



AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Transcript of Oral Submissions for
Compulsory Aquisition Hearing 2

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(c)

Document Ref: 7.9.19

PINS Ref.: EN020022

AQUIND INTERCONNECTOR DCO

APPLICANT'S STATEMENT FOR HEARING

COMPULSORY ACQUISITION HEARING 2

FRIDAY 11 DECEMBER 2020

1. INTRODUCTION

- 1.1 On 14 November 2019, AQUIND Limited (the '**Applicant**') submitted an application for the AQUIND Interconnector Order (the '**Order**') pursuant to section 37 of the Planning Act 2008 (as amended) (the '**Act**') to the Secretary of State ('SoS') (the '**Application**').
- 1.2 The Application was accepted by the Planning Inspectorate ('**PINS**') on 12 December 2019, with the examination of the Application commencing on 8 September 2020.
- 1.3 On 15 September 2020 the Examining Authority ('**ExA**') issued the agenda for Compulsory Acquisition Hearing 2 ('**CAH2**'). In the Examination Timetable the ExA has requested full transcripts of any oral submissions intended to be made at CAH2.
- 1.4 In response to this request, this statement is submitted on behalf of the Applicant and provides a full written response of the oral submissions intended to be made on behalf of the Applicant at CAH2 in relation to the specific questions raised by the ExA in the agenda for CAH2.
- 1.5 It is noted in the agenda that the ExA confirm the agenda is for guidance only, that it is not intended to be exclusive or exhaustive and that the ExA may add other issues for consideration and may alter the order in which issues are considered. Any additional detailed information requested by the Examiner or further information considered to be required to help address points not raised in the agenda for CAH2, or raised by others at the CAH2, will be provided in the Applicant's post hearing submissions, to be submitted at Deadline 6.

Format of this Statement

- 1.6 This statement provides responses to the questions raised by the ExA, and it is confirmed any other questions raised at CAH2 will be responded at CAH2 as necessary on behalf of the Applicant.
- 1.7 The Applicant has submitted a Core Bundle ('**CB**') index of common documents in relation to all hearings which are to take place during December 2020 in respect of the Application. This Core Bundle has been provided in an electronic format with links to the relevant Application documents as they are contained on the PINS webpage for the Application. The Applicant has not submitted these documents to PINS again. References to the CB index follow the format "**CB – document number**".
- 1.8 The Applicant has also submitted a hearing specific bundle index for the Compulsory Acquisition Hearings ('**CAH**'), also provided in an electronic format with links to the relevant documents as they are contained in the PINS webpage for the Application. References to the CAH hearing specific bundle follow the format "**CAH – document number**".

2. HEARING PARTICIPANTS ON BEHALF OF THE APPLICANT

2.1 In attendance at CAH2 from the Applicant will be:

2.1.1 Kirill Glukhovskoy (LLM, MBA, ACMA), Managing Director of AQUIND Limited

2.1.2 Vladimir Temerko, Project Manager of AQUIND Limited

2.2 The Applicant will be represented at CAH2 by Simon Bird QC of Francis Taylor Building and Martyn Jarvis, Senior Associate of Herbert Smith Freehills LLP.

2.3 In addition, the following participants will be speaking on behalf of the Applicant on their relevant specialist topics during CAH2:

2.3.1 In relation to land acquisition matters:

- (A) Alan O'Sullivan of Avison Young: Alan is a Director in the Energy & Natural Resources team at Avison Young and holds a B.Sc (Hons) in Finance and a Post-Graduate Diploma in Surveying. He has over 12 years of experience advising on a wide range of property matters (land acquisition, disposals, easements, wayleaves, mineral rights, business rates, strategic advice, estates rationalisation, estate management, property management, due diligence) in relation to the energy and utilities industries for both public and private sector clients and is leading the acquisition of land and land rights for the Proposed Development.
- (B) Dan Lewis of WSP: Dan is a Land Consultant at WSP, with 4 years' experience as a land referencing consultant. Dan gained a BSc (Hons) Geography degree from Royal Holloway, University of London in 2015. Dan's role on the Project began in late 2018 to provide advice and coordination on statutory documents included within the DCO Application such as the Book of Reference, Land Plans and Crown Land Plans.

3. SUMMARY OF DCO PROVISIONS

Question 3.1

The Applicant to set out briefly which draft DCO (dDCO) Articles engage Compulsory Acquisition and Temporary Possession powers.

