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Our Ref: EN010153/s89/HRA

10 September 2025

Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PM

By email only: FrodshamSolarFarm@planninginspectorate.gov.uk

Dear Mr Rowlands

Application Reference: EN010153
Applicant Response to Planning Act 2008 – section 89(3) response

I write on behalf of Frodsham Solar Ltd (the "Applicant") in response to the letter received on 3rd September 2025 from the Examining Authority (ExA) relating to the impacts of the proposed Frodsham Solar project on the Mersey Estuary Special Protection Area (SPA) and Ramsar site.

As set out in its previous submission to the ExA (AS-001) and in the Information to Inform HRA ('ItIHRA') (AS-017), the Applicant has been engaging with Natural England ('NE') for an extensive period of time in relation to both the information provided in its assessment and in the development of the Applicant's proposals for the Non Breeding Bird Mitigation Area ('NBBMA').

In light of the comments made by NE in its Relevant Representation ('RR') (RR-012), the Applicant intends to continue this engagement to seek to assuage their concerns, and it anticipates doing so at pace over the coming weeks and months.

NE Key Concerns

For the purposes of this response, the Applicant summarises below its understanding of NE's two concerns as articulated in NE's RR:

> **Issue 1**: A concern that the NBBMA proposals do not mitigate the impacts caused by placing the SADA within land that NE considers is Functionally Linked Land ('FLL') in its totality, questioning in particular the quantitative and qualitative relationship effect of the NBBMA proposals (including their long term management) when compared to the impact caused and the existence of the Frodsham Wind Farm mitigation;
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> **Issue 2:** Disturbance related issues, including in relation to cumulative/in-combination impacts with other pipelines in the area (the Applicant notes that cumulative impacts cannot be caused with the wind farm, as it already exists and therefore forms part of the baseline).

As set out in the ItIHRA, the Applicant's position is that it has provided the relevant sufficient mitigation measures in order to robustly reach a conclusion of no Adverse Effect on Integrity (AEoI). However, given NE's RR, it is planning to engage closely with them to deal with their concerns.

Plan for Engagement

The Applicant has arranged a series of five meetings with NE to deal with both Issue 1 and Issue 2. Further meetings will be arranged over this period if considered necessary. These meetings will be informed by the provision of information by the Applicant in good time before them and will cover (non-exhaustively) key points such as:

- sharing with NE the data they have queried in the format they have requested;
- explaining the Applicant's approach to assessing the quantitative impacts caused by the Proposed Development and seeking to agree if any further work is required;
- providing greater detail on the Applicant's approach to assessing noise disturbance and the management of cumulative impacts and agreeing if any amendments are needed to the OCEMP (APP-136) or OLEMP (APP-144) on this matter; and
- updating NE on the discussions it has held with potential conservation bodies in respect of the on-going management of the NBBMA;

Furthermore, and key to Issue 1, at these meetings the Applicant will be discussing with NE the basis of its HRA conclusions in respect of the characterisation of impacts and the Applicant's approach to the provision of the NBBMA.

The Applicant's approach has not been to provide a quantitative 'like for like' replacement of land lost to the SADA. Instead, through the NBBMA, a qualitative improvement will be created, providing effective habitat in the area (including that provided by Frodsham Wind Farm) for the volume of protected ornithological features of the SPA that have been identified to actually use the SADA and the land within the footprint of the NBBMA, irrespective of whether part of it is considered to be FLL or not. The Applicant is committed to the long-term maintenance, management and monitoring of the NBBMA, and this is controlled via Requirement 9(2)(j) of the draft DCO (AS-013).

Furthermore, the Applicant has set out in APP-144 that it intends the NBBMA will be managed by an independent, suitably experienced and reputable conservation body. On this basis a conclusion of No AEoI has been reached in respect of Issue 1.

At this stage NE's RR sets out that it requires additional information to ascertain beyond reasonable scientific doubt that a conclusion of No AEoI can be reached. In essence, it needs additional information to determine that the NBBMA will provide sufficient habitat resources to support the SPA birds, which currently rely on the land which will form the SADA, and the NBBMA. The focus of the Applicant's discussions and provision of additional information will therefore be to reach agreement on the approach to baseline characterisation and the qualitative benefits that can be said to arise from the provision of the NBBMA, in particular.

