

# Stonestreet Green Solar

## Written Summary of Oral Submissions from Issue Specific Hearing 3 and Responses to Action Points

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## Table of Contents

1	Written summary of the Applicant's oral submissions at Issue Specific Hearing 3	2
1.1	Introduction	2
1.2	Agenda Item 1: Welcome and Introductions	2
1.3	Agenda Item 2: Purpose of the Issue Specific Hearing	2
1.4	Agenda Item 3: The Overall approach to the design of the Proposed Development in relation to PROW and Byway Open to All Traffic (BOAT)	2
1.5	Agenda Item 4: Advancement of position between the Applicant, Kent County Council (KCC) and other IPs such as Kent Ramblers	20
1.6	Agenda Item 5: PROW and Landscape	28
1.7	Agenda Item 6: Next steps	36
1.8	Agenda Item 7: Closing	36
2	Action Points	37
2.1	List of action points arising and the Applicant's responses	37

# 1 Written summary of the Applicant's oral submissions at Issue Specific Hearing 3

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## 1.1 Introduction

- 1.1.1 This document summarises the oral submissions made by EPL 001 Limited ('**EPL**' or the '**Applicant**') at Issue Specific Hearing 3 relating to Public Rights of Way ('**PRoW**') ('**ISH3**') which took place in a blended format at the Ashford International Hotel and on Microsoft Teams on 25 February 2025.
- 1.1.2 In what follows, the Applicant's submissions on the points raised broadly follow the Agenda for the ISH3 set out in the Examining Authority's ('**ExA**') agenda which was published on the Planning Inspectorate's website on 17 February 2025 [\[EV8-001\]](#). Where the comment is a post-hearing note submitted by the Applicant, this is indicated.
- 1.1.3 The Applicant, which is promoting the Stonestreet Green Solar Project (the '**Project**'), was represented by Mr Hugh Flanagan of Francis Taylor Building, instructed by Herbert Smith Freehills LLP. He also introduced Mr Mike Humphrey (Director, Quod Planning Consultancy), Mr John Markwell (Landscape Director, at Finc Landscape Consultancy) and Mr Matthew Sharpe (Senior Director, Quod Planning Consultancy).

## 1.2 Agenda Item 1: Welcome and Introductions

- 1.2.1 The ExA welcomed attendees to ISH3 and provided introductory remarks about how the hearing would be conducted.

## 1.3 Agenda Item 2: Purpose of the Issue Specific Hearing

- 1.3.1 The ExA explained that the purpose of ISH3 would be to examine the Applicant's approach and strategy to PRoWs, noting that Kent County Council ('**KCC**') and others would be given the opportunity to contribute, as well as the other Interested Parties ('**IPs**') in attendance. He asked the Applicant team to keep a list of action points.

## 1.4 Agenda Item 3: The Overall approach to the design of the Proposed Development in relation to PROW and Byway Open to All Traffic (BOAT)

- 1.4.1 The ExA asked the Applicant to explain its overall approach to the design of the Proposed Development in relation to PRoW and BOAT and consideration of alternative designs to limit the impact on the PRoW network.
- 1.4.2 Mr Flanagan introduced Mr Humphrey, who provided the following summary of the Applicant's approach.

- 1.4.3 Mr Humphrey explained that the Applicant's overall approach to the selection and design of the Proposed Development in relation to PRow, including consideration of alternative designs and limitation of impacts on the PRow network, is framed within the context of national policy.
- 1.4.4 Solar development is critical to meet net zero requirements and achieve clean power. Noting that site selection is limited by the requirement to be near a point of connection with available capacity, this site can connect without transmission reinforcement works, at Sellindge substation, and therefore would contribute to achieving Clean Power 2030.
- 1.4.5 Mr Humphrey explained that the area surrounding Sellindge has a network of PRows typical of much of rural mid-Kent. He noted that there is no alternative site within the appropriate search area that could accommodate the Project that would not impact on multiple PRows.
- 1.4.6 Mr Humphrey explained that the Applicant is delivering a renewable energy project that is considered by policy to be a critical national priority, whilst seeking to minimise any impact on the PRow network and ensuring the proposals are in full compliance with all the requirements of the relevant National Policy Statements, primarily the *Overarching National Policy Statement for Energy* ('**NPS EN-1**') (paragraph 5.11.30) and *National Policy Statement for Renewable Energy Infrastructure* ('**NPS EN-3**') (paragraphs 2.10.40 - 2.10.45) - which broadly recognise and accept that solar projects will affect existing PRows, but encourage applicants to design project layouts to ensure continued recreational use is possible, to minimise visual impacts, to consider opportunities to enhance the PRow network and to detail how PRow would be managed to ensure they are safe to use, in a PRow management plan.
- 1.4.7 He noted that the Applicant's proposals are secured through the provisions within the **Draft Development Consent Order (DCO) (Doc Ref. 3.1(E))** and the **Outline Rights of Way and Access Strategy** [[REP1-056](#)]. Together, these ensure that the network will retain connectivity and maintain recreational use with as little disruption as practicable.
- 1.4.8 Mr Humphrey explained that the proposed replacement and new PRows have been designed having regard to the potential for improvements to wider connectivity and in consultation with KCC's PRow Officer and other stakeholders to minimise visual impact for PRow users. He added that the **Outline Rights of Way and Access Strategy** [[REP1-056](#)] sets out detail of how the PRows will be managed to ensure they are safe to use.
- 1.4.9 He added that, as confirmed by the **Outline Rights of Way and Access Strategy** [[REP1-056](#)], the approaches taken are compliant with and take account of the Kent Design Guide and Countryside Access Objectives and Policy.
- 1.4.10 Mr Humphrey explained that the following policies were of particular importance in informing the Applicant's approach to the consideration of diversions to PRow, potential alternatives, and their design within the Site:



- NPS EN-3, paragraph 2.10.41 – *“Public rights of way may need to be temporarily closed or diverted to enable construction, however, applicants should keep, as far as is practicable and safe, all public rights of way that cross the proposed development site open during construction and protect users where a public right of way borders or crosses the site.”*;
- NPS EN3 2.10.42 – *“Applicants are encouraged to design the layout and appearance of the site to ensure continued recreational use of public rights of way where possible during construction, and in particular during operation of the site.”*; and
- NPS EN-3 2.10.43 – *“Applicants are encouraged where possible to minimise the visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape”*.

1.4.11 Mr Humphrey explained that, in accordance with these policies, the Project proposals ensure that PRowS across the Site remain open during construction (as required by paragraph 2.10.41) and allow continued recreational use during construction and operation of the site (as required by paragraph 2.10.42).

1.4.12 This is secured in the **Outline Rights of Way and Access Strategy** [REP1-056] and also through Article 18(2) of the **Draft DCO (Doc Ref. 3.1(E))** (which restricts the stopping up of any PRow until a substitute is provided).

1.4.13 Mr Humphrey noted that the only exceptions to this are the two PRow which are to be extinguished (AE 447 and AE 455). However, it should be noted that while these are presented as ‘extinguishments’ rather than diversions, they could actually be characterised as diversions via existing or new or improved routes, which would be in place prior to their extinguishment.

1.4.14 He stated that, regarding all extinguishments, Section 136 of the Planning Act 2008 states:

*“An order granting development consent may extinguish a public right of way over land only if the Secretary of State is satisfied that— (a) an alternative right of way has been or will be provided, or (b) the provision of an alternative right of way is not required.”*

1.4.15 Mr Humphrey noted that the Applicant’s **Explanatory Memorandum (Doc Ref. 3.3(E))** makes it clear in Section 5 (which relates to Part 4 of the **Draft DCO (Doc Ref. 3.1(E))**) that the proposals are in compliance with the Planning Act 2008.

1.4.16 He explained that it is accepted that some PRow diversions are required in order to deliver the Project's benefits, but these have been carefully designed, with input from KCC and Kent Ramblers, to minimise any reduction in amenity.

1.4.17 Mr Humphrey explained that, to put the diversions into context, the average increase in PRow length within the Site as a result of the proposed diversions is 18%. He noted that based on average walking speed of 1.4m/s, the walking time per route on average increases by just over 1 minute.

- 1.4.18 For a full link by link summary of the proposed changes and interactions between existing, replacement and new routes, Mr Humphrey directed the ExA and IPs to Table 12.18 in **ES Volume 2, Chapter 12: Socio-Economics** [\[REP1-024\]](#) and **Table 2-1 of the Outline Rights of Way and Access Strategy** [\[REP1-056\]](#).
- 1.4.19 He explained that the development of PRow diversions and alternatives has been an iterative process, which has evolved over time to balance a range of different factors including:
- The fact that policy allows and supports reasonable diversion of PRow in the context of the critical need for energy infrastructure;
  - The need to design an efficient solar farm with maximised PV capacity within the fields of the Site so as not to reduce the benefits of clean energy generation at this location (while minimising disruption);
  - Feedback from statutory consultees including the Local Highway Authority and IPs who use the routes, including the Kent Ramblers;
  - The need to avoid sensitive ecological areas;
  - The beneficial effect of restoring historic hedgerows and field boundaries – both for cultural heritage and legibility / visual environment of routes. He provided the example of avoiding retaining a route that would pass directly through a field of panels, as opposed to using a historic boundary that provides for screening and/or openness; and
  - User safety.
- 1.4.20 Mr Humphrey noted that the details of the alternatives that have been considered and how the PRow strategy has evolved through public consultation and bilateral engagement are provided in Section 5.7 of **ES Volume 2, Chapter 5: Alternatives and Design Evolution** [\[AS-010\]](#). He confirmed that the proposed changes to the PRow were shared with KCC prior to submission and KCC confirmed in writing that they were happy with the Schedule 8 (public rights of way) to the **Draft DCO (Doc Ref. 3.1(E))**.
- 1.4.21 Mr Humphrey explained that the proposed diversions have been designed to follow the route of historical hedgerows where possible. He added that these historical hedgerows are proposed to be reinstated as part of the Project to reduce visual impact and maximise biodiversity net gain ('**BNG**'). He noted that alignment of PRows to these boundaries allows users a better experience than walking through a field with panels on each side.
- 1.4.22 He noted that the approach to design elements has been iterative and has, as mentioned above, considered input over several years from ABC, KCC and Kent Ramblers.
- 1.4.23 Mr Humphrey then explained that the proposed new PRows have been designed in consultation with, and with input from, the KCC PRow Officer and other stakeholders to seek to minimise visual impact for PRow users. He confirmed that this includes a PRow corridor for each PRow of at least 10m, which is double the 5m width requested by KCC. He further confirmed that the Applicant and KCC have

agreed a screening approach that typically includes hedgerow on one side and fencing only on the other side.

1.4.24 He explained that the layout of the PV panels within the Project has been designed to minimise the impacts on the PRoW network, where possible. Mr Humphrey confirmed that the Applicant has sought to minimise the number and length of PRoW diversions and deliver improvements to the existing PRoW network, with new and diverted PRoW providing increased connectivity.

1.4.25 Mr Humphrey then explained the chronology and iterative design approach undertaken, as follows:

- The Applicant considered how it might seek to minimise impacts on the PRoW network whilst delivering the Project benefits prior to proposing the 2022 Consultation Scheme (at the 2022 Statutory Consultation stage);
- Initial plans were consulted upon in 2022, with the PV panel layouts shown for the Project in the 2022 Statutory Consultation designed to accommodate PRoW routes, diversions (re-routes) and setbacks. The 2022 Statutory Consultation set out a proposed layout of PV arrays and PRoW within the Site.
- He explained that the network of existing PRoWs was a key constraint that had a considerable impact on the efficient use of the Site, with existing routes often not related to field boundaries (existing and historic). Mr Humphrey noted that this is particularly evident immediately to the north of Bank Road, on the north facing slope of the Aldington ridgeline, where there has been significant historic loss of hedgerows. He explained that the Project offers the opportunity to re-establish some of these historic field boundaries and, at the same time, reconfigure the PRoW network at the local scale to better relate to the prevailing landscape pattern.
- Mr Humphrey explained that this enabled the most efficient use of the Site in terms of generating capacity whilst also maximising the potential for existing and proposed hedgerows to screen views of proposed PV panels themselves; by co-locating PRoW within hedgerow and watercourse corridors. He noted that users of PRoW will typically only experience the Project to one side as a result. This approach also allows landscape mitigation to be focused along field boundaries, with significant planting as part of a site-wide green infrastructure strategy.
- He went on to explain that a number of changes to the PRoW strategy were included in the Project layout presented at the 2023 Statutory Consultation following discussion with ABC and KCC and in response to the 2022 Statutory Consultation responses from other IPs, including the Kent Ramblers and other community members.
- Mr Humphrey explained that at this stage it was agreed and confirmed in amended plans that all PRoWs would be at least 10m wide, in excess of the 5m width requirement requested by KCC in its response to the EIA Scoping process, with approximately 30% of the PRoW benefiting from a corridor width in excess of 15m. Additionally, he noted, revised diversion proposals

for PRow AE 370 were made to allow open views of the North Downs to be enjoyed from the Aldington Ridge.

- He went on to explain that, following publication of the 2023 PEIR Addendum, PV panels were removed from Fields 26-29. Rather than remove these fields from the Site, he noted that the Applicant decided to retain this area for landscape, biodiversity and water environment enhancements, with enhanced public access. This includes enhanced public access including existing PRow and new PRow along the East Stour River providing a link to the west side of Field 28 - creating a more direct route between Otterpool Park (towards the east) and Ashford (towards the west), as KCC and ABC had previously indicated to the Applicant that this was a key strategic network aim for the local network.
- Mr Humphrey noted that a detailed summary of how the consultation feedback was considered and presented in the PEIR Addendum, leading into the 'final' scheme on a route-by-route basis, is set out in **Appendix 11.1 of the PEIR Addendum** which has now been submitted to the examination as **Appendix 4 to the Written Summary of Oral Submissions from Issue Specific Hearing 2 and Responses to Action Points** [[REP1-075](#)].

1.4.26 Mr Humphrey stated that the Applicant also acknowledges that NPS EN-3 influences the approach to provide enhancements to PRow within a proposed development. He noted that paragraph 2.10.44 of NPS EN-3 states that *"Applicants should consider and maximise opportunities to facilitate enhancements to the public rights of way and the inclusion, through site layout and design of access, of new opportunities for the public to access and cross proposed solar development sites (whether via the adoption of new public rights of way or the creation of permissive paths), taking into account, where appropriate, the views of landowners."*

1.4.27 He explained that the Project will deliver six new routes and enhancements to the existing network, including routes that will allow PRow users to transition between existing routes without having to use the public highway. He added that the Project will also improve connectivity in the north of the Site, providing better links between the Otterpool Park development and Ashford, a strategic route that KCC and ABC had made clear was important.

