

Planning and Development

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BY EMAIL TO: stonestreetgreensolar@planninginspectorate.go.uk

Date: 31st January 2025

Dear Sir

Site: Stonestreet Green Solar

Proposal: Application for grant of Development Consent Order ('DCO')

Issue: Response to ExQ1

Please find below Ashford Borough Council's (ABC) response to the Examining Authority's written questions and requests for information (ExQ1) in accordance with Deadline 3.

Question reference	ExA Question:	ABC Response:
Q1.03	Statement of Common Ground Page 7 of the update on the Statement of Common Ground submitted by the Applicant at D1 [REP1-062] states that on the 20 November the Applicant sent an email in response to ISH1 comments and sought a meeting to discuss. Can the Council advise if this has been scheduled or taken place and update on their response if the meeting has taken place? In addition, can you also advise if any of the matters not agreed and under discussion have been resolved?	<p>The Council responded to the Applicant by email on 09 December setting out the outstanding matters relating to ISH1 comments, a number of which have been addressed and reported in the Schedule of Changes to the Draft DCO document (EN010135) submitted at D2.</p> <p>The Council met with the Applicant on 28 January and has made further progress on outstanding matters. A number of issues which were under discussion have now been agreed. This progress will be captured in the Statement of Common Ground to</p>

		be submitted at D3. The Council will continue dialogue with the Applicant on those matters that are still under discussion.
Q2.05	<p>Local Nature Recovery Strategy</p> <p>EN-1 Para. 4.6.12 refers to a Local Nature Recovery Strategy (LNRS), if published. ES Chapter 9 Biodiversity [APP-033] doesn't specifically reference a LNRS, can ABC state if a LNRS has been published or if a similar document exists. If not is a LNRS being prepared and if so when is this likely to be published?</p>	<p>Public consultation on the draft Kent and Medway Local Nature Recovery Strategy (LNRS) commenced on 16 January 2025. The draft LNRS has been published by Kent County Council in their role as the Responsible Authority. Ashford Borough Council is a Supporting Authority as defined under the LNRS Regulations (2023). The LNRS sets out the County's priorities for nature recovery and the recommended actions to deliver these. Public consultation closes on 12 March 2025 and a notice of intent to publish the final LNRS is expected in May 2025.</p>
Q4.04	<p>Part 2 Article 45 - Felling or lopping of trees or removal of hedgerows</p> <p>Consider whether this should be done with prior consent or notification of LPA.</p>	<p>ABC consider that notification of tree felling / lopping & hedgerow removal would be appropriate.</p>
Q5.01	<p>Conservation Area Character Appraisals</p> <p>ES Chapter 7 Cultural Heritage [AS-011] Paragraph 7.5.25 refers to the absence of Conservation Area Character Appraisals. Do the Council have any plans to produce Character Appraisals or empower the community to undertake the appraisal for their community?</p>	<p>ABC has an emerging programme to review Conservation Areas through the broader Conservation Area Assessment Management Plan (CAAMP) process.</p> <p>ABC does not, at present, have a date for review of the Aldington Conservation Area (being the nearest to the application site) through the CAAMP process.</p> <p>ABC has no current plans to pursue the CAAMP process through input from the local community.</p>

<p>Q5.02</p>	<p>Heritage Assets – construction phase</p> <p>ES 12 – Socio-Economics [AS-008] Paragraph 12.7.51 identifies that there will be no significant direct effects on cultural heritage assets within 5km of the order limits, or indirect effects to the historic landscape character during the construction phase. Do the local authorities and HE agree?</p>	<p>ABC notes that the ES is based on a study area of up to 1km from the order limits for non-designated heritage assets including historic landscape assets such as field systems, earthworks and boundaries, 2km for designated heritage assets including built heritage and historic landscape assets and up to 5km for the settings of Grade I and Grade II* listed buildings and Registered Parks and Gardens.</p> <p>ABC concurs with the conclusions of the ES that there would be direct construction phase effects (including some permanent adverse effects) on a number of cultural heritage assets within 5km of the order limits, however none would be significant for the purposes of EIA.</p> <p>ABC refers the ExA to KCC’s representations in relation to potential significant direct effects on archaeology during the construction phase (REP1-087).</p> <p>The ES concludes that indirect effects arising from the construction phase on historic landscape character would be minimal and temporary. ABC concurs that the indirect effects would be adverse but not significant. The ES also states that effects on historic landscape character are properly considered at the operational phase. As stated in ABC’s LIR, these effects are considered to result in negative impacts on community,</p>
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		recreational and tourist facilities in the area.
Q7.06	<p>Agricultural Permitted Development Rights</p> <p>If the Proposed Development did not proceed, what form of development could be built on each field utilising permitted Development rights provided by the Town and Country Planning (General Permitted Development) Order 2015.</p>	<p>The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 6 sets out agricultural and forestry ‘permitted development’ rights. It sets out limitations to such rights together with an application process.</p> <p>The ExA’s theoretical question references agriculture only and not Class C (mineral working for agricultural purposes) nor Class E (forestry).</p> <p>The starting point is that permitted development rights apply to ‘agricultural land’. This is defined in D.1 of Part 6 as follows; -</p> <p><i>‘land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so <u>used for the purposes of a trade or business</u>, and excludes any dwellinghouse or garden’ (ABC <u>emphasis</u>).</i></p> <p>Therefore, not all land which might be used for agriculture (as defined in the Act) will automatically qualify for the permitted development rights set out in Part 6 due to the important trade or business caveat. Subject to that point, Part 6 then splits permitted development rights in relation to ‘agricultural units’. This is defined in D.1 of Part 6 as follows; -</p> <p><i>‘agricultural land which is occupied as a unit for the purposes of agriculture, including—</i></p>

