

Case Management Team  
National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol,  
BS1 6PN

By email only

[FrodshamSolarFarm@planninginspectorate.gov.uk](mailto:FrodshamSolarFarm@planninginspectorate.gov.uk)

## Development Management

Planning Service  
Cheshire West and Chester Council  
The Portal  
Wellington Road  
Ellesmere Port  
CH65 0BA

Tel: 07786 198 601

Our ref: 25/01959/NIP

Your ref: EN010153 (Reference **FROD-065**)

Please ask for: [REDACTED]

Email: [REDACTED]

Web: [cheshirewestandchester.gov.uk](http://cheshirewestandchester.gov.uk)

Date: 13 February 2026

Dear Team,

### **Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010**

#### **Application by Frodsham Solar Ltd (the Applicant) for an order granting development consent for Frodsham Solar (EN010153)**

Further to the 'Rule 8 letter' dated 16 December 2025 [PD-008], I am writing on behalf of Cheshire West and Chester Council as the host local authority with comments in relation to Deadline 3a (17 February 2026).

At Deadline 3 (28 January 2026) it was expected that a without prejudice derogation submission would be submitted by the Applicant.

The Applicant's covering letter of 28 January 2026 [REP3-031] to the Deadline 3 submissions provided the following response:

#### ***Without Prejudice Derogation Submission***

*Annex A of the Rule 8 letter states that a Habitats Regulations without prejudice derogation submission should be provided at Deadline 3, if required. Natural England has confirmed, in its response to the Examining Authority's Written Question Q5.1.3 [REP2-009], that it agrees with the Applicant's conclusions regarding likely significant effects and that there would be no Adverse Effect on the Integrity of the Mersey Estuary SPA and Ramsar site (AEoSI).*

*While Natural England has requested some additional information, much of which is contained within the updated Information to Inform the Habitats Regulations Assessment submitted at Deadline 3, the Applicant does not consider that a without prejudice derogation submission is necessary.*

It is noted that Natural England's (NE) comments at Q5.1.3 [REP2-009] are qualified at the end of their comment "... (AEoSI) that are not referenced within our RR".

Following NE's Relevant Representations [RR-012] the Applicant provided information (at Procedural Deadline B) and NE confirmed that a number of the issues set out in the RR-012 had been resolved, and that where there were issues remaining these appeared to be resolvable, with further information from the Applicant. The issues that remained outstanding (as of 18 December 2025), related to:

- i) securing a long-term management conservation body, and
- ii) ii) NE's concerns regarding potential in combination effects which may occur as a result of the Runcorn CO2 spur pipeline.

The Council is concerned that the Applicant is stating that a conclusion of no Adverse Effect on the Integrity on the Mersey Estuary SPA and Ramsar site has been reached before the above matters have been resolved.

In addition, it is noted that the Examining Authority has recently produced a Rule 17 letter, which requests that Natural England and RSPB provide an opinion on 'no' Adverse Effect on the Integrity of the adjacent Special Protection Area, indicating that the matter is not resolved.

In NE's response to the ExA's first questions [REP2-009] 19 January 2026, NE comment in relation to the NBBMA (Q4.4.2) that 'Overall NE does not consider the use of the "*Cleve Hill approach as a robust approach for the development and so it cannot be relied upon*". Detailed reasons are provided for this conclusion. Notwithstanding NE's reply in relation to the Cleve Hill approach, NE has confirmed being "*satisfied that the NBBMA will provide adequate mitigation via an uplift in habitat quality*". This advice is subject to the NBBMA being managed by an appropriate conservation body and Adaptive Management Plan within the NBBMS. In response to Q5.1.5 NE relating to in-combination assessment, the outstanding matters were continued to be highlighted; and in response to Q5.2.1 NE refer to the remaining main concern regarding the NBBMS and securing a conservation body.

The Applicant's draft Statement of Common Ground with Natural England (P02) (Jan 2026) [REP3-036] Table 1 provides details of consultation between the Applicant and NE, and the last entry refers to discussion on various remaining points including reference to '*agreement on no requirement for derogation report*'. It is not clear whether this means that Natural England have agreed this point, or that the Applicant was summarising discussions. Note: The date of the meeting/entry (26 February 2026) appears to be a typographical error. The entries in relation to 9. *Long-term management, Governance and Conservation Oversight* and 11. *In-combination and cumulative effects* indicate further work is needed by the Applicant, with NE noting that the Applicant continues to engage with RSPB in relation to the former and NE consider '*Overlaps may cause cumulative disturbance or affect NBBMA timing and function*' in terms of the latter.

A Summary of the Council's position on Adverse Effect on the Integrity of the Designated Site is as follows:

As indicated in the Council's covering letter to its Deadline 3 submission [REP3-045], having regard to NE's and Cheshire Wildlife Trust's [REP1-068] and [REP2-011]) comments/concerns in applying the Cleve Hill approach to Frodsham Solar, the Council is concerned that a robust approach to assessing whether there would be an Adverse Effect on Site Integrity (AEoSI) has not been demonstrated. . Although the Council agrees the existing NBBMA can be uplifted in habitat value for the qualifying species concerned, it has not been demonstrated, due to a lack of agreed methodology, that this would be enough to compensate for the loss of functionally-linked land and the qualifying bird species associated with it. Therefore, it cannot be demonstrated there is no Adverse Effect on Integrity of the designated site. If the

developable area were reduced to allow further retention of areas currently used by SPA species this would reduce the Council's concerns on this issue.

