

Stonestreet Green Solar

Written Summary of Oral Submissions from Compulsory Acquisition Hearing 2 and Responses to Action Points

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1 Written summary of the Applicant's Oral Submissions at Compulsory Acquisition Hearing 2

1.1 Introduction

- 1.1.1 This document summarises the oral submissions made by EPL 001 Limited ('**EPL**' or the '**Applicant**') at Compulsory Acquisition Hearing 2 ('**CAH2**') which took place in a blended format at the Ashford International Hotel and on Microsoft Teams on 26 February 2025.
- 1.1.2 In what follows, the Applicant's submissions on the points raised broadly follow the Agenda for the CAH2 which was published on the Planning Inspectorate's website on 17 February 2025 [[EV10-001](#)]. 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. Mr Flanagan also introduced Ms Jessica Bere, Technical Director at Gateley Hamer, land agents for the Applicant.

1.2 Agenda Item 1: Welcome, introductions and purpose of the Hearing

- 1.2.1 The Examining Authority ('**ExA**') welcomed participants, introduced the purpose of the hearing and led introductions.
- 1.2.2 It was confirmed that no Affected Persons ('**APs**') were present at the hearing, either in person or online.
- 1.2.3 The Applicant agreed to keep a list of action points arising during the hearing.

1.3 Agenda Item 2: Update on general Compulsory Acquisition (CA) negotiations and discussion

- 1.3.1 The ExA asked the Applicant to provide an update on its case for seeking powers of compulsory acquisition and temporary possession within the **Draft DCO (Doc Ref. 3.1(E))** to deliver the Project.
- 1.3.2 Mr Flanagan, on behalf of the Applicant, explained that the Applicant's case on this matter remains essentially as set out during Compulsory Acquisition Hearing 1 (see the **Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and Responses to Action Points** [[REP1-074](#)]) and in written submissions submitted at the previous examination deadlines.

- 1.3.3 Mr Flanagan then explained that ongoing land negotiations with APs are being tracked in the **Schedule of Negotiations (Doc Ref. 4.4(D))**, which is being updated at each examination deadline. He confirmed that, in respect of private landowners, the necessary rights have either been secured by option agreement, or Heads of Terms have been agreed. He referred the ExA to Table 1 of the **Schedule of Negotiations (Doc Ref. 4.4(D))**.
- 1.3.4 Mr Flanagan then confirmed that, in terms of statutory undertakers, negotiations are continuing. He confirmed that National Grid Electricity Transmission plc ('NGET') have written into the Examination stating that they will not be attending this hearing as they consider they are close to reaching agreement with the Applicant regarding protective provisions (see **Additional Submission accepted at the discretion of the Examining Authority - Compulsory Acquisition Hearing 2 (CAH2) Update [AS-026]**). He confirmed that the Applicant concurred with NGET's view, which is a positive development.
- 1.3.5 Mr Flanagan then confirmed the position for National Grid Interconnectors Limited ('NGIL'), noting that this entity has a more limited interest in the land, and negotiations are continuing positively between the parties.
- 1.3.6 In respect of the Department for Transport ('DfT'), Mr Flanagan directed the ExA to the update in the Deadline 3 version of the **Schedule of Negotiations [REP3-010]** which explains that correspondence has been ongoing between the parties since the November 2024 hearings. He confirmed that the Applicant's solicitors sent chasing correspondence to the DfT's solicitors most recently on 21 February 2025 and are awaiting a response. He confirmed that the Applicant has no reason to think that agreement will not be reached.
- 1.3.7 **Post-hearing note: Please refer to the Schedule of Negotiations (Doc Ref. 4.4(D)) for an update on the most recent correspondence between the Applicant and the DfT.**
- 1.3.8 Mr Flanagan then explained that, in respect of Kent County Council ('KCC'), the Applicant understands that KCC's internal property team have sent information to the KCC board for review and comment. He confirmed that the Applicant has been actively chasing and that the Applicant does not understand there to be any insurmountable hurdles to reaching agreement.
- 1.3.9 He noted that the updates provided above relate to the principal parties the Applicant is currently negotiating with.

Funding for the exercise of compulsory acquisition powers

- 1.3.10 Mr Flanagan then stated that, to confirm and amplify what the Applicant has put in writing, the Applicant has prepared an updated **Funding Statement [REP1-012]**. He explained that this makes clear that the Project, via its funders, will have access to the necessary finance to cover both Project and compensation costs.
- 1.3.11 Mr Flanagan explained that the Applicant considers this to be in accordance with applicable guidance, namely that funding must be likely to be available at the point

of delivery. He added that the method through which the Project is proposed to be funded is a tried and tested method for a project of this sort, which has been endorsed by the Secretary of State for Energy Security and Net Zero ('SoS').

