

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

SUBMISSIONS OF THE NATIONAL FARMERS UNION (NFU) AND THE LINCOLNSHIRE ASSOCIATION OF AGRICULTURAL VALUERS (LAAV) REGARDING THE TRITON KNOLL ELECTRICAL SYSTEM DEVELOPMENT CONSENT ORDER 201 [...]

PLANNING INSPECTORATE REFERENCE NO EN020019

SUBMISSIONS OF THE NFU & LAAV IN ANSWER TO QUESTIONS DCO 3.1, DCO 3.2, DCO 3.15; CA 3.3, CA3.13, CA 3.14; Eon 3.2, Eon 3.3, Eon 3.4 Eon 3.5 and LVI 3.3, SE 3.1, SE 3.2 and SE3.7. OF THE EXAMINING AUTHORITY'S THRID WRITTEN QUESTIONS

DATE 17th February 2016

Introduction

The Examining Authority ("ExA") raised two Questions on 11th December 2015 on which they sought answers:

(1) CA 2.3 Acquiring land by negotiation

In a number of places in your Written Summary of Oral Submissions Made on Behalf of the National Farmers Union and the Lincolnshire Association of Agricultural Valuers at the Compulsory Acquisition Hearing on 13 November 2015 [REP3-027] you state that Agents felt unable to recommend the Heads of Terms to their clients. Explain why this is so.

The Agents felt unable to recommend the Heads of Terms to their clients for (*inter alia*) the following reasons:

- a. TKOWFL were seeking a Permanent Easement, and would not consider any alternative arrangement. Our clients do not consider that a permanent right is required for a temporary project and that a conventional subterranean lease for the same period as the lease for the offshore wind farm itself would be both adequate and appropriate. Very recently TKOWFL have proposed a lease of rights and the Agents have requested the opportunity to have an independent review of this latest proposal as compared to a subterranean lease.
- b. TKOWFL refuse to adequately acknowledge the existence of, or meaningfully engage with, occupiers (where distinct from land owners) despite them having an obvious physical and financial interest.
- c. Land owners and occupiers are most concerned about the physical impact on existing field underdrainage systems and the proposed reinstatement thereof. TKOWFL did not consider the specific detail of individual field underdrainage systems when fixing the cable route. In a number of instances they could have mitigated or avoided impact on those systems by having due regard to such information. We did not, and do not, consider that the Heads of Terms give adequate protection to landowners and occupiers.
- d. The principal financial terms on offer are considered inadequate when considered against other similar projects the Agents have been involved with.
- e. Provisions on future crop loss claims are inequitable and unacceptable.
- f. The restrictions as set out in the draft Deed of Grant are too onerous and unacceptable.

- g. The lack of provision for payment for survey access during the option period is unconventional and unacceptable.
- h. The scope of the Indemnity clause within the draft Deed of Grant is too narrow.
- i. TKOWFL proposed both a grossly inadequate cap on, and a limit on the scope of, professional (legal and agents) fees which exposes landowners and occupiers to incurring unintended professional costs. This is inequitable and is unacceptable.

(2) SE 3.7 - Land Interest Group

Provide evidence of instances where buried infrastructure has moved significantly post-installation so as to pose a risk to agricultural operations.

As highlighted at the first hearings it is known that National Grid (NG) do have gas pipes which have risen to the surface and these are referred to as “Reduced Cover” gas pipelines. There are now numerous pipes which have reduced cover and it is known that over time soil is eroded from the surface by different operations, vehicle use and heavier machinery. NGG and HSE are identifying gas mains which are too shallow for modern regulations and in some cases they are seeking to stop arable operations over the pipeline until matters are resolved. NG have concerns about what will happen in the longer term with these gas pipes. NG would not release the name of a gas pipeline due to landowner confidentiality but are quite happy to speak to the Examiners if they so wish direct. The main contact is Vicky Stirling who is the NG DCO liaison officer, contact (0)1926 653746.

Due to what is happening with NG gas pipes the NFU/LAAV would like to see the wording that has been requested by the Examiners at question Eon 3.5:

“Confirm that annual inspections of the buried cable and associated infrastructure will be undertaken by the operator and that such cable and associated infrastructure will be reburied where it poses a risk to agricultural operations”.

The NFU/LAAV would not want there to be any possibility that cables could rise to the surface and stop agricultural operations in the future.

The NFU/LAAV would also like it to be confirmed where the above obligation is secured in the DCO.

SE 3.2 The Applicant

Section 2 of Revision C of the outline Soil Management Plan (SMP) [REP5-027] makes reference both to the Agricultural Liaison Officer (ALO) and to the ALO team.

Given the size and complexity of the scheme and the number of farms affected:

a) Confirm that the ALO is an ALO team, i.e. several people rather than a single person, and amend the outline SMP to make this clear; and

b) *Make it clear in the outline SMP what will happen at decommissioning.*

The NFU/LAAV would also like to see ‘Decommissioning’ covered in the SMP.

