

## **Agenda for the Compulsory Acquisition (CA) hearing Thursday 17 and Friday 18 September 2015**

As set out in the hearing notification letter of 13 August 2015, the Examining Authority (ExA) agreed to provide agendas at least one week before the hearings. The ExA has sought to provide detailed agendas at this point to assist all parties with the preparations for the hearings. The various agenda items will of course be developed further during the relevant hearings; there may also be additional agenda items identified for examination by the ExA. As such, the agendas should be seen as indicative and not binding.

The ExA aims to, where possible, work through the agenda in the order set out here. However, there may be need for some flexibility. For example, this may be as a result of information provided at Deadline 2a, and of updates provided by various parties.

Should any updated information become available, the ExA requests that it is brought to the attention of the Case Manager, Katherine King, as soon as possible. Should the ExA accept the submission of information, it will be published on the Hornsea Project 2 page of our website. The ExA therefore requests that interested parties monitor the project website. Should any interested party wish to comment on any information, this should be done through oral submission at the hearings, and in the written submissions after the hearings. This pragmatic approach is not to be abused; the ExA will only accept information that has an impact on the running of the hearings.

You will note from the agendas that there are a number of matters to be examined on each day. As such, the ExA requests that interested parties consider how best to provide evidence at the hearings and prepare accordingly.

### **Participation in the hearings**

All interested parties are invited<sup>1</sup> to attend the hearings. Each interested party is entitled to make oral representations at the hearings<sup>2</sup> (subject to the ExA power to control the hearings). Oral representations should be based on the relevant or written representations made by the person by whom (or on whose behalf) the oral representations are made<sup>3</sup>.

Should any party have queries regarding the hearings, they are requested to speak to the Case Manager.

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<sup>1</sup> Guidance for the examination of applications for development consent for Nationally Significant Infrastructure Projects, DCLG 2010.

<sup>2</sup> S91 and S93 of the Planning Act 2008 (as amended) (PA 2008).

<sup>3</sup> S91 and S93 of the Planning Act 2008 (as amended) (PA 2008).

## **Compulsory Acquisition Hearing**

- Venue:** Ashbourne Hotel, Vicarage Lane, North Killingholme, Immingham, DN40 3JL
- Date:** Thursday 17 September continuing on Friday 18 September 2015
- Time:** Please arrive by 0915, for start of hearing at 0930

The Compulsory Acquisition Hearing is being held to ensure adequate examination of the provision seeking to authorise the compulsory acquisition of land and rights in the land and whether there is a compelling case in the public interest for the land and rights to be acquired compulsorily.<sup>4</sup>

The hearing will run until all Affected Persons and other Interested Parties who have indicated a wish to speak have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda. The Applicant will also be given an opportunity to present their evidence in response to each party's case and respond to questions from the Panel. Should all the matters be dealt with on day one, the hearing will conclude and will not then take place on Friday 18 September.

### **Other invited attendees:**

The following persons may wish to attend the hearing to address matters identified in this agenda:

- The Applicant
- Anglian Water Services Limited
- Associated British Ports
- British Telecom
- Centrica KPS Ltd
- Centrica PLC
- C.Gen Killingholme Ltd
- Conoco Phillips (UK) Ltd
- Dong Energy (on behalf of Heron Wind Limited, Njord Limited and Vi Aura Limited) – Hornsea 1 Project
- Environment Agency
- E.ON E&P UK Ltd. (E.ON)
- Highways England
- Natural England
- Network Rail
- National Grid Electricity Transmission PLC
- National Grid Gas PLC
- Northern Powergrid Yorkshire PLC
- Phillips 66 Limited
- The Crown Estate
- Virgin Media

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<sup>4</sup> S.122(3) of the Planning Act 2008 (as amended) (PA2008)

- Vitol Immingham CHP LLP

**The ExA aims to, as far as possible, work through the agenda in the order set out here. However, there may be need for some flexibility.**

## **1. Introduction of the Participating Parties**

## **2. The Applicant's Case**

2.1 Compulsory acquisition can only be granted if the Secretary of State is satisfied that the conditions set out in s122 and s123 of the Planning Act 2008 (as amended) (the PA 2008) are met. The Applicant will be expected to:

- a) set out briefly how the statutory conditions in s122 (2) are met in relation to the compulsory acquisition sought for each plot;
- b) set out briefly the argument for there being a compelling case in the public interest for the compulsory acquisition of the land or rights sought;
- c) set out why it considers the proposed interference is legitimate, necessary and proportionate.

