



Department for  
Business, Energy  
& Industrial Strategy

Department for Business,  
Energy & Industrial Strategy

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Our Ref: EN020021

20/03/2020

Dear Mr Edwards,

**PLANNING ACT 2008:  
APPLICATION FOR THE REINFORCEMENT TO THE NORTH SHROPSHIRE  
ELECTRICITY DISTRIBUTION NETWORK ORDER**

**Introduction:**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 20 December 2019 by the Examining Authority (“ExA”), Paul Hudson, who conducted an examination into the application (“the Application”) for the Reinforcement to the 132kV North Shropshire Electricity Distribution Network (“the Development”) submitted on 12 November 2018 by SP Manweb plc (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”).
2. The Application was accepted for examination on 10 December 2018. The examination period began on 20 March 2019 and was completed on 20 September 2019. Changes were made to the Application during the examination. The details of these changes were made available to interested parties and examined by the ExA [ER.2.2.1 – 2.2.6].
3. The Order would grant development consent for the construction and operation of a new 22.5km 132kV electrical circuit between existing SP Manweb substations at Oswestry and Wem in North Shropshire. The electrical circuit would comprise 21.3km of 132kV electric overhead line supported on Trident wood poles and approximately 1.2km of 132kV underground cable, together with works to the existing substations and associated temporary construction works. The

development site is wholly within a rural part of Shropshire and lies to the immediate north of Shrewsbury. The development falls within the administrative boundary of Shropshire Council.

4. The development would consist of the following:

- works within the boundary of the existing SP Manweb substation at Oswestry including underground cable and the installation of electrical switchgear and associated equipment;
- approximately 1.2km of 132kV underground cable between Oswestry substation and a 132kV terminal structure at Long Wood immediately east of the A5 trunk road (T);
- approximately 21.3km of 132kV of overhead line (“OHL”) supported by Trident wood poles from the terminal structure at Long Wood to the existing SP Manweb substation at Wem;
- works within the existing SP Manweb substation at Wem including the installation of a new 132kV to 33kV transformer;
- undergrounding six short sections of existing SP Manweb lower voltage OHL in order to ensure safe electrical clearance for the new OHL; and
- temporary works required for the construction of the new OHL including seven temporary laydown areas, welfare unit, security cabin, access tracks, vegetation clearance and reinstatement planting.

5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters four to six of the ExA’s Report, and the ExA’s summary of conclusions and recommendation is at Chapter eight.

### **Summary of the ExA’s Report and Recommendation:**

6. The ExA assessed and tested a range of issues during the Examination, which are set out in the ExA’s Report under the following broad headings:

- Legal and policy context (Chapter three);
- Main issues in the examination (Chapter four);
- Conclusion on the case for development consent (Chapter five);
- Compulsory acquisition and related matters (Chapter six);
- Draft development consent order (Chapter seven) and;
- Recommendation (Chapter eight).

7. For the reasons set out in the Summary of Findings and Conclusions (Chapter eight of the ExA’s report) the ExA recommends that the Order be made in the form set out in Appendix D to the ExA’s Report.

8. The Secretary of State notes the comments made by the ExA regarding changes to the Application and in particular corrections to the Book of Reference. Some minor amendments were made to the draft Order which was discussed in an Issue Specific Hearing and which went through a number of iterations. However,

the Secretary of State has concluded that the changes did not result in any material difference to the project that was applied for.

### **Summary of the Secretary of State's Decision:**

9. The Secretary of State has decided, under section 114, of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in this Application. The letter is a statement of reasons for the Secretary of State's decision and for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) ("the EIA Regulations").

### **Secretary of State's Consideration of the Application:**

10. The Secretary of State has considered the ExA's Report and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report (in the form "[ER X.X.X]").

11. The Secretary of State has had regard to the Local Impact Report ("LIR") submitted by Shropshire Council, environmental information as defined in Regulation 2(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

12. The Secretary of State notes that 14 Relevant Representations were submitted by both statutory and non-statutory authorities.

