

Planning Inspectorate

Contact: Elaine Field**T:** ██████████
E: ██████████@weightmans.com
Office: Manchester**Our ref:** W22559-2170/ /6426**Your ref:** TR0100059

2 July 2021

Dear Sirs

**A1 Northumberland CPO – Morpeth to Ellingham DCO
Deadline 11 Representation for Northern Powergrid**

We write in relation to the above mentioned DCO application, to which our client Northern Powergrid Limited (“NPG”), has submitted an objection. NPG’s objection relates to the protective provisions being proposed by Highways England as set out in the schedule to the Order, the latest version of which was submitted to PINS at Deadline 10.

On Tuesday 29 June, Highways England responded to our client’s proposed amendments to the protective provisions, which have highlighted a number of key issues which are not yet agreed and are not reflected in the latest dDCO submitted to PINS. We therefore attach the protective provisions schedule from the dDCO, marked up with the amendments being sought by NPG.

By way of background these amendments are required by NPG for the following reasons:

1. **Time Limits** – The standard protective provisions set out a number of time limits for Highways England providing notice for documents submitted to NPG for approval. NPG now have the benefit of experience in dealing with a number of development consent orders promoted by Highways England, which have established practical issues with some of these minimum time periods. One of the main issues stems from NPG’s internal operations which are conducted across a number of different teams within the organisation. As a consequence, a review of documents or obtaining approvals often requires multi-disciplinary involvement and requires more time than that currently proposed in the protective provisions. The additional time being sought is not extreme and should be capable of being accommodated within Highway England’s programme for the works. It is noted that a number of these amendments have been agreed by Highways England albeit there are some still in negotiation.
2. **Land required for replacement apparatus** – The current protective provisions require Highways England to allow NPG use of land which they own (whether acquired pursuant to the DCO or other land outside of the order limits) for the relocation of their apparatus. However,

on previous Highways England schemes, NPG has experienced extreme difficulty in gaining third party consent for relocating their apparatus such as overhead terminal poles, stay wires and connecting underground cables. This has been a direct result of Highways England only acquiring land for their own works and not factoring in land required for the relocation of utilities. As a result, it has fallen on NPG to use their statutory powers to acquire rights at a later date and often this is from already disgruntled landowners who have had land taken for the scheme. A direct result of this has been delays in acquiring rights which in turn affects Highway England's ability to deliver the scheme. A requirement for Highway England to use reasonable endeavours to acquire land/interest required for the diversions at the outset of the development, is not unreasonable and is also in Highway England's interests if it prevents delays with the scheme. This requirement should extend to acquiring any such land/interests within the order limits as well as negotiating with third parties outside of the limits, if necessary. The relocation of apparatus is directly tied to the DCO works and therefore it is for Highways England to acquire all necessary land/interests required for the scheme and to factor in this land take as part and parcel of their development. The use of NPG's statutory powers should only be an absolute last resort, due to unexpected alterations to the scheme rather than being a standard expectation.

3. Age of Apparatus – The vast majority of Northern Powergrids' network is made up of apparatus which is older than 7 years and 6 months. When providing replacement apparatus, it is not possible to re-use old apparatus and therefore in virtually all cases new apparatus will need to be installed. This should be on a like for like basis or where that is not possible, the closest possible most suitable alternative should be used (where there's a dispute, this can be determined by arbitration). However, the cost of this replacement should be borne by HE as the replacement apparatus is only required as a direct result of the DCO. NPG should not be out of pocket as a result of the relocation works. NPG understand that if NPG seek betterment as part of the replacement, for example, if NPG seek to increase the capacity or specification of the apparatus rather than merely seeking replacement apparatus with like for like or the most suitable, then NPG would have to contribute to the costs to cover that element of betterment but not where it is like for like or the closest alternative required as a direct result of the DCO and the scheme promoted by HE. In this regard, the age of the equipment should not be factor in determining betterment as the need for replacement apparatus will have only arisen due to HE's scheme.

The form of protective provisions attached and requested by NPG are essential to protect NPS's vital operations and infrastructure. We are aware that the promotor has referred to examples of other HE schemes with alternative wording for protective provisions. However, this in itself is of little weight as NPG's experience in practice at the construction stage is that they provide inadequate safeguards. As noted above, the form of protective provisions required for this NSIP is based upon practical learning points from other NSIP's under construction by HE which cause an impact on NPG infrastructure.

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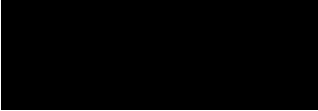
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NPG have been engaging on the above points with Highways England and are keen to continue working with Highways England in a collaborative manner in order to seek to resolve these issues as soon as possible. Should agreement be reached then we will notify the Examining Authority and the Secretary of State.

To this effect, we would request that NPG be granted additional time to continue to seek to engage with Highways England and to reach agreement on these fundamental points. We are conscious though that the examination is due to close and consequently we request that these representations are fully taken into account and that the requested form of protective provisions are included within any final DCO that may be granted.

Yours faithfully



Weightmans LLP

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