
FENWICK SOLAR FARM

**Fenwick Solar Farm
EN010152**

The Applicant's Closing Submissions
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1. Introduction

1.1 Purpose of this document

- 1.1.1 These Closing Submissions have been produced by Fenwick Solar Project Limited (the Applicant) to summarise in one place the Applicant's submissions on any outstanding matters raised in submissions during the Examination of the proposed Development Consent Order (DCO) Application (the Application) for Fenwick Solar Farm (the Scheme).
- 1.1.2 The document is provided to ensure that the Examining Authority, and ultimately the Secretary of State for Energy Security and Net Zero (Secretary of State), is clear on the Applicant's position in relation to these outstanding matters. It has been produced early, at Deadline 5 of the Examination, given the limited nature of the outstanding matters remaining for the Examination.
- 1.1.3 The Applicant is strongly of the view that the Examination of the Application can and should be concluded prior to the end of the six-month Examination period. The Scheme is critical national priority infrastructure, and there is an urgent need for the deployment of renewable energy infrastructure, as supported in Government policy.
- 1.1.4 The Applicant has resolved all substantive issues in Examination, leaving none remaining to be examined, as evidenced by its recent submissions and these Closing Submissions. This is reflected by the lack of submissions at recent Examination deadlines.
- 1.1.5 These Closing Submissions do not make new points but instead draw on, and refer to, submissions made by the Applicant in its Application and throughout the course of the Examination. The Applicant notes that the **Guide to the Application (Revision 06) [EN010152/APP/1.2]**, submitted at Deadline 5 of the Examination, lists each of the Application documents and also provides a breakdown of all submissions made by the Applicant during the Examination. It is submitted to assist all Interested Parties and to aid the Examining Authority and the Secretary of State in the reporting and decision-making process.
- 1.1.6 In doing so, this document re-states the Scheme's compliance with relevant policy, legislation and guidance, the need and benefits of the Scheme, and points the Examining Authority and the Secretary of State to the evidence to determine the application in accordance with section 104 of the Planning Act 2008 (PA 2008).
- 1.1.7 Section 1.5 of these Closing Submissions also provides details of the status of the Applicant's negotiations with relevant statutory undertakers at the end of Examination, and in the very limited cases where agreement has not been finalised, provides the Applicant's case pursuant to section 127 and section 138 of the PA 2008 at Appendix A.

1.2 The Scheme

- 1.2.1 The Scheme comprises the construction, operation and maintenance, and decommissioning of a solar photovoltaic (PV) electricity generating facility and associated development. The associated development proposed

includes, but is not limited to, a Battery Energy Storage System (BESS); On-Site Substation; underground cabling to provide export and import connection to the National Electricity Transmission System (NETS); and areas of landscaping and biodiversity enhancements. A detailed description of the Scheme is included in **ES Volume I, Chapter 2: The Scheme, [APP-054]** which was submitted with the Application and a description of the development to be authorised is set out in Schedule 1 of the **Draft DCO (Revision 06) [EN010152/APP/3.1]** submitted at Deadline 5.

- 1.2.2 The Scheme constitutes a Nationally Significant Infrastructure Project (NSIP) as it is an onshore generating station in England with a capacity over 50 MW, and therefore requires an application for a DCO to be submitted to the Planning Inspectorate for determination by the Secretary of State. The Application for Fenwick Solar Farm was submitted on 1 November 2024 and accepted for Examination on 3 December 2024. Examination of the Application commenced on 5 March 2025.

1.3 National Policy Statements for Energy

- 1.3.1 In accordance with Section 104 of the PA 2008, the Secretary of State must have regard to the current suite of National Policy Statements (NPSs) for energy as the relevant NPSs for this Scheme and must decide the application in accordance with those NPSs. The suite of NPSs for Energy which are relevant to the Scheme are the Overarching National Policy Statement for Energy (NPS EN-1) (Ref. 1), the National Policy Statement for Renewable Energy (NPS EN-3) (Ref. 2) and National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (Ref. 3). The latest versions of these came into force on 17 January 2024.
- 1.3.2 NPS EN-1 (Ref. 1) sets out the need for nationally significant energy infrastructure, including solar generation, to deliver the Government's targets for the decarbonisation of energy generation, increase the affordability of energy and provide energy security.
- 1.3.3 Paragraphs 3.2.6 to 3.2.8 of NPS EN-1 are set out in bold within NPS EN-1 and explain that applications for development of the type of infrastructure set out in the NPS, therefore including solar, should be assessed on the basis that the Government *"has demonstrated that there is a need for those types of infrastructure which is urgent"* and that *"substantial weight should be given to this need when considering applications"*. Furthermore, *"the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS."*
- 1.3.4 NPS EN-1 also introduces the classification of infrastructure that is *"Critical National Priority (CNP)"*. NPS EN-1 section 4.2 explains that the Government has concluded that there is a CNP to provide nationally significant low carbon infrastructure. Section 4.2 of NPS EN-1 specifies which energy technologies are considered to be low carbon and therefore CNP; this includes all onshore and offshore generation that does not involve fossil fuel combustion. A solar generating station is classified as CNP and the Scheme is therefore CNP infrastructure.
- 1.3.5 Paragraph 4.2.16 of NPS EN-1 explains that CNP infrastructure is to be treated as if it has met any tests which are set out within the NPS or any other planning policy, which requires a clear outweighing of the harm,

