

Date: 1 March 2021

AQUIND Interconnector application for a Development Consent Order for the 'AQUIND Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030) in relation to Little Denmead Farm

Post Hearing Note in relation to Compulsory Acquisition Hearing 3: the Introduction of a new Description of Development comprised of 'extension' of the existing Lovedean Sub-station

Submitted in relation to Deadline 8 of the Examination Timetable

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SECTION A – THE INTRODUCTION OF A NEW DESCRIPTION OF DEVELOPMENT

1. At Compulsory Acquisition Hearing 3 ("**CAH3**") the ExA asked the Affected Party to provide a note on the scope of the Rochdale envelope and the extent of the Lovedean Sub-station. Please find the response to that request below.
2. Mr. Geoffrey Carpenter and Mr. Peter Carpenter are the freeholders of Little Denmead Farm, Broadway Lane, Denmead, Waterlooville, PO8 0SL ("the **Affected Party**").
3. The Affected Party owns the freehold land affected by the Development Consent Order application and identified as Plots 1-32, 1-32a, 1-38, 1-51, 1-69, 1-70, 1-71 and 1-72, which now includes Stoneacre Copse ("**SC**").
4. The Affected Party submitted 'Comments on the ExA's further written questions (ExQ2) [**PD-031**] (question references LV2.9.1 and LV2.9.2)' [**REP7-117**] in which it questioned the Applicant's amendments to the definition of the development added into the draft DCO [REP6-015] and Explanatory Memorandum [**REP6-018**] ("**ExQ2 Comments**").
5. The Applicant has submitted an application ("the Application") for development requiring development consent ("the Development") that is also "EIA Development" ("the EIA Development") for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the IPEIAR 2017") and benefits from certification in that respect in early 2020. The EIA Development is proceeding through a statutory Examination under the Planning Act 2008 ("**PA 2008**") for its evaluation using the "Rochdale Envelope" approach. That Approach has been defined by a number of important cases (such as *Tew*, *Milne* and *Smith*) and enables, if lawfully expressed, a match between the development evaluated for EIA purposes and the certain terms of a framework within which details can be worked out in due course. However, the decision maker is required to evaluate what the subsequent decision maker may evaluate in due course and is not entitled to merely assume that subsequent decision makers will 'get it right' subsequently. See those cases, in particular *Smith*. If correctly followed as the cases outline, the approach in law ensues compliance with the EIA Directive and the domestic Regulations that give effect to that Directive.
6. An important touchstone of the Directive and Regulations is the scope of the project being evaluated and in England this is described as the "description of the project" (as the Directive uses that term) or the "description of the development" (in domestic law). The EIA regime requires that the project be "described" and that that "development", as so "described" be evaluated under the EIA provisions. In his matter, the Secretary of State issued his Section 35 Direction in [**APP-111**] that, lawfully read with the related Statement at [**AS-040**], describes in paragraph 3.5 of the latter at paragraph 3.5.1(A) "works at the existing National Grid Lovedean substation in Hampshire where

Aquind Interconnector will connect to the existing GB Grid”. The Application Form at [APP-005] includes no reference to the Substation. The EIA Development was accompanied by an “environmental statement” that includes a Chapter at [APP-118] entitled “Description of Development”. That Chapter includes at Section 3.6 the following:

The description of the onshore elements of the Proposed Development is structured as follows: National Grid Connection Works; Converter Station Area; Onshore Cable Corridor; Landfall; Operation and Maintenance; and Decommissioning.

7. It is clear that the scope of works relating to National Grid extent alone to “Connection Works”.

8. Paragraph 3.6.2 describes these “connection works” as follows:

3.6.2.1 To facilitate the connection to the National Grid Lovedean Substation, it will be necessary to provide additional electrical infrastructure. The electrical connection equipment at Lovedean Substation is expected to be a combination of Air Insulated Switchgear (‘AIS’) and Gas Insulated Switchgear (‘GIS’).

3.6.2.2 It will be necessary to connect two HVAC Cable circuits (each comprising three cables). One connection point is proposed to be located on the western side of the Lovedean substation and the other on the eastern side of the substation for each HVDC Circuit, as shown in Plate 3.5.

9. Therefore, the “connection” works comprise an AIS and a GIS.

10. Plate 3.4 on page 3-31 show in red and blue colours what is “new” on a diagrammatic plan entitled “Proposed Positions of Aquind Interconnector Bays at National Grids Lovedean Substation.

