

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED FOR THE TWEEN BRIDGE
SOLAR FARM ORDER 202X**

DEADLINE 5 SUBMISSION

ON BEHALF OF

NATIONAL HIGHWAYS LIMITED

Interested Party Reference: FC3E3E146

PLANNING ACT 2008

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1. Introduction

- 1.1 This is the Deadline 5 submission of National Highways Limited (“**NH**”) provided in respect of the application by RWE Renewables UK Solar and Storage Limited (the “**Applicant**”) for a Development Consent Order (“**DCO**”) for the Tween Bridge Solar Farm (the “**Proposed Development**”).
- 1.2 Terms used in this submission have the same definition as set out in NH’s **Written Representation [REP1-067]** unless otherwise defined.
- 1.3 This submission has been prepared to respond to the **Justification for the Applicant’s Preferred Protective Provisions [REP4-064]** submitted by the Applicant at Deadline 4.
- 1.4 In particular, NH has provided its response to Section 2 (which sets out the Applicant’s position in respect of so-called “veto” provisions proposed by various statutory undertakers in their draft protective provisions, including NH) and Table 5 (which sets out the Applicant’s position in respect of the NH PPs specifically) of that document.
- 1.5 In view of the brevity of this document, a summary has not been provided.

2. NH Response to Section 2: “A “veto” mechanism for exercising the CA powers”

- 2.1 NH rejects the Applicant’s assertion that the so-called “veto” provisions are not necessary or justified for the protection of NH’s interests and undertaking. In essence, the provisions of paragraph 7(2) of the NH PPs are required in order to ensure that NH is aware of the progress of the specified works affecting the SRN and NH’s undertaking, the scope of those operations, the potential impact to road users and to ensure that compulsory acquisition is managed appropriately and proportionately – if it is required at all. It is worth noting that on 9 December 2025, NH contacted the Applicant to enquire whether they would be attempting voluntary negotiation of land/rights, as no prior attempt to negotiate with NH had been made by the Applicant. The Applicant only then sent Heads of Terms to NH. Accordingly, it cannot be said that NH is unwilling to engage in voluntary negotiation such that powers of compulsory acquisition are necessary, when NH has not only been willing to engage in voluntary negotiations from the beginning, but actually initiated those discussions.
- 2.2 The Applicant refers, at paragraphs 2.11 to 2.12, to the previous 2024 MHCLG guidance “Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects” (the “**2024 Guidance**”).¹ The 2024 Guidance was withdrawn on 24 July 2026, shortly after Deadline 4. The 2024 Guidance’s webpage directs the reader to the replacement MHCLG guidance “Planning Act 2008: Guidance on preparing an application: Part 3 – Contents of a draft Development Consent Order” which was published on 3 July 2026 (the “**2026 Guidance**”).²
- 2.3 NH notes that the Applicant refers to both the 2024 Guidance and the 2026 Guidance in the **Justification for the Applicant’s Preferred Protective Provisions [REP4-064]**. However, the two pieces of guidance address the matter of so-called “veto” provisions quite differently.
- 2.4 NH considers the relevant parts of each of the 2024 Guidance and the 2026 Guidance below.

¹ [\[Withdrawn\] Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects - GOV.UK](#) (accessed 4 August 2026)

² [Planning Act 2008: Guidance on preparing an application: Part 3 - Contents of a draft Development Consent Order - GOV.UK](#) (accessed 4 August 2026)

