



Department for
Business, Energy
& Industrial Strategy

FAO Andrew Hubbard
Western Power Distribution (South Wales) plc
Consents and Wayleaves Team
Blackpole Road
Worcester
Worcestershire WR4 9TB

**Department for Business, Energy &
Industrial Strategy**
3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5770
E: giles.scott@beis.gov.uk
www.beis.gov.uk

6 October 2016

Dear Sirs

PLANNING ACT 2008

APPLICATION FOR THE BRECHFA FOREST WIND FARM CONNECTION DEVELOPMENT CONSENT ORDER

I. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to:

- a) the report dated 6 July 2016 of the Examining Authority (“the ExA”), Martin Broderick, who conducted an examination (“the Examination”) into the application (“the Application”) submitted on 29 May 2015 by Western Power Distribution (South Wales) plc (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Brechfa Forest Connection (“the Development”); and
- b) representations received by the Secretary of State and not withdrawn in respect of the Application.

1.2 The Order, as applied for, is for a Nationally Significant Infrastructure Project under section 14(1)(b) and section 16 of the 2008 Act, as the Development comprises of the installation of a new 132 kilovolt (“kV”) electric line above ground of approximately 28.6km in length in Carmarthenshire in Wales to connect the consented Brechfa Forest West Wind Farm to the electricity distribution network. The electric line is principally above ground but includes approximately 3.56km of undergrounding.

1.3 The Application was accepted for examination on 24 June 2015 and the Examination was completed on 6 April 2016. During the course of the Examination, a procedural decision was issued by the ExA, dated 7 December 2015, to accept a note from the Applicant regarding a proposal for Alternative Southern Extension to Underground Section as Scheme Variation into the Examination. The note informed the ExA that the Applicant intended to submit other information to the Examination in respect

of the proposed alternative [ER 1.3.3]. On 24 February 2016, the Applicant submitted a change request, together with supporting information, in the form of an “Option B” to the proposed development. This option includes the additional undergrounding of two further spans of above ground electric line in Option A (i.e. the original option put forward in the Application) adjoining the River Towy/Afon Tywi [ER 1.3.4]. The ExA considered all the information submitted and concluded that Option B was to be examined alongside Option A and was accepted into the Examination on 1 March 2016.

1.4 The Development would comprise over 25km of above ground 132kV electric lines (on twin and single wooden poles) and 132kV below ground cables (3.3km in length for Option A and 3.56km in length for Option B). The electric line would run from a substation at the consented Brechfa Forest West Wind Farm to a connection point on the Applicant’s distribution network at an existing overhead tower line near Llandyfaelog, situated approximately 10km south of Carmarthen. The Development would be located within the administrative boundaries of Carmarthenshire County Council (“CCC”).

1.5 In addition to the above ground electric line and section of undergrounding, the following works form part of the Development:

- temporary construction compounds at Abergwilli within the Brechfa Forest;
- access points for pedestrians and vehicles along the length of the route alignment for construction and maintenance;
- civil engineering works associated with horizontal drilling of the underground cable, including the creation of a launch and reception pits, cable laydown areas and working areas;
- landscaping and ecological mitigation measures to plant vegetation that has been removed during the construction phase, monitoring of water quality and protected species; and
- other integral works such as site preparation and clearance, earth works and minor street works.

1.6 Published alongside this letter on the Planning Inspectorate’s website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The ExA’s findings and conclusions are set out in chapters 4 to 9 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at chapter 10. All numbered references, unless otherwise stated, are to paragraphs of the Report (specified in the form, ER X.XX.XX).

