

Byers Gill Solar
EN010139

7.3 Other Consents and Licences

Planning Act 2008

APFP Regulation 5(2)(q)

Infrastructure Planning (Applications: Prescribed Forms
and Procedure) Regulations 2009

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1 Introduction

1.1 Introduction

- 1.1.1 This document has been prepared by RWE (the Applicant). It forms part of the application for a Development Consent Order (DCO) under section 37 of the Planning Act 2008 (the Act) for Byers Gill Solar (the Proposed Development).
- 1.1.2 The Proposed Development comprises the construction, operation and decommissioning of a solar farm capable of generating over 50MW of electricity, located on land between Darlington and Stockton-on-Tees in North East England. The Proposed Development covers an area of approximately 490 hectares (ha) and comprising six solar photovoltaic (PV) panel areas (Panel Areas A-F), onsite Battery Energy Storage Systems (BESS), associated infrastructure as well as underground cable connections between panel areas and to connect to the existing National Grid Substation at Norton.
- 1.1.3 The full description of the Proposed Development is provided in Chapter 2 of the Environmental Statement (Document Reference 6.2.2) [APP-024].

1.2 Purpose of this document

- 1.2.1 The purpose of this document is to summarise the other consents, licences and agreements that are expected to be needed for the construction and operation of the Proposed Development in addition to the powers sought within the draft DCO (Document Reference 3.1, Revision 9).
- 1.2.2 Section 37 of the Act governs the content of an application for a DCO, including the requirements for the necessary accompanying documents specified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations).
- 1.2.3 Regulations 5 and 6 of the APFP Regulations provide the statutory requirement for what must accompany a DCO application. Guidance [1] issued by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities) in June 2013 requires that:

“Where the proposed development will also require other consents, licences, permits, etc, to enable it to be constructed and/or operational, and for which the Secretary of State is not the authorising body under the Planning Act, then the applicant must list and briefly describe these in....the application. Reference should be made to any that have already been applied for, and a copy enclosed of any that the applicant may already be in the possession of.”

- 1.2.4 This document lists those consents and agreements which the Applicant currently anticipates may be required to supplement powers within the draft DCO and the status of any agreement with the regulatory authority (where required). The document will be updated by the Applicant as the project progresses to reflect the most current position.

2 Consents and agreements

2.1 Overview

- 2.1.1 The principal consent for the Proposed Development will be a DCO. The DCO provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.
- 2.1.2 As set out through Section 33 of the Planning Act 2008 (the Act), there is no requirement for certain principal conventional consents to be obtained where a DCO is authorising a project. Part 7 of the Act outlines that the following can be included within a DCO:
- Matters ancillary to, the development for which consent is granted, in particular for or relating to any of the matters listed in Part 1 of Schedule 5.
 - The ability to apply, modify or exclude a statutory provisions where provision may be made in the DCO.
 - Make amendments, repeals or revocations of statutory provisions of local application where they appear to the Secretary of State to be necessary or expedient in consequence of or in connection with the DCO.
 - Include incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 2.1.3 It is therefore clear that the intent of the Act and a DCO is to include as many consents as possible, reducing the need for separate, associated consents and agreements to be sought outside of the DCO process.
- 2.1.4 However, the DCO application may need to be supplemented by other applications because:
- a specific consent cannot be contained in the DCO;
 - a consenting authority declines to allow a consent to be contained within the DCO (where they have the power to do so); or
 - it is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development meaning the detail required is unavailable.
- 2.1.5 The draft DCO (Document Reference 3.1, Revision 9) includes many of the consents and powers required, as permitted by various provision of the Act. These fall into the following categories:
- Authorisation for all permanent and temporary works for the Proposed Development which are described as the ‘authorised development’ in Schedule 1 of the draft DCO;
 - Compulsory acquisition of land and/or rights over land, and temporary possession of land. Articles 21 and 23 of the draft DCO provide these powers;

- Consent to carry out street works. Article 9 of the draft DCO provides this power;
- Traffic regulation measures required during the construction of the Proposed Development, equivalent to Traffic Regulation Orders made under the Road Traffic Regulation Act 1984. Article 17 of the draft DCO provides this power;
- Consent to alter the layout of streets and to form new, or alter or improve existing accesses to the highway. Article 11 provides this power;
- Consent to stop up, divert and replace public rights of way. Article 11 of the draft DCO provides these powers;
- Requirement of licence for felling works under section 9 of the Forestry Act 1967. Article 39 of the draft DCO provides this power;
- Land drainage consent(s) under section 23 of the Land Drainage Act 1991 for works affecting the flow in ordinary watercourses. Suggested protective provisions have been shared with the Lead Local Flood Authority (LLFA) in an effort to disapply this requirement. Article 7 of the draft DCO provides this power.