exceptionality or very special circumstances, as the starting point for the Secretary of State's decision making.

- 1.3.6 Paragraph 3.3.63 of NPS-EN-1 also states that the CNP for low carbon infrastructure will *"in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy."* This confirms that with respect to this policy test, that the bar is high, where the impacts of a CNP infrastructure scheme would be required to outweigh need and benefits overall in order for consent to be refused.
- 1.3.7 Paragraph 4.1.3 of NPS EN-1 specifies the presumption in favour of granting consent to applications for energy NSIPs that are identified as CNP infrastructure, due to the level and urgency of need for such infrastructure, *"unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused"*. Paragraph 4.1.7 of NPS EN-1 also adds that: *"For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases."*
- 1.3.8 NPS EN-3 (Ref. 2) also includes specific policies relating to the development of large scale ground mounted solar photovoltaic energy projects such as the Scheme. NPS EN-3 at paragraph 2.10.9 states that the Government has committed to *"sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions by 2050. As such, solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector"* and paragraph 2.10.10 explains that the Government *"expects a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW)"*. Paragraphs 2.10.70 to 2.10.71 of NPS EN-3 recognise the need for flexibility in design for solar NSIPs.
- 1.3.9 This flexibility in design for solar NSIPs is mirrored in paragraphs 2.2.1 to 2.2.8 of NPS EN-5 (Ref. 3) which consider factors influencing site selection and design for electricity networks infrastructure: *"There will usually be a degree of flexibility in the location of the development's associated substations, and applicants should consider carefully their location, as well as their design"*.
- 1.3.10 Paragraph 2.2.9 of NPS EN-5 states that the applicant should *"consider such characteristics as the local topography, the possibilities for screening of the [electricity networks] infrastructure and/or other options to mitigate any impacts"*. NPS EN-5 paragraph 2.4.3 requires the Secretary of State to be mindful that electricity networks infrastructure must in the first instance be safe and secure, and that applicant's ability to influence the aesthetic appearance of infrastructure may be limited by the functional design constraints of safety and security.

1.4 Need and Benefits of the Scheme

- 1.4.1 There is an urgent global need to generate energy using renewable and low carbon sources to provide sufficient, reliable and affordable sources of electricity, whilst meeting national climate change and carbon reduction targets and budgets.
- 1.4.2 The Government expects large scale solar generation to make an important contribution to achieving its decarbonisation requirements and climate change targets, as well as its objectives for the UK's power system, which

includes ensuring the supply of energy remains secure, reliable and affordable.

- 1.4.3 A detailed review of why the Scheme is urgently required at the scale and location proposed is set out in the **Statement of Need [APP-246]**, which also explains how the Scheme addresses relevant aspects of established and emerging government energy and climate change policy and commitments.
- 1.4.4 Without a rapid increase in low-carbon supply, decarbonisation of the energy sector, and other sectors is unlikely to occur. The **Statement of Need [APP-192]** aligns with NPS EN-1 and concludes that many low carbon generating technologies are urgently needed to meet the Government's energy objectives, which include:
- a. Providing security of supply.
 - b. Providing an affordable, reliable system.
 - c. Ensuring the system is Net Zero consistent.
- 1.4.5 The **Statement of Need [APP-192]** concludes that in order to meet these objectives, and bring forward CNP infrastructure as quickly as possible, the evidence points to the development of proven technologies such as large scale solar.
- 1.4.6 The **Statement of Need [APP-192]** states that the Scheme, if approved, would contribute to an adequate and dependable UK energy generation mix, through enabling the generation of more low-carbon power from indigenous and renewable resources. Therefore, the approval, construction and operation of the Scheme will make a significant contribution to the UK's energy security needs, and the decarbonisation needs of the UK.
- 1.4.7 Furthermore, the **Statement of Need [APP-192]** sets out that the Scheme will be a substantial infrastructure asset, which if consented will deliver large amounts of low-cost, secure and low-carbon electricity. Maximising the capacity of generation in the proposed location for the Scheme represents a significant and commercially rational step forward in the fight against the global climate emergency.
- 1.4.8 The Scheme will also deliver other more localised local economic, social and environmental benefits. These include substantial biodiversity net gain; improvements to soil quality; and significant employment generation during construction. These are set out in further detail in section 5 of the **Planning Statement [APP-246]**.
- 1.4.9 In summary, the Scheme will provide CNP infrastructure where the need is already established and for which the presumption in favour of granting development consent is engaged. In accordance with NPS EN-1, which is considered by the Applicant to be an important and relevant matter of significant weight to the Secretary of State's decision making as shown through recent decisions for other solar DCOs, substantial weight should be given to the need for the Scheme, and its status as CNP infrastructure which weighs heavily in favour of consent being granted.

