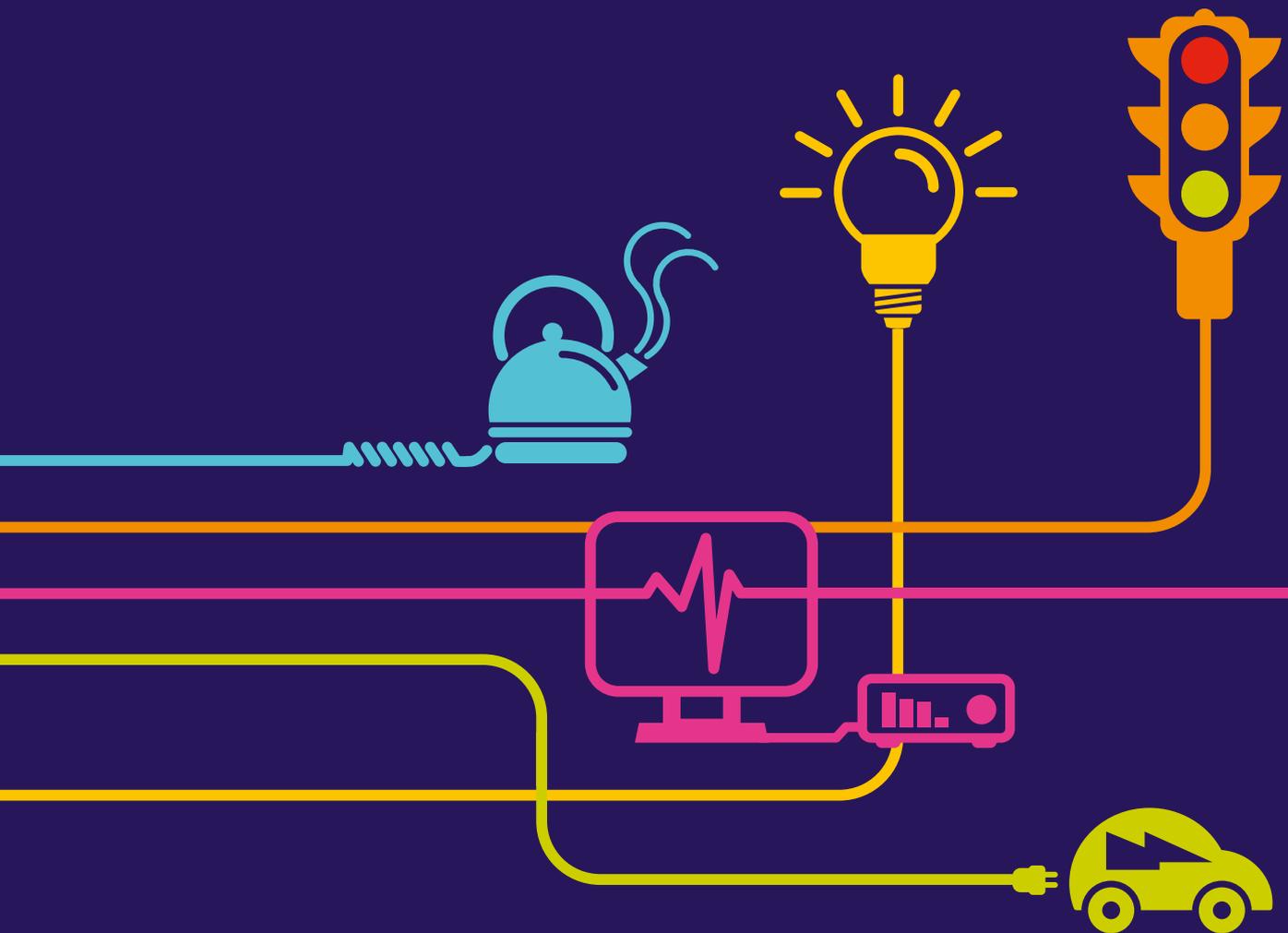


Applications under section 127 and 138 of the Planning Act 2008 Environment Agency

National Grid (Richborough Connection Project) Order



The Planning Act 2008

The proposed National Grid (Richborough Connection Project) Order

Application under section 127 and 138 Planning Act 2008 – Statutory Undertakers’ Land

ENVIRONMENT AGENCY

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Application under section 127 and 138 Planning Act 2008 – Statutory Undertakers’ Land