13. The Secretary of State notes that the ExA, in his Rule 6 letter, asked that Statements of Common Ground ("SoCGs") were started between the Applicant and the following statutory bodies who had submitted relevant representations: Highways England ("HE"); National Grid Electricity Transmission ("NGET"); Severn Trent Water ("STW"); The Environment Agency ("EA"); Network Rail ("NR"); Canal River Trust ("CRT"); Natural England ("NE"); Shropshire Council ("SC"). It is noted that the main matters covered in the SoCGs were the drafting of protective provisions in Schedule 6 to the draft Order.

14. The Secretary of State notes the issues identified by the ExA and their comments and conclusions, these being:

- The principle of the proposed development;
- Consideration of alternatives;
- Construction of the proposed development;
- Construction Environmental Management Plan ("CEMP");
- Transport and Highways;
- Noise;
- Air quality;
- Electric and magnetic fields;
- Landscape and visual amenity;

- Historic environment;
- Ecology and biodiversity;
- Flood risk, water quality and water resources;
- Socio-economic effects; and
- Land use and agriculture.

15. The Secretary of State has taken into consideration the analysis, findings and recommendations made by the ExA in their report concerning the above. The Secretary of State agrees with the conclusions – except where otherwise noted – and the reasons for the Secretary of State’s decisions are those given in the ExA’s report.

National Policy Statements (“NPSs”), Need for the Development and Examination of Alternatives:

16. NPS EN-1 (the Overarching NPS for Energy) sets out that it is critical that the UK continues to have secure and reliable supplies of electricity as part of the transition to a low carbon economy. It also highlights an urgent need for new electricity transmission and distribution infrastructure to be provided.

17. NPS EN-5 (the NPS for Electricity Networks Infrastructure) provides specific guidance relevant to electricity networks infrastructure and sets out additional technology-specific considerations to the generic impacts considered in NPS EN-1.

18. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction ‘net zero’ target for 2050 – this was given effect by an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy NPSs continue to form the basis for decision-making under the Planning Act 2008. He further notes that the ExA concludes that the principle of the Development is in line with the national need for secure and reliable supplies of electricity as part of the transition to a low carbon economy. The Secretary of State therefore considers that granting consent for the Application would not be incompatible with the amendment to the Climate Change Act.

19. The Secretary of State notes that the current local electricity distribution network has been serving North Shropshire for many years. It is operating at or close to capacity as identified in the ExA’s report. Reinforcement of the local distribution network is therefore required to ensure that the applicant can continue to comply with statutory and licence duties obligations.

20. Enhancing the electricity supply has been identified by Shropshire Council as an infrastructure priority to support future growth plans identified in the Shropshire Economic Growth Strategy 2017 to 2021 and adopted Core Strategy and SAMDev components of the Local Plan. Planned employment sites at Oswestry would lead to an anticipated increase in demand for electricity which cannot be met by the existing network.

21. The ExA has concluded that there is an urgent need to substantially increase the capacity of the electricity network if the social and economic plans for North Shropshire are to be achieved. No representations were made to cast doubt on this, and the ExA therefore concluded that the principle of the proposed development is supported by the need demonstrated locally and nationally. The Secretary of State agrees with this assessment.

22. The ExA report noted that the Order was the result of many years of engagement with local people, those with interest in the land and stakeholder bodies. The ExA concludes that this engagement and feedback played a meaningful role in improving the project design and helping refine the proposals.

23. The ExA notes that, in line with the requirements of NPS EN-5, undergrounding of the overhead line at sensitive locations has been properly investigated and the conclusion reached that the benefits would not outweigh the extra costs.

24. The ExA concluded that the selected route for the proposed development represents the optimum in terms of work carried out to date, with the prospect of further refinements and improvements through micro-siting as detailed design progresses. The Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with the NPS EN-1 and NPS EN-5. The Secretary of State notes that the ExA is satisfied that the Applicant has given consideration to design and to alternatives in the proposed Development and that the requirements of NPS EN-1 have been met.

