



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

## **Reinforcement to the North Shropshire Electricity Distribution Network**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Business, Energy and Industrial Strategy

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Examining Authority

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**20 December 2019**



# **OVERVIEW**

File Ref: EN020021

The application dated 12 November 2018 was made under section 37(2) of the Planning Act 2008 and was received in full by the Planning Inspectorate on the same date.

The applicant is SP Manweb plc.

The application was accepted for examination on 10 December 2018, and this began on 20 March 2019 and was completed on 20 September 2019.

The development proposed comprises a 22.5km 132kV mainly overhead electric power line between the existing SP Manweb substations at Oswestry and Wem in North Shropshire, together with works to the existing substations, and temporary construction works.

## **Summary of Recommendation**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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# **1. INTRODUCTION**

## **1.1. INTRODUCTION TO THE EXAMINATION**

- 1.1.1. An application for the Reinforcement to the North Shropshire Electricity Distribution Network (the proposed development) [EN020021] was submitted by SP Manweb plc (the applicant) to the Planning Inspectorate on 12 November 2018 under section 37 (s37) of the Planning Act 2008 (PA2008) and accepted for examination under s55 of PA2008 on 10 December 2018 [PD-001].
- 1.1.2. The proposed development comprises:
- works within the boundary of the existing SP Manweb substation at Oswestry including underground cable and the installation of electrical switchgear and associated equipment;
  - approximately 1.2km of 132kV underground cable between Oswestry substation and a 132kV terminal structure at Long Wood immediately east of the A5 trunk road (T);
  - approximately 21.3km of 132kV of overhead line (OHL) supported by Trident wood poles from the terminal structure at Long Wood to the existing SP Manweb substation at Wem;
  - works within the existing SP Manweb substation at Wem including the installation of a new 132kV to 33kV transformer;
  - undergrounding six short sections of existing SP Manweb lower voltage OHL in order to ensure safe electrical clearance for the new OHL; and
  - temporary works required for the construction of the new OHL including seven temporary laydown areas, welfare unit, security cabin, access tracks, vegetation clearance and reinstatement planting.
- 1.1.3. The location of the proposed development is best shown in Section 1 of the Environmental Statement (ES) Figures [APP-079]. These contain on a clear Ordnance Survey base a location plan of the whole route, the Order limits, the position of each numbered pole, sections of underground and overground cable, sections of lower voltage line to be removed, and the position of the seven laydown areas for construction purposes. The site is wholly within a rural part of Shropshire and lies to the immediate north of Shrewsbury and runs on a west-east alignment between the small market towns of Oswestry and Wem.
- 1.1.4. The legislative tests for whether the proposed development when taken as a whole is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government in the decision to accept the application for examination in accordance with s55 of the PA2008 [PD-001 and 002].
- 1.1.5. On this basis, the Planning Inspectorate agreed with the applicant's view stated in the application form [APP-002] and covering letter [APP-001] that the proposed development is an NSIP as it is for the installation of a new electric line above ground located wholly in England, is not less than 132,000 volts (132kV), is not less than two kilometres (km) in length,

will be owned and managed by SP Manweb, and is not otherwise exempt from the relevant exemptions of the Electricity Act 1989. Accordingly, the proposed development meets the definition of an NSIP pursuant to s14 (1)(b) and s16 of the PA2008. Development consent is therefore required for the 132kV electric line above ground and all works that form part of that line under s31 of the PA2008.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 8 February 2019, I was appointed as the Examining Authority (ExA) for the application under s61, s78 and s79 of the PA2008 [PD-003].

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The Planning Inspectorate issued advice under s51 of the PA2008 to the applicant including highlighting a number of potentially relevant bodies which did not appear to have been consulted at the pre-application stage [OD-001]. The applicant agreed with this and provided explanations for those bodies it had not consulted, and in all other cases added them to the mailing list and sent notices of acceptance of the application under s56 of the PA2008.
- 1.3.2. The persons involved in the examination were:
- persons entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP;
  - Affected Persons (APs) affected by a compulsory acquisition (CA) and/or temporary possession (TP) proposal made as part of the application, and who had objected to it at any stage in the examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The examination began on 20 March 2019 and concluded on 20 September 2019.
- 1.4.2. The principal components of and events around the examination are summarised in the rest of this Chapter. A fuller description, timescales and dates can be found in Appendix A.

### **The Preliminary Meeting**

- 1.4.3. On 20 February 2019, I wrote to all IPs and Statutory Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) inviting them to the Preliminary Meeting (PM), and also an Issue Specific Hearing (ISH) on the same day to discuss the draft Development Consent Order (DCO or Order) [PD-004].
- 1.4.4. The letter outlined:
- the arrangements and agenda for the PM;

- an initial assessment of the principal issues to be considered during the examination;
- a draft examination timetable;
- the availability of application documents;
- my procedural decisions concerning deadlines for comments on RRs, the submission of material from the applicant, Written Representations (WR), a Local Impact Report (LIR) from Shropshire Council (SC), Statements of Common Ground (SoCG), and proposals for an accompanied site inspection; and
- a detailed agenda for the ISH to consider the draft DCO.

1.4.5. The PM took place on 20 March 2019 at The Old Rectory in Wem. An audio recording [EV-001] and a note of the meeting [EV-003] were published on the Planning Inspectorate's National Infrastructure Planning website<sup>1</sup>.

1.4.6. Following the discussion at the PM, I issued my procedural decisions on 27 March 2019 under Rule 8 of the EPR about the examination timetable and reaffirmed those decisions already notified to IPs [PD-005].

### **Site Inspections**

1.4.7. I carried out several unaccompanied site inspections both immediately before the PM and during the examination. An accompanied site inspection with the applicant and representatives of SC was carried out on 11 April 2019, and a full itinerary and maps is contained in EV-005.

1.4.8. I have had regard to the information and impressions obtained during these site inspections in all relevant sections of this report.

### **Hearings**

1.4.9. I held a number of hearings to ensure the thorough examination of the issues raised by the application. ISHs under s91 of the PA2008 were held to consider the subject matter of the draft DCO on:

- 20 March 2019 [PD-004 and EV-002]; and
- 11 July 2019 [EV-005 and EV-008].

1.4.10. Following requests from several APs, I held a Compulsory Acquisition Hearing (CAH) under s92 of the PA2008 on 11 July 2019 [EV-006 and EV-009].

1.4.11. No requests were received from any IPs for an Open Floor Hearing and I therefore decided not to hold one.

### **Written Processes**

1.4.12. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/reinforcement-to-north-shropshire-electricity-distribution-network/>



arising from the examination. All of this material is recorded in the Examination Library (Appendix B) and published online. For this reason, this report does not contain extensive summaries of all documents and representations, although I have considered all important and relevant matters arising from them and full regard has been had to them in reaching my conclusions.

### **Relevant Representations**

- 1.4.13. Fourteen RRs were received by the Planning Inspectorate [RR-001 to RR-014], and the issues that they raise are considered in Chapter 4 of this report. All makers of RRs received the Rule 6 letter and were provided with an opportunity to become involved in the examination as IPs.

### **Written Representations and Other Examination Documents**

- 1.4.14. The applicant and IPs were provided with opportunities to:
- make WRs, respond to my written questions (WQ), submit SoCGs and a LIR;
  - comment on WRs made by the applicant and other IPs, and on these other submissions;
  - comment on revisions to the draft DCO submitted by the applicant during the examination; and
  - make other written submissions requested or accepted by the ExA.

### **Local Impact Report**

- 1.4.15. A LIR is a report made by a relevant local authority invited to submit such a document to the ExA under s60 of the PA2008. The purpose of the LIR is to set out the likely impact of the proposed development on the authority's area (or any part of that area). One LIR was invited and received from SC, the unitary authority in whose area the whole application site lies [REP1-010].

### **Statements of Common Ground**

- 1.4.16. A SoCG is a statement agreed between the applicant and one or more IPs, recording matters that are agreed between them. By the end of the examination, the following bodies had concluded SoCGs with the applicant:
- The Environment Agency [REP1-003];
  - Shropshire Council [REP2-003];
  - National Grid [REP3-004];
  - Highways England [REP3-010];
  - Network Rail [REP4-003];
  - Severn Trent Water [REP8-007]; and
  - Canal and River Trust [AS-013].
- 1.4.17. The applicant attempted to progress a SoCG with Natural England (NE) as requested in my Rule 6 letter at the outset of the examination, and as I reaffirmed in my Rule 17 letter towards the end [PD-009]. However, no response was forthcoming from NE, so the SoCG is unsigned [REP8-006].

- 1.4.18. SoCGs are considered further in relation to the draft DCO in section 7.4 of this report.

### **Written Questions**

- 1.4.19. I asked one round of written questions set out in the Rule 8 letter [PD-006], and three sets of requests for further information under Rule 17 of the EPR, principally concerning proposals for concluding the examination earlier than the published date and requesting submissions on a range of outstanding matters [PD-007, PD-008 and PD-009].

### **Requests to Join and Leave the Examination**

- 1.4.20. On 13 May 2019 Mr Graham Jenkins registered his interest in the project. On the basis of the information provided I considered that he fell within one or more of the categories set out in s102B of the PA2008 and Interested Party status was granted under s102(1)(ab) of the PA2008 providing the opportunity for him to participate in the examination.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.5.1. The proposed development (involving transmission of electrical energy by overhead cables) is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. The applicant submitted a Scoping Report under the EIA Regulations applicable to this application<sup>2</sup> in March 2017, and the Planning Inspectorate provided a Scoping Opinion in April 2017. The proposed development was therefore determined to be EIA development<sup>3</sup>, and the application was accompanied by an ES [APP-031 to APP-085].

## **1.6. HABITATS REGULATIONS ASSESSMENT**

- 1.6.1. The application includes a report to meet the requirements of (the Habitats Regulations<sup>4</sup> [APP-029]. The first stage in Habitats Regulations Assessment (HRA) is screening to assess whether the project is likely to have a significant effect on the interest features of European sites alone or in combination with other plans or projects.
- 1.6.2. The information contained in this report demonstrates that there would be no likely significant effects on any of the European sites and qualifying features that have been considered in the examination, either alone or in combination with other plans or projects, and therefore no further stages of the HRA process are required to be considered.

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<sup>2</sup> Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations (as amended).

<sup>3</sup> In accordance with Regulation 4(2)(a) of the EIA Regulations.

<sup>4</sup> The Conservation of Habitats and Species Regulations 2017.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.7.1. By the end of the examination, there were some matters concerning protective provisions subject to separate agreements between the applicant and the relevant statutory undertaker. The applicant had also reached agreement with various landowners concerning accesses for construction purposes. These considerations are addressed in Chapter 6 of this report as bearing on the draft DCO.

## **1.8. OTHER CONSENTS**

- 1.8.1. In addition to development consent under the PA2008, the proposed development would require several other consents and licences [APP-030]. Most of these are standard consents necessary for typical large construction projects such as licences for European Protected Species and permits for works within 8m of a river bank. No representations were received suggesting there would be any impediments to gaining such consents by the applicant to enable implementation of the proposed development.

## **1.9. STRUCTURE OF THIS REPORT**

- 1.9.1. The structure of this report is as follows:
- **Chapter 1** introduces the application, the processes used to carry out the examination and make this report;
  - **Chapter 2** describes the site and its surroundings, the proposed development, its planning history and that of related projects;
  - **Chapter 3** records the legal and policy context for the Secretary of State's decision;
  - **Chapter 4** sets out the main issues that arose from the application and during the examination;
  - **Chapter 5** sets out the conclusions on the case for development consent;
  - **Chapter 6** sets out the ExA's examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals;
  - **Chapter 7** considers the draft DCO;
  - **Chapter 8** sets out the ExA's recommendation to the Secretary of State.
- 1.9.2. This report is supported by the following Appendices:
- **Appendix A** – Examination Events.
  - **Appendix B** – the Examination Library.
  - **Appendix C** – List of Abbreviations.
  - **Appendix D** – the Recommended draft DCO.
- 1.9.3. Individual document references in this report are enclosed in square brackets [] and contained in the Examination Library with hyperlinks to the original documents held online. References to each of the deadlines in the examination are abbreviated to D1, D2 etc as appropriate.

## **2. THE PROPOSAL AND THE SITE**

### **2.1. THE APPLICATION AS MADE**

- 2.1.1. The proposed development and its components are shown on Figure 1.2 [APP-079] and the Works Plans [AS-006]. A detailed description of the proposed development is contained in Section 3.6 of ES Chapter 3 [APP-034].
- 2.1.2. The proposed development includes the following elements:
- works within the boundary of the existing SP Manweb substation at Oswestry, including an underground cable and the installation of electrical switchgear and associated equipment;
  - approximately 1.2km of 132kV underground cable between Oswestry substation and a 132kV terminal structure at Long Wood, just to the immediate east of the A5(T);
  - approximately 21.3km of 132kV of OHL supported by Trident wood poles from the terminal structure at Long Wood to the existing SP Manweb substation at Wem; and
  - works within the existing SP Manweb substation at Wem, including the installation of a new 132kV to 33kV transformer.
- 2.1.3. The proposed development also includes undergrounding six short sections of existing SP Manweb lower voltage OHL in order to ensure safe electrical clearance for the new OHL.
- 2.1.4. Temporary works would be required for the construction of the new OHL including seven temporary laydown areas, a welfare unit, security cabin, access tracks, vegetation clearance and reinstatement planting.
- 2.1.5. The main construction compound for the proposed development would be located at the existing SP Manweb depot at Maesbury Road, Oswestry Industrial Estate, where site offices and welfare facilities are already in place. This construction compound would cater for the bulk delivery and storage of materials (the main components being wood poles, conductors, stay wire, crossarm assemblies and insulators) and storage of construction plant and equipment.
- 2.1.6. The applicant anticipates that the construction compound would be used for a maximum of 18 months. As the depot already serves as a maintenance and construction compound for other SP Manweb works it is not included within this application for development consent.
- 2.1.7. Subject to development consent being granted, work on site would commence in 2020. Construction is anticipated to take approximately 12 months and the proposed development would be operational in 2021.

### **2.2. CHANGES TO THE APPLICATION**

- 2.2.1. In my Rule 6 letter I requested the applicant supply a number of updated plans and corrections to the Book of Reference (BoR) [PD-004]. These included revised Works Plans [AS-006], and plans showing the Limits of

Deviation [AS-003], Historic Sites [AS-004], Important Hedgerows [AS-005], Nature Conservation Sites [AS-007] and Mapped Flood Risk [AS-008].

- 2.2.2. The applicant was advised to carry out a full review of the Land Plans and the BoR, and ensure that all land interests were clearly informed about the precise nature of rights the applicant is seeking over their land. Accordingly, the applicant added a number of bodies to the list of those sent notices of acceptance of the application under s56 of the PA2008 [AS-002].
- 2.2.3. I explained in my Rule 6 letter [PD-004] that it was not clear whether it is temporary possession, or compulsory acquisition of permanent rights to be used temporarily which is intended by the applicant in relation to specific plots. Some discrepancies were found between the colour of some plots as shown on the Land Plans and the description of rights the applicant is seeking over that land in the BoR.
- 2.2.4. The applicant responded that:
- the reference to plot 376 in Schedule 5 to the DCO is an error and would be amended accordingly [AS-002];
  - rights only are required over plots 9, 10, 11, 16, 39, 45, 142, 186, 258 and 375 coloured yellow on the Land Plans; and
  - article 26 (temporary use of land for carrying out the authorised development) of the draft DCO provides sufficient rights over the plots coloured yellow to allow construction of the proposed development.
- 2.2.5. Accordingly, the BoR and the Statement of Reasons (SoR) were amended to remove reference to Class 6 rights for the yellow plots. The key for the yellow plots on the Land Plans was also amended so that it only refers to temporary possession pursuant to article 26 of the draft DCO. Plot 16 on Sheet 2 of the Land Plans was coloured blue in error and was amended to be shown coloured yellow. Sheet 1 of the Land Plans shows plots 9 and 11 correctly coloured yellow, but the BoR should not have referred to Class 5 rights in respect of these two plots. The BoR and the SoR were amended to remove reference to Class 5 rights for these two plots [AS-002].
- 2.2.6. I formally accepted these amended documents at the PM on 20 March 2019 [EV-003], and the consequent revisions to the draft DCO [REP2-009], BoR [REP2-010], SoR [REP2-011] and Land Plans [REP2-012] were submitted at D2.

## **2.3. THE SITE AND SURROUNDINGS**

- 2.3.1. The proposed development is situated entirely within the administrative county of Shropshire. It passes through a scenic, farmed landscape of arable fields and pasture with occasional villages, scattered residential properties and woodland. This is a rural area with Oswestry and Wem as the two largest settlements closest to the Order limits, and therefore the

population immediately affected by the proposed development is very low.

- 2.3.2. Shropshire's geology is diverse. The proposed development crosses part of the Shropshire Plain, which covers much of North Shropshire. The plain is a basin of Permian and Triassic New Red Sandstone, overlain by a small area of Jurassic Sandstone near Wem.
- 2.3.3. The landform of the area through which the proposed development passes is typical of the Shropshire Plain, being low lying and relatively flat or gently undulating. There are some areas of higher ground (between 90 to 110m AOD) in the north-west, close to Oswestry, and in the central areas of the application area, close to Stanwardine in the Wood. The proposed development crosses the floodplain of the Rivers Perry and Roden.

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. Planning applications within 1km of the proposed development (excluding the access tracks and lower voltage diversions) have been reviewed by the applicant in order to identify whether any proposals would be affected by or would affect the application, but none would be in its assessment [APP-086].

### **3. LEGAL AND POLICY CONTEXT**

#### **3.1. THE PLANNING ACT 2008**

- 3.1.1. In accordance with s14(1)(b) and s16 of the PA2008, OHL installed above ground with a nominal voltage of greater than, or equal to, 132kV and over 2km are considered NSIPs. The proposed development meets these criteria and is therefore defined as an NSIP for which development consent is required.
- 3.1.2. The application for an order granting development consent is to construct, operate and maintain the proposed development. The application also includes the power, where appropriate, to compulsorily acquire rights.
- 3.1.3. The modifications to Oswestry and Wem substations and limited stretches of undergrounding would normally be considered permitted development<sup>5</sup>. However, the applicant has taken the view that these would all form part of the installation of a new 132kV OHL and has therefore included the substation works and underground sections within the application. Consequently, they are included in the EIA and considered within the ES [APP-031 to APP-085].
- 3.1.4. As an NSIP, the application falls to be determined by the Secretary of State in accordance with the requirements of the PA2008. By s104 of the PA2008 the Secretary of State is required to have regard to and decide the application in accordance with any National Policy Statement (NPS) which has effect in relation to development of the description to which the application relates, *'except to the extent that one or more of subsections (4) to (8) applies'*.
- 3.1.5. Those NPSs relevant to the proposed development are the Overarching National Energy Infrastructure Policy (NPS EN-1) and Electricity Networks Infrastructure (NPS EN-5), and these are considered in the following section.

#### **3.2. NATIONAL POLICY STATEMENTS**

- 3.2.1. The applicant's analysis of the policy context applicable to this application is set out in Chapter 5 of the ES [APP-39] and more fully in the Planning Statement [APP-086].

##### **NPS EN-1**

- 3.2.2. Part 4 of NPS EN-1 sets out general policies. It states that:

*'In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the [IPC] should take into account:*

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<sup>5</sup> under the Town and Country Planning (General Permitted Development) (England) Order 2015.

- *Its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and*
- *Its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*

*In this context, the [IPC] should take into account environmental, social and economic benefits and adverse impacts at national, regional and local levels' (paras 4.1.2 and 4.1.4).*

3.2.3. Paragraph 4.1.5 of NPS EN-1 references development plan policies as being 'other matters' which could potentially be taken into account by the relevant decision-making authority in determining a DCO application. In the event of a conflict between these or any other documents and an NPS, *'the NPS prevails for the purposes of ... decision making given the national significance of the infrastructure'*.

3.2.4. NPS EN-1 sets out additional matters which the Secretary of State must consider in his determination. These include compliance with the Habitats Regulations, design, and a range of generic impact topics (such as air quality, traffic, landscape impacts, flood risk), which are considered in the ES.

#### **NPS EN-5**

3.2.5. NPS EN-5 provides specific guidance relevant to electricity networks infrastructure and sets out additional technology-specific considerations to the generic impacts considered in NPS EN-1. These are:

- biodiversity and geological conservation;
- landscape and visual; and
- noise and vibration.

3.2.6. With respect to biodiversity the NPS states that:

*'...large birds such as swans and geese may collide with overhead lines associated with power infrastructure, particularly in poor visibility. Large birds in particular may also be electrocuted when landing or taking off by completing an electric circuit between live and ground wires' (para 2.7.1).*

3.2.7. In terms of landscape matters, paragraph 2.8.2 of EN-5 states that:

*'...new above ground electricity lines, whether supported by lattice steel towers/pylons or wooden poles, can give rise to adverse landscape and visual impacts, dependent upon their scale, siting, degree of screening and the nature of the landscape and local environment through which they are routed. For the most part these impacts can be mitigated, however at particularly sensitive locations the potential adverse landscape and visual impacts of an overhead line proposal may make it unacceptable in planning terms, taking account of the specific local environment and context.'*

3.2.8. It goes on:



*'Cumulative landscape and visual impacts can arise where new overhead lines are required along with other related developments such as substations, wind farms and/or other new sources of power generation.'*

3.2.9. Para 2.8.4 notes that:

*'Where possible, applicants should follow the principles below in designing the route of their overhead line proposals and it will be for applicants to offer constructive proposals for additional mitigation of the proposed overhead line. The ES should set out details of how consideration has been given to undergrounding or sub-sea cables as a way of mitigating such impacts, including, where these have not been adopted on grounds of additional cost, how the costs of mitigation have been calculated.'*

3.2.10. With respect to noise and vibration, Section 2.9 of the NPS states that:

*'All high voltage transmission lines have the potential to generate noise under certain conditions.'* (para 2.9.2).

3.2.11. I am satisfied that the applicant's analysis of the applicable national policy in the case of this application for development consent is correct.

### **3.3. THE NATIONAL PLANNING POLICY FRAMEWORK**

3.3.1. The National Planning Policy Framework (NPPF) of July 2018 sets out the Government's planning policies for England and how these are expected to be applied. The NPPF does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and relevant NPSs, but the NPPF is a relevant consideration in decision making for this application.

### **3.4. THE DEVELOPMENT PLAN**

3.4.1. The application falls entirely within the area of SC, a unitary authority responsible for preparation of the Shropshire Local Plan, the two key documents of which are:

- The Core Strategy Development Plan Document (DPD) (adopted in 2011) which provides the overarching local planning policy framework for Shropshire. It includes a spatial vision and a set of strategic county-wide objectives and policies to inform future levels of housing and employment, infrastructure provision, economic development and countryside protection; and
- The Site Allocations and Management of Development (SAMDev) Plan (adopted in 2015) which provides site specific allocations. It sets out proposals for the use of land and policies to guide future development, including design, historic and natural environment and minerals safeguarding.

3.4.2. The Core Strategy and SAMDev Plan run to 2026, and SC is currently in the process of a Local Plan Review in order to extend the plan period to 2036. As part of this process the Council has recently carried out a consultation into preferred site options in a number of settlements,

including Oswestry and Wem. There are currently no identified preferred development options which would be adversely impacted by the line route for the proposed development.

- 3.4.3. The proposed 132kV OHL would traverse a Mineral Safeguarding Area (MSA) for sand and gravel. A Minerals Resource Assessment was provided as part of the application [APP-040] which highlights a limited area of unencumbered mineral bearing land beneath the route of the OHL, immediately south of Cockshutt and adjacent to the A528 Ellesmere Road. However, this is a nominal proportion of the total surrounding sand and gravel resource, and would present little conflict with the safeguarding policy.
- 3.4.4. SC confirmed that there are currently no identified plans for future working within this area. The proposed alignment of the OHL route is generally peripheral to the main resource blocks within the MSA and the nature of the proposed development would be unlikely to unduly restrict the ability to extract this mineral in the future. Any subsequent proposal to work this mineral would need to establish a satisfactory working methodology to accommodate the proposed OHL[REP2-017].

### **3.5. HABITATS REGULATIONS ASSESSMENT**

- 3.5.1. The application included a No Significant Effects Report (NSER) which concluded that there would be no likely significant effects on any European site, either alone or in combination with any other plans or projects, and that appropriate assessment would not be required under the Habitats Regulations [APP-029]. The European sites and site features considered in the HRA are listed in full in the NSER and reflect the site designation citations and conservation objectives as published. NE was consulted on the NSER by the applicant on more than one occasion and made no comments. SC in its LIR [REP1-010] agreed with the applicant's findings that:
- there would be no likely significant effects on European sites either during construction or operation;
  - no European sites would be directly impacted by the proposed development; and
  - there would be no likely significant effects on the Meres and Mosses Ramsar site Phase 2.
- 3.5.2. The Stage 1 screening assessment which is presented in the NSER has had regard to the 'People over Wind'<sup>6</sup> ruling and is based solely on the proposed development in the absence of mitigation<sup>7</sup>. As a result, the applicant confirmed that the NSER provides a 'worst case' assessment of likely significant effects on European sites and that this worst-case assessment concluded that there would be no likely significant effects

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<sup>6</sup> European Union Court of Justice *People over Wind* Peter Sweetman v Coilite Teoranta judgement (C-323/17) issued on 12 April 2018.

<sup>7</sup> i.e. considering only the unmitigated effects of the route, undergrounded sections and the supporting structures (poles and stays) of the OHL and associated temporary works.

[REP2-006]. NE were asked by myself and the applicant on a number of occasions to confirm this conclusion, but no reply was received [PD-006]. However, this is supported by SC [REP2-017], and I agree with this conclusion.

### **3.6. MADE DEVELOPMENT CONSENT ORDERS**

3.6.1. The most relevant made DCO is the North Wales Wind Farm Connection Project Order 2016. This is for a 132kV OHL of similar length to the application the subject of this report, and put forward by the same applicant, SP Manweb.

3.6.2. Other relevant made Orders are the Brechfa Forest Wind Farm Connection Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.

### **3.7. TRANSBOUNDARY EFFECTS**

3.7.1. A screening for any effects of the proposed development on other countries was carried out by the Planning Inspectorate on behalf of the Secretary of State under Regulation 24 of the Infrastructure Planning EIA Regulations 2009. It concluded that the proposed development was not likely to have a significant effect on the environment in another European Economic Area State [OD-002].

## **4. THE MAIN ISSUES IN THE EXAMINATION**

### **4.1. INTRODUCTION**

- 4.1.1. As is usual, my letter inviting IPs to the PM contained my initial assessment of the principal issues for consideration during the examination [PD-004]. These were:
- adequacy of protective provisions for statutory undertakers;
  - agreements with landowners concerning temporary possession for access during construction;
  - crossings of existing main networks:
    - A5 and A528;
    - Montgomery Canal;
    - Shrewsbury to Chester railway;
    - Ironbridge to Shrewsbury 400kV OHL;
  - flexibility of proposed limits of deviation and siting of individual poles;
  - flood risk;
  - impacts on existing farm operations during construction and operation; and
  - impacts on landscape and visual amenity:
    - hedgerows and veteran trees;
    - laydown areas during construction.
- 4.1.2. The progress of the examination was indeed governed by these main issues.

### **4.2. THE LOCAL IMPACT REPORT**

- 4.2.1. The LIR submitted by SC noted the positive nature of discussions in progress with the applicant since 2016. As a result, there was very limited local response to the proposed development, with the one exception of the choice of line route around the village of Noneley. This is considered in paragraphs 4.5.9 to 4.5.12 below.
- 4.2.2. The LIR sets out the Development Plan policies applicable to the proposed development followed by a systematic appraisal against the main assessment criteria. These are considered as appropriate in the following sections. Overall, the LIR recognises that this proposed infrastructure is part of the Council's current capacity improvement programme and would therefore support its economic development objectives for the north of the county.

### **4.3. APPROACH TO ENVIRONMENTAL ASSESSMENT**

- 4.3.1. The applicant has laid considerable emphasis upon producing a scheme which avoids the need for mitigation because likely significant effects have been dealt with as part of the design stage. The approach to consultation and environmental assessment is described in Chapter 4 of

the ES [APP-037], including a Rochdale Envelope approach to provide the flexibility for micro-siting<sup>8</sup> of individual poles within the overall Order limits.

## **4.4. THE PRINCIPLE OF THE PROPOSED DEVELOPMENT**

- 4.4.1. NPS EN-1 sets out that it is critical that the UK continues to have secure and reliable supplies of electricity as part of the transition to a low carbon economy. It also highlights an urgent need for new electricity transmission and distribution infrastructure to be provided. The applicant believes this proposed development would help meet these requirements.
- 4.4.2. The current local electricity distribution network has been serving North Shropshire for many years. It is operating at or close to capacity. Reinforcement of the local distribution network is therefore required to ensure that the applicant can continue to comply with statutory and licence duties obligations.
- 4.4.3. Enhancing the electricity supply has been identified by SC as an infrastructure priority to support future growth plans identified in the Shropshire Economic Growth Strategy 2017 to 2021, and adopted Core Strategy and SAMDev components of the Local Plan. Planned employment sites at Oswestry would lead to an anticipated increase in demand for electricity which cannot be met by the existing network.

### **Conclusion**

- 4.4.4. There is an urgent need to substantially increase the capacity of the electricity network if the social and economic plans for North Shropshire are to be achieved. No representations were made to cast doubt on this, and I therefore conclude that the principle of the proposed development is supported by the need demonstrated locally and nationally.

## **4.5. CONSIDERATION OF ALTERNATIVES**

- 4.5.1. The studies carried out by the applicant for reinforcing the network are presented in the Strategic Options Report (May 2016) [APP-088] and an updated version (November 2017) [APP-089]. A further update was carried out in November 2018) [APP-090]. These documents consider the technical requirements of the network and outline the economic and high-level environmental considerations. The more detailed routeing considerations are set out in Chapter 2 of the ES [APP-033] and three line route reports prepared in 2016 and 2017 [APP-092, APP-093 and

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<sup>8</sup>article 4 and requirements 3 and 4 of the draft DCO allow for micro-siting within the Order limits for:

- any pole structure to be moved by up to 5m from its indicative position as shown on the Works Plans, but not within 1m of the outside edge of any hedgerows; and
- any pole structure to be increased vertically in height (not exceeding 2m) from the heights shown in Table 1 of requirement 3.

APP-094], all submitted as part of the application for development consent.

4.5.2. The initial technical options considered were:

- whether the network could be upgraded by installing equipment designed to manage customer need requirements within existing substations. This option was discounted because, although it would have limited environmental impacts, the applicant did not consider it would meet anticipated future demands for power. It would not therefore comply with SP Manweb's statutory obligations and licence conditions under the Electricity Act 1989;
- to increase the rating of existing lower voltage 33kV circuits to provide additional supply. This was similarly discounted on the grounds that, although likely to result in minimal environmental impacts, it would not deliver sufficient supply for the anticipated demand;
- to increase the number of 33kV circuits between the substations in Oswestry, Marchwiell, Whitchurch and Wem. This was discounted as it would require multiple new circuits, which would increase costs and also likely environmental impacts; and
- taking a supply from the nearby 400kV circuit operated by National Grid. This was discounted due to the significant cost increases and likely significant environmental impacts, as a new 400kV/132kV transformer substation would be required in addition to a new 132kV OHL.

4.5.3. Consideration was also given to various options involving a new 132kV network. These options were discounted due to the length of new electricity circuit required and the consequent costs and likely environmental impacts.

4.5.4. The conclusion of the options appraisal was a new 132kV circuit between the Oswestry and Wem substations. This was deemed to be acceptable in environmental terms and would also be the most cost effective and technically efficient option.

## **Routeing**

4.5.5. The process of line route selection comprised a series of technical and environmental reviews and assessments, together with stakeholder consultation, as described in detail in the Consultation Report [APP-017].

4.5.6. The applicant has considered the alternatives including through application of the Holford Rules (the broad principles formulated by the late Lord Holford for the routeing of overhead transmission lines). Whilst the Holford Rules relate specifically to high voltage electricity lines supported on lattice steel towers, many of the principles can also be used as guidance for routeing OHL supported on wood poles. Their use for routeing new OHL is advocated by NPS EN-5 (paragraphs 2.8.5 to 2.8.7).

4.5.7. The basic premise of the Holford Rules is that the major impact of an OHL is visual and that the degree of intrusion can be lessened by

routing the line to 'fit' the grain of the landscape. This can be done by using landform and trees to provide screening and/or background and by routing a line at a distance from residential areas and roads. In addition, the Rules note that a well-routed line takes account of other environmental considerations by seeking to avoid the most sensitive and valued natural and man-made features.

- 4.5.8. Applying the Holford Rules to this proposed development, once a broad route corridor was established, this was then refined through developing narrower 100m wide line routes, the preferred line route within a 25m wide corridor and finally the route of the proposed development considered within the ES [APP-091, APP-092 and APP093].
- 4.5.9. SC in their LIR record agreement with the applicant's approach to designing a route which would cause the minimum effects on the historic environment, particularly in relation to the OHL near the settlements of Cockshutt and Noneley [REP1-010]. As part of earlier pre-submission consultation, the applicant put forward a route located to the south of the village of Noneley. SC's appraisal of the southerly route recognised a potential impact on listed and non-designated buildings, specifically that it would be visible from first floor windows of the two Grade II listed farmhouses, as well as from Noneley Hall. With regard to visual impact more generally, it noted that arable farmland to the south of the settlement is fairly open in character.
- 4.5.10. In June 2017, having considered the heritage, landscape and ecological impacts of the competing options, SC officers expressed a marginal preference for an alternative option located to the north of the village.
- 4.5.11. The applicant undertook further studies of detailed routing to the north of Noneley<sup>9</sup>. When compared to the southerly route option, the northerly route would benefit from more hedgerow cover, and thus enabling a greater potential to mitigate the visual impacts of the new line. Additionally, the northerly route would offer the opportunity to co-locate the new OHL with an existing 33kV line, which could further mitigate adverse impacts. The applicant therefore concluded a slight preference for the route to the north of Noneley, supported by some of the landowners and local feedback and by SC [APP-094].
- 4.5.12. In 2018, the applicant adopted the northerly route option around Noneley and this was part of the statutory consultation. This option remains the preference of SC who also agreed that no further mitigation measures would be necessary, other than those contained in the Construction Environmental Management Plan<sup>10</sup> [REP1-010].
- 4.5.13. At the CAH on 11 July 2019 an oral submission was made by Mr and Mrs RG Stokes objecting to the northern route at Noneley. No representations

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<sup>9</sup> and at two other locations as well: to the north of the Woodhouse Estate and to the north of Lower Hordley, and as a result, amendments were made to the route as it affects these two areas.

<sup>10</sup> see section 4.7 below.

had been made by them hitherto during the examination, but I encouraged them to put their concerns forward in writing, which were received as REP6-010. This contained their various letters submitted to the applicant during the consultation stages, prior to the formal submission of the application for the DCO. The applicant's response explains how these responses were handled during the consultation stages [REP7-009] and are recorded in the Consultation Report [APP-017].

- 4.5.14. The applicant considers it has given full consideration to each of the matters raised by Mr and Mrs Stokes and agreed to changes to the proposed development across their land. These include a change to remove construction access through their farm, affecting an area benefitting from a planning permission for barn conversions. In addition, a change was made to the OHL route to avoid a large mature oak tree and move the line further from the farmhouse.
- 4.5.15. From the detailed chronology set out in REP7-009 I am satisfied that the applicant has given proper consideration to the matters raised by the Stokes family before the application was submitted, and that the northern route at this point is an appropriate balance between a range of landscape and visual, ecological and heritage impacts.

## **Undergrounding**

- 4.5.16. The applicant considered that undergrounding the entire length of the route would be a factor of 2.2 to 2.8 times more expensive than an OHL option [APP-089], and drew attention to paragraph 2.8.2 of NPS EN-5 which states that:
- 'The Government does not believe that the development of overhead lines is generally incompatible in principle with developers' statutory duty under section 9 of the Electricity Act 1989 to have regard to amenity and to minimise impacts'*
- 4.5.17. Paragraph 2.8.2 of NPS EN-5 further acknowledges that wood poles:
- 'can give rise to adverse landscape and visual impacts, dependent on their scale, siting, degree of screening and the nature of the landscape and local environment through which they are routed' but notes that 'for the most part these impacts can be mitigated'.*
- 4.5.18. Paragraph 2.8.8 of NPS EN-5 notes that where there are serious concerns about the potential adverse landscape and visual impacts of a proposed OHL, the decision-maker will have to balance these against other factors, including the need for the proposed infrastructure, the availability and costs of alternative routes, technical difficulties and likely costs of undergrounding, as well as the benefits and any impacts of undergrounding along any of the identified sections of the route.
- 4.5.19. NPS EN-5 does not provide a definition of '*serious concerns*', but the applicant interpreted this to mean adverse significant landscape and visual effects that are over and above that expected for this type of



development. In the context of an OHL this is taken to mean an effect which is considered to be significant as assessed in through the EIA process.

