



## **LONGFIELD SOLAR FARM – EN010118**

### **Section 51 advice regarding draft application documents submitted by Longfield Solar Energy Farm Limited**

On 18 October 2021 Longfield Solar Energy Farm Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service<sup>1</sup>:

1. 2.1 - Longfield Solar Farm - Land Plan Sample DRAFT
2. 2.2 - Longfield Solar Farm - Works Plans0008.1 DRAFT
3. 2.2 - Longfield Solar Farm - Works Plans0008.2 DRAFT
4. 2.2 - Longfield Solar Farm - Works Plans0008.3 DRAFT
5. 2.2 - Longfield Solar Farm - Works Plans0008.4 DRAFT
6. 2.2 - Longfield Solar Farm - Works Plans0008.5 DRAFT
7. 2.2 - Longfield Solar Farm - Works Plans0008.6 DRAFT
8. 2.2 - Longfield Solar Farm - Works Plans0008.7 DRAFT
9. 2.2 - Longfield Solar Farm - Works Plans0008.8 DRAFT
10. 3.1 - Longfield Solar Farm - Development Consent Order DRAFT

---

<sup>1</sup> See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



11. 3.2 - Longfield Solar Farm - Explanatory Memorandum DRAFT
12. 4.3 - Longfield Solar Farm - Book of Reference Extract DRAFT
13. 5.1 - Longfield Solar Farm - Consultation Report DRAFT
14. Longfield Solar Farm - Application Index DRAFT
15. 6.1 - Longfield Solar Farm - ES Chapter 1 (Introduction) DRAFT
16. 6.1 – Longfield Solar Farm – ES Chapter 2 (The Scheme) – DRAFT
- 17.6.1 - Longfield Solar Farm - ES Chapter 4 (Consultation) DRAFT
18. 7.1 - Longfield Solar Farm - Statement of Need - DRAFT
19. 7.2 - Longfield Solar Farm - Outline Design Principles DRAFT

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is raised without prejudice to the acceptance or otherwise of the eventual application.

## General drafting points

1. Where references are provided to other application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.
2. [\[MHCLG\] Application form guidance](#), paragraph 3, states: "*The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and*



*information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.”*

3. The Applicant should ensure that when the draft development consent order (dDCO) is finalised for submission all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Notes (AN) 13 and 15 and any guidance on statutory instrument drafting.
4. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power
5. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

<b>2.1 - Longfield Solar Farm - Land Plan Sample DRAFT</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
<b>1.</b>	Plot number 1/2B	It could be useful to add an “inset” to this plot of land.
<b>2.</b>	Inset 1	This inset could also include a north arrow.
<b>3.</b>	Plot number 1/2C	Neither part 1 nor part 2 of the Book of Reference (BoR) indicate that this and plot is “land to be acquired permanently”. The description is not consistent between the BoR and the Land Plan.
<b>4.</b>	All plots	It has not been possible to check the plots against the relevant schedules in the dDCO as these are currently blank. The Applicant should ensure that schedules 7 and 9 include all plots referenced the Land Plans and BoR in the final submitted dDCO.



**2.2 - Longfield Solar Farm - Works Plans0008.2 DRAFT**

<b>Ref No.</b>	<b>Paragraph/Section</b>	<b>Comment/Question</b>
5.	North arrow	The north arrow on the upper left-hand side of the plan blocks part of the "Works area 10" highlighted in green. Although this part is visible in <i>Works Plans0008.1 DRAFT</i> , it would be convenient that the north arrow was moved so that the Order Limit border is consistent during all of the work plans.

**2.2 - Longfield Solar Farm - Works Plans0008.4 DRAFT**

<b>Ref No.</b>	<b>Paragraph/Section</b>	<b>Comment/Question</b>
6.	Key - Works Area 8	The "Work Area 8" key is included within this document of the plan. However, it is difficult to visualise and the Applicant should consider amending to provide greater clarity.

**2.2 - Longfield Solar Farm - Works Plans0008.5 DRAFT**

<b>Ref No.</b>	<b>Paragraph/Section</b>	<b>Comment/Question</b>
7.	North arrow	The north arrow on the upper left-hand side of the plan blocks part of the "Works area 1" highlighted in yellow and "Work area 6" highlighted in red stripes. Although Works Areas 1 and 6 are visible on <i>Works Plans0008.4 DRAFT</i> , it would be helpful if the north arrow was moved so that the work limit is fully visual on the Works Plan.



