Little Covenhope, Aymestrey, Herefordshire, HR6 9SY

APPEAL REF. APP/P3040/W/23/3330045

Land East Of Hawksworth and Northwest Of Thoroton, Nottinghamshire, NG13 9DB

Rule 6 Party (Hawksworth and Thoroton Action Group) comments on draft planning conditions

Responses to inspector's without prejudice questions

1) Condition 2) Would "in complete accordance with" mean strict adherence to the listed drawings so precluding any minor or inconsequential changes?

The R6P's view is that "in complete" accordance with" is synonymous with "strict adherence to." The courts have held that planning conditions should be interpreted on the basis of the "natural and ordinary" meaning of words. The leading authority for this approach is Lord Hodge in the case of *Trump International Golf Club Ltd v Scottish Ministers* [2016] Phase 1 WLR 85; [2015] UKSC 74:

"When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."

The word "*complete"* is defined in the Oxford English Dictionary as:

"Having all its parts or members; comprising the full number of amount; embracing all the requisite items, details, topics, etc; entire, full."

And in the Merriam Webster dictionary as:

1 a) having all necessary parts, elements or steps

2 a) Total, absolute

However, it is unclear what plans and documents will be caught by this condition. Most of the Appellant's plans are described as illustrative or contain illustrative elements. This includes layout plans, which say the number of panels is yet to be determined, although the Appellant has agreed in the Statements of Common Ground that there will be 150,304. The Appellant has offered various numbers of panels in the appeal documents, ranging between 128,752 and 150,304. Clearly, this range could have significant implications for design, layout and screening.

2) Condition 3. To what extent would "Notwithstanding Condition No. 2) mean that details could be altered by later discharge of this condition?

The R6P's view is that this condition can only relate to drawings or elements not encompassed by Condition 2. In that case, "notwithstanding" is redundant.

However, the R6P notes that matters listed in the proposed condition - including layout, materials, colour and finish, solar panels and frames, location of ancillary buildings, and details of equipment and enclosures – are fundamental elements of the proposals assessed through the inquiry. These also include elements – such as layout and locations of ancillary buildings – already ostensibly controlled by the plans covered by Condition 2. Changes to these components of the scheme could have significant impacts, which have not been considered, and possible knock-on effects – for example to landscaping schemes and flood risk mitigation.

3) Condition 5. DMS shall be submitted to the LPA 'for approval in writing'.

(a) would this need to include ancillary equipment to be consistent with last sentence of condition?

Would ancillary equipment include underground cabling and grid connection?

(b) would "former condition" need to be specified as it might not be clear what that was in 40 years time?

Would an aftercare condition be necessary following restoration?

(a) The R6P's view is that ancillary equipment should be included under a) for consistency and that this should include underground cabling and grid connection. The Appellant's Statement of Case advises at paragraph 7.3.7 that *"Upon cessation, all equipment will be removed and the Appeal Site will be fully restored to its current state."* The requirements would accord with this statement.

b) "Former condition" does require specification. For example, if the Appellant is indeed able to reduce soil fertility to create a neutral grassland, how would fertility be restored and how quickly? It is unclear whether topsoil is to be removed from the site (this is suggested in the LEMP), would this be returned and where and how would it have been stored?

c) An aftercare condition would be required to secure full restoration to agricultural use and (although this may be contradictory) if the mitigation planting is to be retained as proposed by the Appellant – see 10.10 of planning witness's proof "*the additional planting and mitigations could continue to remain as a positive legacy and contribute positively to the landscape character".* However, given that a "temporary" permission is sought, any control over the land following decommissioning – and reversion of control to the landowner - would need to be secured by a s.106 agreement.

4) Condition 6. Would the wording need to reflect more closely the provisions of EN-3?

Yes. EN-3, supported by the case of Galloway v Durham, is clear that "*installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm*" (Paragraph 2.10.56)

The R6P has proposed a condition that would control the capacity of both inverters and solar panels. The capacity of the solar panels should be constrained to prevent overplanting, which is also precluded under footnote 92 of EN-3. The Department for Energy and Net Zero has confirmed that *"In the Energy Policy Statement EN-3 guidance, overplanting is countenanced where reasonable to address panel degradation. Unreasonable overplanting or overplanting for any other reasons, would not be supported."* (CD 3.54).

5) Condition 7. Is a detention basin proposed in Scheme B? For the Appellant to respond.

The R6P notes that any Sustainable Drainage Strategy should be developed in accordance with the up-to-date climate change and peak rainfall allowances provided by the Environment Agency in the Humber Basin Flood Risk Plan (Doc CD 10.1 Appendix 4)

6) Condition 9) Would this require compliance with Technical Appendix 4 but Condition 7 would require implementation in accordance with approved SDS – would that give rise to any conflict?

Would provision need to be made for any compensation for loss of flood storage?

Would "other vulnerable infrastructure" need to be defined?

The last sentence would require implementation of mitigation prior to First Export Date and subsequently in accordance with schemes timing – could it do both?

The R6P's view is that there is conflict between conditions 7 and 9, not least because an updated Sustainable Drainage Strategy should be based on the Environment Agency's current Climate Change Flood Risk and Peak Rainfall Allowances, which are significantly larger than those allowed for in the Appellant's Flood Risk Assessment. (See R6P soil witness proof CD 10.1 Appendix 5)

The revised allowances are likely to increase both the area liable to be flooded and the depth of potential flooding, meaning that infrastructure – such as the DNO substation and inverters, which are proposed outside the current Flood Risk Zones 2 and 3 – may have to be relocated and proposed finished floor levels and the height above ground of the solar panels will have to be raised.

