DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0965-26**	**Applicant:**	**AGR Solar 2 Limited**
Proposal:	Proposed development of a photovoltaic solar array, grid connection, access improvement works & ancillary development on land at Bicker Fen, Boston and South Holland - approved under H04-0849-22. Amendments to proposed site layout.		
Location:	Land To The West Of Cowbridge Road Bicker Fen South Holland And Boston		
Terminal Date:	5th November 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework August 2026

Section 96A of the Town and Country Planning Act 1990 (as amended)

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This application seeks approval under section 96A of the Town and Country Planning Act 1990 (as amended) for amendments to planning permission H04-0849-22 for:

"Proposed development of a photovoltaic solar array, grid connection, access improvement works & ancillary development on land at Bicker Fen, Boston and South Holland."

The amendments comprise revisions to the solar array and associated equipment, a reduction in the number of solar inverter/transformer stations from 22 to nine, the introduction of string inverters beneath the panels, changes to the battery storage equipment and compound arrangement, and realignment of internal access tracks.

The application also proposes reducing the acoustic fence height from 5 metres to 3.5 metres,

removing approximately 0.5 hectares from the developed area without changing the application boundary, updating the drainage and landscape/ecological management documents, and amending the timing requirement within Condition 17 relating to external lighting.

Revised drawings and documents are proposed to replace those secured through the relevant conditions.

Site Description

The application site comprises agricultural land at Bicker Fen, crossed by a network of ditches, drains and local roads. The surrounding landscape is predominantly flat and open, with scattered residential properties and agricultural buildings. Field boundaries principally comprise drainage ditches, with hedgerows and trees in some locations.
The development includes solar arrays distributed across several field parcels, associated electrical equipment, a battery storage compound, internal access tracks and landscaping. Residential properties around the site are sensitive receptors in respect of operational noise and views of the development.

The open character of the landscape means that the positioning and scale of infrastructure, together with the retention of screening and landscape planting, are relevant to the assessment of the amendments.

History

Relevant planning history includes:

·H04-0849-22: Solar array, grid connection, access improvement works and ancillary development. Approved 21 July 2023.
·H04-0078-24: Surface water drainage details. Approved 22 March 2024.
·H04-0521-24: Landscape and Ecological Management Plan details. Approved 9 July 2024.
·H04-0558-24: Construction management details. Approved 29 July 2024.
·H04-0769-24: Non-material amendments involving the layout, relocation of switchgear/control/storage buildings and revisions to the compound. Approved.
·H04-0199-25: Archaeological investigation details required by Condition 7. Approved 20 March 2025.
·H04-0508-25: Non-material amendment replacing the approved archaeological mitigation document. Approved 24 June 2025.
·H04-0569-25: Proposed amendment to Condition 13 to permit two-way construction traffic on specified roads. Refused 14 July 2025.
The refused amendment to construction traffic arrangements does not form part of the approved development.

Consultation Responses

IDB

The Internal Drainage Board has provided general advice concerning drainage requirements and any necessary consents. Its response does not provide an express technical endorsement of the revised drainage scheme.
No other consultation responses have been received. Environmental Protection has not been consulted. Statutory consultation is not required for an application under section 96A, and the absence of an Environmental Protection response does not prevent determination.

Scope of Assessment for Non-material Amendments

Section 96A allows the Local Planning Authority to amend a planning permission where it is satisfied that the change is non-material. There is no statutory definition of a non-material amendment; this requires a judgment having regard to the circumstances of the development.

In making that judgment, the authority must consider the effect of the proposed changes together with previous changes made under section 96A. The assessment therefore considers both the

individual amendments and their combined effect upon the originally approved scheme.

An application under section 96A is not an application for planning permission, and section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply. The issue is whether the amendments are non-material, rather than whether a materially different scheme might be acceptable on its planning merits.

Section 96A permits the imposition of new conditions and the alteration or removal of existing conditions. However, that power does not remove the requirement for the changes themselves to be non-material.

Planning Considerations

The Council's published criteria for non-material amendments address matters including changes to the site boundary, the scale and design of development, effects upon neighbouring properties, consistency with conditions and the introduction of effects beyond those previously considered.

These criteria inform the assessment, alongside the statutory requirement to consider the effect of the amendments in their particular context.

The principal considerations are the revised layout and equipment, internal access arrangements, landscaping and visual amenity, drainage, lighting, operational noise and the cumulative effect of the changes.

Assessment

This section discusses the number of proposed changes sought by this application and there impacts as regards materiality.

Layout and equipment

Comparison of the originally approved General Arrangement drawing, Revision E, with the proposed Revision H shows that the principal development areas, broad arrangement of solar arrays and general location of the battery storage compound remain substantially consistent.

The amendments alter panel rows, equipment positions and the internal configuration of the battery compound. The number of solar inverter/transformer stations is reduced from 22 to nine, with string inverters introduced beneath the panels. These changes retain the development's established function and overall spatial arrangement.

The removal of approximately 0.5 hectares from the developed area does not extend development beyond the approved boundary. The revised layout also incorporates changes to buildings and the compound previously addressed through an approved NMA.

In physical layout terms, these amendments do not result in a fundamentally different development. Their operational noise implications are considered separately below.

Internal access tracks

The revised tracks principally serve the amended equipment positions and array arrangement.

Within the western block north of Middle Fen Drove, the internal route is adjusted to run eastwards through the arrays towards the Hammond Beck crossing. Within the south-western field, a more irregular route is replaced by a straighter alignment. Other changes involve local bends, junctions and equipment access spurs.

The broad internal access network remains recognisable when compared with the original permission. The changes do not establish a fundamentally different access strategy or authorise the previously refused alteration to construction traffic routing under Condition 13.

