

From: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >
Sent: 10 August 2026 12:08
To: Chris Bates [REDACTED]
Cc: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >
Subject: RE: Subject: Second Section 51 enquiry - Peak Cluster CCS Pipeline (EN0710001) - resend; confirmation of receipt requested

Dear Mr Bates

Thank you for your email.

With regards to your previous questions 3 and 4, the advice given under Weston Marsh to East Leicestershire on 3 September 2025 still stands. With regards to whether this principle extends to land interest identification, the Planning Act 2008 requires land interests to be identified following diligent inquiry, and in practice applicants are expected to keep land ownership information under review and update the Book of Reference and related land documents where new information becomes available, including during examination.

With regards to your final question, section 51 advice is published at a moment in time and relates to the project it is given under. We are unable to comment any further on whether the advice already given still relates and relates to this project. It is for the applicant to ensure they have shown regard to all advice given on this project specifically when they submit their development consent order application and to comply with legislation.

We will now arrange for all your correspondence together with our replies to be published on the project webpage for this project.

Kind regards

Rebecca

□



Planning
Inspectorate

Rebecca Luxton

Case Manager | National Infrastructure
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From: Chris Bates [REDACTED]

Sent: 22 July 2026 14:17

To: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >

Cc: NI Enquiries <NIEnquiries@planninginspectorate.gov.uk >

Subject: RE: Subject: Second Section 51 enquiry - Peak Cluster CCS Pipeline (EN0710001) - resend; confirmation of receipt requested

Dear Ms Luxton,

Thank you for your email of 22 July, and for the confirmation that my questions and the Inspectorate's advice will be published as section 51 advice. That is welcome.

Three points of detail on the publication. First, I should be grateful if the entry could be attached to the Peak Cluster CCS Pipeline project (EN0710001), so that it appears on the project's own Section 51 advice log and is discoverable by a search for that reference. Second, I assume the record will cover the full exchange: my enquiry of 23 May 2026, the Inspectorate's response of 26 June 2026, my enquiry of 10 July 2026, and your email of 22 July 2026, which itself contains advice on the application of the incoming amendments to this project. Third, both enquiries were drafted with

publication in mind and contain no personal data beyond my name; I am content for them to be published in full, which may be simpler than summarising them.

For clarity, the matters I have raised are not concerns about the project to be put to the applicant. They are requests for the Inspectorate's advice on matters within the Inspectorate's own functions — the acceptance of applications, the recording of advice, and the practice of the Examining Authority. The applicant is not in a position to answer them.

Two of those requests are unaffected by the amendments taking effect on 24 July 2026 and remain unanswered: Questions 3 and 4 of my letter of 10 July — whether the standard articulated in the Weston Marsh to East Leicestershire advice, that survey-access concerns at the pre-application stage may carry through to the examination stage, represents the Inspectorate's general approach and applies to this project; and whether the same principle extends to land-interest identification. I renew my request for the Inspectorate's advice on both.

Finally, since the amendments apply from 24 July 2026, I should be grateful for the Inspectorate's advice as to whether the advice already given — in particular the confirmation that the published Whitestone Solar Farm advice reflects the Inspectorate's position on the appropriate route for pre-application survey access — remains current in respect of matters arising before that date, and whether it remains the Inspectorate's position in respect of the period thereafter.

I look forward to hearing from you.

Yours sincerely,

Chris Bates

From: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk>

Sent: 22 July 2026 12:54

To: [REDACTED]

Cc: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk>; NI

Enquiries <NIEnquiries@planninginspectorate.gov.uk>

Subject: RE: Subject: Second Section 51 enquiry - Peak Cluster CCS Pipeline (EN0710001) - resend; confirmation of receipt requested

Dear Mr Bates

Thank you for your emails together with attachments.

We confirm that we will now publish a summary of your questions together with our advice given as section 51 advice on the [project webpage](#).

