



## Broadfield

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

**BY EMAIL**

**Date:** 30 April 2025

**Project: Fenwick Solar Farm (PINS Reference: EN010152)**  
**Our Reference: JEJ/ADW/124645.0023**

Dear Planning Inspectorate

We write on behalf of our client, Able UK Limited (**AUK**) and Elba Securities Limited (**ESL**) (collectively referred to as **ABLE** hereafter), who are registered as an Interested Party (Reference: FWSF-AFP004 Able UK Limited) and FWSF-AFP084 (Elba Securities Limited)) for the Fenwick Solar Farm project (the **Project**), promoted by Fenwick Solar Project Limited (the **Applicant**).

As detailed in ABLE's Relevant Representation ([AS-003](#)), ABLE's primary ground of objection to the Project concerns the Applicant's proposed compulsory acquisition of ABLE's land, specifically plots 9/09, 9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10 and 10/13 as identified in the Land Plans ([APP-006](#)) and Book of Reference ([APP-020](#)). Notably, plot 10/05 includes the Thorpe Marsh site, which ABLE acquired in 1995 to develop a new 1500 MW capacity electricity generating station. This project received consent from the Department of Energy and Climate Change on 31 October 2011 under Section 36 of the Electricity Act 1989. Since acquisition, ABLE has invested substantially in this site's decommissioning and redevelopment, which would be significantly compromised if the Applicant proceeds with the Project without first properly identifying and consulting with ABLE on potential impacts and necessary mitigation measures.

ABLE is now engaging in constructive discussions with the Applicant to ensure its land interests are safeguarded through appropriate legal mechanisms. Subsequent to the Preliminary Meeting on 19 March 2025, engagement has led to a provisionally agreed cable route, subject to agreement of commercial terms.

On that basis we withdraw our request for a compulsory acquisition hearing, although noting that the compulsory acquisition of the whole site is still part of the application, we may wish to request one subsequently if it appears that the constructive engagement has stalled.

What follows is ABLE's summary of case made at ISH1 but if agreement is reached with the Applicant the points made up to and including paragraph 2.4 fall away.



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## Written summary of oral submissions made at the Issue Specific Hearing 1 on 20 March 2025

Broadfield UK LLP attended Issue Specific Hearing 1 (ISH1) virtually on behalf of ABLE. The hearing held by the Examining Authority (ExA), focused on the drafting of the draft DCO (dDCO) ([APP-014](#)) and related matters. Below is a summary of ABLE's submissions:

### 1 Article 13 – Use of Private Roads

1.1 Article 13 provides that:

*'The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.'* (Emphasis added)

1.2 ABLE strongly object to the breadth of this provision, which would grant the undertaker sweeping and unjustified access to all private roads within the Order limits, including internal roads at ABLE's Thorpe Marsh site (indicated by dashed lines in sheets 9 and 10 of the Streets, Rights of Way and Access Plan ([APP-008](#))).

1.3 This request is wholly disproportionate and demonstrates the Applicant's failure to accurately assess the specific private roads it requires access to, let alone explore less disruptive alternatives. The reasonable and proportionate approach would be to limit the undertaker's access to the area marked hatched green on sheet 10 of the Streets, Rights of Way and Access Plan ([APP-008](#)) to access Thorpe Bank for the purposes of laying cables. In short, ABLE maintains that the Applicant should limit their access over ABLE's land to a maximum of one road, or preferably none if feasible alternatives exist.

1.4 To this extent, the Applicant should reconsider Article 13 and the relevant plans to identify how it can limit its powers of access over private roads within the Order limits. ABLE propose that protective provisions provide the appropriate legal protection to properly secure ABLE's rights in controlling and regulating the undertaker's access over ABLE's private roads. Indeed, the ExA shared ABLE's concern and suggested that the Applicant included a separate schedule which expressly set out the individual private road(s) to be caught by Article 13.

1.5 The Applicant did not provide any immediate assurance or concession for protective provisions but agreed that the Applicant would be in contact with ABLE in due course for discussions.

