



Planning Inspectorate

## Fosse Green Energy - EN010154

### Fosse Green Energy Limited

## Section 51 advice regarding draft application documents

Issued on 13 June 2025

On 14 May 2025 Fosse Green Energy Limited submitted the draft documents listed in the tables below for review by the Planning Inspectorate as part of its ['Pre-application Service'](#).

1. Front End DCO
2. Front End Consultation Report
3. Works Plans
4. Land Plans
5. Book of Reference

The advice recorded in the tables below relates solely to matters raised from the Planning Inspectorate's review of the draft application documents, the documents have **not** been checked for all typographical or cross-referencing errors, the applicant is reminded to undertake such checks prior to submission. The advice is limited by the maturity of the documentation provided by the applicant and the time available for consideration and is raised without prejudice to the acceptance decision, the decision about admission to the fast track procedure (where relevant) or the final decision about whether development consent should be granted. The applicant has been given the opportunity to comment on the Planning Inspectorate's draft record of advice before it was published.

Draft Development Consent Order (DCO)		
Ref No.	Article/ Schedule/ Requirement	Comment or question
1.	General: Drafting	<p>Given that the applicant has provided an incomplete version of the draft DCO, the Inspectorate has not been able to provide a complete review or comment on whether it is of a satisfactory standard. However, the applicant is reminded of paragraphs 3 and 22 of the <a href="#">DCLG: Application form Guidance</a>, which states:</p> <p><b>para 3</b> - “The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6”.</p> <p><b>para 22</b> - “A draft Development Consent Order is to be prepared by the applicant. This is to contain provisions relating to all the development work for which development consent is required, any associated development, any ancillary matters and any powers sought under the Planning Act regime which the applicant considers are necessary to construct and operate the proposed development. The Explanatory Memorandum should explain the purpose and effect of the provisions in the draft Development Consent Order”.</p> <p>We note upon review of the dDCO that there are some sections, schedules, and articles (etc) missing and would therefore encourage the applicant to have regard to the above guidance prior to submission of their DCO application.</p> <p>The DCO should be:</p> <ul style="list-style-type: none"> <li>in the form of a validated Statutory Instrument (SI) template <a href="#">which is publicly available on the UK Legislation Publishing website (National Archives)</a>, with evidence provided of validation.</li> </ul>

Draft Development Consent Order (DCO)		
Ref No.	Article/ Schedule/ Requirement	Comment or question
		<ul style="list-style-type: none"> <li>• follow guidance and best practice for SI drafting (for example avoiding “shall/should”) in accordance with the latest version of guidance from the Office of the Parliamentary Counsel</li> <li>• follow best practice drafting guidance from the Planning Inspectorate and the Departments in <a href="#">Advice Note 15</a> – <i>Drafting development consent orders</i></li> <li>• fully audited to ensure that there are no inconsistencies within the DCO and its constituent parts such as definitions or expressions in the articles, requirements, protective provisions, other schedules and any book of reference and/or any deemed marine licence, that all legislative references in the DCO are to extant provisions and all schedules refer to the correct articles.</li> </ul>
2.	<b>General: Precedent</b>	<p>Notwithstanding that drafting precedent has been set by previously made DCOs, full justification should be provided for each power/provision taking account of the facts of this particular DCO application.</p> <p>Where drafting precedents in previously made DCOs have been relied on, these should be checked to identify whether they have been subsequently refined or developed in the most recent DCOs so that the DCO provisions reflect the Secretary of State’s current policy preferences. If any general provisions (other than works descriptions and other drafting bespoke to the facts of this particular application and DCO) actually differ in any way from corresponding provisions in the Secretary of State’s most recently made DCOs, an explanation should be provided as to how and why they differ (including but not limited to changes to statutory provisions made by or related to the Housing and Planning Act 2016).</p>
3.	<b>General: Flexibility</b>	<p>The extent of any flexibility provided by the DCO should be fully explained, such as the scope of maintenance works and ancillary works, limits of deviation and the ability (through tailpieces in requirements) of discharging authorities to authorise subsequent amendments.</p> <p>The preferred approach to limiting this flexibility is to limit the works (or amendments) to those that would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.</p>