1.5 Statutory Undertakers Update

- 1.5.1 Interests in the land encompassed by the DCO which are held by each statutory undertaker are identified in the **Book of Reference [REP1-009]**,

and the status of those interests have been updated within the Land Rights Tracker throughout the Examination.

- 1.5.2 The Applicant has engaged with these statutory undertakers to ensure the Scheme can be developed without serious detriment to any statutory undertaking, including the provision of the protective provisions within Schedule 14 to the draft DCO, the vast majority of which are in final agreed form. The final table in the **Land Rights Tracker (Revision 04) [EN010152/APP/8.15]** is submitted alongside these Closing Submissions at Deadline 5 of the Examination and includes the final position on the status of negotiations with statutory undertakers.
- 1.5.3 The Applicant has included protective provisions in the final **Draft DCO (Revision 06) [EN010152/APP/3.1]** submitted at Deadline 5 of the Examination for the benefit of the statutory undertakers (see Article 44 and Schedule 14). The Applicant has successfully agreed final protective provisions with all statutory undertakers, where required, save for the following outstanding point:
- a. **DANVM Drainage Commissioners – The Draft DCO (Revision 06) [EN010152/APP/3.1]** has been updated at Deadline 5 to reflect the amendments generally agreed to date between the Applicant and the Commissioners to the protective provisions for the protection of drainage authorities included in Part 3 of Schedule 14 to the **Draft DCO (Revision 06) [EN010152/APP/3.1]**. However, one minor matter remains in discussion between the parties, and the protective provisions remain subject to final sign-off from the Commissioners. The Applicant will provide confirmation that this matter is resolved as soon as possible, either to the Examining Authority if concluded during the Examination, or directly to the Secretary of State.
- 1.5.4 In light of the above and the existing protections included within the final **Draft DCO (Revision 06) [EN010152/APP/3.1]** submitted at Deadline 5 of the Examination, the Applicant considers that the compulsory acquisition powers being sought should be granted, notwithstanding any outstanding representations. Please see the Applicant's full statement pursuant to s127 and s138 of the PA 2008 at Appendix A to these Closing Submissions.

1.6 Other Land Interests

- 1.6.1 The **Land Rights Tracker (Revision 04) [EN010152/APP/8.15]** has been updated to reflect the latest position with landowners and statutory undertakers. This document is submitted at Deadline 5 of the Examination, alongside these Closing Submissions.
- 1.6.2 Notwithstanding any outstanding voluntary agreements, the Applicant has demonstrated that the land and rights being sought are required for the Scheme, and that there is a compelling case in the public interest for compulsory acquisition powers to be granted. All statutory and policy tests for the inclusion of compulsory acquisition powers in the DCO have been met, as outlined in detail within the Statement of Reasons **[APP-018]**.
- 1.6.3 The Applicant wishes to make the following comments in respect of the status of the outstanding land interests for which commentary was raised at the Issue Specific hearings and Compulsory Acquisition Hearing for the Scheme:

1.6.4 First, in relation to Able UK Limited and Elba Securities Limited ("Able") –

- a. The Applicant requires access through Able's land in the final section of the Grid Connection Corridor, where the Scheme will connect into the National Grid Thorpe Marsh Substation. This includes the land on which Substation itself is located (which is under lease from Able to National Grid). Able's land is therefore clearly required for the construction and operation of the authorised development which the DCO would enable. There is no feasible manner in which the Scheme can therefore avoid some extent of property rights being required in respect of Able's land.
- b. The Applicant has outlined, in several submissions during the Examination, the need for access via Able's land, including in respect of the compulsory acquisition case for any powers over this land. This includes:
 - i. **The Applicant's Response to Relevant Representations [REP1-031]** on pages 121 to 123.
 - ii. **Applicant's Summary of Oral Submissions at the Issue Specific Hearing (ISH1) on the Draft Development Consent Order and Post Hearing Note [REP1-041]** at pages 20 to 21. Further to these submissions, the Applicant included amendments to Article 13 of the draft DCO at Deadline 1 **[REP1-005]** to limit powers sought in respect of the use of private roads.
 - iii. **Applicant's Responses to Submissions Received at Deadline 1 [REP2-058]** at pages 87 to 88.
 - iv. **Applicant's Response to the ExA's written questions (ExQ1) [REP2-059]** at pages 6 and 135 to 139. This set out in detail the compulsory acquisition case for Able's land, and confirmed updates to the **Streets, Rights of Way and Access Plans [REP2-004]** to reduce the number of private roads on Able's land subject to powers under Article 13.
 - v. **Applicant's Responses to Submissions Received at Deadline 2 [REP3-029]** at page 20.
- c. As set out in these previous submissions, the Applicant has sought voluntary agreement with Able over both the pre-application and examination period for the Scheme. During Examination, the Applicant and Able have commenced negotiations for a cable easement. At this stage, the Applicant understands the location and extent of the area required for the cabling (and associated easements) is agreed, but is subject to legal drafting of an Option Agreement, draft easement, working width for construction, and commercial terms. The Applicant remains committed to securing a voluntary arrangement, but is still awaiting legal drafting and commercial specifications from Able, and has been since the only meeting held between the parties in April 2025.
- d. While the Applicant continues to seek voluntary agreement from Able to obtain the necessary property rights for the Scheme, without that agreement in place the Applicant considers compulsory purchase powers remain necessary. The Applicant considers the test set out at section 122 of the Planning Act 2008 in respect of compulsory purchase powers has been met as Able's land is clearly required for the development to which the Scheme relates. The Applicant further notes

the SoS must be satisfied there is a compelling case in the public interest for the land to be acquired compulsorily. This case is set out within the Statement of Reasons **[APP-018]** for the project as a whole. Given Able's land is directly required for the delivery of the cable route and connection, it is considered that case squarely applies to its land.

- 1.6.5 Second, in relation to Abhilasha Alias Ashu Chohan – as discussed at the Compulsory Acquisition Hearing, the Applicant has been unable to contact the landowner. No response has been received to the Applicant's section 42 letters, handwritten notes have been placed through this landowner's door, and the Applicant's agent called at this property but received no response. Letters requesting that the landowner makes contact have been sent by "recorded delivery", however the Applicant has received no response. The Applicant included, at Appendix A to the **Applicant's Summary of Oral Submissions at the Compulsory Acquisition Hearing and Post Hearing Notes [REP3-030]**, a witness statement from the Applicant's land agents (DDM Agriculture) which details (with evidence) the attempts made to contact this landowner. The Applicant considers it has undertaken all reasonable steps to engage with this landowner, and while the Applicant will continue to seek engagement with a view to negotiating a voluntary agreement, compulsory acquisition may be required to secure the necessary rights in respect of this land.

1.7 The Applicant's Position on Remaining Matters at Close of Examination

Burnet Heritage Trust

- 1.7.1 The Applicant has sought agreement with the Burnet Heritage Trust (BHT) regarding various matters relating to potential ecology and biodiversity within and surrounding the Scheme throughout the Examination period. However, through this continued engagement, as well as submissions at Examination deadlines and representations at Issue Specific Hearings, both parties have determined that their position on various matters cannot be agreed and that no further progress can be made to reach agreement. In particular, the Applicant has not been able to reach agreement with the BHT at close of examination on the status of the Order limits as functionally linked land and that areas of the Order limits form part of a proposed Site of Special Scientific Interest (SSSI).
- 1.7.2 Regarding the BHT's view that the Order limits include functionally linked land, the BHT has questioned the thoroughness of the ecological surveys informing the conclusions of the **No Significant Effects Report (NSER) [REP2-038]** in their submissions **[RR-011, REP1-054, REP2-075, REP3-035]**. The **Rule 17 Request for further Information [PD-013]**, and Natural England in their response to the ExA's second written questions at Deadline 4 **[REP4-043]**, requested that the Applicant considered the data available regarding Pink-Footed Goose.
- 1.7.3 The Applicant has assessed this data, and this is presented in the **Pink-Footed Goose Technical Note (Revision 00) [EN010152/APP/8.40]** submitted at Deadline 5 of Examination which concludes that the **NSER [REP2-038]** is unaffected.

