



RWE Renewables UK Solar and Storage Limited

FAO Jennifer Savage
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15 March 2024

Dear Jennifer

Planning Act 2008 – Response to advice following issue of decision to accept the application for examination (Section 51 Advice)

Application reference: EN010139

On 8 March 2024, the Planning Inspectorate (PINS) issued a decision by the Secretary of State (SoS) to accept an application made by RWE Renewables UK Solar and Storage Limited (Registered Company No: 14539260) (the Applicant) for an Order Granting Development Consent for the Byers Gill Solar project (the Proposed Development).

In issuing that decision, PINS also issued advice relating to its initial observations of the application. This letter provides a response to that advice and accompanies the submission of updated application documents where appropriate and relevant.

The advice issued by PINS requested that the points raised are actioned prior to commencement of the Relevant Representations period. We confirm that, as communicated to PINS in advance of issuing this letter, the Relevant Representations period is scheduled to begin on Thursday 21 March 2024. We understand that PINS will endeavour to publish the revised documentation enclosed prior to that date.

Applicant Response to Section 51 Advice

The Applicant's response to the Section 51 Advice is summarized in the table below.

Advice	Applicant Response
<p>Consultees identified on a precautionary basis</p> <p>Given the individual circumstances of this case, the Planning Inspectorate advises taking a precautionary approach to consultation under s42(1)(a) of PA2008 to ensure that all persons potentially affected by, or potentially likely to have an interest in the application are given the opportunity to participate fully in the Examination of the application. On this basis, the Applicant may wish to serve notice on the bodies listed in Box 6 of the section 55 checklist when it serves notice of the accepted application under s56(2)(a) of the PA2008; unless there is a specific justification why this is not necessary. Given the individual circumstances of this case, and taking a precautionary approach to ensure that all persons potentially affected by, or potentially likely to have an interest in, the application are given the opportunity to participate fully in the examination of the application, the Planning Inspectorate suggests that the Applicant may wish to include the above bodies amongst those on whom they serve notice of the accepted application under s56(2)(a) of the PA2008; unless there is a specific justification why this is not necessary.</p>	<p>The Section 55 Checklist issued by PINS identifies in box 6 that the following parties were not consulted by the Applicant under Section 42 of the Act:</p> <ul style="list-style-type: none"> a) Grindon and Thorpe Thewles Parish Council b) Mua Gas Limited <p>The Applicant did not consult party (a) because the administrative area of the parish council is not within the DCO Order Limits. It is therefore not a relevant parish council under S42 of the Act.</p> <p>The Applicant did not consult party (b) because it was not identified as a utility with assets in within the Order Limits, and it was not identified as a relevant public gas transporter in the Regulation 11(1)(a) list issued by PINS with the Scoping Opinion in December 2022. It can be noted however that Mua Electricity Limited was included in the Regulation 11 list and was notified by the Applicant under S42 of the Act.</p> <p>Notwithstanding the above, the Applicant agrees to notify the above two parties under Section 56(2)(a) of the Act in accordance with the Section 51 Advice.</p>
<p>Minor errors and omissions</p> <p>There are minor errors and omissions, reflected in Box 30 of the acceptance checklist.</p>	<p>The minor errors and omission identified in Box 30 are addressed in the rows below.</p>
<p>Draft Development Consent Order (Doc 3.1)</p> <p>The Inspectorate following a review of the</p>	<p>It is acknowledged that there is a discrepancy between the length of underground cabling referred to in the Application Form (Document</p>

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<p>application documents has identified some minor errors between the submitted Application Form (Doc 1.3), the draft Development Consent Order and the Environmental Statement (Doc 6.2). The Applicant is advised to undertake a review of their application documents to ensure consistency across all documents. By way of example, the application form states that underground cabling will be up to 31km, whilst the Environmental Statement suggest this would be 32.5km and another 10km. The Applicant may also wish to ensure consistency within the draft DCO when cross referencing between the relevant Articles and Schedules as noted in the section 55 checklist, which may require amending, prior to the start of the Examination.</p>	<p>Reference 1.3) and the Environmental Statement (Document Reference 6.2) (the “ES”)</p> <p>At question 5 of the Application Form the figure is given as “up to 31km of underground cabling”, whereas paragraph 2.3.25 of the ES refers to “approximately 32.5km” of higher voltage cables being required. We can confirm that the figure used in the ES (32.5km) is the correct one. We understand that PINS are satisfied that that this explanation can be read alongside the Application Form to avoid any ambiguity or confusion.</p> <p>The 10km figure is referred to at 2.3.32 of the ES and relates to a subset of the 32.5km higher voltage cables referred to at 2.3.25. The two are consistent, as the 10km refers to the 10km of (132kV) underground cabling required to connect the Proposed Development (from its onsite substation) to the Norton substation (being the point of connection for the Proposed Development). The balance of the underground cabling comprises 33kv cabling to connect the array panel areas to the onsite substation.</p> <p>The draft Development Consent Order (Document Reference 3.1) (the “dDCO”) does not specify the length of underground cabling.</p> <p>It is acknowledged that in box 30 of the section 55 checklist PINS have also identified a minor cross-referencing error. Schedule 13 dDCO ought to refer to Article 36, whereas it currently refers to Article 37. The Applicant intends to address that minor error in the first revision of its dDCO during examination. The Applicant does not consider that this minor error impacts on the ability of members of the public to understand the effect of the dDCO during the relevant representation period.</p>