3.1 - Longfield Solar Farm - Development Consent Order DRAFT		
Ref No.	Article/ Requirement/Schedule	Comment/Question
8.	Drafting	<p>The Development Consent Order (DCO) should be:</p> <ul style="list-style-type: none"> <li>• in the Statutory Instrument (SI) template</li> <li>• follow guidance and best practice for SI drafting (for example avoiding “shall/should”) in accordance with the latest version of guidance from the Office of the Parliamentary Counsel</li> <li>• follow best practice drafting guidance from the Planning Inspectorate and the Departments in AN 15 – Drafting development consent orders (and see specific references AN15 below)</li> <li>• fully audited to ensure that there are no inconsistencies within the DCO and its constituent parts such as definitions or expressions in the articles, requirements, protective provisions, other schedules and any book of reference and/or any deemed marine licence (including scope of works permitted – deemed marine licence should not permit works outside the scope of those permitted by the DCO itself), that all legislative references in the DCO are to extant provisions and all schedules refer to the correct articles. Also, definitions should be precise, accurate and relatively easily understandable. (e.g., if a definition is drafted in a way that obliges the reader to cross refer to wording in multiple other documents in order to understand the definition, then it is not easily understandable). Where any registered company is referred to in the DCO (or any deemed marine licence) it should be defined by using its full and precise company name and company registration number (as those appear on the register held by Companies House).</li> <li>• Kept under constant review by the Applicant throughout any Examination so that definitions are kept up to date by them as matters evolve – e.g.: any definition of ‘Environmental Statement’ in the context of how/the purposes for which it is referred to in the DCO; or how plans and drawings are defined (and where possible include drawing/revision numbers).</li> </ul> <p>In addition, where the Explanatory Note at the end of a draft DCO states that documents will be available for inspection at a third-party location the applicant should be asked to confirm in writing that the stated third party has agreed to that. This does not appear to have been provided in the dDCO subject of this review and therefore the Applicant should ensure that this is reflected in the final dDCO submission.</p>



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
<b>9.</b>	<b>Precedents</b> <b>Article 2, 6, 8, 10, 14, 18, 19, 20, 21, 23, 25, 26, 28, 29, 33, 34, 38, 40 and Schedule 1</b>	<p>Notwithstanding that drafting precedent has been set by previous consented DCOs or similar orders, full justification should be provided for each power/provision taking account of the facts of this particular DCO application.</p> <p>Where drafting precedents in previous made DCOs have been relied on, these should be checked to identify whether they have been subsequently refined or developed in the most recent DCOs so that the DCO provisions reflect the Secretary of State (SoS)'s current policy preferences. If any general provisions (other than works descriptions and other drafting bespoke to the facts of this particular application and DCO) actually differ in any way from corresponding provisions in the SoS's most recent made DCOs, it would be preferable for an explanation to be provided as to how and why they differ (including but not limited to changes to statutory provisions made by or related to the Housing and Planning Act 2016).</p>
<b>10.</b>	<b>Novel Drafting</b> <b>(No novel drafting identified at present)</b>	<p>The purpose of and necessity for any provision which uses novel drafting, and which does not have precedent in a made DCO or similar statutory order should be explained in the Explanatory Memorandum (EM). The Planning Act 2008 power on which any such provision is based should also be identified in the EM. The drafting should:</p> <ul style="list-style-type: none"> <li>• be unambiguous</li> <li>• be precise</li> <li>• achieve what the applicant wants it to achieve</li> <li>• be consistent with any definitions or expressions in other provisions of the DCO</li> <li>• follow guidance and best practice for SI drafting referred to above.</li> </ul>
<b>11.</b>	<b>Flexibility</b> <b>Article 2, 3, 34, and Schedule 2</b>	<p>The extent of any flexibility provided by the DCO should be fully explained, such as the scope of maintenance works and ancillary works, limits of deviation and any proposed ability (through tailpieces) of discharging authorities to authorise subsequent amendments.</p>



