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# Bramford to Twinstead Reinforcement

## Volume 8: Examination Submissions

Document 8.10.7: Application under Section 127 Planning Act 2008 –  
Network Rail Infrastructure Limited

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# 1. Application under s.127 of the Planning Act 2008 – Statutory Undertakers' Land

## 1.1 Introduction

1.1.1 National Grid Electricity Transmission plc (the Applicant) submitted, on 27 April 2023, an application for development consent to the Secretary of State for the Bramford to Twinstead Reinforcement (the project) (application reference EN020002). The application was accepted by the Planning Inspectorate on 23 May 2023.

1.1.2 The draft Development Consent Order (**document 3.1 (G)**) (draft DCO) includes provision for the compulsory acquisition of rights in land, including the acquisition of interests and rights in “statutory undertakers’ land”, as defined by s.127 of the Planning Act 2008, as amended (the 2008 Act). As the draft DCO (**document 3.1 (G)**) will affect statutory undertakers’ interests in land, the Applicant believes that s.127 is engaged by the draft DCO (**document 3.1 (G)**).

1.1.3 Section 127 applies to land (statutory undertakers’ land) if:

- The land has been acquired by a statutory undertaker for the purposes of its undertaking;
- A representation has been made, and not withdrawn, about an application for development consent; and
- The Secretary of State is satisfied that:
  - The land is used for the purposes of carrying on the statutory undertakers’ undertaking; or
  - An interest in land is held for those purposes.

For the purposes of s.127, “land” includes any interest in or right over land (as defined in s.159 of the 2008 Act).

1.1.4 The relevant statutory undertaker for the purposes of this application is Network Rail Infrastructure Limited (Network Rail). The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Network Rail (Network Rail’s Land) for the purposes of its undertaking.

1.1.5 Network Rail has made a representation to the Planning Inspectorate in relation to the application for development consent ([RR-021] and [REP2-028]). The Applicant is in ongoing discussions with Network Rail regarding the application, but its representation has not currently been withdrawn.

1.1.6 If that representation is not withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on Network Rail’s statutory undertaking, then the draft DCO (**document 3.1 (G)**) may only include provision authorising the compulsory acquisition of a right over statutory undertakers’ land, by the creation of a new right over land, to the extent that the Secretary of State is satisfied that the requirements of s.127 have been met.

- 1.1.7 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 of the 2008 Act.
- 1.1.8 The following documents were submitted as part of the application for development consent in April 2023, have been updated throughout the examination and are relied upon to support this application under s.127:
- Land Plans (**document 2.3 (B)**) [REP1-004];
  - Work Plans (**document 2.5**) [APP-010];
  - Draft Development Consent Order (**document 3.1 (G)**);
  - Explanatory Memorandum (**document 3.2 (F)**);
  - Statement of Reasons (**document 4.2**) [APP-038]; and
  - Book of Reference (**document 4.3 (E)**) [REP6-007].
- 1.1.9 The Statement of Reasons [APP-038] sets out the justification for seeking compulsory acquisition powers within the draft DCO (**document 3.1 (G)**).

## 1.2 Need Case

- 1.2.1 The need for the project has been established in the Planning Statement [REP6-011] and the Need Case April 2023 [APP-161], and is underpinned by National Policy Statements EN-1 and EN-5.
- 1.2.2 In line with the UK government's legal commitment to reduce greenhouse gas emissions by at least 100% from the 1990 baseline by 2050 (net zero), growth in offshore wind generation, a new nuclear power station at Sizewell C and greater interconnection with countries across the North Sea has seen a significant increase in the number of connections planned in East Anglia.
- 1.2.3 The existing electricity transmission network was not designed to transfer the increasing volume of generation capacity from East Anglia to major centres of electricity demand across central and southern England. The network will require significant reinforcement in the East Anglia area to provide capacity for these connections to ensure that power can be transferred securely to onshore demand centres to meet the needs of Great Britain's electricity consumers and businesses.
- 1.2.4 The Applicant has obligations under its Transmission Licence to provide an efficient, economic and co-ordinated transmission system in England and Wales. The Applicant is required at all times to plan and develop the transmission system in accordance with the National Electricity Transmission System Security and Quality of Supply Standard and to offer connections to and/or use of the transmission system via the National Grid Electricity System Operator (ESO).
- 1.2.5 The anticipated growth in generation means that between 2025 and 2026, the limits of the East Anglia transmission system will exceed their current capacity.
- 1.2.6 This assessment is supported by the Network Options Assessment (NOA), the Electricity Ten Year Statement (ETYS) and the Future Energy Scenarios (FES) which are undertaken by the ESO, independently of the Applicant, as the transmission owner. The ETYS has identified over 15,300MW of boundary capability is required by 2030 to achieve net zero targets.