- 3.1 The articles of the draft DCO (dDCO) (REP3-003) (**CB-1**) which engage compulsory acquisition powers are:
 - 3.1.1 Article 20 (Compulsory acquisition of land), which empowers the undertaker to acquire land within the 'permanent limits' as shown on the land plans;
 - 3.1.2 Article 23 (Compulsory acquisition of rights and the imposition of restrictive covenants), which authorises the undertaker to create rights and impose restrictions over land as indicated in the book of reference, as well as acquiring existing rights and the benefit of existing restrictions; and
 - 3.1.3 Article 22 (Time limit for exercise of authority to acquire land compulsorily), which restricts the time within which powers of compulsory acquisition may be exercised to 7 years from when the Order is made.
 - 3.1.4 Articles 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) and article 26 (Modification of Part 1 of the Compulsory Purchase Act 1965) make provision for the application of the relevant Acts to the exercise of powers of compulsory purchase. Articles 27 (Acquisition of subsoil and airspace only) and article 28 (Acquisition of part of certain properties) make provision as to the ability of the undertaker to acquire less than the entirety of land held by a land owner.
- 3.2 The articles of the dDCO which engage temporary possession powers are:
 - 3.2.1 Article 29 (Rights under or over streets), which authorises the temporary use of land under or over streets;
 - 3.2.2 Article 30 (Temporary use of land for carrying out the authorised development), which authorises the temporary use of the parcels of land listed in Schedule 10 for the purposes set out in that Schedule;
 - 3.2.3 Article 31 (Time limit for exercise of authority to temporarily use land for carrying out the authorised development), which restricts the temporary use of land for carrying out the development to 7 years from the day the Order is made.
 - 3.2.4 Article 32 (Temporary use of land for maintaining the authorised development), which authorises the undertaker to temporarily use land for maintenance within 5 years of operational use commencing and to stay in possession of such land as long as reasonably necessary for that purpose.

Question 3.2

The Applicant to briefly summarise any other provisions in the dDCO relating to Compulsory Acquisition and Temporary Possession.

- 3.3 The following articles deal with the acquisition of land held by statutory undertakers and special category land:
 - 3.3.1 Article 33 (Statutory undertakers), which confirms that the powers of compulsory purchase and interference with rights provides for in the dDCO apply to land and rights held by statutory undertakers, subject to compliance with the protective provisions in Schedule 13;
 - 3.3.2 Article 36 (Special category land), which relates to land identified as common, open space, or fuel or field allotments, and provides that such land will be discharged from any rights etc. where their continuance would conflict with the Order powers; and

- 3.3.3 Article 47 (Crown rights), which contains protections relating to Crown interests and Crown land.
- 3.4 The following articles do not directly relate to powers of compulsory purchase or temporary possession, but enable the undertaker to carry out the authorised development without being restricted by rights and interests which burden the relevant land:
 - 3.4.1 Article 21 (Statutory authority to override easements or other rights), which provides that the undertaker has statutory authority to carry out the authorised development notwithstanding any interference with or breach of rights which burden the Order land. Article 33(1)(b) provides that this right also applies in relation to rights held by statutory undertakers, albeit subject to the Protective Provisions in Schedule 13; and
 - 3.4.2 Article 24 (Private rights of way), which provides that all private rights of way are extinguished when land is compulsorily acquired or appropriated for the purpose of the authorised development, unless the undertaker provides notice otherwise.

4. HUMAN RIGHTS AND DUTIES UNDER THE EQUALITY ACT 2010

Question 4.1

The Applicant to set out briefly the consideration of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) in relation to the application.

- 4.1 Article 1 of the First Protocol to the ECHR provides: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law."*
- 4.2 The Applicant considers there to be a compelling case in the public interest for the proposed development, for the reasons set out in the Needs and Benefits Report (APP-115) (CAH-8) and the Needs and Benefits Report Addendum (REP1-136) (CAH-9).
- 4.3 The compulsory purchase powers sought are no more than are necessary to ensure delivery and future safe operation of the project. The location and extent of the land onshore, which the compulsory acquisition powers relate to, has been carefully considered and designed to optimise the route, to cause as little disruption as possible, to take the minimum amount of land possible, and to avoid the unnecessary sterilisation of land in the future. Where further engagement with land owners and further engineering work suggested that the Order limits (and the area of land over which powers of compulsory purchase are required) could be reduced without affecting the Applicant's ability to implement the project, the Applicant sought a reduction to the Order limits through its request for a change to the DCO application. The ExA accepted these changes on 11 November 2020 (PD-019 and PD-020) (CAH12 and CAH13).
- 4.4 The extent of the land which would be subject to compulsory acquisition powers under the dDCO is therefore considered by the Applicant to be no more than is reasonably necessary in connection with the construction, operation and maintenance of the proposed development, for which there is a clear and compelling public interest. The Applicant therefore considers that the grant of powers of the compulsory acquisition sought would comply with Article 1 of the ECHR.

Question 4.2

The Applicant to set out briefly, as above, the consideration of Article 6 of the ECHR.