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
		<p>The preferred approach to limiting this flexibility is to limit the works (or amendments) to those that would not give rise to any <u>materially new or materially different</u> environmental effects to those identified in the Environmental Statement. Also, further as to tailpieces, see section 17 of AN15.</p> <p>The drafting which gives rise to an element of flexibility (or alternatives) should provide clearly for unforeseen circumstances and define the scope of what is being authorised with sufficient precision. For example, the Secretary of State had to amend article 6 (Benefit of Order) of the National Grid (Richborough Connection Project) Development Consent Order 2017 at decision stage to remove ambiguity (as later corrected by the National Grid (Richborough Connection Project) (Correction) Order 2018).</p> <p>In relation to the flexibility to carry out advance works, any “carve out” from the definition of “commencement” should be fully justified and it should be demonstrated that such works are de minimis and do not have environmental impacts which would need to be controlled by requirement. See section 21 of AN15. Pre-commencement requirements should also be assessed to ensure that the “carve out” from the definition of “commencement” does not allow works which defeat the purpose of the requirement.</p>
<b>12.</b>	<b>Requirements</b>	<p>In line with AN15 para 11.2, the plans and other documents required to be certified should be specifically listed in the relevant Articles. Applicants should set out the titles and numbers of such documents either in the certification Article or in a separate schedule or Schedules to the dDCO.</p> <p>According to AN15 para 16, biodiversity mitigation should be included in the Requirements section in the draft DCO. There are no Requirements that currently deal with biodiversity mitigation in the dDCO at present – is that because no biodiversity mitigation is necessary? If biodiversity mitigation is necessary, the Applicant should ensure that it is addressed in the Requirements.</p>
<b>13.</b>	<b>Restrictive Covenants</b>	<p>As regards Restrictive Covenants, and in accordance with AN15, Good Practice Point 9, the Applicant should provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed, and wherever possible, the power should extend only to the particular type of Restrictive Covenant required. The Applicant should explain and justify the need for including such a power in the Statement of Reasons.</p>



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
<b>14.</b>	<b>Interpretations Article 2</b>	The Applicant should explain in the Explanatory Memorandum why it considers Communications Providers to fall under the definition of Statutory Undertakers, as set out in s127 of the PA2008.
<b>15.</b>	<b>Development Consent etc granted by the order Article 3</b>	The intent of this article is to avoid inconsistency with other relevant statutory provisions applying in the vicinity, but, notwithstanding other precedents, as much information as possible should be provided about “any enactments” together with clarification about how far from the Order limits the provision can impact.
<b>16.</b>	<b>Disapplication of legislation, etc. Article 6</b>	<p>The guidance in section 25 of AN15 should be followed and, if not already provided, additional information sought such as:</p> <ul style="list-style-type: none"> <li>• the purpose of the legislation/statutory provision</li> <li>• the persons/body having the power being disapplied</li> <li>• an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls</li> <li>• (by reference to section 120 of and Schedule 5 to the PA2008) how each disapplied provision constitutes a matter for which provision may be made in the DCO.</li> </ul> <p>Where the consent falls within a schedule to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 evidence will be required that the regulator has consented to removing the need for the consent in accordance with s.150 PA2008.</p>
<b>17.</b>	<b>Defence to proceedings in respect of</b>	Are the controls on noise elsewhere in the DCO sufficient to justify the defence being provided by this article to statutory nuisance claims relating to noise?



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
	<b>statutory nuisance Article 7</b>	<p>If the defence has been extended to other forms of nuisance under section 79(1) Environmental Protection Act 1990, the same question will apply to those nuisances.</p> <p>This article also sometimes refers to legislation that has been repealed – e.g. s65 Control of Pollution Act 1974. It should refer to extant legislation only.</p>
<b>18.</b>	<b>Power to alter layout, etc., of streets Article 10</b>	This is a wide power – authorising alteration etc. of <u>any</u> street within the Order limits. It should be clear why this power is necessary and consideration given to whether or not it should be limited to identified streets.
<b>19.</b>	<b>Temporary stopping up of streets and public rights of way Article 12</b>	Notwithstanding other precedents, justification should be provided as to why the power is appropriate and proportionate having regard to the impacts on pedestrians and others of authorising temporary working sites in these streets.
<b>20.</b>	<b>Discharge of Water Article 15</b>	The Applicant should be aware and mindful of section 146 of the PA2008.
<b>21.</b>	<b>Compulsory Acquisition and extinguishment of rights Articles 19 - 26</b>	<p>These provisions (and any relevant plans) should be drafted in accordance with the guidance in AN15, in particular sections 23 (extinguishment of rights) and 24 (restrictive covenants).</p> <p>The Secretary of State for the Department for Transport (DfT)'s decision (paragraph 62 of the <a href="#">M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO</a>) should be noted: <i>"to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring</i></p>