- 1.2.7 The ESO manages shortfalls in boundary capacity by reducing power flows and constraining generation. This is achieved by paying generators to reduce their outputs, known as ‘constraint costs’. Ultimately, constraint costs are passed on to consumers and businesses through electricity bills. When constraint costs become higher than the cost of investment required to reinforce the network (and remove the need for constraint costs) it is economically optimal to proceed with investment for reinforcement.
- 1.2.8 As part of the ESO annual ETYS, FES and NOA assessment, the ESO has established from the data the Applicant provides, consistent with the need case set out in Need Case April 2023 [APP-161], that the limits would add constraint costs exceeding the costs of reinforcement of the network.
- 1.2.8 Without the required reinforcement, multiple contracted customers who have connection offers which are reliant on reinforcement of the network before they could proceed with an unconstrained connection to the network will be impacted. Reference is made in this context to Table 3.2 of the Need Case.
- 1.2.9 Establishing the need for reinforcement, as summarised above, is the first step in the Applicant’s project development process. For the project, this is detailed in the Need Case April 2023 [APP-161]. On the basis of the need case established, the Applicant reviewed how the required reinforcement could be delivered, considering different strategic options, and assessing the options identified. This took into account environmental, socio-economic, cost and technical considerations. The strategic proposal was then considered further through options identification and selection, taking into account feedback received. The design and assessment of the project in environmental terms was the subject of statutory consultation, with feedback considered before the project taken forward was finalised and submitted in the application for development consent.
- 1.2.10 Therefore, there is an urgent need to reinforce the network in the East Anglia area by 2028. This is to:
- Enable connection of multiple contracted generation customers;
  - Ensure future connections of generation can be made without incurring significant constraint costs;
  - Facilitate the UK government’s net zero ambitions; and
  - Meet the Applicant’s transmission licence obligations.

## 1.3 Proposed Works

- 1.3.1 The works which are proposed over Network Rail’s Land in connection with the project include, in particular, the following:
- Dismantling and removal of the existing 132kV overhead line which crosses above the Sudbury Branch railway line. These works would require the installation and removal of protective netting and scaffolding over rail infrastructure belonging to Network Rail. It is anticipated that the railway line would need to be closed for up to one day in order to facilitate the overhead line removal. Subject to discussions with Network Rail, the closure would be carried out during an off-peak period, either over night or at a weekend in order to reduce impacts on passengers. The Applicant would liaise with Network Rail to agree any additional measures that may be required as part of the works, including the need for any formal track possessions;

- Installation of an underground electric line beneath the Sudbury Branch railway line. It is assumed that installation would be carried out using a trenchless crossing technique, subject to further consultation with Network Rail; and
- Access across the Sudbury Branch railway line in order to undertake adjacent construction and dismantling works. Access will be taken using a level crossing located on private land (Plot 20-28) to the south of the planned cable undergrounding.

Table 1.1 Proposed Works and Locations

| Plot Numbers                                    | Work       | Works Description  |
|---|------------|--|
| 20-28, 20-33, 20-34, 20-36, 20-38, 20-39, 20-42 | Work No. 5 | Works as shown on Sheets 19, 20, 21, 27 and 28 of the Work Plans [APP-010] to construct and install a new underground transmission electric line (5.1 kilometres in length) in the section of the works between and including the Stour Valley East Cable Sealing End Compound and the Stour Valley West Cable Sealing End Compound. |
| 20-28, 20-33, 20-34, 20-36, 20-38, 20-39, 20-42 | Work No. 8 | Works as shown on Sheets 4, 5, 7 to 17 (inclusive), 19, 20, 21 and 22 of the Work Plans [APP-010] to allow the removal of 25 kilometres of the existing overhead distribution electric line (Route PCB) between Burstall Bridge at a point indicated as PCB5 and a point to the west of Twinstead Tee indicated as PCB89.            |

