



FROM THE PRESIDENT: MEURIG RAYMOND

The Rt Hon Greg Clark
SoS for Business, Energy & Industrial Strategy
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Date: 2nd June 2017

For the Attention of Keith Welford

Dear [Secretary of State]

National Grid: Richborough Connection Project

Development Consent Order (“DCO”) Application

The NFU has been in discussion with National Grid concerning the Richborough Connection Project DCO application for the past 12-15 months., We have also participated in the examination of the DCO application, providing written submissions and giving evidence at the oral hearings on behalf affected NFU members.

The NFU understands the importance of the scheme and we recognise the public interest of nationally significant infrastructure projects in general. For generations NFU members have hosted national infrastructure on their land for the greater good of the nation. There is however always a balance to be struck between the public interest and the private rights of individuals affected.

We are concerned about the way that National Grid has approached this DCO application, particularly as it appears that they are attempting to secure the land needed for the scheme through compulsory purchase powers rather than through negotiation to reach a voluntary agreement with the affected landowners. In addition, in our view the rights National Grid is seeking are not necessary and proportionate for this development.

Enclosed with this letter is a [report] produced by the NFU’s Senior Rural Surveyor setting out in more detail the relevant guidance that applies, and our concerns as to where we say this guidance has not been followed. In brief, we are concerned that National Grid:

- has not fully explored reasonable alternatives to the locations of pylons that would mitigate the effects on affected landowners and their farm businesses;
- has not taken into account the economic impact on the farm businesses;
- has not entered into genuine negotiation with affected landowners and their agents and instead is seeking to rely entirely on the acquisition of rights by compulsory purchase powers; and
- has not given due regard to ensuring the proposed interference is necessary and proportionate, because the rights sought are in perpetuity, and because the covenants that National Grid is seeking to impose would prevent normal agricultural cropping.

We ask that in light of our concerns, you do not approve the DCO for this scheme as it stands with the particular rights that are being sought which are disproportionate and extensive. The rights in our view being sought should be for a time limited period only in line with the life of the pylons being 80 years and that the wording of the restrictive covenants in the book of reference should be amended to allow for normal agricultural cropping to take place. We also believe that alternative dispute resolution mechanisms should be offered by National Grid to all affected landowners before compulsory acquisition is available.

Yours faithfully

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Meurig Raymond MBE, FRAgS
President

cc William White

NFU concerns: National Grid (“NG”) DCO application / Richborough

Introduction

The NFU is aware of DCLG guidance that should be followed in relation to procedures for the compulsory acquisition of land and rights over land. The NFU is concerned that NG has not complied fully with this guidance in respect of the DCO application in relation to the Richborough scheme.

Set out below are relevant extracts from “*DCLG Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land*” (February 2013) (“the Guidance”), along with comments explaining why the NFU believes NG has not complied with that aspect of the Guidance.

The NFU’s concerns fall into two broad categories: (a) negotiation by NG; and (b) the scope of the rights sought by NG.

(a) Negotiation

The Guidance states:

“PREPARING AND MAKING AN ORDER

Preparatory work

24. Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail.

25. Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings. Early negotiations with statutory undertakers and similar bodies may pay dividends later on.”

In addition, DCLG published the policy replacement of Circular 06/2004 as the “*Guidance on Compulsory Purchase Process and the Criche Down Rules*” (“the 2015 Guidance”).

The following words in paragraph 16 of the 2015 Guidance are important:

16. “Acquiring Authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question”

The NFU believes strongly that NG has not entered into meaningful negotiations with landowners, as clearly required by both the 2013 and 2015 Guidance.

At the oral hearings the NFU did highlight to the Examiners that NG had not been carrying out any negotiation with the landowners and occupiers affected by this proposed scheme in regard to where pylons are to be located on land. NG has, in our view, been unwilling to take in to account the impact the location of some of the pylons will have on agricultural operations and the economic impact of the pylons and overhead cables on the farm businesses. NG has held meetings with landowners and their

agents but it has been a one way conversation with NG just telling the landowners what is proposed. There has been no negotiation.

The NFU believes that there is a difference between consulting and negotiation. NG has been consulting with landowners – it has held public events and meetings - but it is the genuine negotiation which in our view has not been taking place.

Voluntary agreements

Further the NFU clearly understands (as stated above under the Guidance paragraph 24) that NG should carry out discussions and negotiation to reach a voluntary agreement alongside pursuing the DCO application. NG sent out standard heads of terms to NFU members affected around Christmas 2015. These were not satisfactory and as professionals the land agents acting for the landowners could arguably have been negligent had they advised clients to sign the heads of terms offered. NG was not willing to amend the heads of terms until the last few months of the examination process.

Further NG has sent a standard option and deed to landowners under its purported voluntary agreement but NG has in our experience been unwilling to make substantive or meaningful amends to these documents. Under other DCOs, in our experience, the developer/applicant has been willing to negotiate with the NFU and land agents acting for clients to produce a standard approved document with all parties. This has not been possible to date in this case as NG has only been willing to make very minor amendments

NG has a “Land Rights Strategy” which highlights the standard compensation it is prepared to offer under a voluntary agreement. Again NG has not been prepared to provide evidence as to how it has calculated the standard payments offered.

(b) Rights granted

The Guidance states:

General considerations

8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

Restrictive covenants

It was raised on numerous occasions throughout the examination that the restrictive covenants being sought by NG are unreasonable, not appropriate and are not necessary for this scheme to be developed. Highlighted below is the wording contained in the book of reference provided by National Grid for this DCO application:

“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 authorised development or interfere with the undertaker’s access including without limitation impose clearance restrictions to the authorised 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 land¹

This states that the landowner would not be able to erect any building or structure on the easement land. Further the landowner could not allow any plant or tree to grow within the easement or change the level of the surface, ground cover or composition of the land.

The wording “*not to allow any plant...*” means that no agricultural cropping can take place on the easement. NG is proposing an easement width of 40m.

On other development schemes where the NFU has been involved in the examination of the DCO, the NFU has been able to agree wording for the restrictive covenants so that normal agricultural operations and cropping can take place. NG has not been prepared to negotiate the wording and so the NFU believes strongly that this is unreasonable and disproportionate for this scheme.

Rights in perpetuity

The NFU strongly believes that NG does not need to apply for ‘rights in perpetuity’ when it could apply for time limited rights that coincide with the life of the pylons. NG has confirmed that the life of the pylons is 80 years and has not been able to provide any reasons as to why a time limited easement would not be acceptable. NG has refused to negotiate on this.

The NFU believes that rights in perpetuity exceed that which is reasonably required and if granted would amount to a disproportionate interference with the rights of the landowners. The rights granted are particularly relevant as NG is not prepared to include a development clause in the deed of easement being offered to landowners under the voluntary agreement.

The NFU believes strongly that the rights being sought should be for a time limited period and the wording of the restrictive covenants should be amended to allow for normal agricultural cropping to take place.

¹ *Book of Reference in Part 1, Class1- Compulsory Acquisition of Rights for the Authorised Development. Paragraph (e)*