3.1 - Longfield Solar Farm - Development Consent Order DRAFT		
Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used". Other DfT decisions have included very similar positions, e.g. the A556 (Knutsford to Bowdon Improvement) DCO and the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO.</i></p> <p>Where an Applicant wishes to create and compulsorily acquire new rights over land, those rights should be fully, accurately and precisely defined for each relevant plot and the Compulsory Acquisition (CA) should be limited to the rights described. This could be done by drafting which limits the CA of new rights to those described in a schedule in the DCO or to those described in the book of reference.</p> <p>If the article is drafted to enable CA of new rights over <b>all</b> of the Order land, with a schedule which limits the compulsory acquisition power in defined plots to the defined rights listed in that schedule, this approach (allowing undefined rights in land not listed in that Schedule) should be clearly identified and the need for it explained and justified in the Explanatory Memorandum and Statement of Reasons. It is likely to be difficult to justify. There must be evidence to show that persons with an interest in the Order land were aware that undefined new rights were being sought over <b>all</b> of the Order land and were consulted on that basis. The SoS for DfT has in at least three decisions (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO) limited the power to create undefined new rights by amending the temporary possession article (see below at 22).</p> <p>It should be noted that in the Manston Airport DCO the SoS for DfT removed the ability to create undefined new rights over land identified for temporary possession even though it was not an issue in examination. The reasons for this are set out at paragraph 121 of the Decision Letter: "The Secretary of State is concerned about the creation of new unidentified rights and is unclear whether affected land-owners have been appropriately consulted".</p> <p>In all respects (including in relation to the book of reference), the Applicant should follow <i>Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land</i> published by DCLG (now MHCLG) in September 2013.</p>



3.1 - Longfield Solar Farm - Development Consent Order DRAFT		
Ref No.	Article/ Requirement/Schedule	Comment/Question
22.	<b>Private Rights Article 22</b>	In relation to Article 22 on "Private Rights", the Applicant should consider whether the Article should be subject to a power under a separate Article which would allow the Applicant to exclude a particular private right from the blanket extinguishment power.
23.	<b>Temporary Possession Articles 28 and 29 Schedule 9</b>	<p>Temporary possession is not itself compulsory acquisition.</p> <p>Articles giving temporary possession powers should be considered carefully to check whether or not they allow temporary possession of <b>any</b> land within the Order limits, regardless of whether or not it is listed in any Schedule to the DCO which details specific plots over which temporary possession may be taken for specific purposes listed in that Schedule. If they do, then the applicant should justify why those wider powers (which also allow temporary possession of land not listed in that Schedule) are necessary and appropriate and explain what steps they have taken to alert <b>all</b> landowners, occupiers, etc. within the Order limits to this possibility.</p> <p>If not already present, consideration should also be given to adding in a provision obliging the applicant (undertaker) to remove from such land (on ceasing to occupy it temporarily) any equipment, vehicles or temporary works they carry out on it (save for rebuilding demolished buildings under powers given by the DCO), unless, before ceasing to occupy temporarily, they have implemented any separate power under the DCO to compulsorily acquire it.</p> <p>If compulsory acquisition articles (land and rights) are drafted to authorise the compulsory acquisition of <b>all</b> of the Order land there will need to be a provision in the temporary possession article which prevents compulsory acquisition of land which is only intended to be used temporarily. For example:</p> <p><i>The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article [xx] (acquisition of subsoil or airspace only).</i></p> <p>In that scenario the compulsory acquisition article would also need to be drafted in a way that expresses that it is subject to the temporary possession article (by reference to the temporary possession article number).</p> <p>If the temporary possession article drafting also says that the undertaker is not precluded from:</p> <p><i>acquiring new rights or imposing restrictive covenants over any part of that land under article [xx] (compulsory acquisition of rights)</i></p>



3.1 - Longfield Solar Farm - Development Consent Order DRAFT		
Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p>Careful consideration must be given to the drafting of the compulsory acquisition of rights article in relation to new rights/restrictions and the effect of its interaction with this provision.</p> <p>If the compulsory acquisition of rights article authorises the creation of new rights over <b>all of the order land</b>, in addition to the new rights described in a specific schedule, wording permitting the creation of new rights in accordance with that article will permit the creation of undefined new rights in the land over which temporary possession powers are granted (i.e., the schedule in the DCO listing the plots over which temporary possession is authorised – Schedule 9). This is likely to be difficult to justify.</p> <p>In these circumstances it is important to look carefully at the book of reference, land plans and Statement of Reasons to see how the land in Schedule 9 is identified and described. If the land is consistently described as being for temporary possession, then it may be that persons with an interest in the land have not understood the nature of powers sought over their land and consequently have not been correctly consulted. The Applicant should be able to clearly explain the powers that they are seeking over these plots, the need for these powers, how this is secured in the DCO and provide evidence that all persons with an interest in these plots have been consulted appropriately in a way that was clear about the nature of the powers sought.</p> <p>The SoS for DfT has issued three decisions amending the drafting of the temporary possession article to remove the power to create undefined new rights in the land described as being for temporary possession (A585 Windy Harbour to Skippool Highway DCO, A30 Chiverton to Carland Cross DCO, Manston Airport DCO). One of the main reasons for this related to the failure to accurately consult those with an interest in the land on the nature of the powers sought, the land being described in all supporting documents and on the land plans, as being for temporary possession only.</p> <p>There may be circumstances where it is permissible to retain drafting which enables the undertaker to acquire new rights in the land in the schedule in the DCO listing the plots over which temporary possession is authorised (Schedule 9 and Articles 28 and 29). For example, where there are cross-over plots with those listed in a schedule in the DCO containing detail of the new rights being compulsorily acquired (Schedule 9 and Articles 28 and 29). In those circumstances, if the new rights are precisely defined and have been consulted on, drafting could be included in the DCO along the following lines:</p> <p><i>The undertaker may not compulsorily acquire under this Order the land referred to in paragraph [(1)(a)(i)] except that the undertaker is not precluded from— (a) acquiring new rights or imposing restrictive covenants over any</i></p>