1.3.2 Works in the vicinity of Network Rail’s Land will be planned, managed and undertaken such that risks associated with the design, construction and operation of new underground electric line are suitably and sufficiently mitigated. This will be achieved through consultation with the responsible Asset Protection and Optimisation (ASPRO) team, as well as compliance with Network Rail guidance ‘Asset Protection and Optimisation Management of Outside Party Works’ (Ref: NR/L2/CIV/096) and applicable Network Rail design standards, including but not limited to; ‘Planning, Design and Construction of Undertrack Crossings’ (ref NR/L2/CIV/044), ‘Monitoring Track Over or Adjacent to Construction Works’ (NR/L2/CIV/177) and ‘Piling, Drilling, Crane, MEWP and SMPT Operations Adjacent to the Railway’ (NR/L3/CIV/0063).

1.3.3 Compliance with these measures and standards will mitigate any potential impact on the integrity or operation of the railway, for example by checking that the depth of the trenchless crossings and any settlement that results from these works will not materially affect the track support zone and providing track monitoring where required to confirm this.

1.3.4 Consideration will be given during the design process, in consultation with the ASPRO team, of any likely foreseeable future improvement or expansion of Network Rail assets in the location of the project works.

## 1.4 Section 127 Application

1.4.1 Section 127 of the 2008 Act applies where a statutory undertaker makes a representation (which is not withdrawn). In these circumstances, the draft DCO (**document 3.1 (G)**) may

only include a provision authorising the compulsory acquisition of statutory undertakers' land where the Secretary of State is satisfied that:

- The land may be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- The land can be replaced by other land belonging to, or available for acquisition by, the statutory undertaker without serious detriment to the carrying on of the undertaking.

1.4.2 Sections 127(2) and (3) are set out below:

*(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).*

*(3) The matters are that the nature and situation of the land are such that—*

*(a) it can be purchased and not replaced **without serious detriment** to the carrying on of the undertaking, or*

*(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers **without serious detriment** to the carrying on of the undertaking.*

1.4.3 Sections 127(5) and (6) contain equivalent wording in respect of acquiring rights over statutory undertaker's land and are set out below:

*(5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).*

*(6) The matters are that the nature and situation of the land are such that—*

*(a) the right can be purchased **without serious detriment** to the carrying on of the undertaking, or*

*(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.*

1.4.4 There is no statutory definition of "serious detriment". The test for "serious detriment" is wide and holistic, it being more than a mere disadvantage. In the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport regarding The Lake Lothing (Lowestoft) Third Crossing Order 2020, the Examining Authority recognised at paragraph 8.5.138. "*that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach*".

## 1.5 Statutory Undertakers' Land

1.5.1 No land owned by Network Rail needs to be compulsorily acquired; only rights over that land. Therefore, ss.127(2) and (3) of the 2008 Act are not engaged.

1.5.2 The Applicant understands that the rights and interests in the plots set out in Table 1.2 below have been acquired by Network Rail for the purposes of its undertaking. Interests and rights in the plots set out in Table 1.2 are required by the Applicant in order to deliver the project. Therefore, ss.127(5) and (6) are engaged.



Below is a broad description of the purpose for which Network Rail's Land is required and the rights that would need to be acquired (in the context of the interface works described in Paragraph 1.3 above); see further the Book of Reference [REP6-007] and noting as is explained in the Book of Reference that where two types of interest, rights or powers are sought over a given plot (such as temporary use for construction, mitigation, maintenance, and dismantling of redundant infrastructure, as well as permanent rights of access), the plot is coloured according to the more extensive power required:

- Class 3 (Compulsory Acquisition of Rights – Underground Cable) – acquisition of rights by the creation of new rights, the imposition of restrictions, or the acquisition of existing rights or benefits of existing restrictions:
  - a. With or without vehicles, plant and equipment to enter the land to construct the underground cables and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace or remove;
  - b. With or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
  - c. With or without vehicles, plant and equipment to enter the land to access any adjoining land;
  - d. With or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
  - e. To require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the underground cables, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
  - f. To fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
  - g. To construct and install land drains (including all necessary supports) on the land, and thereafter to retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, reinstate, renew, alter and replace, the same;
  - h. To carry out any other works necessary or expedient to the land and listed in Schedule 1 of the Order; and
  - i. To carry out any activities ancillary or incidental thereto.
- Class 4 (Compulsory Acquisition of Rights – Access) – acquisition of rights by the creation of new rights, the imposition of restrictions, or the acquisition of existing rights or benefits of existing restrictions:
  - a. Of way with or without vehicles, plant and equipment at all times over the land;
  - b. To remove any buildings, structures, pylons, apparatus, equipment, and vegetation from that land;