- 1.7.4 Natural England has reviewed and agreed to the conclusions of the **Pink-Footed Goose Technical Note (Revision 00) [EN010152/APP/8.40]** prior to Deadline 5, as presented in Appendix A of the **Cover Letter for Deadline 5 (Revision 00) [EN010152/APP/8.38]**. This includes agreement that the conclusions of the **NSER [REP2-038]** remain unchanged, and that therefore Natural England does not anticipate a need for a Report on Implications for European Sites (RIES).
- 1.7.5 Regarding the BHT's view that areas of the Order limits form part of a proposed SSSI, the BHT has noted they have put forward their land, as well as an additional surrounding area including the Order Limits which is not managed by the BHT, and questioned whether this has been appropriately assessed in their submissions **[RR-011, REP1-054, REP2-075, REP3-035]**.
- 1.7.6 Whilst a specific assessment of this proposed SSSI was not able to be undertaken prior to the DCO submission due to a lack of information available at the time (despite consultation with the Burnet Heritage Trust and Natural England, and a search of publicly available information online), the assessment presented by the Applicant in **Volume I, Chapter 8: Ecology [REP4-101]** does consider the impacts on all relevant habitats and species which are likely to comprise the proposed SSSI. Therefore, while there is no assessment of the proposed SSSI itself, the impacts to the relevant component features have been appropriately assessed (where located within a potential zone of influence of the Scheme).
- 1.7.7 The Applicant also received correspondence from Natural England regarding the proposed SSSI on 22 May 2025, confirming that the application for this proposed designation was submitted in late April 2025 and no investigation would be taken forward at this point. This was subsequently confirmed in Natural England's response to Question 1.6.1 of ExQ1 **[REP2-070]**.

Development Consent Order Amendments

- 1.7.8 The Applicant has made a series of iterative amendments to the **Draft DCO (Revision 06) [EN010152/APP/3.1]** to reflect matters discussed at the Issue Specific Hearings, raised in the Examining Authority's Written Questions and as agreed with third parties in direct negotiations. Broadly, these include:
- Amendments to align with recently made Orders for other solar NSIPs, including the East Yorkshire Solar Farm Order 2025 and the Oaklands Solar Farm Order 2025.
 - Amendments to Part 3 (Streets) and associated Schedules 6, 7 and 8 to reflect engagement between the Applicant and the City of Doncaster Council in respect of the management of highways and public rights of way, the alignment with the Council's permitting scheme and the negotiation of a highways agreement between the parties.
 - Various amendments to reflect discussions with the City of Doncaster Council in respect of their approval of certain Articles and Requirements, including agreed changes to the payment of costs by the Applicant relating to their responsibilities to the discharge of requirements.
 - Amendments to ensure the consultation of the Environment Agency on relevant requirements within Schedule 2 that relate to their expertise and statutory role.

- e. Various amendments to reflect requests by the Examining Authority to improve the legibility and consistency of the drafting of the Order with the context of the Site, as well as with recent legislative updates.
 - f. The inclusion of updates to protective provisions as agreed with relevant statutory undertakers for the Scheme (as outlined further at **Appendix A**).
- 1.7.9 At Deadline 5, the Applicant has made final minor amendments to the **Draft DCO (Revision 06) [EN010152/APP/3.1]** to include:
- a. The requested drafting to Article 3 within the Examining Authority's Schedule of Changes to the draft DCO **[PD-012]**.
 - b. An amendment to Article 16 (Agreements with street authorities) to require the Applicant to enter into a final version of a highways agreement with the City of Doncaster Council post consent, updating the framework agreement now signed between the parties as of 20 August 2025.
 - c. The final agreed form of protective provisions with the Environment Agency, including a minor amendment at Article 6 to exclude some plots from the disapplication of flood risk permitting requirements.
 - d. The deletion of the closure of Fenwick 10 between PRoW 04/05 and PRoW 04/09 from Schedule 6, Part 6, to reflect the final versions of the Streets, Rights of Way and Access Plan **[REP3-004]**, as explained in the **Cover Letter for Deadline 5 (Revision 00) [EN010152/APP/8.38]**.
 - e. Amendments to the protective provisions for the benefit of drainage authorities, as per the latest negotiations with the DANVM Drainage Commissioners.
- 1.7.10 At Deadline 5, the Applicant understands that the drafting of the **Draft DCO (Revision 06) [EN010152/APP/3.1]** is therefore agreed with all parties other than in respect of:
- a. Final confirmation from the DANVM Drainage Commissioners as to the drafting of the protective provisions in their favour (as explained in further detailed above), alongside the resolution of the one minor matter being discussed between the parties.
 - b. The inclusion of sub-paragraph (3)(b) within Article 22. The City of Doncaster Council would prefer this not to be included, while the Applicant considers it is appropriate for it to be included in alignment with other CPO legislation and regulation. However, the parties have agreed this is simply a minor principled difference and are not discussing this disagreement further, nor consider it reflects a fundamental disagreement between the parties on the drafting of the Order.
- 1.7.11 The Applicant considers the final version of the **Draft DCO (Revision 06) [EN010152/APP/3.1]** presented at Deadline 5 has resolved all notable substantive matters raised during the Examination. The Applicant considers it reflects best practice drafting, and has incorporated learnings from the several made Orders for solar NSIPs made over the last two years. The Explanatory Memorandum as submitted at Deadline 4 **[REP4-007]** sets out in detail the justifications for the drafting of the DCO articles and schedules.

