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")

CLOSING STATEMENT ON BEHALF OF ALBANWISE

INTRODUCTION

1. This closing statement should be read alongside, principally, Albanwise's Relevant Representation ("RR") **[RR-054]**, Written Representation ("WR") **[REP4A-006]** and Post Hearing Submission and Summary of Oral Submissions made at CAH2 ("CAH2 Submissions") (to be submitted at Deadline 6, there is no examination library reference as yet). These submissions do not seek to repeat what has previously been said but to distil the key points that remain between the Applicant and Albanwise and to set out Albanwise's position on each.

2. As previously established and summarised in the CAH2 Submissions at paragraphs 4 to 9, Albanwise does not object to the Proposed Development but it does object in principle to Change 9 of the Change Application which seeks compulsory acquisition ("CA") and temporary possession ("TP") powers over Albanwise's land without the necessary justification and with material consequences for Albanwise's land holdings.

3. At paragraphs 10-12 of the CAH2 Submissions, Albanwise sets out the late and rushed nature of the Change Application. This point is not made for the sake of it. This is a scheme that always has been assessed and promoted on the basis that the right access solution is via Meaux Lane. That is a very difficult background against which the Applicant has to show that the Change 9 land take is required. The moving explanation as to what (initially Plot 2A-5 was not proposed to be included) and why the land take is required immediately raises doubts as to whether the requisite tests are met. As set out below, the Courts have been clear that doubt is to be resolved in Albanwise's favour.

THE TESTS TO BE APPLIED

4. These are set out in the CAH2 Submissions at paragraphs 13 to 21. They are not repeated here. There is little dispute between the parties as to the tests. There is certainly no dispute that the powers are draconian; the onus of proof lies with the Applicant; the Applicant needs to show that the powers sought are necessary to deliver the scheme and in the public interest; where there are alternatives to the use of CA/TP powers their use will not be justified in the public interest; and any doubt in relation to whether the tests are met should be resolved in favour of Albanwise.

5. There is a single point of tension between the parties. Section 122 of the Planning Act 2008 ("PA 2008") 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.

6. The Applicant said at CAH2 that the ExA/ SoS can take into account any restrictions or limitations (in this case proposed Requirement 16 ("R16")) in judging whether or not there is a compelling case in the public interest. As stated in the CAH2 Submissions (paragraphs 17-19), Albanwise suggest otherwise and, further, such protections are also relevant to the extent of interference with property rights. However, and this is important, they cannot be relevant to the question of whether the land is required for (or to facilitate) the Proposed Development. To the extent, it was suggested otherwise, the Applicant was wrong and, if the suggestion is followed, may lead the ExA/ SoS into legal error.

7. The question of whether the land is required has to be answered without regard to proposed R16. That is very significant because every time it has been asked to justify the land take as a whole, the Applicant has said you have to ask whether there is a compelling case for the package as a whole which includes the protections of R16. It has failed conspicuously to make a case without the R16 protections but that is what it must do to show that the land is required to develop or facilitate the Proposed Development. For the reasons set out below, the land take under Change 9 is not required.

THE LAND TAKE IS NOT JUSTIFIED

8. The land take under Change 9 is not required to develop or facilitate the Proposed Development. This is explained in the CAH2 Submissions, paragraphs 22 to 30.

9. When the Change Application was made the case was not that the land was required and that there is a compelling case in the public interest. Rather the only rationale provided was that to reduce the use of Meaux Lane "*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 discharging the tests.

10. Moreover, and in summary:

(i) Plot 2A-5: Albanwise's case on Plot 2A-5 is set out in detail in its WR **[REP4A-006, pp.2-6]**. As explained, what is required is a track approximately 4.5m wide. What is being proposed to be taken is a plot that is up to 136m wide with an area of some 14,509m^2 (3.6 acres). There is simply no justification for the extent of land taken. Moreover, R16 demonstrates that the vast majority of Plot 2A-5 is not required on the Applicant's own case. 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 all of Plot 2A-5 and has effectively said so. 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. The justification for the late inclusion of Plot 2A-5 was to ensure physical separation from the residential properties at Field House Farm. However, as set out in CAH2 paragraphs 35 to 36, R16 renders the vast majority of Plot 2A-5 unusable to the Applicant. In reality R16 means that 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 or justifiable and, moreover, no material difference in terms of noise and vibration could possibly arise as compared to using Plot 2A-4 alone. As such, the original justification for adding Plot 2A-5 falls away*. So, when the Applicant said it sought to balance three considerations: the protection of Albanwise; physical separation from the Field House properties and the safe and efficient construction of the Proposed Development- the taking of Plot 2A-5 is flatly contrary to the first. On analysis with R16 in place it does not achieve anything material that could justify CA powers on the second and the third is not reliant on Plot 2A-5 even on the Applicant's case. As such, there is no possible basis to justify taking Plot 2A-5.