- c. To require the landowner not to do or suffer anything to be done upon the land which may interfere with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- d. To require the landowner not to do or suffer anything to be done upon the land which may interfere with sight lines associated with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with sight lines, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- e. To construct, use or maintain works (including the provision of means of access);
- f. To construct and install land drains (including all necessary supports) on the land, and thereafter to retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, reinstate, renew, alter and replace, the same; and
- g. To carry out activities ancillary thereto.

Table 1.2 Land affected and interest or right to be acquired

| <b>Statutory Undertaker's land (plot number)</b> | <b>Interest or right to be acquired</b>                               |
|--|---|
| 20-38, 20-39                                     | <i>Class 3 (Compulsory Acquisition of rights – underground cable)</i> |
| 20-28, 20-33, 20-24, 20-36, 20-42                | <i>Class 4 (Compulsory Acquisition of rights – access)</i>            |

- 1.5.4 The Applicant considers that there would be no serious detriment to Network Rail's undertaking if it were to acquire these rights and interests and that the criteria as set out in s.127 are satisfied.
- 1.5.5 Installation of the underground electric line at depth beneath the railway will likely utilise trenchless construction techniques in order to minimise any disruption to, or impact on, Network Rail's existing operational assets. Further, and as explained at Paragraphs 1.3.2 to 1.3.4 above, installation of the electric line will itself be undertaken in compliance with all applicable Network Rail guidance and design standards and pursuant to the terms of an Asset Protection Agreement which the Applicant understands will be required to be entered into prior to the commencement of any works or other operations in proximity to Network Rail's operational assets. (A Basic Asset Protection Agreement has already been entered into between the parties in relation to the design of those works).
- 1.5.6 In addition, the rights sought by the Applicant would co-exist within the plots affected alongside those of Network Rail and, for the most part, the rights would cause minimal interference to Network Rail's undertaking.

- 1.5.7 Other than during construction of the project (noting that the Applicant will seek to agree with Network Rail in advance the timing of those operations required to be undertaken in proximity to Network Rail's operational assets), potential interference would be limited to maintenance or emergency works to the Applicant's equipment. On such occasions, the Applicant would consult with Network Rail in order to cause as little disruption as practicable during maintenance or emergency works.
- 1.5.8 In addition, the Applicant will work with Network Rail regarding its operational requirements and has included protective provisions at Schedule 14, Part 4 of the draft DCO (**document 3.1 (G)**) with a view to protecting Network Rail's interests. Although substantially agreed, those protective provisions are subject to further amendment at Deadline 8, as explained in the Applicant's Schedule of Changes to the Draft Development Consent Order (**document 8.4.2 (F)**).
- 1.5.9 Notwithstanding the amendments made to the protective provisions at Deadline 8, it is the Applicant's view that any interference caused (if at all) will not be a serious detriment to Network Rail carrying on its undertaking.
- 1.5.10 As the rights to be acquired will co-exist with those of Network Rail and, for the most part, cause minimal interference with Network Rail's undertaking, the Applicant does not consider it necessary to replace the land over which rights are required for the project.
- 1.5.11 The procedure under s.127(5) only applies to the compulsory acquisition of a right, and therefore is not engaged by plots which are only subject to Articles 26 to 29 (inclusive) of the draft DCO (**document 3.1 (G)**) which relate solely to temporary use.
- 1.5.12 Negotiations with Network Rail to acquire the interests and rights required for the project and to manage any interfaces between the project and apparatus and/or rights vested in Network Rail on, under or over the land within the order limits voluntarily are ongoing. However, as the Compulsory Acquisition and Temporary Possession Objections Schedule (**document 8.4.4 (F)**) makes clear, it has not yet been possible to reach agreement with Network Rail.
- 1.5.13 In particular, there is a fundamental point of difference between the Applicant and Network Rail regarding the terms of voluntary land agreements currently under negotiation.
- 1.5.14 Network Rail has required terms which would allow it to terminate the Applicant's land rights at Network Rail's election. Tied to this is the term which would allow Network Rail to require the Applicant to relocate its apparatus in the event that Network Rail requests this. These are called 'termination' and 'lift and shift' clauses.
- 1.5.15 Such terms would allow Network Rail to bring the voluntary lands agreement to an end for any purpose in connection to conducting its business as a railway operator by giving the Applicant written notice. Although, prior to serving the notice, Network Rail need to use reasonable endeavours to identify and offer an alternative location for the Applicant's apparatus that is required to be moved, there is no actual obligation to source and provide such alternative location.
- 1.5.16 Each of the 'termination' and 'lift and shift' clauses have the effect of removing the Applicant's rights to operate a critical part of the electricity transmission system at the future request of Network Rail, and further would require positive action by the Applicant to reconfigure the transmission network, at the electricity consumer's expense. These provisions are entirely at odds with the Applicant's obligation to operate the transmission system in compliance with the National Electricity Transmission System Security and



