

Submissions Received After the Close of the Examination

Richborough Connection Project

EN020017

Submissions made in response to BEIS consultation of 31 March 2017		
Number	Name	Date
01	Dover District Council	3 April 2017
02	National Grid	10 April 2017
03	National Grid (updated CEMP)	10 April 2017
04	Canterbury City Council	11 April 2017
05	Environment Agency	11 April 2017
06	Kent County Council	11 April 2017
07	South East Water	11 April 2017
08	Southern Water Services	11 April 2017
09	The Crown Estate	11 April 2017
10	Thanet District Council	12 April 2017

Submissions made in response to BEIS consultation of 9 June 2017		
Number	Name	Date
11	Church Commissioners for England	16 June 2017
12	National Grid	16 June 2017
13	National Grid - Appendix 1	16 June 2017
14	National Grid - Appendix 2	16 June 2017
15	National Grid - Appendix 3	16 June 2017
16	National Farmers' Union	19 June 2017
17	St John's College	19 June 2017

Submissions received following the close of the Examination

Number	Name	Date
18	Sir Julian Brazier MP	28 February 2017
19	Sir Roger Gale MP	3 March 2017
20	National Farmers' Union	2 June 2017
21	National Grid	26 June 2017
22	Southern Gas Networks	20 July 2017

18. Sir Julian Brazier MP

Sir Julian Brazier, T.D., M.P.



HOUSE OF COMMONS
LONDON SW1A 0AA

28 February 2017

D. Amber,

The Richborough Connection Project
Planning Inspectorate Reference: EN020017

I am writing to regard to the issue of the Richborough Power Station application to put pylons the height of Canterbury cathedral across the Kent countryside up to the edge of Canterbury. All the three MPs concerned, Sir Roger Gale, Craig Mackinlay and myself, are opposed to this. We made representations to the enquiry in person, as well as extensively in writing.

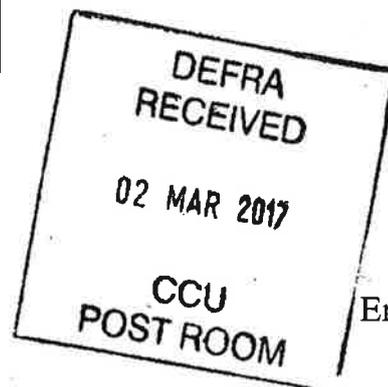
I was shocked to discover that, with no result yet come back from the enquiry, it seems that the promoter has already started to hand out large-scale contracts because it is so confident of success. This proposal threatens to blight villages all along the route and will wreck the Canterbury skyline.

I understand that the application comes before you shortly. I cannot stress enough how opposed I am to this permanent disfiguration of our historic city.

[REDACTED]

The Rt Hon Andrea Leadsom MP
Secretary of State
DEFRA

[REDACTED]



Enc.

19. Sir Roger Gale MP



Sir Roger Gale, M.P.

House of Commons
London, SW1A 0AA

03/03/2017

The Rt Hon Andrea Leadsom MP - Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
LONDON SW1P 3JR

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The Richborough Connection Project Planning Inspectorate Reference: EN020017

Julian Brazier has copied to me his note to you of the 28th February concerning the proposed Richborough Power Station / Nemo Link / National Link proposal. This, as Julian absolutely correctly says is wholly opposed by myself, by Craig Mackinlay and of course by Julian representing the Canterbury end of the line.

We have all made individual and personal representations and given evidence in respect of this enquiry on the basis that the National Grid appears to have taken a decision unilaterally and is determined to pursue it in spite of the fact that there are other and environmentally acceptable and in the long term financially completely viable alternatives.

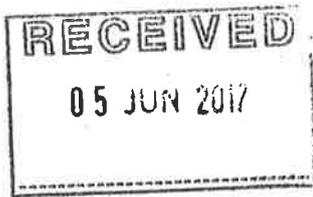
I am appalled by the fact that it would appear that contracts are already being issued: this is a gross breach of the proper position and I would suggest extremely discourteous towards both the Planning Inspectorate and yourself as the Secretary of State responsible for the ultimate decision. We require that National Grid be compelled to go back to the drawing board, do their work properly and instead of riding roughshod over local feeling and our environment fully examine the viable alternative which is an undersea cable from Zeebrugge to Kingsnorth on the Isle of Grain where there is a readily available plug in point. This proposal would obviate the need for unsightly pylons scaring a most beautiful valley in East Kent and would, actually, be more efficient. I have it on the very best authority from a retired engineer who has been involved in the construction of significant and major projects of this kind that the undersea cable proposal across the North Sea is completely viable and would in the long term be cost effective.

