

Bramford to Twinstead Reinforcement

Volume 8: Examination Submissions

Document 8.6.2.2: Applicant's Written Summaries of Oral Submissions to Issue Specific Hearing 2

Final Issue A
November 2023

Planning Inspectorate Reference: EN020002

The Infrastructure Planning (Examination Procedure) Rules 2010) Regulation 8(1)(k)



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1. About this document

1.1 Introduction

- 1.1.1 This document summarises the case put by National Grid Electricity Transmission plc (the Applicant), at Issue Specific Hearing 2 (ISH2) on 8 November 2023 for the Bramford to Twinstead Reinforcement (referred to as the project).
- 1.1.2 The hearing opened at 14:00 on 8 November 2023 and closed at 16:52 on 8 November 2023. The agenda for the hearing [**EV-025**] was published on the Planning Inspectorate’s website on 27 October 2023.
- 1.1.3 In what follows, the Applicant’s submissions on the points raised broadly follow the items set out in the Examining Authority’s agenda.

1.2 Attendees on behalf of the Applicant

- 1.2.1 Michael Humphries KC, Counsel instructed by Bryan Cave Leighton Paisner LLP (BCLP) appeared on behalf of the Applicant.
- 1.2.2 The following expert witness also made submissions throughout the hearing:
 - Rob Fielden, National Grid (Engineering and Design)

2. The Applicant's Summary of Case on Item 3: Review of Applicant's Schedule of Changes to the Draft Development Consent Order (Draft DCO)

2.1 Item 3. Review of Applicant's Schedule of Changes to the Draft DCO

Table 2.1 – Item 3. Review of Applicant's Schedule of Changes to the Draft DCO

Issued Discussed	Summary of Oral Case
i. Review of Applicant's Schedule of Changes to the Draft DCO	
Applicant's Schedule of Changes to the draft DCO.	The Applicant directed the Examining Authority to the Applicant's Schedule of Changes to the draft Development Consent Order (DCO) [REP3-040], which shows in full the changes made to the draft DCO at Deadline 2 [REP2-004] and Deadline 3 [REP3-007]. The Applicant will submit an updated Applicant's Schedule of Changes to the draft Development Consent Order (document 8.4.2 (C)) and draft DCO (document 3.1 (D)) at Deadline 4.
Changes at Deadline 2.	<p>The Applicant provided the following summary of the changes made at Deadline 2 (each reference to an Article, Schedule or paragraph is to that Article, Schedule or paragraph in the draft DCO [REP2-004], and each change reference is to Table 2.1 of the Applicant's Schedule of Changes to the Draft DCO [REP3-040]):</p> <ul style="list-style-type: none">• Responding to s.51 Advice:<ul style="list-style-type: none">– Addressing cross-referencing errors in Schedule 7 (Change Ref 16);• Addressing matters arising from Issue Specific Hearing 1:<ul style="list-style-type: none">– Correction to '<i>His Majesty</i>' in Article 41 (Change Ref 7); and– Changing '<i>must</i>' to '<i>shall</i>' in Article 42 (Change Ref 8);• Responding to matters raised in Suffolk County Council's and Babergh and Mid Suffolk District Council's joint Local Impact Report [REP1-045] and Braintree District Council's and Essex County Council's joint Local Impact Report [REP1-039]:

Issue Discussed	Summary of Oral Case
	<ul style="list-style-type: none"> — <i>unless otherwise agreed</i> added to deemed consent mechanisms in Articles 11, 14, 15, 16, 19, 21, 47 and 48 (Change Refs 1, 2, 3, 4, 5, 6, 10 and 11); — References to <i>'relevant highway authority'</i> as an approving body incorporated within Schedule 3 (Change Refs 13 and 14); and — Removal of <i>'refund of fees paid'</i> mechanism at paragraph 3(2) of Schedule 4 (Change Ref 15); and ● Consequential updates and correction of minor typographical errors: <ul style="list-style-type: none"> — Article 46 (Change Ref 9); — Schedule 1 (Change Ref 12); and — Schedules 10 and 11 (Change Refs 17 and 18).
Changes at Deadline 3.	<p>The Applicant provided the following summary of the changes made at Deadline 3 (each reference to an Article, Schedule or paragraph is to that Article, Schedule or paragraph in the draft DCO [REP3-007], and each change reference is to Table 3.1 of the Applicant's Schedule of Changes to the Draft DCO [REP3-040]):</p> <ul style="list-style-type: none"> ● Responding to The Examining Authority's first written questions – 13 October 2023 [PD-005]: <ul style="list-style-type: none"> — References to the appendices to the Management Plans added to Article 2(1) to address question DC1.6.116 (Change Ref 2); — Title of Requirement 10 changed to <i>'Reinstatement planting plan – implementation, compliance and replacement planting'</i> to address DC1.6.90 (Change Ref 7); ● Responding to matters raised in Suffolk County Council's and Babergh and Mid Suffolk District Council's joint Local Impact Report [REP1-045] and Braintree District Council's and Essex County Council's joint Local Impact Report [REP1-039]: <ul style="list-style-type: none"> — Correction of typographical error in Article 15 (Change Ref 4); — Compliance with the Public Right of Way Management Plan [REP3-056] secured through Requirement 4 of Schedule 3 (Change Ref 6); — Correction of referencing errors in Schedules 5, 6, 7, 8 and 12 to ensure alignment with Street Gazetteer (Change Ref 8); and — Schedule 6 amended to refer to <i>'road markings'</i> rather than <i>'white lines'</i> (Change Ref 9); and ● Consequential updates / correction of minor typographical errors:

