

Connah's Quay Low Carbon Power

Applicant's Statement in respect of section 127 and 138 Planning Act 2008 – Statutory Undertakers' Land

Planning Inspectorate Reference: EN010166

Document Reference: EN010166/APP/9.36

Planning Act 2008 (as amended)

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations

2009 - Regulation 5(2)(q)

Revision 00

May 2026

Prepared for:
Uniper UK Limited

Prepared by:
Herbert Smith Freehills Kramer LLP

Table of Contents

1.	Introduction	3
1.1	Overview	3
1.2	Purpose of this Statement	4
1.3	Needs case	5
2.	Statutory Undertakers' Land	7
2.1	National Grid Electricity Transmission plc.....	7
2.2	Network Rail Infrastructure Limited	8
2.3	Flintshire County Council.....	9
3.	Section 127 Case	12
3.1	Statutory position.....	12
3.2	Position in relation to relevant statutory undertakers	13
4.	Section 138 Case	17
4.1	Statutory position.....	17
4.2	Position in relation to relevant statutory undertakers	17
5.	Conclusion.....	18

1. Introduction

1.1 Overview

Description of the Proposed Development

- 1.1.1 The Connah's Quay Low Carbon Power Development Consent Order (DCO) Application was submitted by the Applicant, Uniper UK Limited, to the Secretary of State (the SoS) on 5th August 2025 under Section 37 of the Planning Act 2008 (the PA 2008). The DCO Application was accepted for examination on 28th August 2025.
- 1.1.2 The Applicant is seeking a DCO for the construction, operation (including maintenance) and decommissioning of a proposed low carbon Combined Cycle Gas Turbine (CCGT) Generating Station fitted with Carbon Capture Plant (CCP) (the 'Connah's Quay Low Carbon Power (CQLCP) Abated Generating Station') and supporting infrastructure (collectively the 'Proposed Development') on land at, and in the vicinity of, the existing Connah's Quay Power Station (Kelsterton Road, Connah's Quay, Flintshire, CH6 5SJ), North Wales (the 'Proposed Development Site'). The term 'Order limits' is used to describe the geographical boundaries within which the Proposed Development and associated powers would be exercised.
- 1.1.3 The Proposed Development would comprise up to two CCGT with CCP units (and supporting infrastructure) achieving a net electrical output capacity of more than 350 megawatts (MW; referred to as MWe for electrical output) and up to a likely maximum of 1,380 MWe (with CCP operational) onto the national electricity transmission network.
- 1.1.4 Through a carbon dioxide (CO₂) pipeline, comprising existing elements to be repurposed and new elements, the Proposed Development would make use of the CO₂ transport and storage network that will be owned and operated by Liverpool Bay CCS Limited, the onshore pipeline for which is currently under development as part of the HyNet Carbon Dioxide Pipeline project (referred to as the 'HyNet CO₂ Pipeline Project'). The CO₂ transport and storage network will transport CO₂ captured from existing and new industries in North Wales and North-West England to be permanently stored in depleted offshore gas reservoirs in Liverpool Bay.

Content of this Statement

- 1.1.5 This Statement has been prepared to demonstrate how the Applicant has satisfied the relevant tests within sections 127 and 138 of the PA 2008. It is formed of the following sections:
- Section 1.2 (Purpose this Statement) – sets out why this Statement is being submitted and provides an overview of the relevant statutory tests.
 - Section 1.3 (Need case) – summarises the needs case for the Proposed Development.
 - Section 2 (Statutory Undertakers' land) – sets out the relevant interests held by the relevant statutory undertakers within the Order limits and summarises the powers sought over the relevant plots.

- Section 3 (Section 127 Case) – establishes the Applicant's case that there would be no serious detriment to the relevant statutory undertakers' undertaking even where matters remain outstanding between the parties.
- Section 4 (Section 138 Case) – establishes the Applicant's case that the relevant extinguishment powers sought are necessary for the purpose of carrying out the Proposed Development.
- Section 5 (Conclusion) – draws together the conclusions of this Statement.

