory in relation to alternative locations for solar panels and other ways of generating solar electricity, as other potential projects do not need to be treated as alternative solutions, and there is no obligation to establish whether the Proposed Development represents the best option.

Whether the proposed acquisition is legitimate, proportionate and necessary

- 6.5.13 Noting that it is seeking to acquire the freehold of various plots, and in the context of the temporary nature of the Proposed Development, I [\[PD-010\]](#) invite the Applicant to explain how it minimises the powers sought and why is it not sufficient to acquire rights and/ or impose restrictive covenants. The Applicant [\[REP1-025\]](#) replies that:
- in each case, there is no legal mechanism or precedent that allows for CA powers to permit acquisition of rights or land for a limited term only;
 - freehold acquisition of the specified plots is sought because these form the main solar farm area, would be actively occupied by the Applicant during construction, operation and decommissioning stages, and it requires a level of control over the land which goes beyond that which can be asserted by the holder of rights over land;

- the use of the land for the lifetime of the Proposed Development, and potentially beyond that; goes beyond what is intended to be covered by TP powers, or the acquisition of rights or imposition of restrictive covenants;
- given the project is a Critical National Priority Infrastructure, any future extension to the life of the project would be made simpler if the necessary land rights were available on an ongoing basis and so there is an ongoing public interest in those rights being available on a permanent basis;
- established compulsory purchase case law (Bellfields Ltd v Secretary of State for Communities and Local Government [2007] EWHC 3040 (Admin), Pascoe v First Secretary of State [2007] 1 W.L.R 885) is clear that it is not a requirement of compulsory purchase for it to involve the least intrusive means of acquisition for it to be considered proportionate;
- the DCO must simply strike a fair balance between the public benefits sought and interference with the rights in question; and
- it is considered that securing the delivery of Critical National Priority infrastructure justifies freehold acquisition of the solar farm area.

6.5.14 Noting the need to ensure that the extent of rights and interests to be acquired have been minimised, and that disproportionate or unjustified interference with human rights should be avoided, I [\[PD-010\]](#) ask if it is necessary to secure that the CA powers can only be used when landowners default on voluntary agreements, or where unknown interests in the land emerge, and in each case to the minimum extent necessary. The Applicant [\[REP1-025\]](#) replies that it:

- does not consider it necessary to expressly provide for this and that in each case of CA the powers sought under the dDCO [\[REP8-003\]](#) are proportionate and justified and the minimum necessary to deliver the project;
- is not aware of any precedent for such provisions and is concerned that any limitations on the powers in the dDCO [\[REP8-003\]](#) could become complex, and inadvertently prevent the use of the powers where necessary; and
- is cognisant that CA should be a last resort and is committed to using powers to the minimum extent necessary.

Funding and potential impediments

Funding

6.5.15 I [\[PD-010\]](#) query whether funding would be available should the predicted cost be exceeded, and whether the scope of the Proposed Development could later be reduced in response to any future changes in costs or available funding. The Applicant [\[REP1-025\]](#) replies that:

- it allows a contingency cost of 10% of the net value, applies inflation based on Consumer Price Index forecasts and is comfortable that suitable funding is available;
- it has committed significant resource and funds to developing the project and wishes to optimise the output;
- fixed costs such as the substation for grid connection would not reduce with a reduction in the scope of the project; and

- it is in its interest to maximise economies of scale where possible.

- 6.5.16 Councillor Amy Wheelton [\[REP1-038\]](#), Diane Abbott [\[REP1-043\]](#), Michael Smith [\[REP1-045\]](#), and Sarah Smith [\[REP1-047\]](#) raise concerns about reports that BayWa AG recently suffered financial difficulties. They question whether the Applicant has the upfront capital to complete the project, the funding to withstand uncertain future revenue streams over the next 40 years, or the revenue funding for ongoing maintenance. The Applicant [\[REP3-031\]](#), [\[REP4-011\]](#), [\[REP6-042\]](#) states that:
- it is part of the renewable energy business, BayWa r.e, which operates largely independently of BayWa AG;
 - the current situation within BayWa AG would not have an impact on the Applicant's ability to deliver projects moving forward;
 - BayWa r.e.'s shareholders and financing partners remain fully committed to the long-term development of renewable energy projects, which is evidenced by the recent funding uplift provided to BayWa r.e.;
 - BayWa r.e. has two major shareholders - BayWa AG (51%) which was founded in 1923 and operates in over 50 countries in the fields of agriculture, construction and energy, and Energy Infrastructure Partners (49%) which is a market leader in energy infrastructure investment that manages over €7 billion from global investors;
 - BayWa r.e. is pursuing a range of options to manage and optimise its financial position, as any responsible business would through the course of market fluctuations and economic challenges; and
 - a restructuring report shows good prospects for BayWa r.e..

Potential impediments

- 6.5.17 The Applicant [\[REP1-025\]](#) says that it is not aware of any land or rights being required in addition to those sought through the dDCO before the Proposed Development could become operational.
- 6.5.18 South Derbyshire District Council [\[REP1-029\]](#) does not have any concerns as to how the Applicant identifies and addresses impediments, or about any other impediments within or outside the scope of the dDCO [\[REP8-003\]](#).

The Equalities Act 2010

- 6.5.19 Responding to my questions [\[PD-010\]](#), the Applicant [\[REP1-025\]](#) states that:
- in progressing the application for the Proposed Development, it has inherently ensured that no individuals have been discriminated against or less able to engage;
 - it used a variety of methods to contact parties subject to the CA powers, including in person visits, newsletters sent via post, offers of data sticks to people who could not attend, providing hard copies in local deposit locations, phone calls, and emails;
 - no individual Affected Persons or Interested Parties have been expressly identified as having protected characteristics as defined under the Equalities Act 2010; and
 - due to the breadth of protected characteristics, it progressed on the basis that there would be those with protected characteristics impacted by the Proposed Development.

CONCLUSIONS ON THE OVERALL CASE

- 6.5.20 These conclusions are on the generalities of the case for land rights powers, as set out and examined above. My consideration of individual objections and special considerations later in this chapter build from the conclusions reached here.
- 6.5.21 I am satisfied that the condition in s123(2) of the PA2008 is met because the application for the DCO includes a request for CA of the land to be authorised.
- 6.5.22 The Applicant considers the statutory tests, CA Guidance, and human rights.
- 6.5.23 Following from my consideration of the case for development in the preceding chapters, I am satisfied that the need case is made.
- 6.5.24 Following the updates, I am satisfied with the dDCO [\[REP8-003\]](#), BoR [\[REP8-012\]](#), SoR [\[REP8-010\]](#), and Land Plan [\[REP6-003\]](#) in relation to land rights. I am content that the Applicant applies appropriate due diligence in identifying land rights.
- 6.5.25 The powers sought are set out in the rDCO (Annex C). The locations and purposes for which the CA and TP powers are requested are set out in the Land Plan [\[REP6-003\]](#), SoR [\[REP8-010\]](#) and rDCO (Annex C). I accept that the Applicant has a clear idea of how it intends to use the land.
- 6.5.26 In Section 3.2 of this report, I conclude that the Applicant considers reasonable alternatives, and I maintain that view in relation to the request for land rights powers.
- 6.5.27 There is much precedent for the permanent acquisition of the freehold of land in similar circumstances on other recent national infrastructure solar projects requiring the temporary use of land, which leads me to consider that the Applicant's request for these powers is acceptable.
- 6.5.28 Based on the above, and the matters considered in previous chapters, I consider that the powers requested are required for the delivery of the Proposed Development.
- 6.5.29 Sufficient evidence is provided for me to find that cost estimates, including the costs of acquisition and compensation, and allowances for inflation and contingencies, are identified appropriately. I accept the Applicant's explanations in relation to funding and the financial health of the relevant companies. I am satisfied that Article 42 of the rDCO (Annex C) secures funding for compensation. On balance, I find that there would be unlikely to be a funding impediment to the delivery of the Proposed Development.
- 6.5.30 In Chapter 5 I conclude that there are no apparent impediments to the implementation of the Proposed Development in relation to other consents or licences. I do not see any evidence of any other likely impediments to the Proposed Development.
- 6.5.31 I note the Applicant's comments in relation to compliance with the Equalities Act 2010. In Section 2.2 I conclude that I have paid due regard to Public Sector Equality Duty and find no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. I find no breach of the Public Sector Equality Duty.
- 6.5.32 Overall, I am satisfied in respect of the generalities of the case for land rights powers, and subject to my further consideration of plots affected by individual objections and issues below, I consider that the tests in s122(2) and s122(3) of the PA2008 are met.

6.6 INDIVIDUAL OBJECTIONS AND STATUTORY UNDERTAKERS

6.6.1 This section sets out my consideration of the objections received from Affected Persons and matters related to SU.

6.6.2 The Applicant [[REP5-010](#), [REP5-028](#), [REP8-020](#)] summarises that:

- Options Agreements are signed with George Llewellyn White, Susan Mary White, Keith Forbes Mallaber, Peter Forbes Mallaber, Philip Andrew Mallaber, and the Executor of the Estate of the Late William John Mallaber;
- negotiations are advanced for the Option for Cable and Access Easement with Elisabeth Albinia Dolben Goodson, other outstanding land agreements with tenant farmer Peter Avery of Fairfields Farm, and with National Grid Electricity Transmission plc for a grid cabling easement and access at Drakelow Substation;
- it has secured the necessary land rights via voluntary land agreements for the solar panel and Battery Energy Storage System area, and most of the grid connection cable route and temporary haul road;
- it is in advanced stages of negotiation with outstanding landowners to secure the rights for the rest of the grid connection cable route and temporary haul road, and throughout the Examination received no objection from landowners to the inclusion of CA powers (save for National Grid Electricity Transmission plc's (NGET's) standard holding objection until Protective Provisions are agreed); and
- it expects to secure voluntary land agreements for the remaining land required to deliver the Proposed Development, and therefore anticipates the CA process and any associated project delays would be avoided.

Elisabeth Albinia Dolben

6.6.3 The Applicant requests the acquisition of rights for plots 02-031, 02-032, 02-033, 02-036 to 02-044, 02-046, 02-047, 02-049 and 02-050 for works to facilitate the laying of cables, including the temporary stopping up of watercourses, construction and decommissioning of access tracks and compounds, general works to facilitate the Proposed Development, and works to facilitate access for all works described in the dDCO [[REP8-003](#) Schedule 1] apart from Work No. 5.

6.6.4 Elisabeth Albinia Dolben has Category 1 interests as owner, reputed owner, and/ or occupier.

6.6.5 I have not received an objection, or any other submission, from Elisabeth Albinia Dolben, but I consider the relevant request for land rights powers on a precautionary basis as the Applicant advises that the Option for Cable and Access Easement is not yet signed.

6.6.6 Based on the above, I consider that the requested CA powers are for a legitimate purpose, that they are necessary and proportionate, that there are suitable provisions for compensation, and that there is a compelling case in the public interest for the powers to be granted.

Peter Avery

6.6.7 The Applicant requests the acquisition of rights for plots 02-032, 02-037, 02-039, 02-040, 02-041, and 02-044 for works to facilitate the laying of cables, including the temporary stopping up of watercourses, construction and decommissioning of access

tracks and compounds, and works to facilitate access for all works described in the dDCO [[REP8-003](#) Schedule 1] apart from Work No. 5.

- 6.6.8 Peter Avery has Category 1 interests as a lessee/ tenant, and occupier.
- 6.6.9 I have not received an objection, or any other submission, from Peter Avery, but I consider the relevant request for land rights powers on a precautionary basis as the Applicant advises that the land agreements are not yet signed.
- 6.6.10 Based on the above, I consider that the requested CA powers are for a legitimate purpose, that they are necessary and proportionate, that there are suitable provisions for compensation, and that there is a compelling case in the public interest for the powers to be granted.

NGET

- 6.6.11 The Applicant requests the acquisition of freehold of plots 02-052, 02-056 and 02-057, and the acquisition of rights for plots 01-001 to 01-004, 01-007 to 01-015, 01-017, 01-019, 01-020, 01-023 to 01-026, 01-029 and 01-030, for works to facilitate the construction and operation of the solar photovoltaic generating station and battery energy storage system including the construction and operation of an on-site substation and connection to the National Grid Substation at Drakelow.
- 6.6.12 NGET has Category 1 interests as lessee/ tenant and occupier for plots 01-001 to 01-004, 01-007, 01-009, 01-010, and 01-011 and Category 2 interests in respect of apparatus, right of access, rights granted by deed and/ or leases for plots 01-001 to 01-004, 01-008, 01-010 to 01-015, 01-017, 01-019, 01-020, 01-023 to 01-026, 01-029, 01-030, 02-052, 02-056 and 02-057.
- 6.6.13 NGET [[RR-229](#), [REP6-053](#), [REP8-026](#), [REP8-027](#)]:
- objects to the CA of its assets, land or rights over its land in the absence of an agreed form of protective provisions and considers it essential that nothing contained within the Order prevents NGET from continuing to deliver future plans or from accommodating other electricity connection customers;
 - requires its definition of "acceptable insurance" to be included in the protective provisions, to provide insurance for a figure of not less than £50 million, which it establishes is necessary to protect its apparatus from any damage or injury caused by the authorised works;
 - requires its definition of "acceptable security" of either a parent company guarantee or a bank bond or letter of credit in favour of NGET to cover the Applicant's liability to NGET to a total liability cap of £50 million to be included;
 - requires paragraph 21(7) to include a provision in relation to acceptable security being provided before the construction stage commences; and
 - submits its suggested protective provisions [[REP8-026](#)].
- 6.6.14 The Applicant [[REP8-020](#)] notes that the protective provisions with NGET remain under discussion.
- 6.6.15 Comparing the protective provisions suggested by NGET [[REP8-026](#)] with the Applicant's version [[REP8-003](#) Part 2 of Schedule 10], NGET requires:
- an increase in insurance from not less than £10 million to not less than £50 million;

- an increase in the total liability cap in the parent company guarantee from £10 million to £50 million;
- an increase in the total liability cap in the bank bond or letter of credit from £20 million to £50 million; and
- the addition of provisions in paragraph 21(7) in relation to acceptable security being provided before the construction stage commences in a similar form to that provided for acceptable insurance.

- 6.6.16 I am satisfied that s127 of the PA2008 is not engaged as no powers would be granted over land owned by NGET. I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008.
- 6.6.17 The Applicant provides no reasoning for why NGET's changes are not acceptable. Based on the information before me, I consider that NGET is best placed to identify the amounts necessary to protect its apparatus and therefore include NGET's figures of £50 million in the rDCO (Annex C). I see no reason why the provisions in paragraph 21(7) for acceptable security should not be in a similar form to those for acceptable insurance and therefore include NGET's suggested wording in the rDCO (Annex C). I consider that with these changes there would be unlikely to be a serious detriment to NGET's undertaking.
- 6.6.18 I therefore consider that the rDCO (Annex C) addresses NGET's concerns and that on this basis they would be likely to withdraw their objections to the granting of the powers requested by the Applicant. My changes to the protective provisions in the dDCO [\[REP8-003](#) Part 2 of Schedule 10] have not been consulted on.
- 6.6.19 Based on the above, I have no concerns in relation to s127 or s138 of PA2008 or regarding any potential detriment to the carrying on of NGET's undertaking. I consider that the requested CA powers are for a legitimate purpose, that they are necessary and proportionate, that there are suitable provisions for compensation, and that there is a compelling case in the public interest for the powers to be granted.

