



Department
of Energy &
Climate Change

Mr A Connolly
National Grid Electricity Transmission plc
National Grid House
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA

Department of Energy & Climate Change
3 Whitehall Place,
London SW1A 2AW
T: +44(0)300 068 5770
E: giles.scott@decc.gsi.gov.uk
www.decc.gov.uk

Your ref:
Our ref: 12.04.09.04/175C

18 December 2013

Dear Mr Connolly

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED KING'S LYNN B OVERHEAD LINE
ELECTRICITY TRANSMISSION CONNECTION PROJECT**

I Introduction

1.1 I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the report dated 10 October 2013 of the Single Examining Inspector forming the Examining Authority ("the ExA"), Ms Eira Hughes who conducted an examination ("Examination") into the application (the "Application") dated 26 July 2012 by National Grid Electricity Transmission plc ("NGET") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act").

1.2 The Examination of the Application began on 11 January 2013 and was completed on 10 July 2013. The Examination was conducted on the basis of written evidence submitted to the ExA and discussed at Open Floor hearings held in King's Lynn on 10, 12 April and 4 June 2013.

1.3 The Order, if made, would grant development consent for the construction, operation and maintenance of an 2.8km 400,000 volt (400 kV) overhead line approximately 3.5km to the south of King's Lynn in the County of Norfolk and the Borough of King's Lynn and West Norfolk and would comprise

of 8 new steel lattice towers, one replacement steel lattice tower on the existing 4VV overhead line, temporary construction works and accesses, together with temporary highway closures.

1.4 Enclosed at **Annex A** to this letter is a copy of the ExA's report and annexed Errata Sheet (Ref.EN020003) of corrections produced by the Planning Inspectorate ("the Report"). The ExA's findings and conclusions are set out in section 4 of the Report, and the ExA's recommendation is at section 8.

II Summary of the EA's Recommendations

2. The ExA recommended that the Order be made, subject to minor modifications and additional requirements being made to NGET's Preferred Draft Order. Those recommended additions were incorporated into the Recommended Draft Order set out in Appendix F to the Report as amended by the Errata Sheet referred to in paragraph 1.4 above.

III Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make an Order granting development consent for the Application, but subject to modifications. A copy of the Order is attached at Annex B. This letter with enclosed Annexes A and B constitutes both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

3.2 In reaching his decision, the Secretary of State has had regard to the local impact reports submitted by King's Lynn and West Norfolk Borough Council and Norfolk County Council, the environmental information as defined in regulation 2(1) of the 2009 Regulations and all other matters which he considers important and relevant to his decision as required by section 104 of the 2008 Act. In making his decision under the 2008 Act the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.

IV Secretary of State's consideration

4.1 The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Report and references to Requirements are to those in the draft Order in Appendix F to the Report as amended by the Errata Sheet produced by the Planning Inspectorate.

4.2 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of her conclusions and recommendations. This letter should therefore be read with the Annexes A and B.

Need and Relevant Policy for the Proposed Development

4.3. After having regard to the comments of the ExA set out in Section 5 of the Report, and in particular the conclusion in paragraphs 5.18 and 5.19, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-5 (NPS Electricity Networks Infrastructure), which set out a national need for development of new nationally significant electricity network infrastructure of the type proposed by NGET.

4.4 He therefore accepts that the planning case for the proposed development should be considered on its merits.

Landscape and visual impact

4.5 The ExA's conclusion [ER 4.79] as regards landscape and visual impact was that the location for the proposed development was not such a sensitive location that an overhead line, with its inevitable visual impacts, would be simply unacceptable in planning terms. The Secretary of State agrees with the ExA's conclusions.

4.6 As regards the ExA's concerns about the likelihood of pylons being used for advertising material and the recommendation to prohibit this by means of a Requirement in the Order [ER 4.84 and ER 6.67] the Secretary of State does not agree with this recommendation. The Secretary of State would expect NGET as a matter of good practice to discourage the use of pylons as advertising billboards and notes that The Electricity Safety, Quality and Continuity Regulations 2002 include requirements on how pylons should be marked to warn the public of the potential risk of electrocution and with emergency contacts. In these circumstances he does not agree with the ExA that an additional Requirement in the Order prohibiting advertising would be useful or necessary.