SE 3.1 NFU/LAAV

At paragraph 5 of the Applicant’s response to our question CA 2.18 [REP4-027] the Applicant estimates crop loss to be approximately £4million, assuming a 3.5 year occupation of the cable easement; with full crop loss for the first year after construction; 50% loss for the second year after construction; and 25% loss for the third year after construction, saying that the figures are a worst case to provide a robust estimation.

In paragraph 3.3 of your joint CA submission [REP5-054] you state that TKES has estimated the private loss to be £4M and highlight that “the crop loss is for up to 5 years during construction and for numerous years after reinstatement ... over approximately 360ha (900 acres)”.

a) *How many years is “numerous”?*

b) *Do you agree with the figure of £4M and the underlying assumptions?*

c) *If you do not agree with the figure of £4M and the underlying assumptions, state your assumptions and explain what you think the figure should be.*

The NFU/LAAV believe that the construction is likely to take the full 5 years even if some partial reinstatement is carried out. It will then take over 3 years for the soil to re-establish. Below are two examples with figures highlighting the cost of crop loss if the whole area had been planted with wheat or potatoes. The yield at 9ha is conservative.

LVI 3.3 The Applicant

The NFU/LAAV have in their response to Deadline 5 [REP5-007] requested a number of changes to the Soil Management Plan [REP4-050] in respect, amongst other things, of soil shrinkage and soil aftercare. Do you consent to these changes?

a) *Will you be updating the Soil Management Plan accordingly?*

b) *Are there any implications for the draft DCO?*

The NFU/LAAV would like to confirm that soil aftercare was discussed at the meeting on 4th February and we are still waiting for confirmation that the wording put forward in our written submission on the 1st February will be accepted.

EON 3.3 the Applicant and NFU/LAAV

Provide a joint statement on your meeting held on 4 February 2016, detailing matters discussed, matters now agreed and outstanding matters of disagreement.

The NFU/LAAV has agreed the minutes of the meeting on the 4th February with TKES and these are submitted as our joint statement. Outstanding matters of disagreement and issues to be clarified include the following:

1.0 Restrictive Covenant (answer to question DCO 3.2 Restrictive Covenant)

1.1. The NFU/LAAV still have concerns as to whether it is necessary for 'Mole Draining' to be highlighted at c (i) in the restrictive covenant. This being an agricultural operation which is prevented unless the undertaker has provided consent in writing. At a site meeting with one of the TK engineers with LAAV, the engineer said that he thought it was not necessary for mole draining to be highlighted specifically. If this is the case then NFU/LAAV would like 'mole draining' to be deleted from the restrictive covenant at C (i). If there is still a reason for it to be highlighted separately in the restrictive covenant then the NFU/LAAV believe that consent should be given for this operation to a farmer within 24 hours.

1.2 As it is stated in the restrictive covenant that consents will have to be in writing the NFU/LAAV are still waiting to receive information as to how this will be carried out and within what timescale for other requests other than mole draining. The NFU/LAAV asked for this to be clarified at the hearings during the week of the 19th January and subsequently in the written submission. The NFU/LAAV would want to see this detail included in the DCO at Schedule 5.

2.0 Drainage

2.1 The NFU/LAAV is still under discussion with TKES on what is the standard format that TKES is expecting as requested in paragraph 4.10. The NFU/LAAV do not consider a format necessary.

4.10 The Applicant will compensate the Occupier on a proven ~~business~~ loss basis for any damages or losses caused as a direct result of the use of, or access to or from, the Easement Strip, subject to receipt and approval of a claim submitted in a standard format as requested by the Applicant."

2.2 The NFU/LAAV still believe very strongly that for drainage to be successfully reinstated that it will in places along the route be necessary for new drainage reinstatement to take place outside of the order limits. Therefore discussions are still ongoing as to the wording that needs to be included under paragraph 4.11. Please see our detailed answer to drainage at EON 3.2 below.

2.3 The NFU/LAAV have requested that were a drainage failure is found and it is a result of the TKES electric scheme then TKES should carry out remedial works. This may be within and outside of the order limits and at any time during the life of the project. This remedial drainage is carried out on other infrastructure schemes. This is yet to be agreed with TKES and for it to be included under drainage within the SMP.

2.4 It is NFU/LAAV understanding that cables will be buried below field drainage. This was not clarified by TKES at the meeting on 4th February.

3.0 Depth of Cables

3.1 The NFU/LAAV still believe that cables should be buried to a depth of 1.5m especially after holding a meeting with farmers and their agents on 11th February when issues were raised over the depth only being 1.2m.

4.0 Easement Width

4.1 As stated in the minutes from the meeting on the 4th February with TKES the NFU/LAAV is still concerned at how landowners will know that TKES only need a 40m easement instead of 60m when crossing a field and that the cables will be constructed within this reduced width. After raising this issue at the hearings and asking again for clarification at our meeting on the 4th February no documentation has been forthcoming from TKES.