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The 2024 Guidance

- 2.5 The extract to which the Applicant refers, and relies upon, within the 2024 Guidance is paragraph 12, which states *“They [protective provisions] should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land.”*
- 2.6 This statement no longer appears in the 2026 Guidance. NH would therefore submit that any reliance placed by the Applicant on this specific wording within paragraph 12 of the 2024 Guidance should be disregarded, on the basis that it is now obsolete.
- 2.7 This is notwithstanding NH’s position that, even if the 2024 Guidance remained in force, the Applicant’s interpretation of paragraph 12 is overly simplistic and incorrect.
- 2.8 The Applicant’s view expressed in section 2 of the **Justification for the Applicant’s Preferred Protective Provisions [REP4-064]** is that the “veto” provisions represent the *“effective disapplication of powers within the DCO”* (paragraph 2.12). The Applicant also advises that it *“does not accept the position which some statutory undertakers have adopted, namely because the power may not be exercised unreasonably/without delay, it does not negate the provisions of the DCO”* (paragraph 2.14).
- 2.9 Taking the NH PPs specifically, paragraph 7(2) does not represent an effective disapplication of powers secured under the DCO. Paragraph 7(2) defers the exercise of certain powers under the DCO, specifically in respect of the SRN and NH-owned land, until NH’s consent has been obtained. Paragraph 7(4) provides the necessary context to the purpose of this provision, setting out that NH’s consent must not be unreasonably withheld and may be subject to any conditions NH considers necessary.
- 2.10 That is, paragraph 7(2) is intended to regulate the exercise of powers under the DCO which could impact the SRN and/or NH’s undertaking, through ensuring that NH has visibility on the exercise of those powers, and has the opportunity to impose reasonable conditions which ensure the safeguarding of its undertaking.
- 2.11 It is not intended as a mechanism to allow NH to block, or “veto”, exercise of powers held under a DCO, and therefore delivery of the project to which those powers relate. NH has no desire to stymy development, and is legally obligated to cooperate with third parties exercising planning or highway functions, which includes the Applicant in relation to the Proposed Development.³
- 2.12 NH is not a private developer. It is a publicly owned Strategic Highway Authority. The notion that NH would veto the Applicant’s powers unreasonably is a fundamental misunderstanding of NH’s statutory role in the development process.
- 2.13 As such, NH would submit that the position is much more nuanced than that presented by the Applicant. It is clear that the NH PPs do not *“simply negate”* DCO provisions in relation to compulsory acquisition of NH’s land (as per the wording of the 2024 Guidance). Rather, they put in place a framework of controls around those provisions, which ensures that NH is afforded an appropriate level of oversight and input in relation to activities which could interfere with its statutory undertaking. This is very different.
- 2.14 It is also worth noting that paragraph 7(2) of the NH PPs relates to various articles of the DCO, not just those relating to compulsory acquisition, again with the simple intention of ensuring that NH has the opportunity to safeguard its interests as the Proposed Development comes forward. The Applicant appears to have particular concerns regarding any qualification of its compulsory

³ Section 5(1) of the Infrastructure Act 2015.

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acquisition powers, but has failed to explain why the application of paragraph 7(2) to other aspects of the DCO is not considered appropriate or proportionate.

- 2.15 The Applicant's position is that restrictions on exercise of compulsory acquisition powers are not justified because *"the protective provisions proposed by the Applicant already provide, in each case, a comprehensive suite of protections for the benefit of each of the statutory undertakers concerned. Those protections ensure that statutory undertakers' apparatus and interests cannot be adversely affected as a consequence of the exercise of CA powers without appropriate safeguards, controls and remedies"* (paragraphs 2.3 to 2.4 of the **Justification for the Applicant's Preferred Protective Provisions [REP4-064]**). However, the Applicant has failed to point to any specific provision within its proposed protective provisions for NH which it considers serves those purposes. Quoting from the Exolum Pipeline System Limited protective provisions and suggesting that *"analogous"* provisions apply across a suite of statutory undertakers carrying out very different specialist functions is not sufficient.

The 2026 Guidance

- 2.16 Paragraphs 2.17 to 2.18 of the **Justification for the Applicant's Preferred Protective Provisions [REP4-064]** go on to consider the 2026 Guidance. The 2026 Guidance provides, at paragraphs 4.25 to 4.26 (emphasis added):

"4.25 Applicants should therefore aim to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. Furthermore, they should not simply negate the principal provisions of the DCO and thereby become an impediment to implementation of the project, for example by conferring unfettered plan approval procedures at detailed design stage that could be operated by the statutory undertaker to frustrate delivery of the project.

