



Fosse Green Energy

EN010154

9.17 Written Summaries of Oral Submissions

Issue Specific Hearing 4

Planning Act 2008 (as amended)

Regulation 8(1)(k)

Infrastructure Planning (Examination Procedure)

Rules 2010

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Fosse Green Energy
Development Consent Order 202[]

9.17 Written Summaries of Oral Submissions Issue Specific Hearing 4

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Table of Contents

1.	About this document	1
1.1	Introduction.....	1
1.2	Attendees on behalf of the Applicant	1
2.	The Applicant's Summary of Case on Agenda Item 3.1	2
2.1	Agenda Item 3.1(a) – Article 2 (Interpretation).....	2
2.2	Agenda Item 3.1(b) – Article 5 (Power to maintain the authorised development)	4
2.3	Agenda Item 3.1(c) – Article 6 (Application and modification of statutory provisions).....	8
2.4	Agenda Item 3.1(4) – Article 38 (Planning permission).....	9
3.	The Applicant's Summary of Case on Agenda Item 3.2	11
3.1	Agenda Item 3.2(a) – Meaning of "part of the authorised development".....	11
3.2	Agenda Item 3.2(b) – Use of "substantially in accordance" phraseology.....	12
3.3	Agenda Item 3.2(c) – The effect of the OEMP.....	15
3.4	Agenda Item 3.1(d) – Requirement 20 (Decommissioning).....	16
3.5	Agenda Item 3.1(e) – Schedule 15 (Procedure for the discharge of requirements)	20
4.	The Applicant's Summary of Case on Agenda Item 3.3	23
4.1	Agenda Item 3.3(b) – Schedule 3 (Legislation to be disapplied).....	23
4.2	Agenda Item 3.3(c) – Schedule 14 (Protective Provisions)	23
	The Applicant's Summary of Case on Agenda Item 4.....	25
4.3	Agenda Item 4 – Any Other Business.....	25
5.	ISH4 Action List.....	27
	Appendix A – Action Point 1	28
	Appendix B – Action Point 2	29
	Appendix C – Action Point 3	30
	Appendix D – Action Point 4	31
	Appendix E – Action Point 6	32

1. About this document

1.1 Introduction

- 1.1.1 This document summarises the case put by the Applicant, Fosse Green Energy Limited (FGEL), at Issue Specific Hearing 4 (ISH4) on Friday 13 March 2026 for the Fosse Green Energy project (the Proposed Development).
- 1.1.2 The hearing opened at 10:00 on Friday 13 March 2026 and took place as a blended event, at LNER Stadium, Sincil Bank, Lincoln LN5 8LD and by virtual means using Microsoft Teams. ISH4 closed at 13:22 on Friday 13 March 2026. The agenda for the hearing **[EV6-001]** was published on the Planning Inspectorate's website on 3 March 2026 (the Agenda).
- 1.1.3 This note does not purport to summarise the oral submissions of other Interested Parties (IPs), and summaries of submissions made by other IPs are only included where necessary to give context to the Applicant's submissions.
- 1.1.4 The structure of this note broadly follows the order of the items set out in the Agenda. Numbered agenda items referred to are references to numbered items in the Agenda. It should be noted that although the items addressed at ISH4 followed the Agenda, the order in which these were addressed differed.
- 1.1.5 The Applicant's substantive oral submissions commenced at Item 3 of the Agenda. Therefore, this document does not address Items 1 and 2 of the Agenda, as these were procedural and administrative in nature. Agenda item 3.3(a) has been omitted from this written summary as it was addressed during the course of Issue Specific Hearing 3.

1.2 Attendees on behalf of the Applicant

- 1.2.1 Reuben Taylor KC, instructed by Womble Bond Dickinson (UK) LLP, appeared on behalf of Fosse Green Energy Limited, the Applicant.
- 1.2.2 The following individual also made submissions throughout the hearing on behalf of the Applicant:
- a. Ewan Sneddon, AECOM (Design / Scale of Development).
- 1.2.3 The following members of the Applicant's team were also present:
- a. Jamie Knott, Windel Energy Limited;
 - b. Gary Toomey, Windel Energy Limited;
 - c. Helen Heward, Recurrent Energy;
 - d. Keith McKinney, Fosse Green Energy Limited & Recurrent Energy;
 - e. Rachel Sykes, Womble Bond Dickinson (UK) LLP;
 - f. Phillippa Collins, Womble Bond Dickinson (UK) LLP; and
 - g. Vicki Redman, Womble Bond Dickinson (UK) LLP.

2. The Applicant's Summary of Case on Agenda Item 3.1

2.1 Agenda Item 3.1(a) – Article 2 (Interpretation)

Issue Discussed

Summary of Applicant's Oral Case

ExA: Addressing the definitions of “commence” and “permitted preliminary works”, and with reference to question DCO.2.09 of the Examining Authority’s Second Written Questions [PD-016] the ExA explained its concerns about the extensive list set and proposed three options as follows:

- (1) To have no permitted preliminary works and remove their definition in Article 2 of the dDCO; or
- (2) To have a shortened list of permitted preliminary works defined in Article 2, with those retained being justified in the EM [REP2-007]; or
- (3) To extend the use of exceptions in the relevant requirements to exclude preliminary works on a specific basis.

ExA: *The ExA asked if either LCC or NKDC had any comments in response to the Applicant's submissions.*

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ explained that, in light of the agenda item and the written question referred to by the ExA, the Applicant has carefully reviewed the interrelationship between the drafting in relation to the permitted preliminary works and recognises that further work is required to improve the mechanism. He added that the Applicant is currently refining a mechanism that identifies more precisely the relationship between the permitted preliminary works and the specific items with regard to when they may be brought forward to ensure that any necessary mitigation is provided in relation to those works. ██████████ noted that the solution that the Applicant is working on can be best described as falling into the third of the categories referred to by the ExA (and in the written question referred to).

██████████ submitted that the Applicant intends to incorporate the reworked mechanism to address those issues in the next iteration of draft DCO to be submitted at Deadline 3A.

LCC submitted that it was content to review the Applicant's updated drafting in due course and whilst not seeking to repeat its written submissions, noted that comments would be provided on the current extent of the permitted preliminary works in LCC's response to the Examining Authority's Second Written Questions [PD-016]. Reference was also made to the request for a requirement to restrict the commencement of the Proposed Development until such time as planning permission has been granted for the proposed Navenby Substation.

