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Your ref: EN010085

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Dear Mr Brennan

## **PLANNING ACT 2008**

### **APPLICATION FOR THE CLEVE HILL SOLAR PARK ORDER**

#### **1. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 28 February 2020 of the Examining Authority ("the ExA") – a panel comprising David Rose (Lead Member), Andrew Mahon and Helen Cassini – which conducted an examination into the application ("the Application") submitted on 15 November 2018 by Cleve Hill Solar Park Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Cleve Hill Solar Park and associated development ("the Development").

1.2 The Application was accepted for examination on 14 December 2018. The examination began on 30 May 2019 and was completed on 30 November 2019. A number of changes were made to the Application during the examination. The details of these changes were made available to interested parties and were examined by the ExA.

1.3 The Order, as applied for, would grant development consent for the construction, operation, maintenance and decommissioning of an electricity generating station comprising a solar farm with the option of an additional energy storage facility with a total capacity of around 350 megawatts ("MW"). The Development would be located in Kent approximately 2km from Faversham and 5km from Whitstable within the jurisdiction of Swale Borough Council. The Development would include:

with this arrangement. The Secretary of State considers that the ExA's conclusions are robust and that this is a matter which does not weigh against the grant of consent for the Development.

#### Safety and Security

4.148 EN-1 does not make specific reference to battery storage nor are there any relevant Development Plan policies. However, paragraph 3.3.31, EN-1 states... "The Government expects that demand side response, storage and interconnection, will play important roles in a low carbon electricity system.....".

4.149 The Applicant's Environmental Statement concluded that it was unlikely the proposed Development would cause a significant accident, but it acknowledged there were risks, principally in relation to possible fires in the battery storage facility. However, the Environmental Statement set out mitigation measures in the facility that would detect and suppress fires. [ER 8.7.6]

4.150 In relation to security of the proposed Development, the Applicant stated it would be protected by perimeter fencing, CCTV, lighting with sensors and restrictions on who would be able to access the site. [ER 8.7.8]

4.151 The Applicant's Environmental Statement sets out various measures that could be taken to minimise risks of an accident occurring. The Applicant also provided an outline Battery Safety Management Plan which has been reviewed by the Health and Safety Executive and Kent Fire and Rescue Service. The Applicant's Air Quality Impact Assessment considered possible outcomes in the event of a battery fire. The Assessment was criticised by one of the Interested Parties, Dr Erasin, who was concerned about the potential release of poisonous gases in the event of a fire in the battery storage facility. The Applicant responded to say that Dr Erasin's concerns were overstated. [ER 8.7.10 et seq]

4.152 The Secretary of State notes that there were a number of concerns from Interested Parties about the safety of the battery storage facility. These concerns were exacerbated by the new technology that the battery storage facility represented. [ER 8.7.17 et seq]

4.153 The Faversham Society expressed strong concerns about the safety of the batteries that would be utilised in the proposed Development's energy storage facility, stating that: there had been no proper testing of this matter; there was no track record of such large installations in the UK; lithium-ion batteries can catch fire and explode; it was not clear who would be responsible for assessing the safety of the installation; and there was uncertainty about access arrangements for emergency personnel. [ER 8.7.19]

4.154 The Graveney Rural Environment Action Team also raised concerns about the safety of the energy storage facility in respect of the possibility of explosion, fire and the threat of terrorism. [ER 8.7.21]

4.155 The ExA notes that the Local Impact Reports from Swale Borough Council, Canterbury City Council and Kent County Council were all silent on the subject of the safety of battery storage facilities. [ER 8.7.21]

4.156 Later in the Examination, the Faversham Society, raised a number of additional issues in respect of battery storage technologies including that there had been a number of significant battery fires where suppression systems had failed and the cause of the fires was

unknown. In addition, the Society expressed concerns that neither the Application nor the Applicant's draft Order addressed battery storage safety concerns and that there was no established guidance for dealing with battery fires. [ER 8.7.22]

4.157 One of the Interested Parties, Dr Erasin set out concerns about the effects of a fire in lithium-ion batteries with the possible release of toxic fumes – specifically, hydrogen fluoride gas – with potential serious risks for the populations in the vicinity of the proposed Development with Seasalter, Graveney, Faversham and Whitstable being named specifically. Dr Erasin suggested that there should be a 15km safety zone from any population around the battery storage site. [ER 8.7.23] Dr Erasin also raised the possible environmental risk of copper leaching from the solar panels. [ER 8.7.24]

4.158 Dr Erasin made further submissions to the Examination to suggest that it would cost around £40 million to dispose of the batteries as part of any decommissioning of the proposed Development and to express concern about the possible use of Vanadium Redox flow batteries which he considered posed an unacceptable risk given their constituent parts. [ER 8.7.26]

4.159 The Graveney Rural Environment Action Team made representations about the lack of early engagement from the Applicant with the Kent Fire and Rescue Service which had led to the Service not being registered as an Interested Party to the Examination of the Application. The Graveney Rural Environment Action Team also raised the point that some correspondence between the Applicant, Kent Fire and Rescue Service and the Health and Safety Executive had not been disclosed to the Examination. The Graveney Rural Environment Action Team also highlighted that the proposed battery storage facility at the proposed Development would be seven times larger than the current largest similar facility in the world. It also highlighted that battery energy storage fires were more likely to occur in coastal and mountain areas and that they had occurred across a range of battery usage.