II. Summary of the ExA’s Report and Recommendation

2.1 The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/wales/brechfa-forest-connection/>

- Main Features to the Project and Site, including consideration of the inclusion of the underground section of electric line (Chapter 2);
- Legal and Policy Context, including the relevant National Policy Statements, European, National, Welsh and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to policy and factual issues, including need and consideration of alternatives (Chapter 4);
- Good Design (Chapter 5), which includes consideration of: good design; landscape and visual effects for both options, including application of the Holford Rules; biodiversity and geological conservation; water quality and resources; flood risk; health and electric magnetic fields; historic environment; traffic and transport; land use; socio-economic effects; common law nuisance, statutory nuisance and other potential nuisance; civil and military aviation and defence interests; climate change mitigation and adaptation; noise and vibration; air quality and emissions; including safety; pollution control and other environmental regulatory regimes; security considerations; and waste management.
- Findings and Conclusions in Relation to Habitats Regulations (Chapter 6);
- Conclusions on the Case for Development Consent, including the Planning Balance (Chapter 7);
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

2.2 The ExA considers both Options A and B alternatives are acceptable in planning terms and either could be granted consent, but only Option B clearly complies with Local Policy [ER 10.2.1]. For the reasons set out in the ExA Report, therefore, the ExA recommends that the Order for Option B be made in the form at Appendix D to the ExA Report [ER 10.2.3].

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, with modifications, an Order granting development consent for the Option B alternative proposal submitted and accepted during the Examination.** This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(a) 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 (as amended) ("EIA Regulations").

IV. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including late representations received after the close of the Examination. The Secretary of State has also sought further information/clarification from certain interested parties through consultations on 18 August 2016, 25 August 2016 and 21 September 2016 in respect to issues relating to the inclusion of the section of underground electric line in the Order, Crown Land, revisions to works plans and a requirement to mitigate the impact of the Development on marsh fritillary butterfly. The Secretary of State's consideration of the ExA Report, together with the late

representations and consultation responses received, is set out in the following paragraphs.

4.2 The Secretary of State has had regard to the Local Impact Report (“LIR”) submitted by CCC [ER 3.10.2], the Development Plan [ER 3.10.8 and 3.10.9], environmental information as defined in Regulation 2(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 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 ExA Report, and the reasons for the Secretary of State’s decision are those given by the ExA in support of its conclusions and recommendations.

Need for the Development

4.4 Having had regard to the ExA analysis, and in particular the conclusions on the case for development consent in Chapter 4 of the ExA Report, 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 (“NPS”) EN-1 (the Overarching NPS for Energy) and EN-5 (the NPS for Electricity Networks Infrastructure) and that taken together, these NPSs set out a national need for development of new electricity transmission and distribution infrastructure of the type proposed by the Applicant.

4.5 The Secretary of State also notes that in February 2011 the Applicant received a request for a connection offer from RWE Innogy UK Ltd with respect to the now consented Brechfa Forest West Wind Farm. The Applicant is obliged to provide the connection offer. The Applicant is licensed to distribute electricity through its electricity systems in South Wales where the Applicant is the Distribution Licence holder. It is obliged, under its licence, to offer least cost, compliant connections to persons seeking connections to the distribution system within the Licence areas [ER 4.3.12]. Accordingly, the Secretary of State is satisfied that the need for the Development has been established.

Consideration of Option A and Option B

4.6 As set out above, the alternative proposed in Option B was considered by the ExA alongside the original application, Option A. The Secretary of State notes the ExA’s conclusion and reasons for recommending Option B and agrees with the ExA that Option B is preferable to Option A on the basis that it includes mitigation, in the form of additional undergrounding, to reduce impacts on the Towy/Tywi Valley. The Secretary of State notes the ExA’s reasoning [ER 4.6.97] that:

- the change [in Option B] is necessary to mitigate the impact of the overhead lines on this part of the Towy/Tywi Valley Special Landscape Area;
- the change [in Option B] is necessary to mitigate the impact of the overhead lines on the Towy/Tywi Valley Registered Landscape of Outstanding Historic Interest in Wales;
- no objections to the alternative [in Option B] were received following the Applicant’s consultation;

- it [Option B] is compliant with CCC local policies; and
- both CCC and Natural Resources Wales (“NRW”) support this option.

Undergrounding of section (Work No. 2)

4.7 The Secretary of State notes that the draft Orders (for “Option A” and “Option B”) considered during the Examination include a section of underground electric line (“*Work No.2*” in Schedule 1 of the draft Orders) which would connect the above ground sections of electric line to the north (“*Work No.3*”) and south (“*Work No.1*”). This underground section is approximately 3.3km long for Option A and 3.56km long for Option B [ER 2.1.6].

