

Chris Shields
Planning Development
Durham County Council
County Hall
Durham
DH1 5UL

Date: 24 October 2023

Our ref: 63916/01/AGR/AA/27061239v1

Dear Mr Shields

Non-Material Amendment – Land East of Edge Lane, Maiden Law, DH7 0RY (DM/22/01769/FPA)

We are pleased to submit on behalf of our client, Lightsource SPV 125 Limited (“the Applicant”), a Non-Material Amendment (‘NMA’) application in respect of planning permission reference DM/22/01769/FPA for the development described on the Decision Notice as:

“Installation and operation of a ground mounted photovoltaic (PV) solar energy generation system (solar farm), battery storage facility, electrical substation and associated infrastructure.”

More specifically, the application seeks amendments to Condition nos.4 and 12 attached to the decision notice for the planning permission.

The amendments are sought in order to state, within the wording of condition no.4, the approved plans and also the energy generating capacity of the permitted development. They also add greater clarity to the purpose of condition no.12.

The Proposed Amendments

The proposed amendments are set out below in highlighted text and strikethrough.

Condition no.4

“4. The development hereby approved shall be carried out in strict accordance with the ~~approved plans listed in Part 3 – Approved Plans.~~ following approved plans:

Drawing Number	Drawing
AD-SLP	Site Location Plan
GBR_GBR_Burnhope_LP2 – PDL_o8	Site Layout Plan

P22-0399_EN_005_E	Detailed Landscape Proposals
P22-0399_EN_006_E	
P22-0399_EN_007_E	
UK_EPD_AUX+300	Auxiliary Transformer
PNL_2P_25/6839_Rev 02	Panel Elevations
UK_EPD_MH/CB	Monitoring House Communication Building
UK_EPD_INV	Inverter
UK_EPD_MTR	Cabinet DNO Meter
UK_EPD_GTD	Gate
UK_EPD_FNC	Fence
UK_EPD_CSS	Customer Substation
UK_EPD_BB	Power Conversion Block
UK_EPD_RCS	Road Cross Section
UK_EPD_S40+300	Storage Container
GBR_BRH_EPD_SUB	Substation Floor Plans
GBR_BRH_EPD_SUB	Substation Sections
UK_EPD_DNO	Substation Elevations
UK_EPD_WMF	Weld Mesh Fence
UK_EPD_WMG	Weld Mesh Gate
UK_EPD_TFM	Transformer
UK_EPD_TLT	Toilet
UK_EPD_SWG	Switchgear Production Substation
UK_EPD_CAM	CCTV Camera
UK_EPD_BB	Battery Block

The approved development, once operational, shall have an export capacity of not more than 49.9MW (AC).

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policies 21, 31, 33, 39 and 41 of the County Durham Plan and Parts 9, 14 and 15 of the National Planning Policy Framework.”

Condition no.12

Notwithstanding the detail in the approved plans set out in condition no.4, prior to the commencement of any above-ground structure, precise details of that structure shall be submitted to and approved in writing by the Local Planning Authority. The submission shall include the colours and finishes. The development shall be carried out in accordance with the agreed details.

Reason: To ensure the development is carried out in accordance with the approved documents and in the interests of visual amenity in accordance with County Durham Plan Policy 39 and Part 15 of the National Planning Policy Framework. Required to be pre-commencement in order to assess the appearance of the development.

The Approach to Non Material Amendments

Whilst there is no statutory definition of a non-material amendment, Section 96A of the Town & Country Planning Act 1990 states that ‘*in deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted*’. Section 96A includes powers to both impose and remove or alter planning conditions.

The Reasons for the Non-Material Amendments

At paragraph 201 of the Officer’s report to the Council’s Planning Committee in respect of this planning application, draft conditions were set out in full wording. The draft condition no.4, at paragraph 201, stated the plans that the Council’s Planning Committee were being asked to consider in its determination of the application. Those plans - their drawing references and drawing titles – have been stated in full (and with no exceptions or additions to the design of the scheme), in the proposed amendments set out above.

On the decision notice, as issued, the wording of condition no.4 cross refers to Part 3 of the notice which is titled “Approved Plans”. In the schedule provided at Part 3, the list of Plan titles and drawing numbers are different to those stated at paragraph 201 of the Officer’s Report. This appears to have been a drafting error when those plan references were transferred onto the decision notice. The above proposed wording to condition no.4 would, however, render Part 3 of the decision notice obsolete and with the amendments now proposed, the condition would be self-contained, clear and precise.

One difference between the plans listed in the Officer’s report to Committee and those listed at Part 3 of the decision notice is that two Panel Elevation plans are referenced on the decision notice. The references of those plans are PNL_4L_25/17 and PNL_2P_25/6839.

In correspondence from Lichfields to the Council (email of 14 December 2022), it was requested that drawing ref. PNL_2P_25/6839 be accepted as forming part of the application and for it to supersede plan ref. PNL_4L_25/17. Drawing ref. PNL_2P_25/6839 was duly added to Planning Portal and referred to in the Officers report, as part of draft condition no.4 (whereas plan ref . PNL_4L_25/17 was correctly not referred to in the draft condition).

For clarity, we hereby submit a Panel Elevation drawing ref. PNL_2P_25/6839_Rev 02 (and for clarity the Plan revision (and date) has been changed, however, the information shown on the drawing remains unchanged from that previously considered by the Council). We ask that the enclosed plan is uploaded to the application documents on Planning Portal and replaces any versions of drawing ref. PNL_2P_25/6839 and PNL_4L_25/17 thereon.

The proposed insertion of reference to '*not more than 49.9MW (AC)*' in condition no.4 clarifies the maximum energy generation of the scheme. Indeed, this generation limit was referenced throughout the planning application submission¹²³⁴ and, its reference in the revised condition merely seeks to confirm what was stated throughout the application submission.

It is widely held that, when imposing a planning condition, there should be reasonable prospects of the condition being capable of being complied with. In order to demonstrate that the development will generate no more than 49.9MW (AC), we enclose a (redacted version) of the applicant's legally binding agreement with Northern Powergrid (termed a "Grid Connection Agreement") which limits the solar farm to generating less than 49.9MW (AC).

Overall, therefore, the amendments sought to condition no.4 and condition no.12 will result in a development no different to the one described in the application submission (in terms of the scale of energy production) and in the draft conditions contained in the Officer's report to Planning Committee (in terms of its physical design and layout). The amendments are, therefore, non-material as they would have no effect on the approved scheme.

The Application Submission

This application is accompanied by the following documents:

- Completed Application Form;
- This Covering Letter;
- Panel Elevation (PNL_2P_25/6839_Rev 02); and
- Extract from the applicant's Grid Connection Agreement with Northern Powergrid (Redacted version).

The requisite planning application fee has been paid via the Planning Portal.

Summary

We trust that all of the above is in order, and that the application can be validated and advanced to determination at the earliest opportunity. We will contact you in due course in order to discuss the likely timescales for determination.

Should you have any queries in the meantime, please do not hesitate to contact me.

¹ See Planning Statement, Paragraph 1.1

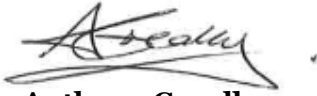
² See Economic Impact Assessment, Paragraph 1.2

³ See Consultation Response Letter, dated 12 December 2022

⁴ See Design and Access Statement, section 1.0

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Yours sincerely



Anthony Greally
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