APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED ("THE APPLICANT")

PEARTREE HILL SOLAR FARM DEVELOPMENT CONSENT ORDER ("THE PROPOSED ORDER")

ALBANWISE LIMITED ("AL"); ALBANWISE SYNERGY LIMITED ("ASL"); ALBANWISE FARMING LIMITED ("AFL"); AND FIELD HOUSE RENEWABLES LIMITED ("FHRL") (INTERESTED PARTY REF.: F04E592CD) (together "ALBANWISE")

POST HEARING SUBMISSION
SUMMARY OF ORAL SUBMISSIONS
MADE AT CAH2

INTRODUCTION

1. The following persons appeared on behalf of Albanwise at CAH2:

   (i) Mark Westmoreland Smith KC, Francis Taylor Building;

   (ii) Fiona Barker, Solicitor and a Principal Associate at Mills & Reeve LLP;

   (iii) Chris Banks, Renewables Development Manager, Albanwise Synergy Limited;

   (iv) Gordon Buchan, Energy – Sector Director and Transport Consultant, Pell Frischmann; and

   (v) Peter Scott, Technical Director, Nautilus Health and Safety Consultants.

2. Albanwise spoke to Agenda Item 4.

SUBMISSIONS UNDER AGENDA ITEM 4

Approach to these submissions

3. These submissions reflect principally what was said at the hearing by Albanwise. They must be read alongside Albanwise's closing statement. The closing statement sets out the key differences between Albanwise's and the Applicant's positions. The Applicant had the last word in relation to the need for compulsory acquisition at CAH2. That is

normal and no complaint is made. What it means is that Albanwise heard new and further submissions from the Applicant to seek to substantiate its position. These points are responded to principally in Albanwise's closing statement.

Overarching position

4. Albanwise confirmed that it does not object in principle to the proposed development, indeed, it is supportive of the type of development proposed.

5. Albanwise's interests in the order land and position in relation to the plots in which it has an interest are set out in **[RR-054, pp.4-5]**. Albanwise explained that it has no objection to the compulsory acquisition ("CA") powers sought in relation to Plots: 10-8; 10-10; 10-11; 17-25; and 17-26.

6. However, as the ExA is aware, Albanwise is affected by the CA and temporary possession ("TP") provisions within the September 2025 Change Request **[REP2-149]** and, more particularly, Change 9 within that request (namely, the newly proposed Farm access to Land Areas D and E off the A1035).

7. Albanwise objects in principle to this change. As set out below, the relevant tests for this land take are not made out.

8. The affected plots are: 2A-4, 2A-5 and 6-7. As set out in the relevant representation **[RR-054, pp.4-5]** and confirmed at CAH2, whilst Albanwise objects in principle on the basis that the tests for CA/TP are not met, it is prepared to come to a commercial agreement with the Applicant for the use of Plots 2A-4 and 6-7. However, the Applicant and Albanwise have to date been unable to come to an agreement. Albanwise also made clear that whilst it cannot agree to the Applicant taking TP powers over Plot 2A-5, if there is an appropriate access design that requires a small part of Plot 2A-5 adjacent to Plot 2A-4 which does not impact Field House Solar Farm ("FHSF"), then Albanwise is open to including such land in an agreement.

9. Albanwise, therefore, made it clear that it would prefer to find a resolution now and will continue to engage with the Applicant, but time is running out in the Examination and, as matters stand, the Applicant does not appear to be prepared to descend into some of the detail that would be necessary to come to an agreement.

The Change Application

10. It is necessary to comment on the nature of the Change Application itself. It shows all the signs of being rushed and not well thought through. The Applicant offered in its response to such, two examples where a change application has been made later in an Examination. That is a revealing response. Reliance on worst practice is a novel means of deriving support. Identifying an Applicant who has done a worse job is in no way justification for a poor application in this case. It also says nothing of the circumstances and relative merits of those other change proposals.

11. Albanwise made the following points:

(i) First, the Change Application has been made very late in the process. The application was made in February 2025 on the basis of the Meaux Lane Access (which is substantially retained). It was made on the basis that the Meaux Lane Access was acceptable and appropriate and, given it is not being replaced, that remains the case. The Examination was meant to close in December 2025, although it will now go into January next year but the Change Request was made in September 2025, just three months before the scheduled end of the Examination.

(ii) Secondly, the Change Request itself evolved materially during the August consultation. Albanwise was consulted in a letter dated 6 August 2025. Consultation responses were required by 5 September 2025. This initial proposal was amended in a further letter dated 14 August 2025 expanding land take from the highway at the north of the A1035 access and adjusting and expanding what is now Plot 2A-4. Neither of the letters referred to Plot 2A-5 at all. The proposal was to use only the existing access track. However, a further amendment was made by the addition of Plot 2A-5 on 29 August 2025. Despite this material change (and Albanwise's objection to it), the consultation deadline of 5 September 2025 was maintained. As such, the Application was initially made on the basis that there would be no access off the A1035 and that the Meaux Lane access was appropriate. The Change Request then itself evolved and ultimately included Plot 2A-5. The first time it was suggested that this was necessary was five working days before the end of the consultation period. At no point until then, had the Applicant ever suggested it was necessary to include TP powers over Plot 2A-5. Plot 2A-5 was a late addition and it had never previously been suggested that it was necessary to deliver the Proposed Development. It plainly is not.

(iii) Thirdly, the Change Request was made with a flawed understanding of the position on the ground. The Applicant has expressly said now in **[REP5A-031, p.5]** that it "*had understood that Albanwise did not have a fixed layout for its Field House Farm project and there could be optimisation of its proposed site. The Applicant's understanding was that there could be such variations. The Applicant therefore wanted to maintain the flexibility that any shared access track would align with the proposals for Albanwise's solar farm layout*." That is just wrong. The FHSF consent **[RR-054, App.1a]** is a detailed planning permission which is dated July 2022. The above demonstrates that the Applicant did not even look at the planning register for the land it proposed to take under TP powers. That is very surprising indeed. The Applicant could not have made a proper evaluation as to the proportionality of the proposed interference with Albanwise's property rights if it did not even inform itself as to how the land could lawfully be used. It clearly did not undertake a proper assessment as to whether the proposed powers were proportionate and now is seeking to defend the position it arrived at without full and proper consideration.

(iv) Fourthly, the EIA of Change 9 is flawed. This point is set out in the Summary of Oral Submissions following CAH1 **[REP4-086, pp.13-15, §§31-36]**. The short point is that the Updated ES (Environmental Statement Volume 4, Appendix 14.1: Transport Assessment (Tracked) (Revision 3) **[REP 2-134, §14.7.4]** states that: "*No baseline data has been collected for the private farm track off the A1035. For the purposes of this assessment, it is assumed that there are 0 daily vehicles on the basis that it is likely to generate only a small number of daily vehicles associated with the small number of residential dwellings and a farm.*" As such, Change 9 has been promoted with no baseline data having been collected for the access track, despite the Applicant being well aware that this track serves: the properties at Field House Farm and Albanwise's c.360 ha. of agricultural land to the south. The Applicant was further aware of the proposed use for the construction and operations of the two solar farm schemes which are in the process of implementation. As a result, the interaction between the Proposed Development and the use of the track has not been assessed and the conclusion that there would be no significant environmental effects is plainly unsound.

12. Overall, it is clear that the Change Request was not properly formulated and considered. The haste with which it has been put together is indicative that the proposed access track is not required but a late adjustment to address some concerns which had been expressed about the use of Meaux Lane (but, of course, the Applicant's case remains and has always been that the use of Meaux Lane is acceptable, an assessment with which Albanwise agrees).

<u>The principles to be applied when considering CA/ TP powers</u>

13. CA/ TP powers are draconian. They sanction the appropriation of property against the will of the landowner. Although, CA/TP powers feature in most applications for development consent and, as such, participants can think of those powers as ordinary, they are anything but and the tests to be met are strict and demanding on the Applicant.