4.8 Given the limited definition of “associated development” in Wales², for an underground section of electric line to be included in the Order it needs to form part of the installation of an electric line above ground. The Secretary of State noted the Applicant’s views as to why it considers the underground section included is part of the installation of an electric line above ground (including a joint legal opinion agreed between CCC and the Applicant) [ER 2.2.12-ER2.2.22].

4.9 In order to inform the Secretary of State’s decision in relation to the underground section of the electric line, the Secretary of State issued a consultation related to this matter on 18 August 2016.

4.10 The Secretary of State has carefully considered the representations made by CCC and the Applicant of 8 September 2016 and also notes the ExA’s reasoning for recommending the inclusion of the underground section in the Order: the works form part of the nationally significant infrastructure project as properly understood; the works are essential mitigation as agreed by CCC and NRW; they are integral to the project as the electric line takes electricity seamlessly from Brechfa Forest to Llandyfaelog; and without the underground section there is no project [ER2.2.8-2.2.22].

4.11 The Secretary of State notes the clear support during the Examination for the Applicant’s underground proposals from CCC and NRW and is satisfied that the section of underground electric line is required as mitigation for the project. On balance, and after careful consideration, the Secretary of State has concluded that in the specific circumstances of this application, it is appropriate to regard the underground section as part of the installation of an electric line above ground and therefore to include the underground section of electric line (“*Work No.2*”) in the Order as recommended by the ExA. In particular, the Secretary of State notes that the inclusion of a section of underground electric line in the Order was supported in principle by the Welsh Government, the undergrounding is required as mitigation and the underground section is a relatively short section of the Development.

² Section 115 of the 2008 Act provides that development consent can be granted for “associated development”. However, in Wales, the definition of “associated development” is limited and covers only surface works, boreholes or pipes associated with underground gas storage facilities.

Undergrounding of whole route

4.12 The Secretary of State agrees with the ExA's conclusion that, given the evidence presented, undergrounding of the whole route would not be justified. The ExA considered that the undergrounding of the whole route would not be justified because the associated additional costs (>3 times) of undergrounding would not be proportionate or a cost effective option and the proponents were not persuasive in the evidence they provided in making a case for the suitability of undergrounding in terms of "serious concerns" on landscape and visual impacts [ER 4.6.31-4.6.67].

V. Biodiversity and Habitats

5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

5.2 The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites.

5.3 In the case of the Development, it is noted that the Applicant submitted a 'Habitat Regulations Assessment No Significant Effects Report' ("HRA NSER") with the Application and supporting Environmental Statement. During the Examination, the Applicant provided several updates and addendums to the report, including the 'HRA NSER Screening of Alternative Undergrounding Option in the Towy Valley', which was produced to assess the potential for likely significant effects from Option B.

5.4 All of the Habitats Regulations Assessment report versions, updates and addendums produced by the Applicant, were consistent in identifying two European sites for inclusion within the assessment:

- Afon Twyi/River Towy Special Area of Conservation; and
- Bae Caerfyrddin ac Aberoedd/Carmarthen Bay and Estuaries Special Area of Conservation.

5.5 These sites were screened in based on their proximity and hydrological linkages to the proposed development. NRW, the statutory nature conservation body for Wales, confirmed its agreement that only these sites should be considered in the Habitats Regulations Assessment and this recommendation was made to the Secretary of State by the ExA.

5.6 Ultimately, the Applicant concluded that likely significant effects on both the Afon Twyi/River Towy Special Area of Conservation and the Bae Caerfyrddin ac Aberoedd/Carmarthen Bay and Estuaries Special Area of Conservation as a result of the Development both alone and in-combination with other plans and projects can be excluded. This conclusion was not disputed by any interested party and NRW repeatedly confirmed their agreement with this throughout the Examination.

5.7 The Applicant relied upon a number of mitigation measures to reach its conclusions on likely significant effects. Several of these were discussed during the Examination but, upon receiving assurances from CCC and NRW, the ExA was content that all mitigation measures were sufficiently secured such that likely significant effects on the two European sites could be excluded.

