Date: 25 January 2021

Application by Aquind Limited for a Development Consent Order for the 'Aquind Interconnector' electricity line between Great Britain and France (PINS reference: EN020022)

Statement in relation to the Applicant's use of Compulsory Acquisition Powers as a Last Resort

On behalf of

Mr. Geoffrey Carpenter & Mr. Peter Carpenter – Little Denmead Farm

Registration Identification Number: 20025030

Submitted in relation to Deadline 7 of the Examination Timetable

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1 SUMMARY

1.1 Mr Geoffrey Carpenter and Mr Peter Carpenter (the "**Owners**") own the freehold interest to Little Denmead Farm, which covers plots 1-32, 1-32a, 1-38, 1-51, 1-57, 1-69, 1-70, 1-71, and 1-72, and they also benefit from a right of way granted by deed of easement over plots 1-60, 1-63, and 1-65, such plot numbers as shown on the latest revised Land Plans (document reference REP6-007) (the "**Owners' Property**").

1.2 The Applicant is seeking compulsory acquisition powers over the Owners' Property.

1.3 The Planning Act 2008 ("**Act**") and guidance from the Department of Communities and Local Government 'Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land – September 2013' ("**Guidance**") require that compulsory acquisition powers in development consent orders should be used only when "all reasonable alternatives" have been explored, that is, as a last resort. This Statement demonstrates that the Applicant has not satisfied this requirement in relation to the Owners' Property as at Deadline 7.

1.4 The Owners' Property is the land on which the proposed converter station is to be located. Therefore the Owners' Property is critical to the Applicants' entire scheme. It would naturally be expected that the Applicant would invest reasonable time and effort, and act in good faith with the Owner, to secure the Owners' Property early by private agreement and also adopt an approach that is in compliance with the relevant law and guidance relating to compulsory acquisition. Disappointingly, the Applicant has been and is continuing to behave in the opposite way. The Applicant is using compulsory purchase as a first and not a last resort.

1.5 The Applicant has made little attempt to explore "all reasonable alternatives" to the use of compulsory acquisition powers in relation to the Owners' Property. The Applicant has instead been paying lip service issuing revised draft Heads of Terms to the Owners that appear in isolation to be terms indicating some kind of negotiation process on foot whereas in fact each draft is simply based on a different scheme and no iterative discussions have occurred by which to narrow the matters between the parties. In isolation, the picture painted by the Applicant is disingenuous, and at best, shows a misconception of the requirements of the Guidance that require not "reasonable endeavours but "all reasonable endeavours" in the context of the Act (as opposed to the Town and Country Planning Act 1990 (**"TCPA"**)).

1.6 There has been and continues to be, to date, little if any 'negotiation' of the draft Heads of Terms. There is certainly no evidence to demonstrate "all reasonable endeavours" have been undertaken by the Applicant.

1.7 Instead, in breach of the Guidance, the Applicant has been acting unreasonably by placing pressure on the Owners to sell and grant rights over their land at an amount that is considerably less than the amount of compulsory acquisition compensation, even though the Owners could not accept a sum less than the compensation scheme provides for.

1.8 No offer or attempt at early neutral evaluation has been made or considered by the Applicant. Instead, the Applicant has made, in breach of the Guidance, a heavy handed threat by the Applicant that it will walk away immediately if the Owner does not comply completely with the Applicant's (unreasonable) terms and terms that have remained unchanged (save for adapting to the Applicant's scheme each time it has changed its scheme (a number of times)). Again, this in breach of Guidance.

1.9 The Applicant has been acting in breach of the relevant law and Guidance by consistently insisting that Aquind Limited will continue to seek compulsory acquisition powers from the Secretary of State **IRRESPECTIVE** of whether any private agreement is reached. This is in direct breach of the Guidance. This is regrettable.

1.10 There has been a considerable degree of heavy handedness by the Applicant (and its agents) in threatening to walk away from negotiations, without waiting for the Owners to properly secure legal advice and discuss the terms in full with the Applicant and its legal advisors. This is again, is in breach of Guidance on how private agreement attempts should be made. This too is regrettable.

1.11 Notwithstanding the historic facilitative approach by the Owners to electricity providers in the vicinity of the Owners' Property, this unreasonable behaviour by the Applicant has not fostered goodwill with the Owners and has impeded negotiations starting properly. The Applicant's behaviour has been far from 'exploring' “all reasonable alternatives” to compulsory acquisition but instead appears intended to deliberately make negotiations fail before they can begin, by giving the Owners no choice but to push back on the draft terms being proposed as opposed to seeking to find common ground and agreement.

1.12 The Owners continue to be open to conducting negotiations in good faith and as they have done with, for example, National Grid, with the Applicant. The Owners have never (either directly or through its advisors) threatened to walk away from discussions. However, the unreasonable and strong-arm tactics being adopted by the Applicant (including its agents and advisors), and incorrect and misleading description of the state of engagement given by the Applicant at deadline 6 (see page 64 of the revised Statement of Reasons (document reference REP6-019) and page 25 of the' Applicant's Response to action points raised at ISH1, 2 and 3, and CAH 1 and 2' (document reference REP6-063)cannot satisfy the Guidance requirement on the Applicant to demonstrate “all reasonable endeavours” have been undertaken before compulsory acquisition powers may be authorised.

1.13 We respectfully invite the Examination Authority, in light of this Statement and the Guidance, to strongly encourage the Applicant to cease behaving in the manner described and to instead approach negotiations reasonably and in a way that adheres with law and guidance, and to provide also a statement of common ground on the nature of each iteration of the draft heads of terms and the changes made by the Applicant to respond to the concerns of the Owner.

2 LAW AND GUIDANCE

2.1 Sections 122(1), (2), and (3) of the Planning Act 2008 (**"**Act**"**) provide that a development consent order may authorise the compulsory acquisition of land **only if** the Secretary of State is satisfied that the following conditions are met:

2.1.1 the land is:

(a) required for the development to which the development consent relates;

(b) is required to facilitate or is incidental to that development; or

(c) is replacement land which is to be given in exchange for commons, open spaces etc.; and

2.1.2 there is a compelling case in the public interest for the land to be acquired compulsorily.

2.2 The Guidance contains general considerations that the Secretary of State will have regard to when deciding on the inclusion of compulsory acquisition powers in a development consent order under the Act. Paragraph 7 of the Guidance states that applicants must be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. Paragraph 7 states: "*Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below set out some of the factors which the Secretary of State will have regard to in deciding whether or not to include a provision authorising the compulsory acquisition of land in a development consent order*. "

2.3 Paragraph 8 of the Guidance requires, importantly, that one of the considerations the Secretary of State should have regard to is that 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*"[1] (Our emphasis added). This is in contrast to the consideration that a confirming authority must take when using their compulsory purchase powers under the Town and Country Planning Act 1990 (**"**TCPA**"**) which is where the acquiring authority is expected to 'demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement'[2] as laid out in government guidance ("**TCPA Guidance**") This evidences that in the Guidance there is an additional requirement for ***all*** reasonable steps to be demonstrated, which is a higher and more onerous test than the one expected by the TCPA Guidance. Despite this, the TCPA Guidance still contends that 'compulsory purchase is intended as a last resort.'[3] So it can be inferred that the Guidance extends an equal if not more strict requirement under the Act through the addition of '*all*' that CPO powers only be included **as a matter of last resort.**

2.4 Furthermore, paragraph 25 of the Guidance requires: "***Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail***" (our emphasis added). An example given in paragraph 25 of what "practicable" means is when proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) where it may not always be practicable to acquire by agreement each plot of land. This is not the case however in relation to the Owners' Property as the freehold interest being sought to be permanently acquired falls within one plot. Therefore the issue of 'practicability' as being any sort of barrier to a private agreement will not be not relevant here.

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[1] ibid. [para 8] (added emphasis)

[2] Department of Housing, Communities, and Local Government: Guidance on Compulsory purchase process and The Crichel Down Rules – July 2019 [6]

[3] ibid [6]

2.5 This no doubt reflects the consideration, in the words of Gray and Gray, that although "*the state reserves the power, in the name of all citizens, to call on the individual in extreme circumstances and generally in return for compensation, to yield up some private good for the greater good of the whole community*"[4], there is an intensified risk that "*powers of compulsory purchase may effect a mandatory transfer from one private actor for the benefit of another'[5] to the 'substantial benefit of their own equity shareholders*."[6]

2.6 Paragraph 27 of the Guidance goes on to state that the Applicant needs to foster good will with those interests it intends to compulsory acquire, and that it should consider using alternative dispute resolution techniques for those with concerns about the compulsory acquisition of their land, specifically referring to "…*other techniques such as* ***early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed***.". Paragraph 28 of the Guidance also states that: "*The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected*."

2.7 Finally, paragraph 30 of the Guidance provides that "*The applicant may offer to alleviate concerns about future compensation entitlement by* ***ENTERING INTO AGREEMENTS WITH THOSE WHOSE INTERESTS ARE DIRECTLY AFFECTED. THESE CAN BE USED AS A MEANS OF GUARANTEEING THE MINIMUM LEVEL OF COMPENSATION which would be payable if the acquisition were to go ahead*** *(but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)* "(our emphasis added).

2.8 To re-cap therefore, the Applicant needs to demonstrate the following things:

2.8.1 **"ALL REASONABLE ALTERNATIVES"** to compulsory acquisition have been explored;

2.8.2 It is seeking compulsory purchase powers as a **MATTER OF LAST RESORT**; and

2.8.3 The Applicant **SHOULD** acquire land **BY PRIVATE AGREEMENT** where practicable;

2.8.4 authority to acquire land compulsorily **SHOULD ONLY** be sought "**IF ATTEMPTS TO ACQUIRE BY AGREEMENT FAIL"**;

2.8.5 **EARLY NEUTRAL EVALUATION** needs to be considered to relieve worries at an early stage about **the POTENTIAL LEVEL OF COMPENSATION**; and

2.8.6 **PRIVATE AGREEMENTS** can be used as a means **of GUARANTEEING A MINIMUM LEVEL OF COMPENSATION** that would be due were the DCO be confirmed.

[4] Gray and Gray Land Law (OUP, 7th ed, 2011) [11-020]
[5] ibid. [11-022]
[6] ibid. [11-022]

2.9 The Applicant has not satisfied the requirements in law and Guidance to justify the compulsory acquisition powers over the Owners' Property.

3 THE OWNERS' INTERESTS & THE APPLICANT'S COMPULSORY ACQUISITION POWERS

3.1 The Owners' registered freehold interest covers approximately 53.21 acres. Of this, 33.6335 acres will be affected by compulsory acquisition powers being sought by the Applicant, which represents nearly 60% of their freehold interest.

3.2 A number of compulsory acquisition powers which the Applicant seeks will affect the Owners' freehold interest, as follows. Please see Sheet 1 of 10 of the Land Plans (document reference REP6-007) for the location of the plot numbers referred to below:

3.2.1 Compulsory permanent acquisition of freehold interest - plot 1-32: This land is owned and used by the Owners.

3.2.2 Compulsory acquisition of new landscaping rights - plots 1-32a, 1-38, 1-69, 1-70, and 1-72. Plot 1-32a is an ancient woodland called Stoneacre Copse that is owned by the Owners.

3.2.3 Compulsory acquisition of new access rights - plot 1-51: This land is owned and used by the Owners.

3.2.4 Powers for the temporary use of land - plots 1-57 and 1-71: Plot 1-57 is owned by the Owners. Plot 1-71 covers part of the track (Footpath 16) that falls within the Owners' freehold interest and which is used by the Owners as their main access to the homes and agricultural buildings on their land, and as access from by the Owners to Broadway Lane. This part of the track is also used by heavy vehicles to access their land, and by their horses when going to the fields for grazing and show-jumping practice.

4 THE APPLICANTS' USE OF COMPULSORY ACQUISITION POWERS

4.1 The Applicant states on page 64 of Appendix D to its revised Statement of Reasons submitted at Deadline 6 of the Examination (document reference REP6-019) that since late 2016 numerous meetings have been held with the Owners. The Applicant states the following chronology between itself and our Clients:

4.1.1 9 December 2016: The Applicant states at paragraph 2 of Appendix D on page 64 of its revised Statement of Reasons (document reference REP6-019) that "*The Applicant's Proposed Development was first discussed with the landowners at a meeting on 9 December 2016 and discussions have been taking place with the landowner since then*." This gives a misleading impression given the context in which it is being given. The Applicant's explanation mixes up engagement on reaching a private agreement to avoid compulsory acquisition, with its scheme *consultation* activities. The Applicant's engagement with our Clients between 2016 and 2019 was mainly in relation to its *consultation* activities and how the proposals have evolved up until submission of the DCO application and *not* about negotiating to avoid compulsory purchase power authorisation. The discussion on 9 December 2016

related to the Applicant's *formal consultation* of the Owners of the details (as they were then) of its proposed *pre-application scheme*. There was not a discussion about any private agreement or any heads of terms. Many of the discussions held with the Owners have been one-way, related to the Applicant's *formal consultation* activities, and were convened by the Applicant merely to *describe* what the latest iteration of its *pre-application proposals were at the time*. **They were not connected with the progression of private agreement negotiations.** Please see the Owners' submissions at Deadline 2 of the Examination in relation to this (see document reference REP2-027, particularly Schedule 1 to REP2-027 which sets out the Owners' full timeline of all 'engagement' by the Applicant);

4.1.2 9 March 2017: The Applicant states at paragraph 2 of Appendix D on page 64 of its revised Statement of Reasons (document reference REP6-019) that "*Heads of terms were first sent to the landowner on 9 March 2017*". These initial draft Heads of Terms in 2017 reflected the scheme as it was being then developed during consultation (pre-application), which is very different scheme to what it is now in 2021. The 2017 draft was superseded and overridden completely (i.e. it could not be built upon) each time the Applicant changed its draft proposals before the application. Therefore whilst there was a first draft Heads of Terms in 2017, this does not mean that that draft has been refined to date. It has not;

4.1.3 19 November 2019: The Applicant states at paragraph 2 on page 64 of its revised Statement of Reasons (document reference REP6-019) that "*Revised heads of terms were sent to the landowner on a number of occasions including 19 November 2019*". This again gives a potentially misleading impression. Each time the scheme proposals changed before the Applicant submitted its application, a new set of draft Heads of Terms was sent to the Owners, to the point where it also became very confusing for the Owners to understand exactly what the Applicant *was* proposing privately and publically. Each draft of the Heads of Terms was different to the previous version (as it related to a different scheme being advanced each time by the Applicant). Each draft of the Heads of Terms was asserted as refined to reflect increased certainty and iterative progression of negotiations, but each draft of the Heads of Terms meant that the Owners had to effectively start again, because they reflected a different scheme to the previous draft with different land situations resulting. That is why there are currently multiple draft Heads of Terms and not because the parties have been 'negotiating'. The Applicant keeps on changing its application proposals in relation to the Owners' Property. A most recent and good example of this is that the Applicant applied to change its proposals yet again in December 2020 by applying to *expand* the Order Limits to include Stoneacre Copse. The latest draft Heads of Terms therefore relate to, yet again, a different set of proposals. It is not the case (as the Applicant's statement implies) that the same set of Heads of Terms have been negotiated progressively with the Owners since 2016;

4.1.4 May & June 2020: The Applicant states at paragraph 2 on page 64 of its revised Statement of Reasons (document reference REP6-019) that "*Further discussions have taken place with the landowner's agent in May 2020 and correspondence was received from the landowner's agent in relation to the revised heads of terms and the Proposed Development on 23 June 2020*". This too is misleading by the Applicant. There was *no* negotiation of draft Heads of Terms by the Applicant for the first 10

months of 2020. All that occurred during 10 months between January 2020 and October 2020 was the land agent and lawyers acting *for the Owners* chasing the Applicant's land agent and lawyers for the Applicant's valuation breakdowns and a first draft of a private agreement, Those communications were either met with complete *silence* by the Applicant's land agent or by *holding* emails sent by the Applicant's legal advisors. No progress or discussion by the Applicant was made or offered for 10 months in 2020. It is simply wrong for the Applicant to say that further discussions took place in May and June 2020;

4.1.5 September 2020: The Applicant states at paragraph 2 on page 64 of its revised Statement of Reasons (document reference REP6-019) that the "*applicant held a further site visit to the landowner's property in September 2020*"". Again, this is potentially misleading. The purpose of this site visit had *no* connection with the Applicant progressing or discussing a private agreement or draft Heads of Terms with the Owners. This site visit was conducted by the Applicant's agents to *survey* the Owners' Property and the Owners were threatened with the service of legal notices if consent was not provided within a very tight timeframe. This led to a lot of unnecessary stress and pressure placed by the Applicant on the Owners. This is an example of heavy handedness by the Applicant, which has been a regular feature in its dealings with the Owners. No attempt was made by the Applicant to act in good faith to give the Owners proper advance notice of its intention to carry out a site visit, or to explain to the Owners' for what purposes the site visit was taking place. No contact was even made by the Applicant with the Owners on the day of the site visit. Please see the Owners' full and detailed account of private agreement engagement made by the Applicant submitted at Deadline 2 of the Examination in document reference REP2-027; and

4.1.6 3 November 2020: The Applicant states at page 64 of the revised Statement of Reasons (document reference REP6-019) that "*Revised and improved Heads of Terms, taking into account concerns raised by the landowner in relation to their ability to access their property, were issued to the landowner's agent on 03 November 2020, along with a draft Option Agreement and associated documents*". A new set of draft Heads of Terms and after 11 months of waiting a first draft of an agreement was indeed sent to the Owners' legal advisors. What is not the case however is that the draft Heads of Terms were in any way "improved". All they are is yet another set of first draft Heads of Terms which reflect a scheme that has changed again. The draft Heads of Terms issued on 3 November 2020 do not address any of the Owners' objections made during the Examination about access and no contact has been made by the Applicant to begin to explore with the Owners how its objections can be addressed privately. All draft Heads of Terms to date are completely silent in relation to addressing the Owners' objections. Again, an inaccurate impression is being given in the Statement of Reasons (document reference REP6-019).

4.2 All the different sets of draft Heads of Terms issued by the Applicant should be treated as 'draft 1' as they each reflect a different scheme being proposed.

4.3 All the different sets of draft Heads of Terms issued by the Applicant state that, notwithstanding any private agreement that may be entered into with the Owners, **the Applicant still reserves in the Terms a right to seek and use compulsory acquisition powers in relation to the**

Owners' Property. This cannot be reconciled with the Guidance that requires acquisition powers be sought only *if negotiations fail* (and not powers as an assumed alternative). This approach does not comply with the requirements of law and Guidance to explore all reasonable **alternatives** to compulsory acquisition, to use private agreements as a way of **avoiding** the use of compulsory acquisition powers and to only seek compulsory acquisition powers as a measure of **last resort** when negotiations fail. Instead, and surprisingly, the Applicant's *starting* point is that the negotiation of a private agreement will **NOT be an alternative** to the use of compulsory acquisition powers. This is simply wrong and reserves the requirement of the Guidance. It is difficult to see how the ExA and Secretary of State could be satisfied that the acquisition powers sought have been sought because negotiations have failed and that "all" reasonable endeavours have been undertaken by the Applicant (as opposed to the Applicant merely re-labelling consultation processes required on its schemes with cpo negotiations or re-labelling heads of terms relating to its new schemes as revised terms so as to make it *appear* that there have been negotiations behind the scenes when there have not).

