



# The Planning Inspectorate

PLANNING ACT 2008 (as amended) ('the Act')  
Section 53: Rights of entry

## SECTION 53 of the Act ('Section 53') - RECOMMENDATION REPORT

**REQUEST BY WREXHAM POWER LIMITED ('the Applicant') FOR  
AUTHORISATION UNDER SECTION 53  
PROPOSED WREXHAM ENERGY CENTRE ('the Project')**

### **LAND PARCEL: 4 ('THE LAND')**

The Schedule of Correspondence should be read in conjunction with this Recommendation Report.

Date of Applicant's letter requesting authorisation	2 April 2013 ( <b>DOC 1</b> ) Received by the Planning Inspectorate on 2 April 2013.
Date of Planning Inspectorate's requests for further information from the Applicant	21 May 2013 ( <b>DOC 10</b> )
Date of Applicant's letter/email(s) submitting further information	7 June 2013 ( <b>DOC 11</b> )
Description of the Land	Land adjoining [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ('the Land')
Name of the Landowners	[REDACTED] ('the Landowners')
Registered Title Number for the Land	Title Number CYM413391
Plan identifying the Land	Plan A - Sheet 6 ( <b>DOC 1: Section 4</b> ).
Proposed surveys and works which are the subject of the Section 53 request	<b>DOC 1: Section 6</b> contains a Schedule detailing the proposed surveys which would be undertaken should access to land be granted under Section 53 of the Act. These are non-intrusive ecological surveys including an extended Phase 1 Habitat Survey and surveys for legally protected species. Further details are provided within this Recommendation Report under 'Purpose of requiring entry onto the land'.
Is this a stand alone application or one of a series of Section 53 applications made to	The Applicant has also made Section 53 authorisation requests in relation to the following plots of land, referred to as: <ul style="list-style-type: none"> <li>Land Parcel 1 (unregistered land) 'Land to</li> </ul>

<p>the Secretary of State?</p>	<p>the north and West of [REDACTED]. To the south of the River Clywedog, north of the B5130 at Talwrn and north east of the Maelor Gas Works’;</p> <ul style="list-style-type: none"> <li>• Land Parcel 2 (unregistered land) – ‘Land to the south of [REDACTED]. To the north, east and south of [REDACTED]’;</li> <li>• Land Parcel 3 (registered title number WA655857) – [REDACTED], [REDACTED];</li> <li>• Land Parcel 5 (registered title numbers CYM165549) – [REDACTED], [REDACTED], [REDACTED];</li> <li>• Land Parcel 6 (registered title numbers CYM123301) – [REDACTED], [REDACTED], [REDACTED], [REDACTED]; and</li> <li>• Land Parcel 7 (unregistered land) – Land to the south of [REDACTED] and on the west side of [REDACTED].</li> </ul>
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### **Legislative Framework**

Under Section 53, the Secretary of State (SoS) has the power to authorise a person to enter onto third party land at any reasonable time for the purpose of carrying out surveys and taking levels<sup>1</sup>, or in order to facilitate compliance with the Environmental Impact Assessment Directive<sup>2</sup>, the Habitats Directive<sup>3</sup> or any EU instrument which replaces all or any part of either of these Directives.

The SoS has the power to authorise such entry in connection with:

- An application for an order granting development consent, which has been accepted by the SoS (Section 53(1)(a));
- A proposed application for an order granting development consent (Section 53(1)(b)) if it appears to the SoS that the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land (Section 53(2)); or
- An order granting development consent that includes provisions authorising the compulsory acquisition of that land, or of an interest in or right over it (Section 53(1)(c)).

Under Section 53(3) if the SoS authorises a person to enter land to undertake surveys under subsection (1) that authority includes the power to search and bore for the purpose of ascertaining the nature of the

<sup>1</sup> Subject to certain conditions (including further protection for land held by statutory undertakers) set out in subsections (9) and (10), the power conferred by subsection (1) to survey land includes the power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it (s.53(3) of the Act)

<sup>2</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time.

<sup>3</sup> Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time.

subsoil or the presence of minerals or other matter in it, subject (unless it is Crown land) to subsections (9) and (10) of Section 53 (Section 53(3)).

The SoS's power to authorise a person to enter land to undertake surveys to facilitate compliance with the Environmental Impact Assessment Directive (as amended or replaced from time to time) includes the power to take, and process, samples of or from any of the categories specified in subsections (3A)(a) to (3A)(f) found on, in or over the land (Section 53(3A)).