E.ON UK plc

- 6.6.20 The Applicant requests the acquisition of rights for plots 01-001 to 01-004, 01-007 to 01-012, 01-015, 01-016 and 01-021 for works to facilitate the laying of cables, including the temporary stopping up of watercourses, construction and decommissioning of access tracks and compounds and works to facilitate access for all works described in the dDCO [\[REP8-003](#) Schedule 1] apart from Work No. 5.
- 6.6.21 E.ON UK plc has Category 1 interests as an owner or reputed owner for all of those plots and Category 2 interests in respect of rights of access for plots 01-002, 01-003, 01-004, 01-007, and 01-009.
- 6.6.22 The Applicant [\[REP6-042](#), [REP8-010](#)] says that it sought voluntary discussions with E.ON UK plc, who directed it to NGET as the appropriate person to grant the voluntary rights, and that it does not require land and rights from E.ON UK plc directly as any rights required at Drakelow Substation would be granted by NGET via rights contained in their existing lease with E.ON UK plc. I conclude on matters related to NGET above.
- 6.6.23 I have not received an objection, or any other submission, from E.ON UK plc, but I consider the relevant request for land rights powers on a precautionary basis.

- 6.6.24 Section 127 of the PA2008 is engaged as powers would be granted over land owned by E.ON UK plc. I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008.
- 6.6.25 Protective provisions are included in the dDCO [[REP8-003](#) Part 1 of Schedule 10] for electricity undertakers, including E.ON UK plc.
- 6.6.26 Although E.ON UK plc did not make a representation directly, I take the precautionary view that NGET made representations on their behalf. NGET did not withdraw their objections before the end of the Examination. Noting my conclusions in relation to NGET, I consider that with the protective provisions in the rDCO (Annex C) there is no evidence of any serious detriment to E.ON UK plc's undertaking and am therefore satisfied in relation to s127 of PA2008.
- 6.6.27 I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008
- 6.6.28 Following from the above, I consider that the requested CA powers are for a legitimate purpose, that they are necessary and proportionate, that there are suitable provisions for compensation, and that there is a compelling case in the public interest for the powers to be granted.

National Grid Electricity Distribution (East Midlands) plc (NGED)

- 6.6.29 The Applicant [[REP8-009](#)] says that the protective provisions in the dDCO [[REP8-003](#) Part 3 of Schedule 10] are agreed between the Applicant and NGED and that the Applicant and NGED have agreed the terms of an Asset Protection Agreement.
- 6.6.30 NGED [[REP8-028](#)] withdraws its holding objection [[RR-228](#)] and says that it reached agreement on the commercial terms of the protection of NGED's apparatus and entered into an asset protection agreement.
- 6.6.31 I am satisfied that s127 of the PA2008 is not engaged as no powers would be granted over land owned by NGED. I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008.
- 6.6.32 Based on the evidence before me, I consider it unlikely that there would be a serious detriment to NGED's undertakings.

Cadent Gas Limited

- 6.6.33 The Applicant [[REP8-009](#)] says that the protective provisions in the dDCO [[REP8-003](#) Part 4 of Schedule 10] are agreed between the Applicant and Cadent Gas Limited.
- 6.6.34 Cadent Gas [[REP5-041](#)] says that the protective provisions are agreed and withdraws its objection [[RR-040](#)].
- 6.6.35 I am satisfied that s127 of the PA2008 is not engaged as no powers would be granted over land owned by Cadent Gas Limited. I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008.
- 6.6.36 Based on the evidence before me, I consider it unlikely that there would be a serious detriment to Cadent Gas Limited's undertakings.

Network Rail Infrastructure Limited

6.6.37 Network Rail Infrastructure Limited [\[REP2-004\]](#) says that as it is not included in the BoR or have operational railway assets in proximity to the Proposed Development, it does not consider that it is adversely affected by the Scheme and as such withdraws its objection [\[RR-232\]](#). The Applicant [\[REP1-023\]](#) confirms that Proposed Development does not engage with railway interests.

6.6.38 I have no concerns in relation to Network Rail Infrastructure Limited.

Other Statutory Undertakers

6.6.39 I have not received an objection, or any other submission from other SUs, including those identified by the Applicant [\[REP8-009\]](#). I see no evidence that concerns me in relation to the powers requested by the Applicant, the protective provisions, or any serious detriments to the undertakings of other SUs.

6.6.40 I am satisfied that s127 of the PA2008 is not engaged as no powers would be granted over land owned by other SUs. I consider that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138 of the PA2008.

6.7 CONCLUSIONS AND RECOMMENDATIONS

6.7.1 My approach to the question of whether and what land rights powers I should recommend that the SoS grant is to apply the relevant sections of the PA2008, including s122 and s123, the CA Guidance, the Human Rights Act 1998 and, in the light of the representations received, to consider whether a compelling case is made in the public interest, balancing the public interest against private loss.

6.7.2 The dDCO [\[REP8-003\]](#) deals with the Proposed Development itself and CA and TP powers. The case for CA and TP powers is not considered until I form a view on the case for the development overall. I consider the case for development in the preceding chapters and in Chapter 5 I conclude that the case is made.

6.7.3 In considering whether there is a compelling case in the public interest to acquire the land (s122(3) of the PA2008), I take account of the Applicant's case for CA and TP, the individual issues and objections raised, and all submissions made to the Examination.

6.7.4 In this chapter I consider the need for CA and TP, the purposes for which the powers are requested, alternatives, individual objections and issues, Statutory Undertakers and protective provisions, availability and adequacy of funds and potential impediments, and human rights and the compelling case in the public interest.

6.7.5 In relation to the application for CA powers, I conclude that:

- there is a clear need for all the land included in the BoR to be subject to CA and TP, the land sought for the Proposed Development and subject to CA would be land required for the purposes of s122(2)(a) and (b) of the PA2008 and that it meets the tests set out in that section;
- the application site is selected appropriately, all reasonable alternatives to CA have been explored and that there are no alternatives which ought to be preferred;
- there is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the extent

of land over which powers are sought would be no more than is reasonably required and it is proportionate to the needs of the Proposed Development;

- the private loss to those affected is in part mitigated through the selection of the land, minimisation of the extent of the rights and interests to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected;
- the Proposed Development represents a significant public benefit and in all cases relating to individual objections and issues, CA and TP is justified to enable its implementation;
- s127 of the PA2008 is engaged in relation to E.ON UK plc as powers would be granted over land owned by E.ON UK plc, however I find that with the protective provisions in the rDCO (Annex C) there are unlikely to be any serious detriment to E.ON UK plc's undertaking and I am therefore satisfied in relation to s127;
- the powers sought by the Applicant in relation to SUs are necessary for the Proposed Development and consistent with s138 of the PA2008;
- adequate and secure funding would be likely to be available for CA;
- the Examination has ensured a fair and public hearing and any interference with human rights arising from implementation of the Proposed Development would be for a legitimate purpose that would justify such interference in the public interest and to a proportionate extent; and
- compensation would be available for quantifiable loss.

- 6.7.6 I have regard to the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. Regarding Article 6, the Examination has ensured a fair and public hearing. The weight of national policy in favour of the Proposed Development and the wider public interest justifies the interference with human rights. I conclude that any interference with human rights arising from implementation of the Proposed Development would be proportionate and would strike a fair balance between the rights of the individual and the public interest.
- 6.7.7 Taking the above factors together, I consider that the SoS can be satisfied that there is a compelling case in the public interest for CA and that the Proposed Development would comply with the PA2008 in this regard.
- 6.7.8 I am satisfied with the application for TP powers because the rights sought are for identified legitimate purposes and are compatible with human rights tests.
- 6.7.9 I consider that the rDCO (Annex C) secures land rights powers appropriately in relation to relevant legislation and policy.

7. DRAFT DEVELOPMENT CONSENT ORDER

7.1 INTRODUCTION

- 7.1.1 This chapter provides an overview of the Development Consent Order (DCO), the Applicant's updates to the draft DCO (dDCO) during the Examination, and my changes to the Applicant's final dDCO [\[REP8-003\]](#) to arrive at my recommended DCO (rDCO), which is included in Annex C.
- 7.1.2 A dDCO [\[APP-016\]](#) and an Explanatory Memorandum (EM) [\[APP-017\]](#) were submitted by the Applicant with its application. The EM describes the purpose of the dDCO and its articles and schedules.
- 7.1.3 While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, (the model provisions) is repealed, the application version of the dDCO draws on the model provisions as well as precedent set by made DCOs for other Nationally Significant Infrastructure Projects under the Planning Act 2008 (PA2008). There has been a change of approach to the use of model provisions since the Localism Act 2011, and although they provide a starting point for the consideration of the DCO, precedent cases are generally more appropriate. The dDCO is in the form of a Statutory Instrument as required by s117(4) of the PA2008.
- 7.1.4 The Overarching National Policy Statement for Energy (NPS EN-1) includes that the Secretary of State should only impose requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. (Paragraph 4.1.16).
- 7.1.5 Guidance on the preparation of a DCO includes [Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects](#) (30 April 2024), and [Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders](#) (1 July 2018).
- 7.1.6 The following sections of this chapter:
- describe the structure and functions of the dDCO [\[REP8-003\]](#);
 - summarise the processes used to examine the dDCO [\[REP8-003\]](#) and the iterations to the dDCO [\[REP8-003\]](#) during the Examination;
 - report on my consideration of the dDCO [\[REP8-003\]](#) and relevant submissions made by the Applicant and other parties;
 - set out the changes made to the dDCO [\[REP8-003\]](#); and
 - provide my recommended changes leading to the rDCO (Annex C).

7.2 STRUCTURE AND FUNCTION OF THE DRAFT DCO

- 7.2.1 Each iteration of the Applicant's dDCO contains articles and schedules including requirements and protective provisions. The articles are in seven parts, which are briefly described here and in more detail in the final EM [\[REP8-005\]](#) submitted to the Examination. My rDCO (Annex C) has the same structure as the dDCO:

Part 1	Provides for citation, commencement and terms used, including definitions from the model provisions and precedent DCOs.
Part 2	Sets out the principal powers, provides for the grant of development consent, allows its construction, operation, maintenance, and decommissioning, and sets out who has the benefit of the Order and how those powers can be transferred. It includes provisions in relation to maintenance, statutory nuisance and the disapplication and modification of provisions in the Land Drainage Act 1991, the Neighbourhood Planning Act 2017, and the Hedgerows Regulations 1997.
Part 3	Provides for the execution of works in or under the streets, powers to alter the layout of streets, and agreements with street authorities. It includes matters relating to access to works, temporary stopping up of public rights of way, agreements with street authorities and related compensation provisions, and traffic regulation measures.
Part 4	Provides supplemental powers for the discharge of water, protective works to buildings and the authority to survey and investigate.
Part 5	Has powers for the compulsory acquisition of land and rights and the temporary use of land. It includes provisions for time limits, the right to impose restrictive covenants, private rights, acquisition of subsoil only, rights under and over streets, statutory undertakers and their apparatus, the mineral code, and compensation provisions. Modifications would be made to the compulsory purchase and compensation provisions under general legislation, including the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981, the Acquisition of Land Act 1981, and the Town and Country Planning Act 1990.
Part 6	Contains powers for the use and operation of the generating station.
Part 7	Has miscellaneous and general provisions in relation to removal of human remains, operational land, certification, service of notices, hedgerows and trees, arbitration, requirements and appeals, landlord and tenant law, protective provisions, and funding.
Schedules 1-11	Contain information referred to in the articles, including the description of the authorised development, requirements, streets subject to street works, alteration of streets, access to works, public rights of way to be temporarily stopped up, land in which only new rights may be acquired, modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants, land in which temporary possession may be taken, hedgerows, protective provisions, and arbitration rules.

7.3 EXAMINATION OF THE DRAFT DCO

7.3.1 In this section I do not report on every change that the Applicant made to the dDCO as several were because of typographical errors, to resolve grammatical inconsistencies, or were revisions that I feel are not controversial. Also, I do not repeat here all queries that I consider are adequately justified by the Applicant and do not require any change to the dDCO [\[REP8-003\]](#).

7.3.2 I do, however, comment on those changes that I consider to be most significant because of their effect or because they gave rise to several submissions or questions.

ARTICLES - GENERAL MATTERS

Compliance with updated guidance

- 7.3.3 Responding to my request [PD-012], the Applicant [REP4-011] provides a review against the [Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects](#) guidance published on 30 April 2024. The Applicant concludes that it is compliant, apart from in relation to “*the DCO will usually provide for the precise location of numbered works to be subject to horizontal and/or vertical limits of deviation*”, explaining that this detail is not provided in the dDCO as the authorised development is limited to the design parameters as set out in Table 4.2 of the Environmental Statement, the works plans and the definitions of “Order land” and “Order limits”. In Section 3.6 of this report I note that the design parameters are secured in documents certified by dDCO [REP8-003], including in the Design Statement [REP6-035] and size, number, location, colour and appearance parameters, and that I am content in relation to design parameters. I address limits of deviation further in my consideration of Article 3, below.

Material effects

- 7.3.4 I [PD-010] question whether the Applicant’s wording “*materially new or materially different environmental effects from those assessed in the environmental statement*” could lead to an unintended consequence of materially different beneficial environmental effects not being permitted and suggest that “*any materially new or materially more adverse environmental effects compared to those identified in the environmental statement*” might be preferable. I am content that the Applicant [REP1-025, REP4-011] then incorporates my wording.

Deemed consent

- 7.3.5 Articles 11(7), 14(9), and 16(6) confer deemed consent if the authority does not respond within 28 days (a “guillotine”). Derbyshire County Council (DCC) [REP1-026] and South Derbyshire District Council (SDDC) [REP1-029] initially consider that 28 days is a tight timeframe to deal with a submission, particularly if consultation is required between authorities, with internal consultees, or the Applicant. The Applicant [REP1-025, REP3-032] says that DCC, SDDC and the Environment Agency (EA) have been made aware of the deemed consent provisions through the process and revises Articles 11(7), 14(9) and 16(6) to allow the 28-day period to be extended if agreed in writing between the parties. DCC [REP4-012] and SDDC [REP4-014] subsequently say that they are content and the EA [REP4-017] has no issues as its permitting process is separate as Article 14(7). It follows that I am content with the provisions for deemed consent.

Site preparation works

- 7.3.6 Noting that the site preparation works defined in Article 2 are pre-commencement activities that could be undertaken without the controls that only apply following commencement, including those in dDCO Requirements and in the Outline Construction Environmental Management Plan (Outline CEMP), I [PD-010, PD-012] ask if more mitigation should be secured for them.
- 7.3.7 DCC [REP1-026] and SDDC [REP1-029] consider that some site preparation works have the potential to create adverse noise and air quality impacts including “remedial work in respect of any contamination or other adverse ground conditions” and “site clearance (including vegetation removal, demolition of existing buildings and structures)”. They say that commencement should include site preparation works

relating to protected species, archaeological remains and traffic. SDDC [\[REP5-040\]](#) considers that it is quite clear that the dDCO has the potential to allow for extensive and destructive pre-commencement works to take place.