(ii) Plot 6-7: as indicated in **[RR-054, p.18]**, the proposed tracks in land parcel 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 proper justification is provided for this extra land take.

(iii) All Change 9 land: there are clear alternatives which fatally undermine the Applicant's compelling case argument. Alternatives are addressed further below.

11. The Applicant belatedly recognised that it had not justified the CA/TP powers and sought to provide further justification which did not originally feature in the Change Application following the CAH1 the Applicant **[APP5A-031, Applicant's response to Written Representations, pp.6-7]**. The points raised are addressed in the CAH2 Submissions at paragraph 23. That paragraph is not repeated here but it should be reviewed.

12. At CAH2 the Applicant realised it had to go further still to make out the tests. It made seven submissions. They do not individually or collectively meet the tests. Each is addressed below:

(i) The first submission summarised and repeated the compelling case as set out in **[APP5A-031, Applicant's response to Written Representations, pp.6-7]**. Albanwise addresses this in paragraph 23 of the CAH2 Submissions.

(ii) The second submission was that R16 and the protections it affords need to be taken into account in assessing whether this is a compelling case. This is addressed in paragraphs 6 to 7 above. It is a submission that without care could lead to an error of law.

(iii) The third submission was that one part of a development consent order ("DCO") should not negate another part of the same DCO and that Albanwise's wish for a legal agreement between the Applicant and itself would undermine this. This submission is wrong on a number of levels. First, it is simply wrong to say one part of a DCO cannot disapply another. The DCO is a statutory instrument that can be drafted as is required. The protective provisions in the Applicant's draft order seek to disapply powers [REP5-004, Schedule 12, Part 1, Paragraph 5]. But, in any event, the proposed legal agreement between Albanwise and the Applicant would not be part of the DCO and as such the point does not arrive. The Applicant then sought to draw a parallel between the current situation and offshore wind projects in which there is now a requirement to assess inter-array wake effects (paragraph 2.8.176 of EN-3 (2025)). The Applicant says that the absence of such a policy in the solar space is significant. That is again a submission without merit. The offshore wind policies are addressing a particular issue where the operation of one wind farm may affect the operation of another indirectly through wake effect. This is materially different from the current situation where there is physical overlap. A specific policy is not required in order to tell the decision maker that such a physical overlap/ conflict is a relevant consideration. Indeed, it is an obviously material consideration. This is a failure as to the EN-3 policy on good design which includes co-existence with other land uses (paragraph 2.5.2). A flawed parallel with offshore wind sector specific policies does not address this policy conflict or, more importantly, the obvious conflict on the ground.

(iv) The fourth submission was that little weight should be accorded to the loss of a small percentage of panels of the Field House Solar Farm ("FHSF") scheme. However, as set out in the CAH2 Submissions (paragraph 48), that approach to weight fails entirely to account for the fact that the loss is not necessary as there are alternatives. And moreover, if the panels can go, so too can the substation which is, in effect, the FHSF scheme which no one suggests would not be a significant loss.

(v) The fifth submission was that the access arrangements with a CTMP were safe. The Applicant committed to include a requirement for Albanwise to be consulted on the CTMP within R16. Albanwise's position on safety is set out in the report of Gordon Buchan **[REP4A-006, App.2]** and summarised in the CAH2 Submissions (paragraphs 40 to 42).

(vi) The sixth submission related to the likelihood of an agreement being reached before the end of the examination and was not aimed at justifying the land take.

(vii) The seventh and last submission, again did not seek to justify the land take, but rather it sought to justify the fact that the Change Application was made late in the process by stating that it could point to applications for changes that have been made later in examinations. The argument that others have done it worse in the past plainly does not excuse the late nature of this application and it does not address at all its rushed nature leading to the substantive issues identified at the CAH2 Submissions paragraph 11.

13. It can be seen that the seven submissions made to bolster the Applicant's case, do not in fact take it any closer to justifying the land take.

