



Stonestreet Green Solar

Statement of Common Ground with Network Rail Infrastructure Limited (Tracked)

PINS Ref: EN010135
Doc Ref. 8.3.8(A)
Version 2
Deadline 2
January 2025

EP Rule 8(1)(e)
Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010



Revision History

Revision	Revision Date	Authorised By	Position	Comment
Issue 1	19/11/24	MS	Senior Director	For NR Review
Issue 2	9/12/24	SS		For NR Comments
Issue 3	9/12/24	MS	Senior Director	Finalisation
Issue 4	6/1/25	MS	Senior Director	Updates to reflect WR

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1 Introduction

1.1 Purpose of this Statement of Common Ground

- 1.1.1 This Statement of Common Ground ('SoCG') has been prepared to support an application (the 'Application') for a Development Consent Order ('DCO') from the Secretary of State for Energy Security and Net Zero under Section 37 of the Planning Act 2008 ('PA 2008') for the proposed Stonestreet Green Solar (the 'Project'). The Application has been submitted by EPL 001 Limited (the 'Applicant').
- 1.1.2 This SoCG has been prepared between (1) the Applicant and (2) Network Rail ('NR') (jointly referred to as the 'Parties'). It has been prepared in accordance with The Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects guidance¹.
- 1.1.3 NR is listed as a prescribed consultee in Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009² and so has been consulted during the preparation of the Application and following its acceptance.
- 1.1.4 The Examining Authority has requested that the SoCG include the following matters as set out in the Rule 6 Letter, [\[PD-004\]](#) Annex G (dated 22 October 2024):
- Potential cable routes under the rail line including suitability and specification; and
 - The draft DCO ('dDCO'), including protective provisions.
- 1.1.5 It is agreed that any matters not specifically referred to in this SoCG are not of material interest or relevance to the representations submitted to the Examining Authority by NR (the 'Representations') and therefore have not been considered in this document.
- 1.1.6 This SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Parties, where agreement has not been reached (and that is the Parties' final position) and where discussions are still ongoing. This SoCG will be revised and updated as discussions between the Parties progress during the Examination.

1.2 Description of the Project

- 1.2.1 The Project comprises the construction, operation and maintenance, and decommissioning of solar photovoltaic ('PV') arrays and energy storage, together with associated infrastructure and an underground cable connection to the existing National Grid Sellindge Substation.
- 1.2.2 The Project will include a generating station (incorporating solar arrays) with a total capacity exceeding 50 megawatts ('MW'). The agreed grid connection for the

Project will allow the export and import of up to 99.9 MW of electricity to the grid. The Project will connect to the existing National Grid Sellindge Substation via a new 132 kilovolt ('kV') substation constructed as part of the Project and cable connection under the Network Rail and High Speed 1 ('HS1') railway.

1.3 Current Position

- 1.3.1 Section 2 of this SoCG addresses the position of the Applicant and NR, following a series of meetings and discussions with respect to the key areas of the Project and the Representations.
- 1.3.2 This is intended to be a 'live' document and some aspects are still under discussion between the Parties. The intention is to provide a final position in subsequent versions of the SoCG, addressing and identifying where changes have been made and ultimately both Parties agree on relevant points.

1.4 Record of Engagement

- 1.4.1 The Applicant has been engaged in consultation and engagement with NR throughout the development of the Application. The Applicant consulted NR as a prescribed consultee, in accordance with section 42 of the PA 2008, about the Project and environmental impact assessment as part of the formal pre-application consultation procedure. This process afforded NR the opportunity to provide responses to the information in various stages of the pre-application process.
- 1.4.2 As highlighted in Table 1.1 below, the Applicant has provided a number of opportunities for NR to engage in the Project during the pre-application stage.
- 1.4.3 Table 1.1 shows a summary of the meetings and correspondence that has taken place between the Applicant (including consultants on its behalf) and NR in relation to the Application.