- 4.5.20. Electricity networks NSIPs will inevitably give rise to some negative effects but NPS EN-5 refers to the need to undertake a very specific exercise to consider options including undergrounding only where landscape and visual effects are particularly significant (paragraph 2.8.9).
- 4.5.21. Based on the above, the applicant took the following approach to the consideration of undergrounding:
- is there a particularly sensitive location along the proposed route of the 132kV OHL where the effects of the line in that locality would give rise to serious concerns; and
  - if the answer is in the affirmative, then is this an exceptional circumstance where undergrounding the line would bring significant benefits which would *'clearly outweigh any extra economic, social and environmental impacts and the technical difficulties are surmountable'* (NPS EN-5 paragraph 2.8.9).
- 4.5.22. The applicant considered the need for undergrounding in a number of sensitive locations and this is set out in Appendix 1 of the Planning Statement [APP-086]:
- crossing the Montgomery Canal – poles 36 to 40;
  - Lower Lees – poles 54 to 64;
  - Dandyford Farm, Lower Hordley – poles 66 to 73;
  - near Kenwick Oak – poles 92 to 97;
  - near Malt Kiln Farm – poles 123 to 128; and
  - near The Shays – poles 147 to 152.
- 4.5.23. In all cases, the conclusion was that whilst undergrounding would provide a modest improvement in landscape and visual effects in a non-designated area, these would not clearly outweigh the extra economic impacts and the technical preference for an OHL. Because the crossing of the Montgomery Canal was a particular concern of the Canal and River Trust (CRT), this matter is considered further in paragraphs 4.12.32 to 4.12.46 below.

## Design

- 4.5.24. Design proposals for the proposed development are set out in Chapter 3 of the ES [APP-034]. Having identified the preferred routeing, the main alternative designs were then considered:
- steel lattice tower approximately 26m high; or
  - heavy duty wood pole (with underslung earth wire) approximately 15m high; or
  - Trident wood pole (no earth wire) approximately 12m high.
- 4.5.25. Steel towers for 132kV OHL are used when a substantial span length (up to three times that of a wood pole) is required, for example to cross

features where there is a land level change or where high ground clearances are needed. They can also be used to reduce impacts on agricultural practices.

- 4.5.26. The applicant concluded that steel towers would not be required within the landscape of the proposed development and therefore considered the two wood pole designs would be more appropriate. The heavy-duty wood pole (HDWP) is a larger double wood pole structure with heavier metalwork than the lighter Trident design. It is typically used where wind velocities and potential ice loading are likely and where there is a need for integral earthing structure.
- 4.5.27. In the case of this project, there would be no need for an integral earthing structure and the predicted wind and ice loading are such that the smaller Trident design could be used. Trident wood poles are lighter and shorter structures than HDWPs and provide greater flexibility to avoid potential environmental issues through careful siting.
- 4.5.28. The Trident pole design has been used by the applicant to support 132kV OHL since the 1980s in a variety of circumstances. This includes crossing terrain similar to that of the proposed development, for example the 20km Legacy to Oswestry 132kV OHL which has been operational since 2015. This experience suggests that wood poles can be screened by trees and are therefore less likely to be visible from the surrounding landscape. Trident poles are also more flexible in terms of routeing around obstacles, thereby enabling a better landscape 'fit'.
- 4.5.29. To cater for particular circumstances along the route of the OHL such as landform and angles of deviation, a range of different Trident wood poles would be used comprising a total of 176 structures:
- 120 Intermediate 2.5m arm poles;
  - 6 Section Single poles;
  - 4 Angle Single poles;
  - 9 Intermediate H-poles;
  - 3 Section H-poles;
  - 33 Angle H-poles; and
  - 1 Terminal H-pole.

These are illustrated in Figure 4.1<sup>11</sup>.

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<sup>11</sup> Diagram 3.2 (V2) from REP2-007 included in the list of documents in Schedule 9 to the draft DCO.

**Figure 4.1: Trident Pole Designs**



Intermediate 2.5 arm



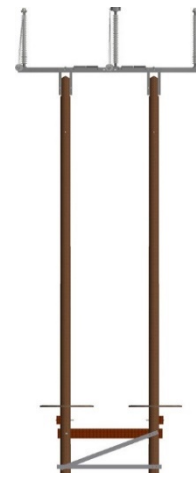
Section Single Pole



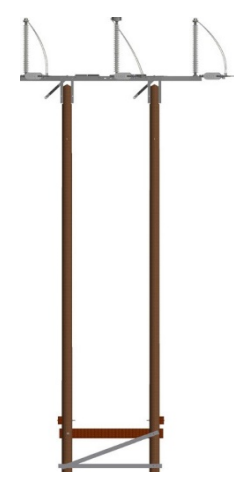
Angle Single Pole



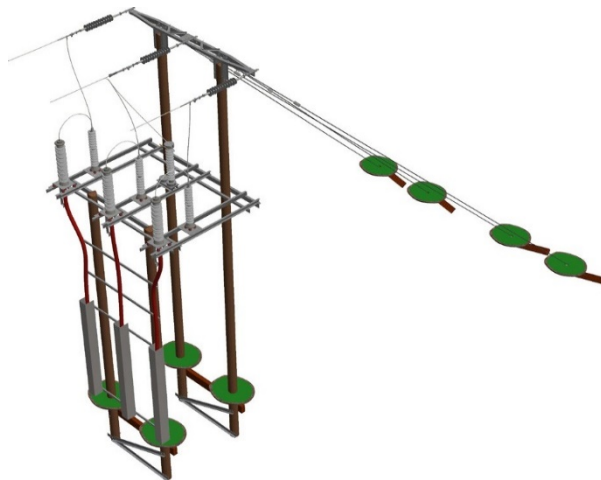
Intermediate H-pole



Section H-pole



Angle H-pole



Terminal H-pole

- 4.5.30. In good ground conditions, each wooden pole would be directly embedded into the ground and the hole backfilled with excavated topsoil or an appropriate crushed-stone aggregate. For some areas where the ground is very poor it may be necessary to design additional measures such as using concrete. However, these works would be no more intrusive than the standard excavations proposed for the majority of the foundations [REP2-006].
- 4.5.31. Galvanised steel stay wires would be used to provide support to poles in order to keep the structures vertical where the line changes direction and at terminal positions. The stay wires would be attached near the top of the structures and anchored in the ground by a below ground timber foundation block.
- 4.5.32. Common to each pole type in the Trident design range are three phase conductors supported on tension insulators which are secured to galvanised steel cross-arms assemblies. The upper structures would be approximately 3.8m wide in the case of a single intermediate wood pole structure and 5.2m wide for a double pole structure.
- 4.5.33. The wood poles would be between 300mm and 450mm in diameter dependent on the height of the pole. Including the steelwork on top of the pole (which is around 2m tall), the Trident wood poles would be typically about 12m above ground within a range of 9m to 16m according to Table 1 of requirement 3 in the draft DCO [REP8-002]. The average distance between the wood pole structures would be 122m within a range of 51m to 200m.
- 4.5.34. The reason for the variation in overall height in poles and distance between them is the need to balance a number of factors including maintaining a statutory ground clearance of 6.7m, geographical location, topography, height above sea level, wind and ice loading, span length and conductor type.
- 4.5.35. The final pole positions may be micro-sited to minimise the extent of the foundation works necessary at any particular location. If so, a change in the pole position may require a consequential adjustment in the pole height and head size to ensure statutory ground clearance is maintained.

## **Conclusions**

- 4.5.36. The application for a DCO is the result of over two years of engagement with local people, those with an interest in land, stakeholder bodies, and the applicant considers the feedback provided by these groups has played a meaningful role in improving the project design and helping refine the proposals.
- 4.5.37. The applicant therefore considers that the proposed development represents the best balance of feedback from these groups, technical assessments and its own engineering work, and I agree with this assessment.

- 4.5.38. The applicant has carried out a systematic approach to the consideration of alternative routes, and chosen Trident wood poles as the most appropriate for the physical circumstances of this part of North Shropshire. In line with the requirements of NPS EN-5, undergrounding of the OHL at sensitive locations has been properly investigated and the conclusion reached that the benefits would not outweigh the extra costs. I accept these findings.
- 4.5.39. My conclusion therefore is that the selected route for the proposed development represents the optimum in terms of work carried out to date, with the prospect of further refinements and improvements through micro-siting as detailed design progresses.

## **4.6. CONSTRUCTION OF THE PROPOSED DEVELOPMENT**

- 4.6.1. The approach to construction of the proposed development is set out in the applicant's Construction Report [APP-087]. A main construction compound is proposed at the existing SP Manweb depot at Maesbury Road on the Oswestry Industrial Estate. All plant and equipment would be delivered to this depot before the start of construction and would be stored there for the duration of the construction programme.
- 4.6.2. Plant, equipment and materials would be moved as required from the depot either straight to the site via the construction accesses or potentially the temporary laydown areas, and then to the site via smaller vehicles.

### **Oswestry Substation**

- 4.6.3. Works at Oswestry substation would comprise the installation of electrical switchgear and associated equipment (including 132kV cable sealing ends and 132kV circuit breaker) and underground cable.

### **Underground Cable**

- 4.6.4. From Oswestry substation, three 132kV single core cables together with fibre optic communications cables would be laid in a cable trench alongside and then beneath the A5(T). The route for the underground cable would run parallel to the western edge of the A5(T) for approximately 600m before passing south-east under the A5(T) for 100m. It would then head south for 700m parallel to the eastern edge of the A5(T), then east towards Long Wood where it would transfer to the OHL at pole no.1.
- 4.6.5. The 132kV underground cable would be laid typically at a depth of 1m below ground level in a trench approximately 1m wide. The cable would be installed in 200mm diameter ducts formed of polyethylene, which is chemically inert and does not contain any fluids.
- 4.6.6. It is expected that the underground cable would at some point intersect with existing underground services, such as water mains or sewerage pipes. The normal procedure in such cases is to provide a deeper trench for the underground cable and tunnel under the existing services.

- 4.6.7. For the A5(T) crossing the applicant would use horizontal directional drilling (HDD), sending a boring head from an entry pit to navigate along a predetermined alignment to a receive pit. The entry and receive pits would be typically between 7m and 10m long and approximately 2m wide and would be located either side of the A5(T) and within the Order limits. After a small diameter passageway is created, the machine is outfitted with a reaming head to widen the tunnel. No part of the existing A5(T) highway would need to be altered for this purpose.
- 4.6.8. The work to construct the 132kV underground cable would take approximately two months.

### **Lower Voltage Diversions**

- 4.6.9. There are six locations where the new 132kV OHL would cross existing lower voltage OHL:
- close to Top House Farm north of Middleton;
  - Rednal Mill Cottage;
  - Dandyford Farm near Lower Hordley;
  - near Wackley Lodge;
  - near Coppice Farm at Moor House Farm; and
  - south of Pools Farm near Wem.
- 4.6.10. These lower voltage lines would be taken down and relocated underground to ensure safe electrical clearance for the new OHL.
- 4.6.11. The lower voltage underground cables would typically be laid at a depth of 0.8m below ground level in a trench approximately 0.6m wide. The cables would be pulled through 160mm diameter ducts formed of polyethylene, and the trench reinstated. During cable laying operations, suitable crossing points would be provided as necessary to ensure access to properties is maintained.
- 4.6.12. The second phase of the diversion works would involve dismantling and removal of the section of lower voltage OHL that has been diverted. All conductor, fittings, wood poles, stay wires etc. would be dismantled and removed from site to the main construction compound.

### **Overhead Line**

- 4.6.13. The OHL would be approximately 21km in length. Construction would follow a standard sequence of activities, and once complete all plant and equipment would then be returned to the main construction compound at Maesbury Road. Construction of the OHL would take about 6 months.
- 4.6.14. Prior to the start of construction, a precise ground survey would be carried out to determine the ground profile along the route alignment and for 7m on either side where the ground profile slopes. This is to ensure that the location selected for poles and stay wires and their relationship with each other would comply with the technical limits laid down for maximum span lengths, maximum sums of adjacent spans and safe clearance to live conductors. Where the OHL would pass over or in

close proximity to trees that could infringe safe clearances to live conductors they would be pruned or felled.

- 4.6.15. In order to avoid breaching hedgerows along field boundaries and minimise the number of hedgerow crossings, access to the works areas to enable pole installation would be from the existing public highway and suitable farm accesses. These farm accesses have either a surfaced track, a stoned track or grassed track through existing field gates.
- 4.6.16. If required, due to the time of year and/or adverse wet weather, there may be a need to create temporary trackways which would be removed following the completion of construction.
- 4.6.17. To provide flexibility during construction of the OHL, the applicant proposes to construct seven temporary laydown areas along the route. Each temporary laydown area would be used for a period of up to 3 months (except for the laydown area located near Wem substation, which may be used for a period of up to 6 months). The proposed laydown areas are located at:
- east of the A5(T) near Long Wood at Middleton;
  - in Middleton between Cabin House and Top House Farm;
  - Brookfield Farm, at the southern end of Coalpit Lane;
  - Dandyford Farm near Lower Hordley;
  - Top House Farm;
  - Coppice Farm, southwest of Loppington; and
  - south of Wem substation.
- 4.6.18. These laydown areas are all located short distances from the public highway and so could be reached via existing farm accesses. Construction traffic movements would be minimal as the laydown areas would only be used when there is a need to store plant overnight to save going back to the main compound in Oswestry.
- 4.6.19. The laydown areas are likely to be used for a short space of time as places where workers drive to and park their vehicles before transferring into construction vehicles and driving to the work site. The laydown areas would be fenced off temporarily and depending on their condition, may require some form of temporary surfacing. A self-contained welfare unit and a security cabin would also be required for up to 6 months during the construction works at Wem substation to provide local facilities for the workforce, given the distance from the main construction compound at Oswestry [APP-034 and REP2-006]
- 4.6.20. It is envisaged that the OHL works would be undertaken by a team of approximately 25 staff. Normal working hours would be Monday to Friday between 0700 and 1900 hours between March and October and between 0730 and 1730 hours or during daylight hours, whichever is the shorter, during January, February, November and December. Working hours would be between 0700 and 1300 hours on Saturdays with no works to take place on Sundays or bank or public holidays. Some particular specialised operations would need to take place outside these standard working hours however.

- 4.6.21. Where the proposed OHL crosses roads, railways, and other infrastructure (for example the existing Ironbridge to Shrewsbury 400kV OHL), precautionary works would have to be completed prior to the commencement of conductor stringing. Scaffolding and nets would normally be erected over major roads and railways, while on minor roads temporary traffic lights would be sufficient to control traffic during stringing activities.
- 4.6.22. Where the proposed OHL crosses the River Perry and River Roden and the Montgomery Canal, the conductors would be strung across without the need to access the water or banks. To enable conductor stringing, a pilot wire would be fired across from one bank to the other, with conductors subsequently pulled over under tension. The conductors would not touch the water during this operation. Scaffolding or netting is not required to complete the conductor stringing across the Montgomery Canal.
- 4.6.23. All points where Public Rights of Way (PRoW) follow access tracks or cross the proposed development, as shown on the Access and Rights of Way Plans [APP-008], would have appropriate signage advising of dates and hours of work. Scaffolding or netting would not be required to complete the conductor stringing across any PRoW. No permanent PRoW closures would be required.
- 4.6.24. Once installed, 132kV wood pole OHL and underground cables generally require very little maintenance but would be subject to a regular inspection programme. Permanent access rights would be needed therefore for this purpose and are provided for in the draft DCO.

## **Wem Substation**

- 4.6.25. The modifications required within the existing Wem substation boundary would comprise the installation of a 132kV cable gantry, line isolator, associated busbars, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker.

## **Conclusion**

- 4.6.26. My conclusion is that the construction arrangements involving the main construction compound being situated at the applicant's existing depot at Oswestry, and the proposed use of seven laydown areas along the line of the OHL to facilitate the erection of individual poles, have a good prospect of limiting disruption to the rural area in which the proposed development would take place,
- 4.6.27. Highways England [HE] raised concerns about the underground crossing of the A5(T), which were resolved by the end of the examination. My conclusion is that there are no issues arising from the proposed construction methods which argue against the Order being made.



## **4.7. CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN**

- 4.7.1. A draft Construction Environmental Management Plan (CEMP) was submitted as part of the ES [APP-036] and revised during the examination. This included matters raised by the CRT concerning bird diverters, signage and planting in the vicinity of the Montgomery Canal, and mechanisms to secure implementation [REP3-006 and REP5-008].
- 4.7.2. The CEMP would form part of the legal contract between the applicant and the contractor appointed to carry out the construction. It would be reviewed and amended as necessary throughout the construction phase.
- 4.7.3. The applicant would appoint an Environmental/Ecological Clerk of Works (ECoW) for the duration of the construction of the proposed development. The purpose of this appointment is to ensure that the environmental interests of areas that may be affected by the works would be safeguarded.
- 4.7.4. The final version submitted at D8 and secured by R9 of the draft DCO has been produced to control and guide the working practices used during construction in order to minimise environmental impacts [REP8-003]. It covers the roles and responsibilities between the applicant and its nominated contractor, and includes general management measures such as noise, site management, air quality and working hours. It also incorporates NE, Historic England and Environment Agency (EA) guidelines, as appropriate, reflecting current best practice. The arrangements for temporary signage for the A5(T) access and associated traffic management have been included following agreement with HE.
- 4.7.5. The CEMP contains a number of site-specific management plans prepared to a largely common format. These include Species Protection Plans for:
- badger;
  - bats;
  - reptiles;
  - great crested newts;
  - birds;
  - water voles and otters;
- and management plans for particular topics:
- hedgerows;
  - pollution prevention;
  - watercourse crossings;
  - drainage;
  - traffic; and
  - canal crossing.
- 4.7.6. As the proposed development is required for network reinforcement purposes it would be permanent infrastructure and therefore decommissioning has not been considered. In the unlikely event that

decommissioning was required the activities would be very similar to those for construction, i.e. creation of construction access tracks and temporary working areas, traffic movements, and working hours.

## **Conclusion**

- 4.7.7. My conclusion is that the CEMP has benefited from amendment and improvement during the examination, based on consultation with the statutory bodies most involved, and the outcome is a document which is well prepared and meets the objective of minimising environmental effects during construction works.

## **4.8. TRANSPORT AND HIGHWAYS**

- 4.8.1. A Transport and Highways Technical Note, rather than a full transport assessment, sets out the nature of the proposal and potential transport impacts [APP-032]. This includes:
- the assumptions and methodologies used to determine the level of traffic associated with the construction of the proposed development;
  - materials and construction traffic travelling to the existing SP Manweb depot at Maesbury Road, Oswestry;
  - construction traffic travelling to the OHL route from the depot;
  - the access locations along the OHL route from the local highway network; and
  - the proposed routes to be used by construction traffic travelling between the depot and the OHL route along the strategic highway network.
- 4.8.2. The transport and traffic impacts of the main elements of the proposed development are set out in turn. The main construction routes and location of temporary laydown areas are shown on the Construction Accesses Location Plan [REP1-005].

### **The SP Manweb Depot**

- 4.8.3. Given that the plant, equipment and materials would be delivered to the existing depot to be used as the main construction compound via the strategic highway network, the proposed delivery numbers would not be discernible from the existing levels of traffic and are therefore considered by the applicant to be insignificant.

### **Oswestry Substation**

- 4.8.4. The works proposed at Oswestry substation would be accessed via the existing access situated on Harlech Road. The access has been designed to accommodate HGVs and therefore no further modifications would be required. Materials, plant and equipment would be delivered to the site via the A5(T) and B4580.
- 4.8.5. The works at Oswestry substation would take circa 40 working days to complete and would generate up to 202 trips, equating to 5 trips per day. Of the 202 trips generated, 40 trips would be made by HGVs in

order to deliver materials, plant and equipment. This equates to approximately 1 HGV movement per day.

## **Underground Cables**

- 4.8.6. Access to the works site would be gained from the Oswestry substation site access and from Construction Access AC2 [REP1-005]. The former would be used to excavate the trench on the western side of the A5(T) and the HDD under the A5(T). The latter would be used to excavate the trench on the eastern side of the A5(T), and as the trench is progressed east towards Long Wood. This approach would ensure that the undergrounding works do not significantly impact on the operation of the A5(T).
- 4.8.7. Access AC2 would be widened to 7.3m for the first 15m from the edge of the A5(T) and the radii increased to 15m to accommodate the delivery of HGV construction vehicles. All construction traffic would enter from the north and exit to the south (left in/left out) to minimise the level of conflict with other road users.
- 4.8.8. The underground cable works would take circa 40 working days to complete and would generate up to 386 trips, equating to 10 trips per day. Of these, 226 trips would be made by HGVs in order to deliver materials, remove excavated material, deliver plant and equipment. This equates to approximately 6 HGV movements per day.

## **Lower Voltage Diversions**

- 4.8.9. Access for the lower voltage cable diversions would typically be required for construction vehicles and equipment and each of the six diversion locations would be accessed via the construction access points being used for the OHL construction.
- 4.8.10. The diversions would take about 60 working days to complete and would generate up to 324 trips, equating to 5 trips per day. Of these, 86 would be made by HGVs in order to deliver materials, plant and equipment. This equates to approximately 1 to 2 HGV movements per working day.

## **Overhead Line**

- 4.8.11. Construction of the 132kV OHL would require access to each pole position and the temporary laydown areas. Existing field entrances from access tracks and minor roads would be used. Construction accesses would typically be 3m to 5m wide and would follow existing farm tracks wherever possible. Where appropriate, temporary trackway systems or temporary stone improvements on existing access tracks would be used. Any such access track improvements would be removed following construction.
- 4.8.12. A total of 43 access points from the local highway network have been identified, along with the seven temporary lay down areas to store construction materials. The number of access points reflects the applicant's strategy of avoiding breaching hedgerow boundaries for

construction purposes wherever possible. The applicant supplied a table showing which of the access points and temporary laydown areas have been agreed with the land owners and tenants [REP2-007] and updated this towards the end of the examination [REP7-002]. This is considered further in paragraph 6.6.32 in Chapter 6.

- 4.8.13. The applicant estimates that each 1.5km section of the route would require approximately 16 individual wood poles. This would generate a maximum of 44 trips a week, with each 1.5km section taking approximately 2 weeks to construct. Therefore, the weekly maximum vehicle movements associated with the construction period would equate to a worst-case of 9 trips a day (over a five day working week) or approximately 1 trip per hour based on a typical working day.
- 4.8.14. The generation of 9 trips a day, which would be spread over several local access points, is therefore not expected to be significant and would not be discernible by existing users of the local highway network.

### **Wem Substation**

- 4.8.15. The construction works would use the existing Wem substation access situated on the B5063 Ellesmere Road. The access has been designed to accommodate HGVs and therefore no further modifications would be required.
- 4.8.16. Materials, plant and equipment would be delivered to the site via the A5(T) and the A495. The applicant anticipates that the 132kV transformer unit required for the Wem substation would be sourced outside of the UK and would be delivered to Ellesmere Port and then transferred to the substation by road on the back of a modular trailer. The 132kV transformer would be heavy but not abnormal in other respects (length, width, height).
- 4.8.17. The works at Wem substation would take circa 120 working days to complete and generate up to 554 trips, equating to 5 trips per day. Of these, 72 trips would be made by HGVs in order to deliver materials, plant and equipment. This equates to approximately 1 HGV movement per day.

### **Conclusions**

- 4.8.18. Construction traffic would result in an average additional 10 vehicle movements a day over the course of construction, which would equate to an additional 1 vehicle per hour. The applicant's conclusion is that construction of the proposed development would not have a significant impact on the highway network. It is considered that any impacts can be satisfactorily mitigated through the implementation of the Traffic Management Plan included as part of the CEMP which would subsequently be agreed with the highway authorities.
- 4.8.19. The Traffic Management Plan sets out measures to ensure the appropriate routing of all traffic generated by the construction of the

proposed development, including abnormal loads. SC as local highway authority confirmed their agreement to this approach [REP2-017].

- 4.8.20. In its SoCG, SC supported the applicant's approach to the use of construction accesses and measures to protect existing field boundary hedgerows, the approach to traffic management on the public highway, and the distribution of construction traffic from the construction compound in Oswestry to the construction sites and temporary laydown areas [REP2-003].
- 4.8.21. SC has reviewed the submitted Transport and Highways Technical Note [APP-032] and is satisfied that based on the projected number of vehicles using the network each day and the level of works adjacent to or on the highway network the proposed development would have a minimal impact [REP2-017]. HE also confirmed its agreement to the conclusions of the Highways Technical Note in its SoCG [REP3-010].
- 4.8.22. The main transport and highways issue during the examination was HE's concerns about the construction of the underground cable beneath the A5(T). These were resolved through appropriate amendments to the Traffic Management Plan as part of the CEMP, and amendments to a number of articles and the protective provisions in the draft DCO. These deal specifically with a HE's requirements to approve construction proposals and traffic management arrangements insofar as they would affect the crossing of the A5(T).
- 4.8.23. In the light of the agreement of SC and HE to the applicant's proposals, my conclusion is that there are no transport or highways issues which would weigh against the Order being made.

## **4.9. NOISE**

- 4.9.1. Section 2.9 of NPS EN-5 highlights the specific noise considerations associated with OHL, particularly crackle or hum, and audible noise arising from substation equipment. It was accepted in the Planning Inspectorate's Scoping Opinion (April 2017) that potential noise effects during operation should be scoped out of the EIA, but not during construction. However, the applicant subsequently agreed with SC's Environmental Health Officer an assessment of construction noise was unnecessary and accordingly this is not considered in the ES [APP-038].
- 4.9.2. The justification for this is that all residential properties and PRoW are at such a distance that any noise effects would be well below the 65dBA noise threshold. The CEMP contains a range of measures to ensure noise issues would not arise during construction, and that noise monitoring would be undertaken should complaints be received. For example, it is proposed that where necessary, suitable plant and working methods that have the potential to cause noise will be discussed and agreed in consultation with SC.
- 4.9.3. Application document APP-038 does though contain an assessment of potential noise impacts from the new transformer works at Wem substation which were proposed at a later stage in the preparation of the

application. The technical assessment concludes that even though existing background noise levels are very low, appropriate noise limits can be established to control noise during construction of such works. SC considered this assessment in their LIR, in particular the noise impact on a nearby residential property to the north-west of the Wem substation. Whilst noise levels both in the day and night would be higher than at present, SC consider they would still be acceptable [REP1-010].

## **Conclusion**

- 4.9.4. My conclusion is that with appropriate noise controls as set out in the CEMP there are no noise issues which would weigh against the Order being made.

## **4.10. AIR QUALITY**

- 4.10.1. In the same way as the consideration of noise matters, it was accepted in the Planning Inspectorate's Scoping Opinion (April 2017) that potential air quality effects during operation should be scoped out of the EIA, but not during construction. However, the applicant subsequently agreed with SC's Environmental Health Officer that no such assessment was necessary and accordingly this is not considered in the ES [APP-038].

- 4.10.2. The justification for this is that:

- the area in which the proposed development is located is sparsely populated with most of the population living in scattered farms, hamlets or villages;
- the main source of NO<sub>2</sub> is road traffic;
- the closest Air Quality Management Area, Heathgates roundabout, is over 14km from the proposed development; and
- emissions of pollutants and creation of dust from on-site vehicles, plant and construction activities would be minimised as far as is practicable by measures incorporated within the CEMP.

- 4.10.3. SC agreed that significant impacts on air quality are unlikely either during the construction or operational phases of the proposed development [REP1-010].

## **Conclusion**

- 4.10.4. My conclusion is that there are no air quality issues which would weigh against the Order being made.

## **4.11. ELECTRIC AND MAGNETIC FIELDS**

- 4.11.1. Section 2.10 of NPS EN-5 discusses the potential for OHL to produce Electric and Magnetic Fields (EMFs). These tend to be highest directly under a line and can have both direct and indirect effects on human health, though there is little evidence that EMFs have any significant consequences for crops or farm animals. To prevent these known effects,

the ICNIRP<sup>12</sup> has developed health protection guidelines for both public and occupational exposure.

- 4.11.2. Essentially, power lines at or below 132 KV with optimal phasing will comply with the ICNIRP guidelines such that no further mitigation is necessary.
- 4.11.3. Public Health England noted in its RR that all issues that could potentially have been a concern in terms of impacts on human health have been scoped out, and that the ES has not identified any issues which could significantly affect public health [RR-013]. No further representations were made about EMFs.

## **Conclusion**

- 4.11.4. I am satisfied that because the proposed development complies with the current public exposure guidelines concerning EMFs and the policy on phasing no mitigation is necessary.

## **4.12. LANDSCAPE AND VISUAL AMENITY**

- 4.12.1. Section 5.9 of NPS EN-1 recognises that major energy infrastructure projects are likely to result in landscape and visual effects and discusses generic issues relating to such effects and how these should be addressed. This is with compliance with guidance in the Third Edition of the Guidelines for Landscape and Visual Impact Assessment (GLVIA3).
- 4.12.2. NPS EN-5 sets out a number of specific principles to be followed when routeing OHL and developing mitigation proposals. These include guidance on when undergrounding may be an appropriate option.
- 4.12.3. Impact on the local landscape of this part of North Shropshire is one of the key issues arising from this application, and the applicant set out its assessment of this in Chapter 6 of the ES [APP-041] and appendices.

## **Site surveys**

- 4.12.4. The study area for the landscape and visual assessment was agreed with SC and extends up to 1km from the Order limits of the OHL. This is because at a distance of 1km, a Trident wood pole, which on average would be 12m high above ground including the conductor, would appear approximately 7mm high in the view. This is considered highly unlikely to give rise to significant visual effects. In addition, throughout much of the study area the layering effect of intervening mature trees on field boundaries, together with generally low-lying landform, would reduce the wider visibility of a wood pole line.
- 4.12.5. However, there are occasions where longer distance views of a wood pole OHL may result in significant visual effects, particularly where the poles are seen above the horizon, i.e. on the skyline. Therefore, a wider survey

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<sup>12</sup> International Commission on Non-Ionising Radiation Protection

area up to 5km from the Order limits was also considered and this is shown on Figure 6.1 in the ES [APP-081].

- 4.12.6. The study area for the residential visual amenity assessment extended to 200m from the Order limits and captured 23 individual properties and farmhouses. At a distance of 200m a 12m Trident wood pole would appear approximately 3.66cm high in the view, which the applicant considers would not create a significant visual effect to materially harm residential amenity or living conditions.
- 4.12.7. Site survey work for the landscape and visual impact assessments took place between 2017 and 2018. A series of 76 viewpoint photographic surveys was undertaken to represent the views experienced from individual residential properties, views from settlements within the wider 5km survey area and sequential views along local roads and PRoW. Of these, 40 viewpoints are within the 1km survey area. Viewpoint locations are shown on Figure 6.7 of the ES [APP-081].
- 4.12.8. Establishing Zones of Theoretic Visibility was considered not appropriate for a wood pole OHL. The proposed Trident wood pole supports are of a similar height to the mature trees and so would carry the conductors at a level or elevation which would be generally below them. The locally undulating nature of the terrain would combine with the scattered mature tree cover to screen many views of the OHL [APP-042].

## **Existing conditions**

- 4.12.9. There are no nationally important designated landscapes within the study area. The closest designated landscape to the proposed development is the Clwydian Range AONB which is 8km to the north-west. Such a distance means the proposed development it would not give rise to any significant landscape or visual effects or compromise the purposes of the designation.
- 4.12.10. Designated landscape sites and other key landscape features within or close to the study area are shown on Figure 6.4 of the ES [APP-082] and include:
- Gravenhall Ancient Woodland SSSI: east of Babbinswood, 750m north of the proposed development at its closest point;
  - Montgomery Canal, Aston Locks – Keepers Bridge SSSI: west of Rednal, the northern end of the SSSI is 870m south of the proposed development (or 1.1km along the path of the Canal); and
  - Ruewood Pastures SSSI: east of Commonwood, 260m south of the proposed development at its closest point.
  - the Shrewsbury-Chester railway line which crosses the western section of the study area to the south of Middleton;
  - the Shropshire Way: a long-distance regional trail which crosses the study area from north to south along the route of the Montgomery Canal 5km east of Oswestry, and again at the eastern end of the study area where the trail passes through the south and west of Wem;



- the Montgomery Canal;
- the privately-owned Woodhouse Estate;
- the River Perry through the centre of the study area, and the River Roden within the eastern part of the study area;
- small-scale industrial facilities at Babbinswood, Rednal and Lower Hordley.
- the A5(T) adjacent to the eastern edge of the Oswestry; the A495 between Oswestry and Whittington on the northern edge of the study area; and the A528 between Ellesmere and Shrewsbury which runs north-south through the centre of the study area between Cockshutt and Burlton; and
- 11 PRoW which the proposed development passes either directly under or adjacent to.

4.12.11. These features and potential impacts on them are set out in detail in the ES [APP-044].

4.12.12. In addition to the settlements (the largest of which are Oswestry and Wem), the farmland is characterised by a dispersed pattern of farmhouses and individual properties. The landscape comprises level or gently undulating arable farmland and pastures, with fields of varying sizes bounded by hedgerows with mature hedgerow trees. A slightly higher ridge of land runs through the centre of the study area between the settlements of Lower Hordley and Cockshutt. The large properties of Stanwardine Hall and Kenwick Lodge are located on this low ridgeline.

4.12.13. Most field boundaries comprise maintained hedgerows with hedgerow trees. Individual and small groups of trees and woodlands are scattered throughout the landscape. There are also occasional ponds which are often surrounded by vegetation, and small pockets of industry, for example near Babbinswood and Rednal.

4.12.14. The agricultural landscape with its many hedgerows, hedgerow trees and woodland belts, creates a layered visual effect with foreground views often merging seamlessly into the middle and far distance. The density of roadside hedgerows means it is often only possible to appreciate wider views through field gates or other occasional gaps in the vegetation. Views from PRoW which cross the farmland are often contained to within one or two fields due to the screening effect of hedgerows and woodland belts.

4.12.15. The areas of higher ground and larger-scale (and therefore more open) fields within the study area afford some long west and north-westerly views towards the Berwyn Mountains in north-east Wales, and south and south westerly views towards the Shropshire Hills. A higher ridge of ground located approximately 5km to the south and east of the eastern end of the proposed development, and comprising Lee Hills and Grinshill Hill, forms a low-lying backdrop to the view when looking to the east and south-east. Within the study area itself there are no notable focal points or protected views.

4.12.16. The relatively level landform and intervening vegetation means that views towards the proposed development from the main settlements of

Oswestry, Cockshutt, Loppington and Wem would only be possible from the edges of the built development, or from occasional higher vantage point within the settlement.

- 4.12.17. It is not anticipated that the future baseline would differ noticeably from the existing baseline.

## **Landscape and visual assessment**

### **Construction**

- 4.12.18. The applicant notes that although construction works can often be highly visible within the landscape, potential effects are temporary and short term [APP-041]. In the case of the proposed development the time needed to install individual poles would generally be 1 to 2 days and the entire project would be constructed within 12 months. Consequently, there would be no likely significant landscape effects during construction.
- 4.12.19. Based on the proposed development presented in the ES, some 42 trees would require felling along the 21.3km length of the OHL. Two of these trees have been identified in Chapter 7 of the ES as veteran oak trees [APP-049]. In addition, 7 trees have been identified for felling as low as reasonably practicable, and two of these are veteran oaks. A further three trees are identified for crown or branch reduction, and 19 other trees would require some work to ensure necessary safety clearances to accommodate the OHL. These figures represent the best judgement of likely tree works as the application stands, but slight variations in pole positions from micro-siting could alter the extent of any resultant impacts on trees.
- 4.12.20. The Woodland Trust drew attention to the NPPF and paragraph 5.32 of the NPS for National Networks, that felling of veteran trees should be avoided and a buffer zone included around them for their protection [RR-014]. It was therefore strongly opposed to the application [REP1-011].
- 4.12.21. The applicant's response was that the proposed OHL would be 21.3km in length, and whilst it has sought to avoid ancient and veteran trees throughout the iterative design process, other constraints relating to the design, including technical feasibility and land use, also have to be taken into account. The ES notes that no significant effects on landscape character are anticipated as a result of the loss of the veteran trees, since the losses would be felt at a local scale rather than across the wider character areas [REP1-002]. This is considered further in section 4.14 of this Chapter.
- 4.12.22. Short sections of hedgerow at 22 locations along the alignment would need to be lifted and replaced to accommodate double wood poles in hedgerows, one of which is identified as species rich at pole 82 [APP-049]. All 22 hedgerows meet the archaeological criteria of The Hedgerows Regulations 1997 [APP-080].

- 4.12.23. Construction works at the Oswestry and Wem substations would take place within the existing substation boundaries and would be unlikely to give rise to any significant landscape effects.
- 4.12.24. No receptors identified, including residential properties or users of PRow, would experience significant visual effects during construction.