Issue Discussed

Summary of Applicant's Oral Case

NKDC submitted that a similar approach would be taken to that outlined by LCC and noted that NKDC looks forward to seeing the Applicant's proposed amendments on this point. It was further submitted that similarly to LCC, a lot of NKDC's concerns relate to works being undertaken prior to permission being granted for the proposed Navenby Substation.

Addressing ISH3 Action Point 18, which was for NKDC to clarify the current anticipated date for submission of the planning application for the proposed National Grid Navenby substation, NKDC submitted that on the basis of the most recent update, this is anticipated to be submitted on 27 April 2026.

(Note – the reference to ISH3 Action Point 18 relates to the list of action points set out in Applicant's Written Summaries of Oral Submissions at Issue Specific Hearing 3 [EN010154/EXAM/9.16] which is subject to confirmation from the ExA)

██████████ on behalf of the Applicant

██████████ noted that the ExA is aware of the Applicant's position with regards to the suggestion for the inclusion of a Requirement restricting the commencement of the Proposed Development until such time as planning permission has been granted for the proposed Navenby Substation as this had been provided in writing.

ExA: The ExA noted that whilst definitions are included in the draft DCO [REP2-005] for "holding company" and "subsidiary", these terms are not used in the drafting of the Order itself.

██████████ on behalf of the Applicant

██████████ explained that upon receipt of the agenda for this hearing [EV6-001] the Applicant had reviewed the draft Order [REP2-005] and noted that neither "holding company" nor "subsidiary" are used.

He submitted that the Applicant has therefore deleted these definitions from Article 2 and noted that these deletions would be reflected in the updated draft DCO [REP2-005] to be submitted to the Examination at Deadline 3A, 24 March 2026.

Issue Discussed

Summary of Applicant's Oral Case

██████████ also confirmed that the Applicant was undertaking a general review of the definitions set out in Article 2 of the draft DCO [REP2-005] to allow for the identification of any further redundant definitions.

ExA: The ExA asked whether LCC or NKDC had any general comments on the definitions set out in the draft DCO.

Neither LCC nor NKDC had any comments on this point.

2.2 Agenda Item 3.1(b) – Article 5 (Power to maintain the authorised development)

Issue Discussed

Summary of Applicant's Oral Case

ExA: The ExA noted a number of concerns in relation to Article 5 (Power to maintain the authorised development). With reference to section 3.5.1 of Chapter 3: The Proposed Development of the ES [REP1-015], the ExA noted that a general description of maintenance is provided which refers to full scale replacement of the solar PV panels and the BESS being undertaken during the operational lifetime of the Proposed Development, but through a phased approach. The ExA sought an explanation from the Applicant as to the assumptions upon which the assessment in relation to maintenance was undertaken as part of the Environmental Statement with particular reference to traffic figures.

██████████ on behalf of the Applicant

██████████ explained that in order to assess the likely effects of the replacement of the solar PV modules, the Applicant looked at the likely scenario for an operator seeking to replace panels. He noted that the focus would be on continued generation during replacement and as such, an operator would not seek to replace the whole of Work No. 1 at the same time as this would result in a temporary halt of generation from the Proposed Development which would not be cost efficient or make commercial sense.

Turning to the assumptions for transport numbers, ██████████ explained that the Applicant looked at the materials which would be required for replacement, split this across a number of years and assessed this in the Environmental Statement. He explained that the same principles were then applied to the topic areas assessed in the Environmental Statement.

██████████ on behalf of the Applicant

Issue Discussed

Summary of Applicant's Oral Case

████████ explained that the assessment set out in the Environmental Statement demonstrates that maintenance activities are expected to generate a peak of around 20 HGVs (or 40 two-way HGV movements) per day and around 20 staff car trips (40 two-way movements) per day, although he noted that maintenance activities would be over a longer period and are therefore likely to be less. He also noted that no abnormal invisible loads are anticipated to be required for these maintenance activities. In order to provide context, █████████ explained that these vehicle movements represent approximately 40% of the HGV activity and approximately 10% of car/LGV movements generated during the peak construction of the Proposed Development.

Furthermore, █████████ explained that in light of these concerns the Applicant recognises that the provision of further detail in the Framework Operational Environmental Management Plan [REP2-015] is required in order to address this point. He submitted that as set out in paragraph 2.3.3 of the Framework Operational Environmental Management Plan [REP2-015], every 12 months from the date of final commissioning, before undertaking the maintenance for the year ahead, the Applicant will submit a planned maintenance schedule to the relevant planning authorities. He noted that this states that, excluding unforeseen emergencies and unless otherwise agreed with the relevant planning authorities, the Applicant will not undertake maintenance activities outside of the planned maintenance schedule. █████████ explained that these maintenance schedules will reduce the monitoring responsibilities being assumed by the local authorities in terms of the effects that might occur as a result of maintenance activities.

████████ explained that in essence, the Applicant is seeking to use the Operational Environmental Management Plan to limit the scope of the maintenance activities, particularly in relation to vehicular movements, by reference to parameters. He explained that the Applicant is effectively seeking to utilise the Rochdale envelope approach for maintenance activities and to ensure that there no wholesale replacement (noting that this is not intended) and to ensure that all maintenance activities fall within the parameters assessed in the Environmental Statement.

With regard to the points he had set out, █████████ submitted that the Applicant's proposed amendments to the Framework Operational Environmental Management Plan [REP2-015] would be sufficient, and that no amendments would be required to the draft DCO [REP2-005].

Issue Discussed

Summary of Applicant's Oral Case

ExA: The ExA asked the Applicant to confirm that traffic assumptions were for a phased replacement as opposed to other maintenance

██████████ on behalf of the Applicant

██████████ confirmed that the assumptions were based on phased replacement.

ExA: With regards to the amendments to the Framework LEMP, the ExA asked if the Applicant was intending to set out parameters for the scale of replacement in any given year.

██████████ on behalf of the Applicant

Whilst ██████████ explained that the Applicant was not currently considering this, he reassured the ExA (and other parties in attendance) that the amendments already discussed will tie the parameters to precisely what has been assessed. However, he noted that the Applicant would consider the suggestion.

The ExA noted that an idea of phasing or timescales would be beneficial to LCC and NKDC.

ExA: The ExA noted that the Framework OEMP does not require proposed maintenance activities to be approved by the relevant planning authority and asked whether the amendments would require the Applicant to seek such approval.