- 1.3.12 Mr Flanagan explained that Article 49 of the **Draft DCO (Doc Ref 3.1(E))** also requires a guarantee or other form of security to be in place before the undertaker can exercise the compulsory acquisition powers contained in the Draft DCO. He then explained that the Applicant considered that it would be helpful to draw the ExA's attention to the recent decision on the Sunnica Energy Farm Order 2024 ('**Sunnica**'), where the SoS placed significant weight on the equivalent article in that Order.
- 1.3.13 He referred to paragraph 6.54 of the Sunnica Decision Letter, explaining that in this the SoS concludes that such a guarantee provision is a common and effective way to guarantee that those parties whose interests in land are subject to compulsory acquisition will receive the compensation that they are due. He added that the Sunnica Decision Letter also notes that the funding approach being used by that applicant is common for large infrastructure projects and widely accepted.
- 1.3.14 Mr Flanagan concluded by stating that the decision on the Sunnica Energy Farm Order 2024 supports that the Applicant's **Funding Statement** [[REP1-012](#)] is compliant with policy and guidance and confirmed that the specific paragraph references from the Sunnica Decision Letter would be provided in the written summary.
- 1.3.15 **Post-hearing note:** Please refer to the Applicant's response to Action Point 1 in Section 2 below.

1.4 Agenda Item 3: Network Rail

- 1.4.1 The ExA noted that the intention was for Network Rail Infrastructure Limited ('**Network Rail**') to present its current position in relation to ongoing discussions with the Applicant.
- 1.4.2 Network Rail did not attend the hearing, and Mr Flanagan read out the following joint statement which had been agreed between the Applicant and Network Rail:
- The Applicant and Network Rail would like to make the ExA aware that they have had a number of positive discussions during the DCO Examination and have made good progress towards resolving the outstanding matters.
 - UK Power Networks Limited ('**UKPN**'), the regulated distribution network operator for this region, has participated in these discussions as it is privately contracted by the Applicant to deliver the cable connection from the Project Substation to its substation at Sellindge to allow export of the electricity generated by the Project to the electricity grid. To ensure it has the necessary powers under the **Draft DCO (Doc Ref 3.1(E))**, UKPN is also defined as the "undertaker" in Article 2(1) by virtue of having the benefit of the **Draft DCO (Doc Ref 3.1(E))** pursuant to Article 6(1) for Work No. 4 (works to construct the cable connection).

- The **Draft DCO (Doc Ref 3.1(E))** seeks powers to compulsorily acquire new rights and impose restrictive covenants over a number of plots of land which are either owned by Network Rail for the purpose of its statutory undertaking or are plots which Network Rail has rights over.
- The cable connection is proposed to cross underneath Network Rail's railway with the expectation that existing ducting under the railway will be used. UKPN completed a full assessment of this ducting in November 2024 and has confirmed it is in suitable condition and available. This was reported to the ExA at Action Point 1 of the **Written Summary of Oral Submissions from Issue Specific Hearing 1 and Responses to Action Points** [[REP1-073](#)].
- The Applicant, Network Rail and UKPN have discussed the minor works required to install the cable under the railway. In summary, this requires an existing UKPN cable to be moved to a second duct, allowing the cable for the Project to use the newly free duct. UKPN will be responsible for this work, operating from land which is not within Network Rail ownership.
- Network Rail has confirmed that it has no in principle technical issues with the cable connection works and considers the activity to be low risk. However, in line with its standard procedures it will require UKPN to complete pre-work clearances and enter into an Asset Protection Agreement or a Basic Asset Protection Agreement prior to the works commencing. UKPN is advancing the clearance process with Network Rail.
- In its **Written Representation** dated 10 December 2024 [[REP1-099](#)], Network Rail confirmed its objection to any compulsory acquisition of new rights over operational railway land and its objection to the seeking of powers to carry out works in the vicinity of the operational railway until relevant agreements have been entered into to ensure that Network Rail's interests as operator of the national rail network are properly protected and that Network Rail's ability to carry out its obligations as a statutory rail undertaker are not affected by the **Draft DCO (Doc Ref 3.1(E))**.
- Since the December 2024 Written Representation, discussions have positively progressed between the parties.
- The negotiation of protective provisions to be included in the **Draft DCO (Doc Ref 3.1(E))** is well advanced, with only a small number of minor points outstanding. Network Rail has requested, and the Applicant has agreed, to enter into a private framework agreement, which is also well advanced. Each of these agreements include restrictions on the ability of the Applicant to exercise compulsory acquisition powers under the **Draft DCO (Doc Ref 3.1(E))** without Network Rail's consent.
- A master agreement between UKPN and Network Rail exists, however a variation to the existing agreement or a new property agreement between Network Rail and UKPN will be required to recognise the additional higher voltage cable and provide the right for the cables to be laid and connected to the respective substation for the solar farm. Network Rail and UKPN are in discussions to agree this matter.
- The parties are confident that agreement on all matters will be reached prior to the end of the Examination. An updated Statement of Common Ground

position will be provided at Deadline 4, which is expected to confirm that the parties have reached substantial agreement on all matters.

- Network Rail and the Applicant are confident that the final version of the Statement of Common Ground submitted at Deadline 5 will confirm that all matters have been resolved to the satisfaction of both parties.

1.4.3 No questions or comments were raised by either the ExA or any other attendees present at the hearing in respect of this agenda item.