1 Introduction

- 1.1 National Grid Electricity Transmission plc (“National Grid”) submitted in January 2016 an application for a Development Consent Order (“DCO”) to the Secretary of State for the Richborough Connection Project (application reference EN020017). The application was accepted by the Planning Inspectorate on 11 February 2016.
- 1.2 The DCO includes provision for the compulsory acquisition of rights in land, including the acquisition of interests and rights in “statutory undertakers’ land”, as defined by section 127 of the Planning Act 2008 as amended (“the Act”). As the DCO will affect statutory undertakers’ land, National Grid believes that section 127 of the Act is engaged by the DCO.
- 1.3 Section 127 applies to land (statutory undertakers’ land) if:
 - (a) the land has been acquired by a statutory undertaker for the purposes of its undertaking;
 - (b) a representation has been made, and not withdrawn about an application for development consent; and
 - (c) the Secretary of State is satisfied that
 - (i) the land is used for the purposes of carrying on the statutory undertakers’ undertaking; or
 - (ii) an interest in land is held for those purposes.
- 1.4 The relevant statutory undertaker for the purposes of this application is the Environment Agency (“EA”). National Grid and, as the case may be, UK Power Networks propose to acquire interests and rights in land, such land or interest in the land having been acquired by the EA (“EA’s Land”) for the purposes of its undertaking.
- 1.5 The EA has made a representation to the Planning Inspectorate in relation to the DCO. National Grid is in ongoing discussions with the EA regarding the DCO application, but its representation has not currently been withdrawn.
- 1.6 If that representation has not been withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on the EA’s statutory undertaking, then the DCO may include provision authorising the compulsory acquisition of a right over statutory undertakers’ land by the creation of a new right over land only to the extent that the Secretary of State is satisfied that the requirements of section 127 have been met.

- 1.7 National Grid is therefore making this application to the Secretary of State pursuant to section 127 of the Act.
- 1.8 The DCO also includes the power for National Grid and, in respect of the UK Power Networks works, UK Power Networks to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, and as such National Grid believes that section 138 of the Act is engaged by the DCO.
- 1.9 Section 138 applies to land if:
- (a) there subsists over the land a relevant right; or
 - (b) there is on, under or over the land relevant apparatus.
- 1.10 Section 138 also provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
- 1.11 National Grid is, therefore, making this application to the Secretary of State pursuant to section 138 of the Act.
- 1.12 The following documents were submitted as part of the DCO application in January 2016 and are relied upon to support this application under sections 127 and 138:
- Statement of Reasons (**Document 3.1**);
 - Draft Development Consent Order (**Document 2.1**);
 - Land Plans (**Document 4.3**);
 - Works Plans (**Document 4.6**); and
 - Book of Reference (**Document 3.3**).
- 1.13 The Statement of Reasons sets out the justification for seeking compulsory purchase powers within the DCO.

2 Background

- 2.1 National Grid operates the high voltage electricity transmission network in Great Britain and owns the network in England and Wales. The network operates at 400,000 and 275,000 volts, connecting the electricity generators to substations where the high voltages are transformed to lower voltages, enabling the power to be distributed to homes and businesses.
- 2.2 One of National Grid's functions is to identify new sources of energy to join to the existing network. One of these new sources is the proposed high-voltage electricity link between Belgium and Richborough near Sandwich in Kent, known as the Nemo Link. In order to transport the energy from Nemo Link

around the country, National Grid need to connect it to the high-voltage electricity network.

- 2.3 At present, there is no high-voltage National Grid electricity network in the Richborough area. The DCO, if made, would therefore grant powers to construct, operate and maintain a 20 kilometre 400kV overhead electricity transmission connection between Richborough 400kV Substation and Canterbury North 400kV/132kV Substation, to join the existing network. This project is known as the Richborough Connection Project (“Proposed Development”).
- 2.4 The DCO, if made, would also grant powers to reconfigure and remove parts of the local 132 kV electricity network. The local distribution network operating at 132kV and below is owned and operated by UK Power Networks. The works to reconfigure the local 132 kV electricity network (“UK Power Networks works”) are in most cases to be undertaken by UK Power Networks. The provisions of the DCO therefore have effect for the benefit of both National Grid and UK Power Networks (in respect of the UK Power Networks works) as set out in Articles 6 and 7 of the DCO.
- 2.5 The DCO will also include powers for:
- the permanent diversion of an existing 132 kV overhead line to enable the new 400kV overhead line to be constructed;
 - the construction of three temporary diversions of another existing 132kV overhead line in order to maintain local supplies whilst the new 400kV overhead line is being constructed;
 - the removal of 20.6 km of existing 132kV overhead line between Richborough 132kV Substation and Canterbury South 132kV Substation; and
 - ancillary works including, but not restricted to, temporary access routes to access pylon construction areas, bridge structures, highway works, construction compounds, protective scaffold structures and pylon work sites.