With regard to your questions in your letter, you will note from my previous email dated 26 June that there are incoming amendments to section 53 of the Planning Act 2008 which we now know are coming into force on 24 July 2026. Here is a link to the [National Infrastructure Planning Guidance Portal](#) from which you will note that the tests for section 55 will change when the application is submitted. As the Peak Cluster CCS Pipeline project is due to be submitted after 24 July therefore the new changes will be applied.

As this project is in the pre-application stage and therefore has not been submitted to the Planning Inspectorate, we would suggest that you put your queries direct to the applicant for them to consider your concerns.

Kind regards

Rebecca



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Inspectorate

Rebecca Luxton

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By email: Nlenquiries@planninginspectorate.gov.uk;
PeakClusterCCS@planninginspectorate.gov.uk

10 July 2026

Dear Sir or Madam,

Second Section 51 enquiry — Peak Cluster CCS Pipeline (PINS reference EN0710001)

Operation of section 55 of the Planning Act 2008 where voluntary information-gathering has produced incomplete returns; procedural consistency of pre-application conduct standards; recording

1. Introduction and purpose

I write further to my Section 51 enquiry of 23 May 2026 concerning the Peak Cluster CCS Pipeline project, to the Inspectorate's response of 26 June 2026, and to my emails of 26 June 2026 and 3 July 2026 concerning the recording of that exchange, which remain unanswered.

The purpose of this further enquiry is to seek the Inspectorate's advice on a procedural question concerning the operation of section 55 of the Planning Act 2008 where a pre-application NSIP promoter has relied on voluntary information-gathering and has not invoked the powers conferred by section 52, and to request the Inspectorate's confirmation that the procedural standards it has articulated on other NSIP projects apply in equivalent terms to the present project. I make this enquiry as a matter of procedure, in order that affected parties may understand the Inspectorate's position and participate effectively in the process, and in the interests of the integrity of that process for all those concerned with it, including the applicant.

The material parts of my first enquiry and of the Inspectorate's response are set out at section 2 below, so that they are before the Inspectorate on the face of this enquiry.

2. The enquiry of 23 May 2026 and the Inspectorate's response of 26 June 2026

My enquiry of 23 May 2026 sought the Inspectorate's advice on five numbered questions. Questions 1 and 2 sought confirmation that the position set out in the Inspectorate's FAQ of 13 July 2017, and reaffirmed in its section 51 advice of 23 May 2025 on the Kingsway Solar Farm project (PINS reference EN010165) — namely that, in the case of a prospective Development Consent Order, the policy intention is that the more specific power in section 53 of the Planning Act 2008 should remain in use, and that the Inspectorate is not responsible for requests made under section 172 of the Housing and Planning Act 2016 — remains the Inspectorate's current view and applies to the Peak Cluster CCS Pipeline project, together with advice on the factors (if any) that the Inspectorate considers would justify a prospective applicant in departing from that expectation. Questions 3 to 5 sought advice on how the Examining Authority will, at examination, expect to assess an applicant's pre-application

conduct in relation to the use (or threatened use) of section 172; how it will expect to assess an applicant's decision to depart from section 53 in obtaining pre-application survey access, including whether the manner of obtaining pre-application survey data may bear on the adequacy of consultation under sections 42 to 48; and whether the Inspectorate would expect a prospective applicant to have provided a substantive response to detailed written representations from an affected landowner before seeking to invoke survey powers under either provision.

The Inspectorate's response of 26 June 2026 stated, in relation to questions 1 and 2:

"Our advice published on Whitestone Solar Farm is an up-to-date reflection of the Inspectorate's position. As noted in the published advice, the Inspectorate cannot provide an interpretation of government policy or case law. However, please note that there are incoming amendments to section 53 of the Planning Act 2008 by the Planning and Infrastructure Act 2025 which are yet to come into force."

In relation to questions 3 to 5, the response stated:

"It will be for the appointed Examining Authority, once appointed, to decide how they will address these matters."