3.1 - Longfield Solar Farm - Development Consent Order DRAFT		
Ref No.	Article/ Requirement/Schedule	Comment/Question
		<p><i>part of that land under article [ ] (compulsory acquisition of rights) to the extent that such land is listed in column [(1)] of Schedule [xx]...</i></p> <p>This drafting has precedent in the East Anglia Three Offshore Windfarm DCO, Hornsea Two Offshore Windfarm DCO and Norfolk Vanguard Offshore Windfarm DCO.</p> <p>Given the parliamentary approval to the temporary possession regime under the Neighbourhood Planning Act 2017 (NPA 2017), which were subject to consultation and debate before being enacted, should any provisions relating to notices/counter notices which do not reflect the NPA 2017 proposed regime (not yet in force) be modified to more closely reflect the incoming statutory regime where possible? As examples:</p> <ul style="list-style-type: none"> <li>• The notice period that will be required under the NPA 2017 Act is three months, substantially longer than the 14 days required under Article 29, and 28 days required under Article 30. Other than prior precedent, what is the justification for only requiring 14/ 28 days' notice in this case?</li> <li>• Under the NPA 2017, the notice would also have to state the period for which the acquiring authority is to take possession. Should such a requirement be included in this case?</li> <li>• Powers of temporary possession are sometimes said to be justified because they are in the interests of landowners, whose land would not then need to be acquired permanently. The NPA 2017 Act provisions include the ability to serve a counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Should this article make some such provision – whether or not in the form in the NPA 2017?</li> </ul>
24.	<p><b>Statutory undertakers and apparatus</b></p> <p><b>Articles 30 and 31</b></p>	<p>Where a representation is made by a statutory undertaker (or some other person) that engages section 127(1) of the Planning Act 2008 (PA2008) and has not been withdrawn, the SoS will be unable to authorise compulsory acquisition powers relating to that statutory undertaker land unless satisfied of specified matters set out in section 127. If the representation is not withdrawn by the end of the examination, the Examining Authority (ExA) will need to reach a conclusion whether or not to recommend that the relevant statutory test has been met in accordance with s.127.</p> <p>The SoS will be unable to authorise removal or repositioning of apparatus (or extinguishment of a right for it) unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development</p>



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
		to which the order relates in accordance with section 138 of the PA2008. Justification will be needed to show that extinguishment or removal is necessary.
<b>25.</b>	<b>Benefit of the Order Articles 33 and 34</b>	If any part of this article is drafted so as to allow any transfer of benefit by the Applicant (undertaker) to any other person without the need for the SoS's consent, then the Applicant should provide full justification as to why that is appropriate.  See 26 below in relation to references to arbitration in this article.
<b>26.</b>	<b>Felling or lopping of trees and removal of hedgerows  Trees subject to tree preservation orders  Articles 37 and 38</b>	The guidance in section 22 of AN15 should be followed. If it hasn't been followed justification should be provided as to why this is the case.  If the 'felling or lopping' article is drafted to allow such actions to trees both within and 'near' the Order limits, should consideration be given to amending that, so that it only applies to trees within or 'encroaching upon' the Order limits?  Article 37(4) appears to be very broad in its powers as there appears to be no schedule controlling the Article.
<b>27.</b>	<b>Arbitration Article 40</b>	It is unlikely that a consenting Secretary of State will allow arbitration provision wording to apply arbitration to decisions he/she, or, if relevant the Marine Management Organisation ('MMO') may have to make on future consents or approvals within their remit.  By way of example:  The SoS for Business, Energy and Industrial Strategy (BEIS) included the following drafting in the arbitration article in the Norfolk Vanguard Offshore Windfarm DCO and the draft Hornsea Three Offshore Windfarm DCO (published with a minded to approve decision) to remove any doubt about the application of arbitration to decisions of the Secretary of State and the MMO under the DCO:



<b>3.1 - Longfield Solar Farm - Development Consent Order DRAFT</b>		
<b>Ref No.</b>	<b>Article/ Requirement/Schedule</b>	<b>Comment/Question</b>
		<p>Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.</p> <p>The SoS for BEIS also agreed with the ExA recommendation to remove reference to arbitration in the transfer of the benefit article and the deemed marine licences (DMLs) in the Hornsea and Norfolk Vanguard DCOs. The Hornsea ExA recommendation report at 20.5.9 details the reasons for removal from the transfer of benefit article, and at 20.5.17 – 20.5.24 regarding removal from the DMLs.</p> <p>It should also be noted that the SoS removed the following from the arbitration clause in both DCOs:  <i>Should the Secretary of State fail to make an appointment under paragraph within 14 days 42 of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.</i></p>
<b>28.</b>	<b>Traffic speed regulation Article 45</b>	Variation of the <u>application of</u> provisions in this article is possible under the Road Traffic Regulation Act 1984 and arguably this has the effect of disapplying section 153 which provides a procedure for changing a DCO. There may be precedent in other made DCOs for the same drafting but it should be clear under which section 120 power these articles are made and if necessary justification provided as to why the provisions are necessary or expedient to give full effect to any other provision of the DCO.
<b>29.</b>	<b>Schedules 2 – 7 and 9</b>	Schedules 2 to 7 and 9 need populating (they are just placeholders at present). The shoulder references to the various Articles need checking for accuracy of cross-referencing.
<b>30.</b>	<b>Procedure for discharge Schedule 10</b>	AN15 provides standard drafting for articles dealing with discharge of requirements. If this guidance has not been followed justification should be provided as to why this is the case.
<b>31.</b>	<b>Explanatory Note</b>	There is no explanatory note in the dDCO. Please ensure the deposit location used in the explanatory note has been agreed with the relevant organisation. This was also set out in row 8 above.



<b>3.2 - Longfield Solar Farm - Explanatory Memorandum DRAFT</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
<b>32.</b>	<b>General</b>	The Applicant should ensure that all cross-references to the dDCO are to the correct Article/Schedule.
<b>33.</b>	<b>General</b>	Following paragraph 17 of AN15, any provisions in the dDCO that allow for flexibility must be thoroughly justified within the EM.
<b>34.</b>	<b>General</b>	AN15 - 1.2 and 1.4, 1.5 – the application needs to provide justification and an explanation regarding the source of each provision and why it is relevant to the Proposed Development. The EM should explain why that particular wording of any Articles is relevant to the proposed dDCO, for example what is factually similar for the consented NSIP and proposed development, and why it is appropriate for the scheme applied for.
<b>35.</b>	<b>Novel provisions</b>	The EM does not state whether there are any novel provisions contained in the dDCO. It would be helpful if the EM could specify whether there are any novel provisions or confirm that there are not. Please see AN15 1.1, 1.2 and 1.4 for further information on this point.

<b>4.3 - Longfield Solar Farm - Book of Reference Extract DRAFT</b>		
<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
<b>36.</b>	<b>General</b>	It would be helpful if the Applicant ensured that the final submitted BoR contained an introduction which sets out how it interacts with the dDCO and the Land Plans.
<b>37.</b>	<b>General</b>	Please be aware of the requirements in Annex D to the Planning Act 2008: Guidance related to procedures for the Compulsory Acquisition (CA) of land (September 2013), in particular paragraphs 7, 8 and 10 of Annex D to that Guidance. Paragraph 10 states, <i>“Where it is proposed to create and acquire new rights compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order”</i> .



<b>38.</b>	<b>General</b>	The BoR should be clear as to which plots (if any) will be subject only to temporary possession or use.
<b>39.</b>	<b>General</b>	A draft Statement of Reasons was not provided, therefore the Inspectorate is unable to comment on the extent of CA required by the Applicant or what types of new rights or restrictions, or the extent of them, may be required. The draft BoR also does not appear to define anything in this regard. Any relevant Schedule to the DCO dealing with CA rights needs to be populated and an explanation provided in the final submitted draft EM.
<b>40.</b>	<b>Part 2</b>	This section of the BoR should contain the Category Three parties (see The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 7(1)(b)). If the Applicant does not consider that there are any Category Three parties then an explanation should be provided in the final submitted EM.
<b>41.</b>	<b>Part 3</b>	This section of the BoR should contain the names of all those entitled to enjoy easements or other private rights over land (see The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 7(1)(c)).
<b>42.</b>	<b>Plot number 1/2C</b>	Neither part 1 nor part 2 of the BoR indicate that this land plot is “land to be acquired permanently”. The description does not appear to be consistent between the BoR and the Land Plans.