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<p>Street Works, Rights of Way and Access Plans (Doc 2.3)</p> <p>The Inspectorate notes that there appears to be a lack of consistency across the plan sheets regarding street names and additionally there are some named streets which are referenced in the draft Development Consent Order that do not appear to have been labelled on the plans, e.g. sheet 7 and 8, Elstob Lane. The Applicant may wish to review the Street Works, Rights of Way and Access Plans and amend to ensure consistency and that all roads listed are labelled across all plans. It has also noted that the legend is not consistent with the approach taken for the Land Plans in terms of listing only the details as reflected on the sheet. The key reflects various types of street works, even though the relevant sheet appears to not show the streets works as depicted in the legend. The legend on each sheet should be limited to what is present on that particular part of the plans; e.g. sheet 1, legend should not include 'A' streets subject to street works'. Consistency must be evident across all plans. The order of the sheets in the Street Works, Rights of Way and Access Plans is not consistent with that of the Key Plan included in the Works Plans (Doc 2.2) or the Land Plans (Docs 2.4). In addition, the Street Works, Rights of Way and Access Plans does not appear to actually match the layout of the key plan and does not appear to correspond to the order in which the sheets of the Street Works, Rights of Way and Access Plans are actually set out.</p>	<p>The Applicant acknowledges the inconsistencies identified by PINS in relation to the Street Works, Rights of Way and Access Plans (Document Reference 2.3). The Applicant has reviewed the advice provided by PINS and has produced a revised set of these plans, submitted alongside this letter.</p> <p>The amendments made to the plans under this revision seek to address the issues identified and have included:</p> <ul style="list-style-type: none"> • Updates to the key plan so that it is now consistent with the Works Plans (Document Reference 2.2) and Lands Plans (Document Reference 2.4). Please note that this change is to the order of the key plan only, and therefore does not impact on the Schedules of the dDCO which cross-reference these plans. • The Legend on each sheet has been amended so that it only shows what is visible on each individual sheet. • A review of the plan's labels against the dDCO Schedules has been undertaken and new labels added in so that they are more easily cross-referenced. <p>The revised plans (Revision 2) are provided to PINS to supersede those submitted at the point of DCO application.</p>
<p>Works Plans (Doc 2.2)</p> <p>The draft Development Consent Order refers to "Works No. 5" under Schedule 1 as works connecting Work No. 4 to Work No. 6. Upon</p>	<p>The 132kV cable which will connect the onsite substation (Work No.4) to the Norton substation (Work No.6) has been included in both Work No.3 and Work No.5, in different</p>

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<p>review of Works Plans Sheet 7 of 13 it doesn't appear that Works No. 5 connects directly to Work No. 4, but instead Work No. 3. The Applicant may wish to review these plans and ensure consistency with the draft Development Consent Order. Schedule 3 of the draft Development Consent Order uses "street", "highway" and "width of highway" interchangeably. "Street" and "highway" are defined differently in Article 2. The Applicant should review the drafting and amend/clarify as appropriate. In relation to the proposed alternative on-road cable route, for some plots (for example but not limited to 2/6, 3/6, 7/6) part of the subsoil up to half width of public highways is in private ownership. The Applicant should review these when carrying out its review of Schedule 3 to ascertain whether the powers sought in Article 9 are sufficient as currently drafted or whether the Applicant will need CA of the relevant sub-soil or any other additional rights not secured at the moment. The Applicant's reasoning should also clearly be set out in the in the relevant application documents including the Statement of Reasons (Doc 4.1).</p>	<p>portions. The cable is within Work No.3 where it is <u>within panel areas</u> (see ES 2.3.4) and then within Work No.5 where it is outside of those panel areas (see ES 2.3.6). It is hoped that with this explanation the approach that the Applicant has taken to the identification of these works on the Works Plans (Document Reference 2.2) is readily apparent.</p> <p>In the Applicant's view the use of the terms "street", "highway" and "width of highway" are used consistently within the dDCO, taking account of the way in which "street" and "highway" have been defined in Article 2. Schedule 3 (and Article 9) follows the accepted form of the drafting of these provisions, as explained in the Explanatory Memorandum (Doc 3.2). The Applicant would therefore respectfully suggest that drafting changes are not required, but is open to engaging on these matters with the appointed Examining Authority at any early DCO hearing which may be called.</p> <p>As far as the on-road cable route is concerned, the Applicant is satisfied that the existing drafting of the dDCO and approach which has taken to CA is appropriate. This is explained further in the following row of this table.</p>
<p>Land Plans (Docs 2.4) and Statement of Reasons (Doc 4.1)</p> <p>The Applicant's approach to the identification of land over which the Applicant does not propose to exercise power of Compulsory Acquisition, secure further rights to use the land or any land in relation to which it does not propose to extinguish easements, servitudes and other private rights, is not fully understood in relation to the on-road cable route which will require a trench to be excavated into the</p>	<p>The Applicant's position is that its approach is adequately explained by the existing Statement of Reasons (Document Reference 4.1), dDCO (Document Reference 3.1) and Explanatory Memorandum (Document Reference 3.2). The Applicant's approach is that where on-road cable routes within public adopted highways are required the existing dDCO would provide the necessary authorisation.</p> <p>The extent of public adopted highways included within the Order Limits has been established</p>