The decision maker should also have regard to the requirements of the Human Rights Act 1998 and in particular Article 1 of the First Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe on 4<sup>th</sup> November 1950 ("the European Convention"), that gives a right to peaceful enjoyment of property. Any interference with this right should be lawful and proportionate so that the right of individuals to peaceful enjoyment of their property should be balanced against the public interest of facilitating applications for development consent under the Act.

### **Information about the Section 53 Request**

On 2 April 2013 the Planning Inspectorate received a request from the Applicant under Section 53 of the Act for authorisation to enter third party land in connection with a proposed Development Consent Order (DCO) application for the Project. It should be noted that the Applicant has made two requests for authorisation for access for the same area of land, one providing the details of the Landowners and one providing the details of the leaseholder. This report deals with the authorisation request associated with the Landowners.

As a DCO application for the Project has not yet been submitted to the Planning Inspectorate, the request falls within Section 53(1)(b) and the SoS can only grant an authorisation if it appears to the SoS that the requirements of Section 53(2) have been met.

There is no prescribed procedure for making a request under Section 53. The Planning Inspectorate has produced and published Advice Note 5: 'Section 53 – Rights of Entry' (April 2012) to assist applicants, setting out the information that the Planning Inspectorate would expect to receive. However, this Advice Note has no formal status and the Applicant is not required to follow this advice.

### **The land to which entry is requested**

This is shown on Plan A – Sheet 6, cross-hatched in green (enclosed with the authorisation request (**DOC 1: Section 4**)).

### **Landowners' notification**

A copy of the Applicant's letters dated 2 April 2013 notifying the

Landowners that the Applicant had made a Section 53 application to the Planning Inspectorate, in respect of the Land, is provided in **DOC 1: Section 9.6**. These letters inform the Landowners that they may provide comments to the Planning Inspectorate, on the Applicant's authorisation request, by 24 April 2013. This follows the Planning Inspectorate's Advice Note 5 (April 2012), which advises that landowners should be given a minimum of 21 days, from the date of the notification letter, to provide comments to the Planning Inspectorate. Following a letter from the Landowners' representative on 18 April 2013 (**DOC 3**) the Planning Inspectorate agreed by letter on 22 April 2013 to extend the deadline for responses until 8 May 2013 (**DOC 4**).

The Planning Inspectorate received letters from Brabners Chaffe Street and Forge Property Consultants (**DOC 7**) (acting on behalf of the Landowners) on 8 May 2013 explaining their concerns and the reasons they were not willing to allow access to the Applicant for the purpose of carrying out surveys.

### **Purpose of requiring entry onto the land**

Authorisation under Section 53(1) for entry onto land may only be given for the purpose of surveying and taking levels of the land or to facilitate compliance with the Environmental Impact Assessment Directive, the Habitats Directive or any EU instrument which replaces all or any part of either of these Directives.

The Applicant provides an explanation on why Section 53 authorisation is being sought in their letter dated 2 April 2013 (**DOC 1: Section 1**). Paragraph 6.2 of Section 1 states that *"the survey work is required for the production of:*

*6.2.1 The Environmental Statement to be submitted with an application for a Development Consent Order pursuant to the PA 2008 for the Proposed Development (required pursuant to the EIA Regulations); and*

*6.2.2 A report to be submitted to the SoS with an application for a Development Consent Order pursuant to the PA 2008 for the Proposed Development that assists the SoS in complying with his obligations under the Conservation of Habitats and Species Regulations 2010".*

Section 6 of the Applicant's cover letter contains a Schedule detailing the proposed surveys and states that the following works would be required (the 'Proposed Survey Works'):

- ecological surveys:
  - extended Phase 1 habitat survey;
  - water vole survey;
  - otter survey;
  - badger survey;
  - tree inspections for bats and bat emergence/re-entry surveys; and
  - hedgerow survey.

Further information relating to survey requirements is provided in:

- **DOC 1: Section 6** – Schedule detailing the proposed surveys – Ecological Survey Scope.

