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Bramford to Twinstead Reinforcement

Volume 8: Examination Submissions

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- A representation has been made, and not withdrawn, about an application for development consent; and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

1.1.5 Anglian Water has made a representation to the Planning Inspectorate in relation to the application for development consent ([RR-022], [REP2-019] and [REP3-058]). Whilst the Applicant is in advanced discussions with Anglian Water regarding matters raised in that representation, Anglian Water’s representation has not currently been withdrawn.

1.1.6 If that representation is not withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on Anglian Water’s statutory undertaking,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.

- 1.1.7 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 Anglian Water.
- 1.1.8 To the extent that those discussions facilitate the withdrawal by Anglian Water 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.
- 1.1.9 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)**).
- 1.1.10 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 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 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.
- 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 The project will interface with the LRT Section of Anglian Water’s Bury St Edmunds to Colchester 69km Pipeline Scheme consented under planning permission DC/22/06352 (the Pipeline Scheme). Works to be undertaken as part of the project at that location (Sheet 8 of the Work Plans [APP-010]) are likely to comprise the following:
- The removal of a section of the existing 132kV overhead line and pylons between pylons PCB20 and PCB21;
 - The construction of the proposed 400kV overhead line between pylons RB16 and RB17;

- The proposed realignment of the existing 400kV overhead line between pylons 4YL017A and 4YL018A;
- The removal of a section of the existing 400kV overhead line between pylons RB16 and 4YL018A, including pylon 4YL018;
- The undergrounding, at various locations, of existing lower voltage electric lines on wooden poles;
- The provision of areas of land for environmental mitigation and enhancement; and
- Temporary construction works including access, working areas and protection works.

1.3.2 In addition, other works and operations forming part of the authorised development as described in Schedule 1 of the draft DCO (**document 3.1(H)**) are either proposed over, or are likely to interact in some way with, Anglian Water's Land. Suitable mitigation measures will be implemented where those works are carried out, including locating and identifying buried services, safe excavation practises and temporary works or protection measures where needed.

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 Anglian Water 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 Anglian Water 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 Anglian Water's Land is required and the rights that 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 1 (Compulsory Acquisition of Land) – acquisition of all interests and rights in the land (noting, however, that this is in respect of Plot 23-13 only, in which Anglian Water has a Category 2 interest in respect of existing apparatus).
- Class 2 (Compulsory Acquisition of Rights – Overhead Lines) – 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 overhead electric line 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 overhead electric line, 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, including environmental mitigation, 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 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.
 - Class 5 (Compulsory Acquisition of Rights – Biodiversity Net Gain) – 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. a. to carry out BNG works or activities in relation to that land;
 - b. to gain access to the land for the above;
 - c. to require the landowner not to do or suffer anything to be done upon the land which may interfere with the BNG works or activities and the ongoing existence and maintenance of those BNG works or activities, or do or allow to be done anything that may cause the land to no longer fulfil the biodiversity purpose identified;

- d. 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
- e. 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
23-13	Class 1 – Compulsory Acquisition of Land. ¹
2-13, 2-28, 3-49, 6-13, 6-38, 6-39, 8-41, 9-26, 10-11, 10-13, 10-16, 10-20, 10-23, 11-13, 11-14, 12-03, 15-98, 15-103, 15-106, 15-108, 15-109, 15-113, 16-04, 16-21, 16-27, 16-29, 16-32, 16-57, 16-61, 16-62, 17-07, 17-38, 17-40, 17-41, 17-95, 17-98, 17-99, 17-106, 28-16, 28-26	Class 2 – Compulsory Acquisition of Rights – Overhead Line
1-29, 2-04, 2-12, 2-18, 4-23, 8-27, 8-63, 8-65, 8-101, 8-107, 8-110, 8-115, 12-15, 12-28, 12-29, 12-32, 12-33, 13-10, 15-08, 16-13, 16-15, 16-16, 16-18, 16-19, 20-19, 20-23, 20-40, 20-50, 21-02, 21-08, 23-05, 23-36	Class 3 – Compulsory Acquisition of Rights- Underground Cable.
2-26, 3-45, 3-54, 3-85, 3-89, 6-12, 6-14, 6-18, 7-48, 8-13, 8-31, 8-35, 8-37, 8-50, 8-109, 10-01, 10-04, 10-12, 10-22, 11-10, 11-12, 11-19, 12-38, 12-39, 12-40, 15-02, 15-89, 16-53, 16-56, 16-60, 16-75, 16-89, 17-08, 17-16, 17-27, 17-53, 17-88, 17-89, 19-05, 20-17, 20-54, 20-55, 23-28	Class 4 – Compulsory Acquisition of Rights - Access
3-10, 17-10, 17-11, 17-55, 17-58, 17-60, 17-101	Class 5 – Compulsory Acquisition of Rights - BNG

1.5.5 The Applicant considers that there would be no serious detriment to Anglian Water's undertaking if it were to acquire these rights and interests and that the criteria as set out in s.127 are satisfied.

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

1.5.7 In particular, construction works over or near Anglian Water assets will be planned, managed, and undertaken in accordance with the requirements and recommendations of HSG47 (*Avoiding danger from underground services*) and relevant Anglian Water guidance notes, including but not limited to '*General requirements regarding building over or near to the public sewer*' and '*Working in proximity to mains*'.

¹ The Book of Reference (**document 4.3(F)**) notes that Anglian Water has a Category 2 interest (in respect of apparatus) in Plot 23-13.

- 1.5.8 Construction risks will be managed through the implementation of suitable mitigation measures, including locating and identifying buried services, safe excavation practises and temporary works or protection measures where needed. Examples of temporary measures that may be implemented include protected crossing points where construction vehicles must drive over utilities, temporary support of utilities when located within an excavation, and in certain circumstances, temporary diversions of utilities.
- 1.5.9 Consultation with the relevant Anglian Water operations teams will be undertaken as advised by the guidance notes and all necessary approvals and sign offs shall be sought before starting works.
- 1.5.10 In the case of the Pipeline Scheme, it is not anticipated that the proposed overhead line works in this area will have a significant impact on Anglian Water's assets. However, details of the works, including method statements, lift plans, details of temporary works and other information as relevant will be shared with the appropriate operations team before starting works. The Applicant and Anglian Water are also in advanced negotiations in respect of a Cooperation Deed which will provide further mutual protections in relation to the interface between the project and the Pipeline Scheme.
- 1.5.11 In addition, the Applicant and Anglian Water have agreed protective provisions (to which see Part 3 of Schedule 14 to the draft DCO) which will ensure the protection of Anglian Water's Land and apparatus.
- 1.5.12 However, compulsory acquisition powers are still sought in the draft DCO (**document 3.1(H)**) over the plots 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 Anglian Water's Land may be included for compulsory acquisition in the draft DCO (**document 3.1(H)**).

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