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**To: Nicky Virdee**

SSE Services plc  
55 Vastern Road  
Reading  
RG1 8BU

Our Ref: EN010002

Date: 12 July 2012

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Dear Ms. Virdee

Thank you for your letter dated 29 June 2012. In relation to your two queries:-

1. With regards to The Infrastructure Planning (Model Provisions) Order 2010, we would note that this just provides a non-exhaustive set of examples of provisions which may be included in draft Development Consent Orders (DCOs), and that the Model Provisions Order no longer has any formal status under the Planning Act 2008 (the 2008 Act) regime.

We would refer you to s.120(5)(a) of the 2008 Act which provides that an order granting development consent may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the order. This broadly drawn power has been used by a number of applicants for development consent to include, often in amended form, provisions drawn from legislation other than the 2008 Act in their draft DCOs. We would advise that an explanation as to the derivation of any such provisions that are included, and the reason for including them, should be set out in the Explanatory Memorandum which has to be submitted with an application for development consent.

2. We note that you have made reference to paragraph 2, of Part 1 of Schedule 5 of the 2008 Act. However, our understanding is that the interests and rights referred to here are private interests and rights over land. On that basis, this provision would arguably not permit the extinguishment of common land status nor allow for the 'designation' of a substitute parcel of land as common land.

In any event, under the 2008 Act regime, as it applies in Wales, specific statutory provisions apply to certain matters including the exchange of common land for other lands. In this regard we would refer you to s.150 of the 2008 Act which provides that an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent to be obtained, but only if the relevant body has consented to the inclusion of the provision. A list of the prescribed consents etc. is set out in the Schedule to The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. These include, in Part 2, which relates specifically to Wales:-

"28. An order under section 147 of the Inclosure Act 1845 (power to exchange common land for other lands)"

This provision has subsequently been repealed, and the relevant statutory provision is now

set out in s.16 of the Commons Act 2006. In Wales, if consent to the inclusion of such a provision in a DCO cannot be obtained from the relevant consenting body, in this case the Welsh Ministers, then consent would need to be separately obtained from them.

I trust that this answers your queries, but please let me know whether you wish to receive any further advice in relation to this matter.

Yours faithfully

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The Planning Inspectorate's National Infrastructure Planning web address:

[www.planningportal.gov.uk/infrastructure](http://www.planningportal.gov.uk/infrastructure)

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the infrastructure pages of the Planning Portal together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our [Information Charter](#) which you should view before sending information to the Planning Inspectorate.