The response concluded:

"Please note that the above email does not constitute section 51 advice and will not be published on the project webpage."

I note and welcome the confirmation that the advice published in relation to the Whitestone Solar Farm project is an up-to-date reflection of the Inspectorate's position, and I take that as confirmation of the Inspectorate's current position as it applies to this project. As to the referenced amendments to section 53 of the Planning Act 2008, I note that those amendments are not in force and that no commencement date has been appointed for them; it is accordingly the position currently in force — which the Inspectorate has confirmed — that is relevant to this enquiry.

In my letter of 23 May 2026 I confirmed that I was content for that letter, and any response, to be published on the register in the usual way. By my emails of 26 June 2026 and 3 July 2026 I asked the Inspectorate either to record the enquiry and its response on the project's Section 51 advice log, or to identify the statutory basis on which it considers advice of that character to fall outside the section 51 recording duty. Neither email has received a response.

3. The operation of section 55 where voluntary information-gathering has produced incomplete returns

It is common practice for NSIP promoters to issue voluntary Land Interest Questionnaires or equivalent voluntary mechanisms to landowners along a proposed route, in order to identify relevant interests for the purposes of section 42 consultation. In practice, the response position is varied. Some recipients return such questionnaires with complete disclosure of the information section 52 of the Planning Act 2008 would compel. Some recipients return such questionnaires with limited or partial disclosure that does not meet that standard. Some recipients do not return the questionnaire at all. The diagnostic position of the promoter is materially different in the first scenario from the second and third.

The acceptance of an application under section 55 of the Planning Act 2008 turns, among other things, on whether the consultation requirements of section 42 have been complied with; the Inspectorate may decline to accept an application where it is not satisfied that they have. The Inspectorate's approach to that assessment is accordingly a matter that affected parties need to understand in order to make effective representations, whether at the acceptance stage or subsequently. It is for that reason that I request the Inspectorate's advice on the following.

Question 1. Where a promoter has issued a voluntary Land Interest Questionnaire (or equivalent), and in respect of any given recipient the promoter has not obtained the full information that section 52 of the Planning Act 2008 would compel (whether because the recipient has not returned the questionnaire, has returned it with limited or partial disclosure that does not meet the section 52 standard, or otherwise), and the promoter has elected not to invoke section 52 to compel disclosure from that recipient: I request the Inspectorate's advice as to the basis on which it would be satisfied, at the section 55 acceptance stage, that the consultation requirements of section 42 have been complied with in respect of the land interests of that recipient.

Question 2. In particular, I request the Inspectorate's advice on whether a promoter that has chosen to rely on voluntary information-gathering, and that has not obtained the information section 52 would compel, is properly to be regarded as having satisfied the consultation requirements of section 42 in respect of the recipients concerned, given that the promoter itself cannot, on the information held, be confident that it has identified the complete set of interests requiring consultation.

I make this enquiry on a general basis, as a question of how section 55 acceptance is intended to operate, rather than in respect of any particular promoter's conduct, in order that affected parties may make informed representations in this regard. I recognise that what constitutes adequate consultation is a fact-sensitive matter; the advice I seek is therefore linked to the prior procedural question of how the Inspectorate addresses the diagnostic position that arises by definition when some recipients of voluntary information requests have not provided the full information section 52 would compel and section 52 has not been invoked.

4. Procedural consistency — the Weston Marsh to East Leicestershire advice

I am also aware of the Inspectorate's published advice in respect of the Weston Marsh to East Leicestershire project (PINS reference EN0210007), as recorded in the Section 51 Advice Log (document EN0210007-000004, version 22 September 2025). In that log, the Inspectorate is recorded as having proactively asked the applicant about land access for surveys, and as having advised that "any issues with land access should be flagged early, as such concerns may carry through to the examination stage."