14. The following propositions are well established and can be drawn from the Court of Appeal in ***<u>Prest v Secretary of State for Wales</u>*** [1983] 1 WLUK 416. The case related to CA powers sought by Welsh Water for sewage works and the affected landowner offered alternative sites. Lord Denning laid down the following principles and observations:

(i) Use of compulsory purchase powers is only available when "*it is necessary in the public interest*".

(ii) "*In any case, therefore, where the scales are evenly balanced — for or against compulsory acquisition — the decision — by whomsoever it is made — should come down against compulsory acquisition"*;

(iii) "*I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest <u>decisively</u> so demands: and then only on the*

condition that proper compensation is paid, see Attorney-General v. De Keyser's Royal Hotel Ltd (1920) A.C. 508" (our emphasis);

(iv) "*If there is a reasonable doubt on the matter, the balance must be resolved in favour of the citizen*"; and

(v) The onus of showing the justification for acquisition lies squarely on the acquiring authority.

15. Lord Denning summed up the gravity of the use of CA powers when it said: "*The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised*."

16. This is reflected in section 122 of the Planning Act 2008, entitled "*Purpose for which compulsory acquisition may be authorised*", which provides that:

> "*(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*
>
> *(2) The condition is* ***that the land****—*
>
> *(a)* ***is required for the development*** *to which the development consent relates,*
> *(b)* ***is required to facilitate or is incidental to that development****, or*
> *(c) is replacement land which is to be given in exchange for the order land under section 131 or 132.*
>
> *(3)The condition is* ***that there is a compelling case in the public interest for the land to be acquired compulsorily***." (our emphasis)

17. It is important to note that statute lays down two conditions. First, that the land is required, i.e. it is necessary to take the land in order to develop or facilitate the proposed development. Secondly, there is the further test of whether there is a compelling case in the public interest.

18. As will be said in the closing statement, the Applicant's response to Albanwise's submissions erroneously blended those tests. It focused only on the compelling case test. It said that the ExA/ SoS can take into account any restrictions or limitations (in this case proposed Requirement 16 ("R16")) in judging whether or not the test is met. Albanwise does not disagree with that submission. Such protections are also relevant to the extent of interference with property rights, but they cannot be relevant to the question of whether the land is required for (or to facilitate) the proposed development (which brings the issue of alternatives into play).

19. To the extent, it was suggested otherwise, that was wrong and may lead the ExA/ SoS into error. The question of whether the land is required has to be answered without regard to proposed R16.

20. The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013 ("the Guidance") reiterates the law set out above. Notable is:

    (i) §8: The applicant should be able to demonstrate to the satisfaction of the Secretary of State that **all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored**. The applicant will also **need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate** (our emphasis);

    (ii) §9: The applicant must have a **clear idea of how they intend to use the land which it is proposed to acquire** (our emphasis); and

    (iii) §12 and §13: …section 122 requires the Secretary of State to be satisfied that there is a **compelling case in the public interest** for the land to be acquired compulsorily…For this condition to be met, the Secretary of State will need to be persuaded that there is **compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss** that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss (our emphasis).

21. TP powers are distinct from CA powers but similarly the Applicant must be able to show that the powers are required i.e. necessary for the delivery of the scheme and that the interference with private property rights is justified such that the net effect is that the same or substantially similar assessment must be made.

<u>The CA/ TP tests are not met</u>

22. It is instructive to see how the Applicant itself articulates the justification behind the change request. The only rationale within the Change Application itself provided to reduce the use of Meaux Lane in the Change Application is that this "*has some attraction given that it is a narrow route with existing weight restrictions in force*" **[REP2-149, §9.1.3]**. This does not even get remotely close to meeting the statutory tests which require necessity and a compelling case. It is not reasonable for the Applicant to seek to acquire compulsorily at this late stage Albanwise's land when the failure to meet the required tests is so pronounced and obvious from the start.

23. Following CAH1 the Applicant sought to provide some further justification which did not originally feature in the Change Application. None of it amounts to necessity or a compelling case. It is summarised in **[APP5A-031, Applicant's response to Written Representations, pp.6-7]**. Albanwise addressed each in turn.

