



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

North London Reinforcement Project

Examining Authority's Report of Findings and Conclusions

Relating to Certificate Applications under Section 127

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Examiner

**A report to the Secretary of State for Transport and to the
Secretary of State for Environment, Food & Rural Affairs**

Date: 23 January 2013

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1 INTRODUCTION

- 1.1 This report records the procedure and issues arising from an examination conducted under section 127 of the Planning Act 2008 (as amended) (s127 PA2008), relating to an application for Development Consent Order (DCO) application for the North London Reinforcement Project.
- 1.2 The DCO application dated 30 August 2012, was made under section 37 of the Planning Act 2008 (as amended) (PA2008) and was received by the Planning Inspectorate on 30 August 2012.
- 1.3 The applicant was National Grid Electricity Transmission plc (the applicant). The application was accepted for examination on 27 September 2012. The examination of the application began on 24 April 2013 and was completed on 23 October 2013.
- 1.4 The proposed development comprises the upgrading of one of two existing 275kV transmission lines (known as the ZBC alignment) running from Waltham Cross substation in the north via Brimsdown substation to Tottenham substation in the south for approximately 14km, generally along the alignment of the River Lee. The upgrading would enable it to run at the higher voltage of 400 kV. The proposed development includes replacing the existing 275kV conductors with new 400kV conductors to be run in the large part on existing pylons, together with extensions and works to substations and pylons (including repairs to pylons, two replacement pylons and one new pylon at Waltham Cross substation) to support the voltage upgrade.
- 1.5 Applications for certificates under section 127 of PA2008 were made in respect of the acquisition of land or rights over land from statutory undertakers. The Planning Inspectorate received these on 17 May 2013. They were examined concurrently with and in parallel to the DCO examination and these s127 examinations were completed on 24 October 2013.
- 1.6 Documents relating to the s127 examinations are referenced in the text below and listed in the appendix.
- 1.7 The information in the following sections of this document is extracted from the DCO examination report submitted to the Secretary of State for Energy and Climate Change on 23 January 2014.

2 SECTION 127 EXAMINATION: PROCEDURE

- 2.1 Section 127 of PA 2008 (as applicable to this examination¹) provides a safeguard in respect of the compulsory acquisition of land or rights over land acquired by a statutory undertaker for the purposes of its undertaking, in circumstances where a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the

¹ The application of PA 2008 s127 has been amended: see SI 2013/1124. Transitional provisions apply to this application as it was submitted before 25 June 2013 and the procedure described here reflects these.

representation has not been withdrawn. In such circumstances and for applications for DCOs made before 25 June 2013², a DCO may only be granted where the relevant Secretary of State issues a certificate to the effect that:

- (in relation to land), the land can be purchased and not replaced without serious detriment to the carrying out of the undertaking, or if purchased it can be replaced, again without serious detriment to the carrying out of the undertaking; and/or
- (in relation to rights), the nature and situation of the land are such that the right can be purchased without serious detriment to the carrying on of the undertaking, or 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.

2.2 The applicant in this case was seeking to include provision in the DCO for the compulsory acquisition of land and rights over land:

- plots of land (Ref 303-310, 314-315, 318-3122, 324 on the land plans [APP 7, 8 & 9]) held by Transport for London (a statutory undertaker), as set out in Table 1 of National Grid's s127 application to the relevant Secretary of State³ [SEC 5]; and
- a plot of land (Ref 388 on the land plans [APP 7, 8 & 9]) held by Lee Valley Regional Park Authority but subject to rights in favour of the Environment Agency and Thames Water (both statutory undertakers), as set out in Table 1 of National Grid's s127 application to the relevant Secretary of State as well as a number of plots listed in Table 2 subject to permanent acquisition of rights that affect the entitlements of the Environment Agency and Thames Water [SEC 4].

At relevant time periods within the DCO examination, representations from these undertakers remained un-withdrawn.

2.3 On that basis, the applicant applied for certificates under s127 PA 2008 to the Secretary of State for Transport (in respect of Transport for London) [SEC5] and the Secretary of State for Environment, Food & Rural Affairs (in respect of Environment Agency and Thames Water) [SEC4]. Both certificate applications were made on 17 May 2013. In the remainder of this report, I refer to the three statutory undertakers who were subject to certificate applications as the 's127 undertakers'.