11. Paragraph 3.6.2.3 then says this:

Each bay would require a Portable Relay Room (‘PRR’), to accommodate associated protection and control cubicles and batteries. The PRR manage the data signal from the equipment and sends it on to the control centres for the Converter Station and Lovedean Substation. Further detail of the National Grid connection works is included in Appendix 3.5, section 1.1.2.

12. Therefore, the “connection” works comprise a “PRR”.

13. In [APP-359], Appendix 3.5 includes a parameter table – “Table 1”. Table 1 does not in fact include any reference to either “connection” or “extension” works or structures. Section 1.1.2 states this in respect of what the Applicant has described as “NGET Substation Connection”:

NGET Substation Connection

1.1.2.1 The Applicant has a Connection Agreement in place with National Grid Electricity System Operator (‘NGESO’) (NGET before the legal separation) to connect to the existing 400 kV Lovedean Substation in Hampshire.

1.1.2.2. To facilitate the connection of the Converter Station, there will be a requirement to provide additional electrical infrastructure at Lovedean Substation.

1.1.2.3. Lovedean Substation is the point of connection for the Proposed Development into the National Electricity Transmission System ('NETS'). One connection point is proposed to be located on the western side of the Substation and the other on the eastern side of the Substation, one for each circuit.

1.1.2.4. The outdoor electrical infrastructure required in Lovedean Substation will be similar to the outdoor equipment which forms part of the proposed Converter Station and is also found within typical electrical substations. It will include electrical equipment such as switchgear, measurement and protection devices, filters, etc, that enable the connection between the Lovedean Substation via High Voltage Alternating Current ('HVAC') Cables to the HVAC part of the Converter Station.

1.1.2.5. The electrical equipment at Lovedean Substation is expected to be a combination of Air Insulated Switchgear ('AIS') and Gas Insulated Switchgear ('GIS').

1.1.2.6. To facilitate the Applicant's connection capacity of 2075 MW1 , two bays are required at Lovedean Substation to connect on to the NETS.

1.1.2.7. It is possible that the Applicant through the appointed contractor will deliver the connection works or alternatively they may be delivered by the National Grid TO as part of its licence conditions. The appropriate approach will be established in the Construction Agreement between the Applicant and NGENSO prevailing at the time of the commencement of the Converter Station construction.

14. The Applicant has differentiated between "connection" and "extension" in its environmental statement and states this in relation to an "extension":

Western Extension

1.1.2.8 There is expected to be an extension of Lovedean AIS substation to the West, including ground levelling works to bring the ground level in line with the existing substation.

1.1.2.10 Construction of one additional bay, likely to be AIS within the extended Lovedean Substation operational compound.

1.1.2.10. Installation of three additional cable sealing ends within the extended Lovedean Substation operational compound

1.1.2.11. Installation of one HVAC Cable circuit between the extended Lovedean Substation operational compound and the Converter Station.

1.1.2.12. Installation of three cable sealing ends within the Converter Station compound for the HVAC circuit.

15. Planning permission for the Lovedean Substation *Extension* was granted previously and it was itself subject to environmental impact assessment because it itself qualified as "EIA Development". The Affected Party has previously submitted evidence in relation to that planning permission, what it included and extracts from the environmental statement. The statement included evaluation of landscape and visual impacts engendered by that development.

16. The EIA Development of the Applicant included in its Planning History at [APP-110], Table 1, that the Extension, reference 13/01025/F/UL was permitted and that that planning permission had been "implemented". The permitted development was described in its description of development for EIA purposes also as this:

Extension of the existing substation to include additional electrical equipment - shunt reactor, static var compensator and super grid transformer.

17. Therefore, the "extension" included equipment described as "*shunt reactor, static var compensator and super grid transformer*". Equipment (and if outside, structures), described as "*shunt reactor, static var compensator and super grid transformer*" are not described in the environmental

statement accompanying the EIA Development nor in the Application form description of development. Rather, only “AIS”, “CIS”, and “PRR” are described as part of the Application EIA Development in its accompanying environmental statement.

