

National Grid

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Our ref. PREAPP/22/00456

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11th July 2023

Dear Beth,

The Yorkshire Green Energy Enablement (Green) NSIP by National Grid Electricity Transmission Plc.

Version 3 Draft s106 Agreement by Womble Bond Dickinson

Thank you for sending Leeds City Council a third draft of the s106 Agreement for this project, received on 6th June 2023.

For chronology purposes, I can advise that Leeds City Council has provided two separate pieces of correspondence on the draft s106 Agreements to date. Our comments of 24th April 2023 were issued on the first draft s106 Agreement (received 16th March 2023) and this formed part of our Deadline 2 submission. National Grid responded to these comments on 16th May 2023 and we replied to these comments on 22nd May 2023, which formed part of our Deadline 4 submission. On 23rd May 2023 National Grid issued a second draft s106 Agreement, which did not take account of our second comments made on 22nd May 2023. On 6th June 2023, National Grid issued a third version of the s106 Agreement for our consideration. We have considered this but you have made us aware that a fourth version is being prepared by National Grid, which hasn't yet been issued for our consideration. Our comments below therefore relate only to the third draft, having regard to our comments previously made.

We note that the current third draft s106 Agreement includes for the provision of a service level agreement to discharge Requirements and other consents relating to Articles. National Grid are advised that Leeds City Council will not be relying on a third party to carry out our statutory duties. This reiterates our discussions had on 6th June 2023 and 27th June 2023.

National Grid is aware that NSIPs are not listed in the Council's Constitution and associated Delegation Agreements. By way of an update, our legal department advise that NSIP's are regarded as an executive function that has not been delegated to officers in our Constitution.

Please have regard to this, as it forms an update to our Deadline 4 post-hearing submission dated 2nd June 2023 (ISH2 and ISH3). We apologise in advance for the confusion this change in opinion may cause National Grid and/or the examination process.

Our adopted scheme of Delegation Agreement within the Council's Constitution is currently under review and officers are considering how NSIPs can be incorporated into this. Whilst I have provided recommendations on how this could be done; I am advised that such changes to our scheme of delegation will not take place swiftly, needing to be ratified by the Council's Executive Board and then by Full Council. These internal procedures means that any updated agreement will stretch into October 2023, and possibly beyond. This could have ramifications relating to the signing of legal agreements and discharging Requirements and consents relating to Articles, should a DCO be granted. Our legal advisors are exploring this issue further with specific regard to the examination timescales for the project and will provide an update as soon as possible.

During our meeting of 27th June 2023 on the third draft s106 Agreement, we identified that:

- the clause to specify the execution of the agreement via counterparts had not been removed, as previously agreed in National Grid's correspondence of 16th May 2023. National Grid agreed to amend this in a fourth draft s106 Agreement, together with any other agreed amendments required by our correspondence of 24th April and 22nd May 2023, such as: para. 12.3.2 - as I mentioned in May – para. 12.3.1(a) should be "Leeds City Council Chief Planning Officer" and not "Leeds City Council Head of Planning".
- We are strongly of the opinion that a written commitment by National Grid should be incorporated within the s106 Agreement and/or the dDCO Requirements to ensure that a proportion of the project's 10% BNG Net Gain benefit is provided within the administrative district of Leeds (and not left to chance). To date, we understand that National Grid has not scoped for opportunity areas within Leeds for where a proportionate part of the 10% net gain could be spent, because final BNG credits have yet to be established. Notwithstanding this, we consider there to be a reasonable prospect of appropriate opportunity areas being found within Leeds to secure the BNG credits. We therefore recommend that a scoping exercise is relevant and necessary and, should be carried out by National Grid prior to a s106 Agreement being signed and/or accounted for within the dDCO's Requirements. On 30th June 2023 I provided National Grid with a link to the adopted [Bramham Neighbourhood Plan](#) where opportunity areas exist for net gain credits to be spent locally. Adopted policy NE2 of this Plan is relevant and states:

'Policy NE2: Enhancement and protection of nature areas and biodiversity

To be supported development proposals must demonstrate they will avoid harm to the integrity and effectiveness of the following nature areas (see maps appendix 2):

- *Wildlife Area, behind the Senior Citizens Centre;*
- *Bramham in Bloom sites: Bowcliffe Road and Wetherby Road gateway areas.*

In addition:

- a) New development proposals should provide opportunities to enhance and support wildlife and/or biodiversity on or adjacent to the development site.*
- b) Existing trees, hedges and other landscape features of value to biodiversity should continue to be part of any development proposal unless clear evidence*

is provided that these are not worthy of retention. Loss of aged or veteran trees will only exceptionally be supported where it is demonstrated the need for, and benefits of, development in that location clearly outweigh the loss. Where removal of existing trees is agreed in order to facilitate approved development, suitable tree replacement should be provided on a minimum three for one replacement to loss. Such planting will normally be expected to be on site, as part of an overall landscape scheme.'

- It is recommended that the proposed definition of the 'BNG Monitoring Body' should be amended as follows:

'BNG Monitoring Body' – 'Means the Council responsible for monitoring the delivery of the Biodiversity Offsetting Scheme which, for the avoidance of doubt, shall be the Council for the administrative area in which the Biodiversity Offsetting Scheme is to be delivered or where the scheme is to be delivered in the administrative areas of more than one Council, all or both of them'.

We will be happy to consider a fourth draft s106 Agreement but it would be helpful if our recommendations here could be included to avoid further delays.

Kind regards

Louise White
Team Leader (Minerals, Energy and Waste Planning)

Cc. Jessica Powis, Planning Inspectorate.