



SPR EA1N and EA2 PROJECTS

DEADLINE 7 – SUBMISSION IN RESPECT OF OPERATIONAL LAND

Interested Party: SASSES **PINS Refs:** 20024106 & 20024110

Date: 4 March 2021 **Issue:** 1

1. This is response to the answers provided by the Applicants and NGET to the ExA's question 2.0.1 (see REP6-059 and REP6-110)
2. The responses from the Applicants and NGET fail to grapple with the point that any land acquired pursuant to the DCOs risks being regarded as operational land ("OL") for the purposes of PD rights. The definition of OL in s 263(1) Town and Country Planning Act 1990 includes two types of land:
 - a. land which is used for the purpose of carrying on their undertaking; and
 - b. land in which an interest is held for that purpose.
3. The Encyclopedia of Planning Law and Practice recognises (Vol 2, P263.04) that the definition of OL would include "land which the undertaker now owns for future operational use" (because that is land "in which an interest is held" for the purpose of the carrying on their undertaking). Accordingly OL is not necessarily limited to land which is "within the finished compounds" (Applicants) or "within the CSECs and substation compound fence lines" (NGET). It is capable of extending to land which is acquired by the "undertakers" (whether the Applicants, or NGET, or a person taking the benefit of the DCOs), but not within the substation compounds in the final design, so long as the land is still held for the (future) purpose of carrying on their undertaking. In any event, the "finished compounds" or "compound fence lines" may extend well beyond the area actually required to accommodate the infrastructure concerned (the extent of the compounds being a matter for the undertaker to determine).
4. As SASSES has explained, this is particular concern because the land capable of being acquired under the dDCOs may be far greater than that which might ultimately be required for the authorised development. It follows that land could be acquired pursuant to the DCOs and continue to be held "for the purpose of carrying on their undertaking" even though it fell outside the land requirements for the substations, CSECs etc. upon detailed design. This land may still be regarded as OL, and thus attract permitted development rights.
5. The effect of Article 33 in the dDCOs is to mean that the land which has the benefit of development consent – which is the whole of the land to be permanently acquired under the dDCOs – is all to be treated as benefiting from a specific planning permission for the purposes of s 264(3). This means that all of that land is and will remain OL unless it is neither used for the undertaker's purpose, nor still held by it for its purpose. Thus, for example:

- a. NGET could acquire (whether by taking the benefit of the DCOs, or by being transferred the land following acquisition by another) all of the land within the Order Limits that it considers is might be necessary for delivering its substation and CSECs;
 - b. It could then promote detailed designs which only use 50% of that land for the authorised development, and build out the authorised development accordingly;
 - c. It could continue to hold the balance of the land with a view to future projects and would thereby hold that land for the purpose of its undertaking. In light of the deeming provision in Article 33, and the definition in s 263(1)(b) TCPA 1990, that would continue to be OL.
6. It follows that neither the Applicants nor NGET properly grapple with the issue raised by SASES in respect of the extent of OL. The issue still falls to be addressed.
 7. SASES endorses the approach of East Suffolk Council, which has been further explained and justified in answer to the ExA's question 2.0.2 at D6 (REP6-079). SASES agrees that the particular sensitivity of Friston and the prospect of further development justifies the removal of PD rights. The uncertain extent of OL, and the risk that it may extend substantially beyond the land actually required for the authorised development following detailed design, provides a further justification for this approach.

Richard Turney
Landmark Chambers

4 March 2021