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Bramford to Twinstead Reinforcement

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Document 8.11.5.1: Application under Section 127 Planning Act 2008 –
Pivoted Power LLP

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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(H)**) (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(H)**) will affect statutory undertakers' interests in land, the Applicant believes that s.127 is engaged by the draft DCO (**document 3.1(H)**).

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- A representation has been made, and not withdrawn, about an application for development consent; and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 Pivoted Power LLP (Pivoted Power). The Applicant proposes to acquire interests and rights in land, such interest in the land having also been acquired by Pivoted Power (Pivoted Power's Land) for the purposes of its undertaking.

1.1.5 Pivoted Power benefits from existing rights of access in common over the access road running between the public highway at Bullen Lane and the Applicant's Bramford Substation site. These rights of access in common are for the benefit of Pivoted Power's Bramford/Tye Lane Battery Energy Storage System project.

1.1.6 No other land or rights presently owned or held by Pivoted Power are affected by the project.

1.1.7 Pivoted Power has made a representation to the Planning Inspectorate in relation to the application for development consent ([RR-035], [REP2-029] and [REP3-075]). Whilst the Applicant is in advanced discussions with Pivoted Power regarding matters raised in that representation, Pivoted Power's representation has not currently been withdrawn.

- 1.1.8 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 Pivoted Power’s statutory undertaking, then the draft DCO (**document 3.1(H)**) 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.
- 1.1.9 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 of the 2008 Act, to the extent that s.127 is engaged, and without prejudice to the ongoing discussions between the Applicant and Pivoted Power.
- 1.1.10 To the extent that those discussions facilitate the withdrawal by Pivoted Power of its existing representation, the Applicant would request that the Secretary of State also treats this application pursuant to s.127 of the 2008 Act as having been withdrawn.
- 1.1.11 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(C)**);
 - Work Plans (**document 2.5**) [APP-010];
 - Draft Development Consent Order (**document 3.1(H)**);
 - Explanatory Memorandum (**document 3.2(G)**);
 - Statement of Reasons (**document 4.2(B)**); and
 - Book of Reference (**document 4.3(F)**).
- 1.1.12 The Statement of Reasons (**document 4.2(B)**) sets out the justification for seeking compulsory acquisition powers within the draft DCO (**document 3.1(H)**).

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 region 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 generation 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.
- 1.2.9 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 April 2023 [APP-161].
- 1.2.10 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 reviews how the required reinforcement could be delivered, considering different strategic options, and assessing the options identified. This takes into account environmental, socio-economic, cost and technical considerations. The strategic proposal is then considered further through options identification and selection, taking into account feedback received. The design and assessment of the project in environmental terms is the subject of statutory consultation, with feedback considered before the project taken forward is finalised and submitted in the application for development consent.
- 1.2.11 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 No physical works are proposed over Pivoted Power's Land in connection with the project.

- 1.3.2 However, the Applicant has sought powers in the draft DCO to facilitate, if required, the compulsory acquisition of rights over plots within the access road running between the public highway at Bullen Lane and the Applicant's Bramford Substation site. These are shown as Plots 1-01, 1-02 and 1-03 on the Land Plans (**document 2.3(C)**).
- 1.3.3 Both the Applicant and Pivoted Power benefit from existing rights of access in common over the access road, for the benefit of the Bramford Substation site and the Bramford/Tye Lane Battery Energy Storage System project respectively.

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(H)**) 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 Pivoted Power 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 1.1 below have been acquired by Pivoted Power for the purposes of its undertaking. Interests and rights in the plots set out in Table 1.1 are required by the Applicant in order to deliver the project. Therefore, ss.127(5) and (6) are engaged.

1.5.3 Below is a broad description of the purpose for which the rights in Pivoted Power's Land would need to be acquired; see further the Book of Reference (**document 4.3(F)**) 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 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.

1.5.4 The procedure under s.127(5) only applies to the compulsory acquisition of a right, and is therefore not engaged by plots subject to Articles 26 to 29 (Temporary possession of land) inclusive of the draft DCO (**document 3.1(H)**).

Table 1.1 - Land affected and interest or right to be acquired

Statutory Undertaker's land (plot number)	Interest or right to be acquired
1-01, 1-02, 1-03	Class 4 (Compulsory Acquisition of Rights – Access)

1.5.5 The Applicant considers that there would be no serious detriment to Pivoted Power's undertaking if it were to acquire rights and interests in the plots listed in Table 1.1 and that the criteria as set out in s.127 are satisfied.

1.5.6 This is because the rights sought by the Applicant would co-exist within the plots affected alongside those of Pivoted Power and, for the most part, the rights would cause minimal interference to Pivoted Power's undertaking.

1.5.7 In particular, and prior to the commencement of development at Bramford Substation, working practices and measures to manage the use of the shared access off of Bullen Lane will be agreed with the Pivot Power Operations Team. The Applicant and its contractor will share the Construction Traffic Management Plan, expected numbers of vehicle movements and any other relevant information with Pivoted Power to ensure the safe and uninterrupted use of the shared access by all parties.

1.5.8 In addition, the Applicant and Pivoted Power are at an advanced stage of negotiation in respect of an Interface Agreement which, once entered into, will ensure the protection of each party's respective interests during the construction of the project, including in respect of the broadband connection to be installed within the access road and which serves the Bramford/Tye Lane Battery Energy Storage System project.

1.5.9 The Applicant would also intend to consult with Pivoted Power in order to ensure that any interference to Pivoted Power's undertaking during the carrying out of routine maintenance or emergency works to the Applicant's equipment in the vicinity of Bramford Substation would be minimised wherever practicable.

1.5.10 As a result, it is the Applicant's view that any interference caused (if at all) will not be a serious detriment to Pivoted Power carrying on its undertaking.

1.5.11 As the rights to be acquired will co-exist with those of Pivoted Power and, for the most part, cause minimal interference with Pivoted Power's undertaking, the Applicant does not consider it necessary to replace the land over which rights are required for the project.

1.5.12 However, compulsory acquisition powers are still sought in the draft DCO (**document 3.1(H)**) over the plots listed in Table 1.1 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(H)**) having been made, the Applicant must be able to rely upon compulsory acquisition powers under the draft DCO (**document 3.1(H)**) 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(H)**).
- 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 Pivoted Power's Land may be included for compulsory acquisition in the draft DCO (**document 3.1(H)**).

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