

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)

Development Consent Protective Provisions in relation to Little Denmead Farm

On behalf of

Mr. Geoffrey Carpenter & Mr. Peter Carpenter ("Affected Party")

Registration Identification Number: 20025030

Submitted in relation to Deadline 8 of the Examination Timetable



Blake Morgan LLP

6 New Street Square

London EC4A 3DJ

www.blakemorgan.co.uk

Ref: 584927-6

INTRODUCTION

1. As the Affected Party stated as part of its oral submissions during Issue Specific Hearing 4 on the draft DCO ("ISH4") and during Compulsory Acquisition Hearing ("CAH3"), and as requested by the ExA, the Owners submit this note with respect to the revised draft protective provisions it is proposing to be inserted into the draft DCO [REP7-014].
2. The Affected Party's proposed revised Protective Provisions are contained within this Note.
3. These revised Protective Provisions are proposed without prejudice to the primary contention of the Affected Party that the inclusion of Part V powers in the draft DCO [REP7-014] are:
 - a. Unlawful and objectively unjustified due to their irrational scope (as in, the scope of the underlying evidence is narrower than the breadth of the powers sought such that the extent of powers is itself irrational and not based on objective evidence);
 - b. The purpose of the powers sought can only encompass development for a purpose "in the field of energy" under sections 14(6)(a) and 35(2)(a)(i) of the Planning Act 2008 ("PA 2008") and cannot, in law, include or encompass a non-statutory purpose such as "commercial telecommunications" so the purpose of acquisition would be tainted by illegality in the event of inclusion of any isolated purpose for "commercial telecommunications";
 - c. Assuming the scope of the development is confined to development exclusively in the field of energy and there is some evidence of such development comprising a small number of electricity cables envisaged to be under Little Denmead Farm and a Converter Station to be erected on its Northern Part, then it remains not objectively shown, nor compellingly so, that it is lawfully justified, necessary or proportionate to preclude the ongoing operation of the 80 year old Farm land after conclusion of construction of that development on the land that would be temporarily used merely for construction purposes;
 - d. The Secretary of State's Guidance *requires* the Applicant to explore all reasonable alternatives and it has not. It also *requires* negotiation by the Applicant with the Affected Party and it has not. These Protective Provisions provide an evidential proxy for that situation that was otherwise required by that Guidance to have taken place but has not at all occurred; and

- e. Unlawful and objectively unjustified due to the fact that the Applicant cannot demonstrate during the Examination that there is a reasonable prospect of the requisite funds becoming available to cover its land acquisition costs. The Applicant has itself confirmed that "*AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.*" (see section 4.5 of the Applicant's Exemption Request made in connection to EU Regulation 2019/943). The Applicant has also confirmed that "*The Applicant has ... confirmed in response to agenda item 5.2 of CAH1 that the monies secured to date from its current investors do not include the costs associated with compulsory acquisition...*" (please see paragraph 9.2 of **REP7-075**).
4. These revised proposed Protective Provisions are based on the Protective Provisions granted by the Secretary of State in his development consent order "Riverside Energy Park Order 2020" made on the 9th April 2020 (SI 2020/413) (the "**Riverside DCO**"). See Schedule 10, Part 1 thereto.
5. They align to the same DCO that the Applicant explained to the ExA at CAH 3 on the 19th February 2021 that it would rely on and that the ExA requested a precedent form of DCO be used.
6. As the Affected Party set out to the ExA at CAH 3, the Secretary of State may include under section 120(3) of the Planning Act 2008 ("PA 2008") provisions that include, under section 120(4) and Part 1 of Schedule 5, paragraph 10:
The protection of the property or interests of any person.
7. During ISH4, the Applicant submitted that it would be relying upon the Riverside DCO as an example of its own approach. In light of this, the Affected Party has also followed the Applicant's helpful lead in preparing the revised protective provisions appended to this Note.
8. In the Riverside DCO, a Protective Provision was provided in relation to a limited company – "RRRL" – that operated a facility that would be operating close by to the authorised development and the Provision provided to enable continued operation of the facility together with that development.

9. The Affected Party, self-evidently, is a “person” and also qualifies within paragraph 9 (so far as any qualification is important or relevant) as having a land “interest” by reason of its freehold ownership of Little Denmead Farm.

10. The Applicant has failed to commence any exploration of alternatives with the Affected Party prior to or during the Examination Period (due to close on the 8th March 2021) before or during its seeking of compulsory acquisition of any part of Little Denmead Farm. This is in clear breach of the Secretary of State’s “Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)” that states:

"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. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate..."

26. 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 ..."

11. The Applicant has not, and has not evidenced to the Secretary of State that it is not practicable to negotiate with the Affected Party. Indeed, the Affected Party submitted proposed protective provisions at Deadline 5 of the Examination (November 2020) because there was no contact by the Applicant privately with the Affected Party or its advisors. The Applicant has to date (as at 1 March 2021) never formally commented on as part of the Examination, or approached the Affected Party privately, about its proposed protective provisions. Indeed, the proposed Protective Provisions align with Riverside DCO Protective Provisions and show what might have been achievable by negotiation. Instead, **if the Secretary of State were to authorise Part V of the DCO without the Protective Provisions below included, it would set a grave precedent for future DCOs and result in effective deletion of paragraph 8 of the Secretary of State’s Guidance in that paragraph and in paragraph 26 of the same Guidance.**

12. Instead, the inclusion of the Affected Party's revised proposed Protective Provisions set out below would enable the Secretary of State to lawfully and rationally conclude that the requirements of his Guidance paragraphs 8 (sentence 1) and 26 could be said to be satisfied by the terms of those Provisions. Whereas

without the inclusion of those Provisions in the event of Part V being authorised, the Secretary of State would be acting unlawfully and in breach of his own Guidance paragraphs 8 and 26, in particular, not properly directing himself in law and fact in relation to the requirements in the second part of paragraph 8.