(i) First, the Applicant relies on the removal of 26,181m2 of land identified for permanent acquisition from the Order Limits (being Plots 2-13 and 2-14 **[APP-010, Land Plans (original, before removal), Sheet 2]**). However, the Applicant takes no account of the addition of some 42,090.83m2 over which CA and TP powers are now sought instead. It can be seen that considerably more land is affected and moreover, even acknowledging that the new access requires the acquisition of new permanent rights and TP as opposed to outright acquisition, the impacts of the CA/ TP powers now sought are far more significant – the use conflicts with the existing use of the track for agriculture and the proposed use for the FHSR and Carr Farm Solar Farm ("CFSF"). These conflicts did not arise from the use of Plots 2-13 and 2-14. Indeed, the owners of those plots (Plot 2-13: Ian Harold Sinkler **[APP-023, BOR, p.29]**; Plot 2-14: Richard Guy Caley **[APP-023, BOR, p.29]**) have not objected on the basis of land use implications. It is easy to see why: those plots form the boundary between two agricultural fields and, as such, the use of the fields for agriculture is virtually unaffected. The Applicant simply stating the amount of land removed from the application obscures the true picture;

(ii) Secondly, the Applicant states that the Change Application will eliminate the interface with tree (T381) which has been identified as a veteran tree. However, the application was made in full knowledge of the existence of that tree and appropriate mitigation proposed so that the tree could be retained and protected. **[APP-115, ES Volume 3, Appendix 7.11: Arboricultural Impact Assessment, p.38, §4.2.4]** states: "*T381 sits within the Order Limits and has a new access road proposed within its RPA. Prior to works commencing, the RPA must be fenced off in its entirety until, under arboricultural supervision, a 'no dig' construction load spreading road is laid using a 3D cellular confinement system product for* example Greenfix Geoweb. This will protect the soil from compaction and minimise the root impacts." The removal of an impact judged to be acceptable is obviously incapable of justifying CA powers over other land;

(iii) Thirdly, the Applicant relies on the reduced need for hedgerow and vegetation clearance between the points marked A/02/01 and A-02/02 on Sheet 2 of the Streets, Rights of Way and Access Plans **[PDA-005]**. What is required at that location is the provision of an access track of 4-5m in width. As such the requirement for removal is small and can be no more than say 20m. Again, no assessment has been made of the requisite hedgerow removal from the proposed new access track and so comparative analysis has been avoided. **[RR-054, App.4, Alternative Access Plan]** shows within Plot 2A-4 at the southern edge of the proposed FHSF immediately after the access track turns through 90 degrees to the south east a hedgerow of about 40m which will need to be removed. Albeit, this hedge is not identified for removal in **[REP4-004]** but designs supplied to Albanwise by the Applicant show an overlap with the proposed passing bay and it is clear that at least some of it will require removal. Even on the Applicant's partial analysis, the removal of a limited amount of hedgerow cannot possibly amount to a compelling case in the public interest. When a proper analysis is carried out, however, it shows that more hedgerow is lost in the Change Application, not less;

(iv) Fourthly, it is said the reduction in the use of Meaux Lane during construction – by approximately 25% for traffic accessing Land Area E and by 50% for traffic accessing Land Area D- is a benefit. However, it was thought this route was fine when the Application was made and, moreover, this route will remain part of the Application. The acceptability of Meaux Lane was not some casual conclusion but the result of detailed work. **[APP-050, 6.2 Environmental Statement Volume 2 Chapter 14 Transport and Access, pp.90-91, Table 14-34: Assessment Summary]** notes that the predicted residual effects on Meaux Lane are all "*Minor adverse and Not significant*". This is repeated in **[REP02-016]**, the September version of the EIA Transport Chapter. On the Applicant's assessment the use of the proposed new access does not materially change the predicated effects on Meaux Lane and those effects were in any event acceptable prior to the proposed Change Application. Again, that cannot be a sound basis on which to suggest the legal tests for CA are met;

(v) Lastly, it is said that the use of an access route directly off the A1035 would provide additional resilience to any incidents or closures on Meaux Lane. The Applicant overstates the point as Meaux Lane is still retained and relied upon *exclusively* for the construction and access to substantial areas of the proposed development. In any event, it is not suggested that resilience in itself is required or would justify CA powers.