1.8 Conclusions

- 1.8.1 As set out in the Application and Examination deliverables, and summarised in these Closing Submissions, there is a clear and compelling need for the Scheme which outweighs its very limited residual adverse effects. The Applicant has provided all necessary information to inform the Examining Authority's Recommendation Report and the Secretary of State's decision making.
- 1.8.2 Agreement has been reached with the vast majority of relevant statutory undertakers, and protective provisions for all relevant undertakers are included within Schedule 14 of the draft DCO.
- 1.8.3 On the basis of the protections offered, the Examining Authority and the Secretary of State can be satisfied that there would be no serious detriment to any statutory undertaking and that the powers sought by the Applicant are necessary and should be granted.
- 1.8.4 The Scheme comprises critical national priority infrastructure, for which there is an urgent national need as defined and established in the NPSs for Energy which came into force in January 2024. There are no overriding or "exceptional" local impacts. On that basis, and for the reasons given throughout this document, the case has been made for: (1) the Examining Authority to recommend that the DCO for the Scheme be made; and (2) the Secretary of State to so make it, in the form submitted by the Applicant at Deadline 5.

2. References

- Ref. 1 Department for Energy Security and Net Zero (2023). Overarching National Policy Statement for Energy (EN-1). Available at:
<https://www.gov.uk/government/publications/overarching-national-policy-statement-for-energy-en-1> [Accessed 18 August 2025].
- Ref. 2 Department for Energy Security and Net Zero (2023). National Policy Statement for Renewable Energy Infrastructure (EN-3). Available at:
<https://www.gov.uk/government/publications/national-policy-statement-for-renewable-energy-infrastructure-en-3> [Accessed 18 August 2025].
- Ref. 3 Department for Energy Security and Net Zero (2023). National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at:
<https://www.gov.uk/government/publications/national-policy-statement-for-electricity-networks-infrastructure-en-5> [Accessed 18 August 2025].

Appendix A Section 127 and Section 138 Statement

A.1 Introduction

- A.1.1 The Applicant submitted the Application for the Scheme. As set out in Section 10.3 of the Statement of Reasons **[APP-018]**, the land encompassed by the DCO includes land, rights or other interests owned by statutory undertakers.

A.2 Legislative Position

- A.2.1 Section 127 (s127) of the PA 2008 applies where:
- a. the land or interest has been acquired by statutory undertakers for the purposes of their undertaking;
 - b. a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and
 - c. as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.
- A.2.2 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- d. the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - e. the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- A.2.3 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:
- f. the right can be purchased without serious detriment to the carrying on of the undertaking; or
 - g. 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 the other land belonging to or available for acquisition by them.
- A.2.4 Section 138 (s138) of the PA 2008 applies if a DCO authorises the acquisition of land (compulsorily or by agreement) and:
- h. there subsists over the land a relevant right (defined in s138(2)); or
 - i. there is on, under or over the land relevant apparatus (defined in s138(3)).
- A.2.5 Section 138(4) of the PA 2008 states that an order may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the

extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

A.3 Deadline 5 s127 and s138 Cases

- A.3.1 The Application includes provisions authorising the compulsory acquisition of land and/or new rights over land, or affecting rights, belonging to statutory undertakers. The following representations made by statutory undertakers have not been formally withdrawn: the Environment Agency, Network Rail Infrastructure Limited and the DANVM Drainage Commissioners.
- A.3.2 The Applicant and the Environment Agency have now agreed the final updates required to the draft DCO and protective provisions, which are included in the **Draft DCO (Revision 06) [EN010152/APP/3.1]** at Deadline 5, to action the agreed approach between the parties to the principle of the disapplication of flood risk permits for the Scheme, other than those areas overlapping with the Thorpe Marsh Reservoir. The Applicant understands that the Environment Agency will be withdrawing its objection to the Scheme at Deadline 5.
- A.3.3 The Applicant and Network Rail Infrastructure Limited have agreed a form of protective provisions, which are included in the DCO as Part 4 of Schedule 14. The Applicant and Network Rail are also finalising a corresponding framework agreement, which is anticipated to be agreed and signed shortly – the Applicant continues to chase Network Rail's lawyers in relation to the single outstanding point on this agreement, but has not received a substantive response despite multiple chasers. Once this framework agreement is signed, the Applicant understands that Network Rail will be in a position to withdraw its objection to the Scheme. The Applicant will provide confirmation that this matter is resolved as soon as possible, either to the Examining Authority if concluded during the Examination or Examining Authority's decision period, and otherwise directly to the Secretary of State.
- A.3.4 The **Draft DCO (Revision 06) [EN010152/APP/3.1]** has been updated at Deadline 5 to reflect the amendments generally agreed to date between the Applicant and the DANVM Drainage Commissioners to the protective provisions for the protection of drainage authorities included in Part 3 of Schedule 14 to the **Draft DCO (Revision 06) [EN010152/APP/3.1]**. However, one minor matter remains in discussion between the parties, and the protective provisions remain subject to final sign-off from the Commissioners. The Applicant will provide confirmation that this matter is resolved as soon as possible, either to the Examining Authority if concluded during the Examination, or directly to the Secretary of State.
- A.3.5 Notwithstanding these outstanding matters, the Applicant considers that the protective provisions in their current form are sufficient to protect all statutory undertakers and to enable the Secretary of State to be satisfied there is no risk of a serious detriment to their statutory undertaking, as further expanded on below.
- A.3.6 The Applicant will continue to liaise with these statutory undertakers, however in the event that the representations are not formally withdrawn, the Applicant has set out in Table 1 below the reasons why the Applicant considers that the tests set out in s127(2) and s127(5) of the PA 2008 are satisfied. For completeness, the Applicant has also included in the table below the position in respect of all statutory undertakers. Table 1 lists the

statutory undertakers in the same order that they appear in the final table of the Land Rights Tracker, for ease of reference.

- A.3.7 Section 138 of the PA 2008 is engaged by Article 24 of the draft DCO. This Article will permit the undertaker to extinguish or relocate the rights or apparatus of statutory undertakers and electronic communications apparatus. Such power may only be included in the DCO if the Secretary of State is satisfied the extinguishment or removal is necessary for the authorised development.
- A.3.8 The exercise of such powers will be carried out in accordance with the protective provisions contained in Schedule 14 of the DCO which set out constraints on their exercise with a view to safeguarding the statutory undertakers' and electronic communications apparatus owners' interests. The Applicant therefore considers that the test set out s138 of the PA 2008 is satisfied.

Table 1 – Section 127 PA 2008 Tests

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
7/01, 7/02, 7/06, 11/07	BT Limited	BT did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	Following some short initial discussions with BT, the Applicant received a letter from Openreach Limited (who are appointed by BT to manage the protection of their electronic communications apparatus) which confirmed they support the standard protective provisions for the protection of operators of electronic communications code networks included in Part 2 of Schedule 14 of the DCO, and have no further comments on the Scheme.
1/02, 2/03, 2/04, 3/01, 3/05, 3/06, 3/07, 4/03, 4/04, 4/06, 4/07, 5/01, 5/03, 6/03, 6/04, 6/05, 7/01, 7/02, 7/06, 7/07, 7/08, 7/09, 7/10, 8/01, 8/04, 8/05, 8/06, 8/08, 8/09, 8/11, 8/13, 8/15, 9/01, 9/02, 9/09, 9/13, 9/14, 10/01, 10/05, 10/06, 10/07, 10/08, 10/10, 10/12, 10/14	DANVM Drainage Commissioners	The Commissioners have submitted representations in respect of the Application. As at Deadline 5, its objection has not been withdrawn.	The Draft DCO (Revision 06) [EN010152/APP/3.1] has been updated at Deadline 5 to reflect the amendments generally agreed to date between the Applicant and the Commissioners to the protective provisions for the protection of drainage authorities included in Part 3 of Schedule 14 to the Draft DCO (Revision 06) [EN010152/APP/3.1] . However, one minor matter remains in