13. The Affected Party's revised proposed Protective Provisions envisage below a situation where the Secretary of State determines that he will grant the DCO and that he is entitled to authorise compulsory acquisition powers pursuant to section 122 Planning Act 2008, including to extend the Order Limits to include Stoneacre Copse for such purposes. **In only such a case**, the Affected Party's Protective Provisions that are below would then become a relevant consideration for the Secretary of State when determining the appropriate extent of compulsory acquisition powers and other powers should be authorised in relation to Little Denmead Farm. These Protective Provisions reflect what the Affected Party submits is appropriate in relation to Little Denmead Farm in such a scenario.

14. To be clear, the Affected Party proposes the revised Protective Provisions below only should the Secretary of State decide to grant the DCO with compulsory acquisition powers and with Stoneacre Copse included within the Order Limits. The Affected Party proposes these revised Protective Provisions **without prejudice** to its **primary** contentions that compulsory acquisition powers are not justified, that the Order Limits should not be extended to include Stoneacre Copse, and that the DCO itself should not be granted.

Reasonable Landscaping Alternative on Little Denmead Farm – as proposed by the Affected Party at Deadline 5

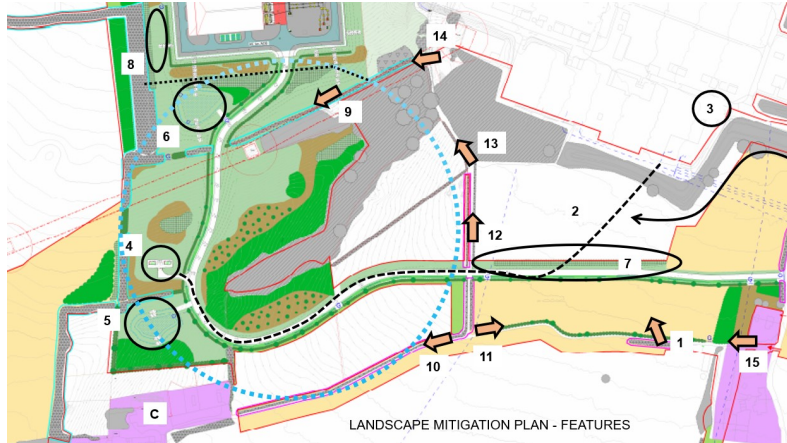
15. The Affected Party's alternative landscape proposals were set out in their Deadline 5 submission '*Oral Submission in relation to Compulsory Acquisition Hearing 2*' (REP5-108). Appendix J (REP-126) addressed Aquind's proposed landscaping and contended that it was a veneer for excessive unjustified land take. The Applicant has to date never responded to these alternatives through the Examination or privately with the Affected Party. It has therefore not explored all reasonable alternatives to compulsory acquisition and thus not satisfied the requirements in paragraphs 7 and 8 of the Secretary of State's Planning Act 2008 guidance on the use of compulsory acquisition powers (2013).

16. The extent of the proposed landscaping exceeded the justification for which was created by unnecessary requirements not sustainably justifiable as part of the converter station proposals. For example:

- The pre-determined mind set over the need for a fully tarmacked permanent impermeable access road across extensive tracts of our clients' agricultural land is excessive for both the construction and operational phases. The Affected Party suggested a temporary heavy duty haul road solutions and the applicant itself accepts that maintenance visits will be sporadic, perhaps 3 to 4 times per year. Yet these suggestions have been dismissed out of hand by generic response;
- Consequently, in the absence of justification for a permanent impermeable access way the parasitic need for the southerly attenuation pond is removed;
- Thirdly, we addressed how the landscape proposals appeared to be prospective mitigation for future proposals in relation to battery storage facilities; and
- Finally, we addressed the excess telecommunications capacity that is created as a convenient residual opportunity for future development, enabled under the proposed access road and across areas of land outside the order limits but under option to the applicant.

17. As such, the landscape proposals conveniently enabled and mitigated future unrelated development whilst being promoted solely as adequate visual mitigation for this development.