That advice is significant in two respects. First, it was given proactively by the Inspectorate, not in response to a question raised by a third party, and accordingly represents the Inspectorate's own standard pre-application practice. Second, it establishes — in the Inspectorate's own words — that survey-access conduct at pre-application is a matter that may be revisited at the examination stage. The phrase "carry through to the examination stage" is sufficiently broad to capture both procedural and substantive examination-stage scrutiny.

I note that, when analogous matters were raised in questions 3 to 5 of my enquiry of 23 May 2026, the Inspectorate's response of 26 June 2026 located those matters with the appointed Examining Authority but did not articulate the approach set out in the Weston Marsh advice — that such concerns should be flagged early because they may carry through to the examination stage. The Inspectorate's published approach to the procedural significance of pre-application conduct accordingly does not appear uniform, and clarification would assist affected parties and applicants alike.

I therefore request the Inspectorate's confirmation that the standard articulated in the Weston Marsh to East Leicestershire advice applies in equivalent terms to current projects, including the Peak Cluster CCS Pipeline project. In particular, I request the Inspectorate's advice on the following questions:

Question 3. Whether the position set out in the Weston Marsh to East Leicestershire advice — that survey-access concerns at pre-application stage may carry through to the examination stage — represents the Inspectorate's general approach to pre-application survey-access conduct on NSIP

projects, and would accordingly apply in respect of the Peak Cluster CCS Pipeline project; and, to the extent that the Inspectorate's published approach may appear to have varied between projects, which approach represents its current general practice.

Question 4. Whether the Inspectorate considers that the same broad principle — that pre-application conduct relevant to landowner engagement may be revisited at the examination stage — extends to conduct in respect of land interest identification, including a promoter's decision whether or not to invoke section 52 of the Planning Act 2008 to compel disclosure where voluntary disclosure has been incomplete.

5. Recording

This enquiry is made under section 51 of the Planning Act 2008 and requests the Inspectorate's advice. I understand that this enquiry and the Inspectorate's response will be recorded and published in the usual way, and I ask that the entry be attached to the Peak Cluster CCS Pipeline project (EN0710001), so that it appears on the project's own Section 51 advice log and is discoverable by a search for that reference.

As to the exchange of 23 May and 26 June 2026: the material parts are set out at section 2 above, and accordingly fall to be recorded, in any event, upon the recording of this enquiry. If the Inspectorate maintains that its response of 26 June 2026 does not itself attract the section 51 recording duty, I renew my request that it identify the statutory basis on which advice of that character is considered to fall outside that duty.

6. Acknowledgement and response

I am conscious that these questions concern the relationship between sections 42, 52 and 55 of the Planning Act 2008, and the broader question of how pre-application conduct is taken into account at examination. I should be grateful for the Inspectorate's advice on these procedural questions at its earliest convenience, and for an acknowledgement of receipt with an indication of the timescale within which a substantive response may be expected. I understand that any advice given will be published in the usual way, and that such advice may be of benefit to a broad spectrum of stakeholders, including the applicant.

Yours faithfully,

Christopher Bates

Enclosure: letter of 23 May 2026

From: Chris Bates [REDACTED]

Sent: 26 June 2026 11:52

To: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >

Cc: NI Enquiries <NIEnquiries@planninginspectorate.gov.uk >

Subject: RE: Further follow-up - Section 51 enquiry, Peak Cluster CCS Pipeline (EN0710001) - enquiry of 23 May 2026 outstanding

Dear Ms Luxton,

Thank you for your email of 26 June 2026, and for the substantive response to my enquiry. I am grateful for it.

This reply concerns only the recording of the advice already provided in response to my enquiry of 23 May 2026. It does not raise any new matter.

I note and welcome the confirmation, in response to questions 1 and 2 of my letter of 23 May, that the advice published in relation to the Whitestone Solar Farm project is an up-to-date reflection of the Inspectorate's position. I take that as confirmation of the Inspectorate's current position as it applies to this project. I note, for completeness, your reference to the incoming amendments to section 53 of the Planning Act 2008 by the Planning and Infrastructure Act 2025; I note also that those amendments are not in force and that no commencement date has been announced for them, and that it is accordingly the position *currently* in force — which the Inspectorate has confirmed — that is relevant to this enquiry.

