



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Navitus Bay Wind Park

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

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Examining Authority

Date: 11 June 2015

Navitus Bay Wind Park Examining Authority's Report of Findings and
Conclusions and Recommendation to the Secretary of State

Examining Authority's findings and conclusions and recommendation in respect of Navitus Bay Wind Park and connection works.

File Ref EN010024

The application, dated 10 April 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 10 April 2014. The applicant is Navitus Bay Development Limited. The application was accepted for examination on 8 May 2014. The examination of the application began on 11 September 2014 and was completed on 11 March 2015.

The development proposed comprises up to 194 wind turbine generators and associated onshore and offshore infrastructure, with an installed capacity of up to 970 MW (the Project). The Project would be located on the bed of the English Channel approximately 17.3 km off Scratchell's Bay (south of the Needles on the Isle of Wight) and 14.4 km from Durlston Head (on the Isle of Purbeck). The Turbine Area occupies an area of 153 km².

The Turbine Area Mitigation Option (the TAMO) proposed during the examination comprises up to 105 wind turbine generators and associated onshore and offshore infrastructure, with an installed capacity of up to 630 MW. The TAMO would be located on the bed of the English Channel approximately 21.6 km off Scratchell's Bay (south of the Needles on the Isle of Wight) and 18.8 km from Durlston Head (on the Isle of Purbeck). The TAMO turbine area comprises an area of 79 km².

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should withhold consent for the Project and the TAMO. If however the Secretary of State decides to give consent to one or both options then the Examining Authority recommends that the Order, or Orders, should be in the form attached at Appendix A.

where required by policy or legislation. The Panel is satisfied that the requirements to consider offshore alternatives have been fulfilled to the extent expected in NPS.

ONSHORE ALTERNATIVES

The applicant's selection process

- 4.3.31 ES Volume C Chapter 4 'Onshore Alternatives' [APP-090] provides details of the main alternatives studied by the applicant and the reasons for the choices made in relation to the onshore element (i.e. the Cable Landfall, Onshore Cable Corridor and Onshore Substation) of the Application Project. Nevertheless, the Panel pressed the applicant (at the issue-specific hearing and in the first round of questions) to explain the regard given to the New Forest National Park and the Dorset and Hampshire Green Belt in the site selection process.
- 4.3.32 The grid connection point is described as a key element of the onshore search process. Selection of a grid connection point is the responsibility of National Grid Electricity Transmission (NGET). NGET identified three existing substations at Chickerell, Fawley and Mannington [REP-2785, Appendix 1]. NGET conducts assessments on the technical and economic feasibility of various options before offering a specific location to a developer. As there were already substations in the locality with sufficient capacity to accommodate the demand, the applicant chose not to seek a greenfield site to locate a new substation with pylons and associated infrastructure. The applicant carried out further detailed feasibility studies into the three potential connection locations between mid-2010 and March 2011.
- 4.3.33 Of the three substations identified, Mannington (near Three Legged Cross) 20 km inland was selected. The substations at Chickerell and Fawley were discounted for the following reasons:
- 4.3.34 Chickerell:
- Environmental impact of the offshore cable corridor passing between two areas of dSAC.
 - Lack of onshore cable corridor options.
 - Lack of feasible onshore substation options.
 - Significant upgrades at the National Grid substation.
 - Engineering risks on the offshore export cable corridor was the main reason for rejecting this option. Unprecedented levels of anchoring and cable protection would be required, due to the significant lengths of hard bedrock assessed as 'extremely challenging'. Given the potential environmental impact there was no certainty that such a route could feasibly be constructed or consented.
- 4.3.35 Fawley:

- The entirety of the cable route to a new onshore substation and to the National Grid substation (approximately 20 km) would be within the New Forest National Park.
- Potential to require closure of the Western Solent while installing cables and the associated consenting concerns.
- Health and safety concerns relating to the closure requiring all vessels to divert around the Isle of Wight.
- Landfall designations include SPA, SAC, SSSI and Ramsar.
- The key reason was the engineering risks associated with laying cables between Hurst Point and the Isle of Wight, due to extreme changes in bathymetry, steep slopes, high currents and exposed bedrock. Lack of width to install six cables rendered the export cable option unviable.