24. The long and short of the case is that these factors amount together to an "improvement" to the scheme (the Applicant states **[REP5A-031, p.4]**): "*the Applicant considers that the use of this alternative access would represent an improvement to its proposals*"). *Improvement* is not sufficient to meet the tests – the CA / TP powers must be required/ necessary and there must be a compelling case in the public interest – the Applicant's own submissions indicate this is not the case.

<u>The case for Plot 2A-5 is unsustainable</u>

25. Albanwise's case on Plot2A-5 is set out in detail in its ("WR") **[REP4A-006, pp.2-6].** The short point is that the case has not been made out. What is required is an access track approx. 4.5m wide. What is being proposed to be taken is a plot that is up to 136m wide with an area of some 14,509sqm / 3.6 acres. There is simply no justification for the extent of land taken. Indeed, R16 demonstrates that vast majority of Plot 2A-5 is not required. The undertaking not to move above ground infrastructure demonstrates that the Applicant is content that it can deliver the Proposed Development without the great majority of Plot 2A-5. It knows it does not need it all. It has said as much. As a matter of logic it is not possible for the ExA/ SoS to rationally and lawfully conclude that Plot 2A-5 is required for the scheme. It must, therefore, be rejected.

<u>Land take in Plot 6-7 is also not properly justified</u>

26. As indicated in **[RR-054, p.18]**, the proposed tracks in Plot 6-7 are expected to be 4m-4.5m wide, however the DCO boundary corridor is 20m wide at this point. This results

in approximately 11,000m2 (2.7 acres) of farmland being taken that need not be. No justification is provided for this extra land take.

Land in relation to Change 9 as a whole is not justified, as there are reasonable alternatives

27. Where there are reasonable alternative ways of delivering a scheme to that proposed by an Application, the Applicant will not be able to show a compelling case in the public interest for CA powers precisely because there is an alternative way of providing the benefits of the scheme proposed without CA powers. ***Prest*** described above is a good illustration of this.

28. As to Plot 2A-5: Plot 2A-4 is clearly an alternative, in particular, given that, as identified above, the Applicant cannot intend to use the great majority of Plot 2A-5 and so cannot move the access materially further away of the Field House properties which was the entire reason given for the land take at Plot 2A-5.

29. As to Plot 2A-4: there are also alternatives:

    (i) Meaux Lane is an alternative. The fact that Plots 2-13 and 2-14 have been removed as mentioned by the ExA does not alter this as a matter of law. The route is an alternative and there is no law which says an alternative has to be 'internal' to an application. If the ExA were to assume that Meaux Lane was not an alternative because of their decision to accept the Change Application and remove Plot 2-13 and 2-14, that would amount to an error of law;

    (ii) As Albanwise pointed out in the RR, there is an access route along the Dogger Bank buried cables land (which has not been investigated by the Applicant in any detail, so far as is ascertainable from the change request documentation). There are two cables and a haul road was used in between them. This is explained at **[RR-054, pp.11-12 and App.4]**. The Applicant raised two points in response in **[REP5A-031, p.31]**: first, using this route would disturb undeveloped land with consequent potential impacts on ecological receptors and, secondly, there would still be an interface as between the Proposed Development and FHSF and CFSF. As to each: it is not undisturbed ground, the Dogger Bank cables have just been installed which included a temporary haul road in order to install them, the consent was given on the basis of that these works would not cause unacceptable ecological harm; and there would still be an interface between the schemes but the interface would be substantially reduced and the majority of the accesses to each would be separated.

30. These alternatives weigh heavily against the making of the Change 9 provisions because in each case they would not cause any of the significant public disbenefits referred to above and in particular would facilitate the continued development of the two consented solar schemes which rely on the land that the application proposes to compulsorily acquire.