I note also, in response to questions 3 to 5 of my letter of 23 May, the Inspectorate's confirmation that it will be for the appointed Examining Authority to decide how those matters are addressed.

I turn to the statement in your email that it "does not constitute section 51 advice and will not be published on the project webpage." With respect, I should be grateful if the Inspectorate would reconsider that characterisation, for the following reasons.

Section 51 of the Planning Act 2008 imposes a duty to record advice given about applying for, or making representations about, an application or proposed application for development consent, and to make that advice available to the public. The duty attaches to advice of that character; it is not a matter of election, or of the label applied to the communication in which the advice is given.

The Inspectorate's response engages that duty in both of its parts. The confirmation, in response to questions 1 and 2, that a published position remains the Inspectorate's current position, given expressly in relation to a proposed application for development consent, is advice about that proposed application. The confirmation, in response to questions 3 to 5, that identified matters will fall to the Examining Authority to determine, is likewise advice as to how the prospective application will be handled. Both are advice given in relation to a proposed application for development consent, and both therefore fall, on their face, within the section 51 recording duty.

I note that the advice to which the Inspectorate's response refers — its published advice in relation to the Whitestone Solar Farm project (register reference 100000267, advice given 18 February 2026) — is itself recorded and published as section 51 advice. That advice was given in response to an enquiry from a landowner raising questions materially similar to my own, including as to the appropriate statutory route for survey entry and the developer's standing as an acquiring authority, and the Inspectorate confirmed to that enquirer, in the advice itself, that both the enquiry and the response would be published pursuant to the duty under section 51(4). It is difficult to see on what basis the Inspectorate's confirmation that that advice remains its current position, given to me in relation to this project, is advice of a different character; still less why an enquiry and response of the same kind as one already published should not, in my case, be recorded equally.

I should accordingly be grateful if the Inspectorate would either record the original enquiry and its response as section 51 advice on the published advice log for the Peak Cluster CCS Pipeline project (EN0710001), or, if it maintains that the response does not attract the section 51 recording duty, identify the statutory basis on which it considers advice of this character to fall outside that duty.

I add one specific request as to the manner of any recording. The Whitestone advice referred to above (register reference 100000267) appears on the central Register of Advice filed under a project name of "General Section 51 Advice ", and a search of the Register for that project's reference (EN0110020) returns no results. The Whitestone project's own section 51 advice page lists only the applicant's advice log and an inception meeting note, and does not include that advice.

I recognise that Mr Leahy's enquiry and the Inspectorate's response have, in that way, been made publicly available on the Register, and I make no suggestion that the section 51(4) duty has not been discharged. The difficulty is one of manner rather than of the fact of publication: advice relating to a specific project has been recorded so that it is neither discoverable by a search for that project nor visible on the project's own advice page, where those following the project would expect to find it.

A small number of other entries appear to have been recorded in the same way, against the great majority that are correctly attached to their projects. I make no criticism of how this has occurred, and assume it to be a matter of how a few entries have, perhaps inadvertently, been indexed rather than anything more.

I should therefore be grateful if the Inspectorate would ensure that, when recorded, my enquiry and the response are associated with the Peak Cluster CCS Pipeline project (EN0710001) — so that they are discoverable by a search for that reference and appear on the project's own advice log — and not recorded solely under a general project name.

I look forward to hearing from you.

Best wishes,

Chris Bates

From: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >

Sent: 26 June 2026 09:38

To: [REDACTED]

Cc: Peak Cluster CCS Pipeline <PeakClusterCCS@planninginspectorate.gov.uk >; NI Enquiries <NIEnquiries@planninginspectorate.gov.uk >

Subject: RE: Further follow-up - Section 51 enquiry, Peak Cluster CCS Pipeline (EN0710001) - enquiry of 23 May 2026 outstanding

Dear Mr Bates

Thank you for your emails dated 23 May, 9 June and 24 June together with attachment.