Table 1-1: Record of Engagement

Date	Form of correspondence	Key topics discussed and outcomes
May 2022	The Applicant wrote to NR to confirm land ownership details and other affected parties.	Land ownership details.
October 2022	The Applicant wrote to NR inviting it to take part in the statutory consultation that took place between 25 October and 29 November 2022.	n/a

Date	Form of correspondence	Key topics discussed and outcomes
17 April 2023	The Applicant met with NR.	Connection to the Sellindge Substation via ducts under the railway line and potential works required.
4 May 2023	The Applicant met with NR.	Connection to the Sellindge Substation via ducts under the railway line and potential works required.
June 2023	The Applicant wrote to NR inviting it to take part in the statutory consultation that took place between 12 June and 17 July 2023.	n/a
30 June 2023	The Applicant met with NR.	Connection to the Sellindge Substation via ducts under the railway line and potential works required.
November 2023	The Applicant wrote to NR inviting it to take part in a targeted consultation that took place between 13 November and 13 December 2023.	n/a
January 2024	The Applicant wrote to NR requesting comments on the protective provisions.	Protective provisions.
February 2024	NR provided updated protective provisions. The Applicant responded.	Protective provisions.
April 2024	NR and the Applicant's solicitors met to discuss the protective provisions.	Protective provisions.
April 2024	NR wrote to the Applicant requesting details regarding the Project and interaction with NR infrastructure. The Applicant resent plans and	Project details.

Date	Form of correspondence	Key topics discussed and outcomes
	details that had previously been provided.	
May 2024	The Applicant's solicitors contacted NR's solicitors to request comments on the protective provisions that had been provided in February 2024.	Protective provisions.
June 2024	NR wrote to the Applicant to explain that any new infrastructure crossing NR land would require a new land agreement, notwithstanding the cable ducts already exist and a land agreement has been granted to UKPN for their use. The Applicant responded and requested a meeting with NR.	Land agreement.
August 2024	The Applicant, NR and UKPN met to discuss the NR requirements regarding protective provisions and other documentation.	Protective provisions
September 2024	NR provided updated comments on the protective provisions to the Applicant.	Protective provisions
October-November 2024	NR and UKPN engaged to agree protection agreements to allow UKPN to confirm the existing ducting is suitable for the grid connection cable.	Protective provisions.
November 2024	The Applicant provided responses to NR's comments on the protective provisions.	Protective provisions
December 2024	NR submitted Written Representation for	Protective Provision, Article 7(3)(c) and Existing Rights

Date	Form of correspondence	Key topics discussed and outcomes
	Deadline 1 of the Examination	

1.4.4 It is agreed that this is an accurate record of the key meetings and consultation undertaken between the Parties in relation to the issues addressed in this SoCG as at the date of this SoCG.

1.5 Format of Document and Terminology

1.5.1 This SoCG has been structured to reflect matters and topics of interest to NR in relation to the Project as set out in the Representations.

1.5.2 Section 2 summarises the issues that are ‘agreed’, ‘not agreed’ or are under discussion under the topics of interest in Table 2.1.

1.5.3 The following terminology is applied in Section 2:

- ‘Agreed’ indicates where the issue has been resolved.
- ‘Not Agreed’ indicates a position where both Parties have reached a final position that a matter cannot be agreed between them.
- ‘Under Discussion’ indicates where points continue to be the subject of on-going discussions between Parties.

1.5.4 For any issues that are 'Under Discussion', the Parties have also indicated the likelihood that disagreement will remain by the end of the Examination using a “Low” (Green), “Medium” (Amber) and “High” (Red) traffic light model, as requested in the Rule 6 letter.

2 Areas of Discussion between the Parties

Table 2-1: [Areas of Discussion](#) [Cable Routes](#)

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
1.	Examining Authority Rule 6 Letter, Annex G	Potential cable routes under the rail line including suitability and specification	<p>NR require certainty on the use of the existing ducting and confirmation on the cable route(s). This information is imperative for NR to assess the impact of the DCO and determine which agreements and conditions need to be in place to ensure NR's land and assets are protected.</p> <p>NR have only received confirmation from UKPN on cable route(s) today (9 December 2024). NR therefore require time to review.</p>	<p>UKPN is contractually required to provide all aspects of the Grid Connection for the Project from the Project Substation to the point of connection at the UKPN substation, within the National Grid Sellindge Substation. This includes the cable connection. The Applicant and UKPN expect to utilise existing electrical ducting under Network Rail's infrastructure and Network Rail has indicated a strong preference for this approach as otherwise a new undertrack crossing ('UTX') would be required.</p> <p>UKPN is in the process of confirming the existing electrical ducting is of sound quality and is expected to be able to confirm this before the end of November 2024. Deadline 2.</p>	In discussion