Consequences of the Change Application

31. As Albanwise explained, the consequences of including Plot 2A-5 are potentially severe (and, again, set out in the WR). Plot 2A-5 forms an integral part of the FHSF including its substation. The Connection date for FHSF is September 2027. Albanwise, therefore, needs to continue implementation in earnest in order to meet a grid connection date – something that will be materially imperilled, if not impossible, if Change 9 is confirmed. Although R16 is said to address the situation, it does not provide any certainty at all as to whether or not the FHSF could meet the September 2027 dates.

32. In the WR, Albanwise has set out the stage at which the FHSF project is at and explained that it is being marketed now for the investment required to meet the connection date. The impact on that process – which had been going well – whittling down 11 expressions of interest in August to three bidders in September and looking to identify the preferred buyer in the new year has been effectively halted by the Change Application. As stated in the WR [**REP4A-006, p.5]**, the Commercial Director of the third-party investment advisory firm who is supporting the investment deal has said:

> "*The introduction of the modified Peartree proposal at this stage creates material uncertainty that investors will view as a significant risk. Granting rights for their construction traffic to pass through the Field House Solar Farm, particularly over asset-critical infrastructure, raises concerns about operational integrity and long-term reliability. These factors directly impact investor confidence and the project's attractiveness in the marketplace. Timely completion of this deal is essential to secure funding to order long-lead items, and maintain the critical path toward the grid connection date. Any delay or perceived exposure to these risks could erode value and compromise the project's competitiveness. It would be a real setback for a project that is otherwise ready to proceed and deliver much-needed renewable electricity to the grid*."

33. It is plainly no part of Government policy to allow larger schemes to cannibalise smaller schemes. On the contrary, all the policy which supports the Proposed Development supports the FHSF and indeed national policy requires developments to be planned to properly co-exist as part of good design (see paragraph 2.5.2 of EN-3). This Change Application is a failure against that requirement. Potential damage to FHSF is a substantial public interest consideration which weighs heavily against the powers sought.

34. The Applicant has been reluctant to descend into detail at this stage – saying detailed design will follow – as it often does in schemes of this nature – but in the context of the Applicant needing to show both that the land is required and that it is reasonable to impose R16 then it must descend to detail to explain how it can comply with R16 and require the majority of Plot 2A-5 at one and the same time.

35. In particular R16(2)(d), which provides that "*the undertaker must:… (d) unless otherwise agreed with Albanwise Ltd ensure that the route of a relevant access to and from the*

authorised development does not require the removal of any above ground infrastructure constructed pursuant to the Field House Solar Farm planning permission", amounts to a de facto ban on using the majority of Plot 2A-5. If that is right, then the taking of the whole of Plot 2A-5 is not justified and the Applicant has demonstrated the same by suggesting R16.

36. Looking at **[RR-054, App.4]** with the above in mind the Applicant must show how it can use the vast majority of Plot 2A-5 whilst leaving above ground infrastructure in place. In reality R16 means that the only the parts of Plot 2A-5 that are adjacent to Plot 2A-4 are usable. If that is so, the remainder of land is not required and unjustifiable. Moreover, no material difference in terms of noise and vibration could possibly arise as compared to using Plot 2A-4 alone and, as such, the original justification for adding Plot 2A-5 falls away.

37. In so far as it is suggested a track could snake between the substation and arrays within Plot 2A-5, Albanwise explained its understanding that the Applicant would need to excavate to install a track and that might be why the Applicant has been resisting reference to underground infrastructure in R16(d). All arrays are connected by underground cables to inverters and from the inverters to the substation by further underground cables. The Applicant saying that it will not take out above ground infrastructure is meaningless if it takes out the necessary connections to give the above ground infrastructure any utility at all. If this is the approach, the protection afforded by R16 is meaningless.

38. As such, either Plot 2A-5 is not required on the Applicant's own case or R16 is meaningless and it does not afford Albanwise and the FHSF the protection it purports to.

39. By way of summary the Change Application and Change 9 as it relates to Plot 2A-5 creates:

    (i) Investment uncertainty: the uncertainty caused by the lack of detailed design of the proposed interface allied with the blanket rights that the Applicant is seeking, creates material investment risk in FHSF making it un-investable, in either absolute terms, or when considered relatively against other market opportunities.

