

URGENT

Mid Kent Planning Support
Maidstone House
King Street
Maidstone
ME15 6JQ

4th January 2023

By Email only to: planningcomments@midkent.gov.uk

Dear Sirs,

23/503812/SUB - Submission of Details to Discharge condition 3 - Battery Safety, Phase 2 - Land At Cleve Hill Graveney Kent ME13 9EE - The Cleve Hill Solar Park Order 2020 ("the DCO")

Introduction

- 1) I have been instructed to write to you on behalf of the Faversham Society ("the Society") and in respect of the "Battery Safety Management Plan and Air Quality Report" ("the Report") prepared by BST&T Consultancy Services ("BST&T") as part of Cleve Hill Solar Park's ("CHSP") application to discharge Requirement 3 of the DCO ("the Application"). This document (together with an accompanying cover letter and amended versions of the original Battery Safety Management Plan were uploaded onto the LPA's planning portal on or around 20th December 2023 - shortly before the Christmas holiday period.
- 2) It is understood from the LPA's website that an extension of time for a decision on this Application has been arranged for 10th January 2024. It is presumed that such an extension was agreed with CHSP, given the terms of Schedule 1, Part 3 of the DCO.
- 3) The purpose of this letter is to raise with you the Society's concerns as to the independence and quality of the advice provided in the Report and the procedure being followed by the LPA.

- 4) The Society requests that this representation be uploaded to the Application page on the Council's planning website as soon as possible. Given the urgency of this representation (and the understanding that the original case officer has now left the Council), a copy has been provided the Council's Chief Executive Officer, the Director of Regeneration and Neighbourhoods, the Head of Regeneration, Economic Development and Property and Interim Head of Planning.

The Society's Concerns

- 5) The LPA will be well aware of the concerns raised by the Society, through Professor Sir David Melville CBE BSc PhD FInstP CPhys HonDSc Sen Member IEEE (USA) on 21st August and 27th September 2023. These should be read alongside this further representation.
- 6) Whilst the Society had initially been satisfied that the LPA appeared to be following the Society's request (initially made within its representation of 21st August 2023) and seeking advice from a recognised authority on battery safety, it was with some dismay that the Society notes that Professor Paul Christensen was not engaged to assist with this matter, yet Paul Gregory and BST&T were engaged in his place. It is unclear as to how or why BST&T were identified as being suitably qualified to advise on this matter. It is also unclear as to whom instructed them to act.

Independence and Expertise

- 7) The Society has real concerns as to the independence and level of expertise of the advice set out in the Report. To explain:
 - a. There is a conspicuous absence of any details of the instructions provided to BST&T as to what advice was sought from it or what material it had been asked to review. The "high level" statements set out under "The review was undertaken on the understanding that:" are effectively meaningless in assisting the reader to understand what the purpose of the review was for and, indeed, how it is intended to assist the LPA in its role as discharging authority under the DCO.
 - b. No details are provided in either the Report or covering letter as to the relevant qualifications and experience/expertise BST&T have to enable it to comment authoritatively on the BSMP and Air Quality Report. All

the Society has been able to establish of the consultancy is that it appears to act predominantly, if not solely, for applicants seeking to bring forward these types of development by reference to other similar DCOs currently undergoing examination - for example, Mr. Gregory is currently involved on behalf of applicants in both the Cottam Solar Project and Sunnica Energy Farm DCOs. However, it is unclear as to whether or not BST&T have ever been engaged to provide independent advice to a discharging authority in applications such as this.

- c. It is unclear from the Report as to who BST&T are purporting to act for. Both the covering letter and Report are silent on this point. The Society had envisaged that the LPA would take independent expert advice and that any advice provided would be on the basis of a neutral evaluation aimed at assisting the LPA in its role as discharging Requirement 3. Given BST&T's role in acting for applicants (in at least two current DCO examinations), it is clearly a conflict of interest for it to now advise an LPA to accept a BSMP (following some minor modifications to the original). Further, the Society suspects that the Report was commissioned and paid for by CHSP, rather than the LPA. This appears to be clear from the fact that:
 - i. the Report fails engage with, refer to or address any concerns raised by third parties who provided responses to the consultation on the BSMP (including the Society)
 - ii. the Report appears to take great pride in displaying CHSP & Hoare Lea (who act for CHSP) branding on the first five pages and,
 - iii. at times the Report reads as if BST&T are acting as an additional adviser to CHSP.
- d. Further to the above, it appears that the Report was provided to CHSP and KFRS before it was provided to the LPA, given the speed at which the BSMP was amended and KFRS were able to comment. Had the LPA commissioned the Report, this would seem to be an unusual approach.
- e. In terms BST&T's analysis of the unspecified material it was provided with the final page of the Report makes it clear that BST&T has relied exclusively on the accuracy of the information provided by Cleve Hill

Solar Park Limited (“CHSPL”) and CATL (understood to be the battery manufacturer). In doing so, it does not appear that BST&T have undertaken a thorough review and have not sought to test the veracity of any of the information provided.