4.3.36 Mannington presented the following risks:

- Consenting of a new onshore substation on Green Belt land.
- Part of the cable route passing through the New Forest National Park.
- Long onshore cable route with international, national and local environmental designations to overcome.
- Restricted landfall options, of which one was considered viable.

4.3.37 The applicant explained that the risks identified were not insurmountable. Impact on the National Park was considered to be less with the Mannington than the Fawley option, as with the latter the entire cable route and the substation would be within the National Park. The Dorset and Hampshire Green Belt is so extensive in the area that it could not be excluded from the search area. Locating a substation within the Green Belt was considered by the applicant as a significant consenting risk to be weighed against other constraints for the Chickerell and Fawley options.

4.3.38 With regard to choice of landfall, the applicant pointed to the key constraints of the built-up nature of the coast as well as natural features such as Hurst spit and estuaries. Of the five sites initially studied, Southbourne and Highcliffe Castle were discounted early on for engineering and environmental reasons. The possibility at Milford-on-sea was discounted, given the technical difficulties associated with significant bathymetric variation along the offshore export cable route.

4.3.39 The potential to avoid approximately 8-10 km of additional cable route, of which 4 km would be within the National Park, led to the applicant to continue assessing the Chewton Bunny landfall in 2011. The decision to remove the site from consideration was based on the findings that a trenchless installation may be feasible for three circuits but not six. Use of the site would also have had a potentially significant impact on adjacent properties, compared to other sites. Taddiford Gap (Barton-on-sea) was

regarded as the most optimal site, for a number of reasons, and identified as the landfall site.

4.3.40 At the outset the applicant committed to undergrounding of the onshore cables. Identifying the route of the Onshore Cable Corridor involved three stages of: identifying a search corridor; defining a cable route and identifying the cable corridor. The ES explained that the cable routes would need to cross the outer edges of the National Park whichever of the three landfalls of Milford, Chewton Bunny and Taddiford Gap were selected. The ES also described the applicant's commitment to measures minimising potential impacts. These include use of trenchless techniques, reinstating lost features and avoiding the New Forest SPA. Similarly, the objectives for siting the cable route is listed - these range from avoiding or minimising harm to designated areas, sensitive habitats and private properties to reducing engineering constraints.

4.3.41 Table 4.7 of the ES Chapter 4 on 'Offshore Alternatives' set out the key routing options considered as well as the rationale for discounting them. These included risks of going through potential mineral extraction sites, engineering difficulties, environmental and residential amenity concerns. The ES explained that the 40m working width applied for in the Application Project was identified having regard to: the six cable circuits; separation distance between circuits and to allow for a temporary haul road as well as adequate working/storage space during construction. It was said that the width of the cable corridor was comparable with other offshore wind projects and was necessary in the interest of works being carried out in a timely and efficient manner [REP-3313].

Issues arising from other representations

4.3.42 The proposed cable route would run through 6 km of the southern part of the National Park. The New Forest National Park Authority (NFNPA) emphasises in its submissions [REP-3348] that all of the areas within the New Forest National Park boundary merit inclusion and are afforded the highest level of protection in relation to its landscape and scenic beauty. The weight accorded to the national park status by the applicant in developing the Project was questioned by the NFNPA, given that 'passing through the grounds of a five star hotel' and 'crossing the railway line' provided the reasoning in the ES for not selecting the Chewton Bunny landfall route and avoiding the New Forest. There was also insufficient justification for discounting the route shown on Figure 4.6 of ES Volume C Chapter 4 'Onshore Alternatives' with the cable clipping the south west corner of Burton Common and passing to its west outside of the National Park.

4.3.43 The merits of a grid connection at Fawley were set out in REP-3443 by Mr Lambon. He considered that decommissioning of that

power station provides opportunities for the Project to connect to that readymade facility. It is said the option was too readily dismissed in favour of an environmentally destructive alternative.

