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Bramford to Twinstead Reinforcement

Volume 8: Examination Submissions

Document 8.11.4: Application under Section 138 Planning Act 2008 –
Statutory Undertakers' & Telecommunications Operators' Rights and
Apparatus

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1. Application under s.138 of the Planning Act 2008 – Statutory Undertakers' & Electronic Communications Code Operators' Rights and Apparatus

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 the power for the Applicant to extinguish the rights of, or remove the apparatus belonging to, statutory undertakers, and as such the Applicant believes that s.138 of the Planning Act 2008, as amended (the 2008 Act), is engaged by the draft DCO (**document 3.1(H)**).
- 1.1.3 Section 138 applies to land if:
- There subsists over the land a relevant right; or
 - There is on, under or over the land relevant apparatus.
- 1.1.4 Section 138 provides that the draft DCO (**document 3.1(H)**) may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the draft DCO (**document 3.1(H)**) relates.
- 1.1.5 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.138 of the 2008 Act. This document presents a Schedule identifying those statutory undertakers and telecommunications operators who retain rights under the Electronic Communications Code with rights and/or apparatus to which s.138 applies.
- 1.1.6 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.138:
- 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)**).

- 1.1.7 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 Section 138 Application

- 1.3.1 As noted at Paragraph 1.1.2 above, the draft DCO (**document 3.1(H)**) gives the Applicant the power to extinguish the rights of, or remove the apparatus belonging to, statutory undertakers over or within the order limits. However, this is only permitted where the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the draft DCO (**document 3.1(H)**) relates.
- 1.3.2 Section 138 of the 2008 Act is set out below:
- (1) *This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—*
- (a) *there subsists over the land a relevant right, or*
 - (b) *there is on, under or over the land relevant apparatus.*
- (2) *“Relevant right” means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—*
- (a) *is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or*
 - (b) *is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.*
- (3) *“Relevant apparatus” means—*
- (a) *apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or*
 - (b) *electronic communications apparatus kept installed for the purposes of an electronic communications code network.*

(4) *The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.*

(4A) *In this section “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purpose of any provision of Part 11 of TCPA 1990.*

(4B) *In this section—*

“electronic communications apparatus” has the meaning given in paragraph 5 of the electronic communications code;

“electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;

“operator of an electronic communications code network” has the meaning given in paragraph 1(1) of Schedule 17 to the Communications Act 2003.

1.3.3 The Schedule hereto identifies those statutory undertakers and telecommunications operators who retain rights under the Electronic Communications Code with rights and/or apparatus to which s.138 applies. The Applicant understands that a relevant right and/or relevant apparatus for the purposes of s.138 is vested in or belongs to those identified therein, on under or over the plots listed.

1.3.4 For the purposes of this application, it is the Applicant’s case that:

- Works associated with the project are necessary over the plots listed in the Schedule hereto (as described in Schedule 1 to the draft DCO (**document 3.1(H)**) and shown on the Work Plans [**APP-010**]) to carry out the project;
- The project could affect relevant rights and/or relevant apparatus vested in or belonging to those identified in the Schedule hereto, albeit in no circumstances would the Applicant interfere with relevant apparatus in such a manner as to be to the detriment of the undertaking or operations carried out by the statutory undertaker or telecommunications operator concerned;
- In the absence of powers for the Applicant to extinguish such rights and/or remove such apparatus, the works associated with the project could not be completed; and
- Protective provisions have been included at Schedule 14 of the draft DCO (**document 3.1(H)**), which ensure that all appropriate steps must be taken by the Applicant to protect retained relevant apparatus and/or to ensure that alternative apparatus is provided on an equivalent basis.

1.3.5 Therefore, taking account of the nature of the proposed works and the inclusion of protective provisions in the draft DCO (**document 3.1(H)**), the Applicant contends that the Secretary of State can be satisfied that the rights of those identified in the Schedule hereto, whilst potentially subject to interface, will not be affected to the detriment of their ability to carry out their undertaking.

1.3.6 Where appropriate, the Applicant is seeking to negotiate with those identified in the Schedule hereto to acquire the rights necessary for the project, and to manage any interfaces between the project and their apparatus and/or rights vested on, under or over land within the order limits, by private treaty. Private treaty negotiations will continue in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as practicably possible.

