



Meeting note

File reference	EN20022
Status	Final
Author	The Planning Inspectorate
Date	9 August 2019
Meeting with	Aquind Ltd
Venue	Telecon
Meeting objectives	To discuss landowner consultation regarding the Aquind Interconnector proposal
Circulation	All

Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely. The names of attendees (personal data) would not be published, in accordance with the General Data Protection Regulation (GDPR).

On Friday 2 August 2019, ahead of the meeting, the Inspectorate provided the following advice in response to the query:

Query:

(What is) the approach that a DCO promoter is required to take to refreshing information in relation to owners of land interests contacted during the statutory consultation between the close of statutory consultation and the submission of the application, and in particular whether a regular refresh exercise would be expected in addition to a pre-submission confirmation exercise.

Section 51 Advice:

The legislation does not specify the exact requirements for this, and neither does the Government Guidance on compulsory acquisition, however there is the requirement for the Developer to undertake diligent inquiry and there is an expectation that this would not stop after the statutory consultation stage. The Inspectorate is not able to offer definitive advice as to whether it considers any particular approach to be a diligent inquiry. The answer to this question is likely to depend on the length of time between the statutory consultation and the submission of the application, the degree of changes made to the application and the specific nature of the land itself and the nature of the land ownership along the route.

It is important that you highlight, upon submission of the application, where certain landowners have changed since statutory consultation and explain the engagement you have had with any additional parties ahead of submission of the application.

Discussion held during the meeting on 9 August 2019

The Applicant explained that during their statutory consultation, they consulted two types of landowners:

1. Those the Applicant considered were genuinely affected by the proposal (where the works are to be located on land which those persons own/have an interest in and have use of); and
2. Those with subsoil interests beneath land which is highway where their properties abutted the highway and as a consequence they are presumed to own the land beneath the highway up to the centreline of the highway by virtue of the "*ad medium filum*" rule.

The Applicant explained that in regard to the persons in type 2 (above), they are intending to apply for the compulsory acquisition of the rights to install, operate and maintain the cable in the land beneath the highway within the DCO application, as opposed to seeking to negotiate private agreements with the presumed owners of the highway subsoil. This approach was outlined in the Applicant's consultation document, published for the purpose of the statutory consultation.

The Inspectorate advised the Applicant to be aware of the tests which are applied (detailed in the legislation) in regard to requests to compulsorily acquire rights/land. The Applicant explained that their approach has precedent in relation to High Speed Two and that they did not consider it would be necessary to negotiate the private acquisition for the rights or to pay compensation, because the relevant owner has no use or enjoyment of it, is not prejudiced by its use for the proposed development, and because the subsoil of a highway is not recognised to have any market value.

The Applicant further explained that the consultation with person in type 2 involved circa 3,000 adjacent landowners/persons with a presumed interest in the subsoil of the highway, which they were informed caused confusion and alarm (where such landowners/persons were unaware of having this interest before being contacted by the Applicant). The Applicant therefore proposed to the Inspectorate that to avoid similar alarm/confusion and noting the type of interest presumed to be held by those persons, they would not undertake the same refresh and confirmation exercise and make further contact with presumed owners of the highway subsoil ahead of submission and sought the Inspectorate's views on the acceptability of this approach. It was also explained by the Applicant that the anticipated period between the close of the statutory consultation and submission of the DCO application is circa 6 months.

The Inspectorate advised that it is the Applicant's responsibility to demonstrate the information pertaining to landowners is up to date at the time of submission of the application, and that it is for the Applicant to determine the approach to satisfying the relevant statutory requirements when undertaking a diligent inquiry and what they consider is proportionate in this regard. The Inspectorate advised that in accordance with the Act, any party that has been identified as having an interest in land required for the project should be consulted with. The Inspectorate advised the Applicant to review all relevant compulsory acquisition tests which are applied when an Applicant requests to compulsorily acquire land/rights through a DCO, both in the legislation itself and in the Government's Planning Act 2008 Guidance related to the procedures

for compulsory acquisition of land (for example paragraphs 49 – 52 <https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land>). The Inspectorate stated that it is unable to provide definitive advice on this specific legal matter, but explained that the Applicant should take its own legal advice and that it should thoroughly justify any approach taken within their consultation report and other relevant application documents (for example statement of reasons).

The Inspectorate reminded the Applicant of the requirements of section 42(a)(d) and section 44 of the Planning Act 2008 which detail the persons the applicant is required to consult with who have specific rights or interests etc in land. The Inspectorate explained that the Applicant must undertake a diligent inquiry to identify and consult with such persons and to thoroughly explain this approach within the application documents. The Inspectorate also noted that the acceptance checklist footnote 8 states that there is no requirement for the Inspectorate to check that the inquiry was diligent, instead it is for the Applicant to detail why they consider they have undertaken a diligent inquiry.

The Inspectorate advised the Applicant to review part 8.10 of their draft consultation report as it did not currently appear to align with the numbers of persons the Applicant had identified earlier as having an interest in the land.

The Applicant explained that further targeted consultation is taking place regarding small areas of additional land plots with the owners of that land, and that the applicant is also informing the host authorities of this further targeted consultation. The Inspectorate advised the Applicant that it will need to justify why full statutory consultation was not undertaken in relation to these additional small areas of land. The Applicant may wish to refer the Government's Planning Act 2008 Guidance on pre-application process (<https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects>) where the different stages to pre-application consultation is explored.