2.4 On 21 June 2013, I was appointed under delegations from the Secretaries of State as an examiner for both certificate applications [SEC1 – 2]. A certificate examination was held concurrently with a DCO examination, commencing on 28 June 2013 [SEC11 – 13].

³ Some of these plots are also subject to Thames Water's entitlement to enjoy easements or private rights. However, as these do not relate to its capacity as a statutory undertaker they were no relevant for PA 2008 s127 purposes.

- 2.5 On the basis that the matters raised by the certificate applications were well known to the s127 undertakers, an expedited examination was proposed, by way of written representations [SEC11 – 13, Annex B]. An opportunity was provided for the s127 undertakers to seek procedural directions and/or to request to be heard orally. However, neither option was taken up and the oral proceedings were cancelled.
- 2.6 On 4 July 2013, the applicant [SEC14] and the s127 undertakers concerned with the certificate applications [SEC15, 16 and 17] made written submissions to me. As a consequence of these submissions, I was satisfied that the representations of Thames Water [SEC16] necessitating a certificate application to the Secretary of State for Environment, Food & Rural Affairs had been withdrawn, and it appeared that the applicant [SEC14] also intended to withdraw their certificate application in response.
- 2.7 However, at this juncture, it was not clear that:
- representations from Transport for London [SEC15] necessitating a certificate application to the Secretary of State for Transport had been fully withdrawn; and
 - representations from the Environment Agency [SEC17] necessitating a certificate application to the Secretary of State for Environment, Food & Rural Affairs had been withdrawn⁴.
- 2.8 Concerns arose about the clarity of intention to withdraw in both cases, because these s127 undertakers had made extensive relevant and written representations. It was important to be clear which representations related to their land, rights and functions as statutory undertakers, and which related to their other functions. On that basis, I issued written questions of clarification to these s127 undertakers on 5 July 2013 and 29 July 2013 [SEC24 – 25].
- 2.9 On 31 July 2013, solicitors for Transport for London wrote [SEC27] to confirm the complete withdrawal of their relevant representation [REP22] and the qualification of their later written representations [REP 42 – 44], making clear that any content of relevance to s127 PA2008 was withdrawn. From this date, I was satisfied of the intention of this s127 undertaker to withdraw all material relevant to s127 PA2008.
- 2.10 A reply from the Environment Agency on 5 August 2013 [SEC26] was not judged to provide sufficient clarity on this point, due to the Environment Agency combining issues emerging from its roles as statutory undertaker (with s127 PA2008 relevance) and as a statutory consultee and environmental adviser to Government (in principle not relevant to s127 PA2008) within integrated submissions. Whilst it was entirely legitimate for the Environment Agency to leave statutory consultee and environmental advisory representations with no statutory undertaker

⁴ The procedural position emerging from these representations is most clearly summarised in the examiner's procedural letters to the applicant and interested parties sent on 5 July 2013 [SEC18 – 21], to the Environment Agency and Transport for London sent on 29 July 2013 [SEC24-25] and to the Environment Agency sent on 29 August 2013 [SEC28].

relevance before the DCO Examining Authority, its letter of 5 August 2013 did not clearly distinguish between these roles or state with precision which components of its submissions were withdrawn.

2.11 I sent a further written question to the Environment Agency on 29 August 2013 [SEC28]. This elicited a response from the Environment Agency of 6 September 2013 [SEC29], placing beyond reasonable doubt the intention of the Environment Agency to withdraw all representations with relevance to its role as a statutory undertaker and hence with any possible bearing on the certificate application under s127 PA2008. This position was acknowledged in the examiner's correspondence of 10 September 2013 [SEC30].

2.12 On that basis, I concluded that there were no remaining representations with a relevance or bearing on s127 PA2008. On 24 October 2013, I wrote to the applicant and the s127 PA2008 interested parties [SEC31 – 34], setting out my view that:

"I have received answers to my written questions from the relevant statutory undertakers, making clear that all remaining representations with a bearing on s127 have now been withdrawn..."

On that basis I decided to close the s127 PA2008 certificates examination.

2.13 The applicant did not object to that course of action. However, neither did the applicant write to the relevant Secretaries of State to withdraw the certificate applications. It follows that this report also contains my consideration of and recommendation on these applications.