Issue Discussed**Summary of Oral Case**

- Article 2(1) (Change Refs 1 and 3);
 - Schedule 2 (Change Ref 5); and
 - Schedule 17 (Change Refs 10 and 11).
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3. The Applicant's Summary of Case on Item 4: Review of the Parties' Positions

3.1 Item 4. Review of the Parties' Positions

Table 3.1 – Item 4. Review of the Parties' Positions

Issue Discussed	Summary of Oral Case
<p>i. Considering What Would Constitute Materially New or Materially Different Environmental Effects From Those Assessed in the Environmental Statement</p>	
<p>Overview of 'materially new or materially different environmental effects'.</p>	<p>It was noted that the Applicant had addressed the concept of 'materially new or materially different environmental effects' in the Applicant's Responses to First Written Questions [REP3-052] at DC1.6.107.</p> <p>The Applicant noted that the relevant Environmental Impact Assessment (EIA) Regulations, and the relevant EIA Directive, consider an assessment of the 'likely significant effects'; acknowledging the effects cannot be guaranteed.</p> <p>The application for development consent has been made prior to the full detailed designs becoming available, and the main works contractor is yet to be appointed. Although the Applicant considers it unlikely that there would be 'materially new or materially different environmental effects', it is necessary to provide for a degree of flexibility to account for unknown future circumstances, safeguarding the delivery of the project.</p> <p>The EIA has been conducted on a 'reasonable worst case' basis, including:</p> <ul style="list-style-type: none"> ● Sensitivity testing that takes into account the application of flexibility as permitted by the draft DCO [REP3-007] for the project's design or construction method; and ● Assessing up to the full extent of the limits of deviation prescribed in Article 5 of the draft DCO [REP3-007]. <p>This achieves a pragmatic approach, providing a necessary and proportionate degree of flexibility to allow unknown future changes in circumstances to be taken into account where they do not result in a 'materially new or materially different environmental effect' to the basis on which the project was consented. In these circumstances, a formal change mechanism is avoided, such formal changes being more restricted than under Town and Country Planning Act 1990 applications due to the draft DCO [REP3-007] being enacted as a statutory instrument.</p>
<p>The party making the assessment.</p>	<p>The Applicant noted that in most instances the draft DCO [REP3-007] provides for the Applicant to make the assessment of what constitutes 'materially new or materially different environmental effects'. Examples of when third parties are to make the assessment are:</p>

Issue Discussed	Summary of Oral Case
	<ul style="list-style-type: none"> ● Article 5 of the draft DCO [REP3-007] – the Secretary of State; and ● Schedule 3, paragraph 1(4) of the draft DCO [REP3-007] – the relevant highway authority or the relevant planning authority. <p>If the Applicant was not empowered to make such judgements, the local authorities would be required to consider every small change within the flexibility allowed, which the Applicant submitted would be dis-proportionate and contrary to the position on other development consent projects.</p>
Corporate practice.	<p>The Applicant confirmed that its corporate practice is to work closely with local authorities to ensure that they are satisfied that the Applicant has acted properly when making such assessments.</p>
<p>ii. The Case for the Amendment of Article 57 (Certification of Documents) / Schedule 17 (Certified Documents) of the Draft DCO</p>	
Management Plans.	<p>The Applicant confirmed that it considers the Management Plans to be appropriate, providing sufficient detail to meet the standards of management plans commonly accepted on other development consent projects.</p> <p>The Applicant noted that the regime around consenting nationally significant infrastructure projects places the decision-making power with the Secretary of State. The Applicant’s objective is to provide a finalised set of Management Plans for the Secretary of State to consider as part of the application.</p> <p>Should the local authorities have any specific concerns regarding the Management Plans, the Applicant confirmed that it would welcome these being identified so that the Applicant can (to the extent practicable) consider these during the remainder of the Examination.</p>
<p>iii. The Need for an ‘Appeal’ Mechanism if Agreement Could not be Reached on Materiality</p>	
Sanctions available to the local authorities.	<p>The Applicant noted that where it makes the assessment of ‘materially new or materially different environmental effects’, should the local authorities disagree with that assessment, they are able to:</p> <ul style="list-style-type: none"> ● Make an information request pursuant to s.167 of the Planning Act 2008; ● Commence proceedings under s.161(1)(b) of the Planning Act 2008 for breaching the terms of the draft DCO [REP3-007]; and ● If the Applicant was found to be in breach of the draft DCO [REP3-007], serve notice of unauthorised development under s.169 of the Planning Act 2008, requiring the Applicant to remedy the breach or failure to comply. <p>The Applicant submitted that the ultimate risk of sanction for acting outside the scope of the draft DCO [REP3-007] incentivises any responsible developer / contractor to ensure that it acts properly when discharging its responsibilities in this context, including working closely with the local authorities.</p> <p>The Applicant noted that it is not aware of any formal ‘appeal’ mechanism being included in any other DCO; this is considered to be a standard approach, being well understood as an effective solution.</p>

