Date: 1 March 2021

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

Mr. Geoffrey Carpenter & Mr. Peter Carpenter, in relation to Little Denmead Farm

Registration Identification Number: 20025030

The Affected Party's Responses to the Applicant's submissions at Deadline 7C of the Examination

Submitted in relation to Deadline 8 of the Examination Timetable

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Ref: 584927-6

INTRODUCTION

1. Mr Geoffrey Carpenter and Mr Peter Carpenter, the joint freehold owners of Little Denmead Farm ("**Affected Party**").

2. The Affected Party has had an opportunity to review the Applicant's responses submitted at Deadline 7C, and submits this note in response.

SECTIONS

3. This Note is divided into the following Sections:

   SECTION A – Executive Summary

   SECTION B – Funding

   SECTION C – Access during operation & protective provisions

   SECTION D – Commercial Telecommunications

   SECTION E – Comments on Applicant's responses to Affected Party's Relevant Representations relating to Stoneacre Copse and Change Request 2

   APPENDIX 1 – Affected Party's Note on the proposed inclusion of Stoneacre Copse as part of Change Request 2

SECTION A - EXECUTIVE SUMMARY

4. The Applicant's responses at Deadline 7C relating to funding, commercial telecommunications, engagement, access, and Stoneacre Copse (in the context of its responses to the Affected Party's Relevant Representations) do not change the Affected Party's previous and current submissions (as at Deadline 8) on these matters.

5. The Applicant has through its Deadline 7C responses demonstrated a fundamental misunderstanding of **its** obligation to defend its compulsory acquisition proposals.

6. It is, regrettably, misconceived for the Applicant to assert that it is up to the Affected Party to provide evidence that all the alternatives to access it is proposing are reasonable. Whilst EN-1 refers to "alternatives", the current situation concerns compulsory acquisition of land. The Applicant's seeking to reverse the onus or burden of proof and to posit it upon the Affected Party is simply wrong, in trite law, and under the Secretary of State's own guidance. This closed-minded approach by the Applicant explains why throughout this Examination, the Applicant has not been able to defend its compulsory acquisition proposals properly. To assist the Applicant, the ExA and the Secretary of State, we (again) remind them of the position at law *where compulsory acquisition is envisaged*, as it is here, in respect of the law including as follows.

7. In *Prest* [1983] 1 WLUK 416, the Court of Appeal held: (Emphasis added)

> *In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority ands if he seeks to support his own decision, on the Secretary of State. The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.*

8. The Affected Party agrees with the Court of Appeal and disagrees with the Applicant.

9. In the Supreme Court, in *Sainsburys* [2011] 1 AC 437, the Law Lords cited Prest:

> *9. Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute…*
>
> *10. In Prest v Secretary of State for Wales (1982) 81 LGR 193 , 198 Lord Denning MR said:*
>
> > *"I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands …"*
>
> *and Watkins LJ said, at pp 211–212:*
>
> > *"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."*

10. The Affected Party agrees with the Supreme Court and disagrees with the Applicant.

11. Further, and in particular, the Secretary of State's guidance on "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)" is consistent with the law above: (Emphasis added)

> *"7. 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…*
>
> *8. 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…*
>
> *25. 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…"*

12. The Affected Party agrees with the Secretary of State and his Guidance and disagrees with the Applicant. The Secretary of State and Courts place the onus "squarely" on the Applicant. It is trite law that the Affected Party need do nothing in the defence of its land being taken against it will. See *Prest*.

13. The Affected Party therefore maintains all its submissions in relation to these matters and encourages the ExA and SoS to refuse the grant of the DCO and of compulsory acquisition powers.

SECTION B – FUNDING

14. The Applicant has had every opportunity throughout the Examination to both provide as much information about funding as it can to the Secretary of State and its concluded and now publicly stated position is that the Applicant has no money at all either to fund statutory compensation or the development for which it seeks development. Instead, it relies, unusually in the sphere of the Planning Act 2008, exclusively on a grant of a DCO and then a hope that some unidentified person might come forward at some unknown time to fund its project or be persuaded to. The significant policy consideration for the Secretary of State is whether it is lawful to consent such a wholly speculative development under that Act (including powers of compulsory acquisition) and in the objective absence during the Examination period of either existing funds or of any evidence of ensured funds at all. The Affected Party re-states that, in the orthodox manner envisaged by his Guidance (September 2013), the only rational (as in evidenced) way forwards is for the Secretary of State to follow his paragraph 16 guidance and not authorise Part V and any other powers of compulsory acquisition in the draft DCO before him. As his Guidance states:

> *"There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land."*

15. This Application is a paradigm of the circumstances envisaged by that clear guidance.

16. The Affected Party has had an opportunity to review the Applicant's responses submitted at Deadline 7C relating to funding in:

a. REP7C-010 *'Applicant's Comments on Other Parties' Responses to the Examining Authority's Second Written Questions*' (page 1-28, response to question CA2.3.13); and

b. REP7C-014 *'Appendix B - Response to Submissions on behalf of Mr G Carpenter and Mr P Carpenter at Deadline 7*'.

17. Applying the close scrutiny required in the particular circumstances of the Affected Party, it is evident that none of the points raised by the Applicant in the above documents are material to, nor address nor meet the Affected Party's previous and current contentions and the evidence (or lack of evidence of funding) relating to funding.

18. The Affected Party submits that compliance by the Applicant with its obligations under the 2013 Guidance is now a matter for the ExA and SoS to evaluate and to make findings in relation to before consideration, in particular, of paragraph 16, sentence one.

SECTION C – ACCESS DURING OPERATION & PROTECTIVE PROVISIONS

19. The Applicant is required by paragraph 8 of the 2013 Guidance 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*" and has had opportunity in the foreshadow of its Application over a number of years and also throughout the statutory Examination Period to consider alternatives to the taking of the Affected Party's land and to making modifications to its development for which development consent is sought. The Applicant refuses to countenance modifications to its development and most recently seeks to reverse the common law onus upon it so as to seek to avoid its obligations in the circumstances of a compulsory acquisition.

20. The Affected Party has had an opportunity to review the Applicant's responses submitted at Deadline 7C relating to a temporary access road across Little Denmead Farm in section C of page 4 of REP7C-014.

21. None of the points raised by the Applicant nor address nor meet nor are material to the Affected Party's previous and current arguments relating to access, except the following where very recent and wholly new contentions are advanced by the Applicant where not before and as set out below.

22. The Applicant explains at paragraph 3.3.1 on page 4 of REP7C-014 that:

"3.3.1 *the laying of an emergency temporary access road for in the event of an emergency situation is not a feasible or safe solution in connection with the operation of Nationally Significant High Voltage Electricity Infrastructure to which a permanent means of access is required*"

23. The Affected Party notes the assertions made, the absence of any risk evaluation evidence in front of the ExA or Secretary of State, and, helpfully, that the Applicant's environmental statement chapter on Major Disasters remains unchanged in light of the above contention by the Applicant. We note the Applicant's fears and concerns remain and recognise their genuine strength of feeling, notwithstanding it remains unsupported by a revised environmental statement or any risk evaluation evidence that is able to be scrutinised.

24. The Applicant also asserts at paragraph 3.5 on page 4 of REP7C-014 that:

"*Furthermore, where an alternative is first put forward by a third party after an application has been made, and the Applicant notes this alternative proposal was not advanced until December 2020 being a year after the Application was made, the ExA may place the onus on the person proposing the alternative to provide the evidence for its suitability. It is clear from the submissions made on behalf of the Affected Party that the alternative access position advanced is not a suitable alternative, because it would not allow for the safe operation of the Proposed Development*."

25. The Affected Party notes that the Applicant has provided no proper reason or evidence to explain why it is not a feasible or safe solution. Merely asserting it is not feasible or safe is not the same as demonstrating so. We refer to paragraphs 7, 8, and 25 of the 2013 Guidance, and to the 11 months of silence by the Applicant before Summer 2020 when it might have come forward to discuss matters with the facilitative Affected Party who has previously assisted National Grid to construct its Substation and provide maintenance access for it also.

26. The Applicant has obdurately mischaracterized so as to mislead the ExA and Secretary of State as to the purposes for which the Affected Party is offering such temporary access over Little Denmead Farm. It is not confined to (so-called) 'emergencies'. The Affected Party is offering temporary access **for heavy vehicles**, **across Little Denmead Farm**, that are not able to use the "light vehicle" alternative access offered under the Affected Party's DCO Obligation for much wider purposes – for purposes of repair, inspection, and maintenance of the Converter Station and related cables, as well as for (so-called) 'emergencies'. Please see, also, the Affected Party's Protective Provisions submitted at Deadline 8.

27. The Applicant has also evidently misunderstood and incorrectly applied the very clear stated requirements of paragraphs 7 and 8 of the Secretary of State's own guidance[1]. It is *the Applicant* who needs to *demonstrate* to the SoS that it has explored all reasonable alternatives to compulsory acquisition (paragraph 8). Not the Affected Party. *It is the Applicant* (not the Affected Party) who must *defend* its proposals for compulsory acquisition "throughout" (paragraph 7). There is no onus on the Affected Party to prove anything at all. The fact the Applicant has even gone so far as to argue this is worrying and demonstrates this as a basis it is not engaging properly with the Affected Party – the Applicant clearly does not understand it has to do so, by law and under Guidance.

28. It may be that the Applicant has confused consideration of "alternatives" under EN-1 (guidance not concerned with compulsory acquisition). But "alternatives" arise under different circumstances in EN-1. For example, the SEA Directive, or Alternatives to additional gas supply capacity, or in Section 4.4 that addresses EIA process and (in that context, and quite understandably) is silent as to circumstances of compulsory acquisition. Paragraph 4.4.3 of EN-1 (the last bullet point) cannot subvert by implication the trite case law of *Prest* in the Court of Appeal ("*In the sphere of compulsory land acquisition, the onus of showing that a CPO has been properly confirmed rests squarely on the acquiring authority and if he seeks to support his own decision, on the Secretary of State")* that places the burden of satisfying section 122 of

[1] *Planning Act 2008 Guidance on use of compulsory acquisition powers (September 2013) - DCLG*

the PA 2008 exclusively onto the Applicant. Indeed, the Secretary of State's 2013 Guidance is consistent with the Affected Party's position.

29. There is **no time limit** set in law or guidance as to when an Affected Party can offer alternatives during an Examination. Indeed, paragraph 7 of the 2013 Guidance helpfully explains to, and that, the Applicant "*will also need to be ready to defend such proposals **throughout** the examination of the application*" and paragraph 8 helpfully provides: " ***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*." Representations in an Examination Period are (as the Applicant has itself done) iterative and reflect submissions made by the Applicant as the Examination has progressed. The Affected Party has had no choice but to offer alternatives through the Examination as the Applicant has not, and continues to not, engage with it or its advisors in relation to this, whether by its lawyers or consultants.

30. To date, the Affected Party has proposed several technically feasible options for what the temporary operational access across Little Denmead Farm could be made of, and how such access could be laid (see Appendix G to document reference [**REP7C – 029**]). The Affected Party has also provided a fully revised set of Protective Provisions at this Deadline 8 relating to the temporary operation access across Little Denmead Farm. The Applicant has had some years in which to negotiate the terms of those Provisions and plans and has chosen to not engage with the Affected Party. The Affected Party has therefore had no choice as a result of the Applicant's passivity that to formulate its own Provisions, doing the best it can, and faced with Applicant intransigence. Whether the Applicant follows the 2013 Guidance remains the choice of the Applicant. The Affected Party **has** therefore provided evidence for the suitability of its proposal resulting in scheme modification and it being a both an evidenced reasonable and practical way forward. The Applicant has had since December 2020 and before to consider and evidentially demonstrate by relevant evidence as opposed to (albeit recognised) fears and concerns as why this cannot be a reasonable alternative. The Affected Party further notes that the Applicant has a £60,000,000 - £80,000,000 reason for not considering the Affected Party's Protective Provisions and reasonable proposals to enable ongoing farming to occur at Little Denmead Farm, as it has done for over 80 years already, and the real desire to avoid reasonable modifications to the development for which development consent is sought. Regrettably for the Applicant, on the Affected Party's case, the scope of the Planning Act 2008 cannot encompass development in the field of commercial telecommunications (see also Mr Stott's expert evidence in Appendix8 to the Affected Party's Deadline 7c Submissions) and the Infrastructure Planning (EIA) Regulations 2017 require evaluation of disaster and accident risk to the development and nothing is contended that that evaluation was unlawful and that it has not adequately addressed risks of all kinds to electricity conveyance by the envisaged development.

31. The Affected Party submitted at Deadline 7c a 'Haul Road Access Note' (see appendix G to [REP7c-029]) which included as Appendix 4 of Appendix G more detailed suggestions on alternative access road options. These built on those same suggestions made in our earlier document entitled 'Oral Submission in relation to Compulsory Acquisition Hearing 2' [**REP5-108**] at Appendix J [**REP5-126**]. Despite this, but

recognising the financial desire behind the Applicant's response, the Applicant arbitrarily dismissed out of hand those suggestions, offering no reasoning at all at Compulsory Acquisition Hearing 3 ("**CAH3**").

32. The only reasonable conclusion is that the Applicant has pre-determined this approach to the access road with a closed mind from the outset, yet it is recognised how successful these solutions can be in delivering infrastructure projects. The intransigence begs the question; why? As Mr Stott has evidenced, the inclusion of commercial telecommunications development on the Affected Party's land would result in a £60-80,000,000 pure profit to the Applicant. So it has every incentive to not modify its development or else forego that sheer profit.

33. In the absence of any reasoned responses and clear evaluation following all reasonable steps being taken to explore alternatives and establish the pros and cons of such approaches for this project we maintain our position; that the options put forward are possible and without any scrutiny the Applicant does not know if any are feasible or viable in this location for the needs of this project. We therefore continue to rebut the Applicant's oral statements on this matter made in CAH3.

34. To reconfirm, the options at appendix G to [**REP7c-029**] are fourfold namely, laying permanent subterranean sub-base layer, import materials when work is required, matting / geo-matting, and chemical soil stabilization methods. Depending on a number of factors, including the purpose of laying the temporary access road, the time it would be needed for, and the speed with which it is required, any one of these options may be preferable. However, our note at appendix G to [**REP7c-029**] took a careful and balanced approach and identified feasible possibilities as well as evaluating the options also. Our view was that matting / geo-matting and chemical soil stabilisation were the two primary candidates and particularly the latter given its speed of laying, associated costs, range of treatments, structural integrity and ability to return the land back to agricultural land relatively quickly. It is currently being used for HS2 infrastructure and that is a considerably larger terrestrial based infrastructure project than a (comparatively) mere Converter Station box of electrical equipment and related structures linked to a small number of tiny diameter cables.

35. In this context, the way the Applicant dismissed these options out of hand evidenced that it continues to have a closed mind and to fail to grapple with the Secretary of State's 2013 Guidance and the onus that lies "squarely" upon it (alone).

36. The Applicant has, therefore, failed to demonstrate it has satisfied paragraphs 7 and 8 of the Guidance in relation to the need for a permanent access across Little Denmead Farm.

37. The Affected Party also refers the ExA and the SoS to the signed DCO Obligation it has submitted at Deadline 8 which now makes the alternative access for the Applicant's light vehicles for the purposes of repair, maintenance, inspection, and dealing with emergencies at the converter station.

38. Furthermore, the Affected Party continues in its facilitative approach to incoming electricity providers by now offering, in its revised Protective Provisions submitted at Deadline 8, the compulsory acquisition of its freehold interest to all land that is north of the existing track that runs between points 'X' and 'Y' on the plan attached to the Affected Party's signed DCO Obligation (which is being submitted at Deadline 8), This is only being offered however by the Affected Party should: (i) the DCO be granted: and (ii) CPO

powers are included in the DCO; and (iii) Stoneacre Copse is included within the Order Limits. The Affected Party's Protective Provisions submitted at Deadline 8 **are not being offered** if these three conditions are not met. This is all however also without prejudice to the Affected Party's primary contentions that the DCO should be refused in its entirety, Stoneacre Copse should be excluded from the DCO , and (even if the DCO is granted), then ALL CPO powers should be stripped out.

39. The Affected Party submits that access over Little Denmead Farm during the operation of the converter station it is now therefore a matter for the ExA and SoS to make a finding.

40. Contrary to the Applicant's assertion at paragraph 3.6 on page 4 of REP7C-014, **this is** important and relevant to the Secretary of State's decision and **should be** given weight in the decision making process.

SECTION D – COMMERCIAL TELECOMMUNICATION CABLES AND BUILDINGS

41. The Applicant has no legal answer to the clear point that section 14(6) of the PA 2008 does not specify "commercial telecommunications" as one of the specified "fields" that Parliament has circumscribed that Act as covering and has equally so limited the scope of section 35(2)(a)(i) discretion.

42. No amount of arm waving and pointing at "associated" or "ancillary" can result to change the terms of sections 14(6) and 35 to state "the field of commercial telecommunications".

43. The Affected Party has sought to assist the Secretary of State by showing an approach used at the Tidal Bay Lagoon DCO that he consented that provides to enable *physical* inclusion of non-statutory cables within the development proposed, but only so that those cables do not have to be retro-fitted on a future application for planning permission to change their use from a nil use to a use for commercial telecommunications to each of the relevant local planning authorities. On application, those authorities may (theoretically) also be satisfied that the future use of compulsory purchase powers to acquire land (absent concluded negotiations) is lawfully justified to their respective minds. Thus, there can be a local conclusion to parts of the NSIP that properly fall within a local jurisdiction and with local management, as envisaged at the Tidal Bay DCO.

44. The Affected Party has had an opportunity to review the Applicant's responses submitted at Deadline 7C relating to commercial telecommunications in **REP7C-010**.

45. None of the points raised by the Applicant are material to the Affected Party's previous and current written and oral submissions made in relation to commercial telecommunications.

46. The Affected Party also refers the ExA and SoS to its written submissions relating to commercial telecommunications in **REP7C-029** (*'Scope of Planning Act 2008 Statutory Purposes & The Development Compulsory Acquisition of AP Land'*), the expert written evidence submitted by Mr. Stott in Appendix 8 of **REP7C-030**, and Mr. Stott's post hearing note submitted at Deadline 8 of this Examination.

47. The Affected Party submits that the inclusion of commercial telecommunications within the development is now therefore a matter for the ExA and SoS to make a finding.

SECTION E – COMMENTS ON APPLICANT'S RESPONSES TO AFFECTED PARTY'S RELEVANT REPRESENTATIONS RELATING TO STONEACRE COPSE AND CHANGE REQUEST 2

48. The Affected Party refers the ExA and the SoS to its comments at Appendix 1 to this Note.

49. The Affected Party also refers the ExA and the SoS to the separate Statement it is submitting at Deadline 8 on Change Requests (which goes beyond the matter of Stoneacre Copse).

APPENDIX 1

Affected Party's Note on the inclusion of Stoneacre Copse as part of Change Request 2

Section A – Executive Summary

Section B – Need For Express Objection In The Stoneacre Copse Relevant Representations

Section C – Recognising Ash Die Back And The Applicant's Response

Section D – Assessment On Affected Party's Residential Receptors 11 And 12

Section E – Omitted Responses

Section F – Summary Of The Affected Party's Position On Stoneacre Copse And The Landscape Proposals Throughout The Examination

Section G – Conclusions

SECTION A – EXECUTIVE SUMMARY

1. The Affected Party owns the freehold to Stoneacre Copse ("**SC**").

2. On 11 December 2020, the Applicant submitted 'Additional Submission - Accepted at the discretion of the Examining Authority - 7.7.17 - Request for Changes to the Order Limits (Change Request 2)' [document **AS-054**] request the inclusion of Stoneacre Copse within the Order Limits ("**Change Request 2 – SC**")

3. The Affected Party submitted relevant representations objecting to Change Request 2 - Stoneacre Copse (document reference REP7a-001) on 28th January 2021 ("the **SC RR**").

4. The Applicant submitted comments at Deadline 7C in relation to Change Request 2 – Stoneacre Copse (document reference REP7c-012) ("**the SC Response**").

5. The Affected Party has reviewed the SC Response and comments in the following sections.

SECTION B – NEED FOR EXPRESS OBJECTION IN THE SC RR

6. Firstly, the SC Response "*notes*" that no express objection was made in the SC RR. This infers that the SC RR had to expressly state that an objection was being made, which is not a requirement in law or guidance.

7. The statement that no objection was raised is factually correct taking a narrow and literal position. However, given the Affected Party has made extensive substantive objections over the course of the Examination, it is ridiculous to suggest the SC RR was anything other.

