

## DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H18-0622-25	Applicant:	Enso Green Holdings R Limited
Proposal:	Installation of a solar farm and battery storage facility with associated infrastructure - approved under H18-1034-23 (original permission H18-0741-21). Modification of Condition 2 to allow amendments to previously approved plans - approved under H18-0448-24. Modification of Condition 6 (Construction Traffic Management Plan and Method Statement) (CTMP&MS), modification of condition 7 relating to access onto Gunthorpe Road and removal of condition 8 relating to improvements to crossroads of King John Bank/Marsh Road/Gunthorpe Road.		
Location:	Gunthorpe Road Solar Farm Land South Of Gunthorpe Road Walpole Marsh		
Terminal Date:	8th October 2025		

### Planning Policies

#### South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
03	Design of New Development

#### National Guidance

#### National Planning Policy Framework December 2024

Section 9 - Promoting sustainable transport

### Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
KINGS LYNN INTERNAL DRAINAGE BOARD	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	5

## **CASE OFFICER ASSESSMENT**

### **Proposal**

This is a section 73 planning application to allow for amendments to previously approved plans (approved under H18-0448-24 which was a S73 application). The original permission reference is H18-0741-21), this application is for the modification of Condition 6 (Construction Traffic Management Plan and Method Statement) (CTMP&MS), modification of condition 7 relating to access onto Gunthorpe Road and removal of condition 8 relating to improvements to crossroads of King John Bank/Marsh Road/Gunthorpe Road.

This results in a request for changes to the following conditions:

#### Condition 2

Amendments to the Solar Farm layout previously approved. An additional internal access track is proposed within the Solar Farm to connect with the boundary of the Site with the previously approved AIL access track. There is also a removal on the site plan of the previously approved access track further east on Gunthorpe Road (no longer marked in grey as an access track on the plan). The land for Biodiversity Net Gain within the Solar Farm Site is also shown on the submitted Drawing WP2-01-P44.

#### Condition 6

Details of the Construction Traffic Management Plan & Method Statement are submitted for consideration under this application. The aim being that condition 6 becomes compliance based.

#### Condition 7

Condition 7 requires widening and the removal of obstructions (exceeding 0.6m) relating to the existing site access at Gunthorpe Road. Under this application this is also proposed to be varied to reference details, and visibility splays, of the separately approved access track also (East Bank/Gunthorpe Road junction).

#### Condition 8

As a consequence of the proposed use of the access from the East Bank/Gunthorpe Road junction the applicant states that no construction or operational vehicle traffic associated with the Solar Farm development will be required to use the King John Bank/Marsh Road/Gunthorpe Road crossroad. The condition may therefore not be related in kind and scale. The applicant seeks this to be removed.

### **Background**

This Section S73 submission relies, for the most part on the access track approved under H18-0085-25. This track is located outside of the red line boundary of the original permission, but does abut it.

Important to note is the permission achieved under H18-0085-25 which was for:

#### *Installation of access track and associated development*

This permission was conditional, two of which place constraints on the success of this section 73. They are condition 2 and condition 5 which approved '2102-022/CTMP/01 Rev B Construction Traffic Management Plan and the January 2025 Supporting Statement'. Under paragraph 1.8 of the CTMP it states:

"Therefore, it is proposed that a new secondary access is created at the western end of Gunthorpe Road for AIL use only. AIL vehicles will route to this access via the A117 and East Bank alongside

the River Nene. This application includes only this secondary (AIL) access. All other vehicles will continue to use the previously approved access and construction route. A red line plan boundary for the new secondary access is shown in Appendix B"

Additionally the supporting statement expands on the proposed use under paragraphs 3.4 & 3.5 stating:

*The access is required to provide abnormal indivisible load (AIL) access. AND  
The access is proposed alongside an access previously permitted by SH DC and KL&WN BC as part of a solar farm and battery storage facility scheme with all associated works allowed on appeal in September 2023"*

Given the content of the applicants supporting documents submitted as part of planning application H18-0085-25 it is considered that this access is allowed for the use of 2 x AIL vehicles only and the retention previously approved access formed part of the consideration.