- 7.3.8 The EA [\[REP1-032\]](#) says that significant environmental effects from “*remedial work in respect of any contamination or other adverse ground conditions*” cannot be ruled out and advise that this is removed from “site preparations work”, and that such works are undertaken with controls that apply at commencement, including Requirements 9 and 13. Natural England (NE) [\[REP1-037\]](#) says that if site preparation would involve the breaking the soil or other activity that could damage the soil then suitable mitigation measures should be secured to ensure that this resource is not damaged.
- 7.3.9 The Applicant [\[REP3-032\]](#), [\[REP6-042\]](#) updated the dDCO [\[REP8-003\]](#) to secure the approval of mitigation measures before certain elements of the site preparation works are carried out:
- Requirement 8(4) prohibits the carrying out of site preparation works until a Landscape and Ecological Management Plan (LEMP) covering the site preparation works, which accords with the Outline LEMP [\[REP4-040\]](#), is submitted to and approved by the local planning authority (LPA);
 - Requirement 9(3) prohibits pre-commencement establishment of construction compounds, preparation of land for construction, construction area fencing, and installation of site drainage, until a specific plan for such works, which accords with the Outline CEMP [\[REP6-018\]](#), is submitted to and approved by the LPA;
 - Requirement 9(4) prohibits the carrying out of site preparation works until a soil management plan covering the site preparation works, which accords with the Outline CEMP [\[REP6-018\]](#), is submitted to and approved by the LPA;
 - Requirement 10(4) confirms, for the purposes of Requirement 10, commence includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures). This means that those works cannot be carried out until a Construction Traffic Management Plan (CTMP) covering those works, which accords with the Outline CTMP [\[REP6-028\]](#), is submitted to and approved by the LPA;
 - Requirement 13(1) prohibits the carrying out of site preparation works comprising remedial work in respect of any contamination until a contamination risk assessment is submitted to and approved by the LPA in consultation with the EA;
 - Requirement 16(6) prohibits the carrying out of site preparation works until written details of proposed temporary fences, walls or other means of enclosure for the site preparation works have been submitted to and approved by the LPA; and
 - Requirement 18 prohibits the carrying out of site preparation works until an archaeological Written Scheme of Investigation (WSI) is submitted to and approved by the LPA.
- 7.3.10 DCC [\[REP7-011\]](#) agrees with the approach taken in the dDCO to site preparation works and considers it to be appropriate and proportionate. SDDC [\[REP6-047\]](#) is content with the Applicant’s approach and the EA [\[REP4-017\]](#) has no remaining concerns. Noting those comments, I am satisfied that the updated dDCO [\[REP8-003\]](#) addresses the concerns raised and mitigates the site preparation works appropriately.

ARTICLES - OTHER MATTERS

Article 3 - Development consent etc. granted by the Order

- 7.3.11 Noting Article 3(2) includes that "*each numbered work must be situated within the corresponding numbered area shown on the works plan and must not exceed the design parameters assessed in the environmental statement*", and given the size of works areas, I [[PD-010](#), [PD-012](#)] ask the Applicant to comment on whether it is necessary for works to be located within the numbered areas such that there would not be any materially new or materially more adverse environmental effects compared to those identified in the Environmental Statement.
- 7.3.12 The Applicant [[REP4-011](#)] subsequently inserts a new sub-paragraph (3) to Article 3 to clarify that the Article does not authorise the carrying out of any works which are likely to give rise to materially new or materially more adverse environmental effects to those identified in the Environmental Statement. I am content with that update and as such have no concerns in relation to limits of deviation.

Article 5 - Consent to transfer benefit of Order

- 7.3.13 Following my [[PD-012](#)] reference to recent precedent, the Applicant removed the provision to allow transfer of the benefit of the DCO to its own holding company or a subsidiary without the Secretary of State for Net Zero's (SoS's) consent, after saying that it wishes to retain that flexibility and feels that it would be disproportionate to require the SoS's consent. I consider that the case is not made for the Applicant's holding company or subsidiary to be exempted from any provisions in relation to consent to transfer the benefit of the Order and am satisfied that the removal is consistent with the SoS's own deletion of similar provisions in other recent solar DCO.
- 7.3.14 Article 5 of Schedule 1 of the Infrastructure Planning (Model Provisions) Order 2009 (which is repealed) does not allow for transfer of the benefit of the Order without consent. Noting that Article 5(3) allows the benefit of the Order to be transferred to another person without the consent of the SoS if either Article 5(3)(a) or 5(3)(b) is satisfied, I [[PD-014](#)] ask the Applicant to comment on whether the DCO should only allow the benefit of the Order to be transferred if both Article 5(3)(a) and 5(3)(b) are satisfied. The Applicant [[REP6-042](#)]:
- considers that its approach is well precedented in solar and offshore wind DCOs;
 - does not consider it necessary for any transfer under Article 5(3)(b) to be to a company with a licence under section 6 of the Electricity Act 1989;
 - says that Article 5 protects the provision of compensation for the compulsory acquisition of rights or interests in land;
 - considers that the justification for allowing transfer to a licence holder without consent is that the transferee or lessee would be of a similar regulatory standing to the undertaker, which is an appropriate level of protection for compensation;
 - says that the effect of Article 5(3)(c) is to permit the transfer or grant of the benefit of the Order without the need to obtain SoS approval where there are no outstanding actual or potential compulsory purchase claims, such that compensation protection is no longer required; and
 - states that Article 5(4) to (7) still requires the SoS to be given advance notification of any transfer or grant, where consent is not required.

7.3.15 The Applicant [REP7-008] [REP8-020] maintains its position after I invite comments on my Schedule of Changes to the dDCO [PD-015] which provides for both Article 5(3)(a) and Article 5(3)(b) to both apply for the SoS's consent not to be required.

7.3.16 My view is that the Applicant does not provide sufficient justification for either Article 5(3)(a) or Article 5(3)(b) to not apply and therefore my rDCO (Appendix A) amends the Applicant's final dDCO [REP8-003] to require that both Article 5(3)(a) and Article 5(3)(b) need to apply for the benefit of the Order to be transferred to another person without the consent of the SoS.

Draft DCO Article 6 - Disapplication and modification of legislative provisions

7.3.17 In Section 3.9 I note that the EA [AS-019, REP1-032, REP1-033] considers it unlikely that the Proposed Development would qualify under any exemption applying to the need for an impoundment licence. It doesn't agree to disapply any requirement for impoundment licences and therefore considers that the proposed disapplication of s25 of the Water Resources Act 1991 should be deleted from the dDCO. The Applicant [REP3-032] then amended Article 6 of the dDCO [REP8-003] to remove s25 of the Water Resources Act 1991 from the list of statutory provisions being disappplied, following which the EA [REP4-016] advises that the matter is agreed. I have no reason to disagree with the deletion.

Article 13 - Traffic regulation measures

7.3.18 Following my reference to recent precedent [PD-012] the Applicant [REP4-011] added:

- Article 13(5)(c) to help ensure adequate notification of the powers under Articles 13(1) and 13(2); and
- Article 13(5)(d) to ensure that the powers under Articles 13(1) and 13(2) can only be used once relevant traffic management plans are approved.

7.3.19 DCC [REP4-012] and SDDC [REP4-014] are content with the additions, and I have no reason to disagree.

Article 26 - Temporary use of land for carrying out the authorised development

7.3.20 Responding to my query the Applicant updated Article 26(1) to limit temporary possession for the purposes of Article 26(1) (b)-(f) to the carrying out of site preparation works, construction and decommissioning. I am content with the update as it provides helpful clarity and is consistent with avoiding disproportionate or unjustified interference with human rights while providing the Applicant with sufficient powers,.

Article 31 - Compulsory acquisition of land - incorporation of the mineral code

7.3.21 I [PD-012] queried whether this Article is required. DCC [REP4-012] says that no coal mines are currently operating nor are any future working anticipated, and consider that the article is not required. The Applicant [REP4-011] explains that it is included on a precautionary basis, as it provides that the Undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions. I am satisfied with the Applicant's reasoning, and on balance I am therefore content that the Article remains on a precautionary basis.

Removal of human remains

- 7.3.22 The application dDCO [\[APP-016\]](#) includes Article 33 removal of human remains. Referring to recent precedent, I [\[PD-012\]](#) asked if there are any known burial grounds within the Order Limits, whether provision for any archaeological human remains would be included in the WSI secured by Requirement 18 of the dDCO [\[REP8-003\]](#), and if the Article could be removed.
- 7.3.23 SDDC [\[REP4-014\]](#) is not aware of any burial grounds within the Order Limits. The Applicant [\[REP4-011\]](#) advises that there are no known burial grounds within the Order Limits, that the WSI would provide for the removal of any archaeological human remains found during the construction stage of the authorised development under the appropriate Ministry of Justice licence, and removes the Article to reflect this position.
- 7.3.24 I note that Requirement 18 of the dDCO [\[REP8-003\]](#) requires approval of the WSI by the local planning authority in consultation with the county archaeologist, and for any archaeological works to be carried out in accordance with the approved WSI. I am therefore content that there are suitable provisions in relation to human remains without Article 33 of the application dDCO [\[APP-016\]](#) and that this Article is deleted.

Article 36 - Felling or lopping of trees or removal of hedgerows

- 7.3.25 In Section 3.6 of this report, I conclude that I am content with the Applicant's addition of Article 36(2)(b) for the standards of works to fell or lop any tree, or shrub.

Article 37 - Trees subject to Tree Preservation Orders

- 7.3.26 In Section 3.6 of this report, I conclude that I am content with the Applicant's addition of Article 37(5) for the prior approval of the LPA to be required for the felling or lopping of a veteran or ancient tree.

SCHEDULE 1

General matters

- 7.3.27 Responding to my [\[EV4-002\]](#) query and reference to recent precedent in the Cottam Solar Project made Order, the Applicant [\[REP5-026\]](#) updated the following to provide that relevant mitigation measures must be maintained throughout the operation stage:
- Requirement 8(3) for the LEMP;
 - Requirement 11(3) for the Operational Environmental Management Plan (OEMP);
 - Requirement 15(2) for the design as described in the operational noise assessment; and
 - Requirement 17(3) for the surface and foul water drainage system.
- 7.3.28 I consider that the requirement to maintain the mitigation measures is appropriate given the duration of the operation stage, I note the consistency with precedent, and I am therefore content with the additions.

Requirement 4 - Phases of authorised development and date of final commissioning

- 7.3.29 Responding to my [\[PD-010\]](#) query and reference to recent precedent, the Applicant [\[REP1-025\]](#) updated Requirement 4(2) to include for a timetable for the construction of

the phases of the authorised development and a plan identifying the phasing areas. DCC and SDDC [\[REP8-017\]](#) agree that the wording of Requirement 4 is appropriate and I have no reason to disagree.

Requirement 5 - Detailed design approval

- 7.3.30 In Section 3.6 of this report, I conclude that I am content with the Applicant adding anti-reflective coating to Requirement 5(1)(k).

Requirement 8 - LEMP

- 7.3.31 In Section 3.4 I conclude that I am content that NE is added as a required consultee on the LEMP, and that I am satisfied with the provisions for biodiversity net gain.
- 7.3.32 The EA [\[REP4-017\]](#) states that there are no main rivers on or adjacent the site, the submitted ecological assessment doesn't suggest there is a risk to water dependant species/habitats for which the EA is the lead, and therefore the EA do not need to be consulted on the LEMP. I am therefore content that the requirement for the EA to be consulted on the approval of the LEMP is removed.

Requirement 9 - CEMP

- 7.3.33 In Section 3.4 of this report I note that SDDC [\[REP1-029\]](#) recommended that a Habitat Constraints Plan is produced and I am content that this is added to the details to be included in the CEMP.
- 7.3.34 In Section 3.9, I note the update for the EA to be consulted on the approval of the CEMP that is made at the EA's request. In Section 3.9 I also note the addition of the requirement for the CEMP to include details of surface water management measures that DCC [\[REP4-012\]](#) says address its concerns. I accept those additions.
- 7.3.35 In Section 4.4, I note the Applicant refers to mitigation for the River Mease Special Area of Conservation, including an environmental monitoring plan, flood risk management measures and related surface water management. I am content that these are added to the details to be included in the CEMP.

Requirement 11 - OEMP

- 7.3.36 The Applicant adds provisions for the OEMP to include a detailed operational drainage design, measures for the replacement of damaged solar panels, and a soil management plan. I consider that these are consistent with my related findings in Sections 3.3, 3.8 and 3.9 of this report and I am satisfied that they are included.

Requirement 12 - Battery safety management plan (BSMP)

- 7.3.37 At my request [\[PD-012\]](#), the Applicant [\[REP4-011\]](#) adds Requirement 12(4) to provide that the BSMP must be implemented as approved and maintained.
- 7.3.38 The Health and Safety Executive [\[AS-034\]](#) says that there is no statutory requirement to consult it in relation to the BSMP, that it does not provide comment on them, and that it asks for references to consultation with it for the BSMP are removed from the DCO. I note that Requirement 12(4) secures consultation with Derbyshire Fire and Rescue Service. On this basis I consider that it is not necessary to secure consultation with the Health and Safety Executive and so my rDCO (Annex C) removes the related provision that is included in the Applicant's dDCO [\[REP8-003\]](#).

Requirement 13 - Land contamination

- 7.3.39 The Applicant adds a provision to Requirement 13(4) for a verification report to be submitted to the LPA following the completion of remedial measures. I consider that is consistent with my findings in Section 3.10 of this report and with EA guidance on land contamination risk management. I am therefore satisfied that it is included.

Requirement 16 - Fencing and other means of enclosure

- 7.3.40 At my request [\[PD-010\]](#), the Applicant [\[REP1-025\]](#) adds Requirement 16(7) to provide that any proposed temporary fences, walls or other means of enclosure for the site preparation works must be carried out in accordance with the approved details.
- 7.3.41 In my rDCO (Annex C) I change Requirement 16(7) of the dDCO [\[REP8-003\]](#) to provide that any proposed permanent and temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details. This change is made to clarify that accordance with approved details is required for all means of both permanent and temporary enclosure and not only for the site preparation works.

Requirement 18 - Archaeology

- 7.3.42 In Section 3.5 I consider the Applicant's updates to secure WSI for the site preparation works and the construction stage, and the related recording and publishing, and I conclude that I am satisfied with the WSI mitigation secured by Requirement 18.

Requirement 21 - Protected species

- 7.3.43 In Section 3.4 I find that I am content with the Applicant's addition of Requirement 21.

Requirement 22 - Decommissioning and restoration

- 7.3.44 In Section 3.2 I conclude that I am satisfied with the Applicant's updates to Requirements 22(2) and 22(6). In Section 3.3 I record that I am content with the Applicant's updates to Requirements 22(4)(b) and 22(5).

Paragraph 32 - Fees

- 7.3.45 DCC and SDDC [\[REP2-001\]](#), [\[REP4-012\]](#), [\[REP5-037\]](#), [\[REP5-040\]](#):
- are concerned that the scale and nature of assessment of future submissions and the need for enforcement and monitoring would not be feasible for them due to the resource implications, putting the mitigation of adverse impacts at risk;
 - say they are in discussions with the Applicant regarding the drafting of a Planning Performance Agreement between the parties and anticipate that this would help to alleviate the resource issues although resourcing concerns remain; and
 - SDDC consider that a Deed of Obligation set out within the DCO would be the most appropriate mechanism to address its concerns.
- 7.3.46 The Applicant [\[REP6-042\]](#), [\[REP7-008\]](#), [\[REP8-019\]](#):
- considers that the paragraph 32 provisions are well precedented and set out the legislative requirements by which fees under a DCO shall be calculated and paid;

- says that it continues to offer each of SDDC and DCC a Planning Performance Agreement, which it considers to be the appropriate method for securing additional funds for the performance of their obligations under the DCO;
- states that neither SDDC nor DCC justify why a Planning Performance Agreement is not appropriate, but both have accepted that alternative options to a Deed of Obligation for securing additional funds are available; and
- maintains that it is not appropriate for a Deed of Obligation to secure these funds to be required within the dDCO as the securing of additional funds for the Councils internal costs would fail the necessary legal tests for its imposition.