Alternatives

14. These submissions build on paragraphs 27 to 30 of the CAH2 Submissions. 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 at paragraph 14 of the CAH2 Submissions, is a good illustration of this.

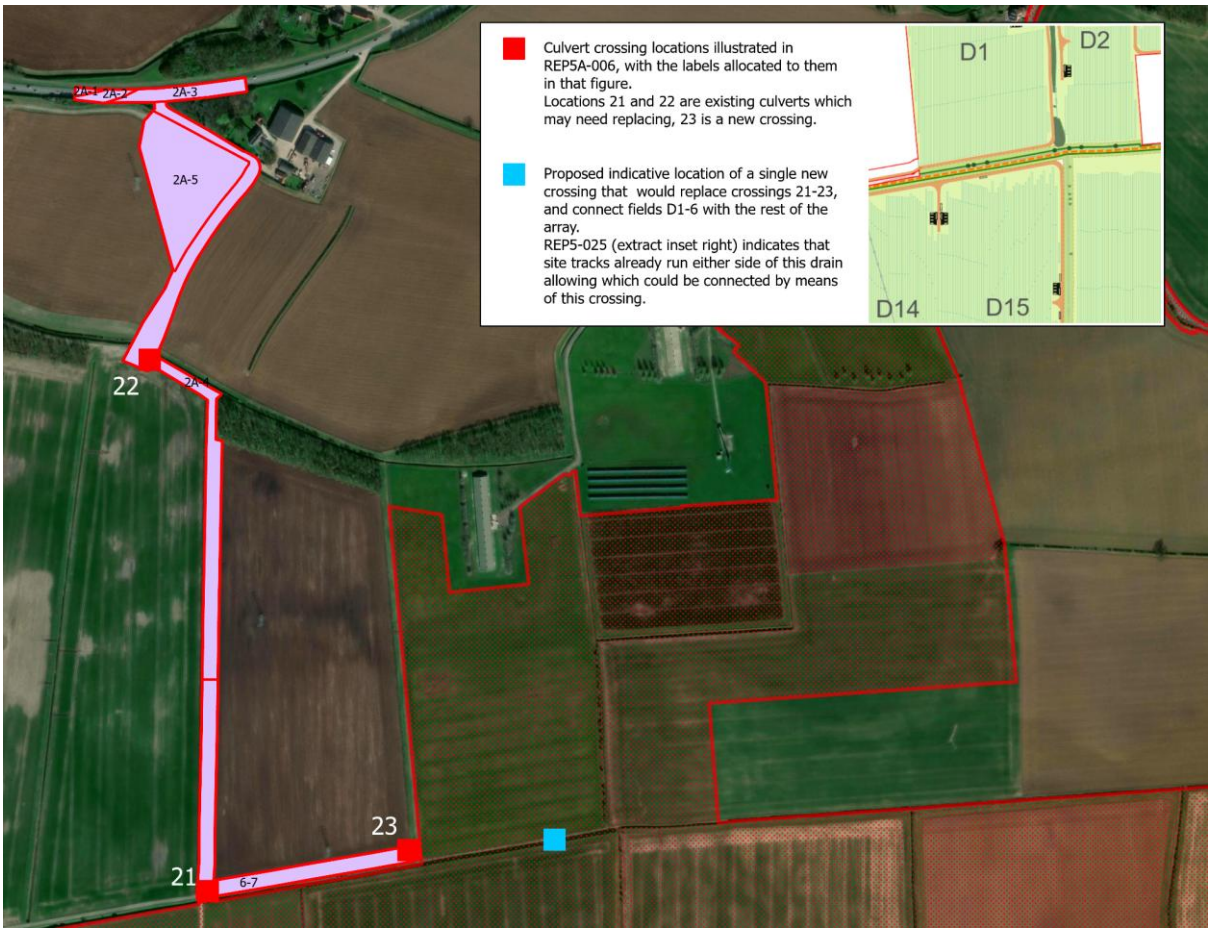
15. As to Plot 2A-5: Plot 2A-4 is clearly an alternative, in particular given that, as identified above, the Applicant cannot intend to use the great majority of Plot 2A-5 and this fundamentally undermines its stated reason for including it (to move the access further away from the FH properties.)

