



24 February 2021

By Email

Planning Inspectorate

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Dear Sir/Madam

SCOTTISH POWER – EAST ANGLIA ONE NORTH AND EAST ANGLIA TWO

REFS – 20024254 & 20024255

Please find attached my post CAH2 submission.

As affected person I confirm that I wish to speak at Compulsory Acquisition Hearing 3 on 18 March 2021.

Yours faithfully

Michael Mahony

EAST ANGLIA ONE NORTH OFFSHORE WINDFARM
EAST ANGLIA TWO OFFSHORE WINDFARM



CAH2: WRITTEN SUMMARY SUBMISSIONS ON BEHALF OF
MICHAEL MAHONY MOOR FARM, FRISTON

A. INTRODUCTION

1. This is a summary of the submissions given by and on behalf of Mr Mahony (“MM”) at Compulsory Acquisition Hearing 2 (“CAH2”), which was held on 16 February 2021. In summary, the Applicant seeks extensive powers of MM’s land, for which no or no sufficient justification has been provided.

B. CONTEXT

2. MM’s written reps can be found at [REP1-291]. A satellite image showing his property can be found at p.2. The Applicant proposed to undertake realignment works to the north east of tower Zx022, which will include the replacement of tower Zx021. At the hearing a witness for National Grid Electricity Transmission (“NGET”), Mr Kudie Marawanyika confirmed that no works of realignment are planned to the south west of Zx022. The Applicant seeks to acquire permanent and temporary possession of land owned by MM.

C. SUBMISSIONS

Physical extent of Plot 116

3. Plot 116 can be found on Sheet 9 of the current land plan [REP1-004]. The Applicant seeks temporary possession of Plot 116 for *“the construction, operation and maintenance of temporary overhead lines. The land will also be used temporarily for areas for works associated with National Grid infrastructure and for access to these works, including any ancillary works necessary to facilitate said access”*. A summary of the powers sought over Plot 116 can be found at §§20-23 of [REP1-291].
4. Whilst it is noted that the western boundary of Plot 116 has been moved to the east since the submission of MM’s written representations, three issues still arise.

Issue 1: Lack of clarity over the location of the western boundary

5. The western boundary to Plot 116 abuts a substantial hedgerow which provides a screen between the residential curtilage to MM's property and an agricultural field (owned by him) to the east. MM noted that the plans produced by the Applicant leave some uncertainty as to whether this hedge is intended to be included within Plot 116. On behalf of the Applicant, ██████████ confirmed that Plot 116 does not include this hedge. MM awaits a written undertaking from the Applicant.

Issue 2: Plot 116 should be moved further to the east

6. Although the Applicant has reduced the amount of residential land included within Plot 116, MM still faces the prospect of works being undertaken immediately to the east of his garden hedge. This is likely to result in considerable interference with his amenity, engaging his rights under Article 8 ECHR. It is for the Applicant to demonstrate that the acquisition of this land is reasonably necessary for the purpose of the development and that any interference with MM's rights is proportionate.
7. Despite this matter having been raised by MM prior to the commencement of the examination, neither the Applicant nor National Grid Energy Transmission ("NGET") – for whose benefit this land is sought – have provided any justification for requiring such a large amount of land, particularly given that no realignment works are proposed in this area. Having failed to engage with MM at all to date, NGET attended CAH2. It was extraordinary to note that, when asked by the Panel, NGET's technical witness ██████████ was unable to state the minimum amount of land NGET required either side of the electricity line or to provide any specific justification for requiring the temporary possession of this section of MM's property.
8. MM understands that NGET will seek to provide further evidence on this point in writing. However, as a result of NGET's wholly unreasonable approach, neither MM nor any other party will have the opportunity to test this evidence at a hearing. It is submitted that whatever *ex post facto* justification is submitted should be treated with extreme caution and given little, if any, weight by the Panel.

Issue 3: Part of Plot 116 still encroaches upon MM's residential curtilage

9. As can be seen from the land plan, Plot 116 still includes part of MM's residential land. As the Panel will recall from its site visit, this land includes several semi-mature trees.

The compulsory acquisition of a person's residential land (even temporarily) plainly engages Article 8 ECHR to a significant extent and requires particular justification.

10. At the hearing NGET submitted that this land was required to facilitate the construction of temporary scaffolding and netting to protect users of the highway immediately to the south from falling objects during the realignment works. However, this land is not under the path of the existing electricity lines. It therefore remains unclear why scaffolding or netting would be required there. Again, despite being present at the hearing, NGET was not able to assist the Panel on this point.