4.4 The Owners are aware that the ExA may not consider matters relating to the value of compulsory acquisition compensation. However, the Owners are not in this Statement requesting the ExA do this but illustrating that the valuation of the Land below the compensation due is evidence of the Applicant not using all reasonable endeavours to avoid compulsory acquisition. The issue of compensation arises solely in relation to what the Guidance sets out as being the role of any private agreement being pursued by applicants who are seeking to comply with legislation and Guidance, to only rely on compulsory acquisition as a measure of last resort. The Owners discuss compensation to illustrate how the Applicant is failing to negotiate a private agreement that complies with one of the specific parameters set down by Guidance – that private agreements secure the compensation due were the DCO confirmed. The Guidance was issued to guide the Secretary of State as to what he should consider when deciding whether section 122 Planning Act 2008 has been satisfied, which is why we now address this issue here. The different sets of draft Heads of Terms issued by the Applicant do not guarantee the amount of compensation that would be due to the Owners were the DCO to be confirmed (as required by paragraph 30 of the Guidance). This issue has been raised repeatedly by the Owners' land agents with the Applicant for a number of years and the Owners. Despite this, the Applicant has failed to explain its position directly and fully to the Owners' land agents despite numerous requests by the Owners, and thus failed to comply with paragraphs 27 and 30 of the Guidance because it has not yet (to date) discussed or offered early neutral evaluation as a way forward to relieve the Owners' worries about the potential level of compensation, and it is not seeking to use the private agreement negotiations as a means to guarantee the minimum level of compensation that would be due to the Owners. Instead, the Applicant has repeatedly issued ultimatums to the Owners' land agents and lawyers that if the Owners do not accept the much *lower* compensation amounts (than would be due) in the draft Heads of Terms, the Applicant will walk away from negotiations. This is despite having a full breakdown of the Owners' calculations of compensation under the DCO, though no reasons have been provided by the Applicant as to why it disagrees with the Owners' calculations. The Applicant's latest threat to walk away from negotiations (without waiting for substantive comments from the on the latest draft Heads of Terms) was made on 21 January 2021 which accompanied yet another new draft Heads of Terms for yet another iteration of its scheme which significantly affects the Owners as the Applicant has now (only since December 2020) proposed to include a large additional section of the Owners' land (Stoneacre Copse) within the Order Limits.

This strong-arm approach by the Applicant is in direct breach of the requirements in Guidance, is also without good will or good faith and is not facilitative to neighbouring farm and electricity providers. Again, the approach adopted by the Applicant is in breach of legal requirements and inconsistent with the Guidance. This 'acquisition powers first' approach should not be accepted by the Examining Authority and Secretary of State as the basis on which compulsory acquisition powers should be granted to the Applicant.

4.5 By seeking to compel the Owners to accept less compensation than they would otherwise receive under the DCO were it to be confirmed, and by forcing the Owners to accept private agreement terms which still allow the Applicant to seek and use compulsory acquisition powers over the same land the private agreement covers, the Applicant is acting in bad faith and in breach of the Guidance.

4.6 The clarifications we have made above is evidence that the Applicant has not been seeking **all reasonable alternatives** to compulsory acquisition (including the use of independent mediation in relation to CPO compensation), and not using private agreement negotiations to AVOID compulsory acquisition. The Applicant continues to continuously change the details of its proposals and take a considerable amount of time to progress negotiations. The Applicant also continues to present a misleading account of its so called 'progress' in reaching a private agreement with the Owners when the truth is that we are in fact effectively still on 'draft 1' of Heads of Terms after 5 years. From the Owners' experience, it is clear the Applicant is trying to engineer a situation where it impossible for the Owners to have constructive private agreement discussions with it, and where it is creating an artificial image of 'progress'.

4.7 The Owners therefore disagrees with the Applicant where it asserts at paragraph 1.3.8 of its Statement of Reasons (REP6-019) that it has 'explored reasonable alternatives to compulsory acquisition… and continues to make attempts to acquire the required land and rights over land by voluntary agreement.' The Applicant has not explored alternatives, nor reasonable alternatives, let alone "all" reasonable alternatives required by the Guidance (as opposed to the Town and Country Planning Act and its guidance).