4.160 Faversham Town Council raised concerns about the scale of the battery storage element and about fire and toxic risk. [ER 8.7.31]

4.161 The Faversham Society provided another submission towards the close of the Examination which was accepted at the discretion of the ExA setting out the conclusions in a report into two fires at battery storage facilities in Arizona which reinforced the Society's views of the dangers of the proposed storage facility that formed part of the proposed Development. [ER 8.7.32 et seq]

4.162 The Applicant responded setting out its reasons why the Faversham Society's arguments were wrong and that suitable mitigation measures were built-in to the proposals for the battery storage facility at the proposed Development. [ER 8.7.35 et seq]

4.163 In its response, the ExA stated that it had held a special session on battery storage issues in one of the Issue Specific Hearings during the Examination to reflect the level of interest in and concern about the topic. The session heard from Interested Parties who had concerns about the battery storage facility as well as from a company, Leclanche, which appeared at the invitation of the Applicant in an independent capacity. (The ExA considered that Leclanche, while accepting it had no commercial or contractual ties to the proposed Development, could not be counted as truly independent as it provides energy storage systems.) [ER 8.7.40]

4.164 The ExA considered that the Examination hearings provided a lot of additional information about the battery storage facility, though it acknowledged that that might not be sufficient to satisfy the concerns of Interested Parties. [ER 8.7.41]

4.165 Leclanche had installed battery storage systems world-wide but not on the scale as the one that would form part of the proposed Development. However, the company explained that the principles for incorporating safety features into these designs were well-established and applied irrespective of scale. Leclanche said lessons had been learned from battery fires, including those in Arizona, and noted that all of the fires had started at the construction stage of the development cycle. [ER 8.7.43]

4.166 In light of the information about fires during construction, the ExA probed about the safety features that would be installed to prevent such incidents and was reassured about the measures that would be incorporated into the battery storage facility at the proposed Development. The ExA also noted the protective measures that would be in place during the operation of the proposed Development and that inspections could be undertaken by the Health and Safety Executive and Kent Fire and Rescue Service. [ER 8.7.44 et seq]

4.167 The ExA asked about battery leakage and was told that the management systems would be able to detect leaks and initiate automatic shut down. The ExA was content that any leakage would be small and confined within the affected container. [ER 8.7.46]

4.168 The ExA noted that the outline Battery Fire Safety Management Plan set out the minimum information that would need to be included at the detailed design stage for the proposal. The ExA also notes that Requirement 3 of the Order it recommended to the Secretary of State requires the approval of a Battery Safety Management Plan which would set out minimum requirements for safety matters. The ExA was happy that in setting out minimum requirements for information, the relevant local planning authority or Kent Fire and Rescue Service would be able to ask for more information to allow them to fulfil their duties. [ER 8.7.47 et seq]

4.169 In terms of the risk of the escape of gases from the battery storage facility, the ExA concludes on the basis of the information provided by the Applicant that there would be no material threat to health arising from a battery fire at the proposed Development. [ER 8.7.50 et seq]

4.170 The ExA was satisfied that the Applicant's engagement with the Kent Fire and Rescue Service, while late in the application process, has provided "vital understanding which the Applicant has used to inform the outline Battery Safety Management Plan". The ExA allowed the Kent Fire and Rescue Service to take part in hearings during the Examination as a non-Interested Party. In respect of the claim made by the Graveney Rural Environment Action Team that not all of the Applicant's correspondence with Kent Fire and Rescue Service and the Health and Safety Executive had been provided to the Examination, the ExA stated it had an understanding of their respective positions. The ExA noted the concern by the Graveney Rural Environment Action Team that any battery fire might just be allowed to burn itself out but was satisfied with Kent Fire and Rescue Services' position that it would determine how to respond to any situation on the ground by way of a number of possible options. The ExA also considered the concern from the Graveney Rural Environment Action Team about the adequacy of the information available to the Kent Fire and Rescue Service and noted that the Service had written

to indicate it would deal with situations based on experiences elsewhere and by working with the site operator. [8.7.52 et seq]

4.171 In addition, in the event that the Order was made, then the local planning authority and relevant consultees would need to be given details of the proposed installation. The ExA was satisfied, therefore, that this process would make available all the information that the Kent Fire and Rescue would need to be able to fight a fire in the battery storage facility. [ER 8.7.57]

