



Department for
Business, Energy
& Industrial Strategy

By email: sarahwood@eversheds-sutherland.com

Ms. Sarah Wood
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Your ref: WOODSX\143974-000151

22 August 2018

Dear Ms. Wood,

**The Electricity Act 1989 and Acquisition of Land Act 1981
The National Grid North Sea Link Limited (East Sleekburn)
Compulsory Purchase Order 2016
Your client: National Grid North Sea Link Limited**

**Department for Business, Energy &
Industrial Strategy**
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1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to refer to the National Grid North Sea Link Limited (East Sleekburn) Compulsory Purchase Order 2016 ("the Order") submitted to the Secretary of State on behalf of your client, National Grid North Sea Link Limited ("the Applicant"), on 6 December 2016 for consideration under section 10 of, and Paragraph 1 of Schedule 3 to, the Electricity Act 1989 ("the 1989 Act") and Part 2 of the Acquisition of Land Act 1981 ("the 1981 Act"). The Secretary of State wrote to yourselves as agents of the Applicant on 6 January 2017 requesting further information and clarification regarding the Order. Following receipt of this further information and clarification on 20 January 2017, the Secretary of State formally accepted the Order for consideration on 26 January 2017.
2. The Secretary of State received two relevant objections to the Order during the objection period, one from an affected landowner and one from Network Rail Infrastructure Limited who also made a section 16 representation as a statutory undertaker to the Department for Transport under the 1981 Act. The Secretary of State received a representation also, that was not a relevant objection, but sought further discussion with the Applicant. The Secretary of State considered that further time was necessary to decide whether to cause an inquiry to be held and extended the period set out in rule 3(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 to 3 April 2017 and for a further period until 30 April 2017. He subsequently wrote to the Applicant informing them that the

Secretary of State had decided to cause a local public inquiry. One relevant objection remained to the Order at that time, from Network Rail Infrastructure Limited. The section 16 representation made to the Department of Transport also remained. In agreement with the Department for Transport, it was decided a concurrent section 16 hearing would be held, both set to commence on 28 November 2017. On 16 November 2017 the inquiry and section 16 hearing were cancelled following the withdrawal of the remaining objections by Network Rail Infrastructure Limited.

3. The Applicant requested that the Secretary of State seek consent from the Gas and Electricity Markets Authority (“GEMA”) in respect of rights over land belonging to another licence holder (RWE Innogy UK) as, before the Secretary of State can confirm the Order, he must receive GEMA consent where any land subject to compulsory acquisition, including rights over land, belongs to another licence holder. The Secretary of State wrote to Ofgem on 26 May 2017 requesting this. On 23 April 2018, Ofgem wrote confirming GEMA consent has been given to the Secretary of State for the Order in respect to land owned by RWE Innogy UK plc (plot 22). A copy of Ofgem’s letter is attached.
4. The Applicant wrote to the Secretary of State on 24 January 2018 requesting modification to the Order, as since the making of the Order in October 2016, there had been progression of detailed design, and the Applicant was now seeking refinements to the Order land to reduce the potential effect of the Order on landowners and occupiers. It was requested on behalf of the Applicant, that the Order be modified by the Secretary of State in the event it is confirmed. Modifications were requested in respect of all 33 plots within the original Order which included the removal or subdivision of some plots, and refinements to the definitions of the new rights being sought over the Order land. Following this request, the Secretary of State asked the Applicant to write to all interested persons informing them of the proposed modifications that had been submitted to the Secretary of State in order to allow an opportunity for objections or representations to be made. The Applicant complied with this request on 20 April 2018. Any objections or representations were to be made to the Secretary of State before 11 May 2018 but none were received.
5. An Open Space Certificate pursuant to paragraph 6(1)(a) of Schedule 3 to the 1981 Act for plot 1 was issued to the Applicant by the Secretary of State for Communities and Local Government (now Ministry of Housing, Communities and Local Government “MHCLG”) on 4 April 2017.

Consideration of the Compulsory Purchase Order

6. In consideration of the Order, the Secretary of State has weighed up the relevant impacts of the proposed cable route and has considered whether the rights over the Order land that are sought interfere with the human

rights of those with an interest in the affected land. The Secretary of State has also considered whether, in accordance with MHCLG “Guidance on Compulsory Purchase Process and The Critchel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion”¹, a compelling case for compulsory purchase in the public interest is made out, and whether any interference with the human rights of those affected is sufficiently justified and proportionate in light of the purposes for which the compulsory purchase order would be made in this instance.

