



Department for  
Energy Security  
& Net Zero

3-8 Whitehall Place  
London  
SW1A 2AW  
+44 020 7215 5000  
[energyinfrastructureplanning@energysecurity.gov.uk](mailto:energyinfrastructureplanning@energysecurity.gov.uk)  
[www.gov.uk/desnz](http://www.gov.uk/desnz)

Ref: EN010123

Laura White  
Project Manager  
Ecotricity (Heck Fen Solar) Limited  
Lion House, Rowcroft  
Stroud  
Gloucestershire  
GL5 3BY

24 January 2025

Dear Laura White,

## **PLANNING ACT 2008**

### **APPLICATION FOR DEVELOPMENT CONSENT FOR THE HECKINGTON FEN SOLAR PARK**

#### **1. Introduction**

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 9 May 2024. The ExA consisted of one examining inspector, Susan Hunt. The ExA conducted an Examination into the application submitted on 15 February 2023 ("the Application") by Ecotricity (Heck Fen Solar) Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Heckington Fen Solar Park and associated development ("the Proposed Development"). The Application was accepted for Examination on 13 March 2024. The Examination began on 19 September 2023 and closed on 20 February 2024. The Secretary of State received the ExA's Report on 9 May 2024. The first statutory deadline for the Secretary of State to take a decision was 9 August 2024.
- 1.2. On 7 June 2024 a request for information<sup>1</sup> was issued by the Secretary of State to the Applicant, Network Rail Infrastructure Limited ("NRIL"), National Grid Viking Link Limited ("Viking Link"), Triton Knoll OFTO Limited ("TK OFTO"), the Crown Estate ("TCE") and the Duchy of Lancaster ("TDoL") seeking updates on the status of protective provisions, Crown Land and Crown rights ("the first information request"). A second request for information was issued on 15 July 2024, requesting further information from the Applicant, NRIL, TCE, TDoL, Viking Link, and TK OFTO on Crown Land and Crown rights, as well as protective provisions ("the second information request").
- 1.3. On 5 August 2024, the Applicant requested that the Secretary of State extends the statutory deadline by five months to allow negotiations with landowners to continue. So, on 9 August 2024, the Secretary of State extended the deadline and on 2 September 2024 a Written

---

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010123/EN010123-001094-Information%20Request%20from%20SoS%20-%20Heckington%20Fen%20-%207%20June%202024.pdf>

Ministerial Statement (“WMS”) formally announced that the extension would be until 27 September 2024. At this time, the Secretary of State also requested information from the Applicant regarding the reasons why it had requested an extension (“the third information request”). On 11 September 2024, the Applicant responded again stating that it needed further time to reach an agreement on land areas involving Crown interests and requesting that the statutory deadline be extended to 6 January 2025.

- 1.4. A second WMS was laid on 7 October 2024 stating that the Secretary of State had extended the statutory deadline to 24 January 2025. On 11 October 2024, the Secretary of State wrote to the Applicant, TCE, and TDoL requesting updates by both 22 November 2024 and 8 January 2025 (“the fourth information request”). A further update was provided to the Secretary of State by TCE on 23 January 2025.
- 1.5. The Order, as applied for, would grant development consent for the construction, operation and decommissioning of a ground mounted solar generating facility with a total capacity exceeding 50 megawatts (“MW”) together with an energy storage facility (with an estimated storage capacity of 200-400MW), and below ground grid connection to and extension of the National Grid Bicker Fen substation.
- 1.6. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers, set out in the draft Order submitted with the Application.
- 1.7. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website<sup>2</sup> is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3 to 7 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER \*.\*.\*”].

## **2. Summary of the ExA’s Report and Recommendation**

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:
  - The Principle of Development
  - Biodiversity and the Natural Environment
  - Design, Landscape and Visual
  - Historic Environment
  - Land Use and Soils
  - Socio-Economics
  - Transport, Access and Public Rights of Way
  - Water Environment, Flood Risk and Drainage
  - Other Planning Issues
  - Cumulative Effects
  - Habitats Regulations Assessment

---

<sup>2</sup> <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010106>

- Land rights and related matters; and
  - Draft development consent order and related matters
- 2.2. The ExA recommended that the Secretary of State should grant development consent and make the Order in the form attached at Appendix D to its Report [ER 8.3.1].
- 2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

### **3. Summary of the Secretary of State's Decision**

- 3.1. The 2008 Act sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects ("NSIPs"). The Proposed Development is an NSIP as defined in sections 14 and 15 of the 2008 Act by virtue of being a photovoltaic ("PV") generating station with a generating capacity of over 50MW.
- 3.2. The 2011 suite of energy National Policy Statements ("NPS") do not mention solar PV technology specifically but are nonetheless devised for generating stations and energy infrastructure on the scale of the Proposed Development, so the Secretary of State considers they have bearing in relation to determining the Application.
- 3.3. The statutory framework for deciding NSIP applications where there is no relevant designated NPS, such as for solar farms, is set out in section 105 of the 2008 Act. In deciding the application, the Secretary of State must have regard to:
- any Local Impact Report ("LIR") submitted before the deadline specified under section 60(2) of the 2008 Act;
  - any matters prescribed in relation to development of the description to which the application relates; and
  - any other matters which the Secretary of State thinks are both important and relevant to their decision.
- 3.4. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.
- 3.5. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
- 3.6. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

#### **4. The Secretary of State's Consideration of the Application**

- 4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to his information requests. 39 Relevant Representations ("RRs") were made in respect of the Application. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State's consideration of the ExA's Report is set out below. The Secretary of State has had regard to the separate LIRs submitted by Boston Borough Council ("BBC"), North Kesteven District Council ("NKDC"), and Lincolnshire County Council ("LCC"), environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the 2008 Act.
- 4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1, EN-3 and EN-5 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs in the Examination and Report [ER 2.2.2].
- 4.3. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA considered both the November 2023 versions and the designated 2024 NPSs in their Report as both iterations were released during the Examination [ER 2.2.19]. Overall, the ExA considers that the 2011 NPS EN-1 and EN-5 are both important and relevant given that the Proposed Development is a generating station of more than 50MW and includes substations and high voltage cable connections. However, the ExA considers the 2011 NPS EN-3 is not important and relevant to the determination of this application given that it expressly excludes solar PV development from its coverage [ER 2.2.25]. The 2024 NPSs do have effect in relation to solar PV specifically but because of the transitional provisions set out in the overarching NPS, EN-1, they do not have direct effect in relation to this application. Nonetheless, the ExA considers the 2024 energy NPS EN-1, EN-3, and EN-5 to be important and relevant considerations in the determination of this Application under section 105 of the 2008 Act and affords them very great weight, more than the 2011 NPS [ER 2.2.26]. As such, the Secretary of State has had regard to the 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead him to reach a different decision on the Application than has been reached by relying on the 2011 NPSs. For example, the Secretary of State notes that both versions of EN-1 state Applicants should seek to minimise impacts on 'best and most versatile' ("BMV") agricultural land (paragraphs 5.10.8 and 5.11.12 respectively in 2011 and 2024) but also stress that acquiring a grid connection is "an important consideration" (paragraphs 4.9.1 and 4.11.1 respectively in 2011 and 2024). The Secretary of State notes 2024 NPS EN-1 puts further emphasis on grid connections and networks facilitating the acceleration of the UK's net zero energy generation (paragraph 4.11.3). In this way, elements of 2011 NPS EN-1 which have been retained, as well as elements which have been added to the 2024 version, support the Secretary of State's conclusions below. The Secretary of State has had regard to the designated 2024 NPSs in deciding the Application but does not consider that there is anything contained

within them that would lead him to reach a different decision on the Application than has been reached by relying on the 2011 NPSs.

