

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 6 SUBMISSION

ON BEHALF OF

NATIONAL HIGHWAYS LIMITED

Interested Party Reference: FC3E3E146

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1. Introduction

- 1.1 This is the Deadline 6 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:
- 1.3.1 The Applicant’s Response to Deadline 4 Submissions [REP5-042]; and
- 1.3.2 The Examining Authority’s Commentary and Questions on the dDCO [PD-013].
- 1.4 In view of the brevity of this document, a summary has not been provided.

2. NH Response to the Applicant’s Response to Deadline 4 Submissions [REP5-042]

- 2.1 NH has reviewed the Applicant’s responses to NH’s Deadline 4 Submission [REP4-078] at Table 4 of the Applicant’s Response to Deadline 4 Submissions [REP5-042]. NH has identified specific matters to which it wishes to respond as set out in the table below.
- 2.2 NH’s decision not to provide a further response to the Applicant’s submissions on certain points should not be taken as an acceptance of the Applicant’s position in relation to those matters – rather, NH refers to its position set out in its previous submissions including its Relevant Representation [RR-022], its Written Representation [REP1-067], its Deadline 4 Submission [REP4-078] and its Deadline 5 Submission [REP6-063].

Reference	Applicant comment	NH response
3.2	The Applicant notes NH’s position and is, as noted, engaging with NH to seek to agree protective provisions for the protection of NH before the end of the examination. For the avoidance of doubt, however, the Applicant considers that the protective provisions included as Schedule 14, Part 7 of the Draft DCO at Deadline 5 [Document Reference 3.1 Revision 8] are appropriate and confer extensive protection for NH and the strategic road network. Accordingly, the Applicant considers that these protective provisions would ensure that there is no serious detriment to NH’s ability to carry on its statutory	NH does not agree that the protective provisions included at Schedule 14, Part 7 of the Draft DCO at Deadline 5 [Document Reference 3.1 Revision 8] provide “appropriate and extensive protection” to NH or the SRN. NH maintains its position that to include such terms in any made order for the Proposed Development would represent a serious detriment to NH pursuant to section 127 of the Planning Act 2008

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	undertaking, in accordance with the test laid out in section 127 of the Planning Act 2008. The decision maker would therefore be entitled to conclude that the inclusion of provision authorising the compulsory acquisition of NH's land (including rights in respect of the same) is justified in this case.	and NH's position on this is set out in its response to DCO.9.9 in section 3 below.
3.3	... Plot 10/26: the Applicant notes NH's comments and will continue to engage with NH in relation to this plot. ...	NH awaits any further information from the Applicant regarding its proposals for plot 10/26, having made various requests for this. As explained in NH's Deadline 4 Submission [REP4-078], it appears that this plot (like 10/21, which has since been removed from the scope of the works and compulsory acquisition powers sought in the Application) comprises an embankment supporting a bridge on which the local highway network overpasses the SRN.
4.3	The Applicant does not accept the form of commitment sought by NH. Its effect would be to require the Applicant to enter into an agreement, the terms of which are not known (and would not on the Applicant's understanding be known until the post-consent stage) and would effectively be at NH's discretion. This would be the necessary consequence of NH's suggested commitment because, unless the Applicant accepted the terms of the interface agreement, it would not be able to comply with Requirement 16 of the Draft DCO [Document Reference 3.1 Revision 8], which secures the Outline Construction Traffic Management Plan (CTMP) [Document Reference 7.7 Revision 4]. The decision maker should be in no doubt that this would be the effect of the commitment which NH is seeking. The Applicant has included a reasonable form of commitment in the Outline CTMP, which has been deliberately drafted to reflect the important point that the potential for overlap between the M180 renewal works and the Scheme is not certain at the current time. NH will have the opportunity, in its capacity as an approving body under Requirement 16, to consider the detailed CTMP when it is submitted for approval. By that stage, the timing of the Scheme and the potential for overlap with the M180 renewal works will be better understood. The Applicant therefore considers that the existing drafting	NH and the Applicant have engaged further on this and agreed revised wording as follows: <i>"If the M180 renewal works will commence or be ongoing during the construction phase of the authorised development and it is considered by NH (acting reasonably) that a construction coordination agreement is required to manage any interface between the works, the Applicant will use reasonable endeavours to enter into a construction coordination agreement with NH on such terms to be agreed between the parties."</i>