2.14 Brief mention must also be made of correspondence from:

- the Health & Safety Executive on 23 May 2013 [AS8]; and
- Energetics Networked Energy on 21 October 2013, shortly before the closure of the examination [AS11].

2.15 The Health and Safety Executive was clear that its correspondence was not a representation and that it was not requesting to become an interested party in the examination. I have referred to the correspondence above in support of my consideration of electro-magnetic fields. Additionally to that matter however, the correspondence did draw attention to the proximity of the application site to two major hazard installations and its crossing of two major accident hazard pipelines. The applicant appears to be aware of these installations and pipelines and there are no objections from their operators.

2.16 The Energetics Networked Energy correspondence was a 'standard form letter' from the safeguarding department of a body which is related to a recognised statutory undertaker. It drew attention to the existence of that body's network assets in two locations but it did not appear to be a representation with any relevance to compulsory acquisition or s127

PSA2008, rather seeking to alert the applicant to the existence of assets for future reference.

- 2.17 One site referred to was clearly in North London, close to but unaffected by the application proposal. The other related to a site for which an adequate address was not provided. However, having undertaken map searches, I am satisfied that the second site is located north of Ely in Cambridgeshire, beyond the reasonable sphere of influence of the application proposal. I have concluded that it was drawn to my attention in error.
- 2.18 Having considered this correspondence, I am satisfied that it has no bearing on compulsory acquisition or PA 2008 s127 matters.

3 SECTION 127 EXAMINATION: CONSIDERATION OF ISSUES

- 3.1 Whilst opportunities to be heard orally were provided to the applicant and the statutory undertakers, they were not taken up. The examination used written questions to determine the degree to which any matters remained at issue between the applicant and the individual statutory undertakers. As a consequence of this written process, before the closure of the s127 PA2008 examination I was satisfied that all representations from these undertakers relating to land or rights relevant to their roles as statutory undertakers had been withdrawn. However, the applicant did not withdraw the certificate applications to the Secretaries of State.
- 3.2 Having regard to the provisions of s127 PA2008 and to the fact that all representations from Transport for London, Thames Water and the Environment Agency were withdrawn before the closure of the s127 PA2008 examination, I observe that there are now no matters that require decision by the Secretary of State for Transport or by the Secretary of State for Environment, Food and Rural Affairs pursuant to s127 PA2008.
- 3.3 In making this finding, I note that the applicant's certificate applications are still extant. On the basis however that the representations which gave rise to the s127 PA2008 certificate applications have been withdrawn, s127 PA 2008 is no longer invoked and hence no certificates require to be given by the Secretaries of State.
- 3.4 In reaching this conclusion, I have noted that bodies that are statutory undertakers can have other functions. This is particularly relevant to the circumstances of the Environment Agency, which combines the functions of a statutory undertaker with regulatory and advisory functions that are distinct from those of a statutory undertaker. Where such a body makes representations applying to more than one of its roles, it appears sufficient to end s127 PA2008 proceedings for it to clarify that it is withdrawing those aspects of its representations that relate to its statutory undertaker function. It does not have to withdraw representations that relate to its other roles as long as they have no bearing on its statutory undertaker functions. It follows that even though there are elements of the Environment Agency representations

that remain un-withdrawn, I consider that the question of whether the Environment Agency has withdrawn its representations to which s127 PA 2008 applies is beyond doubt: the relevant parts of the submissions were withdrawn.

- 3.5 In reaching this conclusion, I have noted that the maker of a representation does not necessarily need to be a statutory undertaker in order to invoke s127 PA 2008. It is sufficient that a representation relates to the land or interests of a statutory undertaker and as a result of it the Secretary of State is satisfied of the matters set out in PA2008 s127(1)(c). However, I have had careful regard to all representations and documentation submitted during the course of the DCO and s127 PA 2008 examinations that could be said to include representations relating to the land or interests of statutory undertakers.
- 3.6 I made a particular point during the DCO examination to clarify orally that Lee Valley Regional Park Authority does not consider itself to be a statutory undertaker. It sought advice and confirmed orally that it does not.
- 3.7 It follows that there are now no s127 PA2008 matters arising from any un-withdrawn representations.