SECTION C – RECOGNISING ASH DIE BACK ("ADB") AND THE APPLICANT'S RESPONSE

8. In the SC Response the Applicant states that "*having recognised*" the issue ADB was "*more prevalent than anticipated*".

9. It is worth noting that it was not the Applicant that recognised ADB, but the South Downs National Park Authority and Winchester City Council in its *'Landscape' section of the Local Impact Report* (section 4.6.12) (**REP1-183**). Anticipation suggests it was recognised in the first place by the Applicant. It was not, despite there was recorded ADB on national record in the area prior to the time the Applicant's environmental statement ("**ES**") and landscape and visual impact assessment ("**LVIA**") was being prepared.

10. Further, ADB was touched upon in National Grid's Lovedean Sub-Station Extension ES supporting their planning application, yet ADB was still overlooked.

SECTION D – ASSESSMENT ON AFFECTED PARTY'S RESIDENTIAL RECEPTORS 11 AND 12

11. The SC RR highlighted the fact that the Affected Party's residential receptors were not identified as part of the ES and LVIA re-assessment of impact and the Applicant's conclusion that ADB "*will have one effect which is more adverse… only in relation to one receptor*". That one receptor is the public right of way (reference 'DC19/HC28' although confusingly referred to in the original ES as 'HC28/DC19').

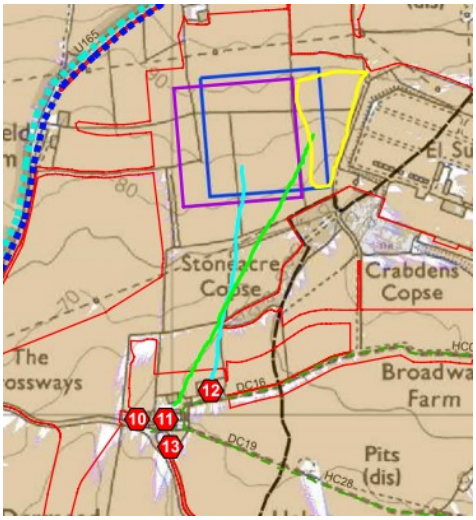
12. The SC Response refers to residential receptors 10 and 12 as identified in the 'Environmental Statement - Volume 2 - Figure 15.47 Residential Properties and Settlements' (APP-280). To clarify, the Affected Party's residential receptors are properties 11 and 12 and these were clearly referenced in the 'Responses to the ExA's further written questions (ExQ2) [**PD-031**] (question references LV2.9.1 and LV2.9.2) and related appendices' (**REP7-117**). The Applicant's response has therefore not addressed property 11.

13. That aside, why does the omission to deal with properties 11 and 12 have to be explained in the SC Response instead of being clearly set out and the impact reiterated in the relevant documentation, namely the Change Request 2 – SC **[AS-054**] and ES Addendum [**REP7-067**]?

14. We recognise the ES Addendum [**REP7-067**] which sought to address the implications of ADB at section12.3 but that document again failed to identify residential receptors 11 and 12 and re-assess impact accordingly. The ES Addendum also set out broad management objectives due to the fact it concluded ADB was "*likely to erode the future baseline considered in the ES*" and that it is *"expected that the majority of ash trees both in the area surveyed, and in the wider landscape, will be badly affected or lost within the next decade*". That conclusion alone is not an adequate worst case assessment it is simply a statement.

15. It is also noted that Applicant states that they have "*engaged with the respective landowners (or their agents in respect of Stoneacre Copse) with a view to seeking the necessary rights to plant and manage these two blocks of woodland*" [**REP7-067** paragraph 12.3.3.3] but this has not been the case at all and no meaningful engagement has been undertaken with the Affected Parties on this matter.

16. SC plays a significant visual role in the view from the two residential receptors (light blue and green lines below) whether directly screening, in whole or part depending on the viewing point, and indirectly naturally framing and softening the peripheral visual effects of the proposed built form. If the existing sub-station extension works (edged yellow below) are also included then the development extends further to the east, as shown below:



17. It is clear a re-assessment of the visual impact on residential receptors 11 and 12 should have occurred even if the outcome was to restate the previous conclusion. The SC Response states the presence of ADB and its continued impact on SC "*would not alter the magnitude of impact or significance of effects*" because the impact was already considered to be moderate-major to major adverse effects. Yet, as there is no assessment of the worst case ADB situation undertaken conclusions on that basis could be more adverse to the Affected Party.