I have responded to your numbered questions in section 4 of your letter below using the same numbering:

1 and 2. Our [advice published on Whitestone Solar Farm](#) is an up-to-date reflection of the Inspectorate's position. As noted in the published advice, the Inspectorate cannot provide an interpretation of government policy or case law. However, please note that there are incoming amendments to section 53 of the Planning Act 2008 by the Planning and Infrastructure Act 2025 which are yet to come into force.

3-5. It will be for the appointed Examining Authority, once appointed, to decide how they will address these matters.

Please note that the above email does not constitute section 51 advice and will not be published on the project webpage.

We hope the above is helpful.

Kind regards

Rebecca



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Rebecca Luxton

Case Manager | National Infrastructure
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By email: Nlenquiries@planninginspectorate.gov.uk

23 May 2026

Dear Sir or Madam,

Section 51 enquiry — Peak Cluster CCS Pipeline (PINS reference EN0710001)

Use of Section 172 of the Housing and Planning Act 2016 by an applicant for development consent under the Planning Act 2008

I write as a landowner whose land falls within the proposed corridor for the Peak Cluster CCS Pipeline project, which is at the pre-application stage and for which an EIA Scoping Opinion was issued by the Planning Inspectorate on 19 February 2026. The centreline of the preferred corridor, as currently indicated on the Phase 1 consultation mapping, crosses my land.

The purpose of this letter is to seek the Planning Inspectorate's advice under section 51 of the Planning Act 2008. In essence, I am seeking confirmation that the position the Inspectorate has previously taken on the use of section 172 of the Housing and Planning Act 2016 by prospective DCO applicants — most recently in its section 51 advice of 23 May 2025 on the Kingsway Solar Farm project — remains the Inspectorate's current view and applies to the present project. The questions on which advice is sought are set out in numbered form at the end of this letter.

1. Factual background

Peak Cluster Limited ("PCL") has, since late 2025, written to me on several occasions seeking voluntary entry into a Land Access Licence for survey purposes. I have responded substantively in mid-December 2025, in mid-February 2026 and in mid-May 2026. In summary, I have thus far declined to enter into the proposed Licence on the basis that the scope and location of the survey works proposed to be undertaken on my land have not been particularised by PCL at any stage of the correspondence, and on the further basis that the commercial terms offered are not realistic.

I have asked PCL to engage substantively with me on the merits of the proposed alignment across my land, on the alternatives considered, and on a number of related matters within the scope of pre-application consultation under the 2008 Act.

By a recent letter headed “Final Reminder”, PCL has stated in terms that, if voluntary access cannot be agreed, it “*will consider exercising statutory powers of entry under Section 172 of the Housing and Planning Act 2016 and other relevant legislation*”, and that “where access is taken using statutory powers, no payments are due”. The letter further indicates that PCL reserves the right to apply to the court for a warrant in the event that access is impeded. At no point in any of its correspondence with me has PCL referred to section 53 of the Planning Act 2008.

Phase 2 consultation for the project is anticipated in late 2026; the DCO application is anticipated for submission in September 2027 (per the Inspectorate’s project page). The pre-application consultation obligations under sections 42 to 48 of the Planning Act 2008 therefore continue to apply, the relevant provisions of the Planning and Infrastructure Act 2025 not yet having been commenced.

2. Legal and policy context

The Inspectorate’s published FAQ of 13 July 2017 addressed the question whether an applicant for development consent may use section 172 of the Housing and Planning Act 2016 instead of section 53 of the Planning Act 2008. The FAQ stated:

“In the case of a prospective DCO, the policy intention is that the power of entry in s53 of the Planning Act 2008 should be used.”