Further explanation from Natural England of the acceptability of the Applicant's approach in providing adequate mitigation without an accepted methodology for doing so, would be welcomed.

As previously represented by the Council at Deadline 3, it is considered that the NBBMS represents a strategy of compensation, rather than mitigation. This is demonstrated by the proposal for wholesale loss and reinstatement of the existing NBBMA, as well as loss of functionally linked land in Cells 1, 2 and 5 (including existing Frodsham Wind Farm "mitigation" cells). Where adverse effects on the integrity of one or more of the internationally important sites cannot be avoided or mitigated, a successful derogation case will be necessary for the development to proceed. This includes satisfying the following legal tests:

- There are no feasible alternative solutions that would be less damaging or avoid damage to the site(s);
- The proposal needs to be carried out for imperative reasons of overriding public interest; and
- The necessary compensation measures can be secured.

The Council suggested amendments to the project as set out in Section 5 of the Council's Written Representations [REP1-048]. These amendments may be significant in relation to consideration of the first of the three legal tests (relating to whether there are feasible alternative solutions) if the ExA concludes that the integrity test is not passed, and a derogation stage is required.

The Council sets out comments regarding the Habitat Regulations Assessment in paragraphs 4.84 to 4.86 of its Written Representations [REP1-048]; and paragraphs 14.3 to 14.7 of the Local Impact Report (LIR) [REP1-046]. The reduction in available Functionally Linked Land (FLL) being a key factor, along with disruption to flight paths.

In REP3-046 (the Council's response to the Applicant's response to relevant representations [PD2-027]) various concerns with the information to inform the Habitats Regulations Assessment [APP-125 and PD2-009] are raised.

The Council has yet to consider the latest version of the information to inform the Habitats Regulations Assessment [REP3-004] submitted at Deadline 3.

The Council's covering letter to the Deadline 3 submission [REP3-045] also highlighted issues with the cumulative and in-combination impacts of the proposed development; and the Technical Note on Pipeline Interactions [REP1-041]. The Council noted its concerns over the appropriateness of imposing planning conditions to link the programmes for Frodsham Solar and the Runcorn CO2 spur pipeline to avoid significant EIA effects, and that an alternative control (e.g. legal agreement) would be needed.

In suggesting the amendments referred to above, the Council's aim has been to follow the HRA principles and work with the Applicant to find a way for development consent to be granted while still protecting the European site. The HRA guidance (referred to in the Rule 8 letter) is to take a precautionary approach at each stage of the HRA process.

The Council remains concerned that an adverse effect on the European site's integrity cannot be ruled out beyond all reasonable scientific doubt.

## **Other matters**

At Deadline 3 the Council's submissions noted that further comments would be forthcoming in relation to a number of the documents that it had not been able to review fully in time for Deadline. Given the Applicant's submission of further iterations of several of the documents at Deadline 3, the Council's intention is to provide comments back at Deadline 4.

The Council and the Applicant are in discussion on the draft statement of common ground (SOCG) and a revised draft with details of comments in relation to the Articles and Requirements for the draft DCO is being prepared.

The Council will continue to progress discussions with the Applicant to resolve outstanding matters.

## **Compulsory acquisition hearing (CAH1) – Registration to observe only**

*Tuesday 24<sup>th</sup> February 2026 – AM*

- In person (to observe only) - [REDACTED] (Principal Planning Officer), [REDACTED] (Solicitor).

## **Issue specific hearing 2 (ISH2) – Registration and participation in the hearings**

The Council's team at the hearings will include the following:

*Tuesday 24<sup>th</sup> February 2026 – PM*

- In person - [REDACTED] (Principal Planning Officer), [REDACTED] (Solicitor), [REDACTED] (Asset Management Officer – PRow/ Highways) and [REDACTED] (Team Leader Asset & Network – Highways)

Attending as statutory party and intending to contribute as necessary on the agenda items/topics:

- Fire risk, safety and security • Traffic and Transport • Non-motorised users and Public rights of way (PROW)

*Wednesday 25<sup>th</sup> and Thursday 26<sup>th</sup> February 2026*

- In person - [REDACTED] (Principal Planning Officer), [REDACTED] (Solicitor), [REDACTED] (Principal Natural Environment Officer (Team Leader)), [REDACTED] (Landscape Architect) and [REDACTED] (Senior Environmental Protection Officer)

Attending as statutory party and intending to contribute as necessary on the agenda items/topics:

- Biodiversity and Ecology (including HRA aspects) • Green Belt • Ground conditions (agriculture, soils, land use, contaminated land, minerals) • Landscape and Visual (including good design) • Water Environment (water quality, resources, flooding, drainage) • Other planning matters.

Yours faithfully

  
*Principal Planning Officer*