1.2 Purpose of this Statement

- 1.2.1 The **Draft DCO (EN010166/APP/3.1)** includes provision for the compulsory acquisition of interests in land, including the acquisition of interests and rights in "statutory undertakers' land", as defined by section 127 of the PA 2008. As the Order will affect statutory undertakers' interests in land, the Applicant believes that section 127 of the Act is engaged.
- 1.2.2 Section 127 applies to land (statutory undertakers' land) if:
- the land has been acquired by a statutory undertaker for the purposes of its undertaking;
 - a representation has been made, and not withdrawn about an application for development consent;
 - the SoS is satisfied that:
 - the land is used for the purposes of carrying on the statutory undertakers' undertaking; or
 - an interest in land is held for those purposes; and
 - for the purposes of Section 127 "land" includes any interest in or right over land (as defined in Section 159 of the PA 2008).
- 1.2.3 The **Draft DCO (EN010166/APP/3.1)** also includes the power to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, and as such the Applicant believes that Section 138 of the PA 2008 is engaged.
- 1.2.4 Section 138 applies to land if:
- there subsists over the land a relevant right; or
 - there is on, under or over, the land relevant apparatus.
- 1.2.5 Section 138 also provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
- 1.2.6 The relevant statutory undertakers for the purpose of this statement are as follows:
- National Grid Electricity Transmission plc;
 - Network Rail Infrastructure Limited; and

- Flintshire County Council (FCC).
- 1.2.7 Relevant representations were also submitted by SP Energy Networks, Wales & West Utilities Limited, Eni UK Limited and Liverpool Bay CCS Limited but agreement has been reached with these parties such that the Applicant anticipates that these parties will withdraw their representations in due course.
- 1.2.8 Whilst a relevant representation has been submitted by National Gas Transmission plc (NGT) and not withdrawn, only powers of temporary possession are sought in respect of NGT's land interests held for the purpose of their undertaking and so it is not necessary to consider the tests pursuant to Sections 127 and 138 of the PA 2008 further in respect of their interest. Notwithstanding this, the Applicant has been engaging with NGT to seek to agree protective provisions and the latest status of discussions can be seen within the **Statement of Common Ground between the Applicant and National Gas Transmission (EN010166/APP/8.9)**. To the extent that issues outstanding with NGT mirror those outstanding with the statutory undertakers contained within this statement, the Applicant's position remains consistent with that set out in this statement.
- 1.2.9 The Applicant is, therefore, making this application to the SoS pursuant to Sections 127 and 138 of the PA 2008.

1.3 Needs case

- 1.3.1 The undertaker requires powers of compulsory acquisition to ensure that the Proposed Development can be constructed and operated in order to contribute to maintaining a secure and stable supply of electricity and so that the Government's policies in relation to the timely delivery of low carbon infrastructure and achieving the UK's net zero targets are met. The Applicant considers that, in the absence of these powers, there would remain a risk that the Order Land would not be fully assembled and the Proposed Development would not be delivered, meaning that Government policy objectives would not be achieved. The need case for the Proposed Development is explained fully in the **Planning Statement [APP-262]** and a summary relevant to compulsory acquisition is also included within the **Statement of Reasons (EN010166/APP/4.3)**.
- 1.3.2 The **Statement of Reasons (EN010166/APP/4.3)** (alongside the **Land and Rights Negotiations Tracker (EN010166/APP/4.2)**) sets out the current status of the negotiations undertaken to date with affected persons. Details of how the Applicant identified persons with an interest in the affected land are set out in the **Consultation Report [APP-028]**.
- 1.3.3 The Applicant has sought to use alternatives to compulsory acquisition but considers that these would not achieve the objectives of the Proposed Development and the significant public benefits of the Proposed Development would not arise.
- 1.3.4 The Applicant has sought to acquire the necessary land and rights by agreement, however, the Applicant has not been able to enter voluntary agreements with all landowners at this time. Whilst it will continue to seek to acquire the land and rights by voluntary agreement, it requires the powers of compulsory acquisition sought in the Application in order to provide certainty

that all the land required for the Proposed Development can be acquired, in order to realise the Proposed Development's significant public benefits.

