

The North Wales Wind Farms Connection Project

Note on the operation of Section 135 of the
Planning Act 2008

Application Reference: EN020014

Deadline 4 Submission
November 2015



Note on the operation of Section 135 of the Planning Act 2008

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THIS NOTE IS IN DRAFT AND HAS NOT YET BEEN AGREED WITH NRW

North Wales Wind Farms Connection Order

Application by SP Manweb for development consent for construction and installation, operation and maintenance of an approximate 17.4 kilometre 132,000 volt (132kV) electric line above ground (electricity distribution connection) in North Wales

Agreed note with Natural Resources Wales regarding section 135 of the Planning Act 2008

1. INTRODUCTION

- 1.1 On 20 March 2015, SP Manweb PLC ("**SP Manweb**") made an application for development consent for the construction and installation, operation and maintenance of an approximate 17.4 kilometre 132,000 volt (132 kV) electric line above ground (electricity distribution connection) (the "**Application**") in North, which was accepted for examination on 17 April 2015. The examination of the Application commenced on 28 July 2015.
- 1.2 As part of the examination, hearings were held week commencing 21 and 28 September 2015. Specifically, a hearing to consider the draft Development Consent Order prepared by SP Manweb was held on Friday 2 October 2015.
- 1.3 In that hearing it was agreed that SP Manweb and Natural Resources Wales ("**NRW**") would prepare, agree and submit a note in respect of section 135 of the Planning Act 2008. This note has been agreed by SP Manweb and NRW.

2. STATUTORY PROVISIONS

- 2.1 Section 135 of the Planning Act 2008 provides as follows:

135 Orders: Crown land

- (1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—
- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
 - (b) the appropriate Crown authority consents to the acquisition.
- (2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.
- (3) The reference in subsection (2) to rights benefiting the Crown does not include rights which benefit the general public.
- (4) For the purposes of this section “the Crown” includes—
- (a) the Duchy of Lancaster;
 - (b) the Duchy of Cornwall;
 - (c) the Speaker of the House of Lords;
 - (d) the Speaker of the House of Commons;
 - (e) the Corporate Officer of the House of Lords;
 - (f) the Corporate Officer of the House of Commons.

3. **AGREED POSITION**

3.1 SP Manweb submitted a revised Book of Reference for Deadline 1 (Examination Library Reference REP1-062). An addendum to that book of reference was submitted for Deadline 2 (Examination Library Reference REP2-025).

3.2 The Book of Reference records at Part 4 land in which the Crown has an interest. In summary that land is as follows:

Land in which the Welsh Ministers are the relevant Crown authority
Plots 1, 1A, 1B, 3 and 3A
Land in which the Queen's most Excellent Majesty in right of Her Crown c/o The Crown Estate Commissioners is the relevant Crown authority
Plots, 1, 1A, 1B, 2, 2A, 3, 3A, 4, 4A, 5, 5A,6, 6A, 7, 7A, 8, 8A, 8B, 9, 9A, 9B, 10, 10A, 11, 11A, 12, 12A, 13, 13A, 13B, 14, 14A, 19, 19A, 19B, 19C, 21A and 21B

3.3 SP Manweb made an application to the Welsh Ministers for consent pursuant to section 135 of the Planning Act 2008 on 11 May 2015.

3.4 On 2 July 2015 a letter was sent by NRW to Pinsent Masons, solicitors for SP Manweb, providing consent pursuant to section 135 of the Planning Act 2008. In that letter it is explained that NRW were acting of behalf of the Welsh Ministers.

3.5 The Examining Authority asked for the Welsh Government to provide confirmation that NRW is authorised to provide consent on behalf of the Welsh Ministers by way of its first written question 11.1.

3.6 The Welsh Government responded to this question (Examination Library Reference REP1-100), and stated that "*WG can confirm that NRW is authorised to provide consent on behalf of the Welsh Ministers....*"

3.7 SP Manweb and the Applicant agree the following:

3.7.1 SP Manweb has not included a provision within the draft development consent order that would enable it to compulsorily acquire Crown land. Article 19 of the draft development consent order provides that "*the undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.*" The Book of Reference then specifically excludes the interests of the Crown from the relevant plots. Therefore, the draft development consent order does not enable the undertaker to acquire land or an interest in land which is under the ownership of either Her Majesty in right of her Crown or the Welsh Ministers.

3.7.2 Section 135(1) of the Planning Act 2008 provides that a development consent order may only provide for the compulsory acquisition of Crown land where that interest is held by another person, not being the Crown authority or a person holding the interest on behalf of the Crown authority, and the Crown authority has consented to that acquisition. Crown land is to be interpreted so that it is co-extensive with interest that the Crown has in that land. Therefore, it is only where the powers of compulsory acquisition relate to that interest that the Crown authority would need to consent (provided that interest is being held by another person). As SP Manweb is not seeking to

acquire any rights or impose any restrictions on Crown land, section 135(1) does not apply.

- 3.7.3 Article 22 of the draft development consent order has the effect of suspending and making unenforceable or, where so notified by the undertaker, extinguishing any rights over land required. This cannot apply to the Crown, as the Applicant is not acquiring any rights in relation to land belonging to the Crown.
- 3.7.4 Even if the above legal analysis is wrong, it is agreed that the letter from NRW (acting on behalf of the Welsh Ministers) dated 2 July 2015 provides consent under both section 135(1) and (2) of the Planning Act 2008.
- 3.7.5 Section 135(2) of the Planning Act 2008 provides that an order granting development consent may only include provisions which apply in relation to Crown land if the appropriate Crown authority consents. The draft development consent order does include provisions which apply to Crown land and therefore consent is required.
- 3.7.6 As has been confirmed by the Welsh Government, NRW has the authority to provide consent on behalf of the Welsh Ministers and has done so.

Pinsent Masons LLP on behalf of SP Manweb

NRW

[] October 2015