4.2 The NFU/LAAV have seen the amended wording put forward by the Examiners at 'Requirement 5 (11) detailed design onshore' and would like to see the recommended amendment to be agreed and included in the DCO. The wording being as follows

(11) (a) At least three months prior to the commencement of the onshore cable works the undertaker must :

Notify the public and landowners of the draft sequencing of the onshore cable works in accordance with the Communications Plan agreed as part of the Code of Construction practice;

(ii) submit to the relevant planning authority for its comments and approval a cable route sequencing plan including details of width and alignment of the cable corridor.

Further that

(c) the works must be constructed in accordance with the approved cable route sequencing plan.

5.0 Link boxes

5.1 NFU/LAAV have requested photos/pictures/diagrams of how the link boxes will look out on the ground especially if three are located together. We are still waiting to receive this.

6.0 Soils Aftercare

6.1 TKES at the meeting on the 4th February had taken on board the wording submitted by NFU/LAAV for soils aftercare in our written submissions and confirmed at the meeting that full sign off was required but then after the meeting in an e-mail dated 8th February it has been confirmed that further discussion is needed. Therefore soils aftercare is still not agreed.

7.0 Survey and Investigate Land

7.1 Further to negotiating heads of terms with TKES which has included payments for the surveys it was agreed that once the option was signed no payments would be made for surveys other than direct crop loss. The NFU/LAAV in the last week have been made aware of archaeology digs taking place on another onshore cable development scheme and excessive damage has been created in field and not just crop loss. Due to this it is felt that payments must be made over and above crop loss for any trial or archaeology trenches. Discussions are ongoing with RWE on this.

EON 3.2 NFU/LAAV

At the Local Impacts Hearing on 19 January 2016 the Applicant stated that it is technically possible to reinstate drainage within the Order Limits.

Do you agree with this statement?

If not, explain why

The LIG and a number of individual farmers and landowners have made representations to the Examining Authority in writing and at the oral Hearings that the applicant has failed to satisfactorily engage and consult prior to the submission of the DCO application. A more thorough pre-application consultation with landowners and their representatives would have served to inform the applicant of the existing land drainage systems and schemes across the cable route and the type of reinstatement works which may be required.

That process would have helped the applicant understand the general land drainage issues and some more detailed site specific issues.

It is LIG's view that a certain amount of design work should have been carried out by the applicant in the preparation of the DCO application in order to consider the drainage constraints which would have identified where reinstatement drainage will require work to be carried out outside of the main easement corridor.

LIG is aware that the National Grid's carbon capture scheme DCO application included a detailed drainage report prepared by land drainage consultants. That scheme identified areas where the post-construction reinstatement drainage will involve works outside of the main easement corridor. This detail was then included in the DCO application plan.

Through experience of constructing pipelines in the 1960's and 1970's National Grid recognise that the reinstating of land drainage in the pipeline schemes should not merely be a case of reconnecting the severed drains. Invariably post-construction drainage needs to be routed away from the installed infrastructure to take into account the relative proximity of outfalls, the immediate topography and the risk of soil subsidence that can happen after construction. Soil subsidence is of particular concern as it can cause post-construction drainage to sink and become ineffective.

National Grid have standards for drainage. These standards are contained within PIP30 which confirms that:

- Unless otherwise directed by National Grid, crossing of the pipeline trench by land drains shall be kept to the absolute minimum whilst still providing adequate drainage systems.

- Wherever possible, the drainage system should be designed to run in parallel with the pipeline trench and connected to an adequate outfall drain on a field by field basis.
- Cross connecting of existing land drains over pipeline trenches should be strongly resisted where practical; however, where circumstances dictate that a land drain should cross the pipeline trench the trench shall be backfilled to provide a good firm bed.
- Before cross connecting the make-up piece to connect to an existing drain, the existing drains being connected shall be cleared to the edge of the working width on each side.
- Header drains or cut-off drains shall be installed at direction of National Grid following agreement by the landowner/occupier.
- Post-construction drainage shall be installed to reinstate the drainage system.

During LIG's discussions with the applicant we have consistently expressed concern that due to the lack of initial design work the applicant has not identified the areas of land where pre or post-construction reinstatement may require to be carried out outside of the Order limits of the DCO plan.

The applicant has insisted that reinstatement of the land drainage involving the reconnection of the land drainage over the cable conduits within the Order limits can be carried out.

LIG do not disagree with that on the basis that the cable conduits are laid below the existing operational drainage schemes. However, there are a number of reasons why this method of reinstatement may not be appropriate in every case. These issues were included in the report on the impact on agricultural land drainage prepared by DMJ Drainage dated 5 October 2015 which accompanied the representations submitted by the LIG.