18. Our alternative proposals at Deadline 5 showed how, due to the nature of the local landscape and the topography, a more sensitive and geographically tighter scheme could adequately mitigate the proposed development. This was indicatively suggested by the diagram at paragraph 3 of Appendix J (REP-126) and which we replicate here:



- a. That plan shows the extensive area circled dashed blue as the area over which the applicant's landscape proposals should be rolled back due to the absence of justification for the access road, the telecommunications buildings (numbered 4), the southerly attenuation pond (numbered 5) and the hedgerow (numbered 7).
- b. The black dashed line (running between circles numbered 6 and 8) shows the indicative point *to* which landscaping proposals could be rolled back leaving enough width to establish a strong screening belt and utilising some localised bunding from excess spoil from levelling the converter station land. The northerly attenuation pond could be repositioned to point 8, to the west.
- c. At that stage of the examination (Deadline 5) Aquind remained oblivious to ash die back (ADB) and its now accepted existence does not undermine these alternative proposals in the slightest. Stoneacre Copse, Crabdens Copse and Crabens Row remain strong existing established planting belts and can be managed to reduce the impact of ADB (as the Affected Party has offered to do) to maintain a good degree of visual mitigation. These belts would be further bolstered by a new additional thick belt of trees immediately to the south of the converter station.
- d. There remains no need to thicken out Stoneacre Copse by planting trees circumnavigating the ancient woodland as is indicated by the applicant's landscape proposals or indeed for all the other extensive planting proposals across Little Denmead Farm.
- e. The original Design and Access Statement (DAS) (APP-114) set out the applicant's landscape design principles at section 7.4 which broadly stated were to:
 - minimise the loss of existing vegetation;
 - include management measures;

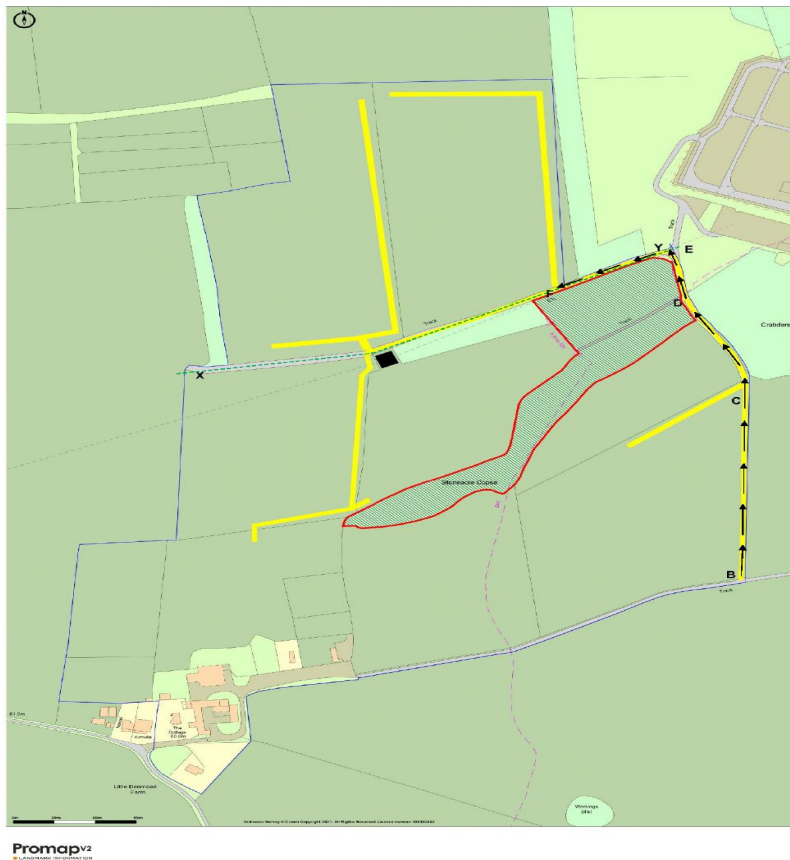
- create new woodland, glades, scrub and hedgerow planting, within locations broadly indicated upon the indicative landscape mitigation plans to provide appropriate screening from sensitive receptors; and
 - enhance existing vegetation.
- f. These principles have not substantively changed since the first iteration of the DAS however there were substantial additions to the "*planning and landscape*" section 5.7 of the following DAS iteration (REP1-032) which sought to justify the landscape proposals further with reference to safety in relation to the proposed boundaries of the new compound and proximity to existing overhead lines.
- g. The Affected Party's alternative landscaping proposals do not infringe the additional safety needs of the development given they represent a lighter touch, utilise the topography and additional bunding and can be located in a belt safely sitting between the overhead power lines and proposed compound boundary. These zones to be 'kept free' are shown in the DAS, for example at page 28 of tracked DAS update document REP7-022.
- h. Nor have the Affected Party's alternative landscape proposals ever infringed the Applicant's landscape design principles as set out from the outset. Our proposals retain existing green capital, enhance it through management and propose additional planting in more appropriate locations to extend the local green infrastructure network for ecological as well as visual mitigation purposes, whilst also retaining as much agricultural land as possible which should be a continuing principal feature of this local landscape.
- i. The retained but relocated attenuation pond is intended to have the same capacity as the applicant's proposed one which takes in to account the fact that the required volume of surface water storage remains undetermined until infiltration rates of the existing substrate surrounding the soakaway can be confirmed.

Reasonable Landscaping Alternative on Little Denmead Farm – As proposed by the Affected Party at Deadline 8

19. The revised proposed Protective Provisions below contain terms reflecting the Affected Party's previously proposed alternative landscaping on Little Denmead Farm, but with one further adjustment with respect to

how much of its freehold interest the Affected Party is willing to allow to be compulsorily acquired by the Applicant (as a facilitative neighbour to new electricity providers).