18. The need for the assessment is even more incumbent on the Applicant given the inconsistency in the documentation over whether a 'minor to moderate' effect is indeed a significant effect or not.

19. One the one hand the Applicant arguing that an effect that is 'minor to moderate' is not a significant effect (see page 4-17, 4-18 and 5-24 for example in the Change Request 2 – SC [**AS-054]**) but that due to this an ADB management plan is needed and thus they need to include SC in order to maintain the ES baseline. On the other hand, and quite dichotomously, in the original ES, the Applicant states that any 'minor to moderate' effect is significant (see paragraphs 5.8.3.11, 5.8.4.31, 5.8.4.32 in document APP-130 for example).

20. Therefore the Applicant has changed the way it views 'minor to moderate' effects and as a result of this a justification is engineered to justify the inclusion of SC.

21. As a result of the above it is hardly surprising the Applicant's opinion in the 'Written Summary of the Oral Case at Issue Specific Hearing 5 (ISH5)' [AS-067] is that it is not necessary for ES Addendum [REP7-067] to be the subject of any ‘formal’ consultation process under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the **IP EIA 2017 Regs**") instead relying on the length of time the ES Addendum has been available on the ExAs website through the examination library as adequate for persons to comment by Deadline 8. That conclusion does of course rest on the assumption that all those that would normally be formally re-consulted are still fully engaged in the current examination process, which is unlikely given the late stage the process is at.

SECTION E – OMITTED RESPONSES

22. The Affected Party simply brings the following to the ExA's attention. The Applicant has failed to address the following in its SC Response.

23. Firstly, a recognition that the Affected Party proposed a solution, to manage SC against ADB themselves "*as a real alternative*". In failing to respond on this point it is another example of failing to explore "*all reasonable alternatives*" to compulsory acquisition;

24. Secondly, submissions that the visual impact assessments and photomontages in the ES contained no reasonable worst-case scenario assessment of the proposal's impacts on visual receptors due to the actual likely effects of ADB on canopy leaf cover.

SECTION F – SUMMARY OF THE AFFECTED PARTY'S POSITION ON SC AND LANDSCAPE PROPOSALS THROUGHOUT THE EXAMINATION

25. The following summary of the Affected Party's position in relation to landscaping mitigation proposals which now includes SC, is set out to assist the ExA.

26. The original ES and LVIA were undertaken in the absence of any recognition of ADB. As such the Applicant reached conclusions on visual impact predicated on that baseline position.

27. As the Affected Party clearly set out at Deadline 5 we questioned the underlying purpose of the extent of those landscape proposals which substantially threatened the Affected Party's land holding and business interests.

28. Whilst the landscape proposals were justified by the Applicant with reference to visual mitigation for the converter station and its associated development it is merely a veneer because the extent of the proposed landscaping is unnecessary purely for the for delivery and operation of the converter station *itself* as an energy NSIP.

29. The Affected Party has outlined how elements of the associated development, as proposed, are either completely unrelated to the energy NSIP but rather a gateway for future infrastructure development (batteries and telecoms) distinct from the operation of the converter station.

30. Therefore, the Affected Party proposed an alternative landscape mitigation scheme (Appendix J REP5-126) equally robust based solely on visually mitigating the converter station and suggesting alternative approaches, for example to access, haul road construction and planting location once the majority of the unnecessary associated development was stripped from the applicant's proposals.

31. Subsequently however two particular turns of events have occurred in the course of this evolving project.

32. *Firstly*, the applicant included reference to the extension of the existing Lovedean substation as part of the works (see draft DCO (REP6-015) and Explanatory Memorandum (REP6-018)).

33. As the Affected Party identified for the ExA, the National Grid sub-station extension had been previously approved by planning permission 13/01025/FUL. Despite some conditions had been discharged the substation extension permission has lapsed ("the **Lapsed NG Permission**").

34. Prima facie it appears that an arrangement has been made with National Grid to include the Lapsed NG Permission extension works into this DCO. This arrangement is indicated in the statement of common ground ("**SoCG"**) iterations, for example by comparing paragraph 1.2.1.4 of the first SoCG (document 'Statement of Common Ground Between Aquind Limited and National Grid Electricity Transmission Plc Agreed Draft - Rev 001" **REP1-113**) and the same paragraph of the later version ('Statement of Common Ground with National Grid Electricity Transmission Plc - Rev003' **REP6-051**).