Panel's reasoning and conclusions on onshore alternatives

- 4.3.44 EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option, unless there are specific legislative requirements. In addressing this matter the Panel has had due regard to the legal and policy tests applying to developments in the National Park, which include an assessment of: need for the development; the cost and scope of developing outside the designated area or meeting the need in some other way. The matters are considered in detail in subsequent sections of this Report. For present purposes we looked only at the applicant's approach to site selection. In other words, whether the options of avoiding designated areas were adequately explored and whether the reasons for discounting them properly justified.
- 4.3.45 The siting and location of the main elements of the onshore development are to a large extent dependent on the grid connection point. The applicant has demonstrated to the Panel's satisfaction that feasible and practical alternatives were explored as part of the wide site search. The Mannington location was less burdened with technical and engineering difficulties than the Chickerell or Fawley sites. In addition to which, a number of environmental considerations such as the extent to which the cable route and the substation would occupy the National Park and landfall locations affecting designated SPA, SAC, SSSI and dSAC sites collectively weighed against the Fawley and Chickerell options. Focussing the search on existing substations obviated the need to explore greenfield sites, so removing the potential for further environmental incursions.
- 4.3.46 There is no other detailed or cogent evidence before the Panel to enable an assessment to be made of the suitability of the discounted sites over the Mannington grid connection point. The Mannington option would not preclude environmental intrusions into designated sites. But the final choice of connection is a matter of balancing extent of harm and potential for mitigation against the engineering and economic feasibility of the three options. That has been done against the background of an area where large swathes of land are either intensively developed, lie within the Green Belt or subject to a wide range of other protective legislative and policy designations.
- 4.3.47 The evidence shows that technical constraints drove the landfall location. These are documented in the ES and summarised above. The validity of IPs' submissions regarding cliff stability at the Taddiford Gap landfall site [REPS-2733, 2905, 3194 & 3849 for instance] is considered in Chapter 5 of this Report. However in

itself the issue should not divert attention from the applicant's ES and additional representations [REP-3313] outlining the main alternatives studied and the reasons why the Taddiford Gap site was selected. With regard to the Chewton Bunny landfall option, Table 4.7 of the ES [APP-090] lists a range of reasons besides disruptions to a five star hotel and a railway line for rejecting that option.

- 4.3.48 The cable route would pass through the New Forest National Park with each of the three most likely landfall options. Whether exceptional circumstances exist, and matters relating to the need for the development and effect on the environment, landscape and recreational opportunities (EN-1 paragraph 5.9.10) fall to be assessed later in this Report. For the purposes of policy requirements relevant to consideration of alternatives, the Panel accepts that the scope for developing outside the National Park is limited. The applicant's evidence also shows that the route to south west of Burton Common was rejected on the advice of Natural England and for reasons of the potential effect on a SANG⁴ provided for the Christchurch urban extension [REP-3313].
- 4.3.49 The Panel finds that the applicant has satisfactorily considered a range of site and route options for the various elements of the onshore aspect of the Navitus Bay project. The task was carried out over a period of time and the level of investigative work exploring the options was proportionate and in accord with policy expectations. The legislative requirements are addressed in the Chapters dealing with flooding, biodiversity and landscape impacts.

⁴ Suitable Alternative Natural Greenspace

22 COMPULSORY ACQUISITION AND RELATED MATTERS

22.0 THE REQUEST FOR COMPULSORY ACQUISITION AND OTHER POWERS

22.0.1 The request for powers of compulsory acquisition was made in the application documents. The applicant provided a Statement of Reasons [APP-042], a Funding Statement [APP-043], a Book of Reference [APP-044 to 049], a Section 132 Statement [APP-050], Land Plans [APP-008] and Special Category Land Plans [APP-010].

22.0.2 The Book of Reference was revised throughout the examination [REP- 3347, 3502 and 4046³⁰]. An updated Funding Statement was submitted by the applicant at Deadline VI [REP-3675] to explain the introduction of the new Article (Guarantees in respect of payment of compensation) in the DCO [REP-3643]. The extent and nature of the compulsory acquisitions sought applies to the Application Project and the TAMO. The reference to the Project in this Chapter applies to both options.

