

## **EN20016: Application by Western Power Distribution (South Wales) plc for an Order Granting Development Consent for the Brechfa Forest Connection (the application)**

### **Hearing Agenda: Compulsory Acquisition Hearing<sup>1</sup>**

#### **Planning Act 2008 (as amended) and Infrastructure Planning (Examination Procedure) Rules 2010**

This document sets out the agenda for the Compulsory Acquisition Hearing.

**Venue:** Theatr Genedlaethol Cymru, Y Llwyfan, College Road, Carmarthen, SA31 3EQ

**Date:** Wednesday 2 December and continuing on Thursday 3 December 2015

**Time:** 10:00 room open from 9:30

#### **Participation in the hearings**

Compulsory Acquisition hearings are held if one affected person (AP)<sup>2</sup> requests this. However, in this instance the Examining Authority (ExA) has decided to hold a compulsory acquisition hearing and the ExA has included this within the examination timetable.

The Compulsory Acquisition hearing<sup>3</sup> is being held to ensure adequate examination of the provisions set out within the Development Consent Order (DCO), which seeks to authorise the Compulsory Acquisition of land and to assess whether the conditions relating to the land being required for the development, or required to facilitate or be incidental to that development, are met and whether there is a compelling case in the public interest for the land to be acquired compulsorily.

This agenda is for guidance only. It is not designed to be exclusive or exhaustive. The ExA may add other matters for consideration or alter the order in which matters are considered. If this occurs, the ExA will seek to allocate sufficient time to any additional matters to allow proper consideration of each.

Should the consideration of the issues take less time than anticipated, the ExA may conclude the hearing as soon as all relevant contributions have been made, and all questions have been asked and responded to. However, we will convene on Thursday 3 December 2015 in order to ensure that any AP who was unable to attend on Wednesday 2 December is given an opportunity to do so.

If there are additional matters to be dealt with, or any submissions that require further consideration, there may be a need to adjourn the hearing and continue at a subsequent sitting.

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<sup>1</sup> S92 Planning Act 2008 (as amended)

<sup>2</sup> Those persons whose land is proposed to be compulsorily acquired or otherwise interfered with by the use of compulsory powers.

<sup>3</sup> S92 Planning Act 2008 (as amended)

The ExA recognises that other hearings may contribute information and evidence which will be used in support of a recommendation in respect of Compulsory Acquisition.

The hearing will run until all APs and other interested parties (IPs) have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda set.

Each AP/IP who has indicated a wish to speak will be invited to come forward to give their evidence and respond to questions from the ExA and others under the oversight of the ExA. The ExA will lead each hearing session which will be by presentation and testing of evidence, and broadly in a question and answer format. The Applicant will also be given an opportunity to present their evidence in response to each party's case within the relevant authority area and respond to questions from the ExA and others present at the hearings.

All IPs are invited to attend the hearing, however APs whose land interest(s) are affected under Compulsory Acquisition proposals are specifically invited to attend. The ExA may decide to allow oral cross-questioning of one party by another where there is clear disagreement between the parties in question to ensure adequate testing of the representations, or to ensure that a party has a fair chance to put their case.

Those attending the hearing are asked to note that an early item on the agenda is to deal with any requests to question a person making oral representations directly under section 94(4)(a) of the Planning Act 2008 (PA 2008).

Breaks will be taken during the hearing as directed by the ExA.

All parties should note that the agenda given below is to assist and provide a framework for this hearing and give discussion points and does not constrain the ExA to particular topics. The ExA may wish to raise other matters arising from submissions and pursue lines of inquiry in the course of the discussions which are not on the agendas.

## **AGENDA**

### **1. INTRODUCTION AND PURPOSE OF HEARING**

### **2. INTRODUCTION OF THE PARTICIPATING PARTIES**

### **3. REQUESTS TO QUESTION A PERSON MAKING ORAL REPRESENTATIONS DIRECTLY UNDER S94 OF THE PLANNING ACT 2008 (PA 2008).**

### **4. REPORT FROM THE APPLICANT ON THE POSITION IN RESPECT OF:**

- Current status of negotiations with affected persons
  - Crown Land in relation to s135 of PA 2008;
  - Category 3<sup>4</sup> persons;
  - Statutory Undertakers' land and apparatus in relation to the requirements of s127 and s138 of PA 2008; and
  - Protective Provisions.