18. Consistent with the scope of the Application EIA Development not including “extension” works to the Substation of National Grid, the draft development consent order at [APP-019] did not include the description “extension” but said this in Schedule 1, Authorised Development:

1. Development which is to be treated as development for which development consent is required as directed by the Secretary of State in the direction issued pursuant to section 35 of the 2008 Act dated 30 July 2018 and associated development within the meaning of section 115(2) of the 2008 Act which is located approximately 13.5 kilometres north of the south coast near Lovedean to the exclusive economic zone boundary between the UK and France, comprising -

Work No.1 – substation connection works consisting of –

(a) onshore HVAC cables of up to 800 metres in length (each cable circuit);

(b) up to 2 400 kilovolt air and or gas insulated switchgears and associated equipment;

(c) up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;

19. The Application development description in the draft DCO does not in fact state “extension” but does expressly refer to the AIS and CIS in Works No 1(b). The environmental statement accompanying the Application did not itself evaluate the EIA Development comprised of the Lovedean “extension” and consideration of the Application EIA submitted shows that the extension planning permission was not in fact included as even relevant in the scope of permissions taken into account in the environmental statement Chapter on landscape and visual assessment.

20. [REP3-004] was a further draft DCO and it was cast in the same terms as the Application “description of the development”. So too was [REP5-058]. So too was [REP5-009].

21. But, for the very first time in [REP6-016], on 23rd December 2020, just before Christmas, the Applicant submitted a changed draft DCO that sought expand the description of its EIA Development to include an additional description outside of the scope of the Application description of development within Schedule 1: (Emphasis added)

1. Development which is to be treated as development for which development consent is required as directed by the Secretary of State in the direction issued pursuant to section 35 of the 2008 Act dated 30 July 2018 and associated development within the meaning of section 115(2) of the 2008 Act which is located approximately 13.5 kilometres north of the south coast near Lovedean to the exclusive economic zone boundary between the UK and France, comprising -

Work No.1 – substation connection works consisting of –

(a) ~~onshore HVAC cables of up to 1 kilometre in length (each cable circuit);~~

(a) extension of the existing substation, including site establishment, earthworks, civil and building works;

(b) up to 2 400 kilovolt air and or gas insulated switchgears and associated equipment;

(c) onshore HVAC cables of up to 800 metres in length (each cable circuit);

(d) ~~(e)~~ up to 5 link boxes per cable circuit with dimensions of up to 0.8 metres in length by 0.8 metres in width by 0.6 metres in height;

22. Therefore, the Applicant has now (purportedly) added a description of development to its current description of development) as described in a new paragraph (a) and deletion of the earlier (a). the New added description reads:

(a) extension of the existing substation, including site establishment, earthworks, civil and building works; ...

23. There is no evidence that the requirements of Regulation 20 of the IPEIAR 2017 were or have been complied with and there remains no certificate required by the regulation in front of the Examination or the Secretary of State as at Deadline 8 of the statutory examination period.

24. The Affected Party respectfully points to Regulation 4(2) of those Regulations and to the definition of "EIA". It appears to that Party that inclusion of the "extension" (itself EIA Development as understood by National Grid on its own application to the local planning authority) that cannot be included.

25. There remain no parameters within which the "extension" can be lawfully evaluated and there remains no application by the Applicant to extend the Rochdale Envelope notional volume containing other electrical structures related to the Converter Station father eastwards so as to encompass with that notional volume further descriptions of (EIA) development and farther electrical structures. The Affected Party expresses its real surprise at the iterative approach by the Applicant and its side stepping of EIA obligations under the 2017 Regulations.

26. The Affected Party has reviewed the Applicant's latest comments on what constitutes the 'extension' of the existing Lovedean sub-station in the following documents and comments in the sections below:

- a. The Statement of Common Ground with National Grid Electricity Transmission Plc - Rev003' ("**the SoCG**") [REP6-051];
- b. The draft DCO [**REP7-013** and **REP7-014**] ("**draft DCO**");
- c. The Applicant's Written Summary of Oral Submissions - ISH4 (Draft DCO) [**AS-065**] ("**ISH4**"); and
- d. Appendix 1 National Grid ESO Network Options Assessment (Jan 2021) [**AS-066**]