4.26 However, provisions exempting land belonging to a statutory undertaker from broad compulsory acquisition provisions within the draft DCO, for example to avoid engaging the additional requirements in section 127 of the Planning Act, may be acceptable if the applicant can demonstrate that the necessary land interests and rights have been, or will be, obtained by agreement with the statutory undertaker concerned."

- 2.17 NH would first note that no effort was made on the part of the Applicant to agree the form of the NH protective provisions included in the draft DCO prior to submission of the Application, in accordance with paragraph 4.25. Had the Applicant sought to engage with NH ahead of submission, many of the objections raised by NH in respect of the Application could have been resolved prior to submission. This is demonstrated by the fact that the Applicant has, following engagement with NH, agreed to remove plots 10/21 and 11/25 from the scope of compulsory acquisition / works powers under the DCO.

- 2.18 Paragraph 4.25 sets out a revised position to that set out in paragraph 12 of the 2024 Guidance, that protective provisions should not *"simply negate the principal provisions of the DCO"* and as a result become *"an impediment to implementation of the project"*. NH maintains that the NH PPs do not fall within the scope of this paragraph for the reasons set out in paragraphs 2.7 to 2.13 above.

- 2.19 Paragraph 4.26, in direct contrast to the 2024 Guidance, goes on to confirm that provisions exempting statutory undertaker land from *"broad compulsory acquisition provisions"* in the DCO *"may be acceptable"*. The 2026 Guidance refers to the specific example of where voluntary agreement has or will be reached. NH is continuing to engage with the Applicant in respect of a voluntary agreement for the necessary land rights and sees no reason why agreement cannot be reached in due course.

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- 2.20 It is NH's view that the 2026 Guidance reflects a position that is consistent with the NH PPs. Even if the 2024 Guidance remained in force, there is no clear restriction in that guidance against the specific provisions contained within the NH PPs.

The Nuclear Regulatory Review 2025

- 2.21 In relation to paragraph 2.19 of the **Justification for the Applicant's Preferred Protective Provisions [REP4-064]**, the Applicant points to the Nuclear Regulatory Review 2025 report led by John Fingleton (the "**Fingleton Review**") as evidence that Model Provisions "*should be reinstated to help solve common problems occurring in the consenting of NSIPs including incorporating acceptable protective provisions for statutory undertakers which do not, in accordance with government guidance, negate other provisions of the DCO*" (emphasis added).
- 2.22 The clear emphasis in the Fingleton Review is for Model Provisions to establish a series of protective provisions which "*are acceptable for the statutory undertakers concerned*".⁴ This position was endorsed by Government. As the statutory Strategic Highway Authority licensed and responsible for the management of the SRN, it would ultimately be for NH to set the requirements of those Model Provisions and to inform developers what would be acceptable in terms of regulating development on or adjacent to its undertaking. That is precisely what the NH PPs seek to do.
- 2.23 We have established above that the NH PPs do not negate provisions of the DCO – they establish a series of proportionate controls around them to counter the imposition of wide and uncontrolled powers secured under a DCO in circumstances where no consultation on the drafting of the powers sought, or the impacts of that drafting, was carried out with NH directly.
- 2.24 The Fingleton Review states that many of the problems of the current consenting system stem from Examining Authorities treating every project as if it were entirely novel.⁵ It goes on to recommend Model Provisions to avoid protracted negotiations with statutory undertakers. That position is fully endorsed by NH. The reason why we are in the current position is precisely because the Applicant is refusing to agree to the Model Provisions which NH have prepared, agreed with numerous energy developers and had endorsed by the Secretary of State on numerous other made Orders. The reason for the protracted negotiation in this case is precisely because the Applicant is choosing to treat its own project as unique from those which have gone before it, to justify the need for bespoke provisions. NH's position is clear – that need is simply not made out.