### **Compulsory Acquisition (“CA”) powers:**

25. The Secretary of State notes that the Applicant is only seeking the rights that it requires in order to construct, operate and maintain the Development on each individual plot. No compulsory acquisition of the freehold of land is proposed in the Order. The land which is subject to compulsory acquisition and temporary possession relates to the creation of rights and the imposition of restrictions. The Applicant is seeking voluntary agreement with those parties who have an interest in the land but is seeking compulsory acquisition rights in the Order to ensure that if voluntary agreements are not reached, the Applicant is still able to deliver the proposed Development without delay.

26. No formal objections to compulsory acquisition of temporary possession were made by any individual. The ExA notes that compulsory acquisition is sought over land in which statutory undertakers have an interest. Although several statutory undertakers made representations regarding land interests these were primarily in relation to the drafting of protective provisions in the draft Order rather than specific objections to the grant of compulsory acquisition powers.

27. The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. The ExA was of the view that the rights and restrictions sought were no more than reasonably necessary in order to construct and install, operate and maintain the

proposed development and that the Order limits were proportionate. Given the national and local need for the proposed development and the support for it found in policy, the ExA stated that the compulsory creation of rights, imposition of restrictions and the temporary use of land, together with overriding of interests, rights and restrictive covenants and the suspension or extinguishment of matters affecting the Order land is justified. The Secretary of State agrees with this conclusion.

28. The ExA also agreed that requisite funds are available to meet any costs of acquisition and compensation payable as a result of the use of powers of compulsory acquisition and temporary possession, as well as funding the construction of the proposed development. The ExA states that the Secretary of State can be reassured the applicant is capable of meeting the compensation liabilities because the applicant is a statutory body and subject to financial and regulatory controls through Ofgem. The Secretary of State is content with this assessment.

29. At the Compulsory Acquisition Hearing held on 11 July 2019 an oral submission was made by Mr Dickin about the route in the vicinity of Stanwardine Grange.

30. The ExA concluded that the Applicant had given proper consideration to the matters raised by Mr Dickin before the application was submitted, and that the route at Stanwardine Grange is an appropriate balance between a range of landscape and agricultural impacts. Additionally, the flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft Order would enable further adjustments to be made where beneficial during implementation of the proposed development.

31. The ExA also noted that there were three plots of land identified as Special Category Land. Section 132 of the Planning Act 2008 makes provision for special Parliamentary procedure unless the Secretary of State is satisfied that one of a number of exemptions set out in s132 applies. No representations were received in respect of the Special Category Land and the Secretary of State is satisfied that taking into account the draft Order, that the tests in section 132(3) of the Planning Act are met ie that the Order land when burdened with the Order right will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public.

32. The ExA concludes that the compelling case in the public interest for the grant of Compulsory acquisition and temporary possession powers has been made, and that the conditions in s122 and s123 of the PA2008 are satisfied.

#### Other Matters:

#### Landscape and visual considerations:

33. It is noted that there was very limited local response to the proposed development, with the one exception being the choice of line route around the village of Noneley [ER 4.5.9 - 4.5.12]. The ExA was satisfied that the Applicant had given proper consideration to the matters raised before the Application was

submitted and that the northern route at this point is an appropriate balance between a range of landscape and visual, ecological and heritage impacts.

34. The Secretary of State notes that the only part of the proposed route to which significant objections were raised during the examination concerned the crossing of the Montgomery Canal. The Canal River Trust (“CRT”) set out its view at the outset that undergrounding of the power line was necessary to cross the Canal rather than overhead as proposed because of the visual importance of the Canal. This was supported by the Inland Waterways Association.

35. The CRT advised that in assessing the visual, ecological and heritage impacts of the overhead line, the Environmental Statement should provide clear, detailed comparison with the impacts of an underground line. They considered the Applicant had not provided sufficient information to demonstrate why undergrounding at this point was not proposed.