- 4.4. The Secretary of State has also had regard to the updated National Planning Policy Framework (“NPPF”) of December 2023 which was released during the Examination and the accompanying Planning Practice Guidance (“PPG”). The ExA notes the NPPF does not contain specific policies for NSIPs however are an important and relevant consideration on decision making. At the end of July 2024, a WMS was made by the Secretary of State for Housing, Communities and Local Government, referring to boosting the delivery of renewables to meet the Government’s commitment to zero carbon electricity generation by 2030 and a consultation published on reforms to the NPPF and other changes to the planning system. Following the consultation on reforms to the 2023 NPPF, a new NPPF was published on 12 December 2024 (“2024 NPPF”). The Clean Power 2030 Action Plan (“CP2030”) was published on 13 December 2024 and sets out a pathway to a clean power system. The Secretary of State had regard to these and finds that there is nothing which would lead him to reach a different decision on the Application.
- 4.5. The Secretary of State agrees with the ExA’s conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- a. The principle of the development – very great positive weight [ER 3.2.82, ER 5.2.5, ER 5.3.3 et seq., ER 8.2.14]
  - b. Biodiversity and the natural environment – great positive weight [ER 3.3.69, ER 5.2.15, ER 5.3.5]
  - c. Design, landscape and visual – moderate negative weight [ER 3.4.55, ER 5.2.23, ER 5.3.8]
  - d. Land use and soils – a little negative weight [ER 3.6.94, ER 5.2.42, ER 5.3.9]
  - e. Socio-economics – moderate positive weight [ER 3.7.29, ER 5.2.45, ER 5.3.6]
  - f. Transport, access and public rights of way – neutral weight [ER 3.8.37, ER 5.2.49, ER 5.3.11]
  - g. Water environment, flood risk and drainage – neutral weight [ER 3.9.33, ER 5.2.52, ER 5.3.11]
  - h. Air quality – neutral weight [ER 3.10.6, ER 5.2.54, ER 5.3.11]
  - i. Glint and glare – neutral weight [ER 3.10.10, ER 5.2.54, ER 5.3.11]
  - j. Major accidents and disasters – neutral weight [ER 3.10.24, ER 5.2.54, ER 5.3.11]
  - k. Noise and vibration – a little negative weight [ER 3.10.28, ER 5.2.54]
  - l. Waste – neutral weight [ER 3.10.47, ER 5.2.54, ER 5.3.11]
  - m. Cumulative effects – moderate negative weight [ER 3.11.59, ER 5.2.55, ER 5.3.10]
- 4.6. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report. This includes matters where the Secretary of State feels it is necessary to provide further detail on his rationale for agreeing with the conclusions of the ExA, and those matters where the Secretary of State disagrees with the conclusions of the ExA.

#### Historic environment and cumulative effects

- 4.7. The ExA considered the Applicant has adequately assessed the significance, and impacts to the significance, of heritage assets, and so accords with both 2011 and 2024 NPS EN-1,

as well as the NPPF [ER 3.5.44]. The ExA noted that there would be minor harm to non-designated heritage assets after mitigation, principally to archaeology during construction, but that this would be a neutral effect [ER 3.5.49 et seq.].

- 4.8. The ExA also noted the Secretary of State must have regard to Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 which relates to impacts on listed buildings and to the desirability of preserving the relevant listed assets [ER 3.5.45, ER 8.2.13]. Noting this, the ExA, in agreement with NKDC and Historic England, gave prominence to the intervisibility between the Proposed Development and the Grade I listed Kyme Tower. The ExA considered the presence of the Proposed Development within Kyme Tower's setting would result in less than substantial harm. As per both 2011 and 2024 NPSs, the ExA noted that where there is less than substantial harm, that harm must be weighed against the public benefits of the Proposed Development to determine whether the benefits justify the approval of the development and harm [ER 3.5.46 et seq., ER 3.5.50 et seq., ER 5.2.30 et seq.].
- 4.9. The ExA concluded that the less than substantial harm to Kyme Tower's setting would be outweighed by the public benefits of the Proposed Development, including the provision of low carbon energy to meet the urgent need identified in the 2011 and 2024 NPS EN-1 [ER 5.3.7, ER 5.3.13, ER 8.2.13]. The ExA therefore considered that the harm to the historic environment on its own carried a little negative weight overall in the planning balance [ER 5.2.30, ER 5.3.7].
- 4.10. The ExA also considered the cumulative harm that the Proposed Development would cause in conjunction with the proposed Beacon Fen Energy Park [ER 3.11.57]. The ExA noted that it was unable to quantify the degree of harm without sight of Beacon Fen Energy Park's full assessment of effects on heritage assets, but that on the information available the cumulative harm to its significance would be less than substantial [ER 3.11.57]. The ExA ascribed the cumulative effects on the Kyme Tower moderate negative weight in the planning balance [ER 5.3.10].

#### *The Secretary of State's Conclusion*

- 4.11. The Secretary of State agrees with the ExA's assessments of the historic environment, and the effects of the Proposed Development on designated and non-designated heritage assets, including archaeology.
- 4.12. The Secretary of State has had regard to the test set out at Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010. In addition, the Secretary of State has noted paragraphs 5.9.27 and 5.9.28 of the 2024 NPS EN-1 which state that great weight should be given to the asset's conservation, and considerable importance and weight should be given to the desirability of preserving heritage assets. The Secretary of State agrees with the ExA's conclusions (in agreement with NKDC and Historic England) which gave prominence to the intervisibility between the Proposed Development and the Grade I listed Kyme Tower. The Secretary of State also agrees with the ExA's conclusion that the presence of the Proposed Development within Kyme Tower's setting would result in less than substantial harm. The Secretary of State therefore agrees with the ExA's conclusion to ascribe the Proposed Development's impacts on the historic environment a little negative weight.

- 4.13. The Secretary of State also agrees that the Proposed Development will contribute to a cumulative adverse effect on Kyme Tower's setting, albeit to a lesser extent than the potential additional harm of the emerging Beacon Fen Energy Park, that amounts to less than substantial harm to the heritage asset's significance. The Secretary of State therefore agrees with the ExA that the cumulative effects on the historic environment contribute to less than substantial harm at the lower end of the scale which should be ascribed moderate negative weight.
- 4.14. However, the Secretary of State agrees with the ExA that the urgent need and substantial public benefits of the Proposed Development outweigh the Proposed Development's singular and cumulative effects and subsequent harm on the historic environment. The Secretary of State concludes that the Proposed Development accords with both 2011 and 2024 NPS EN-1 in this regard.

#### Land use and soils

- 4.15. The 2011 NPS EN-1 and 2024 NPS EN-1 both contain policy relevant to the consideration of land use and soils for energy NSIPs.
- 4.16. As acknowledged by the ExA, paragraph 5.10.8 of 2011 NPS EN-1 requires Applicants to minimise impacts on Best and Most Versatile ("BMV") agricultural land (defined as grades 1, 2 and 3a of the Agricultural Land Classification ("ALC")) and to preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability objectives, and that effects on soil quality should also be identified with measures to mitigate impacts [ER 3.6.2]. The 2024 NPS EN-1 takes forward similar principles but provides additional policies in respect of both the use of agricultural land and soils management. It requires justification for the use of BMV land and directs the Secretary of State to take account of the economic and other benefits of that land.
- 4.17. Paragraph 5.11.4 of 2024 NPS EN-1 acknowledges that development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process. In this context, paragraph 5.11.12 states that Applicants should seek to minimise impacts on the BMV agricultural land and preferably use land in areas of poorer quality [ER 3.6.4].
- 4.18. Furthermore, paragraphs 5.11.13-14 of 2024 NPS EN-1 state that Applicants should seek to minimise impacts on soil health and protect and improve soil quality, that the preparation and implementation of a Soil Management Plan ("SMP") is encouraged, and the sustainable re-use of soil also needs to be considered as well as measures to protect soil during construction.
- 4.19. The 2024 NPS EN-3 reflects the overarching approach established in 2024 NPS EN-1. In paragraph 2.10.29 it states that whilst land type should not be the predominating factor in determining the suitability of the site location, where possible previously developed, contaminated or industrial land should be utilised. Where the use of agricultural land is shown to be necessary, poorer quality land should be preferred, avoiding the use of BMV land where possible [ER 3.6.5]. However, paragraph 2.10.30 makes it clear that whilst solar developments are not prohibited on BMV land, the impacts should be considered. Paragraph 2.10.31 also recognises that at NSIP scale, it is likely that some agricultural land may be used [ER 3.6.6].

- 4.20. Both 2024 NPS EN-1 and 2024 NPS EN-3 require the Secretary of State to take into account the economic and other benefits of BMV land when schemes are to be located on it.
- 4.21. On 15 May 2024, a WMS was published on solar infrastructure and protecting food security and BMV land<sup>3</sup>. This emphasised certain aspects of the policy set out in the 2024 NPSs, including that BMV land should be avoided where possible, and preferably use poorer quality land. The statement also emphasised that due weight needs to be given to the proposed use of BMV land when considering whether planning consent should be granted for solar developments.