7. The Secretary of State has taken a balanced view between the intentions of the Applicant and the concerns expressed by the objectors as set out in their original objections ahead of the cancelled public inquiry. The Secretary of State has considered that the onshore cable connector is necessary to facilitate the interconnector between the UK and Norway and, as a designated Project of Common Interest (“PCI”) under the provisions of the EU Regulation No 347/2013 on guidelines for Trans-European Network for Energy (“TEN-E Regulation”), will increase energy security for both countries, and help create an integrated European energy market supporting integration of renewable energy. He has also considered that the scheme is in accordance with the relevant national policy as set out in National Policy Statements EN-1², and having regard to moving to a low carbon economy whilst maintaining security of energy supply
8. The Secretary of State is aware that an application for planning permission under the Town and Country Planning Act 1990 was granted by Northumberland City Council (“the Council”) on 7 November 2014 (reference number 13/03524/OUT)³ for the construction and operation of the UK terrestrial elements of a high voltage direct current (HVDC) electrical interconnector, comprising HVDC underground cables, from landfall to the proposed converter station site; a converter station; and HVAC underground cables to Blyth substation. A number of conditions subject to this permission have already been discharged by the Council.
9. The Secretary of State has acknowledged that the Order land includes part of the Northumberland Shores Site of Special Scientific Interest (“SSSI”) and the Blyth Estuary Site of Nature Conservation Importance. Northumberland County Council has considered the proposed development in the context of the Town and Country Planning (Environmental Impact Assessment)(England) Regulations 2011 and provided a screening opinion that it would require an Environmental Impact Assessment to be carried out given the scale of the development

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication_FINAL2.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf

³ <https://publicaccess.northumberland.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

and the potential effects on the Northumberland Shore SSSI and Blyth and Sleekburn Estuary Local Wildlife Site. No significant adverse long-term effects, either in isolation or when considered in combination were identified by the local planning authority, and any impacts identified considered to be localised and temporary. The Secretary of State agrees with this conclusion and notes that the Council has already discharged some conditions in respect to the planning permission it has granted in November 2014. The Order does not include any land or other interests held by the Crown, there are no listed buildings or scheduled monuments within the Order land.

10. The Secretary of State considers that the Applicant has taken a proportionate approach to the interests of those affected by the Order and accepts that the exercise of compulsory purchase powers should be used as a last resort.
11. The Secretary of State is satisfied that there is a compelling case in the public interest for the acquisition of the land and rights over land required to allow construction of the UK onshore works for the proposed HVDC subsea electrical interconnector that will facilitate the exchange and trading of up to 1400MW of electricity between the UK and Norway. In considering whether there is any interference with the human rights of those with an interest in the land affected – he has taken account of the compelling public interest justification for the development, and the fact that there are no outstanding objections from any owners, lessees, tenants or occupiers of any of the land to be acquired. He has also taken into account the proportionate nature of the land and rights sought by the Applicant for the construction and maintenance of the project which seek to minimise any interference with the rights of affected landowners. The modification requested will remove some land from the Order and also reduce the scope of new rights sought over the remaining land. He is also satisfied that there are no likely legal, physical or financial impediments to the scheme going ahead as proposed.
12. The Secretary of State has taken the view that the rights over the land sought by the Applicant will interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol of the European Convention on Human Rights. However, he is satisfied that the Applicant has sought to keep interference to a minimum in respect of the rights sought over the Order land and has considered that any interference is necessary and proportionate. The Secretary of State also considers any interference strikes a fair balance with the public benefit of delivering an important Interconnector scheme⁴ that will help to guarantee the UK's future energy security, whilst also helping to further the Europe-wide internal energy market.

⁴ The National Grid North Sea Link Interconnector is a 'Project of Common Interest' (PCI) under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, referred to as 'the TEN-E Regulation'

13. The Secretary of State has concluded that confirmation of the Order would not result in any unlawful interference in the landowner or occupiers' rights under the European Convention on Human Rights and concludes there is a compelling case for confirmation of compulsory purchase powers as sought in the Order.
14. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, in so far as is consistent with the proper exercise his functions. The Secretary of State is of the view that the scheme considers biodiversity sufficiently and he has taken this into account in considering whether to confirm the Order.
15. The Secretary of State has had regard to the requirements of the Habitats Directive, so far as they may be affected by his confirmation of the Order, as required by regulation 9(3) of the Conservation of Habitats and Species Regulations 2017.
16. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010, and is satisfied that there is no evidence that granting this Order will affect adversely the achievement of those objectives.

Secretary of State's decision on the Compulsory Purchase Order

18. **The Secretary of State has decided to confirm the Order with modifications.** The confirmed Order is enclosed together with the plans referred to in that Order. The Order and plans are authorised on behalf of the Secretary of State for Business, Energy and Industrial Strategy.
19. An amended copy of the original Order showing the modifications made to the existing wording and plots as confirmed by the Secretary of State is attached. An additional Annex to the original Order, which is in two parts, sets out the new rights packages and the new sub-divided plots to be included in the Order to give effect to the modifications made. The

modifications are shown on the version of the plans labelled "Drawing No. MHE2002/CPO/04" annexed the original sealed plans. The areas of land to be removed from the Order are hatched in green. Blue lines show subdivided plots with new plot numbers.

20. Your attention is drawn to the notice obligations in section 15 of the 1981 Act, including that relating to publishing a confirmation notice in one or more local newspapers circulated in the locality of the land subject to the compulsory purchase order. The Order will become operative on the date which Notice of Confirmation is first published. It is important you advise the Secretary of State of this date. We should be grateful if you would in due course, send to the Secretary of State a copy of the pages from the local newspaper containing the Notice of Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.
21. Section 15(6) of the 1981 Act provides that a confirmation notice shall be a local land charge and requires it to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the Acquiring Authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.
22. The validity of the Secretary of State's decision may be challenged by making an application to the Planning Court. Such application must be made not later than six weeks from the date on which notice of the confirmation or making of the compulsory purchase Order is first published in accordance with section 15 of the 1981 Act.

Yours sincerely,

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning