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Written Representations by Network Rail Infrastructure Limited in relation to Meridian Solar Farm 202[X] (DCO)

Planning Inspectorate Reference Number: EN010169
Registration Identification Number: [redacted]
Applicant: Meridian Solar Farm Limited
Application: The Meridian Solar Farm

Introduction

We write further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Section 56 Representation (submitted on 1 July 2026) which confirmed that Network Rail requires its standard protective provisions to be included in the draft Development Consent Order (**Order**). As currently drafted, the Draft Order (document reference number 3.1) includes generic protective provisions for certain statutory undertakers in Schedule 13, but it does not include bespoke protective provisions for the protection of Network Rail or the railway. The generic provisions do not sufficiently protect Network Rail's assets, rights, access requirements, safety controls or the safe and efficient operation of the railway. For that reason, Network Rail requires railway-specific protective provisions in a form satisfactory to it (**Protective Provisions**).

The form of protective provisions sought by Network Rail is the same as that appended to its earlier Relevant Representation. Accordingly, the protections now sought are not novel: they have been identified consistently from the outset of the examination.

These protective provisions contain the necessary provisions preventing the compulsory acquisition or temporary use of land and rights owned by, occupied by or held for the benefit of Network Rail unless NR's prior consent is obtained. It is established drafting practice in DCOs affecting railway interests that compulsory acquisition and related powers in respect of railway property are subject to Network Rail's prior consent through protective provisions.

For these purposes, "railway property" should be understood broadly and consistently with Network Rail's standard protective provisions as including land owned by Network Rail, occupied by Network Rail, held for the purposes of its statutory undertaking, and land in relation to which Network Rail enjoys easements, access rights, covenants or other rights for railway purposes.

Network Rail's position is that the absence of those protections would create an unacceptable risk of serious prejudice to Network Rail's ability to:

a) carry out its statutory undertaking;

b) comply with its Network Licence; and

c) safely operate the railway network.

That is so whether the affected land is operational railway land, former railway corridor land, or third party land burdened by rights reserved for the benefit of Network Rail.

Should NR and the Applicant not be able to reach an agreement as to the inclusion of those protective provisions in the Order, NR must maintain its objection to the DCO insofar as it would authorise compulsory acquisition, temporary possession or other interference with railway property without those protections.

We set out the reasons for Network Rail's position and a request for the inclusion of the necessary Protective Provisions in the Order in this representation.

Protective Provisions

The Application includes provisions which would, if granted, authorise the Applicant to acquire land and rights and to carry out works on and in close proximity to land in which Network Rail has property interests and/or rights held for the purposes of its undertaking.

On the information presently available to Network Rail, the relevant impacts include:

1 compulsory acquisition of land in respect of Plot A3-28, comprising approximately 20,225 square metres of hedgerow and drain lying to the south of Queen's Bank, in which Network Rail is identified as having an interest/right;

2 compulsory acquisition of rights in respect of Plot B1-24, comprising approximately 2,220 square metres of abandoned railway line, grassland and drain lying to the east of A16 Cowbit Road, in relation to which Network Rail has rights reserved by conveyance dated 23 October 1991;

3 compulsory acquisition of rights in respect of Plot B1-26, comprising approximately 122 square metres of abandoned railway line, access track and grassland lying to the east of A16 Cowbit Road, in relation to which Network Rail has rights reserved by conveyance dated 23 October 1991;

4 compulsory acquisition of rights in respect of Plot B1-39, comprising approximately 270 square metres of abandoned railway line and grassland lying to the east of A16 Cowbit Road, in relation to which Network Rail has rights reserved by conveyance dated 23 October 1991; and

5 compulsory acquisition of rights in respect of Plot B1-42, comprising approximately 38 square metres of grassland lying to the east of A16 Cowbit Road, in relation to which Network Rail has rights reserved by conveyance dated 15 February 1989

Network Rail must accordingly ensure that the Application is granted subject to the Protective Provisions which provide appropriate protection for the safe and efficient operation of the railway

As there are currently no bespoke Protective Provisions that are afforded to NR in the draft Order there is crucially no railway-specific restriction on the Applicant's exercis of compulsory acquisition powers, temporary possession powers or related powers in relation to railway property without NR's prior consent (with such consent not being unreasonably withheld save where operational or railway safety requires otherwise).

