

# Bramford to Twinstead Reinforcement

Volume 8: Examination Submissions

Document 8.6.2.1: Applicant's Written Summaries of Oral Submissions to Compulsory Acquisition Hearing 1

Final Issue A  
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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 Compulsory Acquisition Hearing 1 on 8 November 2023 for the Bramford to Twinstead Reinforcement (referred to as the project).
- 1.1.2 The hearing opened at 10:00 on 8 November 2023 and closed at 12:45 on 8 November 2023. The agenda for the hearing [**EV-024**] 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 Rebecca Clutten, Counsel instructed by Bryan Cave Leighton Paisner LLP (BCLP) appeared on behalf of the Applicant.
- 1.2.2 The following expert witnesses also made submissions throughout the hearing:
- Christopher Alves-Greenland, Jacobs (Highways);
  - John Bevan, National Grid (Senior Project Manager);
  - Matthew Bell, National Grid (Lands);
  - Rob Fielden, National Grid (Engineering and Design); and
  - Sally Rotherham, National Grid (Environment and Consents).

## 2. The Applicant's Summary of Case on Item 3: The Applicant's Case for Compulsory Acquisition (CA) and Temporary Possession (TP) Powers

### 2.1 Item 3. The Applicant's Case for CA and TP Powers

Table 2.1 – Item 3. The Applicant's Case for CA and TP powers

Issued Discussed	Summary of Oral Case
<b>i. Identification of the Powers Sought and Their Purposes</b>	
Identification of the powers sought.	<p>The Applicant noted that the land and rights sought are necessary to construct, operate, maintain and mitigate the effects of the project. The powers sought over the land within the Order Limits achieve this.</p> <p>Powers sought fall into three categories: (1) CA of land, (2) CA of rights and (3) TP of land. There are eight classes of rights across those three categories (summarised in Table 5.1 of the Statement of Reasons [APP-038]). Classes of rights are subject to subordinate classes of rights (as described in Table 2.1 of the Book of Reference [REP3-013]).</p>
Purposes for which the powers are sought.	<p>Powers are sought for the benefit of both the Applicant and UK Power Networks in respect of the authorised development and the UKPN Works (each as defined in the draft Development Consent Order (draft DCO) [REP3-007]).</p>
<b>ii. Relevant Provisions in the Draft DCO</b>	
Relevant provisions in the draft DCO.	<p>The Applicant directed the Examining Authority to Part 5 of the draft DCO [REP3-007], which makes provision for the relevant CA and TP powers:</p> <ul style="list-style-type: none"> <li>● Powers of acquisition;</li> <li>● Temporary possession of land;</li> <li>● Compensation; and</li> <li>● Supplementary provisions.</li> </ul> <p>Further detail is provided in the Statement of Reasons [APP-038] and the Explanatory Memorandum [REP3-009].</p>

Issued Discussed	Summary of Oral Case
<p>“Reasonable satisfaction” and the adjudication process.</p>	<p>Article 26 of the draft DCO [REP3-007] includes an obligation on the Applicant to reinstate land over which temporary possession has been taken to the reasonable satisfaction of the landowner.</p> <p>The Applicant confirmed that the draft DCO [REP3-007] does not define “reasonable satisfaction” but noted that this is a well-precedented term. This would be a matter for the landowner to determine, and in the event of dispute, it would be judged objectively by the standards of the reasonable person.</p> <p>Should any dispute arise that cannot be resolved by negotiation between the parties, Article 59 of the draft DCO [REP3-007] makes provision for arbitration.</p>
<p><b>iii. How the Relevant Statutory and Policy Tests Under the Planning Act 2008 and Department for Communities and Local Government Guidance Related to CA Would Be Met</b></p>	
<p>Principal statutory test.</p>	<p>The Applicant noted that the principal tests for justification of the CA powers are contained in s.122 of the Planning Act 2008. These require:</p> <p>The land:</p> <ul style="list-style-type: none"> <li>— To be required for the development;</li> <li>— To be required to facilitate or be incidental to that development; or</li> <li>— To be replacement land to be given in exchange for the order land; and</li> <li>— There to be a compelling case in the public interest for the land to be acquired compulsorily.</li> </ul>
<p>Guidance relating to CA within the context of development consent orders.</p>	<p>The Department for Communities and Local Government’s guidance related to CA makes clear that demonstrating a compelling case will include consideration of:</p> <ul style="list-style-type: none"> <li>● The need for the land;</li> <li>● The powers sought being necessary and proportionate;</li> <li>● There being no reasonable alternatives; and</li> <li>● The absence of any impediments, such as showing a reasonable prospect that funding for the CA and any related claims is available.</li> </ul>
<p>How the project meets those statutory and policy tests.</p>	<p>Addressing the above statutory and policy tests, the Applicant submitted:</p> <p>The need case for the project is established in the National Policy Statement for Electricity Networks Infrastructure (EN-5), as is set out in the Planning Statement [APP-160] and Need Case April 2023 [APP-161]. This comprises:</p> <ul style="list-style-type: none"> <li>— An urgent national need to deliver a reliable and secure transmission system that can cope with the demands placed upon it in the future; and</li> </ul>