### **Provisions of Section 53**

The Project is currently recorded on the National Infrastructure pages of the Planning Portal as at the pre-application stage of the DCO process, and that the application is expected to be submitted in Q3 2013. Therefore, to grant authorisation for entry to the land under Section 53 of the Act, the SoS must be satisfied that the following has been demonstrated by the Applicant:

#### **Section 53(2)(a):**

***“The proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land”***

The Planning Inspectorate has considered both aspects of Section 53(2)(a) below:

*“The proposed applicant is considering a distinct project of real substance”*

The Applicant has not, at the date of this Recommendation Report, notified the SoS of a proposed application under Section 46 of the Act. However, the Applicant’s letter dated 2 April 2013 (**DOC 1: Section 1**) explains, at paragraph number 3, that the following has been undertaken to date:

- The Applicant submitted a Regulation 6 notification to the Planning Inspectorate on 26 June 2012;
- The Applicant undertook informal consultation on the Proposed Development beginning on 11 June 2012 and ending on 5 August 2012. A Stage One Feedback Report was produced in November 2012; and
- The Applicant submitted a Scoping Report to the Planning Inspectorate on 3 December 2012 and a Scoping Opinion was issued by the SoS on 9 January 2013.

**DOC 1: Section 1**, paragraph 3.3.8 states that the Applicant intends to submit an application pursuant to the Act for the Proposed Development, with submission now delayed until Q4 of 2013.

The Landowners’ representatives have challenged whether the Applicant’s proposals constitute a distinct project of real substance (**DOC 7**) on the following grounds:

- They did not feel that the need for the project had been justified;
- The electricity connection will be via the overhead lines which would have a detrimental effect on their property and business interests. The overhead power lines would require pylons 47m in height;

- They did not feel that the proposal for the power station to be ready for Combined Heat and Power is one of real substance;
- They believe that National Grid (who would have to provide a tapping to connect the project to the gas network) is only generally aware of the project; and
- They have made enquiries that show that the Applicant does not have experience in the energy sector.

Issues about the potential quality or need for the project are matters for examination (should the project be accepted).

The Planning Inspectorate is satisfied that the Applicant is considering a distinct project of real substance.

*“Genuinely requiring entry onto the land”*

In the view of the Planning Inspectorate, Environmental Impact Assessment (EIA) is an iterative process. It is reasonable for the applicant to undertake ecological surveys to inform their assessment of the project impacts and to use the information gained from those surveys to shape the final application.

The Applicant in their letter dated 2 April 2013 (**DOC 1**) states that entry is required to undertake ecological surveys for the purposes of producing an Environmental Statement (ES) that would be submitted with the application for a DCO, and also to assist the SoS in complying with his obligations under the Habitats and Species Regulations 2010 (as amended). The surveys being carried out cover the standard set of ecological information that would be required by the SoS as part of an ES.

The Planning Inspectorate is satisfied that the Applicant genuinely requires entry onto the land in order to carry out the ecological surveys required for the project.

**Efforts to agree voluntary access**

*Guidance*

There is no government guidance specifically dealing with the application of Section 53. However, the Department of Communities and Local Government have recently produced updated guidance on fees, The Infrastructure Planning (Fees) Regulations 2010: Guidance (June 2013) ('the Guidance'), which refers to Section 53. The Guidance is intended to aid interpretation of the Infrastructure Planning (Fees) Regulations 2010 (SI 2010/106) ('the Fees Regulations') (Paragraph 2 of the Guidance).

However, in Annex A to the Guidance, the commentary relating to Regulation 3 of the Fees Regulations states that the policy intention in respect of Section 53 is that:

*“Applicants are expected to act reasonably, first seeking to obtain ... permission to access land directly before seeking authorisation under*

*these provisions. Specifically, applicants should only submit requests for ....access to parcels of land, where they consider they have been unreasonably refused that....access”.*

It should be noted that the requirement that requests under Section 53 'should only be made as a last resort', that was included in the February 2010 version of the Guidance, has now been removed.

Applicant's efforts to agree voluntary access

**DOC 1: Section 5** comprises a schedule of meetings, telephone calls and emails dating from 7 December 2012 to 2 April 2013 between the Applicant and the Landowners. Copies of letters and emails between the Applicant and the Landowners are enclosed with the Applicant's authorisation request dated 2 April 2013 (**DOC 1: Section 9.4**).