2.2 In particular the Examining Authority (ExA) wishes to explore the question of rights and restrictive covenants sought in the context of Articles 19 and 26 and Schedules E and G of the draft DCO; the Applicant will be asked to comment on:

- a) whether any existing rights are to be acquired and if so what is the nature of the rights and which plots are they in?
- b) how and where the nature of the permanent rights / restrictive covenants to be acquired in respect of the land plots in Schedule E are to be described in relation to (a) the purposes set out in the Schedule and (b) the Works set out in Part 1 of Schedule A, the Authorised Project, and shown on the Works Plans?
- c) what new rights and restrictive covenants are to be sought in relation to the land plots in Schedule G; where they are to be described; and how the tests set out in s.122 of the PA2008 are met in relation to each of these rights?

2.3 To assist in the running of this hearing, it may be helpful if the Applicant could provide a table setting out for each plot, the nature of the compulsory acquisition sought, including a description of any new right to be created, the purpose for which it is sought and any temporary possession powers required.

## **3. Required Documentation**

3.1 Clarification will be sought as to whether any updated versions of the relevant application documents (as set out in Regulation 5 of the Infrastructure Planning (Applications, Prescribed Forms and Procedure)

Regulations 2009 (the APFP Regulations)) should be provided and/or referred to:

### **The Book of Reference**

Confirmation will be sought that all parts of the Book of Reference are included with the application, that the provisions are clear and comprehensible and whether there are any matters that any party submits need clarification.

DCLG PA2008 Compulsory Acquisition Guidance (September 2013) advises that where it is proposed to create and acquire new rights compulsorily they should be clearly identified and that the Book of Reference 'should also cross-refer to the relevant articles contained in the development consent order' (Appendix D para 10). The ExA is particularly concerned that the Book of Reference provides no information on the rights being sought in relation to individual plots in either Schedules E or G, because this presents a significant challenge in examining whether the proposed exercise of compulsory acquisition powers is appropriate, proportionate and in the public interest.

### **The Statement of Reasons**

The ExA will seek views upon whether the Statement of Reasons sets out comprehensively the Applicant's case for the grant of compulsory acquisition powers with reasons and justification and whether there are any matters that any Party submits need clarification<sup>5</sup>.

### **The Funding Statement<sup>6</sup>**

In considering the issue of financial security for compulsory acquisition compensation regard needs to be had to the provisions of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 together with Guidance issued under the PA2008. In addition regard will need to be had to the provisions of the Human Rights Act 1998 since compulsory acquisition involves a potential interference with rights protected by Article 1 of the First Protocol and Articles 6 and 8.

The ExA will wish to hear submissions that deal with ensuring that the Funding Statement and any supplementary information required is

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<sup>5</sup> Regulation 5(h) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

<sup>6</sup> Regulation 5(h) The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and paras 17 and 18 of DCLG PA2008 Compulsory Acquisition Guidance (September 2013)

considered in the context of full evidence that reflects Guidance and the Human Rights Act considerations. Such evidence should demonstrate whether or not adequate funds will be available to meet:

- a) full project costs including both construction and decommissioning and an explanation of the mechanisms that will ensure the required amount is secured and the project(s) will not proceed until funding is in place.
- b) compulsory acquisition and other compensation if compulsory acquisition powers are granted and exercised and the project consented and implemented up to the maximum consent period.

### **The Land Plan<sup>7</sup>**

Confirmation will be sought that all land and interests to be compulsorily acquired are clearly identified and differentiated and that there are no outstanding discrepancies between the description of the land in the Book of Reference and the Land Plan and confirmation as to the precise areas of land which are proposed to be compulsorily acquired.

Where substituted documents have been provided reference should be made to them and they should be clearly identified.

## **4. Alternatives**

- 4.1 The Applicant will be invited to set out in summary form what alternatives to the land included in the application were considered, the reasons for the selection of the land chosen, and where this is set out in the application and examination documentation<sup>8</sup>.
- 4.2 Submissions will be invited from any Affected Person or other Interested Party on any alternatives not already identified or additional submissions in relation to those already identified. This may include any lesser steps that could meet the identified need.