NR requires the inclusion of the following provisions to form part of its Protective Provisions:

1. (1) The undertaker must not exercise the powers conferred by—

(a) article 3 (*development consent etc. granted by the Order*);

(b) article 5 (*power to maintain the authorised development*);

(c) article 18 (*discharge of water*);

(d) article 20 (*authority to survey and investigate the land*);

(e) article 21 (*compulsory acquisition of land*);

(f) article 24 (*compulsory acquisition of rights*);

(g) article 25 (*private rights*);

(h) article 29 (*acquisition of subsoil or airspace only*);

(i) article 27 (*power to override easements and other rights*);

(j) article 31 (*temporary use of land for constructing the authorised development*);

(k) article 32 (*temporary use of land for maintaining the authorised development*);

(l) article 33 (*statutory undertakers*);

(m) article 40 (*felling or lopping of trees and removal of hedgerows*);

(n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 33 (*statutory undertakers*), article 27 (*power to override easements and other rights*) or article 25 (*private rights)*, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it

shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

Paragraph 4(1)

The Applicant seeks powers in the draft Order to acquire rights permanently over plots, comprising (i) land owned and occupied by Network Rail, and (ii) land in respect of which Network Rail is the occupier or has the benefit of rights. In particular, as presently identified, the powers sought affect Plot A3-28 and Plots B1-24, B1-26, B1-39 and B1-42, including former railway land and land over which rights have been reserved to Network Rail for railway purposes

If NR's consent is not required to be obtained prior to the exercise of such powers, there would be a significant and unacceptable risk that the Applicant could compulsorily acquire rights over or temporarily use railway property without those rights or that use being subject to the approvals, conditions, limitations and restrictions necessarily required by NR (including conditions identified through its business and technical clearance process in order to facilitate and ensure the safe and efficient operation of the railway. Such processes and protocols are implemented by Network Rail to regulate third party interference with the railway and to ensure compliance with its statutory and regulatory obligations. It would be inappropriate for the Order to allow such powers to be exercised in respect of railway property without Network Rail's prior consent, because that would bypass the safety, operational and engineering controls that Network Rail is required to apply.

NR operates under a Network Licence granted by the Office of Rail and Road (ORR). Under its Network Licence, NR is required to comply with a wide range of standards imposed by the Rail Safety and Standards Board that pertain to maintaining the safe and efficient running of trains on the railway. In order to do so, NR must retain appropriate restrictions, controls and procedures over any interference with railway property by third parties, including where rights are proposed to be exercised on or over railway land. Those controls are secured through the requirement for prior consent and, where specified works are proposed, through an asset protection agreement.

Accordingly, where a right is compulsorily acquired and may be exercised over railway property without NR's prior consent, that right would be created outside of NR's proper control and would not be subject to the restrictions and conditions NR considers necessary to enable it to comply with its Network Licence and statutory responsibilities. By way of example, NR may require rights granted to the Applicant to be subject to reservations allowing NR to interrupt the exercise of those rights in certain circumstances such as to respond to emergencies undertake maintenance, facilitate possessions or protect railway safety. In the absence of a consent control, there is a real risk that rights or temporary possession affecting railway property would not be subject to the necessary restrictions, with consequent prejudice to railway safety, operational integrity and Network Rail's ability to discharge its regulatory obligations. That is not a position which can be accepted by NR, nor is it one which would be compatible with its obligations to the ORR as regulator.

Network Rail is willing to engage with the Applicant to agree the terms of the rights sought and under paragraph 4(6) above is required to act reasonably in doing so. The proposed drafting does not confer an unqualified veto. Consent is expressly not to be unreasonably withheld, although it may be subject to reasonable conditions and it will not be unreasonable for Network Rail to withhold consent for reasons of operational or railway safety. NR cannot, however, relinquish the degree of control necessary to ensure the safe and proper management of the operational railway and other railway property held for the purposes of its undertaking. Network Rail is in discussions with the Applicant to agree the grant of the necessary rights through private agreement, but these negotiations remain at an early stage and the relevant agreements are not yet in place.

A restriction requiring Network Rail's consent before compulsory acquisition and related powers are exercised in respect of railway property is established drafting practice in DCOs affecting railway interests and has been accepted by the Examining Authority and Secretary of State in a number of made Orders including but not limited to: the Beacon Fen Energy Park Order, the A47/A11 Thickthorn Junction DCO, Thurrock Flexible Generation Plant DCO, Yorkshire and Humber CCS Cross Country Pipeline DCO, Sunnica Energy Farm DCO, Longfield Solar Farm DCO and South Humber Bank Energy Centre DCO. The purpose of this restriction is not to impede the implementation of the Applicant's scheme, but to secure appropriate protection for NR as statutory undertaker and infrastructure manager in order that it can properly regulate the exercise of rights over railway property in accordance with the established function and purpose of protective provisions.