Quality of the Advice

- 8) In addition to the above, the Society is concerned as to the scope and quality of the advice provided:
- a. The Report does not appear to have reviewed any of the comments raised by third parties to this consultation. The Society is in the privileged position of having Prof. Sir David Melville as Vice Chair and through his expertise was able to advance a number of clearly key concerns that the LPA will need to consider as part of its decision making on this Application. The Report does not engage with these concerns at all and it is unclear to the Society how, in the absence of any advice on the concerns it has raised, the LPA is equipped to address them – other than dismiss them out of hand, which it is hoped is not the LPA’s intention. For clarity, the issues raised by the Society and now ignored in the Report are:
 - i. The need for measures related to the increased risk of explosions for LFP batteries
 - ii. The need to seek Hazardous Substances Consent (HSC)
 - iii. The use of the *minimum* recommended (6m) container spacing for such a large BESS when there is experience of 23m flames.
 - iv. The potential almost five-fold expansion of the BESS at some unspecified future date
 - v. The previous world-wide experience of BESS failures as required in the NFCC guidance
 - vi. Failure to consider the possibility of multiple simultaneous fires

- vii. Failure to consider or reference the authoritative independent Atkins report for HSE(NI) on airborne hazards in order to downplay the risk of potentially lethal toxic fumes in favour of their own cursory Hoare Lea analysis
 - viii. A serious undersizing of the amount of fire water potentially required based on actual experience elsewhere
 - ix. Failure to provide details of the potentially dangerous fire suppression system in the CATL EnerC+ system
- b. The Report relies on material that has been omitted from the Report “...on requirements that it remains confidential”. The Society assumes that the reference to material being omitted from the Report indicates that some relevant material and analysis has been kept from the LPA. This is unacceptable in the Society’s view as the Report clearly cannot be a “complete picture” prepared for the LPA. Further, the Society notes that the covering letter makes reference to the LPA’s views being sought on “necessary” redactions for reasons of commercial confidentiality. It is assumed that the LPA approved the redaction of the material that appears at pages 6-9 and 11-17 of the Report. Given the public interest in this Application and Report, the Society considers that the LPA were wholly wrong to allow the Report to be redacted as it has.
- c. **Disclosure of information redacted in the Report is now requested under the Environmental Information Regulations.** Should the LPA consider that Reg 12(5)(e) applies to this request, then the LPA will need to explain how it has considered and applied the public interest test found in Reg 12(1)(b) (and bearing in mind that Reg 12(2) sets out a presumption in favour of disclosure).
- d. On page 2 of the Report, the BST&T explain that the BSMP “...incorporates the latest safety standards and best practice guidelines”. The Society at this stage notes that:
- i. Current safety standards and best practice guidelines in the UK are limited. As set out above, the Report does not address the

concerns raised by Prof. Sir David Melville including those regarding the international experience of grid-scale BESS.

- ii. The conclusions rely heavily on material provided by an American fire safety and fire engineering consultancy (Jensen Hughes). It seems that this material has been redacted (see above for the Society's position on the redactions made to the Report) and so is inaccessible for the purposes of scrutiny of the claims made within the Report.

Procedure Now Being Followed

- 9) It is appreciated that this is a novel and highly technical decision that the LPA is being required to consider through this DCO. The LPA consulted initially on the Application and it seems implied that this consultation is still ongoing. Given the interest locally, it is odd (but not surprising) that (as of today's date) no further third-party comments have been provided in response to the publication of the Report and amended BSMP. The Society considers the lack of further comments to be down to:
 - a. The fact that the material was uploaded at the start of the Christmas period, when many local people are unavailable or unable to find time to comment
 - b. There has been a failure to notify those who commented (or may wish to comment) that the Report has been provided and the Application amended with a further version of the BSMP
 - c. A delay, due to the Christmas period, at the LPA's side in uploading comments to the portal.
- 10) It is clearly important that sufficient time is provided to the third parties to consider fully and consult on what has now been provided. The seeming deadline of 10th January 2024 needs to be extended further to account for the Christmas period.

The Society's Proposed Solution

- 11) In respect of its concerns (as set out above) the Society considers that the LPA should, given the importance of this Application, identify its own, independent

and suitably qualified expert to prepare a more fulsome and neutral report to assist the LPA in its role as discharging authority. Any such report should identify, consider and address the concerns raised by the third parties (including those raised by the Society) and be clear as to how they can, or cannot, be overcome to enable the LPA to consider fully and properly the Decision it has been tasked to make. The Report provided by BST&T is wholly deficient in that regard.

- 12) A further consultation period, of at least 28 days, should be allowed for once any further report has been obtained and those who have registered an interest in the Application should be notified and invited to respond further once the new report is available.
- 13) Should the LPA decline to obtain a further report, it should at least agree with CHSP a further extension (28 days) to allow the revised Application to be properly consulted upon and notify those interested that their further comments are invited.
- 14) Failure to do so will potentially expose the LPA to a challenge to any Decision to approve the amended BSMP and Air Quality Report.

Should you have any questions or comments to make in respect of the above, I look forward to hearing further from you.

Yours sincerely



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Counsel

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