

Highways England Response to Secretary of State's Questions dated 28 November 2019



Secretary of State's Question	Highways England Response
<p>The Secretary of State notes REP6-023 and REP6-008 regarding the potential acquisition of permanent rights over land that is subject only to temporary possession. The Secretary of State invites the Applicant to provide a further indication in relation to which plots of land listed in Schedule 7 they might need to acquire permanent rights over, and, in respect of those plots, what consultation has been undertaken with those with an interest in the land on this issue.</p>	<p>The Applicant has not at this stage identified a specific need to create permanent rights over any of the plots listed in Schedule 7. However, as explained in previous submissions (REP2-020; REP5-020), article 33(8) provides important flexibility to the Applicant to do so should the creation of a permanent right prove to be necessary at a future stage.</p> <p>Consultation with those with an interest in the land has taken place in accordance with statutory requirements. To date no party has raised or objected to this point and as such the Applicant has not held any specific discussions on it with those with an interest in the land.</p> <p>The Applicant does not repeat its previous submissions in full but does reiterate that it is following well-established precedent in including article 33(8). The Applicant has proposed wording at Deadline 6 (REP6-008; REP6-023) that limits the scope of the rights that could be created over the plots listed in Schedule 7 in a manner that has not been deemed necessary in previously made orders.</p> <p>Given the extensive consultation that has taken place on the dDCO; the opportunity to join the examination as an interested party and the process of the examination itself; the obligation for the Applicant to pay compensation; and the limitations of the wording proposed by the Applicant at Deadline 6, the Applicant does not consider that there is any risk of unfair prejudice being caused to those with an interest in the land in the event that the Applicant did need to rely on article 33(8) at a future stage to acquire a permanent right.</p>
<p>The Secretary of State invites the Applicant and SPR to provide an update on the status of their proposed legal agreement (REP7-012).</p>	<p>Since SPR submitted its objection the Applicant and SPR have been in extensive discussions and have been negotiating an agreement designed to resolve SPR's concerns and allow it to withdraw its objection. The discussions have included extensive discussions at a technical level to agree the details and design of works having, or having the potential to, impact on SPR's assets. It had originally been anticipated that the agreement would be completed before the end of the examination but that proved to not be possible. The latest in a series of meetings between the parties took place at SPR's request in Glasgow on 9 December. The Applicant had hoped that the</p>

agreement would be finalised at that meeting but that has proven not to be the case and despite the parties continuing to make progress additional time is needed for further discussions.

The Applicant cannot presently say with certainty how much longer it may take to complete the agreement, but it will continue engaging in good faith with SPR with the aim of completing the agreement before the Secretary of State's decision on 6 February 2020. If that is achieved then the Applicant will immediately write to the Secretary of State with confirmation, which will be followed by the withdrawal of SPR's objection.

Due to this uncertainty the Applicant considers it necessary to make the enclosed submissions (see separate letter) to inform the Secretary of State's decision on the application should that decision need to be made in the absence of a completed agreement with SPR.

In summary, the Applicant has been engaged in extensive discussions with SPR since April 2018. It considers that it has done all that it reasonably can to secure an agreement with SPR and the consequent removal of SPR's objection.

The considerable number of technical issues raised in SPR's Relevant Representation were resolved early on in the examination, leaving a handful of issues about the phasing of works and the adoption of land by Cornwall Council. The agreed changes to the Scheme design in the vicinity of the Wind Farm were secured via updated documents submitted at Deadline 3.

Despite very extensive engagement since Deadline 3 it has not yet been possible for the remaining issues to be resolved via the completion of an agreement. Given the amount of time and effort that has gone into the draft agreement this is regrettable. However, progress has been repeatedly frustrated by a very slow turnaround time from SPR, at times extending to months, and by SPR frequently requesting new and significant changes to the draft documents despite them already having been through several iterations.

Both parties have expressed the view that protective provisions provide an alternative to the agreement. The parties submitted competing protective provisions at Deadlines 6 and 7. The Applicant has explained the justification for its preferred protective provisions and has also explained the significant issues with SPR's preferred provisions, which in summary are that they would give SPR the power to delay the Scheme or stop it from proceeding by failing to respond or to act reasonably in approving plans and documents; and that they include unreasonable indemnity provisions that are unacceptable to the Applicant.

	<p>The Applicant notes that SPR did not raise the prospect of serious detriment in its objection. For the avoidance of doubt however, in light of the above, the Applicant’s view is that there is no risk of serious detriment being caused to SPR’s undertaking in the absence of a completed agreement. The draft DCO and associated plans secure a revised design layout for the Wind Farm that SPR has confirmed is acceptable. The protective provisions would provide at least the same significant level of protection to SPR as is afforded to other electricity undertakers, including as to costs and potential losses. In combination, these measures ensure that SPR’s undertaking would be adequately protected.</p> <p>For the Applicant’s detailed submissions please refer to the enclosed letter dated 12 December.</p>
<p>The Secretary of State invites the Applicant and WPD to provide an update on the status of their proposed legal agreement.</p>	<p>The agreement has been completed and WPD has withdrawn its objection. This is confirmed in correspondence from the Applicant and WPD dated 26 November and 29 November respectively.</p>
<p>The Secretary of State invites the Applicant to provide comments on the letter submitted by Defence Infrastructure Organisation (AS-044).</p>	<p>The Applicant notes that the Defence Infrastructure Organisation (the “DIO”) does not object to the Scheme in its letter of 1 August 2019. The DIO requests to be consulted on the Construction Environment Management Plan (Requirement 3) and on the detailed design (Requirement 12), insofar as they are relevant to the safeguarding zone for RAF Portreath.</p> <p>The Applicant is content for the DIO to be added as a consultee in Requirements 3 and 12 of the dDCO and would suggest the following wording if the Secretary of State agrees:</p> <p>Requirement 3(1) (CEMP): <i>“No part of the authorised development is to commence until a CEMP for that part has been prepared in consultation with the relevant planning authority, the local highway authority and (on matters related to its functions) the Defence Infrastructure Organisation and submitted to and approved in writing by the Secretary of State.”</i></p> <p>Requirement 12(1) (detailed design): <i>“...following consultation with the relevant planning authority, the local highway authority and the Defence Infrastructure Organisation on matters relating to their functions...”</i></p> <p>These additions to the draft DCO would secure the controls requested by the DIO.</p>