2. Statutory Undertakers' Land

2.1 National Grid Electricity Transmission plc

2.1.1 The following table sets out the plots in which NGET have an interest, the DCO powers sought in respect of these plots and an overview of the relevant works associated with such land. Please note that, whilst plots over which temporary possession and no acquisition are sought have been included within this table, the test in sections 127 and 138 of the PA 2008 is only concerned with the authorisation of compulsory acquisition of statutory undertakers' land.

Table: 1 (NGET Land)

Nature of NGET land interest	Nature of DCO powers sought ¹	Plots	Works
Category 1 - Freeholder	CAR	8/15, 8/16, 8/17, 8/18, 9/1, 9/2, 9/3, 9/4, 9/5, 9/6, 9/7, 9/10, 9/11, 9/12, 9/14, 9/17	Electrical connection works and works to provide site access.
Category 2 - Third Party Interest	CAL	8/10, 8/11, 8/12, 9/23	Works to construct the CQLCP Abated Generating Station, infrastructure connection works, temporary construction and laydown areas, and landscaping and ecological enhancement.
Category 2 - Third Party Interest	TP	8/9, 8/14, 9/24, 9/25, 9/26, 9/27, 9/28, 9/29, 9/30, 9/31, 10/1	Works to facilitate the delivery of abnormal indivisible loads to the Main Development Area.
Category 2 - Third Party Interest	CAR	8/5, 8/13, 8/16, 8/17, 8/18, 8/15, 9/1, 9/3, 9/7, 9/10, 9/12, 9/14, 9/17, 9/20, 9/21, 9/22	Works to facilitate access to the Main Development Area, electrical connection works and works in the

¹ Abbreviations: compulsory acquisition of land (CAL), compulsory acquisition of rights (CAR), compulsory acquisition of subsurface (CAS), and temporary possession (TP).

			Water Connection Corridor.
Category 2 - Third Party Interest	CAS	6/4	Land included within the Order limits to facilitate use of the Repurposed CO2 Pipeline Corridor. No works are proposed.
Category 2 - Third Party Interest	NO ACQUISITION	6/7, 6/8, 6/10, 6/11, 6/12, 6/13, 6/14, 6/15, 6/16, 6/17, 6/18, 6/19, 6/20, 6/22, 8/1, 8/2, 7/16	

2.2 Network Rail Infrastructure Limited

2.2.1 The following table sets out the plots in which NRIL have an interest, the DCO powers sought in respect of these plots and an overview of the relevant works associated with such land. Please note that, whilst plots over which temporary possession and no acquisition are sought have been included within this table, the test in sections 127 and 138 of the PA 2008 is only concerned with the authorisation of compulsory acquisition of statutory undertakers' land.

Table: 2 (NRIL Land)

Nature of NRIL land interest	Nature of DCO powers sought ²	Plots	Works
Category 1 - Freeholder	CAL	8/10, 9/23, 8/11	Works to construct the CQLCP Abated Generating Station, infrastructure connection works, temporary construction and laydown areas, and landscaping and ecological enhancement.
Category 1 - Freeholder	TP	1/5, 1/1, 9/27, 9/25, 9/28, 9/30, 1/4	Works to facilitate the delivery of abnormal indivisible loads to the Main Development Area.

² Abbreviations: compulsory acquisition of land (CAL), compulsory acquisition of rights (CAR), compulsory acquisition of subsurface (CAS), and temporary possession (TP).