The extent of the rights being sought over Plots 115 and 116

11. As explained at §§31-2 of MM's written representations [REP1-291], National Grid already benefits from permanent rights over Plots 115 and 116 (save for that part which is within MM's residential curtilage) by virtue of the Deed of Grant dated 16.08.02 between (1) Charles Grenville Vernon Wentworth and (2) The National Grid Company plc.
12. National Grid has never raised any concern about the adequacy of the rights contained in the Deed to enable it to maintain and repair the electricity lines and towers on MM's land. Whilst it is accepted that the Applicant may need some additional rights to undertake the realignment works, once completed there is no basis for it to retain any rights above and beyond those already contained within the Deed.
13. Despite this, the permanent powers sought over Plot 115 (see Sch 7 to the Draft DCO [REP5-003]) and the temporary powers sought over Plot 116 (see Arts. 26-7 of the Draft DCO) do go beyond those contained within the Deed (for example by providing powers to remove buildings and structures, use land as a temporary worksite and construct drains).
14. In response to MM's submissions, NGET's representative stated that the temporary possession rights contained in the Draft DCO were "*standard*" for these types of development and that it will not be necessary to exercise all of the powers sought over all of the land acquired. Whilst this may or may not be "*standard*" practice, it remains the case that the Applicant is required to justify any right sought and may not acquire more than is reasonably necessary. If, as NGET appears to accept, it does not intend to exercise

these additional powers over Plots 115 and 116, then it follows that it cannot meet this requirement.

15. MM is also concerned about the following reason given in the Statement of Reasons for acquiring Plot 116 which states (emphasis added) that it will be required for *“the construction, operation and maintenance of temporary overhead lines. The land will also be used temporarily for areas for works associated with National Grid infrastructure”*. He requires clarification as to whether the *“National Grid Infrastructure”* is a reference to the pylons and lines which will cross his land and nothing more and separate from the lines, pylons, substation and cable sealing ends on the land to the north). No justification has been provided for why temporary possession of Plot 116 would be reasonably required to facilitate this work nor could there be one since the Applicant is already acquiring independent access to the substantial parcel of land on which these works will sit. This is a very material point in relation to the substation and cable sealing ends since the duration of the overhead line work has been stated to be 12 months in a period of 36 months whereas the duration of the remainder of the National Grid infrastructure is stated to be up to 48 months, four times as long.
16. Finally, and without prejudice to the foregoing, MM agrees with the observations of the ExA [PD-031, p.18] that the 14 day notice period provided for in Art. 26 of the DCO is both inadequate and inconsistent with the 28 days period provided for in Art. 27.

Plot 117A

17. Plot 117A is a strip of land on the northern edge of the Saxmundham Road which is assumed to be owned by MM. It extends along the south of MM’s residential property and includes the principal access. In the Applicant’s response to MM’s relevant representations on this point [AS-037] it stated that temporary possession of this land was required for the erection of scaffold protection over the highway. This position was affirmed in the Applicant’s response to MM’s written representations [REP2-018, p.53].
18. However, at the hearing, NGET (again for the first time) stated that in fact temporary possession of the land to the south of MM’s residence is required merely to erect signage. It also confirmed that MM’s access would not be impeded. MM does not object to its acquisition on this basis, although a written undertaking from the Applicant is awaited. This does, however, raise a broader concern about the confused and inconsistent

approach that the Applicant has taken to the acquisition of land. It would appear that, at least in some cases, it has identified land that it considers it may require before it has fully considered why it may require it.

Plots 126 & 117

19. These plots are strips of land on the boundary between the Saxmundham Road and MM's property. This boundary is marked by a mixed hedge which provides essential screening from the road for MM's property. According to the Applicant's Statement of Reasons, temporary possession of these plots is required to remove vegetation and increase visibility swathes on the approach to the proposed operational access road.
20. Shortly prior to the hearing, the Applicant suggested that, in fact, temporary possession of these plots is only required to cut back overhanging or impeding vegetation from the highway as required to allow the passage of heavy loads [REP2-018, p.52]. At the hearing, the Applicant confirmed that the rights sought were no more extensive than those of a highways authority. MM does not object to its acquisition on this basis, although a written undertaking from the Applicant is awaited.

Plot 114

21. This plot is a public footpath immediately to the north of the agricultural field owned by MM. The Applicant seeks to acquire this land so that it can be used for the operational access road. However, since the application was submitted, the Applicant has accepted changes to the design of the proposed substations to the north of the plot, which has led to them being reduced in size. As can be seen from the Outline Landscape Mitigation Plan ("OLMP") [REP4-015, fig. 3], as a result of this, there is now scope to move the operational access road to the east away from Plot 114. It follows that the acquisition of this land is not reasonably necessary and therefore not justified.