It is important to note then that this access track did not allow permission for the access/egress at East Bank/Gunthorpe Road junction to accept all construction and operational traffic, rather it allowed it to be used for AIL use only (as per the approved construction management plan and supporting statement provided as part of H18-0085-25).

## Site Description

The application site straddles the administrative boundary between local authorities in two different counties, South Holland District Council (SHDC); and the Borough Council of Kings Lynn and West Norfolk (KLWN), in Norfolk.

The site benefits from an extant permission to formulate a solar farm; approved by the Planning Inspectorate in September 2023. A subsequent Section 73 application was approved which allowed the lifetime of the development to be extended to 40 years.

A permission exists to use a field abutting the site to install an access track. This track was given permission for the use of AIL vehicles only. This is located outside of the red line boundary of the original permission.

## History

H18-0741-21 - Installation of a solar farm and battery storage facility with associated infrastructure. Allowed at appeal 29th September 2023. An application was submitted to each Council (SHDC & KL & WN), on 21 January 2022 SHDC considered a report that raised no objections to the proposal. The resolution was that decision making authority should be delegated to KLWN, as the greater proportion of the site lies in its administrative area, and we issued a notice of non-determination on 25 February 2022. This stated no further action would be taken on that application. SHDC therefore failed to determine the application. In the Statement of Case, SHDC suggest it does not wish to defend the appeal and has no objection to the proposal.

H18-1034-23 - Installation of a solar farm and battery storage facility with associated infrastructure - H18-0741-21 - approved on Appeal. Modification of Condition 3 to allow the solar farm and battery storage facility to operate for a further 5 years to 40 years. Approved 27-02-24

H18-0040-24 - Condition 9 Written Scheme of Investigation. Approved 27-02-24

H18-0448-24 - Installation of a solar farm and battery storage facility with associated infrastructure - approved under

H18-1034-23. Modification of Condition 2 to allow amendments to previously approved plans. Approved 30-07-24

H18-0085-25 - Installation of access track and associated development. Approved 16-04-25

## Consultation Responses

Anglian Water

We have reviewed the submitted documents with the variation of condition and there are no drainage related documents therefore we are unable to make comments on the above application.

### Kings Lynn IDB

No comments to make

### Highways & Suds

The proposal is for minor amendments to Installation of a solar farm and battery storage facility with associated infrastructure - approved under H18-1034-23 (original permission H18-0741-21). Modification of Condition 2 to allow amendments to previously approved plans - approved under H18-0448-24. Modification of Condition 6 (Construction Traffic Management Plan and Method Statement) (CTMP&MS), modification of condition 7 relating to access onto Gunthorpe Road and removal of condition 8 relating to improvements to crossroads of King John Bank/Marsh Road/Gunthorpe Road. The minor amendments proposed will not have an adverse impact upon the public highway or surface water flood risk subject to the following conditions.

### National Gas Submission

An assessment has been carried out with respect to National Gas Transmission plc's apparatus and the proposed work location. Based on the location entered into the system for assessment the area has been found to be within the High Risk zone from National Gas Transmission plc's apparatus and you **MUST NOT PROCEED** without further assessment from Asset Protection.

Before you go ahead with these works, you are required to send your plans and a description for us to review them at [box.assetprotection@nationalgas.com](mailto:box.assetprotection@nationalgas.com). We will contact you within 28 days of receipt.

It is **YOUR** responsibility to take into account whether you are required to or would benefit from referring to the HSE Land Use Planning App (LUP), available from HSE's website. (Please note for some works this is a requirement for them to take place) More information on the LUP is available at <https://www.hse.gov.uk/landuseplanning/>

### DOCO

Lincolnshire Police do not have any objections to this development

### Lincs Fire & Rescue

Lincolnshire Fire and Rescue (LFR) recognises that Battery Energy Storage Systems (BESS), including those using lithium-ion technology, represent a rapidly evolving area within the renewable energy sector. We are committed to working collaboratively with developers to identify and manage the associated fire safety risks at every stage of development.