22.0.3 The land for which powers of compulsory acquisition are sought is to be used for the onshore infrastructure component of the project – that is:

- the Landfall which is located at Taddiford Gap, between Barton-on-Sea and Milford-on-Sea with transition joint bays to connect onshore and offshore cables;
- approximately a 35 km Onshore Cable Corridor, which would be entirely underground and is required to transmit the electricity generated by the offshore wind park to a grid connection point;
- a new Onshore Substation located in Three Legged Cross, which is required to transform the electricity voltage up to 400 KV appropriate for the UK transmission system network.

22.0.4 The land to be acquired is primarily agricultural land. There are a number of rights of way that would be crossed, and land over which statutory undertakers have freehold, leasehold or other interests.

22.0.5 The powers to acquire land are created in Articles 22-30³¹ of the Development Consent Order (DCO).

³⁰ REP-4046 comprises the Book of Reference submitted towards the end of the examination and includes a separate tracked changes version

³¹ Article numbering in this Chapter follows the numbering of the DCOs attached as Appendix A to this Report

22.0.6 The powers to obtain temporary possession or other rights over land are included in Articles 13 – 17, 20, 21 and 31-33.

22.1 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

CONTEXT

22.1.1 The Statement of Reasons [APP-042] explained that the applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of cable installation and subsequent access) and temporary rights of possession and/or access. In addition to which, restrictive covenants are sought on most plots over which rights are sought, in order to protect the installed cables from being excavated or built over.

22.1.2 The Book of Reference [REP-4046] schedules all owners, lessees, tenants and occupiers, those with other interests in the land and those entitled to make relevant claims. Table 1 of the Book of Reference describes in detail the nature of the cable installation and maintenance rights sought. They are referenced POS 1, POS 2, A-A5, B, C-C1, D-R (207 plots). Rights S-Z refer to the nature of the access only rights sought for plots where permanent access is required to the Cable Corridor but no cable construction would occur (10 plots Table 2 in the Book of Reference). The restrictive covenant sought over some of the Order land feature in Table 3 and are referenced AA, BB and CC (143 plots).

22.1.3 In addition the DCOs seek further powers in relation to land which might or would also interfere with existing rights. These further powers are:

- The carrying out of street works for the purposes of the authorised Project, as specified in Article 14 and Schedule 2.
- The temporary stopping up, alteration or diversion of streets, as specified in Article 16 and Schedule 3.
- Forming and laying out means of access or improving existing means of access, as specified in Article 17 and Schedule 5.
- Discharge of water into watercourses, any public sewer or drain and the laying of pipes to achieve this, as specified in Article 19.
- Survey and investigation of land within the Order limits, including placing, leaving or removing apparatus to facilitate this, subject to serving of notice, as specified in Article 20.
- Temporary suspension of public access to Access Land, described in Schedule 6 and as specified in Article 21.
- Extinguishment of all private rights in land subject to compulsory acquisition under Articles 22 or 23.
- Acquisition of subsoil of land referred to in Article 22 or Article 25.
- Extinguishment of private rights over land subject to compulsory acquisition, as specified in Article 26.

- Acquisition of part of certain properties subject to notice to treat, as specified in Article 29.
- Entry on and appropriation of so much of the subsoil of any street within the Order limits and as may be required for the purposes of the Project, as specified in Article 30.
- Entry on and temporary possession of land specified in Schedule 9 and rights to within the land, subject to serving notices and as set out in Article 31.
- Entry on and temporary possession of land required for the purpose of maintaining the Project, as specified in Article 32.
- Subject to the Protective Provisions agreed between the applicant and Network Rail Infrastructure Ltd. (Schedule 12), acquisition of land or new rights or imposing restrictive covenants on land belonging to statutory undertakers, as set out in Article 33.
- Felling or lopping of trees and the removal of hedgerows within the Order limits, as specified in Article 37.
- The lopping of trees subject to tree preservation orders within the Order limits, as specified in Article 38.