The Applicant first made contact with the Landowners by letter on 7 December 2012. The key correspondence between the parties is as follows:

- Separate letters to the individual Landowners dated 7 December 2012 from the Applicant introducing the project and asking them to confirm their interest in the land. It states that on the basis of informal consultation that the southern corridor option would be most favoured for the electrical connection. Letter accompanied by a 'Request for Information' form for completion by each Landowner.
- Separate letters to the Landowners dated 7 December 2012 from the Applicant requesting access for surveys and explaining the nature of the survey. Accompanied by a blank 'Property Access Consent Form' for completion by the Landowner, a map showing an indicative gas pipeline route corridor and a map showing the northern and southern electrical grid connection indicative route corridor. The land of interest to the Applicant is shown on two maps ref. J:\12-13\CDG12\_63 Wrexham Energy Centre\Dep Plans Sheet 6.
- Note of telephone message dated 3 January 2013 left by the Applicant for the Landowners.
- Note of telephone message dated 10 January 2013 left by the Applicant for the Landowners
- Note of telephone message dated 16 January 2013 left by the Applicant at one of the Landowners' businesses.
- Note of visit dated 22 January 2013 made by the Applicant to the Landowners. The Landowners raised concerns over the potential impacts of the scheme and the approach to informal consultation taken by the Applicant. The Applicant provided advice on the project timeline and consultation plan. The Landowners advised that they were not prepared to co-operate with the Applicant in their request for information or access.
- Note of telephone message dated 13 February 2013 left by the Applicant for the Landowners in relation to their land ownership in the Wrexham area.
- Note of visit dated 8 March 2013 by the Applicant to the

Landowners' business. The Applicant spoke to administration staff asking to speak to the Landowners. Was advised to send an email (address provided).

- Letter dated 19 March 2013 to the Landowners from the Applicant requesting access and offering to pay ██████ upon grant of access. The letter warns that if access is not granted within 7 days of the date of the letter then the Applicant will apply for entry under Section 53 of the Act. Accompanied by a licence for access including 'commitments' in Schedule 2 which largely correspond to the draft conditions suggested in **DOC 1: Tab 7** and maps showing the boundaries of land ownership (reference J:\12-13\CGD12\_63 Wrexham Energy Centre\Dep Plans Plan No: Dep Plans\_Land Ownership). Also includes an offer of ██████ towards land agency fees
- Letter dated 26 March 2013 (stamped as 'Received 2 Apr 2013') from the Landowners to the Applicant raising their concerns about the letters sent by the Applicant on 7 December 2012 and 19 March 2013, particularly around the volume and nature of information requested and the lack of direct consultation. It also highlights the contrast between the amount of information provided by the Applicant and that provided by Scottish Power or the National Grid for similar projects. Letter copied to local MPs, Wrexham Borough Council, the Planning Inspectorate, the Country Landowners Association and Community Councillors.
- Letter from the Applicant dated 2 April 2013 notifying the Landowners that the Applicant is applying for powers of entry under Section 53 of the Act. Explains how to contact the Planning Inspectorate to comment on the application and provides a copy of the application documents being sent to the Inspectorate.

The Landowners state that they did not receive answerphone messages on 3 or 10 January 2013 or 13 February 2013. They have also checked with their staff regarding the telephone message left on 16 January 2013, but state that no message was received. The Applicant however, states that they have call logs from the network operator that confirms that the calls were made (**DOC 12**). The Landowners are disappointed at the lack of effort by the Applicant to discuss proposals prior to January 2013. They feel that the Section 53 application is premature and they have been given too little time to consider it. The Landowners also state that maps 4, 6 and 7 in the Section 53 application show a revised route corridor that did not feature in any previous consultation.

For the purposes of this request, the Planning Inspectorate is only considering the efforts to gain access permission made by the Applicant from December 2012. The Applicant has stated that the first specific request for access for the purpose of carrying out ecological surveys was made on 7 December 2012 (**DOC 11**). The area for which access is requested is shown in colour on the maps included with the letters dated 7 December 2012. It should be noted that the Landowners stated that they were not willing to grant access for ecological surveys on 22 January 2013 and re-stated their opposition in their letter dated 26 March 2013.

The Landowners' reasons for refusal appear to largely be an objection to the project itself rather than specific concerns about any potential impacts resulting from the surveys.

The Planning Inspectorate notes that the project website to which the Landowners were directed by the Applicant in their letter of 7 December 2012 (**DOC 1**) does not provide details such as the likely height of the pylons for the electricity grid connection. As noted above, however, it is reasonable for the Applicant to undertake ecological surveys to inform their assessment of the project impacts and to use the information gained from those surveys to shape the final application.

The Planning Inspectorate is satisfied that the Applicant has made reasonable efforts to agree access voluntarily before applying for powers of entry under Section 53.