With my best wishes,
Yours sincerely


Sir Roger Gale MP

cc Craig Mackinlay MP
Sir Julian Brazier MP

20. National Farmers' Union



FROM THE PRESIDENT: MEURIG RAYMOND

The Rt Hon Greg Clark
SoS for Business, Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Your ref:
Our ref: MR/db/594
Email: debbie.birch@nfu.org.uk
Direct line: 02476 858 580
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

A solid black rectangular redaction box covering the signature area.

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 Crichel 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)*

21. National Grid



BIRCHAM DYSON BELL

Mr Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1A 0ET

Your Ref
EN020017
Our Ref
ENB/005694.0341
Date
26 June 2017

By Email giles.scott@beis.gov.uk

Dear Mr Scott

**Planning Act 2008
Application by National Grid Electricity Transmission plc for an Order Granting Development
Consent for the Richborough Connection Project**

National Grid notes that the deadline for a decision to be made by the Secretary of State has been delayed until 8 August 2017.

In order to minimise any further delay I am instructed to ask that, if the Order be made, the period between the making of the Order and it coming into force be less than the usual 21 day period and to question why there need be any interval between the two events. There is, as you know, a very strong imperative on National Grid to deliver this project as quickly as possible. National Grid's customer Nemo Link's project is proceeding on schedule and National Grid must have infrastructure in position next year to connect the interconnector to the transmission system. .

As far as I am aware the current practice of allowing 21 days between the making of an Order and it coming in to force stems from general statutory instrument practice and, in particular, Statutory Instrument Practice, Fourth Edition, November 2006, with the rule applying to instruments that are laid before Parliament under the negative procedure. DCOs are not laid before Parliament and so it appears that the 21 day rule applies only by analogy and where the circumstances are not directly comparable.

We have seen arguments in the past as follows:-

If the Order were to come into force on the same day it was made there could be issues related to retrospective effect of the Order owing to the rule that the statutory instruments come into force immediately after midnight on the day on which they come into force. This would be particularly problematic if an Order created a criminal offence.

We believe that the department have already in effect rebutted this argument by making a number of orders which come into force on the day following the Order being made.

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BIRCHAM DYSON BELL

A similar response would be made to the comment that sufficient time needs to be allowed for the printing and publication on the internet of the Order to ensure that the content of the Order is publically available before it comes into force.

It has also been said that the 21 day period has long been followed for orders under the Transport and Works Act 1992 and that it would be reasonable to recognise that both Parliament and the general public have an expectation that this practice will be followed for development consent orders. It is clear that the Department does not accept the rationale of this argument as the Secretary of State has made a number of DCOs that have come into force on the day following the publication of the decisions letter.

It has also been said that there is a need to have a period of time in cases where compulsory acquisition is permitted under the Order. I am not sure that that argument has any particular logic as the draft Order ensures that a person with an interest in land is notified in advance of any use or occupation of land under the powers contained in the Order. Furthermore under the Planning Act all those listed in the Book of Reference have to receive notification that the Order has been made and that it contains powers of compulsory acquisition.

In July 2016 the Meaford Gas Fired Generating Station Order 2016 was made and came into force on 2 August 2016 just 14 days after it was made. I believe that National Grid's case for early commencement is well made both because the decision has been delayed for wholly understandable reasons and there is sufficient urgency for the project to proceed for the usual time period to be reduced from 21 days to 7 days. These 14 days will significantly assist National Grid, if the Order is made, to proceed promptly with this nationally significant project.

If you need any further information in respect of this letter please do not hesitate to contact me.

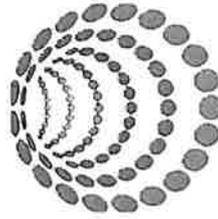
Yours sincerely



Nicholas Brown
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For and on behalf of Bircham Dyson Bell LLP

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22. Southern Gas Networks



SGN
Your gas. Our network.

Our Ref: TW/Richborough Connection

Giles Scott
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BY FIRST CLASS POST

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Thursday, 20 July 2017

Dear Mr Scott

Application by National Grid Electricity Transmission plc for an Order granting development consent for the Richborough Connection Project

By a submission received on 1 April 2016, Southern Gas Networks wrote to the Planning Inspectorate to make representations about National Grid's application for the above Order.

National Grid and Southern Gas Networks have entered into an agreement, the result of which is that Southern Gas Networks now wish to withdraw these representations, and express its support for the application.

Yours sincerely

Tristan Wright
Solicitor