36. The Secretary of State notes that the ExA visited Montgomery Canal – at the request of the CRT – and that the ExA concludes that, apart from the change of view created by the removal of some Canal-side woodland to allow safety clearance for the proposed overhead line, there were no particular landscape features, impacts or visual constraints at this crossing pointed out to the ExA by the CRT representatives. The ExA did, however, appreciate that this is an attractive stretch of the Canal, bounded by tall straight trees.

37. The ExA’s overall conclusion was that undergrounding at Montgomery Canal would not be justified. The ExA concluded that there are no landscape or visual amenity issues which would weigh against the Order being made. The Secretary of State accepts these conclusions.

38. The ExA also stated that a range of potential temporary effects as a result of the Development have been identified in the assessment including the temporary loss and disruption to agricultural land use practices during the construction of the overhead line and underground cabling although none of these effects would be significant. No potentially significant effects on land use and agriculture have been identified during the operational phase. The Secretary of State notes that the ExA concludes, that disruptions to agriculture during construction do weigh marginally against the Order being made. The Secretary of State acknowledges this but accepts the conclusions that on balance that the mitigations highlighted above and those offered by the CEMP mitigate this issue. He therefore gives the issue limited weight in the planning balance.

39. The Secretary of State also notes paragraph 2.2.6 of NPS EN-5 which draws attention to the requirements of Schedule 9 to the Electricity Act 1989, which places a duty on all transmission and distribution licence holders, in formulating proposals for new electricity networks infrastructure, to “have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting any sites, buildings and objects of architectural, historic or archaeological interest; and do what [they] reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside”.

40. The Secretary of State notes that construction near hedgerows would follow the vegetation management elements of the CEMP in order to protect retained trees and hedgerows. All of the affected hedgerows are species-poor apart from one, though even this does not meet the ecological criteria for 'importance' as defined in The Hedgerows Regulations 1997 ("the Hedgerows Regulations"). However, all 22 hedgerows are classed as important in terms of the historic environment, i.e. boundaries which meet the archaeological criteria of the Hedgerows Regulations. Overall effects on hedgerows both during construction and operation are considered by the applicant to be negligible (and both reversible and temporary). This is supported by Shropshire Council.

41. No areas of ancient woodland would be crossed by the proposed development. No trees protected under Tree Preservation Orders lie within or adjacent to the Order limits. However, the Secretary of State notes that approximately 42 trees would require felling along the length of the OHL. Two of these trees have been identified as veteran oak trees and seven trees have been identified for felling as low as reasonably practicable, of which two are also veteran oaks. Shropshire Council expressed concern about the loss of veteran/ancient trees, and therefore encouraged micro-siting of individual poles to avoid such impacts wherever possible.

42. The Secretary of State notes that the ExA considers that the Applicant has taken considerable care in routeing the OHL to fit it with the topography and avoid the most sensitive and valued groupings of trees, including small copses and areas of woodland as far as possible along a route of approximately 22.5km. Additionally, the flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft Order enable further adjustments to be made where beneficial during implementation of the Development. The Secretary of State agrees with this assessment and that the public benefit of the Development as a whole would outweigh any loss.

#### Habitats Regulations:

43. Under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State is required to determine whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any Natura 2000 site. If likely significant effects cannot be ruled out, at any Natura 2000 site, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for that site in view of its conservation objectives. This process is collectively known as a Habitats Regulations Assessment ("HRA"). In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in combination with other plans or projects, adversely affect the integrity of such a site unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

44. To inform the HRA, the Applicant produced a 'No Significant Effects Report' ("NSER"). The report concluded that the Development is not likely to have a



significant effect on any Natura 2000 site, when considered alone and in-combination with other plans and projects. The Applicant stated that this conclusion can be reached without the use of mitigation.

