



Meeting note

File reference	EN020014
Status	Final
Author	Nicholas Coombes
Date	23 February 2015
Meeting with	SP Manweb
Venue	Rivergate
Attendees	Claire Duffy (SP Manweb) Richard Griffiths (Pinsent Masons) Kathryn Powell (Planning Inspectorate) Nicholas Coombes Justin John (Legal Advisor) Alison Down Linda Rossiter
Meeting objectives	SP Manweb to provide update on project development and submission date. The Planning Inspectorate to provide feedback on draft documents submitted in advance of the meeting
Circulation	all

Summary of key points discussed and advice given:

The participants introduced each other and their roles. SP Manweb were made aware of the Planning Inspectorate's openness policy, that any advice given will be recorded and placed on the Planning Inspectorate's website under s51 of the Planning Act 2008 (PA2008)(as amended). Any advice does not constitute legal advice on the applicants or others can rely.

Project update

SP Manweb stated that their revised planned submission date was 20 March 2015, subject to completion and printing of the necessary documents.

SP Manweb is currently engaged in continuing conversations with landowners, local authorities and statutory consultees to refine their application and confirmed that the local authorities have reviewed the draft requirements in the draft Development Consent Order (DCO) Developers of the wind farms to which the project connects are seeking an early connection date.

SP Manweb explained in detail the extent of the DCO application for an overhead electric line and the context of the wider connection project which would also include a new collector substation at the site of the consented Clocaenog Wind Farm, works to

an existing substation at St Asaph and an underground cable between the St Asaph substation and the terminal pole of the overhead electric line.

On 23 December 2014 SP Manweb submitted an application for planning permission under the Town and Country Planning Act 1990 (TCPA) to Denbighshire County Council for the new collector substation at Clocaenog.

SP Manweb considers that the works to the substation at St Asaph and the underground line to it should be permitted development for them as a statutory undertaker. This assumes that these would not be Environmental Impact Assessment (EIA) Development, therefore SP Manweb will submit a screening application to Denbighshire County Council in March 2015 to ascertain this. SP Manweb's conversations with the council to date and their own assessments indicate that the works would not be EIA development and would thus be permitted development, so SP Manweb currently takes the view that they do not need to be included in the DCO or subject to an application for planning permission under the TCPA.

In summarising, SP Manweb described how the project had been assessed for cumulative impact in the Environmental Statement (ES), by using the following tiers:

- The DCO scheme alone
- The wider project including the DCO scheme and the wider scheme
- The wider scheme and the four wind farms to which it connects
- The wider scheme, four wind farms and any other relevant projects

SP Manweb described their approach to a section of underground electricity cable running from the terminal pole to the highway (unnamed) at Groesffordd Marli ("additional undergrounding"). As consent to construct this work has not been included in the draft DCO, SP Manweb explained that as it is under private land, SP Manweb cannot simply install as they would on a public highway. Therefore SP Manweb are seeking in their DCO the ability to compulsorily acquire rights over land to install this section of the underground cable, but are not seeking development consent for those underground cable installation works (which they intend to carry out as permitted development or, alternatively, pursuant to a planning permission under the TCPA which they have not yet applied for). They are not seeking compulsory acquisition powers over land outside their proposed DCO boundary, as they believe necessary rights over such land can be secured voluntarily.

SP Manweb also explained that around 14 existing 11kV and 33kV overhead electric lines would need to be diverted to facilitate the DCO scheme. SP Manweb considers that this work, including minor deviations and short lengths of undergrounding should all be permitted development, and landowner consent would be negotiated directly. The most significant element would be the undergrounding of a 33kv electric line for a few kilometres at the southern end of the DCO scheme. These additional works to divert lines would be listed in a Design and Construction Report to be submitted with the DCO application and assessed in the ES, especially the Landscape and Visual Impact Assessment section.

The Planning Inspectorate advised SP Manweb to clearly explain all of this reasoning in their application documents, to provide a summary of the processes, the progress made in relation to them and timeframes, and justify their decisions, to give any Examining Authority (ExA) confidence that there are no impediments to works required for the wider scheme and, in particular, to the undergrounding at Groesffordd Marli being consented.