██████████ on behalf of the Applicant

██████████ explained that the Applicant is not intending to provide for approval from the relevant planning authority as the parameters of maintenance are to be tied directly to what has been assessed and set out in the Environmental Statement. Therefore, approval is not required for something that will have already been approved through the EIA assessment and DCO process.

ExA: *The ExA asked if either LCC or NKDC had any comments in response to the Applicant's submissions.*

NKDC submitted that it would review the amendments proposed by the Applicant and noted that given the Applicant has assessed for broad phasing of replacement activities, the approach set out by the Applicant seemed reasonable.

LCC submitted that it had similar concerns owing to the breadth of the definition of maintain, but noted that provided a maximum parameter is going to be secured either on the face of the draft Order or in the Framework Operational Environmental Management Plan [REP2-015], this would be sufficient. Whilst noting that a cap on the percentage of replacement panels was required for the proposed Springwell Solar Farm (PINS Reference: EN010149), LCC explained that provided a mechanism was implemented to secure the maximum parameters of maintenance activities, such a restriction would likely not be required.

Issue Discussed

ExA: The ExA noted that the detailed OEMP(s) would be submitted to the relevant planning authority for approval. with reference to question DCO.2.01 of the Examining Authority's Second Written Questions [PD-016] the ExA confirmed that it would still like to see the requested 'dummy' maintenance schedules.

An IP submitted that it had concerns that there was confusion as to the difference between maintenance and decommissioning as replacing the panels may result in effective "re-commissioning" of the Proposed Development. The IP noted that if new technology emerges within three years of commissioning of the Proposed Development, it would result in a significant level of maintenance which would make it difficult for the relevant planning authority to enforce in respect of the control of impacts such as noise, vibration and traffic.

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

██████████ confirmed that the Applicant was preparing the 'dummy' maintenance schedules for submission to the Examination. He noted that the Applicant appeared to be on the same page as LCC and NKDC and was hopeful that the amendments proposed would allow the parties to reach agreement on this point.

The ExA explained that it understood the annual maintenance schedules will identify routine years but as the mid-point of the operational lifetime of the Proposed Development is reached, large-scale replacement would commence. The ExA asked if the Applicant could give an indication of the capital value of the panels relevant to the value of the Proposed Development, noting that if these were 20% – 25% of the capital value, it would not make commercial sense to replace these unnecessarily.

Ewan Sneddon on behalf of the Applicant

██████████ explained that the panels constitute approximately 25% – 30% of the cost of the Proposed Development and therefore, once they are installed and functioning, they are essentially "free" meaning there would be no incentive to constantly change the panels unnecessarily. He explained that whilst there would likely be a need to replace panels as a result of failures, these would be replaced using spares stored on site. As spares would be stored on site, no regular vehicle movements would be required for ad hoc panel replacement, aside from between accesses.

██████████ explained that once the stock of panels stored on site was depleted, it would be replenished with another batch of panels delivered by a single HGV. He explained that whilst the solar PV modules do degrade over time, they tend to have a 30-year power performance warranty guaranteeing performance for 30 years, meaning that the Applicant would look to commence the phased replacement of the panels around this time. ██████████ explained that this warranty tends to be exceeded, hence the Applicant requires flexibility as to precisely when phased replacement is undertaken. He noted that it is not anticipated large-scale replacement would be required prior to the

Issue Discussed

Summary of Applicant's Oral Case

30-year mark and that the Applicant would be required to give the relevant planning authority advance notice of its proposals.

Post-Hearing Note – The Applicant would like to clarify that the cost of panels forms a smaller portion than stated, i.e., 15% - 20%, however the labour costs of undertaking the works increases costs to 25% to 30%.

2.3 Agenda Item 3.1(c) – Article 6 (Application and modification of statutory provisions)

Issue Discussed

Summary of Applicant's Oral Case

ExA: Turning to Article 6 (Application and modification of statutory provisions), the ExA sought an update on discussions between the Applicant and the Environment Agency with respect to Article 6(1)(e).

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ submitted that agreement has been reached in relation to the disapplication of the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991. He confirmed that, in the circumstances, the Environment Agency had confirmed it is content to agree to the disapplication of the byelaws.

ExA: *The ExA sought confirmation of this from the Environment Agency.*

The Environment Agency confirmed satisfaction with the Applicant's response to its written representations and as such, that it is content with the disapplication of these byelaws. Therefore, issue EA05 was confirmed as resolved.

2.4 Agenda Item 3.1(4) – Article 38 (Planning permission)

Issue Discussed

ExA: Referring to question DCO.2.04 of the Examining Authority's Second Written Questions [PD-016] the ExA sought the Applicants justification for the inclusion of Article 38 (Planning permission) noting that the SoS had been removing this article when making DCOs.

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

██████████ confirmed that the Applicant is continuing to pursue the inclusion of this article in the draft Order, notwithstanding the Secretary of State's position. He explained that there are two parts to this article. The first 'part' of the article being sub-paragraph (1), with the remaining 'parts' dealing with Hillside risk.

The first part is intended to deal with the risk that a further related application under the Town and Country Planning Act 1990 (TCPA application) may be required to enable the use or completion of elements of the Proposed Development. ██████████ explained that in the absence of this particular provision, there is a risk of a potential conflict between a drop in TCPA application and the Order itself. This provision therefore allows for the drop in of such an application.

██████████ explained that the Applicant is seeking to deal with risks which may arise affecting the ability of the Applicant to implement the Proposed Development but cannot be foreseen. By way of a hypothetical example, ██████████ explained that if the fire regulations were to change to require a fixed mains water supply to be provided for the BESS, a TCPA application would be required. He submitted that this is precisely the sort of unknown which the provision is intended to provide for.

Turning to the remainder of the article, ██████████ explained that this is to deal with the risks associated with the Hillside decision. He noted that such risks may arise, and once one accepts the potential for drop in TCPA applications, the consequences of the implementation of that drop in must be considered. Therefore, he submitted that the justification for the inclusion of this article is to address the risks associated with the implementation of a subsequent permission, and its impact on an original permission which has not been fully built out.

ExA: Noting that articles of this nature are being removed by the SoS when making DCOs, the ExA highlighted the importance of this detailed

██████████ on behalf of the Applicant

Issue Discussed

justification being set out in the Explanatory Memorandum to the draft DCO. Addressing the hypothetical example provided by the Applicant, the ExA asked whether a variation could be made to a made Order to address this.