Issue Discussed**Summary of Oral Case**

iv. Any Related Matters Arising from the Examining Authority's First Written Questions

The introduction of the 'unlikely' qualifier into 'materially new or materially different environmental effects' in Schedule 3, paragraph 1(4) of the draft DCO.

The Applicant confirmed that the inclusion of 'unlikely' within the context of Schedule 3, paragraph 1(4) of the draft DCO [REP3-007] was not intended to introduce a new or different layer of qualification, instead being an implication of the drafting looking to a future event.

It was agreed that the Applicant would consider potential changes to provide consistency as part of the draft DCO (**document 3.1(D)**) to be submitted at Deadline 4.

4. The Applicant's Summary of Case on Item 5: Local Authorities' Suggested Amendments to the Draft DCO

4.1 Item 5. Local Authorities' Suggested Amendments to the Draft DCO

Table 4.1 – Item 5. Local Authorities' Suggested Amendments to the Draft DCO

Issued Discussed	Summary of Oral Case
There was nothing that the Examining Authority wished to raise in relation to Item 5 at the hearing. Consequently, the Applicant made no oral submissions.	

5. The Applicant's Summary of Case on Item 6: Review of Parties' Current Positions on Requirement 7 – Construction Hours

5.1 Item 6. Review of Parties' Current Positions on Requirement 7 – Construction Hours

Table 5.1 – Item 6. Review of Parties' Current Positions on Requirement 7 – Construction Hours

Issued Discussed	Summary of Oral Case
i. Construction Hours	
Overview of the Applicant's position.	<p>At Deadline 3, the Applicant submitted its Justification for Construction Working Hours [REP3-045]. The Applicant explained that this compared the baseline construction programme with two scenarios modelled based on suggestions in the Local Impact Reports [REP1-039 and REP1-045]:</p> <ul style="list-style-type: none"> ● Baseline construction programme (as set out in Requirement 7 of the draft DCO [REP3-007]) – core working hours between 07:00 and 19:00 Monday to Friday and 08:00 and 17:00 on Saturdays, Sundays and Bank Holidays; ● Scenario 1 – core working hours between 07:00 and 19:00 Monday to Friday and 08:00 and 13:00 on Saturdays, with no working on Sundays; and ● Scenario 2 – core working hours between 08:00 and 18:00 Monday to Friday and 08:00 and 13:00 on Saturdays, with no working on Sundays. <p>The Applicant noted that the outage dates are key fixed dates in the programme, and that in both Scenario 1 and Scenario 2 the first outage on 9 March 2027 (Outage 4 Start) would be missed.</p>
Consequences of missing the planned outages.	<p>Outage four to seven need to occur in the same outage season. Missing the Outage 4 Start on 9 March 2027 could result in at least a year delay, causing the required 2028 completion date (as set out in Need Case April 2023 [APP-161]) to be missed.</p> <p>Outages must be coordinated with other system outages taking place across the transmission network. The Applicant noted that preliminary discussions with National Grid Electricity System Operator indicate that if the 2027 outages are missed, the next available outages may not be until 2032.</p> <p>The Applicant noted that even if it sought to rearrange the outages with National Grid Electricity System Operator at this stage, there is no guarantee that this change could be accommodated sooner than previously indicated. In any event, the Applicant must await</p>