7.3.47 Towards the end of the Examination, DCC [\[REP8-021\]](#) says that resources remain under discussion, with the possibility of DCC utilising capacity fund underspend and additional funding from the Applicant through a Planning Performance Agreement to support the discharge of requirements and monitoring.

7.3.48 SDDC [\[REP8-023\]](#) says that the Applicant's proposal is to specify fees within the dDCO as per the Town and Country Planning Act 1990 charging schedule and for this to be supplemented by addressing the provision of additional resourcing needs through flexible mechanisms like Planning Performance Agreement or Agreements under section 111 of the Local Government Act 1972. SDDC says that this should ideally be provided within the DCO but considers that these alternative proposals would be an acceptable compromise if that is not possible.

7.3.49 The signed Statement of Common Ground between the Applicant, DCC and SDDC [\[REP8-017\]](#) includes that the parties are in broad agreement regarding the need to provide appropriate local authority resourcing for work relating to the discharge of requirements and subsequent monitoring, and the Applicant's position is that a Planning Performance Agreement or similar would be agreed to reflect the resourcing requirements of the LPAs following the granting of any development consent.

7.3.50 I consider the above submissions, including the Applicant's commitment to provide resourcing for work relating to the discharge of requirements and subsequent monitoring and for the details of a Planning Performance Agreement, or similar, to be agreed following the granting of any development consent. Following this, and noting precedent, I consider that paragraph 32 provides an appropriate mechanism for LPA fees to be identified post consent and paid.

OTHER SCHEDULES

Schedule 10 - Protective Provisions

7.3.51 In Section 6.6 of this report, and in relation to avoiding a severe detriment to National Grid Electricity Transmission plc's (NGET's) undertaking, I conclude having considered NGET's [\[REP8-026\]](#) proposed wording, the following changes should be made to the Applicant's version [\[REP8-003\]](#) Part 2 of Schedule 10]:

- an increase in insurance from not less than £10 million to not less than £50 million;
- an increase in the total liability cap in the parent company guarantee from £10 million to £50 million;
- an increase in the total liability cap in the bank bond or letter of credit from £20 million to £50 million; and

- the addition of provisions in paragraph 21(7) in relation to acceptable security being provided before the construction stage commences in a similar form to that provided for acceptable insurance.

Schedule 12 - Documents to be certified

7.3.52 In Section 3.1 of this report I note that Appendix A of the Applicant's latest version of the Outline LEMP [\[REP4-040\]](#) is blank, and conclude that the Illustrative Landscape Strategy Plan (Figures 1a-f) provided in Appendix A of the penultimate version of Outline LEMP [\[REP3-025\]](#) should be included in the Outline LEMP. I therefore refer to the Outline LEMP as comprising [REP4-040](#) and Appendix A of [REP3-025](#) and update the reference to the Outline LEMP in Schedule 12 accordingly.

7.3.53 In Section 7.4 I detail other changes to Schedule 12, including to:

- remove the 'Revision' column as it is not needed to uniquely identify the correct versions, and reflecting that not all documents include a revision number;
- update document references to the latest version submitted to the Examination;
- add certain documents that were submitted during the Examination that are referred to in updates to the Environmental Statement; and
- address minor omissions, make corrections and other minor changes.

7.4 CHANGES TO THE APPLICANT'S FINAL DRAFT DCO

7.4.1 My reasoning for recommending changes to the Applicant's final version of the dDCO [\[REP8-003\]](#) are set out in the previous section. In this section I summarise the changes included in my rDCO (Annex C), apart from minor corrections.

Article 5 - Consent to transfer benefit of Order

7.4.2 Replace "or" at the end of Article 5(3)(a) with "and".

Article 34 - Certification of plans, etc.

7.4.3 Replace Article 34(1) with the following to reflect that Schedule 12 identifies the documents to be certified: *"(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order."*

Article 36 - Felling or lopping of trees or removal of hedgerows

7.4.4 Change "part 1" to "Part 1" and "part 2" to "Part 2" in Article 36(4) for consistency.

Requirement 12 - Battery safety management plan (BSMP)

7.4.5 Remove "the Health and Safety Executive and" from Requirement 12(3).

Requirement 16 - Fencing and other means of enclosure

7.4.6 Replace Requirement 16(7) with *"(7) Any proposed permanent or temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details."*

Schedule 10 - Part 2 - For the protection of NGET as electricity undertaker

- 7.4.7 Correct “ELECRCITY” to “ELECTRICITY” in the title.
- 7.4.8 Change “£10,000,000.00 (ten million pounds)” to “£50,000,000 (fifty million pounds)” in the definition of “acceptable insurance” in paragraph 12.
- 7.4.9 Change “£10,000,000.00 (ten million pounds)” to “£50,000,000 (fifty million pounds)” in paragraph 12(a) of the definition of “acceptable security”.
- 7.4.10 Change “£20,000,000.00 (twenty million pounds)” to “£50,000,000 (fifty million pounds)” in paragraph 12(b) of the definition of “acceptable security”.
- 7.4.11 Replace paragraph 21(7) with:
- “(7) The undertaker is not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc’s apparatus until the following conditions are satisfied:*
- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and*
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.”*

Schedule 10 - Part 7 - For the protection of the drainage authorities

- 7.4.12 Replace the definition of “plans” with the following, to correct a typographical error: *““plans” includes sections, drawings, specifications and method statements; and”.*

Schedule 12

- 7.4.13 Changes:
- remove the ‘Revision’ column;
 - add Examination Library reference REP8-012 for the Book of Reference and add Figures 4.6 to 4.10b APP-099;
 - change “Appendices 6.1 - 13” to “Appendices 6.1 - 6.13” for consistency;
 - correct the document reference for APP-071 etc to EN010122/APP/6.1, correct the date of REP4-040 to October 2024, correct the dates of REP1-017 and REP1-019

to July 2024, correct the document reference for REP7-003 to EN010122/D7/6.1, and correct the date to December 2024;

- remove APP-072 as it is superseded by AS-016, remove APP-096 as it is superseded by REP6-031, and remove APP-156 as it is superseded by AS-015;
- move Appendix 5.5 Residential Visual Amenity Assessment REP6-024 to its own row, change the document reference to EN010122/D6/6.1 and change the date to November 2024;
- replace Appendix 15.1 - Agricultural Land Classification Survey for Oaklands Farm APP-170 with REP6-030, change the document reference to EN010122/D6/6.1 and change the date to November 2024;
- move Figures 10.1-10.4, 10.6-10.9 AS-015 to its own row, change the document reference to EN010122/S51/6.1 and change the date to May 2024;
- replace REP1-013 with AS-027, change the document reference to EN010122/D4/6.1 and change the date to October 2024;
- for the Outline LEMP, add Appendix A of REP3-025 to the examination reference together with its document reference of EN010122/D3/6.1 and date of August 2024;
- add Additional Land Classification Survey at Park Farm REP5-036, document reference EN010122/D5/13.14, date October 2024; and
- add Sequential Assessment - Flood Risk REP6-045, document reference EN010122/D6/14.6, date November 2024.

7.5 CONCLUSIONS

- 7.5.1 I have regard to all matters forming the application and put before me at the Examination, including the iterations of the dDCO [[APP-016](#), [AS-005](#), [REP1-003](#), [REP3-008](#), [REP4-004](#), [REP5-003](#), [REP6-004](#), [REP8-003](#)].
- 7.5.2 I have considered the Applicant's final draft dDCO [[REP8-003](#)] and I recommend several changes, which I include in the rDCO (Annex C).
- 7.5.3 I am satisfied that the rDCO (Annex C) adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the ES. I consider that the rDCO (Annex C) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. I therefore consider that paragraph 4.1.16 of the NPS EN-1 is satisfied.
- 7.5.4 I recommend that the DCO is made in the form set out in Annex C.

8. SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

8.1 INTRODUCTION

- 8.1.1 This chapter summarises my conclusions arising from the report and sets out my primary recommendation to the Secretary of State for Energy Security and Net Zero.
- 8.1.2 On 22 January 2025, after the close of the Examination, the Environment Agency updated its [National Flood Risk Assessment](#). I do not take account of this update, but the Secretary of State for Energy Security and Net Zero may wish to consider it.

8.2 SUMMARY OF FINDINGS AND CONCLUSIONS

- 8.2.1 My conclusions are subject to the provisions of the recommended Development Consent Order in Annex C. With the mitigation secured by the recommended Development Consent Order in Annex C, I consider that adverse impacts arising from the Proposed Development, and cumulatively with other developments, would be unlikely to outweigh its benefits.
- 8.2.2 I consider the Proposed Development against s104 of the Planning Act 2008 as it is within the scope of the Overarching National Policy Statement for Energy, the National Policy Statement for Renewable Energy Infrastructure and the National Policy Statement for Electricity Networks Infrastructure. I find that these are relevant National Policy Statements and have effect. I find no evidence that s104(4) to (8) of the Planning Act 2008 apply and, as required by s104(3), I conclude that the application must be decided in accordance with the relevant National Policy Statements.
- 8.2.3 I find that the Proposed Development is Critical National Priority Infrastructure in accordance with the relevant National Policy Statements. My conclusions are the same both with and without Critical National Priority Infrastructure considerations.
- 8.2.4 I have regard to matters arising from the Local Impact Reports from Derbyshire County Council, South Derbyshire District Council and Leicestershire County Council, and to all matters that I consider to be both important and relevant in reaching my conclusions. I consider relevant legislation and guidance.
- 8.2.5 In relation to s104(2) and s104(3) of the Planning Act 2008, I conclude that making the recommended Development Consent Order would be in accordance with the relevant National Policy Statements, relevant development plans, and other relevant policy.
- 8.2.6 I have regard to the Applicant's Habitats Regulations Assessment Screening Report and Natural England's comments. Whilst the Secretary of State for Energy Security and Net Zero is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 and will make the definitive assessment, I conclude that the Proposed Development would not be likely to give rise to adverse effects on the integrity of European Sites. I find that there is sufficient information for the Secretary of State for Energy Security and Net Zero to enable them to undertake an appropriate assessment and to fulfil its duty under the requirements under the Conservation of Habitats and Species Regulations 2017. I see no reason for Habitats Regulations Assessment matters to prevent the making of the Development Consent Order.
- 8.2.7 Regarding the land rights required to implement the Proposed Development. I find that:

- the application site is selected appropriately, all reasonable alternatives are explored, and the Applicant has a clear idea of how it intends to use the land;
- the powers sought are for a legitimate purpose, necessary to facilitate the Proposed Development, and no more than is reasonably required; and
- adequate funding would be likely to be available for the delivery of the Proposed Development and for the payment of compensation, which is secured appropriately.

8.2.8 I have regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the Examination has ensured a fair and public hearing. The weight of national policy in favour of the Proposed Development and the wider public interest qualifies any interference with the human rights affected. I conclude that any interference with human rights arising from implementation of the Proposed Development would be proportionate and strike a fair balance between the rights of the individual and the public interest. I find that there is a compelling case in the public interest for the powers sought and conclude that the powers should be granted.

8.2.9 I have regard to the Public Sector Equality Duty. I find no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. I find no breach of the Public Sector Equality Duty.

8.2.10 As required by Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, I have regard to the desirability of preserving listed buildings or their setting and any features of special architectural or historic interest which they possess, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting. I am satisfied with how they are addressed.

8.2.11 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. I am content that those aims are accorded with.

8.2.12 I have due regard to conserving and enhancing biodiversity and fulfil my biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.

8.2.13 I find that the benefits of the Proposed Development outweigh harm to heritage assets, adverse visual effects, and adverse landscape impacts.

8.3 RECOMMENDATIONS

8.3.1 My findings and conclusions are set out in this report, and I consider important and relevant matters and all submissions. I comply with all applicable legal duties and do not take account of any matters that are not relevant to my recommendations. I find no important and relevant matters that would individually or collectively lead to a different recommendation.

8.3.2 I find that the Proposed Development meets the tests in s104 of the Planning Act 2008 and I recommend that the Secretary of State for Energy Security and Net Zero makes the Oaklands Farm Solar Park Development Consent Order in the form attached at Annex C.

ANNEXES

ANNEX A: ABBREVIATIONS

ANNEX B: KEY LEGISLATION AND POLICY

ANNEX C: RECOMMENDED DEVELOPMENT CONSENT ORDER

ANNEX A: ABBREVIATIONS

Abbreviation	Meaning
AA	Appropriate Assessment
AEoI	Adverse effects on integrity
AIL	Abnormal Indivisible Load
ALC	Agricultural Land Classification
AQMA	Air Quality Management Area
BESS	Battery Energy Storage System
BMV	Best and Most Versatile agricultural land
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
BSMP	Battery Safety Management Plan
CA	Compulsory Acquisition
CA Guidance	Planning Act 2008: guidance related to procedures for the compulsory acquisition of land
CCTV	Closed-circuit television
CEMP	Construction Environmental Management Plan
CNP	Critical National Priority
CO ₂	Carbon Dioxide
CO _{2e}	Carbon Dioxide equivalent
CTMP	Construction Traffic Management Plan
DCC	Derbyshire County Council
dB	Decibel
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for the Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DFRS	Derbyshire Fire and Rescue Service
DfT	Department for Transport
DTM	Digital Terrain Model
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Abbreviation	Meaning
EM	Explanatory Memorandum
EMF	Electric and magnetic fields
ES	Environmental Statement
ESBC	East Staffordshire Borough Council
FRA	Flood Risk Assessment
GHG	Greenhouse Gas
ha	Hectare
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HE	Historic England
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive Non-Native Species
ISH	Issue Specific Hearing
km	Kilometre
kV	Kilovolts
L _{A90}	A-weighted sound level exceeded for 90% of the measurement period
L _{Aeq}	A-weighted, equivalent sound level over the measurement period
LCC	Leicestershire County Council
LCT	Landscape Character Type
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LPA	Local Planning Authority
LSE	Likely Significant Effect
LWS	Local Wildlife Site
MW	Megawatts
MWh	Megawatt hours
NE	Natural England
NGED	National Grid Distribution (East Midlands) plc
NGET	National Grid Electricity Transmission plc
NMU	Non-motorised users, including walkers, cyclists and horse riders
NO ₂	Nitrogen Dioxide

ANNEX A: ABBREVIATIONS

OAKLANDS FARM SOLAR PARK: EN010122

REPORT TO THE SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 19 MARCH 2025

Abbreviation	Meaning
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NSIP	Nationally Significant Infrastructure Project
OEMP	Operational Environmental Management Plan
PA2008	Planning Act 2008
pLWS	Potential Local Wildlife Site
PM	Preliminary Meeting
PRoW	Public Right of Way
PV	Photovoltaic
rDCO	Recommended Development Consent Order
SAC	Special Area of Conservation
SCC	Staffordshire County Council
SDDC	South Derbyshire District Council
SMP	Soil Management Plan
SOAEL	Significant Observed Adverse Effect Levels
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Energy Security and Net Zero
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage Systems
tCO _{2e}	Tonnes of Carbon Dioxide Equivalent
TMG	Traffic Management Group
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
WFD	Water Framework Directive
WFD Regulations	Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WSI	Written Scheme of Investigation
ZTV	Zone of Theoretical Visibility

ANNEX A: ABBREVIATIONS

OAKLANDS FARM SOLAR PARK: EN010122

REPORT TO THE SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 19 MARCH 2025