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
2.	Examining Authority Rule 6 Letter, Annex G	The dDCO, including protective provisions	NR would like to protect its position to raise any comments in the future (if required)	With the exception of the protective provisions, NR has not raised any comments on the dDCO.	In discussion
3.2	Para 3, Representation Paras 1.5 to 1.7 and Section 3, WR to Deadline 1	Protective provisions Potential cable routes and clearance	<p>NR note that the dDCO currently does include protective provisions for the protection of the railway however it is a version which has not yet been agreed with the NR. Therefore NR wishes to use its standard protective provisions, on the face of the dDCO, which will be necessary given the proximate location of the works to the railway.</p> <p>The outstanding issues in the protective provisions are subject to the framework agreement which was to be circulated after NR had certainty over the cable routes.</p> <p>NR have provided a draft framework agreement and returned the draft protective provisions to the Applicant on 9 December 2024. Network Rail have been</p>	<p>Discussions have been ongoing between the Applicant and NR regarding the protective provisions since early 2023.</p> <p>The version of the draft protective provisions as at the date of submission of the Application is included in Part 7 of Schedule 13 to the Draft DCO (Doc Ref. 3.1 (B)). The Applicant has informed NR that it has included the Applicant's preferred form of protective provisions in the dDCO, but that these are subject to further negotiations between the Parties.</p> <p>An updated draft of the protective provisions was sent by the Applicant to NR on 13 November 2024. The Applicant notes Network Rail's comments regarding its internal clearance processes, and confirms it will</p>	In discussion

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
			<p><u>unable to assess the impact fully as EPL have not been able to confirm the cable route(s) and whether the existing ducting can be used or if new ducting is required to carry out the works. Network Rail only received confirmation on 9 December 2024 and has therefore not had the time to assess the impact.</u></p> <p><u>Network Rail is continuing to discuss with EPL arrangements to ensure that the proposed development can be carried out while safeguarding Network Rail's undertaking. Any agreed arrangements are subject to the outcome of Network Rail's internal clearance process which is detailed in section 3 below.</u></p> <p><u>In order to ensure that interests are protected, Network Rail requests the examining authority recommend the Network Rail's standard form of protective provisions are included as Part 7 of Schedule 13 to the DCO.</u></p> <p><u>Section 3</u></p>	<p><u>work with Network Rail as required in this regard.</u></p> <p><u>As confirmed in the response to Action Point 1 in the Applicant's Written Summary of Oral Submissions from Issue Specific Hearing 1 and Responses to Action Points (Doc Ref 8.5.3) [REP1-073], UK Power Networks has confirmed to the Applicant that it completed its investigations to consider the soundness of the existing ducts under the railway on 21 November 2024. UK Power Networks has further confirmed its intention to relocate the existing 33kV electrical cables to release one of the existing ducts to allow the installation of the new 132kV cable for the Project, which is the preferred option (Option A). However, to ensure that the delivery of the Project is not jeopardised in the event that unforeseen circumstances mean the existing ducts are not available to be used by the Project due to future damage or</u></p>	

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
			<p><u>Clearance is a two-stage process by which Network Rail's technical and asset protection engineers review a proposal before clearance can be granted for a proposal to proceed. Without confirmation of the cable route, Network Rail is unable to submit clearances. Until the outcome of the clearance process is known Network Rail is unable to comment fully on the impact of the proposals on its operational railway.</u></p> <p><u>Network Rail intends to keep the Examining Authority and EPL informed regarding the clearance process at the relevant examination deadlines.</u></p>	<p><u>other unforeseen circumstances, the land and rights needed for the alternative option of installing new ducts under the railway (Option B) are included within the Application. Please also see Action Point 4 in the Applicant's Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and Responses to Action Points (Doc Ref. 8.5.4) [REP1-074] in which the Applicant confirmed that the land needed for Option B has been included in the Book of Reference (Doc Ref. 4.1) [APP-019] and the Land Plans (Doc Ref. 2.1) [APP-007], to facilitate the construction of new ducts in the unlikely scenario that these are required.</u></p> <p><u>In response to Network Rail's comments relating to the inclusion of its standard form of protective provisions in Part 7 of Schedule 13 to the Draft DCO (Doc Ref. 3.1(C)) [REP1-006], the Applicant confirms that the parties are progressing</u></p>	