Category 1 - Freeholder	CAR	9/11, 8/6, 8/13	Works to provide site access.
Category 1 - Freeholder	CAS	6/21	Land included within the Order
Category 1 - Freeholder	NO ACQUISITION	8/1, 6/22, 6/20, 8/2	limits to facilitate use of the Repurposed CO2 Pipeline Corridor. No works are proposed.
Category 2 - Third Party Interest	CAL	8/12, 8/10, 9/23, 8/11	Works to construct the CQLCP Abated Generating Station, infrastructure connection works, temporary construction and laydown areas, and landscaping and ecological enhancement.
Category 2 - Third Party Interest	TP	4/3, 5/5, 5/6, 5/10, 5/11, 5/13, 1/6, 9/27, 9/25, 9/28, 9/30	Works to facilitate the delivery of abnormal indivisible loads to the Main Development Area.
Category 2 - Third Party Interest	CAR	8/5, 8/13	Works to provide site access.
Category 2 - Third Party Interest	NO ACQUISITION	6/19, 6/7, 6/8, 8/1, 6/22, 6/12, 6/16, 6/17, 6/18, 6/11, 6/13, 6/10, 6/14, 6/15, 8/2	Land included within the Order limits to facilitate use of the Repurposed CO2 Pipeline Corridor. No works are proposed.

2.3 Flintshire County Council

2.3.1 The following table sets out the plots in which FCC have an interest, the DCO powers sought in respect of these plots and an overview of the relevant works associated with such land. Please note that, whilst plots over which temporary possession and no acquisition are sought have been included within this table, the test in sections 127 and 138 of the PA 2008 is only

concerned with the authorisation of compulsory acquisition of statutory undertakers' land.

Table: 3 (FCC Land)

Nature of FCC land interest	Nature of DCO powers sought ³	Plots	Works
Category 1 - Freeholder	TP	8/14, 8/9, 8/3, 8/7, 5/12, 5/14, 5/16, 5/17, 5/1, 5/3, 5/2, 5/5, 5/6, 5/7, 5/10, 5/9, 5/11, 5/13, 4/4, 4/3, 4/2, 1/7, 1/8, 9/31, 10/1, 8/4, 6/2, 5/8, 6/3, 5/4, 5/15, 6/1, 4/1, 3/1, 2/3, 2/2, 2/1, 1/9, 10/2, 7/1	Works to facilitate the delivery of abnormal indivisible loads to the Main Development Area. Works to provide site access.
Category 1 - Freeholder	CAR	8/5, 9/6, 9/12	Works to provide site access.
Category 1 - Freeholder	CAS	6/6, 7/3, 7/4, 7/5	Land included within the Order limits to facilitate use of the Repurposed CO2 Pipeline Corridor, where no works are proposed. Works in the Proposed CO2 Pipeline Corridor, bordering Alt Goch Lane.
Category 1 - Freeholder	NO ACQUISITION	7/15, 7/10, 6/9, 7/11, 7/13, 7/14, 7/15	Land included within the Order limits to facilitate use of the Repurposed CO2 Pipeline Corridor, where no works are proposed.
Category 2 - Third Party Interest	TP	8/8, 9/27, 9/25, 9/28, 9/30	Works to facilitate the delivery of abnormal indivisible loads

³ Abbreviations: compulsory acquisition of land (CAL), compulsory acquisition of rights (CAR), compulsory acquisition of subsurface (CAS), and temporary possession (TP).

			to the Main Development Area.
--	--	--	-------------------------------------

3. Section 127 Case

3.1 Statutory position

3.1.1 Section 127 applies where a statutory undertaker makes a representation (which is not withdrawn). In these circumstances the DCO may only include a provision authorising the compulsory acquisition of statutory undertakers' land where the SoS is satisfied that the land may be purchased and not replaced without serious detriment to the carrying on of the undertaking or it can be replaced with other land belonging to or available for acquisition by the undertaking without serious detriment to the carrying on of the undertaking. Section 127(2) and (3) are set out below:

(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).

(3) The matters are that the nature and situation of the land are such that—

*(a) it can be purchased and not replaced **without serious detriment** to the carrying on of the undertaking, or*

*(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers **without serious detriment** to the carrying on of the undertaking.*

3.1.2 Section 127(5) and (6) of the PA 2008 contain equivalent wording in respect of acquiring rights over statutory undertaker's land.