20. Please see the image below. The Affected Party proposes that the Applicant only be allowed to compulsorily acquire its freehold interest to all the land to the north of the northern most edge of the access track coloured yellow, with such access track being shown approximately running on the land between points 'X' and 'Y' on the plan below. For clarity, the plan below includes yellow strips north of this line which are existing tracks referred to in a licence agreement but are not relevant here.



21. This would provide the Applicant with sufficient land on which to construct the converter station, security fencing and also leave enough land on which to have permanent landscaping on the converter station's southern most fringes.
22. This would also enable the Applicant, as a result of the Affected Party's unilateral DCO Obligation, to construct an alternative access from the bottom left hand corner of the converter station to meet the alternative access route the Affected Party has offered under the DCO Obligation (the alternative access route under the DCO obligation runs from points B to F on the image above and is shown marked with

black arrows). Alternatively, this could allow an access way from indicative location shown on the converter station plan southwards and then eastwards to the alternative access way (for the avoidance of doubt the existing track coloured yellow running between points X and Y remains in the Carpenters' freehold ownership). This allows the Applicant to take the maintenance access track from any point along the existing to the southern most fringes of the converter station. This in itself would allow the Applicant access into the converter station throughout its operational life.

23. This, together with the Affected Party's proposal in the Protective Provisions below for only a temporary access way to be built during operations for **heavy vehicles** (for example large cranes or abnormal load vehicles) as and when there is a need to repair, inspect, maintain or facilitate emergency access and they cannot use the alternative access route granted under the Affected Party's DCO Obligation, should be sufficient for the Applicant's purposes. This represents a reasonable alternative for the Applicant to now **demonstrate** it has properly explored, or in the alternative that the Secretary of State accepts that the Applicant has had plenty of opportunity to have explored it and can be properly satisfied of that.

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 7

FOR THE PROTECTION OF THE OWNER OF LITTLE DENMEAD FARM

1. For the protection of the Owner of and of Little Denmead Farm as referred to in this part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and the Owner of that land.

2. In this part of this Schedule

"Affected Property" means that part of the Order land in the freehold ownership of the Owner which on the date upon which this Order comes into force pursuant to Article 1 are those plots identified as being in the freehold ownership of the Owner in the book of reference as plot numbers 1-32, 1-32a, 1-38, 1-51, 1-57, 1-69, 1-70, 1-71, and 1-72 as shown on the land plans, and Footpath 4 as shown on plan EN020022-2.5-AROW-SHEET1-REV03;

"Agricultural Soil Quality" means soil that is suitable for agricultural production;

"Alternative Apparatus" means alternative apparatus adequate to enable the Owner to fulfil its functions at Little Denmead Farm in a manner no less efficient than previously;

"Apparatus" means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by the Affected Party or used for, or for purposes connected with, the use or operation of Little Denmead Farm and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Construction Period" means the period of time from the commencement of actual construction of the Converter Station, Related Structures and Related Cables and Work No. 3 as they relate to Little Denmead Farm (prior notice of which must be given in writing by the undertaker to the Owner) to the issue of certification of the practical completion of Works No. 2 (b) to (t) and (x) to (z). Work No. 2 (aa) and (bb) are only to be located on Little Denmead Farm on a temporary basis to the south of the green dashed line between X and Y on The Plan and are to be removed in their entirety after certification of the practical completion of Works No. 2 (b) to (t) and (x) to (z);

"Converter Station" means one converter station built for the purpose of transmission of electricity within the parameters of one only of either Option B(i) or (ii) as shown on the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Combined Options" with Plan Reference EN020022-2.6-PARA-Sheet1 REV 02, the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(i)" with Plan Reference EN020022-2.6-PARA-Sheet2 REV 03, and the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(ii)" with Plan Reference EN020022-2.6-PARA-Sheet3 REV 03, north of the existing pylon line on the northern part of the Affected Property;

"Decommissioning Period" means for the purposes of this Part 7 only, the period that starts on the date identified pursuant to Requirement 24(3)(f) of Schedule 2 to this Order (decommissioning) as being the beginning of the relevant decommissioning works and concludes on the date on which the undertaker concludes the last phase of restoration of Little Denmead Farm to being land suitable for agricultural production;

"Fibre Optic Data Transmission Cables" means fibre optic cables connected to the Converter Station for the purpose of control, monitoring, and protection of the HVDC and HVAC electricity cable circuits, and for telecommunications relating to the Converter Station;

"Landscaping Area of the Affected Property" means the extent of the area of ground shown on The Plan comprising the area north of the northern most edge of the existing access track coloured yellow, such existing access track being shown approximately running on the land between points 'X' and 'Y' on The Plan;

"Little Denmead Farm" means the part of the land known as Little Denmead Farm, Broadway Lane, Denmead, Waterlooville, PO8 0SL, as shown on the title plan registered at HM Land Registry under title number HP763097, and that falls within the Order Limits;

"Operational Access Way" means a route identified by black arrows (and extending as far westwards to coincide with a permanent access from the Converter Station) showing the access way between points B and F on The Plan comprised of an existing accessway in part within the Order Limits and in part outside the Order Limits but within Little Denmead Farm adjacent to those Order Limits, and over which access in both directions by light vehicles may be taken by the undertaker from the highway of Broadway Lane to the built Converter Station during the Operational Period for the purposes of periodic inspection and maintenance of the Converter Station, Related Structures and Related Cables;

"Operational Period" means the period from the date of certified practical completion of the Converter Station on the Affected Property until the conclusion of the Decommissioning Period;

"Owner" means Mr Geoffrey Carpenter and Mr Peter Carpenter (and their successors in title respectively), who are the joint freehold owners of Little Denmead Farm;

"Related Cables" means such part of the authorised development specified in Schedule 1, Work Nos. 2 (b) (g), (h) and (r), being respectively two 320 kilovolt HVDC cable circuits and two 400 kilovolt HVAC cable circuits for the transmission of electricity with the Fibre Optic Data Transmission Cables all being connected to the Converter Station;

"Related Structures" means such part of the authorised development specified in Schedule 1, Work Nos. 2 (c), (d), (e), (f), (i), (j), (k), (l), (m), (n), (o), (p), (q), (s), (t), (x), (y) and (z);

"Stoneacre Copse" means that part of Little Denmead Farm comprised of broadleaved ancient woodland in the National Forest Inventory (and which falls within plot number 1-32a as shown on the land plans);

"Stoneacre Copse Management Plan" means a written management plan relating to Stoneacre Copse, to apply for the duration of the Operational Period only, and formulated pursuant to forestry principles published by the Forestry Commission produced and maintained by the Owner with the following objectives: i) arresting the extent of Ash dieback to at least the extent identified as then present in that Copse in survey Drawing Reference EN020022/Rev 01 (dated 14th October 2020), Figure 1 of Annex 1 to

Appendix 3 to the “Request for Changes to the Order Limits”, document reference 7.7.17; ii) establishing and undertaking regular monitoring and maintenance of the trees that are the subject of Ash dieback; iii) obtaining all necessary licences to ensure the objectives of the management plan are satisfied; iv) establishing continued and sustainable treescape within Stoneacre Copse;

“Temporary Access Roadway” means a temporary access roadway laid within the Temporary Access Road Zone for the purposes of enabling such repair of the Converter Station or the Related Structures or the Related Cables as may be necessary to ensure operation of that development as may arise during the Operational Period;

"Temporary Access Roadway Zone" means the zone of access within which the undertaker may construct a temporary haul road on Little Denmead Farm , and one related temporary attenuation pond, for the purpose of constructing the Converter Station, Related Structures and Related Cables and which zone is identified shaded in light grey within Little Denmead Farm and identified as “Parameter Zone 1 Access Road” on “the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(i)" with Plan Reference EN020022-2.6-PARA-Sheet2 REV 03, and the plan entitled "Converter Station and Telecommunications Buildings Parameter Plans Option B(ii)" with Plan Reference EN020022-2.6-PARA-Sheet3 REV 03; and

“The Plan” means the plan identified as the "Accessway Plan – Plan 1 of 2' and showing a route identified by black arrows showing an access way between points B and F, which accessway remains in the freehold title of Little Denmead Farm, together with the remainder of the access way in the westward direction therefrom running West to East between points X and Y, and identifying the said accessway from the northern most side of which accessway is land able to be compulsorily acquired under para 3 of this part 7, and certified in Schedule 14. **[See the Plan appended to [REP7-119]]**.

Compulsory Acquisition, temporary possession and access

3. – (1) Regardless of any provision in this Order or anything shown on the land plans and in the book of reference, the undertaker cannot enter, possess, or acquire (whether by exercising its powers under Part 5 or any other part of this Order or otherwise) any part of Little Denmead Farm save as expressly provided for as follows:

- (a) subject to sub-para (b) the undertaker cannot compulsorily acquire any permanent interest in or rights in, under or over land within Little Denmead Farm, or compulsorily extinguish any interest or right in, under or over land within Little Denmead Farm otherwise than for the purpose of the field of energy and of the extent:
- i) up to such extent of the land area to the north of the northern most edge of the accessway that is coloured yellow and which is shown as running between points 'X' and 'Y' on The Plan, and of no more volume than the outermost extent of the Converter Station and Related Structures as built; and
 - ii) of the volume identifiable by the extrapolation of the section shown in Plate 3.5 of Chapter 3 of the environmental statement (description of the proposed development) along the route shown hatched in blue identified in figure 24.2 of document called 'Illustrative cable route' in reference 6.2.24 of volume 2 of the environmental statement and on drawing number EN020022-ES-24.2-SHEET1, such linear volume not being above 1.05m below ground level as at the date on which the Order is made, for the purposes of situating the Related Cables;
- (b) the undertaker must receive from the Secretary of State his written satisfaction of an enforceable bond provided by the undertaker an enforceable bond to cover all decommissioning occurring upon, and restoration costs of, any and all land so acquired within Little Denmead Farm, such bond to remain in place until the conclusion of all restoration works to the reasonable satisfaction of the Owner,
- (c) the undertaker may not otherwise than within a single phase and during Work No. 2(a), Work No. 3 and the Construction Period enter and temporarily possess the Affected Land for those purposes related to the construction of the Converter Station, Related Structures and Related Cable in the field of energy;
- (d) the undertaker must remove during the Decommissioning Period the Converter Station, Related Structures and Related Cables pursuant to the approved decommissioning plan required under Requirement 24 of Schedule 2 to this Order and ensure that the extent of Little Denmead Farm that is the subject of paragraph 1 (b) of this Part 7 is reinstated to be Agricultural Soil Quality;
- (e) the undertaker or any party referred to in Article 6 and Article 7 cannot situate any structures, cables and equipment or part of any structures, cables and equipment, or carry out any works, for the purposes of commercial telecommunications on, in or over Little Denmead Farm unless the same has been agreed in writing exclusively by the Owner;

Temporary access through Little Denmead Farm during the Operational Period

4. —(1) Where during the Operational Period the undertaker requires to undertake repair works, inspection for such repair works (whether routine repair works or emergency repair works) or maintenance works at the Converter Station for the purpose of ensuring continuity of the ongoing operation of the Converter Station or Related Structures or Related Cables and continuity of the generation of electricity, and requires for such repair works, inspection for such works, or maintenance works, access across Little Denmead Farm otherwise than for light vehicles, for heavy vehicles which in the reasonable opinion of the undertaker are not able to use the Operational Access Way, the undertaker may lay and use the Temporary Access Roadway the within the Temporary Access Road Zone for only such purposes and for only such duration that is reasonably necessary to ensure such repair (and no more).
 - (2) Before entry to any part of Little Denmead Farm for the purposes of paragraph 3(1), the undertaker must:
 - (a) Notify in writing to the Owner not less than 72 hours (save for in emergencies, in which case written notice must be delivered to the Owner as soon as reasonably practicable) in advance of the need for the Temporary Access Roadway to be laid within the Temporary Access Road Zone; and
 - (b) Agree with the Owner the timing and practical arrangements relating to the construction and use of the Temporary Access Roadway (including health and safety and protective works) , to ensure that the execution and use of the Temporary Access Roadway takes account of the need to also secure the safe and efficient operation of Little Denmead Farm.
 - (3) The undertaker must ensure that it has an enforceable bond in place to cover all costs relating to or that arise from the execution of works to lay, use and remove the Temporary Access Roadway, any damage or harm caused by the construction, use and removal of the Temporary Access Roadway, , and in relation to the reinstatement of the relevant parts of Little Denmead Farm to Agricultural Soil Quality as may be affected by the installation, use and removal of the Temporary Access Roadway and certify in writing to the Owner that such bond is in place not less than 72 hours before taking entry into Little Denmead Farm;
 - (4) The undertaker must use all reasonable endeavours to co-ordinate the execution of the works associated with paragraph 3(1) of this Part 7 and their prompt execution in the interests of

safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of Little Denmead Farm; and

(5) The undertaker must certify in writing to the Owner the date on which the relevant repair works have been completed, such notice to be sent to the Owner within 5 days of completion of such works.

(6) The undertaker must remove the Temporary Access Roadway within 14 days of the certification referred to in paragraph 4(5) above. (or such other timescale agreed in writing with the Owner);

(7) Within two weeks (or such other timescale agreed in writing with the Owner) of the Temporary Access Roadway, the undertaker must reinstate the relevant land within Little Denmead Farm to Agricultural Soil Quality

5. The Owner shall use its reasonable endeavours to co-operate with the undertaker for the purposes of paragraph 4 of this Part 7;

Apparatus at Little Denmead Farm

6 — (1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within Little Denmead Farm otherwise than by agreement.

(2) If, in the exercise of the powers conferred by this Order, the undertaker:–

(a) acquires any interest in land in which any Apparatus is placed or over which access to any Apparatus is enjoyed; or

(b) requires that the Apparatus within Little Denmead Farm is relocated, diverted or removed,

any right of the Owner to any part of Little Denmead Farm and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that Apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to the Owner for alternative apparatus and equivalent alternative apparatus has vested in the Owner and (in relation to Apparatus) has been constructed and is in operation, and access to it has been provided. The location of equivalent alternative apparatus and

rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and the Owner before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(3) If, for the purpose of executing any works in, on or under Little Denmead Farm, the undertaker requires the relocation, diversion or removal of any Apparatus placed in Little Denmead Farm, the undertaker must give to the Owner for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the Alternative Apparatus is to be provided or constructed by the undertaker.

(4) The approval of the Owner under sub-paragraph (3) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to the Owner, the Owner has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, the Owner is deemed to have approved the said notice, plan, section and timetable as submitted.

(5) When giving its approval under sub-paragraph (4), the Owner may specify such reasonable requirements that are necessary in the provision or construction of the Alternative Apparatus.

(6) In the event that the Owner issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (4), the undertaker may refer the matter to appeal in accordance with Schedule 3 of this Order (procedures in relation to certain approvals etc).

(7) Any Alternative Apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with the Owner or in default of agreement settled by appeal in accordance with Schedule 3 of this Order (procedures in relation to certain approvals etc)

Decommissioning of the Converter Station - Restoration of land within Little Denmead Farm

7 Regardless of any provision to the contrary in this Order, the undertaker shall, in preparing a decommissioning plan to submit to the relevant planning authority pursuant to Requirement 24 of Schedule 2 to this Order, ensure that the plan requires the undertaker to restore Little Denmead Farm to Agricultural

Soil Quality and to consult the Owner and take into account such representations as may be made by the Owner before submitting the decommissioning plan, to the relevant public authority or Secretary of State for its or his approval (as the case may be).

