



Meeting note

File reference	EN020016
Status	Final
Author	Steffan Jones
Date	4 March 2015
Meeting with	Western Power Distribution (WPD)
Venue	Room 3/03, Temple Quay House, Bristol
Attendees	Andrew Hubbard - WPD Geraint Griffiths - WPD Christian Hjelm - WPD Neil Bromwich - Osborne Clarke Lara Flynn - Osborne Clarke David Kenyon - AMEC Kathryn Dunne - The Planning Inspectorate Nicholas Coombes - The Planning Inspectorate Steffan Jones - The Planning Inspectorate Richard Kent - Environmental Services Team, the Planning Inspectorate Justin John - Legal Advisor to the Planning Inspectorate
Meeting objectives	To go through the developer's draft DCO submitted to the Planning Inspectorate prior to the meeting and provide an update on the project
Circulation	all

Summary of key points discussed and advice given:

The participants introduced each other and their roles. Western Power Distribution 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 which the developer or others can rely.

Where this note refers to the developer, it means Western Power Distribution.

Project Update

The Planning Inspectorate was informed that the developer's statutory consultation under s42 and 47 of the PA 2008 took place between 17 November 2014 and 16 January 2015.

The developer, along with its Land Rights team, held a consultation with landowners to assist in the identification of any unknown landowners; this consultation was held in parallel to the statutory consultation stage.

Discussions with the local authority are on-going in relation to landscape and ecology enhancement measures; these are sought to enable landowners to apply for grants to undertake landscape or ecological enhancement works (for example, the planting of trees) in the future in the locality of the proposal.

The developer declared its intention to submit draft EPS licences with its application. Natural Resources Wales (NRW) and the local authorities have been provided with draft version of the Habitats Regulation Assessment (HRA) Report and the Construction Environment Management Plan (CEMP). The Planning Inspectorate advised that if the above documents were to be provided to them in draft form for comment, it would prefer it if comments from NRW and the local authorities were already included.

Submission of the application for development consent to the Planning Inspectorate is expected in late April 2015.

The Proposed Development

The developer informed the Planning Inspectorate that, aside from pole micro-siting, no major changes to the proposal have occurred following the statutory consultation stage. The changes to pole micro-siting responded to requests from affected landowners.

The Planning Inspectorate queried whether the developer is intending to submit a Flood Risk Assessment (FRA) with its application for development consent. Earlier discussions have led to the developer stating it considered not providing one; however the developer has now informed the Planning Inspectorate that its current proposal is to provide one. The Planning Inspectorate clarified that a Flood Risk Assessment is a required document under the Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations) 2009.

The developer highlighted that it has attempted to identify highway boundary land ownership, however during its investigations it has concluded that documentary information on exact highway boundaries is not recorded. Therefore based on assumptions and discussions with its highway consultants and with the local highways authority, the developer has identified these parcels of land as 'unknown owner' as well as 'Highways Authority' in its Book of Reference (BoR).

The developer informed the Planning Inspectorate that it would need to move some existing overhead lines at 10 crossings situated along the proposed route which are critical to the delivery of the scheme. Should the developer decide to include these works in the application for development consent under the PA 2008 it will list them as separate works within the draft DCO, the developer should explain thoroughly within its Explanatory Memorandum (EM) why it believes such works are integral to the proposal.

Following advice received from their legal advisors, the developer intends to submit an application for the underground section of the proposal to the local planning authority

under the Town and Country Planning Act 1990 (TCPA), in parallel with the application for development consent (including the undergrounding section) under PA 2008. The developer confirmed that an explanation of this approach will be provided to Welsh Government for comment prior to submission. The Planning Inspectorate advised the developer to explain this approach in their EM.

The developer stated that they would also seek planning permission for the three off-site work compounds from the local planning authority. However, they will request power for compulsory acquisition of rights to use the land for the northern and southern compounds through the application for development consent. The Planning Inspectorate advised the developer clearly explain why the rights sought are justified. During any potential examination of an application the Examining Authority (ExA) is likely to require details as to how far progressed a TCPA application will be as any likely impediments to the scheme underlying the compulsory acquisition request would need to be examined.

The diversion and undergrounding of existing 11kV electric overhead lines crossed by the proposal was discussed further, as the developer has not, to date, consulted on these elements of the project. If the developer still intends to apply for consent to divert and underground the existing 11kV lines within the DCO application, it will need to describe in the consultation report what activities have since been undertaken to demonstrate compliance with its consultation duties.

The Department for Communities and Local Government has issued guidance on the pre-application process (March 2015). The Planning Inspectorate advised the developer to consider the content of the guidance in relation to any potential targeted consultation it may engage in.

Should the developer decide to engage in a targeted consultation, the Planning Inspectorate advised the developer it should clearly explain why it believes its approach was proportionate within its application for development consent. The developer was reminded that local authorities would be given the opportunity to comment on any consultation through an Adequacy of Consultation (AoC) representation during the acceptance stage.