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	appropriately addresses NH's concerns without imposing an uncertain and open-ended obligation on the Applicant. The Applicant is willing to discuss a reasonable compromise with NH and will continue to engage with NH on this, but the Applicant will resist any commitment in the absolute terms sought by NH here.	
5.2	The Applicant does not agree and has set out its position on this matter in the following documents: • Response to Relevant Representations [REP1-043] (Table 8-1, in response to paragraph/section 66 of NH's Relevant Representation [RR-022]; • Responses to Written Representations [REP2-088] (Table 1, in response to paragraph/section 9 of NH's written representation [REP1-067]); and • Statement of Common Ground with National Highways [REP4-070] (Table 3 1, ref. 9). For the reasons explained in the above submissions, the Applicant is emphatically of the view that the relevant planning authority is the appropriate approval body for the requirements listed, reflecting the conventional approach to discharge of planning conditions in the Town and Country Planning context. The exception is Requirement 16, where the Applicant accepts that the relevant highway authority (which would include National Highways where relevant) is the appropriate body to approve the construction traffic management plan for each phase. This is already provided for by Requirement 16 of the Draft DCO [Document Reference 3.1 Revision 8]. It is notable that NH has not cited any precedent in support of its position on this matter, nor has the Applicant been able to identify any. The Applicant considers it particularly noteworthy that NH does not have approval rights in respect of equivalent Requirements in any of the DCOs which NH cited in	NH considers that the Applicant's position is as follows: • There is no precedent to NH having approval rights over specific requirements; and • The LPA is the appropriate discharging authority. No attempt has been made by the Applicant to respond to or address the substantive concerns raised by NH. It is not uncommon for third parties other than the LPA to have responsibility for discharging approvals for requirements. There are various precedents for this. It is common practice for the detailed design of highway works to be submitted for the approval of the relevant highway authority.¹ There is precedent for amendments to approved details being discharged by other third parties.² There is precedent for NH being the approving body in relation to CEMPs and Operational Freight Management Plans on matters related to its functions.³ There is precedent for other bodies, such

¹ <https://nspidocuments.planninginspectorate.gov.uk/published-documents/TR020005-004236-250919%20Gatwick%20-%20signed%20DCO.pdf> – Requirement 5

² [https://nspidocuments.planninginspectorate.gov.uk/published-documents/EN070007-003073-HYCO%20-%20SoS%20Validated%20DCO%20\(hold\).pdf](https://nspidocuments.planninginspectorate.gov.uk/published-documents/EN070007-003073-HYCO%20-%20SoS%20Validated%20DCO%20(hold).pdf) – Requirement 22

³ [https://nspidocuments.planninginspectorate.gov.uk/published-documents/TR030007-001350-241004%20-%20Associated%20British%20Ports%20\(Immingham%20Eastern%20Ro-Ro%20Terminal\)%20Development%20Consent%20Order%202024%20validated.pdf](https://nspidocuments.planninginspectorate.gov.uk/published-documents/TR030007-001350-241004%20-%20Associated%20British%20Ports%20(Immingham%20Eastern%20Ro-Ro%20Terminal)%20Development%20Consent%20Order%202024%20validated.pdf) – Requirements 8 and 13