As a historically facilitative neighbour, the Owner remains surprised at the approach of the incoming new potential neighbour and wishes to engage fully with the Applicant to reach a private agreement: but, as with National Grid, on reasonable terms and when the Applicant starts to act with good faith and in compliance with *relevant* Guidance.

5 STATUS OF PRIVATE NEGOTIATIONS AS AT 25 JANUARY 2021

5.1 As mentioned above, the Applicant's lawyers issued a further fresh set of draft Heads of Terms on 21 January 2021 to the Owners' lawyers. The Owners are currently considering those new terms in light of the Applicant's latest round of significant changes to its application. However, the latest draft was accompanied with the further repeated *threat* by the Applicant that it would walk away completely from negotiations if the Owners do not accept all of its terms, including the term that the Applicant can still seek and use compulsory acquisition powers DESPITE entering into a private agreement with the Owners to privately purchase some of the Owners' Property. This is on the face of it a breach of the relevant Guidance. The Applicant is also continuing to insist that the Owners accept less than the compensation they would receive were the DCO to be confirmed, which is contrary to paragraph 30 of the Guidance. The Applicant has to date not offered an independent means of settling the issue of the value of

compensation due under the DCO were it to be confirm, and in omitting to do so breaches the Guidance (paragraph 27). The latest draft also does not address any of the Owners' objections raised during Examination, in particular the access needed by the Owners along the track from Broadway Lane from the highway during construction. The Owners are being ignored.

5.2 Surprisingly, there has been no negotiation at all between the Owners' lawyers and the Applicant's *lawyers* on any of the terms of the draft Heads of Terms with the Owners' lawyers, and yet the Applicant is already threatening to walk away now (during Examination). This falls far short of the obligation of the Guidance on the Applicant for it to "explore all reasonable alternatives" to CPO, and of using a concluded private agreement **to avoid** compulsory acquisition. On the contrary, and in breach of the Guidance, it appears the Applicant is merely continuing to pushing forward with compulsory acquisition without negotiation beyond “take it or leave it” terms that include the opportunity to rely on acquisition powers in direct breach of the Guidance that requires negotiations to *avoid* such a use.

6 CONCLUSIONS

6.1 The Applicant has and continues to fail to explore “all reasonable alternatives” to compulsory acquisition. By consistently placing undue pressure on the Owners to accept unreasonable private agreement terms that is in direct contrast to what is required by the Guidance, and by repeatedly threatening to walk away from discussions without allowing for any proper opportunity by the Owners' lawyers to make comments, the Applicant is acting in bad faith and not pursing private agreement negotiations as a measure of last resort. Finally, the Applicant continues to refuse (over a year since first being asked to) reveal how it is calculating its CPO compensation calculations relating to the Owner's Property and, so based on the Owners' calculations of CPO compensation, the draft Heads of Terms consistently offer significantly less than the compensation the Owners' have calculated were the DCO to be confirmed. This also breaches Guidance on what a private agreement should do according to Guidance, which is to guarantee the amount of compensation due were the DCO to be confirmed.

6.2 This leaves the Owners in a difficult and stressful place, living under the threat of the Applicant walking away from all negotiations imminently.

6.3 The Owners strongly contend that the in order for the ExA and the Secretary of State to legitimately and reasonably consider the use of compulsory acquisition powers in relation to the Owners' Property, that the Applicant be asked to *start* engaging with the Owners on more reasonable terms and in compliance with the requirements of Guidance and law. The Owners remain open to independent mediation (the cost of which ought to be borne by the Applicant given it is the cause of such delay and the current situation) to settle the matter of what level of compensation be, should under the private agreement. Moreover, we request that:

6.3.1 the ExA recommend that the Applicant is NOT granted compulsory acquisition powers relating to the Owners' Property, if a private agreement is entered into with the Owners, and

6.3.2 the ExA to recommend that the Applicant is wrong to insist to seek compulsory acquisition irrespective of a private agreement being entered into and that that approach is in breach of the relevant Guidance and so acquisition powers should not be authorised by the Secretary of State as such a first resort.