



Dean Moor Solar Farm

Applicant Response to D6 Written Representations

on behalf of **FVS Dean Moor Limited**

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DEAN MOOR SOLAR FARM
APPLICANT RESPONSE TO D6 WRITTEN REPRESENTATIONS
PLANNING INSPECTORATE REFERENCE EN010155
PREPARED ON BEHALF OF FVS DEAN MOOR LIMITED

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Contents

| | | |
|---|--|---|
| 1 | Introduction..... | 1 |
| 2 | Response to 12 Property FE Written Representation..... | 3 |

1 Introduction

- 1.1.1 This document has been produced for FVS Dean Moor Limited (the 'Applicant') to support the application for a Development Consent Order (the 'DCO application') for Dean Moor Solar Farm ('the Proposed Development') located between the villages of Gilgarran and Branthwaite in West Cumbria (the 'Site'), which is situated within the administrative area of Cumberland Council ('the Council').
- 1.1.2 This Applicant Response to Deadline 6 ('D6') Written Representations (ARWR-6) is a response to the Written Representations (WR) made by Keystone Law on behalf of 12 Property FE Limited ('12FE') [[REP6-022](#)].
- 1.1.3 In order to assist the Examining Authority, the Applicant has produced this response which cross refers to previous submissions and seeks to respond to new matters raised by 12FE. The Applicant's overall position in respect of 12FE remains as set out in its Closing Submission [[REP6-015](#)] at section 5.2.
- 1.1.4 In this document, the Applicant responds only where the Applicant believes that a response is required, for example if the WR includes a request for further information or clarification or where the Applicant considers that it is appropriate for the ExA to receive the Applicant's comments on a matter raised by 12FE in its response.
- 1.1.5 Where an issue raised within a WR has been dealt with previously by the Applicant, for instance within one of the documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided should, therefore, be read in conjunction with the material in respect of which cross references are provided.
- 1.1.6 The Applicant has sought to respond to all material points by copying them directly or summarising them in the table below. A lack of response should not be treated as the Applicant accepting or agreeing with the point raised by 12FE. If the ExA or any party considers that a material point has not

been addressed, they may raise this in their response to this document, and the Applicant will consider the merits in making a direct response.

2 Response to 12 Property FE Written Representation

Table 4.1: Applicant Response to 12 Property FE's D6 WR

| 12 Property FE Limited's Comment | Applicant Response |
|---|--|
| <p><i>Our client does not agree that “the key issue is compensation”, our client maintains its objection to the scheme in principle. The inclusion of the Minerals Code only gives limited protection as the Applicant accepts my client will be subject to the compulsory purchase of at least part of its interest.</i></p> | <p>The Applicant notes the in-principle objection. The Examining Authority will note that the Applicant has already addressed 12FE's objections in respect of:</p> <ul style="list-style-type: none"> - the extent of negotiations in its Land and Rights Negotiation Tracker [REP6-004]; and - the level of information provided, surveys, and the reasonableness of alternatives, in the Response to CAH Action Points at AP4 to 7 [REP5-014]. <p>The Examining Authority will note the significant uncertainty around the extent of 12FE's interest. 12FE have alluded to there being private loss, but this has not been substantiated to any material degree. The Applicant acknowledges that 12FE retains a qualified interest in unverified mines and minerals, not binding interests pre-March 2018. The Applicant has sought to minimise the impact on 12FE through incorporation of the Mineral Code. This is a proportionate way of limiting private loss, while at the same time, allowing the Proposed Development to be implemented, giving rise to its significant public benefits. The Secretary of State has endorsed the incorporation of the Minerals Code in several other solar DCOs.</p> |
| <p><i>Section 3 of the Applicant's Response states: “The Applicant's view is that it is for the party seeking to sell its interest to prove the extent of its interest and justify its valuation”. Our client is not “seeking to sell its interest”, rather it is having the threat of compulsory purchase imposed on it.</i></p> | <p>The Applicant notes this comment. The Examining Authority should note that the Applicant has offered to voluntarily acquire 12FE's interest, and as of writing, the offer remains open (subject to contract). The Applicant has received a counter-offer from 12FE indicating that 12FE is prepared to reach an agreement, but only at a significantly inflated sum.</p> |