(5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).

(6) The matters are that the nature and situation of the land are such that—

*(a) the right can be purchased **without serious detriment** to the carrying on of the undertaking, or*

(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

3.1.3 There is no statutory definition of "serious detriment." The test for "serious detriment" is wide and holistic and is more than a mere disadvantage. In the Examiner's Recommendation Report in the Lake Lothing (Lowestoft) Third Crossing Development Consent Order 2020, the Inspector recognised at paragraph 8.5.138 "*that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach.*"

3.2 Position in relation to relevant statutory undertakers

- 3.2.1 NGET, NRIL and FCC are the only statutory undertakers who hold interests in land over which compulsory acquisition powers are sought and who have submitted relevant representations to the examination where agreement has not been reached on the position regarding suitable protections for their undertakings.
- 3.2.2 Bespoke protective provisions have been included within the **Draft DCO (EN010166/APP/3.1)** at Schedule 13 for the benefit of each of NGET and NRIL individually. As noted within the respective Statements of Common Ground (SoCGs) with each of these parties, the form and substance of these provisions is largely agreed, save for the following specific points:
- The statutory undertakers have requested an uncapped indemnity be included within the protective provisions. However, the Applicant is only able to commit to an indemnity of up to £50m.
 - NGET have requested specific exclusions from the arbitration provisions in their protective provisions, which the Applicant is unable to accept.
 - NGET have requested that the term 'authorised works' (covering the whole of the authorised development) be used instead of 'specified works' in certain locations throughout the protective provisions, which the Applicant has not accepted.
- 3.2.3 Whilst protective provisions have not been included for the benefit of FCC's highways undertaking, other protections for FCC's benefit have been included within the **Draft DCO (EN010166/APP/3.1)** to ensure that there would be no serious detriment to FCC's highways undertaking.

Indemnity position

- 3.2.4 In relation to the outstanding point of disagreement concerning the indemnity wording, the Applicant considers that it has taken a reasonable and proportionate approach to the figure set for the indemnity given in the protective provisions.
- 3.2.5 Whether or not the indemnity provided for within the protective provisions is capped or uncapped does not contribute to a test of 'serious detriment'. The sum of the indemnity cap provided by the Applicant is reflective of the insurance and security terms required by the relevant statutory undertakers, indicating that this sum matches the risk profile associated with the works of the Proposed Development in proximity to the respective statutory undertakers' apparatus. In addition, the sum proposed is far in excess of any likely damage that could be caused by the carrying out of the Proposed Development based on a review of the relevant interfaces.
- 3.2.6 In addition, in the unlikely event there should be any damage to the statutory undertaker's apparatus above the capped amount, each statutory undertaker would still have recourse through the usual contractual channels to seek costs from the undertaker for damage attributable to it under the protective provisions (such losses would simply need to be proven as opposed to being outright indemnified). The indemnity merely provides a more beneficial starting point for the statutory undertakers with respect to recovering their

costs and so the cap does not limit the recoverability of any damage properly suffered by the statutory undertaker as a result of the Proposed Development.

- 3.2.7 Finally, the remainder of the bespoke protective provisions for the benefit of each of the statutory undertakers in question (for which the majority of elements are agreed) provide protections which would prevent any such damage being incurred, such as ensuring that those works are undertaken with the statutory undertaker's prior approval and that protective measures are in place.
- 3.2.8 Overall, all indemnities provided by the Applicant must be justified in scope and scale. The Applicant is unable to agree to an uncapped indemnity but has agreed to provide an indemnity up to a sum which is considered reasonable and proportionate and which matches the insurance and security requirements of the relevant statutory undertakers. The absence of an uncapped indemnity does not contribute to a test of 'serious detriment' because there is still recourse provided through the protective provisions included within the Schedule 13 of the **Draft DCO (EN010166/APP/3.1)** which ensure the relevant statutory undertakers have sufficient control over the works undertaken in proximity to their assets and also can recover any losses or damages through the usual channels outside of the indemnity provided, in the highly unlikely event that any excess claim be required. Therefore, with the reasonable and proportionate £50m indemnity limit, the statutory tests in section 127 of PA 2008 are met.