Quality of Supply Standard (NETS SQSS) and its statutory duties to be economic and efficient.

- 1.5.17 It is accepted that Network Rail has a statutory duty to ensure safe operation of the railway and act in the public's best interest. Notwithstanding the fact that the works required to be undertaken as part of the project will not, in the Applicant's opinion, inhibit Network Rail's statutory duty, it must similarly be emphasised that the Applicant is also a regulated body with a duty to the electricity consumer and must not enter into commitments which would put at risk the future transmission of electricity across the nation. Agreeing to Network Rail's request would remove certainty as to the ongoing operation of the project and commit the Applicant to future diversions which may require new consents, including new land rights which would need to be sought, and which have not been assessed as part of this project. This would be entirely unacceptable for the operation of the national electricity transmission system. The Applicant would also note that it has been through a thorough optioneering and consultation process (including consulting Network Rail) to reach the design solution which is now proposed, and which includes the location of the interface with the railway.
- 1.5.18 In addition, the Applicant would incur significant costs in complying with Network Rail's request, costs which would ultimately be borne by the electricity consumer. Outages would also be likely to be necessary and hence experienced by the consumer, and which would potentially take a significant amount of time to restore, especially if new statutory consents are required.
- 1.5.19 The costs and timescales associated with these consents processes are substantial and would exceed the timescales for 'termination' and 'lift and shift' proposed by Network Rail. Additionally, this could also require land and rights to be obtained from additional landowners not already affected by the project.
- 1.5.20 The Applicant has not been made aware of any planned upgrades or modifications to the Sudbury Branch railway line. However, it is the Applicant's position that any future need for Network Rail to update its network, which necessitates movement of the Applicant's apparatus, should be funded and consented, with alternative land rights secured for the Applicant, by Network Rail as the promoter of any such future development in the usual way.
- 1.5.21 Private treaty negotiations with Network Rail will continue in parallel with the compulsory acquisition process with a view to concluding an agreement as soon as practicably possible.
- 1.5.22 Compulsory acquisition powers are still sought in the draft DCO (**document 3.1 (G)**) over the Network Rail Land for the following reasons:
- Notwithstanding that diligent enquiry to establish all persons with an interest in land has been undertaken, and agreements concluded, if any person with an interest in land is identified or comes forward subsequent to the draft DCO (**document 3.1 (G)**) having been made, the Applicant must be able to rely upon compulsory acquisition powers under the draft DCO (**document 3.1 (G)**) in respect of such interest if no voluntary agreement with that person can be obtained;
  - The voluntary agreement may later prove to have granted insufficient rights and the land owner may be unwilling to extend the rights as may be required; and
  - Compulsory acquisition powers are more readily enforceable, thereby reducing additional risk, cost and delay. The Applicant may consistently and uniformly enforce

compulsory acquisition powers to deliver the project in a comprehensive manner in relation to all persons with an interest in land.

## 1.6 Conclusion

1.6.1 Given the need for the project (see in particular the need case as signposted in Paragraph 1.2 (Need Case)), the Applicant considers that there is a compelling case in the public interest for the inclusion of the compulsory acquisition powers within the draft DCO (**document 3.1 (G)**).

1.6.2 For the reasons set out in this application, it is the Applicant's position that, pursuant to s.127 of the 2008 Act, the Secretary of State can be satisfied that the prescribed tests of s.127 have been met and that interests and rights in Network Rail's Land may be included for compulsory acquisition in the draft DCO (**document 3.1 (G)**).

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