### **Operation**

- 4.12.25. The likely effects on landscape and visual receptors during operation would arise from the presence of the wood pole structures, associated conductors, steelwork on top of the poles, stay wires and the substation equipment. As with any external material, wood poles are susceptible to weathering and consequent colour variations. The colour of the poles at the time of construction would be dark brown but this would fade to a lighter silver-grey. Over time these changes would tend to reduce the perceptibility of elements viewed above the skyline, but may increase the visibility of structures when viewed against a dark background such as coniferous plantation. The metal bracing and the conductors would be constructed from aluminium, which is initially shiny but tends to dull over time to dark matt silver.
- 4.12.26. The proposed development would add to the structures already present in the landscape which include wood pole OHLs and substation infrastructure. The removal of woodland and tree cover may cause the opening up of the landscape and reduce the sense of enclosure, thereby allowing views into other landscape spaces beyond. Where felling is proposed for an OHL or underground cable through a wooded area, the linear nature of the felling could be visually intrusive.
- 4.12.27. The applicant concludes there are no landscape receptors likely to experience significant direct or indirect effects during operation. Visual receptors in the settlements identified in the ES would not experience significant visual effects during operation. Of the 76 viewpoints identified in the survey work described in paragraph 4.12.7 above, four were assessed as experiencing significant visual effects [APP-044]:
- Viewpoint 14: PRow 0207/14/13 near Kenwick Oak;
  - Viewpoint 23: PRow 0217/4/2 near Malt Kiln Farm (listed building);
  - Viewpoint 70: Dandyford Farm, Lower Hordley; and
  - Viewpoint 72: PRow 0217/12/1 near The Shays (listed building).

No representations were received in relation to these four viewpoints and the properties closely connected to them.

- 4.12.28. Of the 23 properties within 200m of the Order limits for the OHL analysed in the ES [APP-046], only one, Lower Lees, was identified as experiencing significant effects on its visual amenity. Lower Lees is a farm-house located 600m east of a rural lane connecting Hordley and Rednal Mill. The OHL and the closest two wood poles would be approximately 100m from the building and would affect existing open northerly views from the front of the property and its eastern garden. The proposed development would be visible across the view heading east

to west, and at least eight wood poles would be visible in the foreground and middle distance, although not all would be experienced within the same view.

- 4.12.29. Whilst existing OHL structures are already present in views in this location, the addition of another line could result in significant effects on the residential visual amenity of Lower Lees. Views towards the OHL would be open with limited or no screening, although hedgerows in the distance may provide a partial backdrop. The introduction of the proposed development would mean that the property would be almost encircled by OHLs. The magnitude of change would be medium, and as such the effects are considered to be moderate adverse (significant). No representations were received in relation to Lower Lees.
- 4.12.30. The applicant undertook a specific study to examine whether undergrounding of the route in the vicinity of these four viewpoints and in the vicinity of Lower Lees (together with the Montgomery Canal considered below) would convey sufficient additional benefits to outweigh the extra economic impacts and the technical preference for an OHL. In all cases the conclusion was that such benefits did not arise [APP-086].

### **Cumulative assessment**

- 4.12.31. In terms of cumulative assessment, 24 projects were considered by the applicant [APP-045]. None of these would give rise to significant cumulative inter-project landscape or visual effects during the construction or operational phase of the proposed development. The limited inter-visibility between the proposed development and the cumulative projects considered results from a number of factors, including:
- the distance between the respective sites;
  - the very lightly undulating and generally low-lying topography;
  - the intervening screening resulting from the layering effect of trees on field boundaries;
  - screening from intervening woodland areas and transport corridors;
  - and
  - screening from intervening settlement and other built development.

### **Montgomery Canal**

- 4.12.32. The only part of the proposed route to which significant objections were raised during the examination concerned the crossing of the Montgomery Canal. The CRT set out its view at the outset that undergrounding of the power line was necessary to cross the Canal rather than overhead as proposed because of the visual importance of the Canal at this point [RR-011]. This was supported by the Inland Waterways Association [RR-006].
- 4.12.33. The CRT advised that in assessing the visual, ecological and heritage impacts of the OHL the ES should provide clear, detailed comparison with the impacts of an underground line. They considered the applicant had not provided sufficient information to demonstrate why undergrounding at this point was not proposed.

- 4.12.34. If an overground alignment was implemented as proposed by the applicant, the CRT set out that the height of an OHL over the Canal must be sufficient to:
- reduce the chance of cable strikes by birds;
  - ensure that access along the towpath to carry out essential maintenance and repair of the Canal infrastructure is not restricted; and
  - ensure that boaters, towpath users, anglers and wildlife are not adversely affected.
- 4.12.35. The CRT considered an OHL would require a localised no fishing safety restriction, and anglers would need to be advised of the power lines via measures such as totem posts with no fishing signs on them installed on the towpath [RR-011].
- 4.12.36. The CRT requested that I should visit the proposed OHL crossing of the Montgomery Canal during my accompanied site inspection which I did, together with representatives of the CRT [REP1-008]. Apart from the change of view created by the removal of some Canal-side woodland to allow safety clearance for the proposed OHL, there were no particular landscape features, impacts or visual constraints at this crossing pointed out to me by the CRT representatives. However, I readily appreciated that this is an attractive stretch of the Canal, bounded by tall straight trees [EV-004].
- 4.12.37. The CRT amplified these points at D1 [REP1-008]. The proposed OHL would cross the Canal at an angle rather than forming a perpendicular crossing. The tow path runs along the western side of the Canal on an embankment so that the land level beyond it to the east is lower than the waterway.
- 4.12.38. Pole 37 would be located to the west of the Canal, and pole 38 to the east, and neither would be located on land within the Trust's ownership. This is a rural stretch of Canal with mature planting along it and is well used by anglers, boaters and tow path users. The Trust was satisfied with the applicant's proposals [REP5-003] that there would be sufficient clearance of the OHL crossing the Canal with the height of the conductors being 9.3m on the western side of the Canal and 9.9m on the eastern side [REP3-006].
- 4.12.39. The CRT drew attention to the consideration of undergrounding in the ES [APP-033] which they claimed was a very generic approach ruling out any locations along the proposed OHL where undergrounding would be necessary to reduce impacts on particularly sensitive localities. The Trust did not agree with this approach and set out its view that the Montgomery Canal at this particular point does meet the criterion of a sensitive location.
- 4.12.40. In the alternative, if over-grounding at this point is justified, then the CRT wished for appropriate mitigation through planting to reduce the visual impact of poles 37 and 38 on Canal users. The applicant's

response was that it is not proposing planting at the crossing of the Canal as the visual effects would not be significant [REP2-002].

- 4.12.41. The applicant also pointed out that the Planning Statement did consider the case for undergrounding at a number of specific locations, including the Montgomery Canal [APP-086, Appendix 1] but concluded that the additional costs could not be justified by the benefits likely to be achieved.
- 4.12.42. The CRT nonetheless considered this analysis inadequate and requested additional information covering construction, landscaping and visual impacts of an underground line between poles 36 and 40 [REP2-015]. It also requested a further viewpoint/photomontage to be provided from underneath the OHL where it crosses the Canal and consideration of whether mitigation is required [REP2-019].
- 4.12.43. The applicant supplied a wireframe for Viewpoint 8 showing pole 36 as a Terminal H Pole [REP2-007]. Viewpoint 8 is taken from the western bank of the Montgomery Canal, just to the south of the point where the proposed development would cross it. Using the methodology as set out in the ES for the route as a whole, poles 36 and 40 would not be visible from the same viewpoint.
- 4.12.44. Whilst the stretch of the Montgomery Canal where the proposed OHL would cross is undoubtedly visually attractive, and undergrounding would provide a modest benefit, I agree with the applicant that undergrounding at this point is not justified. This is not a protected landscape and the height of the cable crossing would cause little impact on Canal users nor impede maintenance, structural integrity of the Canal or navigational safety. There is an existing 11kV cable crossing of the Canal approximately 1.1km away at Keepers Bridge, and the 400kV crossing further to the north near Lockgate Bridge, and these do not seem to me to detract from the experience of using the Canal.
- 4.12.45. From the analysis provided by the applicant [APP-086], if the line was undergrounded at this point it would mean poles 36 and 40 being Terminal H-pole structures which as can be appreciated from Figure 4.1 are considerably more elaborate and therefore prominent in the landscape than the simple Intermediate 2.5m Arm poles proposed [REP2-007, Annex D].
- 4.12.46. In addition, permanent access arrangements to pole 36 would be required for maintenance purposes which themselves would create a greater visual impact than that required for the proposed development. A further potential disadvantage with an underground route at this location would be that if a fault occurred it would be difficult to repair and could cause considerable interruption to electricity supply in North Shropshire [REP3-002].

## Conclusions

- 4.12.47. The applicant's main strategy for minimising any adverse landscape and visual effects of the proposed development has been through careful planning, design and routeing in accordance with the Holford Rules.
- 4.12.48. The applicant does not consider that any further measures, for example planting, are necessary to mitigate effects of the OHL. Although the OHL may be visible in the distance, the effects on views further away would not be significant as it would be perceived as a small feature in the view and would generally blend into the background scenery. No significant concerns have been raised by SC to the proposed route on landscape and visual grounds [REP1-010].
- 4.12.49. I conclude therefore that the design and route of the proposed OHL, combined with the screening effects of landform and vegetation, means that its effects on views and visual amenity would generally be limited. Only those receptors close to the proposed development would experience a significant change in their view.
- 4.12.50. The geography of the area is relatively low level, flat and less exposed to extreme weather which would allow for more single poles (approximately 75% would be single poles) and greater span lengths in the design. Using the Trident design results in there being single angle and section poles which would also help to further reduce visual effects [REP2-006].
- 4.12.51. The Trident design also offers greater flexibility in routeing to avoid and/or reduce adverse effects. Wherever possible indicative pole positions have been located close to woodland blocks, individual trees and hedgerows to help better accommodate them within the landscape. Temporary laydown areas have been kept to a minimum and any areas which would be disturbed by construction would be reinstated, including any sections of hedgerows removed.
- 4.12.52. Notwithstanding the applicant's view that further mitigation in the form of planting is not needed, with which I agree, there may be opportunities for additional planting outside of the Order limits where this can be agreed with individual landowners as part of voluntary agreements.
- 4.12.53. My conclusion is that there would be no significant landscape effects during the construction and operation of the proposed development, and no significant visual or residential amenity effects during construction. Some localised significant visual effects have been identified by the applicant at locations where the proposed development either crosses or is directly adjacent to a PRow, and at six particular points, of which Lower Lees is the most serious. However, these were not assessed as creating a major visual effect or materially harming residential amenity or living conditions.
- 4.12.54. These conclusions are supported by SC who stated that the assessment of landscape and visual effects has been carried out in a robust and transparent manner in accordance with the best practice set out in the Guidelines for Landscape and Visual Impact Assessment (Third edition),

and that the scope for any additional mitigation is extremely limited [REP2-017]. I agree with this assessment.

- 4.12.55. In relation to the specific matter of the crossing of the Montgomery Canal, my conclusion is that undergrounding would not be justified. My overall conclusion therefore is that there are no landscape or visual amenity issues which would weigh against the Order being made.

## **4.13. HISTORIC ENVIRONMENT**

- 4.13.1. Paragraph 5.8.14 of NPS EN-1 indicates that there should be a presumption in favour of the conservation of designated heritage assets; the more significant the asset, the greater the presumption in favour of its conservation. Paragraph 5.8.15 advises that any harmful effects on designated heritage assets should be weighed against the public benefit of the development.
- 4.13.2. NPS EN-5 does not address the historic environment directly, unlike other environmental issues, but does refer in Section 2.8.9 to heritage assets in the context of undergrounding.
- 4.13.3. The likely significant environmental effects on the historic environment which could result from the proposed development are considered in Chapter 8 of the ES [APP-060] and appendices [APP-061 to 065]. A plan of historic sites was provided by the applicant at the beginning of the examination [AS-004].

### **Heritage assets**

- 4.13.4. There are no designated assets (listed buildings, registered parks and gardens and scheduled monuments) within the Order limits. Within a 1km study area however, the designated assets are:

#### *Conservation Areas*

- almost the entire Whittington Conservation Area is outside the study area, but its southern boundary is approximately 960m from the proposed development;
- approximately the southern third of the Loppington Conservation Area lies within the study area and its southern boundary is approximately 900m north-west of the proposed development; and
- approximately the western half of the Wem Conservation Area is within the study area and its western boundary is approximately 650m east of the proposed development.

#### *Listed Buildings (Grade II\* unless stated)*

- Church of St Michael, Loppington, Grade I listed – 880m north-west of the proposed development;
- Woodhouse Hall (and adjacent stable block), Rednal – 650m south of the proposed development;
- Stanwardine Hall, Stanwardine-in-the-Wood – 360m south of the proposed development;



- The Ditches Hall, near Wem – 740m west of the proposed development;
- Church of St Peter and St Paul, Wem – 900m east of the proposed development; and
- Tilley Hall, Tilley – 950m south-east of the proposed development.

#### *Scheduled Monuments*

- Stanwardine moated site and associated fishpond, 465m south of the proposed development;
- sundial in parish churchyard, Loppington, 890m north-west of the proposed development; and
- Wem Castle, 830m east of the proposed development.

- 4.13.5. Within a 5km study area the designated assets include 34 scheduled monuments, seven conservation areas, 720 listed buildings 9 (nine Grade I and 33 Grade II\*) and two registered parks and gardens. These assets are all of high significance.
- 4.13.6. There are also 1,023 non-designated assets within the 5km study area. Eight were assigned high significance by the applicant by virtue of their relationship with designated assets, and 34 assigned medium significance.
- 4.13.7. The effects of visual intrusion on heritage assets and their settings from working practices during construction would be short-term and temporary. All of the construction effects would be direct and physical, and the vast majority (almost 99%) would affect non-designated assets of low significance. None of the identified adverse direct physical effects on heritage assets resulting from construction of the proposed development were assessed as being significant.
- 4.13.8. All of the operational effects would result from change to the settings of heritage assets, but none have been assessed as being significant. Almost two-thirds would be effects on the settings of non-designated assets of low or medium significance and there would be no effects on the settings of non-designated assets of high significance.
- 4.13.9. Conversely, there would be some beneficial effects on the settings of heritage assets resulting from the removal of short sections of existing lower voltage OHL from the landscape.
- 4.13.10. The applicant identified a slight/moderate significance of effect for the following designated assets:
- Malt Kiln Farmhouse (Grade II listed building);
  - The Shayes Farmhouse (Grade II listed building); and
  - Stanwardine moated site and fishpond (SM), Stanwardine Hall (Grade II listed building), Stanwardine House (Grade II listed building), sundial, fishpond, terraces, walls and gate piers (Grade II listed building).
- 4.13.11. There are no developments which would give rise to significant cumulative historic environment effects during the construction or

operational phase of the proposed development. This is due primarily to the distance between the proposed development and the projects considered, and their differing nature.

- 4.13.12. SC in their LIR record agreement with the applicant's approach to designing a route which would cause the minimum effects on the historic environment, particularly in relation to the OHL near the settlements of Cockshutt and Noneley [REP1-010]. As noted in paragraphs 4.5.9 to 4.5.12 above, having considered the heritage, landscape and ecological impacts of the competing options, SC officers expressed a marginal preference for the route to the north of the village.
- 4.13.13. There is little positive indication of the likely presence of buried archaeological remains [APP-060]. The construction methods would be minimally invasive, with the poles accessed as far as possible through existing farm tracks. Installation of the poles would create little subsurface disturbance beyond the diameter of the poles. The applicant does not therefore consider archaeological monitoring of construction work to be a proportionate response [REP2-006] and general mitigation measures for archaeology have been included in the updated CEMP [REP8-003]. This approach is supported by SC in their LIR [REP1-010].

## **Conclusions**

- 4.13.14. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.
- 4.13.15. My conclusion is that there are no historic environment issues which would weigh against the Order being made.

## **4.14. ECOLOGY AND BIODIVERSITY**

- 4.14.1. In addition to the requirements under the Habitats Regulations, NPS EN-1 states that: *'...the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity'* (paragraph 5.3.3).
- 4.14.2. Paragraph 2.2.6 of NPS EN-5 draws attention to the requirements of Schedule 9 to the Electricity Act 1989, which places a duty on all transmission and distribution licence holders, in formulating proposals for new electricity networks infrastructure, to *'have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting any sites, buildings and objects of architectural, historic or archaeological interest; and do what [they] reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside'*.

- 4.14.3. These matters are considered in Chapter 7 of the ES [APP-049]. Baseline ecological information was compiled through desk study, consultation and detailed field surveys undertaken between 2016 and 2018. The approach and methodology for the ecological assessment is presented within the ES Appendix 7.1 [APP-050].
- 4.14.4. In addition to statutory and non-statutory designated sites, the assessment considered priority habitats and species as defined under s41 of the Natural Environment and Rural Communities (NERC) Act 2006. In order to be sure of the position, a revised plan of nature conservation sites was provided at my request by the applicant at the beginning of the examination [AS-007].
- 4.14.5. The ecological study and survey areas were informed by consultation with SC, NE, Shropshire Wildlife Trust and RSPB. The survey areas range from between 25m to 500m from the edge of the Order limits for particular habitats and species, to 10km for European designated sites.

#### **Statutory designated sites**

- 4.14.6. The proposed development would not cross or directly affect any statutory or non-statutory designated site. Part of the Midland Meres and Mosses Phase 2 Ramsar site (treated as a European site according to Government policy) and component Brownheath Moss SSSI lies approximately 1.7km north of the proposed development and is discussed in the HRA NSER [APP-029]. There would be no direct land take or potential for habitat loss, and there are no direct functional ecological links between the land within the Order limits and the Ramsar site and SSSIs.
- 4.14.7. The nearest nationally important designated sites are Ruewood Pasture and Montgomery Canal SSSIs, both within 1km of the proposed development. Ruewood Pasture SSSI, designated for its grassland plant species, lies approximately 220m south-east from the proposed development and would experience no direct effects. There would be no loss of functionally linked or associated habitat outside the SSSI as a result of construction. Construction would result in negligible change to existing land drainage/groundwater drainage [APP-066].
- 4.14.8. The section of the Montgomery Canal designated as a SSSI (the special interest of which is in the aquatic features) lies approximately 840m from the proposed crossing point of the proposed development. There would be no works affecting the Canal itself, and all works would be set back at least 8m from the Canal banks. Specific Canal protection measures set out in the CEMP [REP8-003] and agreed with the CRT would protect the Canal and its associated species from indirect effects during construction.
- 4.14.9. Accordingly, the applicant concludes that there would be no significant effects upon these statutory designated sites during either the construction or operational phase. SC in its LIR agreed with the applicant's findings and considers that the route chosen from the various alternatives would be the least damaging for biodiversity. Also, with

appropriate pollution prevention measures in the CEMP, there should be no indirect effects on any of the designated sites [REP1-010].

### **Non-statutory designated sites**

- 4.14.10. The Moorfields Loppington Local Wildlife Site (LWS) is due south of Loppington and lies approximately 100m from the proposed development. It comprises two fields which are good examples of unimproved and marshy grassland supporting areas of semi-improved and unimproved neutral grassland and areas of rush dominated grassland bounded primarily by ditches and alder trees.
- 4.14.11. However, habitat and botanical surveys of land around this site did not identify any notable flora or species assemblage characteristic of the habitats within the LWS. Construction would result in negligible change to existing land and groundwater drainage [APP-066] and hence no potential for indirect habitat effects.
- 4.14.12. Ruewood Pool LWS is south west of Wem and adjacent to Sleaf Airfield. It is approximately 1.22km from the proposed development and comprises an area of damp, unimproved pasture with silted murky pools, surrounded by encroaching alders. It is not considered at risk from indirect effects due to the distance involved and the procedures to be provided through the CEMP [REP8-003] to avoid any risk of effects from runoff and siltation effects during construction.
- 4.14.13. Halston Hall LWS is to the east of Whittington and lies approximately 750m north of the proposed development and is an area of deciduous woodland containing a heronry on an island within an ornamental lake.
- 4.14.14. Accordingly, the applicant concludes that there would be no significant effects upon these non-statutory designated sites during either the construction or operational phases.

### **Habitats**

- 4.14.15. The habitats along the survey corridor for the proposed development are of low ecological value, overwhelmingly dominated by agricultural land supporting a mixture of arable and largely improved grassland fields.
- 4.14.16. Field boundaries contain mature hedgerows both species rich and species poor, some of which qualify as important under The Hedgerows Regulations 1997 due to their ecological features or historic context (as set out in APP-052 and illustrated in APP-009). A revised plan of important hedgerows was provided by the applicant at the beginning of the examination [AS-005].
- 4.14.17. Hedgerows would be generally retained and protected within the proposed development, with construction accesses specifically designed to make use of existing gaps and farm gates instead of direct routes which would require substantially more hedgerow crossings.

- 4.14.18. Construction near hedgerows would follow the vegetation management elements of the CEMP in order to protect retained trees and hedgerows. Short sections of hedgerow (each approximately 3 to 5m wide) at 22 locations along the proposed development would need to be lifted and replaced to accommodate double wood poles. This is a well-established and recognised approach to hedgerow reinstatement, and should there be individual plant failures, additional replacement planting would be undertaken to 'gap up' reinstated sections of hedgerow [REP-006].
- 4.14.19. All of the affected hedgerows are species-poor apart from one, though even this does not meet the ecological criteria for 'importance' as defined in The Hedgerows Regulations 1997. However, all 22 hedgerows are classed as important in terms of the historic environment, i.e. boundaries which meet the archaeological criteria of the Regulations [APP-060]. Overall effects on hedgerows both during construction and operation are considered by the applicant to be negligible (and both reversible and temporary). This is supported by SC [REP1-010].
- 4.14.20. No areas of ancient woodland would be crossed by the proposed development. The nearest area of ancient woodland lies at Gravenall, approximately 750m to the north of the OHL route. No trees protected under Tree Preservation Orders (TPOs) lie within or adjacent to the Order limits. Existing farm gates and tracks would be used, and accesses would largely cross arable/grassland habitat, thereby avoiding trees and woodland or minimizing removal.
- 4.14.21. Nonetheless, approximately 42 trees would require felling along the length of the OHL [APP-081]. Two of these trees have been identified as veteran oak trees [APP-053] and seven trees have been identified for felling as low as reasonably practicable, of which two are also veteran oaks. SC expressed concern about the loss of veteran/ancient trees, and therefore encouraged micro-siting of individual poles to avoid such impacts wherever possible [REP1-010].
- 4.14.22. There is a network of 34 scattered ponds across the area, 18 of which lie within or adjacent to the study area and some would be in close proximity to proposed pole locations. No ponds would be lost to the proposed development and no construction works within ponds are proposed. Works that are unavoidable in close proximity to pond habitats would be controlled through the CEMP.
- 4.14.23. The proposed route would cross the Montgomery Canal, River Perry and River Roden, and land to either side of these waterways includes ditch-lined fields within the floodplain. Work on pole erection would take place without the requirement for any bankside or in-river works. A minimum 8m stand-off distance would be maintained from main rivers during works, thereby protecting the watercourses and riparian habitats as well as the species they support.
- 4.14.24. The applicant concludes that there would be no significant effects upon any of these habitats along the route of the proposed development during the construction or operational phases.

### **Protected and notable species**

- 4.14.25. Protected species are present along the survey corridor of the proposed development [APP-052 to 058]. The applicant considers that there would be no significant effects upon populations of any bird species during the construction or operational phases and that there would be no significant effects on individuals of specific target species. The likely effects of collision risk on vulnerable bird species is considered to be of low magnitude which would not have any significant effect on local populations of any bird species, including geese, wildfowl or herons, and is assessed as not significant. No specific mitigation is therefore required to address these effects.
- 4.14.26. Similarly, it is considered that there would be no significant effects upon the conservation status of amphibians (including great crested newts), reptiles, bats, water voles, otters, dormice and badgers during the construction or operational phases. This was supported by the EA in its SoCG with the applicant [REP1-003].
- 4.14.27. However, SC raised concerns over the lack of bat roost surveys of trees identified to be felled or lopped, and that it expected such surveys to be carried out during 2019 before the end of the examination, which the applicant confirmed [REP1-010 and REP2-005]. These were not in fact supplied by the applicant before I closed the examination on 20 September 2019. But in any event, these would need to be carried out before the commencement of development as required by the species protection plan in the CEMP [REP8-003].
- 4.14.28. The ES identifies those species for which a licence may be required in relation to proposed works at certain locations. These are great crested newts, bats and badgers. The CEMP sets out that licencing requirements cannot be finalised as, for certain species survey work will need to be carried out shortly before commencement of works. NE were asked to confirm this approach in my WQ [PD-006] but no response was received. The applicant foresees no impediment to licencing [REP2-006] and I have no reason to disagree.

### **Future Impacts**

- 4.14.29. As the proposed development would cross land that is almost entirely under established agricultural management regimes, it is considered that the current situation is unlikely to experience notable change in the short or medium term.
- 4.14.30. The impacts of the proposed development during its operational life would be associated with the presence of wood pole structures and the OHL. Once constructed, there would be no moving parts or lighting and the line would only require very occasional maintenance visits. No land take or habitat loss or disturbance additional to that required during construction would therefore result.
- 4.14.31. The wood poles would have negligible ongoing ecological effects, occupying a small footprint and with natural vegetation reinstated on all

sides. The poles being located within farmland would not create new barrier or habitat fragmentation effects. The habitats crossed by underground sections of the proposed development (including the proposed cable route connecting to Oswestry substation and undergrounding of six sections of low voltage lines) would be re-instated after construction is completed. Temporary features associated with the construction phase, such as the temporary laydown areas, would no longer be present during the operation phase.

- 4.14.32. There are no developments which would give rise to significant cumulative ecological effects during the construction or operational phases of the proposed development. This is primarily due to the distances between the proposed development and other projects, and the nature of these projects, being unlikely to have significant adverse effects on ecological receptors.

## **Conclusions**

- 4.14.33. Approximately 1.52ha of arable and improved grassland and less than 0.5ha of woodland/trees/scrub would be taken by the proposed development; otherwise habitat loss would be negligible. The applicant proposes to provide for 0.5ha of new woodland planting as part of a Habitat Improvement Strategy being developed with the Shropshire Wildlife Trust [REP2-005]. This Strategy is supported by the EA who welcomed the potential for delivering net gain for biodiversity as well as protection of habitat and species during the construction phase [RR-008 and REP1-003].
- 4.14.34. There would be no significant ecological effects at a local, regional or national scale and no significant ecological effects are predicted during the construction, operation or maintenance of the proposed development. In agree therefore that no mitigation is required to reduce any identified 'significant' effect to 'not significant'.
- 4.14.35. Whilst the loss of trees is always to be regretted, my view is that the applicant has taken considerable care in routeing the OHL to fit it with the topography and avoid the most sensitive and valued groupings of trees, including small copses and areas of woodland. That only two mature veteran trees would be felled along a route of approximately 22.5km in total is testimony to the sensitive approach adopted by the applicant. Additionally, the flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft DCO enable further adjustments to be made where beneficial during implementation of the proposed development.
- 4.14.36. Apart from the observations from Mr Dickin [REP6-011 and REP9-004] which are considered in paragraphs 4.17.16 to 4.17.19 below, no representations about ecological or biodiversity matters were made, and I therefore conclude that there are no such issues which would weigh against the Order being made.

## **4.15. FLOOD RISK, WATER QUALITY AND WATER RESOURCES**

- 4.15.1. NPS EN-1 sets out a number of matters applications for development consent are expected to consider with respect to flood risk and water quality. According to paragraph 5.7.4, projects in England of 1ha or greater in Flood Zone 1 and all proposals for energy projects located in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment.
- 4.15.2. Paragraph 5.15.2 states that where the project is likely to have effects on the water environment, an assessment is required of the impacts of the proposed project on water quality, water resources, water bodies or protected areas under the Water Framework Directive, and on source protection zones (SPZs) around potable groundwater abstractions.
- 4.15.3. NPS EN-5 sets out in paragraph 2.4.1 that applicants should consider to what extent the proposed development is vulnerable, and as appropriate, how it would be resilient to flooding, particularly for substations that are vital for the electricity transmission and distribution network.
- 4.15.4. Accordingly, Chapter 9 of the ES assesses the likely environmental effects on Flood Risk, Water Quality and Water Resources in relation to the construction and operation of the proposed development [APP-066]. A Flood Risk Assessment is provided at APP-027, and an assessment of the existing status of the water environment and potential impacts at APP-068. A revised flood risk map was provided by the applicant at the beginning of the examination [AS-008].
- 4.15.5. The study area for this assessment extends up to 50m either side of the Order limits. Desktop studies only were carried out and no hydrological site visits or walkover surveys of the study area were undertaken. Information on flood extent was acquired from the EA.
- 4.15.6. The topography of the area is typical of the Shropshire Plain, being low lying and relatively flat or gently undulating. There are some areas of higher ground (between 110 to 120m AOD) in the northwest close to Oswestry. The area lies entirely within the Severn catchment and features many small watercourses and drainage channels, particularly to the west of the study area. There are no large rivers, and each of the watercourses crossed by the proposed development would be simply spanned without requiring support within watercourse channels.
- 4.15.7. These watercourses include the Montgomery Canal, the Rivers Perry and Roden (recognised by the EA as main rivers), and an unnamed drainage channel which flows alongside the Roden across low lying land and then flows separately to the north of the Roden, and joins it on the outskirts of Wem.
- 4.15.8. The Planning Inspectorate's advice to the applicant under s51 of the PA2008 noted that a plan identifying water bodies in a river basin management plan had not been submitted [OD-001]. This was provided by the applicant in response [AS-002].



## Flood Risk

- 4.15.9. The FRA did not consider the section of 132kV underground cable or the undergrounding of lower voltage diversions since these parts of the proposed development would not impact on surface water flooding. Temporary lay down areas and proposed access routes to facilitate the construction were considered within the FRA, but not the construction compound located at the existing SP Manweb depot at Oswestry Industrial Estate.
- 4.15.10. The EA confirmed that following the technical guidance to the NPPF, the proposed development is classified as “essential infrastructure”, which is defined as including “essential utility infrastructure which has to be located in a flood risk area for operational reasons”. All development should be located in areas of least flood risk where possible, i.e. Flood Zone 1, but essential infrastructure is considered appropriate in Flood Zone 2 indicating an annual fluvial flood risk between 0.1% and 1%, and also in Flood Zone 3 where annual fluvial flood risk is expected to be 1% or greater, subject to the exception test [RR-008].
- 4.15.11. Climate change is expected to increase the probability of flooding, and current guidance<sup>13</sup> suggests including an allowance for increased peak flow for future climate scenarios. The future Flood Zone 3 is unlikely to exceed the current Flood Zone 2 extent in future climate scenarios. In the absence of detailed flow modelling the applicant has taken a precautionary approach of assuming the current Flood Zone 2 represents the future Flood Zone 3 extent.
- 4.15.12. Consideration of the flood risk for the proposed 132kV OHL therefore uses the current Flood Zone 2 to indicate the potential fluvial flood risk area during its operational lifetime. The construction phase would be only short term and the current Flood Zones have been used to assess flood risk for construction activities. The existing SP Manweb substations at Oswestry and Wem where electrical switchgear and associated equipment would be installed are both in Flood Zone 1 and at very low risk of fluvial flooding.
- 4.15.13. Where the Order limits cross both the main rivers there is land involved in Flood Zones 2 and 3. Small watercourses with catchment areas less than 3km<sup>2</sup> and other non-main watercourses are affected more by local rainfall-generated runoff rather than flow from large upstream catchments. Although the Flood Zone 2 risk area covers much of the low-lying agricultural land within the study area, the number of residential properties at risk of flooding either from rivers, surface water or other sources identified in the FRA is not high [APP-027].
- 4.15.14. Whilst the majority of the route for the 132kV OHL, and all but one of the laydown areas, is in Flood Zone 1, some pole locations are within Flood

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<sup>13</sup> <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Zone 2. The nature of the topography and the small watercourses draining it means that the Flood Zones are frequent and wide in extent:

- an extensive area associated with the River Perry adjacent to the Montgomery Canal;
- three locations close to Rednal associated with the River Perry;
- two small areas associated with the Sleaf Brook; and
- a more extensive area associated with the River Roden outside of Wem.

- 4.15.15. In all these areas the low relief would lead to shallow flood depths and low flood flow velocities. Consequently, there would be little risk of erosion around the poles and they are unlikely to experience significant horizontal forces from flood flows or the accumulation of flood debris. There is therefore little risk to the 132kV OHL arising from fluvial flooding.
- 4.15.16. The one temporary laydown area within Flood Zone 2 is at Brookfield Farm. The access tracks to it would be in Flood Zone 3, but they would not be elevated above the surrounding ground level and no bridges or culverts would be constructed. Fluvial flooding is not therefore expected to have any impact on the access tracks.
- 4.15.17. Other sources of flood risk, including groundwater, sewers, the Montgomery Canal and other stored water sources are all considered by the applicant to be insignificant. The poles would not require substantial foundations, and the cross-sectional area of individual poles is insignificant. There would be no discernible runoff generated from the proposed development. It would not significantly deflect flood flows or occupy a significant volume of flood plain storage. The impact on third party flood risk in the area is therefore expected to be minimal.
- 4.15.18. The EA raised no concerns in its SoCG with the applicant relating to impact on flood storage or flows [APP-003]. A Flood Risk Activity Permit (FRAP) would be required for any works within 8m of the top of the banks of both the River Perry and Roden (both main rivers). In this instance the proposed works would be classed as an exempt activity [RR-008]. In addition to this, a FRAP would also be required for the OHL crossing the EA's flood defence structure located adjacent to the River Roden, as confirmed within Table 2.1 of the Other Consents and Licences Report [APP-030].

## **Water Quality**

- 4.15.19. In terms of compliance with the WFD, the River Roden was classified in 2016 as ecologically Poor but Good chemically, with the objective to achieve Good status for both measures by 2027. The River Perry was classified in 2016 as ecologically Moderate but Good chemically, with the objective to achieve Good status for both measures by 2027. An assessment of potential impacts on water bodies is presented in Appendix 9.2 of the ES [APP-068]. This confirmed that the impact of the proposed development on watercourses, including the Rivers Roden and

Perry, would be negligible and would therefore have no impact on the chemical and ecological status of these watercourses.

- 4.15.20. There is very limited potential for operational effects on water quality as only occasional maintenance access would be required. This would not generate significant erosion or pose a pollution hazard.
- 4.15.21. The EA highlighted the proximity of the Shropshire Groundwater Scheme described in Chapter 9 of the ES [APP-066], but whilst adjacent to the proposed development there would be no impact [RR-008].

## **Water Resources**

- 4.15.22. The most significant groundwater resource is the Shropshire Groundwater Scheme in the western part of the study area [APP-066]. There are also licensed abstractions of surface and groundwater in the Rivers Perry and Roden catchments for agricultural purposes, principally for spray irrigation. There are no licensed private water supplies in the study area.
- 4.15.23. The proposed development would pass through a total catchment (zone 3) groundwater SPZ associated with a public water supply at Woodhouse used for potable supply by Severn Trent Water Ltd. It is likely that further exploitation of groundwater in the area would occur in the future, and the Shropshire Groundwater Scheme is expected to require the construction and maintenance of groundwater wells in the western part of the study area.

## **Conclusions**

- 4.15.24. Potential effects on surface water and groundwater features during construction include:
- increased flood risk due to location of laydown areas, access tracks and temporary construction activities within the floodplain;
  - release of sediment into surface water during construction;
  - accidental release of oils, fuels and construction materials and contaminants into the groundwater, particularly from temporary laydown areas; and
  - trenching activities for the underground sections.
- 4.15.25. Each of these potential effects has been identified in the CEMP [REP8-003] and measures adopted to manage and minimise their impact on the environment. These would ensure construction of the proposed development would not give rise to any significant effects on flood risk, water quality or water resources.
- 4.15.26. No significant effects on flood risk, water quality or water resources arising from the proposed development have been identified by the applicant in the assessment, nor any developments which would give rise to significant cumulative effects, and this is supported by the SoCG with the EA [APP-003]. I agree, and my conclusion is that there are no flood

risk, water quality or water resources issues which would weigh against the Order being made.

## **4.16. SOCIO-ECONOMIC EFFECTS**

- 4.16.1. NPS EN-1 sets out in paragraphs 4.4.2, 4.13.4, 5.12.2, 5.12.3 and 5.12.5 the socio-economic matters an application should address. These could include employment, equality, community cohesion and well-being, the composition, size and proximity of the local population, the creation of jobs and training opportunities, the provision of additional local services and improvements to local infrastructure, effects on tourism and local businesses.
- 4.16.2. NPS EN-5 does not provide specific guidance in relation to socio-economic assessment.
- 4.16.3. Accordingly, these matters are considered in Chapter 10 of the ES [APP-070] and a number of appendices, especially APP-072. The nature of potential socio-economic effects on tourism (including hotels and bed and breakfast accommodation) and recreation means they have a direct relationship to visual effects, and for this aspect the study area corresponds with the 1km study area for the visual assessment. For the assessment of business effects, the geographical area of Shropshire as a whole was adopted due to potential effects on business potentially extending to wherever the proposed development would provide reinforcement to the energy supply.
- 4.16.4. The immediate study area between Wem and Oswestry is predominantly rural with agricultural businesses and some isolated commercial premises. Shropshire has a high proportion of the population past retirement age (like many rural areas) and comparatively low levels of unemployment in a primarily small business economy.
- 4.16.5. Due to the short-term nature of the construction in any one location and the limited visual impact there are not anticipated to be any significant socio-economic effects resulting from the construction of the proposed development. It would safeguard a small number of existing jobs for a contractor (this may not be a local contractor and may require specialist staff that are not locally based) and would indirectly support the growth of the market towns and the rural economy. No quantitative assessment has been provided, but the applicant suggests this could be less than 50 jobs [REP2-006].
- 4.16.6. Maintenance during operation would be carried out by the applicant's existing staff so no new jobs would be created [REP2-006]. However, as SC recognise, the need for investment in new electricity infrastructure has been a significant economic development issue in North Shropshire for a number of years. For example, development proposals for housing and employment are predicated on the availability of electricity which has been constrained by electrical supply and capacity in Whitchurch and Oswestry [REP1-010].