Obstruction of Access during Operational Period and Decommissioning Period

8. If in consequence of any agreement reached or the powers granted under this Order access to Little Denmead Farm is materially obstructed during the Construction Period Operational Period and the Decommissioning Period , the undertaker must provide such (in the reasonable opinion of the Owner) suitable alternative means of access to Little Denmead Farm as will enable the Owner to maintain or use Little Denmead Farm no less effectively than was possible before such obstruction occurred;

Temporary Prohibition or restriction of streets, public rights of way and permissive paths during Construction Period

- 9 — (1) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (Temporary closure, alteration, diversion or restriction of streets, public rights of way and permissive paths) and subject to any health and safety requirements by the undertaker (such requirements to be notified in writing to the owner by the undertaker at least 10 working days before exercising powers under article 13 in relation to the relevant streets, public rights of way and permissive paths) , the Owner is at liberty at all times to enter and pass and re-pass, on foot and/or with or without vehicles, plant, animals, and machinery, any street, public right of way or permissive path used to access Little Denmead Farm (including Stoneacre Copse) which has been temporarily closed, altered, diverted or restricted under article 13 for all purposes connected with the Owner's residential, recreational, and agricultural use and to do all such things in, upon or under any such street used to access Little Denmead Farm (including for the avoidance of doubt Stoneacre Copse) as may be reasonably necessary or desirable to enable the Owner to continue to use Little Denmead Farm for agricultural and residential purposes during the Construction Period.

Modification of other powers in this Order in relation to Little Denmead Farm (including Stoneacre Copse)

10 — (1) Regardless of the functions therein stated, such functions under the following Articles as may otherwise affect Little Denmead Farm shall be modified as follows in relation to the Owner and Little Denmead Farm:

(a) article 10 (power to alter layout etc. of streets), the undertaker may not exercise the powers available under article 10 in relation to the Affected Property, subject to the extent that similar rights are granted to the undertaker by the Owner under a separate written agreement ;

(b) article 11 (street works), the undertaker may not exercise the powers available under article 11 in relation to the Affected Property, subject to the extent that similar rights are granted to the undertaker by the Owner under a separate written agreement ;

(c) article 14 (access to works), the undertaker may not create during the Operational Period any accesses to works over the Affected Property otherwise than by written agreement with the Owner;

(d) article 17 (discharge of water), the undertaker may not, in relation to the Affected Property, use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, operation or maintenance of the authorised development or inspect, lay down, take up and alter pipes, make openings into, and connections with, the watercourse, public sewer or drain on the Affected Property otherwise than by written agreement with the Owner;

(e) article 19 (authority to survey and investigate land), the undertaker must not, in relation to the Affected Property, exercise the powers in article 19 otherwise than by written agreement with the Owner;

(f) article 41(felling or lopping or trees and removal of hedgerows), the undertaker may not, in relation to the Affected Property, exercise the powers in article 41 otherwise than by written agreement with the Owner;

(g) article 42 (trees subject to tree preservation orders), the undertaker may not, in relation to the Affected Property, exercise the powers in article 41 otherwise than by written agreement with the Owner.

(h) article 29 (rights under and over streets), the undertaker may not, in relation to the Affected Property, exercise the powers in article 29 otherwise than by written agreement with the Owner;

Stoneacre Copse

11. Regardless of any provision in this Order or anything shown on the land plans and in the book of reference, the undertaker cannot enter, possess, or acquire (whether by exercising its powers under Part 5 or any other part of this Order) any part of Stoneacre Copse.
12. Not later than 12 months after this Order comes into force, the Owner shall commission the Stoneacre Copse Management Plan for the sustainable management of Ash dieback at Stoneacre Copse.
13. The Owner shall manage Stoneacre Copse in accordance with the Stoneacre Copse Management Plan for the duration of the Operational Period only.

Landscaping works on Little Denmead Farm

- 14.— (1) Regardless of any provision in this Order or anything shown on the land plans and in the book of reference, Work No. 2 (aa) can only be carried out and kept on Little Denmead Farm on a permanent basis on the Landscaping Area of the Affected Property.

(2) Any works falling under Work No. 2 (aa) and (bb) can only be carried out on Little Denmead Farm south of the Landscaping Area of the Affected Property on a temporary basis and during the Construction Period only, and must be removed from all land south of the Landscaping Area of the Affected Property after the completion of the Construction Period. The undertaker must send the Owner certification in writing as to the date on which such works have been so removed within 5 days of their removal. The undertaker must within 15 working days of such certification reinstate the land on Little Denmead Farm south of the green dashed line between points X and Y on The Plan to Agricultural Soil Quality.

Works on Little Denmead Farm

15. —(1) Regardless of any provision in this Order, the undertaker cannot enter or possess any part of Little Denmead Farm other than in relation to the execution of works relating to the Converter Station, Related Structures, Related Cables and Work No. 3. For the avoidance of doubt, regardless of any provision in this Order or anything shown on the land plans and in the book of reference, the undertaker cannot acquire (whether by exercising its powers under Part 5 or any other part of this Order or otherwise) any part of Little Denmead Farm.