    (ii) Devalued investment: the complications of interfacing with the Applicant, the potential need to redesign FHSF and seek approval for any amendments, the increased traffic management measures and actual cost increases; which can be added to the additional devaluation caused by the increase in project risk, would all cause a decrease in the valuation of the FHSH which is an investment opportunity Albanwise has been working on for over 4 years.

    (iii) Risk to Programme: waiting on the creation of new designs and management measures; reaching agreement on them and getting variations to the planning permission consented; the impact that this has on investment decisions; as well as the risks of project delays that are much more likely to occur during the

construction phase itself, represent risks to the project programme which could result in the project not being able to connect on to the grid in September 2027 as planned.

(iv) Most importantly for reasons set out, land take is not justified

Safety

40. Gordon Buchan, Transport Consultant at Pell Frischmann made the following points:

(i) The site access junction onto/ from the A1035 is a safety concern. The junction is used by a number of different road users, residential and agricultural as well as construction traffic associated with the solar schemes. Proposed mitigation of a booking system and multiple banksmen does not take into account practical issues for competing contractors with multiple sub-contractors and with different schedules. There has been no real consideration of what will practically happen on site. Use of banksmen is a failure of design and mitigation. There is little detail in the oCTMP as to how up to five banksmen would operate. This information needs to be detailed given sensitivities of this area.

(ii) The Applicant should provide further detail in the oCTMP to ensure that the commitments can be made and delivered. No detail is given on how the construction traffic will be identified and how banksmen will know which traffic is for which scheme. No explanation as to how precedence is determined as between contractors has been provided. It should not be forgotten that there is an active agricultural business so there will be tractors, vans, cars etc using the same access. The Applicant's own swept path drawings show its maximum size HGV sweeping across the junction so that it would clash with oncoming traffic. This will likely cause delay and queuing on the A1035, a 50mph road. Banksmen have no power to stop or hold traffic on the public highway. Road users seeking to overtake queuing HGVs on the main carriageway creates road safety risks. In addition, there is no proposal for signage at present.

(iii) The Applicant has not committed to a wear and tear agreement for Albanwise's access tracks and watercrossings. The Applicant states that such provisions are included in the oCTMP. However, the oCTMP indicates that survey areas relate to public roads. There is, in fact, no commitment in relation to Albanwise's access track. This is critical to Albanwise and the other users of the access track.

(iv) The Applicant has not undertaken any review of existing watercourse crossings. This lack of detail casts doubt on any works needed being able to be accommodated in DCO limits and Albanwise being able to retain access to its wider land holding. In **[REP5A-031]** some of the drawings show works straying outside order limits which show that the drawings cannot be relied on and the Applicant should be reconsider these.

(v) The Applicant has overlooked some simple mitigation options to address road safety issues such as not using the existing access track concurrently with FHSF. **[REP4-025, pp.241-244 and pp.255-258]** contains out of date plans. Albanwise are concerned that the Change 9 proposals have been rushed and that the Applicant has not taken the opportunity to design out some of the risks. The local highway authority have said they are supportive but have not been given the detail because it does not exist and have not properly considered the concurrent use by different schemes, as became clear at the hearing.

(vi) Meaux Lane is a superior option to the access track in highways terms.

41. Peter Scott, Technical Director at Nautilus Health and Safety Consultants explained that he has over 40 years experience within the construction industry and for 25 of those years he has worked as a safety consultant. He explained that he was asked to give his opinion on the proposal of the shared use of the existing access point resulting from Change 9.

42. Mr Scott made the following points for Albanwise, consistent with Mr Buchan:

(i) Site access points are a known area of risk.

(ii) Current legislation and associated guidance relating to vehicle movements on and off site (in particular: the Construction (Design and Management) Regulations 2015 ("the CDM Regulations"); Health and safety Guidance ("HSG") 136 – Guide to Transport Safety; HSG 144 – Safe use of vehicles on construction sites; and HSG L153) focusses on reducing the number of vehicles that are entering and leaving site and segregating 'vehicle to vehicle' and 'vehicle to people' interfaces.