Arbitration position

- 3.2.9 The Applicant can accept certain terms being carved out from arbitration. However, cannot accept a lack of external dispute resolution being available for provisions which require express agreement between the parties and, therefore, have the potential need for escalation and external resolution in the event of a dispute. This is particularly the case for paragraphs relating to the suitability of alternative apparatus and approval of plans. The absence of an ability to escalate to arbitration could cause the unreasonable delay or prevention altogether of certain works needed for the delivery of the Proposed Development. The provisions related to cooperation expressly provide that "*whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed*". There is no means for NGET to be held to account with this provision if there is no means for external dispute resolution on such approvals.
- 3.2.10 By applying the arbitration provisions to the approvals for alternative apparatus and plans in proximity of NGET apparatus, there is no change to the commitments themselves, and NGET are still adequately protected from any serious detriment. However, in instances where required approvals are unreasonably withheld or relayed, there is a means for the Applicant to escalate the matter externally so that delivery of the Proposed Development is not prevented.

Use of 'Specified Works'

- 3.2.11 The Applicant has used the term 'specified works' instead of 'authorised works' in a number of instances throughout the protective provisions for National Grid's benefit where this is considered the more appropriate trigger for the relevant commitment. "specified works" is defined as "*any of the authorised works or activities undertaken in association with the authorised works which— (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 53(2) or otherwise; and/or (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 53(2) (removal of apparatus) or otherwise; and (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines"*". As this term covers works which "*may in any way adversely affect any apparatus*", it is sufficient to ensure that the protections apply to prevent any adverse effects on National Grid's undertaking.
- 3.2.12 Constraining the actions of the undertaker through the protective provisions for National Grid's benefit where there would be no way in which such activities could affect National Grid's undertaking is unduly onerous and has the potential to constrain the efficiency of the delivery of the Proposed Development.
- 3.2.13 The Applicant's approach prevents disproportionate approvals being required whilst still ensuring that National Grid's undertaking is sufficiently protected from any serious detriment.

Local Highway Authority Protective Provisions

- 3.2.14 As outlined in Table 3 above, the only compulsory acquisition powers sought in respect of FCC's land interests relate to rights with respect site access and the acquisition of subsurface interests where the land in question runs underneath a part of the highway.
- 3.2.15 As regards access to works, Article 17 of the **Draft DCO (EN010166/APP/3.1)** provides that the express consent of the street authority, in consultation with the relevant planning authority (in this case both FCC), would be required prior to any laying out of a means of access, or improving existing means of access at such locations within or adjacent to the Order limits. The consent of the street authority is only not required where details of the access works have already been provided and set out as part of the DCO Application. Here, relevant details have been provided within the **Access, Streets, Rights of Way and Rights of Navigation Plans [CR-006]**, which is a certified document, and design details are presented within the **Indicative Access Design [REP2-018]**. The detail has been available for FCC as part of the examination process and the position regarding such access is summarised in row 6.11 of the **Statement of Common Ground between Uniper UK Ltd and FCC (EN010166/APP/8.1)**.
- 3.2.16 Interests within the Repurposed CO2 Corridor and works within the Proposed CO2 Corridor all relate to underground pipeline, which will not interfere with the highway network.

