
SUBMISSIONS ON THE UNILATERAL UNDERTAKING ON BEHALF OF THE APPLICANT

Introduction

- 1 These submissions are made on behalf of the Applicant in relation to the Unilateral Undertaking (“**UU**”) to be submitted in connection with application S62A/2024/0045 (“**Application**”) which is to be determined by a person appointed by the Secretary of State for Housing, Communities and Local Government (the “**Secretary of State**”) under Section 62A and Section 76D of the Town and Country Planning Act 1990 (“**1990 Act**”).

Background

- 2 The Application is for the following form of development on land at Wickham Hall Estate, Bishops Stortford, Uttlesford, CM23 1JG (the “**Site**”):

*Erection of a Solar Photovoltaic Farm with supporting infrastructure and battery storage, inverters and transformers, fencing, landscaping works and connecting cable (the “**Proposed Development**”)*

- 3 Planning permission has previously been granted for another solar farm to the west of the Site and within the local authority area of East Hertfordshire¹ (“**EHDC Solar Farm Permission**”). This was for the “*erection of a solar photovoltaic farm with an output capacity not to exceed 49.9MW of energy, with supporting infrastructure and battery storage, inverters and transformers, fencing and landscaping works*” (the “**EHDC Development**”).
- 4 There is also another ongoing and yet undetermined planning application in respect of a temporary access for construction. This temporary access has already been approved in the context of the EHDC Development and it is also proposed to be used for the purpose of enabling construction of the Proposed Development². The application is also within East Hertfordshire and is for the “*temporary installation of a*

¹ Planning Reference: 3/21/2601/FUL (East Hertfordshire District Council)

² Planning Reference: 3/24/1119/FUL (East Hertfordshire District Council)

*construction access from Old Hadham Road to Wickham Hall Estate” (the “**Temporary Access Application**”).*

- 5 The UU shall be entered into in connection with the Application by (1) Frank David Harvey, Suzana Rose Harvey and David Ernest Hollest³, (2) Frank David Harvey⁴, and (3) Clydesdale Bank plc⁵. The covenants in the UU are given to East Hertfordshire District Council (“**EHDC**”) and Uttlesford District Council (“**UDC**”). The Applicant shall also sign the UU to consent to its terms as it has the benefit of a promotion agreement in relation to the Site.
- 6 Drafts of the UU (and title information for the land to be bound) have been shared and negotiated with the respective solicitors acting for both UDC and EHDC (in addition to the solicitors acting for the landowners and mortgagee) and both the respective solicitors acting for both UDC and EHDC have confirmed that they are content with the form of UU that is to be entered into.
- 7 This note is prepared in response to the appointed person’s request for a brief cover note to be submitted with the UU setting out what obligations the UU secures and why.

The Applicant’s pre-application engagement with the Inspectorate

- 8 Prior to submission of the Application, the Applicant sought pre-application advice from the Planning Inspectorate. A key query raised by the Applicant in relation to the construction access being located mainly within the District of East Hertfordshire was as follows:
 - *The acceptability of the applicant’s proposal to use an approved construction access in East Herts District Council (EDHC) for the purposes of the implementation of the proposed development having regard to the limitation of the Secretary of State’s jurisdiction to matters concerning development in UDC.*
- 9 A response was provided on 12 April 2024 by Zoe Raygen on behalf of the Planning Inspectorate (the “**Pre-Application Advice**”). In response to the Applicant’s query above, the Pre-Application Advice contained the following:

³ The First Owner

⁴ The Second Owner

⁵ The Chargee

- *The construction access would be taken from the A120 Hadham Road along an existing private road together with the works to extend the road through to the UDC boundary that have planning permission from EHDC⁶.*
- *The applicant intends to submit a planning application to EHDC to use the approved access to facilitate the construction of the proposed solar farm. It is my view that this access should also be in the red line for the planning application within UDC to be submitted to PINS/UDC. The most appropriate way to link the applications to ensure the access is provided would be via a planning obligation⁷.*

10 As the Pre-Application Advice stated that the most appropriate way forward is via a planning obligation, the Applicant have therefore sought to secure the provision, use and removal of this construction access in the UU.

Obligations in the UU

11 The key obligations within the UU are summarised as follows:

Construction Route Obligations (Schedule 2)

11.1 The EHDC Development was granted pursuant to planning permission which approved the principle of using a route including the “Construction Access Land” (as defined in the UU) as the construction access for the EHDC Development⁸.

11.2 For the purposes of the UU, the “Construction Access Land” is that land shown edged red on the Construction Access Land Plan. We have provided a copy of this plan at **Appendix 1**.

11.3 The UU therefore seeks to secure the provision, use and removal of this construction access in the UU in connection with the Proposed Development.

12 The approach taken, including covenants given to UDC in relation to the construction access, ensures that the use of this can be enforced by UDC as the local planning authority in which the Proposed Development is to be located, as well as EHDC as the local planning authority in which the construction access is largely located (and by

⁶ Paragraph 6, Pre-Application Advice

⁷ Paragraph 7, Pre-Application Advice

⁸ H5234-5PD-TN03 Revised Construction Access Scheme (including enclosed drawings H5234-5PD-002 Rev C and H5234-5PD-003 Rev A) is an approved document referred to on the planning permission for the EHDC Development.

whom conditions on the temporary planning permission expected to be granted for this would be enforceable).