1.4.28 Mr Humphrey explained that the key enhancements are set out within Section 3 of the **Outline Rights of Way and Access Strategy** [[REP1-056](#)]. He noted that the improvements that meet this policy requirement are:

- Four new PRow acting as alternative / substitutions to existing routes. He explained that this comprises:
  - FN-1 - new PRow linking to the east of Field 23 to AE 657, as an alternative to the proposed diversion to the west of Field 23;
  - FN-6 - new PRow between Roman Road and Handen Farm, which would run parallel to an existing PRow (part of AE 377) that currently shares a driveway into



Handen Farm with motorised users, to the west side of the hedge next to Field 12. This is intended to improve user safety;

- FN-7 - PRoW running between AE 378 and AE 448 on the west side of Goldwell Lane, which has the benefit of removing the need for users to cross Goldwell Lane when travelling between these links, and creates a new circular recreational walk around Field 19; and
  - AE 657 Extension / FN-AE657 – this is a new link between the AE 657 and the west of Field 23 connecting to the AE 381 diversion.
- He then explained that, as well as these alternative PRoW, new PRoW for improvements to wider connectivity and amenity (rather than mitigation) comprise:
- FN-2 - new PRoW running from the existing AE 657 at the south of Field 28 / west of Backhouse Wood and New 3 / FN-3 at the East Stour River;
  - FN-3 - new PRoW running from the existing intersection of AE 657 and AE 457 at the East Stour River, and running alongside the river to meet the diverted AE 431 at the north east corner of Field 25 - A 'riverside walk' will be created by FN-3 running east to west through the north of the Site and connecting existing route AE 376 directly to AE 657, thereby directly connecting the network between Mersham and Sellindge;
  - FN-8 - new PRoW that would link AE 457 and AE 657 to the north of Backhouse Wood resulting in a more direct route and a decrease in journey length; and
  - A new link (FN-AE 380) between the replacement for the diverted AE 385 east of Bank Road, where it would link to the existing AE 380 (north of Bank Road) providing the benefit of connecting the existing AE 380 path (that terminates at Bank Road) with AE 385, avoiding the need to walk on Bank Road and Laws Lane to continue progress.
- Finally, he explained that a further enhancement committed to in the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) is the clearance and maintenance of access to the BOAT (AE 396) which is currently not passable due to extensive vegetation. He noted that this is the only route within or around the Site suitable for horse riding so opening this up is a local benefit.

1.4.29 Mr Humphrey explained that the Project has also offered to make a financial contribution to the delivery of a cycle route between Aldington and Mersham, subject to appropriate landowner agreements and securing land permissions outside of the Order Limits.

1.4.30 Mr Humphrey noted that a final point in terms of policy compliance is that national policy also requires the collaborative development of an appropriate management plan for affected PRowS. Paragraph 2.10.45 of NPS EN-3 requires that *“Applicants should set out detail on how public rights of way would be managed to ensure they are safe to use in an outline Public Rights of Way Management Plan.”*

1.4.31 He explained that the Applicant's approach to this is detailed in the mechanisms of the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) which was shared with KCC prior to the application's submission, with comments received incorporated. He added that, as set out in the **Statement of Common Ground with Kent County Council (Doc Ref. 8.3.4(C))** at items P.6 PRow and P.8 PRow, this **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) is agreed with KCC.

1.4.32 Mr Humphrey explained that **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) includes some important measures, including:

- A framework for the control of the design, management, monitoring and implementation of PRow, which is agreed with KCC and represents a comprehensive set of measures to ensure that PRow are accessible, well-designed and maintained and fit for purpose in terms of accessibility, legibility and safety;
- The requirement for detailed Rights of Way Strategies and Implementation Plans to be developed through consultation with a Rights of Way and Access Working group. He confirmed that KCC will have final sign off of any PRow to be adopted permanently or temporarily as a result of the Project;
- A requirement that for each Implementation Plan, the Applicant will supply all necessary technical information, drawings and other details (including a statement in accordance with section 53 of the Wildlife and Countryside Act 1981) that KCC would reasonably require to enable updates to the Definitive Map. He confirmed that the Implementation Plan will include information required to demonstrate accordance with all relevant legislation and policy and have regard to guidance and standards set out within the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#), including related to accessibility, design, surface materials, widths, gradient and safety and security; and
- Design standards - including 2m path width within a 10m corridor; and that surfacing, signage, boundary treatments and access controls shall be designed with the intent of being efficient and integrated, appropriate to the type of usage permitted and appropriate to its surrounding context as much as is reasonably practicable. He confirmed that the design will be in accordance or with regard to design standards adopted by KCC: the Kent Design Guide and KCC Countryside Access Objectives and Policy.

1.4.33 Mr Humphrey then explained that alongside the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) there is the **Outline Landscape and Ecological Management Plan** [\[REP3-020\]](#) which sets out plans for annual inspection and maintenance/management of the PRow environment, including litter collection, weed control, clearance and management of scrub. He added that it is anticipated to include management principles, including:

- Footpaths being checked for wear and tear. Any areas of settlement or damage will be made good in accordance with current UK safety standards. Vegetation will also be managed along the routes of PRow to allow for safe passage where appropriate;
- Footpaths kept free of litter, weeds, grass cuttings, and general debris; and
- Any furniture and signage inspected monthly to ensure there is no vandalism or missing features, and no health and safety issues. Missing or broken items will be replaced. Any necessary repairs are to be carried out in accordance with UK safety standards.

1.4.34 He explained that in order to allow users to recognise and appreciate their whereabouts, routes across and adjacent to the Project within the Order Limits will include appropriate clear and informative signage to provide wayfinding for the users.

1.4.35 Mr Humphrey explained that, as per the **Outline Rights of Way and Access Strategy** [REP1-056], when the new and replacement PRow are operational, the Applicant will:

- Comply with the legal requirements of the Equality Act 2010 and the Highways Act 1980, in terms of any new or existing access infrastructure and management, by ensuring that there are no barriers without lawful authority and that reasonable adjustments are made to facilitate access to all;
- Ensure that all new surfaces are easy to use;
- Ensure that all new or diverted routes are accessible and well-maintained in relation to vegetation management, clearance of obstructions and flooding / waterlogging; and
- Apply and maintain best practice in terms of on-site signage and other information provision, and to enhance visitor enjoyment and safety.

1.4.36 Mr Humphrey confirmed that, considering the overarching approach to the design of the Project in relation to PRow and BOAT and consideration of alternative designs to limit the impact on the PRow network, the Applicant considers that what is proposed complies with and is supported by the policies in NPS EN-1 (specifically paragraph 5.11.30) and NPS EN-3 (specifically paragraphs 20.10.40-2.10.45).

1.4.37 He explained that, as mentioned, a full detailed breakdown of the approach on a route-by-route basis is included within Table 12.18 of **ES Volume 2, Chapter 12: Socio-Economics** [REP1-024]) and Table 2-1 of the **Outline Rights of Way and Access Strategy** [REP1-056].

1.4.38 Mr Humphrey clarified that details of how these routes and their alternatives evolved through the pre-application phase is set out in Appendix 11.1 of the PEIR Addendum which, as previously mentioned, has now been submitted to the Examination as Appendix 4 to the **Written Summary of Oral Submissions from Issue Specific Hearing 2 and Responses to Action Points** [REP1-075].

- 1.4.39 Mr Humphrey explained that he would now briefly summarise some of the key changes to routes across the broad areas of the Project.

*Changes in the South West of the Site (around Bank Road – AE 370, AE 377)*

- 1.4.40 He explained that AE 370 and AE 377 run in a NW-SE alignment between Aldington and Mersham, crossing the Site. He noted that AE 370 and AE 377 form part of a wider link noted by the Kent Ramblers as an important arterial route between Aldington and Mersham.
- 1.4.41 Mr Humphrey then explained that AE 370 is the route of a proposed cycle route, and therefore minimising turns has been a key consideration in its diversion. He explained that the diverted route will take walkers through the open field to the west of Field 12, where existing views to the North Downs can be enjoyed from the Aldington Ridge. He clarified that timber benches will be provided in this area, with existing reinforced and proposed hedgerows to limit the impact of solar panels on viewers in this location. He confirmed that the Applicant has developed this route from alternatives based on feedback around the length of adjacency to Bank Road.
- 1.4.42 He also explained that AE 377 has evolved during the design development of the Project, in order to reduce a 'dog leg' previously consulted upon. He noted that it is a route that currently sweeps across the middle of a field, but will be diverted to follow reinstated historic hedge boundaries between Fields 14 and 15, which are key for biodiversity improvements, reduce visual impact and create legibility. He explained that the path travels broadly in the intended direction throughout, with a 175.4m (24.4%) increase in distance over the link. He concluded that, while there remains a change in the 'directness' of the link, the improved legibility, visual and biodiversity benefits of the re-route are considered important.

*Aldington to Mersham Strategic / Arterial Link*

- 1.4.43 Mr Humphrey explained that in terms of the role these routes play in the wider arterial link, a walker travelling from Aldington to Mersham from the centre of the village (or for an onward journey from the PRow network to the south of Bank Road) would experience change over around 30% of the route, which would only increase journey distance from Aldington to Mersham by around 6-7% as a result of the diversions. He confirmed that, at a walking speed of 1.4m/s, this would add between 1 minute and 30 seconds to 2 minutes to a pre-existing journey time of 26 to 27 minutes.
- 1.4.44 He also explained that the amenity value of part of the route would change where it is moved over from the middle of the fields to the east and west, with different user experience, views and gradient for a short period of the route.

*Changes to the North East area*

- 1.4.45 Mr Humphrey explained that, in the north east of the Site, a number of new and diverted routes are proposed to improve connectivity and recreational options in an area of the Project which will not have solar panels. He further explained that principally these are:



- FN-2 - A new PRoW running from the existing AE 657 at the south of Field 28 / west of Backhouse Wood and New 3 / FN-3 at the East Stour River;
- FN-3 – A new PRoW running from the existing intersection of AE 657 and AE 457 at the East Stour River, and running alongside the river to meet the diverted AE 431 at the north east corner of Field 25. He explained that a 'riverside walk' will be created by FN-3 running east to west through the north of the Site and connecting existing route AE 376 directly to AE 657, thereby directly connecting the network between Mersham and Sellindge; and
- FN-8 – A new PRoW that would link AE 457 and AE 657 to the north of Backhouse Wood, resulting in a more direct route and a decrease in journey length.

*Changes to the Centre of the Site (Field 19, Goldwell/Calleywell Lane)*

1.4.46 Mr Humphrey explained that, in the centre of the Site, PRoWs in and around Field 19 would experience change, with the current routes bisecting the field (AE 428 and AE 448) diverted around the outside, and with AE 447 extinguished. He noted that AE 378 would be diverted to run alongside the field boundary next to the stream, with a new PRoW (FN-7) added to the west side of Goldwell Lane, removing the need for users to cross Goldwell Lane when travelling between these links, and creating a new circular recreational walk around Field 19.

1.4.47 He explained that AE 447 is an existing short link which will be extinguished where it runs diagonally across Field 19, and then will continue on a short distance to end at the river to the north of Field 19. He noted that, given the availability of alternatives (either via AE 378, AE 448 diversions and New 7 / FN-7), this extinguishment is in compliance with the Planning Act 2008. He further noted that the section that continues past AE 448 is a 'dead end', in that it does not connect to the rest of the highway network, either PRoW or motorised.

*Changes to the South East of the Site (AE 474, AE 454)*

1.4.48 Mr Humphrey explained there are some routes that are likely to be more sensitive to change as a result of their location, usage levels, and local importance. Principally, AE 474 is clearly the most well-used and sensitive route, based on engagement with local communities and KCC. He explained that this route arguably offers the greatest connectivity of the local routes as it connects Goldwell Lane to Church Lane, and is the closest PRoW in the study area to Aldington. He confirmed that it was the busiest location surveyed, with an average of 26 one-way trips per day, as set out within **Environmental Statement Volume 3: Figures Chapter 13: Traffic and Access Figures 13.3 - PRoW Survey Results – Daily PRoW Trips** [\[APP-056\]](#).

1.4.49 Mr Humphrey explained that the Applicant has set out its position relating to construction effects and management of AE 474 in its **Written Summary of Oral Submissions from Issue Specific Hearing 2 and Responses to Action Points** [\[REP1-075\]](#). He then explained that, in summary, and in the context of wider PRoW measures set out within **Section 6.2 of the Outline Construction Traffic Management Plan ('CTMP')** [\[REP3-018\]](#):

- An 8m buffer will be provided using temporary barrier fencing to separate PRow users and construction traffic;
- A temporary 5mph speed limit for Project vehicles using the Primary Site Access, Internal Haul Road ('IHR') crossing points with PRowS and along the shared section with footpath AE 474 at the Goldwell Lane access; and
- A pre-commencement condition survey will be undertaken where the IHR will cross public highway/BOAT/PRowS at the IHR crossing points and at the shared section of AE 474. Any defects arising solely as part of the construction activity will be rectified at the cost of the Applicant.

1.4.50 He clarified that, overall, the Project would not change the connectivity offered by AE 474 during the operation or construction phase: it remains on its existing alignment. However, he noted there is a change to a route connecting to it. AE 454 would be re-routed to the east of Field 20 and between Fields 21 and 22, and that the southern origin of the replacement will be 172m further east than currently.

1.4.51 Mr Humphrey confirmed that a re-route of AE 454 to the western edge of the field, as proposed by some stakeholders during consultation, had been considered, but is not considered possible as this is a protected species habitat area. He explained that redirection of the footpath adjacent to a proposed orchard east of the solar panels in Field 20, west of the existing tree line, was intended to improve amenity value and help to reduce the impact of the existing overhead cables, which obscure any views to the North Downs.

1.4.52 Also in this area, he confirmed that part of AE 455 will be extinguished. He explained that this is an existing short section of a wider link to be extinguished where it runs diagonally across Field 21 and confirmed that alternative access is provided from retained sections of AE 455 to AE 475 via rerouted AE 454.

1.4.53 Mr Humphrey concluded that, overall, these changes to individual routes have been developed in cognisance of the policy framework balancing the need for new solar development with the requirement to manage access and design PRow to retain amenity and connectivity. The individual changes have been discussed at length with KCC and ABC as well as other stakeholders in the community including the Kent Ramblers. He added that, while they represent changes in routing and environment, these changes are not contrary to policy and have been carefully developed by the Applicant.

1.4.54 The ExA then asked the following series of questions:

1.4.55 The ExA noted that the Applicant's oral submissions mentioned survey work and also that paragraph 1.1.8 of the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) states that the Strategy has been informed by observation surveys of existing users of PRowS and access within the Site. He also noted that **Appendix 13.6: PRow User Survey Results** [\[APP-112\]](#) provides a summary of results undertaken over a relatively short survey window in August 2022. He asked:

- What method of survey was used;
- What the margin of error was for the method used, noting the low PRow

usage identified; and

- Whether the survey was determined in consultation with KCC.

1.4.56 In response, Mr Flanagan explained that rather than giving a partial answer now, the Applicant would respond fully in writing.

1.4.57 **Post-hearing note:** Please refer to the Applicant's response to Action Point 2 in Section 2 below.

1.4.58 The ExA noted that a number of IPs have said that the Project should be designed around the PRow network. He noted that he could not see in the Application documents a comparison of the generating capacity if this was to be the case. He asked whether the Applicant could provide a measure of what the generation reduction would be if the Project was designed around the PRow network. He also referred to paragraph 2.10.61 in NPS EN-3 and asked whether an alternative design, avoiding effects to the BOAT, would achieve this policy objective.