- 3.2.17 As the Applicant has confirmed within **Applicant's Response to Local Impact Report [REP3-058]** and **Applicant's Written Summary of Oral Submissions at Compulsory Acquisition Hearing 1 and Response to Action Points [REP4-085]**, protective provisions specifically for the highway authority are not required because separate provisions providing for the relevant protections that would be secured through such protective provisions are already separately secured within different control documents sitting under the **Draft DCO (EN010166/APP/3.1)**.
- 3.2.18 For example, paragraph 4.2.17 of the **Framework Construction Traffic Management Plan (CTMP) [REP4-046]** already provides a requirement for highway condition surveys to take place for the proposed routes for construction within the vicinity of the Proposed Development. Section 3.4 of the **Framework CTMP [REP4-046]** provides detail regarding HGV forecasts and recommended routes. The design of certain highway works, such as the access to site, is provided indicatively within the **Framework CTMP [REP4-046]**.
- 3.2.19 Requirement 3 of the **Draft DCO (EN010166/APP/3.1)** provides express approval by FCC of the detailed design of each stage of the Proposed Development. Accordingly, through the combination of design matters secured through Requirement 3 and specific highways controls secured through Requirement 5 (construction traffic management plan), there is no need for an additional layer of approval through protective provisions.

Conclusion

- 3.2.20 Overall, based on the protections explained above in relation to each statutory undertaker's undertaking, which are secured within the **Draft DCO (EN010166/APP/3.1)** serve to ensure that there will be no serious detriment caused by the Proposed Development and that the statutory test in section 127 of the PA 2008 is met.

4. Section 138 Case

4.1 Statutory position

4.1.1 The **Draft DCO (EN010166/APP/3.1)** gives the undertaker the power to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers. For the purposes of this Statement, it is the Applicant's case that:

- Works associated with the Proposed Development are necessary over the plots listed within each table in Section 2 above. Whilst summarised within the tables in section 2, such works are described in more detail within Schedule 1 (Authorised Development) of the **Draft DCO (EN010166/APP/3.1)** and shown on the **Works Plans [CR1-004]**.
- The Proposed Development works could affect relevant rights and/or relevant apparatus vested in or belonging to statutory undertakers.
- In the absence of powers for the undertaker to extinguish such rights and/or remove or reposition such apparatus, the works associated with the Proposed Development (and summarised at Section 2 above) could not be completed.
- Protective Provisions or alternative means of control have been included in Schedule 13 of the **Draft DCO (EN010166/APP/3.1)**.
- The nature of the proposed works, controls within the DCO articles themselves and inclusion of protective provisions in the **Draft DCO (EN010166/APP/3.1)** means that the SoS can be satisfied that each statutory undertaker's rights, whilst potentially subject to interface, will not be affected to the detriment of its ability to carry out its undertaking.

4.2 Position in relation to relevant statutory undertakers

4.2.1 The Applicant is seeking to negotiate with relevant statutory undertakers to acquire the rights necessary for the Proposed Development and to manage any interfaces between the Proposed Development and apparatus and/or rights vested in each respective statutory undertaker on, under or over the order land by private treaty. Private treaty negotiations will continue in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible. Further detail on the status of such negotiations is provided within the Land and Rights Negotiations Tracker **(EN010166/APP/4.2)**.

4.2.2 As noted in Section 3 above, there remains outstanding points of disagreement with certain statutory undertakers on discrete points. However, notwithstanding this, in the absence of private treaty agreement, it is still necessary to secure compulsory acquisition powers in the DCO to ensure that the Applicant is able to consistently and uniformly enforce powers to deliver the Proposed Development in a comprehensive manner in relation to all persons with an interest in land.

5. Conclusion

- 5.1.1 Given the need for the Proposed Development (see Section 1.3 above), the Applicant considers that there is a compelling case in the public interest for the inclusion of the proposed compulsory purchase powers within the DCO.
- 5.1.2 For the reasons set out in this Statement, it is the Applicant's position that, pursuant to section 127 of the PA 2008, the SoS can be satisfied that the prescribed tests of section 127 have been met and that the statutory undertakers' land may be included for compulsory acquisition in the DCO.
- 5.1.3 It is also the Applicant's position that, pursuant to section 138 of the PA 2008, the SoS can be satisfied that the power for the undertaker to extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers is necessary for the purpose of carrying out the Proposed Development, and that the test of section 138 has therefore been met.