3 Proposed Works

The works which are proposed over the EA’s Land in connection with the Proposed Development include, in particular, the following:

- works to construct and thereafter maintain a 400kV overhead electric line comprised in Work No. 1 in the draft DCO and as shown on the Works Plans, consisting of the installation of pylons and associated conductors, insulators and fittings; and
- such associated development as may be necessary or expedient for the purposes of, or in connection with, the construction or maintenance of the works comprised in Work No. 1 including, without limitation,

works to provide access to pylons and associated conductors, insulators and fittings.

4 Section 127 Application

Statutory Undertakers' Land

- 4.1 No land owned by the EA needs to be compulsorily acquired; only rights over land. Therefore, section 127(2) and (3) of the Act are not engaged.
- 4.2 Section 127(5) of the Act provides that a DCO may include provisions authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).
- 4.3 The matters set out in subsection (6) are that the nature and situation of the land are such that-
- (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
 - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the rights, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- 4.4 National Grid understands that the rights and interests in the plots set out in Table 1 below have been acquired by the EA for the purposes of its undertaking. Interests and rights in the plots set out in Table 1 are required by National Grid in order to deliver the Proposed Development. Any right to be acquired by UK Power Networks in those plots listed in Table 1 is either a right comparable to that being sought by National Grid or a lesser right. As such, this application is made by National Grid only.
- 4.5 Below is a broad description of the purpose for which the EA's land is required and the rights that would need to be acquired as set out in Table 1.
- 4.5.1 Class 1 – acquisition of rights by the creation of new rights:
- (a) with or without vehicles, plant and equipment to enter the land to construct the Proposed Development and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace or remove the Proposed Development;
 - (b) with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
 - (c) with or without vehicles, plant and equipment to enter the land to access any adjoining land for the purposes of the Proposed Development;

- (d) with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
- (e) to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the Proposed Development or interfere with the undertaker's access including without limitation impose clearance restrictions to the Proposed Development, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- (f) carry out any other works necessary or expedient to the land and listed in Schedule 1 to the Order; and
- (g) to carry out any activities ancillary or incidental thereto.

4.5.2 Class 2 – acquisition of rights by the creation of new rights:

- (a) of way with or without vehicles, plant and equipment at all times over the land;
- (b) to remove any buildings, structures, pylons and vegetation from that land;
- (c) to construct works including the provision of means of access; and
- (d) to carry out activities ancillary thereto.

TABLE 1

Statutory Undertaker's land (plot number)	Interest or right to be acquired
171, 175, 176, 177, 180, 182, 187, 204, 219, 220, 221, 226, 227, 449, 450, 451, 452, 630, 633, 634, 636, 640, 650, 663, 664, 666, 670, 671, 708, 727, 728, 740, 746, 747, 748, 754, 755, 763, 827, 828, 843, 888, 902, 908, 1054, 1056, 1066, 1314, 1320, 1321, 1323, 1324, 1417, 1436, 1444, 1445, 1446, 1449, 1451, 1462, 1594, 1615, 1616, 1618, 1619, 1621, 1622, 1626,1627	Class 1