#### *Concerns from Interested Parties*

- 4.22. Several Interested Parties (“IPs”) raised concerns in relation to the Proposed Development’s impact on soil quality, loss of agricultural land, and food security. NKDC considered that the scale of the Proposed Development and the amount of BMV land taken up amounted to a significant impact at District and County level, and that the Applicant had not demonstrated an attempt to minimise impacts to ongoing agricultural operations [ER 3.6.51 et seq.]. LCC similarly had concerns over the loss of productive arable farmland from not only the Proposed Development but also when considered in combination with other NSIP scale projects across Lincolnshire [ER 3.6.55 et seq.]. At the close of Examination, NKDC and LCC’s fundamental concerns with the use of BMV land meant that they could not reach agreement with the Applicant on this matter [REP6-006, ER 3.6.82]. Other IPs were concerned the loss of BMV land due to the Proposed Development could impact food security and agricultural production [ER 3.6.59 et seq.]. No concerns were raised by BBC on soil and agricultural land use matters [ER 3.6.57].

#### *Natural England’s final position*

- 4.23. NE identified several agricultural land and soils matters that needed to be addressed by the Applicant both prior to, and during, the course of the Examination [ER 3.6.58, ER 3.6.72]. However, by the end of the Examination, agreement had been reached with the Applicant. As set out in its final Statement of Common Ground (“SoCG”), NE confirmed that it had no outstanding concerns regarding the Applicant’s assessment of effects on land use and BMV, and the SoCG detailed final agreement on the Applicant’s survey areas, baseline data, and methodology [REP5-048, ER 3.6.83].

#### *The Applicant’s consideration of alternatives and site selection*

- 4.24. In relation to site selection, the 2024 NPS EN-3 outlines factors and associated policies that are likely to influence the site selection process as well as design:
- Irradiance and site topography;
  - Network connection
  - Proximity of a site to dwellings;
  - Agricultural land classification and land type;
  - Accessibility;
  - Public rights of way; and,
  - Security and lighting.

---

<sup>3</sup> <https://questions-statements.parliament.uk/written-statements/detail/2024-05-15/hcws466>



- 4.25. Paragraph 2.10.29 of 2024 NPS EN-3 states that: *“While land type should not be a predominating factor in determining the suitability of the site location Applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of “Best and Most Versatile” agricultural land where possible. Best and Most Versatile agricultural land is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification.”*
- 4.26. Paragraph 2.10.30 continues stating: *“Whilst the development of ground mounted solar arrays is not prohibited on Best and Most Versatile agricultural land, or sites designated for their natural beauty, or recognised for ecological or archaeological importance, the impacts of such are expected to be considered and are discussed under paragraphs 2.10.73 – 92 and 2.10.107 – 2.10.126.”* Paragraph 2.10.32 requires that consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions such as storage to maximise the efficiency of land use.
- 4.27. The Applicant set out its consideration of alternatives and site selection in both the Statement of Need and Planning Statement, and Chapter 3 of the Environmental Statement (“ES”) ‘Site Description, Site Selection, Iterative Design Process’ [REP2-060, PS-053]. The Applicant explored alternatives based on various criteria which were comparable to the Heckington Fen site, but which would also have a realistic prospect of delivering the same infrastructure capacity in the same timescale as the Proposed Development, as per NPS EN-1 [ER 3.2.49 et seq.].
- 4.28. The site for the Proposed Development was primarily based on having secured a grid offer from National Grid for a 400 MW export capacity at Bicker Fen substation [ER 3.2.48]. The Applicant notes that National Grid have confirmed a connection at Bicker Fen for 2027 and that a connection at Spalding substation, the only other 400kV substation connection available in Lincolnshire, would not be available until after 2030 [ER 3.2.50]. Additionally, the Applicant has had a long-standing Option agreement in place with the single ownership landowner of the site of the Proposed Development for several years due to the Applicant’s previous onshore windfarm proposal. The Applicant expects that securing a new site of similar size and capacity would take at least 12 months, and that the bilateral agreement with National Grid regarding Bicker Fen was advanced because of the Option agreement over the site [ER 3.2.55 et seq.].
- 4.29. The Applicant considered a search distance of 15km from Bicker Fen substation for a back check and review of alternative sites, agreed with the relevant local planning authorities (NKDC, BBC, and LCC, together - “RPAs”). Although the Proposed Development’s site is single ownership, multiple ownership sites were also analysed. The Applicant considered this would result in a more complex and time-consuming legal process to secure agreements, meaning it would be unrealistic to connect to Bicker Fen by 2027 [ER 3.2.56]. The Applicant also followed the Environment Agency’s guidance on the sequential test in relation to flood risk and found that, when compared with the 13 alternative sites, there were no other reasonable available alternative sites with a lower risk of flooding than the Proposed Development [ER 3.2.48, ER 3.2.51, ER 3.2.57]. The site of the Proposed Development was also considered more suitable in comparison to the other sites due to the site’s orientation, not being in proximity to sensitive ecological areas, the accessibility of the site from adjoining main roads, and its limited visibility to residential receptors and the wider landscape [ER 3.2.58].

- 4.30. For the site itself, the Applicant considered an option of ‘no development’ on the site would lead to a loss of opportunity for provision of much needed renewable energy [ER 3.2.52] and, further, that alternative technologies such as an onshore wind farm or tracking panel solar (rather than ground mounted) would present difficulties with radar and flooding respectively [ER 3.2.53]. Agrivoltaics was also discounted as an alternative technology based on its economic viability at the site [ER 3.2.54]. The cable route corridor was also refined following a consideration of alternatives, mainly revolving around the engineering complexity of crossing points with other linear infrastructure [ER 3.2.60 et seq.]. Alternative layouts for the site itself were also considered which saw, amongst other things, a removal or adjustment of some internal infrastructure and buildings, as well as an overall reduction in the size of the site following the removal of 62 hectares of grade 1 and 2 BMV agricultural land in the south-west of the site following statutory pre-application consultation [ER 3.2.59, ER 3.6.13, ER 3.6.36].
- 4.31. The ExA noted that no RPA or IPs raised any issue with the Applicant’s site selection process or consideration of alternatives. The ExA notes that, instead, the RPAs sought a design and layout to reflect the ALC and reduce the amount of BMV land affected by the Proposed Development. The ExA accepts that the alternative sites considered by the Applicant have similar or higher amounts of BMV for a layout of the same size of the Proposed Development [ER 3.2.76] and concludes that the Applicant has satisfactorily demonstrated an appraisal of alternatives and both siting and routing options to meet legislative and policy requirements [ER 3.2.81].

#### *ALC survey*

- 4.32. Chapter 16 of the Applicant’s ES covers Land Use and Soils and includes an assessment of potential impacts on agricultural land, soils, and agricultural businesses [ER 3.6.12 et seq.]. It is supported by several appendices including two ALC soil surveys undertaken in 2021 and 2022, with the approach to sampling agreed by NE and NKDC [ER 3.6.15 et seq.]. The table below provides a breakdown of the Applicant’s ALC results for the Solar Park Site section of the Order limits [REP2-028, ER 3.6.19].

**Table 1: Applicant's ALC results for the Solar Park Site [REP2-028]**

<b>ALC Grade</b>	<b>Area (Hectares)</b>	<b>Area % of total site</b>
Grade 1 (Excellent)	58	11.1
Grade 2 (Very Good)	39	7.4
Grade 3a (Good)	160	30.5
Grade 3b (Moderate)	265	50.6
Grade 4 (Poor)	0	0
Grade 5 (Very Poor)	0	0
Non-agricultural	2	0.4
Urban	0	0
<b>Total</b>	<b>524</b>	<b>100</b>

- 4.33. 257 hectares of the Solar Park Site, or 49%, is classified as BMV land with an ALC of 3a or higher [ER 3.6.19]. 265 hectares of the Solar Park Site is also used for agricultural purposes but not considered BMV, with 2 hectares used for non-agricultural purposes.
- 4.34. Following the survey, the Applicant compared the ALC grading of the site of the Proposed Development to the district, county, and national levels [ER 3.6.28 et seq.]. Chapter 16 of the ES provides the following information [REP2-028, ER 3.6.29]:
- an estimated 42% of agricultural land in England is estimated to be of BMV quality;
  - across Lincolnshire the estimated proportion of BMV rises to 71.2%;
  - across North Kesteven the proportion of BMV at 67% is slightly lower than the Lincolnshire average, but this still covers two thirds of agricultural land, and is above the national average.
- 4.35. Paragraph 16.5.22 of Chapter 16 of the ES states that the Applicant considers that the area where the Proposed Development would be sited is expected to be mostly more than 60% BMV by area [REP2-028]. Overall, the Applicant considered that the site of the Proposed Development has a larger proportion of Grade 3 land than the whole of the county, but a smaller proportion of Grades 1 and 2 land, and that it is clear both North Kesteven and Lincolnshire have a much higher overall proportion of BMV compared to the rest of England [ER 3.6.29].

#### *Soil quality*

- 4.36. The ExA is satisfied that the Construction Environment Management Plan (“CEMP”) and the SMP, secured by Requirements 13 and 20 of the draft Order, would mean that the installation of solar panels would not result in significant adverse effects on soils at the site of the Proposed Development, and would not result in any change to the ALC grade. The ExA considered there would be a moderate beneficial effect for the quality of the soils during the Proposed Development’s operation due to intensive cropping being replaced by grazing sheep [ER 3.6.85]. The ExA is therefore satisfied that the Operational Environment Management Plan (“OEMP”) and SMP, secured by Requirements 19 and 20 of the draft Order, provide assurance the land used by the Proposed Development can be returned to equal ALC value or indeed could be improved [ER 3.6.89].

#### *Impacts on food production, farming, and BMV*

- 4.37. The Applicant’s ES and Farming Report estimates that the 524 hectares of land for the Proposed Development’s solar arrays, when producing winter feed wheat as it does currently [ER 3.6.21 et seq.], could produce 4200 tonnes of wheat a year – 0.03% of the national production. The land also represents 0.1% of the total commercially farmed land within Lincolnshire [APP-220, ER 3.6.27].
- 4.38. For the duration of the operation of the Proposed Development, the Applicant proposes the agricultural land in and around the solar panels could continue in agricultural use as grassland could be grazed by sheep and support a new farming enterprise [ER 3.6.30, ER 3.6.80]. Sheep farming would be secured through the OEMP and the outline Landscape and Ecological Management Plan (“LEMP”), and Requirements 8 and 19 of the draft Order [ER 3.6.63, ER 3.6.78]. The Applicant expects the land could be quickly returned to farming wheat crops following the removal of the solar panels during decommissioning [ER 3.6.31]. As above, the Applicant considers that sheep farming would provide benefits in both

reducing carbon emissions compared to arable farming and improving the soil quality [ER 3.6.32].

- 4.39. The Applicant contends that if the solar arrays proposed across the 257 ha of BMV land within the Solar Park Site were moved to poorer quality agricultural land elsewhere, the consequence would be the decrease in production levels between the BMV and non-BMV land rather than the loss of production overall [ER 3.6.45]. The Applicant estimates this reduction in production to be about 360 tonnes of winter wheat [ER 3.6.46]. Further, the Applicant highlights the variation of ALC grading across the site of the Proposed Development means that dividing farmed, cropping BMV areas from any potential alternative site layouts for the Solar Park Site would not be viable [ER 3.6.64 et seq.].
- 4.40. The Applicant also accepts that that up to 20.1 hectares used for fixed onsite equipment, such as substations, cannot be used for sheep grazing during operation and might not be restored to comparable ALC quality following decommissioning. However, only 2.8 hectares of this land is BMV with the vast majority located within 3a land, meaning its impact is considered no greater than moderate adverse by the Applicant [REP2-028, ER 3.6.40 et seq., ER 3.6.48, ER 3.6.66, ER 3.6.70].
- 4.41. The ExA is content that farming of the land would continue through sheep grazing in an economically and environmentally sensitive manner, and that this is robustly secured in the Order with appropriate controls and monitoring [ER 3.6.91]. The ExA considers the Applicant has given appropriate and detailed consideration to the continuation of agriculture use and co-location with other functions (including storage) to maximise the efficiency of land use, in accordance with paragraph 2.10.32 of 2024 NPS EN-3 [ER 3.6.93].
- 4.42. The ExA agrees with the Applicant's methodology for the ALC surveys and considers Chapter 16 of the Applicant's ES to be robust [ER 3.6.84]. The ExA welcomes the iterative design process which removed 62 hectares of BMV land from the Solar Park Site and acknowledges that the fixed onsite equipment has been appropriately located in areas of lower graded land [ER 3.6.86]. Whilst the proportion of BMV across the site at 49% is sizeable, the ExA accepts the Applicant's view that the parcels of BMV are spread haphazardly and to keep them free of the Proposed Development in order to farm would be complex and uneconomic [ER 3.6.87]. The ExA is satisfied that, although 40 years for the lifecycle of the Proposed Development remains a very long period, the majority of the agricultural land would not be permanently lost, accepting that 2.8 hectares of BMV would be sealed over [ER 3.6.89 et seq.]. The ExA is satisfied that the Applicant has justified the siting of the Proposed Development on areas of BMV land, has identified effects and sought to minimise impacts on soil quality, and considered the mitigation measures proposed. The ExA considers the Proposed Development is therefore in accordance with paragraphs 5.10.8 and 5.10.15 of 2011 NPS EN-1, and paragraph 5.11.12 of 2024 NPS EN-1.
- 4.43. Overall, the ExA considers the Proposed Development would result in long term but not irreversible or permanent loss of agricultural land. The ExA ascribes the loss of BMV a little negative weight against making the order.

#### *Cumulative effects*

- 4.44. The Applicant submitted its Interrelationship with other Nationally Significant Infrastructure Projects document at Deadline 5, in which the Applicant considers the possible effects of the

Proposed Development and other solar projects on BMV across Lincolnshire [REP5-008, ER 3.11.18 et seq.].

**Table 2: Cumulative Lincolnshire Land Use from NSIP Solar Projects [REP5-008]**

<b>Site</b>	<b>Area of Solar PV panels and BMV Area (Grades 1, 2 and 3a)</b>
Heckington Fen Solar Park	524 hectares;  257 hectares BMV (49%) of which 3 hectares (0.6%) will be permanently lost.
Mallard Pass Solar Farm	531 hectares;  216 hectares BMV (41%) of which 4.2 hectares (0.8%) will be permanently lost.
Cottam Solar Project	1179.7 hectares;  48.3 hectares BMV (4.1%) of which 4 hectares (0.3%) will be permanently lost.
Gate Burton Energy Park	652 hectares;  73.6 hectares BMV (11%) of which 2 hectares (0.3%) will be permanently lost.
West Burton Solar Project	757.8 hectares;  119.5 hectares BMV (26.4%) of which 2 hectares (0.3%) will be permanently lost.
Beacon Fen Energy Park	512 hectares;  242.7 hectares BMV (47.4%) of which 20.6 hectares (8.4%) will be permanently lost.
Temple Oaks Renewable Energy Park	280 hectares;  0 hectares BMV (0%) of which 0 hectares (0%) will be permanently lost.
Springwell Solar Farm	1458 hectares;  782 hectares BMV (53.6%) of which 7.82 hectares (0.5%) will be permanently lost.
Fosse Green Energy	1003 hectares;  1003 hectares BMV (100%) of which 10 hectares (1%) will be permanently lost.
Tillbridge Solar Project	900 hectares;  68 hectares BMV (7.5%) of which 11 hectares (1.2%) will be permanently lost.

One Earth Solar Farm	1500 hectares;  1455 hectares BMV (97%) of which 2.5 hectares (0.2%) will be permanently lost.
----------------------	--

- 4.45. The Applicant states at paragraph 8.15 of its Interrelationship with other Nationally Significant Infrastructure Projects document that the ten other solar NSIP projects and the Proposed Development would combine to utilise approximately 9,743ha of land for solar PV panels within Lincolnshire. Of this, approximately 2,597ha has to date been identified as a worst case to be BMV land in Lincolnshire. The Applicant estimates that approximately 50.6ha of this cumulative BMV land will be permanently lost in Lincolnshire, and that this represents 0.0013% of the total BMV land in Lincolnshire. The Applicant considers the effect on BMV land from the Proposed Development in combination with the other solar NSIPs is not significant when compared to the total proportion of BMV land available in Lincolnshire [REP5-008].
- 4.46. The ExA notes the cumulative effects of the Proposed Development with other solar developments [ER 3.11.39 et seq.]. However, the ExA also notes the inclusion of the Boston Alternative Energy Facility and the proposed Lincolnshire Reservoir in the Applicant's ES Technical Note - Updated Information on Cumulative Projects [REP5-004]. If both of these projects were consented and built, the Applicant stated this would result in a permanent loss of 998.8 hectares of BMV land, resulting in a major adverse significant impact on BMV land in Lincolnshire. Without the Lincolnshire Reservoir, the Applicant concluded the residual cumulative effect on BMV land is not significant [ER 3.11.43].
- 4.47. The ExA concludes that the Proposed Development's impact on the cumulative loss of BMV land in the Lincolnshire region contributes to a moderate adverse effect which attracts moderate negative weight in the planning balance.