## **5. Update in Relation to Negotiations with Private Landowners and Statutory Undertakers**

- 5.1 The Applicant will be asked to provide an update following on from the response in Appendix I (Update on status of Land Agreements – response to G2) Deadline 1 and in cases where negotiations are still ongoing to indicate when the Applicant anticipates that these will be concluded.
- 5.2 In cases where a voluntary agreement to acquire has been reached the Applicant will be asked whether the land and/or interests in the land need

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<sup>7</sup> Regulation 5(2)(i) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

<sup>8</sup> Para 8 of CLG PA2008 Compulsory Acquisition Guidance (September 2013)

to remain the subject of compulsory acquisition and if so what is the justification for this position.

## **6. Representations by Affected Persons and Other Interested Parties**

- 6.1 Any persons whose land or right is to be compulsorily acquired or otherwise interfered with by the use of compulsory acquisition powers or temporary possession powers will be invited to make oral representations to the ExA.
- 6.2 Oral submissions should be based on representations previously made in writing by the particular participant or arising directly from the matters raised by each Affected Person or other Interested Party. However, representations made at the hearing should not simply repeat matters previously covered in a written submission, but rather provide further detail, explanation and evidential corroboration to help inform the ExA. All Parties are asked to provide copies of any speaking notes to be used during the hearing sessions.

## **7. Statutory Undertakers Land and Apparatus**

- 7.1 Confirmation will be sought that land and interests in land and apparatus held by statutory undertakers have been properly identified and that the requirements of the PA2008<sup>9</sup> in relation to compulsory acquisition have been met and that the provisions of the DCO support the position.
- 7.2 Submissions will be invited from the following statutory undertakers in relation to s.127 of the PA 2008:
- a) Anglian Water Services Limited
  - b) Associated British Ports
  - c) Centrica PLC
  - d) Centrica KPS Limited
  - e) Dong Energy (on behalf of Heron Wind, Njord and Vi Aura Limited) and in relation to Hornsea 1
  - f) E.ON Exploration and Production UK Limited
  - g) VPI Immingham CHP LLP
  - h) National Grid Electricity Transmission PLC (NGET)
  - i) National Grid Gas PLC
  - j) Network Rail
  - k) Northern Powergrid Yorkshire PLC
- 7.3 The Applicant will then be invited to make submissions in relation to s.127 for each statutory undertaker listed above.
- 7.4 Submissions will be invited from any statutory undertaker and operators of electronic communications code networks on whether s.138 of PA2008

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<sup>9</sup> PA2008 s.127 and s.138

is engaged in respect of any of their rights or apparatus and whether any compensatory Protective Provisions under Schedule L of the draft DCO or other agreements are satisfactory. The Applicant will be asked to put their case in relation to s.138.

## **8. Crown Land**

8.1 Formal confirmation will be sought that land and interests in land held by the Crown have been properly identified, that the requirements of the PA2008<sup>10</sup> in relation to compulsory acquisition have been met and that the provisions of the DCO support the position. In particular:

- a) Articles 18 & 19 seek to authorise compulsory acquisition over all of the Order land which includes Crown land. Crown interests are not excluded from compulsory acquisition by description in the Book or Reference or in the compulsory acquisition articles and Article 39 does not prevent the acquisition of Crown interests; the Applicant will be asked to explain how the DCO ensures that compulsory acquisition is not granted for each Crown interest held by the Crown.
- b) The Applicant will be asked to confirm which interests in Crown land held otherwise than by the Crown the Applicant is seeking to acquire and whether consent from the appropriate Crown authority has been obtained in relation to these interests.
- c) The Applicant will be asked for an update regarding the transfer of land to Highways England and its status as Crown land. If the Applicant does not intend to seek compulsory acquisition of Highways England interests the Applicant will be asked to explain how these interests are excluded from compulsory acquisition.

## **9. Commons and Open Spaces**

9.1 Formal confirmation will be sought that there are no land and interests in land comprising commons and open spaces within the Order lands.

## **10. Human rights and Public Sector Equality Duties**

10.1 The Applicant will be asked to set out how Human Rights have been and will be addressed.<sup>11</sup>

## **11. Any Other Matters**

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<sup>10</sup> PA2008 Sec 135 (1) (2) (3)

<sup>11</sup> Para 10 of CLG PA2008 Compulsory Acquisition Guidance (September 2013)