		<p><i>(a) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or</i></p> <p><i>(b) any dwelling on that land occupied by a farmworker'</i></p> <p>For larger agricultural units comprising 5 hectares or more the provisions of Class A would apply. For smaller agricultural units comprising less than 5 hectares, Class B would apply.</p> <p>Although it is not expressly stated, ABC assume that the ExA's question primarily relates to the entirety of the site subject of the proposed DCO as constituting the relevant agricultural unit. On that basis, the unit would clearly exceed 5 hectares and Class A would apply (alternative agricultural unit possibilities are covered further below).</p> <p><u>SINGLE AGRICULTURAL UNIT</u></p> <p><u>CLASS A</u></p> <p>Class A (A.) deals with permitted development in the form of the erection, extension or alteration of a building or excavation or engineering operations which are <u>reasonably necessary</u> for the purposes of agriculture.</p> <p>Class A.1 (a) to (k) identify that which <u>will not</u> constitute permitted development and if any of the limitations apply then a planning application for planning permission would need to be made to and approved by ABC (as the local planning authority or PINS on appeal) in order for the proposed development to be lawfully carried</p>
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		<p>out.</p> <p>Of most relevance in Class A.1 to the ExA's question are;-</p> <p><u>Area</u></p> <p>(e) under Part 6 Class A rights the ground area or works/structure/plant machinery arising from engineering operations or any building erected or extended <u>could not exceed 465 sq.m. D.1</u></p> <p>(2)(a) caveats that this ground area limitation has to include the ground area of any building, structure, works, plant, machinery, ponds or tanks which are being provided or have been provided within the proceeding 2 years if any part would be within 90m of that which is proposed.</p> <p><u>Height</u></p> <p>(g) under Part 6 Class A rights a building / structure or works <u>could not exceed 12m in height</u> for the purpose of Part 6</p> <p><u>Relationship to classified road</u></p> <p>(h) under Part 6 Class A rights no part of the development could be within 25 metres of a metalled part of a trunk road or classified road. ABC's understanding is that Station Road, Goldwell Lane, Church Lane, Roman Road, Bank Road and Frith Road are all Class 'C' classified roads. KCC, in its role as local highway authority, has confirmed to ABC that Calleywell Lane is unclassified.</p> <p>This limitation would therefore create a zone at the edge of an agricultural unit comprising 5 hectares or more wherein development could not take place pursuant to Part 6 Class A rights.</p>
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		<p>Using the applicant's Illustrative Layout Plans (APP-012), the ability to carry out Class A (and Class B) permitted development in the following locations;-</p> <p>Fields 2, 4, 5, 6 & 9 (northern edge with Bank Road)</p> <p>Fields 10 & 12 (southern edge with Bank Road)</p> <p>Field 19 (eastern edge with Station Road)Fields 23 & 25 (western edge with Station Road)</p> <p>Field 23 (southern edge to Station Road/Goldwell Lane)</p> <p>DCO order limits crossing Church Lane (land on western and eastern sides of the Lane)</p> <p><u>Use</u> <u>Within 400 metres</u> (measured along the ground) <u>of the curtilage of a 'protected building'</u> (defined as a permanent building normally occupied by people but not including a building within the agricultural unit or a dwelling or other building on another agricultural used for/in connection with agriculture);-</p> <p>(i) the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation <u>would not</u> fall within Part 6 rights.</p> <p>(k) any building for storing fuel or waste from a biomass boiler or an</p>
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		<p>anaerobic digestion <u>system would not</u> fall within Part 6 rights (and irrespective of the specified distance, the storage of waste of fuel from elsewhere would also fall outside Part 6 rights).</p> <p>A.1 identifies that in relation to excavations or engineering operations connected with fish farming, Part 6 Class rights do not apply on or over article 2(4) land which is defined elsewhere in the Order as National Parks and adjoining land and the Broads. Neither of these apply to the Stonestreet Green application for DCO.</p> <p>Therefore, in summary, ABC's view is that Class A development;-</p> <p><u>(i) could not exceed 465 sq.m (after also taking into account the area of recent development within 90m within the preceding 2 years),</u></p> <p><u>(ii) could not exceed 12m in height,</u></p> <p><u>(iii) could not be within 25m of the metalled portion of a class 'C' classified road, and</u></p> <p><u>(iv) could not be within 400m of 'off-site' protected buildings according to the specific use of the development proposed.</u></p> <p>Given (i) above, the ability to carry out permitted development (in terms of sq.m coverage) on each field is therefore dictated by (a) its relationship to other development whether in the same field or a different field but otherwise all</p>