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<p>road verge. Although the Applicant appears to be relying on Article 9 and Schedule 3 of the Draft Development Consent Order, Schedule 3 refers to works beneath the width of highway which appears to imply that the works to excavate the road trench may not be secured through Schedule 3. It is advised that the Applicant clarifies this matter further within the Statement of Reasons. The Applicant should review their approach and make any amendments deemed necessary to ensure that a clear situation with these matters is reached.</p>	<p>through legal searches and the provision of highway boundary plans from the relevant local highway authority.</p> <p>Article 9(1) of the dDCO provides the necessary authority for the Applicant to (amongst other matters) “break up or open the street, or any sewer, drain or tunnel under it” and “place and keep apparatus under the street”. Article 9(2) confirms that the authority provided is a statutory right for the purposes of the New Roads and Street Works Act 1991.</p> <p>The Explanatory Memorandum explains the genesis of these common DCO provisions. The Statement of Reasons explains how they are being relied on for any on-road cable options.</p> <p>No further rights of compulsory acquisition are required where that statutory right is available, including in respect of highway sub-soil (which does not form part of the adopted public highway). There would be no interaction with any existing easements, servitudes or any other private rights relating to these plots where those powers are exercised in adopted public highway.</p> <p>The Applicant acknowledges the questions which are being raised on this matter by PINS, and would welcome the opportunity to address those matters in an early DCO hearing as part of the examination to the extent that a more detailed explanation would be helpful.</p>
<p>Flood Risk Assessment (Doc 6.4.10.1) Paragraph 3.1.6 of the Flood Risk Assessment states that the underground cables are proposed to cross underneath watercourses at two locations (E:436811, N:520703 and E:439526, N:521493) and will therefore cross Flood Zone 3. However, the Flood Risk</p>	<p>Flood Zone 3a is the extent for a 1 in 100 year event and is that shown in the EA maps. Flood Zone 3b is the functional floodplain and is typically defined by a 1 in 30 year flood event. The cables would cross Flood Zone 3a in the two locations specified. Given that the cable crossings are going under a watercourse then</p>

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<p>Assessment does not state whether this is Flood Zone 3a or 3b. The Flood Risk Assessment should clearly distinguish between Flood Zones 3a and 3b.</p>	<p>technically it is considered to also cross the functional floodplain (Flood Zone 3b) of the watercourses. However, as the cables would be located underneath the waterbodies, they would have no impact on floodplain storage. The Applicant highlights that the Flood Risk Assessment (FRA) (Document Reference 6.4.10.1) concludes that there would be no impact on flood risk.</p> <p>In order to provide the clarity requested by PINS on this matter, a tracked change and 'clean' version of the FRA is provided with amendments made to section 3.1.6. This revision (Revision 2) should supersede the FRA provided at time of DCO application.</p>
<p>Design Approach Document (Doc 7.2) It is noted that throughout the Design Approach Document (DAD), that reference is made to specific "Plate" numbering, which the Inspectorate believes to be references to figures, plans or other documents, however all these "Plates" appear to be omitted from the DAD e.g., Plate 2-1 referenced in paragraph 2.1.3 of the DAD is not provided overleaf i.e. page 5 of 55. The Applicant should ensure they submit an updated DAD inclusive of all Plates as referenced in the document, as this appears to be an oversight.</p>	<p>The Applicant acknowledges the omission identified by PINS, which was made in error at time of DCO submission. A corrected Design Approach Document (Document Reference 7.2, Revision 2) is submitted alongside this letter to supersede the earlier version of this document. This includes all plates referenced in the document.</p>

We trust that the information above and documents enclosed are sufficiently clear, however, if we can be of any assistance, please do not hesitate to contact us using the details provided below.

Your sincerely,

Michael Baker



DCO Project Manager, Byers Gill Solar