## **Conclusion**

- 4.16.7. My conclusion is that there are no adverse socio-economic effects arising from the proposed development, and the benefits are limited beyond the basic purpose of reinforcing the resilience of the electricity supply in North Shropshire and the encouragement this is expected to have for economic development.

## **4.17. LAND USE AND AGRICULTURE**

- 4.17.1. NPS EN-1 advises that applicants should identify existing and proposed land uses near the proposed project, and seek to minimise impacts on the best and most versatile agricultural land which is Grades 1, 2 and 3a of the Agricultural Land Classification (paragraphs 5.10.5, 5.10.8 and 5.10.15). NPS EN-5 does not provide specific guidance in relation to land use and related matters.
- 4.17.2. Accordingly, these are considered in Chapter 11 of the ES [APP-074]. The assessment has been undertaken largely by means of a desk study, using information from published sources (including information available through the DEFRA website) and from specific liaison and consultation. A study area of 1km extends from the boundary of Order limits for the 132kV cable route and OHL.
- 4.17.3. Permanent impacts of the proposed development would only be the footprint of the Trident wood poles (and area of land covered by the stays on angle poles). No new permanent access tracks would be required, although permanent access rights are being sought.
- 4.17.4. As noted in Section 2.3 above, the predominant land use within the study area is agriculture. The proposed development would pass through the following types of agricultural land:
- Grade 2 (very good quality) - approximately 5% of the area within the Order limits, near Lower Hordley, Cockshutt, Loppington, Noneley and just west of Wem;
  - Grade 3 (good to moderate quality) - approximately 60%; and
  - Grade 4 (poor quality) - approximately 35% particularly near the Montgomery Canal and the River Perry, and in the area south of Loppington [Figure 11.1 APP-083].
- 4.17.5. Approximately 40 farms would be affected by the proposed development. Farming is generally medium scale arable and dairying, with some larger fields set aside for arable farming in the low-lying areas associated with the River Perry, Wackley and Sleaf Brook, and the River Roden.
- 4.17.6. Arable and pastoral farmland is interspersed with small settlements, and there are a number of other small-scale land uses including residential properties, recreational uses, PRow and businesses.
- 4.17.7. The majority of effects on farming operations would arise during construction including:

- loss of grazing and cropping areas within the temporary laydown areas, along access tracks, within working areas surrounding pole locations and along the route of the 132kV underground cable and the lower voltage diversions;
- the timing of construction works which may impact on seasonally dependent agricultural operations such as harvesting, sowing, lambing and calving;
- disruption to field drainage and water supplies, which may require diversion or repair;
- compaction of soil due to tracking by vehicles;
- impact on the commitments made by the farmers/landowners etc with regard to agri-environmental schemes; and
- increased risk of disease transmission and transfer of invasive weeds associated with vehicle movements along the access tracks and within the Order limits.

4.17.8. The majority of pole positions would be accessed by existing farm access arrangements and field gates shown on the Access and Rights of Way Plans [APP-008]. Potential adverse effects during construction can be avoided or reduced through careful management and standard good practice construction techniques as set out in the CEMP [REP8-003] and discussed in advance with the landowner/tenant.

4.17.9. The permanent loss of operational agricultural land from the wood poles and stays would itself be very small. The 'uncropped' area created by the proposed development (calculated using a precautionary approach of not cropping using agricultural machinery within 2m of a pole or stay) is estimated to be a total of 1.5ha. In addition, the presence of wood poles and the OHL within fields could cause inconvenience to agricultural operations, for example during grass cutting, spraying and irrigation operations.

4.17.10. The applicant argues the actual footprint would be significantly less, as 111 out of 176 wood poles would be sited adjacent to field boundaries and hedgerows and therefore are currently uncropped anyway. Furthermore, the farming systems where the OHL would be located are predominantly managed as grazed grassland units and as such the unutilised area would be limited only to the wooden pole footprint.

4.17.11. The diversions of six sections of lower voltage OHL would result in the removal of a number of wood poles which would have a small beneficial effect as small areas of land associated with the pole footprints would be returned to agricultural use.

4.17.12. OHL present a potential hazard of contact or flashover between tall agricultural equipment and the conductors. Once an overhead power line is operational it is necessary to maintain safety clearances, and the proposed 132kV OHL would need a minimum height of 6.7m above ground level. This is compared to an 11kV line which is common place around the UK which has a minimum height of 5.2m above ground. Therefore, the Trident pole design would give an additional 1.5m of clearance meaning common farming operations such as ploughing, sowing, spraying and combining would be unaffected.

- 4.17.13. The proposed underground cables (132kV and lower voltage) would be laid at a depth of 1.4m in order to not impact on agricultural activities such as ploughing.
- 4.17.14. There are not expected to be any cumulative effects on land use and agriculture as a result of the proposed development as it would be located primarily within agricultural land, and the majority of both potential construction and operational effects identified are likely to be localised.
- 4.17.15. The NFU observed that developments in agriculture and the use of modern, larger machinery have significantly improved field work rates. Therefore, time lost when navigating around the proposed OHL structures, loss of yield and various additional costs incurred, would have a much greater impact on farming businesses [RR-012]. This was supported by a specific representation [REP2-018]. The applicant's response was that construction works would be undertaken in accordance with the CEMP [REP8-003] to protect soils, field drainage and water supplies, and avoid unnecessary disruption to the land management activities. Additionally, the applicant would be responsible for making good physical damage to the land and/or settling any reasonable compensation claims for losses incurred arising from the construction works [REP1-002].
- 4.17.16. At the CAH on 11 July 2019 an oral submission was made by Mr Dickin about the route in the vicinity of Stanwardine Grange. No representations had been made by him previously during the examination, but I encouraged him to put his concerns forward in writing, which were received as REP6-011 and REP9-004. These set out that the land at Stanwardine Grange is the only organic registered block on the route of the proposed development and is in an environmental stewardship agreement with NE. In addition, he made a number of specific objections to the location of poles 103 to 108, and the line route near to Cockshutt.
- 4.17.17. The applicant's response set out the engagement with Mr Dickin during the consultation stages, prior to the formal submission of the application for the DCO [REP7-019] and is recorded in the Consultation Report [APP-017]. Noting the existence of the organic farmland and the mapped Countryside Stewardship areas in the project area shown in Figure 11.2, Chapter 11 of the ES assesses the effects of the proposed development on land use and agriculture and concludes there would be no significant effects. The measures in the CEMP would have the objective of ensuring that disruption to farming activities and agri-environmental schemes are kept to a minimum during construction.
- 4.17.18. The applicant considers it has given full consideration to each of the matters raised by Mr Dickin regarding the farming practices at Stanwardine Grange, proximity of the route to Cockshutt and a detailed review of alternatives to the location of poles 103 to 108. None of the suggested route options across Stanwardine alter the applicant's view that the proposed route remains the preferred scheme.

- 4.17.19. From the detailed chronology set out in REP7-019, I am satisfied that the applicant has given proper consideration to the matters raised by Mr Dickin before the application was submitted, and that the route at Stanwardine Grange is an appropriate balance between a range of landscape and agricultural impacts. Additionally, the flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft DCO would enable further adjustments to be made where beneficial during implementation of the proposed development.

## **Conclusion**

- 4.17.20. In conclusion, a range of potential temporary effects as a result of the proposed development have been identified in the assessment including the temporary loss and disruption to agricultural land use practices during the construction of the OHL and underground cabling. None of these effects would be significant. No potentially significant effects on land use and agriculture have been identified during the operational phase. My conclusion, however, is that the disruptions to agriculture during construction do weigh marginally against the Order being made.



## **5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **5.1. INTRODUCTION**

- 5.1.1. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 of the PA2008. With exceptions, the Secretary of State must decide the application in accordance with any relevant NPS, which in the case of this application are NPSs EN-1 and EN-5.
- 5.1.2. The need justification for the proposed development is provided in paragraphs 3.1.1 to 3.1.4 of NPS EN-1 which state that:
- "The [IPC] should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part."*
- 5.1.3. Paragraph 3.7.2 of NPS EN-1 goes on to state:
- "Lack of sufficiently robust electricity networks can cause, or contribute to, large scale interruptions. Existing transmission and distribution networks will have to evolve and adapt in various ways to handle increases in demand, but construction of new lines of 132KV and above will also be needed to meet the significant national need for expansion and reinforcement of the UK's transmission and distribution networks."*
- 5.1.4. In addition, SP Manweb as the applicant has to operate within the statutory duties and obligations placed upon it under the Electricity Act 1989 to develop and maintain an efficient, coordinated and economical system of electricity distribution. The need for reinforcement of the electricity circuit in North Shropshire is part of these duties.
- 5.1.5. My conclusions on the case for granting development consent for this application are based on an assessment of those matters which I consider are both important and relevant to the decision, as well as the LIR submitted to the examination, as required by s104 of the PA2008.
- 5.1.6. I set out the reasons for my conclusions on each of the matters in Chapter 4, and these are summarised in the following section. Chapter 7 then turns to the applicant's proposals for CA and related matters, followed by a discussion of the draft DCO in Chapter 8 before reaching an overall recommendation about whether development consent should be granted for the application in Chapter 9.

### **5.2. FINDINGS AND CONCLUSIONS**

#### **Principle of the development**

- 5.2.1. There is an urgent need to substantially increase the capacity of the electricity network in North Shropshire if the social and economic plans

for this part of the county are to be achieved. This is the major component of the representations of SC in supporting the application and no representations were made to cast doubt on this. I therefore conclude that the need for the proposed development is established.

### **Alternatives and design**

- 5.2.2. The applicant has carried out a systematic approach to the consideration of alternative routes and the choice of Trident wood poles as the most appropriate for the physical circumstances of this part of North Shropshire. In line with the requirements of NPS EN-5, undergrounding of the OHL at sensitive locations has been properly investigated and the conclusion reached in each case that the benefits do not outweigh the economic impacts. My conclusion is that the selected route for the proposed development represents the optimum in terms of work carried out to date, including at Noneley, with the prospect of further refinements and improvements as detailed design progresses.

### **Construction**

- 5.2.3. The construction arrangements have been designed to cause minimum disruption to the rural area in which the proposed development would take place, involving the main construction compound situated at the applicant's existing depot at Oswestry, and the proposed use of seven laydown areas along the line of the OHL to facilitate the erection of individual poles. HE's concerns about the underground crossing of the A5(T) were resolved by the end of the examination and my conclusion is that there are no issues arising from the proposed construction methods.

### **CEMP**

- 5.2.4. My conclusion is that the CEMP has benefited from amendment and improvement during the examination, based on consultation with the statutory bodies most involved, and the outcome is a document which is well prepared and meets the objective of minimising environmental effects during construction works.

### **Transport and Highways**

- 5.2.5. Construction of the proposed development would not have a significant impact on the highway network. Any impacts that do arise can be satisfactorily mitigated through the implementation of a Traffic Management Plan as part of the CEMP which would subsequently be updated and agreed with the local and strategic highway authorities.
- 5.2.6. The use of construction accesses and measures to protect existing field boundary hedgerows, the approach to traffic management on the public highway, and the distribution of construction traffic from the construction compound to the construction sites and temporary laydown areas represents a satisfactory way of handling such impacts. This is supported by SC as the local highway authority.
- 5.2.7. HE's concerns about the construction of the underground cable beneath the A5(T) were resolved through appropriate amendments to the Traffic

Management Plan as part of the CEMP, and amendments to a number of articles and the protective provisions in the draft DCO.

- 5.2.8. My conclusion is that there are no traffic or highways issues which would weigh against the Order being made.

### **Noise and air quality**

- 5.2.9. With appropriate noise controls in the CEMP there are no noise or air quality issues which would weigh against the Order being made.

### **EMFs**

- 5.2.10. Because the proposed development complies with the current public exposure guidelines concerning EMFs and the policy on phasing no mitigation is necessary.

### **Landscape and Visual Amenity**

- 5.2.11. The closest designated landscape to the proposed development is 8km away, though there are other key landscape features within the study area for the proposed development. There would be no significant landscape effects during the construction and operation of the proposed development, and no significant visual or residential visual amenity effects during construction.
- 5.2.12. The design and route of the proposed OHL, combined with the screening effects of landform and vegetation, means that its effects on views and visual amenity once constructed would generally be limited. Only those receptors close to the proposed development would experience a significant change in their view. In relation to the specific matter of the crossing of the Montgomery Canal, my conclusion is that undergrounding is not justified.
- 5.2.13. Notwithstanding the applicant's view that further mitigation in the form of planting is not needed, there may be opportunities for additional planting outside of the Order limits where this can be agreed with individual landowners as part of voluntary agreements.
- 5.2.14. My overall conclusion therefore is that there are no landscape or visual amenity issues which would weigh against the Order being made.

### **Historic Environment**

- 5.2.1. There are no designated assets (listed buildings, registered parks and gardens and scheduled monuments) within the Order limits. Within a 5km study area however, there is a substantial number of designated and non-designated assets.
- 5.2.2. The effects of visual intrusion on heritage assets and their settings during construction would be short-term and temporary. All of the operational effects would result from change to the settings of heritage assets, and none have been assessed as being significant.

5.2.3. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.

5.2.4. My conclusion is that there are no historic environment issues which would weigh against the Order being made.

### **Ecology and Biodiversity**

5.2.5. The proposed development would not cross or directly affect any statutory or non-statutory designated site. Approximately 1.52ha of arable and improved grassland and less than 0.5ha of woodland/trees/scrub would be taken by the proposed development; otherwise habitat loss would be negligible.

5.2.6. There would be no significant ecological effects at a local, regional or national scale and none are predicted during the construction, operation or maintenance of the proposed development. No mitigation is required to reduce any identified 'significant' effect to 'not significant'. Two mature veteran oak trees would be felled, and two further veteran oaks would need some reduction, but within a context of a total route of 22.5km.

5.2.7. Hedgerows would be generally retained and protected, with construction accesses specifically designed to make use of existing gaps and farm gates. Short sections of hedgerow at 22 locations would need to be lifted and replaced to accommodate double wood poles. Overall effects on hedgerows both during construction and operation are assessed as negligible (and both reversible and temporary).

5.2.8. The flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft DCO would enable further adjustments to be made where beneficial during implementation of the proposed development.

5.2.9. I therefore conclude that there are no ecology or biodiversity issues which would weigh against the Order being made.

### **Flood Risk and Water Quality and Water Resources**

5.2.10. A Flood Risk Assessment has been provided. No significant effects on flood risk, water quality or water resources arising from the proposed development have been identified, nor any developments which would give rise to significant cumulative effects. The CEMP contains a range of measures to ensure that if any such adverse effects did arise during construction, they can be properly managed.

5.2.11. My conclusion is that there are no flood risk, water quality or water resources issues which would weigh against the Order being made.

### **Socio economic effects**

- 5.2.12. No adverse socio-economic effects are likely and the benefits from the proposed development are limited beyond the basic purpose of reinforcing the resilience of the electricity supply in North Shropshire and the encouragement this is expected to have for economic development.

### **Land use and agriculture**

- 5.2.13. The proposed development could lead to the temporary loss and disruption to agricultural land use practices during the construction of the OHL and underground cabling. None of these effects during construction would be significant, and the measures in the CEMP would have the objective of ensuring that disruption to farming activities and agri-environmental schemes are kept to a minimum.
- 5.2.14. Permanent impacts of the proposed development would only be the footprint of the Trident wood poles (and area of land covered by the stays on angle poles) and the land take would be very small.
- 5.2.15. Additionally, the flexibility provided for micro-siting of individual poles by article 4 and requirements 3 and 4 of the draft DCO would enable further adjustments to be made where beneficial during implementation of the proposed development.
- 5.2.16. However, my conclusion is that the potential disruptions to agriculture during construction do weigh marginally against the Order being made.

### **HRA**

- 5.2.17. Prior to granting development consent, under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) the decision-maker must consider whether the project may have a significant effect on a European site, either alone or in combination with other plans or projects.
- 5.2.18. The NSER provides a worst-case assessment of likely significant effects on European sites and concludes that there will be no likely significant effects. NE were asked to confirm his conclusion, but no reply was received. However, this is supported by SC and I agree with this conclusion.

## **5.3. THE OVERALL BALANCE**

- 5.3.1. The proposed development would meet the policy justification set out in NPSs 1 and 5, and the strengthening of the electricity supply in North Shropshire supported by SC in its Development Plan, economic development strategy and LIR.
- 5.3.2. The only adverse impact identified in the appraisal of main issues is the potential for disruption to agriculture during construction, and I am confident that with the rigorous application of the measures in the CEMP that if they do arise these can be substantially minimised.

- 5.3.3. Other adverse impacts which were identified during the examination have either been satisfactorily concluded through negotiations between the applicant and the interested party (for example HE in the case of arrangements for the underground crossing of the A5(T)), or I have concluded that the issue is not one which should require changes to the proposals (for example the request of the CRT to underground the cable crossing of the Montgomery Canal).
- 5.3.4. For all other matters, including those under the Habitats Regulations, there are no issues which would weigh against the Order being made. I have had full regard to the obligations under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. I also consider there is no conflict with the requirements of the NERC Act 2006 and the Public Sector Equality Duty under the Equalities Act 2010.
- 5.3.5. In coming to an overall conclusion about the case for development consent, in my view this is a thorough and well-prepared application which perhaps explains why it has attracted very few representations. It is fully compliant with the policy requirements of the NPSs, and I conclude there is a very clear justification in favour of granting development consent.
- 5.3.6. If the Secretary of State agrees that development consent should be granted, then I propose several minor amendments to the final version of the draft DCO submitted by the applicant at the conclusion of the examination. These are discussed in Chapter 7, following the consideration of the request for CA and TP powers.

## **6. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **6.1. INTRODUCTION**

- 6.1.1. As noted in Chapter 2, I requested at the beginning of the examination that the applicant revise the Land Plans to correct discrepancies with the description in the Book of Reference (BoR). The applicant did so, and further revisions to the BoR, Statement of Reasons (SoR) and Funding Statement (FS) during the examination reflect changes particularly to the drafting of the DCO. Accordingly, the versions of the Land Plans [REP2-012], BoR [REP7-011], SoR [REP7-013] and FS ([REP7-005] considered in this Chapter are those as finally submitted.
- 6.1.2. The Order limits include the land required for or affected by the proposed development. The width of the Order limits (excluding the substations) is generally 25m wide for the OHL and 20m wide for the underground cable. The Order limits are wider at changes in direction of the OHL, along some access tracks to take account of vehicle swept path requirements, and at the Terminal Pole No 1 to allow the conductors to be fixed to the wood pole by means of a winch. The Order limits also include construction accesses from public roads.
- 6.1.3. The indicative pole locations are shown on the Works Plans [APP-007]. However, it may be necessary and desirable to refine the final vertical and horizontal profile of the conductors and pole to reflect the outcome of pre-construction surveys. These could identify new localised environmental constraints, and agreements on minor alterations suggested by landowners.
- 6.1.4. Accordingly, article 4 and requirements 3 and 4 of the draft DCO allow for micro-siting within the Order limits for:
- any pole structure to be moved by up to 5m from its indicative position as shown on the Works Plans, but not within 1m of the outside edge of any hedgerows; and
  - any pole structure to be increased vertically in height (not exceeding 2m) from the heights shown in Table 1 of requirement 3.

### **6.2. COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

- 6.2.1. The applicant (defined as the undertaker for the purposes of the draft DCO or Order) is seeking principally rights to construct, operate and maintain the proposed authorised development. No compulsory acquisition of the freehold of land is proposed in the draft DCO. The land which is subject to compulsory acquisition (CA) and to powers of temporary possession (TP) is identified on the Land Plans [REP2-012] and set out in the BoR [REP7-011]. This therefore embraces the land within the Order limits to enable the OHL to be constructed, to facilitate

the undergrounding of six short sections of existing lower voltage OHL, and temporary works including to provide for the seven temporary laydown areas.

- 6.2.2. The proposed CA and TP powers are contained in Part 5 of the draft DCO in articles 17 to 30, but there are also relevant provisions dealing with streetworks in Part 3 in articles 9 to 14. The purpose of each of the relevant articles is described in the following paragraphs.

### **Part 3 Streetworks**

- 6.2.3. **Articles 9, 10 and 11** would provide general powers to enter onto streets (apart from the A5(T)), to construct means of access and to create temporary prohibitions and restrictions of the use of streets in order to carry out works. In some instances, the right to create temporary access tracks would extend beyond the period after construction in order to enable future maintenance to be carried out.
- 6.2.4. There are 39 PRoW running through the Order limits. Article 11 of the draft DCO would grant the powers to temporarily restrict as necessary those PRoW affected by the proposed development as set out in Schedule 3 to the draft DCO.
- 6.2.5. **Article 12** would allow the undertaker to regulate traffic on roads for the purposes of the construction of the authorised development. This would be subject to the consent of the traffic authority.
- 6.2.6. **Article 13** would permit the undertaker to form new, or improve existing, means of access within the Order limits, apart from the A5(T), with the approval of the relevant planning authority in consultation with the relevant highway authority.
- 6.2.7. **Article 14** would enable street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street.

### **Part 5 Powers of Acquisition**

- 6.2.8. **Article 17** would exempt existing rights in minerals from the scope of CA.
- 6.2.9. **Article 18** would give the undertaker the power to create and acquire compulsorily the following rights and to impose the following restrictions described in the BoR and shown on the Land Plans:
- Class 1: rights for the installation, maintenance and use of the OHL;
  - Class 2: rights for the installation, maintenance and use of the underground cable;
  - Class 3: rights for the installation, maintenance and use of the lower voltage diversions;
  - Class 4: rights to use and create the accesses to the proposed development;
  - Class 5: rights for reinstatement planting and drainage;



- Class 6: rights to use land as a temporary laydown area, to construct gates and fencing, construction working areas and access for construction;
  - Class 7: rights for the installation of substation equipment at Wem and Oswestry substations.
- 6.2.10. The explanation for these rights is set out in Tables 2 to 8 of the SoR, with a detailed justification for each plot set out in Table 9.
- 6.2.11. This article would also provide for modifications to the Compulsory Purchase Act 1965 as set out in Schedule 4 to the draft DCO to ensure that they apply properly to the acquisition of rights and imposition of restrictions and not affect the amount of compensation to which landowners would be entitled.
- 6.2.12. **Article 19** would provide that in carrying out or using the proposed development and doing anything else authorised by the DCO, by virtue of s158 of the PA2008 the undertaker may override easements and other rights. It also provides that compensation may be payable.
- 6.2.13. **Article 20** would give the undertaker five years to issue notices to treat or a general vesting declaration to acquire the rights in land subject to CA.
- 6.2.14. **Article 21** would provide that all private rights and restrictive covenants over land subject to CA would be suspended and unenforceable or extinguished. Similarly, all private rights and restrictive covenants over land of which the undertaker takes TP would be suspended and unenforceable for so long as the undertaker remains in temporary possession of that land. These private rights are identified in Part 3 of the BoR. Compensation would be payable where loss is suffered as a result. This article does not apply to rights of statutory undertakers which are covered separately in article 29.
- 6.2.15. **Article 22** would apply the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 as amended by the Housing and Planning Act 2016.
- 6.2.16. **Article 23** would allow the undertaker to acquire rights below the ground or above it.
- 6.2.17. **Article 24** reflects changes introduced by the Housing and Planning Act 2016 and would disapply the notice periods it introduces to the TP or use of land under articles 26 and 27.
- 6.2.18. **Article 25** would allow the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Compensation would be payable in certain circumstances.
- 6.2.19. **Article 26** would provide for the temporary use of land specified in Schedule 5 to the draft DCO for carrying out the proposed development. These rights are described in Class 6 of the BoR and include:

- use of temporary laydown areas, storage areas, working areas and parking;
- construction of gates, fences and other boundary structures;
- pedestrian and vehicular access;
- vegetation removal;
- survey work; and
- construction of welfare and security structures.

6.2.20. The applicant intends that the powers under article 26 would be exercised before the acquisition of rights under article 18 so as to enable the necessary micro-siting of OHL poles to take place. This is to ensure that the undertaker minimises the extent of land over which it would exercise the CA rights.

6.2.21. The undertaker must vacate the land within one year of the date of final commissioning of the authorised development (as defined in article 2), unless a notice to treat has been served or general vesting declaration made. There are provisions requiring 14 days' notice to be given and restoration of the land following the temporary possession/works. Compensation would be payable where loss is suffered.

6.2.22. **Article 27** would similarly provide for the temporary use of land anywhere within the Order limits for maintenance purposes. There are provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession/works. Compensation would be payable where loss is suffered.

6.2.23. The provisions of the Neighbourhood Planning Act 2017 would be disappplied to articles 26 and 27 given that they have not yet come into force and the regulations required to provide more detail on the operation of the regime have not yet been made.

6.2.24. **Article 28** would provide in accordance with s132 of the PA2008 for three plots of Special Category Land required for the purposes of the Order to be suspended from all rights, trusts and incidents to which it was previously subject.

6.2.25. **Article 29** would provide a specific power for the undertaker to create or CA rights, extinguish or suspend the rights of, and remove or reposition the apparatus of, statutory undertakers shown on the Land Plans and described in the BoR. In all cases the powers conferred by this article are subject to the protective provisions within Schedule 6 to the draft DCO.

6.2.26. **Article 30** would provide that statutory undertakers who have to create a new connection following the exercise of powers under article 29 may recover the costs from the undertaker.

## 6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. As noted in paragraph 6.2.1 above, the applicant is only seeking powers for the creation of rights and the imposition of restrictions and is not seeking to acquire the freehold of any land. The applicant argues the classes of rights sought and the imposition of restrictions are to enable

the proposed development to be constructed and the resulting asset to be properly maintained.

6.3.2. The SoR identifies the purpose for which each right and restriction sought would be used, and on which plot. The extent of each plot has been drawn to reflect the specific works that would be undertaken. Although this has resulted in a large number of plots being shown on the Land Plans, the applicant is only seeking the powers to create rights and restrictions that it actually needs in order to construct and operate the proposed development on each individual plot.

6.3.3. On this basis, the applicant argues it is seeking powers of acquisition that are legitimate, necessary and proportionate to allow the construction and operation of the proposed development.

## **6.4. LEGISLATIVE REQUIREMENTS**

6.4.1. Under s122 of the PA2008, a DCO which includes CA powers may be made only if the conditions in s122(2) and s122(3) are met. These are:

- that the land is required for the development to which the DCO relates or is required to facilitate or is incidental to the development, or the land is replacement land to be given in exchange for the Order land under s131 or s132 of the PA2008 (s122(2)); and
- there is a compelling case in the public interest for the land to be acquired compulsorily (s122(3)).

## **6.5. THE APPLICANT'S CASE**

6.5.1. The applicant considers the area over which rights are sought and on which restrictions are to be imposed to be the minimum that is required in order to construct, install, operate and maintain the proposed development.

6.5.2. A range of structures would be required to construct the proposed development, including wooden poles forming the OHL, underground cables to connect into Oswestry substation, undergrounding of the lower voltage lines and at Wem substation, and these are described in the Construction Report [APP-087]. The applicant therefore considers that the s122(2) condition is satisfied.

6.5.3. In respect of the s122(3) condition, paragraph 13 of the Guidance<sup>14</sup> states that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose rights in land are to be acquired and over which rights are to be created. Paragraph 14 of the Guidance states that in determining where the balance of public interest lies, the Secretary of State will weigh up

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<sup>14</sup>Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land DCLG 2013

the public benefits that a scheme will bring against any private loss to those affected by CA.

6.5.4. The need for the proposed development is to reduce risk to the security of the electricity network in North Shropshire. The applicant considers that the public benefits derived from CA outweigh the private loss that would be suffered, and accordingly s122(3) condition is satisfied.

6.5.5. Paragraphs 8 to 10 of the Guidance set out a number of general considerations that an applicant must demonstrate to the satisfaction of the Secretary of State when justifying an order authorising CA:

- all reasonable alternatives to CA (including modifications to the proposed development) have been explored;
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
- an applicant has a clear idea of how it intends to use the land which it is proposed to acquire;
- there is a reasonable prospect of the requisite funds for the acquisition becoming available; and
- the purposes for which CA of land powers are included in the DCO are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

6.5.6. The following sections of this Chapter deal with these considerations in turn.

#### **ALTERNATIVES TO COMPULSORY ACQUISITION**

6.5.7. The applicant has a statutory duty under the Electricity Act 1989 to operate an economic and efficient system of electricity distribution. The alternative options considered for the reinforcement of the local distribution network leading to the decision to progress the proposed development are described in the Further Updated Strategic Options Report [APP-090], the Updated Line Route Report [APP-093], the ES [APP-031 to 085] and the Consultation Report [APP-017].

6.5.8. Any alternative routes to the proposed development for a new 132kV OHL and underground cable would also require the CA of rights over land.

6.5.9. In the case of the proposed development the subject of this application, the BoR, Land Plans and the tables in Section 5 of the SoR show the rights and restrictions that are required over each plot and for what purpose. The Order limits have been drawn as tightly as possible to avoid any unnecessary interference with or extinguishment of private interests and rights.

6.5.10. The applicant is seeking CA powers only for the creation of rights and the imposition of restrictions. Furthermore, the applicant is seeking the ability to use, where appropriate, powers of temporary use to identify the

minimum easement width required rather than vesting rights and restrictions in an area larger than is actually required.

- 6.5.11. The applicant's argument therefore is that the alternatives to CA have been consistently pursued through voluntary agreements wherever possible, that these discussions are continuing and therefore that CA would be a last resort in specific circumstances where such agreements are not reached.

#### **ACQUISITION BY AGREEMENT**

- 6.5.12. The applicant has undertaken extensive consultation with those parties with an interest in the land within the Order limits and has made offers to acquire the necessary rights by voluntary agreement, subject to the DCO being made and the proposed development commencing. The applicant is progressing these negotiations with landowners and tenants to reach voluntary agreements so as to try and avoid the need to use article 18 of the draft Order.

- 6.5.13. However, paragraph 25 of the Guidance confirms that for long, linear schemes, such as the proposed development:

*'It may not be practical to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.'*

- 6.5.14. The applicant is therefore seeking CA rights in land in the draft Order to ensure that if voluntary agreements are not reached, the applicant can deliver the proposed development without potential delay. The CA powers would also cover instances where the person with an interest in land is unwilling/or unable to grant the relevant land interest or right once the option has been exercised.

- 6.5.15. Additionally, including all interests in the draft Order would allow all required rights and restrictions to be obtained in the same way and through one process, potentially by General Vesting Declaration (GVD) if it is not possible to secure rights voluntarily. This is an effective way of avoiding the risk of a failure to disclose a relevant interest or where interests are unknown.

#### **AVAILABILITY OF FUNDS FOR COMPENSATION**

- 6.5.16. Paragraph 9 of the Guidance states that an applicant:

*'should be able to demonstrate that there is a reasonable prospect of the requisite funds becoming available. Otherwise it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122'.*

- 6.5.17. The FS [APP-015] sets out how the proposed development would be funded and seeks to demonstrate that the applicant has secured sufficient financial resources to pay any compensation arising from the exercise of the CA and TP powers set out in the draft Order and to

construct the proposed development. Any compensation arising from the exercise of the CA powers would be assessed in line with the statutory compensation code. In cases of disagreement, persons affected have the right to apply to the Upper Tribunal (Lands Chamber) to determine the compensation payable.

- 6.5.18. The total cost of the proposed development is estimated at £18 million [REP7-005]. This includes the cost estimated at £1.13 million of acquiring the rights over land to install and maintain the works, compensation, any disturbance costs properly payable to landowners, compensation for the felling and/or lopping of any trees, and all associated professional costs.
- 6.5.19. Ofgem currently regulate how much the applicant can earn and spend, following submission of a Business Plan which sets out the outputs it intends to deliver during the relevant Price Control period and the estimated costs of doing so. Ofgem's final determination for the current RII0-ED1 Price Control period was published on 28 November 2014 and includes approval for expenditure by the applicant on the proposed development.
- 6.5.20. The applicant therefore considers it has demonstrated it has the sufficient financial resources to carry out the proposed development, and to meet all the liabilities estimated to arise through the application of the CA and TP powers in the draft DCO.

## **HUMAN RIGHTS**

- 6.5.21. The Human Rights Act 1998 incorporated the European Convention on Human Rights into UK law. The following articles of the Convention are relevant to the Secretary of State's decision as to whether in making the DCO, it should include powers of CA:
- Article 6: this entitles those affected by the powers sought in the draft DCO to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision-making process;
  - Article 8: this protects private and family life, home and correspondence. No public authority can interfere with these rights except in accordance with the law and is necessary in the interest of national security, public safety of the economic well-being of the country; and
  - Article 1 of the First Protocol: this protects the right of everyone to a peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.
- 6.5.22. The draft DCO has the potential to infringe the rights of persons who hold interests in land within the Order limits under Article 1 of the First Protocol, but the applicant argues this is legitimate as:
- there is a compelling case in the public interest for the inclusion of powers of CA in the DCO; and

- the interference with right is proportionate.

- 6.5.23. The applicant considers that there would be a significant public benefit arising from the making of the DCO in meeting the need to distribute electricity. This benefit is only realised if the DCO includes CA powers. The applicant has concluded on balance that the significant public benefits would outweigh the effects upon persons who own property within the Order limits. For the small number of landowners who would be affected by the exercise of the CA powers in the draft DCO, compensation is payable in accordance with the statutory compensation code.
- 6.5.24. In relation to Article 6 of the Convention, there has been the opportunity to make representations during the preparation of the application. In accordance with Part 5 of the PA2008, the applicant has consulted with persons set out in the categories contained in s44 of the PA2008. This includes owners of land within the Order limits and those who may be able to make claims either under s7 and s10 of the Compulsory Purchase Act 1965 in respect of injurious affection and claims under Part 1 of the Land Compensation Act 1973.
- 6.5.25. Also, the beneficiaries of rights overridden by the exercise of powers in the draft DCO would be capable of making claims under s10 of the Compulsory Purchase Act 1965.
- 6.5.26. Representations have been made by persons in response to notices given under s56 of the PA2008 for consideration during the examination of the draft DCO. Should the DCO be made, any person aggrieved may bring a challenge in the High Court if they consider that the grounds for doing so are made out pursuant to s118 of the PA2008.
- 6.5.27. For these reasons, the applicant considers that any infringement of the human rights of those whose interests are affected by the CA powers is proportionate and legitimate and is in accordance within national and European law.

### **SPECIAL CONSIDERATIONS**

- 6.5.28. No Crown interests in land have been identified as affected by the proposed development, and as a result there is no content to Part 4 of the BoR.
- 6.5.29. Plots 2, 3 and 4 are shown on the Land Plans and identified in Part 5 of the BoR as Special Category Land. Plot 2 is approximately 11,375m<sup>2</sup>, plot 3 approximately 56m<sup>2</sup>, and plot 4 approximately 58m<sup>2</sup>. The land covered by these three plots is a mixture of grassland, wooded area, existing overhead electricity distribution lines and poles. It is essentially a very wide verge between a housing estate and the A5(T) and is used for informal recreation with a number of paths laid out along its length.
- 6.5.30. The reason for the proposed creation of rights and the imposition of restrictions is to enable the installation and use of Work No.2. This would be the short stretch of 132kV underground cable from the Oswestry

substation running to the immediate east of the A5(T) before turning due west underneath the road to meet the start of the OHL Work No.3 at Long Wood. The proposed works would therefore involve some site clearance and the installation of the underground cable through excavation, and reinstatement once complete. Apart from the need to maintain access for maintenance purposes, the expectation is that the site could return much to its existing appearance and use once the works are complete.

