

DECISION DELEGATED TO HEAD OF PLANNING**DECISION DELEGATED TO HEAD OF PLANNING**

Application No: H04-0184-24 **Applicant:** AGR Solar 2 Ltd

Proposal: Details of Landscape & Ecological Management Plan (Condition 19 and also relating to Conditions 17, 18 & 20 of H04-0849-22)

Location: Land To The West Of Cowbridge Road Bicker Fen Boston

Terminal Date: 24th April 2024

Planning Policies**South East Lincolnshire Local Plan - Adopted: March 2019**

28 The Natural Environment
04 Approach to Flood Risk

National Guidance**National Planning Policy Framework 2023**

Section 14: Meeting the challenge of climate change, flooding and coastal change
Section 15 Conserving and Enhancing the Natural Environment.

Representations:

	Object	Support	No Obj.	Comments
BLACK SLUICE INTERNAL DRAINAGE BOARD	1	0	0	0
OTHER STATUTORY BODIES	0	0	0	1

CASE OFFICER ASSESSMENT**Proposal**

Details of Landscape & Ecological Management Plan (Condition 19 and also relating to Conditions 17, 18 & 20 of H04-0849-22).

Site Description

As per host consent.

History

H04-0849-22 - Proposed development of a photovoltaic solar array, grid connection, access improvement works & ancillary development on land at Bicker Fen, Boston and South Holland. Approved 21 July 2023.

H04-0078-24 - Details of foul & surface water disposal (Condition 15 of H04-0849-22). Approved 22nd March 2024.

H04-0204-24 - Details of Construction Management Plan & Method Statement and precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from site during construction of development (Conditions 10 and 11 of H04-0849-22). Undetermined at the time of writing.

H04-0219-24 - Details of the parts of North Ing Drove, Cowbridge Road and Ing Drove that will be used by vehicles making deliveries of materials and components shall be recorded by written notes, still and moving photographic images during an inspection (Condition 14 of H04-0849-22). Undetermined at the time of writing.

Consultation Responses

Lincolnshire Bat Group

Thank you for referring this Ecological Management Plan to Lincs Bat Group for comment. See section 3.6 for bat protection measures. This looks satisfactory.

Black Sluice IDB

The Board has received the above planning application and has the following comments:

Access to Watercourses / IDB Byelaws

There are numerous open watercourses crossing and bounding the land concerned which are maintained by the Board under the terms of the Land Drainage Act 1991. The Board does NOT own the land within which these watercourses lie. The Board is only responsible for the conveyance of water.

The Board has a byelaw (No.10) which prohibits the siting of any obstructions, whether temporary or permanent, including planting, within 9 metres of the top of the bank of an open watercourse without the prior written consent of the Board. The Board requires these 9m access strips to carry out annual maintenance and improvement works by machinery throughout the year.

It would appear from the plans provided that the applicant intends to plant hedgerows within 9 metres of IDB-maintained watercourses. The applicant is advised that this will not be acceptable to the Board, and as such the Board OBJECTS to this application.

The applicant is also advised that suitable obstruction-free access strips should also be left alongside those watercourses which are NOT maintained by the Board so that these can also be maintained by the developer or any subsequent land owners.

Works within watercourses within the Black Sluice IDB District The applicant is reminded that if they intend to pipe or fill any watercourse, now or at any time in the future, then under Section 23 of the Land Drainage Act 1991 the prior written consent of the Board is required. Works may include any proposed permanent or temporary works or structures, infilling, diversion, or replacement of any existing structures, within any watercourse. This is mandatory.

The applicant is reminded that within common law, the ownership and maintenance responsibility for any watercourse, and any structures within such as piped access culverts, lies with the adjacent landowners, regardless of whether the watercourse is maintained by the Board, unless proved otherwise. Where a section of watercourse lies wholly within a land or property boundary, or lies alongside a highway, then the land or property owner is considered wholly responsible for the ownership and maintenance of that section of watercourse and any structures within

Planning Considerations

The wording of Condition 19 was as follows:

Condition 19 Detail

"No above ground development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall set out detailed scaled plans and shall include the following and be in force for no less than 30 years:

- a) description and evaluation of features to be managed, informed by the Ecological Assessment;
- b) details associated with the Skylark Mitigation Area and Skylark Habitat Management Plan by Avian Ecology reference: AXIS-043-1379 dated 10/02/2023 as required by Condition 20;
- c) details of the landscaping as required by Condition 18;
- d) ecological trends and constraints on site that might influence management;
- e) aims and objectives of management;
- f) appropriate management, maintenance, ongoing monitoring and remediation measures and retention;
- g) prescriptions for management actions, broken into monitoring time periods;
- h) preparation of a work schedule, including a timetable for implementation of all the planting, works and ecological and landscape enhancement/creation measures and an annual work plan capable of being rolled forward over a five-year period;
- i) a scheme for dark corridors for biodiversity protection (including bats) to work in combination with an approved lighting strategy as part of Condition 17;
- j) retention of higher quality nesting and foraging habitat and semi improved field margins, size and details associated with their buffer zones;
- k) construction and ecological management plan including ecologist pre-site clearance measures, survey to identify wild birds nests (including ground nesting birds), suitable work exclusion zones around any identified nest sites, and habitat protection during construction;
- l) use of mammal gates to allow free movements of mammals, amphibians and reptiles;
- m) use of box culvert for water voles in association with the new crossing in Hammond Beck;
- n) species rich hedgerow management plan;

The approved LEMP, the future maintenance and management scheme and associated measures shall be implemented within the first planting season following installation of any of the solar panels. All trees, shrubs and hedgerows and skylark mitigation shall be maintained by the owner or owners of the land on which they are situated for the period of thirty years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its biodiversity, visual amenity and that of the area in which it is set. This Condition is imposed in accordance with Policies 2, 3, 28 and 31 of the South East Lincolnshire Local Plan, 2019"

Condition detail

A landscape masterplan and a Landscape ecological plan has been submitted together with a covering letter.

These describe the features to be managed, protection of notable species, in terms of sites and habitats, dark corridors for biodiversity protection, aims and objectives of management, work schedule and monitoring.

Appraisal

The Lincolnshire Bat Group raise no objection to the submitted details.

However, the Black Sluice IDB objects to the proposals due to hedgerows being planted within 9m of an IDB. The Board requires these 9m strips to be kept clear of obstructions to carry out annual maintenance and improvement works by machinery throughout the year. The plans include planting hedgerows within 9 metres of IDB maintained watercourses, which is not acceptable to the Board.

Obstruction free access strips should also be left alongside the watercourses. Mandatory Land Drainage Consent is required.

With an objection such as this, this means the proposals are likely to affect flood risk, and as such, without measures to ensure that drains are maintained adequately, this increases the risk of flooding. As such the proposals need to be re-designed so that they conform with IDB requirements.

Conclusion

The details conflict with IDB requirements to maintain 9m maintenance strips adjacent to IDB maintained drains, which are required to be kept free of obstructions at all times for maintenance purposes. Without keeping drains free of obstructions, the Board would be unable to maintain the drain, thereby increasing the chances of flooding. The proposals are not therefore acceptable therefore the condition cannot be discharged.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.