- 1.3.7 However, in the absence of private treaty agreement between the parties, it is still necessary to seek compulsory acquisition powers in the draft DCO (**document 3.1(H)**) to ensure that the Applicant is able to consistently and uniformly enforce powers to deliver the project in a comprehensive manner in relation to all persons with an interest in land.
- 1.3.8 The Applicant considers these powers to be essential until such time as a voluntary grant of the interests in question has been secured.

1.4 Conclusion

- 1.4.1 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)**).
- 1.4.2 For the reasons set out in this application, it is the Applicant's position that, pursuant to s.138 of the 2008 Act, the Secretary of State can be satisfied that the power for the Applicant to extinguish the rights of, or remove the apparatus belonging to, the statutory undertakers as set out in the Schedule hereto, is necessary for the purpose of carrying out the project, and that the test of s.138 has therefore been met.

2. Schedule of Statutory Undertakers and Electronic Communications Code Operators

Table 1.1 – Section 138 of the Planning Act 2008, Statutory Undertakers’ & Electronic Communications Code Operators’ Rights and Apparatus

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
1	Anglian Water Services Limited (Anglian Water)	Statutory water and sewerage undertaker	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of rights granted by various deeds of grant; and • in respect of apparatus. <p>The apparatus anticipated to be removed or altered refers to:</p> <ul style="list-style-type: none"> • Anglian Water’s existing apparatus, in respect of which protective measures would be implemented or diversionary works undertaken (subject to the output of detailed design, and in consultation with 	<p>Schedule 14, Part 3 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Anglian Water Services Limited, which are agreed.</p> <p>Negotiations in respect of a draft Cooperation Deed and Construction Interface are at an advanced stage.</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works, the inclusion of Protective Provisions in the draft Development Consent Order and the progress made in respect of a Cooperation Deed, the Applicant considers that the Secretary of State can additionally be satisfied that Anglian Water’s rights, whilst potentially subject to interface,</p>	<p>Existing representations submitted into the Examination [RR-022], [REP2-019] and [REP3-058].</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>Anglian Water and in accordance with both the Protective Provisions and the Cooperation Deed); and</p> <ul style="list-style-type: none"> apparatus which will form part of 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), in respect of which protective measures will be implemented in consultation with Anglian Water and in accordance with both the Protective Provisions and the Cooperation Deed. 		will not be affected to the detriment of its ability to carry out its undertaking.	
2	BT Group / Openreach Limited (BT Openreach)	Operator of an electronic communication code network	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> in respect of apparatus. 	Schedule 14, Part 2 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Operators	The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.	No representation submitted into the Examination to date.

