



**North Kesteven**  
DISTRICT COUNCIL

**Application by Fosse Green Energy Ltd for an  
order granting development consent for the Fosse  
Green Energy solar farm**

**Post - Hearing Submissions in  
relation to ISH2:  
Comments on the Draft  
Development Consent Order**

**by North Kesteven District Council  
(ID FD1E96A6C) for Deadline 1**

**NKDC reference: 23/0325/NSIP**

**Planning Inspectorate reference: EN010154**

**January 2026**

Provision	Council comments
<p>Article 2 interpretation + Sch2 Requirements: 'Date of final commissioning'</p>	<p>The 'date of final decommissioning' is defined as the date that each 'part' of the Authorised Development commences operation by generating electricity on a commercial basis. This is problematic for the following reasons:</p> <ol style="list-style-type: none"> <li>1. 'Part' is not defined, and does not appear to mean 'Work'. 'Part' could effectively mean whatever the Undertaker decides.</li> <li>2. This Article is arguably incoherent. 'Part' could, for instance, mean the Authorised Development as a whole or, alternatively, just anything within Work No. 1 that generates electricity. Other Work or parts do not in themselves generate electricity, and hence cannot have a 'date of final commissioning'</li> <li>3. It would appear to follow that there is no required date for decommissioning per Sch. 2 Requirement 20 for any part other than Work No. 1 – because the deadline for the commencement of decommissioning is dependent on the date of final commissioning</li> <li>4. Work No.1 itself could have several decommissioning deadlines, as there may be several different 'dates of final commissioning' if Work No.1 is done in 'parts'</li> <li>5. The consequent implication is that the operational lifespan of the development could be well beyond 60 years assessed in ES etc</li> <li>6. It is also possible that there would be disagreement over what constitutes a 'part', and hence what the relevant date for decommissioning should be. It is not clear how those disputes would be resolved.</li> <li>7. The Council suggests an amendment to the definition as follows:</li> </ol> <p style="text-align: center;"><i>'date of final commissioning' means the date on which <u>the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing</u></i></p>
<p>Article 2 interpretation: 'maintain'</p>	<p>In Article 2, 'maintain' is defined as including replacement of any part of the development, save for replacement of the whole of Work No.1 at the same time. The following points arise:</p> <ol style="list-style-type: none"> <li>1. What does 'at the same time' mean?</li> </ol>

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	<ol style="list-style-type: none"> <li>2. Not 'the whole of' means that up to 99% replacement 'at the same time' would be permitted</li> <li>3. There is no cap on this, which means that potentially much more significant environmental effects may occur during the operational phase (e.g. construction-related and waste generation impacts) than are anticipated by the ES. Article 5(3) is inadequate in dealing with this because it is plain that significant replacement above 5% would have new/materially different effects and there is too much room for dispute over whether or not they are significant.</li> <li>4. The Council notes that the Examining Authority for the Springwell DCO examination proposed a cap on annual replacement at 5%, though this may prove problematic for the Fosse Green scheme which suggests a panel lifespan of 30 – 40 years and suggests but does not detail possible phasing of replacement works (<a href="#">APP-028</a>, Table 3-11 and paragraph 3.5.1).</li> <li>5. The Council suggests that a new Requirement is included in Sch.2 for details of a solar panel / array replacement and repowering strategy to be submitted to and approved by the Local Planning Authority and implemented as approved, with the proviso that implementation of the strategy should not have new or materially different effects from those assessed in the ES</li> <li>6.</li> </ol>
<p>Article 2 interpretation: 'permissive paths' and Requirement 17</p>	<p>Defined as 'new paths providing restricted public access within the Order limits along the routes shown on the framework landscape and ecological management plan'. This raises the following points:</p> <ol style="list-style-type: none"> <li>1. The definition as 'restricted' public access is considered opaque and inadequate. For instance, the path could comply with this by being open for only a few days a year</li> <li>2. The definition should set out clearly what permissive access is proposed including duration of permitted access</li> <li>3. Requirement 17 in Sch.2 of the draft DCO at present does not require the Undertaker to actually provide any permissive paths</li> <li>4. When coupled with the powers in the DCO to close any or all public rights of way (PRoW), this means that in theory there could be much greater impact on PRoWs than has been assessed in the ES</li> </ol>