Summary of Applicant's Oral Case

██████████ explained that there is a risk that a variation to a made Order may not be permitted, and that the Applicant therefore maintains its position that the inclusion of this article is sufficiently justified.

ISH4 Action Point 1 – For the Applicant – Update the Explanatory Memorandum to the dDCO [REP2-007] to include detailed justification for the inclusion of Article 38 (Planning permission) in the draft Development Consent Order [REP2-005], with examples of scenarios which may arise that the article is seeking to address.

3. The Applicant's Summary of Case on Agenda Item 3.2

3.1 Agenda Item 3.2(a) – Meaning of "part of the authorised development"

Issue Discussed

ExA: Turning to the Requirements set out in Schedule 2 to the draft DCO [REP2-005] and taking Requirement 6 as an example, the ExA asked how the Applicant was seeking to define 'part of the authorised development'.

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

██████████ indicated that ██████████ would provide a brief explanation but noted that the Applicant recognises the issue as to what a 'part of the authorised development' would entail. He explained that the Application is proposing an amendment to the draft DCO [REP2-005] to insert a Requirement for the Applicant to provide notification to the relevant planning authority setting out a list of details as to what constitutes a 'part of the authorised development'. Whilst noting that the precise details of this mechanism remain under consideration by the Applicant, it is acknowledged that the relevant planning authority would need to be notified relatively early in the process.

██████████ on behalf of the Applicant

██████████ noted that ██████████ submission provided clarification of the meaning of 'part of the authorised development'. To provide an example of a possible breakdown into parts, ██████████ explained that such a development would typically be broken down into the Work Numbers, suggesting the Work No. 8A (in relation to accesses) may be completed whilst the detailed design of other parts is being undertaken.

██████████ on behalf of the Applicant

██████████ further explained that seeking the approval of the relevant planning authority on the breakdown of 'parts' would not be justified or necessary, given the Applicant's position is that the assessment has been undertaken on the basis of all work being carried out at the same time. Therefore, as construction of the whole Proposed Development at the same time has already been determined to be acceptable, ██████████ stated that the Applicant is proposing notification only.

Issue Discussed

Summary of Applicant's Oral Case

ExA: The ExA noted that the Applicant would need to consider the fact that there are two relevant planning authorities for the purpose of the Requirements set out in Schedule 2 to the draft DCO.

██████████ on behalf of the Applicant

██████████ confirmed that both LCC and NKDC would be notified as the relevant planning authorities.

ExA: With reference to question DCO.2.21 of the Examining Authority's Second Written Questions [PD-016] the ExA noted that the Applicant will need to consider how the wording could cater for the potential inclusion of National Highways as an approving body to Requirement 14.

██████████ on behalf of the Applicant

██████████ acknowledged this on behalf of the Applicant.

NKDC asked that the Applicant consider the wording of the requirements to ensure that these do not provide for the relevant planning authority to have 34 parts of each of the management plans to approve.

██████████ on behalf of the Applicant

Acknowledging the request from NKDC, ██████████ confirmed that the Applicant is also keen to avoid a plethora of management plans. He noted that the Applicant would formulate an appropriate mechanism and seek to reach agreement on this with both LCC and NKDC.

3.2 Agenda Item 3.2(b) – Use of "substantially in accordance" phraseology

Issue Discussed

Summary of Applicant's Oral Case

ExA: The ExA noted concerns with the use of "substantially in accordance" phraseology, particularly when considering that in some recently made Orders, the Secretary of State has said that the plans "must accord" with the respective frameworks.

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ explained that the Applicant has used the phrasing "substantially in accordance" in relation to the various management plans referenced in the Requirements in order to retain the necessary flexibility for the detailed design of the Proposed Development, and thus the

Issue Discussed

Summary of Applicant's Oral Case

specific details of the mitigation accompanying it, to be reflected in the final versions of the Management Plans to be approved.

He explained that this flexibility is necessitated as the drafting of the DCO adopts the principle of using a design envelope, which is recognised as appropriate for a wide range of NSIP developments. This approach ensures that the detailed design of the Proposed Development is in accordance with the Design Commitments, the Proposed Development Parameters **[REP1-029]** and details listed in Requirement 6 (detailed design approval) of Schedule 2 to the draft DCO **[REP2-005]**. Commonly known as the 'Rochdale Envelope' approach, he noted that this ensures suitable flexibility is incorporated into the design of the Proposed Development to allow new technology or different layouts to be utilised, whilst remaining within the scope of the Environmental Statement.

████████ submitted that the flexibility is justified as, like any NSIP in the consenting process, detailed design of the Proposed Development is yet to be undertaken. The detailed design phase will take place post-consent, and at that time, it may be necessary for the Applicant to carry out some detailed design related surveys or investigations. The findings from such surveys or investigations may mean that the measures outlined in the various framework management plans are no longer necessary or may require revision. Additionally, some measures may need to be made more specific in accordance with the detailed design of the Proposed Development, in order to ensure that they effectively deliver the precise mitigation that is necessary.

Furthermore, he explained that such flexibility is required to allow for innovation in the provision of certain mitigation measures that may evolve prior to construction and which might provide a more effective method of delivering the management or mitigation measures to be provided than those suggested at the stage that the Framework plan was drafted.

In summarising, ██████████ submitted that the use of the word "substantially" therefore allows updates and amendments to be made as necessary, following the detailed design phase of the Proposed Development. The various management plans are essential to provide effective management of, and mitigation for, the effects of the Proposed Development. Therefore, the use of the wording "substantially in accordance" ensures that the management plans can be updated to accord with the

Issue Discussed

Summary of Applicant's Oral Case

detailed design of the Proposed Development, whilst remaining predominantly consistent with the frameworks. The use of the wording "substantially" has recent precedent in the Fenwick Solar Order 2026 (made 18 February 2026), as well as in the Tillbridge Solar Order 2025, the Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024, and Heckington Fen Solar Park Order 2025.

He noted the Applicant's understanding that with regards to the wording "substantially in accordance", in NKDC's post-hearing submission [REP1-085], it was stated that "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." (verbatim)

This further demonstrates that the use of "substantially in accordance" is acceptable.

ExA: The ExA sought comments from NKDC and LCC on the Applicant's submissions.

NKDC confirmed that the Applicant had accurately relayed its position.

LCC confirmed its position as aligned with that of NKDC and added that the wording is not considered to provide the Applicant with unreasonable flexibility.

ExA: The ExA asked LCC and NKDC to put their positions in writing and posed alternative wording of "in accordance with the principles of".