As with all emerging technologies, LFR seeks to ensure that risk is appropriately assessed and mitigated in line with relevant legislation, including the Building Regulations (as amended) and the Regulatory Reform (Fire Safety) Order 2005. We also encourage alignment with current best practice, including guidance issued by the National Fire Chiefs Council (NFCC), which reflects the latest national position on BESS developments.

We will work and engage with the developer as the project evolves, to ensure it complies with the statutory responsibilities that we enforce.

### National Grid

Please contact NGET regarding the 132kv and Towers in the area.

### Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019,

forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals.

In this instance, no relevant neighbourhood plans have been adopted. The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

### **Evaluation - Section 73**

The proposal relates to the variation of conditions attached of H18-1034-23, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with the relevant conditions amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'. The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions.

The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted".

There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved". In the case of *R (Vue Entertainment Limited) v City of York Council*, it was concluded that the decision gives clear support for use of s.73 in respect of changes to conditions which go beyond 'minor' amendments.

It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

### **Planning Considerations**

The variation of plans and conditions are all related to Highways reasons. Therefore key consideration as part of this assessment are as follows:

- Highway Safety
- Planning Balance

#### Highway Safety

SELLP Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation.

SELLP Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Section 9 of the National Planning Policy Framework (December 2024) specifically relates to 'Promoting sustainable transport'. It advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The proposed changes would affect the following conditions:

#### *Condition - 2 Approved Plans*

The applicant seeks to replace WP2-01-P02 with WP2-01-P44, which also shows additional internal access tracks (connecting to the AIL access track) and the removal of the previously approved access track on Gunthorpe Road.

The applicant's intention is to allow the separately approved access at the East Bank/Gunthorpe Road junction to be utilised for '*all construction and all operational vehicles associated with the development*'. Whilst the new internal access track may physically allow this to occur, the access track is outside of the red line boundary and its use (East Bank/Gunthorpe Road junction) is governed by planning permission H18-0085-25, which only allows for 2 x Abnormal Indivisible Load (AIL) deliveries at the junction of East Bank/Gunthorpe Road and alternative entrance/exit route through the highway road network (and not for all construction and operational traffic).

Therefore, in order to establish that this access can accept all operational and construction traffic, it is permission H18-0085-25 that needs to be addressed.

For the purposes of this application only the new internal access track is acceptable and not the wider usage of the AIL access track that is located outside of the red line boundary of the original permission (which cannot be granted in any case under this S73). Additionally, should this plan be approved, drawing number WP2-01-P44 also shows the removal of the previously approved access onto Gunthorpe Road (the plan does not highlight this as an access in the key), this is likely to leave the development without a permitted access for construction and operational vehicles (given that the alternative access is for AILs only).

Whilst it is considered then that the formulation of a new internal access track attaching to the East Bank and Gunthorpe Road (AIL track) may be supported in general planning terms (subject to that track being established as appropriate for all vehicles), to leave a permission without a recognised access (that is currently approved for all construction and operational traffic movements) would be contrary to good planning. Therefore, this amendment is not supported.

#### *Condition - 6 - Construction Management Plan and Method Statement*

The condition states - Notwithstanding the submitted details, no development shall take place, including any site clearance or works of demolition, until a Construction Traffic Management Plan and Method Statement shall have been submitted to, and approved in writing by the local planning authority.

The applicant has provided a Construction Traffic Management Plan and Method Statement that confirms that the use of the alternative access arrangement for all construction and all operational vehicles associated with the development from the East Bank/Gunthorpe Road junction in addition to the already permitted use of this access for two AIL deliveries. This is not achievable through this submission, the access track is located outside the red line boundary and therefore its use needs to be addressed by altering the details provided under planning permission H18-0085-25.

In addition, a construction compound is proposed, this is located on the north of the access track at the junction of East Bank and Gunthorpe Road. This area of land is not shown in blue on the site location plan and therefore cannot be conditioned (Grampian). Therefore, this condition cannot be varied. Should the construction compound be located outside of the original red line boundary of the

original permission then, the physical operations associated with that will need planning permission (likely along with the submission of an application to expand the use of the A11 track to accommodate all construction and operational vehicles). Should such an application be submitted and subsequently approved, the discharge of these conditions could be linked to that permission.