1.6 ABLE welcome and look forward to engaging with the Applicant on this point.

### 2 Article 22 – Compulsory Acquisition of Rights

2.1 Article 22(2), with reference to Schedule 9, defines the rights sought by the Applicant for compulsory acquisition, distinguishing between 'access rights' and 'cable rights'. ABLE has Category 1, 2, and 3 land interests (plots 9/09, 9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10 and 10/13 as identified in the Book of Reference ([APP-020](#)) and Land Plans ([APP-006](#))) which are adversely impacted by this definition of 'cable rights'.



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- 2.2 ABLE specifically object to sub-paragraph (g) of ‘cable rights’ which imposes excessive restrictions on ABLE’s land use as it provides the undertaker rights over land to:

*‘[...] restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.’*

- 2.3 Such broad powers and restrictions are unacceptable. While ABLE appreciate the Applicant’s view that the definitions of ‘cable rights’ has been adopted from previously made DCOs, ABLE and the ExA maintain that, if sub paragraph (g) was to remain, ABLE are justified in seeking protective provisions as otherwise ABLE would not have any form of control on how these rights are exercised. ABLE insists that any such limitations must be confined strictly to the cable corridor, where cable installation is planned, and cause the minimum disruption to ABLE’s activities. The ExA concurred that as with Article 13, protective provisions or amendments are necessary to ensure ABLE retains control over its land use.
- 2.4 The Applicant again did not commit to provide protective provisions at the meeting but agreed that they would correspond with ABLE to discuss this point and better understand the extent of land interests held by ABLE.
- 2.5 [Not raised at ISH1] ABLE would wish sub-paragraph (g), if it is to continue to apply, to be amended to allow such activities with the permission of the Applicant (or owner of the cable at the time).

### **3 Article 29 – Temporary Use of Land for Constructing the Authorised Development**

- 3.1 Article 29(3) states that:

*‘Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.’*

- 3.2 ABLE considers a notice period of 14 days entirely inadequate and fails to consider the regulatory reforms under consideration. The Planning and Infrastructure Bill, currently progressing through Parliament, is expected to amend the Neighborhood Planning Act 2017 (**NPA 2017**), which suggests it will be brought into force and it contains an extension of such notice to three months. ABLE maintain their preference for a similar period, in the event that the NPA 2017 is not brought into force. The proposed 14 days’ notice is too short to mitigate operational disruptions and ensure proper coordination with ongoing site activities, including any environmental remediation and safety compliance measures.
- 3.3 The ExA emphasised that although other recent DCOs have accepted the 14-day notice period, the Project’s timing means that a holistic assessment is required. As there is now a strong indication that the provisions of the NPA 2017 could materialise, the ExA would take this into account, and closely consider if it is Parliament’s intention to extend the notice period as per the periods stipulated in the NPA 2017.



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3.4 The Applicant did not provide any other concession, and it was agreed that ABLE and the Applicant would consider this further.

3.5 ABLE welcome and look forward to discussing this point with the Applicant.

### **4 Schedule 1 – Authorised Development**

4.1 At the end of Schedule 1, the Applicant sets out an extensive list of ‘further associated development’ works concerning Work Nos. 1 to 9, which includes Work No.4 ‘works to lay electrical cables and compounds for the electrical cables’ which falls within ABLE’s land at Thorpe Marsh.

4.2 ABLE object to the inclusion of Work No.4 within these broad development powers, as several listed works are irrelevant to cable installation, which is the primary basis for Work No.4. As with Article 13, it appears that the Applicant has not sufficiently given thought to limit any powers, with a view to balancing the interests of affected parties. Rather, it would appear that the Applicant has included blanket provisions out of convenience. Moreover, it remains unclear whether these works have undergone sufficient environmental assessment.

4.3 In this respect, ABLE require a review of this list, and seek a reduction to include what is strictly necessary for cable installation. Furthermore, the ExA acknowledged ABLE’s concerns and suggested that a carve-out for Work No.4 ought to be explored, ensuring that only necessary works are permitted and appropriately assessed.

4.4 ABLE welcome and look forward to discussing this point with the Applicant.



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ANNEX – PLAN SENT TO THE APPLICANT ON 29 APRIL 2025