## Draft Development Consent Order (DCO)

Ref No.	Article/ Schedule/ Requirement	Comment or question
		<p>The drafting which gives rise to an element of flexibility (or alternatives) should provide clearly for unforeseen circumstances and define the scope of what is being authorised with sufficient precision.</p> <p>In relation to the flexibility to carry out advance works, any “carve out” from the definition of “commencement” should be fully justified and it should be demonstrated that such works are de minimis and do not have environmental impacts which would need to be controlled by requirement. See section 5.3 of Advice Note 15.</p> <p>The drafting of the requirements should reflect Advice Note 15 and the <a href="#">Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects</a>.</p>
4.	<b>Interpretations</b>	All mentions of ‘Framework’ should be replaced with ‘Outline’ for consistency e.g. change Framework Soil Management Plan to Outline Soil Management Plan to be consistent with Outline Travel Plan.
5.	<b>Interpretations</b>	Human Rights Act 1998 should be included due to the CA powers being sought in Article 20.
6.	<b>Article 3</b>	Should include ‘consent for or power to construct associated development.’
7.	<b>Article 8</b>	The power sought appears to be limited in scope especially as it omits power to ‘alter or renew apparatus’, remove or use all earth and materials in or under the street, ‘demolish, remove, replace and relocate any street furniture within the street’, ‘execute and maintain any works to provide hard and soft landscaping’.
8.	<b>Article 10</b>	The power sought seems to be limited in scope, particularly as it does not include power to execute any works of surfacing or resurfacing of the highway, execute any works necessary to alter or provide facilities for the management and protection of pedestrians, ‘remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses.’
9.	<b>Interpretations</b>	The 1991 Act - Does not have the corresponding article specifying the powers sought under ‘The Application of the 1991 Act’.

## Draft Development Consent Order (DCO)

Ref No.	Article/ Schedule/ Requirement	Comment or question
10.	Article 13	Claimed public rights of way should be amended to read 'Stopping up of public rights of way'.
11.	Article 14	The phrase "the locations specified in Schedule 7 (access to works)" – the applicant needs to confirm that these works would take place within the Order Limits and ensure that it is stated as such in this article.
12.	Article 17	Should have been complemented with another article dealing with the applicant's responsibility for the maintenance of any works connected with the drainage of land.
13.	Article 17	The 28 days deadline for consent seems restrictive as local authorities are generally allowed up to 2 months. Perhaps 42 days minimum deadline would be reasonable.
14.	Article 19	The 28 days minimum deadline for consent seems restrictive as local authorities are generally allowed up to 2 months. Perhaps 42 days deadline would be reasonable.
15.	Article 31	Paragraph 3 - the applicant needs to consider also a complementary power relating to the extent of notice required for temporary possession where a potential risk to the safety of the authorised and/or associated development, the public or surrounding environment has been identified, perhaps like that in paragraph 1a.
16.	Part 6	The applicant should consider adding 'Crown rights'.

## Draft sample land plans

Ref No.	Plan Name and Ref	Comment or question
1.	All Plans	Red line boundaries should be surrounding each plot, instead darker grey lines are used which can make roads/tracks unclear to the untrained eye.
2.	All plans	No landmarks listed i.e. road names, building names, river/lake names so it is not clear where each area is or what the land features are.
3.	All plans	Where plots go across sheets its not clear where the plot boundary is as they appear to become new plot numbers on the new sheet e.g. plots 1/10 and 2/2 do not appear to have a line to separate the boundary and this appears to be the same for all plots crossing sheets.
4.	All plans	No temporary acquisition of land plots listed in the key or plans.
5.	<b>Sheets 5 and 6 Plots 5/16, 5/17, 6/1</b>	Its not clear where the boundaries are, as there are no dark lines splitting the plots. Additionally, the plot number change on the next sheet, when it appears that it should be the same plot of land (given that there is no demarcation separating them except the sheet number).
6.	<b>Sheet 10. Plots 10/1, 10/2, 10/3</b>	It might be helpful to the public if this section was magnified, as it is a small area on the edge of the sheet.
7.	<b>Sheet 10 Plots 10.5/10.6</b>	The Book of Reference states 10/5 is not in use but the land plan is using this plot. 10/6 appears to be the one not in use.

Draft sample works plans		
Ref No.	Plan Name and Ref	Comment or question
1.	All Plans	For ease of clarity the applicant may wish to include within the legend of the sheet a “Location plan” reflecting the position of “x” sheet in relation to the overall scheme.
2.	All Plans	<p>The draft Works Plans do not appear to meet the requirements of Regulation 5(2)(j)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 as the draft Works Plans do not clearly show the limits of deviation (dDCO includes no schedules, so we have been unable to cross check this).</p> <p>Limits of deviation are not represented in the legend shown on the Draft Works Plans. Overall, it is unclear where limits of deviation apply to individual works.</p>
3.	All Plans	Each work should have a clear and accurate description, and it must appear on the sheet as described in the dDCO (unable to check against dDCO as no schedules have been included).

Draft consultation report, including section 42 consultee list		
Ref No.	Paragraph/ Section	Comment or question
1.	General	Having made a general check of the document, the quality and content appears suitable indicating compliance with the Planning Act 2008 – s37 (3)(c) and (7), ss42-50 and s55(4)(a) and APFP Regs 3 and 4. However, we are unable to check the content thoroughly as the report appendices have not been included with the submission. Therefore, we were unable to ascertain whether the applicant has complied with its pre-application consultation duties, given that various sections of the consultation

**Draft consultation report, including section 42 consultee list**

Ref No.	Paragraph/ Section	Comment or question
		report are currently incomplete. Sections 7-11 have also not yet been drafted. Tables are also not yet numbered.

**Draft book of reference (BoR)**

Ref No.	Page/ Plot Ref	Comment or question
<b>1.</b>	<b>339</b>	Plot 14/5 should be labelled as not in use.