5.8 In the concluding recommendation, the ExA considered that sufficient information had been provided by the Applicant in their Habitats Regulations Assessment reports and during the course of the Examination. This, combined with the views expressed by CCC and NRW, would allow the Secretary of State to conclude that likely significant effects on the Afon Twyi/River Towy Special Area of Conservation and the Bae Caerfyrddin ac Aberoedd/Carmarthen Bay and Estuaries Special Area of Conservation can be excluded from the Development alone and in combination with other plans or projects. This conclusion applied to both Options A and B.

5.9 In conclusion, the Secretary of State is satisfied that the Development is not likely to have a significant effect on any European site either alone or in combination with other plans or projects. The Secretary of State is also content that sufficient information has been provided for the Secretary of State to determine that an AA under the Habitats Regulations is not required.

VI. Other Matters

Landscape and Visual Effects

6.1 The Secretary of State notes that landscape and visual matters were raised as matters of concern by interested parties. The Secretary of State has had regard to the comments of the ExA set out in Chapters 4, 5 and 7 of the ExA Report, and in particular the overall conclusions on landscape and visual effects set out in paragraphs 5.2.119 to 5.2.126. The Secretary of State agrees with the ExA's conclusion that the requirements of EN-1 and EN-5 have been met and agrees with the ExA's recommendation that there are no reasons on landscape and visual impact grounds not to make the Order for Option B [ER 5.2.126]

Section 106 agreement

6.2 Although not signed at the close of the Examination [ER 1.8.2 and ER 9.8], the Secretary of State notes from the Applicant's Project Update 2016 that they have since entered into with CCC on 22 June 2016 a Development Consent Obligation under section 106 of the Town and Country Planning Act 1990 to deliver landscape and ecological enhancement via a Works/Grants Fund, which will be available to qualifying persons (i.e. any owner on any qualifying land within 3km of the Order Limits) for: the laying (and fencing) of hedgerows; the planting of trees and woodland creation; the

planting of new hedgerows/hedgerow plants; the blocking of existing drainage ditches; the removal of invasive species; and the provision of nest boxes for birds, bats and dormice. The Secretary of State sees no reason to disagree with the ExA's view that the landscape and ecological enhancements secured by the section 106 agreement are necessary to make the Development acceptable in planning terms. [ER 1.8.2 and ER 9.8]

Compulsory Acquisition

General

6.3 The Secretary of State notes that the ExA considered whether the evidence provided during the Examination justified the grant of compulsory acquisition powers sought by the Applicant having regard to the statutory and other requirements and representations made by affected parties. The Secretary of State has considered the compulsory acquisition powers sought in respect of the Order land in relation to the creation and acquisition of new rights and the imposition of restrictions over land. The rights sought are for the purposes of constructing, installing, operating, maintaining and decommissioning the Development. The ExA's detailed consideration of compulsory acquisition matters is set out in Chapter 8 of the ExA Report section.

Engagement

6.4 The Secretary of State notes that the Applicant has sought to acquire rights by voluntary agreement in parallel to seeking to compulsorily acquire rights in land through the Order and the ExA has seen evidence of a considerable range of contacts between parties involved in issues relating to compulsory acquisition [ER 8.5.91]. Whilst acknowledging some landowners remain dissatisfied with the landowner engagement process undertaken by the Applicant, the Secretary of State also notes that progress has been made on negotiating voluntary agreements outside the compulsory acquisition process with a number of landowners. He also notes a late representation from landowners indicates that they have recently met the Applicant on proposals to re-align a section of overhead line and are in a position to sign revised Head of Terms subject to their preferred route option being adopted. Notwithstanding progressing negotiations regarding voluntary agreements, the Applicant is still seeking to compulsorily acquire rights in land and restrictions in land through the Order to ensure it can deliver the Development without potential delay if for any reason the voluntary acquisition of rights in land is unsuccessful [ER 8.5.4, 8.5.19 and 8.5.23].