1.4.59 In response, Mr Flanagan explained that:

- There is no formal assessment of alternative generating capacity if the Project did not include the PRow diversions and extinguishments set out in the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#). He explained that any such assessment would be unlikely to be particularly precise, noting that the Applicant has previously explained that a range of capacity can be estimated from what is proposed in terms of the number of panels, accounting for current technology and by anticipating future improvements. This range has been provided. He explained that the Applicant's position is that one of the reasons to undertake the PRow diversions (although not the only one) is to optimise generating capacity so PRows are not cutting through panel areas.
- Secondly, he explained that the Applicant does not consider provision of an alternative design or capacity assessment to be necessary in terms of policy compliance. The Project proposals limit effects on the PRow network, and it is highly relevant that the Environmental Statement concludes that nothing higher than minor adverse effects on the PRow network are anticipated. Therefore, the effects are not such that a more granular or additional assessment needs to be undertaken setting out an alternative strategy.
- Thirdly, Mr Flanagan explained that the existence of alternatives to a project is not a reason to refuse an acceptable scheme, as set out in NPS EN-1 para 4.3.22 – 4.3.29, particularly given the level and urgency of the need for new energy infrastructure. He added that, if an alternative was proposed that involved PRow cutting through panel areas, the Applicant's case is that this does not make what is proposed unacceptable. There are limited impacts related to the design of the Project, and there are indeed amenity and PRow benefits in what is proposed (for example in terms of ensuring that PRow users do not have panels on both sides of them, which they would if the PRow cut through an area of panels), in addition to the significant benefits in terms of ensuring optimisation of the Site in terms of generating capacity and land use and maximising use of the grid

connection.

1.4.60 Mr Flanagan then confirmed that the Applicant would respond in detail in writing to these points.

1.4.61 **Post-hearing note:** Please refer to the Applicant's response to Action Point 3 in Section 2 below.

1.4.62 The ExA noted that paragraph 5.2.1 of **Outline Rights of Way and Access Strategy** [REP1-056] refers to corridor widths for PRow. He asked whether there is a prescribed standard for widths, and if so, where is this found. If not, he asked how this is assessed.

1.4.63 Mr Humphrey responded on behalf of the Applicant and confirmed that there is not a prescribed width, instead it is reflective of the environment. He confirmed that the corridor widths had been discussed with KCC to make sure they are in accordance with and exceed minimums set out in the Design Manual for Roads and Bridges ('DMRB'). He added that, beyond that, the widths are in accordance with the Kent design guide, which takes account of national guidance and prescribes specific details for Kent. Mr Humphrey clarified that this is why the Applicant has used 10m and 2m for the general corridor and path widths respectively. He also explained that the minimum width used by KCC in its guidance is 5m. As such, the Applicant has exceeded this by maximising the corridor width to 10m, which is reflective of the environment of the affected PRows.

1.4.64 **Post-hearing note:** Please refer to the Applicant's response to Action Point 4 in Section 2 below.

1.4.65 The ExA noted that paragraph 7.1.1 of the **Outline Rights of Way and Access Strategy** [REP1-056] sets out that the legal requirements of the Equality Act 2010 and the Highways Act 1980 will be adhered to in relation to the implementation, maintenance and management of existing, new and diverted access during the operational phase of the Project. He noted that the **Draft DCO (Doc Ref. 3.1(E))** defers approval of PRow issues to the local authority, through Requirement 10. He asked how, given the concerns set out by KCC, it can be said that these legal requirements have been complied with.

1.4.66 In response, Mr Flanagan noted that paragraph 7.1.1 of the **Outline Rights of Way and Access Strategy** [REP1-056] refers to the legal requirements under the Equality Act 2010 that relate to ensuring reasonable adjustments are made to facilitate access to all. He noted that what is reasonable depends on the context, with the context here being paths around and across fields, which are in many cases unsurfaced. He confirmed that it is the Applicant's position that the details of this are an appropriate matter to be dealt with at the detailed design stage. Mr Flanagan further noted that boundary treatment and other matters are not appropriate to be dealt with at the outline stage. Paragraph 7.1.1 also refers to duties under the Highways Act 1980 concerning ensuring that no barriers are erected without lawful authority. Again, those duties will be complied with.



1.4.67 In respect of the ExA's point regarding legal compliance with these provisions notwithstanding concerns raised by KCC, Mr Flanagan explained that the objections from IPs, including KCC, relate to impacts on users of PROWs in terms of effect, amenity and distance. He noted that the Highways Act 1980 and Equality Act 2010 do not prescribe any requirements in respect of these matters; instead they are more matters of judgment and policy. As such, Mr Flanagan confirmed that they do not lead to any legal non-compliance and they are no bar to consent.

1.4.68 The ExA then noted that in terms of reinstatement of diversions during decommissioning, there is nothing in the **Draft DCO (Doc Ref. 3.1(E))** that guarantees funding will be in place to ensure decommissioning takes place at the end of the 40 years or when the panels are no longer needed, whichever comes first. The ExA noted Requirement 14 of the **Draft DCO (Doc Ref. 3.1(E))** and explained that he thought this should be supplemented by another requirement, possibly in four parts that requires:

- Firstly, that no phase of the authorised development may commence until a decommissioning fund or other form of financial guarantee that secures the cost of performance of all decommissioning obligations is in place;
- Secondly, to agree the value of the decommissioning fund or other form of financial guarantee between the undertaker and the local planning authority, or failing the agreement, determined on application by either party, by a suitably qualified independent professional, that the fund is sufficient to meet the costs of all the decommissioning obligations;
- Thirdly, that the decommissioning fund or other form of financial guarantee shall be maintained in favour of the local planning authority until the date of the completion of the works; and
- Finally, that the value of the decommissioning fund or other form of financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years, and increased or decreased to take account of any variation in costs of compliance with decommissioning obligations and best practice prevailing at the time of each review.

1.4.69 The ExA asked for the Applicant's comments before taking this away.

1.4.70 In response, Mr Flanagan confirmed that the Application contains a **Funding Statement** [\[REP1-012\]](#) which complies with requirements for evidencing availability of funding where an application contains compulsory acquisition powers. He then confirmed that there is no policy requirement to provide that sort of evidence of funding in respect of non-compulsory acquisition in matters. Mr Flanagan noted that it would be unprecedented and novel to have an obligation to provide a fund for decommissioning as a precondition to receiving planning consent.

1.4.71 In response the ExA noted that he accepted this would be a novel provision but that he thought it should be considered in the Examination within the context of decommissioning.

1.4.72 **Post-hearing note:** Please refer to the Applicant's response to Action Point 5 in Section 2 below.

1.4.73 The ExA then enquired as to whether Requirement 14 of the **Draft DCO (Doc Ref. 3.1(E))** should be amended to include a trigger date for agreeing that decommissioning works will commence with local planning authority. The ExA suggested this should be a provision that within three months of the date that the undertaker decides to decommission any part of the solar farm works and connection works or no later than six months before the 40th anniversary of the date of final commissioning, details of decommissioning should be agreed with the local planning authority (in the form of detailed decommissioning environmental management plan(s) and decommissioning traffic management plan(s)). He also suggested the insertion of a clause that should the proposed development stop generating electricity before the end of 40 years, this triggers the need to decommission the site. He invited comments on this suggestion from the Applicant.

1.4.74 In response, Mr Flanagan confirmed that the Applicant would take this away and respond in writing.

1.4.75 **Post-hearing note:** Please refer to the Applicant's response to Action Point 6 in Section 2 below.

1.4.76 The ExA invited comments from IPs, and heard from the following persons present:

- Mr Graham Rusling (on behalf of KCC), who noted that there was not much disagreement between KCC and the Applicant on a factual basis. Mr Rusling summarised KCC's comments on the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#), noting that the Applicant's proposals retain linkages and the Applicant has engaged with KCC throughout. He noted that the overall approach of the Applicant could create a "sterile environment" and that absent the DCO process, he did not consider that consent would be granted for the proposals under the Highways Act 1980 regime. He noted that the Applicant's strategy maximises efficiency, but an alternative design could have been proposed. In terms of policy, he clarified that 2m width is a KCC minimum for PRow corridors, noting the 5-10m width is preferred.
- Ms Alison Eardley (on behalf of Aldington and Bonnington Parish Council ('ABPC')), who raised a number of points relating to engagement and application documents, hearing venues, impacts to PRow (including the effect of PRow amenity on wellbeing), and noted that a focus of ABPC is the impact on AE 474, which is regarded as locally important. She also noted concerns with the use of Goldwell Lane as an access, noting its use by horse riders. She also summarised the conclusions of the Environmental Statement and noted her disagreement. She advocated for a reduction in the size of the Project to mitigate adverse impacts.
- Mr Nigel Spencer (on behalf of Kent Ramblers), who raised a number of points relating to the Applicant's survey methods, alternative design including alternative proposals in relation to Field 19 and AE 428, the Applicant's proposed diversions and PRow strategy, noting Kent Rambler's specific views on the various diversions and changes proposed and the inconvenience that would be experienced by local users.

- Mr Jonathan Tennant (on behalf of the Aldington and Mersham Support Group ('**AMSG**')), who raised points relating to assessments of average walking time and the Project's design approach.
- Mr Pdraig Herlihy (on behalf of the Village Alliance), who raised points relating to the summer 2022 survey, PRow diversions under section 119 of the Highways Act 1980, and the proposed PRow diversion around Field 19.
- Mr Paul Bartlett (Mersham ward member for ABC), who raised comments relating to community benefits, the proposed new cycle link between Aldington and Mersham, and requested that the Applicant lead discussions with the Church Commissioners for England to deliver the new link and to cover costs.
- Mrs Colleen Loader, who raised points relating to access to and from Stonestreet Green village and decommissioning; and asked when ecological surveys were first carried out, claiming a prevalence of black plastic quadrants in the local area.
- Mr Andrew Swarbrick, who raised points relating to PRow diversions and extinguishments and noted he had prepared a video. The first part of the video was played to attendees; however, the sound did not work so Mr Swarbrick narrated the video.
- Mr Norman Corfield, who asked how quickly Ordnance Survey mapping would be updated to reflect the PRow diversions and changes resulting from the Project.

1.4.77 Mr Flanagan on behalf of the Applicant then responded as follows:

- Firstly, he noted that the Applicant welcomes the acknowledgement from KCC that the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#) does retain PRow linkages, and that the Applicant has engaged with KCC throughout.
- In respect of alternatives, he explained that it is important to deal with this within the relevant policy framework, which is paragraphs 4.3.22 to 4.3.29 of NPS EN-1. Mr Flanagan confirmed that the proper approach, in accordance with this policy, should be the assessment of the impacts of the proposal, and whether the impacts outweigh the benefits of the Project. If a Project is acceptable in planning terms, the existence of an alternative is not (bar exceptional circumstances) a reason to withhold consent (especially given that any such alternative in the present case is hypothetical).
- Mr Flanagan also referred to the assessment in **ES Chapter 12: Socio-Economics** [\[REP-024\]](#) and the conclusion of minor adverse effects at worst in respect of PRow impacts, with some effects being assessed as beneficial. He clarified that the chapter has therefore not identified any significant effects. Mr Flanagan observed that it is important to note that the assessment in **ES Chapter 12: Socio-Economics** [\[REP-024\]](#) has not been disputed by KCC. He noted that KCC may refer to alternatives, but they are doing this against the background of not disputing the findings of the Environmental Statement, i.e. the absence of any significant effects in respect of PRow socio-economic impacts.

- In respect of comments from IPs expressing a preference for PRoW diversions to cross through fields with panels in, Mr Flanagan noted that the Applicant's approach of following historic field boundaries and hedges, which are being reinforced, is considered to be superior to cutting through fields. He noted that creating new hedgerows through fields would change the historic field pattern in the local area and could take years to establish;
- Regarding the summer 2022 survey (as described in paragraph 13.4.5 of **ES Chapter 13: Traffic and Access** [\[REP3-012\]](#)), he explained that video cameras were used by an independent traffic surveying company in order to carry out the assessment, which provides for a more accurate tally than counters. He further noted that the margin of error in this survey is virtually zero. He also explained that the 7-day period in August 2022 had been deliberately chosen to include the August Bank Holiday, but was for a whole week so not just over that period. Mr Flanagan noted that the veracity and validity of the survey has not been disputed by any statutory body. Furthermore, he noted that there is evidence in **ES Chapter 13: Traffic and Access** [\[REP3-012\]](#) explaining that the temperature during the survey period was between 22 and 26 degrees, so it is not correct to say it was an unusually hot and unattractive period to be outside.
- In respect of the points raised by Mr Bartlett regarding negotiations with the Church Commissioners, Mr Flanagan noted that the Applicant could not force the Church Commissioners to give up their land, and that it is outside of the Order Limits. He reiterated that the Applicant would consider a financial contribution, but noting that this goes beyond what is required in planning terms and is not necessary as mitigation for the Project. Mr Flanagan explained that this would be contributing to a new and improved strategic route, which is something that would require strategic oversight by the relevant bodies involved.

6.1.2. Mr Humphrey then responded on behalf of the Applicant as follows:

- In respect of the points raised by ABPC relating to engagement, he noted that this had been raised before and this will be dealt with in response to ABPC's Deadline 3 submissions. Mr Humphrey also explained that there were six meetings of the Community Liaison Panel, of which all were attended by representatives from ABPC. He also noted that PRoWs were discussed at every meeting.
- In response to comments requesting that the Applicant upgrade local bridleways, Mr Humphrey noted that there are no bridleways apart from the BOAT within the Order Limits. As a result, he explained the Applicant did not consider it proportionate to consider upgrading other bridleways. He also explained that this had been discussed with KCC and was understood by the Applicant to be agreed.
- Mr Humphrey noted that a further point was made on reinstatement and the approach to PRoW remaining in perpetuity. He explained that details on that are set out in paragraphs 6.1.4 to 6.1.6 of the **Outline Rights of Way and Access Strategy** [\[REP1-056\]](#). This sets out that KCC has indicated that it may wish to amend the network permanently to adopt temporary replacements for amended PRoWs following decommissioning and the



Applicant will look to facilitate discussions between KCC and the landowners should that be the case.

- In response to comments relating to the Applicant's survey approach and the use and interpretation of survey data in the Environmental Statement, Mr Humphrey noted that the usage rates do not inform the sensitivity of the receptors assessed in **ES Volume 2, Chapter 12: Socio-Economics [REP1-024]**. He confirmed that this has been agreed between KCC and the Applicant. Mr Humphrey explained that the location and the accessibility of the route contributes to its sensitivity, regardless of usage. He further explained that usage comes into play when considering mitigation, so it is important to look at usage at this stage. He confirmed that usage was taken into account when considering mitigation for the effects to PRow AE 474 during the construction period.
- In response to comments relating to Field 19 and AE 428, Mr Humphrey noted that the Applicant did consider Kent Ramblers' suggested addition, but did not consider it was necessary at that stage. He explained that connectivity from north and on AE 428 remains possible via the route FNR 6 to AE 378, which then connects onto AE 377 and onwards to Mersham. He then explained that the Project will improve connectivity from the north east through the introduction of FNR 8, which is an important aspect.
- He also confirmed that the Applicant would submit further details in writing in respect of Mr Corfield's query relating to Ordnance Survey data.

1.4.78 **Post-hearing note:** Please refer to the Applicant's response to Action Point 7 in Section 2 below.