The Applicant maintains its position that it considers that its conclusion of no AeOI is robust based on a robust assessment of impacts and appropriate provision of mitigation. However, it is acknowledged that in providing the additional information requested by NE, and potentially introducing additional commitments, there may be a requirement to make amendments to some of the submitted outline management plans (including the Non-Breeding Bird Mitigation Strategy ('NBBMS'), in order to assist NE in being satisfied in a of No AEoI.

For example, the Applicant notes that in NE's response to the ExA (AS-030), they are concerned about the lack of certainty as to how long-term management of the site can be undertaken and secured. The Applicant can confirm that it is engaging with the RSPB on this matter and through discussions with them and NE, it may be that further detail will be able to be added to the NBBMS to alleviate NE's concerns.

Approach to Examination

In this context, the Applicant considers that it would be preferable to an efficient running of the Examination, that updates to application documentation (both the ItIHRA and any updates to outline management plans) are brought forward after discussions are finalised with NE, rather than updating them multiple times throughout the course of the

Examination, or failing this, that as few versions are submitted as possible. Furthermore, the Applicant considers that such documents should be updated all together at the same time, rather than updated piecemeal, so that the ExA (and Interested Parties) can understand the latest position 'in the round'.

With that in mind, the Applicant is aiming to work with NE such that any such documents are able to be submitted by 21 November – either as a 'final' update to reflect total agreement, or to reflect what has been able to be progressed and agreed by that point in time. The consequence of this programme is that if, for example, the Examination was to start in mid-October 2025, a sizeable portion of the Examination would still be remaining to ensure that these updates were able to be property scrutinised and examined.

However, to ensure that the ExA has sight of how matters are progressing with NE in the intervening period before submission of any updated application documents, the Applicant would respectfully suggest that the Examination timetable should provide that at each deadline the Applicant be required to submit a version of Table 1 of NE's RR, which has an additional column which provides for a 'Position at Deadline X' for each of the Amber items in that table – essentially a specific type of SoCG.

The Applicant is planning on the basis that it would seek to agree the content of that column with NE prior to submission of that table at each deadline, informed by meetings held with them on the substantive issues at hand.

Similarly, given CWaCC's ecological concerns expressed in its RR, the Applicant will look to provide a SoCG (in a more usual form) at each deadline, albeit noting that for ItIHRA issues, CWaCC will defer to NE.

The Applicant would propose to submit the first version of that table a week prior to the Preliminary Meeting, once the date for that meeting is notified, so that the ExA can see the progress that has been made between the time of writing and that point in time.

ExA Query on Need for Changes

The Applicant notes that the ExA has asked about whether there is any scope for a change needing to be made to the Application in response to NE's concerns – the Applicant takes this to mean a change that would invoke the procedures in the PINS Advice Note on post-submission changes ('the PINS AN'), as it would involve, for example, changes to the limits of deviation to certain Work Numbers (e.g. in this case, the size of the NBBMA (Work No. 6C) ('a Change').

As stated above, the Applicant considers that discussions with NE should be able to progress such that a Change is not required as their concerns should be able to be addressed through updates to the ItIHRA and outline management plans (if any changes are indeed is required).

However, if a Change is required, the Applicant considers that this would be able to be able to be brought forward into the Examination in accordance with the PINS AN. This is because:

- any such change would not lead to a materially different project – it would remain a solar farm with ecological mitigation provision;
- no additional land' (as defined by the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ('the CA Regulations'), either through the addition of any land to the Order limits, or the 'upgrading' of powers to compulsory acquisition, would be required as all aspects of the Proposed Development in and around the NBBMA are already subject to proposed full compulsory acquisition powers; and
- any such changes would not lead to any new or different likely significant EIA effects. If brought forward, any changes would simply be providing greater reassurance to NE (and potentially the ExA) in relation to the effects it has already assessed, particularly those in Chapter 8: Ornithology (APP-041); and
- similarly, given that the Applicant's ItIHRA already reaches a conclusion of no AEoI, any such changes would not lead to a different HRA conclusion, but instead provide further reassurance in respect of those conclusions.