16. 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 Plots 2-13 and 2-14 would amount to an error of law. This is a very important point. As a matter of law access from Meaux Lane is an alternative whatever the effect of the acceptance of the Change Application;

(ii) In any event, it is plain that access to all those parcels of land accessed by Change 9 could be gained via Meaux Lane even without Plots 2-13 and 2-14. Meaux Lane gives access to Plot 6-2 from which Plot 6-1 and Plot 2-15 can be reached (see **[REP3-004, Sheets 2 and 6]**). Works 1d, 2 and 3 are proposed across all of these plots and that includes Work No. 3 (d) the laying down of internal access tracks including the crossing of watercourses. Therefore, even after the removal of Plots 2-13 and 2-14 the newly proposed access is not required. Albanwise has analysed

this route and a single new water course crossing is required as indicated below. The Change 9 access across Albanwise's land also requires a new water course crossing as well as two further existing crossings that the Applicant has not assessed as to whether they will require further reinforcement. The suggestion that the refusal of Change 9 would remove a quarter of the Proposed Development is, therefore, evidently wrong and any decision made on that assumption would be flawed.



(iii) 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 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 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. The Applicant made two additional points in ISH3. First, that their Dogger Bank alternative would require a significant amount of more

land. That is not so. There is a short additional east-west run in the north, away from the access to the A1035, and a short addition west-east run in the south. It is not significantly more land. Moreover, as indicated above, it avoids most of the interface between the projects (save at the junction itself) and would achieve the Applicant's objective of moving the access away from the properties at Field House Farm. The second further submission was that "*other alternatives should not be entertained*" where there will be a detailed design process, the protections afforded by R16 and the CTMP. That is a non-sequitur: the alternative that has to be considered is an alternative to the use of CP/TA powers. Again, this argument if entertained could lead to legal error.

17. As a result, there remains very clear alternatives to the Change 9 proposal. 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. Additionally, these alternatives do not address the safety issues raised by Mr Buchan and Mr Scott.

REQUIREMENT 16

18. Progress has been made between the parties on the drafting of R16 and the Applicant has now agreed to incorporate below ground infrastructure and to consult Albanwise on the CTMP.

19. Albanwise asks the ExA to include the following version of R16 in its final version of the DCO which goes to the SoS which reflects the discussions between the parties and builds upon the version of R16 that was included in **[REP5-004]** and in which the blue text indicates the final comments from Albanwise to the Applicant:

> **Interaction with Field House Solar Farm and Carr Farm Solar Farm**
> 16.—(1) The undertaker must use all reasonable endeavours to avoid any conflict arising between the carrying out and maintenance of the authorised development and the carrying out of Field House Solar Farm and minimise any conflict arising between the carrying out and maintenance of the authorised development and (i) the carrying out and maintenance of Carr Farm Solar Farm and (ii) the maintenance of Field House Solar Farm.
>
> (2) Without limitation to sub-paragraph (1), the undertaker must—
> (a) ~~in so far as reasonably practicable,~~ use all reasonable endeavours to programme its construction activities to avoid the use of the existing access track or a relevant access within the Field House Farm construction phase;
> (b) in the event that the construction of the authorised development occurs concurrently with the construction of Field House Solar Farm and Carr Farm Solar Farm (or either of them), to co-operate with Albanwise

Ltd so as to reasonably ensure the co-ordination of construction programming, use of the existing access track land assembly, and the carrying out of works in connection with the authorised development so as to minimise disruption to the construction, and maintenance of Field House Solar Farm and Carr Farm Solar Farm;

(c) provide a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development

(d) exercise the powers of temporary possession and compulsory acquisition in such manner as is reasonably necessary for the undertaker to safely construct, maintain or operate the authorised development whilst, ~~avoiding any disruption to the construction of Field House Solar Farm and~~ so far as reasonably practicable, minimising any disruption to the construction and operation of Field House Solar Farm and ~~the construction and operation of~~ Carr Farm Solar Farm; ~~and~~

(e) 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; and

(f) before submitting for approval under Requirement 5 a CTMP that relates to a part of the authorised development which would involve the use of the existing access track or a relevant access, consult with, and have due regard to comments made by, Albanwise Ltd in relation to that CTMP on matters relating to the use of the existing access track or a relevant access.

(3) Field House Solar Farm below ground infrastructure shall have the benefit of the Protective Provisions for Electricity Undertakers in Part 1 of Schedule 12 to the Order as if it were "apparatus" as defined in paragraph (2)(a) of Part 1 of Schedule 12.

(4) Article 43(2) and (3) of this Order will, without limitation, apply to any land in which there is an overlap between the authorised development, and Field House Solar Farm and Carr Farm Solar Farm.