4 S127 RECOMMENDATION

- 4.1 In respect of the s127 PA2008 applications I **recommend** as follows:

The Examiner recommends the Secretary of State for Transport to note that as all representations relevant to the application relating to the interests of Transport for London have been withdrawn, there is now no basis or requirement for that certificate to be either sought or granted.

The Examiner recommends the Secretary of State for Environment, Food & Rural Affairs to note that as all representations relevant to the applications relating to the interests of Thames Water and the Environment Agency have been withdrawn, there is now no basis or requirement for those certificates to be either sought or granted.

APPENDIX: s127 EXAMINATION DOCUMENTS

| DOC REF | TITLE | DATE |
|------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------|
| SECTION 127 DOCUMENTS | | |
| SEC1 | North London (Electricity Line) Reinforcement appointment letter | 21 Jun 2013 |
| SEC2 | North London (Electricity Line) Reinforcement appointment letter 2 | 21 Jun 2013 |
| SEC3 | Cover letter for National Grid applications under s127,131,132 | 21 May 2013 |
| SEC4 | National Grid Section 127 Application with supporting documents to DEFRA | 17 May 2013 |
| SEC5 | National Grid Section 127 application with supporting documents to the Department for Transport | 17 May 2013 |
| SEC6 | National Grid Section 127 Appendix A Statement of Reasons | 17 May 2013 |
| SEC7 | National Grid Section 127 Appendix B Draft DCO | 17 May 2013 |
| SEC8 | National Grid Section 127 Appendix C Land Plans | 17 May 2013 |
| SEC9 | National Grid Section 127 Appendix D Book of Reference | 17 May 2013 |
| SEC10 | Delegation letter from DEFRA | 6 Jun 2013 |
| SEC11 | Section 127 letter to Thames Water Utilities Ltd | 28 Jun 2013 |
| SEC12 | Section 127 letter to Environment Agency | 28 Jun 2013 |
| SEC13 | Section 127 letter to Transport for London | 28 Jun 2013 |
| SEC14 | National Grid (the applicant) | 4 Jul 2013 |
| SEC15 | Eversheds LLP on behalf of Transport for London | 4 Jul 2013 |
| SEC16 | Savills on behalf of Thames Water | 4 Jul 2013 |

| DOC REF | TITLE | DATE |
|----------------|------------------------------------------------------------------------------------------------------------------------|-------------|
| SEC17 | Environment Agency | 4 Jul 2013 |
| SEC18 | Section 127 Procedural Letter to the applicant National Grid | 5 Jul 2013 |
| SEC19 | Section 127 Procedural Letter to Thames Water | 5 Jul 2013 |
| SEC20 | Section 127 Procedural Letter to the Environment Agency | 5 Jul 2013 |
| SEC21 | Section 127 Procedural Letter to Transport for London | 5 Jul 2013 |
| SEC22 | National Grid and the Environment Agency | 12 Jul 2013 |
| SEC23 | Environment Agency | 15 Jul 2013 |
| SEC24 | Section 127 Letter to Transport for London | 29 Jul 2013 |
| SEC25 | Section 127 Letter to the Environment Agency | 29 Jul 2013 |
| SEC26 | Environment Agency - Written submission for the deadline of 5 August 2013 | 5 Aug 2013 |
| SEC27 | Eversheds LLP on behalf of Transport for London - Written submission for the deadline of 5 August 2013 | 31 Jul 2013 |
| SEC28 | Section 127 Letter to the Environment Agency | 29 Aug 2013 |
| SEC29 | Environment Agency written submission for the deadline of 6 September 2013 | 6 Sep 2013 |
| SEC30 | Section 127 letter to the Environment Agency | 10 Sep 2013 |
| SEC31 | Section 127 Letter closing the examination Environment Agency | 24 Oct 2013 |
| SEC32 | Section 127 Letter closing the examination National Grid | 24 Oct 2013 |
| SEC33 | Section 127 Letter closing the examination Thames Water | 24 Oct 2013 |
| SEC34 | Section 127 Letter closing the examination Transport for London | 24 Oct 2013 |

APPENDIX. Document AS11

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| AS11 | Energetics Networked Energy | 21 Oct 2013 |
|------|---------------------------------------------|-------------|