(iii) Mr Scott has visited the site and used the A1035 access and has safety concerns with regards to its use. The left in/left out proposal results in a sharp turn which increases the risk of interface between vehicles and between vehicles and people. Mr Scott said the design of the access requires improvements.

(iv) He said there was a risk of vehicles being delayed as a result of vehicles interfacing in the access and vehicles trying to enter the site queuing on the A1035. If that happens, members of the public may try to pass the queuing vehicle which would pose a risk to other road users.

(v) Use of banksmen ought to be an additional control and is not a reliable means of reducing risk. If there is an accident, Mr Scott's view is that it could not be said that best practice and HSG had been followed.

(vi) Using the Meaux lane access would be safer. The Applicant's focus should be on reducing risk so far as is reasonably practicable. In Mr Scott's view that did not appear to have been the focus in this case.

RESPONSES TO QUESTIONS

43. The ExA asked whether CFSF remained a concern. Albanwise explained that it was. It will use the same access track and as a result it will require an interface agreement. That is even though no cross over of construction periods is currently anticipated. However, that might change and this needs to be accounted for.

44. The ExA asked about the need to refer to below ground infrastructure in R16 referring to the Applicant's position that the protective provisions would protect such apparatus. Albanwise explained that it is the current landowner and is not a statutory undertaker and as such will not be protected by the protective provisions. Whilst the operator of the FHSF will likely be a statutory undertaker, it does not follow that the person who builds out the scheme will be, and the current landowner should be protected. If it is intended to provide the same protection as is afforded to statutory undertakers to the FHSF as the Applicant's response indicates, what is the harm in putting the same protection in a commercial agreement for the benefit of Albanwise?

45. The ExA asked whether payments had been made by Albanwise to secure the 2027 grid connection. Albanwise explained that that 2027 remains the anticipated connection date had recently been confirmed that in the Gate 1/2 process (Albanwise noted that the Applicant has not confirmed its position as to its connection date following the start of Gate 1/2 notifications). Albanwise explained that capital contributions are staged and that Albanwise has made what has been required to date.

46. When asked if it would be refunded if the scheme could not meet the connection date, Albanwise explained that only funds not used by the DNO would be refunded.

47. The ExA asked what weight should be given to the reduction of 1.5% in FHSF solar panels.

48. Albanwise said that if that were the reduction then it would still warrant material weight as the reduction is not necessary (see the alternatives point above) and Government policy is effectively 'the more the merrier the earlier the better'. It would be a failure against that policy position and NOS EN3 on good design including the need for projects to coexist. Of course, if the panels can go, so might the substation, that would be the effective elimination of FHSF and would need to be accorded very significant weight.

49. The ExA noted that the local highway authority was satisfied with the access arrangements and asked what weight should be given to the local highway authority's position.

50. Whilst the ordinary position is that statutory consultee views should be afforded considerable weight, this is not a rule but a starting point. In this case it is clear that the local highway authority has not considered the detail of the access arrangements – such detail does not exist – and moreover it expressly said its views were based on the fact

that the access had been consented for other schemes. However, it has not been consented on the basis of the cumulative impacts of schemes, nor the interface between schemes and it is this that gives rise to the concerns. In the circumstances, this is a case where less weight can be given to the local highway authority view.

SUMMARY

51. By way of summary, Albanwise concluded by saying that:

(i) There is no justification in the context of the CA/ TP tests for Change 9 as regards the requirement for the land or extent of land take;

(ii) There is nothing to show that using the proposed access is a safer option than Meaux lane, it is the contrary;

(iii) If the Applicant did use the Albanwise access most of the above points would be avoided or be reduced in significance if the Applicant agreed to not use the track for construction at the same time as the construction of FHSF or Carr Farm Solar Farm, but has not done so;

(iv) Government policy is to get renewable electricity onto the network and these proposals are stifling a project which is ready to go; and

(v) All this results from a late and unnecessary change that was not properly assessed (e.g. failure to understand the FHSF planning permission; failure to look at the baseline use of the access track) and which, ironically, places another solar farm in jeopardy. There is no justification for it where a scheme includes a viable alternative.