7) Condition 11) How would the approval of means of enclosure square with the details about deer fencing and palisade fencing that was assessed at the Inquiry and would be subject to Condition 23?

The R6P agrees that the deer fencing proposed by the Appellant – contrary to the advice of Nottinghamshire Police – is that which has been assessed through the appeal proposal. Any change to the proposed fencing may have significantly different impacts from those assessed. Proposed condition 23 or R6P's proposed condition 1) deals with this.

8) Condition 13) Would it be necessary to set a timetable for implementation of mitigation?

Yes, timetable for both implementation and ongoing maintenance of mitigation is required to ensure that it becomes effective within the claimed timescale (ten years) and remains effective for the lifetime of the development. The R6P would also note that other elements of the Biodiversity Management Plan are undeliverable or in conflict with other plans, including the Bird Hazard Management Plan as explained in the Statement of Case. (CD 7.8)

9) Condition 14) Would discharge of this condition allow something very different to what was considered at the Inquiry concerning landscape and ecology?

What is meant by "long-term implementation" for the duration of the permission or beyond that date?

How would i) re agricultural purposes relate to Condition 24?

The R6P has shown that the BMP and LEMP are unlikely to be deliverable and require substantial revision. In particular, the dropping of the proposal for soil inversion means that herbicides will have to be routinely applied, probably for the lifetime of the development, but this still doesn't address the difficulty of establishing neutral grassland on productive nutrient-rich farmland.

The R6P does not agree that very low level sheep grazing, even were this to occur (see comment on Condition 24), constitutes agricultural use. No other agricultural use is proposed or feasible.

10) Condition 17. Is the "passing place detail" in 26th January 2023 email outside the red line appeal site boundary? If so, would this be a matter that would need to be addressed by a Grampian condition?

The passing place is within the appeal site boundary. As the R6P has set out in its statement of case, the passing place serves no purpose because it has no effect on traffic outside the site

and traffic within the site will not be able to see whether other HGVs are approaching. The passing places shown on the photographs supplied by the appellant (with the planning application – these have not been included in the appeal documents) are farm and private entrances suitable only for short vehicles, as pointed out in the R6P's Statement of Case (CD 7.8). There is no provision for the passing of two HGVs or for an HGV to pull in to allow other traffic to pass. The R6P's view is that passing places are required along the entire haul route from the A46 for the safety of other road users. The R6P would like to see more robust measures in the CTMP, including formal traffic routing arrangements.

11) Condition 18) How would a condition requiring footpaths to be "made available for public use" and "retained following the decommissioning of the site" square with statutory provisions for securing either Permissive Paths or PRoW?

Any use of the land following expiry of the permission is likely to require a s.106 or other legal agreement as would the dedication of a public right of way, which is what appears to be proposed by this condition. See DB Symmetry Ltd v Swindon Borough Council [2022] UKSC 33, which held that planning conditions cannot be used to dedicate land as a public highway. Dedication of highways should be secured through a planning obligation or compulsory purchase powers (under which the landowner is entitled to compensation for the acquisition of the land). The R6P is also concerned that the scheme details protecting existing public rights of way are not required until after the development has been built. This should be approved prior to commencement to minimise disruption to users of the public rights of way during both construction and operational periods.

12) Condition 19) III –would the location of site compounds be fixed by the approved plans and Condition 2?

V would that permit disposal of waste on site?

XI would the draft condition agreed by Mr Kernon and Mr Franklin for soil management apply for the whole duration of the development including construction?

III - The construction compounds are shown on the Infrastructure Layout Plan – CD.7.6.D1. This is not an indicative drawing and so the location appears to be fixed. There appears to be crossover/conflict between this and other conditions, including the draft soil management condition.

XI The draft condition requires details of the handling and storage of soils through the operational period of the development so management does not need to be duplicated in this condition.

13) Condition 22) The conditional "if this information is inconclusive or not complete" would not be precise. Would it be necessary to either set a BS4142 noise limit for sensitive receptors or require a noise mitigation scheme to be approved?

R6P agrees that complete information and compliance with BS 4142 should be secured prior to commencement of development – rather than first export date as a noise management plan may require amendments to the scheme.

14) Condition 23. See Condition 12 (Condition 11?) The R6P considers proposed condition HTAG1 would secure proper control over the fencing, which is a major component of the appeal

proposals. HTAG 2 believes there is strong justification for the restriction of PD rights, given that screening, biodiversity and amenity impacts have been assessed on the appeal proposals as submitted.

15) Condition 24 and 14 i) The R6P has serious concerns about the proposal for sheep grazing on the site. HTAG and interested parties have raised concerns about the welfare of sheep on large solar sites, where they cannot be seen to be checked for injury, fly strike or other ailments that require urgent attention. The Appellant has confirmed that it does not own any sheep and has no agreement with any local grazier, nor is there any provision for twice-daily checking of stock – the Appeal proposals indicate only monthly visits to the site. Mr Kernon was unable to advise whether there was any water infrastructure on the appeal site for drinking troughs. This condition could be complied with by the Appellant acquiring sheep and turning them out unattended on the land, giving rise to significant welfare concerns.

The grazing of sheep would not achieve the aim of the condition to ensure continued agricultural use of the site. As the R6P pointed out in its Statement of Case, the proposed stocking density indicates that sheep grazing would at best help to manage the grassland. It would not serve a genuine agricultural purposed. This view is supported by the evidence of Mr Franklin and Mr Clayton. The level of grazing would not constitute continued agricultural use and the land could not be put to any other agricultural purpose.