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ confirmed that consideration would be given to this wording but noted that this could lead to questions as to how "principles" should be defined.

In agreement with the Applicant's position, NKDC submitted that it would prefer the use of the wording "substantially in accordance with", although noted that advice would be taken on the ExA's proposition.

Similarly, LCC submitted that the preference is for the "substantially in accordance with wording".

Issue Discussed

Summary of Applicant's Oral Case

The ExA asked that the parties set out their position in writing with regards to the following phraseologies: “substantially in accordance with”, “in accordance with the principles of” and “must accord with”.

3.3 Agenda Item 3.2(c) – The effect of the OEMP

Issue Discussed

Summary of Applicant's Oral Case

ExA: The ExA referred to the Applicant’s response to question DCO.1.24 of the Examining Authority’s First Written Questions [PD-011], noting that the Applicant considers that the wording “no later than” provides that the decommissioning could commence before the end of the 60-year operational lifetime of the Proposed Development. The ExA then referred to the insertion of paragraph 6.1.4 of the Framework OEMP [REP2-015] and whilst noting that this set out the provisions for a period of extended outage, asked whether this additional wording should provide for an extended period of outage to trigger decommissioning of the Proposed Development.

██████████ on behalf of the Applicant

██████████ explained that what is set out in the Framework OEMP [REP2-015] provides a mechanism for the Applicant to explain the reasoning for long-term cessation to the relevant planning authority. He sought clarity as to whether the ExA is seeking for this to trigger the commencement of decommissioning. ██████████ noted that the current drafting of the Framework OEMP [REP2-015] does not provide for an extended period of outage to trigger decommissioning and explained that from the Applicant’s perspective, it is difficult to see circumstances in which this would be triggered.

In response to the Applicant’s submissions, NKDC noted that discussion between the parties may be required to clarify the differences between an extended period of outage, permanent cessation, and decommissioning. Referring to the proposed Springwell Solar Farm (PINS Reference: EN010149), NKDC explained that the drafting is such that if a part ceases generation for 36-months then decommissioning requirements are triggered. This ensures that if part of the development stops generating for the extended period of time, then it must be decommissioned.

LCC stated a similar position noting that the request is only for a mechanism to secure early decommissioning if there is early cessation of generation. This is because early cessation without decommissioning would result in the development and any adverse impacts being left until the end of the intended operational lifetime. Also referring to the proposed Springwell Solar Farm (PINS Reference: EN010149), LCC explained that the drafting provides for various steps to be taken, and

Issue Discussed

Summary of Applicant's Oral Case

the commencement of decommissioning would only be triggered if generation did not re-commence following these steps.

██████████ on behalf of the Applicant

██████████ explained that from the Applicant's perspective an arbitrary period during which generation must recommence or else decommissioning must take place is not practical.

██████████ on behalf of the Applicant

In support of ██████████ submission, ██████████ gave an example that during the construction of the Cleve Hill Solar Farm, 2 super grid transformers were diverted to Ukraine resulting in a significant delay. He explained that the Applicant would not want to end up in a similar position with replacement components and have to decommission the Proposed Development earlier than the consented time frame, simply due to unforeseen supply chain issues beyond its control.

LCC noted that such situations would not trigger decommissioning as there is an exception for an extended period of outage resulting from a force majeure event. LCC also sought clarity on the intended meaning of the final sentence of section 6.1.4 of the Framework OEMP [REP2-015].

Post-Hearing Note – In response question DCO.2.19 of the Examining Authority's Second Written Questions [PD-016] the Applicant has provided clarity on the wording queried by LCC.

3.4 Agenda Item 3.1(d) – Requirement 20 (Decommissioning)

Issue Discussed

Summary of Applicant's Oral Case

ExA: With reference to question DCO.2.28 of the Examining Authority's First Written

██████████ on behalf of the Applicant

Issue Discussed

Questions [PD-011] the ExA noted the response the Applicant gave in respect of funding and decommissioning, as well as the comments made by the LCC and NKDC. Whilst acknowledging the Applicant's updated funding statement and the responses about the legally binding nature of DCO requirements, the ExA asked if there were any risks in relying solely on a body having the requisite funding for decommissioning at the end of the operational lifetime of the Proposed Development.

Summary of Applicant's Oral Case

On behalf of the Applicant, ██████ explained that Requirement 20 of Schedule 2 to the draft DCO [REP2-005] provides that decommissioning works, as set out in the Decommissioning Environmental Management Plan, must commence no later than 60 years following the date of the final commissioning of the Proposed Development. Prior to the commencement of decommissioning works, the undertaker must submit a Decommissioning Environmental Management Plan which is substantially in accordance with the Framework Decommissioning Environmental Management Plan (DEMP) [APP-191], to the relevant planning authority for its approval, in consultation with Lincolnshire County Council, National Highways and the Environment Agency. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

██████ further explained that the Framework DEMP provides for how decommissioning will be undertaken and noted that the Applicant is aware of its obligations in the draft DCO with respect to decommissioning (including the funding of the same) as set out in Requirement 20. The requirements of the DCO are enforceable and failure to comply is a criminal offence. ██████ explained that in addition to prosecution, there is a huge array of legislation, including injunctive relief noting that anyone who doesn't comply with an injunction is facing a prison sentence the length of which would be at the discretion of the court. He stated that it is entirely fanciful that there would be no funding for decommissioning as the directors would be facing imprisonment and loss of assets.

More importantly, ██████ submitted that in an answer to a parliamentary question on 16 June 2025, the Government stated:

"We do not currently have plans to require solar and battery projects to be covered by decommissioning bonds. Solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use. Solar panels can be decommissioned relatively easily and cheaply. It is a legal requirement for any company that imports, manufactures or rebrands solar products to join a 'Producer Compliance Scheme', which then ensures their legal obligations are met, most significantly for the collection and recycling of old PV panels."

Issue Discussed

Summary of Applicant's Oral Case

██████████ reiterated that this is the position set out by the government response to a parliamentary question and accordingly, it is not necessary to include a requirement to provide a bond for decommissioning in the DCO.

In relation to made DCOs, ██████████ noted that the Applicant is aware that a requirement for a decommissioning bond was included in the Helios Renewable Energy Project Order 2025 as follows:

"(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 in the form as required by the landowners."

However, this was agreed by the applicant for the Helios Renewable Energy Project and was not a contentious issue. It was also agreed at their first Compulsory Acquisition Hearing which was prior to the date of the response to the written question referred to above.