- 6.5.31. All three plots are an area designated by SC as Informal Open Space and otherwise known as Amenity Green Space, the land use of which is protected in the Development Plan. At the CAH on 11 July 2019, the applicant confirmed that these three plots fall within the definition of Special Category Land as they are open space as defined by s19(4) of the Acquisition of Land Act 1981. The plots are used for public recreation in that there are paths crossing them, and are therefore subject to s132 of the PA2008 [REP6-002].
- 6.5.32. Section 132 of the PA2008 makes provision for special parliamentary procedure to apply where a DCO authorises the CA of rights over land forming part of a common, open space, or fuel or field garden allotment. The DCO would be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of a number of exemptions set out in s132 applies.
- 6.5.33. As plots 3 and 4 are less than 200m<sup>2</sup> in extent, it could be argued that they would be exempt by virtue of s132(5)(a), but plainly plot 2 far exceeds 200m<sup>2</sup>. The applicant has not sought to argue the exemption in relation to plots 3 and 4, probably because in practice this is one contiguous area. Accordingly, the exemption case put forward by the applicant is that s132(3) applies to all three plots of the Special Category Land because the Order land when burdened with the Order right will be no less advantageous than it was before to:
- the persons in whom it is vested;
  - other persons, if any, entitled to rights of common or other rights; and
  - the public.
- 6.5.34. Article 28 of the draft Order provides for the three plots of Special Category Land required for the proposed development to be discharged from all rights, trusts and incidents to which they were previously subject, where their continuance would be inconsistent with the exercise of the rights and restrictions under articles 18 and 26 of the draft Order. The consequential statement that the Secretary of State is satisfied that any Special Category Land, when burdened with the rights and restrictions, will be no less advantageous to any persons affected, is included in the preamble to the draft DCO.
- 6.5.35. No representations were received concerning the Special Category Land.



## **STATUTORY UNDERTAKERS' LAND**

- 6.5.36. As identified in Parts 1 and 2 of the BoR, a number of statutory undertakers have interests in land within the Order limits. They are:
- Highways England;
  - Wales and West Utilities;
  - Severn Trent Water Limited;
  - The Environment Agency;
  - Canal and River Trust;
  - Shropshire Council (as highway authority);
  - Network Rail;
  - BT Telecommunications (Openreach); and
  - National Grid.
- 6.5.37. The draft DCO would provide for the creation and CA of rights, extinguishment or suspension of rights, or removal or repositioning apparatus belonging to statutory undertakers, as shown on the Land Plans and described in the BoR. Accordingly therefore, the Secretary of State needs to be satisfied that these rights can be provided without a serious detriment to the carrying on of the undertaking (article 127(5) and (6)), or is necessary for the purpose of carrying out the proposed development (article 138(4)).
- 6.5.38. Article 29 in the draft Order would provide the power to extinguish or suspend the rights of and remove or reposition apparatus on statutory undertakers' land. It also would provide the power to create and acquire new rights over statutory undertakers' land, the suspension of rights of a statutory undertaker (for example where land is being used temporarily under the draft Order) rather than just extinguishment, and the ability to impose restrictions over statutory undertakers' land.
- 6.5.39. In all cases the powers conferred by article 29 would be subject to the protective provisions within Schedule 6 to the draft Order. With these, the applicant envisages the Secretary of State can be satisfied that the creation and acquisition of new rights etc and the extinguishment or removal of relevant apparatus will only take place if necessary and with the agreement of the applicable statutory undertaker.

## **6.6. OBJECTIONS**

- 6.6.1. No formal objections to CA of rights of any plot or TP powers were made by any individual. Although several statutory undertakers made representations about their land interests, these were usually expressed as the drafting of protective provisions in the draft DCO rather than specific objections to the CA of particular plots. However, to crystallise matters, at the CAH on 11 July 2019 the applicant confirmed that the relevant plots where there were outstanding objections to CA at that point were:
- plot 58 - Network Rail;
  - plots 122 and 126 - National Grid; and
  - plots 86, 87 and 88 - Canal and Rivers Trust.

## **Network Rail (NR)**

- 6.6.2. The section of the OHL which crosses the Shrewsbury to Chester railway near Babbinswood is proposed to be supported by poles 17 and 18. These poles would be located either adjacent to or within the NR land identified as plot 58.
- 6.6.3. Rights would be required by the applicant for this plot to facilitate the construction and installation of the 132kV OHL, including erection of scaffolding and any associated netting, together with ancillary works to drains/ditches; reinstatement planting and reinstatement drainage; felling, trimming or lopping of trees; carrying out surveys; and access both on foot and by vehicle.
- 6.6.4. The removal of existing 11kV and 33kV OHL and construction of underground 11kV and 32kV cables would be directly adjacent and parallel to the operational railway. NR objected to the powers contained in articles 18, 23, 26 and 27 of the draft DCO, and accordingly required protective provisions and an asset protection agreement to control works either on, above or adjacent to the operational railway. Without these being to its satisfaction, NR maintained an objection to the CA of plot 58 [RR-009].
- 6.6.5. A SoCG was agreed with the applicant at D4, but this recorded agreement that protective provisions were a matter of continuing negotiation [REP4-003].
- 6.6.6. Prior to D7 NR set out its requirements in some detail [AS-017]:
- NR cannot agree to the applicant being granted the unfettered ability to exercise CA powers over the operational railway;
  - any temporary possession of, or acquisition of permanent rights over, NR operational land can only be granted with NR's consent and subject to its internal land clearance process;
  - indemnity for costs is required;
  - a wayleave agreement is needed between the parties to regulate the grant of required rights from NR to the applicant;
  - an asset protection agreement is needed to regulate the construction of works directly adjacent and parallel to the operational railway.
- 6.6.7. These matters were challenged by the applicant, claiming that NR had misunderstood the details of the scheme. There are no underground cables proposed to run alongside the railway, and the wooden poles to support the OHL would be on land outside of NR's operational interests. Wayleave and asset protection agreements were therefore unnecessary [REP7-0215].
- 6.6.8. However, NR's final representation at D8 stated that the need for wayleave and framework agreements (which would render the proposed CA powers unnecessary) had been agreed between the applicant and NR but not yet concluded, whilst an asset protection agreement and protective provisions were now agreed. On this basis, NR withdrew its

objections [REP8-011]. This matter is therefore settled, and s127 of the PA2008 is not engaged.

### **National Grid (NG)**

- 6.6.9. NG's land interests in plots 122 and 126 comprise an easement which contains rights for the purposes of using and maintaining the existing 400kV OHL which crosses these plots.
- 6.6.10. For plot 122, rights would be required by the applicant to facilitate the construction and installation of the 132kV OHL together with ancillary works to drains/ditches; reinstatement planting and reinstatement drainage; felling, trimming or lopping of trees; carrying out surveys; and access both on foot and by vehicle.
- 6.6.11. For plot 126, rights would be required by the applicant for the temporary improvement and upgrade of existing access tracks to facilitate the construction and installation of the proposed development, together with ancillary works to drains/ditches; reinstatement planting and reinstatement drainage; felling, trimming or lopping of trees; carrying out surveys; and access both on foot and by vehicle.
- 6.6.12. Although a SoCG was agreed with the applicant at an early stage in the examination, this recorded agreement that protective provisions are required to modify the application of articles 18 and 29 of the draft DCO as they relate to NG, and were a matter of continuing negotiation [REP3-003]. NG subsequently recorded its formal objection to the CA of plots 122 and 126 in the absence of satisfactory protective provisions in further representations [AS-16].
- 6.6.13. At D7 NG set out its views concerning the outstanding points of disagreement with the protective provisions in some detail [REP7-018]:
- NG would accept that its agreement to the form and exercise of the rights granted by the proposed Order should not be unreasonably withheld;
  - if there is a need on the part of the applicant or NG to remove the existing 400 kV OHL because of the proposed development then it is the applicant's responsibility to secure any necessary consents and provide sufficient replacement rights for NG;
  - 56 days should be allowed for NG to properly consider and assess the applicant's plans, rather than 28 days proposed by the applicant;
  - NG does not accept that potential protective works can only be carried out on land held or controlled by NG and within an existing authorisation or consent;
  - the applicant should cover any costs incurred by NG as a consequence of the carrying out of the proposed development;
  - an indemnity is needed to include third party claims for an interruption of transmission from the carrying out of the proposed development; and
  - the applicant must obtain acceptable insurance for NG's financial protection.

- 6.6.14. However, by the close of the examination the final form of protective provisions had been agreed between the applicant and NG, resolving these points, and NG withdrew its objections to the CA of these two plots accordingly [REP8-010]. This matter is therefore settled, and s127 and s138 of the PA2008 are not engaged.

### **Canal and River Trust (CRT)**

- 6.6.15. None of the poles are proposed to be located on land belonging to CRT, and the applicant would only require appropriate airspace rights for the OHL to cross the Montgomery Canal, involving plots 86, 87 and 88.
- 6.6.16. Rights would be required therefore by the applicant for these three plots to facilitate the construction and installation of the 132kV OHL, including erection of scaffolding and any associated netting, together with ancillary works to drains/ditches; reinstatement planting and reinstatement drainage felling, trimming or lopping of trees; carrying out surveys; and access both on foot and by vehicle.
- 6.6.17. CRT has established a code of practice to control construction of such works affecting its waterways and this is included as an appendix in the final version of the CEMP [REP8-003]. Nonetheless, CRT objected to CA powers and the protective provisions included in the draft DCO at the outset [RR-011].
- 6.6.18. CRT amplified these points at D1 [REP1-008] and essentially reiterated them at every deadline throughout the examination. CRT drew attention to the Guidance<sup>15</sup> stating that CA should be a last resort and alleging that the applicant had failed to engage with the Trust to reach a private agreement.
- 6.6.19. CRT attended the ISH concerning the draft DCO on 20 March 2019 and lodged its concerns about the protective provisions. CRT's representations at D3 and D4 [REP3-006 and REP4-005] complained of alleged failures by the applicant to discuss a land agreement or progress the protective provisions. CRT also notified its intention to attend and speak at the second ISH concerning the draft DCO and the CAH arranged for 11 July 2019. However, given good progress it felt was being made about these matters, in the event CRT withdrew from both [AS-009]. This meant detailed examination of its representations about these matters at the hearings was not possible as I had intended, and therefore my consideration of them rests on the written submissions.
- 6.6.20. CRT's representations at D6, 7, 8 and 9 stated that there had been no further negotiation with the applicant about a land agreement and the Trust reiterated its objection to the use of CA powers concerning its interests. CRT objected to the deemed approval provisions of article 37 concerning any approvals required from the Trust, and the use of CA powers unless the undertaker has used reasonable endeavours to agree

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<sup>15</sup> Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land DCLG 2013.

the acquisition of the necessary rights and interests from the Trust by private treaty [REP6-008, REP7-015, REP8-009 and REP9-001].

- 6.6.21. At the conclusion of the examination therefore the Trust maintained an objection to the proposed CA of plots 86, 87 and 88. It drew attention to the protective provisions agreed with NR and NG prohibiting the use of CA powers in the draft DCO without their agreement, and suggested that as a statutory undertaker the CRT should be treated in the same way.
- 6.6.22. The applicant set out its final position on the proposed protective provisions for CRT in Part 4 of Schedule 6 to the draft DCO at the end of the examination [REP8-005]. Similarly, CRT set out its final proposed drafting [REP9-001].
- 6.6.23. My conclusion is that CRT's request that it should be exempt from the provisions of article 37(2) which would impose deemed consent after 42 days is unconvincing. The Trust's reasoning is because it might not have sufficient opportunity to consider the information provided. No other statutory undertaker has requested such an exemption apart from HE (for somewhat different reasons), and in my view this has to be seen in the context of the content of the protective provisions proposed to cover CRT's interests. These include the design of the works, approval of plans, construction and maintenance, and the extensive measures included in the CEMP at CRT's request.
- 6.6.24. The actual works involved in stringing the OHL over the Montgomery Canal do not appear to be at all complicated or technically challenging, and I share the applicant's view that a period of 42 days to provide a response for the approval of the detailed construction methods is more than adequate for a body such as the CRT. I do not therefore agree to the CRT's request that it should be exempt from article 37(2).
- 6.6.25. The second element of CRT's objection is that the proposed CA and TP powers should not be exercised without its agreement. This is because CRT claims the applicant has not made sufficient attempt to negotiate the necessary rights by private treaty, and that other statutory undertakers enjoy this measure of control in their respective protective provisions. The applicant argues that the particular formulation proposed by CRT to deal with this point in its protective provisions is too wide, uncertain and open to debate and is therefore opposed [REP8-005].
- 6.6.26. In my view, this general requirement of most statutory undertakers (including NR and NG in this DCO) that CA powers must not be exercised without their express consent rather defeats the object of granting such powers in the first place, but in this situation I appreciate that CRT makes a reasonable point of consistency of approach [REP9-001].
- 6.6.27. My conclusion therefore is that a new subparagraph should be inserted at the beginning of paragraph 35 of Schedule 6 Part 4 concerning the protective provisions for CRT, to read:

*(1) The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of rights), article 23 (acquisition of subsoil or*

*airspace only), article 26 (temporary use of land for carrying out the authorised development), article 27 (temporary use of land for maintaining the authorised development) or article 29 (statutory undertakers) without the Trust's consent, which must not be unreasonably withheld or delayed.*

The existing subparagraphs (1) to (15) would then be renumbered (2) to (16) accordingly.

- 6.6.28. With these conclusions and proposed amendments to the protective provisions, I conclude that the CRT's objection is met and that the applicant's case for the CA of plots 86, 87 and 88 is justified. I also conclude that the requirements of s127(5) and (6) and article 138(4) of the PA2008 are met.

### **National Farmers Union (NFU)**

- 6.6.29. The NFU submitted a general representation that the easement payment being offered by the applicant in the heads of terms is only for 20 years. This is not an acceptable payment for the interference and impact that the infrastructure would have on farming operations and the loss of production on agricultural land [RR-012]. The applicant responded that the easement payment of 20 years is calculated by multiplying the annual payment by twenty. This is an accepted valuation principle for the grant of permanent rights. The annual payments used in the calculation for all of the proposed 132kV apparatus are based upon the higher level payment for arable land [REP1-002].
- 6.6.30. Levels of compensation are not a matter for this Order and there are mechanisms available for dissatisfied land owners to pursue their concerns. Nevertheless, the applicant's response seems to me to be reasonable, and I note that no further representation from the NFU was received on this matter.

### **Construction Access Agreements**

- 6.6.31. A schedule showing the position reached between the applicant and the affected landowner in relation to each construction access and temporary laydown area (whether the current agreement was a verbal approval, heads of terms signed, or a completed option agreement) was supplied by applicant at D2 [REP2-007, Annex B].
- 6.6.32. An updated version provided towards the end of the examination at D7 [REP7-002] shows that at that point verbal agreement had been reached in relation to 40 of the 44 construction accesses and all the temporary laydown areas. Heads of Terms were in place for 19 of the construction accesses and all but one of the temporary laydown areas, and no case had yet reached the final signing of an option agreement.
- 6.6.33. This leads to the conclusion that whilst verbal approvals have been reached in many cases, as matters stand at the end of the examination the applicant could not rely on negotiated agreements to conclude the required construction accesses. I consider therefore that the CA and TP

powers sought by the applicant to ensure that these rights are secured are justified.

## **6.7. CONCLUSIONS**

- 6.7.1. A range of structures would be required to construct the proposed development, and these are described in the Construction Report [APP-087]. I am satisfied that there is a case for the inclusion of each plot within the BoR and Land Plans. The applicant has set out clear and specific proposals regarding how each plot comprising the Order land would be used, and I therefore consider that the s122(2) of the PA2008 is satisfied.
- 6.7.2. I agree that all reasonable alternatives to CA and the proposed development have been explored. The applicant has attempted to acquire interests through agreement with affected landowners as far as possible, and these negotiations continue. Whilst verbal approvals have been reached in many cases, as matters stand at the end of the examination the applicant could not rely on negotiated agreements to conclude the required construction accesses. If they fail in relation to any specific plot, then I conclude the applicant would need the proposed CA and TP powers as a last resort to enable the proposed development to be constructed.
- 6.7.3. Given the national and local need for the proposed development and the support for it found in policy, I conclude the compulsory creation of rights, imposition of restrictions and the temporary use of land, together with overriding of interests, rights and restrictive covenants and the suspension or extinguishment of matters affecting the Order land is justified.
- 6.7.4. Furthermore, the rights and restrictions sought are no more than is reasonably necessary in order to construct and install, operate and maintain the proposed development. The Order limits have been reduced as much as possible and are proportionate.
- 6.7.5. The requisite funds are available to meet any costs of acquisition and compensation payable as a result of the use of powers of CA and TP, as well as funding the construction of the proposed development. I agree the Secretary of State can be reassured the applicant is capable of meeting the compensation liabilities because the applicant is a statutory body and subject to financial and regulatory controls through Ofgem.
- 6.7.6. The proposed interference with the rights of those with an interest in the Order land is for a legitimate purpose, namely the proposed development, and is necessary and proportionate to that purpose. The public benefits to be derived from the proposed CA and TP powers in the draft Order would outweigh the private loss that would be suffered.
- 6.7.7. I am satisfied that all objections which have been made have either been resolved by the applicant or the objectors have had the opportunity to present their cases before me during the examination, including at a CAH held for this purpose.

- 6.7.8. No representations were received concerning the Special Category Land, and the rights sought are to enable a stretch of underground 132kV cable to be laid, with the affected open space land capable of being restored to its former position. I consider therefore that the Secretary of State can be satisfied that the three plots of Special Category Land, when burdened with the proposed rights and restrictions, will be no less advantageous to any affected persons than before.
- 6.7.9. The only outstanding objection the end of the examination was from CRT and my conclusion is that with the modification I propose to the protective provisions in Part 4 of Schedule 6 to the draft DCO this objection is met.
- 6.7.10. Accordingly, with the protective provisions secured in the draft Order, I also conclude that the requirements of s127(5) and (6) and article 138(4) of the PA2008 are met concerning the interests of all statutory undertakers.
- 6.7.11. I am satisfied that the case has been made that all the land included in the BoR and Land Plans is required either for the development or to facilitate or is incidental to it. I have concluded that development consent should be granted for the reasons set out in Chapter 5. It follows therefore that its delivery would be jeopardised in the absence of the CA powers, and the temporary use of land intended as set out in the draft DCO. Interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development.
- 6.7.12. In this situation, I conclude that the compelling case in the public interest for the grant of CA and TP powers has been made, and that the conditions in s122 and s123 of the PA2008 are satisfied.



## **7. DRAFT DEVELOPMENT CONSENT ORDER**

### **7.1. INTRODUCTION**

- 7.1.1. The application included a draft DCO [APP-012] and Explanatory Memorandum (EM) [APP-013]. I decided to hold an ISH to deal with the draft DCO immediately after the PM on 20 March 2019 and issued an agenda for this setting out a number of comments on the draft Order [PD-004]. These were discussed with the applicant and other attendees at the meeting and following that, a summary of the applicant's responses were submitted at D1 [REP1-006] and a revised draft DCO including these agreed changes submitted at D2 [REP2-009].
- 7.1.2. On 11 July 2019 I held a second ISH to deal with the draft DCO, and similarly issued an agenda for this with my comments on the draft as it stood at that time [EV-005]. The applicant readily responded to my suggestions at the hearings and then written submissions, and consequently the draft DCO went through what amounted to 5 iterations before the final version submitted at D8 [REP8-002].
- 7.1.3. It is therefore the final versions of the EM [REP6-006] and the draft DCO [REP8-002] at the end of the examination which are considered in this Chapter.

### **7.2. CONTENT OF THE DRAFT ORDER**

- 7.2.1. The structure of the draft DCO is straightforward and the principal provisions of the articles and Schedules is as follows:
- Articles**
- 7.2.2. **Article 2** provides for the interpretation of the rest of the Order, including the Schedules.
- 7.2.3. **Article 3** gives the principal power to carry out the authorised development as described in Schedule 1 within the Order limits, subject to the requirements listed in Schedule 2.
- 7.2.4. **Article 4** permits a deviation to allow the micro-siting of pole structures within the Order limits (subject to restrictions imposed by requirements 3 and 4). The vertical limits of deviation are 2m upwards from the heights given in the pole schedule (Table 1 of requirement 3) and any amount necessary or convenient downwards. This provision has been included so that actual construction can reflect ground conditions when the works are carried out.
- 7.2.5. **Article 5** confirms that in accordance with s141 of the PA2008 the undertaker has the authority to keep the authorised development installed. This authority is needed in lieu of consent which would otherwise be required under s37 of the Electricity Act 1989.
- 7.2.6. **Article 6** sets out the scope within which the undertaker may maintain the authorised development within the Order limits.

- 7.2.7. **Article 7** provides that the undertaker has the sole benefit of the Order, subject to article 8.
- 7.2.8. **Article 8** allows any or all of the benefit of the provisions of the Order and related statutory rights to be transferred to another person with the consent of the Secretary of State. This is subject to three exceptions:
- the transferee or lessee is a statutory undertaker; or
  - the transferee or lessee is a person who holds a licence issued under s6(1) of the Electricity Act 1989; or
  - where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 7.2.9. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims.
- 7.2.10. **Articles 9 to 14** cover matters relating to streets and which are discussed in Chapter 6.
- 7.2.11. **Article 15** enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner, not to be unreasonably withheld and subject to certain other conditions.
- 7.2.12. **Article 16** allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes, boreholes or excavations. The power is subject to a number of conditions including a requirement for 14 days' notice to be given, and is subject to the payment of compensation.
- 7.2.13. **Articles 17 to 30** cover the proposed CA and TP powers which are discussed in Chapter 6.
- 7.2.14. **Article 31** provides that the undertaker may fell, lop or cut back the roots of any tree or shrub within or overhanging land within the Order limits to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. The article also modifies The Hedgerows Regulations 1997 and provides that the undertaker may remove any hedgerow, or important hedgerow specified in Schedule 8 to the draft DCO with no additional requirement to obtain the consent of the local authority.
- 7.2.15. **Article 32** would override landlord and tenant law so far as it would prejudice any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered

into by the undertaker for the construction, maintenance, use or operation of the authorised development.

- 7.2.16. **Article 33** states that the development consent granted by the Order is to be treated as a specific planning permission for the purposes of determining the operational land of a statutory undertaker under the Town and Country Planning Act 1990.
- 7.2.17. **Article 34** amends the terms of the defence provided by s158 of the PA2008 in the case of noise nuisance relating to the construction or maintenance or use of the authorised development. This is in accordance with controls imposed by the local authority under the Control of Pollution Act 1974 or cannot reasonably be avoided.
- 7.2.18. **Article 35** provides for the submission of documents specified in Schedule 9 to the draft DCO to the Secretary of State in order that they may be certified as being true copies.
- 7.2.19. **Article 36** deals with the service of notices pursuant to the Order.
- 7.2.20. **Article 37** contains provisions concerning any approval, consent or agreement (excluding the requirements) which is required to be given by the relevant authority apart from HE. It must be given in writing, and any authority (except HE) that fails to respond to an application for consent within 42 days of the application being made is deemed to have given its consent.
- 7.2.21. The procedure for the discharge of requirements in Schedule 2 is set out in Schedule 7 to the draft DCO. It sets out clear time limits for decisions to be made within and how appeals are to be made in the event of a refusal, or if the relevant authority requires further information to be provided in relation to that application.

### **Schedules**

- 7.2.22. **Schedule 1** describes the authorised development including but not limited to:
- 7.2.23. Work No.1: Works at Oswestry substation as shown on sheet 1 of the Works Plans comprising the installation of electrical switchgear and associated equipment (including 132kV cable sealing ends, isolator and associated busbar and a 132kV outdoor circuit breaker) and a 132kV underground cable.
- 7.2.24. Work No.2: the construction and installation of a 132kV underground cable and fibre optic cable 1.2km in length from Oswestry substation connecting to Work No.3 at a terminal structure at Long Wood as shown on sheet 1 of the Works Plans. This comprises three 132kV single core cables together with a fibre optic cable installed in 200mm diameter polyethylene ducts laid in trefoil formation, together with the installation of cable protection tiles above at a depth of approximately 1.4m to ensure a final minimum depth of 975mm.

- 7.2.25. Work No.3: the construction and installation of a 132kV OHL 21.3km in length commencing in the vicinity of Long Wood. From there it follows an easterly direction passing to the south of Whittington, north of Rednal, to the north of Lower Hordley, south of Cockshutt, and to the south of Loppington terminating at a gantry at Wem substation, as shown on sheets 1 to 16 of the Works Plans. The OHL will comprise a three phase 132kV line (three wires/conductors and fibre optic cable) mounted on 176 Trident wood pole structures extending up to 18m high, with terminal and cable sealing ends at the Terminal Pole No 1, and all modifications required and any support to facilitate a change in angle of the OHL.
- 7.2.26. Work No.4A: the removal of existing 11kV and 33kV OHL between Oswestry and Wem as shown on sheets 2, 3, 7, 8, 12, 13, 14 and 16 of the Works Plans, and all associated wood poles, conductors, insulators and fittings.
- 7.2.27. Work No.4B: the undergrounding of 11kV and 33kV cables between Oswestry and Wem as shown on sheets 1, 2, 3, 7, 8, 9, 12, 13, 14 and 16 of the Works Plans.
- 7.2.28. Work No.5: works at Wem substation as shown on sheet 16 of the Works Plans comprising the installation of a 132kV gantry, isolator, associated busbar, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker.
- 7.2.29. The description of the authorised development in Schedule 1 to the Order includes associated development that supports the construction and operation of the principal development and is subordinate to that development, in accordance with the principles set out in the Guidance<sup>16</sup>. This includes (but is not limited to) matters such as:
- the establishment of temporary laydown and storage areas;
  - establishment of temporary means of access and access tracks;
  - reinstatement hedgerow planting;
  - installation of a welfare unit and security cabin;
  - diversion of lower voltage OHL;
  - drainage works and temporary culverts;
  - works to alter the position of apparatus, including mains, sewers, drains and cables;
  - works to alter the course of or otherwise interfere with a watercourse; and
  - establishment of winching points and the erection of scaffolding.
- 7.2.30. In some cases there may be some overlap between associated development and the works which form part of the NSIP. The applicant considers that all elements of the proposed development either constitute part of an NSIP or are associated development within the meaning of s115(2) of the PA2008 and so can properly be authorised by the DCO.

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<sup>16</sup> Planning Act 2008: associated development applications for major infrastructure projects DCLG 2013.

This was a matter I raised with the applicant and is referred to in paragraph 7.5.1 below.

- 7.2.31. The Order also contains several powers that are ancillary to the authorised development. The main ancillary matter is a power to acquire rights compulsorily, in accordance with s120(4), s122 and Part 1 of Schedule 5 to the PA2008. These rights, including the imposition of restrictions, are required to construct, maintain and operate the authorised development. The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. In such cases, s117 and s120(5) of the PA2008 require that the Order be made by Statutory Instrument. The Order is drafted in that form.
- 7.2.32. **Schedule 2** sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order.
- 7.2.33. Requirement 1 provides for the interpretation of words and phrases used in Schedule 2.
- 7.2.34. Requirement 2 states that the authorised development must be commenced within 5 years of the date that the Order is made.
- 7.2.35. Requirement 3 secures the carrying out of the authorised development in accordance with the approved drawings, subject to the limits of deviation.
- 7.2.36. Requirement 4 sets restrictions on the limits of deviation of pole structures such that they are permitted to move no more than 5m from their location as shown on the Works Plans, but no pole structure can be located within 1m of the outside edge of any hedgerow.
- 7.2.37. Requirement 5 sets out that the authorised development must be carried out in accordance with the plans or other documents certified in accordance with article 35 (certification of plans), subject to the limits of deviation.
- 7.2.38. Requirement 6 ensures that the felling of trees is undertaken in accordance with the relevant guidance.
- 7.2.39. Requirement 7 controls the hours during which construction work may be carried out by providing different construction hours during summer and winter months and specifies the works that can be undertaken outside of the working hours.
- 7.2.40. Requirement 8 provides that should contamination be identified during construction, an investigation and risk assessment must be undertaken, and that the risk assessment may identify the need for a detailed remediation strategy. If such a detailed remediation strategy is required, this must then be submitted to the relevant planning authority for approval, and the authorised development must then be carried out in accordance with that approved strategy.

- 7.2.41. Requirement 9 requires the approval by the relevant planning authority of a detailed CEMP which is in accordance with the CEMP included in Schedule 9 as one of the documents to be certified. The authorised development must be carried out in accordance with the approved detailed CEMP.
- 7.2.42. Requirement 10 provides that any reference to an approved plan which has been amended must be taken to include the amendment if subsequently approved by the relevant planning authority. No amendment must be approved if it would be likely to give rise to any new or materially different environmental effects from those assessed in the ES.
- 7.2.43. Requirement 11 requires the approval by HE of construction traffic management arrangements for temporary use of the existing A5(T) access. The authorised development must be carried out in accordance with the approved arrangements.
- 7.2.44. **Schedule 3** contains a list of those streets for which the undertaker would be given authority under article 10 to carry out street works which are described.
- 7.2.45. **Schedule 4** sets out proposed modifications to the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.
- 7.2.46. **Schedule 5** identifies those land plots which may be taken for temporary use under article 26, principally for the laydown areas.
- 7.2.47. **Schedule 6** contains six sets of proposed provisions to protect the interests of various statutory undertakers.
- 7.2.48. **Schedule 7** sets out detailed procedures for the discharge of requirements and a process by which the undertaker can appeal against the refusal of an application for approval.
- 7.2.49. **Schedule 8** lists 23 important hedgerows which are proposed for removal under powers provided in article 31.
- 7.2.50. **Schedule 9** contains all the application documents which are proposed to be certified by the Secretary of State as true copies if the Order is made.

### **7.3. EVOLUTION OF THE DRAFT ORDER**

- 7.3.1. The detailed discussion of particular points and revisions to successive drafts of the DCO are set out in a range of examination documents [PD-008, EV-002, EV-005, EV-008, REP1-006, REP2-009, REP4-002, REP5-002, REP6-002, REP6-003, REP6-005 and REP8-002].
- 7.3.2. Revised Limits of Deviation Plans and Works Plans were provided by the applicant at the beginning of the examination [AS-003 and AS-006].

- 7.3.3. A revised figure illustrating the pole types with the descriptions as set out in Table 1 of R3 of the draft DCO was provided as REP7-004.
- 7.3.4. At the second ISH concerning the draft DCO held on 11 July 2019, I requested the applicant supply a note concerning the relationship between articles 8, 18, 21, 29 and 30 in the draft DCO. This is because they all address (at least in part) the role of statutory undertakers, and I questioned whether all these provisions were necessary. The response of the applicant dealt systematically with each of these articles, and demonstrated to my satisfaction they are justified in the draft DCO, based particularly on the precedent of the North Wales Windfarms Connection Order 2016 [REP6-003].

## **7.4. STATEMENTS OF COMMON GROUND**

- 7.4.1. I requested in my Rule 6 letter the preparation of a number of SoCGs between the applicant and a range of statutory bodies who had submitted relevant representations, particularly HE [RR-004], NG [RR-005], STW [RR-007], EA [RR-008], NR [RR-009] and CRT [RR-011]. The applicant provided an update of progress in concluding SoCGs at each deadline [REP1-004, REP2-004, REP3-005], with final versions as agreed with each body submitted as these were concluded. The main matters covered in the SoCGs were the drafting of protective provisions in Schedule 6 to the draft DCO.

### **HIGHWAYS ENGLAND (HE)**

- 7.4.2. The SoCG was agreed at an early stage in the examination and records agreement to the Transport and Highways Technical Note [APP-032], exclusion of HE from deemed consent provisions in article 37 of the draft DCO, similar exclusions from articles 9, 13, 26 and 27, and a new requirement in Schedule 2 to deal with traffic management of construction of the A5(T) crossing. Agreement to the protective provisions for HE was outstanding at the time of the agreed SoCG [REP3-010].

### **NATIONAL GRID ELECTRICITY TRANSMISSION (NG)**

- 7.4.3. The SoCG records NG's agreement to the ES, CEMP, the Construction Report and the draft DCO, other than the protective provisions in Schedule 6 Part 5 [REP3-004].

### **SEVERN TRENT WATER (STW)**

- 7.4.4. A joint letter between the applicant and STW acknowledges STW's guidance for working near its assets included as an appendix to the CEMP, protective provisions and an asset protection agreement between the parties, which enable STW to confirm it has no objection to the application [REP8-007].

### **THE ENVIRONMENT AGENCY (EA)**

- 7.4.5. In addition to agreeing flood risk, water quality, water resources, ecology and biodiversity matters the SoCG states the EA's agreement to the

requirements contained in Schedule 2 to the draft DCO, and the obligation on the applicant to consult with EA in relation to the preparation of a detailed CEMP prior to submission to SC [REP2-003].

#### **NETWORK RAIL (NR)**

- 7.4.6. The SoCG records NR's agreement to the draft DCO other than its objections to CA of NR's interests and the drafting of protective provisions [REP4-003].

#### **CANAL AND RIVER TRUST (CRT)**

- 7.4.7. The SoCG notes agreement the approach and methodology in the ES covering ecology and biodiversity, landscape and visual impacts, historic environment, flood risk and water quality, socio-economic matters and tourism, and the content of the CEMP. However, the design of the proposed development (including over or undergrounding), the protective provisions and the CA of the Trust's land interests in relation to the crossing of the Montgomery Canal are not agreed [AS-013].

#### **NATURAL ENGLAND (NE)**

- 7.4.8. The applicant recorded at several points during the examination its inability to secure any response from NE to a draft SoCG (for example in REP7-008), and similarly NE did not reply to any questions from myself. In the light of this unsatisfactory situation, the applicant submitted an unsigned joint letter with NE which records that the proposed development is unlikely to have any significant impacts on internationally and nationally designated sites, proposes NE's agreement to the draft CEMP, and that there is no impediment to appropriate consents being granted if the DCO is approved [REP8-006].

#### **SHROPSHIRE COUNCIL (SC)**

- 7.4.9. The SoCG records agreement to the need and design of the proposed development, the policy context, the ES, draft CEMP and the content of the draft DCO, with no matters not agreed or under discussion [REP2-003].
- 7.4.10. SC agreed the draft requirements and the approach to discharging them in Schedule 7 to the draft DCO, article 9 (3), article 11 (3), article 37, Schedule 3 as amended with reference included to the individual Access and Rights of Way sheet nos. in relation to the street works listed [REP2-003].

### **7.5. CHANGES DURING THE EXAMINATION**

- 7.5.1. A considerable number of relatively minor changes were made to each successive version of the draft DCO during the examination as noted in paragraph 7.3.1. These are recorded in REP1-006 and REP6-002 and reflected in the tracked change versions of the Order. The main changes were:



- to deal with HE's concerns about the undergrounding of the cable crossing of the A5(T) and essentially that this should be excluded from powers proposed to be granted by articles 9, 13, 26 (13), 27 (12) and 37 (4);
- the applicant agreed with my proposition that the works described in Schedule 1 should be distinguished between the NSIP (Work No. 3) and the associated development (Works Nos. 1, 2, 4A, 4B and 5) and the final version of the draft DCO reflects this change<sup>17</sup>;
- some redrafting of the requirements in Schedule 2, particularly Table 1 of R3 and how the CEMP is proposed to be secured in R9; and
- the considerable redrafting of the protective provisions in Schedule 6 to meet the specific requirements of statutory undertakers, and with the sole exception of paragraph 35 relating to CRT (covered in detail in Chapter 6) these are all agreed.

## 7.6. RECOMMENDATION

- 7.6.1. The single recommended substantive change to the final draft DCO is to paragraph 35 of Schedule 6 to meet the proposal put forward by CRT, with which I agree for the reasons set out in paragraphs 6.6.25 to 6.6.28 above. Paragraph 35 is therefore recommended to read as follows:

*The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of rights), article 23 (acquisition of subsoil or airspace only), article 26 (temporary use of land for carrying out the authorised development), article 27 (temporary use of land for maintaining the authorised development) or article 29 (statutory undertakers) without the Trust's consent, which must not be unreasonably delayed or withheld.*

- 7.6.2. I consider it would be helpful to have a consistent approach to this matter in all protective provisions and I therefore propose amendments to paragraphs 16(4) and 55 of Schedule 6 to convey as identical wording as possible.
- 7.6.3. It seems to me that paragraph 35(9) is repeated in paragraph 35 (13), and I therefore propose this latter subparagraph is deleted accordingly.
- 7.6.4. I consider the logic of the appeals process set out in Schedule 7 could be improved by reordering some paragraphs, and I recommend paragraph 4 (3) should be moved to immediately precede subparagraph (7).
- 7.6.5. In addition, there are a number of minor corrections which I am recommending to the final draft DCO, which are all of a straightforward drafting nature and require no further comment or explanation.
- 7.6.6. Accordingly, the final form of The Reinforcement to the North Shropshire Electricity Distribution Network Development Consent Order I recommend is that in Appendix D.

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<sup>17</sup> in accordance with paragraph 1.8.2 of NPS EN-5

## **8. RECOMMENDATION**

### **8.1. INTRODUCTION**

- 8.1.1. I am satisfied that the description of the authorised development in Schedule 1 to the draft DCO comprises development falling within the terms of s16 and s115 of the PA2008, and further that the provisions and requirements in the draft DCO fall within the terms of s120 of the PA2008.
- 8.1.2. I have had regard to the matters listed in s104 of the PA2008 as amended, including the relevant National Policy Statements, and the Local Impact Report submitted by Shropshire Council. None of the exceptions in s104(4) to (8) apply in the case of this application in my view.