## 1.5 Agenda Item 4: Advancement of position between the Applicant, Kent County Council (KCC) and other IPs such as Kent Ramblers

- 1.5.1 The ExA asked the Applicant to set out progress in resolving concerns about the perceived negative impact on the PRow network. He asked if there were any other plans for the Community Liaison Group to meet.
- 1.5.2 Mr Flanagan responded that the **Outline Rights of Way and Access Strategy [REP1-056]** (at paragraph 5.2.5) proposes a working group to be formed post consent comprised of ABC and KCC, and to which other parties would be invited as necessary. He noted that this provision is secured through the **Draft DCO (Doc Ref. 3.1(E))**.
- 1.5.3 Mr Humphrey then provided a summary in respect of the agenda item. Firstly, he ran through the consultation undertaken with KCC and ABC, as follows:
- He explained that the Applicant has addressed the approach to consultation regarding PRow in the **Responses to Relevant Representations [REP1-061]**.
  - Furthermore, he noted that Section 12.3 in **ES Volume 2, Chapter 12: Socio-Economics [REP1-024]** also sets out the consultation and engagement undertaken in the pre-application period with KCC. He noted it

is also helpful to refer to the information in Appendix 11.1 to the PEIR Addendum which has now been submitted to the Examination as Appendix 4 to the **Written Summary of Oral Submissions from Issue Specific Hearing 2 and Responses to Action Points** [REP1-075]. This shows, as at summer 2023, how each stakeholder's concern raised during preceding consultations has been responded to, in detail on a route-by-route basis, and how the Project has been developed.

- Mr Humphrey explained that the Applicant considered feedback from non-statutory consultation, two rounds of statutory consultation and Community Liaison Panel meetings and has sought to amend the presentation of materials relating to the location and proposed diversion of PRow to minimise impact whilst ensuring the Project benefits can be delivered. He explained that the detail of footpath diversions is set out within the **Outline Rights of Way and Access Strategy** [REP1-056], secured in the **Draft DCO (Doc Ref. 3.1(E))** (Part 4; and Schedules 8 and 9). He noted that this is visualised within the **Streets, Rights of Way and Access Plans** [APP-011] and **ES Volume 3, Figure 3.2: Proposed Access Network** [APP-045].
- He then explained that, at an early stage, members of Kent Ramblers requested a separate focussed sub group to consider PRow matters only. As noted, a meeting was held in October 2022. However, it was thereafter considered that these matters would be more fairly discussed as part of the Community Liaison Panel meetings, alongside other related community matters. Representatives of the Kent Ramblers were invited to attend the Community Liaison Panel from the outset and have attended five of the six Community Liaison Panel meetings held to date where where the Applicant has responded to their questions and feedback.

1.5.4 Mr Humphrey then explained that the Applicant believes that it has given proportional consideration to the importance of PRow across the assessment, and this is reflected in the scale of mitigation and management set out within the management plans including the **Outline Rights of Way and Access Strategy** [REP1-056], **Outline Landscape and Ecological Management Plan** [REP3-020] and the **Design Principles** [REP3-016].

1.5.5 He also noted that the Applicant has engaged with residents, community groups and local authorities in the approach to specific PRow. As noted in **KCC's Relevant Representation** [RR-156] (emphasis added):

*"Through the pre application stage of this proposal, the County Council has proactively negotiated with the applicant a PRow Management Strategy (APP-160), that covers the construction, operational and decommissioning stages. The proposed site covers a very dense area of the PRow network; the number of PRow that were originally proposed to be extinguished has been reduced to two, and the number of routes to be diverted during the operational stage has been reduced to the minimum."*

1.5.6 Mr Humphrey explained that the Applicant recognises that there are several PRows in the area, which is typical of the countryside in proximity to the grid connection location, and has worked closely through formal consultation and engagement with

KCC, ABC, Kent Ramblers and other stakeholders to evolve the design approach to minimise the need to divert or extinguish PRowS and ensure that management and design principles are appropriate, with KCC as the Highways Authority retaining sign-off on the detailed Rights of Way and Access Strategy ('RoWAS') and Implementation Plans.

- 1.5.7 He noted that the **Outline Rights of Way and Access Strategy** [REP1-056] secures the provision of a Rights of Way and Access Working Group which will review Implementation Plans (which will set out the detailed approach to managing changes to PRowS) with the aim of minimising disruption and amenity loss to PRow users during implementation.
- 1.5.8 He then explained that, as mentioned by Mr Flanagan, the Rights of Way and Access Working Group will include the Applicant, the contractor(s) responsible for the Project, ABC, and KCC with other parties invited to contribute where the Group considers this to be beneficial. Mr Humphrey noted that the Applicant will have due regard to responses from the Rights of Way and Access Working Group prior to finalisation of the submission of an Implementation Plan. Any detailed RoWAS must be generally in accordance with the Outline Strategy, as required by Requirement 10 of the **Draft DCO (Doc Ref. 3.1(E))**.
- 1.5.9 Mr Humphrey confirmed that the assessment methodology for effects on PRowS was influenced directly by feedback from a number of local community consultees, which suggested that the PRow network is seen as a valuable asset, offering traffic-free recreational routes and traffic-free alternatives to local roads despite largely being unsurfaced and not easily navigable in all-weather. As such, the PRowS are recognised as being used by the local community for 'Active Travel' being used to get from place to place, rather than solely used for leisure or fitness.
- 1.5.10 He explained that, partly as a result of this and other feedback, the Applicant's assessment has diverted from some 'standard' methodologies and guidance such as the DMRB LA112 which puts weight on the level of usage of PRowS as influencing their sensitivity, and has greater thresholds for definitions of significant effects than applied in this case. Mr Humphrey noted that this means the levels of significance reached here are greater than would be the case had the Applicant's assessment used the "standard" methodologies. He concluded that, notwithstanding this conservative approach, no significant effects have been identified.

*Update on position between the Applicant and KCC*

- 1.5.11 Mr Humphreys explained that the Applicant and KCC continue to meet regularly to discuss outstanding areas of agreement and disagreement and are seeking to resolve matters shortly. He confirmed that agreement has been reached on a number of important matters relating to policy compliance, the scope of the **Outline Rights of Way and Access Strategy** [REP1-056] and the approach to engagement and the development of diversions (which KCC confirm have resulted in the number of extinguishments being reduced to two, and the diversions reduced to a minimum). He added that this is notwithstanding the 'overarching' position that

the PRowS would be changed in their alignment and environment, which is unavoidable if the full benefits of the Project are to be delivered.

1.5.12 He further confirmed that there are two substantive matters that the parties are engaging on, having most recently met to discuss this last week, on 21 February 2025, which are as follows:

- KCC's position on its assertion of effects on PRow which influences its use of the term "substantial harm"; and
- The potential for off-site enhancements over and above those included within Section 3 of the **Outline Rights of Way and Access Strategy** [REP1-056]. He confirmed that the Applicant is expecting to receive a joint proposal from KCC and ABC.

*"Substantial Harm"*

1.5.13 Mr Humphrey explained that the Applicant considers that KCC's position that the Project will result in a "substantial adverse impact" on the local PRow network, as stated in the **Local Impact Report** [REP1-087] (paragraph 4.31), and to an extent **KCC's Written Representation** [REP1-091], does not recognise the extent of mitigation for the proposed diversions of PRowS and also ignores the addition and enhancement of the network within the Site which contributes to wider connectivity.

1.5.14 He also explained that KCC's position conflates or 'double counts' two elements of the Environmental Impact Assessment in its conclusion that the Project would impose a substantial adverse impact on the PRow network. These two elements are the assessment of effects on PRowS and their users in **ES Volume 2, Chapter 12: Socio-Economics** [REP1-024], and the assessment in **ES Volume 2, Chapter 8: Landscape and Views** [AS-012] which assesses visual effects on PRow users.

1.5.15 Mr Humphrey explained that the Applicant notes the following, as set out within **KCC's Relevant Representation** [RR-156] and reflected as 'agreed' within the Section 2.3 of the **Statement of Common Ground with Kent County Council** (Doc Ref. 8.3.4(C)):

- The importance attributed to PRow in national and local policy, including the KCC Rights of Way Improvement Plan (ROWIP), has been reflected in **ES Volume 2, Chapter 12: Socio-Economics** [REP1-024] and the **Outline Rights of Way and Access Strategy** [REP1-056];
- There was proactive engagement on the **Outline Rights of Way and Access Strategy** [REP1-056] during the pre-application period, resulting in an agreed Strategy that will secure detail of the management of each PRow route affected in terms of access and connectivity. Engagement has resulted in KCC's stated position (in its **Relevant Representation** [RR-156]) that: *"the number of PRow that were originally proposed to be extinguished has been reduced to two, and the number of routes to be diverted during the operational stage has been reduced to the minimum"*; and
- Sufficient measures and controls are in place to ensure there is no



temporary reduction in network accessibility and connectivity during the construction phase in the PRow network and on local roads which allow transition between PRow.

1.5.16 Mr Humphrey then explained that KCC's conclusion of "substantial adverse impact[s]" cannot be justified for the following reasons:

- The affected PRow are of low to medium sensitivity, with a low to medium magnitude of effect being caused by the Project. It has been agreed with KCC that the PRow effects have been mitigated as far as reasonably practicable through the Project's design evolution and mitigation secured in the agreed **Outline Rights of Way and Access Strategy** [REP1-056] in terms of network accessibility and connectivity / alignment, and in some cases enhanced through inherent improvements to the network included within the Project and set out in Section 3 of the **Outline Rights of Way and Access Strategy** [REP1-056].
- The Applicant has worked to ensure that there is no loss of access or connectivity. Overall, the network within the Site will increase in length, but only by 18%, in terms of distance collated across all extinguished and displaced / replacement PRow, which results in a low level of impact by any standard methodology. Mr Humphrey confirmed that the Applicant considers that what is proposed complies with and is supported by the policies in NPS EN-1 (paragraph 5.11.30) and NPS EN-3 (paragraphs 20.10.40-2.10.45).
- He confirmed that the Applicant considers that what is proposed complies with and is supported by the policies in NPS EN-1 and NPS EN-3, through the provisions within the **Draft DCO (Doc Ref. 3.1(E))** and the **Outline Rights of Way and Access Strategy** [REP1-056] to ensure that the network retains connectivity and maintains recreational use during the operational stage with as little disruption as practicable.
- Mr Humphrey explained that the proposed new PRow's have been designed having regard to the potential for improvements to wider connectivity and in consultation with the KCC PRow Officer and other stakeholders to minimise visual impact for PRow users. The **Outline Rights of Way and Access Strategy** [REP1-056] sets out detail of how the PRow's will be managed to ensure they are safe to use.
- He further explained that the Applicant understands KCC's fundamental point to be that both the connectivity of routes and the amenity of users of the routes should be considered in the assessment. Mr Humphrey confirmed that the Applicant considers that the former has been mitigated as far as is reasonably practicable and that the residual effects are limited to a not significant level (as set in out in Tables 12.18 and 12.19 in **ES Chapter 12: Socio-Economics** [APP-036]). He confirmed that, as previously noted, the approach to assessment of socioeconomic impacts on the PRow network have been agreed by KCC in the **Statement of Common Ground with Kent County Council (Doc Ref. 8.3.4(C))** at matter P.6 PRow.

- 1.5.17 He concluded that KCC's conclusion of 'substantial harm' can therefore only be based on the assessment of effects on the amenity of users (i.e. changes in landscape/visual or other environmental factors such as noise or air quality).
- 1.5.18 Mr Humphrey explained that section 8.7 of **ES Volume 2, Chapter 8: Landscape and Views** [AS-012] assesses the likely effects to landscape and views of PRow users, including an assessment of the impacts to the experiential qualities of the impacted PRow users, which concludes that there are likely to be no effects above 'moderate adverse' and several at a 'moderate to minor' or 'minor' or 'negligible' scale on the landscape and visual amenity of PRow users during the Project's construction and operation. He further noted that KCC accept the Applicant's assessment of visual effects on PRow users in the **Statement of Common Ground with Kent County Council (Doc Ref. 8.3.4(C))** (see row 2.8.1).
- 1.5.19 He also confirmed that, during the operational phase of the Project, **ES Volume 2, Chapter 8: Landscape and Views** [AS-012] reports that users of PRow within and adjacent to the proposed solar PV area would experience a moderate adverse effect.
- 1.5.20 Mr Humphrey confirmed that the Project includes buffers to PRow users, to include new hedgerow planting, reinforcement of existing hedgerows, new woodland planting areas and new grassed areas, as set out in paragraph 8.6.23 of **ES Volume 2, Chapter 8: Landscape and Views** [AS-012]. He confirmed that this position is agreed with KCC, which is reflected in section 2.8.1 of the **Statement of Common Ground with Kent County Council (Doc Ref. 8.3.4(C))** which states: "*It is agreed that the assessment adequately considers the impact of the proposed Project on the PRow network and the necessary mitigation to limit the impact*".
- 1.5.21 He also noted that KCC notes in its **Relevant Representations** [RR-156] that it has "*engaged with the Landscape consultancy commissioned by Ashford Borough Council to provide a suitably qualified response to the applicant's assessments*". Mr Humphrey confirmed that the findings of that assessment broadly align with the Applicant's assessment in terms of reporting significant effects (i.e. some of moderate significance, others minor and negligible), but it is notable that that neither assessment considers the effects to be "substantial adverse".
- 1.5.22 Mr Humphrey also noted that KCC's position regarding "substantial adverse impact" is the highest possible level of harm to PRow users that could be ascribed.
- 1.5.23 He explained that KCC appears to be judging the impact on the local PRow network as equivalent to a scenario which involved the extinguishment a nationally important footpath. Mr Humphrey noted that, when considering the sensitivity of the PRow receptors and the magnitude of effect, as set out in **ES Volume 4, Appendix 8.9: Visual Effects Table** [APP-081], the conclusion of a 'substantial adverse' effect cannot be justified and is without foundation.
- 1.5.24 Mr Humphrey concluded by noting that the Applicant considers that although KCC's Relevant Representation, Written Representation and Local Impact Report all refer to substantial adverse impacts on PRow users, there is no methodology, substantive

evidence or transparent framework provided by KCC in any of these that leads to that conclusion.

#### *Ask for Additional Mitigation*

1.5.25 Mr Humphrey explained that the Applicant understands that KCC and ABC continue to work on proposals for off-site enhancement, which may be through a Section 106 agreement. He noted that nothing has been presented to the Applicant so far and in any case the basis or justification for such an agreement is unclear. He explained that while this has been mentioned in passing, it is not included within the agreed **Outline Rights of Way and Access Strategy** [REP1-056] save for a reference to the potential for a proportionate contribution to providing the proposed cycle route between Aldington and Mersham.

#### *Kent Ramblers*

1.5.26 Mr Humphrey then stated that, as explained earlier in the hearing, the Applicant engaged in extensive consultation with Kent Ramblers prior to submission of the DCO Application. He confirmed that members of the Kent Ramblers were invited to the Community Liaison Panel meetings and have attended five out of the six meetings held.

1.5.27 He then noted that the Applicant recognises the Kent Ramblers' position and concerns specifically relating to PRowS AE 370, AE 454, AE 377 and AE 428 (in terms of the individual links and their role in the wider network / longer routes), and has provided a response to the Kent Ramblers' submission within its **Responses to Deadline 2 Submissions** [REP3-046] document at Deadline 3.