That position was subsequently considered against the background of the High Court decision in *Sawkill v Highways England Company Limited* [2020] EWHC 801 (Admin), in which Dove J held that section 53 of the 2008 Act and section 172 of the 2016 Act are overlapping alternative powers, and that, where an NSIP promoter meets the definition of “acquiring authority” in the 2016 Act, it may, as a matter of law, exercise the section 172 power. *Sawkill* arose, however, on materially different facts to the present case: Highways England had already obtained authorisation under section 53 for an initial round of pumping tests in December 2017 and sought to use section 172 only to avoid the time and cost of a second section 53 application for follow-up tests. The court was not asked to consider, and did not consider, whether resort to section 172 was appropriate where no section 53 authorisation had ever been sought, or where the applicant had not substantively engaged with the affected landowner on matters within the scope of sections 42 to 48 of the 2008 Act.

More recently, the Inspectorate has had occasion to revisit the underlying policy position. In its section 51 advice of 23 May 2025 to Mr Richard Pargeter on the Kingsway Solar Farm project (PINS reference EN010165; published at [the Inspectorate’s published documents register](#)), the Inspectorate stated, in terms, that:

“the Planning Inspectorate is not responsible for requests made under s172 of the Housing and Planning Act 2016, and as such we are unable to provide advice regarding this process.”

The Inspectorate further confirmed:

“In terms of whether an applicant can use s172 of the Housing and Planning Act 2016 ... instead of s53 of the Planning Act 2008 to gain access to land, our advice has been that

in relation to a prospective Development Consent Order, the policy intention is that the power of entry in s53 of the Planning Act 2008 should be used.”

And, addressing expressly the position post-Neighbourhood Planning Act 2017:

“... in the case of a prospective Development Consent Order, the policy intention is that the more specific power in s53 of the Planning Act 2008 should remain in use.”

The Kingsway advice of 23 May 2025 is, so far as I am aware, the most recent published reaffirmation by the Inspectorate of this position.

3. Why this matters in the present case

The position adopted by PCL in its recent “Final Reminder” letter appears to me to be in direct tension with the Inspectorate’s advice on Kingsway, and on facts that are weaker for the applicant than those before the High Court in *Sawkill*. In particular:

(a) PCL has not, at any stage, applied to the Secretary of State for authorisation under section 53 of the Planning Act 2008. The choice of section 172 is not, in this case, a choice between two routes both of which have been engaged with; it is a choice to bypass the section 53 process altogether, in circumstances where PCL is otherwise progressing the project formally under the 2008 Act framework.

(b) PCL has not provided any substantive response to my recent written representations, which raised a number of matters squarely within the scope of pre-application consultation under sections 42 to 48 of the 2008 Act (including the rationale for the proposed alignment across my land, the alternatives considered, the Strategic Options Appraisal and the July 2024 section 51 meeting note, HSE Major Accident Hazard Pipeline implications, the proposed arrangements for Phase 2 consultation, and concerns raised by relevant local planning authorities along the proposed route). PCL’s “Final Reminder” letter does not address those representations; it simply re-asserts the demand for access and adds the section 172 threat.

(c) The project is at a comparatively early stage of pre-application: Phase 2 consultation has not yet opened, and the DCO application is not anticipated until September 2027. There is, on any view, ample time for PCL either to engage substantively under the 2008 Act framework or, if it cannot obtain voluntary access, to apply to the Secretary of State under section 53.

Beyond the matters set out above, there is a broader question raised by PCL’s posture which I respectfully invite the Inspectorate to consider. The survey power in section 53 of the 2008 Act is calibrated to the actual statutory position of a prospective applicant — namely, one whose entitlement to compulsory powers in respect of the relevant land has not yet been determined. The survey power in section 172 of the 2016 Act, by contrast, sits within a regime that presupposes acquiring-authority status already exists. Where a prospective DCO applicant chooses to obtain survey access via section 172 rather than section 53, the application that follows depends, in part, on data obtained under a power whose foundational premise is the conclusion the DCO examination has yet to reach. I would respectfully invite the Inspectorate to consider whether that approach is consistent with the integrity of

the 2008 Act regime as the framework within which the question of compulsory acquisition is to be examined and determined.