2.1.6 A number of the above consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (a 'Prescribed Consent'). As a result, under Section 150 of the Act, the relevant consenting body must agree to the inclusion of these consents within the DCO. Appendix A of this document sets out the status of such agreements where they have been sought.

2.2 Consents

2.2.1 The extent of other consents that may be sought separately from the DCO and those which the Applicant is seeking to disapply are identified in Appendix A, along with a position on the necessary agreements.

2.2.2 The requirement for additional consents and licences is largely dependent on the finalisation of the detailed design of the Proposed Development, the detailed construction or working methodologies, and discussions with consenting authorities in light of detailed design. There is not therefore sufficient detail at this stage to confirm the requirements in full and it is therefore not practicable to include them within the DCO.

2.2.3 The table in Appendix A lists the type of consent or licence required, the relevant consenting body, any agreement that has been reached with that body, and any further actions. This document will be updated as the application progressed through Examination and if / where progress has been made with the consenting bodies.

2.3 Agreements

2.3.1 Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.

- 2.3.2 The Proposed Development has been accepted as part of the National Infrastructure Early Adopters Programme (EAP), a trial of potential components of a future enhanced pre-application service for nationally significant infrastructure projects (NSIPs). The Proposed Development trialled the use of pre-application Principal Areas of Disagreement Summary Statements (PADS) which focus on recording the stakeholders interpretation of the main areas of disagreement. This was summarised in the Potential Main Issues for Examination (PMIE) (Document Reference 7.6) [APP-169] at time of DCO application submission. Since the start of Examination, the Applicant has progressed a number of Statements of Common Ground, as summarised in the Statement of Commonality (Document Reference 8.4, Revision 8).
- 2.3.5 Other forms of agreement are also likely to be required, for example, legal agreements regulating land and works powers, undertakings and memoranda of understanding. A number of these are being progressed by the Applicant, for example, agreements with statutory undertakers where these are required in addition to the protective provisions within the DCO, as set out in the Statutory Undertakers Position Statement (Document Reference 7.7, Revision 6).

Appendix A: Consents and agreements table

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
Electricity Generation	Electricity Generation Licence – under the Electricity Act 1989	Office of Gas and Electricity Markets (OFGEM)	Required at the operational stage of the project in relation to the generation of electricity.	Application will be made either during Examination or post-consent	The Applicant has secured this licence outside of the DCO process.
	Connection Agreement – required for the connection of the project to the National Grid.	National Grid	As set out in the Grid Connection Statement (Document Reference 7.5) the Applicant accepted a grid connection offer in 2021, thereby securing a connection to the existing Norton Substation.	The Applicant has obtained this agreement with the relevant authority.	Secured outside of the DCO process.
Nature Conservation	Protected Species Licence – under the Conservation of Habitats and Species Regulations 2017, Wildlife and Countryside Act 1981 or Protection of Badgers Act 1992.	The Secretary of State, or Natural England	Works that could disturb European Protected Species.	Not currently anticipated although may be required in relation to bats should tree removal effect trees with roosting potential.	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate licence applications outside of the DCO process.
	Protected Species Licence – Great Crested Newts – under the Conservation of Habitats and Species Regulations and	Natural England	Required in relation to the disturbance or removal / translocation of GCN within the Order Limits.	District Level Licence (DLL) is being pursued. The Applicant received countersigned certificate in May 2024. from Natural England.	The Applicant is not seeking to disapply this in the draft DCO. A countersigned certificate has been received from Natural England on 14