45. The NSER demonstrated that the Development is not located within or adjacent to any Natura 2000 sites. Therefore, on the basis of limited connectivity to Natura 2000 sites, the Applicant concluded that the following potential effects of the Development would not likely be significant at Natura 2000 sites:

- Direct land take and habitat loss
- Bird Disturbance
- Bird Collision
- Indirect damage or alteration to habitats through:
  - changes to surface or ground waters
  - introduction or spread of non-native species
  - pollution

46. An assessment of the potential effects of the Development in-combination with other plans and projects was also provided within the NSER, but the conclusion was that there would be no combined effect due to the distance between other plans and projects and the Natura 2000 scoped into the assessment.

47. On the basis of the above, the Secretary of State has concluded that the Development, alone and in-combination, is not likely to have a significant effect on any Natura 2000 site and that an Appropriate Assessment is not required. As noted above, NE did not provide any comments on this matter during the Examination, but, during pre-application discussion with the Applicant, it did agree that significant effects were unlikely. The representations made by Shropshire Council did not identify any concerns with the Applicant's assessment for Natura 2000 sites, nor did the recommendation made by the ExA.

### **General Considerations:**

#### Human Rights Act 1998:

48. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the proposed Development and notes there were no human rights concerns raised during the Examination. He has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

#### Equality Act 2010:

49. The Equality Act 2010 ("the Equality Act") includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act; advance equality of opportunity between people who share a protected characteristic and

those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

#### Natural Environment and Rural Communities Act 2006:

50. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

51. The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

#### **Secretary of State’s conclusions and decision:**

52. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent. Given the national need for such development, as set out in the relevant NPSs referred to above, the Secretary of State does not believe that this is outweighed by the Development’s potential adverse impacts, as mitigated by the proposed terms of the Order.

53. The Secretary of State has decided to accept the recommendation and make the Order (to include the modifications set out below). In reaching this decision regard has been given to the LIR and all other relevant matters and also confirms that any environmental information has been taken into consideration for the purposes of the EIA regulations

54. The Secretary of State has therefore decided to accept the ExA’s recommendation to make the Order granting development consent.

55. In making their decision the Secretary of State has complied with all necessary legal duties and has not considered any matters which are not relevant to the decision.

#### **Modifications to the Order by the Secretary of State:**

56. The Secretary of State has made the following modifications to the Order:
- Article 8 (Consent to benefit of transfer) has been amended to ensure that the Secretary of State has appropriate notice of any transfer of the benefit of the Order for which consent is not required. This is consistent

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

with similar provisions which have been included in Orders recently made by the Secretary of State.

- In Article 26 (Temporary use of land for carrying out the authorised development) references to permanent works have been deleted as the Article relates to temporary possession.
- In paragraph 7 of Schedule 6 definitions have been added of electricity, gas, water and sewerage undertakers.
- The Secretary of State notes that the ExA has recommended that a new subparagraph should be inserted in the protective provisions for CRT. The proposed amendment would stop the Applicant exercising powers of compulsory acquisition of rights, subsoil or airspace, temporary use of land and in respect of statutory undertakers' land without the consent of CRT. Despite misgivings about similar provisions in the protective provisions for the benefit of certain other statutory undertakers, the ExA agreed to include them in CRT's protective provisions "for consistency of approach" [E.R 6.6.26]. However, the Secretary of State notes that other protective provisions had been agreed with the Applicant whereas the CRT protective provisions had not been. He also notes the proposed amendment is not limited to powers affecting CRT's land and so agrees with the Applicant that the limitation is too wide. He is further satisfied that the unamended protective provisions for the CRT would ensure that the rights being sought would not cause serious detriment to the carrying out of CRT's undertaking. He has therefore not included the ExA's proposed amendment to Schedule 6 Part 4 Paragraph 35 in the Order.

57. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency.

**Challenge to decision:**

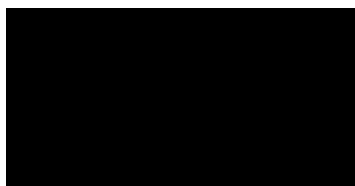
58. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

**Publicity for decision:**

59. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely,

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**GARETH LEIGH**  
**Head of Energy Infrastructure Planning**

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**