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Article 2 interpretation: definitions of 'commence' and 'permitted preliminary works'	<p>It is noted that Requirement 11 in Sch.2 of the DCO adopts a different definition of 'commence' to that in Article 2, so as to avoid unassessed adverse effects on archaeological resources associated with preliminary works. It is noted that Advice Note 15 requires a reasoned justification in the Explanatory Memorandum, which the Council considers should be added to explain why this carve out has been made.</p> <p>However, the Council queries whether possible significant effects of other kinds may still occur as a result of preliminary works (e.g. noise, harm to protected species). The Council suggests that parts c), e), f) and h) are carved out of the definition of 'permitted preliminary works' in Article 2.</p>
Article 6 and Sch3 legislation disapplied	<p>The Council notes that Explanatory Memorandum (APP-019 ) only provides partial reasons for disapplication. More detailed explanation for each one is required.</p>
Articles 7, 9, 10 street works, permit scheme and altering layouts etc	<p>These are matters primarily for the ExA, National Highways and LCC as highway authority.</p> <p>However, the Council notes the power in Art.12 to close etc any street or PRow <i>anywhere</i> just because it is connected (even tenuously) with the Authorised Development. This seems extremely broad and hard to justify, especially as the term 'temporarily' is not defined or limited even by necessity or reasonableness.</p>
Article 13 stopping up Public Right of Ways	<p>The Council considers that the scope of this provision is extremely broad, giving power for any PRow inside the order limits to be permanently stopped up. Explanatory Memorandum (APP-019 ) 4.3.9 does not say why this is necessary or explain how the effect of possible complete loss of PRows has been assessed in the ES.</p>
Article 15 traffic regulation measures	<p>These are matters primarily for the ExA, National Highways and Lincolnshire County Council as Highway Authority. However, the Council and the ExA share a similar concern here about breadth of the power in relation to 'any road', and the and lack of justification provided.</p>

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Article 17 discharge of water	A typographical error has been made in Article 17 (8): missing 'or' after granted consent and before given approval.
Article 29 temporary use of land for constructing	The right to remain in possession is limited in time to 1 year from the date of final commissioning of that part of the Authorised Development for which possession has been taken. However, the Council notes that there is no restriction on when possession can originally be taken e.g. possession could be taken for a part that is then not constructed for 10 years or does not produce electricity so has no date of final commissioning.
Article 30 temporary use for maintaining	The Council has a similar query in relation to Article 30 – here the maintenance period is defined by ref to date of final commissioning. Query how it applies to parts that don't have such a date.
Article 35 consent to transfer benefit	Article 35 provides that the consent of the Secretary of State is not needed to transfer the benefit of the Order after the time limits for claims for compensation in relation to compulsory purchase have elapsed. The Council queries whether there would still be a need to be satisfied of a new Undertaker's credentials – not least in financial terms - after that point, given their responsibility for operation, decommissioning, and the exercise of very extensive statutory powers and privileges.
Article 40 trees subject to tree preservation orders	<p>The Council considers that this Article, which provides a power to override post-DCO TPOs, is unjustified. Also, there is concern that the obligation to replace trees under s.206 of the Town and Country Planning Act 1990 has been removed.</p> <p>The Council may see the need, on their merits, to make trees within the Order Limits subject to TPOs over the 60 year proposed lifespan of the development. The Council considers that Local Planning Authority approval should be required, with right of appeal in event of disagreement, so that there is a clearer requirement for dialogue over</p>

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	the necessity for and nature of works to trees subject to future TPOs; together with provisions for LPA involvement in replacement planting where necessary.
Article 46 approvals procedure (other than for Requirements)	The Council considers that the period for approval should be 10 weeks, as it is for Requirements - not 8 weeks as specified in Article 46 as currently drafted. This change would ensure consistency of approach and avoidance of confusion in the future. No justification has been provided as to why this period needs to be 2 weeks shorter than for the Requirements.
Article 47 guarantees in respect of payment of compensation	The Council queries why paragraph (2) of this Article does not apply to Articles 25 and 26 since compensation is payable under those provisions also.
Sch1 Authorised development	There appears to be a typographical error in 'mounting structure', with the definition having a missing 'be' after 'tracking and'
Sch1 Authorised development	The description of Work 1 should be amended to include buried cables.
Sch1 Authorised development	The Council notes the 'catch-all' after Work 9 (' <i>further associated development</i> ' connected with Work nos1 to 9), but queries whether item (j) <i>temporary footpath diversions and closures</i> is justified or necessary, given the other specific powers provided by the Order. Query then why yet another catch-all after that or why first cannot be dispensed with?
Sch2 Requirement 1:	Please see comments above in relation to this definition in Article 2.