Precedent for the "veto" provisions

- 2.25 Finally, NH would note that there is extensive precedent for provisions of the type sought in paragraph 7(2) of the NH PPs across various made DCOs, regulating the exercise of compulsory acquisition and/or other powers secured in the DCO, including (but not limited to):

2.25.1 The Gatwick Airport (Northern Runway Project) Development Consent Order 2025;⁶

2.25.2 The Viking CCS Carbon Dioxide Pipeline Order 2025;⁷

2.25.3 The Sunnica Energy Farm Order 2024;⁸

2.25.4 The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024;⁹

⁴ <https://assets.publishing.service.gov.uk/media/692080f75c394e481336ab89/nuclear-regulatory-review-2025.pdf> (recommendation 28) (accessed 4 August 2026)

⁵ <https://assets.publishing.service.gov.uk/media/692080f75c394e481336ab89/nuclear-regulatory-review-2025.pdf> (para 391) (accessed 4 August 2026)

⁶ <https://www.legislation.gov.uk/uksi/2025/1054/contents/made> (Sch 9, Part 3, para 25(2)) (accessed 4 August 2026)

⁷ <https://www.legislation.gov.uk/uksi/2025/509/contents> (Sch 9, Part 9, para 117(2)) (accessed 4 August 2026)

⁸ <https://www.legislation.gov.uk/uksi/2024/802/contents> (Sch 12, Part 9, para 100(5)) (accessed 4 August 2026)

⁹ <https://www.legislation.gov.uk/uksi/2024/564/contents> (Sch 14, Part 13, para 7(2)) (accessed 4 August 2026)

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- 2.25.5 The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024;¹⁰
- 2.25.6 The Medworth Energy from Waste Combined Heat and Power Facility Order 2024;¹¹ and
- 2.25.7 The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.¹²

3. **NH Response to Table 5: “Status of Protective Provisions for the benefit of National Highways”**

3.1 The table below provides a line-by-line response to the Applicant's position set out in Table 5, together with justification as to why the NH PPs are considered appropriate for the Proposed Development (noting that detailed justification for each provision of the NH PPs is already set out at paragraph 10.2 of NH's **Written Representation [REP1-067]**):

Provision in dispute	NH's position
Definitions of “as built information” and “detailed design information”	The definitions of “as built information” and “detailed design information” set out the relevant information which may be required by NH in order to certify satisfactory practical completion and approve commencement respectively of works which may affect the SRN. The items provided in these two definitions have been compiled by NH engineers to be as comprehensive as possible in respect of the matters which may be relevant to such works. NH notes that in both cases, the list is not prescriptive, with “as built information” being required “<i>where National Highways deems necessary</i>” and “detailed design information” being caveated “<i>as are relevant to the specified works</i>”. As such, any matters which are not necessary or relevant to the particular works proposed in respect of the Proposed Development would not be required by NH. Given that the Proposed Development will be consented (if approved) in outline form, it is NH's strong preference for these definitions to be as comprehensive as possible, to avoid misunderstandings or omissions at a later date, whilst retaining flexibility to waive requirements where not proportionate to the works proposed.
“Veto” over compulsory acquisition powers	NH refers to its position set out in section 2 above.
The need for a provisional and final certification process, with defects period	Of critical importance in understanding the need for this provision in the present case is the proposed breadth of the power sought by the Applicant over the SRN. The Applicant is proposing to route a cable under the SRN at plot 9/24. This is captured by Work No 2 of Schedule 1 of the DCO. Work No 2 includes: (a) Works to lay electrical cables and temporary construction laydown areas for electrical cables at various locations;

¹⁰ <https://www.legislation.gov.uk/uksi/2024/393/contents> (Sch 16, Part 6, para 67(3)) (accessed 4 August 2026)

¹¹ <https://www.legislation.gov.uk/uksi/2024/230/contents/made> (Sch 11, Part 5, para 50(2)) (accessed 4 August 2026)

¹² <https://www.legislation.gov.uk/uksi/2024/70/contents/made> (Sch 12, Part 4, para 41(2)) (accessed 4 August 2026)

