



# Immingham Green Energy Terminal

9.50 Applicant's Response to the ExA's Request for Further  
Information under Rule 17 of the Examination Procedure  
Rules

Infrastructure Planning (Examination Procedure) Rules 2010  
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## **Response to the ExA’s request for further information under Rule 17 of the Examination Procedure Rules**

### **a) The Applicant’s reasoning whether CA Regulations are engaged by the proposed changes should be accompanied with a full assessment of relevant legislative and policy provisions.**

Regulation 4 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the “CA Regulations”) establishes that the CA Regulations are only engaged when:

(a) it is proposed that “additional land” be included in the draft DCO and subject to powers of compulsory acquisition; and

(b) a person with the interest in that additional land does not consent to the inclusion of the relevant compulsory acquisition powers in the draft DCO.

“Additional land” is defined in Regulation 2 of the CA Regulations as “*land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land*”. “Land” is as defined in Section 159 of the Planning Act 2008 (the “Act”) as meaning “*any interest in or right over land*”.

There are, therefore, two limbs to Regulation 4(a): first, whether the relevant land was referenced in the Book of Reference (“BoR”) as submitted [[APP-008](#)]; and second, whether compulsory acquisition powers are sought.

“Compulsory acquisition” is not defined in the CA Regulations or the Act; indeed it is not defined in compulsory purchase legislation in general. However, the distinction between compulsory acquisition and temporary possession is well established. Powers of temporary possession are a separate creature of statute, being subject to separate statutory provisions governing their application than powers of compulsory acquisition.

For example, in respect of DCOs, the Act provides that these may include provisions authorising the compulsory acquisition of land, subject to certain limitations and conditions (Section 122 of the Act). Section 120 and Schedule 5, Part 1 of the Act further provide for matters that may be included in a DCO, including acquisition powers, the creation of interests in or rights over land, and the payment of compensation. There is no reference to powers of temporary possession or use in the Act itself. Further, relevant government guidance (*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land* (Department for Communities and Local Government, 2013)) does not refer to powers of temporary possession and use. The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (now repealed) included suggested precedent provisions for the temporary use of land for carrying out, or maintaining, the authorised project which were separate provisions to those governing compulsory acquisition.

In respect of other general legislation authorising compulsory acquisition, powers of compulsory acquisition are contained in the Town and Country Planning Act 1990 (Section 226) and the Highways Act 1980 (Sections 239, 240, 241, 242, 246 and 250), but neither statute contains associated provision for temporary possession powers.

This distinction between compulsory acquisition and temporary possession is also clearly reflected in the language used in case law. For example, in *R (on the application of Trago Mills Ltd) v Secretary of State for Communities and Local Government* [2016] EWHC 1792 (Admin) the judgment states at Paragraph 30: “...the remainder of that plot...was identified as being, not for compulsory acquisition, but for temporary possession only...”, and at Paragraph 33: “...the draft DCO...showed the Excess Land as not for compulsory acquisition but for temporary possession only”.

Likewise, in *R (on the application of Jones (on his own behalf and on behalf of the Pylon Pressure Group)) v Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 1111 (Admin) at Paragraph 26 the Court states “...the panel also considered whether the right of compulsory acquisition was appropriate...and considered that that course was preferable to providing for temporary possession of the land...”, and at Paragraph 65, “...the panel considered that the compulsory acquisition of rights was preferable as temporary possession would mean excluding persons from the land for 30 years...”.

With reference to Regulation 4(a) of the CA Regulations, while the Applicant is proposing to extend the Order Limits to include a small, new parcel of land (referred to as the “Temporary Possession Land” below) which was not previously identified in the BoR, the only power sought in respect of the Temporary Possession Land is the power of temporary possession and use during construction, not compulsory acquisition powers. Accordingly, and on the above basis, the CA Regulations are not engaged.

**b) Provide an update on Regulation 4(b) of the CA Regulations, and the corresponding engagement with the owner of the land affected by Change 3. If consent has not been secured from the landowner, then provide an anticipated timeline with respect to the Examination timetable, showing how the Applicant expects negotiations to proceed. Provide relevant evidence.**

As explained above, the CA Regulations are not engaged because compulsory acquisition powers are not proposed in respect of the Temporary Possession Land.

Notwithstanding that position, in order for the CA Regulations to apply, Regulation 4(b) must also be engaged – this will only be the case where those with interests in the Temporary Possession Land have not consented to the inclusion of that land for compulsory acquisition within the dDCO.