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**Issued Discussed****Summary of Oral Case**

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- Contributing to the achievement of net zero and energy security through facilitating the delivery of 50GW of offshore wind by 2030;

All of the land required for the project has been identified in the Book of Reference [REP3-013] and Statement of Reasons Appendix A Details of Purpose for Which Compulsory Acquisition and Temporary Possession Powers are Sought [APP-039], describing the intended use of each plot and setting out the work numbers in Schedule 1 of the draft DCO [REP3-007] to which they relate;

As standard practice, the project applies limits of deviation. Consequently, it may not be necessary to acquire interests in or rights over all of the land within the order limits, but such land remains necessary for the project due to the need to provide sufficient flexibility to ensure that the project can be delivered during construction;

The proportionality of any interference is ensured by adopting a cascading approach (CA of land, CA of rights and TP of land), allowing the Applicant to acquire the category of right that represents the lowest degree of interference possible;

The scale and location of the project is such that CA cannot be avoided, although intervention has been minimised through its routing and siting. In any event, the Applicant will always look to avoid CA by reaching voluntary agreement with the landowner; and

The project's Funding Statement [APP-037], as supplemented through the Applicant's Responses to First Written Questions [REP3-052], makes clear that there is a reasonable prospect of the required funds for CA and related claims being available.

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**Other statutory tests.**

The Applicant submitted that the following statutory tests are also satisfied:

Section 123 of the Planning Act 2008 – all necessary land that may be subject to CA has been included in the application for development consent;

Section 127 of the Planning Act 2008 – there would be no serious detriment to the carrying on of a statutory undertaking since:

- The siting / routing has minimised the interfaces with the infrastructure and assets of statutory undertakers;
- Protective provisions are included on the face of the order; and
- The Applicant is confident that side agreements can be reached with those statutory undertakers that have made representations in this regard;

Section 138 of the Planning Act 2008 – for similar reasons to s.127 of the Planning Act 2008, any interference with the land of statutory undertakers is necessary for the project.

In addition, the Applicant noted that the only special category land affected is very limited areas of open space, some of which has only been included on a precautionary basis. In all cases, the Applicant confirmed that its position is that the land will be no less advantageous to users when burdened with rights since:



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Issued Discussed	Summary of Oral Case
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Electricity infrastructure is already present within the area; and/or  
Use of the land is not incompatible with the infrastructure to be installed.

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#### iv. The Applicant's Strategy and Criteria for Determining Whether to Seek Powers for CA of Land, CA of Rights or TP of Land

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The Applicant's strategy and criteria for determining the powers sought.	The Applicant noted that its strategy for determining the powers sought focused on minimising interference, subject to the need to secure the benefit of appropriate rights to facilitate the operation and maintenance of essential national infrastructure.  As addressed, this is ensured by adopting a cascading approach to the powers sought.
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#### v. Consideration of Alternatives to CA and TP

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Consideration of alternatives to CA and TP.	Regarding its consideration of alternatives, the Applicant submitted: <ul style="list-style-type: none"><li>• Alternatives to the project – the need case establishes a critical national need for the reinforcement of the electricity transmission network in order to meet the country's energy needs and the demand for connections in the relevant area, giving no alternatives to the project;</li><li>• Alternative routing / siting – alternative routing / siting has been considered extensively through strategic optioneering and ongoing consultation. Against the background of competing considerations and the Applicant's statutory obligations, the route proposed is considered reasonably direct and efficient; and</li><li>• Alternatives to CA and TP – this is principally achieved through attempts to reach voluntary agreements. Where CA / TP powers need to be relied upon, the cascading approach allows the Applicant to seek the minimum level of power required to deliver the project, minimising interference.</li></ul>
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# 3. The Applicant's Summary of Case on Item 4: Site-specific Representations from Affected Persons