1.5.28 The ExA referred to Mr Andrew Swarbrick's Written Representation [REP1-112] and asked the Applicant to direct him to the detailed response.

1.5.29 In response, Mr Flanagan confirmed that this would be followed up in writing.

1.5.30 **Post-hearing note:** Please refer to the Applicant's response to Action Point 8 in Section 2 below.

1.5.31 Mr Rusling, on behalf of KCC, then provided submissions in response to the Applicant's submissions, which noted that connectivity is maintained across the network as part of the Project, amenity impact to use and enjoyment of PRowS, the effect of the Otterpool Park development, a suggested "significant urbanising effect" of the Project, and the cost of converting footpaths to cycle paths.

1.5.32 Mr Rusling again confirmed that connectivity within the PRow network would be maintained but that he was concerned regarding wider impacts on amenity on the user in the context of other development in the region.

1.5.33 Mr Rusling confirmed that he felt the proposals would substantially impact the experience for a PRow user, notwithstanding the identified impacts in the landscape

and socio-economic assessments. Mr Rusling confirmed that in his view the overall impact is more than the sum of the parts as the experience is changed.

1.5.34 Mr Rusling also responded to Mr Corfield's question relating to updates to the OS mapping, confirming that all changes require sign off by the local authority. At that point, the Definitive Map will be updated.

1.5.35 The ExA then heard submissions from the following IPs:

- Mr Spencer (on behalf of Kent Ramblers), relating to pre-application consultation on PRow changes;
- Cllr Harman, relating to pre-application engagement on PRowS and the visual impact of the Project;
- Mr Swarbrick, relating to alternative PRow diversions and various other matters;
- Mr Herlihy (on behalf of the Village Alliance), also relating to alternative PRow diversions;
- Mr Thompson (on behalf of CPRE Kent), relating to community engagement on PRow changes; and
- Mr Murphy (on behalf of Mersham Parish Council), relating to proposed mitigation measures for PRow users and cumulative impacts with other projects.

1.5.36 Mr Flanagan responded on behalf of the Applicant, as follows:

- Firstly, he noted that the Applicant welcomes the further acceptance by KCC that PRow connectivity is maintained. He noted KCC's view that, in considering the assessment of PRowS, more than one category of effect must be considered. If that approach is to be taken, there needs to be a robust methodology to demonstrate how any such effects are aggregated and how KCC's conclusion that there is a substantial adverse effect has been reached. Mr Flanagan confirmed that the assessment presented in **ES Volume 2, Chapter 12: Socio-Economics** [\[REP1-024\]](#) shows that there are, at most, minor adverse effects on PRowS. In respect of transport and traffic, **ES Volume 2: Chapter 13: Traffic and Access (Version 5)** [\[REP3-012\]](#) concludes that there are, at worst, minor adverse effects which are considered to be negligible. **ES Volume 2, Chapter 8: Landscape and Views** [\[AS-012\]](#) shows, at worst, moderate adverse residual effects on users of PRow. Therefore the Project has no major or moderate-major adverse residual effects in any of these categories; and in respect of socio-economic and traffic and transport effects on PRow, there are not even any moderate adverse residual effects. He explained that, given effects limited to these levels, combining these effects plainly does not lead to a conclusion that the effects of the Project will be substantial adverse or get anywhere close. It is relevant to recognise that NPS EN-1 uses the word 'substantial' for the weight that is to be given to the benefits of renewable energy generation (paragraph 3.2.7), for which there is an urgent need and which is said to be a critical national priority. There is no basis for KCC to be

using the same language to describe residual environmental effects which on the agreed assessment do not get above moderate adverse and in many cases are minor or negligible.

- Secondly, in response to the points raised relating to consultation and engagement by Mr Herlihy and Cllr Harman, Mr Flanagan clarified that there have been multiple rounds of consultation. He confirmed there had been six meetings of Community Liaison Panel and PRow matters were raised in all of them. This is in addition to the statutory and non-statutory consultations. He explained that it is not at all fair on the Applicant to say that the community have not been consulted, as there have been years of pre-application consultation. During this process the community has had the opportunity to speak and input, and as Mr Humphrey has explained, changes have been made to the Project as a result.

## 1.6 Agenda Item 5: PRow and Landscape

1.6.1 The ExA introduced the Agenda item and asked the Applicant to set out its position on this matter.

1.6.2 Mr Flanagan introduced Mr Markwell, who provided the following evidence.

1.6.3 Mr Markwell explained that the assessment of visual effects for the Project has been carried out in accordance with an agreed Landscape and Visual Impact Assessment ('LVIA') methodology, which follows best practice guidance published by the Landscape Institute and the Institute of Environmental Management and Assessment ('IEMA') in the Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> Edition ('GLVIA3').

1.6.4 He explained that, in accordance with GLVIA3, the scope and methodology of the visual assessment was consulted upon with the competent authority (which is ABC), its landscape consultants and key stakeholders including Natural England and the Kent Downs National Landscape Team. Mr Markwell confirmed that these aspects are a matter of agreement in the **Draft Statement of Common Ground with Ashford Borough Council (Doc Ref. 8.3.1(B))**.

1.6.5 Mr Markwell explained that visual receptors on the PRow network have been grouped according to their location and sensitivity into the following categories:

- Visual receptors on PRow within or immediately adjacent the Site;
- Users of PRow within/adjacent to the Site with Open Panoramic Views Towards the Kent Downs National Landscape;
- Users of PRow within Fields 26-29;
- Visual receptors on the wider PRow network; and
- Visual receptors on the PRow network within the Kent Downs National Landscape.

1.6.6 He confirmed that it is appropriate and in accordance with GLVIA3 to group receptors like this.



- 1.6.7 Mr Markwell then explained that a series of mitigation measures have been integrated into the design of the Project to reduce or avoid significant adverse landscape and visual effects, including those on PRow users. He noted that this includes the provision of planting to reinforce existing field boundaries, re-establishing historic field boundaries, and strengthening enclosure of the Site with woodland planting. He confirmed that the identification of mitigation proposals has been informed by the character of the Site and its context, including published landscape character evidence base and guidance.
- 1.6.8 Mr Markwell noted that he would not cover the NPSs in detail, however he did clarify that NPS EN-1 and NPS EN-3 both cover LVIA in detail, which is addressed in **ES Volume 2, Chapter 8: Landscape and Views** [\[AS-012\]](#).
- 1.6.9 He noted that the Site is not located within the Kent Downs National Landscape, and explained that visual receptors on PRow within the National Landscape who would experience views of the Project are those on the North Downs Way. He confirmed that from this location, due to a minimum separation distance of approximately 6.8km to the theoretically visible parts of the Project, combined with intervening landform and vegetation, the Project would be barely perceptible.
- 1.6.10 Mr Markwell explained that, as set out in the **ES Volume 2, Chapter 8: Landscape and Views** [\[AS-012\]](#), the Project would have, at worst, minor/negligible visual effects on this receptor group.
- 1.6.11 He added that the minimal impact on users of PRow within the National Landscape is a matter of agreement with Natural England (see Table 2.5 of the **Draft Statement of Common Ground with Natural England (Doc Ref. 8.3.7(C))**), the Kent Downs National Landscape Team and ABC (see part Table 2.3 the **Draft Statement of Common Ground with Ashford Borough Council (Doc Ref. 8.3.1(B))**).

*Visual receptors on the wider PRow network – Medium to High Sensitivity*

- 1.6.12 Mr Markwell explained that beyond the Site's boundaries there are limited opportunities for views towards the Site due to the undulating nature landform and the bowl like nature of the East Stour River Valley which contains much of the Site. He also noted that visibility is restricted by intervening vegetation and occasionally existing settlement.
- 1.6.13 He explained that potential views of the Project from PRow to the south of the Site typically diminish rapidly beyond the Site's boundaries, as demonstrated by Viewpoints 4 and 5, with no views identified to the south of Frith Road and Roman Road.
- 1.6.14 Mr Markwell noted that views from PRow AE 449 to the north of Aldington (Viewpoint 14) would include partial filtered views of the Project from a short section of the route, leading to a moderate adverse effect. He explained that the landscape proposals include woodland planting along Calleywell Lane which, once established, will reduce visibility of the Project and reduce the visual effect to minor adverse.

- 1.6.15 He explained that to the east of the Site there would be no visibility of the Project from the PRoW network on Bested Hill. This is demonstrated by Viewpoint 23 (on PRoW AE457) and is due to intervening vegetation including Backhouse Wood, which contains the Project from the east.
- 1.6.16 Mr Markwell explained that further east of Viewpoint 21 (PRoW AE 656), the Project comprises almost entirely below ground elements which would not adversely impact on views during the operational phase.
- 1.6.17 He noted that, as demonstrated by the visualisations (**ES Volume 4, Appendix 8.10: LVIA Visualisations** [\[AS-014\]](#)), views from PRoW AE 474 (Viewpoint 28) to the east of the Site in the vicinity of the Aldington Church Conservation Area would be subject to a negligible neutral effect due to the containment of the Project by landform and existing vegetation. Closer to the Site, the Applicant has considered that receptor group on that same PRoW, but from that point there is very limited visibility of the Site.
- 1.6.18 Mr Markwell then explained that on the western side of the Project the primarily low-lying and well vegetated landscape restricts views of the Site. However, he noted that one viewpoint was identified on PRoW AE 401 (Viewpoint 29 – Colliers Hill) where a moderate adverse effect would result from the Project at Year 1. He explained that, whilst proposed planting will help to integrate the Project to a degree, due to the elevated nature of this viewpoint and the extent of the Project visible the Year 15 effect would likely remain moderate adverse.
- 1.6.19 He explained that to the north of the M20 field surveys identified highly restricted visibility of the Site, with only one viewpoint identified (Viewpoint 33 (PRoW HE 307)). He noted that the Project would be seen partially and at a distance of approximately 3.6km from this point, confirming that the assessment identified a negligible adverse effect on this receptor.
- 1.6.20 Mr Markwell noted that the views experienced by visual receptors on the PRoW network (PRoW AE 370, AE 378, AE 376, AE 428, AE 430) immediately north of the Site up to the High Speed 1 railway line are represented by Viewpoints 18, 30 and 31. He explained that, due to the largely open nature of the river valley landscape, there would be views of the Project in Fields 10-19 leading to moderate adverse effects at Year 1.
- 1.6.21 He explained that the illustrative landscape proposals include the provision of tree planting along the East Stour River, following the northern boundary of Field 19, as well as the reinforcement of existing field boundary vegetation on the northern extents of Fields 10, 11 and 16. For visual receptors on low lying land to the north of the Site (Viewpoint 18) or further west (represented by Viewpoint 31), he noted that once established this planting would provide increased filtering of the Project to the extent that Year 15 effects would reduce to minor/moderate adverse.
- 1.6.22 Mr Markwell then explained that from more elevated positions in close proximity to the High Speed 1 railway (Viewpoint 30), proposed planting on the low-lying northern Site boundary would not reach a sufficient height within the 15-year

timeframe of the assessment to reduce the visual impact of the Project, and the effect would remain moderate adverse, in similar fashion to the Collier's Hill Viewpoint.

*Users of PRow within Fields 26-29 - Medium Sensitivity*

- 1.6.23 Turning to visual receptors within or immediately adjacent to the Site, Mr Markwell explained that these have been split into three different receptor groups, including users of PRow within Fields 26 to 29. He confirmed that no PV panels are proposed within this part of the Site: only the Project substation and landscape enhancements are proposed there. As a result, visual receptors traveling on the existing PRow network will experience views of the Project substation at a minimum distance of 300 meters across an intervening landscape, enhanced as part of the illustrative landscape proposals. As such, he concluded that the effect on receptors in this location would be, at worst, minor/moderate adverse, reducing to minor adverse at Year 15 following the establishment of landscape proposals.

*Users of PRow within/adjacent to the Site with Open Panoramic Views Towards the Kent Downs NL – Medium/High Sensitivity*

- 1.6.24 Mr Markwell explained that open panoramic views towards the North Downs ridgeline within the Kent Downs National Landscape are experienced from the southern extents of PRow AE 370, AE 377 and from PRow AE 474 along the southern edge of Field 12, where the gently elevated position on the western extent of the Aldington ridgeline allows views northwards to the distant backdrop of the Downs, and that visual connection with the nationally designated landscape creates a higher sense of a high level of sensitivity.
- 1.6.25 He then explained that receptors on PRow AE 370 and AE 377 currently experience open views across a large-scale arable landscape towards the East Stour River and the High Speed 1 railway line. He noted that these PRow would be subject to diversions to follow existing and proposed hedgerow field boundaries more closely. Mr Markwell confirmed that all PRow routes would be within retained open corridors a minimum of 10m wide, and in places substantially more, thereby retaining a degree of openness experienced by visual receptors. He noted that PRow AE 370 would be diverted into a field retained as an open landscape to the west of Field 12, where open views towards the North Downs can be experienced from the Aldington Ridge.
- 1.6.26 Mr Markwell noted that whilst the diversion of PRow in itself is not considered to lead to visual effects, redirecting these routes along hedgerow field boundaries, together with the sub-division of large scale field parcels (in accordance with published guidance) would result in visual containment of the Project on at least one side of the PRow. This approach, together with the provision of visual buffers to the PRow is considered to balance using existing and proposed vegetation to screen the Project with the opportunity to retain open views as far as possible. He confirmed that the approach is also considered to be consistent with the prevailing character of the landscape of the Site and published landscape guidance.

- 1.6.27 He then explained that users of PRow AE 474 travelling east from Goldwell Lane experience open, expansive views to the north-west. However, as demonstrated by Viewpoint 24, Fields 20-22 are not readily perceived initially due the lower-lying landform of this part of the Site. Mr Markwell noted that further east, as the PRow approaches the southern edge of Field 20, proposed PV panels in this location will come into view in open close range views. These effects will occur along the length of Field 20, but are likely to diminish rapidly travelling further east due to a combination of landform and existing vegetation, demonstrated by Viewpoint 28. He also confirmed that at no time during the operational phase will the Project obscure views of St Martin's Church, Aldington.
- 1.6.28 Mr Markwell confirmed that this receptor group has been identified as likely to experience a major-moderate adverse effect at Year 1 of operation, and noted that these are the initial effects. He explained that following the establishment of proposed planting, including new/reinforced hedgerow and trees along the southern/western edge of Field 20, and planting around retained open land adjacent to Field 12, these effects will diminish to minor/moderate adverse due to the increased containment of the Project.