ANNEX B: KEY LEGISLATION AND POLICY

LEGISLATION

Key relevant legislation (including any amendments)
Human Rights Act 1998 The consideration of the land rights powers requested by the Applicant can engage various relevant articles under the Human Rights Act 1998.
Climate Change Act 2008 The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 came into force on 27 June 2019 and changed the Government's target for reducing greenhouse gas emissions by 2050 from at least 80% to 100% compared to 1990 levels.
Other key relevant legislation • Acquisition of Land Act 1981 • Air Quality (England) Regulations 2000 • Air Quality Standards Regulations 2010 (as amended) • The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 • Ancient Monuments and Archaeological Areas Act 1979 • Building Act 1984 and the Building Regulations 2010 • Carbon Budget Order 2021 • Climate Change Act 2008 (Credit Limit) Order 2021 • Commons Registration Act 1965 • Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations 2017') • Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') • Control of Pollution Act 1974 • Compulsory Purchase Act 1965 • Compulsory Purchase (Vesting Declarations) Act 1981 • Countryside and Rights of Way Act 2000 • Equality Act 2010 • Electricity Act 1989 • The Environment Act 1995 • Environment Act 2021 • Environment (Amendment etc.) (EU Exit) Regulations 2019 • Environmental Damage (Prevention and Remediation) (England) Regulations 2015 • Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 • Environmental Permitting (England and Wales) Regulations 2016 • Environmental Protection Act 1990 • Environmental Noise (England) Regulations 2006 (as amended) • Environmental Permitting (England and Wales) Regulations 2016 • Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 • European Commission Circular Economy Package Environmental Protection Act 1990 • European Landscape Convention (ELC) (Council of Europe, 2016) Hedgerow Regulations 1997 • Flood Risk Regulations 2009 • Flood and Water Management Act 2010

Key relevant legislation (including any amendments)
• Groundwater (Water Framework Directive) (England) Direction 2016 • Hazardous Waste (England and Wales) Regulations 2005 • Health and Safety at Work etc. Act 1974 • Health and Social Care Act 2012 • The Hedgerows Regulations 1997 • Highways Act 1980 • Human Rights Act 1998 • The Infrastructure Planning (Decisions) Regulations 2010 • The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 • Land Drainage Act 1991 • Levelling Up and Regeneration Act 2023 • Localism Act 2011 • Marine and Coastal Access Act 2009 • National Parks and Access to the Countryside Act 1949 • National Parks and Access to the Countryside Act 2000 • Natural Environment and Rural Communities Act 2006 • Neighbourhood Planning Act 2017 • Noise Insulation Regulations 1975 • The Planning Act 2008 • Planning (Hazardous Substances) Act 1990 • Planning (Listed Buildings and Conservation Areas) Act 1990 • Pollution Prevention and Control Act 1999 • Protection of Badgers Act 1992 • Town and Country Planning Act 1990 • Waste (England and Wales) Regulations 2011 • Waste Electrical and Electronic Equipment Regulations 2013 • Water Abstraction and Impounding (Exemptions) Regulations 2017 • Water Act 2003 • Water Act 2014 • Water Framework Directive (2000/60/EC) • Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015 • Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 • Water Industry Act 1991 • Water Resources (Abstraction and Impounding) Regulations 2006 • Water Resources Act 1991 • Water Supply (Water Quality) Regulations 2018 • Wild Mammals (Protection) Act 1996 • Wildlife and Countryside Act 1981

NATIONAL POLICY AND GUIDANCE

Key relevant national policy and guidance
Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024) NPS EN-1 sets out the need for new nationally significant electricity infrastructure and the Critical National Priority for low carbon infrastructure, including solar photovoltaic electricity generating stations. It sets out general principles and generic impacts to be considered in

Key relevant national policy and guidance	
considering applications for energy Nationally Significant Infrastructure Projects (NSIPs). All other energy National Policy Statements sit under the policy framework that it provides.	
National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024) NPS EN-3 details assessment criteria specific to different types of renewable energy infrastructure, including energy from solar photovoltaic electricity generating stations. The assessment criteria for energy from solar photovoltaic generation proposals include impacts relating to site selection and design, climate change, biodiversity, landscape and visual, cultural heritage, traffic, and noise and vibration.	
National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024) NPS EN-5, amongst other things, provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.	
• Air Quality Strategy (2023) • British Energy Security Strategy (2022) • Clean Air Strategy (2019) • Clean Growth Strategy (2018) • Clean Power 2030 Action Plan (13 December 2024) • Energy White Paper: Powering our Net Zero Future (2020) • Environmental Improvement Plan (2023) • The Glasgow Pact (2021) • A Green Future: Our 25 Year Plan to Improve the Environment (2018) and Environmental Improvement Plan (2023) • Industrial Decarbonisation Strategy (2021) • The Kyoto Protocol (1997) • National Infrastructure Strategy (2020) • National Planning Policy Framework (2023) • Net Zero Strategy: Build Back Greener (2022) • Noise Policy Statement for England (2010) • The Paris Agreement (2015) • Powering Up Britain - Energy Security Plan (2023)	

LOCAL POLICY

Local authority	Key relevant local policy
Derbyshire County Council	• The saved policies contained within the Derby and Derbyshire Minerals Local Plan (adopted 2000 and amended in 2002) • The saved policies contained within the Derby and Derbyshire Waste Local Plan (adopted 2005) • The Landscape Character of Derbyshire (2014) • D2N2 Energy Strategy (2019-2030) • Derbyshire and Derby Minerals Local Plan (2022-2038) - Pre-submission Draft (2023) • Derbyshire Spatial Energy Study (2022)

Local authority	Key relevant local policy
	- Derbyshire County Council Climate Change Strategy: Achieving Net Zero (2021-2025) - Derby and Derbyshire Waste Local Plan (2005)
South Derbyshire District Council	- South Derbyshire Local Plan Part 1 (2016) - South Derbyshire Local Plan Part 2 (2017) - Local Green Spaces Plan (2020) - South Derbyshire Design Guide Supplementary Planning Document (2017) - Trees & Development Supplementary Planning Document (2004) - Planning & Lighting Design A Guide to Help Developers Design out Light Pollution Supplementary Planning Document (2017) - Cycling Strategy Supplementary Planning Document (2001) - South Derbyshire Issues and Options (October 2022) - Climate Emergency and Environmental Management (2019) - Climate and Environment Strategy (2021) - Climate and Environment Action Plan 2021-30 (2022)

ANNEX C: RECOMMENDED DEVELOPMENT CONSENT ORDER

202[] No.

INFRASTRUCTURE PLANNING

The Oaklands Farm Solar Park Order 20[]

Made - - - -

Coming into force

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008^(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The Examining Authority having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.

(c) S.I. 2010/103, amended by S.I. 2012/635.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017^(a) has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Oaklands Farm Solar Park Order 20[•] and comes into force on [•].

Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961^(b);

“the 1965 Act” means the Compulsory Purchase Act 1965^(c);

“the 1980 Act” means the Highways Act 1980^(d);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981^(e);

“the 1989 Act” means the Electricity Act 1989^(f);

“the 1990 Act” means the Town and Country Planning Act 1990^(g);

“the 1991 Act” means the New Roads and Street Works Act 1991^(h);

“the 2008 Act” means the Planning Act 2008⁽ⁱ⁾;

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protective test posts, field boundary markers, transformer rectifier kiosks, electrical cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“battery energy storage” means equipment used for the storage of electrical energy by battery;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order in accordance with article 34 (certification of plans, etc);

(a) S.I. 2017/572.

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1989 c.29.

(g) 1990 c.8.

(h) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(i) 2008 c.29.

“building” includes any structure or erection or any part of a building, structure or erection;

“cable circuit” means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

“CCTV” means a closed circuit television security system;

“commence” means to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than the site preparation works (except where stated to the contrary), and “commencement” and “commenced” must be construed accordingly;

“commissioning” means the process of testing all systems and components of Work No. 1 in order to ensure that they, and the authorised development as a whole, function in accordance with plant design specifications and the undertaker’s operational and safety requirement;

“construction compound” means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

“date of final commissioning” means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“design statement” means the document certified by the Secretary of State as the design statement for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“design parameters” means the principles and assessments set out in the environmental statement and table 4.2 of the environmental statement (design parameters used in the EIA);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“generating station” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);

“highway” and “highway authority” have the same meaning as in the 1980 Act^(a);

“important hedgerows plan” means the plan identifying hedgerows and important hedgerows and certified by the Secretary of State for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“inverter” means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

“land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“local planning authority” means the local planning authority (as defined in section 336 of the 1990 Act) for the area to which the provision relates;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development, provided these do not give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement, and “maintenance” and “maintaining” are to be construed accordingly;

“mounting structure” means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels;

(a) “highway” is defined in section 328 (1) for “highway authority” see Section 1.

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the land plans within which the authorised development may be carried out and land acquired or used;

“outline BSMP” means the plan certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“outline CTMP” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 34 (certification of plans, etc);

“outline decommissioning environmental management plan” means the document certified by the Secretary of State as the decommissioning environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“outline OEMP” means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“permissive path” means the new access track providing restricted public access within Work No. 10 as shown on the works plans;

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

“requirements” means those matters set out in Part 2 of Schedule 1 (requirements) and “requirement” means any one of those requirements;

“site preparation works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;
- (b) demolition of buildings and removal of plant and machinery;
- (c) above ground site preparation for temporary facilities for the use of contractors;
- (d) remedial work in respect of any contamination or other adverse ground conditions;
- (e) diversion and laying of services;
- (f) the provision of temporary means of enclosure and site security for construction;
- (g) the temporary display of site notices or advertisements; or
- (h) site clearance (including vegetation removal, demolition of existing buildings and structures);

“solar panel” means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounted structure;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(b);

(a) 1981 c.67.
(b) 2003 c.21.

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath or part of a street;
“streets, access and rights of way plan” means the plan certified as the streets, access and rights of way plan by the Secretary of State for the purposes of this Order in accordance with article 34 (certification of plans, etc);

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act(a);

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(b);

“substation” means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the Road Traffic Regulation Act 1984(c);

“transformer” means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

“undertaker” means Oaklands Farm Solar Limited (company number 12915335) whose registered office is at 22 Chancery Lane, London WC2A 1LS;

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Part 1 of Schedule 1 (authorised development);

“working day” means any day other a Saturday, Sunday or English bank or public holiday; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 34 (certification of plans, etc).

(2) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plan and streets, access and rights of way plan are to be taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) In this Order “includes” must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body’s successor bodies.

(6) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(7) All areas described in square metres in the book of reference are approximate.

(a) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c.7).

(b) 2006 c.46.

(c) 1984 c.27.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and must not exceed the design parameters assessed in the environmental statement.

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement.

Power to maintain the authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement.

Consent to transfer benefit of Order

5.—(1) Subject to the powers of this Order, the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; and
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (6), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (6) The date specified under paragraph (5)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notification.
- (7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.
- (8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—
- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
 - (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
 - (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Disapplication and modification of legislative provisions

6.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development—

- (a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws)(c) of the Land Drainage Act 1991; and
- (d) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(d).

(2) Regulation 6 of the Hedgerows Regulations 1997(e) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for the carrying out or maintenance of development which has been authorised by the Oaklands Farm Solar Park Order 20[•].”

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(f) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so

(a) 1991 c.59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(b) Section 31 was amended by S.I. 2013/755.

(c) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(d) 2017 c.20.

(e) 97/1160.

(f) 1990 c.43

as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a); or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) or of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 3

STREETS

Street works

8.—(1) The undertaker may for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of it; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as Part 3 of the 1991 Act.

(4) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

9.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 3 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(a) S.I. 2016/362.

- (b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 3 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places; and
- (c) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Access to works

10.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent private means of access to works) of Schedule 4 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary private means of access) of Schedule 4; and
- (c) with the prior approval of the local planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Temporary stopping up of public rights of way

11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, alter or divert any public rights of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the public rights of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the public rights of way.

(2) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public rights of way affected by the temporary stopping up, alteration or diversion of a street under this article if there would be otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the public rights of way specified in column (2) of Schedule 5 (public rights of way to be temporarily stopped up) to the extent specified, by reference to the streets, access and rights of way plan, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any public rights of way referred to in paragraph (4) without first consulting the street authority; and
- (b) any other street or public rights of way without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), or such longer period that is agreed in writing between the undertaker and that street authority, that street authority is deemed to have granted consent.

(8) In this article expressions used in this article and in the 1984 Act have the same meaning.

Agreements with street authorities

12.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, restriction, alteration or diversion of a street authorised by this Order;
- (c) the carrying out in the street of any of the works referred to in article 8(1) (street works) and article 10 (access to works); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

13.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column (2) of each table in each Part of Schedule 3 (alteration of streets) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction or decommissioning of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

(a) S.I. 2016/362

- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any or made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendments) Regulations 2011^(a) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;
- (b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated;
- (c) displayed a site notice containing the same information at each end of the length of road affected; and
- (d) either—
 - (i) in relation to the construction of the authorised development only, have first obtained approval under requirement 10 for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or
 - (ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 22 for a decommissioning traffic management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004^(b) (road traffic contraventions subject to civil enforcement).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may,

^(a) S.I. 2011/935.
^(b) 2004 c.18.

on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a), or such longer period that is agreed in writing between the undertaker and that person, that person is deemed to have granted consent or given approval, as the case may be.

Protective works to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(a) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2016/1154.

(4) For the purposes of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 38 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the construction, operation, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, operation, maintenance or use of the authorised development.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys for the purposes of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(b) in the case of a highway authority; or
- (b) under paragraph (4)(c) in the case of a street authority,

or such longer period that is agreed in writing between the undertaker and that authority, that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of article 19 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

18.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 21 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

19.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 17 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 20 (private rights) and article 28 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 10 of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

20.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenants by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 19 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 28 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether that title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

21.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted(a).

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 18

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 c.22.

(time limit for exercise of authority to acquire land compulsorily) of the Oaklands Farm Solar Park Order 20[•].”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 22(3) (acquisition of subsoil only) of the Oaklands Farm Solar Park Order 20[•], which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

22.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) or article 19 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

23.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
 - (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.
- (5) Where a person deriving title under the undertaker by whom the land in question was acquired—
- (a) is liable to pay compensation by virtue of paragraph (4); and
 - (b) fails to discharge that liability, the liability is enforceable against the undertaker.
- (6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 18 (time limit for exercise of authority to acquire land compulsorily) of the Oaklands Farm Solar Park Order 20[•]”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 18 (time limit for exercise of authority to acquire land compulsorily) of the Oaklands Farm Solar Park Order 20[•]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 22(3) (acquisition of subsoil only) of the Oaklands Farm Solar Park Order 20[•], which excludes the acquisition of subsoil only from this Schedule”; and

- (b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 15 (protective works to buildings), article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Oaklands Farm Solar Park Order 20[•].”.

Rights under or over streets

25.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised

development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

26.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act,

for the carrying out of site preparation works, construction and decommissioning of the authorised development;

- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works, on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (f) carry out mitigation works required pursuant to the requirements in Schedule 1.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a

notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Part 2 of Schedule 1 (requirements).

(6) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 6 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 22 (acquisition of subsoil only) or any part of the subsoil or air-space over that land under article 25 (rights under or over streets).

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining authorised development

27.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date on which a phase of the authorised development first exports electricity to the national electricity transmission network.

Statutory undertakers

28. Subject to the provisions of Schedule 10 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

29. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets) or article 11 (temporary stopping up of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the

undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

Compulsory acquisition of land – incorporation of the mineral code

31. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

PART 6

OPERATIONS

Operation of generating station

32.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for the purposes of the 1990 Act

33. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

(a) 2003 c.21.

Certification of plans, etc.

34.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

35.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c.30.