### **Proposed Conditions**

S.53(4)(c) provides that a person authorised by the SoS to enter any land *"must comply with any other conditions subject to which the Secretary of State's authorisation is given"*.

The Applicant proposed draft conditions that could be attached to the licence permitting access in their letter dated 19 March 2013 (**DOC 1**). The Landowners, in their letter dated 7 May 2013 (**DOC 7**) advised that these conditions were deficient because they did not require the Applicant to provide a specific schedule of dates and periods on which they proposed to carry out the relevant surveys and identify the number of visits that would be made.

### **Conditions proposed by the Planning Inspectorate**

The Planning Inspectorate requested comments from the Applicant (**DOC 9**) and the Landowners (**DOC 11**) on draft conditions that would be attached to the authorisation should the SoS grant authorisation. The Applicant was content with the proposed conditions (**DOC 11**). The Landowners proposed a number of changes (**DOC 12**) including:

- Access on foot only;
- A requirement to prepare a pre-entry photographic record of condition with a copy to be provided to the Occupier and Agent;
- A requirement to provide the Occupier with full details of the areas to be surveyed, the nature and timing of the surveys and the access routes;
- Provision of compensation for any damage caused by the surveys which cannot be made good;
- A requirement to undertake a safety induction with the Occupier;
- A requirement to provide a minimum of 48 hours notice of the surveys with names and contact details for all persons undertaking the surveys;
- To contact the Occupier when leaving the property;
- Ensure that persons carrying out the surveys are checked by the Disclosure and Barring Service;

- Provide proof of suitable insurance in respect of public and third party liability;
- Pay the sum of ■■■ per visit to the Landowner/Occupier in recognition of disturbance in advance of carrying out the survey; and
- Pay Agents, Legal and any other costs which are necessarily incurred as a result of the surveys.

If the SoS is minded to authorise entry, the Planning Inspectorate recommends that the draft authorisation conditions provided in the Schedule of draft Proposed Conditions attached to the draft Authorisation in **Annex 1** of this Recommendation Report are adopted. These draft conditions have been prepared having regard to both the comments from the Applicant and the Landowners, to ensure that the Landowners' legitimate interests, so far as known, are protected. Provisions relating to the notice that must be given and the compensation to be provided in case of damage have not been included as these are covered by Section 53(4)(b) and (7) of the Act respectively.

Under Section 53(3), if the SoS authorises a person to enter land to undertake surveys under subsection (1) that authority includes the power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it, subject (unless it is Crown land) to subsections (9) and (10) of Section 53 (Section 53(3)). However, in this authorisation request, the Applicant has confirmed that they are only seeking authorisation to undertake non-intrusive surveys, as identified in **DOC 1**. On this basis, the Planning Inspectorate recommends that the authorisation, as drafted in **Annex 1**, excludes the power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it.

### **Executive Summary and Recommendation**

The Planning Inspectorate considers that the Applicant has satisfied the criteria under Section 53(2), as evidenced above.

The Planning Inspectorate considers that the Applicant has demonstrated reasonable efforts to obtain permission to access the Land by agreement but has been unsuccessful, as evidenced above.

If the SoS is minded to grant the Applicant authorisation to enable the Applicant to enter the Land for the purpose of surveying and taking levels, the Planning Inspectorate recommends that the authorisation given to the Applicant is in the format of the draft Authorisation attached at **Annex 1 to this Recommendation Report**.

### **Additional Matters**

***Payment of the Correct Fee***

The correct fee of [REDACTED] has been paid by the Applicant (transferred by BACS) and received by the Planning Inspectorate on 4 April 2013.

### ***Information Sought from the Applicant***

There is no information which the Planning Inspectorate has requested from the Applicant which is still outstanding.

### ***Issues Identified by the Landowners***

There is no information which the Planning Inspectorate has requested from the Landowners which is still outstanding.

### **Human Rights Act 1998**

Article 1 of the First Protocol of the European Convention gives a right to peaceful enjoyment of property. Any interference with this right should be lawful and proportionate so that the right of individuals to peaceful enjoyment of their property should be balanced against the public interest of facilitating applications for development consent under the Act.

If the SoS is minded to grant authorisation for this Section 53 request, it is considered that granting an authorisation which is in accordance with the provisions of Section 53 (which includes a right to compensation for any damage caused to land or chattels in the exercise of the right of entry so conferred or in the making of any survey for which such rights is conferred) and which is granted subject to conditions, would be justified and proportionate in the wider public interest.