Funding

6.5 The Secretary of State notes that the ExA has referred to the Applicant's substantive account of its company assets and the lack of a CCC request for security and considers on balance it is reasonable to rely on the: Applicant's connection charge arrangement with RWE; Annual Report and Financial Statements for the year ended 31 March 2015; and Applicant's credit risk rating as detailed in its 2015 annual accounts [ER 8.5.41]. The Secretary of State notes that the ExA is content that there is a reasonable prospect of the requisite funds for acquisition, possession and compensation becoming available [ER 8.5.42].

6.6 The Secretary of State sees no reason to disagree with the ExA's view that the Applicant has adequate funding for the compulsory acquisition liabilities of the Development.

Section 135 (Crown Land)

6.7 The Secretary of State notes that in relation to Crown Land the Applicant has also sought to acquire rights by voluntary agreement in parallel to seeking compulsory acquisition powers in the Order. The Secretary of State notes that the Applicant is seeking powers to compulsorily acquire interests held otherwise than by or on behalf of the Crown in relation to the following Crown Land:

- Plots C216-C227, which is forest land (managed by NRW on behalf of Welsh Government, with the ultimate landowner being the Crown); and
- Plot B6, the riverbed of the River Towy (for which Cooke & Arkwright act as agent to the Crown Estate Commissioners, with the ultimate landowner also being the Crown).

6.8 The Secretary of State notes that the ExA's conclusions at the close of the Examination on Crown Land were that he was not persuaded that the appropriate Crown authority consent has been provided for the purposes of section 135(1) of the 2008 Act nor to the inclusion of provisions (other than Compulsory Acquisition) for the purposes of section 135(2) of the 2008 Act [ER 8.6.14]. In respect of Plots C216-C227, the ExA recommended that the Secretary of State should not grant consent for the compulsory acquisition powers sought in respect of Crown Land until the appropriate Crown authority has provided any necessary consent for the purposes of section 135(1) of the 2008 Act [ER 8.6.15]. Similarly he recommended that the compulsory acquisition powers sought in respect of Plot B6 should not be granted until either the Crown or its representatives have confirmed that the necessary consent from the Crown authority is obtained. He suggested that the Secretary of State may wish to consider requesting section 135(2) consents from both Crown authorities in relation to non-Compulsory Acquisition provisions in the Order that affect any other respective Crown land plots [ER 8.6.16].

6.9 The Applicant has since confirmed in its late representation "Applicant's Project Update June 2016" in respect of Plots C216-C227 that the form of voluntary agreement and associated documentation was signed on 10 June 2016. NRW's representation of 6 September 2016 has also confirmed by virtue of the section 135 schedule attached to the 10 June 2016 agreement, that the Crown authority consent to acquisition for the purposes of section 135(1) and s135(2) of the 2008 Act has been provided.

6.10 In respect of Plot B6, the June 2016 update confirmed that an easement in the land had been agreed by the Crown Commissioners in principle, subject to commercial terms. Negotiations were continuing and the Applicant considered that both parties are close to concluding the agreement. The Applicant's representation of 8 September 2016 also confirmed that a voluntary agreement with the Crown appears imminent but that compulsory acquisition powers in relation to plot B6 were still sought.

6.11 The Secretary of State has followed up on the status of the outstanding s135(1) and s135(2) consents in relation to Plot B6 with both the Applicant and the Crown Estate. The Secretary of State has received confirmation from the Crown Estate and the Applicant that there are no interests held otherwise than by or on behalf of the Crown and, as such, there is no need for the Crown Estate Commissioners to provide s135(1) consent for Plot B6. The Crown Estate Commissioners provided the necessary s135(2) consent in relation to Plot B6 on 5 October 2016.

Temporary possession powers

6.12 The Secretary of State notes that where at all possible the Applicant has sought temporary possession of land rather than permanent rights [ER 8.7.9] in order to carry out the development and to maintain it. The Secretary of State also notes that the ExA is satisfied that the powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in the Order [ER 8.7.16]. The ExA also considers these powers are justified in human rights terms [ER 8.5.131].

Compulsory acquisition and temporary possession powers – conclusion

6.13 The Secretary of State is satisfied with the ExA's analysis of the issues relating to compulsory acquisition and notes the ExA's conclusion that the compulsory acquisition and temporary possession powers sought by the Applicant are necessary to enable the Development to proceed; that the land to be taken is reasonable, necessary and proportionate; that there is a compelling case in the public interest for the land to be acquired compulsorily; and that the provision to provide compensation for compulsory acquisition is adequate.