#### *The Secretary of State's Conclusion*

- 4.48. The Secretary of State has considered all relevant policy contained within the 2011 and 2024 NPSs relating to solar and land use as important and relevant considerations within the decision-making process. The Secretary of State recognises that the 15 May 2024 WMS emphasises elements of the 2024 NPSs.
- 4.49. The Secretary of State notes paragraph 5.11.34 of 2024 NPS EN-1 which states that the Secretary of State must ensure that Applicants do not site their scheme on BMV land without justification, and where schemes are to be sited on BMV land, the Secretary of State should take into account the economic and other benefits of the land. The Secretary of State notes the Proposed Development's site is owned by a single landowner and accompanied by an available grid connection at Bicker Fen. The Secretary of State considers this corroborates the Applicant's disapproval of alternatives to this site regarding BMV and that other sites with similar BMV are less suitable overall when economic factors are also considered.
- 4.50. The Secretary of State agrees with the ExA that the Applicant's methodology for the ALC surveys and subsequent results are sufficiently detailed and are not in dispute. The Secretary of State agrees with the ExA that the Applicant satisfactorily demonstrated an appraisal of alternatives and both siting and routing options to meet the legislative and policy requirements. The Secretary of State is satisfied the Applicant has considered options to

reduce the amount of BMV land affected by the Proposed Development, including removing 62 hectares of BMV land, and agrees with the ExA that other sites considered by the Applicant have similar or higher amounts of BMV for a layout of the same size as the Proposed Development.

- 4.51. Similarly, the Secretary of State agrees that to divide the Solar Park Site between areas of BMV land for farming, and areas of non-BMV land for the Proposed Development, would be complex and uneconomic due to the pattern of BMV across the Solar Park Site. The Secretary of State agrees with the ExA that whilst the proportion of BMV across the Proposed Development is high at 49%, agricultural use will still continue across the Solar Park Site's 524ha through sheep grazing and that this is sufficiently secured in the Order and OEMP. The Secretary of State also agrees with the ExA that the OEMP and SMP provide assurance that the land used by the Proposed Development can be returned to equal ALC value and, attributable to the change in agricultural use to sheep grazing, could improve in soil quality. In agreement with the ExA, the Secretary of State considers that, the above factors mean the Proposed Development will cause only minor adverse effects to land use and soil. The Secretary of State ascribes land use and soils a little negative weight in the planning balance.
- 4.52. The Secretary of State acknowledges that the temporary loss of 257 hectares of BMV land for 40 years, despite being a long time, will not be irreversible. Nonetheless, the Secretary of State acknowledges the permanent loss of 2.8 hectares of BMV land is a harm of the Proposed Development and that, considered with the cumulative loss of BMV across Lincolnshire, has a moderate adverse effect. The Secretary of State therefore agrees with the ExA that the Proposed Development's adverse cumulative effects on BMV land, when taken with other developments across Lincolnshire, are ascribed moderate negative weight in the planning balance.
- 4.53. The Secretary of State agrees with the ExA that the Proposed Development is in accordance with the policy contained in the 2011 NPSs and would also accord with the 2024 NPSs, were they to have effect.

## **5. Habitats Regulations Assessment**

- 5.1. This is a record of the Habitats Regulations Assessment ("HRA") that the Secretary of State has undertaken under the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") in respect of the Proposed Development and its associated infrastructure. For the purposes of these Regulations the Secretary of State is the competent authority.
- 5.2. The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. Following the United Kingdom's departure from the European Union, these domestic regulations continue to apply. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the United Kingdom and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").

- 5.3. The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance (“Ramsar sites”). Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).
- 5.4. Regulation 63 of the Habitats Regulations provides that: “... *before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*” And that: “*In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*”
- 5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) addressing the implications for the protected site in view of its conservation objectives.
- 5.6. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity (“AEoI”) of protected sites, unless he chooses to continue to consider further tests laid down in regulations 64 and 68 of the Habitats Regulations. The complete process of assessment is commonly referred to as an HRA.
- 5.7. The ExA produced a Report on the Implications for European Sites (“RIES”) [PD-014]. The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and IPs during the examination (until Deadline 4 on 16 January 2024). It was issued to set out the ExA’s understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on protected sites, at that point in time. Following consultation on the RIES, no comments were received during examination.
- 5.8. The Applicant’s assessment of effects was described in their Shadow HRA to Inform Appropriate Assessment (“sHRA”) [REP4-022]. There were four updates to the HRA report.
- 5.9. No LSE on protected sites in other European Economic Area (“EEA”) States were identified in the Applicant’s sHRA. Only UK protected sites are addressed in this report.
- 5.10. The sHRA identified three protected sites located 14.5km from the Proposed Development:
- The Wash and North Norfolk Coast SAC;
  - The Wash SPA;
  - The Wash Ramsar site.
- 5.11. All relevant planning authorities, including NKDC, LCC, and BBC agreed that the correct sites had been included, and that all impacts on the sites had been identified and adequately assessed, offering no further comments on HRA matters [REP6-006]. NKDC also added that



the Applicants assessment of wintering birds was appropriate, provided NE agreed with the findings of the HRA report. NE [REP5-048] did not raise concerns regarding the sites selected and agreed with the approach set out in the sHRA. In their final SoCG, all matters, including survey areas and methodology were marked as agreed.

- 5.12. The Secretary of State has carefully considered the information presented before and during the Examination, including the ES, sHRA, representations made by IPs, and the ExA's Report. The Secretary of State has considered the conservation objectives and qualifying features for each of the three protected sites against the potential effects of the Proposed Development.

### **Likely Significant Effect Assessment**

- 5.13. In Table 2 of the sHRA [REP4-022], the Applicant provided a table which sets out an extensive list of potential effect pathways that are associated with terrestrial development. The Applicant then excluded all but three pathways. Other pathways were screened out either because the threat will not be present within the Proposed Development, or because of the large distance of the Proposed Development from the protected sites, or because there was no reasonable pathway from the Proposed Development to the protected site.
- 5.14. However, there is a network of drains and watercourses within the Proposed Developments' red line boundary, which drain into the South Forty Foot Drain. This drain joins the Witham River at Boston, 11 kilometres to the east of the Proposed Development before entering the Wash SPA/SAC/Ramsar site a further 5 kilometres downstream. The Applicant noted that this means that there is a potential hydrological link from the Proposed Development to the protected sites, and further noted that migratory wetland birds are not always restricted to the boundaries of designated sites.
- 5.15. Consequently, the pathways through which the Applicant assessed the Proposed Development might have an effect on the protected sites were:
- Silt laden run off from surface water;
  - Contamination from surface water pollution events impacting on water quality downstream; and
  - Loss of functionally linked land used by qualifying bird species of The Wash SPA and Ramsar site.
- 5.16. Table 1 below shows the protected sites for which an LSE could not be excluded from these pathways, alongside each sites qualifying features.

**Table 1:** Protected sites for which the Secretary of State cannot exclude LSEs, either alone or in-combination

Protected Site	Supplementary Advice on Conservation Objectives ("SACOs")	Distance from the Proposed Development	Qualifying Features

<b>The Wash and North Norfolk Coast SAC</b>	See Footnote <sup>4</sup>	14.5km	<ul style="list-style-type: none"> <li>• Sandbanks which are slightly covered by sea water all the time; Subtidal sandbanks</li> <li>• Mudflats and sandflats not covered by seawater at low tide; Intertidal mudflats and sandflats</li> <li>• Coastal lagoons</li> <li>• Large shallow inlets and bays</li> <li>• Reefs</li> <li>• <i>Salicornia</i> and other annuals colonising mud and sand; Glasswort and other annuals colonising mud and sand</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</li> <li>• Mediterranean and thermo-Atlantic halophilous scrubs (<i>Sarcocornetea fruticosi</i>); Mediterranean saltmarsh scrub</li> <li>• <i>Lutra lutra</i>; Otter</li> <li>• <i>Phoca vitulina</i>; Common seal</li> </ul>
<b>The Wash SPA</b>	See Footnote <sup>5</sup>	14.5km	<ul style="list-style-type: none"> <li>• <i>Cygnus columbianus bewickii</i>; Bewick's swan (Non-breeding)</li> <li>• <i>Anser brachyrhynchus</i>; Pink-footed goose (Non-breeding)</li> <li>• <i>Branta bernicla bernicla</i>; Dark-bellied brent goose (Non-breeding)</li> <li>• <i>Tadorna tadorna</i>; Common shelduck (Non-breeding)</li> <li>• <i>Anas penelope</i>; Eurasian wigeon (Non-breeding)</li> <li>• <i>Anas strepera</i>; Gadwall (Non-breeding)</li> <li>• <i>Anas acuta</i>; Northern pintail (Non-breeding)</li> <li>• <i>Melanitta nigra</i>; Black (common) scoter (Non-breeding)</li> <li>• <i>Bucephala clangula</i>; Common goldeneye (Non-breeding)</li> <li>• <i>Haematopus ostralegus</i>; Eurasian oystercatcher (Non-breeding)</li> <li>• <i>Pluvialis squatarola</i>; Grey plover (Non-breeding)</li> <li>• <i>Calidris canutus</i>; Red knot (Non-breeding)</li> <li>• <i>Calidris alba</i>; Sanderling (Non-breeding)</li> <li>• <i>Calidris alpina alpina</i>; Dunlin (Non-breeding)</li> <li>• <i>Limosa limosa islandica</i>; Black-tailed godwit (Non-breeding)</li> <li>• <i>Limosa lapponica</i>; Bar-tailed godwit (Non-breeding)</li> <li>• <i>Numenius arquata</i>; Eurasian curlew (Non-breeding)</li> <li>• <i>Tringa totanus</i>; Common redshank (Non-breeding)</li> <li>• <i>Arenaria interpres</i>; Ruddy turnstone (Non-breeding)</li> <li>• <i>Sterna hirundo</i>; Common tern (Breeding)</li> <li>• <i>Sterna albifrons</i>; Little tern (Breeding)</li> <li>• Waterbird assemblage</li> </ul>

4

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK0017075&SiteName=THE%20WASH&SiteNameDisplay=The+Wash+and+North+Norfolk+Coast+SAC&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=2>

5

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9008021&SiteName=THE%20WASH&SiteNameDisplay=The+Wash+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=21>

Wash Ramsar site	N/A	14.5km	<ul style="list-style-type: none"> <li>• <i>Limosa lapponica</i>; - Bar-tailed godwit (Wintering)</li> <li>• <i>Numenius Arquata</i>, Curlew (Wintering)</li> <li>• <i>Branta bernicla</i>; Dark-bellied brent goose (Wintering)</li> <li>• <i>Calidris alpina</i>; Dunlin (Wintering)</li> <li>• Estuary</li> <li>• <i>Pluvialis squatarola</i>; Grey plover – (Wintering)</li> <li>• <i>Phoca vitulina</i>; Harbour (common) seal</li> <li>• <i>Calidris canutus</i>; Knot (Wintering)</li> <li>• <i>Haematopus ostralegus</i>; Oystercatcher (Wintering)</li> <li>• <i>Anser brachyrhynchus</i>; Pink-footed goose (Wintering)</li> <li>• <i>Anas acuta</i>; Pintail, (Wintering)</li> <li>• <i>Tringa tetanus</i>; Redshank (Wintering)</li> <li>• <i>Calidris alba</i>; Sanderling (Wintering)</li> <li>• <i>Tadorna tadorna</i>; Shelduck (Wintering)</li> <li>• <i>Arenaria interpres</i>; Turnstone (Wintering)</li> <li>• Waterbird assemblage (Wintering)</li> <li>• Wetland invertebrate assemblage</li> </ul>
------------------	-----	--------	---

- 5.17. Appendix D of the Applicant's sHRA [REP4-022] shows a summary of the LSE during the construction and decommissioning stage for the three potential effect pathways. The table shows effects on otter (a qualifying feature on the North Norfolk Coast and Wash SAC) from the loss of functionally linked habitat being screened out of the assessment, as the design of the solar farm includes setbacks from all drainage ditches, which the otters are unlikely to use. The Secretary of State agrees with the Applicant that these measures are an integral part of the Proposed Development's design, to comply with Internal Drainage Board ("IDB") regulations rather than avoidance or mitigation against an environmental effect, and therefore effects on otter can be excluded at the LSE stage.
- 5.18. Effects on other qualifying features from the three pathways have been screened into the Applicant's sHRA and have been taken forward to the AA stage.
- 5.19. The Secretary of State, in agreement with NE, the relevant planning authorities and the ExA, is satisfied that the correct sites and effect pathways have been identified and brought forward to the AA stage.

### **Appropriate Assessment**

- 5.20. The Secretary of State has undertaken an objective scientific assessment of the implications of the Proposed Development on the qualifying features of the protected sites identified in his screening assessment, using best scientific evidence available. The assessment has been made in light of the site's conservation objectives.

#### **Silt laden run off from surface water - The Wash SPA, SAC, and Ramsar**

- 5.21. The Applicant's sHRA [REP4-022] states that there is a hydrological link between The Wash SPA, SAC, and Ramsar site and the Proposed Development, and therefore a need to consider silt-laden run-off at the AA stage of the HRA.
- 5.22. In the sHRA [REP4-022], the Applicant notes that this impact pathway will be mitigated both by design, and by construction practices. The initial design of the Proposed Development includes a 9m stand-off from all IDB Drains, and an 8m stand-off from all other drains within

the Proposed Development. As with effects on otter, the Secretary of State considers this to be an integral part of the Proposed Development's design, as opposed to specific mitigation.

- 5.23. In terms of mitigation, in addition to the distance from the drains, the areas will be fenced off during construction to prevent the risk of silt run-off into the ditch or drainage network.
- 5.24. The Applicant has also assessed that any potential negative impacts of dust deposition or silt runoff into the drain ditches within the Proposed Development will be mitigated via procedures that are set out in their CEMP. For example, during construction, an Ecological Clerk of Works will oversee any works, and has the power to request the installation of silt fencing if necessary, such as during periods of high rainfall to avoid the silt running off into the drains.
- 5.25. Other mitigation measures set out in the Applicants CEMP include the installation of barriers and/or silt traps.
- 5.26. In addition to the above measures, the Applicant has assessed that the Proposed Development could potentially have a minor positive effect on silt laden runoff as a result of the conversion of arable land into permanent grasslands and hard standing, and the associated enhanced percolation and drainage in grasslands when compared to arable fields.
- 5.27. The Secretary of State is satisfied that the above measures are secured in the DCO through the implementation of a CEMP in accordance with Requirement 13 of the DCO, and agrees with the Applicant, the ExA [ER4.4.1] and NE, that there will not be an AEoI on the Wash SPA/SAC/Ramsar site from silt laden runoff.

Contamination from surface water pollution events impacting on water quality downstream – The Wash SPA, SAC, and Ramsar

- 5.28. As with the silt laden run-off, the Applicant's sHRA Report [REP4-022] concluded no AEoI on this impact pathway due to the initial design for development of the Energy Park, including the stand-offs from drains.
- 5.29. In terms of mitigation, the design of the bus-bar extension and bus-coupler will include appropriate drainage to ensure there would be no water quality effects. The mitigation measures employed to mitigate silt laden run-off would also prevent any water quality effects during construction.
- 5.30. Similar to the pathway of silt laden run off, the Applicant has assessed that the project has the potential to lead to a positive effect on the three protected sites. According to the landowner's farm records 272 tonnes of chemical fertiliser and 5581 litres of agrochemicals were used on the Energy Park Site in 2021 for agricultural reasons. Therefore, the Applicant has assessed that the cessation of agriculture, and the associated cessation of the use of these fertilisers would lead to an improvement in water quality in The Wash SPA, SAC, and Ramsar site.
- 5.31. The Secretary of State agrees that this land use change will likely lead to the betterment of water quality in the area and concludes that there will not be an AEoI on The Wash SPA, SAC or Ramsar site from water pollution.

### Loss of functionally linked land used by qualifying bird species - The Wash SPA and Ramsar site.

- 5.32. The majority of Wash SPA and Ramsar site qualifying winter wetland bird species are restricted to the wetland habitat within the designation for foraging and roosting. However, the Applicant's HRA Report [REP4-022] concluded the possibility for LSE from this impact pathway on three qualifying bird species (pink footed goose (*Anser brachyrhynchus*) golden plover (*Pluvialis apricaria*) and lapwing (*Vanellus vanellus*)) that will feed on farmland, as the farmland within the red-line boundary could be considered functionally linked land, based on the distance of the designated European sites.
- 5.33. The Wash pink footed goose population feeds over a very wide area, extending to over 350,00 hectares. However, winter bird surveys did not contain any records of pink footed goose using the energy park land, and only one small flock recorded once on the offsite grid connection corridor.
- 5.34. Large numbers of golden plover and lapwing winter in Britain in the East of England. Small numbers (less than 1% of the winter bird population in the East of England) of this population have been recorded wintering using land within the Proposed Development. However, the Applicant stated that there is no evidence that the large numbers of birds that winter in the east of England are there as a result of the farmland habitat that forms part of the Proposed Development. Instead, the evidence points to the management of the designated coastal wetland to account for the large numbers. The coastal wetland's food intake rates have been found to be four times higher than on the nearby farmland. It is for this reason the Applicant concludes that the farmland within the Proposed Development is not critical to, or necessary for, the ecological or behavioural functions of the golden plover or lapwing.
- 5.35. The sHRA concluded that the land of the Proposed Development cannot be regarded as functionally linked habitat important to the integrity of The Wash SPA or Ramsar site. The Secretary of State agrees with the Applicant's assessment and concludes that there will be no AEoI on the Wash SPA or Ramsar site, due to the loss of functionally linked land.