### **The Habitats Regulations**

Under Regulation 9 of the Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations'), the SoS is required to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of the SoS's functions. There is a system of strict protection under the Habitats Regulations, which transpose the Directive, for certain species known as European Protected Species. Any authorisation which may be granted by the SoS under Section 53 will not extend to authorising entry onto land for any activity which may lead to the committing of an offence under the Habitats Regulations.

Surveys are proposed to be undertaken for bats, otter, water vole and badger, of which bats and otter are European Protected Species. The information provided by the Applicant (**DOC 1**) suggests that a licence for European Protected Species may be required. The SoS should note that if he is minded to grant authorisation, **draft condition 8** provided in the Schedule of draft Proposed Conditions attached to the draft Authorisation in **Annex 1** of this Recommendation Report, specifies that entry is only authorised if the activities undertaken in connection with

such entry will not constitute an offence in themselves and subject to all necessary consents, if any, in relation to the carrying out of the surveys having first been obtained.

1 July 2013



## ANNEX 1 – DRAFT AUTHORISATION

### AUTHORISATION UNDER SECTION 53 OF THE PLANNING ACT 2008

#### LAND ADJOINING [REDACTED]

#### PURSUANT TO A REQUEST RECEIVED ON 2 APRIL 2013 BY THE PLANNING INSPECTORATE

1. For the purposes of this Authorisation, the following words have the following meanings:

'Act'	the Planning Act 2008 (as amended)
'Applicant'	Wrexham Power Limited (Company Registration number 06762265) whose registered office is Sir Stanley Clarke House, 7 Ridgeway, Quinton Business Park, Birmingham, West Midlands B32 1AF
'Authorisation date'	the date of this Authorisation
'Authorisation period'	the period from the Authorisation date to the Expiry date (both dates inclusive)
'Authorised Persons'	The Applicant and any persons authorised by the Applicant
'Conditions'	the conditions set out in Annex 1 of this Authorisation
'Expiry date'	[DATE] or (if earlier) the date of submission of an application for development consent for the Project pursuant to s37 of the Act
'Land'	Land shown for identification purposes coloured green on the plan attached to this Authorisation within the boundaries of land registered at HM Land Registry with title absolute under title number CYM413391
'Landowners'	[REDACTED]
'The Occupiers'	means the Landowners, their successors in title, and any such other person as may be notified to the Applicant as being in occupation of the Land or any part thereof
'The Project'	the proposed Wrexham Energy Centre

2. In exercise of the power conferred on the Secretary of State for Communities and Local Government ('the Secretary of State') by

Section 53(1) of the Act the Secretary of State authorises the Authorised Persons to enter onto the Land for the following purposes:

- a. surveying and taking levels of it; and
  - b. in order to facilitate compliance with the provisions mentioned in Section 53(1A) of the Act.
3. This Authorisation is granted for the Authorisation period.
  4. This Authorisation is given subject to compliance with the Conditions which are necessary to ensure that the Occupiers' legitimate interests are protected.

**Mark Southgate**  
**Director of Major Applications & Plans**  
**For and on behalf of the Secretary of State for Communities and Local Government**

**[Date]**

## THE SCHEDULE OF DRAFT CONDITIONS

### 1. Interpretation

In these Conditions the following words and expressions shall, unless otherwise stated, have the following meanings:

"Applicant"	Wrexham Power Limited (Company Registration number 06762265) whose registered office is Sir Stanley Clarke House, 7 Ridgeway, Quinton Business Park, Birmingham, West Midlands B32 1AF
"Application"	the application pursuant to section 53 of the Planning Act 2008 (as amended) made by the Applicant in respect of the Land in a letter dated 2 April 2013 to the Planning Inspectorate
"Authorisation"	the authorisation granted by the Secretary of State pursuant to the Application
"Authorised Persons"	the Applicant and any persons authorised by the Applicant to carry out the Surveys
"Surveys"	means Non-intrusive surveys of the Land including, but not limited to, non-intrusive environmental surveys, archaeological surveys or engineering surveys
"Non-intrusive surveys"	walkover surveys excluding any works to search and bore and including the taking of measurements and levels by non-intrusive equipment and methods and the taking of photographic records
"Land"	Land shown for identification purposes coloured green on the plan attached to this Authorisation within the boundaries of land registered at HM Land Registry with title absolute under title number CYM413391
"Landowners"	
"Occupiers"	means the Landowners, their successors in title, and any such other person as may be notified to the Applicant as being in occupation of the Land or any part thereof

- "Working day" any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday
- "Working hours" the hours between 7.00am and 7.00pm of any Working day

- 2 In these Conditions unless the context otherwise requires:
- a. any gender includes any other gender;
  - b. the singular includes the plural and vice versa;
  - c. references to persons include natural persons, firms, companies, corporations and their successors in title;
  - d. the headings are for convenience only and do not affect interpretation; and
  - e. any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation from time to time.