<b>5.1 - Longfield Solar Farm - Consultation Report DRAFT</b>		
<b>Ref No.</b>	<b>Paragraph/Section</b>	<b>Comment/Question</b>
<b>43.</b>	<b>General</b>	It would be helpful if the Applicant included a full list of abbreviations in the final version of the Consultation Report.
<b>44.</b>	<b>Paragraph 4.3.8</b>	It is noted that the Consultation Report states that the Applicant considers there are no persons who might be entitled to make a relevant claim as a category 3 interest. The Applicant should consider whether any persons are likely to be impacted by temporary matters such as delivery of materials to the site(s), as well as any operational effects. If so, these persons must be added to the BoR. If the Applicant does not consider any persons will be affected, justification for this should be provided in the Consultation Report and EM.



<b>45.</b>	<b>Appendix K-1</b>	It would benefit the readers of the report if the appendices such as K-1 listed all the subsections of the documents included in the appendices.
------------	---------------------	--

**Longfield Solar Farm - Application Index DRAFT**

<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
46.		No comments.

**7.1 - Longfield Solar Farm - Statement of Need – DRAFT**

<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
47.	<b>General</b>	The Applicant should ensure that the Statement of Need reflects the current national and local policy statements at the time of submitting the application. It should also demonstrate that the Applicant has the funds available to cover the cost of compulsory acquisition, as well as the cost of the project.

**6.1 – Longfield Solar Farm – ES Chapter 2 (The Scheme) - DRAFT**  
**(No comments on ES Chapter 1 (Introduction) – DRAFT or ES Chapter 4 (Consultation) - DRAFT)**

<b>Ref No.</b>	<b>Paragraph/ Section</b>	<b>Comment/Question</b>
48.	<b>Section 2.4</b>	<p><b>Concept Design Parameters and Outline Design Principles</b></p> <p>The Planning Inspectorate’s Scoping Opinion stated at paragraph 2.3.20 that: “<i>The development parameters should be clearly and consistently defined across both the dDCO and the accompanying ES</i>”.</p> <p>The Applicant’s approach as described in ES Chapter 2 is that the assessment of likely significant effects in the ES is based on “<i>Concept Design Parameters</i>”, which have not been provided within the draft documentation but are</p>



**6.1 – Longfield Solar Farm – ES Chapter 2 (The Scheme) - DRAFT**

**(No comments on ES Chapter 1 (Introduction) – DRAFT or ES Chapter 4 (Consultation) - DRAFT)**

Ref No.	Paragraph/Section	Comment/Question
		<p>described as "<i>realistic worst-case design parameters within the Rochdale Envelope</i>" which do not always represent the maximum parameters.</p> <p>Rochdale Envelope "<i>Outline Design Principles</i>" are set out in a separate document (Document 7.2 - Outline Design Principles - draft) which states on page 2: "<i>It is proposed that the DCO includes a requirement that some details of the Scheme are approved by the relevant planning authorities, and that details submitted for approval would be in accordance with the design principles set out in the ODP</i>". However, there is currently no requirement in the dDCO which references the Outline Design Principles (or Concept Design Parameters).</p> <p>ES paragraph 2.4.3 further explains: "<i>Wherever possible, the Concept Design Parameters are the same as the Design Principles, for example, the heights of all elements of the Concept Design align with the Design Principles and Concept Design Parameters. Where that is not possible within the Concept Design, the assessment addresses this difference</i>".</p> <p>This approach is akin to that taken in the Cleve Hill application and was considered at length during that Examination. The examination of this issue focused on the need for consistency between the development which would be authorised by the DCO and the development assessed in the ES. It also considered whether and to what extent the Applicant's approach could result in an Order granting consent for development beyond that which had been assessed in the ES.</p> <p>The Secretary of State amended Requirement 2(2) of the Cleve Hill DCO in line with the ExA's suggestion, to ensure adherence of the development with the assessed parameters.</p> <p>Therefore, should the Longfield Solar Farm application be accepted for Examination, the relationship between any powers that would be authorised through the dDCO, the Outline Design Principles and Concept Design Parameters that have been assessed are likely to lead to similar lines of questioning during Examination.</p> <p>The Applicant states at ES paragraph 2.4.7 that: "<i>Where those Concept Design Parameters are different to the Design Principles, the assessment has also considered whether any new, different or worse effects would result if the Design Principle was constructed</i>". The Applicant must ensure the necessary certainty in the evidence is provided, given that a fundamental principle of the EIA process is that the Environmental Statement must address the likely significant effects of the proposed development and that the consent should not authorise development falling outside the scope of the assessed effects.</p>