If a Change is required, the Applicant would also work to bring this forward for 21 November - this would be a proper amount of time to enable progress to be made with NE and dovetail with the overall approach to the ItIHRA and NBBMS as discussed above.

Any such Change Notification could be accompanied by the updated ItIHRA and NBBMS, alongside indicative drawings of how any agreed changes would look, to allow consultation to take place on the basis of the fullest possible information, whilst also enabling the ExA (and Interested Parties) to have sight of the updated assessment information before the Changes Application is ultimately submitted, such that it can prepare questions in relation to that information and understand the full implications of the change in the round.

Accounting for Christmas, such consultation could end on 9 January (to account for the Christmas break) with the Applicant then reporting on that consultation and submitting updated documents as a Change Application by 21 January.

The consequence of this programme is that if, for example, the Examination was to start in mid-October 2025, close to 3 months of the Examination would be left to fully consider a Change Request, if that was required.

Position in respect of Without Prejudice Derogation

In respect of the ExA's statements relating to a possible without prejudice derogation case, the Applicant's position is that whilst the Applicant's primary aim is to reach agreement with NE, it recognises that there is a scenario where full agreement is not reached, i.e. NE may consider that more and/or different Changes are required above and beyond the changes to application documentation/a potential Change Request that the Applicant considers are appropriate or necessary to be brought forward, particularly in light of the statements in paragraph 4.2.21 of NPS EN-1 and the Applicant's objectives for the Proposed Development.

Were this scenario to arise, the difference between the parties would essentially constitute the basis of the Applicant's without prejudice derogation submissions on the 'alternative solutions' limb of the derogation text, as the Applicant would need to set out that and why it does not consider that further Changes would constitute an 'alternative solution', in the context of NPS EN-1.

Such submissions would also need to deal with the scenario where the Secretary of State does not agree with the Applicant's case, such that the Applicant could provide 'without prejudice' versions of the application documentation to reflect what NE ultimately considers is necessary. The Secretary of State would then, if necessary, be able to choose between the two positions.

Secondly, and relatedly, the Applicant notes the following in respect of 'compensatory measures' limb of a possible without prejudice derogation case:

- further discussions with NE are required to understand their position in respect of the nature of possible compensation for the habitat that is impacted by the Project, which is supporting habitat (i.e. FLL) rather than SPA habitat; and

- the extent of any possible compensation is connected with the ongoing discussions with NE regarding the extent and nature of the impact.

With this in mind, it is the Applicant's position that the submission of any without prejudice documentation will need to be carefully timed to take the fullest possible account of progress made in discussions with NE.

As such, the Applicant would propose that any without prejudice documentation would be submitted by 21 January at the latest (to dovetail with any Changes Application if that was brought forward) so that the ExA could consider the overall position in the round at the same time.

Conclusion

The Applicant is committed to working closely with NE to resolve its concerns, and considers that, through close engagement, progress will be able to be made alongside the running of an Examination, to ultimately enable agreement on a conclusion of no AeOI.

With this in mind, the Applicant considers that nothing discussed in this submission would necessitate delaying the start of the Examination for the Proposed Development. The Applicant will engage substantively with NE and CWaCC and will report on progress during the course of the Examination and this submission has shown that if any Changes Request is necessary, it could be easily accommodated, time-wise, within an Examination that started in mid-October.

Working with stakeholders to deal with their concerns alongside an Examination is a usual part of the DCO process and the Applicant considers that the start of the Examination will enable the focussing of resources around set deadlines to enable progress to be made efficiently and expeditiously.

Please do not hesitate to contact if you have any questions or require any further information regarding this letter.

Yours sincerely

[redacted]

Mark Flaherty
Development Manager on behalf of Frodsham Solar Limited (FSL)
FSL is a Cubico Sustainable Investments owned company