██████████ also submitted that as a Generation Licence holder, the undertaker will be subject to any requirements of Ofgem in relation to the appropriate management of its affairs and if it was felt necessary this could extend to financial or decommissioning requirements as it does for other energy sectors (e.g. nuclear and offshore wind).

An additional point made by ██████████ was a general response to the various Interested Parties that had asked how decommissioning would be undertaken if the undertaker went into liquidation. He confirmed that in the event the undertaker went into liquidation or receivership, its assets would be sold off to fund the decommissioning of the Proposed Development which is legally required pursuant to the DCO. ██████████ said that it is pertinent to note that a DCO is a piece of legislation, and therefore it differs to a planning permission in many ways, including in enforcement.

Summarising his submissions on behalf of the Applicant, ██████████ stated that a decommissioning bond is not routine for solar DCOs and although similar arguments have been advanced requesting bonds in most other solar DCOs, the Applicant is only aware of the Helios Renewable Energy Project

Issue Discussed

Summary of Applicant's Oral Case

Order 2025 containing a decommissioning bond and reiterated that this Order pre-dated the parliamentary question.

ExA: The ExA noted that it would be beneficial if the Applicant could provide a note setting out the role of Ofgem in relation to the management of the affairs of a generation licence holder.

ISH4 Action Point 2 – For the Applicant – In relation to compliance with Requirement 20 (Decommissioning) of Schedule 2 to the draft DCO [REP2-005], provide a note explaining the Ofgem requirements that an undertaker will be subject to as a Generation Licence holder in relation to the appropriate management of its affairs.

The below is a brief summary of the submissions made by LCC, NKDC and another IP, to provide context for the Applicant's submissions in response.

LCC submitted that its position remained as previously set out in writing and indicated that further written submissions may be made on this point.

NKDC submitted that it would seek further advice but to summarise the position, the Council is seeking to mitigate the risk of the costs of decommissioning from falling on the public purse.

An IP submitted that a percentage of the profit should be taken each year and set aside for the purposes of decommissioning.

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ asked the ExA to note that the submissions from the IP and NKDC go directly against the parliamentary policy position he had set out.

3.5 Agenda Item 3.1(e) – Schedule 15 (Procedure for the discharge of requirements)

Issue Discussed

ExA: In relation to Schedule 15 (Procedure for discharge of Requirements) the ExA noted that the provisions allow for deemed approval if the relevant planning authority did not give notice of its decision prior to the expiry of the specified time periods. Noting that there is an exception to this where the subject matter of the discharge application would be likely to give rise to any materially new or materially different environmental effects, the ExA asked whether it should be for the relevant planning authority to determine whether an application is within the scope of the Environmental Statement.

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

██████████ explained that the reason for this provision is related to the deeming mechanism which, as currently drafted, provides for the application to be deemed as approved if it is not determined by the relevant planning authority within the relevant timescale. Citing case law, ██████████ explained that in the case of *R v North Yorks CC ex parte Brown* [2000] 1 AC 397 the House of Lords held that a legislative provisions which deemed the grant of consent for EIA development without first complying with EIA procedural requirements were unlawful. The procedure proposed in the DCO provides that a deemed consent can only be granted where the application includes an assessment that the application would not be likely to give rise to any new or materially different environmental effects. ██████████ submitted that the mechanism effectively requires there to be an assessment as to whether what has been proposed is within the scope of the Environmental Statement. Where it has been assessed and determined to be within the scope of the Environmental Statement, if the relevant planning authority has not responded in the set timescale, then it can be deemed approved without offending against the principle established in *ex parte Brown* or the objectives of the Environmental Impact Assessment regulations.

LCC submitted that it is for the Applicant to provide a statement as to whether an application is likely to give rise to any materially new or materially different effects as if the Applicant states that something new has arisen which is outside the scope of the assessment, then it cannot be approved. LCC queried whether the drafting could be amended to reflect this.

NKDC did not have any comments but stated agreement with LCC's submissions.

██████████ on behalf of the Applicant

██████████ confirmed that whilst the Applicant was content with the current drafting, a review would be undertaken to identify any opportunities to make amendments to simplify the provisions.

Issue Discussed

ExA: With respect to the deeming provisions, the ExA asked whether it would be more appropriate for there to be deemed refusals as opposed to deemed approvals.

ExA: Turning to **NDKC** and **LCC**, the ExA sought clarification on the basis for seeking fees higher than those set out in the draft Order.

ExA: As a final point in relation to Schedule 15, the ExA asked if **LCC** or **NKDC** has any views as to whether the procedures for the discharge

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ submitted that this would not be appropriate.

LCC indicated agreement with the Applicant and confirmed that this was not proposed.

NKDC indicated agreement with both the Applicant and LCC that this would not be appropriate.

The below is a brief summary of the submissions made by LCC and NKDC, to provide context for the Applicant's submissions in response.

NKDC submitted that the basis of the fees for the discharge of the requirements is the planning condition discharge equivalents with a multiplier applied. The variation in the rates aligns with the time anticipated to be incurred by officers to deal with the discharge of those requirements.

LCC supported NKDC's submissions but added that the fees set out in the current iteration of the draft Order are the previous version as the Planning Fee Regulations were updated in April 2025, hence seeking the increased figures.

██████████ on behalf of the Applicant

██████████ noted that it does not appear to be fair, in the absence of evidence to support the point, to seek an uplift on TCPA fee levels as this assumes that the workload for discharging a DCO requirement is significantly higher than that required for the discharge of planning conditions for a solar farm permitted under the TCPA. Notwithstanding this, ██████████ confirmed that the Applicant would review Schedule 15.

NKDC indicated that thought would be given to this, but there were no strong views at the time.

LCC confirmed no strong view and indicated contentment with the current structure.

Issue Discussed

Summary of Applicant's Oral Case

of requirements should be set out as Part 2 to Schedule 2 or remain in as a standalone Schedule.

Acknowledging that neither party had significant concerns, the ExA confirmed that the structure should remain as currently drafted.

4. The Applicant's Summary of Case on Agenda Item 3.3

4.1 Agenda Item 3.3(b) – Schedule 3 (Legislation to be disapplied)

Issue Discussed

ExA: Turning to the Applicant, the ExA asked if justification for the disapplication of the legislation could be provided.