The Planning Inspectorate advised that the developer would need to form its own view on whether any elements of its proposed works constituted 'associated development' for the purposes of s115 of the PA 2008. If the developer considers an element to be integral to the proposed Nationally Significant Infrastructure Project (NSIP), and so not 'associated development' then it should clearly explain why in its EM. If an element of the proposed scheme forms part of a NSIP, then development consent must be obtained in accordance with s31 of the PA 2008. In relation to the proposal to include some elements of the project in both PA 2008 and TCPA applications; in order to include these elements within the PA 2008 application, the developer would need to justify why it considers that these elements form part of the NSIP, as the definition of associated development has a very limited application in Wales and will not apply in the case of this application. The justification for their inclusion in the PA 2008 application would need to be consistent with the fact that applications for planning permission under the TCPA were also being made. Any contradictions in approach to what formed part of the NSIP itself, and what was not part of the NSIP and therefore could not be included in the application, should be avoided.

The Planning Inspectorate reminded the developer that Welsh Government has provided comments during the examination on associated development in relation to a NSIP generating station in Wales; this can be viewed on the National Infrastructure website.

Draft Development Consent Order (DCO)

The Planning Inspectorate provided comments to the developer having received a copy of the DCO and EM in advance of the meeting.

Articles

Formatting and cross-referencing of provisions need amendment.

A1: the name of the order has the word 'Connection' missing.

A2(1): the developer was advised that the use of "maintain" as currently drafted is likely to be subject to discussion at examination, if the application is accepted for examination. All aspects of it should be explained in the EM.

A2(2): a minor drafting point was discussed re: plural v singular, in the last 5 words of the provision.

A2(5): the developer was asked whether this cross-referenced the correct plans.

A4(2) & (3) 'Development consent etc granted by the Order': the developer was advised to give further consideration to the wording used (e.g. its use of 'operate and use').

A4(4): the Planning Inspectorate queried whether the word "general" was appropriate.

A7(1) 'Benefit of Order' : the Planning Inspectorate suggested the developer considers specifying the applicant by name, rather than as the 'undertaker' in this provision. Also to consider if some of the cross-references here are necessary.

A14(1) 'Discharge of water' : consider how much of the article the proviso is intended to be applicable to and may, as a result, need to move it elsewhere in the provision.

A17(1)(d) 'Authority to survey and investigate the land': the Planning Inspectorate queried whether an obligation to take away apparatus should be added in the circumstances of this provision. The developer asked if articles 19 and 23 could be combined, the answer to which was positive.

Article 18 is missing.

A20(3) 'Statutory authority to override easements and other rights' : the Planning Inspectorate queried why a limited list was provided here.

A21 'Compulsory acquisition of land – incorporation of the mineral code': rogue footnote.

A23(7) & (8) 'Compulsory acquisition of rights': The Planning Inspectorate questioned whether the paragraphs were necessary.

A24(1) 'Extinguishment and suspension of private rights' : rogue footnote.

A24(7): this should cross-reference 6(b), not 7(b), in the first line as currently drafted.

A25(3) 'Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession': the Planning Inspectorate advised the developer should expect close examination of this provision, if an application is accepted for examination.

A27(3) 'Acquisition of subsoil or airspace only' & A28 'Acquisition of part of certain properties': May not be necessary as the developer is not seeking to acquire land ownership.

A30 'Temporary use of land by the undertaker' and A32(5) 'Temporary use of land for maintaining the authorised development': the Planning Inspectorate queried whether an obligation to take away all works should be added here, if a permanent right is not also acquired.

Article 31 is missing.

A34 'Statutory undertakers': In its current draft, the article would enable a statutory undertaker's land to be taken. The developer was advised to re-draft if it only requires acquisition of rights, not land.

A37 'Felling or lopping of trees': the developer should consider re-drafting the first line of this article to include wording along the lines of "...within or encroaching upon the Order limits" after "authorised development".

A39 'Certification of plans etc': advised to list specific plans or drawing numbers.

A41 'Arbitration': rogue footnote.

Schedules

Should all be fully populated and cross-refer to relevant articles which make them operative.

Schedule 1 'Authorised Development': Advised to use specific grid references for specific locational points, where possible.

Sch 1 paragraph (d): the developer intends to list crossing points as separate work packages

Sch 1(d) paragraph (viii): the Planning Inspectorate questioned whether this was appropriate for inclusion.

Schedule 3 Requirements

Paragraph 1(2): the Planning Inspectorate advised caution against using tailpieces.

Req 3 'Compliance with approved details' : the Planning Inspectorate advised caution against using tailpieces and use of word "general".