SPECIFIC PURPOSES

22.1.4 The following describes the nature of the land interests required for the Project:

- Freehold rights are sought for the purpose of constructing and maintaining the substation compound and permanent access to that compound (Plots 338, 339 and 340).
- Permanent rights are sought to install underground cables, to facilitate access for installation and for maintenance of the offshore works. This is the nature of acquisition sought for the principal part of the Order land. Schedule 7 to the DCOs lists the lands over which new rights are sought and describes the rights.
- Temporary possession only is sought over land parcels listed in Schedule 9 to the DCOs for the purposes of construction laydown areas, welfare facilities and plant and equipment storage.

SPECIAL CONSIDERATIONS

Crown Land

22.1.5 The Order land includes land owned by the Crown, as shown on Crown Land Plan Offshore and Crown Land Plan Onshore [APP-032 & 033]. The Statement of Reasons confirmed that the applicant holds an agreement directly with the Crown for its offshore works.

22.1.6 In response to the Panel's second round of questions the Crown Estate Commissioners confirmed [REP-3628] that Article 13, which is protective to the interests of Crown authorities affected

by the proposals, was in a form specified by the Commissioners [REP-3086]. Furthermore, the Commissioners consented to the inclusion of rights of compulsory acquisition in the DCO, but reserved their rights as regards the consent of the Crown Estate to the exercise of such compulsory acquisition powers, as provided for in s135(1)(b) of the Act and expressly confirmed by Article 13.

22.1.7 The applicant does not seek to exercise compulsory acquisition against the freehold held by the Crown in any instance, and this is protected under Article 13 of the Order. It seeks instead to acquire or extinguish or override interests held from the Crown by other parties. The Crown Land in which the applicant seeks to acquire interests are as follows:

- Plots 237-262, 294-297, 336-339, 340. These comprise the Forestry Commission sites of Hurn Forest, West Moors Plantation and Mill Nursery Plantation, held for the Crown by the Secretary of State for Environment Food and Rural Affairs.
- Plot 256. The Secretary of State for Health has rights of drainage across a small area of the Onshore Cable Corridor within Hurn Forest, on land owned by the Secretary of State for Environment Food and Rural Affairs.
- Plots 264-267, 284-289. The lands are included to remove any third party rights that may prevent installation, operation and use of cables (or right of access to them) installed under the A31 Trunk Road and an existing access to the A31.
- Plots 298, 299 and 333. The Highways Agency Historical Railways Estate has rights of access for maintenance over land where the cables would be installed.
- Plots 300-307. The land is owned by the Ministry of Defence on behalf of the Secretary of State for Defence. The rights are required for the laying of cables and for temporary construction area on their land.

22.1.8 Letters sent in on behalf of the Secretary of State for Environment Food and Rural Affairs [REP-3027], Secretary of State for Transport [REP-3994], Secretary of State for Health [REP-3028], Highways Agency Historical Railways Estate [REP-3029] and Secretary of State for Defence [REP-3030] confirmed that consent was provided to compulsorily acquire interests other than those held by or on behalf of the Crown.

Statutory Undertakers

22.1.9 In responding to the Panel's second round of questions [PD-011], the applicant stated that the following nine statutory undertakers would be affected by the Project:

- Network Rail Infrastructure Ltd

restrictive covenants confirm the acceptability of the approach in the DCO.

- 22.4.43 The Panel concludes that the applicant has explored all reasonable alternatives to compulsory acquisition and no other credible alternative could be identified.