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
				<p><u>negotiations on the drafting of the protective provisions to be included in the Order. The Applicant provided the latest mark-up of the protective provisions to Network Rail's solicitors on 6 January 2025 and looks forward to receiving comments on the few remaining points outstanding. The relevant row in Table 3 of the Schedule of Negotiations (Doc Ref. 4.4(B))[REP1-014] documents the progress of discussions between the parties, and will be updated at each future deadline. The Applicant remains confident that agreement will be reached between the parties during the Examination.</u></p>	
4.	Para 4, Representation	Existing rights	<p>The dDCO proposes to include the power to compulsorily acquire new rights over plots 3/14, 3/15, 3/16, 3/17, 3/20, 3/21, 5/5, 5/6, 5/7, 5/12, 5/14, 5/16, 5/17, 5/18 and 5/19 as set out in Schedule 10 of the dDCO. NR will require its existing rights to</p>	<p>The Applicant and UKPN have been engaging with NR's Asset Protection Team. Discussions on the protective provisions are ongoing, as set out in this table. Plots 3/14, 3/15, 3/16, 3/17 and 3/20 relate to the compulsory acquisition of new rights as</p>	In discussion

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
			<p>be retained, as well any existing rights yet to be determined.</p> <p>In addition, the dDCO also seeks compulsory acquisition of plot 3/29, which NR has rights over (the extent of the right is yet to be reviewed).</p>	<p>detailed in Schedule 10 of the dDCO. NR is a Category 2 person as defined in Section 57 of the PA 2008 for these plots. The key works in these areas relate to installation of underground electrical cables and creation/upgrading of access to the Project Station.</p> <p>Plot 3/21 relates to the compulsory acquisition of new rights as detailed in Schedule 10 of the dDCO. NR is a Category 1 (freehold owner) person as defined in Section 57 of the PA 2008. The key works in this area involve vegetation clearance to ensure visibility for arriving construction traffic.</p> <p>Plots 3/29 relates to the compulsory acquisition of this area where NR is a Category 2 person as defined in Section 57 of the PA 2008. The key works in this area relate to installation of underground electrical cables and creation/upgrading of access to the Project Station.</p>	

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
				<p>Plots 5/5, 5/6, 5/7, 5/12, 5/14, 5/16, 5/17, 5/18 and 5/19 relate to the compulsory acquisition of new rights as detailed in Schedule 10 of the dDCO. NR is a Category 1 (freehold owner) person as defined in Section 57 of the PA 2008 for these plots. The key works in these areas relate to installation of underground electrical cables by UKPN. It is expected that this will utilise existing electrical ducting where NR/UKPN have already agreed a private agreement for such use. If this is not the case new private agreements will be required.</p>	
5.	Paras 5 and 6, Representation	Agreements	<p>NR will require the Applicant to:</p> <p>A) include NR's standard protective provisions in the DCO;</p> <p>B) potentially enter into a property agreement (easement) to govern the installation, operation and maintenance of any cable (subject to NR's asset protection process);</p> <p>and</p>	<p>See above responses to section 3 and section 4.</p>	In discussion

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
			<p>C) enter into a framework agreement that describes and attaches the documents referred to above, the protective provisions, clearance conditions and any necessary basic asset protection agreement, asset protection agreement, structures agreement or other engineering documents required for the benefit and protection of NR's assets.</p> <p>Without those agreements and satisfactory protective provisions being in place NR considers the proposed development, if carried out in relation to the aforementioned plots, would have serious detrimental impact on the operation of the railway and would prevent NR from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, NR is unable to withdraw its objection to the DCO.</p>		