Req 5 'Implementation and maintenance of landscaping': the Planning Inspectorate queried the use of "to a reasonable standard", which may be too vague.

Req 9 'Controlled water protection scheme': the Planning Inspectorate advised caution against using tailpieces.

Req 11(2) 'Landscape and ecological management plan': 3rd line, the Planning Inspectorate advised that the use of "appropriate" may be too vague

Req 12 'Habitat Management Plan': Typographical error.

Reqs 12 'Habitat Management Plan' & 13 'Code of construction practice': the plans and codes referred to need to be defined

Reqs 13 'Code of construction practice', 14 'External lighting' & 15 'Construction traffic': the Planning Inspectorate advised caution against using tailpieces.

Req 15 'Construction traffic': Construction Traffic Management Plan needs to be defined.

Req 17 'Construction hours': the Planning Inspectorate advised caution against using tailpieces.

Req 20 'Construction Environmental Management Plan': Plan referred to needs to be defined.

Req 23 'Amendments to approved details': Planning Inspectorate advised caution against using such a tailpiece provision

Schedule 4 paragraph 2 'Modification of the Land Compensation Act 1973':
rogue footnote

Schedule 9 paragraph 4(1)(b) 'Discharge of requirements - Appeal process':
Current draft, declares that the Secretary of State (SoS) must appoint a person, however advised should consider re-drafting to allow the SoS the option to do so, whilst retaining option to act himself/herself.

Explanatory Memorandum

Correct title of the Order needs to appear at beginning.

The developer was advised that the EM should clearly explain the developer's conclusions in relation to what is integral to the scheme and why they so conclude.

When referring to 'secondary legislation', it should be specified by title and Statutory Instrument number.

When referring to a DCO in the second paragraph, the developer was advised that it should be referring to the exact titles of any made DCOs should it wish to do so.

Planning Inspectorate advised that all explanations of individual provisions should refer to their precedents (if any).

Purpose of the Order

The developer was advised to include the full company name when referring to itself; the developer should also reference the full title of any DCO when referring to one.

The Planning Inspectorate advised developer to explain who owns the 'Swansea North sub-station'.

Sections 3 & 4 – discussed typographical errors. The draft EM currently states 'no ancillary works are allowed for a project in Wales', however the Planning Inspectorate explained that the Brechfa Wind Farm DCO included removal of hedgerows as ancillary works and the Clocaenog Wind Farm DCO included landscaping and clearance of vegetation as ancillary works.

Part 1 – Preliminary

The Planning Inspectorate advised that if the developer believes that s131 PA2008 will not be engaged, then is no need to refer to it here. Where the developer is defined as 'the undertaker' here, the developer was advised to refer to itself by its full name instead.

The developer was advised to clearly explain all elements of the definition of "maintain".

Part 2 – Principal Powers – discussed typographical errors and the extent of s141 PA2008.

Part 3 – Streets - – discussed typographical errors and Planning Inspectorate queried whether, as currently drafted, the explanation of Article 12(1)(a) is correct.

Part 4 – Supplemental Powers

Article 18 is missing from the explanatory memorandum.

Part 5 – Powers of Acquisition

Article 22 – the Planning Inspectorate queried whether explanation, as currently drafted, fully explains this article.

Article 23 – reference to the Crown here may now be redundant.

The developer was advised that Article 25(3) may be closely examined should the application be accepted for examination.

Article 31 – developer will need to check if this explanation refers to the correct article number.

Article 33 - the Planning Inspectorate questioned the explanation here of the preamble to the Order. If the explanation is what is intended then the preamble will require amendment to reflect it.

Article 34 - the developer explained that it does not intend to acquire land ownership as opposed to rights and restrictions.

Schedules

Schedule 3 (Requirements); Req 3 - the developer was advised that the use of "general" may be too vague and that the schedule does in fact allow the developer to do more than is explained in the explanatory memorandum.

The developer will need to revisit explanations of requirements to ensure that they are all explained and that the correct requirement numbers are referenced.

Schedule 10 (Land which may be compulsory acquired); the developer was advised to consider moving the final 2 paragraphs under schedule 8 (protected provisions) instead; the Planning Inspectorate believe they would be more applicable in this location. Also, the developer does not intend to acquire land ownership as opposed to rights and restrictions.

AOB

A discussion took place on the effect of precedents from other DCOs in relation to New Roads and Street Works Act 1991, Road Traffic Regulation Act 1984 and Highways Act 1980.

A discussion on the provisions of Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 and s120(5) PA2008 was also had. The Planning Inspectorate referred developer to its Advice Note 11 series (working with public bodies) and paragraph 27 of its Advice Note 15 (Drafting Development Consent Orders).

The Planning Inspectorate will confirm with the developer how many hard copies of the application it will require.

The Planning Inspectorate advised the developer to consider including an organogram of plans; this would be a helpful visual tool for an appointed ExA.