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	support of its positions at paragraph 10.3 of its Written Representation [REP1-067]. Appropriate provision is made for NH's views to be given and acted upon via the process of prior consultation which is baked into the Schedule 2 Requirements. This is a precedented approach and NH has failed to provide any specific justification in support of a different approach being taken in this case. All of the reasons given by NH would apply in principle to other schemes where NH's interests are engaged and yet, beyond the CTMP which the Applicant has already addressed, no precedents have been cited that support NH's position. Furthermore, NH has not suggested that, in relation to other schemes, it has experienced any difficulty where its role under a requirement is consultative as opposed to approbative. No other statutory undertaker has sought to suggest that it should be afforded approval rights under the DCO requirement; NH is alone in this regard. Like other statutory undertakers with assets affected by the Scheme, NH will receive the benefit of protective provisions which control the manner in which the undertaker's powers can be exercised under the Order (if made). The Applicant's firm view is that there is no justification for the decision maker to take a different approach to that which has been consistently adopted in previous Orders in relation to this matter.	as Network Rail, being the approving body in respect of lighting requirements.⁴ The request which NH makes is borne out of a genuine concern that its view may not be taken into account due to circumstances outside of its control. This could conceivably give rise to safety concerns or regulatory concerns leading to breach of its licence conditions. There is clear precedent across a variety of orders – recent and historic – showing examples of where third parties have been made approving bodies in respect of matters which are relevant to their specific functions, where they have so requested. If third parties do not require approval rights or do not routinely request them, then that is their decision. Where such rights are requested and evidence is presented as to why the third party would be prejudiced without the imposition of that control, that view should be considered seriously. NH is making the same request across all current DCO applications in which it is an interested party and where a specific need to be an approving body on a particular requirement has been identified. In all cases, this request is specifically limited to matters related to its functions, in order to be as limited and proportionate as possible.
5.3.3(a)	The Applicant's response at ref 5.2 of this table is applicable. NH's interests would be secured as a named consultee in respect of a relevant landscape and ecology management plan pursuant to Requirement 8. As regards NH's comments in relation to deemed consent, the point is overstated. The relevant planning authority will have 8 weeks to determine an	The Applicant's position is noted, but does not acknowledge the fact that the LPA may not provide a response within the eight-week period, resulting in deemed discharge of the requirement with no regard had to NH's consultation response. Nothing in the Applicant's argument addresses this fact, save to say that the LPA is likely to respond in that timeframe. Whilst that may be the case, why should

⁴ [https://nsip-documents.planninginspectorate.gov.uk/published-documents/TR030007-001350-241004%20-%20Associated%20British%20Ports%20\(Lmmingham%20Eastern%20Ro-Ro%20Terminal\)%20Development%20Consent%20Order%202024%20validated.pdf](https://nsip-documents.planninginspectorate.gov.uk/published-documents/TR030007-001350-241004%20-%20Associated%20British%20Ports%20(Lmmingham%20Eastern%20Ro-Ro%20Terminal)%20Development%20Consent%20Order%202024%20validated.pdf) – Requirement 14

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	application for approval under the Requirements (see Schedule 2, Part 2 of the Draft DCO [Document Reference 3.1 Revision 8]). Because the Draft DCO requires consultation to be undertaken by the Applicant prior to the submission of an application for approval under the Requirements, none of this 8 week period would be consumed by the relevant planning authority undertaking consultation with third parties such as NH. Each application for approval would need to include a statement that refers to the timeframe for consideration of the application and the consequences of a failure to meet that timeframe (article 50(4) of the Draft DCO). It is also open to the relevant planning authority to refuse an application within the 8 week timescales. For these reasons, the Applicant does not consider that there is a "material risk" that there would be a failure to action NH's comments, as NH contend.	NH take that risk when it is perfectly feasible and proportionate to prevent that risk occurring now by making NH an approving body.
5.3.4(a)	The Applicant's response at ref 5.2 of this table is applicable. NH's interests would be secured as a named consultee in respect of fencing in proximity to the strategic road network pursuant to Requirement 9. The Applicant also notes that, under the protective provisions contained in Schedule 14, Part 7 of the Draft DCO [Document Reference 3.1 Revision 8], it would be required to submit detailed design information to NH for approval prior to commencing any specified work. The definition of "detailed design information" expressly includes details of "(b) boundary, environmental and mitigation fencing". Accordingly, NH will have the opportunity to review and approve the proposed fencing through the protective provisions. The Applicant therefore considers that this provides appropriate and sufficient protection for NH's interests. The inclusion of an additional approval mechanism for fencing within the Requirements would be duplicative, unnecessary and impose an additional burden on the Applicant without delivering any corresponding benefit. The Applicant has addressed NH's comments in relation to the deemed consent provision at 5.3.3(a) of this table.	NH is considering this point internally and will endeavour to provide a response at Deadline 7.

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5.3.5(a)	The Applicant's response at ref 5.2 of this table is applicable. NH's interests would be secured as a named consultee in respect of a relevant drainage strategy pursuant to Requirement 11. The Applicant has addressed NH's comments in relation to the deemed consent provision at 5.3.3(a) of this table. In addition, and as NH notes, the Applicant is not proposing any outfall of surface water runoff into highway drainage apparatus. If the Applicant sought to do so, NH's consent would be required pursuant to article 20(3) of the Draft DCO [Document Reference 3.1 Revision 8]. This protects NH's position.	NH is considering this point internally and will endeavour to provide a response at Deadline 7.
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3. NH Response to Examining Authority's Commentary and Questions on the dDCO [PD-013]