Table 2-2 Protective Provisions

<u>Ref</u>	<u>Relevant Document</u>	<u>Description of Matter</u>	<u>NR Current Position</u>	<u>Applicant's Current Position</u>	<u>Status</u>
<u>3</u>	<u>Examining Authority Rule 6 Letter, Annex G</u>	<u>The dDCO, including protective provisions</u>	<u>NR would like to protect its position to raise any comments in the future (if required)</u>	<u>With the exception of the protective provisions, NR has not raised any comments on the dDCO.</u>	<u>In discussion</u>
<u>4</u>	<u>Para 3, Representation</u>	<u>Protective provisions</u>	<p><u>NR note that the dDCO currently does include protective provisions for the protection of the railway however it is a version which has not yet been agreed with the NR. Therefore NR wishes to use its standard protective provisions, on the face of the dDCO, which will be necessary given the proximate location of the works to the railway.</u></p> <p><u>The outstanding issues in the protective provisions are subject to the framework agreement which was to be circulated after NR had certainty over the cable routes.</u></p>	<p><u>Discussions have been ongoing between the Applicant and NR regarding the protective provisions since early 2023.</u></p> <p><u>The version of the draft protective provisions as at the date of submission of the Application is included in Part 7 of Schedule 13 to the Draft DCO (Doc Ref. 3.1 (C)) [REP1-006]. The Applicant has informed NR that it has included the Applicant's preferred form of protective provisions in the dDCO, but that these are subject to further negotiations between the Parties.</u></p> <p><u>An updated draft of the protective provisions was sent by the</u></p>	<u>In discussion</u>

<u>Ref</u>	<u>Relevant Document</u>	<u>Description of Matter</u>	<u>NR Current Position</u>	<u>Applicant's Current Position</u>	<u>Status</u>
			<u>NR have provided a draft framework agreement and returned the draft protective provisions to the Applicant on 9 December 2024.</u>	<u>Applicant to NR on 13 November 2024.</u>	
<u>5</u>	<u>Para 5.1, WR to Deadline 1</u>	<u>Protective provisions</u>	<u>As previously mentioned, the protective provisions included in the draft order are not the agreed version or Network Rail's standard protective provision. To ensure the safe and efficient operation of the railway network, it is essential that the development proceeds in consultation and agreement with Network Rail and that the form of the protective provisions annexed to these written representations is included in the final form of the Order instead.</u>	<u>The Applicant confirms that the parties are progressing negotiations on the drafting of the protective provisions to be included in the Order. The Applicant provided the latest mark-up of the protective provisions to Network Rail's solicitors on 6 January 2025 and looks forward to receiving comments on the few remaining points outstanding. The relevant row in Table 3 of the Schedule of Negotiations (Doc Ref. 4.4(B)) [REP1-014] documents the progress of discussions between the parties, and will be updated at each future deadline. The Applicant remains confident that agreement will be reached between the parties during the Examination.</u>	<u>In discussion</u>

Table 2-3 The dDCO

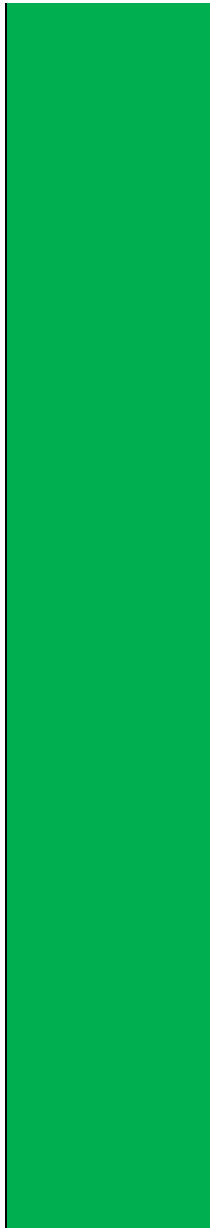
<u>Ref</u>	<u>Relevant Document</u>	<u>Description of Matter</u>	<u>NR Current Position</u>	<u>Applicant's Current Position</u>	<u>Status</u>
<u>6</u>	<u>Para 4, Representation</u>	<u>Existing rights</u>	<p><u>The dDCO proposes to include the power to compulsorily acquire new rights over plots 3/14, 3/15, 3/16, 3/17, 3/20, 3/21, 5/5, 5/6, 5/7, 5/12, 5/14, 5/16, 5/17, 5/18 and 5/19 as set out in Schedule 10 of the dDCO. NR will require its existing rights to be retained, as well any existing rights yet to be determined.</u></p> <p><u>In addition, the dDCO also seeks compulsory acquisition of plot 3/29, which NR has rights over (the extent of the right is yet to be reviewed).</u></p>	<p><u>The Applicant and UKPN have been engaging with NR's Asset Protection Team. Discussions on the protective provisions are ongoing, as set out in this table.</u></p> <p><u>Plots 3/14, 3/15, 3/16, 3/17 and 3/20 relate to the compulsory acquisition of new rights as detailed in Schedule 10 of the dDCO. NR is a Category 2 person as defined in Section 57 of the PA 2008 for these plots. The key works in these areas relate to installation of underground electrical cables and creation/upgrading of access to the Project Station.</u></p> <p><u>Plot 3/21 relates to the compulsory acquisition of new rights as detailed in Schedule 10 of the dDCO. NR is a Category 1 (freehold owner) person as</u></p>	<u>In discussion</u>