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>The apparatus anticipated to be removed or altered refers to:</p> <ul style="list-style-type: none"> • BT Openreach’s existing apparatus (comprising both above ground and below ground apparatus), in respect of which protective measures would be implemented or diversionary works undertaken (subject to the output of detailed design, in consultation with BT Openreach and in accordance with the Protective Provisions). 	<p>of Electronic Communications Code Networks.</p>	<p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and the inclusion of Protective Provisions in the draft Development Consent Order, the Applicant considers that the Secretary of State can additionally be satisfied that BT Openreach’s rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	
3	Cadent Gas Limited (Cadent Gas)	Gas transporter	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus; and • in respect of rights granted by various deeds of grant. 	<p>Schedule 14, Part 5 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Cadent Gas Limited as Gas Undertaker, which are agreed.</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition</p>	<p>Existing representations submitted into the Examination [RR-024] and [REP2-020].</p> <p>(A further submission was made by Cadent Gas on 21</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>The apparatus anticipated to be removed or altered refers to:</p> <ul style="list-style-type: none"> • Cadent Gas' existing apparatus, in respect of which protective measures would be implemented or diversionary works undertaken (subject to the output of detailed design, in consultation with Cadent Gas and in accordance with the agreed Protective Provisions). 	<p>A confidential Side Agreement has also been agreed between the parties.</p>	<p>such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works, the inclusion of Protective Provisions in the draft Development Consent Order and the position reached regarding the Side Agreement, the Applicant considers that the Secretary of State can additionally be satisfied that Cadent Gas' rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	<p>February 2024, confirming withdrawal of its Relevant Representation and Written Representation).</p>
4	East Anglia ONE OFTO Limited (EA1)	Electricity transmission licence holder pursuant to the Electricity Act 1989	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus; • in respect of rights of access; and • in respect of mitigation planting. 	<p>Schedule 14, Part 1 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers.</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition</p>	<p>No representation submitted into the Examination to date.</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with EA1 and in accordance with the Interface Agreement (once agreed).</p>	<p>It is anticipated that an Interface Agreement will be entered into once commercial terms have been agreed between the parties.</p>	<p>such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works, the inclusion of Protective Provisions in the draft Development Consent Order and the progress made in respect of an Interface Agreement, the Applicant considers that the Secretary of State can additionally be satisfied that EA1's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	
5	East Anglia Three Limited (EATL)	Electricity generation licence holder pursuant to the Electricity Act 1989	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of rights of access; • in respect of apparatus; and • in respect of mitigation planting. 	<p>Schedule 14, Part 1 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers.</p> <p>It is anticipated that an Interface Agreement will</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works</p>	<p>Existing representations submitted into the Examination [RR-029], [REP2-022], [REP3-069], [REP4-044] and [REP5-036].</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with EATL and in accordance with the Interface Agreement (once agreed).</p>	<p>be entered into once commercial terms have been agreed between the parties.</p>	<p>associated with the project could not be completed.</p> <p>Given the nature of the proposed works, the inclusion of Protective Provisions in the draft Development Consent Order and the progress made in respect of an Interface Agreement, the Applicant considers that the Secretary of State can additionally be satisfied that EATL's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	
6	Environment Agency (EA)	<p>Specific functions relevant to flood risk pursuant to the Water Resources Act 1991</p>	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of Main Rivers. <p>No apparatus is anticipated to be removed or altered.</p>	<p>Table 3.1 of the Statement of Common Ground - Environment Agency [REP6-019] confirms that Protective Provisions are not considered necessary in the context of the project.</p> <p>A Flood Risk Activity Permit (FRAP) will also be sought from the Environment Agency in respect of works or activities likely to affect Main Rivers.</p>	<p>The extinguishment of the relevant rights is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights, the works associated with the project could not be completed.</p> <p>Given the status of matters as recorded in the Statement of Common Ground - Environment Agency [REP6-019], and the requirement to obtain a FRAP, the Applicant considers that the Secretary of State can additionally be satisfied that the EA's rights, whilst potentially</p>	<p>Existing representations submitted into the Examination [RR-031], [REP2-023], [REP3-070], and [REP7-036]</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
					subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.	
7	Gigaclear Limited (Gigaclear)	Operator of an electronic communication code network	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus. <p>The apparatus anticipated to be removed or altered refers to:</p> <ul style="list-style-type: none"> • Gigaclear’s existing apparatus, in respect of which protective measures would be implemented or diversionary works undertaken (subject to the output of detailed design, in consultation with Gigaclear and in accordance with the Protective Provisions). 	Schedule 14, Part 2 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks.	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and the inclusion of Protective Provisions in the draft Development Consent Order, the Applicant considers that the Secretary of State can additionally be satisfied that Gigaclear’s rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	No representation submitted into the Examination to date.

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
8	Network Rail Infrastructure Limited (Network Rail)	Railway licence holder pursuant to the Railways Act 1993	<p>No right(s) are anticipated to be extinguished.</p> <hr/> <p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with Network Rail and accordance with the Protective Provisions and an Asset Protection Agreement (once agreed).</p> <p>Further detail as to the conduct of any works to be undertaken in proximity to Network Rail's apparatus is set out in the Applicant's Application under Section 127 Planning Act 2008 – Network Rail Infrastructure Limited [REP8-037].</p>	<p>Protective Provisions, Schedule 14, Part 4 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Network Rail Infrastructure Limited.</p> <p>As is documented in the Applicant's Protective Provisions and Commercial Side Agreements Tracking List (document 8.7.8(E)) and in the Applicant's Application under Section 127 Planning Act 2008 – Network Rail Infrastructure Limited [REP8-037], certain elements of these Protective Provisions have not been agreed between the parties.</p>	<p>The removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and (notwithstanding the isolated matters which are not yet agreed) the inclusion of Protective Provisions in the draft Development Consent Order, the Applicant considers that the Secretary of State can additionally be satisfied that Network Rail's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	Existing representations submitted into the Examination [RR-021], [REP2-028] and [REP8-052].