3.1 The table below sets out NH's response to the questions within [PD-013] directed to NH:

Ref.	Directed to:	Commentary or question	NH response
DCO.9.1	All Statutory Undertakers, CDC, NLC and the applicant	General The ExA notes that negotiation is ongoing on Protective Provisions (PPs) and on that basis is not proposing to set out preferred wording at this present time. All parties (including Statutory Undertakers) who are negotiating protective provisions should set out their preferred wording, identifying areas of disagreement on the applicant's proposed wording where agreement has not been reached. This should be provided by deadline 6 and updated at deadline 8.	NH has previously submitted its preferred protective provision wording into the Examination as an appendix to its Relevant Representation [RR-022] and again at Deadline 4, as an appendix to NH's Deadline 4 Submission [REP4-078]. Table 5 of the Applicant's Justification for its Preferred Protective Provisions [REP5-039] identifies areas of disagreement between the Applicant and NH in respect of the NH PPs. NH responded to the original version of this document (submitted at Deadline 4, [REP4-064]) in its Deadline 5 Submission [REP5-063]. The Applicant's updates submitted at Deadline 5 do not alter the parties' positions in respect of the NH PPs. In summary, the principal areas of disagreement between the parties are as follows:

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			- Definitions of “as built information” and “detailed design information” – as set out in section 3 of NH’s Deadline 5 Submission [REP5-063]. - So-called “veto” provisions (paragraph 7(2)) – NH’s position on this is set out in section 3 of NH’s Deadline 5 Submission [REP5-063]. - Provisional / final certification process and defects period – NH’s position on this is set out in section 3 of NH’s Deadline 5 Submission [REP5-063]. - Insurance – the protective provisions proposed by the Applicant do not make any provision for insurance requirements. Adequate insurance is required to be held by all contractors working on the SRN (including those carrying out operations on, over and under the highway) due to the potential for damage to infrastructure, highway assets and road users. As such, the NH PPs must include an obligation on the undertaker to hold appropriate public liability insurance of up to £50,000,000. - Bond requirements – NH’s position is set out in section 3 of NH’s Deadline 5 Submission [REP5-063].
DCO.9.9	National Highways (NH)	National Highways (Part 7) NH’s deadline 5 representation [REP5-063] is noted. However, could NH please confirm the following: 1: What is NH’s current position if the applicant’s preferred PPs [REP5-040] are adopted? Could NH set out its position in these circumstances with specific regard to the statutory tests set out at s127 of the Planning Act 2008. In particular, please confirm whether (and if so, how) the proposed development would cause	1. NH’s overarching position is that the protective provisions currently proposed for the benefit of NH in the draft DCO [REP5-002] offer insufficient protection to enable the test contained in section 127 (and section 138) of the Planning Act 2008 to be satisfied. More detail in respect of each of these tests is provided below. <u>Section 127</u> Plot 9/24 comprises operational land forming part of the SRN. NH therefore holds an interest in this plot for the purposes of carrying on its statutory undertaking, and section 127 of the Planning Act 2008 is engaged. The Applicant seeks acquisition of permanent rights over this plot and intends to route a cable under the SRN at this location. These works form part of Work No. 2. As noted above,