AVAILABILITY AND ADEQUACY OF FUNDING

- 22.4.44 In accordance with DCLG Guidance the applicant submitted a Funding Statement [APP-043] which was revised [REP-3675] in the light of the introduction of Article 43 (formerly Article 44).
- 22.4.45 The Funding Statement cited total construction costs of £3 billion and an estimated cost for property acquisition of £15 million but was short on detail. The applicant confirmed that commercial sensitivity precluded the disclosure of detailed costs estimates, especially in relation to land assembly.
- 22.4.46 Save for PCBA alleging that a shortfall would arise from s57 claims (addressed above), the figures were not challenged. The applicant claimed that the level of funding is very small in percentage terms for the overall Project and that the parent companies understand the costs of land assembly. The Panel can find no reason to question the applicant's acquisition estimates, particularly as completed agreements with 85% of owners/occupiers would provide a reasonable understanding of likely costs. The construction costs are comparable to the industry's review of capital costs, and were not disputed.
- 22.4.47 The Funding Statement [REP-3675] showed that one of the parent companies, Eneco UK, has a Scottish onshore wind portfolio and in November 2013 the company acquired its first solar project in the UK. The second parent company, EDF Group is developing its renewable portfolio in the UK through a joint venture between EDF Energy and EDF Energies Nouvelles (EDF EN). EDF EN is a global renewable developer and operator with over 6GW installed gross capacity and 1.5GW of assets under construction worldwide. The applicant explained that the Project is intended to be independently financially viable within the framework of the electricity market instigated by the Secretary of State.
- 22.4.48 The Funding Statement also concluded that the reputation, experience and support of its parent company would provide NBDL with the ability to procure the financial resources necessary to fund the works authorised by the Order. There was no indication that the required funding would not be available. EDF and Eneco are said to be experienced developers and operators of offshore wind farms and understand the level of costs required for construction and acquisition. EDF recently completed the 63MW Teeside offshore project and Eneco has experience of

operating and constructing offshore wind farms in the Netherlands.

- 22.4.49 At the hearing the applicant confirmed that the parent companies have significant experience of large infrastructure. While the Project is of a larger size than their previous offshore wind farm schemes, shareholders are frequently required to provide guarantees or other commitments of funding for a similar level. It was not envisaged that the size of guarantees being sought was in excess of what was normally expected of shareholders in relation to their previous developments. Based on the information provided by the applicant, the Panel sees no reason to doubt that the relevant companies are of sound financial standing; the matter remained largely uncontested during the examination.
- 22.4.50 PCBA suggested that appropriate guarantees for the decommissioning costs need to be in place before consent is granted. The applicant confirmed the Secretary of State would issue a decommissioning notice and a decommissioning plan would have to be submitted before construction starts (Requirement 7). As part of that process guarantees and securities would need to be in place. If financial security cannot be provided then construction could not commence. With the pre-construction controls in place the Panel is satisfied that the Project could not proceed without the Secretary of State being assured of sufficient securities in place to fund the decommissioning.
- 22.4.51 At the time of the application NBDL proposed unilateral planning obligations to the relevant County Councils [Annex 4 and 5 to Funding Statement APP-043] to guarantee funding for acquisition. However, concerns expressed by Dorset County Council in its LIR [REP-2678] and the approach adopted by the Secretary of State in the Hornsea One Offshore Wind Farm Order led to the inclusion of Article 43 (Guarantees in respect of payment of compensation) at Deadline V stage.
- 22.4.52 The article provides for a form of guarantee to be given to the Secretary of State before compulsory acquisition and related powers are exercised. The applicant explained that the effect of the article was to provide an absolute bar on the exercise of compulsory acquisition powers until the Secretary of State was satisfied that there was a reasonable prospect of the necessary funding for compensation being in place [REP-3643].
- 22.4.53 The evidence substantiates the ability of the company to deliver the Project and nothing in the funding arrangements described are out of the ordinary for this type of project. The liability for compensation is not substantial in relative terms and would not threaten the financial security of the companies involved.

22.4.54 Although at the hearing the applicant conceded that the mechanism for guaranteeing payment of compensation had not been tried and tested, there is a precedent for Article 43 and its adoption provides further guarantee that funding for compensation would be forthcoming. There was no indication from the applicant or disputed by the majority of IPs that there were financial impediments to the powers being exercised within the five years statutory timeframe.

COMPELLING CASE IN THE PUBLIC INTEREST FOR COMPULSORY ACQUISITION

22.4.55 The Panel's conclusions below on the public interest and human rights issues are predicated on the Secretary of State finding that the national need for a Project of the type that is the subject of the application represents a substantial public interest argument in its favour, as noted in paragraph 22.4.3.