12.1 The Owners covenant with EHDC (as relevant local planning authority for the extent of the Construction Access which lies outside Uttlesford) as follows:

- To use the Construction Access in accordance with the Construction Access Scheme for all construction traffic and deliveries associated with the construction of the Proposed Development during the Construction Period. This covenant covers the period of time between the date that the Proposed Development is commenced until the date that the Proposed Development is first used for the generation of electricity to ensure that construction traffic must use this route during that time;
- From the later date of either (a) the first use of the Proposed Development or (b) the first use of the EHDC Development (acknowledging that this development would also use the Construction Access as approved in the EHDC Solar Farm Permission), the Owners shall remove any physical works carried out in order to use the Construction Access and restore the Construction Access to the condition it was in before the Construction Access was first used. The Owners are to comply with this obligation within 3 months of the relevant date. This is to reflect that the Construction Access is to only be a temporary arrangement and to provide a planning obligation to secure the removal of this access route following the construction period;
- Upon completion of the restoration works referred to above, the Owners shall notify EHDC of their completion. If within one month EHDC serve notice on the Owners stating that remedial works are required to the Construction Access Land then the Owners must carry these out within 3 months of EHDC's notice. This obligation has been added during negotiations as a requirement of EHDC to provide a further mechanism to ensure that the Construction Access Land is returned to its former condition given the access is only intended to be temporary and to satisfy EHDC in this regard; and
- Use of the Construction Access for access or egress to or from the Proposed Development shall cease from the date of first use of the Proposed Development. This again imposes a timescale on the temporary

access and ensures that the use of the same is determined by a certain date.

- 12.2 The Owners also covenant with UDC (as relevant local planning authority for the area in which the Proposed Development is located and to ensure the Proposed Development may be enforced against through these covenants) as follows:
- Not to commence development of the Proposed Development unless and until the Construction Access is practically complete and available for use in respect of the Proposed Development. This provides an enforcement option for UDC to prevent development being carried out on the Site unless the Construction Access is in place; and
 - Not to carry out the Proposed Development otherwise in accordance with the Construction Access Scheme, this being the use of the Construction Access as the means of accessing the Site for all construction traffic and deliveries relating to this during its construction period).

Permissive Path Obligations

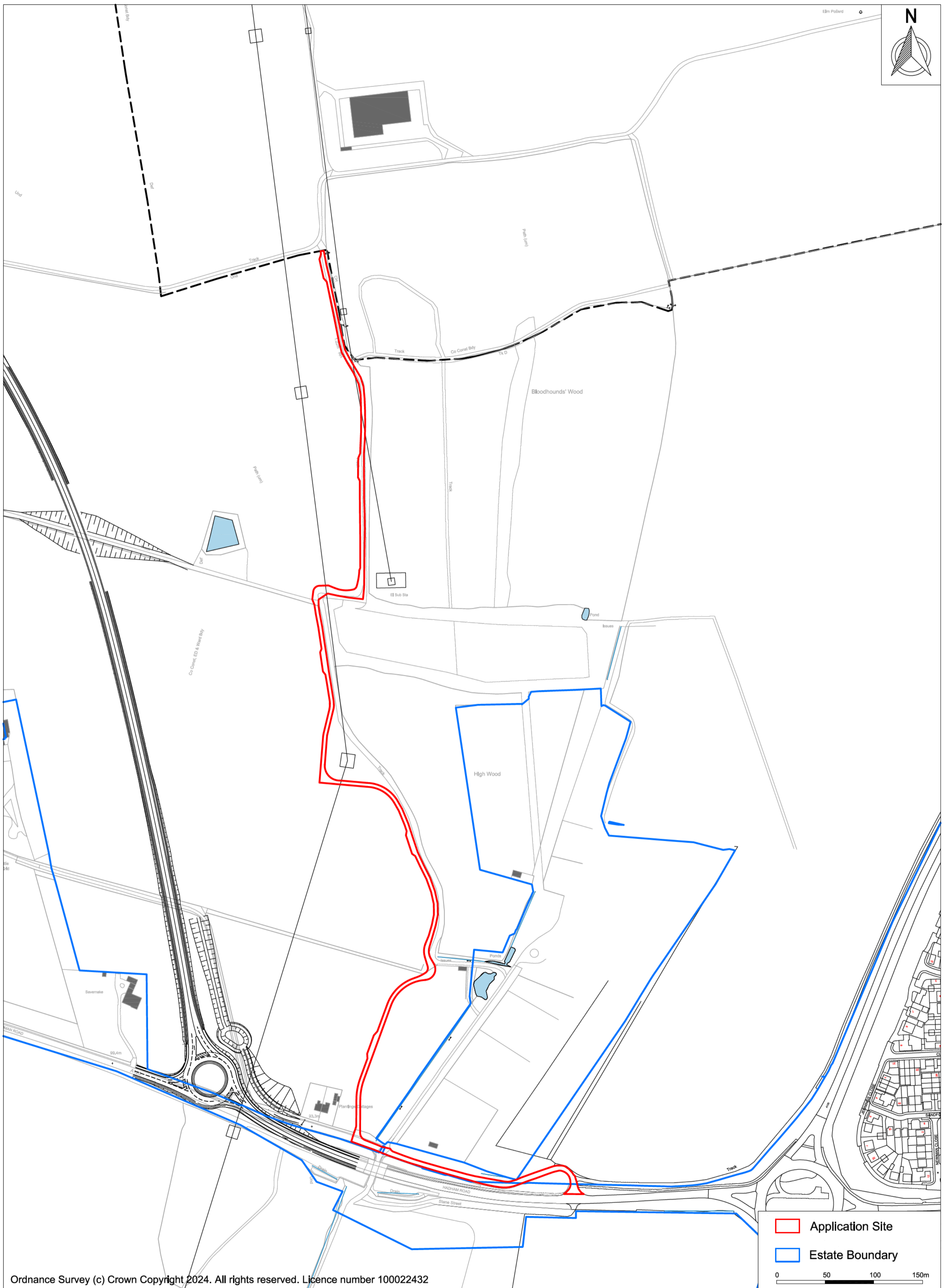
- 12.3 These obligations can be found at Schedule 3 of the Unilateral Undertaking. They primarily concern the Permissive Paths which are displayed on the Permissive Path Plan. A copy of the Permissive Path Plan has been appended at **Appendix 2** for ease of reference.
- 12.4 A unilateral undertaking dated 7 December 2023 was entered into in connection with the EHDC Solar Farm Permission and secured the same permissive path obligations. These obligations have been included in the UU in this case in the same form as secured in the 7 December 2023 unilateral undertaking to ensure that these permissive path obligations are triggered and the permissive paths provided (or continue to be maintained, as the case may be) in the event (a) the Proposed Development is carried out before the EHDC Development; (b) the Proposed Development is delivered after the EHDC Development and remains operational for a longer period than the EHDC Development; or (c) the EHDC Development is not carried out at all so the obligations in the 7 December 2023 unilateral undertaking are not otherwise triggered.