Draft documents review

The Planning Inspectorate explained, as previously advised, that they prefer to allow three weeks to review any submitted draft documents. Given the shorter timescale afforded to the Planning Inspectorate, the review of documents referred to below may be less comprehensive.

Funding Statement

The Planning Inspectorate advised that the current drafting of the funding statement could be clearer as to the status of the section of underground land for which compulsory acquisition rights, but not development consent, is sought (1.2.3). SP Manweb agreed to re-write some sections and to explain fully in the Planning Statement to be submitted with the DCO application.

The Planning Inspectorate asked for greater clarity of drafting relating to the difference between funding the compulsory acquisition, and funding the scheme 'generally'. The Planning Inspectorate requested that all involved companies are named in full, to include the wind farm developers funding the connection (2.1.1 and 2.3.1). They also asked for clarity between the roles of the distribution license holder and the district network operator (2.1.1) and relevant "legal duty" referred to.

2.4.1 refers to circumstances where SP Manweb is unable to 'seek'. Should this, instead, refer to inability to 'obtain'?

The applicant should be clear if there is a contractual obligation and as to the extent of funding to which any such obligations may extend (2.3 and 2.5.2). While the Planning Inspectorate appreciated issues of commercial confidentiality, it was suggested that any ExA would be likely to seek greater reassurance over funding than the current draft provides.

The Planning Inspectorate requested that company names be provided in full, for example using 'limited' where relevant (2.5.3) and that the difference between SP Energy Networks and SP Manweb should be clarified.

Noting that the company structure is to be added as an appendix, the Planning Inspectorate suggested that excerpts from company accounts were also commonly provided in Funding Statements (appendix 1).

Book of Reference

The Planning Inspectorate and SP Manweb agreed that all persons listed in Part 3 of the Book of Reference should also be present in Part 1 as a person with an Interest in the Land. SP Manweb confirmed that they are.

The Planning Inspectorate queried the 'all diversions necessary' stated as required in the introductory paragraph to some rights classes definitions; SP Manweb suggested that this could be referenced to the Design and Construction Report Appendix to explain which existing 11kV and 33kV overhead electric lines needed diverting.

SP Manweb stated that, since submitting the draft Book of Reference, they have amended it so that rights requested in it are not described as "temporary".

SP Manweb explained why rights to decommission were included in the Book of Reference while decommissioning was not drafted as a requirement of the DCO. SP Manweb does not believe that they should be compelled by the DCO to decommission after the life of the wind farms which it connects, as it may be a useful part of the network. However, they will require access to the line to decommission in future if they choose to do so; this would normally be included in voluntary wayleave agreements. The Planning Inspectorate asked the applicant to provide further explanation of the differences between the permitted works sought through the DCO and rights sought by compulsory acquisition through the DCO.

There was a discussion about how best to explain and represent the application for power to compulsorily acquire permanent rights to access landscaping for maintenance through parcels of land otherwise used temporarily for construction of the development.

The Planning Inspectorate stated that agreement needed to be reached with any relevant Crown authority over inclusion of any power to compulsorily acquire any third party interests in Crown land (and inclusion of any other DCO provisions affecting Crown land) before a DCO could be made which included such provision(s) (s. 135 PA2008).

SP Manweb stated that references to 'unknown' individuals related to situations where the identity of a person holding an interest was unknown following diligent enquiry.

The Planning Inspectorate suggested that references to, for example, 'unilateral notice in respect of an option agreement' etc. could be more correctly worded as, for example, a right which was 'an option agreement dated [] in relation to which a unilateral notice was registered under title number []'.

The Planning Inspectorate recommended that Part 2 of the Book of Reference should not be split into sections as currently drafted. Furthermore, as currently drafted the two sections do not helpfully reflect the three paragraphs of s57(6) PA2008 relating to those who should be included in Part 2.

Explanatory Memorandum

Further explanation must be provided in the explanatory memorandum to explain why the provisions are required, and the reasons for any divergences from the model provisions, as previously advised.

Some examples where further explanation is required are regarding the inclusion of consent to 'operate' an electric line (Art 6(2)); the inclusion of paragraph 4 within the 'transfer of benefit' article and the definition of 'maintain' (Art 2).

