



**Canal &
River Trust**

Making life better by water

NorthShropshireReinforcement@
planninginspectorate.gov.uk

Your Ref EN020021

Our Ref IPP - 36

Wednesday 28th August 2019

Dear Mr Hudson,

Application by SP Manweb for an Order Granting Development Consent for the Reinforcement to the North Shropshire Electricity Distribution Network

Canal & River Trust Response submission for deadline eight

Written question from examining authority

The ExA has requested a final submission from the Canal & River Trust ("the Trust") setting out our concluding position on the protective provisions and whether our objection to compulsory acquisition rights in respect of plots 86, 87 and 88 is withdrawn.

The Trust's position remains the same as set out in our response to deadline six and seven letters. The draft DCO revised protective provisions are not agreed with the Trust. There remain two outstanding points in respect of the protective provisions. These are:

- 1) The Trust has sought to include wording in the protective provisions which states that article 37(2) of the draft DCO shall not apply in relation to any approvals required from the Trust:

35.(16) Article 37(2) shall not apply in respect of any consent/approval required to be obtained from the Trust.

This is on the basis that the provisions may result in deemed approval in circumstances where the Trust has not had a proper opportunity to consider the information provided. As a charity, the Trust has specific procedures which must be followed in decision making. In addition, the Trust is concerned with the safety and enjoyment of the users of the Montgomery Canal and needs to ensure that any proposals relating to the application are thoroughly checked before being approved. Whilst the Trust is content not to unreasonably withhold or delay its consent (in accordance with article 37(1)) article 37(2) as drafted by the applicant goes too far and is not acceptable.

- 2) Our objection to the use of compulsory acquisition powers remains. We note that within the applicant's response to Deadline 6 Written Submissions (para 2.2-2.7) that the matter of whether the proposed scheme falls within the Omnibus Agreement is with the Trust. We responded to this matter on 31st July confirming that the installation would not fall within the remit of the Omnibus Agreement and offered to discuss the terms for Deed of Grant to permit the crossing over the Trust's property. The applicant has only recently responded to the Trust's correspondence and has agreed to consider heads of terms for a Deed of Grant.

Canal & River Trust

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In the Trust's experience, where compulsory acquisition powers are used, the Trust are often left without appropriate protections in place. Whilst the protective provisions go some way to bridge this gap, there are nevertheless specific provisions which would be included in any wayleave/easement entered into with the applicant that could provide additional protections.

On the basis that the Trust had understood from the applicant that the applicant was willing to work with the Trust and use compulsory acquisition powers as a last resort, the Trust had suggested the following wording should be included in the protective provisions at paragraph 35(17):-

(17) The undertaker must not exercise powers conferred by article 18 (compulsory acquisition of rights) or article 23 (acquisition of subsoil or air space only) or article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) or article 29 (statutory undertakers) in respect of the waterway unless the undertaker has used reasonable endeavours to agree the acquisition of the necessary rights/interests from the Trust by private treaty.

The Trust consider the above wording to be reasonable and consistent with the applicant's assurances that they will attempt to agree the acquisition of the necessary rights and/or interests by private treaty

In conclusion the Trust's objection to the use of compulsory acquisition powers remains. The Trust ask that the ExA includes the following two points within the protective provisions. In the event that these two points are included by the ExA, the Trust confirm that the protective provisions would be agreed. In addition, in these circumstances, the Trust would agree to remove its objection against compulsory acquisition rights in respect of plots 86, 87 and 88.

(16) Article 37(2) shall not apply in respect of any consent/approval required to be obtained from the Trust.

(17) The undertaker must not exercise powers conferred by article 18 (compulsory acquisition of rights) or article 23 (acquisition of subsoil or air space only) or article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) or article 29 (statutory undertakers) in respect of the waterway unless the undertaker has used reasonable endeavours to agree the acquisition of the necessary rights/interests from the Trust by private treaty.

Please do not hesitate to contact me with any queries you may have.

Yours sincerely,

Tim Bettany-Simmons MRTPI
Area Planner

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<https://canalrivertrust.org.uk/specialist-teams/planning-and-design>

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