



City of  
Doncaster  
Council

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# Post-Hearing Submission for Issue Specific Hearing 1 (“ISH1”)

Project: Fenwick Solar Farm

Applicant: Fenwick Solar Project Limited

Unique Reference: B100000053

Deadline 1: 30 April 2025



## Purpose of this submission

The purpose of this submission is to provide a written summary of representations made by the City of Doncaster Council (“**CDC**”) at Issue Specific Hearing 1 (“**ISH1**”) held on 20 March 2025.

<b>Agenda for Issue Specific Hearing 1</b>	
<b>Item 1</b>	<b>Welcome, opening remarks and introductions</b>
	<p>CDC was represented by the following –</p> <ul style="list-style-type: none"><li>• [REDACTED], Principal Legal Officer (Planning Solicitor), CDC</li><li>• [REDACTED], Planning Development Manager, CDC</li><li>• [REDACTED], Head of Service Planning, CDC</li><li>• [REDACTED], (external solicitor), Sharpe Pritchard LLP</li></ul>
<b>Item 2</b>	<b>The purpose of the hearing and how it will be conducted</b>
	<p>CDC had no representations to make under Agenda Item 2.</p>
<b>Item 3</b>	<b>The purpose and overall structure of the dDCO</b>
	<p>CDC had no representations to make under Agenda Item 3.</p>
<b>Item 4</b>	<b>Main discussion points</b>
	<p>CDC made representations on the following points –</p> <p><b>Article 2 (interpretation)</b></p> <p><b>“Working day” –</b> In the articles, the term “working day” is only used once, in article 35(6) (consent to transfer benefit of the Order) which refers to “ten working days”. Elsewhere in the articles, the term “days” is used instead. For consistency with the use of “days” in the other articles, the reference to “ten working days” could be changed to “fourteen days”. (This would make the definition of “working day” in article 2 unnecessary and it could be deleted).</p> <p>Paragraph 1 of Schedule 15 (procedure for discharge of requirements) also defines “working day”. (A slightly different definition from the one used in article 2(1) is used).</p> <p>In Schedule 15, all but one “day” references are to “working days” (see: paragraphs 3(2), 3(3), 4(2)(d) to (f), 4(3) and 4(4)); however, paragraph 4(2)(a) refers to “42 days”. For consistency with the rest of Schedule 15, this reference to 42 days should be changed to “35 working days”.</p> <p><b>Article 12 (permanent closure of public rights of way)</b></p>

	<p>CDC has comments on the drafting of article 12 and these will be discussed with the Applicant after the hearing.</p> <p>On a practical point, some paths affected by the DCO have been subject to previous legal orders, such as a diversion, and it is not clear that, in every case, a legal event modification order for each legal event has been made yet. CDC and the Applicant will need to discuss the practicalities arising from this. The discussion will take place after the hearing.</p> <p>On a drafting point, in article 12(5), “contiguous” should be replaced with “continuous”.</p> <p><b>Article 21 (time limit for exercise of authority to acquire land compulsorily)</b></p> <p>In article 21(3)(b), the Council does not consider that the time limit for exercising powers under article 29 (temporary use of land for constructing the authorised development) should be extended by a year if the period beginning on the day the application is made and ending on the day it is withdrawn or determined, is less than a year. (Owing to this, the Council considers article 21(3)(b) can be omitted).</p> <p><b>Schedule 2 – Requirements</b></p> <p><b>Requirement 10 (archaeology)</b></p> <p>CDC consider the South Yorkshire Archaeological Service (“<b>SYAS</b>”) should be named as a consultee to ensure that body is consulted by CDC before the final Archaeological Mitigation Strategy is approved, notwithstanding the fact CDC could consult SYAS even if they were not named. A reason for naming SYAS in R10 is that the officer responsible for eventually discharging the requirement might be unaware that it is CDC’s practice to consult SYAS on architectural matters and the naming of SYAS in the requirement will ensure this is done. It is therefore a question of good administration.</p> <p>SYAS are an organisation that have entered into a service level agreement with Barnsley, Doncaster, Rotherham and Sheffield Councils. Each authority contributes to the running of SYAS who are, effectively, the archaeological advisers for each of these South Yorkshire councils.</p>
<b>Item 5</b>	<b>Protective Provisions</b>
	CDC had no representations to make under Agenda Item 5.
<b>Item 6</b>	<b>Opportunity for interested parties to comment on other aspects of the dDCO and raise any matters not covered in items 1-5 above.</b>
	CDC made representations on the following five points –

**(1) Art.2 (interpretation) and the definition of “permitted preliminary works”**

The definition of “commence” excludes “permitted preliminary works”, and those works are set out in paragraphs (a) to (i) of the definition.

Paragraph 5.2.2(d) of the Explanatory Memorandum [APP-223] says –

“The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) **means they are not expected to give rise to environmental effects requiring mitigation**". [Emphasis added].