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

1.5 Agenda Item 4: Compensation Code

1.5.1 The ExA asked the Applicant to outline its position in respect of the Compensation Code (the '**Code**'), bearing in mind this has been raised by Interested Parties ('**IPs**') during the Examination.

1.5.2 On behalf of the Applicant, Mr Flanagan responded to state that he would first deal with the Code in general, and then respond to specific points raised by IPs.

1.5.3 He then confirmed that the Compensation Code will apply to any acquisition of land or rights under the **Draft DCO (Doc Ref 3.1(E))**. Mr Flanagan explained that the Applicant has been engaging with all landowners impacted by the Project and has been negotiating for the acquisition of land and rights and agreeing to pay compensation in accordance with the Code. He confirmed that in doing this, the Applicant has adhered to Government guidance which provides that when acquiring authorities decide to and arrange to acquire land by agreement, they will pay compensation as if it had been compulsory acquired.

1.5.4 Mr Flanagan then explained that, if matters cannot be agreed in terms of compensation, the landowner has a right to apply to the Upper Tribunal (Lands Chamber) for the sum to be determined.

1.5.5 Mr Flanagan then confirmed that eligibility for compensation and the amount of that compensation is not a matter for the Examination, in accordance with Section 87 of the Planning Act 2008.

1.5.6 He then confirmed that, in response to points that have been raised regarding compensation in respect of land which is not subject to compulsory acquisition powers under the **Draft DCO (Doc Ref 3.1(E))** (as referred to in Aldington and Mersham Support Group's ('**AMSG**') Deadline 2 written representation, **Comments on the Applicants Responses to Relevant Representations** [\[REP2-039\]](#)), there is still provision for compensation in some circumstances. Part 1 of Land Compensation Act 1973 provides for compensation for depreciation in the value of land caused by the use of works, insofar as that depreciation is attributable to physical factors which are defined and include things such as noise and vibration.

1.5.7 Mr Flanagan explained that there is also potential entitlement for loss caused where land is not taken under section 10 of the Compulsory Purchase Act 1965. He

concluded that, as the Applicant has explained in written responses to AMSG (see the response under the heading 'Compensation' in **Responses to Deadline 2 Submissions** [REP3-046]), those statutory provisions apply to compulsory acquisition under the **Draft DCO (Doc Ref 3.1(E))**, as they do to compulsory purchase under any other legislation. Mr Flanagan explained that those parties that consider that they could be able to make a claim should seek advice from a qualified professional, and noted that they could use the Applicant's land agent, Gateley Hamer, as an initial point of contact.

- 1.5.8 Mr Flanagan then noted that there have also been some representations made into the Examination relating to property value, and explained that the position of the Applicant is that many factors influence property values. He observed that entitlement to compensation is decided through the Code, which is Parliament's view of what is fair compensation. The Code provides for compensation to be recoverable in defined circumstances, and where it does not go further that is because Parliament has not considered it appropriate to make further provision.

Statutory nuisance

- 1.5.9 Mr Flanagan noted that there have been some references to the defence to statutory nuisance which Article 10 of the **Draft DCO (Doc Ref 3.1(E))** provides for, as is entirely standard and provided for in the Planning Act 2008. He noted that, for the benefit of the Interested Parties, Article 10 of the **Draft DCO (Doc Ref 3.1(E))** provides a defence to proceedings in respect of statutory nuisance, but it does not disapply the Compensation Code.
- 1.5.10 No questions or comments were raised by either the ExA or any other attendees present at the hearing in respect of this agenda item.

1.6 Agenda Item 5: Any other matters

- 1.6.1 The ExA closed the hearing at 15:00.

2 Action Points

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

Action Points	Applicant's response
<p>Action Point 1: The Applicant to provide relevant paragraph references to the extracts of the Sunnica Decision Letter referred to in oral submissions.</p>	<p>Please see below the following extract from the Sunnica Decision Letter, published 12 July 2024:</p> <p><i>“6.54. The Secretary of State notes that the Applicant provided an indication of how any potential shortfalls are intended to be met, rather than evidencing that they have the exact capital available currently. This is common for large infrastructure projects and the Secretary of State has accepted a similar funding position on a number of previous applications.</i></p> <p><i>6.55. The Secretary of State is content with the funding statement and that any liabilities in relation to CA and TP will be met. In any event Article 43 of the Order requires a suitable guarantee to be in place and approved by the Secretary of State to cover all such liabilities before any CA or TP can take place. The Secretary of State agrees with the Applicant and considers that Article 43 of the Order is in accordance with the precedent that a parent company guarantee does not need to be provided prior to any grant of development consent, as has been the case with other made Orders [ER 7.5.121].</i></p> <p><i>6.56. The Secretary of State therefore disagrees with the ExA and does not consider that there is a risk that AP could have their land or rights taken away without compensation [ER 7.5.130], as the Secretary of State will have confirmation that the guarantee is in place and is adequate before powers of CA and TP can be exercised.”</i></p>
<p>Action Point 2: The Applicant to provide an updated Statement of Common Ground with Network Rail.</p>	<p>Please refer to the Draft Statement of Common Ground with Network Rail Infrastructure Limited (Doc Ref. 8.3.8(C)).</p>