(5) In this paragraph—

(a) "above ground infrastructure" means the solar photovoltaic arrays and substation development shown on the approved plan identified in condition 3 of the Field House Solar Farm planning permission and identified as Figure 04 – Proposed Site Plan;

(b) "below ground infrastructure" means any ~~below ground infrastructure~~ apparatus, equipment or structures comprising part of Field House Solar Farm which is below ground, including but not limited to underground electricity cables and associated equipment;~~that constitutes apparatus within the meaning of paragraph 2(a) in Part 1 of Schedule 12;~~

(c) “Albanwise Ltd” means Albanwise Limited (Company Registration Number 01359468) whose registered office is at Botanic House, Hills Road, Cambridge, England, CB2 1PH and any successor who implements the planning permission for Field House Solar Farm and Carr Farm Solar Farm;
(d) “Carr Farm Solar Farm” means the solar farm development permitted pursuant to the Carr Farm Solar Farm planning permission;
(e) “Carr Farm Solar Farm planning permission” means the planning permission with reference APP/E2001/W/25/3360978;
(f) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the land which is the subject of a planning permission for Field House Solar Farm and Carr Farm Solar Farm;
(g) “existing access track” means the existing access track running south off the A1035;
(h) “Field House Solar Farm” means the solar development permitted pursuant to the Field House Farm Solar Farm planning permission;
(i) “Field House Solar Farm construction phase” means the construction period for Field House Solar Farm not exceeding 8 months and commencing when confirmed to the undertaker in writing by Albanwise Ltd no later than three weeks after the date on which the Order is made;
(j) “Field House Farm Solar Farm planning permission” means the planning permission with reference 22/000824/STPLF; and
(k) “relevant access” means such access to the authorised development as may be constructed pursuant to this Order within the limits of plot 2A-5.

20. The blue text represents Albanwise’s final proposed changes to the draft Requirement which the Applicant has accepted. The following should be noted with regards to the blue text:

(i) It is reasonable and appropriate to ask the Applicant to use all reasonable endeavours given the importance of the FHSF and CFSF and the potential impact on those schemes and Albanwise’s business interests. The Applicant has agreed this;

(ii) Albanwise has added wording requiring the Applicant to take account of its comments on the CTMP, which the Applicant has agreed;

(iii) The amendment in relation to definition of “below ground infrastructure” is designed to ensure that it covers cables even if they are not yet live. The definition proposed by the Applicant referred to *“apparatus” within the meaning in paragraph (2)(a) in Part 1 of Schedule 12* of the Electricity Act 1989. That definition includes electric lines but electric lines are defined in the Electricity Act 1989 as “*any line which is used for carrying electricity”.* Given the interface may be at construction as opposed to operation of FHSF, the protection needs to be afforded to any installed cables that are yet to be energised. The Albanwise drafting, which has been agreed by the Applicant, ensures this is done.

(iv) There were two elements of the definition of "Field House Solar Farm construction phase" that were in dispute. The first was the length of the construction period. The Applicant referred to 5 months on the basis of the Indicative Construction Schedule shown in Appendix B (Indicative Construction Schedule) of the Field House Solar Farm and BESS Code of Construction Practice approved by East Riding of Yorkshire Council on 20 May 2025 under reference 25/30183/CONDET. There were two issues with this. First, it is an indicative schedule and there needs to be some flexibility. Secondly, it does not include mobilisation and demobilisation which will add a further month. Albanwise suggested, therefore, that if the definition referred to a 'not exceeding figure', 8 months would be reasonable to account for mobilisation and demobilisation and any delays in construction. The Applicant has agreed to that. The second issue was that the Applicant's proposed definition did not identify the start of the construction period and as such R16 did not actually identify the period in which paragraph 2 is engaged. That is why Albanwise proposed a requirement to notify the Applicant of when the construction period will begin so that period is clear. The Applicant has now agreed that.

21. Whilst R16 is welcome, it does not overcome the failure to justify the land take for Change 9.

CONCLUSION

22. For all these reasons the CA and TP powers sought in relation to Change 9, applying the tests properly, ought to be refused. To repeat, the suggestion that the consequence of refusal is that a quarter of the Proposed Development cannot come forward is simply wrong. There are clear alternatives to Change 9 that allow the Proposed Development to proceed without the Change 9 CA/ TP powers.

23. Albanwise notes that the Applicant is yet to update the Examination on the latest position in relation to its grid offer.