The permitted preliminary works include (h): the “demolition of existing buildings and structures”; which would seem capable of giving rise to environmental effects. The Council appreciate that the works in (h) would be caught by requirements 6, 8 and 10; however, so that they have a better understanding of what might be coming forward, the Council would welcome more information on which buildings and structures are likely to be demolished as part of the “permitted preliminary works”.

**[Post-hearing note: CDC understands the definition of “permitted preliminary works” in the next version of the draft DCO will be amended and the reference to the demolition of “buildings” will be removed. CDC is content with this amendment].**

**(2) Part 3 of the draft Order concerns streets.**

The first point to make here is that members of the Council’s highways team are due to meet with the Applicant’s highways consultants in the next week or so to discuss the Council’s concerns with Part 3.

In general terms, officers are concerned with the wide scope of powers sought under Part 3 including powers for the undertaker to interfere with the streets in its area without the consent of the street authority.

For the good administration of the delivery of the highways works related to the authorised development, the Council considers it would be beneficial if a highways side-agreement was entered into, based on the Council’s standard s.278 agreement. A copy of that agreement has been shared with the Applicant, and it hoped work can begin on it after the meeting between the technical experts has taken place.

**(3) The third point is related to the second and concerns the Doncaster Permit Scheme which the Council has in place.**

The Scheme provides for the management of highway works in its area. The Council is aware that other DCOs apply the relevant authority’s permit scheme to the exercise by the undertaker of any highways powers

conferred by the DCO. An example is art.12 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 (SI2024/958). For the consistent management of highway works in its area (including those proposed by the Order), the Council would welcome the application of their permit scheme to the instant order.

**[Post-hearing note: CDC understands the next version of the draft DCO will include an article which applies CDC's permit scheme to the instant application].**

#### **(4) Schedule 2 concerns requirements**

Certain documents which must be submitted to and approved by the local planning authority must be prepared "substantially in accordance" with the framework or outline document, while other documents must be prepared "in accordance" with the framework or outline document. It would be helpful if the Applicant could explain why greater flexibility is required for the preparation of certain documents and not for others.

Second, Council officers are currently finalising their review of the outline control documents mentioned in Schedule 2.

**[Post-hearing note: CDC officers have shared / are in the process of sharing these comments with the Applicant].**

Third, Requirement 3 requires the undertaker to submit to the LPA the terms of reference for a community liaison group prior to the commencement of the authorised development. The Council considers it would be sensible if draft terms of reference could be submitted during the Examination and would welcome the Applicant's thoughts on this suggestion.

**[Post-hearing note: CDC no longer considers that draft terms of reference need to be shared during the Examination].**

The Council has several drafting points to discuss in respect of the Requirements and considers the forthcoming meeting on the draft DCO would be an appropriate forum to raise them.

#### **(5). Schedule 15 (discharge of requirements)**

CDC commented on paragraph 5 of Schedule 15, which concerns fees.

The first point to make is that while the Council will be required to deal with applications for consent under articles and under requirements, by paragraph 5(1) of Schedule 15, a fee is only payable in respect of requirements. The Council considers that fees should also be paid for dealing with applications under articles. The Council's approach is consistent with the standard drafting for a provision dealing with procedure for the discharge of approvals, as set out in Appendix 1 to PINS Advice Note 15, which concerns drafting DCOs.

	<p>The second point to make is that the proposed fee is too low. Paragraph 5(1) applies the fee prescribed in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. This amounts to £145.</p> <p>If we assume an hourly rate of £55 for an officer to deal with this work, it would mean the officer would have to deal with any discharge application within 2 hrs and 36 minutes before dealing with the application was costing the Council money. It is unlikely that any application will be capable of determination within that time period. While the Council cannot make a profit for this work, it is reasonable for it to seek the full recovery of the actual costs incurred.</p> <p>This is not only about fairness but also about the way in which the Order is drafted. For example, by paragraph 2 of Schedule 15, the Council will have 8 weeks to make its decision on any application and if no decision is made within that period, consent will be deemed to have been granted. By article 45(4) of the Order, a similar regime applies in respect of consents sought under articles. Dealing with any application for consent under this Order will therefore be a matter of high priority for the Council and it is likely that external help will be sought to ensure matters are dealt with on time.</p> <p>Rather than the regime currently proposed in the Order, the Council considers it would be preferable if the Applicant and Council entered into a planning performance agreement (“<b>PPA</b>”) for the full recovery of the Council’s costs in discharging any application under the Order. This is consistent with the Government’s recent Planning Reform Working Paper: Streamlining Infrastructure Planning where they refer to their plans to enable cost-recovery for local authorities when dealing with DCOs.</p> <p><b>[Post-hearing note: The Council has agreed to provide the Applicant with its proposed form of PPA and it is hoped that discussions on that document will begin shortly].</b></p>
<b>Item 7</b>	<b>Any other matters</b>
	CDC had no representations to make under Agenda Item 7.