The Temporary Possession Land is owned by The Right Honourable Charles John Pelham The Eighth Earl of Yarborough, Francis George Windham Brooke Baronet and Kenneth Peter Lyle Mackay, Earl of Inchcape (referred to collectively as the “Brocklesby Estate”). The Brocklesby Estate holds a number of interests in land affected by the Project (details below) and the Applicant’s land agent has been actively engaging with the Brocklesby Estate’s agent in respect of the inclusion of powers for temporary possession of the Temporary Possession Land for construction purposes within the dDCO, with a view to securing the landowner’s consent. To date, no concerns have been raised regarding the inclusion of the Temporary Possession Land within the dDCO and, following finalisation of the boundaries of the Temporary Possession Land, the Applicant is seeking formal written consent from the Brocklesby Estate.

On 21 March 2024, Gateley Hamer, the Applicant’s land agent, sent a letter to the agent for the Brocklesby Estate which includes a form to be returned confirming the Brocklesby Estate’s consent to the inclusion of the Temporary Possession Land and a response is awaited (copy letter attached as Appendix 1 to this response). While the Applicant may not be in a position to confirm that consent has been obtained at Deadline 2, it anticipates it should have a response by Deadline 3 when the Applicant anticipates the Change Application will be submitted to the ExA.

The Applicant notes that Northern Powergrid has an underground electricity cable which runs across part of the wider land parcel of which the Temporary Possession Land forms part; however, the cable does not cross the Temporary Possession Land sought for inclusion in the dDCO. No interference is proposed to the cable. The Applicant’s land agent has confirmed that there are no other parties with an interest in the Temporary Possession Land.

**c) Specify if the landowner would be included in the Book of Reference (BoR) (if they are not already included in the BoR). If so, explain if the landowner would be considered an Affected Person.**

As above, the Brocklesby Estate (the freehold owner of the Temporary Possession Land) is already included in the BoR in respect of a Category 2 interest in Plots 5/3, 5/4, 5/18, 6/6, 6/18, 7/6, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23. The Brocklesby Estate would be included in the BoR in respect of the Temporary Possession Land as it has a Category 1 interest as a result of its freehold ownership.

The CA Regulations define an “affected person” as “*a person whose name has been given to the Secretary of State in a notice under section 59*” of the Act. Section 59(4) states that a person is an “affected person” if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition request relates or any part of that land. As explained in (a) above, as there is no request for compulsory acquisition powers in respect of the Temporary Possession Land, the Brocklesby Estate as the owner of that land would not be an “affected person” (it is an “affected person” for the purposes of the Examination in respect of its interest in other land which is subject to compulsory acquisition).

**d) The Applicant should set out its assessment of what would be required from the Applicant and the ExA to enable the landowner to participate with the Examination fully and fairly. For instance, for procedural fairness, does the Applicant consider that the landowner should be provided the opportunity to request a Compulsory Acquisition Hearing and / or an Open Floor Hearing**

If an “interested party” (as defined in Section 102 of the Act and Rule 2 of the Infrastructure Planning (Examination Procedure) Rules 2010) requests an Open Floor Hearing, or an “affected person” requests a Compulsory Acquisition Hearing (“CAH”) before the deadline set by the ExA, then the ExA must hold the requested hearing (Sections 92 and 93 of the Act, and Planning Inspectorate Advice Note 8.5, Paragraphs 2.2 and 4.1).

In the ExA’s Rule 6 letter, the date of 13 March 2024 was set as the deadline by which these requests had to be received; this deadline pre-dates the Applicant’s Change Notification being

submitted on 26 March 2024. In this regard, the Applicant notes Advice Note Sixteen which states at Paragraph 6.2:

*“If a change is accepted by the ExA, the ExA will always invite Interested Parties to comment on the changed application. This opportunity will be accommodated within a revised Examination Timetable. Submissions will normally take the form of written representations, as described in Rule 10 of the Infrastructure Planning (Examination Procedure) Rules 2010, including responses to any specific questions posed by the ExA about the changed application...An Issue Specific Hearing may also be held dealing with the changed application”.*

As set out in our response to (c) above, as the CA Regulations are not engaged, the Brocklesby Estate is not an “affected person” in respect of the Temporary Possession Land and therefore is not able to request a CAH under Section 92 of the Act. Where the Brocklesby Estate is an “affected person” in respect of other land already included in the dDCO, it has had an opportunity to request a CAH (and the Applicant notes such request has not been made). The Brocklesby Estate is already an “interested party” by virtue of Section 102(1)(aa) of the Act (having been notified of the acceptance of the application in accordance with Section 56(2)(d) in respect of its other land interests already within the Order Limits).