## 3.1 Item 4. Site-specific Representations from Affected Persons

Table 3.1 – Item 4. Site-specific Representations from Affected Persons

Issued Discussed	Summary of Oral Case
<b>i. Temporary Access Route off the A131</b>	
Permanent / temporary nature of the powers sought.	<p>The Applicant confirmed that it is seeking the CA of permanent rights of access under Article 24 (Compulsory acquisition of rights) of the draft DCO [REP3-007] in relation to temporary access routes; these are class four rights, as described in Table 2.1 of the Book of Reference [REP3-013].</p> <p>The temporary access routes would be temporary in the physical sense; they would be installed to enable the construction of the authorised development and would be removed once the construction phase has completed.</p> <p>Permanent rights are sought to enable the Applicant to reinstall a temporary access route to the extent necessary in the event that significant works – for example large scale failure of a significant length of cable – required it to be reinstalled for access.</p>
Situations that may necessitate re-installation.	<p>The Applicant noted that a situation requiring the reinstallation of the temporary access route from the A131 is unlikely, but it may be necessitated by works of repair and/or maintenance that are of such magnitude that they are akin to the construction works themselves.</p> <p>When, and to what extent, the temporary access route from the A131 may need to be reinstalled would depend on the circumstances of any particular asset failure or disrepair, as well as the technologies available to the Applicant and the size and number of the construction vehicles required. The Applicant noted that its preferred approach would be to make use of the local road network where practicable, but this would depend upon the scale of the works.</p> <p>Should the temporary access route from the A131 need to be reinstalled, the Applicant confirmed that it anticipates about 50 to 80 metres would be reinstalled each day.</p>
Notice periods to re-install.	<p>The Applicant noted that if the rights are acquired by voluntary agreement, the notice period for the future use or reinstallation of the temporary access route from the A131 would be that agreed with the landowner. The Applicant confirmed that the current draft Heads of Terms make provision for notice except in cases of emergency:</p> <ul style="list-style-type: none"> <li>● Twenty eight days should entry be required for access, without it being necessary to reinstall; and</li> <li>● Three months should it be necessary to re-install and then use the access.</li> </ul>

Issued Discussed	Summary of Oral Case
	<p>The draft DCO [REP3-007] does not place an obligation on the Applicant to give a particular notice period ahead of future reinstallation should the CA powers be exercised. However, the Applicant noted the need to maintain ongoing relationships with the landowners and that it would be inconsistent with its corporate practice to seek to reinstall the temporary access route without any form of prior consultation or notice. The Applicant agreed to consider as part of its Applicant's Response to the November Hearings Action Points (<b>document 8.6.3, Action Point 1</b>) what further comfort could be provided should CA powers need to be relied upon.</p>
Environmental requirements ahead of re-installation.	<p>The Applicant confirmed that it would be required to comply with the prevailing environmental legislation at the time of the reinstallation.</p>
Compensation available to the landowners in the event of re-installation.	<p>The Applicant noted that provision for further compensation could be included within voluntary agreements with landowners.</p> <p>Should the rights be obtained using the CA powers, any claim for compensation would be time-barred after six years following the acquisition of the permanent rights. However, the Applicant confirmed that the initial compensation payable for the acquisition would account for the permanent rights sought and the potential for re-installation. The risk that the temporary access route may be re-installed being a relevant factor when considering the diminution in value of the land caused by the CA.</p>
Mechanisms to secure the removal of the temporary access route.	<p>The draft DCO [REP3-007] does not include a specific requirement to remove the temporary access route from the A131 once the construction phase is complete. However, the Applicant noted that it would risk its actions being deemed ultra vires and unlawful if it retained the physical installation post-construction, the draft DCO [REP3-007] only permitting the temporary access route for the purposes of constructing and maintaining the authorised development.</p> <p>The Applicant confirmed that Good Practice Measure GG07 set out in the Code of Construction Practice [REP3-026] requires land used temporarily to be re-instated where practicable to its pre-construction condition and use. The Code of Construction Practice [REP3-026] is secured through Requirement 4(2)(a) of the draft DCO [REP3-007].</p>
<p><b>ii. Peter Nott and G V S Nott (together, the Affected Persons)</b></p>	
Consideration of the routing for the temporary access route.	<p>The Applicant confirmed that its initial non-statutory and statutory consultations did not include the temporary access route from the A131. Feedback was received from local residents regarding the local road network being unsuitable for the vehicles requiring access during the construction phase. A targeted consultation was subsequently introduced which included the temporary access route from the A131.</p> <p>The Applicant confirmed that the design process included consideration of alternative routes for the temporary access route from the A131, including those proposed by the Affected Persons.</p> <p>With respect to the feasibility of the routes proposed by the Affected Persons, the Applicant noted concerns from an environmental and highways perspective and agreed to submit further details within the Technical Note on Temporary Access Route off the A131 (<b>document 8.5.5 (B)</b>) at Deadline 4 specifically addressing the feasibility of the alternative routes proposed by the affected persons.</p>
Concerns regarding potential impacts on the drainage	<p>The Applicant noted:</p>