### In combination Assessment

- 5.36. The Applicant's methodology for assessing in-combination effects was set out in Chapter 2 of their Environmental Statement [APP-055]. The list of other plans or projects that were included into the Applicant's in-combination assessment short-list can be found in Table 2.1 of the Environmental Statement Technical note submitted at Deadline 5 [REP5-004]. Tier 1 sites included in the assessment include Vicarage Drove, a solar farm on the land to the west of Cowbridge Road, Boston Alternative Energy Facility, Mallard Pass Solar Farm, Cottam Solar Project, Gate Burton Energy Park, West Burton Solar Project, Little Hale Fen, and a solar project on the land north of Roman Bank and East of Middle Marsh Road at Red House Farm.
- 5.37. All sites and pathways were screened out of the in-combination assessments, either due to their distance from the Proposed Development, or due to there not being any viable effect pathways which could cause an effect when combined with the effects from this Proposed Development.

- 5.38. The Secretary of State agrees with the Applicant's assessment and agrees that there will not be any LSE from the Proposed Development when considered in-combination with other plans or projects.

### **The Secretary of State's Conclusion on the HRA**

- 5.39. The Secretary of State has carefully considered all information available to him, including the recommendations of the ExA [ER 4.5.4], the RIES [PD-014], the advice of NE [AS-035] as the SNCB, the views of all other IPs, and the Applicant's case. The Secretary of State concludes that LSEs cannot be excluded at three protected sites, when the Proposed Development is considered alone or in-combination with other plans or projects:
- The Wash and North Norfolk Coast SAC;
  - The Wash SPA;
  - The Wash Ramsar site.
- 5.40. As the competent authority under the Habitats Regulations for this Application under the 2008 Act, the Secretary of State has undertaken an AA in respect of the Conservation Objectives of these protected sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEoI.
- 5.41. The Secretary of State agrees with the recommendation of the ExA, in line with the advice of NE that, based on the information available to him, an AEoI of any protected site can be excluded beyond all reasonable scientific doubt. The Secretary of State is content that the design parameters and mitigation measures outlined are secured by the planning requirements attached to the DCO.
- 5.42. The Secretary of State agrees with the ExA [ER 4.1.3] that sufficient information has been provided for him to fulfil his duties under the Habitats Regulations.

### **6. Consideration of Land Rights and related matters**

- 6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of CA and TP of rights which it had not been able to acquire by voluntary agreement. The Applicant is not seeking any CA of land. The Applicant is seeking powers to:
- acquire rights over some land within the Order limits;
  - acquire access to some land within the Order limits;
  - temporarily possess land within the Order limits; and
  - temporarily suspend rights over some of the land within the Order limits in order to construct, operate and maintain the Proposed Development [ER 6.4.7].
- 6.2. The ExA was satisfied that:
- The Application included a request for CA of the land to be authorised and the Applicant carried out diligent enquiry regarding CA matters, meeting the requirements of section 123 of the 2008 Act [ER 6.9.5];
  - The CA powers sought by the Applicant would be required and are proportionate to facilitate or to be incidental to the Proposed Development, meeting the requirements of section 122(2) of the 2008 Act [ER 6.9.1, ER 8.2.8];

- The Applicant has met the relevant parts of the CA Regulations and CA Guidance [ER 6.9.1];
- There is a compelling case in the public interest for the land to be acquired compulsorily, meeting the requirements of section 122(3) of the 2008 Act [ER 6.9.2];
- The Applicant has explored all reasonable alternatives to CA [ER 6.9.3];
- There is a reasonable prospect of funding being available for acquiring land and implementing the Proposed Development within the statutory timescale, as secured by Article 43 of the draft Order [ER 6.9.3, ER 6.9.13 et seq., ER 8.2.8];
- The public benefits associated with the Proposed Development would strongly outweigh the private loss, meeting the requirements of section 122(3) of the 2008 Act and establishing a compelling case in the public interest for the CA powers sought [ER 6.9.4, ER 6.10.1, ER 8.2.8];
- In the case of each section 127 representation, there would be no serious detriment caused to the carrying on of the undertaking of the statutory undertakers (“SU”) in question should the CA powers sought be granted, as secured by the Protective Provisions included in Schedule 13 of the Order accordingly [ER 6.9.6 et seq., ER 8.2.8] – the outstanding objections at the end of the Examination are discussed further by the Secretary of State below at paragraph 6.5;
- In the case of each section 138 representation, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development, and the ExA has worded the recommended DCO accordingly [ER 6.9.6 et seq., ER 8.2.8] – the outstanding objections at the end of the Examination are discussed further by the Secretary of State below at paragraph 6.6;
- The TP powers sought would be appropriately used, are justified, and are necessary to implement and maintain the Proposed Development [ER 6.9.11]; and,
- Any interference with human rights would be for legitimate purposes, proportionate, and justified in the public interest. The ExA considered that the Proposed Development would accord with the Equality Act 2010 and that due regard has been paid by the Applicant to public sector equality duty (“PSED”) [ER 6.9.12, ER 8.2.8].

6.3. With regards to Crown land, the ExA noted that the Applicant must obtain consent from both the Crown Estate and the Duchy of Lancaster in relation to Crown land prior to the Order being granted, and therefore recommended the Secretary of State consult these parties on the matter [ER 6.9.9, ER 8.2.8]. The Secretary of State considers this further at paragraph 6.9 below.

6.4. The ExA recommended, subject to the Applicant obtaining the necessary Crown authority in accordance with section 135 of the 2008 Act, that:

- the compulsory acquisition powers included in the Recommended DCO be granted;
- the temporary possession powers included in the Recommended DCO be granted;
- the compulsory acquisition powers sought in respect of Crown land should be granted;
- the powers authorising the compulsory acquisition of rights over Statutory Undertakers' land included in the Recommended DCO be granted;
- the powers authorising the extinguishment of rights, and removal of apparatus, of Statutory Undertakers included in the Recommended DCO be granted; and
- the powers included in the Recommended DCO to apply, modify or exclude a statutory provision be granted [ER 6.10.2].



### *Statutory undertakers and protective provisions*

- 6.5. As above, there were several SU with outstanding objections regarding their land interests at the close of Examination. The ExA provided its own conclusions and recommendations in each instance of disagreement [ER 6.7.23 et seq., ER 7.5, ER 6.9.6 et seq., ER 8.2.8], but also stated that the Secretary of State may receive or seek updates detailing agreement during the decision-making period [ER 6.9.8, ER 8.2.19 et seq.].
- 6.6. The outstanding objections and disagreements were between the Applicant and NRIL, Viking Link, and TK OFTO respectively [ER 6.7.73]. The Secretary of State requested updates from these three SUs and the Applicant in the first information request.
- 6.7. All four parties provided separate responses<sup>6</sup> which informed the Secretary of State that agreement had been reached between the Applicant and Viking Link and TK OFTO, respectively. The Applicant and NRIL both stated that agreement between the parties was imminent but, on 23 July 2024 following the second information request, the parties started agreement had been made but no new agreed Protective Provisions were provided to the Secretary of State to replace those in the draft DCO. On 31 October 2024, Viking Link withdrew its objection to the Proposed Development, on 10 January 2025, NRIL confirmed it also had withdrawn its objection, and on 23 January 2025, TK OFTO withdrew its objection too.

### *Crown Land*

- 6.8. As at paragraph 1.2 onwards above, the Secretary of State continuously sought updates during the decision-making period from the Applicant, TCE, and TDoL in regard to the Applicant obtaining the necessary Crown authority in accordance with section 135 of the 2008 Act. Following the Secretary of State's first, second, and third information requests the Applicant reiterated that commercial negotiations were ongoing and that no agreement had been reached with TCE or TDoL. During the Secretary of State's fourth information request on 22 November 2024, the Applicant and TDoL confirmed agreement had been reached, and TDoL confirmed the section 135 consent for its land interest. On 8 January 2025, no agreement had been reached but, by 23 January 2025, TCE confirmed that the Applicant had obtained the outstanding s135 consent.