6.14 The Secretary of State is satisfied that the requirements in sections 122 and 123 of the 2008 Act and all other requirements for granting compulsory acquisition have been met. The Secretary of State agrees with the ExA's conclusions that the proposed interference with the individuals' rights as a result of the grant of the compulsory acquisition powers would be necessary, proportionate and justified in the public interest [ER 8.7.11 and ER 8.7.12].

Marine Licence

6.15 The Secretary of State notes from the Applicant's Project Update 2016 that the Applicant submitted a Marine Licence application [ref. no. CML 1551] to NRW on 11 November 2015, which has not yet been determined. NRW has subsequently confirmed its without prejudice position that based upon the information currently available, it would be possible in principle to grant consent for the Marine Licence sought.

Decommissioning

6.16 The Secretary of State notes that the recommended Order includes a decommissioning requirement (Requirement 25) which provides for the decommissioning of the Development when it becomes redundant.

Revised Work Plans

6.17 The Applicant has provided revised Works Plans to correct discrepancies in colours between actual markings on plans and keys for the limits of deviation [ER 9.3.61].

VII. Consideration of Late Representations and Developments since the Close of the Examination.

7.1 The Secretary of State notes that a number of late representations have been received by the Planning Inspectorate and the Department since the close of the Examination. This correspondence is also published alongside this letter. The Secretary of State considers a number of the concerns raised in the late representations repeat arguments considered in detail during the Examination (i.e. in relation to electric line design, landscape and visual impact, undergrounding, alternatives, compliance with Local Plans, negotiation handling and engagement). However, where appropriate, the representations are further considered below.

Private water supplies

7.2 The Secretary of State notes that a late representation from a landowner and agent raised concerns about negotiation handling by the Applicant in respect of the correct identification of 3 poles and the proposed mitigation measures (i.e. the placing of the poles in concrete sleeves) to address concerns regarding potential contamination of a private water supply from the leaching of pole preservative. The correspondence also questions the accuracy of the Applicant's land plan and area required for compulsory acquisition and the scope of and payment for the proposed water testing and monitoring to be undertaken by CCC's Environmental Health Department, which the landowner understood would only detect bacterial contamination. The correspondence follows on from matters raised and considered during the Examination [ER 8.5].

7.3 In respect of the above, the Secretary of State notes that the Applicant's late representation to the Planning Inspectorate dated 14 April 2016 rectifies concerns regarding the identification of correct pole locations and Poles 170-172 are also clearly shown on the plan included in the Applicant's June 2016 Update. Furthermore, the Secretary of State notes that the 3 poles to be concrete sleeved have also been correctly referenced in Requirement 7 of the recommended Order. The Secretary of State is satisfied therefore the poles subject to the mitigation measures proposed have now been correctly identified.

7.4 The Secretary of State notes that the Applicant's June 2016 Update provides information on water sampling to be undertaken. It is also noted that the Applicant's letter to CCC's Public Health Services of 24 June 2016 states that the sampling and analysis to be undertaken will be carried out at the expense of the Applicant. The ExA's consideration of [ER 8.5.104-8.5.105] and conclusions [ER 8.5.106] on water supply are that he considers there is no persuasive evidence that the spring well water sources would be tainted by the leakage of creosote chemicals or would have its flow disrupted by wooden poles. However, the Secretary of State also agrees that the mitigation

proposed by the Applicant addresses the possibility of any potential harm which could arise.

Examination Handling and Processes

7.5 Concerns have been raised through late representations in respect of the Planning Inspectorate's handling/processes and also about the ExA's handling of the Examination and impartiality. Concerns have also been raised through late representations in respect of CCC's handling of the Application and the Applicant's response to and participation at public hearings and the need for further site visits by the Secretary of State.

7.6 Recruitment of the ExA, the running of the Examination and publication of documents are matters for the Planning Inspectorate. However, the Secretary of State has no reason to believe that the ExA did not handle the Examination and the issues raised during the Examination of the Application in a reasonable and professional manner. The Secretary of State is aware that during the Examination accompanied and unaccompanied site visits were conducted by the ExA. As the ExA is a suitably qualified person appointed to advise the Secretary of State, further site visits are not considered necessary.