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'date of final commissioning'	
Sch2 Requirements: 'substantially in accordance'	The Council is content with this wording. It is approved in case law (see Swire) and there is the protection that LPA has to approve details anyway. Therefore, gives it desirable latitude to accept minor variations which may be better.
Sch2 Requirements: 17 permissive paths	The Council seeks an amended so that it is cited as a relevant consultee – though (as set out above), the main issue is that this Requirement contains no express commitment to provide any permissive paths. Separately, the Council has made submissions in its LIR and WR seeking the dedication of permissive paths as PRoW.
Sch2 Requirements: 18 PROWs	The Council seeks an amendment so that it is a consultee on these details.
Sch2 Requirements: 20 decommissioning – New Requirement sought	<p>Please see comments above in relation to Article 2 and the definition of the <i>date of final commissioning</i>.</p> <p>The Council seeks an additional Requirement that a financial security is provided and put in place by an appropriate date in order to avoid risk that future operator may seek to avoid their obligations and liabilities – for instance by transferring the benefit of the Order to another party prior to the triggering of decommissioning Requirements. That may lead to a situation where the DCO benefit then sits with another party against whom it is not possible in practice to take effective enforcement action to deliver decommissioning in the appropriate manner.</p> <p>In that respect, the Council sees that as the operation of the development proceeds, over time the future financial returns will diminish until a point is reached whereby those future returns are less than the anticipated costs of decommissioning.</p>

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	<p>The Council considers that it is particularly important to guard against these risks in a situation such as this, where the future decommissioning date is over 60 years hence.</p> <p>The Council draws attention to DCO Requirement 5 for the Helios solar farm development, which reads:</p> <p><i>5(3) No later than year 15 of operation the undertaker must notify the local planning authority that the undertaker has put in place the requisite decommissioning security</i></p>
<p>Sch2 Requirements: - new Requirement sought</p>	<p>See above re Art2 and def of ‘maintain’</p>
<p>Sch2 Requirements: NEW CLAUSE RE NAVENBY</p>	<p>As set out in the Council’s Local Impact Report and Written Representation, the Council proposes a new Requirement that development must not commence unless and until the National Grid Navenby Substation (NGNS) has been granted planning permission.</p> <p>As the Applicant has acknowledged in discussion of alterations to the scheme, the case for the development on basis of the need for clean renewable energy cannot be supported without a sufficient grid connection, which in this case means the construction and bringing into operation of the NGNS. Without NGNS, it is clear the development would cause harm but not contribute towards meeting that need and would deliver no benefits.</p> <p>It is necessary therefore to ensure that development (including any harmful preliminary works) cannot be started and carried out unless and until planning permission has been granted at the very least.</p>

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	<p>The Council notes that the ExA for the Springwell Solar Farm appeared to agree that a Requirement was needed that precluded development and any permitted preliminary works until planning permission for NGNS had been granted.</p> <p>The Council suggests that a similar Requirement is likewise necessary and appropriate here - and also suggest it should be worded so as to provide for the possibility of a legal challenge to that permission.</p>
<p>Sch15 discharge of Requirements - Paragraph 4 Appeals</p>	<p>The Council notes that, whilst timetabling is a matter for the Planning Inspectorate, the 10 working days in paragraph 4.(2)(d) appears quite short within which to provide the required written representations or further information. The Council notes that The Planning Inspectorate Nationally significant Infrastructure Projects – Advice Note Fifteen: drafting Development Consent Orders contains in section 7. Appendix 1, of which paragraph 4(2)(d) is worded as follows:</p> <p style="text-align: center;"><i>the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal <u>within 20 business days</u> of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person</i></p> <p>It is also noted that the draft DCO does not include clear provisions and timings for counter-submissions. Paragraph 4(2)(e) of Appendix 1 of Advice Note 15) states that:</p> <p style="text-align: center;"><i>(e) the appeal parties shall make any counter-submissions to the appointed person within 20 business days of receipt of written representations under paragraph (d).</i></p> <p>Paragraph 4(8) in Sch.15 of the draft DCO also appears to contain a typographical error: should be ‘<i>unless proceedings for judicial review are brought</i>’ or similar.</p> <p>Paragraph (11) also appears to contain a typographical error: ‘award costs’ should be ‘<i>on the award of costs</i>’</p>

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	The relevant PPG for Appeals is now 2024, not 2014.
Sch15 discharge of Requirements	The Council seeks revisions to the fee structures, and refers the ExA to its comments on fee structure in its LIR at paragraphs 27.13 and 27.14
S106 obligations	Related to the DCO, the Council refers the ExA to its comments in its Local Impact Report on Biodiversity Net Gain monitoring fees; and funding for the Skills and Education package – see LIR paragraphs 27.15 – 27.17.