### **8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

- 8.2.1. I have considered all important and relevant matters and conclude, for the reasons stated in this report, that subject to the minor modifications to the draft DCO that I propose at Appendix D, the benefits of the proposed development contained in the application for the Reinforcement to the North Shropshire Electricity Distribution Network as a whole would outweigh any adverse impacts. As the ExA, I therefore recommend that the Secretary of State should grant development consent for this application.
- 8.2.2. I have also considered the request for powers of CA and TP to be included in a DCO that is made. My conclusion is that in the situation where development consent for the application is granted, a compelling case is justified in the public interest for the grant of the CA and TP powers sought by the applicant in respect of the rights shown on the Land Plans and Special Category Land Plans and described in the BoR.
- 8.2.3. In my view there is no conflict with the requirements of the NERC Act 2006, or the Public Sector Equality Duty under the Equalities Act 2010, and I have had full regard to the Infrastructure Planning (Decisions) Regulations 2010.

### **8.3. RECOMMENDATION**

- 8.3.1. As the Examining Authority, I recommend under s83 of the Planning Act 2008 that development consent for The Reinforcement to the North Shropshire Electricity Distribution Network should be granted and that the Secretary of State makes an Order under s114, s115 and s120 of the Planning Act 2008 in the form at Appendix D.

## **APPENDICES**

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## **APPENDIX A: THE EXAMINATION**

## APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Examination Event
20 March 2019	<b>Preliminary Meeting</b>
20 March 2019	<b>Issue Specific Hearing 1</b> dealing with matters relating to the draft Development Consent Order
27 March 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>Examination Timetable</li> </ul> <p>Publication of:</p> <ul style="list-style-type: none"> <li>The ExA's Written Questions</li> </ul> <p>Notification by the ExA of an Accompanied Site Inspection to take place on Thursday 11 April 2019</p>
29 March 2019	<p><b>Deadline 1</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>Comments on Relevant Representations (RRs);</li> <li>Summaries of all RRs exceeding 1500 words;</li> <li>Written Representations (WRs);</li> <li>Summaries of all WRs exceeding 1500 words;</li> <li>Local Impact Report(s) from local authorities;</li> <li>Statements of Common Ground (SoCGs) requested by the ExA;</li> <li>Notification by Interested Parties of wish to attend the Accompanied Site Inspection;</li> <li>Suggested locations for site inspections and justification for consideration by the ExA;</li> <li>Post hearing submissions including written submissions of oral cases;</li> <li>Notification by Statutory Parties of wish to be considered an Interested Party;</li> <li>Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>
11 April 2019	<b>Accompanied Site Inspection</b>
24 April 2019	<p><b>Deadline 2</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>Comments on WRs;</li> <li>Comments on any SoCG;</li> <li>Comments on Local Impact Report(s);</li> <li>Responses to the ExA's Written Questions;</li> <li>Revised draft DCO from the Applicant;</li> </ul>

## APPENDIX A: THE EXAMINATION

	<ul style="list-style-type: none"> <li>• Comments on updated application documents (submitted by the Applicant on 18 March 2019 and accepted by the ExA at the Preliminary Meeting);</li> <li>• Comments on any further information requested by the ExA and received to Deadline 1;</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>
14 May 2019	<p><b>Deadline 3</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification by Affected Persons of wish to speak at a Compulsory Acquisition Hearing;</li> <li>• Notification by Interested Parties of wish to speak at Open Floor Hearing;</li> <li>• Any revised / updated SoCG;</li> <li>• Comments on the Applicant's revised draft DCO;</li> <li>• Comments on responses to the ExA's Written Questions;</li> <li>• Comments on any further information requested by the ExA and received to Deadline 2;</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>
4 June 2019	<p><b>Deadline 4</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on any revised/updated SoCG;</li> <li>• Revised draft DCO from the Applicant;</li> <li>• Comments on any further information requested by the ExA and received to Deadline 3;</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules.</li> </ul>
12 June 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification by the ExA of further hearings;</li> <li>• Request for further information.</li> </ul>
18 June 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Request for further information.</li> </ul>
27 June 2019	<p><b>Deadline 5</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions (if required);</li> <li>• Any revised/ updated SoCG;</li> <li>• Comments on the Applicant's revised draft DCO;</li> <li>• Comments on any further information requested by the ExA and received to Deadline 4;</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules (including probably a request for a further revised draft DCO prior to the ISH programmed for Thursday 11 July 2019);</li> </ul>

## APPENDIX A: THE EXAMINATION

11 July 2019	<b>Issue Specific Hearing 2</b> dealing with matters relating to the draft Development Consent Order
11 July 2019	<b>Compulsory Acquisition Hearing</b>
19 July 2019	<p><b>Deadline 6</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Post hearing submissions (if required);</li> <li>• Applicant's final preferred DCO on SI template and validation report, and final revised Explanatory Memorandum;</li> <li>• Comments on any revised / updated SoCG;</li> <li>• Comments on responses to the ExA's Further Written Questions (if required);</li> <li>• Comments on any further information requested by the ExA and received to Deadline 5;</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>
31 July 2019	<p><b>Deadline 7</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the Applicant's final preferred DCO;</li> <li>• Comments on any further information requested by the ExA and received to Deadline 6;</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>
06 August 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Request for further information.</li> </ul>
28 August 2019	<p><b>Deadline 8</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to comments on the Applicant's final preferred DCO;</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7.</li> </ul>
30 August 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Request for further information;</li> <li>• Change to the Examination timetable.</li> </ul>
18 September 2019	<p><b>Deadline 9</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the Applicant's final DCO;</li> <li>• Any further information requested by the ExA.</li> </ul>
20 September 2019	Close of Examination

## APPENDIX A: THE EXAMINATION

23 September 2019	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"><li>• Notification of completion of the Examination under section 99 of the Planning Act 2008.</li></ul>
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## **APPENDIX B: EXAMINATION LIBRARY**

## **APPENDIX B: EXAMINATION LIBRARY**

### **Reinforcement to North Shropshire Electricity Distribution Network Examination Library**

**Updated – 23 September 2019**

This Examination Library relates to the Reinforcement to North Shropshire Electricity Distribution Network application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

## APPENDIX B: EXAMINATION LIBRARY

<b>EN020021 – Reinforcement to North Shropshire Electricity Distribution Network</b> <b>Examination Library - Index</b>	
<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<a href="#">Representations – by Deadline</a>	
<a href="#">Deadline 1:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP1-xxx
<a href="#">Deadline 2:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP2-xxx

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<a href="#">Deadline 3:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP3-xxx
<a href="#">Deadline 4:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP4-xxx
<a href="#">Deadline 5:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP5-xxx
<a href="#">Deadline 6:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP6-xxx
<a href="#">Deadline 7:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP7-xxx
<a href="#">Deadline 8:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP8-xxx
<a href="#">Deadline 9:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP9-xxx
<a href="#">Other Documents</a>  Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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EN020021 – Reinforcement to North Shropshire Electricity Distribution Network	
Examination Library	
Application Documents	
APP-001	<a href="#">SP Manweb</a> 1.1 - Application Letter including SP Manweb's s55 checklist and information regarding the application documentation navigation
APP-002	<a href="#">SP Manweb</a> 1.2 - Application Form
APP-003	<a href="#">SP Manweb</a> 1.3 - Planning Inspectorate Electronic Application Index
APP-004	<a href="#">SP Manweb</a> 1.4 - Navigation Document
APP-005	<a href="#">SP Manweb</a> 2.1 - Location Plan
APP-006	<a href="#">SP Manweb</a> 2.2.0-2.2.16 - Land Plans and Crown Land
APP-007	<a href="#">SP Manweb</a> 2.3.0-2.3.16 - Works Plans
APP-008	<a href="#">SP Manweb</a> 2.4.0-2.4.16 - Access and Rights of Way Plans
APP-009	<a href="#">SP Manweb</a> 2.5 - Plan of Important Hedgerows Affected
APP-010	<a href="#">SP Manweb</a> 2.6 - Nature Conservation Sites Plan
APP-011	<a href="#">SP Manweb</a> 2.7 - Historic Sites Plan
APP-012	<a href="#">SP Manweb</a> 3.1 - Draft Development Consent Order
APP-013	<a href="#">SP Manweb</a> 3.2 - Explanatory Memorandum
APP-014	<a href="#">SP Manweb</a> 4.1 - Statement of Reasons
APP-015	<a href="#">SP Manweb</a> 4.2 - Funding Statement
APP-016	<a href="#">SP Manweb</a> 4.3 - Book of Reference
APP-017	<a href="#">SP Manweb</a> 5.1 - Consultation Report
APP-018	<a href="#">SP Manweb</a> 5.1.1 - Consultation Report - Appendices to Chapter 1
APP-019	<a href="#">SP Manweb</a> 5.1.2 - Consultation Report - Appendices to Chapter 2
APP-020	<a href="#">SP Manweb</a> 5.1.3 - Consultation Report - Appendices to Chapter 3
APP-021	<a href="#">SP Manweb</a> 5.1.4 - Consultation Report - Appendices to Chapter 4
APP-022	<a href="#">SP Manweb</a> 5.1.5 - Consultation Report - Appendices to Chapter 5
APP-023	<a href="#">SP Manweb</a> 5.1.6 - Consultation Report - Appendices to Chapter 6
APP-024	<a href="#">SP Manweb</a> 5.1.7 - Consultation Report - Appendices to Chapter 9
APP-025	<a href="#">SP Manweb</a> 5.1.8 - Consultation Report - Appendices to Chapter 10

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APP-026	<a href="#">SP Manweb</a> 5.1.9 - Consultation Report Figures Document
APP-027	<a href="#">SP MANWEB</a> 5.2 - Flood Risk Assessment
APP-028	<a href="#">SP Manweb</a> 5.3 - Statement of Statutory Nuisance
APP-029	<a href="#">SP Manweb</a> 5.4 - Habitats Regulations Assessment No Significant Effects Report
APP-030	<a href="#">SP Manweb</a> 5.5 - Other Consents and Licences Report
APP-031	<a href="#">SP Manweb</a> 6.1 - Environmental Statement Chapter 1: Introduction
APP-032	<a href="#">SP Manweb</a> 6.1.1 - Environmental Statement - Chapter 1 Technical Appendix 1.1: Transport and Highways Technical Note
APP-033	<a href="#">SP Manweb</a> 6.2 - Environmental Statement Chapter 2: Alternatives and Design Evolution
APP-034	<a href="#">SP Manweb</a> 6.3 - Environmental Statement Chapter 3: The Proposed Development
APP-035	<a href="#">SP Manweb</a> 6.3.1 - Environmental Statement - Chapter 3 Technical Appendix 3.1: Proposed Pole Schedule
APP-036	<a href="#">SP Manweb</a> 6.3.2 - Environmental Statement - Chapter 3 Technical Appendix 3.2: Draft Construction Environmental Management Plan
APP-037	<a href="#">SP Manweb</a> 6.4 - Environmental Statement Chapter 4: Approach and General Methodology
APP-038	<a href="#">SP Manweb</a> 6.4.1 - Environmental Statement - Chapter 4 Technical Appendix 4.1: Noise and Air Quality Technical Note
APP-039	<a href="#">SP Manweb</a> 6.5 - Environmental Statement Chapter 5: Planning Considerations
APP-040	<a href="#">SP Manweb</a> 6.5.1 - Environmental Statement - Chapter 5 Technical Appendix 5.1: Mineral Resource Assessment
APP-041	<a href="#">SP Manweb</a> 6.6 - Environmental Statement Chapter 6: Landscape and Visual Impact Assessment
APP-042	<a href="#">SP Manweb</a> 6.6.1 - Environmental Statement - Chapter 6 Technical Appendix 6.1: Landscape and Visual Assessment Methodology
APP-043	<a href="#">SP Manweb</a> 6.6.2 - Environmental Statement - Chapter 6 Technical Appendix 6.2: Landscape Baseline, LCA Sheets and Assessment
APP-044	<a href="#">SP Manweb</a> 6.6.3 - Environmental Statement - Chapter 6 Technical Appendix 6.3: Visual Baseline, Viewpoint Sheets and Assessment
APP-045	<a href="#">SP Manweb</a> 6.6.4 - Environmental Statement - Chapter 6 Technical Appendix 6.4: Cumulative Landscape and Visual Impact Assessment
APP-046	<a href="#">SP Manweb</a> 6.6.5 - Environmental Statement - Chapter 6 Technical Appendix 6.5: Residential Visual Amenity

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APP-047	<a href="#">SP Manweb</a> 6.6.6 - Environmental Statement - Chapter 6 Technical Appendix 6.6: Photomontages
APP-048	<a href="#">SP Manweb</a> 6.6.7 - Environmental Statement - Chapter 6 Technical Appendix 6.7: LVIA Scoping Opinion Responses
APP-049	<a href="#">SP Manweb</a> 6.7 - Environmental Statement Chapter 7: Ecology and Biodiversity
APP-050	<a href="#">SP Manweb</a> 6.7.1 - Environmental Statement - Chapter 7 Technical Appendix 7.1: Ecology and Biodiversity Assessment Methodology
APP-051	<a href="#">SP Manweb</a> 6.7.2 - Environmental Statement - Chapter 7 Technical Appendix 7.2: Ecology and Biodiversity Baseline and Assessment. This appendix supports Chapter 7 Ecology and Biodiversity
APP-052	<a href="#">SP Manweb</a> 6.7.3 - Environmental Statement - Chapter 7 Technical Appendix 7.3: Extended Phase 1 Habitat Survey
APP-053	<a href="#">SP Manweb</a> 6.7.4 - Environmental Statement - Chapter 7 Technical Appendix 7.4: Arboricultural Survey
APP-054	<a href="#">SP Manweb</a> 6.7.5 - Environmental Statement - Chapter 7 Technical Appendix 7.5: Ornithology Surveys
APP-055	<a href="#">SP Manweb</a> 6.7.6 - Environmental Statement - Chapter 7 Technical Appendix 7.6: Amphibian Surveys
APP-056	<a href="#">SP Manweb</a> 6.7.7 - Environmental Statement - Chapter 7 Technical Appendix 7.7: Bat Surveys
APP-057	<a href="#">SP Manweb</a> 6.7.8 - Environmental Statement - Chapter 7 Technical Appendix 7.8: Otter and Water Vole Surveys
APP-058	<a href="#">SP Manweb</a> 6.7.9 - Environmental Statement - Chapter 7 Technical Appendix 7.9: Badger Surveys (CONFIDENTIAL)
APP-059	<a href="#">SP Manweb</a> 6.7.10 - Environmental Statement - Chapter 7 Technical Appendix 7.10: Ecology and Biodiversity Scoping Opinion Response
APP-060	<a href="#">SP Manweb</a> 6.8 - Environmental Statement Chapter 8: Historic Environment
APP-061	<a href="#">SP Manweb</a> 6.8.1 - Environmental Statement - Chapter 8 Technical Appendix 8.1: Historic Environment Assessment Methodology
APP-062	<a href="#">SP Manweb</a> 6.8.2 - Environmental Statement - Chapter 8 Technical Appendix 8.2: Historic Environment Baseline and Assessment
APP-063	<a href="#">SP Manweb</a> 6.8.3 - Environmental Statement - Chapter 8 Technical Appendix 8.3: Heritage Asset Tables
APP-064	<a href="#">SP Manweb</a> 6.8.4 - Environmental Statement - Chapter 8 Technical Appendix 8.4: Historic Environment Viewpoint Assessment
APP-065	<a href="#">SP Manweb</a> 6.8.5 - Environmental Statement - Chapter 8 Technical Appendix 8.5:

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	Historic Environment Scoping Opinion Response
APP-066	<a href="#">SP Manweb</a> 6.9 - Environmental Statement Chapter 9: Flood Risk, Water Quality and Water Resources
APP-067	<a href="#">SP Manweb</a> 6.9.1 - Environmental Statement - Chapter 9 Technical Appendix 9.1: Flood Risk, Water Quality and Water Resources Assessment Methodology
APP-068	<a href="#">SP Manweb</a> 6.9.2 - Environmental Statement - Chapter 9 Technical Appendix 9.2: Flood Risk, Water Quality and Water Resources Baseline and Assessment
APP-069	<a href="#">SP Manweb</a> 6.9.3 - Environmental Statement - Chapter 9 Technical Appendix 9.3: Scoping Opinion Response
APP-070	<a href="#">SP Manweb</a> 6.10 - Environmental Statement Chapter 10: Socio-Economic
APP-071	<a href="#">SP Manweb</a> 6.10.1 - Environmental Statement - Chapter 10 Technical Appendix 10.1: Socio-Economic Assessment Methodology
APP-072	<a href="#">SP Manweb</a> 6.10.2 - Environmental Statement - Chapter 10 Technical Appendix 10.2: Socio-Economic Baseline and Assessment
APP-073	<a href="#">SP Manweb</a> 6.10.3 - Environmental Statement - Chapter 10 Technical Appendix 10.3: Issues Raised and Responses to Scoping Opinion
APP-074	<a href="#">SP Manweb</a> 6.11 - Environmental Statement Chapter 11: Land Use and Agriculture
APP-075	<a href="#">SP Manweb</a> 6.11.1 - Environmental Statement - Chapter 11 Technical Appendix 11.1: Scoping Opinion Response
APP-076	<a href="#">SP Manweb</a> 6.12 - Environmental Statement Chapter 12: Cumulative Effects
APP-077	<a href="#">SP Manweb</a> 6.12.1 - Environmental Statement - Chapter 12 Technical Appendix 12.1: Intra-Project Cumulative Effects
APP-078	<a href="#">SP Manweb</a> 6.13 - Environmental Statement Chapter 13: Summary of Environmental Effects
APP-079	<a href="#">SP Manweb</a> 6.14 - Environmental Statement - Figures 1.1-4.2
APP-080	<a href="#">SP Manweb</a> 6.14 - Environmental Statement - Figures 6.1-6.4
APP-081	<a href="#">SP Manweb</a> 6.14 - Environmental Statement - Figures 6.5-6.9
APP-082	<a href="#">SP Manweb</a> 6.14 - Environmental Statement - Figures 7.1-7.10
APP-083	<a href="#">SP Manweb</a> 6.14 - Environmental Statement - Figures 8.1-11.2
APP-084	<a href="#">SP Manweb</a> 6.15 - Environmental Statement - Non-Technical Summary
APP-085	<a href="#">SP Manweb</a> 6.16 - Environmental Statement - Glossary
APP-086	<a href="#">SP Manweb</a> 7.1 - Planning Statement
APP-087	<a href="#">SP Manweb</a> 7.2 - Construction Report

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APP-088	<a href="#">SP Manweb</a> 7.5 - Strategic Options Report
APP-089	<a href="#">SP Manweb</a> 7.6 - Updated Strategic Options Report
APP-090	<a href="#">SP Manweb</a> 7.7 - Further Updated Strategic Options Report
APP-091	<a href="#">SP Manweb</a> 7.8 - Route Corridor Options Report
APP-092	<a href="#">SP Manweb</a> 7.9 - Line Route Report
APP-093	<a href="#">SP Manweb</a> 7.10 - Updated Line Route Report
APP-094	<a href="#">SP Manweb</a> 7.11 - Updated Line Route Report 2
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Shropshire Council</a> Adequacy of Consultation Representation
AoC-002	<a href="#">South Staffordshire Council</a> Adequacy of Consultation Representation
AoC-003	<a href="#">Stafford Borough Council</a> Adequacy of Consultation Representation
AoC-004	<a href="#">Wyre Forest District Council</a> Adequacy of Consultation Representation
AoC-005	<a href="#">The Canal and River Trust</a> Other submission received during the Acceptance Stage
<b>Relevant Representations</b>	
RR-001	<a href="#">The Coal Authority</a>
RR-002	<a href="#">Keirnan Family</a>
RR-003	<a href="#">SP Energy Networks</a>
RR-004	<a href="#">Highways England</a>
RR-005	<a href="#">Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of National Grid Electricity Transmission Plc</a>
RR-006	<a href="#">Inland Waterways Association on behalf of Inland Waterways Association, Shrewsbury &amp; North Wales Branch</a>
RR-007	<a href="#">From Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of Severn Trent Water Limited</a>
RR-008	<a href="#">Environment Agency</a>
RR-009	<a href="#">Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of Network Rail Infrastructure Limited</a>
RR-010	<a href="#">Shropshire Council</a>
RR-011	<a href="#">Canal &amp; River Trust</a>
RR-012	<a href="#">NFU</a>
RR-013	<a href="#">Public Health England</a>
RR-014	<a href="#">The Woodland Trust</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 55 Checklist</a>
PD-003	<a href="#">Notice of Appointment of Examining Authority</a> Notice of Appointment of Single Examiner
PD-004	<a href="#">Rule 6 letter - Notification of the preliminary meeting and matters to be discussed</a>

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PD-005	<a href="#">Rule 8 - notification of timetable for the examination</a>
PD-006	<a href="#">Written Questions</a>
PD-007	<a href="#">Rule 17 Notification of Procedural Decision and Rule 13 Notification of Hearings</a> Request for Further Information and Notification of Hearings
PD-008	<a href="#">Rule 17 - Request for Further Information from the Applicant</a>
PD-009	<a href="#">Examination Timetable and Rule 17 Requests for Further Information</a>
PD-010	<a href="#">Rules 8 (3) and 17 – Request for further information and change to the Examination timetable</a>
PD-011	<a href="#">Notification of the completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">SP Manweb</a> Covering Letter
AS-002	<a href="#">SP Manweb</a> Response to s51 advice and s55 checklist
AS-003	<a href="#">SP Manweb</a> Limits of Deviations Plans
AS-004	<a href="#">SP Manweb</a> Plan of Historic Sites
AS-005	<a href="#">SP Manweb</a> Plan of Important Hedgerows
AS-006	<a href="#">SP Manweb</a> Works Plans
AS-007	<a href="#">SP Manweb</a> Plan of Nature Conservation Sites
AS-008	<a href="#">SP Manweb</a> Environmental Statement Fig 9.1 Mapped Flood Risk
AS-009	<a href="#">Canal &amp; River Trust</a> Additional Submission - Response to the Issue Specific Hearings - Accepted at the discretion of the Examining Authority
AS-010	<a href="#">SP Manweb</a> Additional Submission - Cover Letter - Accepted at the discretion of the Examining Authority
AS-011	<a href="#">SP Manweb</a> Additional Submission - Updated Draft Construction Environmental Management Plan V4A (Tracked Changes) Accepted at the discretion of the Examining Authority
AS-012	<a href="#">SP Manweb</a> Additional Submission - Updated Draft Construction Environmental Management Plan V4A (Clean) Accepted at the discretion of the Examining Authority
AS-013	<a href="#">SP Manweb</a>

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	Additional Submission - Agreed Statement of Common Ground between SP Manweb and the Canal and River Trust - Accepted at the discretion of the Examining Authority
AS-014	<a href="#">SP Manweb</a> Additional Submission – Agreed Protective Provisions with Highways England – Accepted at the discretion of the Examining Authority
AS-015	<a href="#">Eversheds Sutherland (International) LLP on behalf of Severn Trent Water Limited</a> Additional Submission – Further response to Request for further information and Notification of Hearings dated 12 June 2019 – Accepted at the discretion of the Examining Authority
AS-016	<a href="#">National Grid Electricity Transmission Plc</a> Additional Submission – Further Written Representations – Accepted at the discretion of the Examining Authority
AS-017	<a href="#">Eversheds Sutherland (International) LLP on behalf of Network Rail Infrastructure Limited</a> Additional Submission – Accepted at the discretion of the Examining Authority
<b>Events and Hearings</b>	
<b>Accompanied, Unaccompanied Site Inspections and Hearings</b>	
EV-001	<a href="#">Recording of Preliminary Meeting 20th March 2019</a>
EV-002	<a href="#">Recording of Issue Specific Hearing 20th March 2019</a>
EV-003	<a href="#">Preliminary Meeting Note</a>
EV-004	<a href="#">Accompanied Site Inspection Itinerary</a>
EV-005	<a href="#">Agenda for the Issue Specific Hearing dealing with matters relating to the draft Development Consent Order on 11 July 2019 at 10am</a>
EV-006	<a href="#">Agenda for the Compulsory Acquisition hearing on 11 July 2019 at 2pm</a>
EV-007	<a href="#">SP Manweb</a> Hearing Notice
EV-008	<a href="#">Recording of the Issue Specific hearing on the draft Development Consent Order – 11 July 2019</a>
EV-009	<a href="#">Recording of Compulsory Acquisition Hearing (CAH) - 11 July 2019</a>
<b>Representations</b>	
<b>Deadline 1 – 29<sup>th</sup> March 2019</b> <ul style="list-style-type: none"> <li>• Written Representations</li> <li>• Responses to ExA’s first written Questions</li> <li>• Local Impact Reports</li> <li>• Statements of Common Ground</li> <li>• Other submissions</li> </ul>	

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REP1-001	<a href="#">SP Manweb</a> Deadline 1 Submission - Covering Letter
REP1-002	<a href="#">SP Manweb</a> Deadline 1 Submission - SP Manweb's Responses to Relevant Representations
REP1-003	<a href="#">SP Manweb</a> Deadline 1 Submission - Statement of Common Ground Between SP Manweb PLC and Environment Agency (Midlands Region)
REP1-004	<a href="#">SP Manweb</a> Deadline 1 Submission - Position on Statement on Statements of Common Ground
REP1-005	<a href="#">SP Manweb</a> Deadline 1 Submission - Construction Accesses Location Plan
REP1-006	<a href="#">SP Manweb</a> Deadline 1 Submission - Summary of SP Manweb's Oral Submissions at ISH1
REP1-007	<a href="#">SP Manweb</a> Deadline 1 Submission - Suggested Route for Examining Authority's Accompanied Site Visit 11th April
REP1-008	<a href="#">Canal &amp; River Trust</a> Deadline 1 Submission - Accompanied Site Inspection and Written Representation
REP1-009	<a href="#">National Grid Electricity Transmission Plc</a> Deadline 1 Submission - Written Representation
REP1-010	<a href="#">Shropshire Council</a> Deadline 1 Submission - Local Impact Report 2019
REP1-011	<a href="#">Woodland Trust</a> Deadline 1 Submission - Written Representation
REP1-012	<a href="#">Highways England</a> Late Deadline 1 Submission - Written Representation - accepted at the discretion of the ExA.
<b>Deadline 2 – 24<sup>th</sup> April 2019</b> <ul style="list-style-type: none"> <li>Comments on Written Representations</li> <li>Comments on responses to ExA's first written Questions</li> <li>Responses to comments on relevant representations</li> <li>Comments on Local Impact Reports</li> <li>Other submissions</li> </ul>	
REP2-001	<a href="#">SP Manweb</a> Deadline 2 Submission - Cover Letter
REP2-002	<a href="#">SP Manweb</a> Deadline 2 Submission - SP Manweb's Responses to the Written Representations
REP2-003	<a href="#">SP Manweb</a> Deadline 2 Submission - Agreed Statement of Common Ground between SP Manweb and Shropshire Council
REP2-004	<a href="#">SP Manweb</a> Deadline 2 Submission - Position Statement on Statements of Common Ground
REP2-005	<a href="#">SP Manweb</a> Deadline 2 Submission - SP Manweb's Responses to the Shropshire Council Local Impact Report
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	Authority's First Written Questions
REP2-007	<a href="#">SP Manweb</a> Deadline 2 Submission - SP Manweb's Responses to the Examining Authority's First Written Questions - Supporting Information
REP2-008	<a href="#">SP Manweb</a> Deadline 2 Submission - NSER Screening Matrices - Response to Examining Authority's First Written Questions 5.01
REP2-009	<a href="#">SP Manweb</a> Deadline 2 Submission - Draft Development Consent Order (Tracked Changes)
REP2-010	<a href="#">SP Manweb</a> Deadline 2 Submission - Schedule of Changes to Book of Reference V1
REP2-011	<a href="#">SP Manweb</a> Deadline 2 Submission - Schedule of Changes to the Statement of Reasons V1
REP2-012	<a href="#">SP Manweb</a> Deadline 2 Submission - Land Plans
REP2-013	<a href="#">SP Manweb</a> Deadline 2 Submission - Updated Construction Environmental Management Plan V3 (Clean)
REP2-014	<a href="#">SP Manweb</a> Deadline 2 Submission - Updated Construction Environmental Management Plan V3 (Tracked Changes)
REP2-015	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Written questions from ExA, Update on Statement on Common Grounds and Comments on other Written Representations
REP2-016	<a href="#">Highways England</a> Deadline 2 Submission - Written Representation
REP2-017	<a href="#">Shropshire Council</a> Deadline 2 Submission - Responses to the ExA's Written Questions
REP2-018	<a href="#">Edward Jones</a> Deadline 2 Submission - Written Representation
REP2-019	<a href="#">Canal &amp; River Trust</a> Deadline 2 Submission - Late submission – accepted at the discretion of the ExA
<b>Deadline 3 – 14<sup>th</sup> May 2019</b> <ul style="list-style-type: none"> <li>• Notification by Affected Persons of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification by Interested Parties of wish to speak at Open Floor Hearing</li> <li>• Any revised / updated SoCG</li> <li>• Comments on the Applicant's revised draft DCO</li> <li>• Comments on responses to the ExA's Written Questions</li> <li>• Comments on any further information requested by the ExA and received to Deadline 2</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	
REP3-001	<a href="#">SP Manweb</a> Deadline 3 Submission - Cover Letter
REP3-002	<a href="#">SP Manweb</a> Deadline 3 Submission - Comments on Responses to the Examining Authority's Written Questions
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REP3-005	<a href="#">SP Manweb</a> Deadline 3 Submission - Position Statement on Statements of Common Ground (V3)
REP3-006	<a href="#">Canal &amp; River Trust</a> Deadline 3 Submission - Notification of wish to speak at Compulsory Acquisition Hearing and Issue Specific Hearing 2 . Comments on Applicant's revised draft DCO. Update on Statement of Common Ground (SoCG). Comments on responses to ExA's Written Questions.
REP3-007	<a href="#">Canal &amp; River Trust</a> Deadline 3 Submission - Statement of Common Ground between SP Manweb PLC and Canal and River Trust - Comments on draft
REP3-008	<a href="#">Canal &amp; River Trust</a> Deadline 3 Submission - Managing the Risks to Anglers from Overhead Power Lines
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REP3-010	<a href="#">SP Manweb</a> Deadline 3 Submission - Statement of Common Ground Between SP Manweb and Highways England - Late Submission - accepted at the discretion of the ExA
<b>Deadline 4 – 4<sup>th</sup> June 2019</b>  Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Comments on any revised/updated SoCG</li> <li>• Revised draft DCO from the Applicant</li> <li>• Comments on any further information requested by the ExA and received to Deadline 3</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP4-001	<a href="#">SP Manweb</a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#">SP Manweb</a> Deadline 4 Submission - Draft Development Consent Order (Tracked Changes) Version 3
REP4-003	<a href="#">SP Manweb</a> Deadline 4 Submission - Agreed Statement of Common Ground between SP Manweb and Network Rail
REP4-004	<a href="#">SP Manweb</a> Deadline 4 Submission - Updated Position Statement on Statements of Common Ground (V4)
REP4-005	<a href="#">Canal &amp; River Trust</a> Deadline 4 Submission
REP4-006	<a href="#">Highways England</a> Deadline 4 Submission
<b>Deadline 5 – 27<sup>th</sup> June 2019</b>  Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions</li> <li>• Any revised/ updated SoCG</li> <li>• Comments on the Applicant's revised draft DCO</li> <li>• Comments on any further information requested by the ExA and received to</li> </ul>	

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<p>Deadline 4</p> <ul style="list-style-type: none"> <li>Any further information requested by the ExA under Rule 17 of the Examination Rules (including probably a request for a further revised draft DCO prior to the ISH programmed for Thursday 11 July 2019)</li> </ul>	
REP5-001	<a href="#">SP Manweb</a> Deadline 5 Submission - Cover Letter
REP5-002	<a href="#">SP Manweb</a> Deadline 5 Submission - Draft Development Consent Order (Tracked Changes) Version 4
REP5-003	<a href="#">SP Manweb</a> Deadline 5 Submission - Plan showing the Overhead Line Profile at the Montgomery Canal Crossing
REP5-004	<a href="#">SP Manweb</a> Deadline 5 Submission - Response to Deadline 4 Submissions
REP5-005	<a href="#">SP Manweb</a> Deadline 5 Submission - Schedule of Changes to the Book of Reference (Version 2)
REP5-006	<a href="#">SP Manweb</a> Deadline 5 Submission - Updated Construction Environmental Management Plan (Version 4 ) - Clean
REP5-007	<a href="#">SP Manweb</a> Deadline 5 Submission - Updated Construction Environmental Management Plan (Version 4 ) - Tracked Changes
REP5-008	<a href="#">Canal &amp; River Trust</a> Deadline 5 Submission
REP5-009	<a href="#">Eversheds Sutherland (International) LLP on behalf of Network Rail Infrastructure Limited</a> Deadline 5 Submission
REP5-010	<a href="#">Highways England</a> Deadline 5 Submission
REP5-011	<a href="#">Severn Trent Water Limited</a> Deadline 5 Submission
<p><b>Deadline 6 – 19<sup>th</sup> July 2019</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>Post hearing submissions</li> <li>Applicant's final preferred DCO on SI template and validation report, and final revised Explanatory Memorandum</li> <li>Comments on any revised / updated SoCG</li> <li>Comments on responses to the ExA's Further Written Questions (if required)</li> <li>Comments on any further information requested by the ExA and received to Deadline 5</li> <li>Any further information requested by the ExA under Rule 17 of the Examination Rules.</li> </ul>	
REP6-001	<a href="#">SP Manweb</a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">SP Manweb</a> Deadline 6 Submission - Summary of Oral Submissions at the Issue Specific Hearing and the Compulsory Acquisition Hearing - Thursday 11th July
REP6-003	<a href="#">SP Manweb</a> Deadline 6 Submission - Note in Relation to Statutory Undertakers
REP6-004	<a href="#">SP Manweb</a> Deadline 6 Submission - Draft Development Consent Order (Clean) V5

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	DCO Document 3.1
REP6-005	<a href="#">SP Manweb</a> Deadline 6 Submission - Draft Development Consent Order (Tracked Changes)
REP6-006	<a href="#">SP Manweb</a> Deadline 6 Submission - Explanatory Memorandum (Clean) V2
REP6-007	<a href="#">SP Manweb</a> Deadline 6 Submission - Explanatory Memorandum (Tracked Changes) V2 DCO Document 3.2
REP6-008	<a href="#">Canal &amp; River Trust</a> Deadline 6 Submission
REP6-009	<a href="#">Highways England</a> Deadline 6 Submission
REP6-010	<a href="#">R G and G M Stokes</a> Deadline 6 Submission - Post hearing submissions
REP6-011	<a href="#">John Dickin</a> Deadline 6 Submission
<b>Deadline 7 – 31<sup>st</sup> July 2019</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• comments on the Applicant's final preferred DCO</li> <li>• comments on any further information requested by the ExA and received to Deadline 6</li> <li>• Any further information requested by the ExA under Rule 17 of the Examination Rules</li> </ul>	
REP7-001	<a href="#">SP Manweb</a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#">SP Manweb</a> Deadline 7 Submission - Annex B Schedule of Construction Accesses / Temporary Laydown Areas with Consent (July 2019) V2
REP7-003	<a href="#">SP Manweb</a> Deadline 7 Submission - Draft Construction Environmental Management Plan V5
REP7-004	<a href="#">SP Manweb</a> Deadline 7 Submission - Diagram 3.2 Illustration of Different Trident Pole Types
REP7-005	<a href="#">SP Manweb</a> Deadline 7 Submission - Funding Statement Document 4.2 V2 (Clean)
REP7-006	<a href="#">SP Manweb</a> Deadline 7 Submission - Funding Statement Document 4.2 V2 (Tracked Changes)
REP7-007	<a href="#">SP Manweb</a> Deadline 7 Submission - Glossary Document 6.16 V2
REP7-008	<a href="#">SP Manweb</a> Deadline 7 Submission - Position Statement on Statements of Common Ground V5
REP7-009	<a href="#">SP Manweb</a> Deadline 7 Submission - Responses to Written Representations Submitted at Deadline 6
REP7-010	<a href="#">SP Manweb</a> Deadline 7 Submission - Schedule of Changes to Book of Reference V3
REP7-011	<a href="#">SP Manweb</a> Deadline 7 Submission - Book of Reference (Final)
REP7-012	<a href="#">SP Manweb</a>

