

Application by North Falls Offshore Wind Farm Ltd for an Order granting Development Consent for an offshore Wind Farm

Network Rail's Written Statement for the Compulsorily Acquisition Hearing on 17 June 2025.

Network Rail has prepared the following statement for the compulsorily acquisition hearing on 17 June 2025 and kindly requests the Examining Authority to read out this statement in respect of agenda item CAH Part 2.

Compulsory Acquisition of Network Rail's land

1. Under the book of reference, the Applicant seeks to acquire new rights over plots 4-010, 4-011, 4-013 and 4-014.
2. In respect of Plots 4-010 and 4-011, Network Rail is the unregistered freehold owner of plot 4-010 upon which railway tracks sit. Network Rail take access of Plot 4-011 (arable land) to maintain and renew lineside fencing for the benefit of this plot (pursuant to section 68 of Railways Clauses Consolidation Act 1845). These plots therefore form part of the operational railway.
3. In respect of the other two plots, Network Rail is the freehold owner of plot 4-013, which consists of an accommodation overbridge which is 12ft wide. Network Rail (or its contractors) use this bridge annually to conduct a visual inspection and at risk-based frequency, a detailed exam.
4. Network Rail has a right over plot 4-014 pursuant to a Deed of Release and Grant dated 8 June 2020. The plot is an access track which leads to the accommodation bridge situated on plot 4-013. The freehold owner of the land adjacent to this plot is the authorised user of this accommodation bridge.
5. Plots 4-013 and 4-014 will be used for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development as set out in schedule 5 of the draft DCO. In addition, under schedule 7 of the draft order, the Applicant may take temporary possession over these two plots.

Option for an easement

6. Under the draft DCO, Plots 4-010 and 4-011 are required for the cable route as set out in schedule 5 of the draft DCO. In order for Network Rail to be comfortable with the works under the Order taking place, Network Rail have requested the Applicant to enter into an option agreement for a deed of easement for the right install and maintain the ducts and cabling. The option agreement and deed of easement are currently the only property agreements which are in the process of being entered into. However, the heads of terms have not yet been agreed and therefore the easement has not been able to be drafted in a final form.
7. The main area of disagreement in the heads of terms are:
 - a) Lift and Shift provisions;
 - b) Termination (notice of termination); and
 - c) The consideration amount.

8. Network Rail's position is that a notice period of 6 months for termination and the lift and shift provisions is acceptable and is the standard notice period provided for similar schemes. The Applicant, on the other hand, is requesting a longer time period for both provisions. The consideration for the easement is also currently being negotiated.

Property Agreement

9. Network Rail also require its existing rights to be retained and a property agreement to be entered into for the use of the accommodation bridge to carry out the works set out in the draft DCO. As well as compliance with any clearance conditions.

Asset Protect Agreement

10. In addition to the property agreement, Network Rail also require the Applicant to enter into some form of assessment protection agreement(s), which could be one or all of the following:
 - a) Asset Protection Agreement (APA);
 - b) Basic Asset Protection Agreement (BAPA); or
 - c) Structures Agreement
11. Asset Protection Agreements are required when proposed works have the potential to impact the railway. Generally, these are proposals in close proximity to the railway, or on the railway property itself. The agreements allow Network Rail to support an applicant to mitigate and manage the railway risk appropriately. In order to establish the appropriate type of Asset Protection Agreement, Network Rail would need the scope of works, and in particular clarity on those elements where there is a potential to impact the railway. To support this assessment, Network Rail would require:
 - a) A completed Initial Enquiry Questionnaire (IEQ) – used to obtain some basic details to gather an insight on scope and how a proposal may impact the railway (or whether indeed the proposal has the potential to impact the railway or not).
 - b) A short one page summary of the proposal. This should include details of the entity promoting the proposal and carrying out the works.
 - c) A set of annotated drawings that depicts the proposal and shows the location, and in particular the relationship to the railway. These should include where possible:
 - i. An annotation of the different type of potential railway risks
 - ii. Relationship to the railway e.g. distance (estimated) to the railway boundary and / or railway tracks and / or overhead electrification lines.
 - d) Overview of the programme, key milestones and / or aspirations.
 - e) Fee for the Asset Protection Agreement

For complex proposals with complex railway interfaces, Network Rail would advise entering into feasibility BAPAs to provide a mechanism to explore the steps above and inform the most appropriate contractual route to support the proposal.

12. Network Rail requested the Applicant on 22 May 2025 to make an application to Network Rail's Asset Protection team (ASPRO) and provide the relevant details. To date ASPRO have not received the respective information and Network Rail's surveyor has not received a response to his follow up emails or phone calls. The latest communication being on Friday 13 June 2025.
13. Without the information mentioned above, ASPRO is unable to carry out a detailed assessment of the works to determine what asset protection agreement(s) are required. Network Rail would therefore like to reserve the right to produce additional and further grounds of concern when further details of the Scheme and its effects on Network Rail's land are available.
14. Whilst Network Rail, in principle do not object to the Scheme, it does need to object to acquisition of land and new rights without relevant agreements in place, to ensure there is no detrimental impact on the Accommodation Bridge or the operation of the Railway and that the safety of the Railway is maintained during the construction, operational and decommissioning phases of the Scheme.

Protective Provisions and Framework Agreement

15. In order to capture the above, Network Rail and the Applicant are negotiating the protective provisions and framework agreement, however without an agreed form of heads of terms for the property agreement, the framework agreement and protective provisions cannot be finalised. Network Rail is hopeful that an agreement can be reached with the Applicant but until such time, to safeguard Network Rail's interests and the safety and integrity of the operational railway, Network Rail objects to the Order.
16. Network Rail would like to remind the Examining Authority that Network Rail is under a statutory duty to protect the operational railway and associated railway infrastructure and therefore without the relevant agreements and protective provisions in place, Network Rail's objection will need to be sustained. Nevertheless, Network Rail would like to continue to seek an agreement with the Applicant before the close of the examination and is willing to provide any further detail which the Examining Authority requires.

16 June 2025