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defined in Section 57 of the PA 2008. The key works in this area involve vegetation clearance to ensure visibility for arriving construction traffic.

Plots 3/29 relates to the compulsory acquisition of this area where NR is a Category 2 person as defined in Section 57 of the PA 2008. The key works in this area relate to installation of underground electrical cables and creation/upgrading of access to the Project Station.

Plots 5/5, 5/6, 5/7, 5/12, 5/14, 5/16, 5/17, 5/18 and 5/19 relate to the compulsory acquisition of new rights as detailed in Schedule 10 of the dDCO. NR is a Category 1 (freehold owner) person as defined in Section 57 of the PA 2008 for these plots. The key works in these areas relate to installation of underground electrical cables by UKPN. It is expected that this will utilise existing electrical ducting where NR/UKPN have already agreed a private agreement for such use. If this is not the case new private agreements will be required.



7Paras 1.1 to 1.4,
WR to Deadline 1Existing rights

This written representation is submitted on behalf of Network Rail Infrastructure Limited (Network Rail) in response to the application by EPL 001 Limited (EPL) for the Stonestreet Green Solar Development Consent Order (the DCO).

The Book of Reference identifies several parcels of land where Network Rail are either landowner, riparian owner or have a right over. Network Rail are still in the process of reviewing these parcel and will update the ExA on the impact of each plot.

The DCO includes the power to compulsory acquire New Rights (as defined in the Book of Reference) over Plots 3/14,3/15,3/16,3/17,3/20,3/21, 5/5,5/6,5/7,5/12,5/14,5/16,5/17,5/18 and 5/19 as set out in Schedule 10 of the draft DCO.

Network Rail objects to any compulsory acquisition of new rights over operational railway land and objects to the seeking of powers to carry out works in the vicinity of the operational railway until relevant agreements have been entered into by EPL to ensure that Network

Please refer to the response provided above, which sets out the Applicant's position regarding the inclusion of compulsory acquisition powers in the **Draft DCO (Doc Ref. 3.1(C))**[REP1-006] to ensure that there is no impediment to the delivery of this nationally significant infrastructure project.

In discussion

Rail's interests as operator of the national rail network are properly protected and that Network Rail's ability to carry out its obligations as a statutory rail undertaker are not affected by the DCO.

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Paras 4.1 to 4.3, WR to Deadline 1

The dDCO

The draft Order seeks powers to compulsorily acquire new rights and impose restrictive covenants over the aforementioned plots which are plots of land either owned by Network Rail for the purpose of its statutory undertaking and is used for that purpose or are plots which Network Rail have rights over. In addition, EPL also seek to compulsorily acquire plot 3/29, which Network Rail has rights over. Those rights are wide ranging, and are set out in Schedule 10.

Network Rail does not consider that the scope of those rights is acceptable. The precise impact of the works on the railway line is yet to be fully assessed and the carrying out of any works is subject to the clearance process as explained above. Even if the impact of the physical works is considered acceptable, the rights sought are very wide-ranging and exercisable

The Applicant does not consider the scope of the rights it is seeking in the **Draft DCO (Doc Ref. 3.1(C))**[REP1-006] to be unacceptable. The **Statement of Reasons (Doc Ref. 4.2(A))** [REP1-010] explains why it is necessary, proportionate and justifiable for the Application to seek powers of compulsory acquisition for the Project, and why there is a compelling case in the public interest for the Applicant to be granted these powers. The relevant powers and the land and interests sought are no more than is required to facilitate the Project, its construction, operation, maintenance and decommissioning.