Issued Discussed	Summary of Oral Case
systems in the agricultural fields.	<ul style="list-style-type: none"> <li>• That its projects commonly require working in agricultural areas and that it has well established processes for ensuring that any impacts on field drainage is addressed;</li> <li>• Compensation would be available under the compensation code for any loss or damage caused by any impacts on field drainage; and</li> <li>• The current draft Heads of Terms issued to the affected persons for consideration contain significantly improved drainage terms, including a number of covenants on the part of the Applicant.</li> </ul>
Concerns regarding soil handling, storage, management and reinstatement.	<p>The Applicant confirmed that Chapter 11 of the CEMP [REP3-024] contains management measures for soil, and the Code of Construction Practice [REP3-026] makes commitments regarding soil handling.</p> <p>It was noted that soil surveys had been undertaken for around 40% of the temporary access route off the A131 before they were aborted due to agricultural operations. The Applicant confirmed that it wishes to re-commence the soil surveys but noted that these would not affect the environmental assessment but would inform soil handling measures during construction.</p>
Concerns regarding preventing use of the temporary access route by the public.	<p>The Applicant confirmed that security points are proposed in the CEMP [REP-024]</p> <p>The Applicant agreed to confirm in its Applicant’s Response to the November Hearings Action Points (<b>document 8.6.3, Action Point 4</b>) how security measures are secured in the CEMP [REP3-024] and/or the Construction Traffic Management Plan [REP3-030].</p>

# 4. The Applicant's Summary of Case on Item 5: Site-specific Matters for the Applicant

## 4.1 Item 5. Site-specific Matters for the Applicant

Table 4.1 – Item 5. Site-specific Matters for the Applicant

Issued Discussed	Summary of Oral Case
<b>i. Voluntary Agreements with Landowners</b>	
Applicant's update on seeking voluntary agreements with landowners.	The Applicant provided the following update on the position set out in Statement of Reasons Appendix B Schedule of Negotiations with Land Interests [APP-040]: <ul style="list-style-type: none"><li data-bbox="629 719 1294 748">● Heads of terms have been signed by 17 landowners;</li><li data-bbox="629 772 1980 801">● The solicitors acting for the Applicant, BCLP, have active instructions for 11 of the signed Heads of Terms; and</li><li data-bbox="629 825 2040 887">● Further signed Heads of Terms are expected on a rolling basis, with several of those outstanding understood by the Applicant to be substantially agreed.</li></ul>

# 5. The Applicant's Summary of Case on Item 6: Statutory Undertakers

## 5.1 Item 6. Statutory Undertakers

Table 5.1 – Item 6. Statutory Undertakers

Issued Discussed	Summary of Oral Case
<b>i. The Applicant's Update on Discussions with Statutory Undertakers</b>	
Pivoted Power LLP.	<p>The Applicant confirmed that good progress had been made with Pivoted Power LLP, and that it was confident an agreement would be reached. Comments had recently been returned by Pivoted Power LLP on the draft agreement, which are under consideration by the Applicant.</p>
Cadent Gas Limited.	<p>The Applicant confirmed that although less progressed, progress had been made with Cadent Gas Limited. Discussions remain ongoing regarding the technical interface and, as the parties continue to work through the process, it is anticipated that bespoke protective provisions will be agreed for inclusion in the draft DCO [REP3-007], as well as a side agreement covering commercial elements. Cadent Gas Limited's preferred set of protective provisions have been received by the Applicant and are under review.</p> <p>Should no agreement be reached, the Applicant noted that boilerplate protective provisions are included at Schedule 14 of the draft DCO [REP3-007] for the benefit of gas, water, sewage and electricity statutory undertakers.</p>
Network Rail Infrastructure Limited.	<p>The Applicant confirmed that although it remains hopeful of reaching resolution with Network Rail Infrastructure Limited, it is less confident than in relation to the other statutory undertakers. The parties are continuing to seek agreement regarding bespoke protective provisions, whilst engagement is ongoing regarding a Statement of Common Ground.</p> <p>Should no agreement be reached, the Applicant noted that protective provisions are included at Schedule 14 of the draft DCO [REP3-007] for the benefit of Network Rail Infrastructure Limited.</p>

# 6. The Applicant's Summary of Case on Item 7: Human Rights

## 6.1 Item 7. Human Rights

Table 6.1 – Item 7. Human Rights

Issued Discussed	Summary of Oral Case
There was nothing that the Examining Authority wished to raise in relation to Item 7. Consequently, the Applicant made no oral submissions.	

# 7. The Applicant's Summary of Case on Item 8: Consideration of Duties under the Equalities Act 2010

## 7.1 Item 8. Consideration of Duties arising under the Equalities Act 2010

Table 7.1 – Item 8. Consideration of Duties arising under the Equalities Act 2010

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



# 8. The Applicant's Summary of Case on Item 9: Funding

## 8.1 Item 9. Funding

Table 8.1 – Item 9. Funding

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

# 9. The Applicant's Summary of Case on Item 10: Any Other Business

## 9.1 Item 10. Any Other Business

Table 9.1 – Item 10. Any Other Business

Issued Discussed	Summary of Oral Case
The Applicant made no oral submissions in relation to Item 10.	

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