The generic protective provisions presently included in article 45 and Schedule 13 do not address these concerns. They do not provide any railway-specific restriction on compulsory acquisition, temporary possession, access interference or specified works affecting railway property, and they do not require an asset protection agreement to be entered into before works interfacing with the railway are undertaken.

Paragraph 4(2)

Network Rail is required to maintain strict safety protocols under its Network Licence granted by the ORR. Network Rail employees and contractors must have reliable pedestrian and vehicular access to railway property for maintenance, inspection, fault response, emergency attendance, possession access and other operational purposes. That access cannot be impeded without NR's consent. Any prevention of such access could prejudice the safe and efficient operation of the railway and place Network Rail at risk of non-compliance with its regulatory obligations. Network Rail requires the inclusion of paragraph 4(2) in the Protective Provisions for this reason.

Paragraph 4(3)-(6)

Network Rail not only has a duty to ensure the safe and efficient running of the railway for employees, third parties, members of the public and all others who come into contact with the railway; it also has an overarching duty to preserve the integrity of the operational railway and related property interests. For that reason, compulsory acquisition and related powers affecting operational railway land or rights benefiting Network Rail must be subject to Network Rail's prior written consent. Should rights be acquired over railway land without such consent being obtained then the right is created outside the control of Network Rail and may not be subject to the necessary restrictions and conditions that Network Rail would regard as sufficient so as to enable it to comply with the Network Licence and its wider statutory undertaker responsibilities.

Similarly, where compulsory acquisition is proposed over land in respect of which Network Rail has the benefit of easements or other rights, the exercise of those powers without consent would circumvent Network Rail's usual process of obtaining business and technical clearance (a process through which Network Rail's engineers assess the likely detriment to the railway and identify appropriate controls). If such rights are acquired outside of this process Network Rail could be placed in a position where railway safety and operations were prejudiced and where it was unable properly to discharge its responsibilities as statutory undertaker and infrastructure manager.

Network Rail is willing to engage with the Applicant to agree the terms and extent of the rights sought. In doing so (and as reflected in paragraph 4(6)), Network Rail is required to act reasonably. However, Network Rail cannot be placed in a position where it is required to relinquish control over operational and railway safety matters. In those matters, Network Rail must retain the ability to determine what is necessary in order to comply with its statutory duties and licence obligations.

Paragraph 4(7)/ Asset Protection Input

An Asset Protection Agreement (APA) is required to be entered into in order to support the review of the design of any specified works and to facilitate access on to railway land. An APA is a contractual agreement between Network Rail and an outside party regulating interaction with the railway and establishing roles, responsibilities and liabilities in relation to works over, under or adjacent to the railway. The APA enables NR's Asset Protection Team to manage access, site safety, engineering input and possession arrangements and other operational interfaces as necessary.

The consent mechanism and the APA serve different purposes, and both are required. The consent mechanism governs whether and on what terms powers in the Order may be exercised in relation to railway property. The APA is the practical contractual mechanism through which technical design review, access, possessions, supervision, programme interface, liabilities and cost recovery are managed for specified works.

The protective provisions should therefore include an express requirement for the Applicant to enter into an APA before carrying out any specified work so that NR can fulfil its duties to protect the railway and comply with its regulatory obligations. This requirement is proportionate. “Specified work” is defined in Network Rail’s standard protective provisions to include works situated upon, across, under, over or within 15 metres of, or which may in any way adversely affect, railway property. In that context, the APA requirement is a practical and established means of ensuring that works interfacing with the operational railway are properly controlled.

It is therefore submitted that Network Rail would plainly be acting reasonably in requiring an APA to be entered into before any specified work is carried out.

For the reasons set out above, NR maintains its objection to the draft Order in its current form and requests inclusion of paragraph 4 of its standard protective provisions in full by amendment to article 45 and Schedule 13 so as to include a bespoke part for the protection of Network Rail.

Section 127 of the Planning Act 2008

In addition to the points set out above, and insofar as the draft Order would authorise compulsory acquisition affecting statutory undertaker land, NR maintains its objection on the basis that the requirements of section 127 of the Planning Act 2008 are not met unless paragraph 4 of Network Rail’s standard protective provisions is included.