The track realignments are considered non-material in the context of the wider development.

Landscaping, character and visual amenity

The comparison of the original and proposed layouts shows retention of the principal landscape belts and perimeter screening. These include planting around the northern compound, along the Ing Road frontage and in locations associated with surrounding residential properties and the southern development parcels.

The amendments do not show wholesale removal of the landscaping or an expansion of infrastructure into previously undeveloped areas beyond the approved boundary. Local changes to planting arrangements accompany the revised layout but do not fundamentally alter the agreed landscape approach.

Reducing the acoustic fence from 5 metres to 3.5 metres would reduce the height and prominence of the enclosure. However, a lower fence can also expose more of the infrastructure behind it, so its visual effects cannot be assessed solely on the basis that a lower structure is less impactful/visible across a wider area.

The revised battery inverter/transformer station elevation indicates an equipment height of approximately 2.32 metres. This supports the view that the reduced fence would continue to screen that equipment, although it does not establish complete screening of every component within the compound.

Taking account of the compound's retained general location, the continuing enclosure and the retention of the principal landscape planting, the drawings do not demonstrate a material change to the overall landscape character or residential visual amenity arising from the layout amendments. The acoustic function of the fence remains a separate and significant consideration (this is discussed below).

Drainage

The revised drainage information addresses changes to the constructed access and hardstanding arrangements and the associated means of collecting, storing and discharging surface water.

The scheme continues to rely upon managed drainage associated with the internal infrastructure and existing drainage network. The technical note provides calculations and details of the revised arrangements.

These are changes to the engineering measures serving the development rather than an alteration to its fundamental use or extent. On the information submitted, the drainage revisions do not provide a separate basis for finding that the application constitutes a material amendment. This conclusion takes account of the submitted technical information rather than treating the Internal Drainage Board's general response as approval of the design.

External lighting

The proposed amendment to Condition 17 removes the requirement for lighting details to be approved before any above-ground works commence.

The requirement for approval before the installation of lighting would remain, together with the controls governing its assessment, implementation and relationship with ecological protection.

The change therefore adjusts the approval trigger while retaining control over the lighting itself (the reason for the condition). It does not authorise a different lighting scheme or remove the requirement for prior approval of lighting installations. This amendment is considered non-material.

Acoustic fence and operational noise

Condition 21 of planning permission H04-0849-22 is an ongoing compliance condition. It requires

the rating level of noise from fixed plant and machinery, assessed in accordance with BS 4142:2014+A1:2019, not to exceed the representative background noise level by more than 5 dB(A). It does not require any details to be submitted or approved.

The condition remains enforceable. However, its existence does not demonstrate that the proposed equipment changes and reduction in fence height would comply with the condition, nor that the resulting impacts would be non-material.
The submitted Noise Technical Note assesses the revised scheme using a 3.5-metre acoustic fence, and its findings are a material consideration. However, the assessment contains inconsistent background noise figures.

For Ing Road, Table 1 identifies a daytime background noise level of 32 dB, while Table 4 uses 33 dB. Similarly, Table 3 identifies a sunrise background level of 32 dB, whereas Table 4 uses 34 dB. Table 4 also predicts rating levels of up to 38 dB at this receptor.

If the correct background level is 32 dB, the limit imposed by Condition 21 would be 37 dB. As Table 4 predicts a rating level of up to 38 dB at this receptor, the assessment indicates a potential exceedance of the condition limit. That 37 dB limit is specific to that background level and is not a site-wide or universal limit.

These inconsistencies create uncertainty as to whether the revised scheme would comply with Condition 21.

This does not mean that a breach of the condition has occurred. However, it does mean there is insufficient certainty that the amended equipment and reduced acoustic fence would comply with the existing noise restriction set out by condition 21. The acoustic fence provides mitigation. Reducing its height, while also altering the equipment and layout, requires robust evidence that the changes would not result in materially different impacts. The inconsistencies within the submitted assessment prevent the authority from relying on its conclusions with confidence.

While Condition 21 remains an enforceable control, it does not remove the need to demonstrate that the amendment itself is non-material. Based on the information submitted, and in the absence of a clear and consistent noise assessment, it has not been demonstrated that the proposed acoustic changes are non-material.

Cumulative assessment

The proposed changes have been considered both individually and alongside the amendments previously approved under Section 96A.

Comparing Revision E with Revision H shows that the overall arrangement of the development remains broadly the same. The main areas of solar panels, the location of the compound, the internal access tracks and the principal landscaping have all been largely retained. The earlier archaeological amendment also maintained the approved archaeological mitigation measures.

On this basis, there is no clear evidence that the changes to the layout, access tracks, landscaping, drainage and lighting, either individually or collectively, would fundamentally alter the nature or appearance of the approved development.

However, the cumulative assessment must also consider the operational effects of the proposed changes. This includes the revised equipment, its position within the site and the reduction in the height of the acoustic fence. As there remains uncertainty within the submitted noise assessment, it has not been demonstrated that the combined effect of these changes would be non-material when compared with the original permission.

Conclusion

The revised layout, internal tracks, landscaping, drainage arrangements and lighting approval trigger are considered capable of being treated as non-material in the context of this development.

However, the acoustic evidence contains inconsistent background figures which indicate a potential conflict with Condition 21. The authority cannot therefore be satisfied that the revised equipment

arrangements and reduction in acoustic fence height would have a non-material effect.

Having regard to the proposed amendments collectively and to previous changes approved under section 96A, the application has not demonstrated that the amendments are non-material.

Recommendation

Refuse the application under section 96A.

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 xxx 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 xxx 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.