SECTION B – PARTICULAR ANALYSIS

27. It is evident from the above that the latest iteration of the draft DCO also contains the additional wording describing "*Work No.1*" inserted at paragraph 1 of Schedule 1 as, "*substation connection works consisting of (a) extension of the existing substation, including site establishment, earthworks, civil and building works*".
28. The concerns set out in the Affected Party's ExQ2 Comments were predicated on the fact that a National Grid sub-station extension had been previously approved by planning permission (reference: 13/01025/FUL) on land lying between the proposed converter station site and the existing Lovedean sub-station ("the **NG Extension Permission**") and that it appeared, therefore, that that planning permission was to be built out by National Grid (it having foreshadowed in its planning application material submitted to the Examination, that such Grid extension would itself enable connection by the Interconnector to the National Grid) and not by any third party.
29. One of the siting options (Bii) for the converter station is located over half of the land previously proposed to site the NG Extension Permission development whilst the other option (Bi) is located immediately adjacent, to the west, to what was the red line of the NG Extension Permission. But the scope of Option B(ii) does not extend farther than the landscape belt required by that Permission and does not encompass the structures permitted by that Permission. The extent of the B(ii) envelope remains consistent with the building out by National Grid of its own Extension as permitted and of introduction of AIS and CIS structures within that landscape belt.
30. Consequently, and however, the additional description of development wording used in the changed draft DCO description of development reflected those proposals envisaged under the NG Extension Permission almost exactly.
31. The Applicant, at ISH4 explained that this description is not a reference in fact to the 'extension' to the existing Lovedean sub-station per se, but rather that what was envisaged was the placing of 'equipment' outside Lovedean substation. However, this is difficult to reconcile with the originally submitted Works No 1 (b) description that expressly refers to certain equipment structures and no other works.
32. Moreover, despite that some conditions had been discharged on the NG Extension Permission, the Affected Party submitted during ISH4 that it was able to verify with Winchester City Council that the NG Extension Permission had lapsed.
33. Prima facie it appears that since then an arrangement had been made with National Grid to include what now appears to be the *lapsed* NG Extension Permission development (itself subject to an EIA when itself permitted) into this DCO. This is most surprising and circumvents Regulation 20 of the 2017 EIA Regulations. The possibility of this arrangement is indicated in the statement of common

ground iterations with National Grid. For example, by comparing paragraph 1.2.1.4 of the first SoCG [REP1-113] and the same paragraph of the later third version [REP6-051].

34. SoCG revision 3 also clearly added explicit reference to works:

"by way of an extension to the existing substation, including site establishment, earthworks, civil and building works"

and also chronicles a teleconference on the 3rd December 2020 resulting in an audit of the environmental assessment ("**ES**") to assert that the further works were (in some way) appropriately assessed (see Table 4.1 of SoCG revision 3) and the findings were set out by a letter from WSP dated 17 December 2020 ("the **Letter**") and table 1-1 of findings ("the **Table**") at Appendix 1 of the SoCG [REP6-051].

35. The Letter refers to paragraph 3.6.2.2 of ES Chapter 3 (Description of Proposed Development) [APP-118] and Plate 3.4 which shows positions of "*connection bays*" and the "*indicative extension area (in red)*". No commitment is made to build the "*extension in the area shown*" and the ES does not treat it as a final design of certain parameters.

36. There remains also no evidence at all in front of the Examination that the Applicant has complied with the Regulation 20 requirements of the 2017 IPEIAR or that the ExA itself has exercised its logically prior required discretion in respect of the "need" for further information, quite apart from the Secretary of State's Examination Guidance on changes to the development and the steps mandated by him in relation to changes to the Application description of development and the *Wheatcroft* test. See also the *Kent* case about the lack of jurisdiction to increase the scope of development as opposed to reducing it.

37. Plate 3.4 of the environmental statement "description of development" helpfully shows (not an "extension" but) the "*connection bays*" and is replicated below for ease of reference ("**the Connection Bays**"):

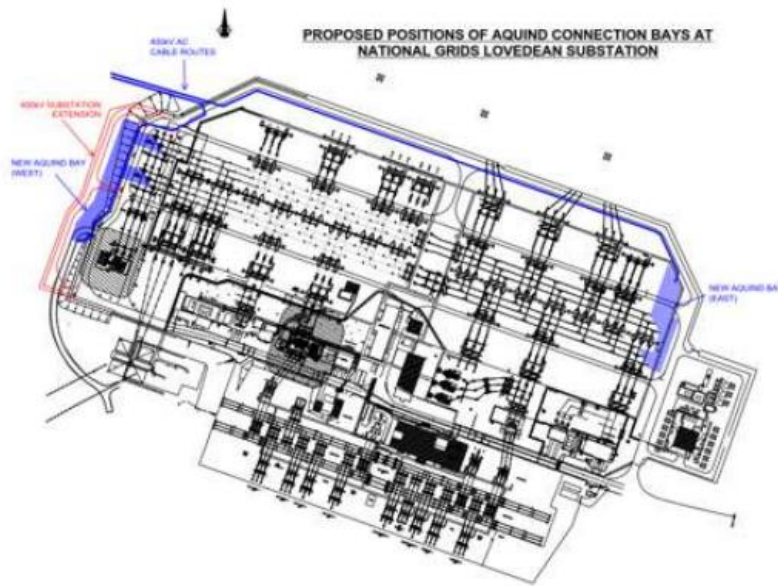


Plate 3.4 - Proposed Eastern and Western connection bays at Lovedeane Substation.