### **General**

- 3 Entry onto the Land is authorised only:
- a. for the authorised Surveys;
  - b. for the purposes of surveying and taking levels of the Land and to facilitate compliance with the Environmental Impact Assessment Directive<sup>4</sup>, the Habitats Directive<sup>5</sup> or any European Union instrument which replaces all or any part of these Directives;
  - c. on Working days; and
  - d. during Working hours (unless for the purpose of carrying out surveys for the presence of bats).
- 4 No Authorised Person shall enter the Land otherwise than in accordance with the Authorisation and these Conditions.
- 5 The Authorised Persons' right of entry onto the Land pursuant to the Authorisation shall immediately cease if any Authorised Person is in breach of the Authorisation or any of these Conditions.
- 6 These Conditions subject to which the Authorisation is given are in addition to the provisions of section 53 of the Planning Act 2008 (as amended) ("Section 53") and if there is any conflict between the Conditions and the provisions of Section 53 the latter shall prevail.
- 7 The Occupiers retain control, possession and management of the Land and the no Authorised Person has the right to exclude the Occupiers from the Land.

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4 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time.

5 Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time.

- 8 Entry onto the Land is authorised only:
- a. provided the activities undertaken in connection with the Survey(s) will not constitute an offence in themselves; and
  - b. subject to all necessary consents (if any) in relation to carrying out the Survey(s) having first been obtained.

**Carrying out the Survey(s)**

- 9 In carrying out the Survey(s) the Authorised Person shall:
- a. cause as little damage as is possible and upon completion of the final Surveys, or if earlier on the expiry of the Authorisation, shall make good any damage caused to the reasonable satisfaction of the Occupiers and remove any apparatus or equipment taken on to the Land by the Authorised Person in connection with the Surveys on completion of the same;
  - b. not do any act, matter or thing which would or might constitute a breach of any law (including without limitation common law), statute, regulation, rule, order, byelaw or notice, or which would or might vitiate in whole or in part any insurance effected by or on behalf of the Occupiers in respect of the Land from time to time;
  - c. provide details at least 48 hours prior to the Survey of the names and contact details for all persons undertaking the Surveys;
  - d. provide at least 48 hours prior to the Survey full details of the areas to be Surveyed, the nature and timing of said Surveys together with access routes;
  - e. at all times take all measures as are reasonably necessary to maintain the same level of security in respect of the Land which would exist but for the undertaking of the Survey(s) to include leaving all gates as found;
  - f. not cause any nuisance, disturbance, annoyance, inconvenience or unreasonable interference to the Occupiers or to adjoining and/or neighbouring property and/or to the owners, occupiers or users of such adjoining or neighbouring property;
  - g. prepare a pre-entry photographic record of condition and provide a copy to the Occupiers;
  - h. not display any signs or notices at the Land other than those required pursuant to statute;
  - i. not interfere with the existing use of the land other than to the extent reasonably necessary to carry out the Survey(s);
  - j. contact the Occupiers when leaving the Property; and
  - k. observe the Occupiers' reasonable health and safety policies and site rules previously notified to the Authorised Person in writing.