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent that it would be if served, given or supplied by means of a notice or document in printed form.

Felling or lopping of trees or removal of hedgerows

36.—(1) The undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

- (a) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree, or shrub;
- (b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards; and
- (c) pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development—

- (a) remove those parts of the important hedgerows within the Order limits and specified in Schedule 9 Part 1 (removal of important hedgerows); and
- (b) remove those parts of the hedgerows as are within the Order limits and specified in Schedule 9 Part 2 (removal of hedgerows).

(5) The undertaker may not pursuant to paragraph (1) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997^(a).

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree described in Schedule 13 (trees subject to tree preservation orders) within or overhanging land within the Order limits or cut back its roots, relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, operation or maintenance of the authorised development or any

(a) S.I. 1997/1160.

apparatus used in connection with the authorised development in accordance with the landscape and ecological management plan.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) The undertaker may not pursuant to paragraph (1) fell or lop a veteran or ancient tree without the prior approval of the local planning authority.

Arbitration

38.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules at Schedule 11 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Requirements, appeals, etc.

39.—(1) Where an application is made to, or a request is made of, a consenting authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, to be validly given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 3 (procedure for discharge of requirements) of Schedule 1 (authorised development) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 2 (requirements) of that Schedule.

Application of landlord and tenant law

40.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Protective provisions

41. Schedule 10 (protective provisions) has effect.

Funding

42.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee, the form and the amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and the amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 17 (compulsory acquisition of land);
- (b) article 19 (compulsory acquisition of rights);
- (c) article 20 (private rights);
- (d) article 22 (acquisition of subsoil only);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised development);
- (g) article 27 (temporary use of land for maintaining the authorised development); and
- (h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Inconsistent planning permissions

43.—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.

(2) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 2 (requirements) of Schedule 1.

(3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the

undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the local planning authority from granting, planning permission for development within the Order limits.

(5) Any development or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of section 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.

Signed by Authority of the Secretary of State for Energy Security and Net Zero

Address title

Date

Signature

Department

SCHEDULE 1

Article 2

PART 1

AUTHORISED DEVELOPMENT

1. In the administrative area of Derbyshire the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

2. The nationally significant infrastructure project authorised by this Order comprises a generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1 – a ground mounted solar photovoltaic generating station comprising—

- (a) solar panels fitted to mounting structures; and
- (b) balance of solar plant,

and associated development within the meaning of Section 115(2) (for which development consent may be granted) of the 2008 Act including—

Work No. 2 – a battery energy storage system compound comprising—

- (a) battery energy storage system units;
- (b) auxiliary transformers and associated bunding;
- (c) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
- (d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;
- (e) monitoring and control systems;
- (f) heating, ventilation and air conditioning systems;
- (g) underground electrical cabling;
- (h) fire safety infrastructure including water storage in tanks or other containers, and drainage and water containment features and associated infrastructure;
- (i) containers or similar structures to house control room, office and welfare facilities, and storage; and
- (j) security fencing, access gates and tracks, car parking and hardstanding areas,

Work No. 3 – works in connection with a new 132/33kV onsite substation comprising—

- (a) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
- (b) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;
- (c) monitoring and control systems for Work Nos. 1 to 3;
- (d) 132 kilovolt harmonic filter compound;
- (e) electrical cables;
- (f) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and
- (g) access gates and tracks, security palisade fencing and bunding,

Work No. 4 – works to trench and lay 132 kilovolt electrical cables connecting Work No. 3 to Work No. 5 including—

- (a) excavations to install trenching, including storage of excavated material;
- (b) provision of ducting or alternative means of conducting media;
- (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.); and
- (d) temporary construction compounds within the working area,

Work No. 4A – crossing Rosliston Road with electrical cabling including—

- (a) trenching through, or directionally drilling beneath, Rosliston Road;
- (b) preparation of temporary drilling launch and emergence pads;
- (c) associated civils investigations and works; and
- (d) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling process,

Work No. 4B – temporary stopping up of watercourses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses,

Work No. 4C – crossing Walton Road with electrical cabling including—

- (a) trenching through, or directionally drilling beneath, Walton Road;
- (b) preparation of temporary drilling launch and emergence pads;
- (c) associated civils investigations and works; and
- (d) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling processes,

Work No. 4D – crossing Coton Road with electrical cabling including—

- (a) trenching through, or directionally drilling beneath, Coton Road;
- (b) preparation of temporary drilling launch and emergence pads;
- (c) associated civils investigations and works; and
- (d) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling processes,

Work No. 5 – connection and installation works to the existing transmission network substation, including works to trench and lay 132 kilovolt electrical cables connecting to Work No. 4C including—

- (a) excavations to install trenching, including storage of excavated material;
- (b) provision of ducting or alternative means of conducting media;

- (c) permanent removal of trees and vegetation to provide construction laydown and working areas, and provide permanent operations and maintenance access to cabling;
- (d) laying down of access tracks, ramps, means of access; and
- (e) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including electricity distribution/transmission cabling, telecommunications etc.),

Work No. 5A –construction, operation, maintenance and decommissioning access for Work No. 5—

- (a) works to create permanent access from public highway, and install temporary or permanent traffic lights, visibility splays, banksmen or other measures to manage traffic;
- (b) works to widen and surface the public highway; and
- (c) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track and permanent operational track to be installed,

Work No. 5B – access to National Grid operational land for the construction, operation, maintenance and decommissioning for Work No. 5—

- (a) works to create permanent access from public highway, and install temporary or permanent traffic lights, visibility splays, banksmen or other measures to manage traffic;
- (b) works to widen and surface the public highway; and
- (c) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track and permanent operational track to be installed,

Work No. 6 – temporary construction and decommissioning of access tracks and compounds comprising—

- (a) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;
- (b) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;
- (c) storage of equipment and materials;
- (d) civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface;
- (e) creation of temporary construction access tracks, laydown and working areas;
- (f) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.);
- (g) temporary stopping up of watercourses for installation of culverts, drainage and other features to cross water courses;
- (h) areas of hardstanding;
- (i) car parking;
- (j) site and welfare offices, canteens and workshops;
- (k) area to store materials and equipment;
- (l) storage and waste skips;
- (m) area for download and turning;
- (n) security infrastructure;
- (o) site drainage and waste management infrastructure; and
- (p) electricity, water, waste water and telecommunications connections,

Work No. 7 – General works comprising—

- (a) trenching and laying electrical cables connecting Work Nos. 1 and 2 to Work No. 3;
- (b) fencing, gates, boundary treatment and other means of enclosure;

- (c) works for the provision of security and monitoring measures including CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure and perimeter fencing;
- (d) use of existing private tracks;
- (e) laying down of internal means of access;
- (f) earthworks and foundations;
- (g) drainage and irrigation infrastructure;
- (h) storage containers including welfare facilities; and
- (i) temporary construction compounds within the permanent working area,

Work No. 8 – works to facilitate access for all works excluding Work No. 5 comprising—

- (a) creation of accesses from or across the public highway;
- (b) visibility splays;
- (c) works to widen and surface the public highway; and
- (d) installation of temporary traffic lights or facilities for manned traffic management,

Work No. 9 – works for areas of habitat management comprising—

- (a) landscape and biodiversity enhancement measures; and
- (b) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure,

Work No. 10 – works to implement new permissive path through Order limits comprising—

- (a) temporary clear route of obstacles and laying down of permissive path; and
- (b) signage and information boards,

and in connection with the construction of Work Nos. 1-10 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

- (a) boundary treatments, including means of enclosure;
- (b) bunds, embankments, trenching and swales;
- (c) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (d) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (e) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to alter the position of such services and utilities connections;
- (f) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;
- (g) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), earthworks (including soil stripping and storage and site levelling) and excavations, the alteration of the position of services and utilities and works for the protection of buildings and land;
- (h) works to maintain and repair streets and access roads;
- (i) tunnelling, boring and drilling works; and
- (j) landscaping and biodiversity mitigation and enhancement measures including planting.

PART 2

REQUIREMENTS

Time limits

3. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

Phases of authorised development and date of final commissioning

4.—(1) The authorised development may not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Notice of the date of final commissioning with respect of the first phase of Work No. 1 to complete commissioning must be given to the local planning authority within 15 working days of the date of final commissioning for that phase.

Detailed design approval

5.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) programme for landscaping works;
- (j) fencing; and
- (k) the anti-reflective coating to be used on the solar modules in Work No. 1,

relating to that phase have been submitted to and approved in writing by the local planning authority.

(2) The details submitted must accord with—

- (a) the site location plan;
- (b) the works plan;
- (c) the design parameters; and
- (d) the outline design principles as set out in the design statement, or such variation thereof as may be approved by the local planning authority pursuant to requirement 23.

(3) The authorised development must be carried out in accordance with the approved details.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 8 (landscape and ecological management plan), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the local planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Arboricultural method statement (AMS)

7. No phase of the authorised development may commence until an AMS for that phase has been submitted to and approved by the local planning authority. Any AMS submitted for approval must be in accordance with the Tree Retention/Removal Plan and Tree Protection Plan contained within appendix 6.14 of the environmental statement and any approved AMS must be adhered to for the duration of the works in the phase of the authorised development to which the AMS relates.

Landscape and ecological management plan (LEMP)

8.—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England.

(2) The LEMP must include—

- (a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;
- (b) details of habitat creation, including new native hedgerow planting adjacent to the proposed security fencing along the line of the existing footpath, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;
- (c) details of ongoing management including seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;
- (d) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development;
- (e) details of how the plan will secure a minimum of 20% biodiversity net gain in habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and a minimum of 10% biodiversity net gain in river units during the operation of the authorised development, and the metric that has been used to calculate that those percentages will be reached; and
- (f) landscaping details.

(3) The LEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(4) No site preparation works are to be commenced until a LEMP covering the site preparation works which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England. Such LEMP must be implemented as approved.

Construction environmental management plans (CEMP)

9.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the local planning authority in consultation with the Environment Agency and Natural England. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

(2) The CEMP for each phase of the authorised development must provide details of—

- (a) community liaison;
- (b) complaints procedures;

- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);
- (d) a soil management plan;
- (e) site waste and materials management measures;
- (f) pollution control measures to prevent the introduction of any hazardous substances;
- (g) a water quality and silt management plan;
- (h) security measures and use of artificial lighting;
- (i) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction;
- (j) details of out of hours working procedures;
- (k) details of measures to be adopted including pre-construction surveys to protect species defined as a European Protected Species in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017^(a) or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981^(b) applies;
- (l) environmental monitoring plan;
- (m) flood risk management measures including surface water management; and
- (n) a habitats constraints plan.

(3) Pre-commencement establishment of construction compounds, preparation of land for construction, construction area fencing and installation of site drainage must only take place in accordance with a specific plan for such works which accords with the outline CEMP and which has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(4) No site preparation works are to be commenced until a soil management plan covering the site preparation works which accords with the outline CEMP has been submitted to and approved by the local planning authority. Such soil management plan must be implemented as approved.

(5) For the purposes of requirement 9(1) “commence” includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures).

Construction traffic management plan (CTMP)

10.—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must include details of—

- (a) associated traffic movements; including delivery vehicles and staff construction/vehicle movements;
- (b) traffic management requirements on the adjoining public highway; and
- (c) a condition survey for any road which will be affected by undertaking that phase of the authorised development and a further condition survey following that phase of the construction works. In the event that any defects are identified in that condition survey that are directly attributable to that phase of the construction works of the authorised development, details of how those defects are to be remediated by the undertaker.

(3) The CTMP must be implemented as approved.

^(a) S.I. 2017/1012.

^(b) 1981 c.69.

(4) For the purposes of requirement 10(1) “commence” includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures).

Operational environmental management plan (OEMP)

11.—(1) No phase of the authorised development may commence until an OEMP which accords with the outline OEMP for that phase has been submitted to and approved by the local planning authority.

(2) The OEMP must include details of—

- (a) nuisance management including measures to avoid or minimise the impacts of operational works (covering dust, noise and vibration);
- (b) associated traffic movements; including delivery vehicles and staff operation/vehicle movements;
- (c) detailed operational drainage design;
- (d) measures for the replacement of damaged solar panels; and
- (e) a soil management plan.

(3) The OEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Battery safety management plan (BSMP)

12.—(1) Prior to the commencement of Work No. 2 a BSMP must be submitted to and approved by the local planning authority.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) In the event that the submitted BSMP proposes changes to the outline BSMP the local planning authority must not approve the BSMP until it has consulted with Derbyshire Fire and Rescue Service.

(4) The BSMP must be implemented as approved and maintained throughout the construction, maintenance, operation and decommissioning of the authorised development.

Land contamination

13.—(1) No phase of the authorised development, and no part of the site preparation works for that phase comprising remedial work in respect of any contamination, is to be commenced until a contamination risk assessment in respect of soils has been produced which is to include details of—

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination;
- (c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works; and
- (d) appropriate remediation strategies and mitigation measures to address any contaminated material that may be found at any time when carrying out the authorised development, which was not previously identified in the environmental statement,

and has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the local planning authority in consultation with the Environment Agency.

(4) Remedial measures must be carried out in accordance with the approved scheme, and a verification report following completion of those remedial measures must be submitted to the local planning authority.

Public rights of way diversions

14.—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that phase has been submitted to and approved by the local planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed;
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed;
- (c) personnel responsible for safeguarding users of the Cross Britain Way and public safety;
- (d) the locations of any public rights of way to be temporarily closed;
- (e) the hours of proposed works effecting public rights of way; and
- (f) measures to safeguard users of public rights of way during construction of the authorised development.

(3) The plan must be implemented as approved unless otherwise agreed with the local planning authority in consultation with the highway authority.

Operational noise

15.—(1) No phase of the authorised development is to commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the outline operational environmental management plan are to be complied with for that phase has been submitted to and approved by the local planning authority.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

16.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).

(2) For the purposes of requirement 16(1), “commence” includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) Any approved permanent fencing must be completed before completion of the authorised development.

(6) No site preparation works are to be commenced until written details of all proposed temporary fences, walls or other means of enclosure for the site preparation works have been submitted to and approved by the local planning authority.

(7) Any proposed permanent or temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details.

Surface and foul water drainage

17.—(1) No phase of the authorised development is to be commenced until written details of the surface and foul water drainage system for that phase have been submitted to and approved by the local planning authority.

(2) The details submitted under sub-paragraph (1) must be in accordance with and include the plans and strategies referred to in the flood risk assessment and outline drainage strategy forming appendix 8.1 of the environmental statement.

(3) The surface and foul water drainage system for the relevant part of the authorised development must be implemented in accordance with the approved details and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Archaeology

18.—(1) No phase within the authorised development, and no part of the site preparation works for that phase, is to be commenced until an archaeological written scheme of investigation (WSI) for that phase has been submitted to and approved by the local planning authority in consultation with the county archaeologist.

(2) Any archaeological works or programme of archaeological investigation carried out under the approved WSI must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute, and the nominated organisation and its relevant specialists will be identified and agreed within the WSI.

(3) Any archaeological works must be carried out in accordance with the approved WSI, including post-excavation analysis, reporting, publication and archiving.

Permissive path

19.—(1) Where a phase of the authorised development includes a permissive path, the permissive path must be provided and open to the public within 12 months of final commissioning in respect of that phase.

(2) No phase of the authorised development which includes a permissive path may commence until written details of the route and maintenance provisions have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).

(3) The permissive path must be maintained and access by the public permitted for 264 days a year (subject to closures for maintenance or emergencies) until commencement of decommissioning of the authorised development pursuant to requirement 22 (decommissioning and restoration).

