

Representation at Deadline 8 by Network Rail Infrastructure Limited in relation to The Beacon Fen Energy Park 202[*] (DCO)

Planning Inspectorate Reference Number: EN010151

Registration Identification Number:

Applicant: Beacon Fen Energy Park Limited

Application: The Beacon Fen Energy Park Order 202[]

Introduction

Further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Written Representations submitted on 10 October 2025 (**Written Representations**) which confirmed that NR was negotiating the form of protective provisions for the benefit of railway interests (**Protective Provisions**) and a private agreement with Beacon Fen Energy Park Limited (NR and Beacon Fen Energy Park Limited together referred to as the **Parties**), we are writing to provide a further update on this matter at Deadline 8.

Overview

Network Rail is the owner and operator of Great Britain's railway infrastructure. Network Rail is a statutory undertaker in respect of its railway undertaking, with statutory and regulatory obligations in respect of it.

The draft DCO submitted with the Application includes provisions which would, if granted, authorise Beacon Fen Energy Park Limited to carry out works on, under and in close proximity to operational railway land in the control of Network Rail and to permanently acquire new rights over NR's freehold interests in such land, as well as extinguish, suspend and/or interfere with NR's rights over and apparatus on third party land. At the date writing, the draft DCO (document reference number 3.1) does not contain protective provisions that Network Rail consider necessary to protect the railway infrastructure.

Protective Provisions

We have reviewed the updated draft DCO and the protective provisions included for the benefit of the railway (**Order PPs**). The Order PPs are not wholly consistent with the form of PPs requested by NR to be included in the draft DCO, which are contained at Appendix 1 of NR's relevant representation submitted on 02 July 2025 (**NR PPs**).

Whilst discussions are ongoing, the Parties have not yet been able to agree the form of Protective Provisions to be placed on the draft DCO and are unlikely to do so.

This document sets out Network Rail's position in respect of the key variances between the form of protective provisions submitted by Beacon Fen Energy Park Limited (Order PPs) and Network Rail's standard protective provisions (**NR PPs**). A detailed justification for Network Rail's position on the principal point of dispute (compulsory acquisition) is provided in the table at Appendix 1. Whilst Network Rail is willing to accept certain less significant changes to the NR PPs where these are considered reasonable, there remain a number of provisions which are not acceptable to Network Rail for the reasons set out. Crucially, if the provisions at paragraphs 110 are not included in the DCO (if granted), serious detriment to NR's statutory undertaking will be caused as a result of Beacon Fen Energy Park Limited being able to exercise compulsory acquisition powers to acquire rights over an operational railway line.

Network Rail therefore requests that the Examining Authority gives due consideration to the matters raised in this submission and ensures that the final form of the protective provisions adequately safeguards Network Rail's operational interests, statutory obligations and their duty to overarching public safety. Currently, the issue around the use of compulsory acquisition powers is the only outstanding issue between the Parties and the Applicant otherwise agrees to NR's PP. Accordingly, NR hereby requests that their standard protective provisions provided in their Written Representation are incorporated into the Order (if granted).

S.127 and S.138 of the Planning Act 2008

In addition to the points set out above and the table at Appendix 1, without the inclusion of the restrictions on compulsory acquisition at paragraph 110, NR must also maintain its objection to the DCO on the basis that the proposed compulsory acquisition of rights over railway property does not satisfy the test in section 127 Planning Act 2008 in that:

- (a) The rights cannot be acquired without serious detriment to the carrying on of the undertaking; and
- (b) Such detriment cannot be made good by Network Rail by use of other railway property.

The reason for which is that:

- 1) The plot (over which rights are proposed to be compulsorily acquired and temporary possession is proposed to be taken) comprise of, or is in close proximity of operational railway line;

- 2) Given the critical importance of maintaining the safety, integrity, and uninterrupted operation of the national rail network, it is essential that NR retains the ability to require its prior consent before any acquisition of rights or temporary possession of railway land is effected under the DCO. In practical terms NR will require the Applicant to enter into an asset protection agreement (APA) prior to the exercise of DCO powers in order to ensure any such rights can be carried out in harmony with the operational railway. The APA is a well-established mechanism that ensures all works and activities are planned and undertaken in a manner that fully protects the operational railway, its infrastructure, and its users. Accordingly, in the absence of such document the DCO must include a requirement that the promoter obtains NR's express consent before exercising any compulsory acquisition or temporary possession powers in respect of railway land. Without such safeguards, the proposed rights/temporary use have the capacity to cause serious detriment to the carrying on of NR's undertaking as it could interfere with the operational railway line, including but not limited to, in particular, the potential for interference with the safe and efficient operation of the railway. It is inconceivable that a third party should have compulsory powers to acquire the rights to use railway land without first seeking NR's consent and entering into the necessary protective agreements; and
- 3) As this is an operational railway line such detriment cannot be made good as the line cannot be relocated to other land in the possession of NR (and not least to say requiring NR to relocate its operational railway to facilitate such rights would be entirely disproportionate both in cost and nature).

Accordingly, in order for such proposed compulsory acquisition and temporary possession of the Plot to pass the test in section 127 Planning Act 2008, paragraphs 110 of the Proposed PPs requiring NR's prior consent to be sought must be imposed before powers authorising the compulsory acquisition of such rights are exercised. Network Rail's position is that in the absence of such, the test in section 127 is not satisfied.

In addition, to the extent that the proposed compulsory acquisition of rights and temporary possession over the plot does involve the extinguishment of any rights or the removal of any apparatus belonging to NR, NR submits that the test in section 138 is not satisfied on the same grounds as set out above.

Paragraph Number	NR's Proposed Change (red text)	NR's Justification for the Change
110	<p>110.—(1) The undertaker must not exercise the powers conferred by— (a) article 20 (discharge of water); (b) article 22 (authority to survey and investigate the land); (c) article 44 (felling or lopping of trees or removal of hedgerows); (d) section 172 (right to enter and survey land) of the Housing and Planning Act 2016; in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.</p> <p>(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.</p> <p>(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (statutory undertakers), article 25 (statutory authority to override easements and other rights) or article 28 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.</p> <p>(4) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.</p> <p>(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).</p> <p>(6) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.</p> <p>110) The undertaker must not exercise the powers conferred by—</p> <p>(a) article 3 (<i>Development consent etc. granted by the Order</i>);</p> <p>(b) article 5 (<i>Maintenance of the authorised development</i>);</p> <p>(c) article 20 (<i>Discharge of water</i>);</p> <p>(d) article 22 (<i>Authority to survey and investigate the land</i>);</p>	<p>Beacon Fen Energy Park Limited proposes to use compulsory powers to acquire permanent rights over plot 10/14 (Permanent acquisition of new rights over 3682.45 square metres of railway line (Grantham to Skegness Line); south east of Great Hale Drove, Sleaford (Unregistered Land), and this land is operational railway.</p> <p>Absent the inclusion of the restriction on compulsory acquisition where NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that Beacon Fen Energy Park Limited could compulsorily acquire rights over railway land without prior NR's consent. Such a proposition is patently unacceptable as this compulsory acquisition of railway land would result in NR no longer having control over its operational railway land. This clearly has the potential for catastrophic implications for the operational railway and poses a serious detriment to NR's carrying on of its statutory undertaking. It is consistent with established statutory protections for statutory undertakers such as NR that compulsory powers over operational railway land should not be exercisable without NR's prior consent.</p> <p>For example, NR may require that rights granted to Beacon Fen Energy Park Limited are subject to reservations allowing NR to interrupt the exercise of such right in certain circumstances (such as enabling NR to deal with emergencies on the railway or carry out necessary works or the exercise of such rights or such temporary possession may not be safe to be exercised at certain times). Where NR's prior consent is not required before exercising these powers over railway land, there is a risk that any such rights or such temporary possession would not be subject to the required restrictions and as a result NR's control over its ability to appropriately manage the safety of the railway would be compromised. The consequences of NR not being able to effectively manage the safety of the railway could be catastrophic. Moreover, this could lead to a failure by NR to comply with its Network Licence, which is not a position that can be accepted by NR, nor would it be acceptable to the Office of Rail and Road (ORR) as NR's regulator.</p> <p>NR is of course willing to engage with Beacon Fen Energy Park Limited and would be required to act reasonably in agreeing the terms of any easement. However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway.</p>

	<ul style="list-style-type: none"> (e) <i>article 23 (Compulsory acquisition of land);</i> (f) <i>article 24 (Compulsory acquisition of land – incorporation of the mineral code);</i> (g) <i>article 25 (Statutory authority to override easements and other rights);</i> (h) <i>article 27 (Compulsory acquisition of rights and imposition of restrictive covenants);</i> (i) <i>article 28 (Private Rights);</i> (j) <i>article 30 (Acquisition of subsoil and airspace only);</i> (k) <i>article 32 (Temporary use of land for carrying out the authorised development);</i> (l) <i>article 34 (Temporary use of land for maintaining or decommissioning the authorised development);</i> (m) <i>article 35 (Statutory undertakers);</i> (n) <i>article 37-38 (Use of airspace within the Order land);</i> (o) <i>article 44 (Felling or lopping of trees and removal of hedgerows);</i> (p) <i>the powers conferred by section 11(3) (power of entry) of the 1965 Act;</i> (q) <i>the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;</i> (r) <i>the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;</i> (s) <i>any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;</i> 	<p>NR would ask the ExA to consider; if Beacon Fen Energy Park Limited compulsorily acquires rights over an operational railway (without NR's consent), how can NR ensure that those rights are adequately controlled to preserve safety on the railway and in compliance with its Network Licence when the terms of the rights are not within NR's control?</p> <p>The acquisition of rights over railway land is not akin to acquiring rights over private land and requires special restrictions and controls, so for the reasons set out above the terms of any such rights to access railway land must be agreed by Network Rail first and the necessary protections requested by NR be afforded to NR.</p>
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in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (*Statutory undertakers*), article 25 (*Statutory authority to override easements and other rights or private rights of way*) or article 28 (*Private rights*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions, but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