		serious detriment to the carrying out of NH's undertakings. 2: If agreement cannot be reached, please provide your preferred protective provisions for the specific areas of disagreement at deadline 6 (notwithstanding that the ExA acknowledges that negotiations with the applicant are ongoing).	NH additionally awaits further information from the Applicant in respect of plot 10/26. Section 127 provides that a DCO may include provision authorising the compulsory acquisition of a right over statutory undertakers' land only to the extent that the Secretary of State is satisfied that the nature and situation of the land are such that either (i) the right can be purchased without serious detriment to the carrying on of the undertaking, or (ii) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them. As explained in NH's Written Representation [REP1-067], any works proposed beneath or above the SRN constitute a potential operational and safety risk, and therefore risk serious detriment to NH's undertaking. This detriment would arise if the cabling work caused surface level damage to the carriageway above it, or subsidence, and no bond was in place for NH to access to carry out the emergency works that would be required. Notably the Applicant has applied for more than just cabling, which has an even greater risk to NH's asset if no bond was provided. If that risk occurred without a bond being put in place, NH has no recourse to a fund that could cover the cost of the work. As such, the SRN would need to be closed in that location until the works were carried out, which could be a potentially significant period of time. Without a bond available, NH would be forced to try to recover the cost of repairing the damage through the indemnity provisions, which would only be possible if the undertaker at that point accepted liability under the indemnity and had recourse to funds to pay out under it. None of this could occur quickly and it would left to the public purse to rectify the damage first to enable the SRN to be reopened to traffic. It cannot be acceptable for the public sector to act as the Proposed Development's financial backstop for damage or defective works to NH's network. As well as financial cost to NH, this poses a
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			substantial reputational risk and could lead to regulatory action for breach of NH's licence conditions. As noted in section 3 of NH's Deadline 5 Submission [REP5-063], it is significant that the scope of Work No. 2 is much wider than being restricted simply to the laying of electrical cabling, including matters such as erection of fencing, laying down means of access, provision of security measures and works to existing utility assets. There is nothing otherwise in the draft DCO [REP5-002] to limit the works that may be undertaken within plot 9/24 solely to electrical cabling. As such, whilst the Applicant may maintain that the nature of the works proposed in this area are minimal and confined solely to electrical cabling beneath the carriageway, this position is not currently secured in any way within the DCO, and the form of protective provisions proposed by the Applicant is insufficient to secure appropriate protection for NH and the SRN. In these circumstances and without a bond being put in place, there are no grounds on which the Secretary of State could safely conclude that the Applicant's acquisition of permanent rights over plot 9/24 on the wide terms proposed would <u>not</u> cause serious detriment to NH's undertaking. This conclusion was confirmed by the Secretary of State in the Gatwick Northern Runway DCO decision. In paragraph 21.7.15 of the ExA's recommendation report, the ExA stated that <i>"Whilst the ExA notes the progress made between both parties, it finds both the bond and uncapped indemnity to be necessary to avoid serious detriment to the carrying on of the undertaking under s127 of the PA2008. In this instance, the ExA agrees that it is not appropriate for a public sector agency to potentially fund a private sector burden. As such, in the rDCO the ExA has included the wording as suggested by NH in respect of paragraph 18 of Schedule 9, Part 3".</i>⁵ The Secretary of State fully endorsed this position in paragraph 442 of the decision letter, stating that <i>"the Secretary of State has considered and agreed with the ExA [ER 21.7.15] that the inclusion of a bond and uncapped indemnity in the Order, suggested by National Highways in respect of paragraph 18 of Schedule 9, Part</i>
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⁵ <https://nsip-documents.planninginspectorate.gov.uk/published-documents/TR020005-003943-Gatwick%20Airport%20Recommendation%20Report%20-%20FINAL.pdf> – Paragraph 21.7.15

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			<i>3 is necessary to avoid serious detriment to the carrying on of the undertaking under section 127 of the 2008 Act".⁶</i> Nor is it possible for this risk to be made good by NH's use of other land belonging to or available for acquisition by it. No alternative land can replace the existing structure of the SRN – it cannot be re-provided or relocated elsewhere. In light of the above, NH does not consider that the test set out in section 127 can be satisfied in respect of plot 9/24, in the absence of adequate controls within the NH PPs. <u>Section 138</u> Additionally, there are various plots (7/7, 7/13, 7/14, 7/17, 11/22, 11/24, 12/6, 12/8, 12/9, 12/10, 12/11, 12/12 and 12/13, 12/14 and 12/15) over which NH benefits from rights required for the purposes of its undertaking. Section 138 of the Planning Act is therefore engaged in respect of these plots. Section 138 provides that a DCO may include provision for the extinguishment of statutory undertakers' rights only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the relevant development. As yet the Applicant has not provided evidence demonstrating that any proposed extinguishment of these rights (in pursuance of the broad powers conferred by article 35 of the draft DCO [REP5-002]) would be necessary for the purposes of the Proposed Development. Again, in the circumstances, NH does not therefore currently consider it is possible to conclude that the test set out in section 138 can be satisfied in respect of these plots.
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⁶ <https://nsip-documents.planninginspectorate.gov.uk/published-documents/TR020005-004237-GATWICK%20AIRPORT%20NORTHERN%20RUNWAY%20DCO%20-%20Decision%20Letter%20-%2021%20September%202025.pdf> – Paragraph 442

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			2. NH refers to its response to DCO.9.1 above and the form of protective provisions appended to its Deadline 4 Submission [REP4-078].
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22 September 2026