6.1 – Longfield Solar Farm – ES Chapter 2 (The Scheme) - DRAFT (No comments on ES Chapter 1 (Introduction) – DRAFT or ES Chapter 4 (Consultation) - DRAFT)		
Ref No.	Paragraph/Section	Comment/Question
49.	Para 2.5.3	The ES description refers to "29 PV Arrays", while Appendix A of Outline Design Principles document indicates 31 PV arrays.
50.	Para 2.5.27	The ES description refers to "A maximum of 150 standalone Solar Station locations". Suggest this figure is specified in the Concept Design and secured in the Outline Design Principles document.
51.	Paras 2.5.35 and 2.5.36	The ES describes trench width/depth parameters for electrical cables which form part of Work No.1. Suggest these parameters are specified in the Concept Design and the same parameters secured in the Outline Design Principles document.  The same point applies to trench width/depth parameters for electrical cables which form part of Work No. 2 (as described in ES paragraph 2.5.58); and Work No. 4 (as described in ES paragraphs 2.5.86).
52.	Paras 2.5.49 – 2.5.51	The ES describes the dimensions and approximate number (1,300) of BESS units, which would be located in the BESS compound. Suggest specifying the BESS unit parameters in the Concept Design and securing the same parameters in the Outline Design Principles (notwithstanding the Outline Design Principle that no component of the BESS will exceed 4.5m).  The same point applies to the dimensions and approximate numbers of inverters, transformers and control rooms, as described in ES paragraphs 2.5.52 – 2.5.54. Similarly for the water tanks described in ES paragraph 2.5.63.
53.	Paras 2.5.71 – 2.5.83	Dimensions for buildings within the Longfield Substation electrical compound are described in paragraph 2.5.73 of the ES and secured in the Outline Design Principles. However, ES Chapter 2 provides dimensions for some other taller structures within the electrical compound (e.g. transformers; air insulated switchgear) which are not secured in the Outline Design Principles. Suggest these parameters are specified in the Concept Design and the same parameters secured in the Outline Design Principles document.
54.	Para 2.5.83	If the ES assessment has been based on the concept design which has two 1.6MVA diesel standby generators, these specifics should be secured in the Outline Design Principles.



6.1 – Longfield Solar Farm – ES Chapter 2 (The Scheme) - DRAFT (No comments on ES Chapter 1 (Introduction) – DRAFT or ES Chapter 4 (Consultation) - DRAFT)		
Ref No.	Paragraph/Section	Comment/Question
55.	Para 2.5.88	Suggest including cross-reference to plans/figures here which show the locations of the two temporary pylons and existing vs realigned route for the 400kV overhead line (it does appear these are intended to be included in the final version of ES Chapter 2).
56.	Para 2.5.96	States that " <i>Indicative lengths of cabling are provided in the Concept Design Parameters</i> ". Suggest that trench width/depth parameters are also specified in the Concept Design and the same parameters secured in the Outline Design Principles document.
57.	Para 2.5.104	Suggest adding confirmation of how these areas of new habitat creation are secured.
58.	Para 2.6.21	Suggest adding cross-reference to a figure showing agreed construction traffic routing.
59.	Para 2.6.24	Suggest maximum HGV movements are specified in the Concept Design and secured in the Outline Design Principles document.
60.	Para 2.8.1	ES paragraph 2.8.1 states that a Decommissioning Environmental Management Plan will be prepared prior to decommissioning and will be secured through a DCO Requirement. Such a requirement does not appear to be included in the dDCO.
61.	General	Work numbering between ES Chapter 2, dDCO and Outline Design Principles document needs reviewing and correcting for consistency. E.g. ES paragraph 2.5.52 is under the heading of " <i>Inverters, transformer, switchgear and ancillary equipment (Work No 2.(b))</i> ", but Work No. 2 in the dDCO runs from parts (g) – (p). Work No.2 in the Outline Design Principles document runs from parts (d) – (m).

**General**

- Where references are provided to other draft application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.



7. [\[MHCLG\] Application form guidance](#), paragraph 3, states: *“The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.”*