22.4.56 In looking at the extent to which private interests would be affected the Panel recognises that the onshore element of the project has been designed so that the majority of works would take place beneath the ground. The cable route selected seeks to minimise or avoid urban areas, residential properties and utilities. The extent of any private loss has therefore been mitigated both through the selection of the route and the undergrounding of the cables.

22.4.57 The ExA considers that the applicant would be making minimum use of compulsory acquisition powers through the exercise of temporary and permanent powers to acquire new rights instead of freehold interests where possible, thus minimising the impact on individual owners. Use of restrictive covenants provides appropriate protection with the minimum necessary interference with owners of the land and limits the scope of the required acquisition.

22.4.58 The majority of interests sought have been acquired through voluntary agreement. The land over which the powers are sought is predominantly agricultural or pasture which would be returned to its former uses. The interests sought are expressed in terms of the 'least rights' necessary to construct and operate the Project. All reasonable alternatives to compulsory acquisition have been explored. The factors identified above demonstrate the extent to which the applicant has sought to minimise use of acquisition powers.

22.4.59 In the view of the Panel the applicant has demonstrated sufficiently and conclusively that the land and rights sought are necessary for the construction and operation of the Project. The purpose for each of the plots in the Book of Reference is clearly defined and the need for the development in each of the plots has been demonstrated.

THE CASE FOR OTHER LAND POWERS

22.4.60 In respect of the powers for temporary possession and other rights over land as contained in the DCO, the Panel considers that these are necessary and reasonable for the construction of the Project.

HUMAN RIGHTS CONSIDERATIONS

22.4.61 In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily or for permitting the interference in interests and rights through the DCO, it is also necessary to consider the interference with human rights which would occur if compulsory acquisition or other powers over land or interests were granted.

22.4.62 The European Convention on Human Rights was incorporated into domestic law by the Human Rights Act 1998. The Statement of Reasons [APP-042] identifies the following as being relevant:

- Article 1 of the First Protocol (the peaceful enjoyment of possessions and not to be deprived of possessions except in the public interest and subject to the conditions provided for by law and by the principles of international law)
- Article 6 (fair and public hearing within a reasonable time by an independent and impartial tribunal)
- Article 8 (right to respect for private and family life, home and correspondence)

22.4.63 Article 8 would be engaged to the extent that gardens or access to them would be necessary. Article 1 would be engaged in the acquisition of agricultural land and businesses.

22.4.64 At the end of the examination there remained only a handful of objections from affected parties to the applicant's acquisition of land and rights. The Panel has addressed those individually and considered the individual rights interfered with. We are satisfied that, in relation to Article 1 of the First Protocol and Article 8, the proposed interference with those rights would be for legitimate purposes that would justify such interference in the public interest. The extent of that interference would be proportionate. In reaching this conclusion, we have had regard to the compensation to which those individuals would be entitled.

22.4.65 In relation to Article 6, the applicant has consulted the persons set out in the categories contained in s44 of the PA2008, which include owners of the land subject to the compulsory acquisition and other powers sought. All affected parties were given the opportunity to express their concerns during the course of the examination through written representations, and a hearing was held. By the end of the examination no representations were made on the basis that rights under Article 6 had not been upheld and we are satisfied that its requirements have been met.

CONCLUSIONS

22.4.66 If the Secretary of State concludes that the case for the Project is made, the Panel considers that:

- the need to secure the land and rights required and to construct the development within a reasonable timeframe, and to ensure that the development would remain operational, represents a significant public benefit to weigh in the balance;
- the private loss to those affected has been mitigated through the selection of the application land; the undergrounding of the cables and the extent of the rights and interests proposed to be acquired;
- the applicant has explored all reasonable alternatives to the compulsory acquisition of the rights and interests sought. There are no alternatives which ought to be preferred where compulsory acquisition powers remain;
- adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the Order being made;
- that an appropriate framework for compensation exists, and
- the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent.

22.4.67 If the Secretary of State is minded to accept the Project on the basis of its compliance with national policy, there would be a compelling case for the compulsory acquisition powers sought in the Order. The proposal would comply with s122(3) of the PA2008 and that other land related powers in the Order would be necessary and justified for the Project to proceed.