38. By this it can be seen that the western extension of the Sub-station is not itself coloured and it can be seen and established that the red area is not as extensive as the red line area to which the NG Extension Permission related (if lapsed) and relates (if not lapsed) (which we have previously provided to the Examination in detail) which is shown here:



39. Comparison of Plate 3.4 and the above shows Plate 3.4 as extended westwards and the coloured elements alone forming part of the EIA Development of the Application. The Letter then continues to:

"Work No 1 with the addition of 'a) Extension of the existing substation, including site establishment, earthworks, civil and building works' has been assessed"

and asserts that it was not necessary to amend the ES. This conclusion was most surprising because the Permitted Extension was itself EIA development subject to environmental impact assessment for landscape and visual effects and so it seem not credible to suggest that the same Permitted extension – if envisaged within the Application – results in no different effects on the environment.

40. Therefore, it is reasonable to conclude that the starting point was that the audit focussed on the *Connection Bays* in some way themselves being characterised as ‘the extension works’ to the existing Lovedean substation referred to and not the wider works envisaged by the NG Extension Permission.
41. Concern is heightened by the fact that very similar proposals for the Vanguard DCO – by an experienced operator in the field of energy - clearly envisaged the need for existing sub-station extensions, and whilst these were expressly dealt with and included in that project this does not appear to be proposed in this DCO based on the SoCG, the Letter and the Table.
42. The Table refers to the extension works being described at section 1.1.2 of the 'Environmental Statement – Volume 3 – Appendix 3.5 Additional Supporting Information for Onshore Works' [**APP-359**] ("**Appendix 3.5**") and that they were assessed in the Applicant's 'ES Chapter 15 (Landscape and Visual Amenity)' [**APP-130**] ("**the ES Chapter**"). But, in fact, they were not. Paragraph 15.5.4 Future Baseline assumed the execution of the Extension by a third party. See 15.5.4.2. But the present baseline was not evaluated by that Chapter in respect of the Extension. Paragraph 15.5.4.7 said this:

Whilst the implications of the National Grid Lovedean Substation extension are considered in the future baseline, effects on landscape character and visual amenity as a consequence of Development No 67, 68 and 70 are considered in the assessment of cumulative effects (Section 15.8)...

15.8.4.25 By year 10, mitigation planting (a mix of woodland and scrub) is anticipated to reach a height of up to 8 m, partially screening many views of the Converter Station buildings and, for most receptors reducing the effect. The following effects are anticipated: ...

North east of the Converter Station (Nos. 19, 20, 21 and 22): Mitigation planting for Lovedean Substation extension should contribute a visual screening function but as this is dependent on its maturity this assessment concludes that the effects would remain unchanged over time...

43. Thus, the environmental statement was reliant for its evaluation on the building out of the Permission for the Extension and also its required landscape condition and landscape plans. The Affected Party has provided this material to the Examination previously. The landscape and visual effects were addressed in the environmental statement accompanying that application and resulted in the planning condition also.

44. Appendix 3.5 recognises that (having regard to Regulation 20(1) and (2) of the IPEIAR 2017, and whether further information is necessary, and also to paragraph 19 of the Planning Act 2008: Guidance related to compulsory purchase and risks of impediments to implementation:

"to facilitate the connection of the Converter Station, there will be a requirement to provide additional electrical infrastructure at Lovedean Substation" (paragraph 1.1.2.2). It goes on to state that "outdoor electrical infrastructure required in Lovedean Substation will be similar to the outdoor equipment which forms part of the proposed Converter Station" (paragraph 1.1.2.4), "will include electrical equipment such as switchgear, measurement and protection devices, filters, etc, that enable the connection between the Lovedean Substation via High Voltage Alternating Current ('HVAC') Cables to the HVAC part of the Converter Station" (paragraph 1.1.2.4)

and that:

*"the electrical equipment at Lovedean Substation is expected to be a combination of Air Insulated Switchgear and Gas Insulated Switchgear" (paragraph 1.1.2.5). To facilitate this "**two bays are required** at Lovedean Substation to connect on to..." (Emphasis added) (paragraph 1.1.2.6).*

The following paragraphs then add further detail as to the works envisaged for the western and eastern Connection Bays.