Ecology and Biodiversity

4.7 The Secretary of State notes that the ExA considered a number of issues under the above heading:

(a) Internationally recognised Sites and Species

4.8 As to the likely impact on the Ouse Washes Special Protection Area (SPA) and The Wash SPA and corresponding Ramsar Site designations and protected species the Secretary of State accepts the advice of ExA as set out in the Report on the Implications for European Sites (Appendix E) that these sites are unlikely to be affected by the proposed development and therefore agrees that a Habitats Regulation Assessment is not required.

(b) Bird Collision Risk, Large Birds and Bird Deflectors

4.9 The Secretary of State agrees with the ExA's interpretation of NPS EN-5 that EN-5 expresses a concern about the potential impacts on 'large birds' of many species [ER 4.129] and that national policy in EN-5 suggests that 'large birds' are an issue of importance [ER 4.145]. The Secretary of State agrees with the conclusions of the ExA [ER 4.145-146] that there is no significant immediate effect on 'large birds'. The Secretary of State also notes Natural England's view [ER 4.111] that bird deflectors are not required. He also notes that NGET has a Protocol on bird deflectors [ER 4.140 -142] which sets out how NGET would, if evidence pointed in that direction, add bird deflectors, and lists a number of cases studies where bird deflectors were installed and other cases where it was concluded that bird deflectors were not required. Having considered the advice of the ExA on this matter and taken note of the views of Natural England and the established procedures adopted by NGET to deal with issues of this nature, the Secretary of State is satisfied that adequate safeguards already exist without the need to impose further requirements. The Secretary of State therefore does not believe it would be an appropriate use of planning conditions to include an additional Requirement to give formal recognition of the NGET Bird Protocol and to act as a reminder to keep this matter under review [ER 4.416] as recommended by the ExA.

(c) Nationally important sites and species

4.10 As regards the likely impacts on the River Nar Site of Special Scientific Interest (SSSI) and the Islington Heronry SSSI the Secretary of State notes that the ExA is satisfied that the risk of adverse impact has been carefully considered and in particular that there are convincing plans and proposals to deal with water vole habitat issues [ER 4.127]. The Secretary of State agrees with the ExA's conclusions.

(d) Conserving and enhancing local biodiversity

4.11 The Secretary of State notes that improvements were agreed to the Code of Construction Practice to include protective measures to conserve local biodiversity and the ExA views that this development will only have a minimal adverse effect [ER 4.154]. The Secretary of State agrees with the ExA's conclusions.

Biodiversity – Mitigation

4.12 The Secretary of State notes the ExA is generally satisfied with progress on the mitigation measures agreed to conserve and enhance local biodiversity. The Secretary of State notes that the ExA concluded that on the issue of storage of fuels and chemicals on site a Requirement should be imposed to prevent this because of the risk of fuel and chemical spillages into streams and ditches in the locality of the works in a flood risk area [ER 4.158-4.160]. In this regard the Secretary of State notes the assurances provided by NGET [ER 6.46 page 114] in response to the ExA's written questions that it would adhere to the Code of Construction Practice which prohibits the storage of these materials on the construction site. In view of this the Secretary of State is satisfied that there are adequate measures in place to prevent storage on site during construction and for this reason he does not believe a Requirement prohibiting the storage of fuels and chemicals is necessary. As regards the ExA's concerns about the position during the operation and subsequent decommissioning of the development [ER 6.67 page 120] the Secretary of State is satisfied that this should not be a concern for the operational phase of the development and he is content to rely on NGET implementing similar good practice measures as regards decommissioning of the development at the relevant time.

Construction Traffic

4.13 The Secretary of State notes there were concerns about the planned routing of construction traffic serving the southern works area (involved in the construction of 2 pylons) running off the A10, and along country lanes into Watlington, a village c.4.5km due south of the construction site, and then along other country lanes including St. Peters Road/ Magdalen Road, crossing Mill Road, and onto Thiefgate Lane referred to as the Southern Construction Route (SCR). In its assessment of the likely impact the Construction Traffic and Mitigation Report identified potential impacts as (i) possible congestion and delay through Watlington village; (ii) possible risk to pedestrians and non-motorised users including primary school; and (ii) temporary road closures, possible impact of diversions [ER 4.232].