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		<p>fields forming the overall large agricultural unit and (b) time.</p> <p>Development that would be permitted development under Class A is subject to A.2 conditions. A.2 sets out an application process that has to be followed when seeking to exercise permitted development rights.</p> <p>A developer is required by A.2 (2)(i) to apply to ABC for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank (‘the prior approval matters’), as the case may be.</p> <p>Having received a valid application, the development cannot proceed unless;_</p> <ul style="list-style-type: none"> - ABC identify within a 28-day period that its prior approval is not required, or - If within the 28-day period ABC indicate that prior approval is required, the subsequent giving of that prior approval or - ABC fail to make any determination on the application within the 28-day period <p>In circumstances where ABC identify prior approval is required but insufficient details have been given in order to properly assess the A.2 (2) (i) ‘prior approval matters’ then ABC would confirm within the 28-day period that prior approval is</p>
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		<p>needed and then identify that it is refused. In such circumstances, a fresh application might be submitted (or it would be open for an applicant to lodge an appeal against the refusal).</p> <p>Therefore, in summary, provided that the A1. limitations are not breached and that the A.2 conditions establishing process are followed then permitted development could lawfully take place pursuant to Part 6 rights.</p> <p><u>MORE THAN ONE CLASS A AGRICULTURAL UNIT</u></p> <p>ABC note that various existing landowners are identified as ‘affected parties’ in the applicant’s Schedule of Negotiations (APP-022) and so that may be the more likely practical reality related to the site covered by the proposed DCO than a theoretical single agricultural unit comprising the entire DCO site.</p> <p>In a theoretical case of the DCO site comprising several large agricultural units and each of those units comprising 5 hectares or more then the Class A rights set out above would apply in respect of each such agricultural unit. Notwithstanding any locational proximity, the 90m limitation in respect of the D.1 (2) (a) ground area calculation would not apply in respect of development that is either occurring or has occurred within the preceding 2 years and whilst within that 90m distance is development that is located in a different agricultural unit.</p>
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		<p><u>MULTIPLE SMALLER CLASS B AGRICULTURAL UNITS (AND/OR MIX OF SUCH WITH LARGER AGRICULTURAL UNITS)</u></p> <p>In the case of the DCO site theoretically comprising a far greater number of agricultural units, any of those that do not exceed 5 hectares would be covered by Part 6 Class B. The reasonably necessary for the purposes of a trade or business caveats remain.</p> <p>ABC is not clear from a review of the application information as to whether any individual fields within the defined DCO site are physically less than 5 hectares in extent, and so could theoretically individually form an agricultural unit for the purposes of Part 6 Class B. This information may be able to be provided to the ExA by the applicant if necessary.</p> <p>Notwithstanding, in many respects, Class B mirrors the approach in Class A with limitations followed by requirements including an application process.</p> <p>Class B identifies that development that is reasonably necessary for the purposes of agriculture within the agricultural unit of less than 5 hectares involving the following will constitute permitted development;-</p> <p><i>the extension and alterations of an agricultural building;</i></p> <p><i>installation of additional or replacement plant or machinery:</i></p> <p><i>the provision, rearrangement or</i></p>
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		<p>case, <u>Class B rights would not apply</u>. The protected building definition is covered further above in respect of Class A.</p> <p><u>Fish farming</u> B.1 (e) Pond construction, placing or assembly of a tank on land or in waters and increase in size of either already existing would fall outside Class B rights.</p> <p><u>Hard surfacing</u> B.4 Hard surfacing exceeding 1,000 sq.m calculated in accordance with D.1(2)(a) as referenced further above in relation to Class A Part 6 rights) would <u>fall outside the scope of Class B rights</u>.</p> <p>Development that would be permitted development under Class B is subject to B.5 conditions. Of most relevance is that in relation to the provision, rearrangement or replacement of a private way an application would be required to be made to ABC for a determination as to whether prior approval would be required as to the siting and means of construction of the private way. The decision pathway for such an application to ABC would follow the 28-day process that is set out in Class A at A.2 (2).</p> <p>For the avoidance of doubt, ABC's response to Q7.06 is solely to assist the ExA in relation to the application for DCO subject of Examination and is not in relation to any specific query as to how a specific intended development on agricultural land might be lawfully carried out.</p>
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		It should not be construed as binding on ABC, as the local planning authority, in any way.
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I trust the Council's response is helpful.

Yours sincerely

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Deputy Team Leader, Strategic Development and Delivery