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	Wildlife and Countryside Act 1981.			Further progression of the licence can be made only post-planning consent.	May 2024, which is the furthest the license can be progressed prior to any consent being granted. The Applicant will proceed with the next steps to obtain the license should development consent be granted.
	Licence to interfere with badger setts – under Section 10 of the Protection of Badgers Act 1992	Natural England	Required in relation to the disturbance and destruction of known badger setts within the Order Limits prior to and during construction.	The requirement for licences will be determined after a pre-construction survey and monitoring works.	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate licence applications outside of the DCO process.
Materials and Waste	Exemption for using, treating, storing and disposing of waste – under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required for activities involving the use, treatment, disposal or storage of waste.	The re-use of any excavated material during construction would be managed in line with the CL:AIRE Materials Management Plan. The EA confirmed in writing 9/11/2023 that they would not approve the disapplication of this consent.	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate permit applications outside of the DCO process.
	Mobile plant permit – under the Pollution Prevention and Control Act	Environment Agency	Permit may be required for mobile plant used for the treatment of soils	Permit not currently anticipated to be required, however	The Applicant is not seeking to disapply this in the draft DCO.

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
	1999, Environmental Permitting (England and Wales) Regulations 2016		and contaminated material.	residual possibility through unexpected contamination.	
	Asbestos – Control of Asbestos Regulations 2012	Health and Safety Executive (HSE)	Required for any works where asbestos is present.	Not anticipated to be required, however there is a residual possibility of unexpected sources of asbestos (i.e. buried asbestos). If required, a licence will be sought by the contractor prior to demolition works taking place.	The Applicant is not seeking to disapply this in the draft DCO.
Water	Land Drainage Consent – under section 23 of the Land Drainage Act 1991 and Flood and Water Management Act 2010	Lead Local Flood Authority (LLFA)	Required in relation to works affecting the flow in ordinary watercourses. Necessary for watercourse crossings required for the Proposed Development.	Draft Protective Provisions have been shared with the LLFA for agreement. Darlington LLFA and Stockton-on-Tees LLFA have both confirmed in writing their agreement in principle with the disapplication of the Land Drainage Consent through the DCO. The Applicant continues to engage with Stockton-on-Tees LLFA on the detail of the disapplication process.	This is a prescribed consent which the Applicant is seeking to disapply through the draft DCO. Draft protective provisions are included in Schedule 11 of the draft DCO (Document Reference 3.1) for the protection of the undertaker.

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
	Flood risk activity permit(s) – under the Environmental Permitting Regulations (England and Wales) 2016.	Environment Agency	Required in connection with any temporary drainage outfall requirements that may emerge following appointment of the contractor and development of detailed design.	At point of DCO application, draft Protective Provisions had been shared with the EA for agreement. The Applicant received confirmation from the EA on 22 August 2024 that the EA does not agree to disapplication of this consent and therefore the Applicant is no longer seeking to disapply it. The draft DCO (Document Reference 3.1, Revision 2) was updated at Deadline 2 to reflect this.	Following engagement with the EA, the Applicant is no longer seeking to disapply this prescribed consent. This was reflected in the updated draft DCO (Document Reference 3.1, Revision 2) in which the previously proposed Protective Provisions have been removed. Whilst it is not currently anticipated that a temporary outfall is going to be required, the appointed contractor would be responsible for obtaining the permit as necessary.
	Water Activity Permits – under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required in relation to temporary construction and permanent operational discharges of water.	The EA confirmed in writing 9/11/2023 that they would not approve the disapplication of this consent.	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate licence applications outside of the DCO process.
	Water abstraction or impoundment licence – under section 24 of the Water Resources Act 1991 (as amended by the Water	Environment Agency	Required where pumping or dewatering is proposed.	This is considered to be unlikely but should pumping or dewatering activities be required, applications would be	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate licence applications