4.14 The Secretary of State notes there was agreement with the local planning authorities that use of the SCR by crane vehicles was acceptable as this would only involve one movement each way to and from the site at the start and completion of the works, but no agreement on use of the SCR for other regular construction traffic due to concerns about the route being narrow and involving tight corners on the approach to Watlington village from the A10 and also going through the village by the playing field and village hall. For those reasons the local planning authorities wanted alternative routes assessed to

avoid unacceptable impacts upon the residential amenity in the village [ER 4.234]. NGET did not agree and considered that the SCR was a suitable access route for use by construction traffic [ER 4.241]. Construction traffic would be low in relation to existing traffic levels, construction HGVs would not pass through Watlington during school arrival and leaving periods and the route had been assessed as the best and most economical route for construction traffic accessing the Southern Works Area [ER 4.250].

4.15 As to the consideration of alternative traffic routing measures for mitigation or avoidance of impacts on the village of Watlington the Secretary of State notes that the Report states that two alternatives were raised during the course of the examination. One involved the use of a temporary bridge over the River Nar which would provide access to the southern works area from the northern works area but this was not explored in any depth. The other possible alternative involved upgrades to an existing route known as Route A/ Low Road to enable construction vehicles to use it safely.

4.16 In weighing up the merits of the arguments for and against the alternative construction traffic options the ExA said she had regard to the policy statement in NPS EN-1 which requires impacts on local communities to be kept to a minimum, and at a level that is acceptable, and which call upon the decision-maker to consider requirements to mitigate adverse impacts on transport networks arising from developments [ER 6.67].

4.17 However the ExA said she did not have sufficient detail on which to reach a firm conclusion about the suitability as an alternative of a temporary bridge across the River Nar [ER 4.294]. As regards the use of Low Road the ExA noted [ER 4.300] that NGET's objection to doing upgrading work to Low Road came down to concerns about technical deliverability, the extra costs of the upgrade, and on natural justice grounds because its use for construction vehicle traffic had not been formally consulted upon. NGET estimated that it would cost in excess of £1m to bring the Low Road up to an acceptable standard and would most likely involve the acquisition of additional land, all of which would require further consultation and approval and was outside the scope of the current planning application.

4.18. Whilst the ExA concluded that the use of the Low Road was a serious, relevant, important alternative proposal [ER 4.304] she could not recommend the Secretary of State consider this option rather than the SCR. The ExA said [ER 4.303] any decision to do so must be fairly considered and this was not possible because all the landowners and residents along the route of the Low Road, and other interested parties, had not been formally consulted on its use, rather than the SCR for construction traffic as part of the application for consent. However, in noting that alternative approaches to using the proposed SCR had been identified, the ExA concluded that there was a reasonable possibility that NGET and the other relevant parties might agree an alternative way forward on construction traffic for giving this access to the southern work area which would avoid or, at least, minimise impacts upon Watlington [ER 6.67]. On this basis

the ExA recommended, therefore, that access to the southern works area using NGET's preferred SCR should be excluded from the Order and the relevant local planning authority, in consultation with the local highway authority, should make the final decision approving the route to be used by construction traffic serving the southern work area as part of the Construction Traffic Management Plan (CTMP).

4.19 Having studied this matter carefully the Secretary of State agrees with the ExA findings. Whilst the Secretary of State accepts that NGET has put forward persuasive arguments that the overall traffic level would be low in comparison to current road usage in the area, on balance he agrees with the conclusion reached by the ExA for the reasons set out in the Report and taking into account all other relevant factors, including, in particular, the cost of mitigating impacts, that the impact on amenities for local communities and on transport infrastructure needs to be minimised to acceptable levels. The Secretary of State therefore accepts the ExA's recommendation in this regard and shares the ExA's view (ER 6.67, page 119) that there is a reasonable probability that NGET and the local authorities are likely to agree a way forward on construction traffic routing for the southern works area which would avoid or, at least minimise impacts on Watlington.

4.20 In order to give full effect to the ExA's recommendation the Secretary of State has decided to amend Article 2 and Article 14 of the draft Order in Appendix F to the Report as amended by the Errata Sheet produced by the Planning Inspectorate to make clear that before construction can commence details of the construction traffic routing for access to the southern works must be approved as part of the CTMP.

4.21 On the issue of the recovery of costs of potential damage to country lanes the Secretary of State agrees with the conclusion of the ExA [ER 4.316] that the Highways Act already provides a mechanism for the recovery of expenses with respect to damage to a highway, by the relevant highway authority, in respect of abnormal loads (such as abnormal indivisible loads) and notes that none are in any event expected during any phase of the development. For this reason the Secretary of State agrees that it would not be a proper use of a planning condition to agree to the LPAs request that a road reinstatement Requirement be added to the Order. In this regard the Secretary of State notes the ExA advice [ER 6.69-6.73 under "Other Requirements Considered"] that a development consent Order cannot impose a legal obligation or agreement.