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
			discussion between the parties, and the protective provisions remain subject to final sign-off from the Commissioners. The Applicant will provide confirmation that this matter is resolved as soon as possible, either to the Examining Authority if concluded during the Examination, or directly to the Secretary of State.
1/02, 2/01, 2/03, 9/09, 9/11, 9/13, 10/09	Environment Agency	The EA has submitted representations in respect of the Application. The Applicant understands that the EA will be withdrawing its objection to the Scheme at Deadline 5.	The Applicant and the Environment Agency have now agreed the final updates required to the draft DCO and protective provisions, which are included in the Draft DCO (Revision 06) [EN010152/APP/3.1] at Deadline 5, to action the agreed approach between the parties to the principle of the disapplication of flood risk permits for the Scheme, other than those areas overlapping with the Thorpe Marsh Reservoir. These agreed protective provisions for the benefit of the EA are included in Part 5 of Schedule 14 of the draft DCO. The Applicant understands

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
			that the Environment Agency will be withdrawing its objection to the Scheme at Deadline 5.
1/01, 1/02, 1/03	Exolum Pipeline Systems Limited	Exolum has withdrawn its objection to the Scheme [REP2-074] and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of Exolum are included in Part 6 of Schedule 14 of the draft DCO.
5/03, 11/07	Lumen Technologies UK Limited	Lumen did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	Lumen confirmed to the Applicant that they do not have any apparatus within the Order limits and therefore will not be making representations into the examination or seeking protective provisions.
9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/10, 10/11	National Grid PLC	Covered by negotiations with NGET below.	Covered by negotiations with NGET below.
2/03, 2/04, 2/05, 2/06, 8/07, 8/09, 8/10, 8/11, 8/12, 8/13, 8/15, 8/16, 9/01, 9/11, 9/12, 10/06, 10/09, 10/11, 10/12	National Grid Electricity Transmission Plc	NGET has withdrawn its objection to the Scheme [REP1-051] and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of NGET are included in Part 7 of Schedule 14 of the draft DCO.
5/03, 8/14, 9/02, 9/04, 9/07, 9/09, 9/10, 10/01, 10/02, 10/03, 10/04, 10/09, 11/07	Network Rail Infrastructure Limited	Network Rail has submitted representations in respect of the Application. As at Deadline 5, its objection has not been withdrawn.	The Applicant and Network Rail Infrastructure Limited have agreed a form of protective provisions, which are included as Part 4 of Schedule 14 of the draft DCO. The Applicant and Network

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
			Rail are also finalising a corresponding framework agreement, which is anticipated to be agreed and signed shortly – the Applicant continues to chase Network Rail's lawyers in relation to the single outstanding point on this agreement, but has not received a substantive response despite multiple chasers. Once this framework agreement is signed, the Applicant understands that Network Rail will be in a position to withdraw its objection to the Scheme. The Applicant will provide confirmation that this matter is resolved as soon as possible, either to the Examining Authority if concluded during the Examination, or directly to the Secretary of State.
11/01, 11/02, 11/03, 11/04, 11/05, 11/06, 11/07	Northern Gas Networks Limited	NGN did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	The Applicant and NGN completed an asset protection agreement, containing a bespoke form of protective provisions for NGN's benefit, on 29 April 2025.

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
1/02, 2/03, 2/04, 2/06, 3/01, 5/01, 5/03, 6/03, 6/04, 6/05, 7/10, 8/01, 8/02, 8/03, 8/04, 8/05, 8/07, 8/11, 8/13, 9/01, 9/02, 9/03, 9/04, 9/06, 9/07, 9/09, 9/14, 10/03, 10/05, 10/06, 10/07, 10/09, 10/11, 10/12, 10/13, 10/14, 11/07	Northern Powergrid (Yorkshire) Plc	NPG has withdrawn its objection to the Scheme [REP4-044] and therefore s127 of the PA 2008 is not triggered.	Agreed protective provisions for the benefit of NPG are included in Part 8 of Schedule 14 of the draft DCO.
9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/10	Npower Limited	Npower did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	The Applicant has had no response from Npower to its initial correspondence in October 2024. The Applicant notes that Npower has not submitted a relevant representation into the Examination and notes that standard protective provisions for the protection of electricity, gas, water and sewerage undertakers are included in Part 1 of Schedule 14 of the DCO.
10/05, 10/06, 10/07, 10/08	Vodafone Limited	Vodafone did not submit a representation about the DCO Application and therefore s127 of the PA 2008 is not triggered.	The Applicant has had no response from Vodafone to its initial correspondence in August 2024. The Applicant notes that Npower has not submitted a relevant representation into the Examination and notes that standard protective provisions for the protection of electronic

Plot Nos.	Statutory undertaker or other apparatus owner	Engagement of Section 127	Applicant's Position
			communications code networks are included in Part 2 of Schedule 14 of the DCO.



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