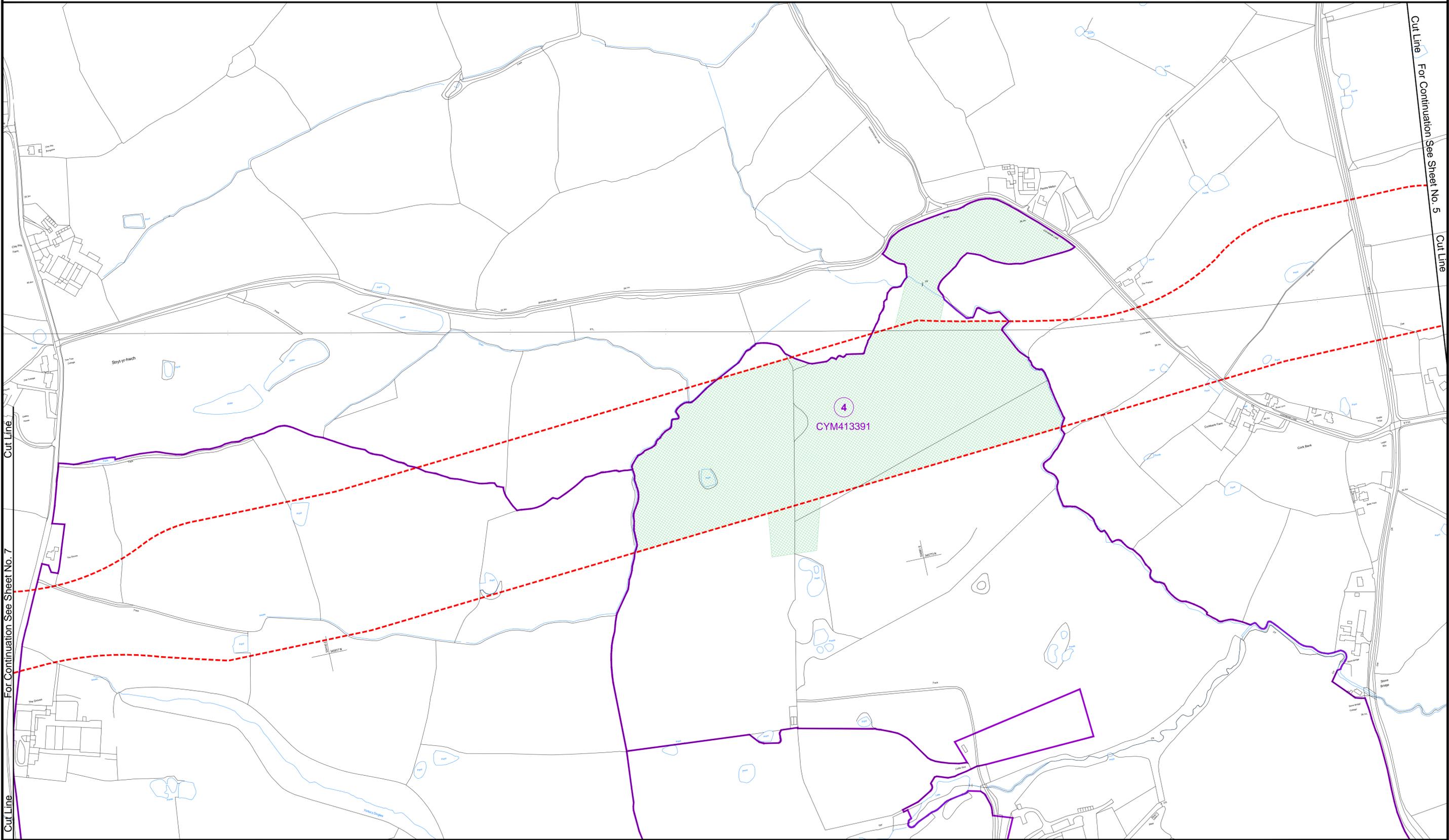
## **Insurance**

10 The Applicant shall:

- a. subject to provision of written evidence of such requirements, pay on demand the reasonable and proper cost of any additional insurance premiums payable by the Occupiers which may have become payable as a result of the Authorisation; and
- b. ensure that those who work on its behalf hold suitable and adequate insurance in respect of public and third party liability and provide proof of said insurance to the Occupiers prior to carrying out the Surveys.

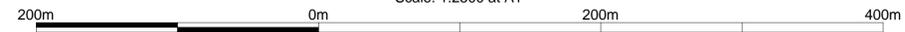
## THE PLAN IDENTIFYING THE LAND

# Wrexham Energy Centre



  
 Date: 02/04/2013  
 Ref: J:\12-13\CGD12\_63 Wrexham Energy Centre\Dep Plans  
 Plan No: Dep Plans

**TITLE:**  
 Parcel 4, as shown on Sheet 6 of Plan A

Scale: 1:2500 at A1  


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**KEY:**

-  The extent of the proposed Power Island
-  Land under the control of the Applicant (Wrexham Power Limited)
-  The extent of land ownership boundaries
-  Land over which rights of entry are sought
-  The extent of the route corridors (illustrative only and subject to consultation) within which the proposed gas/electricity connections may be located
-  Parcel Number