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
	Act 2003), Environment Act 1995, Water Resources (Abstraction and Impounding) Regulations 2016			made by the contractor before abstraction or impoundment commences. The EA confirmed in writing 9/11/2023 that they would not approve the disapplication of this consent.	outside of the DCO process.
	Temporary water impoundment licence – under section 25 of the Water Resources Act 1991.	Environment Agency	Required where temporary impoundment of water is proposed.	This is considered to be unlikely but should a licence be required, applications would be made by the contractor.	The Applicant is not seeking to disapply this in the draft DCO and would make appropriate licence applications outside of the DCO process.
	Trade effluent consent – under the Water Industry Act 1991.	Relevant water and sewerage company – Northumbrian Water	Required for the discharge of trade effluent from welfare facilities during construction.	This is considered unlikely to be required, as all effluent during construction and operation would be self-contained and not discharged to the mains network.	This is a not a prescribed consent. The Applicant is not seeking to disapply this in the draft DCO and would make appropriate consent applications outside of the DCO process if required.
Noise	Section 61 consent – under Section 61 of the Control of Pollution Act 1974.	Relevant Local Authority	Required to avoid any significant construction noise and vibration effects.	Applications for consent would be made to the relevant local authority at least 28 days before any relevant works begin, or earlier if reasonably practicable.	The Applicant is not seeking to disapply this in the draft DCO. Applications are not anticipated but may be made, if required by the contractor.

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
Traffic / Transport	Permit for transport of abnormal loads – for delivery by road of loads that fall outside standard practice (if required)	Road Vehicles (Authorisation of Special Types) (General) Order 2003 or with authorisation from the Secretary of State under the Road Traffic Act 1988.	Police and Highway Authority Bridge owners (if any) as appropriate.	Applications will be made as appropriate in advance of the abnormal load delivery and in line with the principles within the Outline Construction Traffic Management Plan (CTMP) (Document Reference 6.4.2.8, Revision 3).	The Applicant is not seeking to disapply this in the draft DCO.
	New Roads and Street Works Act 1991	Relevant Local Highways Authority	The Applicant may need to utilise powers under: (a) section 56(d) (power to give directions as to timing of street works); (b) section 56A(e) (power to give directions as to placing of apparatus); (c) section 58(f) (restriction on works following substantial road works); (d) section 58A(g) restriction on works following substantial road works); (e) section 61 (protected streets); and	The Applicant sought to disapply the provisions listed under Article 10 of the draft DCO, at time of DCO application submission. However, through engagement with Darlington Borough Council and Stockton Borough Council as the local relevant highways authority has identified that they do not agree to the provisions of Article 10 as proposed. The Applicant will therefore be required to apply separately to the relevant local highway authority in relation to works	The Applicant has now amended Article 10 to remove the disapplication of this aspect of the 1991 Act. This is reflected in the latest version of the draft DCO (Document Reference 3.1, Revision 9). Street works will therefore be discussed and agreed with DBC and SBC through the relevant processes.

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			(f) schedule 3A(h) (restriction on works following substantial street works).	engaging the provisions of the 1991 Act as listed in this table.	
Health & Safety	Health and Safety related consents – under the Health and Safety at Works Act 1974 and subsidiary legislation.	Health and Safety Executive (HSE).	May be required during construction and decommissioning to ensure compliance with health and safety regulations.	Applications to be made by the contractor before construction commences as appropriate.	The Applicant is not seeking to disapply this in the draft DCO.
Hedgerows	Hedgerow Regulations 1997 – under the Environment Act 1995	Relevant Local Authority	Requirement for the removal of hedgerows.	To be disapplied through the DCO. As it is not a prescribed consent, no agreement is required with the relevant authority to disapply it.	This is a not a prescribed consent, however the Applicant is seeking to modify the application of the Regulations through the draft DCO.
Open Space Land	CSection 132 of the Planning Act 2008	Stockton-on-Tees Borough Council (SBC)	Two plots (13/14 and 13/16) within the Order Limits are open space as defined by section 19 of the Acquisition of Land Act 1981, to be used temporarily with rights to be acquired permanently, relating to construction of cable routes. As set out in the Statement of Reasons (Document Reference 4.1, Revision 5), this should not invoke special parliamentary procedure (SPP) as exceptions	SBC has confirmed that it does not object to the compulsory acquisition of rights over the Open Space land plots, and that it does not object to the use of the Open Space land with the appropriate safeguards that are in place. This is recorded in submissions submitted by the Council at Deadline 9.	The draft DCO provides for the compulsory acquisition of rights over the two Open Space plots, and records (in its introductory paragraphs) that the relevant tests of s.132 are met in this regard in respect of the rights to be acquired over the Open Space plots. This approach is not objected to by the relevant local planning authority (SBC).

Issue	Consent/Licence and Legislation	Relevant Authority	Description	Status	Relationship to the draft DCO
			provided for by s.132 are applicable.		