- (2) Not less than 28 days before starting the execution of any works in, on or under the part of Little Denmead Farm that is not the subject of permanent compulsory acquisition powers that is authorised under paragraph 3(a) of this Part 7 that may materially affect the operation of Little Denmead Farm, the undertaker must submit to the Owner for approval a plan, section and description of the works to be executed on such land and a timetable for when such works are to be carried out.
- (3) The approval of the Owner under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to the Owner, the Owner has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, the Owner is deemed to have approved the said plan, section description and timetable as submitted.
- (4) When giving its approval under sub-paragraph (2), the Owner may specify such reasonable requirements which in the Owner's opinion are necessary in the execution of the works.
- (5) The works described in sub-paragraph (2) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (2) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (4) by the Owner. Where the Owner reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the Owner's reasonable satisfaction prior to the works described in sub-paragraph (3).
- (6) In the event that the Owner issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (2), the undertaker may refer the matter to appeal in accordance with Schedule 3 of the Order (procedures in relation to certain approvals etc).
- (7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (2) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to the Owner notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances.

(9) Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or Owner requires the removal of Apparatus or the Owner makes requirements for the protection or alteration of Apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of Little Denmead Farm and the Owner shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(10) If in consequence of any agreement reached under Part 7 the access to any Apparatus or Alternative Apparatus is materially obstructed, the undertaker must provide such alternative means of access to such Apparatus or Alternative as will enable the Owner to maintain or use the Apparatus or Alternative Apparatus no less effectively than was possible before such obstruction.

(11) The undertaker must send the Owner certification in writing as to the date on which the works covered by this paragraph 15 have been practically completed. The undertaker must within 20 working days of such certification then remove all apparatus and Work No. 3 from the part of Little Denmead Farm that has not been the subject of compulsory acquisition powers under paragraph 3(1) of this Part 7, and reinstate the land on Little Denmead Farm south of the green dashed line between points X and Y on The Plan to Agricultural Soil Quality.

Due care and skill

16. —(1) The fact that any act or thing may have been done by the undertaker pursuant to an approved plan or document will not excuse the undertaker from liability under the provisions of this Part 7 if the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not accord with the approved plan or document,

Indemnity

17 —(1) Subject to sub-paragraphs (2) and (3), if by reason of, or in connection to, or in consequence of the following with respect of the part of Little Denmead Farm that is not the subject of compulsory acquisition powers granted under paragraph 3(a) of this Part 7:

- (a) the presence of the undertaker (including any person employed or authorised by the undertaker) ; or
- (b) the presence of equipment belonging to the undertaker or any person employed or authorised by the undertaker ; or
- (c) the construction, use or removal of any works (including access, utilities and landscaping), authorised by this Part 7 of this Schedule 13 ; or
- (d) any reinstatement works authorised by this Part 7 of this Schedule 13; or
- (e) the construction, use, maintenance or failure of any part of the Converter Station, Related Structures or Related Cables; or
- (f) the repair, inspection, removal, alteration or protection of the Converter Station, Related Structures and Related Cables; or
- (g) the inspection, removal, alteration or protection of any Apparatus or Alternative Apparatus
- (h) the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker;
- (i) any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out works, use or maintenance;
- (j) any subsidence resulting from any of these works;

(k) decommissioning of works authorised under this Part 7 and of the Converter Station, Related Structures, Related Cables and Work No.3;

(l) loss of access (temporary or permanent);

by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, use, reinstatement, repair, inspection, removal, alteration, protection or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule, any loss, disturbance, expense, or damage that is caused, in the reasonable opinion of the Owner, to the Agricultural Soil Quality of any part of Little Denmead Farm) or to the property of the Owner or to Apparatus or Alternative Apparatus, or there is any interruption caused to the operation (including agricultural production) of Little Denmead Farm, and the Owner suffers loss, disturbance, damage or expense as a result of that or becomes liable to pay any amount to any third party, the undertaker will:–

(m) bear and pay on demand the loss, disturbance, expense, or damage reasonably incurred by the Owner in relation to the property, Apparatus, Alternative Apparatus and Agricultural Soil Quality at Little Denmead Farm;

(n) bear and pay on demand the reasonable expenses incurred by the Owner in, or in connection with, the inspection, removal, alteration or protection of any Apparatus or Alternative Apparatus within Little Denmead Farm;

(o) bear and pay on demand the loss, disturbance, expense, or damage reasonably incurred by the Owner in relation to the interruption in the operation of Little Denmead Fram, including agricultural production;

(p) bear and pay on demand the cost reasonably incurred by the Owner in making good such damage or loss, or restoring the relevant part of Little Denmead Farm to being suitable for agricultural production; and

(q) bear and pay on demand and indemnify the Owner for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Owner, by reason or in consequence of any such damage or interruption or Owner becoming liable to any third party as aforesaid other than arising from any default of Owner.

(2) The fact that any act or thing may have been done by the Owner on behalf of the undertaker or in accordance with a plan approved by the Owner or in accordance with any requirement of the Owner or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless the Owner fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and the Owner.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of the Owner, its servants, contractors or agents.

(4) The Owner must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The Owner must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 16 applies. If requested to do so by the undertaker, the Owner shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 17 for claims reasonably incurred by the Owner.

(6) The undertaker must not re-enter Little Denmead Farm in the absence of restoration of the land to the Agricultural Soil Quality and payment referred to in paragraph 17(1) above.