Network Rail is a statutory undertaker and the plots and rights affected include land and rights held for the purposes of its undertaking including rights reserved over land forming part of former railway corridor. Section 127(2) applies where statutory undertakers' land is to be acquired, and section 127(5) applies where a right is to be acquired over statutory undertakers' land by the creation of a new right. In each case, the Secretary of State must be satisfied, in summary, that the relevant acquisition can occur without serious detriment to the carrying on of the undertaking or that any such detriment can be made good by the use of other land.

Without the inclusion of paragraph 4 of Network Rail’s standard protective provisions, Network Rail’s position is that the Secretary of State could not properly be satisfied that the proposed compulsory acquisition affecting railway property satisfies section 127, because:

(a) the proposed acquisition would give rise to a real risk of serious detriment to the carrying on of NR’s undertaking; and

(b) any such detriment cannot be made good by use of other land.

That is particularly so in relation to the acquisition of rights over land and rights benefiting Network Rail, to which section 127(5) is directly relevant.

The reasons are as follows:

1) all of the plots over which rights are proposed to be compulsorily acquired include operational railway land, land used for railway equipment, and land affected by restrictions or rights held for railway purposes including Plot A3-28 and Plots B1-24, B1-26, B1-39 and B1-42 where Network Rail's interests and/or reserved rights have been identified;

2) unless NR has the ability to require its prior consent before the exercise of compulsory powers in respect of railway property and, where relevant, to require the Applicant to enter into an asset protection agreement before carrying out specified work, the exercise of such powers may occur outside Network Rail's established safety, engineering and operational control framework;

3) in those circumstances, the proposed powers would create a real risk of serious detriment to Network Rail's undertaking because they could interfere with access, maintenance, possessions, operational safety, railway assets and the safe running of trains; and

4) such detriment cannot be made good by the use of other land because the railway undertaking and associated rights cannot realistically be relocated or substituted elsewhere. Requiring NR to relocate railway infrastructure or rights held for railway purposes in order to accommodate the exercise of such powers would in any event be wholly unrealistic and disproportionate both in cost and nature).

Accordingly, absent paragraph 4 of Network Rail's standard protective provisions and in particular paragraph 4(1) Network Rail does not consider that the Secretary of State could properly be satisfied that the proposed compulsory acquisition affecting railway property would satisfy section 127 of the Planning Act 2008.

For the avoidance of doubt, Network Rail relies on section 127 in relation to compulsory acquisition affecting statutory undertaker land. Network Rail further relies on section 127(5) insofar as the draft Order would authorise the acquisition of rights over statutory undertakers' land or rights benefiting that land. Temporary possession and other operational interference separately reinforce the necessity for the protective provisions and consent controls sought.

Section 138 of the Planning Act 2008

Network Rail is also reviewing the extent to which the draft Order would authorise the extinguishment, suspension or overriding of rights enjoyed for the purposes of its undertaking including through article 25 (private rights), article 27 (power to override easements and other rights), article 30 (rights under or over streets), article 33 (statutory undertakers) and article 34 (apparatus and rights of statutory undertakers in closed or restricted streets), insofar as applicable. Pending completion of that review, Network Rail reserves its position as to whether the requirements of section 138 of the Planning Act 2008 are satisfied, including whether the Secretary of State could properly be satisfied that any such extinguishment, suspension or overriding would not cause serious detriment to the carrying on of Network Rail's undertaking. On the basis of the presently identified impacts, Network Rail's concern is that rights of access and other rights held for railway purposes may otherwise be extinguished, suspended or overridden without the railway-specific controls and protections required to avoid serious detriment. Network Rail therefore maintains that bespoke protective provisions are required in order properly to protect its position under section 138.

Network Rail is also reviewing the extent to which the legislative disapplications proposed by article 7 and Schedule 3 may affect railway rights, protections or controls, and reserves its position pending completion of that review

Conclusion

As outlined above, Network Rail is continuing to investigate the potential risks to its assets arising from the construction, operation and decommissioning of the Scheme and is engaging with the Promoter regarding any necessary mitigation measures. This engagement is expected to continue throughout the examination process.

Network Rail maintains its objection to the draft Order insofar as it would authorise compulsory acquisition, acquisition of rights, temporary possession, extinguishment, suspension or overriding of rights, or works affecting railway property without bespoke protective provisions in a form satisfactory to Network Rail being incorporated into the Order.

Network Rail reserves the right to be heard at a relevant hearings and further reserves the right to supplement these representations as further information becomes available in relation to the exercise of powers sought over land and rights affecting Network Rail.