In particular, rights are sought over land owned by Network Rail and over which it has rights in order to facilitate the cable connection between the Project's

In discussion

over the entirety of the
aforementioned plots.

Network Rail considers that the
Secretary of State, in applying
section 127 of the Planning Act
2008, cannot conclude that the
acquisition of New Rights can be
exercised without detriment to the
carrying on of Network Rail's
undertaking, nor can any detriment
to the carrying on of the
undertaking, in consequence of the
acquisition of the rights, be made
good by the use of other land
belonging to, or available for
acquisition by, Network Rail unless
the requisite agreements are
entered into.

generating station and Sellindge
substation which will cross under
the Network Rail and High Speed
1 railway.

Paragraph 1.5.4 and paragraph
6.3.4 of the **Statement of
Reasons (Doc Ref. 4.2(A))**
[REP1-010] explain that the
Applicant has sought to acquire
the necessary land and rights by
agreement. Whilst it will continue
to seek to acquire the land and
rights by voluntary agreement, it
requires the powers of
compulsory acquisition sought in
the Application in order to provide
certainty that all the land required
for the Project can be acquired in
order to realise the Project's
significant public benefits. This
approach of making the
application for powers of
compulsory acquisition in the
Application for the Order and, in
parallel, conducting negotiations
to acquire land by agreement,
accords with paragraph 26 of
*Planning Act 2008: Guidance
related to procedures for the
compulsory acquisition of land*
(September 2013).

As explained in the relevant row
of Table 1 in the **Schedule of**

Negotiations (Doc Ref. 4.4(B)) [REP1-014], the Applicant, through its Grid Connection agreement with UKPN, intends to utilise existing agreements between UKPN and Network Rail to be able to install the cable route within the existing ducting underneath the railway, meaning that it is not currently anticipated that any rights belonging to Network Rail will need to be acquired.

Section 8.3 of the **Statement of Reasons (Doc Ref. 4.2(A))** [REP1-010] explains how, through the inclusion of protective provisions for the protection of statutory undertakers including Network Rail in the **Draft DCO (Doc Ref 3.1(C))** [REP1-006] which set out constraints on the exercise of the powers in the DCO, the Applicant considers that statutory undertakers' land or rights over land can be purchased without serious detriment to the carrying on of their undertakings, meaning that the tests set out in sections 127(2) and 127(5) of the Planning Act 2008 are satisfied.

9

Paras 4.4. WR to
Deadline 1

Article 7(3)(c) of the
dDCO

Network Rail is concerned that Article 7(3)(c) enables the benefit of the provisions of the Order to be transferred or leased to any person without the approval of the Secretary of State where the timeframe for all compensation claims has passed and all claims have been settled. After that point the benefit of the powers could be transferred without any scrutiny of the standing of the transferee by Secretary of State. However, that overlooks that there are provisions in Network Rail's protective provisions such as maintenance of the authorised development and indemnity provisions, for which there is an ongoing liability. Network Rail request that Article 7(3)(c) is deleted.

The Applicant does not consider that Article 7(3)(c) should be deleted. As is explained in section 3.5 of the **Explanatory Memorandum (Doc Ref 3.3(C))** [REP1-008], Article 7 is a standard article included in numerous made DCOs, including the **Cleve Hill Solar Park Order 2020** (Article 5), the **Longfield Solar Farm Order 2023** (Article 33) and the **Mallard Pass Solar Farm Order 2024** (Article 35). These three DCOs all contain the same provision as in Article 7(3)(c) of the **Draft DCO (Doc Ref. 3.1(C))** [REP1-006] which enables the benefit of the Order to be transferred without the consent of the Secretary of State where the timeframe for all compensation claims relating to the acquisition of land or rights over land has passed and all claims have been settled.