Construction hours

20.—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

- (a) 07:00 to 19:00 Monday to Friday; and
- (b) 07:00 to 13:30 on Saturday.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) emergency works; and

- (b) works which do not cause noise that is audible at the boundary of the Order limits and do not give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement.
- (3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the local planning authority within 72 hours of their commencement.
- (4) Save for emergency works, works under sub-paragraph (2) must be carried out in accordance with the approved scheme.

Protected species

21.—(1) No phase of the authorised development may commence until protected species surveys have been carried out by a suitably qualified person. The surveys shall inform the mitigation measures required for the protection of such species, which shall be incorporated into a Species Protection Plan that shall include a scheme of protection and mitigation.

(2) The Species Protection Plan must be agreed with the local planning authority in consultation with Natural England and implemented as approved.

(3) In this requirement, “protected species” refers to any species defined as a European Protected Species in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017^(a) or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981^(b) applies.

Decommissioning and restoration

22.—(1) Within 3 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, or no later than 6 months before the 40th anniversary of the date of final commissioning of the first phase of Work No. 1 as notified by the undertaker pursuant to requirement 4 (phasing of the authorised development and date of final commissioning) the undertaker must submit to the local planning authority for that part (or both local planning authorities where that part falls within the administrative areas of both South Derbyshire District Council and Derbyshire County Council) for approval a decommissioning environmental management plan and a decommissioning traffic management plan for that part. Decommissioning will commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1.

(2) The undertaker must provide notice to the local planning authority once any part of the authorised development stops generating electricity for more than 6 months. If, by expiry of the period of 12 continuous months beginning with the date of the notice, and unless otherwise agreed in writing by the undertaker and the relevant local planning authority, that part of the authorised development does not re-generate electricity, then within 3 months the undertaker must submit to the local planning authority for that part (or both local planning authorities where that part falls within the administrative areas of both South Derbyshire District Council and Derbyshire County Council) for approval a decommissioning environmental management plan and a decommissioning traffic management plan for that part.

(3) The plans submitted and approved must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan.

(4) The decommissioning environmental management plan submitted and approved must include:

- (a) a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials; and
- (b) details of measures to be adopted including pre-decommissioning surveys to protect species defined as a European Protected Species in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and

^(a) S.I. 2017/1012.

^(b) 1981 c.69.

Species Regulations 2017^(a) or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981^(b) applies.

(5) No decommissioning works must be carried out until the local planning authority or both relevant local planning authorities (as applicable) has/have approved the plans submitted in relation to such works in consultation with the Environment Agency and Natural England.

(6) The plans must be implemented as approved, and decommissioning of that part of the authorised development to which a plan relates must be completed within 2 years of such approval, or such other time period as is agreed in writing between the undertaker and the local planning authority.

(7) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Skills, supply chain and employment

23.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the local planning authority.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Requirement for written approval

24. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval, agreement or confirmation must be given in writing.

Amendments to approved details

25.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially more adverse environmental effects compared to those identified in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

Consultation

26. Where the local planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

^(a) S.I. 2017/1012.

^(b) 1981 c.69.

Decommissioning fund

27.—(1) No phase of the authorised development may commence until a decommissioning fund or other form of financial guarantee that secures the cost of performance of all decommissioning obligations under Requirement 22 of this Order has been submitted to and approved by the local planning authority.

(2) The value of the decommissioning fund or other form of financial guarantee shall be agreed between the undertaker and the local planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning obligations referred to in Requirement 22 of this Order.

(3) The decommissioning fund or other form of financial guarantee shall be maintained in favour of the local planning authority until the date of completion of the works to be undertaken in accordance with Requirement 22 of this Order.

(4) The value of the decommissioning fund or other form of financial guarantee shall be reviewed by agreement between the Undertaker and the local planning authority by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning obligations and best practice prevailing at the time of each review.

PART 3

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

28. In this Part of this Schedule, “relevant authority” means—

- (a) any body, other than the Secretary of State, responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as “the 1974 Act”(a).

Applications made under requirements

29.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the relevant authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the relevant authority;
- (b) where further information is requested under paragraph 30, the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the relevant authority; or
- (c) such longer period that is agreed in writing between the undertaker and the relevant authority.

(a) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), Schedule 15 to the Environmental Protection Act 1990 (c.43) and Schedule 24 to the Environment Act 1995 (c.25).

(2) In determining any application made to the relevant authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, the relevant authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the relevant authority must provide its reasons for that decision with the notice of the decision.

(3) In the event the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information regarding requirements

30.—(1) In relation to any application referred to in paragraph 29, the relevant authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the relevant authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 2 of this Schedule specifies that consultation with a consultee is required, the relevant authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

31.—(1) Where a person (“the applicant”) makes an application to a relevant authority, the applicant may appeal to the Secretary of State in the event that—

- (a) the relevant authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement contained in Part 2 of this Schedule; or
 - (ii) a document referred to in any requirement contained in Part 2 of this Schedule;
- (b) the relevant authority grants such an application subject to conditions;
- (c) the relevant authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
- (d) on receipt of a request for further information pursuant to paragraph 30 of this Schedule, the applicant considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (e) on receipt of any further information requested, the relevant authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 29(1), giving rise to the appeal referred to in sub-paragraph (1);

- (b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any consultee specified under the relevant requirement contained in Part 2 of this Schedule;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;
- (d) the relevant authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
- (e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 2 of this Schedule as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing, but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the relevant authority or the applicant, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

Fees

32.—(1) Where an application is made to the local planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the local planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the local planning authority failing to determine the application within ten weeks from the relevant date in paragraph 29(1) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the local planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 29(1) of this Schedule.

SCHEDULE 2

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works</i>	<i>(3) Description of works</i>
Derbyshire	Walton Road	Cable works at the point marked SW-B1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road	Cable works at the point marked SW-C1 on sheet 2 of the streets, access and rights of way plan
Derbyshire	Coton Road	Cable works at the point marked SW-D1 on sheets 3 and 4 of the streets, access and rights of way plan

(a) S.I., amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314, S.I. 2019/1154 and S.I. 2023/1197.

SCHEDULE 3

ALTERATION OF STREETS

Article 9

PART 1

PERMANENT ALTERATION TO LAYOUT

<i>(1) Area</i>	<i>(2) Street Subject to alteration</i>	<i>(3) Extent of alterations</i>
Derbyshire	Walton Road	Works for provision of a permanent private means of access (Drakelow Access) at the point marked AS-B1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road (south)	Works for the provision of a permanent private means of access (Rosliston emergency access) at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent private means of access (Southern Crossroad) at the point marked AS-D1 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent private means of access (Southern Crossroad) at the point marked AS-D2 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Vegetation clearance for the creation of visibility splays at the point marked AS-D3 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Vegetation clearance for the creation of visibility splays at the point marked AS-D4 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent means of access at the point marked AS-F1 on sheet 4 of the streets, access and rights of way plan

PART 2

TEMPORARY ALTERATION TO LAYOUT

<i>(1) Area</i>	<i>(2) Street subject to alteration</i>	<i>(3) Extent of alterations</i>

Derbyshire	Walton Road	Works for the provision of a temporary means of access (Park Farm Eastern Access) at the point marked AS-A1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Track at Park Farm	Works for the provision of a temporary means of access at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan
Derbyshire	Walton Road	Works for the provision of a temporary means of access at the point marked AS-A3 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road (north)	Works for the provision of a temporary means of access at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan

SCHEDULE 4 ACCESS TO WORKS

Article 10

PART 1

PERMANENT PRIVATE MEANS OF ACCESS TO WORKS

<i>(1) Area</i>	<i>(2) Reference as shown on the streets, access and rights of way plan</i>	<i>(3) Description of access</i>
Derbyshire	AC-D1 to AC-D2	Improved permanent construction and decommissioning access, as shown on sheet 4 of the streets, access and rights of way plan
Derbyshire	AC-D3 to AC-D4	Improved permanent construction and decommissioning access, as shown on sheet 4 of the streets, access and rights of way plan

PART 2

TEMPORARY PRIVATE MEANS OF ACCESS

<i>(1) Area</i>	<i>(2) Reference as shown on the streets, access and rights of way plan</i>	<i>(3) Description of access</i>
Derbyshire	AC-A1 to AC-A2	New temporary construction and decommissioning access,

		as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-A3 to AC-A4	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-A5 to AC-A6	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-C1 to AC-C2	New temporary construction and decommissioning access, as shown on sheet 2 of the streets, access and rights of way plan
Derbyshire	AC-C3 to AC-C4	New temporary construction and decommissioning access, and permanent emergency access, as shown on sheet 2 of the streets, access and rights of way plan
Derbyshire	AS-A2	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan

SCHEDULE 5

Article 11

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Derbyshire	SD48/9/1	499m as shown on sheets 2 and 3 of the streets, access and rights of way plan

SCHEDULE 6

Article 19

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1. In this Schedule—

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and road widening and to remove impediments (including vegetation) to such access;

- (b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“cable rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

“substation connection rights” means rights over land to—

- (a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid Drakelow substation;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;
- (c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (d) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping measures.

<i>(1) Plot numbers(s)</i>	<i>(2) Work No.</i>	<i>(3) Purpose for which rights may be acquired and restrictive covenants imposed</i>
01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019, 01-020, 01-021, 01-022, 01-023, 01-024, 01-025, 01-026, 01-027, 01-028, 01-029, 01-030, 02-034, 02-035, 02-038, 02-039, 02-040, 02-041, 02-042, 02-044, 02-046, 02-049	6	Access rights
02-043, 02-047, 02-050, 03-058, 03-059 01-015, 01-019, 01-020, 01-021, 01-022, 02-040, 02-041,	7	Access rights and cable rights

02-042, 02-043, 02-044, 02-046, 02-047, 02-049, 02-050, 03-059		
01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019, 01-020, 01-024, 01-028, 01-030, 02-031, 02-032, 02-033, 02-035, 02-036, 02-037, 02-038, 02-040, 02-041, 02-042, 02-043, 02-046, 02-047	8	Access rights
02-040, 02-041, 02-042, 02-043, 02-046, 02-047	4	Cable rights
01-030, 02-031, 02-032, 02-033, 02-035, 02-038, 02-040, 02-043, 02-046, 02-047	4a	Cable rights
01-012, 01-013, 01-014	4b	Cable rights
01-001, 01-002, 01-003, 01-004, 01-007, 01-008, 01-009, 01-010, 01-011	4c	Cable rights
01-004, 01-010, 01-011	5	Substation connection rights
01-001, 01-002, 01-004, 01-007, 01-008, 01-009	5a, 5b	Access rights

SCHEDULE 7

Article 19

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5) If—

(a) 1973 c.26.

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the Oaklands Farm Solar Park Order 20[•])
 - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 to the Oaklands Farm Solar Park Order 20[•]) to acquire an interest in the land; and
 - (c) the acquiring authority enters on and takes possession of that land
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 17 (compulsory acquisition of land) and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965)), applies to the compulsory acquisition of a right by the creation of a new right under article 19 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4 are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

6. For section 7 of the 1965 Act (measure of compensation in the case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

7. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

8. Section 11 (powers of entry)(a) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 4 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c.22) and S.I. 2009/1307.

compulsory acquisition under article 17 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(a), 11B (counter-notice requiring possession to be taken on specified date)(b), 12 (penalty for unauthorised entry)(c) and 13 (refusal to give possession to acquiring authority)(d) of the 1965 Act is modified correspondingly.

9. Section 20 (tenants at will, etc.)(e) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

10. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 24(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

11. For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 21 (application of the 1981 Act) of the Oaklands Farm Solar Park Order 20[•] in respect of the land to which the notice to treat relates.

(2) But see article 22(3) (acquisition of subsoil only) Oaklands Farm Solar Park Order 20[•] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
(b) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
(c) Section 12 was amended by paragraph (4) of Schedule 16 to the Housing and Planning Act 2016 (c.22).
(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c.15).
(e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—
 - (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
 - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
11. In making its determination, the Upper Tribunal must take into account—
 - (a) the effect of the acquisition of the right or the imposition of the covenant,
 - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
 - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.
13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.
- 14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
 - (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
 - (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot reference number shown on the Land Plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>
01-021	Works for the provision of a temporary means of access at the point marked AS-A3 on sheet 1 of the streets, access and rights of way plan and improved temporary construction and decommissioning access between the points marked AC-A5 to AC-A6 shown on sheet 1 of the streets, access and rights of way plan
03-058	Works pursuant to Article 9 (power to alter layout, etc., of streets) and Article 10 (access to works) at the plot marked 03-058 on sheet 3 of the land plans

SCHEDULE 9

Article 36

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

<i>(1) Plan</i>	<i>(2) Important Hedgerow</i>	<i>(3) Work</i>
Figure 2.09b of the Important Hedgerows Plan	H25	Removal of 5m of hedgerow H25 at the north of field F1 within the underground cable corridor
Figure 2.09b of the Important Hedgerows Plan	H28	Removal of 5m of hedgerow H28 along Rosliston Road for the temporary access track
Figure 2.09b of the Important Hedgerows Plan	H89 north	Removal of 5m of hedgerow H28 along Rosliston Road for the temporary access track
Figure 2.09b of the Important Hedgerows Plan	H87	Removal of 5m of hedgerow H87 within field O24 for the underground cable corridor
Figure 2.09c of the Important Hedgerows Plan	H66	Removal of 10 linear meters of hedgerow in the north east of field O19 may be necessary to widen the existing field access
Figure 2.09c of the Important Hedgerows Plan	H45	Removal of 5m section of hedgerow H45 to the east of field O12 within the underground cable corridor
Figure 2.09c of the Important Hedgerows Plan	H44 east	Removal of 6m of hedgerow for a construction access track
Figure 2.09c of the Important Hedgerows Plan	H70	Removal of 3.5m section of hedgerow H70 to the south of field O9, for a temporary access track

Figure 2.09c of the Important Hedgerows Plan	H89 south	Removal of 3.5m section of hedgerow H89 south in the south west of field O9, to accommodate a minor track realignment
Figure 2.09c of the Important Hedgerows Plan	H79	Removal of 3.5m Existing gap in hedgerow to be utilised with some widening being required
Figure 2.09c of the Important Hedgerows Plan	H53	Removal of 3.5m Existing gap in hedgerow to be utilised with some widening being required
Figure 2.09c of the Important Hedgerows Plan	H41 north	Removal of 60m of H41 along Coton Road within the required visibility splay
Figure 2.09c of the Important Hedgerows Plan	H50 north	Removal of 120m of H50 along Coton Road within the required visibility splay

PART 2

REMOVAL OF HEDGEROWS

<i>(1) Plan</i>	<i>(2) Hedgerow</i>	<i>(3) Work</i>
Figure 2.09a of the Important Hedgerows Plan	H2	Removal of 3m of hedgerow H2 where the underground cable route turns north to cross Walton Road

SCHEDULE 10

Article 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless specific provision to the contrary is made in this Schedule 10 or otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(a); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; “in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(b);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(c); or
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus may not be removed under this Part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it may not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(a) 1991 c.56.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(c) 1991 c.56.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration) and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the

purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

11.—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 5 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to 11(3)b).