- 4.5 Article 6 of the ECHR provides: *"In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"*.
- 4.6 The procedures under PA 2008 are compliant with the Human Rights Act 1998 and in so far as these duties are observed by the Applicant, the Applicant's duties under the Human Rights Act 1998 are discharged.
- 4.7 In particular:
- 4.7.1 the DCO process provides opportunities to make representations;
 - 4.7.2 under sections 42 and 44 Planning Act 2008, the Applicant consulted all known owners and occupiers of the land needed for the proposed development;
 - 4.7.3 persons who would or might be entitled to claim compensation under section 10 of the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973;
 - 4.7.4 beneficiaries of restrictive covenants and of other rights overridden may claim compensation under section 10;
 - 4.7.5 the public can make representations in response to notice served under s.56 of the Planning Act 2008 and/or during the examination of the Application (e.g. in CA hearings) or in any written representations procedure the ExA holds;

- 4.7.6 if the DCO is made by the Secretary of State, a person aggrieved could mount a judicial review challenge in the High Court under section 118 Planning Act 2008; and
- 4.7.7 for disputed compensation, there is a right to apply to the Upper Tribunal of the Lands Chamber (an independent tribunal).

Question 4.3

The Applicant to set out briefly, as above, the consideration of Article 8 of the ECHR.

- 4.8 Article 8 of the ECHR provides:
 - 4.8.1 *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
 - 4.8.2 *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".*
- 4.9 The Applicant understands that in determining whether interference with Convention Rights (in article 8) is proportionate, a fair balance must be struck between the public benefit sought and the interference with affected private rights.
- 4.10 In seeking to strike that balance, the Applicant has had regard to:
 - 4.10.1 the need for the proposed and the public benefits it would bring; and
 - 4.10.2 the interference with affected private rights.
- 4.11 The Applicant has, in particular, designed a scheme which does not require the compulsory acquisition of any residential properties. On balance, the Applicant considers that the public benefits which the proposed development would bring substantially outweigh the private loss which would arise from interference with private rights.
- 4.12 The Applicant therefore considers that the proposed compulsory acquisition of land and rights over land is legitimate, necessary and proportionate.

Question 4.4

The Applicant to set out briefly any duties under the Equality Act 2010 in relation to the application.

- 4.13 The Equality Act 2010 prohibits discrimination on the grounds of protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation (**'protected characteristic groups'**). Section 149 of the Equality Act 2010 requires 'public authorities' to have due regard to a number of equality considerations when exercising their functions (the **'Public Sector Equality Duty'**). The Public Sector Equality Duty requires public authorities to have due regard to the need to:
 - 4.13.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - 4.13.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - 4.13.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 4.14 The Applicant is not a 'public authority' as defined in the Equality Act 2010, and is therefore not itself subject to the Public Sector Equality Duty, but the Secretary of State will be subject to the Public Sector Equality Duty when deciding whether to grant or refuse the

DCO. To assist the Secretary of State in making a decision on the Application taking account of duties under the Equality Act 2010, the Applicant would be pleased to submit an Equality Statement at Deadline 6. The purpose of the Equality Statement would be, to the extent relevant, to:

- 4.14.1 identify and assess any likely effects of the Project on protected characteristic groups;
 - 4.14.2 identify measures to minimise any adverse effects on protected characteristic groups; and
 - 4.14.3 identify any relevant and proportionate measures to further enhance any beneficial effects on the protected characteristic groups.
- 4.15 The Equality Statement would consider the effects of the development identified in Application documents, in particular, the findings of the Environmental Statement (ES) (APP-116 – APP-506(a)). It would assess the potential effects on equality and consider whether significant effects are identified and if they would impact on protected characteristic groups differently to the general population.

5. REVIEW OF THE COMPULSORY ACQUISITION SCHEDULE

Question 5.1

The Applicant to summarise outstanding objections and progress with negotiations on alternatives to Compulsory Acquisition.

- 5.1 The current status of negotiations with landowners, statutory undertakers and other apparatus owners is summarised in Appendices B to D of the Statement of Reasons (REP1-025) **(CB-12)**.
- 5.2 An updated version of the Statement of Reasons has been submitted at Deadline 5 to reflect the most recent position.

6. REPRESENTATIONS FROM AFFECTED PERSONS AND OTHER INTERESTED PARTIES

Question 6.1

Affected Persons who requested a Compulsory Acquisition Hearing and wish to make oral representations:

- ***Hampshire County Council;***
- ***Portsmouth City Council;***
- ***Winchester City Council;***
- ***Aggregate Industries;***
- ***Sainsburys Supermarkets Limited;***
- ***Geoffrey and Peter Carpenter;***
- ***Michael and Sandra Jefferies;***
- ***Robin Jefferies.***

6.1 N/A.

Question 6.2

Other Affected Persons wishing to make oral representations.

6.2 N/A.

Question 6.3

Any section 102 parties or Category 3 persons wishing to make oral representations.

6.3 N/A.

Question 6.4

Interested Parties wishing to make oral representations on the temporary use of land.

6.4 N/A.