161, 391, 614, 627, 655, 910, 1016, 1032, 1061, 1304A, 1304B, 1628, 1632, 1634, 1638, 1675	Class 2
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- 4.6 National Grid considers that there would be no serious detriment to the EA's undertaking if it (and/or, as the case may be, UK Power Networks) were to acquire these rights and interests and that the criteria in section 127 are satisfied. This is because the rights would co-exist within the plots affected alongside those of the EA and, for the most part, the rights would cause minimal interference to the EA's undertaking. Other than during construction of the Proposed Development, the only interference would be maintenance or emergency works to National Grid's or, as the case may be, UK Power Network's equipment. On such occasions, National Grid or, where appropriate, UK Power Networks would consult with the EA in order to cause as little disruption as practicable during the maintenance or emergency works.
- 4.7 As a result, it is National Grid's view that any interference caused (if at all) will not be a serious detriment to the EA carrying on its undertaking.
- 4.8 As the rights to be acquired will co-exist with those of the EA and, for the most part, cause minimal interference with the EA's undertaking, National Grid does not consider it necessary to replace the land over which interests are required for the Proposed Development.
- 4.9 The procedure under section 127(5) only applies to the compulsory acquisition of a right, so is not engaged by plots subject to Articles 29 to 31 inclusive of the DCO (temporary use).
- 4.10 Negotiations with the EA to acquire the interests and rights required for the Proposed Development and to manage any interfaces between the Proposed Development and apparatus and/or rights vested in the EA on, under or over the order land voluntarily are ongoing. However, it has not yet been possible to reach agreement. Private treaty negotiations with the EA will continue in parallel with the compulsory acquisition process with a view to concluding an agreement as soon as possible.
- 4.11 However, compulsory acquisition powers are still sought in the DCO over the plots for the following reasons:
- notwithstanding that due and diligent enquiry to establish all persons with an interest in land has been undertaken, and agreements concluded, if any person with an interest in land is identified or comes forward subsequent to the DCO having been made, National Grid (and, as the case may be, UK Power Networks) must be able to rely upon compulsory powers under the DCO in respect of such interest if no voluntary agreement with that person can be obtained;

- the voluntary agreement may later prove to have granted insufficient rights and the land owner may be unwilling to extend the rights as may be required; and
- compulsory powers are more readily enforceable so reducing additional risk, cost and delay. National Grid may consistently and uniformly enforce compulsory powers to deliver the Proposed Development in a comprehensive manner in relation to all persons with an interest in land.

5 Section 138 Application

- 5.1 As noted at Paragraph 1.8 above, the DCO gives National Grid and in respect of the UK Power Networks works, UK Power Networks the power to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, including (but not limited to) the EA, over or within the order land. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.
- 5.2 National Grid understands that a relevant right and/or relevant apparatus for the purposes of section 138 of the Act is vested in or belongs to the EA, on under or over the plots listed in Table 1 above.
- 5.3 For the purposes of this application, it is National Grid's case that:
- 5.3.1 works associated with the Proposed Development are necessary over the plots listed in Table 1 above and are described in Schedule 1 to the DCO (**Document 2.1**) and shown on the Works Plans (**Document 4.6**) to carry out the Proposed Development;
- 5.3.2 the Proposed Development could affect relevant rights and/or relevant apparatus vested in or belonging to the EA which may be affected by the Proposed Development;
- 5.3.3 in the absence of powers for National Grid to extinguish such rights and/or remove or reposition such apparatus, the works associated with the Proposed Development (and summarised at Paragraph 3 above) could not be completed;
- 5.3.4 the nature of the proposed works means that the Secretary of State can be satisfied that the EA's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.
- 5.4 National Grid is seeking to negotiate with the EA to acquire the rights necessary for the Proposed Development and to manage any interfaces between the Proposed Development and apparatus and/or rights vested in the EA on, under or over the order land by private treaty. Private treaty negotiations will continue in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.

- 5.5 However, in the absence of private treaty agreement, it is still necessary to seek compulsory powers in the DCO to ensure that National Grid is able to consistently and uniformly enforce powers to deliver the Proposed Development in a comprehensive manner in relation to all persons with an interest in land.

6 Conclusion

- 6.1 Given the need for the Proposed Development (see in particular the needs case as set out in the Statement of Reasons), National Grid considers that there is a compelling case in the public interest for the inclusion of the compulsory purchase powers within the DCO.
- 6.2 For the reasons set out in this application, it is National Grid's position that, pursuant to section 127 of the Act, the Secretary of State can be satisfied that the prescribed tests of section 127 have been met and that the statutory undertakers' land may be included for compulsory acquisition in the DCO.
- 6.3 It is also National Grid's position that, pursuant to section 138 of the Act, the Secretary of State can be satisfied that the power for National Grid and, as the case may be, UK Power Networks to extinguish the rights of, remove or reposition the apparatus belonging to the EA is necessary for the purpose of carrying out the Proposed Development, and that the test of section 138 has therefore been met.