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	(b) Fencing, gates, boundary treatment and other means of enclosure; (c) Improvement, maintenance and use of existing private tracks; (d) Laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, crossing of watercourses, and roads, including the laying and construction of drainage infrastructure, signage and information boards; (e) Works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure and perimeter fencing; and (f) Works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications, etc). There is no restriction on this power in either the DCO or the extent of what has been assessed within the Rochdale Envelope for the Proposed Development that would limit the extent of this power to just underground cabling. On that basis, if the DCO was granted with Work No 2 as proposed by the Applicant, there would conceivably exist at that point, an unrestricted power to carry out Work No 2 on the SRN as described above. Those works could include more than underground cabling. In such circumstances, those works would need to be controlled in the same manner as any other development taking place on the SRN – which would require the works to be certified by NH. Assuming that Work No 2 only included underground cabling, the need for certification of work would still extend to works beneath the SRN, on the basis that such works are capable of affecting the structural integrity of, and/or apparatus lying beneath, the surface of the highway. It is critical to the safe and efficient operation of the SRN that works are signed off by NH engineers as safe, through issue of the provisional certificate and final certificate. Even if Work No 2 did not extend as widely as it currently does and was limited to underground cabling, this is precisely why these provisions are wholly proportionate in the present case, and NH rejects the Applicant's suggestion that they are not. The Applicant could expect to accept similar obligations when undertaking such works in a non-DCO context (for example under a section 278 agreement). The provisional / final certificate mechanism also operates for the benefit of the Applicant, as issue of the provisional certificate has the effect of reducing the bond sum to 20%, before full release of the bond on issue of the final certificate (see further below in respect of bond requirements). Where specified works include horizontal directional drilling, as is the case here, as part of the approval of works and prior to commencement, a condition survey of the highway is required. A final
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	condition survey is required on completion of the horizontal directional drilling works, to identify any settlement of the carriageway in accordance with the threshold levels set out in technical standard DMRB CD622. If any settlement beyond tolerance is identified, this would pose a safety risk to road users, as part of the carriageway would have collapsed to unsafe levels. NH would require this defect to be remedied. Similarly, where NH's network is damaged by works carried out pursuant to the DCO, it is for the Applicant to remedy that damage. This is the reasonable justification for inclusion of a 12-month defects period within the NH PPs. It is not for NH to bear this risk.
The need for the provision of a security bond	Again, it is not for NH to bear the risk of the Applicant failing to complete, or complete to the necessary standard, works which may affect the SRN, and the requirement for security is wholly standard under, for example, a section 278 agreement. Noting that Work No 2 is drafted very broadly and extends to far more than just cabling beneath the SRN, NH should not be afforded any reduced standard of protection from liability for a developer's acts or omissions simply by virtue of the relevant development being consented under the Planning Act 2008 regime. It is also noted that the bond sum is calculated with reference to the actual cost of the works to be completed by the Applicant, so is inherently proportionate to the specific works being carried out.

4. **Conclusions**

- 4.1 In light of the above, NH does not consider that the Applicant has provided sufficient justification for deviation from the NH PPs, particularly in respect of the so-called "veto" provisions. The Applicant's position relies on an overly simplistic interpretation of the superseded 2024 Guidance and the NH PPs, and also places reliance on the 2026 Guidance which the Applicant itself has not followed (by failing to seek to secure agreement of the form of protective provisions ahead of submission of the Application).
- 4.2 NH is concerned by the approach taken by the Applicant on this scheme and would urge a more proportionate and reasonable negotiation and willingness to understand the potential for impacts to NH's assets and statutory undertaking. In NH's view, the Applicant's overly legalistic and selective interpretation of precedent and guidance is not helping to resolve matters between the parties and is leading to an unhelpful presentation of 'parallel realities' before the Examining Authority. NH will continue to defend its interests at every Examination deadline if necessary, which it considers will only lead to greater cost for the Applicant.

4 August 2026