- 12.5 The purpose of the obligations contained within Schedule 3 is to confirm that the Permissive Paths will be used as “Permissive Routes”. A “Permissive Route” is defined in the UU but can be summarised as a route available and maintained for use by the public on foot. It is not, however, the intention that these routes will be dedicated as public rights of way and their operation shall remain in the control of the Owners, subject to the requirements of the UU.
- 12.6 The Owners covenant with EHDC and UDC as follows:
- To not allow or permit the first use of the Proposed Development unless and until the Permissive Paths have been provided as Permissive Routes;
 - The Permissive Paths shall be used as Permissive Routes for the duration of the operation of the Proposed Development until such time as the decommissioning of the Proposed Development has been completed.;
 - Should EHDC or UDC at any time following the first use of the Proposed Development decide that a Permissive Path is not being used as a Permissive Route, they may serve notice on the Owners to this effect. The Owners are therefore required within two months of the date of the notice to provide the relevant Permissive Paths as Permissive Routes. This is a mechanism to ensure that the footpaths for public use are provided; and
 - In the event that EHDC or UDC serve notice in accordance with the above, and the Owners do not comply with the contents within 2 months of it being served, the Owners covenant to cease the use of the Proposed Development. The Owners also covenant to comply with any planning condition that the Proposed Development is subject to in respect of decommissioning and restoring the Proposed Development.

HOWES PERCIVAL LLP

22 August 2024

Appendix 1 – Construction Access Land Plan



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- Application Site
- Estate Boundary

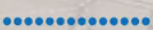
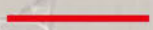
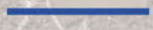


<p>CLIENT</p> <p>Endurance Energy Wickham Hall Limited</p>	<p>Date: 12 June 2024</p> <p>Scale: 1:2500 @ A3</p> <p>Job No: H5234-13</p>	<p>OS Ref: 546502.222848</p> <p>Drawing No: D01</p> <p>Rev:</p>	<p>DLP PLANNING LIMITED</p> <p>4 Abbey Court, Fraser Road, Pitney Business Park Bedford, MK44 3WH</p> <p>† 01234 832 740 f 01234 831 266 e bedford@dipconsultants.co.uk</p> <p><small>Offices also at: Bristol, East Midlands, Leeds, Liverpool, London, Milton Keynes, Rugby and Sheffield</small></p>
<p>PROJECT</p> <p>Wickham Hall Estate Bishops Stortford</p>	<p>DRAWING TITLE</p> <p style="text-align: center;">Location Plan</p>		<p><small>dynamic development solutions™</small></p>

Appendix 2 – Permissive Path Plan



KEY

-  New Permissive Paths
-  Site Boundary
-  Other land within the Applicant's control

SK01 Permissive Path Plan