

**Response to The Examining Authority's Second Written Questions by National Highways Limited
Application by Frodsham Solar Ltd for an Order granting Development Consent for the Frodsham Solar Farm
Planning Inspectorate Reference Number: EN010153**



National Highways has extracted from the Examining Authority's Second Written Questions those questions which are addressed to National Highways. National Highways has used the same format table as issued by the ExA with its response provided under each relevant question.

Q2.1.1	The applicant, All Interested Parties (IPs)	<p>Solar Roadmap 2025</p> <p>The applicant and all interested parties are invited to make any comments or representations about the Solar Roadmap 2025 and its applicability and implications for the proposed development. This is across all topics but, most notably, the areas of need, alternatives and waste management are likely to require some explanation and commentary.</p>
<p>National Highways response: National Highways has no comment to make on the Solar Roadmap 2025. It does not contain reference to the Strategic Road Network, nor does it discuss matters such as highway connections or traffic implications from the development of solar farm sites.</p>		
Q2.9.4	NH	<p>BESS and the Battery Safety Management Plan</p> <p>Are you content with the amendment to Requirement 7 (Battery Safety Management) in [REP4-004]?</p>
<p>National Highways response: National Highways is content with the wording of Requirement 7. It is important for the safety of the two bridge structures that should either of them be required as access routes, that they are assessed as per the Design Manual for Roads and Bridges. With National Highways being a consultee regarding the approval of the Battery Safety Management Plan, this gives us the satisfaction required that the bridges can and will be assessed as required.</p>		
Q2.10.5	NH	<p>Protective Provisions</p> <p>Having regard to your position in respect of the Brook Furlong and Weaver Lane bridges, are you content with the Protective Provisions for the Protection of National Highways Limited at Schedule 27 of the dDCO [REP4-004]?</p>
<p>National Highways response: National Highways has undertaken further negotiations with the Applicant in relation to the Protective Provisions for the Protection of National Highways and has come to an agreement as to the form. For completeness, the Protective Provisions for the Protections of National Highways which National Highways expects to see on the face of the Order can be found below in Annex 1.</p>		

Q.2.11.1	All interested parties and Statutory Undertakers	<p>Residual issues with the dDCO</p> <p>The DCO [REP4-004] has been updated and progressed over the past few deadlines. A proportion of what has been requested by interested parties has been included in the Order, another proportion has been addressed through the updating of associated management plans and other elements the applicant has resisted with reasons. Under this question, please: 1) Outline any remaining or residual issues that you have with any articles, requirements or schedules of the dDCO. 2) Set out why the applicant has not yet resolved your concerns or why you are not content with the applicant's justification. 3) Define what remedy or solutions are available to meet your satisfaction and explain (make your case) as to why the applicant, ExA and SoS should consider such amendments to the DCO.</p>
<p>National Highways response: The Applicant has agreed to add National Highways as a consultee to Requirements 9 (Landscape and Ecology Management Plan) and 15 (Public Rights of Way) at Deadline 5 and we look forward to seeing this reflected through the updated drafting of the draft DCO.</p> <p>The Protective Provisions for the Protection of National Highways are now in an agreed form and are appended at Annex 1, for ease of reference. The Applicant will be updating the draft DCO to reflect the agreed position at Deadline 5.</p>		

Annex 1

SCHEDULE 27 Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

1. (1) The provisions of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2. —(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Schedule—

“National Highways” means National Highways Limited (company number 09346363) whose registered office is at Three Snowhill, Snow Hill Queensway, Birmingham, B4 6GA;

“DBFO contract” means the design build finance operate contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and “road space bookings shall be construed accordingly”;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures, drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority.

“structural assessment” means the process of evaluating the structural capacity and performance of an existing highway structure to determine its ability to safely sustain the current or proposed loads and actions proposed by the undertaker pursuant to paragraph 7 of this Schedule, in accordance with the requirements of the DMRB, including but not limited to CS 451 to CS 454 and the technical approval procedures set out in CG 300. This process may include structural analysis,

review of inspection and condition data, verification of material properties, and consideration of applicable load models and safety factors to determine whether the structure is adequate for the intended use or whether mitigation or protective measures are required. Where required under CG 300, the assessment methodology, assumptions and outcomes shall be subject to the relevant technical approval procedures; and

“structural review” means a formal engineering appraisal of an existing highway structure undertaken in accordance with DMRB CS 451 to determine whether a structural assessment is required and, where such assessment is required, to evaluate the adequacy of the structure for current and reasonably foreseeable future loading proposed by the undertaker pursuant to paragraph 7 of this Schedule and to confirm whether the structure can safely remain in service for its intended use, thereby to support decisions on future maintenance interventions.