The Applicant considers that Network Rail's concerns are unfounded. The duties and requirements in the **Draft DCO (Doc Ref. 3.1(C))** [REP1-006] will be imposed upon the "undertaker", which is defined in Article 1 as the Applicant or any

In
discussion

person who for the time being has the benefit of the DCO in accordance with Articles 6 (benefit of the Order) and 7 (consent to transfer benefit of the Order). Therefore, any entity that undertakes the role of the undertaker, regardless of whether or not the consent of the Secretary of State is required for the transfer of the benefit to that entity, will be required to deliver the Project with adherence to the controls and commitments established for the Project through the DCO, including those set out in the protective provisions for the protection of Network Rail.

Breach of a provision in a DCO is a criminal offence pursuant to section 161 of the Planning Act 2008. Therefore, if the undertaker were to fail to adhere to the protective provisions included in the DCO, this would amount to an offence, which is considered to be a sufficient deterrent to ensure compliance.

Table 2-4 Agreements

<u>Ref</u>	<u>Relevant Document</u>	<u>Description of Matter</u>	<u>NR Current Position</u>	<u>Applicant's Current Position</u>	<u>Status</u>
<u>10</u>	<u>Paras 5 and 6, Representation</u>	<u>Agreements</u>	<p><u>NR will require the Applicant to:</u></p> <p><u>A) include NR's standard protective provisions in the DCO;</u></p> <p><u>B) potentially enter into a property agreement (easement) to govern the installation, operation and maintenance of any cable (subject to NR's asset protection process); and</u></p> <p><u>C) enter into a framework agreement that describes and attaches the documents referred to above, the protective provisions, clearance conditions and any necessary basic asset protection agreement, asset protection agreement, structures agreement or other engineering documents required for the benefit and protection of NR's assets.</u></p> <p><u>Without those agreements and satisfactory protective provisions being in place NR considers the proposed development, if carried out in relation to the aforementioned plots, would have serious</u></p>	<u>See above responses to section 3 and section 4.</u>	<u>In discussion</u>

<u>Ref</u>	<u>Relevant Document</u>	<u>Description of Matter</u>	<u>NR Current Position</u>	<u>Applicant's Current Position</u>	<u>Status</u>
			<u>detrimental impact on the operation of the railway and would prevent NR from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, NR is unable to withdraw its objection to the DCO.</u>		
<u>11</u>	<u>Para 6.1 to 6.3 of WR to Deadline 1</u>	<u>Agreements</u>	<p><u>Network Rail is liaising closely with EPL to enter into private agreements to govern the carrying out of the proposed works.</u></p> <p><u>Without those agreements and satisfactory protective provisions being in place Network Rail considers the proposed development, if carried out, would have a detrimental impact on the operation of the railway and would prevent Network Rail from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place, Network Rail is unable to withdraw its objection to the DCO.</u></p> <p><u>In the event, that insufficient progress is made regarding the protective provisions and private</u></p>	<u>The Applicant notes these comments. Please refer to the responses provided above in this table. The Applicant remains confident that protective provisions and the required private agreements will be agreed during the course of the Examination, such that Network Rail can withdraw its objection to the Application.</u>	<u>In discussion</u>

Ref	Relevant Document	Description of Matter	NR Current Position	Applicant's Current Position	Status
			agreements, Network Rail would like to reserve its position to request to be heard in an appropriate hearing to explain the impact of the proposals on its railway undertaking.		

3 Signatures

This SoCG has been prepared and agreed by the Applicant and NR.

On behalf of EPL 001 Limited

Name:

Signature:

Position:

Date:

.....

On behalf of Network Rail

Name:

Signature:

Position:

Date:

.....

References

¹ *Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects*. [online] GOV.UK. Available at: <https://www.gov.uk/guidance/planning-act-2008-examination-stage-for-nationally-significant-infrastructure-projects> [Accessed 14 Oct. 2024]

² *Planning act 2008 - guidance related to procedures for the compulsory acquisition of land (2013)* GOV.UK. Available at: https://assets.publishing.service.gov.uk/media/5a748a8ce5274a7f9902904a/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf (Accessed: 06 January 2025).

²³ Legislation.gov.uk. (2023). *The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*. [online] Available at: <https://www.legislation.gov.uk/ukxi/2009/2264/schedule/1/made>