#### Condition 7 - Gunthorpe Road access

The condition states "No development shall take place, including any site clearance or works of demolition, until the existing access onto Gunthorpe Road shall have been widened and all obstructions exceeding 0.6 metres high cleared from the land within the visibility splays as illustrated on Drawing number SK01 Rev D, and thereafter the visibility splays shall be kept free of obstacles exceeding 0.6 metres in height."

The applicant seeks to change this wording to the following:

"No development shall take place, including any site clearance or works of demolition, until the existing access onto Gunthorpe Road shall have been widened and all obstructions exceeding 0.6 metres high cleared from the land within the visibility splays as illustrated on Drawing number SK01 Rev D SK02, and thereafter the visibility splays shall be kept free of obstacles exceeding 0.6 metres in height."

Another issue presents itself in approving SK02 as the East Bank/Gunthorpe Road junction (shown on this plan) is outside the red line boundary. These improvement works will need to be secured by a new application or one amending planning permission H18-0085-25 (unless of course these improvement works are already secured by that application, which the case may be) and they do not need to form part of a variation of the original permission (but rather the separately approved access track).

It would appear from the proposed wording that the applicant still intends to widen and remove vegetation of the access in accordance with drawing number SK01 Rev D; however, proposed site plan WP2-01-P44 does not show this access on plan, this needs more clarification. This variation is not supported

#### Condition 8 - Road Improvements

The condition states - No development shall take place, including any site clearance or works of demolition, until the works to improve the public highway by means of carriageway junction widening at the crossroads of King John Bank/Marsh Road/Gunthorpe Road in accordance with the details as shown on Drawing number SP01 Rev E have been certified complete by the local planning authority.

Given that the construction traffic (and likely decommissioning traffic) is intended to use the East Bank/Gunthorpe Road access/egress and not the King John Bank/Marsh Road/Gunthorpe Road crossroad then this is likely to result in the condition being unreasonable and the applicant seeks it to be removed. Notwithstanding this point, it is not possible for this section 73 application to secure that all construction and operational parking use the East Bank/Gunthorpe Road access. This needs to be done through a separate planning application for the reasons outlined above.

To remove the condition at this stage would abandon the road mitigation works that are required (that make this development acceptable in planning terms) and therefore the condition will remain until such a time if and when the development (both during construction and operationally) has permission for the East Bank/Gunthorpe Road access to serve the development. Which needs to be addressed under a separate application.

#### Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

This section 73 relies completely upon the East Bank/Gunthorpe Road access. This access only has permission to be used for A11s and not all construction and operational traffic. That permission (which sits outside of the original solar farm application) needs to be varied (or ideally a new full application submitted) so an assessment can be made (and more pertinent a permission given) that

allows this track to be used for all construction and operational traffic movements. Furthermore any improvement works at this junction should be provided under the application regarding the access track.

Moreover, if the site compound is located outside the previously approved red line boundary (the plans are not fully clear on this as it is not shown on an overall site layout), these works need to be permitted separately, the CMTP & MS can then be discharged and linked to such a permission (if approved).

It is likely that a permission for the AIL track to accept all construction and operational traffic is required (which would also benefit from showing the proposed construction compound) prior to such S73 variation of the original permission coming forward.

Ultimately, given the permission that exists for the AIL access track (especially restrictive conditions 2 and 5 of H18-0085-25) it is not possible to support the variation of these conditions in this instance. Once an alternative access is established (in planning terms, that would replace the previously approved access then these variations may be considered more favorably) at present this track is only permitted for the use of AILs and not all construction and operational traffic.

## **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.

## **Conclusion**

Taking the above considerations into account, the proposal is considered not to accord with policies

2, & 3 of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework (December 2024) as the access track proposed does not benefit from an existing permission for all construction and operational vehicles. The amendment of this permission, given the approved track is outside of the red line of the original permission is also outside of the scope for a section 73 in this instance.