*Visual receptors on PRow within or immediately adjacent the Site – Medium Sensitivity*

- 1.6.29 Mr Markwell then explained that visual receptors elsewhere within the Site, within the more contained landform of the East Stour Valley, do not have views of the North Downs, so as a result have a reduced sensitivity.
- 1.6.30 He explained that a number of these PRow are proposed to be rationalised to follow field boundaries. He noted that, whilst this will make some of the routes slightly longer and less direct, this change on its own is not considered to result in visual effects. He also noted that the proposed routes will relate more closely to existing and proposed landscape structure, including a new route (FNR 7) running along the East Stour River.
- 1.6.31 Mr Markwell confirmed that the retained and diverted PRow are proposed to run within corridors a minimum of 10m in width, and in places substantially wider than this minimum. He explained that these corridors will run alongside field boundaries comprising existing reinforced, or new hedgerow planting. He noted that the corridors themselves are proposed to be planted with taller growing native grassland species which will assist in assimilating the Project within its landscape setting.
- 1.6.32 He also confirmed that the nature of the Project, including its restricted height, visual permeability and provision of grassland within PV areas, serves to limit the scale of visual change, particularly in close range views. He added that the nature of security fencing and the allowance of a buffer between fencing and PV panels also serves to maintain a degree of openness from the PRow.
- 1.6.33 Mr Markwell then explained that notwithstanding this, visual receptors on PRow within the Site (excepting those outlined previously) will experience moderate adverse effects at Year 1 as a result of views of the Project experienced at close

range. He also noted that although the scale of change at Year 15 would reduce as a result of the establishment of mitigation, a moderate adverse effect would remain at Year 15.

- 1.6.34 Mr Markwell also confirmed that the effects on visual receptors have been agreed with ABC/KCC through the preparation of the Statements of Common Ground with both councils.
- 1.6.35 He noted that, in summary, the Site has a relatively restricted visual envelope, particularly considering its extent.
- 1.6.36 Mr Markwell explained that whilst the Project is within the setting of the Kent Downs National Landscape, no receptors within the National Landscape, including visual receptors on the PRow network therein, will experience significant adverse effects.
- 1.6.37 He explained that the Project includes a comprehensive landscape mitigation strategy that has been designed through an iterative process informed by an analysis of the Site's character, context and visual characteristics as well as being informed by published character assessments and other specialist disciplines. He added that the landscape strategy has also been designed to minimise visual effects on PRow users wherever possible in line with policy.
- 1.6.38 Mr Markwell explained that a number of existing PRowS run through and adjacent to the Site, as they do through much of Kent. He explained that views from this network of routes are not within a designated landscape although views from more elevated positions have an association, through intervisibility, with the nationally designated landscape of the Kent Downs. He confirmed that this relationship has been taken into account in the sensitivity judgements of visual receptors.
- 1.6.39 He explained that the Project will lead to significant residual adverse effects on users of the PRow network within parts of the Site, but the residual effects after mitigation are no greater than moderate adverse, meaning that no major adverse and not even moderate-major adverse effects have been identified, with many effects being lower than moderate. Mr Markwell also explained that in some areas of the Site, the establishment of proposed planting and the extensive visual buffers would reduce visual effects below the significance threshold.
- 1.6.40 Mr Markwell then explained that, with respect to views from the local PRow network beyond the Site's boundaries, significant visual effects would be experienced from limited areas to the north and west of the Site due to partial visibility of the Project. He added that to the south, east and north of the High Speed 1 railway, visibility of the Project would diminish rapidly, and no significant residual effects are predicted.
- 1.6.41 He noted that it is worth highlighting that no contrary expert landscape evidence has been produced and the findings of the LVIA are a matter of agreement with KCC. Mr Markwell explained that ABC appointed professional landscape consultants, Landscape Management Services ('LMS') as part of the 2022 Statutory Consultation. He confirmed that LMS reviewed and commented on the LVIA, which was subsequently amended to take account of their comments. He also confirmed



that no further expert landscape evidence has been provided by ABC and the effects identified in the LVIA have been agreed in the **Draft Statement of Common Ground with Ashford Borough Council (Doc Ref. 8.3.1(B))**.

- 1.6.42 Mr Markwell explained that mitigation measures are included in the design of the Project to reduce visual effects as far as possible in line with the National Policy Statements, however, due to landform it is not possible to completely screen the Site from some locations and significant residual effects will remain. He added that, nonetheless, considering the size of the Project, the extent and nature of significant visual effects on PRow users are considered to be modest and localised, and largely confined to within the Site's boundaries.
- 1.6.43 The ExA responded to note that he acknowledges there are SoCGs that cover impacts, but that some IPs disagree regarding whether the Applicant has fulfilled policy tests. He referred to paragraph 2.10.43 of NPS EN-3 which states that "*Applicants are encouraged where possible to minimise the visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape.*" The ExA asked the Applicant to explain how it will go about maximising the opportunities to reduce the impact, having regard to this policy.
- 1.6.44 Mr Flanagan responded on behalf of the Applicant to confirm that this would be responded to in writing.
- 1.6.45 **Post-hearing note:** Please refer to the Applicant's response to Action Point 9 in Section 2 below.
- 1.6.46 The ExA then heard submissions from Mr Roland Mills of ABC and Mr David Withycombe of Land Management Services ("**LMS**") (the landscape consultants instructed by ABC) on behalf of ABC relating to the LVIA assessment and how the assessment takes account of PRow, and noting the conclusions in the LVIA relating to landscape character.
- 1.6.47 Submissions were also heard from the following IPs in attendance:
- Ms Alison Eardley (relating to the Neighbourhood Plan and viewpoint selection);
  - Cllr Linda Harman (relating to views across the East Stour Valley, viewpoint selection and impacts to users of Station Road);
  - Mr Jonathan Tennant (relating to the Kent Downs National Landscape and Bested Hill, assessment of alternatives, planting proposals, and the East Stour Solar Scheme);
  - Mr Herlihy (relating to protection of PRow as compared with other local solar schemes, and the effects of a local inland border facility, and disagreement with the Applicant's LVIA conclusions);
  - Mr Richard Thompson (relating to landscape and PRow harm),
  - Ms Colleen Loader (relating to effects of local residents relating to

landscape views);

- Mr Swarbrick (relating to the Community Liaison Panel and long range views across the valley);
- Mr Langhorn (relating to the positive effects the landscape has on health and wellbeing and the impacts of the Project on PRoW);
- Mr Paul Ripley (relating to the health and wellbeing benefits of walking); and
- Mr Norman Corfield (also relating to the impacts of the Project on long distance views across the East Stour Valley).

1.6.48 In response, Mr Flanagan on behalf of the Applicant stated the following:

- Firstly, in respect of ABC's submissions today, he noted that Mr Withycombe of LMS has not disputed any of the findings of the Applicant's LVIA, which is helpful. He confirmed that the assessment in the Applicant's LVIA is therefore a matter that is agreed between ABC's expert landscape consultant (i.e. LMS) and the Applicant's. That is important to recognise. Mr Withycombe had stated that there remained some significant residual effects, but Mr Flanagan noted that 'significance' in a LVIA and ES is a range. Moderate adverse is at the bottom of that range, i.e. below both moderate-major and major. It is highly relevant that despite the Project being of a scale which makes it nationally significant, it generates landscape and visual residual effects which are no greater than moderate adverse. This is indicative of the fact that the site is well-suited to the Project and can accommodate the Project acceptably, as well as evidencing that the Project has been well-designed and sensitively sited, with effective mitigation put in place. NPS EN-1 acknowledges that NSIPs inevitably "*will have adverse effects on the landscape*" (5.10.5) and that "*The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be **so damaging** that it is not offset by the benefits (including need) of the project*" (5.10.35; emphasis added). Likewise, NPS EN-3 acknowledges that solar development is likely to cover "*a significant surface area*" (2.10.95). Policy therefore recognises that there will be significant landscape and visual effects from renewable energy, including solar, development. They are not a basis to refuse consent for nationally significant renewable energy development. Secondly, in respect of the Kent Downs National Landscape, Mr Flanagan confirmed that the National Landscape Unit have reviewed the Project and responded to the pre-application consultations, as have Natural England. He confirmed that they have not objected to the Project, are content with the LVIA and agree that any effects on the National Landscape are at most minimal.
- Thirdly, he noted that additional hedgerow planting was raised a couple of times by IPs. He explained that there is a balance to be struck between landscape planting and screening whilst also maintaining views. He noted that differing views had been expressed by IPs during the hearing regarding this balance, with some preferring more planting than the Applicant has proposed, and some preferring less planting than the Applicant has proposed. The Applicant considers that it has struck the right balance, as

set out in the landscape and visual application material.

1.6.49 Mr Flanagan then explained that, in terms of the points raised by ABC relating to reducing the size of the Project and additional planting, the Applicant would respond in writing.

1.6.50 ***Post-hearing note:*** Please refer to the Applicant's response to Action Point 10 in Section 2 below.

## 1.7 Agenda Item 6: Next steps

1.7.1 Mr Flanagan read out the list of Action Points from the hearing.

## 1.8 Agenda Item 7: Closing

1.8.1 The ExA thanked participants and closed ISH3 at 14:30.

## 2 Action Points

### 2.1 List of action points arising and the Applicant's responses

Action Point	Applicant's response
<b>Action Point 1:</b> The ExA / PINS to confirm the discussions that have been had regarding the chosen location for this week's hearings.	N/A
<b>Action Point 2:</b> The Applicant to provide further details regarding the PRow surveys, including regarding methodology, margin of error and consultation with KCC.	<p><b>Method of survey</b></p> <p>As set out in paragraph 13.4.48 to 51 of <b>ES Volume 2, Chapter 13: Traffic and Access (Doc Ref. 5.2(D))</b> <a href="#">[REP3-012]</a>, video camera (CCTV) surveys were undertaken by an independent traffic survey company (360 TSL, now operating as Paul Castle Associates). The video footage method was used to survey the number of PRow users over a 7 day period in August 2022 as this allows for a more accurate tally than people counters which are often triggered by animals and birds. August was chosen for the surveys in order to record what would reasonably be expected to be the highest period of PRow use activity, allowing a worst case assessment in terms of maximum number of PRow users. Cameras were located in inconspicuous locations to avoid tampering. Weather temperatures for this area show maximum daily temperatures between 20 – 26 degrees Celcius<sup>1</sup>.</p> <p>The PRow survey locations are shown on <b>ES Volume 3, Figure 13.2: PRow Survey Locations &amp; Average Daily Trips (Doc Ref. 5.3)</b> <a href="#">[APP-056]</a>. Results are set out within <b>ES Volume 4, Appendix 13.6: PRow User Survey Results (Doc Ref. 5.4)</b> <a href="#">[APP-112]</a>.</p> <p><b>Margin of Error</b></p> <p>The margin of error is not quantified but considered to be virtually zero. Downloaded footage from the CCTV cameras is watched by experienced numerators and data recorded directly into the Excel sheets provided in <b>ES Volume 4, Appendix 13.6: PRow User Survey Results (Doc Ref. 5.4)</b> <a href="#">[APP-112]</a>.</p> <p><b>Relevant consultation with KCC</b></p>

<sup>1</sup> [https://world-weather.info/forecast/united\\_kingdom/ashford/august-2022/](https://world-weather.info/forecast/united_kingdom/ashford/august-2022/)

Action Point	Applicant's response
	<p>As set out in paragraph 13.4.51 of <b>ES Volume 2, Chapter 13: Traffic and Access (Doc Ref. 5.2(D))</b> <a href="#">[REP3-012]</a>, the Applicant agreed the survey locations with KCC before the PRow surveys were undertaken. Table 13.2 of <b>ES Volume 2 Chapter 13: Traffic and Access</b> <a href="#">[REP3-012]</a> then summarises the approach to the scope and timing of the surveys. KCC raised that PRow user surveys were required focusing on sections of PRow impacted by the Project. KCC suggested surveys were undertaken for a 7-day period in either June or July.</p> <p>User surveys were undertaken by the Applicant over an 8 day period in August 2022 (23 – 30th inclusive of the Bank Holiday weekend). August was chosen for the surveys in order to record what would reasonably be expected to be the highest period of PRow use activity, allowing a worst case assessment in terms of maximum number of PRow users.</p> <p>The on-site locations were shared in advance and agreed with KCC PRow Officers via email on 8/2/22. This agreement was reported in <b>PEIR Appendix 12.1: Consultation Summary</b>.</p> <p><b>PRow User Survey Results</b></p> <p>Paragraph 13.5.50 of <b>Chapter 13: Traffic and Access (Doc Ref. 5.2(D))</b> <a href="#">[REP3-012]</a> summarises the results. <b>ES Volume 3, Figure 13.3: PRow Survey Results - Daily PRow Trips (Doc Ref. 5.3)</b> <a href="#">[APP-056]</a> shows the total PRow trips per day in graphical form. The full survey results are provided in <b>ES Volume 4, Appendix 13.6: PRow User Survey Results (Doc Ref. 5.4)</b> <a href="#">[APP-112]</a>.</p> <p>The results show that observations made during the Site visits that the local PRow network is relatively lightly used are confirmed by the survey data. This is not unexpected given that the PRow network currently offers limited connectivity between settlements.</p> <p>Fewer than 10 one-way trips per day were observed at six of the eight survey locations across the 7.5-day survey period with a number of locations not recording any usage during the survey period (including the AE454 going north from the AE474 which is proposed to be diverted and has been raised as a concern in representations).</p> <p>Survey location 3, east-west is the AE474 travelling from Goldwell Lane to Church Lane (towards Aldington Church) and is the closest PRow in the study area to Aldington and has by far the highest usage with an average of 26 one way trips (13 two way trips) per day over the study period.</p>



Action Point	Applicant's response
	<p>The Applicant notes that no diversions are proposed to AE474 and therefore there is no change to amenity value. A limited section of this PROW will run past the Project, with solar panels located 90 degrees to the left and therefore not in the direct line of sight of the PROW user. The panels will be located behind extensive vegetation screening to be planted and/or enhanced further limiting effects on PROW users.</p>
<p><b>Action Point 3:</b> The Applicant to respond to the ExA's question on the effect on the Project's generating capacity if the Project were to be designed around the PRow.</p>	<p>The Applicant has sought from the outset to maximise the generating capacity of the Project, and therefore the benefits that can be delivered, at the same time as avoiding unacceptable harm to the environment.</p> <p>The Applicant's approach is set out in the <b>Design Approach Document (Doc Ref. 7.4)</b> <a href="#">[APP-149]</a> in particular Objective 1 (<i>Design the Project to optimise the amount of renewable energy that can be generated in the Site area to help decarbonise electricity generation and achieving net zero carbon emissions, in line with the Government's commitments</i>) and Objective 8 (<i>Retain existing PRow and connectivity where possible and seek opportunities to enhance the local network</i>).</p> <p>The proposed diversions to the Public Right of Way ('PRow') network enable the Project to optimise the amount of renewable energy the Site can deliver, and in doing so maximise the Project's contribution to meeting the UK's legally binding decarbonisation commitments. It also ensures an efficient use of the land and the grid connection capacity which, as the ExA is aware, is in short supply and has been recognised by the Government as a critical barrier to achieving Clean Power 2030.</p> <p>NPS EN-3 paragraph 2.10.40 identifies and acknowledges that solar NSIP developments may affect the provision of PRow with the subsequent paragraphs (NPS EN-3 2.10.40-2.10.45) setting out how Applicants should have regard in terms of approach to project design. In accordance with NPS EN-3 the Applicant has sought to minimise impacts on PRow recreational use where possible and has included a number of new PRows which will improve the connectivity of the network, in particular through the introduction of a more direct route between Otterpool Park (towards the east) and Ashford (towards the west) as KCC and ABC had previously indicated to the Applicant that this was a key strategic network aim for the local network.</p>