Interpretation

12. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which

constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity Transmission Plc” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 17(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 17(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

13. Except for paragraphs 14 (*apparatus in stopped up streets*), 19 (*retained apparatus: protection*), 120 (*expenses*) and 21 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in stopped up streets

14. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of public rights of way), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

15. The undertaker, in the case of the powers conferred by article 15 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

Acquisition of land

16.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as otherwise agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 19 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

17.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3),

secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 18(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

18.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (1), if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 25 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

19.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;

- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing-

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved

pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 11 to 13 and 16 to 18 apply as if the removal of the apparatus had been required by the undertaker under paragraph 17(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

20.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 17(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 25 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Only costs, charges and expenses actually incurred by National Grid Electricity Transmission Plc may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to National Grid Electricity Transmission Plc any anticipated charges, costs and expenses.

Indemnity

21.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 21; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker is not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured

acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 21(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

22. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

23.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 17(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 19, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action or exercise of powers by the undertaker, it must not be unreasonably withheld or delayed.

Access

24. If in consequence of the agreement reached in accordance with paragraph 16(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

25. Save for differences or disputes arising under paragraph 17(2), 17(4) 18(1) and 19 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 38 (arbitration).

Notices

26. Notwithstanding article 35 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 19 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

27. For the protection of NGED the following provisions, unless otherwise agreed in writing between the undertaker and NGED, have effect.

Interpretation

28. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“undertaker” means Oaklands Farm Solar Limited (Company No. 12915335) or such other person as has the benefit of the Order;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

29. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

30. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

Removal of apparatus

31.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works comprised in the authorised development in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 36.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 36, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 36; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

32.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as shall be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 36.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

33.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 31, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be

notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph (2).

(7) Nothing in this paragraph 33 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

34.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses reasonably and actually incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

35.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably

necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably and properly incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

36.—(1) Article 38 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 38.

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

37. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

38. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction and use period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy must include (but without limitation):

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause;
- (c) a waiver of subrogation in favour of Cadent; and
- (d) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 42(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 42(2) or otherwise; or
- (c) include any of the activities that are referred to in T/SP/SSW/22 Cadent’s policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22

On Street apparatus

39.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 40, 45, 46 and 47; and

(b) where sub-paragraph (2) applies, paragraphs 42 and 43.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over the Protective Provisions in Part 1 of this Schedule of the Order which do not apply to Cadent.

Apparatus of Cadent in stopped up public rights of way

40.—(1) Notwithstanding the temporary alteration, diversion or restriction of use of any public right of way under the powers of article 11 (temporary stopping up of public rights of way), Cadent will be at liberty at all times to take all reasonably necessary access across any such public right of way and to execute and execute and do all such works and things in, upon or under any such public right of way as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that public right of way.

Acquisition of land

41.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 44 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where the undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 42 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

42.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 41, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed (which must be approved by Cadent in accordance with the standard SLA) and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 43(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed as soon as reasonably practicable save that this obligation must not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

43.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent

(in Cadent's reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 50 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

44.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required) such approval to not be unreasonably withheld or delayed and not less than 10 days before the commencement of any specified works.

(4) Any approval of Cadent given under sub-paragraph (3) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6).

(5) For the purposes of sub-paragraph (3) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would:

- (a) cause damage to its apparatus; or
- (b) prevent access to its apparatus at any time unless otherwise agreed in writing.

(6) In relation to any work to which sub-paragraphs (1) or (2) apply, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where Cadent reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any

measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 37 to 39 and 41 to 43 apply as if the removal of the apparatus had been required by the undertaker under paragraph 42(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 45.

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(14) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22" and HSE's "HS(~G)47 Avoiding Danger from underground services and any difference or dispute arising between the undertaker and Cadent in that regard shall not be determined by arbitration in accordance with article 39 (arbitration).

Expenses

45.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 28 calendar days of receipt of an itemised invoice all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 42(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 44(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 50 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where Cadent demand payment for those charges, costs and expenses reasonably anticipated pursuant to sub-paragraph (1), Cadent must provide an itemised invoice or claim detailing all charges, costs and expenses reasonably anticipated within the following three months. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent who shall hold the sum of those charges, costs and expenses in a bank account identified for those works. To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent together with any accrued interest.

Indemnity

46.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or

in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply, as evidenced by Cadent to the undertaker no less than 28 days prior to the issuing of any invoice or claim from Cadent to the undertaker; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1) that is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (c) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 5 (consent to transfer benefit of the Order) of the Order.

(4) Cadent must:

- (a) give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following condition is satisfied:

- (a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 46(5) of this Part of this Schedule, nothing in this Part of this Schedule prevents Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

47. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

48.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 42(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 44, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

49. If in consequence of any agreement reached in accordance with paragraph 41(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

50. Save for differences or disputes arising under sub-paragraphs 42(2) and 42(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 38 (arbitration).

Notices

51. Notwithstanding article 35 (service of notices) any plans and written notices submitted to Cadent by the undertaker pursuant to the provisions of this Part of this Schedule must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to [REDACTED]@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

52. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between the undertaker and SSW.

53. The provisions of Part 1 of Schedule 10 (Protective Provisions for the Protection for Electricity, Gas, Water and Sewerage Undertakers), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

54. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and SSW are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

55. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable SSW to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (b) any drain or works vested in SSW under the Water Industry Act 1991; and
- (c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plans” includes sections, drawings, specifications and method statements; and

“SSW” means South Staffordshire Water Plc and includes its successors in function or any successor in respect of any land interests or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

56. Regardless of any provision in this Order or anything shown on the deposited plans, the undertaker must not acquire any apparatus otherwise than by written agreement.

Alternative apparatus

57.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of SSW to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of SSW confirmation of which must not be unreasonably withheld or delayed.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SSW written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW must (acting reasonably) propose an alternative position for the alternative apparatus and must give the undertaker written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 38 (arbitration).

(4) Any alternative apparatus to be constructed in the undertaker's land under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed in writing between SSW and the undertaker such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to the undertaker), or in default of such agreement settled by arbitration in accordance with article 38 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, the undertaker must, subject to sub-paragraph (5), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus and SSW is entitled to recover its reasonable and proper costs incurred in securing such necessary facilities and rights from the undertaker subject to paragraph 58(3) below.

(6) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow the undertaker to remove any apparatus as required to be removed by the undertaker (acting reasonably) under the provisions of this Part of this Schedule PROVIDED THAT to the extent that any reasonable and proper costs are incurred by SSW as a result of the removal of such apparatus then such reasonable and proper costs are recoverable in full from the undertaker.

(8) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to SSW that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by SSW, must be executed by the undertaker without unreasonable delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 6 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 6 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus including existing apparatus and apparatus to be retained;
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and
- (f) any maintenance required.

58.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to SSW facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and SSW or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 6 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the existing apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to SSW than the facilities and rights enjoyed by SSW in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

59.—(1) Not less than 42 days before starting the execution of any of the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 57(2), the undertaker must submit to SSW a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 52 to 58 apply as if the removal of the apparatus had been required by the undertaker under paragraph 56(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SSW notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

60.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to SSW the actual reasonable and properly incurred costs and expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised development.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSW any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 38 (arbitration).

(7) For the purposes of sub-paragraph (1)—

(a) SSW shall wherever it is reasonably practicable give the undertaker reasonable notice of three months of any known and quantifiable costs to be incurred under paragraph 60(1) provided always that this shall not apply where any works are required as a matter of urgency in connection with SSW exercising its statutory functions; and

(b) in respect of any third party claim for compensation involving SSW apparatus, no settlement or compromise is to be made without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) and in the event of any dispute this is to be settled by arbitration in accordance with article 38 (arbitration).

(8) Only costs, charges and expenses actually incurred by SSW may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to SSW any anticipated charges, costs and expenses.

Damage to apparatus: costs, losses, etc.

61.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of SSW or there is any interruption in any service provided or in the supply of any goods, by SSW the undertaker must—

- (a) bear and pay the costs reasonably incurred by SSW in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SSW for any other expenses, loss, damages, penalty or costs incurred by SSW, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SSW, its officers, servants, contractors or agents.

(3) SSW must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 38 (arbitration).

(4) Only costs, charges and expenses actually incurred by SSW may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to SSW any anticipated charges, costs and expenses.

Enactments and agreements

62. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and SSW in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Payments

63.—(1) In the event that any payment is not made by the undertaker to SSW within thirty (30) working days of the due date (which in the case of any costs, charges and expenses to be incurred by SSW shall be the date on which the undertaker is notified of such costs, charges and expenses actually being incurred), then SSW shall be entitled to interest on the outstanding balance (excluding any payments made by the undertaker to SSW on account) at a rate of 4% above the base rate for the time being of Barclays Bank Plc, from the due date until the date payment is actually made.

(2) All payments made by the undertaker under this Part of this Schedule shall be made by direct bank transfer to an account in England nominated in advance by SSW for that purpose.

PART 6

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

64. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

65. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

(a) 2003 c.21.

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

66. The exercise of the powers of article 28 (statutory undertakers) are subject to Part 10 of Schedule 3A (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

67.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 38 (arbitration).

68. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

69. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 7

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

70. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

71. In this Part—

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991;

“drainage work” means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(a);

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity, or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

72.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 74.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

73. Without limiting paragraph 72, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or

(a) 1991 c.59, section 72(1).

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,
by reason of any specified work.

74.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 73, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

75.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the order limits held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

76. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

77. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

78.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker (such agreement not to be unreasonably withheld or delayed).

79. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

80. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 38 (arbitration).

SCHEDULE 11

ARBITRATION RULES

Article 38

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 38 (arbitration) of this Order.

(2) The arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant must provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, the amount of its claim and/or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant’s statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations of the objections.

(4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

- (a) a written statement responding to the Respondent’s submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent’s submissions;
- (c) any expert report in response to the Respondent’s submissions;

- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing in relation to the expert(s)—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified by these Rules in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 12

Articles 2 and 34

DOCUMENTS TO BE CERTIFIED

<i>Documents</i>	<i>Document Reference</i>	<i>Examination Library Reference</i>	<i>Date</i>
Book of reference	EN010122/D8/4.3	REP8-012	December 2024
Land plans	EN010122/D6/2.2	REP6-003	November 2024
Works plans	EN010122/S51/2.3	AS-003	May 2024
Streets, access and rights of way plan	EN010122/D4/2.4	REP4-003	October 2024

Important hedgerows plan	EN010122/APP/2.9	APP-014	January 2024
Design statement	EN010122/D6/7.2	REP6-035	November 2024
Environmental Statement Contents Chapter 1 Appendices 1.1 – 1.2 Figures 1.1 – 1.5 Chapter 2 Appendices 2.1 – 2.3 Figure 2.1 Chapter 3 Appendices 3.1a – 3.1b Figures 3.1 – 3.5 Appendices 4.1 – 4.2 Appendices 4.6 – 4.8 Figures 4.1a – 4.15c Appendices 5.1 – 5.4 Figures 5.1 – 5.21a-d Chapter 6 Appendices 6.1 – 6.13 Appendix 6.15 Figures 6.1 – 6.4 Appendix 7.2 Figure 7.1 Chapter 8 Figures 8.1 – 8.3 Chapter 9 Appendix 9.1 Figure 9.1 Chapter 10 Appendices 10.2 – 10.7 Appendices 11.2 – 11.3 Figures 11.1 – 11.3 Chapter 12 Appendix 12.1 Figures 12.1 – 12.2 Chapter 15 Appendices 15.2 – 15.5 Figure 15.1 Chapter 16 Appendices 16.1 – 16.2 Figures 16.1a – 16.1b Chapter 17 Appendix 17.1	EN010122/APP/6.1	APP-071, APP-073 – APP-075, APP-077 – APP-089, APP-093 – APP-095, APP-097 – APP-103, APP-107 – APP-132, APP-134 – APP-136, APP-138, APP-140, APP-143 – APP-147, APP-149 – APP-155, APP-158 – APP-159, APP-161 – APP-164, APP-168 – APP-169, APP-171 – APP-180.	January 2024

Environmental Statement - Chapter 4 Project Description	EN010122/D6/6.1	REP6-031	November 2024
Environmental Statement – Appendix 4.3 Outline Construction Environmental Management Plan	EN010122/D6/6.1	REP6-018	November 2024
Environmental Statement – Appendix 4.4 Outline Operational Environmental Management Plan	EN010122/D6/6.1	REP6-020	November 2024
Environmental Statement – Appendix 4.5 Outline Decommissioning Environmental Management Plan	EN010122/D6/6.1	REP6-022	November 2024
Environmental Statement – Chapter 5 Landscape and Visual	EN010122/D4/6.1	AS-027	October 2024
Environmental Statement – Appendix 5.5 Residential Visual Amenity Assessment	EN010122/D6/6.1	REP6-024	November 2024
Environmental Statement – Appendix 5.6 Outline Landscape and Ecological Management Plan	EN010122/D4/6.1, EN010122/D3/6.1	REP4-040, Appendix A of REP3-025	October 2024, August 2024
Environmental Statement – Appendix 6.14 Arboricultural Survey Report	EN010122/D6/6.1	REP6-026	November 2024
Environmental Statement – Chapter 7 Historic Environment	EN010122/D1/6.1	REP1-017	July 2024
Environmental Statement – Appendix 7.1 Historic Environment Assessment	EN010122/D1/6.1	REP1-019	July 2024
Environmental Statement – Appendix 8.1 Flood Risk Assessment and Outline Drainage Strategy	EN010122/D7/6.1	REP7-003	December 2024

Environmental Statement – Appendix 8.2 Water Framework Directive Assessment	EN010122/D4/6.1	REP4-043	October 2024
Environmental Statement – Appendix 10.1 Outline Construction Traffic Management Plan	EN010122/D6/6.1	REP6-028	November 2024
Environmental Statement – Figures 10.1 – 10.4, 10.6 – 10.9	EN010122/S51/6.1	AS-015	May 2024
Environmental Statement – Chapter 11 Noise	EN010122/D4/6.1	REP4-045	October 2024
Environmental Statement – Appendix 11.1 Baseline Noise Survey Report	EN010122/D4/6.1	REP4-051	October 2024
Environmental Statement – Chapter 13 Climate Change	EN010122/D3/6.1	REP3-021	August 2024
Environmental Statement – Chapter 14 Glint and Glare	EN010122/D4/6.1	REP4-047	October 2024
Environmental Statement – Appendix 14.1 Solar Photovoltaic Glint and Glare Study	EN010122/D4/6.1	REP4-034	October 2024
Environmental Statement – Appendix 15.1 Agricultural Land Classification Survey for Oaklands Farm	EN010122/D6/6.1	REP6-030	November 2024
Environmental Statement – Non-Technical Summary	EN010122/S51/6.2	AS-016	May 2024
Environmental Statement Addendum – Cumulative Effects Update	EN010122/D6/14.5	REP6-044	November 2024
Additional Land Classification Survey at Park Farm	EN010122/D5/13.14	REP5-036	October 2024
Outline Skills, Supply Chain and Employment Plan	EN010122/D6/14.4	REP6-043	November 2024
Sequential Assessment – Flood Risk	EN010122/D6/14.6	REP6-045	November 2024

SCHEDULE 13

Article 37

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1) Type of tree</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the authorised development</i>	<i>(4) TPO reference</i>
Trees within the area identified as W4 in South Derbyshire District Council's Tree Preservation Order No. 122 (1994)	Potential felling or lopping of trees, or cutting back tree roots, to enable the construction of the authorised development	Work Nos. 5 and 5A	TPO No. 122 (1994)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a solar generating station and battery energy storage facility together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 34 (certification of plans, etc.) may be inspected free of charge during working hours at the South Derbyshire District Council, Civic Way, Swadlincote, Derbyshire DE11 0AH and at Derbyshire County Council, County Hall, 88 Smedley Street, Matlock DE4 3AG.