### *Unknown Interests*

- 6.9. In the first information request, the Secretary of State also requested an update from the Applicant regarding the relevant interests in Plots 313 and 317 which had unknown Category 1 owners and occupiers at the close of Examination [ER 6.7.20 et seq.]. In its response, the Applicant stated that no interests had been identified and that a lack of identifiable owners of the plots in question may have been due to discrepancies between mapping tools. Regardless, the Applicant considered the provisions within the Order are proportionate and sufficient for the rights required, and that it has carried out diligent enquiry into the plots.

---

<sup>6</sup> <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010123/documents?stage-6=Secretary+of+State+Consultation&date-from-day=&date-from-month=&date-from-year=&date-to-day=&date-to-month=&date-to-year=&searchTerm=&itemsPerPage=25>



### *The Secretary of State's Conclusion*

- 6.10. Following the first information request, the Secretary of State notes that Protective Provisions between the Applicant and Viking Link and TK OFTO, respectively, will remain as per those provided prior to the close of Examination and included in the rDCO provided to the Secretary of State by the ExA. The Secretary of State notes that consent has now been obtained from TCE and TDoL in accordance with section 135 of the 2008 Act. The Secretary of State agrees that the Applicant has conducted due diligence inquiring into land plots with unknown interests and, in any case, the provisions within the Order are proportionate and sufficient for the rights required over these plots.
- 6.11. The Secretary of State has considered all the information and agrees with the ExA that, the powers outlined at ER 6.10.2 and above at paragraph 6.4 should be granted.
- 6.12. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998 (see paragraph 8.1 below for the Secretary of State's consideration of the Equality Act 2010 and the principles of PSSED).

### **7. Secretary of State's Consideration of the Planning Balance and Conclusions**

- 7.1. The Secretary of State acknowledges the ExA's recommendation that development consent should be granted and that the Order should be made in the form attached at Appendix D to its Report [ER 8.3.1].
- 7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- The principle of the development – very great positive weight [ER 3.2.82, ER 5.2.5, ER 5.3.3 et seq., ER 8.2.14]
  - Biodiversity and the natural environment – great positive weight [ER 3.3.69, ER 5.2.15, ER 5.3.5]
  - Design, landscape and visual – moderate negative weight [ER 3.4.55, ER 5.2.23, ER 5.3.8]
  - Land use and soils – a little negative weight [ER 3.6.94, ER 5.2.42, ER 5.3.9]
  - Socio-economics – moderate positive weight [ER 3.7.29, ER 5.2.45, ER 5.3.6]
  - Transport, access and public rights of way – neutral weight [ER 3.8.37, ER 5.2.49, ER 5.3.11]
  - Water environment, flood risk and drainage – neutral weight [ER 3.9.33, ER 5.2.52, ER 5.3.11]
  - Air quality – neutral weight [ER 3.10.6, ER 5.2.54, ER 5.3.11]
  - Glint and glare – neutral weight [ER 3.10.10, ER 5.2.54, ER 5.3.11]
  - Major accidents and disasters – neutral weight [ER 3.10.24, ER 5.2.54, ER 5.3.11]
  - Noise and vibration – a little negative weight [ER 3.10.28, ER 5.2.54]
  - Waste – neutral weight [ER 3.10.47, ER 5.2.54, ER 5.3.11]
  - Cumulative effects – moderate negative weight [ER 3.11.59, ER 5.2.55, ER 5.3.10]

- 7.3. All NSIPs will have some potential adverse impacts. In the case of the Proposed Development, the potential impacts have been assessed by the ExA as having not breached the 2011 NPS EN-1 and NPS EN-5 or those contained in the designated 2024 NPS EN-1, EN-3 and EN-5, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.
- 7.4. For the reasons given in this letter, the Secretary of State concludes that the benefits of the Proposed Development outweigh its adverse impacts.
- 7.5. The Secretary of State concludes that development consent should be granted for the Heckington Fen Solar Park. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Proposed Development's adverse impacts, as mitigated by the proposed terms of the Order.
- 7.6. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by BCC, NKDC and LCC, the NPSs (2011 and 2024 versions), and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## **8. Other Matters**

### Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). 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; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; disability; gender reassignment; marriage and civil partnerships<sup>7</sup>; pregnancy and maternity; race; religion and belief; sex; and sexual orientation.
- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. 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.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential

---

<sup>7</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

#### Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the Application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

### **9. Modifications to the draft Order**

- 9.1 Following consideration of the recommended Order provided by the ExA, the Secretary of State has made the following modifications to the recommended Order:
- Amendment to article 11 (temporary closure of public rights of way) to include provision to enable any person who suffers loss by suspension of private right of way to seek compensation pursuant to the Land Compensation Act 1961.
  - Deletion of (previously) article 15 (removal of human remains). This article is not considered necessary or appropriate due to separate statutory requirements. This is consistent with the position taken in previous Development Consent Orders.
  - Amendment to article 16 (authority to survey and investigate the land) to include a requirement for any notice to include prescribed information, apparatus is removed as soon as possible, and land restored to its original condition after completion of the activities undertaken pursuant to that article.
  - Amendment to article 17 (compulsory acquisition of land) to provide the compulsory acquisition of land subject to the following additional articles: article 18 (time limit for exercise of authority to acquire land compulsorily), article 20 (private rights), article 22 (acquisition of subsoil only), article 25 (rights under or over streets), article 26 (temporary use of land for carrying out the authorised development) and protective provisions (schedule 13).
  - Amendment to article 26 (temporary use of land for carrying out the authorised development) to change the notice period to ensure sufficient notice is provided.
  - Amendment to article 30 to amend the definition of “public utility undertaker” to reflect amendments to the Highways Act 1980.
  - Amendment to article 32 such that the right to transfer the benefit of the Order is subject to the consent of the Secretary of State being required (except in certain

circumstances) and to existing rights and obligations, and to change the notification period to ensure sufficient notice is provided.

- Amendment to article 35 (felling or lopping of trees and removal of hedgerows) such that the right to fell or lop any tree or shrub near any part of the authorised development is subject to the obligations to pay compensation (sub-paragraph 2) and article 36 (trees subject to preservation orders).
- Amendment to article 36 (Trees subject to preservation orders) such that the right to fell or lop any tree subject to a tree preservation order is subject to the obligations set out in sub-paragraph 2 of the same article.
- Amendment to article 41 (procedure in relation to certain approvals etc.) to delete sub-paragraph 4, the effect being that all consents, agreements or approvals are given pursuant to Schedule 14 except protective provisions or protective works to buildings which are to be dealt with pursuant to Schedule 13 or under article 15(6) respectively.
- Amendment to article 42 (guarantees in respect of payment of compensation) to extend the obligation to pay compensation to article 21 (acquisition of subsoil only).
- Amendment to paragraph 3 of Schedule 2 (phasing the authorised development and date of final commissioning) to change the notice period to ensure sufficient notice is provided.
- Amendment to paragraph 7 of Schedule 12 (confidentiality) to provide that arbitration hearings must be in public unless agreed otherwise by the arbitrator on application from one or both of the parties.
- Amendment to paragraph 2 of Schedule 14 (applications made under provisions of this Order) to provide for: additional notification requirements and deemed refusal in the event the relevant planning authority considers the application has given rise to any materially new or different environmental effects.
- Amendment to paragraph 4 of Schedule 14 (appeals) to include a time period for appeals, an extension to time period in which the appointed person may seek further information, and the removal of the requirement for a decision to be made within a prescribed period, instead requiring it to be made as soon as reasonably practicable.

9.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency.

## **10. Challenge to decision**

10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

## 11. Publicity for decision

- 11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the 2008 Act provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development

## **ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010123>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**

## ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
BBC	Boston Borough Council
BESS	British Energy Security Strategy
CA	Compulsory Acquisition
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ExA	The Examining Authority
HRA	Habitats Regulations Assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
LCC	Lincolnshire County Council
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
NE	Natural England
NKDC	North Kesteven District Council
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NRIL	Network Rail Infrastructure Limited
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
The 2008 Act	The Planning Act 2008
PP	Protective provisions
PSED	Public Sector Equality Duty
PV	Photovoltaic
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SPA	Special Protection Area
SU	Statutory undertaker
TCE	The Crown Estate
TDOL	The Duchy of Lancaster
TK OFTO	Triton Knol OFTO Limited
TP	Temporary Possession
Viking Link	National Grid Viking Link Limited