Action Point	Applicant's response
	<p>NPS EN-3 paragraph 2.10.42 requires the design and layout of the Site to ensure continued recreational use of PRow. The proposed changes to the network meet this requirement. <b>ES Volume 2, Chapter 12: Socio-Economics (Doc Ref. 5.2(B))</b> <a href="#">[REP1-024]</a> identifies adverse effects, but these are assessed as negligible to minor adverse (not significant). In particular, and as further explained by Mr Humphrey orally in ISH3, in so far as the diversions lengthen any routes, the increases are limited and do not give rise to significant effects.</p> <p>In relation to the BOAT (AE 396) no significant adverse effects are identified (<b>ES Volume 2, Chapter 12: Socio-Economics (Doc Ref. 5.2(B))</b> <a href="#">[REP1-024]</a>). The BOAT is currently not passable due to extensive vegetation and the Applicant has committed under paragraph 8.2 of the <b>Outline Rights of Way and Access Strategy</b> <a href="#">[REP1-056]</a> to clear and maintain access to this link as part of the Project. As this is the only route within or around the Site suitable for horse riding opening this up is a local benefit.</p> <p>KCC has reviewed and has not raised any concern with the assessment presented in <b>ES Volume 2, Chapter 12: Socio-Economics (Doc Ref. 5.2(B))</b> <a href="#">[REP1-024]</a>. Importantly, it is noted that KCC explicitly confirmed at ISH3 that PRow connectivity will be maintained post implantation of the proposed diversions, and as such KCC agrees the Project complies with the NPS requirement.</p> <p>With respect to the visual impact of the Project on PRow users, the primary consideration in the assessment of effects is the scale of visual change. GLVIA (paragraph 6.39) defines scale of visual change as follows:</p> <ul style="list-style-type: none"> <li>■ “the loss of addition of features in the view and changes in its composition, including the proportion of the view occupied by the proposed development;</li> <li>■ the degree of contrast or integration of any new features or changes in the landscape with the existing or remaining landscape elements and characteristics in terms of form, scale and mass, line, height, colour and texture; and</li> <li>■ The nature of the view of the proposed development...”.</li> </ul> <p>The approach set out in <b>ES Volume 4, Appendix 8.2: LVIA Methodology (Doc Ref. 5.4(A))</b> <a href="#">[AS-016]</a> is consistent with GLVIA3 in that it provides criteria for assessing the scale of visual effects based on the change in the composition of views with consideration of:</p>

Action Point	Applicant's response
	<ul style="list-style-type: none"> <li>■ “The angle of view in relation to the main activity of the receptor;</li> <li>■ The distance of the viewer from the Project;</li> <li>■ The extent of the area over which the changes will be visible; and</li> <li>■ The degree of visual intrusion of the Project in the view”. (Appendix 8.2, Paragraph A1.35).</li> </ul> <p>Visual effects would take place when there are new physical components, such as the PV structures, hedgerows, or changes to existing views of open agricultural land. The diversion of a PRow in itself is not considered as a visual effect; the visual effect is the result of the introduction of the PV arrays. Such an effect would occur at the PRow receptors with or without the PRow diversions. Therefore, whilst the experience of the site by users would be altered as a result of having different vantage points within the site, there would be no change in the composition of views as a result of the PRow diversions, and therefore no scale of visual change and no resultant visual effect.</p> <p>On the basis of the above, the diversions do not lead to any additional visual impacts compared to retaining the current PRow network and therefore designing the Project around the existing PRow would result in the same reported landscape and visual effects.</p> <p>KCC has not disagreed with the landscape and visual assessment undertaken (as set out in <b>ES Volume 2, Chapter 8: Landscape and Views (Doc Ref. 5.2(A))</b> <a href="#">[AS-012]</a>), whether in respect of landscape and visual effects on PRow users or otherwise. It is important to note therefore that these two assessments in the ES are agreed with KCC. The landscape and visual assessment in <b>ES Volume 2, Chapter 8: Landscape and Views (Doc Ref. 5.2(A))</b> <a href="#">[AS-012]</a> is also agreed with ABC, and notably ABC's expert landscape advisor (Mr Withycombe of Land Management Services) who attended ISH3 and did not raise any concerns with the landscape and visual assessment undertaken, only noting that the assessment showed some significant visual effects in EIA terms, which is accepted and to be expected on a project of national significance.</p> <p>It is important to note therefore that all assessments in relation to PRow impacts in the ES are agreed with KCC. However, in its written representation KCC suggests it believes the Project will result in a “substantial adverse</p>

Action Point	Applicant's response
	<p>impact” to the PRow network, being the highest possible level of harm that could be ascribed. As set out by the Applicant in response to KCC’s written representation and orally at ISH3, the Applicant maintains its position that KCC’s conclusion of a substantial adverse effect cannot be justified and is without foundation, noting that when provided the opportunity to justify its position at ISH3 the KCC Public Rights of Way Officer was unable to do so, referring instead to a “substantial impact on experience and enjoyment”. Given KCC’s failure to justify its written representation position by reference to (i) an accepted methodology, or (ii) further written evidence from a suitably qualified expert, despite repeated prior opportunities in writing and orally at ISH3 to do so, it is the Applicant’s view that the ExA, and SoS, should not afford such a statement any weight in the decision-making process.</p> <p>A number of IPs have asked the Applicant to consider a layout that retains the existing PRow network. The proposals allow the maximum level of renewable energy to be generated by the Project whilst also minimising to the extent possible effects on PRowS and fully complying with the relevant policy requirements in NPS EN-1 and NPS EN-3, thereby meeting the stated Project objectives as set out in <b>Design Approach Document (Doc Ref. 7.4)</b> <a href="#">[APP-149]</a>.</p> <p>As a result, the Applicant does not believe there is a requirement to consider an alternative scheme design or that such an alternative would be important or relevant to the SoS's decision.</p> <p>The re-introduction of wide pathways through areas identified for solar generation (as opposed to the paths following existing field boundaries) would materially reduce the generating capacity of the Project and therefore reduce the Project benefits and its contribution to achieving Government targets, including Clean Power 2030 but without undertaking significant work to design an alternative scheme it is not possible to be precise as to the reduction figure. However, the Applicant does not consider it necessary, proportionate or in accordance with policy to undertake such a design process given that the evidence and assessments, which are not disagreed by either local authority, show the scheme for which development consent is sought to be acceptable in planning terms on its merits.</p> <p>The Applicant’s position in relation to this is supported by NPS EN-1.</p>

Action Point	Applicant's response
	<p>Paragraph 4.3.22 states that <i>“consideration of alternatives should be carried out in a proportionate manner”</i> and that <i>“only alternatives that can meet the objectives of the proposed development need to be considered”</i>.</p> <p>Paragraph 4.3.23 states that <i>“the Secretary of State should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development.”</i></p> <p>In summary:</p> <ul style="list-style-type: none"> <li>• The Applicant's Project design does not result in any significant adverse effects on PRowWs in terms of connectivity, accessibility and convenience (as set out in <b>ES Volume 2, Chapter 12: Socio-Economics (Doc Ref. 5.2(B))</b> <a href="#">[REP1-024]</a>). The effects are negligible to minor adverse. KCC has not raised any concern regarding this assessment.</li> <li>• The Applicant's Project design results in some significant adverse effects on PRowWs in visual terms, but the residual effects after mitigation do not exceed moderate adverse in any case, i.e. the lowest end of the 'significance' scale, as set out in <b>ES Volume 2, Chapter 8: Landscape and Views (Doc Ref. 5.2(A))</b> <a href="#">[AS-012]</a>. Further, even if the Project were redesigned to avoid any PRowW diversions, that would not result in lower reported landscape and visual effects. KCC has not disagreed with the submitted landscape assessment and it is agreed with ABC and notably ABC's expert landscape advisor (Mr Withycombe of Land Management Services).</li> <li>• No significant adverse effects are predicted to the BOAT (AE 396). In fact, the clearance and maintenance of access of the BOAT would secure a local benefit.</li> <li>• Overall, the effects on PRowWs are limited, especially relative to the scale of the Project and the significant benefits to which the Project gives rise.</li> <li>• The alternative of designing the Project around the existing PRowW network would reduce the generating capacity of the Project and result in conflict with key policy requirements at EN-1 4.3.22 and 4.3.23.</li> </ul>



Action Point	Applicant's response
	<p>In the light of all these matters, and the policy context which specifically recognises that nationally significant renewable energy development, including solar development, is likely to impact on PRow, the alternative of redesigning the Project to avoid any PRow diversions should not attract any material weight.</p>
<p><b>Action Point 4:</b> The Applicant to provide the full document reference for the Design Manual for Roads and Bridges.</p>	<p>The full reference to design standards for PRow referred to in ISH 3 as "DMRB Guidance" is: <i>Highways England (2021) CD 143 Designing for Walking, Cycling and Horse-riding</i>. That document provides requirements and advice for the design of walking, cycling and horse-riding facilities, and is accessible online at:  <a href="https://www.standardsforhighways.co.uk/search/9b379a8b-b2e3-4ad3-8a93-ee4ea9c03f12">https://www.standardsforhighways.co.uk/search/9b379a8b-b2e3-4ad3-8a93-ee4ea9c03f12</a>.</p> <p>It should be noted that this has in part informed the Kent Design Guide, which has also been used as the principal basis for design, surfacing, gradient, widths and signage provision on PRow to be implemented by the Project.</p>
<p><b>Action Point 5:</b> The Applicant to respond to the ExA's question regarding decommissioning funds and the suggestion of whether an additional requirement in the Draft DCO would be appropriate in this regard.</p>	<p>Requirement 14 of the <b>Draft DCO (Doc Ref. 3.1(E))</b> provides that decommissioning works must commence no later than the 40th anniversary of the first export date and that prior to commencement of any decommissioning works a Decommissioning Environmental Management Plan ('<b>DEMP</b>') and Decommissioning Traffic Management Plan ('<b>DTMP</b>') must be approved by the local planning authority. As explained in Table 4-9 in Section 4.10 on page 260 of the <b>Response to Deadline 1 Submissions</b> (Doc Ref. 8.8] [<a href="#">REP2-034</a>], breach of a requirement of a DCO is a criminal offence pursuant to section 161 of the Planning Act 2008. Therefore, if the undertaker were to fail to decommission the Project or decommission the Project without obtaining the approval of the DEMP and DTMP in accordance with Requirement 14, this would amount to a criminal offence. This is considered to be a sufficient deterrent to ensure compliance.</p> <p>The possibility of requiring security to be put in place for decommissioning costs was considered during the Examination of the Mallard Pass Solar Project. The Examining Authority's Recommendation Report states at paragraph 7.4.73 that "<i>Whilst there were suggestions by Interested Parties for provision to be made for a financial bond, consistent with the other made DCO's for solar projects we do not consider this to be necessary given the controls that would already be in place via Requirement 18 [Decommissioning and restoration] of the DCO</i>". As far as the Applicant is aware, no solar DCO has imposed such a</p>

Action Point	Applicant's response
	<p>requirement, including the recently granted West Burton Solar Project Order 2025 and Heckington Fen Solar Park Order 2025. There is nothing about the Stonestreet Green project which would justify a different approach. NPS EN-3 provides a clear policy framework for solar NSIPs, and paragraphs 2.10.65 to 2.10.69 deal with project lifetime and decommissioning. There is no reference within this policy to it being necessary for security to be put in place to cover the costs of decommissioning. Indeed, paragraph 2.10.68 notes that "Solar panels can be decommissioned relatively easily and cheaply". Such a requirement would not meet the policy test within NPS EN-1 paragraph 4.1.16 that requirements should only be imposed that are, inter alia, necessary and reasonable.</p> <p>On this basis, the Applicant does not consider that there is any justification for such a requirement to be imposed for the Project, nor any support in legislation, policy or precedent for doing so.</p>
<p><b>Action Point 6:</b> The Applicant to comment on the proposed amendments to requirement 14 of the Draft DCO regarding decommissioning.</p>	<p>The Applicant has broken down the proposed requirement into three limbs in order to respond to this matter fully.</p> <p>(1) <b><i>Details of decommissioning should be agreed with the local planning authority in the form of detailed decommissioning environmental management plan(s) and decommissioning traffic management plan(s).</i></b></p> <p>Requirement 14 of the <b>Draft DCO (Doc Ref. 3.1(E))</b> already provides that no decommissioning works may commence until the DEMP and DTMP have been submitted to and approved by the local planning authority. Therefore this limb of the proposed requirement has already been addressed in the current drafting.</p> <p>(2) <b><i>Those details must be agreed with the local planning authority within three months of the date that the undertaker decides to decommission any part of the solar farm works and connection works or no later than six months before the 40th anniversary of the date of final commissioning.</i></b></p> <p>Similar to the trigger dates for the other requirements in the <b>Draft DCO (Doc Ref. 3.1(E))</b>, Requirement 14(2) requires approval of the relevant details "prior to commencement" of the decommissioning works. If the undertaker were to fail to obtain that approval, this would be a breach of the DCO and thus a criminal offence. Requirement</p>

Action Point	Applicant's response
	<p>14(1) requires that the decommissioning works must commence no later than the 40th anniversary of the first export date and, again, if that did not occur then this would be an offence. Together, paragraphs (1) and (2) of Requirement 14 mean that it is in the undertaker's interests to begin the process of seeking agreement of the DEMP and DTMP an appropriate period of time in advance of the 40th anniversary of the first export date. This is considered to be sufficient control such that it is not necessary for there to be an arbitrary date imposed by when agreement must have been reached on the decommissioning details.</p> <p><b>(3) <i>Provide notice to the local planning authority once any part of the authorised development stops generating electricity for more than six months. Unless otherwise agreed in writing by the local planning authority if, by expiry of the period of 12 continuous months beginning with the date of the notice, that part of the authorised development is not generating electricity then this triggers the need to decommission that part of the works.</i></b></p> <p>The Project is defined as being of critical national priority and once constructed it should be allowed to generate urgently needed clean power for as long as possible within its permitted 40-year lifetime. The Project's value is necessarily linked to its ability to generate electricity and therefore it would not be in the undertaker's interest to construct the Project but then not seek to provide for the continuance of electricity generation where possible. It is also noted that there are many elements of the authorised development, as described in Schedule 1 of the <b>Draft DCO (Doc Ref. 3.1(E))</b>, that do not generate electricity and that is not their intended purpose, for example the BESS, Project Substation, cables etc, but which would be caught by the wording of this proposed new requirement. As explained above, there are already comprehensive controls within the <b>Draft DCO (Doc Ref. 3.1(E))</b> that govern the decommissioning of the Project. The Applicant does not consider that this limb of the proposed requirement is justified or in compliance with national policy. It is not considered that there will be any pause in electricity generation, but even if that did occur it would be unjustified to require early decommissioning, i.e. in advance of the end of the permitted 40-year lifetime. Given the urgent need for renewable energy generating capacity, the Project should be permitted to remain in situ and</p>