### **5. ORAL REPRESENTATIONS FROM AFFECTED PERSONS PRESENT AND/OR FORMALLY REPRESENTED**

These may include the issue of protective provisions.

- Affected persons<sup>5</sup> who wish to make oral representations.
- Category 3 persons wishing to make oral representations.

### **6. TO ESTABLISH THAT THE LAND IS REQUIRED FOR THE DEVELOPMENT TO WHICH THE DEVELOPMENT CONSENT RELATES OR THAT IT IS REQUIRED TO FACILITATE, OR IS INTEGRAL TO, THAT DEVELOPMENT AND IS FOR A LEGITIMATE PURPOSE, INCLUDING:**

How the Applicant intends to use the land which it is proposed to acquire, including the eventual use of land where Compulsory Acquisition has been applied for, for example, on land larger than that required for the work or to provide flexibility in decision making:

- Integral – the Applicant to summarise why it believes that the undergrounding is integral to the development
- Whether the statutory conditions in relation to the right to exercise CA as set out in s122 and s123 of PA 2008 are met in principle and in relation to individual plots
- Whether the purposes for which the compulsory acquisition powers are sought comply with section 122(2) of the PA 2008?

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<sup>4</sup> Those persons whose land is not proposed to be compulsorily acquired but whose land/property may be affected by the construction or use of the proposed development such that they may be able to make claims for compensation (section 57(4) Planning Act 2008 (as amended))

<sup>5</sup> Those persons whose land is proposed to be compulsorily acquired or otherwise interfered with by the use of compulsory powers.

- Is the land required for the development to which the development consent relates?
- Is the land required to facilitate or is incidental to the proposed development?
- Whether the proposal would comply with the *Planning Act 2008: Guidance on associated development applications for major infrastructure projects (Published by Department for Communities and Local Government April 2013)* and the *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (Published by Department for Communities and Local Government September 2013)*?
- The case for seeking powers of temporary possession.

**7. TO ESTABLISH A COMPELLING CASE IN THE PUBLIC INTEREST FOR THE LAND TO BE ACQUIRED COMPULSORILY; INCLUDING:**

Having regard to section 122(3) of the PA 2008, whether there is a compelling case in the public interest for the land to be acquired compulsorily?

- The need in the public interest for the project to be carried out
- The private loss to those affected by compulsory acquisition
- Where does the balance of the public interest lie?

**8. TO ESTABLISH THAT ALL REASONABLE ALTERNATIVES TO COMPULSORY ACQUISITION HAVE BEEN EXPLORED; INCLUDING:**

What consideration has been given to all reasonable alternatives to compulsory acquisition? Whether there are any lesser steps that could meet the identified need?

- Acquisition by agreement;
- The use of alternative methods to achieve the required control over land.

**9. TO ESTABLISH THAT THE PROPOSED INTERFERENCE WITH THE RIGHTS OF THOSE WITH AN INTEREST IN THE LAND IS NECESSARY AND PROPORTIONATE, INCLUDING WITH REFERENCE TO PROTOCOL 1, ARTICLE 1 AND ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, INCLUDING:**

- What regard has been had to Article 8 of the European Convention on Human Rights and Article 1 of the First Protocol?
- The degree of importance attributed to the existing uses of the land proposed to be acquired including:

- The effect of Compulsory Acquisition on the operation of agricultural and other businesses affected by applications for Compulsory Acquisition?
- The weighing of any potential infringement of Convention rights against the potential public benefits if the DCO is made.
- Whether there are any Equality Act duties relevant to the application and, if so, how have these been addressed?

**10. TO ESTABLISH THAT THERE IS A REASONABLE PROSPECT OF THE REQUISITE FUNDS FOR ACQUISITION BECOMING AVAILABLE; INCLUDING:**

- Costs of acquisition and compensation
- What security is being proposed to ensure that the costs of acquisition of land and rights can be met in the event that the DCO application is approved e.g. parent company guarantee.

**11. THE DRAFT DEVELOPMENT CONSENT ORDER PROVISIONS**

The Applicant will be invited to set out in summary form:

- Which articles of the DCO engage compulsory acquisition powers
- Whether the DCO excludes the application of a compensation provision or modifies the application of a compensation provision beyond that necessary to enable the compensation provision to be applied?
- How protective provisions would be fully incorporated and whether these are in a satisfactory form that is agreed with relevant parties?

**12. ANY OTHER RELEVANT MATTERS.**

**13. CLOSING REMARKS**