4.172 The ExA notes concerns about the battery storage technology that might be employed at the proposed Development but decided that it would not be appropriate to limit the choice of systems that the Applicant might want to deploy and so had not included any provision to limit flexibility in the Order that it recommended to the Secretary of State. The ExA considered that the relevant processes, legislation and safety requirements would apply to all battery technologies. Similarly, the Applicant would need to satisfy a range of consultees before a Battery Safety Management Plan could be agreed. [ER 8.7.58 et seq]

4.173 As far as security of the site of the proposed Development is concerned, the ExA considered the concerns raised by Interested Parties but was satisfied that measures proposed to protect the site were reasonable. Notwithstanding that point, the ExA acknowledged that fear of criminal activity is capable of being a material consideration in the determination of the Application. However, it went on to conclude that no party had provided any evidence that measures additional to those proposed by the Applicant were necessary. [ER 8.7.60 et seq]

4.174 The ExA noted guidance in National Policy statement EN-1 about security considerations but concluded that there was no indication that the proposed Development would be considered to be critical infrastructure with security implications. [ER 8.7.62]

4.175 The ExA's overall conclusions on safety and security were that there were a large number of representations about this issue which flowed from the scale of the proposed battery storage facility, the fact that it was a new technology, the risk of major fires and the proximity of the battery storage facility to local populations. The ExA acknowledged those concerns. However, it took comfort from the legislation and guidance and the Battery Safety Management Plan which would be subject to consultation with relevant bodies and the ExA was, therefore, confident that the risks could be managed or mitigated appropriately. As far as site safety was concerned, the ExA noted that the measures proposed by the Applicant might be viewed as minimal but there was no evidence before it that anything else was needed – there was a sound basis for managing and mitigating site safety risks. The ExA's overall conclusion on this matter, therefore, was that there was nothing of weight to carry into the overall planning balance.

#### Secretary of State's Conclusion

4.176 The Secretary of State notes that the safety and security of the Development generated many concerns from Interested Parties to the Examination who were worried about the potential health risks of a fire or explosion within the battery storage facility that formed part of the proposed Development. In addition, the Secretary of State notes that the ExA's analysis of this matter was informed by a range of views and considerations, including from the Kent Fire and Rescue Service. He considers, therefore, that its consideration is robust and wide-ranging. While noting the strength of feeling among local people about this matter (since the receipt of the ExA's Report, a considerable number of representations have been received about the impacts of the Development, with many citing the safety of the battery storage unit as a key

issue), the Secretary of State does not see any reason to disagree with the conclusions reached by the ExA.

#### **Other Matters**

##### Appointment of the Examining Authority

4.177 There were a number of complaints about the appointment of David Rose as Lead Member of the Examining Panel. The complaints arose because Mr Rose had been the Examining Inspector in an application for consent for the London Array Electricity Substation which sits on a site within the boundary of the proposed Development. Mr Rose recommended that consent should be granted for the substation and the Secretaries of State for Trade and Industry and Communities and Local Government agreed with the recommendation.

##### Secretary of State's Conclusions

4.178 The matter raised by the complainants is not one for the Secretary of State – the appointment of examiners to conduct Examinations into applications for development consent under the Planning Act 2008 is a matter for the Planning Inspectorate to determine.

##### Parameters of the Cleve Hill Solar Park

4.179 The ExA drew the Secretary of State's attention to its view that, while the proposed Development was well defined by reference to the descriptions in the Environmental Statement and in other documentation submitted with the Application, there was a possibility that the 'as built' project could expand beyond those definitions. The ExA, therefore, recommended that additional wording – which it provided – should be added to the Order to prevent any potential for project expansion beyond what had been assessed in the Examination. The ExA did not ask for comments on its proposed wording before the close of the Examination but suggested that the Secretary of state should do so.

##### Secretary of State's Conclusion

4.180 The Secretary of State considered the ExA's comments on this matter and decided that the views of the Applicant (and others) should be sought on the proposed wording. A consultation letter was issued on 6 April 2020 covering this and other matters with a form of words for inclusion in any Order that the Secretary of State might issue. The Applicant replied indicating it was content with the inclusion of the proposed wording. Other respondents indicated that they felt the parameters of the proposed Development were too widely drawn. However, they made no comment on the specific wording proposed. Having considered the consultation responses, the Secretary of State considers it is necessary and adequate to prevent any potential for project expansion beyond what has been assessed in the examination and has, therefore, incorporated the proposed wording into the Order that he has decided to make.

##### The Ability of Swale Borough Council to Monitor and Enforce conditions in any Order that Might be Granted

4.181 A number of Interested Parties during the Examination and several parties in the wake of the Secretary of State's receipt of the ExA's Report (including in responses to the