Action Point	Applicant's response
	<p>available for that purpose for its full lifetime. The Applicant is not aware of any precedent for an early decommissioning requirement in any solar DCOs.</p>
<p><b>Action Point 7:</b> The Applicant to comment on how quickly OS mapping would be updated if the PRoWs were changed in the way proposed for the Project.</p>	<p>The Applicant recognises the importance of changes to PRoW being adopted expediently by KCC into its Definitive Map and then published within the Ordnance Survey. The Applicant's understanding is that online maps are updated every six weeks with paper maps updated approximately every three years<sup>2</sup>.</p> <p>The <b>Outline RoWAS (Doc Ref. 7.15(A))</b> [REP1-056] sets out measures to promote this within Implementation Plans – Paragraph 5.2.1 to 5.2.3 notes that <i>“within each Implementation Plan, the Applicant will supply all necessary technical information, drawings and other details (including a statement in accordance with section 53 of the Wildlife and Countryside Act 1981) that KCC would reasonably require to enable updates to the Definitive Map. The Implementation Plan will include:</i></p> <ul style="list-style-type: none"> <li><i>• Information required to demonstrate accordance with all relevant legislation and policy, and regard to guidance and standards set out within this Outline Strategy including related to accessibility, design, surface materials, widths, gradient and safety and security;</i></li> <li><i>• Information required to demonstrate accordance with the commitments in the Management Plans secured by the DCO; and</i></li> <li><i>• Information required to demonstrate accordance with the principles set out under Part 6 and Part 7 in this Outline Strategy.</i></li> </ul> <p><i>Plans will be required for each new or diverted PRoW. Any plans produced to support the Implementation Plans will reflect the necessary diversions, be at an adequate scale (1:2,500) and be sufficiently detailed to enable amendment of the KCC Definitive Map and Statement”.</i></p> <p>Importantly, the <b>Outline Rights of Way and Access Strategy</b> [REP1-056] also commits to the provision of signage – for example at paragraph 5.2.14 <i>“In order to allow users to recognise and appreciate their whereabouts, routes across and adjacent to the Project within the Order limits shall include appropriate clear and informative signage to provide wayfinding for the users”.</i></p>

<sup>2</sup> <https://www.mapserve.co.uk/blog/os-maps-updates>

Action Point	Applicant's response
	<p>As set out in the <b>Statement of Common Ground with Kent County Council</b> <a href="#">[REP3-032]</a> at item P.6 PRow and P.8 PRow this <b>Outline Rights of Way and Access Strategy (Version 2)</b> <a href="#">[REP1-056]</a> is agreed with KCC.</p>
<p><b>Action Point 8:</b> The Applicant either: (i) to provide a reference to its detailed response to the submissions made by Mr Swarbrick at Deadline 1; or (ii) if no such detailed response has been provided to date then to provide a detailed response.</p>	<p>The Applicant has submitted several documents which reference the points relating to PRow raised by Mr Swarbrick in his Deadline 1 submission <a href="#">[REP1-112]</a>. These include:</p> <ul style="list-style-type: none"> <li>• <b>Table 12.18 of ES Volume 2, Chapter 12: Socio-Economics</b> <a href="#">[REP1-024]</a> and <b>Table 2-1 of the Outline Rights of Way and Access Strategy (Version 2)</b> <a href="#">[REP1-056]</a> which set out a link by link summary of the proposed changes and interactions between existing, replacement and new routes;</li> <li>• <b>Section 5.7 of ES Volume 2, Chapter 5: Alternatives and Design Evolution</b> <a href="#">[AS-010]</a> which sets out details of the alternatives that have been considered and how the PRow strategy has evolved through public consultation and bilateral engagement;</li> <li>• <b>Appendix 11.1 from the PEIR Addendum</b> which has now been submitted to the Examination as <b>Appendix 4 to the Written Summary of Oral Submissions from Issue Specific Hearing 2 and Responses to Action Points</b> <a href="#">[REP1-075]</a> which provides a detailed summary of how the consultation feedback was considered and presented in the PEIR Addendum leading into the 'final' scheme on a route-by-route basis;</li> <li>• the Applicant's <b>Responses to Relevant Representations (Doc Ref. 8.2)</b> <a href="#">[REP1-061]</a> provides thematic and detailed responses to PRow issues raised by Interested Parties (including Mr Swarbrick);</li> <li>• the Applicant's <b>Responses to Deadline 1 Submissions</b> <a href="#">[REP2-034]</a> which provides thematic and detailed responses to PRow issues raised by Interested Parties (including Mr Swarbrick) at Section 5.12;</li> <li>• the Applicant's <b>Responses to Deadline 2 Submissions</b> <a href="#">[REP3-046]</a> which includes in Table 2-4 responses to Kent Ramblers on specific PRow raised by Mr Swarbrick.</li> </ul> <p>It should be noted that regarding PRow diversions, the Applicant has engaged with residents (including Mr Swarbrick), community groups (including Kent Ramblers, of which Mr Swarbrick is a member) and Local Authorities on the approach to specific PRow and is agreed with KCC</p>



Action Point	Applicant's response
	<p>on the approach to diversions. This is confirmed by <b>Kent County Council in its Relevant Representation</b> [RR-156] which states:</p> <p><i>“Through the pre application stage of this proposal, the County Council has proactively negotiated with the applicant a PRow Management Strategy (APP-160), that covers the construction, operational and decommissioning stages. ... the number of PRow that were originally proposed to be extinguished has been reduced to two, and the number of routes to be diverted during the operational stage <u>has been reduced to the minimum</u>.”</i></p> <p>It is noted that Mr Swarbrick's submission makes reference to diversions in three broad areas of the Site:</p> <ul style="list-style-type: none"> <li>• AE454 and AE454 in the <b>south east</b> of the Site;</li> <li>• AE377 and AE370 in the <b>south west</b> of the Site; and</li> <li>• AE447, AE448, AE378 and AE428 in the <b>centre</b> of the Site</li> </ul> <p>The Applicant's <b>Written Summary of Oral Submissions made at ISH 3 and Responses to Action Points (Doc Ref. 8.14.1)</b> includes a summary of the approach to changes to PRow in each area, in addition to the listed submissions above.</p> <p>A detailed specific response to Mr Swarbrick's representation is set out within <b>Responses to Deadline 3 Submissions (Doc Ref. 8.13)</b>.</p>
<p><b>Action Point 9:</b> The Applicant to explain how it has gone about maximising opportunities to minimise the visual impacts on users of PRow to meet the policy tests in NPS EN-3.</p>	<p><b>Minimise visual impacts of the development for those using PRow</b> (NPS EN-3 para 2.10.44):</p> <p>EN-1 notes in Paragraphs 5.10.13 and 5.10.14 that all energy projects are likely to result in visual effects, and in paragraph 5.10.35 that “The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project”.</p> <p>EN-3 notes that:</p> <p><i>2.10.43 Applicants are encouraged where possible to minimise the visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape<sup>89</sup>.</i></p>

Action Point	Applicant's response
	<p><i>Footnote 89: For example, screening along public right-of-way networks to minimise the outlook into the Solar Park may, impact on the ability of users to appreciate the surrounding landscapes</i> (emphasis added)</p> <p>The Applicant has made considerable efforts in minimising the visual impacts for those using PRoW in the vicinity of the Project.</p> <p>This design strategy of minimising and mitigating visual impacts has included the following key elements:</p> <ul style="list-style-type: none"> <li>■ Screen planting in the form of new and reinforced hedgerow planting;</li> <li>■ Maintaining/creating long distance views northwards from the Aldington Ridge through the use of larger buffers (for example, PRoW AE370 has been diverted to run through an open area in Fields 12 and 13 (approximately 0.86ha), where seating will be provided and views towards the North Downs will be experienced, with proposed PV panels approximately 90m distant to the north, with new and enhanced hedgerows to provide an element of screening) ;</li> <li>■ Over 5km of new hedgerows, including on the most visually sensitive parts of the site (the Aldington Ridge);</li> <li>■ Minimum open 10m landscape corridors to existing/diverted/new PRoW;</li> <li>■ Reinforcement of proposed planting on the southern edge of Field 20 to further limit short distance views from the NL (as requested by the Kent Downs NL Unit);</li> <li>■ Creation of new PRoW which will enhance amenity, including so as to allow a new riverside walk by FN-3 running east to west through the north of the Site and connecting existing route AE 376 directly to AE 657 ;</li> <li>■ Restoring historic hedgerows and field boundaries; and</li> <li>■ Native woodland planting where compatible with prevailing character/published guidance and the need to maximise for energy generation, including woodland belts along Calleywell Lane and Station Road and extensive planting of characteristic trees and woodland along the East Stour River.</li> </ul> <p>The landscape mitigation strategy has sought to balance the use of hedgerow screening and the use of open buffers in a manner which is consistent with, and respectful of the prevailing existing character of the landscape and the guidance set out in published landscape guidance</p>

Action Point	Applicant's response
	<p>contained within KCC and ABC landscape character assessments. The approach to mitigation is also a matter of agreement with KCC in the <b>Statement of Common Ground with Kent County Council (Doc Ref. 8.3.4(C))</b>).</p> <p>Significant visual effects on users of PRow networks are highly likely to occur where there are PRowS within or near to a site. This is acknowledged by NPS EN-1 Paragraphs 5.10.13, 5.10.14 and 5.10.35.</p> <p>As outlined in <b>ES Volume 2, Chapter 8: Landscape and Views (Doc Ref. 5.2(A))</b> <a href="#">[AS-012]</a>, the majority of visual effects are limited to those receptors within or immediately adjacent to the site. These effects are at the lower end of the scale for significant effects. Furthermore, in some parts of the Site (e.g. Fields 26-29), residual effects below the significance threshold have been reported.</p> <p>Beyond the Site's boundaries five significant visual effects have been identified on PRow receptors. In all these cases, moderate adverse effects have been identified which are at the lower end of the scale for significant effects, and no major or moderate/major effects have been identified. Following the establishment of mitigation measures as set out above, the majority of these effects would be reduced to negligible or minor, with only two moderate adverse (significant) residual visual effects remaining.</p> <p>Given the extent of PRow across the site, and the open nature of existing views it is considered that reducing effects across all PRow below a moderate level would not be achievable without substantial reductions in the scale of the Project, which would conflict with EN-1 4.3.22 and 4.3.23.</p> <p>The Applicant notes that moderate adverse is at the bottom of that range, i.e. below both moderate-major and major. It is highly relevant that despite the Project being of a scale which makes it nationally significant, it generates landscape and visual residual effects which are no greater than moderate adverse. This is indicative of the fact that the site is well-suited to the Project and can accommodate the Project acceptably, as well as evidencing that the Project has been well-designed and sensitively sited, with effective mitigation put in place. NPS EN-1 acknowledges that NSIPs inevitably "will have adverse effects on the landscape" (5.10.5) and that "The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging</p>

Action Point	Applicant's response
	<p>that it is not offset by the benefits (including need) of the project” (5.10.35; emphasis added). Likewise, NPS EN-3 acknowledges that solar development is likely to cover “a significant surface area” (2.10.95). Policy therefore recognises that there will be significant landscape and visual effects from renewable energy, including solar, development.</p> <p>These viewpoints are within the local vicinity of the Site, which again demonstrates that the Project has very localised visual influence, particularly in relation to its extent. No significant adverse effects have been reported in relation to PRow users within the Kent Downs National Landscape, or any other designated landscape.</p> <p>No further mitigation measures are considered possible to reduce these two residual impacts, as the elevated nature of the viewpoints, undulating nature of the site and distance to the Project are such that mitigation planting will not grow to a height to be effective within the timescale of the Project.</p> <p>As part of the consultation process, the Applicant considered the potential for additional buffers and use of tree belts suggested by ABC to further reduce the residual effects on PRow users beyond the Site’s boundaries, however these were considered unlikely to alter the visual effects identified and would have a considerable detrimental impact on the operational capacity of the Project.</p> <p>As explained in response to Action Point 3, the Applicant notes that the proposed diversions to the PRow are not the source of visual impacts, and so avoiding these diversions would not reduce any reported LVIA effects of the Project. The Applicant also notes that the approach and extent of the PRow diversions have been discussed and agreed with KCC.</p> <p>The result of removing the proposed diversions would be to create additional operational constraints on the development and to reduce the generating capacity. Such a change to the Project is therefore considered contrary to paragraph 5.10.26 of EN-1.</p> <p>The Applicant therefore considers that the Project is entirely consistent with the objectives of paragraph 2.10.43 of EN-3.</p> <p><b>Maximise opportunities to facilitate enhancements</b></p> <p>Paragraph 2.10.44 of EN-3 notes that:</p>

Action Point	Applicant's response
	<p><i>“Applicants should consider and maximise opportunities to facilitate enhancements to the public rights of way and the inclusion, through site layout and design of access, of new opportunities for the public to access and cross proposed solar development sites (whether via the adoption of new public rights of way or the creation of permissive paths), taking into account, where appropriate, the views of landowners”.</i></p> <p>The Applicant notes that the Project will provide enhancements to PRow network. The Project will deliver six new routes and enhancements to the existing network, including routes that will allow PRow users to transition between existing routes without having to use the public highway. It will also improve connectivity in the north of the Site, providing better links between the Otterpool site and Ashford, a strategic route that KCC made clear was important to them.</p> <p>These enhancements are set out and secured by the <b>Outline RoWAS (Doc Ref. 7.15(A))</b> <a href="#">[REP1-056]</a> at Section 3.</p> <p>The Applicant considers that it has therefore fully complied with paragraph 2.10.44 of EN-3.</p>
<p><b>Action Point 10:</b> The Applicant to respond to detailed submissions made by ABC about reducing the size of the Project and the advantages and disadvantages of tree belts in this landscape.</p>	<p>The Applicant's <b>Responses to Deadline 1 Submissions (Doc Ref. 8.8)</b> <a href="#">[REP2-034]</a> includes a response to the matters set out in ABC's LIR, and in particular the responses provided on pages 24 to 26. The Applicant has made extensive effort to engage with ABC and has incorporated the vast majority of changes proposed by ABC and its specialist landscape advisor (Land Management Services).</p> <p>This noted that the only key proposals from ABC that the Applicant has not accepted relate to removal of panels from fields near the Aldington Ridge and the proposed introduction of significant tree belt planting across the ridge area, both of which would result in a material reduction in the generating capacity of the Project which would conflict with EN-1 4.3.22 and 4.3.23.</p> <p>ABC has indicated these proposals are mainly intended to reduce effects from longer distance views to the north, with particular focus on views from Viewpoint 30 which is located on public right of way AE428 immediately south of High Speed One. The Applicant notes that both its landscape specialist and ABC's landscape specialist (LMS) agreed during a meeting on 7 December 2023 that were</p>



Action Point	Applicant's response
	<p>these changes made they would not result in a change in the magnitude of effect identified in ES.</p> <p>As a result implementation of the outstanding changes proposed by ABC would reduce the generating capacity of the Site without any reduction in the magnitude of effects and therefore the Applicant does not consider such a change to be justified or consistent with National Policy.</p> <p>The <b>Statement of Common Ground with Ashford Borough Council (Doc Ref. 8.3.1)</b> <a href="#">[REP1-062]</a> sets out the record of engagement, which confirms that the Applicant has responded to all feedback received by ABC, most notably in the Applicant's responses dated 15 August 2023, 10 November 2023, 14 February 2024 and 19 April 2024, along with the substantive responses made to ABC's feedback set out in their Relevant Representation and LIR. These responses summarise the Applicant's reasons for not accepting ABC's proposals on the basis that they would result in a reduction in Project benefits without any reduction in the magnitude of effects. The Applicant is still awaiting a response to these submissions.</p>