Accordingly, provided that the process as envisaged in Paragraph 6.2 of Advice Note Sixteen is followed ensuring that interested parties have the opportunity to comment on the changed application (assuming the ExA accepts the Change Application), then procedural fairness will be satisfied as the Brocklesby Estate will be able to participate fully and fairly in the Examination.



Of Clark Weightman

On and behalf of Broklesby Estate

Dear Mr Clark

**RE: Land to the Rear of 31 Queens Road, Immingham**

Further to recent correspondence we write on behalf of our clients Associated British Ports (ABP) and Air Products (BR) Limited (Air Products) in respect of land to the rear of 31 Queens Road, Immingham (Additional Land) which is in the ownership of your client Brocklesby Estate [namely The Right Honourable Charles John Pelham The Eighth Earl of Yarborough, Francis George Windham Brooke Baronet and Kenneth Peter Lyle Mackay, Earl of Inchcape]. A plan showing the Additional Land is enclosed with this letter.

As you are aware, ABP has made an application for a development consent order (the Application) for the Immingham Green Energy Terminal and associated development including a landside hydrogen production facility to be constructed and operated by Air Products (the Scheme). The Application was originally submitted on 21 September 2023 and accepted for Examination on 19 October 2023, which has since commenced on 20 February 2024.

Following detailed discussions with Cadent Gas, it is now understood that the eventual layout of part of the Scheme (within Work No. 7, as shown on the Works Plans submitted with the Application) will need to move 10-15 metres north so as to avoid a high-pressure gas pipeline which crosses part of Work No. 7. As a consequence, a small area of land will be required temporarily during construction to accommodate the layout of the pipeline sleeve ahead of its installation as part of Work No. 6. ABP therefore proposes to extend the boundary of the Scheme to incorporate part of the land to the rear of 31 Queens Road, Immingham which is in the ownership of your client (as shown on the attached plan).

For the avoidance of doubt, ABP will only be seeking powers to temporarily possess and use the Additional Land in connection with the construction of the pipeline corridor (Work No. 6). It is anticipated that these temporary possession powers will only need to be exercised for the first phase of construction (approximately three years from the start of construction). There are no proposals for permanent works on the Additional Land.

The proposal to include this Additional Land within the Order limits is subject to consultation in respect of four changes to the Scheme (the inclusion of the Additional Land forming part of Change 3) that ABP is carrying out from Tuesday, 26 March 2024 to 23:59 to Wednesday, 24 April 2024. The Proposed Changes Notification Report and appendices will be available to be reviewed from 26 March 2024 at:

One Forbury Square  
The Forbury Reading  
RG1 3BB  
0118 952 0820

[gateleyhamer.com](http://gateleyhamer.com)

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR030008>

After having regard to any written responses received to the consultation, ABP will finalise its proposed changes and then make its formal application to the Planning Inspectorate for the changes to the Application. It is for the Planning Inspectorate to decide whether to accept the changes for examination.

Given the Additional Land is required for temporary possession and use only (as described above), neither ABP nor Air Products consider the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) are engaged. The CA Regulations prescribe the procedure that must be followed where it is proposed to include in a DCO a provision authorising the compulsory acquisition of additional land once the order has been made.

ABP's and Air Products' position on the CA Regulations has been communicated to the Examining Authority (ExA). Notwithstanding this, ABP has agreed to seek to secure the consent of the owner of the Additional Land and the ExA has requested that ABP provide an anticipated timeline to securing that consent (if not already obtained) at Deadline 2 (26 March 2024).

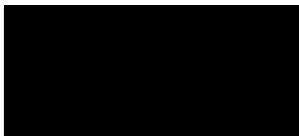
The purpose of this letter is, therefore, to seek your client's consent for the Application to include a provision authorising the inclusion of the Additional Land. We understand that the proposed amendment to the Order limits and the inclusion of the Additional Land is acceptable to your client and would be grateful if you could please sign the below and return the enclosed copy of this letter to confirm this.

For the avoidance of doubt the inclusion of the Additional Land within the Order will not impact on the heads of terms agreed, by our respective clients, for the acquisition of this land by agreement.

If you have any further questions please do not hesitate to contact us and we look forward to hearing from you in due course.

Kind Regards,

James Dewey



Gateley Hamer

I, Andrew Clark, for and on behalf of Brocklesby Estate [namely The Right Honourable Charles John Pelham The Eighth Earl of Yarborough, Francis George Windham Brooke Baronet and Kenneth Peter Lyle Mackay, Earl of Inchcape] provide my clients consent to the inclusion of a provision authorising the application of temporary possession powers over the additional land, being land to the rear of 31 Queens Road, Immingham, in the development consent order for the Immingham Green Energy Terminal.

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