Issued Discussed	Summary of Oral Case
	<p>the Secretary of State's decision before it is confirmed that the permitted construction programme allows the planned outages to be met, by which point other parties needing outages will have secured their place in their queue ahead of the Applicant.</p> <p>There are approximately 104 applicants for connection dates in the relevant period in East Anglia, a number of which rely on the completion of the project; hitting the target date avoids negatively affecting any of those projects submitted in the forward plan.</p> <p>The construction hours sought are those needed to meet the outages based on the Applicant's modelling and past experience, and the environmental assessment was conducted on this basis. The full working hours may not be used in every location, but until a main works contractor is appointed, flexibility must be retained to ensure that the project can be delivered.</p> <p>The Applicant:</p> <ul style="list-style-type: none"> ● Noted the risk in respect of the wider electricity transmission system if the construction working hours were revised in a way that caused the outages to be missed; ● Confirmed that its position on the proposed construction working hours is that they are acceptable in the context of the urgent need case (as set out in Need Case April 2023 [APP-161]) and developing essential national infrastructure; and Invited the Examining Authority to accept the justifications put forward in Justification for Construction Working Hours [REP3-045].
Alternative weekend working'.	<p>The Applicant explained that alternative weekend working is based on multiple contractors being on-site with different working shift patterns; work would continue each weekend, but different contractors would deliver different packages of work in different locations, affecting different receptors.</p> <p>The Applicant confirmed that the baseline construction programme was developed on the basis of such alternative weekend working without contingency for delays such as those from adverse weather.</p>
Adequacy of environmental assessment given the construction hours are dictated by the fixed outage dates.	<p>The Applicant submitted that nothing in the environmental assessment (conducted on a 'reasonable worst case' basis) suggested an unacceptable environmental impact from the project in relation to working hours. The Applicant noted the context of the project, whereby work will generally be undertaken in agricultural fields, on relatively small worksites and away from residential properties.</p> <p>The Applicant confirmed that its view is that any potential effects from the proposed construction working hours are acceptable in the context of the available measures and the national need.</p>
Exceptions to the core working hours.	<p>Two exceptions to the core working hours were addressed:</p> <ul style="list-style-type: none"> ● Requirement 7(2) of the draft DCO [REP3-007] – the Applicant confirmed that: <ul style="list-style-type: none"> — The flexibility provided is principally to allow the contractor to ensure that any ongoing activities at the end of the core working hours are safely secured overnight, noting that in the Applicant's experience such provision rarely needs to be relied upon; and

Issued Discussed	Summary of Oral Case
	<ul style="list-style-type: none"> — No reliance was placed on utilising Requirement 7(2) of the draft DCO [REP3-007] when modelling Scenario 1 and Scenario 2 in the Justification for Construction Working Hours [REP3-045]; and ● Requirement 7(3) of the draft DCO [REP3-007] – the Applicant confirmed that: <ul style="list-style-type: none"> — No reliance was placed when modelling the baseline construction programme on the start up and close down activities being allowed up to one hour either side of the core working hours.

ii. Relationship Between the Critical Path and the Baseline Construction Programme

Relationship between the critical path and the baseline construction programme.	<p>The Applicant agreed to provide a post-hearing note at a later deadline:</p> <ul style="list-style-type: none"> ● Relating the critical path analysis to the baseline construction programme; ● Considering the relationship between the baseline construction programme and Scenario 1 (as shown in Table 2.1 of the Justification for Construction Working Hours [REP3-045]) with Requirement 3 of the draft DCO [REP3-007]; and ● Explaining how the milestone dates have been arrived at for both Scenario 1 and Scenario 2 (as shown in Table 2.1 of the Justification for Construction Working Hours [REP3-045]).
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6. The Applicant's Summary of Case on Item 7: Highway Related Matters

6.1 Item 7. Highway Related Matters

Table 6.1 – Item 7. Highway Related Matters

Issued Discussed	Summary of Oral Case
i. Highway Related Matters	
Provisions in the draft DCO.	The Applicant noted the following: <ul style="list-style-type: none">Article 12 of the draft DCO [REP3-007] requires applications to be made to the permitting schemes maintained by Suffolk County Council and Essex County Council, both of which have their own fee arrangements that the Applicant will need to meet; andArticle 47 of the draft DCO [REP3-007] provides for a set of traffic regulation orders that may be implemented without any further fee or consultation. Any additional traffic regulation orders sought under Article 47(2) of the draft DCO [REP3-007] will require the consent of the relevant highways authority, and the Framework Highways Agreement will include financial provision for those bodies.

7. The Applicant's Summary of Case on Item 8: Any Other Matters Arising from the Examining Authority's First Written Questions

7.1 Item 8. Any Other Matters Arising from the Examining Authority's First Written Questions

Table 7.1 – Item 8. Any Other Matters Arising from the Examining Authority's First Written Questions

Issued Discussed	Summary of Oral Case
There was nothing that the Examining Authority wished to raise with the Applicant in relation to Item 8 at the hearing. Consequently, the Applicant made no oral submissions.	

8. The Applicant's Summary of Case on Item 9: Any Other Business

8.1 Item 9. Any Other Business

Table 8.1 – Item 9. Any Other Business

Issued Discussed	Summary of Oral Case
There was nothing that the Examining Authority wished to raise in relation to Item 9 at the hearing. Consequently, the Applicant made no oral submissions.	

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