45. Reference to the term "bays" appears different to the draft DCO wording of "*extension of the existing substation*".

46. References are then provided in the Table in the ES Chapter to four points at which some kind of assessment was undertaken, as follows:

- a. Paragraph 15.1.1.2 which describes generally the basis of the proposed development by reference to 'Chapter 3 (Description of the Proposed Development) of the Environmental Statement ('ES') Volume 1 (document reference 6.1.3);
- b. Paragraph 15.5.4.6 which states that NG Extension Permission existed "*to extend further west*";
- c. Paragraph 15.7.1.8 which state that "*within the perimeter of the Converter Station, covering a footprint of 200 m x 200 m (appropriately 4 ha), would sit buildings up to 26 m high including the Converter Hall, Control Building, Valve Coolers, Spares Building (referred to on the Parameter Plans and Table as Parameter Zone 4). Buildings and equipment including transformers, termination equipment, reactors, generator and HVDC and HVAC cable termination equipment up to 15 m would sit within Parameter Zone 3 surrounded by a hardstanding compound*"; and

- d. Paragraph 15.7.1.29 which reports that "*where practicable (and subject to agreements with National Grid) areas of existing mitigation planting on National Grid land that falls within the Converter Station Area and which would be lost as a consequence of health and safety constraints associated with the Converter Station, would be used to reinforce new mitigation planting*".

47. There are a number of concerns with these four audited locations of apparent assessment.
48. Firstly, there is a clear discrepancy of fact. The ES Chapter considered the NG Extension Permission to be live ("approved and implemented" as recorded in its Planning History chapter and as also evaluated in Chapter 15 of the ES that assumed it would be built out and so assumed that it was alive). In fact it was not live, as confirmed by the Affected Party during ISH4. The failure to recognise that the NG Extension Permission had lapsed over three years before the date of compilation of the ES Chapter, on 6 August 2016, is concerning. However, perhaps it is indicative of the fact the Applicant and National Grid were proceeding on a misunderstanding and upon realising this sought, through the amendments to the description of development, to widen out the scope of the project.
49. Secondly, such a situation would be reflected in the fact that no robust evidence of EIA assessment exists in front of the Examination and it is the existence of the Connection Bays that are sought to be differently characterised by the Applicant so as to disguise a very different new development of description that the latest draft DCO is driven to describe instead as meaning "*extension*".
50. Paragraph 15.1.1.2 is a generic description of the proposed development and refers to a list of other documents, unrelated to this issue.
51. Paragraphs 15.7.1.8 and 15.7.1.29 are paragraphs in overarching section 15.7 that deals with proposed mitigation under the sub heading 'Converter Station and Infrastructure Design'. Paragraph 15.7.1.8 refers to development within the perimeter of the converter station (edged blue below) and to parameter zone 4 (shown below by yellow cross) which is within the converter station footprint. Both are clearly quite distanced from the approximate location of the western Connection Bay (shown by blue cross).



(Image taken from '2.6 Converter Station and Telecommunications Buildings Parameter Plans' [REP7-009])

52. Paragraph 15.7.1.29 simply references planting lost due to the converter station area.
53. What is clear from this analysis by the Affected Party – and which the ExA itself is required by Regulation 20 to have undertaken in compliance with that Regulation but appears to not have done so - is that the audit referred to in the SoCG shows a gap in EIA process of both evaluation of landscape and visual effects and of required consultation under Regulation 20..
54. The sections referred to above have not, we understand, been added to through the course of this Examination to ensure a match between the description of the development and what has been evaluated under the IPEIR 2017. .
55. The effect of this late amendment to the works description results in a subsisting breach of Regulations 20 and 5 (if the additional description of Works No1 (a) is envisaged to be included in the draft DCO in front of the ExA and Secretary of State and so engages regulation 4(2) of the IPEIR 2017. The project and relating to a scope of works that has not been assessed as required by the Directive and Regulations. If this were to occur, the consequential effect on the ES and LVIA baseline conclusions is that they cannot be known without more to be Regulation compliant.

SECTION C – CONCLUSIONS

56. Notwithstanding the Affected Party's wider objections to this project, if the ExA were minded to recommend confirmation of the DCO to the Secretary of State, we therefore request the ExA ensures deletion of Works No 1(a) (the envisaged “extension”) so as to ensure that the evaluated development remains confined to “connection” works and cannot extend to “extension” development (permitted under an earlier planning permission as discrete EIA development).