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	Deadline 7 Submission - Final Draft Statement of Common Ground between SP Manweb and Severn Trent Water
REP7-013	<a href="#">SP Manweb</a> Deadline 7 Submission - Statement of Reasons Document 4.1 V2 (Clean)
REP7-014	<a href="#">SP Manweb</a> Deadline 7 Submission - Statement of Reasons Document 4.1 V2 (Tracked Changes)
REP7-015	<a href="#">SP Manweb</a> Deadline 7 Submission - Response to the letter submitted by Network Rail Infrastructure Limited dated 25th July 2019
REP7-016	<a href="#">Canal &amp; River Trust</a> Deadline 7 Submission - Response Submission for deadline seven
REP7-017	<a href="#">Highways England</a> Deadline 7 Submission - Comments on the Applicant's final preferred DCO
REP7-018	<a href="#">National Grid Electricity Transmission Plc</a> Deadline 7 Submission - Comments on the Applicant's final preferred DCO
REP7-019	<a href="#">SP Manweb</a> Deadline 7 Submission - Late response to comments submitted by Mr J Dickin at Deadline 6
<b>Deadline 8 – 28<sup>th</sup> August 2019</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Responses to comments on the Applicant's final preferred DCO</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7</li> <li>• Comments on the RIES</li> </ul>	
REP8-001	<a href="#">SP Manweb</a> Deadline 8 Submission - Cover Letter
REP8-002	<a href="#">SP Manweb</a> Deadline 8 Submission - Development Consent Order - DCO Document 3.1
REP8-003	<a href="#">SP Manweb</a> Deadline 8 Submission - Construction Environmental Management Plans - Document 6.3.2
REP8-004	<a href="#">SP Manweb</a> Deadline 8 Submission - Construction Environmental Management Plan with Tracked Changes - Document 6.3.2
REP8-005	<a href="#">SP Manweb</a> Deadline 8 Submission - SP Manweb's Final Position on the Proposed Protective Provisions
REP8-006	<a href="#">SP Manweb</a> Deadline 8 Submission - Agreed Statement of Common Ground between SP Manweb and Natural England
REP8-007	<a href="#">SP Manweb</a> Deadline 8 Submission - Agreed Statement of Common Ground between SP Manweb and Severn Trent Water
REP8-008	<a href="#">SP Manweb</a> Deadline 8 Submission - Validation Report
REP8-009	<a href="#">Canal &amp; River Trust</a> Deadline 8 Submission

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REP8-010	<a href="#">Eversheds Sutherland (International) LLP on behalf of National Grid Electricity Plc</a> Deadline 8 Submission
REP8-011	<a href="#">Eversheds Sutherland (International) LLP on behalf of Network Rail Infrastructure Limited</a> Deadline 8 Submission
<b>Deadline 9 – 18<sup>th</sup> September 2019</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Comments on the Applicant's final DCO</li> <li>• Any further information requested by the ExA</li> </ul>	
REP9-001	<a href="#">Canal &amp; River Trust</a> Deadline 9 Submission - Comments on the Applicant's final DCO
REP9-002	<a href="#">Highways England</a> Deadline 9 Submission - Comments on the Applicant's final DCO
REP9-003	<a href="#">Historic England</a> Deadline 9 Submission - Comments on the Applicant's final DCO
REP9-004	<a href="#">John Dickin</a> Deadline 9 Submission
REP9-005	<a href="#">Shropshire Council</a> Deadline 9 Submission - Comments on the Applicant's final DCO
<b>Other Documents</b>	
OD-001	<a href="#">Section 51 advice to the Applicant</a>
OD-002	<a href="#">Regulation 24 Transboundary Screening document</a>
OD-003	<a href="#">SP Manweb</a> Section 56 Notice
OD-004	<a href="#">SP Manweb plc</a> Certificate of Compliance
OD-005	<a href="#">SP Manweb</a> Notice of Issue Specific Hearing on the draft Development Consent Order on 20 March 2019

## **APPENDIX C: LIST OF ABBREVIATIONS**

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation	Reference
2009 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
2017 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
AOD	Above Ordnance Datum
AP	Affected Persons
AONB	Area of Outstanding Natural Beauty
AQMA	Air Quality Management Area
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CRT	Canal and River Trust
D	Deadline
dB	Decibel
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DL (number)	Examination Deadline (see Appendix A for the list)
DPD	Development Plan Document
EA	The Environment Agency
ECOW	Environmental / Ecological Clerk of Works
EEA	European Economic Area State
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
NPS EN-1	Overarching National Energy Infrastructure Policy
NPS EN-5	Electricity Networks Infrastructure Policy
EP	Environmental Permit
EP Regulations	The Environmental Permitting (England and Wales) Regulations 2016 (as amended)
EPR	Examination Procedure Rules
EPS	Environmental Protected Species
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
FRAP	Flood Risk Activity Permit
FS	Funding Statement
FWQ	First Written Questions
GLVIA3	Third Edition of Guidelines for Landscape and Visual Impact Assessment
GVD	General Vesting Declaration
HDD	Horizontal Directional Drilling
HoT	Heads of Terms
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HE	Highways England
HDWP	Heavy Duty Wood Pole
HGVs / HGV	Heavy Goods Vehicles
HRA	Habitat Regulations Assessment
HSE	Health and Safety Executive

## APPENDIX C: LIST OF ABBREVIATIONS

IAPI	Initial Assessment of Principal Issues
IP	Interested Party/ies
ISH	Issue Specific Hearing
Km	Kilometre
km <sup>2</sup>	Square kilometre
kV	Kilovolts
LIR	Local Impact Report
LNR	Local Nature Reserves
LSE	Likely Significant Effects
LWS	Local Wildlife Site
M	Metres
MSA	Mineral Safeguarding Area
NE	Natural England
NERC	The Natural Environment and Rural Communities Act 2006
NFU	National Farmers Union
NGET	National Grid Electricity Transmission
NG	National Grid
NR	Network Rail
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NSER	No Significant Effects Report
OFH	Open Floor Hearing
OHL	Overhead Lines
PA2008	Planning Act 2008
PM	Preliminary Meeting
PRoW	Public Rights of Way
PTF	Pipeline Trap Facility
Recommended draft DCO	The Development Consent Order recommended to the Secretary of State
RIES	Report on Implications for European sites
RR	Relevant Representation(s)
RSPB	Royal Society for the Protection of Birds
Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8 Letter	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
SAC	Special Area of Conservation
SAMDev	Site Allocations and Management of Development
SC	Shropshire Council
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SPZ	Source Protection Zones
SSSI	Sites of Special Scientific Interest
STW	Severn Trent Water
TCPA 1990	Town and Country Planning Act 1990
TP	Temporary Possession
TPO	Tree Preservation Orders
The Inspectorate	The Planning Inspectorate
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive

## APPENDIX C: LIST OF ABBREVIATIONS

WPD	Western Power Distribution
WR	Written Representation(s)
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

## **APPENDIX D: THE RECOMMENDED DCO**

201[ ] No. [ ]

## INFRASTRUCTURE PLANNING

### The Reinforcement to the North Shropshire Electricity Distribution Network Order 201[ ]

*Made* - - - -

\*\*\*

*Coming into force* - -

\*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(a)</sup> in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(b)</sup> for an order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(c)</sup>. The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, the report and recommendation of the single appointed person, having taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(c)</sup> and having had regard to the documents and matters referred to in section 104(2) of the 2008 Act, , has decided to make an Order granting development consent for the development described in the application with modifications which, in the opinion of the Secretary of State, do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that the special category land within the Order limits (as defined in article 28(3) of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public; and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115 and 120 of the 2008 Act, makes the following Order:

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(a) 2008 c. 29.

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, 2014/469, 2014/2381, 2015/277, 2015/1682, 2017/524, 2017/572 and S.I. 2018/378.

(c) S.I. 2009/2263, amended by S.I. 2012/635 and 2012/787

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Reinforcement to the North Shropshire Electricity Distribution Network Order 201[ ] and comes into force on [ ].

#### **Interpretation**

2.—(1) In this Order—

“1961 Act” means the Land Compensation Act 1961(a);

“1965 Act” means the Compulsory Purchase Act 1965(b);

“1980 Act” means the Highways Act 1980(c);

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“1984 Act” means the Road Traffic Regulation Act 1984(e);

“1990 Act” means the Town and Country Planning Act 1990(f);

“1991 Act” means the New Roads and Street Works Act 1991(g);

“2003 Act” means the Communications Act 2003(h);

“2008 Act” means the Planning Act 2008(i);

“the A5(T)” means the A5 Trunk Road between to the north, the junction with the A495 and the B4590, and, to the south, the junction with the A483;

“access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development of a 132kV overhead line comprising the nationally significant infrastructure project (Work No.3) and associated development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act (meaning of development);

“the book of reference” means the book of reference certified as the book of reference by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act (notice of authorisation of compulsory acquisition);

“construction report” means the construction report certified as the construction report by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

- 
- (a) 1961 c. 33.  
(b) 1965 c. 56.  
(c) 1980 c. 66.  
(d) 1981 c. 66.  
(e) 1984 c. 27.  
(f) 1990 c. 8.  
(g) 1991 c. 22.  
(h) 2003 c. 21.  
(i) 2008 c. 29.

“date of final commissioning” means the date on which the authorised development first comes into use by distributing electricity at 132kV on a commercial basis;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network, or

(b) by other means in electronic form;

“the environmental statement” means the documents of that description listed in Schedule 9 and certified by the Secretary of State under article 35 and Schedule 9 as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“Highways England” means Highways England Company Limited (company registration number 9346363) of Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ;

“land plans” means the plans certified as the land plans by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 4 (limits of deviation);

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of “maintain” must be construed accordingly;

“Order land” means the land shown on the land plans and described in the book of reference within which the authorised development is taking place;

“the Order limits” means the limits shown on the land plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(interpretation)(a);

“plans of important hedgerows affected” means the plans certified as the plans of important hedgerows affected by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order;

“relevant highway authority” means Shropshire Council, or Highways England in relation to the A5(T);

“relevant planning authority” means Shropshire Council;

“requirements” means those matters set out in Schedule 2 to this Order and any numbered requirement must be construed accordingly;

“SP Manweb PLC” means SP Manweb PLC (company registration number 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land) and a public communications provider as defined in section 151 of the 2003 Act (interpretation of Chapter 1);

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“structure” includes any erection or any part of a structure or erection;

“traffic authority” has the same meaning as in section 121A of the 1984 Act (traffic authorities);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

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(a) 1981 c. 67.

“undertaker” means SP Manweb PLC or any other person who has the benefit of this Order in accordance with article 7 (benefit of the Order) or article 8 (consent to transfer benefit of the Order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State under article 35 and Schedule 9 for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are acquired and created under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points are taken to be measured between the referenced points.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) The undertaker is granted development consent for the authorised development as set out in Schedule 1 (authorised development), to be carried out within the Order limits and subject to the provisions of this Order including the requirements set out in Schedule 2 (requirements).

(2) Subject to article 4, each numbered work must be situated in the area shown on the works plans.

#### **Limits of deviation**

4.—(1) In carrying out or maintaining the authorised development the undertaker may—

- (a) deviate from the lines or situations of the authorised development shown on the works plans subject to requirements 3 and 4 and carry out construction and maintenance for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development set out in column 3 of Table 1 of requirement 3—
  - (i) to any extent not exceeding 2 metres upwards; or
  - (ii) to any extent downwards as may be found necessary or convenient.

#### **Operation of authorised development**

5.—(1) The undertaker is authorised to install and keep installed the authorised development.

(2) This article does not relieve the undertaker of obtaining any permit or licence under any other legislation that may be required from time to time authorising the installation, maintenance or use of the authorised development.

(3) The undertaker may use the authorised development as part of the electricity distribution system in England and Wales.

## **Maintenance of authorised development**

6.—(1) The undertaker may, at any time, maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

## **Benefit of the Order**

7.—(1) Subject to article 8 (consent to transfer benefit of the Order), and paragraph (2), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where this Order provides an express benefit to owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

## **Consent to transfer benefit of the Order**

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of this Order and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is a statutory undertaker;
- (b) the transferee or lessee is a person who holds a licence issued under section 6(1) of the Electricity Act 1989 (licences authorising supply, etc)(a); or
- (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where an exception in paragraph (4) applies, the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).

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(a) 1989 c. 29.

## PART 3

### STREETS

#### **Power to alter layout, etc. of streets**

9.—(1) Subject to paragraphs (2) and (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) permanently or temporarily alter the layout of any street or junction;
- (b) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (c) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (d) reduce the width of the carriageway of the street;
- (e) make and maintain crossovers and passing place(s);
- (f) carry out works for the provision of parking places and unloading areas; and
- (g) execute any works to provide or improve sight lines.

(2) Unless otherwise agreed in writing with the street authority, the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(4) Paragraphs (1)(a), (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) The powers conferred by paragraph (1) do not apply to the A5(T).

#### **Street works**

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may carry out the street works specified in column (3) of that Schedule.

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) of the 1991 Act (prohibition of unauthorised street works).

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the Electricity Act 1989.

(4) In this article “apparatus” has the meaning given in Part 3 of the 1991 Act.

(5) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

#### **Temporary prohibition or restriction of use of streets and public rights of way**

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street or public right of way under this article.

(4) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act (traffic regulation orders outside Greater London) (experimental traffic orders) (traffic regulation byways etc. on National Parks in England and Wales).

### **Traffic regulation**

**12.—**(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) authorise the use as a parking place of any road; and
- (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise any prohibition, restriction or other provision under article 11 or paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 or paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act (power of local authorities to provide parking places),and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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(a) 2004. c. 18. There are amendments to this Act not relevant to this Order.



### **Access to works**

**13.—**(1) The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant highway authority, form and lay out such means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The powers conferred by paragraph (1) do not apply to the A5(T).

### **Agreement with street authorities**

**14.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street under or over the authorised development) authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) any temporary closure, alteration or diversion of a street authorised by this Order;
- (d) the carrying out in the street of any works.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

**15.—**(1) Subject to paragraphs (2) to (8), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers)(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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(a) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37).

(5) Except as otherwise authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 (requirement for an environmental permit)(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

### **Authority to survey and investigate the land**

**16.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes, boreholes or excavations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place and leave on the land apparatus for use in connection with the survey and investigation of land and making of trial holes, boreholes or excavations.

(2) No land may be entered or equipment placed or left on the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take on to the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes, boreholes or excavations.

(4) No trial holes, boreholes or excavations are to be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must—

- (a) make good any damage to the land where it has made a trial hole, boreholes or excavation;
- (b) remove from the land any apparatus used in connection with the survey and investigation of land when no longer required; and
- (c) compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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(a) S.I. 2016/1154.

(b) 1991 c. 57 as amended by S.I. 2009/3104.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of rights: incorporation of the mineral code**

17.—(1) Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for the “acquiring authority” there is substituted “the undertaker”.

#### **Compulsory acquisition of rights**

18.—(1) The undertaker may create and acquire compulsorily the rights in, under or over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right in, under or over land by the creation of a new right or imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Subject to the modifications set out in Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) of the 1965 Act the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

#### **Statutory authority to override easements and other rights**

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or

- (b) a breach of a restriction as to use of land arising by virtue of contract, caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) with any necessary modifications.

### **Time limit for exercise of authority to acquire rights compulsorily**

**20.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 22 (application of the 1981 Act)(a).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Private rights**

**21.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory creation and acquisition of rights or the imposition of restrictions under the Order will be suspended as is necessary to ensure the operation of the Order and insofar as their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement, or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants save any such rights benefitting the undertaker over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(5) Paragraphs (1) and (3) have effect subject to—

- (a) any notice given by the undertaker before—

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(a) 1981 c. 66.

- (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
  - (ii) the undertaker's appropriation of that land;
  - (iii) the undertaker's entry onto that land; or
  - (iv) the undertaker's taking temporary possession of that land,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested or belongs.
- (6) If any such agreement as is referred to in paragraph (5)(b)—
- (a) is made with a person in or to whom the right or restrictive covenant is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including natural right to support and personal covenants.

### **Application of the 1981 Act**

- 22.—**(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection (2) there is substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5 (earliest date for execution of declaration), in subsection 2, omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118(c) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
  - (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Network Order 201[ ]”.
- (7) In section 6(d) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(e) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

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(a) Inserted by section 182(2) of the Housing and Planning Act 2016 c. 22.  
 (b) As inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016 c. 22.  
 (c) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to the Localism Act 2011 c. 20 and section 92(4) of the Criminal Justice and Courts Act 2015 c. 2.  
 (d) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 c. 11 and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 c. 22.  
 (e) As amended by section 142, and Part 21 of Schedule 25 to the Localism Act 2011 c.20 and S.I. 2012/16.

(9) In Schedule A1(a) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute —

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 24 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of rights under this Order.

### **Acquisition of subsoil or airspace only**

**23.—**(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

(2) Where the undertaker acquires any rights in the subsoil of, or the airspace over, land under paragraph (1), the undertaker is to not be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil and airspace only —

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory or airspace above a house building or manufactory.

### **Modification of Part 1 of the 1965 Act**

**24.—**(1) Part 1 of the 1965 Act, as applied to this Order by section 125 of the 2008 Act (application of compulsory acquisition provisions), is modified as follows.

(2) In section 4A(1)(b) (extension of time limit during challenge)-

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*”.

(3) In section 11A(c) (powers of entry: further notices of entry)-

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article

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(a) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 c. 22.

(b) As inserted by section 202(1) of the Housing and Planning Act 2016 c.22.

(c) As inserted by section 186(3) of the Housing and Planning Act 2016 c.22.

20 (time limited for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)-

(a) for paragraphs 1(2) and 14(2) substitute —

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*, which excludes the acquisition of subsoil or airspace only from this Schedule”

(b) after paragraph 29 insert-

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*.”

#### **Rights under or over streets**

**25.—**(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

#### **Temporary use of land for carrying out the authorised development**

**26.—**(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (11), the undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the

acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

- (b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;
- (c) construct temporary works and permanent works (including the provision of means of access, gates, fences and other boundary structures) on that land and use that land as temporary laydown area, storage area and working area;
- (d) construct any works specified in relation to that land in column (3) of Schedule 5; and
- (e) carry out reinstatement works required pursuant to the requirements in Schedule 2.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act (powers of entry) or made a declaration under section 4 of the 1981 Act (execution of declaration) or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary and permanent works (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority; but the undertaker is not required to—

- (a) replace any electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) Nothing in this article precludes the undertaker from—

- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or of airspace over the Order land under article 23 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).



(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 5.

(12) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017<sup>(a)</sup> do not apply insofar as they relate to temporary possession of land under this article.

(13) The undertaker may not rely on the power conferred by paragraph (1)(c) to construct any new means of access without the consent of Highways England where they are the relevant highway authority for the highway from which the access will be taken.

### **Temporary use of land for maintaining the authorised development**

27.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (10), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) construct such temporary works (including the provision of means of access) and structures on the land as may be reasonably necessary for that purpose; and
- (c) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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(a) 2017 c. 20.

(11) In this article “the maintenance period” in relation to any part of the authorised development means the period of 5 years beginning with the date of final commissioning.

(12) Paragraph (1) does not authorise the undertaker to construct or provide any new means of access unless the undertaker has obtained the consent of Highways England where they are the highway authority for the highway from which the access will be taken.

(13) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to the temporary possession of land under this article.

### **Special category land**

**28.**—(1) Subject to the provisions of this article, so much of the special category land as will be required for the purposes of the exercising by the undertaker of the Order rights will be suspended from all rights, trusts and incidents to which it was previously subject —

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement, or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(2) So far as the temporary use of land under article 26 (temporary use of land for carrying out the authorised development) is concerned, the suspension in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 18 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised development); and

“the special category land” means the land numbered 2, 3 and 4 identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the land plans.

### **Statutory undertakers**

**29.**—(1) Schedule 6 (protective provisions) has effect.

(2) Subject to the provisions of Schedule 6 (protective provisions), the undertaker may—

- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to, statutory undertakers shown on the land plans and described in the book of reference; and
- (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

### **Recovery of costs of new connections**

**30.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or

sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act (interpretation of chapter 1) (a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

## PART 6

### OPERATIONS

#### **Felling or lopping of trees and removal of hedgerows**

**31.**—(1) The undertaker may fell or lop any tree or shrub or cut back its roots within or overhanging land within the Order limits, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows).

(5) The power conferred by paragraph (4) removes any obligation upon the undertaker to secure any consent under the Hedgerows Regulations 1997(b).

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law**

**32.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to use the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as

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(a) 2003 c. 21.

(b) S.I 1997/1160, to which there are amendments not relevant to this Order.

any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for the purposes of the 1990 Act**

**33.** Development consent granted by this Order must be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Defence to proceedings in respect of statutory nuisance**

**34.—**(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) is not to apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Certification of plans etc.**

**35.—**(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 9 (documents to be certified) for certification that they are true copies of the plans or documents referred to in this Order.

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(a) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(b) 1974 c. 40.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the plan or document of which it is a copy.

### **Service of notices**

**36.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post)(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

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(a) 1978 c. 30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation 1984 (c.27). There are other amendments not relevant to this Order.

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

#### **Procedure in relation to certain approvals etc.**

**37.**—(1) Where an application is made to or request is made of the relevant planning authority, a relevant highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for the applications made pursuant to Schedule 7 (Procedure for discharge of requirements) and any application made to Highways England, if, within 42 days after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Schedule 7 (procedure for discharge of requirements) is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority pursuant to the requirements.

(4) The powers conferred by paragraph (1) do not apply to an application to or request made of Highways England in relation to the A5(T).

#### **Arbitration**

**38.** Subject to article 37 (procedure in relation to certain approvals etc.) and except where otherwise provided for in this Order any difference under any provision of this Order, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Address  
Date

*Name*  
Title  
Department

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project, as defined in sections 14(1)(b) and 16 of the 2008 Act and associated development within the meaning of section 115(2) of the 2008 Act comprising—

#### OSWESTRY SUBSTATION (Associated Development)

**Work No. 1** Works at Oswestry substation as shown on sheet 1 of the works plans comprising the installation of electrical switchgear and associated equipment (including 132kV cable sealing ends, isolator and associated busbar and 132kV outdoor circuit breaker) and 132kV underground cable.

#### 132kV UNDERGROUND CABLE (Associated Development)

**Work No. 2** the construction and installation and keeping of a 132kV underground cable and fibre optic cable 1.2km in length from Oswestry substation connecting to Work No.3 at a terminal structure at Long Wood (grid reference: SJ 3113229877) comprising three 132kV single core cables together with a fibre optic cable installed in 200mm diameter polyethylene ducts laid in trefoil formation together with the installation of cable protection tiles above at a depth of approximately 1.4m to ensure a final minimum depth of 975mm and as shown on sheet 1 of the works plans; and

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works;
- (i) ramps, means of access, footpaths and bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) the removal, disposal or re-siting of apparatus;
- (o) open trench excavations and directional drilling.

#### 132kV OVERHEAD LINE (Nationally Significant Infrastructure Project)

**Work No. 3** the construction and installation and keeping of a 132kV electric line above ground of 21.3 km in length commencing in the vicinity of Long Wood (grid ref: SJ 3113229877) and following an easterly direction passing to the south of Whittington, north of Rednal, to the north of Lower Hordley, south of Cockshutt, and passing to the south of Loppington terminating at a gantry at Wem substation more particularly shown on sheets 1 to 16 of the works plans. This comprises a three phase 132kV line (three wires/conductors and fibre optic cable) mounted on 176 trident wood pole structures extending up to 18m high and terminal ends and cable sealing ends at

terminal poles and all modifications required and any support to facilitate a change in angle of the electric line; and—

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works;
- (i) works to alter ramps, means of access, footpaths and bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) the provision of overhead electricity cables underground ducting and placing electricity cables below ground to connect to Work No.2 and Work No.5;
- (o) establishment of winching points and the installation of scaffolding;
- (p) a welfare unit and a security cabin at laydown area number 7.

#### LOWER VOLTAGE DIVERSIONS (Associated Development)

**Work No.4A** the removal of existing 11kV and 33kV overhead lines between Oswestry and Wem as shown on sheets 2, 3, 7, 8, 12, 13, 14 and 16 of the works plans and all associated wood poles, conductors, insulators and fittings and;

- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works;
- (i) works to alter ramps, means of access, footpaths and bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) establishment of winching points and the installation of scaffolding.

**Work No.4B** the undergrounding of 11kV and 33kV cables between Oswestry and Wem as shown on sheets 1, 2, 3, 7, 8, 9, 12, 13, 14 and 16 of the works plans and;



- (a) site preparation works and site clearance (including fencing, felling and vegetation removal);
- (b) earthworks (including soil stripping and storage and site levelling);
- (c) carrying out surveys or taking soil samples;
- (d) establishment of temporary laydown and storage areas, temporary vehicle parking and construction fencing;
- (e) cutting down, uprooting, topping or lopping of trees or shrubs or cutting back their roots;
- (f) reinstatement hedgerow planting;
- (g) establishment of temporary means of access and trackways;
- (h) drainage works;
- (i) works to alter ramps, means of access, footpaths and bridleways;
- (j) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (k) works to alter the course of, or otherwise interfere with a watercourse;
- (l) works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (m) works for the benefit or protection of land affected by the authorised development;
- (n) establishment of winching points and the installation of scaffolding;
- (o) works to install the means to connect the lower voltage overhead line (Work No.4A) with the new section of lower voltage underground cable.

#### WEM SUBSTATION (Associated Development)

**Work No.5**—Works at Wem substation as shown on sheet 16 of the works plans comprising the installation of a 132kV gantry, isolator, associated busbar, a 132kV to 33kV transformer, 33kV cable and a 33kV circuit breaker and:

- (a) site preparation works and site clearance (including fencing);
- (b) levelling;
- (c) creation of hard stoned area.

## SCHEDULE 2

### REQUIREMENTS

Article 3

#### Interpretation

**1.** In this Schedule—

“bank holiday” means a holiday as defined under section 1 of the Banking and Financial Dealings Act 1971(a);

“commencement” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development and the words “commence” and “commenced” are to be construed accordingly;

“construction environmental management plan” means the document certified under article 35 and Schedule 9 by the Secretary of State;

“felling” means any felling or lopping undertaken pursuant to article 31 (felling or lopping of trees and removal of hedgerows) of this Order;

“planning consent” means any of the following—

- (a) planning permission granted under Part 3 of the 1990 Act;
- (b) development consent granted under the 2008 Act;
- (c) consent granted under the Electricity Act 1989; or
- (d) planning permission granted under the Town and Country Planning (Development Management Procedure) (England) Order 2015(b);

“Pole Type Diagram” means Diagram 3.2 Illustration of Pole Types (July 2019);

“reinstatement planting” means the reinstatement of the vegetation that has been removed to enable the construction of the authorised development;

“working hours” means Monday to Friday between 0700 and 1900 hours during the months of March to October and between 0730 and 1730 hours or during daylight hours, whichever is the shorter, during the months of January to February and November to December and between 0700 and 1300 hours on Saturdays with no works to take place on Sundays or bank or public holidays.

#### Time limits

**2.** The authorised development must be commenced within 5 years of the date that this Order is made.

#### Compliance with approved details

**3.—**(1) The construction of the pole structures forming part of the authorised development comprised in Work No.3 must take place in accordance with the approved drawings listed in Table 1 below and within the limits of deviation as set out in article 4(1)(a) (limits of deviation) as limited by requirement 4:

**Table 1**

<i>(1) Poles</i>	<i>(2) Works</i>	<i>Plans</i>	<i>sheet</i>	<i>(3) Structure</i>	<i>height</i>	<i>(4) Pole type</i>	<i>(as</i>
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- (a) 1971 c. 80.
- (b) S.I. 2015/595

	<i>number</i>	<i>(metres above ground)</i>	<i>shown in Pole Type Diagram)</i>
1	1	13	Terminal H-Pole
2	1	10	Inter 2.5m Arm
3	1	10	Inter 2.5m Arm
4	1	10	Inter 2.5m Arm
5	1	11	Inter 2.5m Arm
6	1	12	Inter H-Pole
7	2	14	Section Single
8	2	13	Angle H-Pole
9	2	13	Inter 2.5m Arm
10	2	11	Inter 2.5m Arm
11	2	12	Angle H-Pole
12	2	13	Inter 2.5m Arm
13	2	13	Inter 2.5m Arm
14	3	12	Inter 2.5m Arm
15	3	11	Inter 2.5m Arm
16	3	10	Inter 2.5m Arm
17	3	12	Angle H-Pole
18	3	11	Inter 2.5m Arm
19	3	11	Inter 2.5m Arm
20	4	11	Inter 2.5m Arm
21	4	12	Angle Single
22	4	12	Angle H-Pole
23	4	10	Inter 2.5m Arm
24	4	10	Inter 2.5m Arm
25	4	10	Inter 2.5m Arm
26	4	11	Inter 2.5m Arm
27	4	12	Inter 2.5m Arm
28	4	12	Inter 2.5m Arm
29	4	15	Angle H-Pole
30	4	12	Inter 2.5m Arm
31	4	11	Inter 2.5m Arm
32	5	10	Inter 2.5m Arm
33	5	10	Inter 2.5m Arm
34	5	11	Inter 2.5m Arm
35	5	12	Inter 2.5m Arm
36	5	12	Inter H-Pole
37	5	13	Section Single
38	5	13	Inter 2.5m Arm
39	5	12	Inter 2.5m Arm
40	5	11	Inter 2.5m Arm
41	5	10	Inter 2.5m Arm
42	5	12	Angle H-Pole
43	7	10	Inter 2.5m Arm
44	7	10	Inter 2.5m Arm
45	7	11	Inter 2.5m Arm
46	7	12	Inter 2.5m Arm
47	7	11	Inter 2.5m Arm
48	7	10	Inter 2.5m Arm
49	7	12	Angle H-Pole
50	7	10	Inter 2.5m Arm
51	7	10	Angle H-Pole

52	7	10	Inter 2.5m Arm
53	7	14	Angle H-Pole
54	7	12	Angle H-Pole
55	7	9	Inter 2.5m Arm
56	7	9	Inter 2.5m Arm
57	7	9	Inter 2.5m Arm
58	7	11	Section Single
59	8	12	Inter 2.5m Arm
60	8	11	Inter 2.5m Arm
61	8	11	Inter 2.5m Arm
62	8	10	Inter 2.5m Arm
63	8	10	Inter 2.5m Arm
64	8	13	Angle H-Pole
65	8	13	Inter 2.5m Arm
66	8	10	Inter 2.5m Arm
67	8	11	Inter 2.5m Arm
68	8	12	Section Single
69	8	11	Inter 2.5m Arm
70	8	12	Inter 2.5m Arm
71	8	11	Inter 2.5m Arm
72	8	10	Inter 2.5m Arm
73	9	10	Angle H-Pole
74	9	10	Inter 2.5m Arm
75	9	10	Inter 2.5m Arm
76	9	14	Angle H-Pole
77	9	15	Inter H-Pole
78	9	16	Inter H-Pole
79	9	12	Inter 2.5m Arm
80	9	11	Inter 2.5m Arm
81	9	12	Angle H-Pole
82	9	14	Inter H-Pole
83	9	15	Inter H-Pole
84	9	15	Angle H-Pole
85	9	12	Inter 2.5m Arm
86	10	13	Inter 2.5m Arm
87	10	14	Inter 2.5m Arm
88	10	12	Inter 2.5m Arm
89	10	11	Inter 2.5m Arm
90	10	11	Inter 2.5m Arm
91	10	11	Inter 2.5m Arm
92	10	12	Angle Single
93	10	10	Inter 2.5m Arm
94	10	10	Inter 2.5m Arm
95	10	10	Inter 2.5m Arm
96	10	10	Inter 2.5m Arm
97	11	12	Angle H-Pole
98	11	10	Inter 2.5m Arm
99	11	15	Inter 2.5m Arm
100	11	13	Angle H-Pole
101	11	12	Inter 2.5m Arm
102	11	16	Inter H-Pole
103	11	15	Inter H-Pole
104	11	12	Inter 2.5m Arm

105	11	14	Angle H-Pole
106	11	16	Inter 2.5m Arm
107	12	16	Inter 2.5m Arm
108	12	13	Angle Single
109	12	12	Inter 2.5m Arm
110	12	11	Inter 2.5m Arm
111	12	11	Inter 2.5m Arm
112	12	12	Angle H-Pole
113	12	15	Angle H-Pole
114	12	11	Inter 2.5m Arm
115	12	12	Angle H-Pole
116	12	12	Inter 2.5m Arm
117	13	12	Inter 2.5m Arm
118	13	12	Inter 2.5m Arm
119	13	12	Inter 2.5m Arm
120	13	12	Angle H-Pole
121	13	11	Inter 2.5m Arm
122	13	11	Inter 2.5m Arm
123	13	11	Inter 2.5m Arm
124	13	11	Inter 2.5m Arm
125	13	15	Section H-Pole
126	13	15	Section H-Pole
127	13	15	Angle H-Pole
128	13	15	Angle H-Pole
129	14	11	Inter 2.5m Arm
130	14	10	Inter 2.5m Arm
131	14	10	Inter 2.5m Arm
132	14	12	Angle H-Pole
133	14	10	Inter 2.5m Arm
134	14	10	Inter 2.5m Arm
135	14	10	Inter 2.5m Arm
136	14	11	Inter 2.5m Arm
137	14	12	Inter 2.5m Arm
138	14	14	Angle H-Pole
139	14	11	Inter 2.5m Arm
140	14	13	Angle H-Pole
141	14	12	Inter 2.5m Arm
142	14	12	Inter 2.5m Arm
143	14	12	Angle H-Pole
144	14	11	Inter 2.5m Arm
145	14	13	Inter 2.5m Arm
146	14	11	Angle H-Pole
147	15	11	Inter 2.5m Arm
148	15	11	Inter 2.5m Arm
149	15	10	Inter 2.5m Arm
150	15	12	Angle H-Pole
151	15	13	Inter 2.5m Arm
152	15	15	Inter 2.5m Arm
153	15	13	Inter 2.5m Arm
154	15	10	Inter 2.5m Arm
155	15	11	Section Single
156	15	10	Inter 2.5m Arm
157	15	10	Inter 2.5m Arm

158	15	10	Inter 2.5m Arm
159	15	10	Inter 2.5m Arm
160	15	10	Inter 2.5m Arm
161	15	10	Inter 2.5m Arm
162	15	13	Angle H-Pole
163	16	13	Inter H-Pole
164	16	11	Angle H-Pole
165	16	12	Inter 2.5m Arm
166	16	13	Angle Single
167	16	11	Inter 2.5m Arm
168	16	10	Inter 2.5m Arm
169	16	12	Inter 2.5m Arm
170	16	11	Inter 2.5m Arm
171	16	10	Inter 2.5m Arm
172	16	12	Angle H-Pole
173	16	10	Inter 2.5m Arm
174	16	11	Inter 2.5m Arm
175	16	12	Section Single
176	16	11	Section Single

#### **Restriction on the limits of deviation**

- 4.—(1) No pole structure as set out in Table 1 of requirement 3 is authorised to move:
- (a) more than 5 metres in any direction from its location as shown on the works plans; and
  - (b) within 1 metre of the outside edge of any hedgerow.

#### **Plans**

5. Subject to article 4 (limits of deviation) and requirements 3, 4, 8 and 10 the authorised development must be carried out in accordance with the plans or other documents certified in accordance with article 35 (certification of plans etc) and Schedule 9.

#### **Felling**

6.—(1) All felling must be undertaken in accordance with the relevant guidance specified in paragraph (2).

- (2) The relevant guidance is—
- (a) The UK Forestry Standard (“UKFS”);
  - (b) UKFS Guidelines – Forests and Water (2011);
  - (c) UKFS Guidelines – Forests and Soil (2011);
  - (d) UKFS Guidelines – Forests and Biodiversity (2011); and
  - (e) UKFS Guidelines – Forests and Historic Environment (2011).

#### **Construction hours**

7.—(1) Subject to sub-paragraph (2), construction work must not take place other than during the working hours.

- (2) The following operations may take place outside the working hours—
- (a) the installation and removal of scaffolding and protective netting across railways, highways and watercourses;
  - (b) stringing of the 132kV overhead line across the highway subject to the prior written approval of the relevant planning authority;

- (c) the completion of construction works commenced during working hours which cannot be safely stopped.

### **Contaminated land and groundwater**

8.—(1) In the event that contamination is found at any time when carrying out the authorised development, it must be reported in writing immediately to the relevant planning authority and the constructing of that part of the authorised development affected by such contamination must cease immediately. An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination within the Order limits and whether or not it originates within the Order limits, such scheme must be submitted to and approved by the relevant planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced and submitted to and approved by the relevant planning authority.

(2) Where remediation is required pursuant to the approved investigation and risk assessment, a detailed remediation scheme to bring the relevant land to a condition suitable for the intended use must be prepared, and submitted for the written approval of the relevant planning authority.

(3) The remediation scheme must be carried out as approved.

(4) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and approved in writing by the relevant planning authority.

(5) Where the carrying out of any part of the authorised development has ceased pursuant to sub-paragraph (1) the undertaker may only recommence the carrying out of that part of the authorised development following—

- (a) where remediation is required pursuant to the approved investigation and risk assessment for contamination affecting that part, the completion of measures pursuant to sub-paragraph (4); or
- (b) in all other cases the approval of the investigation and risk assessment pursuant to sub-paragraph (2).

### **Construction environmental management plan**

9.—(1) No authorised development is to commence until, following consultation with the relevant highway authority and the Environment Agency, a detailed construction environmental management plan, which is substantially in accordance with the construction environmental management plan certified under article 35 and Schedule 9, has been submitted to and approved by the relevant planning authority. The detailed construction environmental management plan must include measures to minimise impacts of construction works.