Draft Development Consent Order

The Planning Inspectorate queried the use of the word 'associated' in Works 1A and 1B as this could lead to confusion in relation to 'associated development'. The unnumbered paragraph at the end of Schedule 1 is more commonly associated with DCOs which permit associated development; the applicant agreed to revisit this paragraph.

The Planning Inspectorate noted that, in line with recent SoS decisions, the phrase 'in general accordance with' had been removed from articles securing details, but considered 'substantially in accordance with' to have a similar effect (Req 5). SP Manweb stated that they were willing to argue this point during any examination.

The Planning Inspectorate again drew attention to the inclusion of the right to 'operate' the electric line (Art 6(2)) and if SP Manweb still intend to include this within the DCO, it should be thoroughly explained within the Explanatory Memorandum..

The Planning Inspectorate queried whether the benefit of some provisions of the order may also be for others in addition to SP Manweb owing to the related existing overhead electric line diversions and/or protective provisions for the benefit of other parties (Art 7). SP Manweb will consider this.

Comparing iterations of the draft DCO, the Planning Inspectorate asked why 'and within the order limits' had been removed from Art 13(2); SP Manweb replied that this was likely in error.

There was a discussion about the acquisition of "rights and impose restrictions over the order land" (Art 19). Also, re Art 19, SP Manweb will consider whether acquisition of "benefits of restrictions already in existence" is actually required, as currently drafted.

As previously discussed, the PA 2008 does not allow compulsory acquisition of Crown interests. Neither does it allow compulsory acquisition of third party interests in Crown land without relevant Crown authority consent having been obtained before the making of a DCO, so Art 20(6) and 20(7) may be redundant.

It was agreed that Art 22 regarding time limits should be reworded for greater clarity.

As no land is to be permanently acquired, the Planning Inspectorate suggested that SP Manweb consider whether Art 25(3) and Art 26 are necessary.

SP Manweb explained their approach to the acquisition of temporary construction rights and permanent rights for maintenance. The Planning Inspectorate suggested that this should be explained in the Statement of Reasons and EM (Art 28). There was also a discussion about the implications and propriety of using temporary rights to install permanent structures (Art 28(4)).

The Planning Inspectorate suggested that the right to fell or lop trees could reasonably be constrained to trees within or encroaching upon the order land, rather than current wording (Art 32(1)). SP Manweb stated that no trees subject to a Tree Preservation Order are affected.

The reinstatement of a final article (as per the previous draft) about securing funding was resisted by SP Manweb, but it was recognised that this may be discussed further during the course of any examination.

While the wording in schedule 1 'all modifications required to any support to facilitate a change in direction' was explained by SP Manweb to refer to angles in the application alignment, the Planning Inspectorate was concerned that this could be misinterpreted more widely. SP Manweb agreed to consider modifying the wording and explain the provision in the EM.

SP Manweb explained that Natural Resources Wales (NRW) were likely to fell any trees on their land for which a DCO or TCPA permission had been granted. The Planning Inspectorate suggested they consider whether a requirement relating to felling (and one relating to European protected species) may need to be added to the DCO.

There was a further conversation about the possibility of a requirement relating to decommissioning and site restoration. SP Manweb stated that they have a duty to provide electricity connections economically; therefore they do not wish to be compelled to decommission the electric line when the related wind farms are decommissioned, as the capacity may be needed for future wind farms on those sites, or as part of the existing network at that time.

The Planning Inspectorate queried the current drafting relating to the possibility of local authorities (LA) agreeing changes to plans which had been approved by the Secretary of State (SoS) (Sch 2 Req 3 and 15). SP Manweb agreed to clarify these provisions to reinforce that Land Plans, Works Plans and Access & Rights of Way Plans approved by the SoS could not be changed by the LA. The Planning Inspectorate nonetheless cautioned against the use of tailpiece provisions.

SP Manweb stated that they had deleted previous draft protective provisions for the benefit of 'affected persons' as they do not consider them necessary.

Habitats Regulations Assessment

The Planning Inspectorate suggested that SP Manweb should provide greater explanation of judgements reached in the report and fill out the detailed reasoning behind decisions. For example, the extent of the 15km study area should be explained and justified; if this was endorsed by NRW or others these should also be included (3.3.1).

In Tables 3.1 and 3.2 the features of designation should be listed. In Table 3.2 the Special Protection Areas (SPA) and Ramsar sites should be listed.