| 12 Property FE Limited's Comment | Applicant Response |
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| <p><i>As raised at the Compulsory Acquisition Hearing, the Applicant has not provided sufficient information for our client to be able to properly identify the impact or the proposed development on its interest. It is not reasonable for the Applicant to on one hand claim that the scheme is subject to further detailed design such that the impact on our client's interest is unknown, while also expecting our client to provide detailed information of their own.</i></p> | <p>The Applicant strongly disagrees that it has "not provided sufficient information". The extent of the Applicant's works, powers sought, and impact on 12FE is clear (see for example Response to CAH Action Points [REP5-014] or the Design Parameters Document [APP-028]).</p> <p>The Applicant has acted reasonably throughout the examination process. The Examining Authority will note that the Applicant has provided details of the impacts on 12FE, while 12FE have failed to provide any material evidence (other than a title copy) of potential private loss.</p> |
| <p><i>The Examining Authority clearly recognised the lack of clarity provided by the Applicant in raising action 4: "Applicant to confirm full extent of works within 12 Property FE plots". To the extent further information has been provided in the Applicant's Response on the impact of the scheme, should survey works now be possible (which remains to be seen), there is clearly insufficient time for these to be carried out prior to the close of the examination.</i></p> | <p>The Applicant's response to Action Point 4 from the Compulsory Acquisition Hearing is set out at [REP5-014]. Future surveys are discussed at Action Point 7.</p> <p>No further survey works are required before the grant of development consent (should such consent be forthcoming).</p> |
| <p><i>It is material that in its response to Action Point 6 the Applicant accepts that it has not carried out ground investigations at our client's interest and refers to reports carried out in respect of another scheme (the Potato Pot Wind Farm). At the same time the Applicant is critical of a lack of information provided by our client, despite them frustrating their ability to prepare such information by stating that it is subject to further "detailed design".</i></p> | <p>The Applicant's response to Action Point 6 from the Compulsory Acquisition Hearing is set out at [REP5-014]. The Examining Authority will note that the relevant 12FE plots are in "Area A" and that pre-submission surveys did take place in this area.</p> <p>The Applicant is not required to carry out invasive surveys to establish the existence of 12FE's interests. Based on the arguments raised by 12FE to date, those surveys would not be permissible without compulsory acquisition powers as they would require breaking up the surface (where it is claimed that 12FE's mineral estate commences).</p> |
| <p><i>We do not consider there to be any conflict between our submissions made in the compulsory purchase hearing and the fact that the mineral estate begins immediately below the surface. This is established law which no doubt the examining authority will satisfy itself on.</i></p> | <p>The Examining Authority will note the significant ambiguity in the extent of 12FE's claimed interest. At the CAH, 12FE stated that its interests were in mines and minerals only, and so breaking up the surface would not be of concern. However, at Deadline 5 [REP5-034] and at Deadline 6, 12FE has sought to confuse matters by arguing its mineral estate commences immediately below the surface. For the avoidance of doubt, the Applicant's position remains that mines and minerals must be specific interests of value, not generic/organic soil.</p> |

| 12 Property FE Limited's Comment | Applicant Response |
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| <p><i>It is well established that it is for the Applicant to take reasonable steps to negotiate with effected parties to acquire their interests by agreement. In instances where an applicant has failed to meet this requirement compulsory purchase powers should be refused.</i></p> | <p>The Applicant has made significant and repeated attempts to engage, and reach an agreement, with 12FE. This is evidenced in the Land and Rights Negotiation Tracker [REP6-004].</p> |
| <p><i>The Applicant cannot demonstrate that they have taken reasonable steps to negotiate when they have failed to provide sufficient information on the impact of the scheme on our client's interests. Neither has the Applicant carried out their own survey work in the relevant areas. Instead, the Applicant seeks to rely on compulsory purchase powers and make this a matter solely as to compensation. This is not a lawful position, and should the DCO be confirmed our instructions are to robustly pursue any opportunity to challenge by way of judicial review.</i></p> | <p>The Applicant does not agree with this statement, for the reasons set out above.</p> <p>The Applicant respectfully requests that the Examining Authority support the inclusion of compulsory acquisition powers over the 12FE plots for the reasons set out above and summarised in the Closing Submission [REP6-015].</p> <p>In the Applicant's view, the public benefits of the Proposed Development significantly outweigh any private loss. Any party suffering private loss would be entitled to compensation.</p> <p>It would be unreasonable to disrupt this nationally significant infrastructure project and impede its significant public benefits to address limited impacts on 12FE, which the Applicant has made extensive efforts to address and minimise.</p> |