V Secretary of State's conclusions and decision

5.1. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given the added contribution that it would make to the electricity transmission network infrastructure.

5.2. The Secretary of State has therefore decided to accept the ExA's recommendation in Section 8.7 of the Report to make the Order granting development consent and imposing the Requirements as proposed by the ExA, but subject to the modifications described in section 6 below. He confirms that, in reaching this decision, he has had regard to the ExA Report, the local impact reports submitted by the relevant local authorities and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State confirms also for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

VI Modifications to the Order

6.1. The Secretary of State has decided to make various changes to the form of the draft Order as set out in Appendix F to the Report as amended by the Errata Sheet produced by the Planning Inspectorate which, while altering the way in which specific issues are dealt with, do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

6.2. One of these changes is an amendment to Article 34 of the Order to require the Secretary of State to arbitrate in the event of dispute as opposed to the Institute of Civil Engineers to bring this provision in line with other Orders for nationally significant infrastructure projects.

6.3. For the reasons set out in paragraphs 4.5 – 4.21 above, the Secretary of State has decided not to include the ExA recommendations concerning Requirements 11, 20 and 21 in Schedule 8 of the draft Order at Appendix F to the Report as amended by the Errata Sheet produced by the Planning Inspectorate.

6.4. In Part Two of section 6 of the Report (from page 117) the ExA makes the following drafting suggestions to the Order which the Secretary of State accepts with modifications where indicated:

- i) *“the inclusion of a definition in Article 2 defining “authorised construction routes” which would exclude use of the proposed southern construction route for light and heavy goods vehicles other the crane vehicles.”*

For reasons set out in paragraphs 4.13- 4.19 above the Secretary of State agrees that the SCR should only be authorised for use by crane vehicles and that the route for other construction traffic should be agreed by the relevant planning authority. In order to give full effect to the ExA's recommendation the Secretary of State has amended Requirement 14 of

the Order to require NGET to include any approved traffic routing measure for access to the southern works as part of the CTMP.

- ii) *“the amendment of Schedule 9 which would require the appeal process similar to that required under sections 78 and 79 of the Town and County Planning Act 1990”.*

The Secretary of agrees with the ExA that the standard appeals process should apply and that there is nothing exceptional about this Application that would warrant a different approach.

6.5 The account of the Secretary of State's consideration below focuses on those matters on which he takes a materially different view from that expressed by the ExA. Since neither sub-paragraph (a) nor (b) of regulation 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 applies in respect of the view which he has formed on any of these matters, he is not required to notify interested parties to give them an opportunity to make further representations under regulation 19(3) before taking his decision on the Application.

6.6 Also in Part Two of section 6 of the Report (from page 117) the ExA makes the following drafting suggestions to the Order which the Secretary of State does not accept:

- i) *Recommendation that there should be a new Requirement 20 which prohibits advertising on pylons*

For reasons set out in paragraph 4.6 the Secretary of State does not agree with the recommendation made by the ExA

- ii) *Recommendation that there should be a new Requirement 21 prohibiting the storage of fuels and chemicals on site*

For reasons set out in paragraph 4.12. the Secretary of State does not agree with the recommendation made by the ExA

- iii) *Recommendation that there should be an additional strand to Requirement 11 regarding bird diverters (“deflectors”)*

For reasons set out in paragraph 4.9 the Secretary of State does not agree with the recommendation made by the ExA.

6.7 Following the closure of the Examination on 10 July 2103, no representations were submitted. The Secretary of State does not consider that he requires further information on which to take his decision.

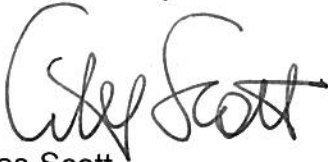
VII Challenge to decision

7.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

VIII Publicity for decision

8.1. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Giles Scott', written in a cursive style.

Giles Scott
Head of National Infrastructure Consents

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The National Grid (King's Lynn B Power Station Connection) Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address: <http://infrastructure.planningportal.gov.uk/projects/eastern/kings-lynn-b-connection-project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)