Summary of Applicant's Oral Case

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ confirmed that the list of archaic legislation set out in Schedule 3 to the draft DCO [REP2-005] is under review. He explained that the Applicant is undertaken an in-depth investigation and considering whether the disapplication of all of this legislation is required. ██████████ submitted that following completion of this review, the Applicant would amend the Schedule accordingly and full justification that would be set out in the Explanatory Memorandum to the draft DCO [REP2-007] for any legislation the Applicant is seeking to retain within the Schedule.

Noting the limited time between Deadline 3 and Deadline 3A (20 March and 24 March respectively), ██████████ asked whether the ExA would be content with the Applicant only submitting an updated draft DCO [REP2-005] at Deadline 3A.

The ExA confirmed that it was agreeable to this.

4.2 Agenda Item 3.3(c) – Schedule 14 (Protective Provisions)

Issue Discussed

ExA: The ExA sought an update as to the status of the negotiation of bespoke protective provisions between the Applicant and National Highways.

Summary of Applicant's Oral Case

The below is a brief summary of the submissions made by National Highways, to provide context for the Applicant's submissions in response.

Issue Discussed

Summary of Applicant's Oral Case

National Highways submitted that discussions with the Applicant are progressing well and confirmed that a written update would be provided at the next deadline

██████████ on behalf of the Applicant

In agreement with the submission made by National Highways, ██████████ confirmed that the protective provisions are substantially agreed. He submitted that the Applicant expects to be in a position to incorporate fully agreed protective provisions into the draft Order at Deadline 3A, but noted that if this is not possible, it will incorporate substantially agreed protective provisions and update these accordingly in a future iteration of the draft Order.

ExA: Turning to the Environment Agency, the ExA asked whether any protective provisions were required, and whether it is generally content with the drafting of the Order.

With regards to protective provisions, the Environment Agency confirmed that it does not require any protective provisions to be incorporated into the draft DCO. Furthermore, the Environment Agency confirmed general contentment with the drafting of the Order and noted that responses would be provided to the ExA's Written Questions as required.

An IP asked why the Environment Agency is not seeking protective provisions to be included in the Order. The IP further asked whether sufficient water would be available in the event of a fire incident at the BESS and sought clarification as to whether the Environment Agency has sufficient powers to deal with any potential water contamination concerns.

The ExA noted that the Anglian Water Authority had already confirmed that sufficient water would be available.

The Environment Agency explained that protective provisions would only be requested in relation to the disapplication of legislation (such as for the disapplication of FRAP). As this is not being sought by the Applicant protective provisions are not required. It was confirmed that the Environment Agency is satisfied in relation to the water demand and a written response would be provided to the IPs final point.

ISH4 Action Point 5 – *For the Environment Agency – Respond in writing to the points raised by an IP during ISH4 relating to whether sufficient water is available in the event of a fire incident at the BESS.*

The Applicant's Summary of Case on Agenda Item 4

4.3 Agenda Item 4 – Any Other Business

Issue Discussed

ExA: The ExA asking if any parties wished to raise any general points on the drafting of the Order.

Summary of Applicant's Oral Case

NKDC and LCC both stated that although some points remained outstanding, these have all been put to the Applicant, and that these are therefore assumed to be under consideration by the Applicant.

NKDC submitted an additional point, noting that the current drafting of Requirement 17 of Schedule 2 to the draft DCO does not require the Applicant to provide any permissive paths, as the trigger is "prior to the construction of the permissive paths" .

██████████ on behalf of the Applicant

On behalf of the Applicant, ██████████ confirmed that the drafting of this Requirement would be reviewed. He also noted that whilst the Applicant hoped to resolve outstanding points raised by NKDC and LCC in relation to the draft Order, it may not be possible for these to be addressed prior to Deadline 3A. ██████████ submitted that a meeting between the Applicant, LCC and NKDC may be beneficial.

The parties agreed that all would be amenable to a meeting, and the ExA asked that any major outstanding issues in relation to the draft Order be set out in the respective Statements of Common Ground.

ExA: The ExA noted that as part of discussions with regard to construction hours during ISH3, it was agreed that the consideration would be given during ISH4 as to whether the Framework CEMP [REP2-013] contains sufficient detail to cover the hours and enforcement in relation to operating hours.

NKDC confirmed that it would make a written submission on this point at Deadline 3.

LCC also confirmed that it would set out its position in writing.

██████████ on behalf of the Applicant

██████████ confirmed that the Applicant would review the Framework CEMP [REP2-013] and consider whether the wording requires tightening. He also confirmed that the Applicant would consider

Issue Discussed

Summary of Applicant's Oral Case

comments from LCC and NKDC upon receipt. [REDACTED] also acknowledge that this is the framework, and not the final CEMP.

5. ISH4 Action List

- 5.1.1 This section sets out the Applicant's understanding of the agreed action points arising from ISH4 which are subject to confirmation by the ExA.
- 5.1.2 **ISH4 Action Point 1** – Explanatory Memorandum – the Applicant is to update the Explanatory Memorandum to the dDCO **[REP2-007]** to include detailed justification for the inclusion of Article 38 (Planning permission) in the draft Development Consent Order **[REP2-005]**, with examples of scenarios which may arise that the article is seeking to address. *Response provided by the Applicant in Appendix A.*
- 5.1.3 **ISH4 Action Point 2** – Requirement 20 (Decommissioning) of Schedule 2 – the Applicant is to provide a note in relation to compliance with Requirement 20 (Decommissioning) of Schedule 2 to the draft DCO **[REP2-005]**, explaining the Ofgem requirements that an undertaker will be subject to as a Generation Licence holder in relation to the appropriate management of its affairs. *Response provided by the Applicant in Appendix B.*
- 5.1.4 **ISH4 Action Point 3** – Schedule 15 – the Applicant is to review and consider whether any amendments are required to the wording of paragraph 2(3) of Schedule 15 to the draft Development Consent Order **[REP2-005]**. *Response provided by the Applicant in Appendix C.*
- 5.1.5 **ISH4 Action Point 4** – Schedule 3 – the Applicant is to review the need for the disapplication of the legislation set out in Schedule 3 to the draft Development Consent Order **[REP2-005]** and:
- a. Update Schedule 3 of the draft Development Consent Order **[REP2-005]** accordingly; and
 - b. Provide written justification in the Explanatory Memorandum to the dDCO **[REP2-007]** for the disapplication of any legislation which the Applicant is seeking to retain within Schedule 3 to the draft DCO **[REP2-005]**. *Response provided by the Applicant in Appendix D.*
- 5.1.6 **ISH4 Action Point 5** – Fire Accident Water Availability – the Environment Agency is to respond in writing to the points raised by Mrs Overton during ISH4 relating to whether sufficient water is available in the event of a fire incident at the BESS; and
- 5.1.7 **ISH4 Action Point 6** – Working hours in the Framework CEMP – the Applicant / Lincolnshire County Council / North Kesteven District Council is to review the wording in relation to enforcement of the working hours within the Framework Construction Environmental Management Plan **[REP2-013]** and provide written comments. *Response provided by the Applicant in Appendix E.*