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
9	Pivoted Power LLP (Pivoted Power)	Electricity generation licence holder pursuant to the Electricity Act 1989	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of access. <hr/> <p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with Pivoted Power and in accordance with the Interface</p>	<p>Schedule 14, Part 1 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Negotiations between the parties in respect of an Interface Agreement are at an advanced stage.</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works, the inclusion of Protective Provisions in the draft Development Consent Order and the progress made in respect of an Interface Agreement, the Applicant considers that the Secretary of State can additionally be satisfied that Pivoted Power's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	<p>Existing representations submitted into the Examination [RR-035], [REP2-029] and [REP3-075].</p>

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			Agreement (once agreed).			
10	Royal Mail plc (Royal Mail)	A provider of the Universal Postal Service as defined by the Postal Services Act 2011	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus. <p>No apparatus is anticipated to be removed or altered.</p>	<p>Not applicable.</p> <p>To enable Royal Mail to carry out its duties as a provider of the Universal Postal Service, the Construction Traffic Management Plan (document 7.6 (E)) specifies as follows:</p> <p><i>“Advance notifications of programmed diversions and closures will be issued to major road users and businesses, including Royal Mail. This will include providing notice of any road closures, diversions or alternative access arrangements that may affect travel on those routes and the agreed hours of working</i></p>	<p>The extinguishment of the relevant rights is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and the inclusion of measures as set out in the Construction Traffic Management Plan, the Applicant considers that the Secretary of State can additionally be satisfied that Royal Mail’s rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	Existing representations submitted into the Examination [RR-023] and [REP2-030].

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
				<i>at least one month prior to works taking place.”</i>		
12	UK Power Networks (Operations) Limited (UKPN)	Electricity distribution licence holder pursuant to the Electricity Act 1989	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus. <p>The apparatus anticipated to be removed or altered refers to:</p> <ul style="list-style-type: none"> • the removal of the existing 132kV overhead line between Pylon PCB5 and Pylon PCB89; • the modification of the existing 132kV overhead line between Pylon PCB97 and PCB103; and • the diversion of existing 33kV and 11kV distribution electric lines at various locations. 	<p>An overarching agreement containing commercial and construction terms is in agreed form. Completion is anticipated shortly.</p> <p>Protective provisions for the benefit of electricity undertakers (which also includes gas, water and sewerage undertakers) have been included within Part 1 of Schedule 14 to the draft Development Consent Order (Document 3.1 (H)).</p>	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Having regard to the contractual protections afforded to UKPN pursuant to the overarching agreement, and the existence of the Protective Provisions, the Applicant considers that the Secretary of State can additionally be satisfied that UKPN’s rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	No representation submitted into the Examination to date.

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
13	Virgin Media Limited (Virgin Media)	Operator of an electronic communication code network	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus. <p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with Virgin Media and in accordance with the Protective Provisions.</p>	Schedule 14, Part 2 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks.	<p>The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and the inclusion of Protective Provisions in the draft Development Consent Order, the Applicant considers that the Secretary of State can additionally be satisfied that Virgin Media's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	No representation submitted into the Examination to date.
14	Vodafone Limited (Vodafone)	Operator of an electronic communication code network	<p>The nature of the right(s) anticipated to be extinguished, as noted in the Book of Reference (document 4.3 (F)) are:</p> <ul style="list-style-type: none"> • in respect of apparatus. 	Schedule 14, Part 2 of the draft Development Consent Order (document 3.1(H)) contains Protective Provisions for the	The extinguishment of the relevant rights, and/or the removal or alteration of the relevant apparatus is necessary for the purpose of carrying out	No representation submitted into the Examination to date.

No.	Undertaker	Nature of undertaking	Relevant right(s) to be extinguished and/or relevant apparatus to be removed or altered	Protective provisions and/or agreement	Accordance with test in s.138(4)	Status of representation (if any)
			<p>No apparatus is anticipated to be removed or altered.</p> <p>However, in the event that it becomes necessary to remove or alter any apparatus, protective measures would be implemented or diversionary works undertaken in consultation with Vodafone and in accordance with the Protective Provisions.</p>	<p>Protection of Operators of Electronic Communications Code Networks.</p>	<p>the development to which the Order relates.</p> <p>In the absence of powers for the Applicant to extinguish such rights and/or remove or reposition such apparatus, the works associated with the project could not be completed.</p> <p>Given the nature of the proposed works and the inclusion of Protective Provisions in the draft Development Consent Order, the Applicant considers that the Secretary of State can additionally be satisfied that Vodafone's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.</p>	

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