In those circumstances, it appears to me that PCL's posture engages precisely the policy concern that the Inspectorate identified in the 2017 FAQ and reaffirmed in the Kingsway advice of 23 May 2025. I should be grateful for the Inspectorate's confirmation that the Kingsway position remains its current view and applies to the Peak Cluster project, and for its advice on the related matters set out below.

4. Matters on which advice is sought

I should be grateful if the Inspectorate could provide its advice on the following questions:

1. Whether the position set out in the Inspectorate's FAQ of 13 July 2017, and reaffirmed in its section 51 advice of 23 May 2025 on the Kingsway Solar Farm project (PINS reference EN010165) — namely that, in the case of a prospective Development Consent Order, the policy intention is that the more specific power in section 53 of the Planning Act 2008 should remain in use, and that the Planning Inspectorate is not responsible for requests made under section 172 of the Housing and Planning Act 2016 — remains the Inspectorate's current view, and applies to the Peak Cluster CCS Pipeline project.
2. Whether, following the decision of the High Court in *Sawkill v Highways England* [2020] EWHC 801 (Admin), the Inspectorate's expectation remains that, in the case of a prospective Development Consent Order, the survey power in section 53 of the Planning Act 2008 should be used in preference to the survey power in section 172 of the Housing and Planning Act 2016, and what factors (if any) the Inspectorate considers would justify a prospective DCO applicant in departing from that expectation.
3. How the Examining Authority will, at the DCO examination, expect to assess an applicant's pre-application conduct in relation to the use (or threatened use) of section 172 — including:
 - (a) whether such conduct will be a matter to which the Examining Authority will have regard when considering the adequacy of the applicant's pre-application engagement with affected landowners;
 - (b) whether it is a matter that will be relevant to the Examining Authority's consideration of the compulsory acquisition case under section 122 of the 2008 Act (and in particular the question of whether the applicant has taken reasonable steps to acquire the relevant land and rights by agreement); and
 - (c) whether the Examining Authority will expect the applicant's Statement of Reasons, Funding Statement and/or Consultation Report to address the use of section 172 (in favour to section 53) expressly.
4. How the Examining Authority will, at the DCO examination, expect to assess an applicant's decision to depart from section 53 of the Planning Act 2008 in obtaining pre-application survey access — including:

(a) whether the Examining Authority will expect the applicant's Consultation Report, Statement of Reasons and/or Funding Statement to address that decision expressly, including the applicant's reasons for not applying under section 53;

(b) whether the manner of obtaining pre-application survey data — separately from the technical soundness of that data — may be the subject of representations at examination, in particular as to whether the relevant access was obtained on a proper foundation having regard to the 2008 Act framework;

(c) whether the manner of obtaining pre-application survey data may bear on the Examining Authority's consideration of the adequacy of the applicant's consultation under sections 42 to 48 of the 2008 Act; and

(d) whether the Examining Authority will, in considering the matters at (a) to (c) above, have regard to the relationship between the survey power exercised at the pre-application stage and the question of compulsory acquisition that the Examining Authority will itself be required to examine and determine.

5. Whether, more generally, the Inspectorate would expect a prospective applicant for development consent at the pre-application stage to have provided a substantive response to detailed written representations from an affected landowner on matters within the scope of sections 42 to 48 of the 2008 Act before seeking to invoke survey powers under either section 53 of the 2008 Act or section 172 of the 2016 Act.

5. Further matters

I appreciate that any advice given by the Inspectorate under section 51 does not constitute legal advice on which I am entitled to rely, and that it will be recorded on the Inspectorate's advice log in accordance with the section 51 duty. I am content for this letter, and any response, to be published on the register in the usual way.

I should be grateful for an acknowledgement of receipt, and an indication of the timescale within which a substantive response may be expected.

Yours faithfully,

Christopher Bates