General

3.—In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Schedule but for the purposes of any approvals required under this Schedule the undertaker shall liaise directly with National Highways.

4.—Notwithstanding the limits of deviation permitted pursuant to article 4(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

5.—References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Works

7.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 4 (development consent etc. authorised by this Order);
- (b) article 6 (power to maintain the authorised development);
- (c) article 9 (street works);
- (d) article 10 (power to alter layout, etc. of streets);
- (e) article 11 (construction and maintenance of altered streets);
- (f) article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way);
- (g) article 14 (access to works);
- (h) article 16 (traffic regulation measures); and
- (i) article 17 (discharge of water);

over any part of the strategic road network without the written consent of National Highways, and National Highways may in connection with any such consent require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.

(2) The undertaker must not exercise the powers conferred by article 13(11) (permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way) or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge which carries Brooks Furlong over the M56 motorway unless and until—

- (a) a structural review of the bridge which carries Brooks Furlong over the M56 motorway has been carried out at the undertakers expense to ascertain whether the proposals under article 13(11), or the use by emergency vehicles of the bridge (as appropriate), can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;
- (b) if a structural review carried out pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and
- (c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(11) being able to be utilised, or emergency vehicles usage of the bridge can be proposed (as appropriate), and the undertaker still determines that it wishes to use the powers in article 13(11) or propose emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(3) The undertaker must not exercise the powers conferred by article 13(3), (4), (5) or (6) (permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way) or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge that carries Weaver Lane over the M56 motorway unless and until—

- (a) a structural review of the bridge which carries Weaver Lane over the M56 motorway has been carried out at the undertakers expense to ascertain whether the proposals under article 13(3) (4), (5) or (6) , or the use by emergency vehicles of the bridge, can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;
- (b) if the structural review carried out pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and
- (c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(3), (4), (5) or (6) being able to be utilised, or emergency vehicle usage of the bridge can be proposed, and the undertaker still determines that it wishes to use the powers in article 13(3), (4), (5) and (6) or propose emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(4) Any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or (3)(b) must not take place until the undertaker has entered into a bridge agreement with National Highways.

(5) Where a bridge agreement has been entered into, this shall be considered to constitute National Highways' consent, for the purposes of sub-paragraph (1), in respect of the use of the powers listed in that sub-paragraph in relation to the works that are the subject of the bridge agreement.

(6) In this paragraph "bridge agreement" means an agreement setting out how any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or sub-paragraph (3)(b) are to be carried out, maintained and paid for, such agreement to be entered into at the undertakers expense and subject to terms and conditions imposed at National Highways' absolute discretion but which must be relevant to the works to be undertaken.

Land

8.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 18 (protective works to buildings);
- (b) article 19 (authority to survey and investigate the land);
- (c) article 21 (compulsory acquisition of land);
- (d) article 23 (compulsory acquisition of rights);
- (e) article 26 (acquisition of subsoil or airspace only);
- (f) article 29 (rights under or over streets);
- (g) article 30 (temporary use of land for constructing the authorised development);
- (h) article 31 (temporary use of land for maintaining the authorised development); and
- (i) article 39 (felling and lopping of trees and removal of hedgerows);

over any part of the strategic road network or in respect of any other land owned by National Highways or extinguish any existing rights or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(2) Article 24 (private rights) and article 27 (power to override easements and other rights) do not apply to the strategic road network, unless requested to and approved in writing by National Highways.

(3) Article 46 (procedure in relation to certain approvals etc.) does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions under this Schedule.

Indemnity

9.- The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from or in connection with the exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Expert Determination

10.—(1) Article 42 (arbitration) of the Order does not apply to this Schedule.

(2) Any difference under this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
 - (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
 - (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.
- (6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).
- (7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.