Appendix A – Action Point 1

ISH4 Action Point 1 – Explanatory Memorandum – the Applicant is to update the Explanatory Memorandum to the dDCO **[REP2-007]** to include detailed justification for the inclusion of Article 38 (Planning permission) in the draft Development Consent Order **[REP2-005]**, with examples of scenarios which may arise that the article is seeking to address.

- A.1.1 The Applicant is in the process of updating the Explanatory Memorandum to the dDCO **[REP2-007]** to include the requested justification and example scenarios for the inclusion of Article 38 (Planning permission). In line with the ExA's request, a revised iteration of the Explanatory Memorandum to the dDCO will be submitted to the Examination at Deadline 3A.

Appendix B – Action Point 2

ISH4 Action Point 2 – Requirement 20 (Decommissioning) of Schedule 2 – the Applicant is to provide a note in relation to compliance with Requirement 20 (Decommissioning) of Schedule 2 to the draft DCO **[REP2-005]**, explaining the Ofgem requirements that an undertaker will be subject to as a Generation Licence holder in relation to the appropriate management of its affairs.

B.1.1 The Applicant has included within its response to DCO.2.28 of ExQ2 **[PD-016]** text which addresses this point.

Appendix C – Action Point 3

ISH4 Action Point 3 – Schedule 15 – the Applicant is to review and consider whether any amendments are required to the wording of paragraph 2(3) of Schedule 15 to the draft Development Consent Order **[REP2-005]**.

C.1.1 The Applicant is reviewing the wording of paragraph 2(3) of Schedule 15 to the draft DCO. If the Applicant considers any amendments to be required, these will be reflected in the iteration of the draft DCO to be submitted to the Examination at Deadline 3A.

Appendix D – Action Point 4

ISH4 Action Point 4 – Schedule 3 – the Applicant is to review the need for the disapplication of the legislation set out in Schedule 3 to the draft Development Consent Order **[REP2-005]** and:

- a. Update Schedule 3 of the draft Development Consent Order **[REP2-005]** accordingly; and
 - b. Provide written justification in the Explanatory Memorandum to the dDCO **[REP2-007]** for the disapplication of any legislation which the Applicant is seeking to retain within Schedule 3 to the draft DCO **[REP2-005]**.
- D.1.1 The Applicant is undertaking an in-depth review of the legislation set out in Schedule 3 to the draft DCO. Following the conclusion of this review, the Applicant will make any necessary amendments to the drafting of Schedule 3. The Applicant will also update the Explanatory Memorandum to the dDCO **[REP2-007]** to include detailed justification for seeking the disapplication of any legislation which is retained in Schedule 3 following the review. If possible, these amendments will be reflected in the iterations of the draft DCO and Explanatory Memorandum to be submitted to the Examination at Deadline 3A.

Appendix E – Action Point 6

ISH4 Action Point 6 – For the Applicant / Lincolnshire County Council / North Kesteven District Council – Review the wording in relation to enforcement of the working hours within the Framework Construction Environmental Management Plan [REP2-013] and provide written comments

- E.1.1 The Applicant is satisfied that Section 6 of the Framework CEMP [REP2-013] covers enforcement, under the title ‘Checking and Corrective Action’, for example in setting out the monitoring process and detailing the assignment of an Environmental Manager to observe site activities and report any deviations from detailed CEMPs. The Framework CTMP [REP2-023] includes measures to control traffic movements, such as developing a Delivery Management System (DMS) to regulate the timings of HGV arrivals and monitor compliance of HGV routing (ref. paragraph 7.3.5), and a Traffic Management and Monitoring System (TMMS) to monitor movements and ensure compliance with timing restrictions (ref. paragraph 7.3.6). Section 7.5/7.6 of the Framework CTMP sets out the management/monitoring of the CTMP, including (ref. paragraph 7.6.2): “*The Transport Co-ordinator will monitor data relating to HGV routes, timing of HGV arrivals and departures and compliance with the DMS/ TMMS. The results of the data monitoring will be reported to identify any issues which need to be resolved and any additional measures which should be implemented to these from arising again.*” Furthermore, the Framework CTMP specifically has a section on enforcement for traffic and transport related measures in Section 8 ‘Compliance and Enforcement’.
- E.1.2 These sections will be further developed with additional detail in the detailed CEMP and CTMP, which will be produced substantially in accordance with the framework plans following any future consent, as secured by Requirements 12 and 14, respectively, of the Draft DCO [REP2-005].
- E.1.3 It is noted that the ExA also made reference to the working hours during any maintenance/repowering works during the operation of the Proposed Development. The Applicant recognises that these are not specifically set out in the Framework OEMP [REP2-015], and as such has updated the document (submitted to the Examination at Deadline 3). The Framework OEMP now includes the following at Section 2.10:

“Operational Working Hours

Operational works will generally take place in hours of day light, although inspections and maintenance / repair activities may occur at any time, as required. Any repowering activities will align with the core construction working hours as follows:

- c. Monday to Friday: 07:00 to 19:00 – all activities. Any percussive piling works within 400m of residential properties will only occur for two periods of four hours (between 08:00 to 18:00) with at least one hour break between the two periods;*
- d. Saturday: 09:00 to 13:00 – all activities, except percussive piling within 400m of residential properties;*

- e. *Saturday: 13:00 to 18:00 – all activities, except for HGV deliveries, works likely to generate substantial levels of noise (defines as activities generating more than 45dB LAeq at neighbouring dwellings), and percussive piling (unless agreed with the relevant local authority); and*
- f. *Sundays, Bank Holidays and outside of the construction hours noted above (including nights): no activities.*

Additionally, quiet non-intrusive works, such as the installation of PV panels may take place over longer periods during the high summer and other quiet non-intrusive works such as electrical testing, commissioning and inspection may take place over longer periods throughout the year.