The Planning Inspectorate noticed throughout the report references to approximate dimensions or similar; they advised that like the environmental statement, the assessment should be based on the worst case scenario.

When discussing the Construction Environment Management Plan (CEMP), the Planning Inspectorate suggested that it would be helpful to refer to how this is secured in the DCO (4.4.17). The Work Programme should include not just a start date, but also anticipated duration for works (4.4.20).

The Planning Inspectorate suggested that Chapter 5 of the report should define a 'significant effect' and state that the development is not connected to the management of the sites in question. They also requested the inclusion of the dates when survey work was undertaken, and stated that conclusions needed more evidence and referencing.

The Planning Inspectorate stated that the evidence notes at the foot of the Stage 1 Matrices generally needed more detail to support the conclusions, and that the matrices needed to list all of the features for which the site is designated.

The Planning Inspectorate said that Chapter 2.3 should reflect sites identified as possibly relevant and then screened out from the assessment.

Finally, the Planning Inspectorate noted that Habitats Regulations (plural) should be used throughout in place of Habitat Regulations (singular), and that consultation comments relating the Habitats Regulations Assessment (HRA) should be appended to the report.

Environmental Statement

While the Planning Inspectorate does not normally review Environmental Statements at this pre-application stage of a project, the provision of the first five chapters has been useful for understanding the wider scheme, and the Planning Inspectorate has been able to provide some feedback.

The Planning Inspectorate noticed inconsistencies between the treatment of line diversions between 2.7.5 and 2.7.14, and observed that the dimensions on figure 2.3 were not legible. They advised that the worst case scenario must be assessed for environmental impact, therefore use of general, approximate or minimum dimensions was not appropriate.

The Planning Inspectorate suggested that additional dimensions could be added to Table 4.3, and SP Manweb agreed to re-word the section on Derwydd Bach wind farm to clarify that it had been assessed in its entirety.

The Planning Inspectorate suggested that Chapter 5, Planning Policy, could be usefully expanded to explain why different consenting routes had been selected for elements of the wider scheme.

Consultation Report

The Planning Inspectorate observed that many of the previously suggested clarifications in the report had been adopted, which was helpful but resulted in a very long document.

Regarding chapter headings, the Planning Inspectorate warned that Non-Technical Summary was a specific term used in Environmental Statements, so its use here could confuse. Conversely, 'Post-formal consultation' did not use the specific term 'Post-statutory consultation' which would more accurately describe the activity.

The Planning Inspectorate suggested that SP Manweb state clearly to which organisations a copy of the notice published under s48 PA2008 was sent in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, and refer to the relevant appendix.

There was a discussion about the merits of listing the names, in addition to the addresses provided, of s42(1)(d) consultees (persons with an interest in land) (Appendix 10). This would allow unambiguous comparison with the Book of Reference, but may require redaction prior to publication.

Finally, it was noted that 'associated development' was included in the glossary; SP Manweb agreed to revisit this, to consider if it could be described in a way which made it clear that it did not apply to a DCO application of this type in Wales (unless it

was simply there because it may be stated elsewhere in the document that no consent is being sought for associated development, within the meaning of s115 PA 2008, in the DCO application).

Plans

The Planning Inspectorate noted that earlier feedback had been implemented, and that the scheme was now easier to locate.

There was a discussion about colour coding to the Land Plans, and SP Manweb agreed to investigate whether any distinction could be made between situations where they seek both Class 1 and Class 2 rights over a plot and where they seek only one of those classes of rights over a plot.

Timescales

SP Manweb stated that despite the delay to the application submission date, the related four wind farm developers were keen for a connection date as soon as possible.

The events and duration of the pre-examination period were discussed; SP Manweb expressed their concern about a Preliminary Meeting (PM) being delayed to September to avoid August. They stated their preference for a PM in July, possibly August if July could not be accommodated. The Planning Inspectorate noted that a prompt examination would be in the public interest, but that this would need to be balanced against availability of and convenience to interested parties amongst other considerations.

SP Manweb stated that, if their application were to be accepted for examination, they would then intend to notify acceptance and open the relevant representations period swiftly after any potential decision on the acceptance of an application for examination, although the Planning Inspectorate advised against allowing the absolute minimum number of days for interested parties to submit representations.