

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Your Ref:
Our Ref: LMS.NOR081.69
Doc No:
Date: 23 January 2025

For electronic submission via Planning Inspectorate Project Webpage

Dear Sirs

Byers Gill Solar Farm - Application for Development Consent - Planning Act 2008
Reference: EN010139
Our Client: Northumbrian Water Limited (Reference Number: BGSF-AFP327)

We are instructed by Northumbrian Water Limited ("NWL") in relation to the application for a Development Consent Order ("DCO") in respect of the Byers Gill Solar Project (the "Project").

NWL are landowner, statutory undertaker and a Statutory Party for the purposes of The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

NWL submitted a letter of objection to the DCO on the 16th October 2024. We write to confirm on behalf of NWL that that objection is hereby withdrawn subject to there being included as part of the DCO the protective provisions in the form of that enclosed with this letter.

Yours faithfully



Ward Hadaway LLP



Enclosure

NWL Protective Provisions

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

For the protection of NWL, the following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and NWL, have effect.

1. In this Part of this Schedule:

“alternative apparatus”	means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;
“apparatus”	<p>means the following items belonging to or maintained by NWL within the Order limits:</p> <p>a. in the case of NWL’s water undertaking:</p> <p>(i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL for the purposes of water supply; and</p> <p>(ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and</p> <p>b. in the case of NWL’s sewerage undertaking:</p> <p>(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and</p> <p>(ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, “disposal main” (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p>
“functions”	includes powers and duties;

"in"	in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;
"NWL"	means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;
"plan"	includes sections, drawings, specifications and method statements; and
"the standard protection strips"	means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus: <ul style="list-style-type: none"> a. 2.25 metres where the diameter of the pipe is less than 150 millimetres; b. 3 metres where the diameter of the pipe is between 150 and 450 millimetres; c. 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; d. 6 metres where the diameter of the pipe exceeds 750 millimetres; and e. 6.5 metres where it is a sewer.

2. **On street apparatus**

- 2.1. Except for paragraph 10 (apparatus in stopped up streets), the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NWL are regulated by the provision of Part 3 of the 1991 Act.

3. **Compulsory acquisition**

- 3.1. The undertaker must not without express written agreement of NWL (such agreement not to be unreasonably withheld or delayed) exercise any power conferred by article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) in respect of NWL's interests.
- 3.2. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.
- 3.3. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NWL to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NWL, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for NWL, such agreement not to be unreasonably withheld or delayed.

4. **Protection Strips**

- 4.1. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

5. **Alteration of NWL Apparatus**

- 5.1. Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until:
- 5.1.1. any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other replacement legislation and any other associated consents are obtained;
- 5.1.2. if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed; and
- 5.1.3. in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NWL for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

6. **Access**

- 6.1. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

7. **Protective Works to Buildings**

- 7.1. The undertaker, in the case of the powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

8. **Removal of Apparatus**

- 8.1. Without prejudice to paragraph 3.2 hereof if, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that NWL's apparatus is relocated or diverted, that apparatus must

not be removed, and any right of NWL to maintain that apparatus in that land must not be extinguished, until

- 8.1.1. alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NWL; and
- 8.1.2. facilities and rights have been secured for that alternative apparatus in accordance with paragraph 9.1
- 8.2. Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 5.1 hereof, if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any of NWL's apparatus placed in that land, the undertaker must give to NWL 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NWL reasonably needs to remove any of its apparatus) the undertaker must afford to NWL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.
- 8.3. NWL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to NWL of any such facilities and rights as are referred to in paragraph 8.2, proceed to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this schedule.
- 8.4. Any alternative apparatus to be constructed in land of the undertaker pursuant to the terms hereof must be constructed in such manner and in such line or situation as may be agreed between NWL and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations or in default of agreement settled by arbitration in accordance with article 41 (arbitration).
- 8.5. If NWL notifies the undertaker in writing that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work instead of being executed by NWL must be executed by the undertaker without unnecessary delay under the superintendence and to the reasonable satisfaction of NWL.
- 8.6. If the undertaker gives notice in writing to NWL that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by NWL, may, subject to the written consent of NWL (which must not be unreasonably withheld) and in accordance with NWL's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, NWL.
- 8.7. Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with NWL's reasonable requests for a reasonable period of time to enable NWL to:

- 8.7.1. make network contingency arrangements; or
- 8.7.2. bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

9. **Facilities and rights for alternative apparatus**

- 9.1. Where, in accordance with the terms of the Order, the undertaker affords to NWL facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and NWL or in default of agreement settled by arbitration in accordance with article 41 (arbitration).
- 9.2. If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NWL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to NWL as appears to the arbitrator to be reasonable having regard to all the circumstances
- 9.3. Such facilities and rights as are set out in the preceding paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations (England and Wales) Regulations 2016 or other legislation.

10. **Apparatus in stopped up streets**

- 10.1. Where in pursuance of the powers conferred by the Order any street is stopped up (permanent stopping up and restriction of use of streets and private means of access), where NWL has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NWL legal easements reasonably satisfactory to NWL in respect of such apparatus and access to it, subject to any right of the undertaker or NWL to require the removal of that apparatus under paragraph 8.
- 10.2. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by the Order (temporary alteration, diversion, prohibition and restriction of the use of streets), NWL is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway subject to provision of reasonable prior notice to the undertaker (except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

11. **Unmapped sewers/other apparatus**

- 11.1. Where the undertaker identifies any sewers, lateral drains or other apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable and the apparatus shall be afforded the same protection as other NWL assets.

12. **Expenses and costs**

12.1. Subject to the following provisions of this paragraph and save where otherwise agreed in writing between NWL and the undertaker, the undertaker must repay to NWL all costs, charges and expenses which NWL may reasonably incur or have to pay or which it may sustain in, or in connection with:

12.1.1. the inspection, removal, alteration or protection of any apparatus which may be reasonably required in consequence of any works to construct the authorised development; and/or

12.1.2. the construction of any alternative apparatus which may be required in consequence of the execution of any such works as referred to in paragraphs 8.2 or 8.3.

12.2. The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under paragraph 12.1, that value being calculated after removal.

12.3. If in accordance with the provisions of this Part of this Schedule -

12.3.1. apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or

12.3.1. apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NWL in question by virtue of paragraph 12.1 is to be reduced by the amount of that excess.

12.4. For the purposes of paragraph 12.3 –

12.4.1. an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;

12.4.1. the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and

12.4.2. where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a

manhole is to be treated as if it also had been agreed or had been so determined.

13. **Indemnity**

- 13.1. Subject to paragraphs 13.3 and 13.5, if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker that is consequential to the terms hereof any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must indemnify and keep indemnified NWL against:
- 13.1.1. any cost reasonably incurred by NWL in making good any damage or restoring the supply;
 - 13.1.2. any other expenses, loss, damages, penalty or costs incurred by NWL, by reason or in consequence of any such damage or interruption.
- 13.2. NWL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph 13.1. The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.
- 13.3. The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to paragraph 13.5, excuse the undertaker from liability under the provisions of paragraph 13.1 unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.
- 13.4. NWL must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 13.5. Nothing in paragraph 13.1 imposes any liability on the undertaker with respect to:
- 13.5.1. any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, servants, contractors or agents; or
 - 13.5.2. any indirect or consequential loss of any third party (including but not limited to indirect loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

14. **Arbitration**

- 14.1. Any dispute arising between the undertaker and NWL under this Part of this Schedule must be referred to and settled by arbitration under article 41 (arbitration).

15. **Duty to cooperate**

- 15.1. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

16. **Enactments and agreements**

- 16.1. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.