7.7 It is not a matter for the Secretary of State as to how a relevant local planning authority and its officers and councillors decide to participate in the Examination.

7.8 In conclusion, the Secretary of State is satisfied that the Examination process held under the Planning Act 2008 was impartial and provided a satisfactory opportunity for all interested parties to participate and make their views known on the Application. Furthermore, the views of interested parties and all relevant information have subsequently been taken into account in the decision making process.

Marsh Fritillary and New Requirement Consultation

7.9 Late representations have been received in relation to the subsequent identification of marsh fritillary butterfly larval webs and caterpillars on an affected landholding (at Penwaun, Altwallis Road) during a recent routine survey visit by Butterfly Conservation Wales. The Secretary of State notes that no presence of marsh fritillary butterflies was recorded by the Applicant during surveys included in its Environmental Statement. In view of the subsequent identification of marsh fritillary butterfly larval webs and caterpillars, the Secretary of State consulted all interested parties on the terms of a new draft requirement. Following consideration of the consultation responses received, the Secretary of State considers it appropriate to include a new requirement (Requirement 30) in the Order that provides for a marsh fritillary study to be carried out before a section of Work No. 3 (which crosses the affected landholding) commences in areas where food plants for marsh fritillary butterfly larvae are present and provides for mitigation to be put in place if marsh fritillary are found to be present.

Dormice

7.10 A late representation has been received from a landowner enclosing a Dormouse Habitat Suitability Assessment which identifies errors and inconsistencies in the Applicant's Dormouse Method Statement assessment included in its Environmental Statement. The latest assessment suggests that the landowner's previously unsurveyed hedge may contain dormice habitat and recommends that, since the absence of dormice has not been proven, mitigation assuming their presence should be put in place. The dormouse is protected under the Wildlife and Countryside Act 1981 and as a European Protected Species. The Secretary of State is aware that the Applicant will also need to obtain a separate licence or licences from Natural Resources Wales and is of the view that this regime provides suitable protection for dormice without the need for further provision being made in the DCO. Nevertheless, the Secretary of State is also forwarding the representation and enclosed assessment to them in order that it can be taken into account in Natural Resources Wales' consideration of the licence application and the mitigation measures to be deployed.

The consented Brechfa Forest West Wind Farm Development

7.11 The Secretary of State notes that a number of issues relating to the consented Brechfa Forest West Wind Farm development have been raised through late representations. The Secretary of State considers these are not relevant to the Application now before him and refers to arguments addressed during the Examination and the decision letter³ for that proposal. The Brechfa Forest West Wind Farm was consented by the Secretary of State in March 2013.

Trees

7.12 Concerns were also raised through late representations regarding loss of trees during the construction of the Development. The Secretary of State notes that the loss of trees was considered by the ExA during the Examination. The ExA considered that the loss of trees in Brechfa Forest would be the same as ordinary felling in a managed forest and that there would be no loss of ancient woodland, veteran trees or trees with a special status. [ER 5.2.40-5.2.42] This is also secured by Requirement 16 in the Order [ER 5.2.52]. Requirement 5 of the Order will also allow (with some specified exceptions) for micro-siting deviations within the Order limits.

Carmarthenshire Local Action Forum & Brechfa Forest Tourism Cluster Group Late Representations

7.13 The Secretary of State has considered a late representation from the Carmarthenshire Local Access Forum, which suggested that NRW should have consulted them. The Secretary of State considers that the representation does not raise anything materially new in respect of the current application and that public access to land for the purposes of open-air recreation and enjoyment has been considered in the ExA's Report [ER 5.10]. The Secretary of State has also considered a late representation

³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010008/EN010008-000026-The%20Secretary%20of%20State's%20decision%20letter.pdf>

from the Chairman of the Brechfa Forest Tourism Cluster Group, which raises concerns about: consideration of the Community Led Development Plan for Brechfa Forest and the impact of the Development on tourism and historic sites in the area; compulsory acquisition and engagement with landowners; alternative grid connection options and undergrounding to mitigate the impact of the Development; impartiality of the ExA; and the Carmarthenshire Local Access Forum. The Secretary of State considers that the representations do not raise anything materially new in respect of the current application and that the issues raised have been considered in the ExA's Report [ER 5.7, ER 8 and ER 4.6] or, where appropriate, elsewhere in this decision letter.