35. SoCG revision 3 clearly added explicit reference to works "*by way of an extension to the existing substation, including site establishment, earthworks, civil and building works*" to the description of development which was not included in SoCG revision 1. That drafting is very broad.

36. SoCG revision 3 then chronicles a meeting on the 3rd December 2020 resulting in an audit of the ES to show the works were appropriately assessed and appends a letter and table of findings (Appendix 1 REP6-051). That audit focused on the connection bays being the extension works to the existing Lovedean Sub-Station and not the wider works envisaged by the Lapsed NG Permission. The letter confirms; "*Whilst the purpose of this plate is to show the positions of the connection bays, this shows an indicative extension area (in red). This does not represent a commitment to build the extension in the area shown, and as set out in Table 1-1 our environmental assessments have not treated this as a final design*"

37. However, the effect of this late amendment to the works description and its very broad terminology threatens to allow the scope of the project to be extended. If so, the consequential effect on the ES and LVIA baseline conclusions is that they are put into considerable doubt.

38. Moreover, the effect of the flexible proposals engage the principles of the Rochdale Envelope.

39. We have highlighted, for example, how the Vanguard DCA applicant dealt much more clearly in its LVIA and photographic visualisations with the Rochdale Envelope principle where exact parameters remained unknown and the broadest scope of the possible project was assessed on a precautionary basis.

40. The point is that, if the Applicant is unsure of the extent of any extension works to the existing sub-station including the Lapsed NG Permission extension works, those works should have been factored into the ES and LVIA. The project is already predicated on the basis of two locational options for the converter station.

41. Because this assessment was not undertaken conforming to Rochdale principles the effect of wider additional sub-station extension works will not have been factored into the ES/LVIA, the adequacy of the visual baseline and consequently the conclusions on effect.

42. Until the description of the extension works is tightened up to preclude wider sub-station extension works similar to those envisaged under the Lapsed NG Permission there remains an issue.

43. *Secondly*, the existence of ADB was brought to the attention of the applicant by Winchester City Council (**REP1-183**) also relatively late in the process.

44. This is despite National Grid's ES for the Lapsed NG Permission recognising the existence of ADB in the area. It is remarkable that this was overlooked. Had it not been the baseline and future baseline could have been assessed on a robust basis from the outset. In such a situation photomontages could have been produced showing how the existing and proposed visual mitigation would be affected depending on the possible visual grades of ADB spread and effect as set out in the original ES.

45. Again, the impact on the robustness of the Applicant's ES and LVIA conclusions is called into question. Issues are not transparently and coherently dealt with and a suite of changes and updated assessments had to be undertaken.

46. Yet, despite it is accepted that the effects of ADB cannot be accurately predicted on particular stands of ash, after all the last minute amendments the conclusions reached are that the effect on localised visual receptors is minimally worse in relation to one footpath only.

47. Furthermore, given the concerns over the extent of the land/rights take for the Affected Party's on the basis of the Applicant's initial landscape proposals, ADB has been latterly used to justify an extended rights take in relation to SC.

48. Given the alternatives that we have proposed throughout this process, that remain unassessed and that the Applicant's response has been to dismiss those alternatives out of hand with little to no justification we remain very firmly of the view that the inclusion of SC within the order limits is unjustified *as is* the extent of the wider land take in relation to the Affected Party's holding which is predominantly justified on the basis of visual mitigation alone for the converter station and its associated development when in fact that is not the case but represents excessive proposed land and rights acquisition.

49. Due to the issues outlined above the Affected Party maintains that the requirements of the IP EIA Regs 2017 have not been robustly met and therefore Regulation 4 is engaged which prevents the grant of the DCO by the ExA.

SECTION G – CONCLUSIONS

50. In conclusion, the Affected Party retains its position in objecting to the extent of the landscape proposals and the inclusion of SC in those.

51. The Affected Party also maintains that the alternative solutions (access routing, landscape design, access construction) it has put forward to the Applicant and the ExA are reasonable alternatives that are more proportionate and have failed to be adequately assessed by the Applicant.