DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H11-0912-23**	**Applicant:**	**Tuwale Power Ltd.**
Proposal:	Proposed upgrade of existing access track (relating to solar farm)		
Location:	Land East Of Little London (Former Long Sutton Butterfly And Wildlife Park) Long Sutton		
Terminal Date:	8th December 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

-Section 192 of The Town and Country Planning Act 1990

-Part 9, Class E of Schedule 2 (of The Town and Country Planning General Development Order 2015 (as amended)).

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The applicant is applying for a lawful development certificate for a proposed development, the development relates to an upgrade to the existing access track that serves a solar array located to the east of Little London, Long Sutton.

The applicant seeks confirmation under section 192 of The Town and Country Planning Act 1990 (as amended) that the proposed works are lawful.

Site Description

The application site relates to an access track serving a solar array at the former wildlife and butterfly park, Long Sutton. The track links on to an internal connector road that attaches to Little London, to the north of Hall Marsh House.

History

H11-1658-07 - Proposed new access. Approved 14-02-08

H11-0817-10 - Construction of solar park, comprising photovoltaic arrays, car park, inverter building, landscaping and vehicular access. Approved 21-02-11

H11-0398-12 - Proposed residential development comprising 87 dwellings and associated works and to include renewable energy systems. Approved 27-01-14

Consultation Responses

Consultation responses were not sought as part of this application

Planning Considerations

Section 192 of The Town and Country Planning Act 1990 sets out the process of Certificate of lawfulness of proposed use or development. Section 192(1) states:
If any person wishes to ascertain whether:

(a)any proposed use of buildings or other land; or

(b)any operations proposed to be carried out in, on, over or under land,
would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

Supporting Information

The applicant has provided a covering letter and plans (location plan and cross section showing the scope of the works. The covering letter states that:

It is considered that the proposal constitutes Permitted Development under Part 9 Class E of the Town and Country Planning (General Permitted Development) Order 2015, for the following reasons (direct extract from GDPO)

Class E - repairs to unadopted streets and private ways Permitted development. E. The carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way. Interpretation of Class E E.1 For the purposes of Class E, "unadopted street" means a street not being a highway maintainable at the public expense within the meaning of the Highways Act 1980

Determination of Lawfulness

The applicant directs the decision maker to part 9 of Schedule 2 (of The Town and Country Planning General Development Order 2015 (as amended)). This part is concerned with 'Development relating to Roads'. More Specifically Class E (of the above part) relates to 'repairs to unadopted streets and private ways'.

The application site which is bound in red on the location plan identifies an access track that serves the solar array. The track is private and not maintainable at public expense (meeting the definition of unadopted Street set out under E.1 interpretation) and thus considered to be an unadopted street and so Class E applies.

Class E allows for 'The carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way' and the applicant has provided a cross section (plan reference: UK_EPD_RCS) showing the upgrading of the track, this consists of removing soil to the base and topping off with stone. It is considered that these operations represent maintenance or improvement of an existing unadopted street or private way.

It is therefore considered that the proposal would accord with Part 9, Class E of Schedule 2 (of The Town and Country Planning General Development Order 2015 (as amended)).

Conclusion

The proposal represents permitted development set out under Part 9, Class E of Schedule 2 (of The Town and Country Planning General Development Order 2015 (as amended)).

The proposed operations are therefore considered Lawful.

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.