VIII. Modifications to the Order by the Secretary of State

8.1 The Secretary of State has amended the Order to make necessary minor changes. In particular:

- Insertion of a new Requirement (Requirement 30) to provide for a marsh fritillary study to be carried out before a section of Work No. 3 (identified by reference to the works plans) commences in areas where food plants for marsh fritillary butterfly larvae are present and to provide for mitigation to be put in place if marsh fritillary are found to be present. This additional requirement has been included in response to a late representation regarding the identification of marsh fritillary butterfly larval webs in this area.
- Insertion of a new Requirement (Requirement 31) to provide that plans approved under the Requirements are to be taken to include any amendments approved subsequently by the relevant planning authority or NRW (such amendments to be in line with the environmental statement).
- Amendment of Article 23 (Suspension of private rights) to make clear that private rights are suspended in so far as is reasonable and necessary to ensure the operation of the Order.
- Removal of the definition of "deviation plan" and removal of this plan from Article 33 (certification of plans) as this plan is not otherwise referred to in the Order.
- Amendment of Article 19(8) to include wording required by the Crown Estate.
- Inclusion of a new Article 37 (Crown rights) as required by the Crown Estate.

Other Drafting Changes

8.2 In addition to the above, the Secretary of State has made various changes to the Order which do not materially alter its effect, including changes to conform with the current drafting practice for statutory instruments, changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

IX. General Considerations

Equality Act 2010

9.1 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships⁴; pregnancy and maternity; religion and belief; and race. The Secretary of State has had due regard to the public sector equality duty and has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues. This also concurs with the conclusion of the ExA [ER 8.5.56].

Human Rights Act 1998

9.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and compulsory purchase powers. It is noted that infringement of human rights in respect of the Application is also considered in the ExA’s Report. The ExA notes that no outright land ownership is being acquired and no dwellings are being acquired as part of the scheme and therefore the application of the Convention is limited to the interference caused by compulsory acquisition of rights, temporary possession and restrictions (which do not form part of a dwelling) and any construction activities [ER 8.5.45]. In conclusion, the ExA considers that the level of landowner engagement is sufficient to demonstrate that engagement has been reasonable and is both for a legitimate purpose and that it is necessary and proportionate. The ExA considers that by virtue of the Applicant’s direct functional need for the rights and restrictions sought for the electric line, the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met, also having regard to the compensation to which individuals would be entitled. The Secretary of State agrees with the ExA’s conclusion that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.

Section 6(1) of the Environment (Wales) Act 2016

9.3 The Secretary of State, has had regard to the duty in section 6(1) of the Environment (Wales) Act 2016 to seek to maintain and enhance biodiversity, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of functions in relation to Wales. In particular, in accordance with section 6(4)(a), regard should be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State is of the view that the ExA Report considers biodiversity in accordance with this duty.

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

X. Secretary of State's conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State considers that this is not outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order, and that granting consent would be consistent with EN-1 and EN-5.

10.2 The Secretary of State has also considered the Applicant's request for powers to compulsorily acquire rights and powers of temporary possession over land which forms part of the Application and, for the reasons set out above, has granted powers of compulsory acquisition and powers of temporary possession.

10.3 The Secretary of State considers that the Development will have no likely significant effects of European Designated Sites either alone or in combination with other plans or projects.

10.4 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent for Option B [ER 10.2] subject to the modifications described above. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the LIR submitted by CCC, the representations received from interested parties after the close of the Examination and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

XI. Challenge to decision

11.1 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.

XII. Publicity for decision

12.1 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 EIA Regulations.

Yours sincerely

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(1) of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by 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 Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Brechfa Forest Wind Farm Connection Order 2016 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/wales/brechfa-forest-connection/>

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)