Hedgerows & trees

22. MM expressed concern about the effects of the proposed development on a number of the hedgerows present on his property. He drew attention to [APP-020, sheet 9] which shows those "*important*" hedgerows which the Applicant intends to remove in the vicinity of MM's property. He also noted the comments from East Suffolk Council [REP5-010, p.22, item 15] which question whether the removal of these hedges is justified.

23. MM adopts these concerns. However, he is also concerned about the possibility that other hedgerows (including those surrounding his land – including those adjacent to or within Plots 115, 116, 117, 117A 128 and 129) have been marked for removal but not necessarily deemed “important”. This would give rise to loss of privacy and potential ecological harm. MM agrees with the ExA [PD-031, p.19] that further information and clarification is required on this point.
24. Further, MM notes that Arts. 34-35 of the DCO do not include any requirement for the undertaker to provide advance notice of works to fell or lop trees. These provisions should be amended to include a stipulation that no such works may take place unless the undertaker has notified the landowner with notice in writing specifying the proposed works no less than 28 days in advance.

Further observations on the wording of the Draft DCO

25. MM has considered the ExA’s observations on the wording of the Draft DCO [PD-031] and would add the following submissions to those made above:
 - a. As the ExA points out, Art. 5 does not require approval from the Secretary of State for assignment of the benefit of the order to another Electricity Act 1989 licensed generating undertaker. There would appear to be no obvious basis for this exclusion, which plainly prejudices affected persons.
 - b. Article 20 provides the undertaker with the power to acquire rights and impose restrictive covenants on the order land. Unlike Art.18 (compulsory acquisition of land) this power is not made subject to Article 26. There would appear to be no obvious basis for this discrepancy which may allow the undertaker to acquire more rights than those set out in Article 26 and/or for purposes other than those specified in Sch. 9.
 - c. As the ExA points out, Art. 21 does not explain whether the Applicant intends to suspend, over-ride or extinguish the private rights and further clarity is required, not least for affected persons who will need to know what the position of these rights will be during and after completion of the project.

- d. MM agrees with the ExA that the rights set out in Sch. 7 are too broad and that insufficient justification has been provided for them. MM has made specific submissions about Plot 115 above.

Submissions by National Grid concerning Infrastructure Design and Cumulative Impact

26. At the hearing Counsel for NGET was asked whether the National Grid substation would be reduced in size if only one of the Applicants' projects was built. This was referred to as the "downward case". The answer to that question was no. Clearly if only one of the projects were built the benefits in terms of the generation of renewable energy would be reduced by approximately half depending which of the projects was constructed. However given National Grid's position the environmental impacts of the National Grid infrastructure (which includes not only the substation but the three cable sealing ends and the pylon works) would be unchanged. Aside from this materially affecting the question of whether the adverse impacts outweigh the benefits, it also shows a complete lack of concern as to the environmental impacts of this infrastructure. If National Grid had any concern for environmental impacts it would be seeking to reduce the size of this infrastructure. This is consistent with National Grid not even taking the smallest steps to improve the size/design of its infrastructure, which has previously been described as "standard" by lawyers representing National Grid. In short it shows a complete disregard for environmental impacts. This is consistent with National Grid's approach to compliance or rather non-compliance with Schedule 9 of the Electricity Act 1989 which was the subject of submissions by SASES at ISH2 and its subsequent post hearing submission. It also demonstrates that National Grid has little or no regard for the requirements of "good design" and "sustainability" under EN-1, EN-3 and EN-5.
27. Counsel for National Grid was also asked about what was termed the "upward case" namely the use of the National Grid infrastructure and its expansion for the other offshore energy projects which will or are highly likely to connect at Friston. National Grid sought to distance itself from the National Grid Venture's documents which refer to both connecting at Friston and the extent to which the National Grid substation would need to be expanded. As MM submitted at the hearing this argument is not tenable because:

- a. in order to make the connection offer at Friston a CION assessment has been conducted and all National Grid divisions would have been involved in that assessment process: and
 - b. National Grid Ventures would not have made a statement concerning the extent to which the National Grid substation would need to be extended without discussing that matter with and seeking guidance from the other parts of National Grid.
28. It is understood that SASES may make its own submissions on this topic at Deadline 7 following the submission by National Grid its written statement of oral case at Deadline 6.

END