(2) The detailed construction environmental management plan must include a canal crossing plan detailing the measures to manage the risks of overhead power lines to anglers, bird collisions and tree works which has been agreed with the Canal & River Trust.

(3) The authorised development must be carried out in accordance with the detailed construction environmental management plan.

### **Approved plans and amendments to approved plans.**

10.—(1) Where a requirement requires the authorised development to be carried out in accordance with a plan, scheme, statement, strategy or details (the “plan”) approved by the relevant planning authority, the approved plan must be taken to include any amendments that may be approved subsequently by the relevant planning authority (after consulting every person required to be consulted before approval of the original plan).

(2) The relevant planning authority must not approve the plan or an amendment to the plan unless it is satisfied that the plan or the amendment is unlikely to give rise to any new or materially different environmental effects from those assessed in the environmental statement.

### **A5(T) Traffic Management Crossing**

**11.** No authorised development is to commence until, following consultation with Highways England, details of the construction traffic management for the temporary use of the existing A5(T) access (as shown in the Construction Accesses Location Plan, Environmental Statement: Appendix 1.4 Traffic and Transport Technical Note (July 2019)) and of the construction method for the installation of the underground cable (Work No. 2) under the A5(T) have been submitted to and approved by the relevant planning authority following written confirmation of approval of them by Highways England. The authorised works must be carried out in accordance with the details approved under this requirement.



## SCHEDULE 3

Article 10

### STREETS SUBJECT TO STREET WORKS

**Table 2**

<i>(1) Area</i>	<i>(2) Street subject to street works</i>	<i>(3) Description of the street works</i>	<i>(4) Access and rights of way plan</i>
Shropshire	B5009 – Approx. 105m north from junction with Oil Tank Services Ltd	Scaffolding and Netting	Sheet 3
Shropshire	Unnamed (Hordley Road) – Approx. 160m from the access to Dandyford Farm	Scaffolding and Netting	Sheet 8
Shropshire	A528 – Approx. 500m north from Wackley Lodge	Scaffolding and Netting	Sheet 12
Shropshire	B4397 – Approx. 480m east of Malt Kiln Farm	Scaffolding and Netting	Sheet 13
Shropshire	Salters Lane – Approx. 240m north of The Shayes	Scaffolding and Netting	Sheet 15
Shropshire	B5063 – Wem Substation	Scaffolding and Netting	Sheet 16
Shropshire	Woodhouse Road – Rednal	Installation of lower voltage cable in carriageway	Sheet 7
Shropshire	B5063 – Wem Substation	Installation of lower voltage cable in carriageway	Sheet 16
Shropshire	A5 (T) – Approx. 720m south of roundabout with B4580 and A495	Directional Drill under carriageway	Sheet 1
Shropshire	Woodhouse Road - Approx. 65m north from Rednal Mill House	Crossing with 132KV overhead line (Work No.3)	Sheet 7
Shropshire	Unnamed (Hordley Road) - Approx. 660m east of Dandyford Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 9
Shropshire	Unnamed (Hordley Road) - Approx. 820m east of Dandyford Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 9
Shropshire	Unnamed Road (Stanwardine) - Approx. 240 west of A528	Crossing with 132KV overhead line (Work No.3)	Sheet 12
Shropshire	Unnamed Road (Malt Kiln Farm) - Approx. 150m west of Malt Kiln Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 13
Shropshire	PRoW 0306/12/7 - Adjacent to A5 (T)	Crossing with underground cable	Sheet 1
Shropshire	PRoW 0313/41/1 – Approx. 640m north east of Top House Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 1
Shropshire	PRoW 0313/41/1 – Approx. 630m north east of top House Farm	Recovery of existing line	Sheet 1
Shropshire	PRoW 0313/41/1 – Approx. 450 south west of Brook Field Farm	Crossing with underground cable	Sheet 3

Shropshire	PRoW 0307/66/1 – Approx. 180m south of Top House Farm	Crossing of public right of way by construction and maintenance access track	Sheet 2
Shropshire	PRoW0307/65/1 - Approx. 130m east of Top House Farm	Crossing of public right of way by construction and Sheet maintenance access Sheet track	Sheet 2
Shropshire	PRoW 0313/42/1 - Approx. 400m west of Brook Field Farm	Crossing of public right of way by construction and maintenance access track	Sheet 3
Shropshire	PRoW 0313/42/1 – Following access track from Brook Field Farm	Crossing of public right of way by construction and maintenance access track	Sheet 3
Shropshire	PRoW 0313/42/1 - Adjacent to Brook Field Farm Yard	Crossing of public right of way by construction and maintenance access track	Sheet 3
Shropshire	PRoW 0313/42/1 – Crossing access track to Brook Field Farm	Crossing of public right of way by construction and maintenance access track	Sheet 3
Shropshire	PRoW 0313/47/1 – Adjacent to Bryn y Plentyn	Crossing of public right of way by construction and maintenance access track	Sheet 3
Shropshire	PRoW 0313/44/2 – Following track south from Perrymoor Farm	Crossing with 132KV overhead line (Work No.3) and access route	Sheet 4
Shropshire	Regional Trail – Montgomery Canal	Crossing with 132KV overhead line (Work No.3)	Sheet 5
Shropshire	PRoW 0207/14/3 – Approx. 400m east of Top House Farm	Crossing with 132KV overhead line (Work No.3) and access route	Sheet 10
Shropshire	PRoW 0207/15/1 - Approx. 430m south west of Kenwick Lodge	Crossing of public right of way by construction and maintenance access track	Sheet 11
Shropshire	PRoW 0207/15/1 – Approx. 400m south west of Kenwick Lodge	Crossing with 132KV overhead line (Work No.3)	Sheet 11
Shropshire	PRoW 0207/15/1 – Approx. 250m south of Kenwick Lodge	Crossing of public right of way by	Sheet 11

		construction and maintenance access track	
Shropshire	PRoW 0207/16/2 – Approx. 210m south east of Kenwick Lodge	Crossing of public right of way by construction and maintenance access track	Sheet 11
Shropshire	PRoW 0207/16/2 - Kenwick Lodge Driveway	Crossing of public right of way by construction and maintenance access track	Sheet 11
Shropshire	PRoW 0207/13/1 - Kenwick Lodge Driveway	Crossing of public right of way by construction and maintenance access track	Sheet 11
Shropshire	PRoW 0207/4/1 - Access to The Wood near Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track	Sheet 13
Shropshire	PRoW 0207/4/2 – Approx. 100m north west of Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track	Sheet 13
Shropshire	PRoW 0217/4/2 – Approx. 130m north west of Malt Kiln Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 13
Shropshire	PRoW 0217/5/1 – Approx. 300 m east of Malt Kiln Farm	Crossing of public right of way by construction and maintenance access track	Sheet 13
Shropshire	PRoW 0217/5/1 – Approx. 200 m south west of Coppice Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 14
Shropshire	PRoW 0217/10/1 – Approx. 500m south of Bentley Farm	Crossing of public right of way by construction and maintenance access track	Sheet 14
Shropshire	PRoW 0217/10/1 – Approx. 510m south of Bentley Farm	Crossing of public right of way by construction and maintenance access track	Sheet 14
Shropshire	PRoW 0217/10/1 – Approx. 60m south of Bentley Farm	Crossing of public right of way by construction and maintenance access track	Sheet 14
Shropshire	PRoW 0217/11/1 – Approx. 50m south of Bentley Farm	Crossing of public right of way by	Sheet 14

		construction and maintenance access track	
Shropshire	PRoW 0217/11/1 – Approx. 270m east of Bentley Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 14
Shropshire	PRoW 0217/11/1 - Approx. 360m east of Bentley Farm	Crossing of public right of way by construction and maintenance access track	Sheet 14
Shropshire	PRoW 0217/12/1 – Approx. 250m north of The Shayes	Crossing with 132KV overhead line (Work No.3)	Sheet 15
Shropshire	PRoW 0217/13/1 – Approx. 380m north east of The Shayes	Crossing of public right of way by construction and maintenance access track	Sheet 15
Shropshire	PRoW 0230/47/1 – Approx. 360m north east of The Shayes	Crossing with 132KV overhead line (Work No.3)	Sheet 15
Shropshire	PRoW 0230/47/1 – Approx. 550m south of The Ditches Hall	Crossing of public right of way by construction and maintenance access track	Sheet 16
Shropshire	PRoW 0230/47/1 - Following access to The Ditches Hall heading south	Crossing of public right of way by construction and maintenance access track	Sheet 16
Shropshire	PRoW 0230/47/1 – Approx. 250m south of Pools Farm	Crossing of public right of way by construction and maintenance access track	Sheet 16
Shropshire	PRoW 0230/47/2 – Approx. 260m south of Pools Farm	Crossing with 132KV overhead line (Work No.3)	Sheet 16

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## SCHEDULE 4

Article 18

### MODIFICATION OF THE COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### COMPENSATION ENACTMENTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation set out in this Schedule, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction as they apply as respects compensation on the compulsory purchase of land and interests in land.

#### MODIFICATION OF THE LAND COMPENSATION ACT 1973

2.—(1) Without limitation on the scope of paragraph (1), the Land Compensation Act 1973(a) has effect subject to the modification set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act (measure of compensation in case of severance) as substituted by paragraph 5 (3)—

- (a) for the words “land is acquired or taken from” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A of the 1961 Act, (relevant valuation date) after “if” substitute—

- (a) the acquiring authority enters on the land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 4 to the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*); and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 4 to the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.

#### APPLICATION OF PART 1 OF THE 1965 ACT

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and modified by article 24 (modification of Part 1 of the 1965 Act)) applies to the compulsory acquisition of a right by the creation of a new right or to the imposition of a restrictive covenant under article 18 (compulsory acquisition of rights) —

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows:

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(a) 1973. c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land).

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 of the 1965 Act (powers of entry)(a) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20(f) of the 1965 Act (of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 24(4) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 c. 67, section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 c. 71, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 c. 22.
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 c. 22.
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 c. 23.
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 c. 15.
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 c. 34 and S.I. 2009-1307.

## **“SCHEDULE 2A**

### **COUNTER-NOTICE REQUIRING PURCHASE OF LAND**

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\* in respect of the land to which the notice to treat relates.

(2) But see article 23 (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 201\* which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

#### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—**(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”



## SCHEDULE 5

Article 26

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 3**

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
East of the A5(T) near Long Wood at Middleton	9	Temporary use as laydown area and access	Part of Work No.2 and Work No.3
East of the A5(T) near Long Wood at Middleton	10	Temporary use as laydown area	Part of Work No.2 and Work No.3
East of the A5(T) near Long Wood at Middleton	11	Temporary use as access	Part of Work No.2 and Work No.3
in Middleton between Cabin House and Top House Farm	16	Temporary use as laydown area	Part of Work No.3 and Work No.4
Southwest of Brookfield Farm, Coalpit Lane	39	Temporary use to dismantle existing LV overhead line	Part of Work No.4A
at Brookfield Farm, at the southern end of Coalpit Lane	45	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Dandyford Farm near Lower Hordley	142	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Top House Farm	186	Temporary use as laydown area	Part of Work No.3 and Work No.4
at Coppice Farm, southwest of Loppington	258	Temporary use as laydown area	Part of Work No.3 and Work No.4
on the western edge of Wem, in the field just south of Wem substation	375, 376	Temporary use as laydown area and for welfare unit and security cabin	Part of Work No.3 and Work No.4 and Work No.5

## PROTECTIVE PROVISIONS

## PART 1

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC  
COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106(1) of the 2003 Act (application of the electronic communications code)(a);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage and make reasonable compensation to that operator for any other expenses, loss, or costs incurred by it, by reason, of any such damage, provided that the operator is not entitled to recover any indirect or consequential losses or losses of profits from the undertaker.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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(a) See section 106.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 38 (arbitration).

4. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference (if any) arising from the construction or use of the authorised development.

5. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

6. For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

7. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the relevant statutory undertaker to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other water apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in that undertaker under the Water Industry Act 1991(b); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act (adoption of sewers and disposal works) or an agreement to adopt made under section 104 of that Act (agreements to adopt sewer, drain or sewage disposal works, at future date),

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

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(a) 1989 C. 29.

(b) 1991 C. 56.

“relevant statutory undertaker” means, in relation to any apparatus, the statutory undertaker that owns the apparatus or is responsible for its maintenance; and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991
- for the area of the authorised development.

**8.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**9.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any apparatus otherwise than by agreement with the relevant statutory undertaker.

**10.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the relevant statutory undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the relevant statutory undertaker written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the relevant statutory undertaker, must on receipt of a written notice to that effect from the undertaker, use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The relevant statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the relevant statutory undertaker that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**11.—(1)** Not less than 28 days before starting the execution of any works of the type referred to in paragraph 10(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 10(2), the undertaker must submit to the relevant statutory undertaker a plan, section and description of the works to be executed.

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(a) 1986 c. 44. A new section 7 was submitted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act (c. 27)

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, (declaring that these must be on land held or controlled by the relevant statutory undertaker or the undertaker and subject to them being authorised by the Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 10(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the relevant statutory undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**12.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to the relevant statutory undertaker the proper and reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus provided that the relevant statutory undertaker is not entitled to recover any indirect or consequential losses or losses of profits from the undertaker.

(2) The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the relevant statutory undertaker by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the relevant statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## PART 3

### FOR THE PROTECTION OF NETWORK RAIL

**13.** The following provisions of this Part have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

**14.** In this Part—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 115) of the Companies Act 2006(b) (meaning of “subsidiary” etc)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the dates of, extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means—

- (a) any railway belonging to Network Rail;
- (b) any station, land, works, apparatus and equipment belonging to Network Rail and connected with any such railway; and
- (c) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**15.—(1)** Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail

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(a) 1993 c. 43.

(b) 2006 c. 46.

complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**16.—**(1) The undertaker must not exercise the powers conferred by article 16 (authority to survey and investigate the land), article 18 (compulsory acquisition of rights), article 19 (statutory authority to override easements and other rights), article 23 (acquisition of subsoil or airspace only), article 26 (temporary use of land for carrying out the authorised development), article 27 (temporary use of land for maintaining the authorised development) and article 31 (felling or lopping of trees and removal of hedgerows) or the powers conferred by section 11(3) of the 1965 Act 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 under the powers of this Order extinguish any rights over any railway property except with the consent of Network Rail.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

**17.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 38 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed and if by the end of the period of 35 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of his or her disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the reasonable opinion of the engineer must be carried out before the commencement of the construction of a specified work (declaring that such protective works must be on land held or controlled by Network Rail and subject to such works being authorised by the Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services

of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without reasonable delay, and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**18.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 17(3) must, when commenced, be constructed—

- (a) without reasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 17;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property;
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property; and
- (e) so as not to interfere with the safe use of any railway of Network Rail or the traffic thereon or the safety of passengers using railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**19.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**20.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**21.—**(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 12 months after the completion of that work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail; and if Network Rail gives to the undertaker 56 days' notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.



(2) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 22(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing the saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**22.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by any protective works under the provisions of paragraph 17(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchperson and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which are in their opinion of the engineer, required to be imposed by reason or in consequence of the constructions or failure of a specified work which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**23.—**(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 17(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all reasonable measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 17(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 17(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the date of final commissioning and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with sub-paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 27(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 22(a) any modifications to Network Rail's apparatus under this paragraph will be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 38 (arbitration) to a single arbitrator to be agreed between the parties will be read as a reference to the Institution of Electrical Engineers.

**24.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**25.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail, and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and

any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

26. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

27.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

- (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and
- (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

(5) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the act, omission, default or negligence of Network Rail or its servants, contractors or agents.

(6) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(7) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(8) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**28.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 27) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

**29.** In the assessment of any sums payable to Network Rail under this Part, no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary or was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

**30.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer or grant to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**31.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**32.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of the Order) of this Order, and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**33.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 35 (certification of plans etc.) and Schedule 9 are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

## **PART 4**

### **FOR THE PROTECTION OF CANAL & RIVER TRUST**

#### **Interpretation**

**34.—(1)** For the protection of the Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Trust.

**(2)** In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2018) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work undertaken as part of the authorised development includes—

- (a) the execution and placing of that work; and

- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of the Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust’s network);
- (g) any interference with the exercise by any person of rights over the Trust’s network; “the engineer” means an engineer appointed by the Trust for the purpose in question;
- (h) any effect on the stability of the waterway or the safe operation and navigation of the waterway;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timings and duration of any proposed use and/or occupation of the waterway;

“protective work” means a work constructed under paragraph 36(2)(a) and “protective works” is to be construed accordingly;

“specified work” means so much of the authorised development as is situated upon, across, under, over or within 150 metres of, or may in any way affect the waterway and “specified works” is to be construed accordingly;

“towpath” means the towpath forming part of the waterway;

“the Trust” means the Canal & River Trust a company limited by guarantee (company registration number 07807276) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes MK9 1BB and a registered charity registered with the charity commission number 1146792;

“the Trust’s network” means the Trust’s network of waterways;

“the waterway” means the Montgomery Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that navigation.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

### **Powers requiring the Trust’s consent**

**35.—**(1) The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of rights), article 23 (acquisition of subsoil or airspace only), article 26 (temporary use of land for carrying out the authorised development), article 27 (temporary use of land for maintaining the authorised development) or article 29 (statutory undertakers) without the Trust’s consent, which must not be unreasonably withheld or delayed.

(2) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway or towpath unless such obstruction or interference with such access is with the consent of the Trust.

(3) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 15 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(4) The undertaker must not exercise the powers conferred by article 16 (authority to survey and investigate land) or section 11(3) of the 1965 Act (powers of entry), in relation to the waterway unless such exercise is with the consent of the Trust.

(5) The undertaker must not exercise the powers conferred by this Order to temporarily stop up streets or public rights of way under article 11 (temporary prohibition or restriction of use of streets and public rights of way) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of the Trust.

(6) The consent of the Trust pursuant to sub-paragraphs (2) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions including any condition requiring compliance with the Code of Practice or any applicable part thereof and any condition which required the payment of such charges/fees/costs as are typically charged by the Trust and in the case of article 15 (discharge of water) it is reasonable to impose the following non-exhaustive conditions—

- (a) requiring the payment of such charges as are typically charged by the Trust;
- (b) specifying the maximum volume water which may be discharged in any period; and
- (c) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust, to the extent that any discharge of water by the undertaker is into the waterway.

(7) The undertaker must not exercise the powers conferred by this Order to abstract water from the Montgomery Canal unless such abstraction is with the consent of the Trust. Such consent may be given subject to reasonable terms and conditions including specifying the maximum velocity of the flow of water which may be abstracted at right angles to the waterway at any time.

(8) Where the undertaker is required to obtain the Trust's consent in accordance with this Order such consent must be obtained in writing.

(9) The undertaker must not move the location of any pole structure within a specified work without the consent of the Trust.

(10) The undertaker must comply with the code of practice in relation to the construction and operation of a specified work or protective work.

(11) The undertaker must not deviate vertically from the levels of the authorised development set out in Table 1 of requirement 3 in respect of any specified work without the consent of the Trust.

(12) The undertaker must not exercise the power conferred by article 31 (felling or lopping of trees and removal of hedgerows) in respect of any tree, shrub or hedgerow within an area of a specified work unless such power is exercised with the consent of the Trust.

(13) The construction hours in respect of any specified work must be agreed in writing with the Trust.

(14) In the event that any contamination which could impact upon the waterway is found when carrying out the authorised development, the undertaker must notify the Trust immediately and must agree with the Trust the remediation require to be undertaken. The undertaker must complete the remediation works at its own cost in accordance with timescales agreed with the Trust.

(15) Except in the case of emergencies, the undertaker must provide the Trust with 28 days written notice before interfering with the waterway for the purposes of maintaining/inspecting the

authorised development and must comply with any reasonable conditions which the Trust may impose in accordance with the Code of Practice.

### **Approval of plans, protective works etc.**

36.—(1) Before commencing construction of any specified works including any temporary works, the undertaker must supply to the Trust proper and sufficient plans of that work, the form and application fee which is ordinarily required by the Trust's engineers in accordance with the Code of Practice and such further particulars available to it as the Trust may within 28 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration and for the avoidance of doubt the approval of the engineer may be subject to any reasonable conditions including a requirement that the specified work is undertaken at a reasonable time specified by the engineer.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed. When signifying approval of the plans the engineer may specify on land held or controlled by the Trust or the undertaker and subject to such works being authorised by the Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the undertaker or by the Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(3) The undertaker must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (2) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Trust under this paragraph.

(4) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse within 28 days to the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

### **Design of works**

37. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Trust on—

- (a) the design and appearance of the specified works or protective works (including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Trust in response to such consultation pursuant in particular to the

requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(a) and to the interest of the Trust in preserving and enhancing the environment of its waterways.

### **Notice of works**

38. The undertaker must give to the engineer 28 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

### **Construction of specified works**

39.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 36 and paragraph 37 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Trust;
- (e) in such a manner so as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 15 (discharge of water); and
- (f) in compliance with the Code of Practice, if relevant.

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(b) (maintenance of waterways) to maintain the waterway.

(3) Following the completion of the construction of the specified works, the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Trust.

### **Prevention of pollution**

40. The undertaker must not in the course of constructing the authorised development or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Access to work – provision of information**

41.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

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(a) 1995 c.i.  
(b) 1968 c.73



(2) The Trust on being given reasonable notice must—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Trust's reasonable costs in relation to the supply of such information.

#### **Alterations to the waterway**

**42.**—(1) If during the construction of a specified work or a protective work or during a period of 12 months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and provided that the Trust gives to the undertaker 56 days' notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Trust under this paragraph.

#### **Maintenance of works**

**43.** If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment

#### **Repayment of the Trust's fees, etc.**

**44.**—(1) The undertaker must repay to the Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraphs 36(2)(a) or 36(4);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Trust to ensure the safe navigation of the waterway save that nothing is to require the Trust to construct and/or carry out any measures.

(2) If the Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Trust will first provide an estimate of that fee, charge, cost or

expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 21 days—

- (a) provide confirmation to the Trust that the estimate is agreed and pay to the Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) the Trust must take in to account any representations made by the undertaker and must, within 21 days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Trust must, when estimating and incurring any charge, cost or expense pursuant to sub-paragraph (1), do so with a view to being reasonably economic and acting as if the Trust were itself to fund the relevant fee, charge, cost or expense.

### **Making good of detriment; compensation and indemnity, etc.**

**45.—**(1) The undertaker must be responsible for and make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to and reasonably incurred by the Trust—

- (a) by reason of any detriment caused by the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act of omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (2) the undertaker must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in Part 4 of this Schedule save that the Trust will not be entitled to recover any consequential losses which are not reasonably foreseeable.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect, act or default of the Trust, its officers, servants, contractors or agents. The fact that any act or thing may be done by the Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator must not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(3) The Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

### **Arbitration**

**46.** Any difference arising between the undertaker and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 38 (arbitration) of this Order.

### **Capitalised sums**

**47.** Any capitalised sum which is required to be paid under this Part of this Schedule must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

### **Vehicles, plant and machinery**

**48.** The undertaker must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld or delayed and such consent may be subject to conditions including any condition which requires the payment of a fee; and
- (b) subject to compliance with such reasonable and necessary requirements as the engineer may from time to time specify:-
  - (i) for the prevention of detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents or the users of the waterway.

### **Fencing**

**49.** Where so required by the engineer and where that requirement has been evidenced in writing the undertaker must to the reasonable satisfaction of the engineer and upon providing reasonable notice of not less than 28 days fence off a specified work or a protective work or take such other steps as the engineer may reasonably require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

### **Survey of waterway**

**50.—**(1) Before the commencement of construction of any part of the specified works and again following practical completion of the specified works the undertaker will appoint a surveyor (“the surveyor”) at the undertaker’s cost, to be approved by the Trust and the undertaker, who must undertake a survey including a dip-survey to measure the depth of the waterway (“the survey”) or so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of Part 4 of this Schedule will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

### **Further engagement**

**51.** The undertaker will continue to engage with the Trust in relation to the acquisition of the necessary rights and interests from the Trust by private treaty.

## PART 5

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

#### **Application**

52. The following provisions have effect for the protection of National Grid unless otherwise agreed in writing between the undertaker and National Grid.

#### **Interpretation**

53. In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the requirements of an “acceptable provider”, such policy must include (but without limitation):

- (a) National Grid Electricity Transmission Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable provider” means a bank or financial institution with a credit rating that is not lower than: “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“alternative apparatus” means appropriate alternative apparatus to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of National Grid);

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commencement” has the same meaning as in paragraph 1 of Schedule 2 (requirements) to the Order and commence will be construed to have the same meaning save that for the purposes of Part 5 of this Schedule only the term commence and commencement will include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any of its entities or successor entities;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development 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 56(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 56(2) or otherwise; and/or
- (c) include any of the activities that are referred to in National Grid’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

### **On Street Apparatus**

**54.** Except for paragraphs 58, 59 and 60 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition of land**

**55.—**(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid without the consent of National Grid, which must not be unreasonably withheld or delayed.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Where there is any inconsistency or duplication between the provisions set out in Part 5 of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or

exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in Part 5 of this Schedule will prevail.

(4) No agreement or consent granted by National Grid under any other paragraph of Part 5 of this Schedule constitutes agreement under sub-paragraph (1).

### **Removal of apparatus**

**56.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 55 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 57(1) below) the necessary facilities and rights-

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the use and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the National Grid to seek or use any compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in Part 5 of this Schedule will prevail.

### **Facilities and rights for alternative apparatus**

**57.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National

Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 64 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: Protection of National Grid as Electricity Undertaker**

**58.**—(1) Not less than 56 days before the commencement of any specified work that is near to or will or may affect any apparatus, the removal of which has not been required by the undertaker under paragraph 56(2), the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and show and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, include a method statement which, in addition to the matters set out in sub-paragraph (2), must; -

- (a) describe details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) provide an assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted provided that National Grid will not unreasonably delay notification of its approval or disapproval.

(5) Any approval of the National Grid required under sub-paragraphs (2) or (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work requiring the submission of a plan under sub-paragraph (1), National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 56(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**59.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all reasonable charges, costs and expenses reasonably anticipated or incurred by National Grid in consequence of the execution of any authorised development including without limitation in respect of: —

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such



apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 56(3); and/or
- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**60.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed

or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid the undertaker is liable for the cost reasonably incurred by National Grid in making good such damage, or there is any interruption in any service provided, or in the supply of any goods by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan (or as otherwise agreed between the undertaker and National Grid pursuant to paragraph 59).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of Part 5 of this Schedule including this paragraph .

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or carry out any works within 15 metres of National Grid's apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it must maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Grid has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with sub-paragraph (5), nothing in Part 5 of this Schedule will prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

## **Enactments and agreements**

61. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between

the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**62.**—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 56(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 58, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to 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.

### **Access**

**63.** If in consequence of the agreement reached in accordance with paragraph 55(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**64.** Save for differences or disputes arising under paragraphs 56(2), 56(4), 57(1), 58 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 38 (arbitration).

### **Notices**

**65.** The plans submitted to National Grid by the undertaker pursuant to paragraph 58(1) must be sent to National Grid Plant Protection at **plantprotection@nationalgrid.com** or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 6**

### **FOR THE PROTECTION OF HIGHWAYS ENGLAND**

### **Application**

**66.** The provisions of this Part of this Schedule apply to the HE works and have effect unless otherwise agreed in writing between the undertaker and Highways England.

### **Interpretation**

**67.**—(1) Where terms defined in article 2 are inconsistent with the terms defined in sub-paragraph (2) below, the latter prevail.

(2) In this Part of this Schedule—

“the contractor” means any contractor or sub-contractor appointed by the undertaker to construct the HE works;

“the detailed design information” means details of the following where applicable to the HE works —

- (a) site clearance details;
- (b) boundary and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting and supporting drainage calculations;
- (e) earthworks including supporting geotechnical assessments and any required strengthened earthworks appraisal form certification;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets) and supporting lighting calculations;
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures and any required structural approval in principle;
- (l) landscaping;
- (m) proposed departures from DMRB requirements;
- (n) utilities diversions;
- (o) topographical survey;
- (p) site waste management plan;
- (q) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any replacement or modification of it;
- (r) asbestos survey;
- (s) regime of core testing and sampling of existing trunk road pavement construction;
- (t) site investigation survey;
- (u) health and safety information; and
- (v) other such information used to inform the detailed design of the HE works that may be required by Highways England;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“the estimated costs” means the estimated costs in respect of the HE works agreed pursuant to paragraph 70 of this Schedule;

“the HE works” means the part of Work No.2 of the authorised development which directly affects the A5(T) near Long Wood at Middleton being the directional drilling and installation of an underground cable conduit and 132kV cable under the A5(T);

“the nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during construction of the HE works, as notified to Highways England from time to time;

“the programme of works” means a document setting out the sequence and timetabling of the HE works; and

“utilities” means any pipes, wires, cables or other equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

### **Prior approvals**

**68.—**(1) The HE works must not commence until—

- (a) the detailed design of the HE works comprising of the following details has been submitted to and approved by Highways England—

- (i) the detailed design information;
  - (ii) the programme of works;
  - (iii) details of proposed road space bookings;
  - (iv) a scheme of traffic management; and
  - (v) the identity of the contractor and nominated persons.
- (b) all necessary temporary traffic regulation measures have been made by the undertaker under article 11(1) (temporary prohibition or restriction of use of streets and public rights of way) or 12(3) (traffic regulation), or all necessary temporary traffic regulation orders have been made by Highways England;
- (c) at least 28 days' notice of the commencement date of the HE works has been given to Highways England in writing, unless otherwise agreed by Highways England.
- (2) Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the information required by sub-paragraph (1)(a) being received by Highways England. Highways England must give reasons for any disapproval and must not unreasonably delay its approval to the undertaker.
- (3) In the event of any disapproval, the undertaker may re-submit the information required by sub-paragraph (1)(a) with modifications and Highways England must use its best endeavours to notify the undertaker of its approval or, as the case may be, of its disapproval and the grounds of disapproval, within 42 days of the revised detailed design information being received by Highways England. Highways England must give reasons for any further disapproval and must not unreasonably withhold or delay consent.
- (4) The documents and programmes approved under sub-paragraphs (1) and (2) may be subsequently amended by agreement between the undertaker and Highways England from time to time, both parties acting reasonably.
- (5) Within 28 days of receipt of a written request by the undertaker and in any event prior to the commencement of the HE works, Highways England must inform the undertaker of the identity of the person who will act as the point of contact on behalf of Highways England for consideration of the information required under sub-paragraph (1).

### **Construction of the HE works**

**69.—**(1) The HE works must be constructed to the satisfaction of Highways England acting reasonably and in accordance (where relevant) with—

- (a) the information approved under paragraph 68(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the DMRB and the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by Highways England (to include all relevant interim advice notes, the Traffic Signs Manual 2008 and any amendment to or replacement of such standards for the time being in force), save to the extent that exceptions to those standards apply which have been approved by Highways England under paragraph 68(1) in respect of the HE works;
- (c) the Traffic Signs Regulations and General Directions 2016 or any amendment to or replacement of them; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any amendment to or replacement of them.

(2) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker and the contractor by Highways England) to gain access to the HE works for the purposes of inspection and supervision of the HE works.

(3) The undertaker must permit and must require the contractor to act upon any reasonable request made by Highways England in relation to the construction of the HE works as soon as

reasonably practicable provided such a request is not inconsistent with and does not fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations under this Order.

(4) If any part of the HE works is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule.

(5) If within 28 days of the date on which a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to take the steps required by that notice, Highways England may carry out works to reinstate the highway and other land and premises of Highways England, and Highways England may recover from the undertaker any expenditure reasonably incurred by it in so doing.

(6) If during construction of the HE works the undertaker causes any damage to the A5(T) then Highways England may by notice in writing require the undertaker, at the undertaker's own expense, to remedy the damage.

(7) If within 28 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, Highways England may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by Highways England in so doing.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as it reasonably believes to be necessary as a result of the construction of the HE works without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

(9) In constructing the HE works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of Highways England.

## **Payments**

**70.—**(1) The undertaker must fund the full cost of the HE works and any incidental and amended works approved under this Part of this Schedule and must also pay to Highways England in respect of the HE works a sum equal to the whole of any costs and expenses which Highways England reasonably incurs (including costs and expenses for using internal or external staff) in relation to—

- (a) the checking and approval of the information required by paragraph 68(1)(a);
- (b) the supervision of the HE works;
- (c) all legal and administrative costs in relation to sub-paragraph (1) (a) and (b) ;
- (d) any costs incurred by Highways England in undertaking any necessary statutory procedure required as a result of construction of the HE works, and in preparing and bringing into force any traffic regulation order necessary to construct or implement the HE works, provided that this paragraph will not apply to the making of any orders which duplicate traffic regulation measures contained in, or which may be made by the undertaker under, this Order; and
- (e) any value added tax which is payable by Highways England in respect of the costs incurred pursuant to sub-paragraph(1) which Highways England cannot otherwise recover from HM Revenue and Customs;

sub-paragraph (1) (a) to (e) together comprising “the estimated costs”.

(2) The undertaker and Highways England must, acting reasonably, agree a schedule of the estimated costs prior to the commencement of the HE works and once that schedule is agreed the undertaker must pay to Highways England the estimated costs in line with the agreed schedule.

(3) Highways England is not entitled to costs or expenses incurred under any part of sub-paragraph (1) if those costs or expenses are included as part of the estimated costs under any other part of sub-paragraph (1).

### **Indemnity**

**71.**—(1) The undertaker must in relation to the construction of the HE works indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from any claim, demand, action or proceedings resulting from damage caused by the construction of the HE works provided that—

- (a) Highways England notifies the undertaker immediately upon receipt of any such claim, demand, action or proceedings;
- (b) unless Highways England is otherwise required to do so sooner as a requirement in law or to comply with any order of the court, Highways England must prior to the settlement or compromise of any such claim, demand, action or proceedings consult the undertaker and have regard to any representations made by the undertaker in respect of any such claim, demand, action or proceedings; and
- (c) following the acceptance of any such claim, demand, action or proceedings, Highways England notifies the undertaker of the quantum in writing.

(2) Sub-paragraph (1) does not apply if the costs, expenses, damages, losses and liabilities were caused by or arise out of the act, neglect or default of Highways England or its officers, servants, agents, contractors or any person or body for whom it is responsible.

(3) Highways England must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, damages, losses and liabilities to which the indemnity under this paragraph applies.

(4) In no circumstances is the undertaker liable to Highways England under this Part of this Schedule for any indirect or consequential loss or loss of profits.

### **Arbitration**

**72.** Any difference or dispute arising between the undertaker and Highways England under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Highways England, be determined by arbitration in accordance with article 38 (arbitration).

**PROCEDURE FOR DISCHARGE OF REQUIREMENTS****Applications made under requirements**

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 42 days from the day immediately following that on which the application is received by the relevant planning authority;
- (b) where further information is requested under paragraph 2, 42 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (2) (a) or (b).

(3) Notice under sub-paragraph (1) above must be in writing and where the notice is a refusal the notice must provide the relevant planning authority's reasons for refusal.

**Further information**

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information to be necessary it must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the relevant planning authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

**Fees**

3.—(1) Where an application is made to the relevant planning authority for consent, agreement or approval in respect of a requirement, a fee of £116 is to be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the decision period as determined under paragraph 1;

unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

**Appeals**

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;



- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1;
- (c) on receipt of a request for further information under paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows:

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultees;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations under sub-paragraph (2) (d).

(3) The appointment of the person pursuant to sub-paragraph (2) (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (2) (4) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person and made available to all appeal parties within 10 business days of that date.

(6) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(7) The appointed person may-

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not);

and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person are to be met by the undertaker.

(13) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance or any circular or guidance which may from time to time replace it.

## **Interpretation of Schedule 7**

### **5. In this Schedule—**

“the appeal parties” means the relevant planning authority, the undertaker and any requirement consultees.

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

## SCHEDULE 8

Article 31

### REMOVAL OF IMPORTANT HEDGEROWS

**Table 4**

<i>(1) Important reference number</i>	<i>hedgerow</i>	<i>(2) Pole number</i>	<i>(3) Plan of important hedgerows affected, sheet number</i>
IH1		9	1
IH2		11	1
IH3		17	2
IH4		21	2
IH5		22	2
IH6		29	2
IH7		42	3
IH8		84	5
IH9		92	5
IH10		100	6
IH11		108	6
IH12		112	7
IH13		113	7
IH14		115	7
IH15		120	7
IH16		127	7
IH17		140	8
IH18		143	8
IH19		146	8
IH20		150	8
IH21		162	9
IH22		172	9
IH23		176	9

## SCHEDULE 9

Article 35

### DOCUMENTS TO BE CERTIFIED

The Book of Reference listed below—

**Table 5**

<i>(1) Application Documents No.</i>	<i>(2) Document Description</i>
4.3	Book of Reference Parts 1-5

The Land Plans listed below—

**Table 6**

<i>(1) Application document no.</i>	<i>(2) Sheet number</i>	<i>(3) Document description</i>
2.2.0	Sheet 0 of 16 (v8.0)	Overall Location Plan and Master Key Plan
2.2.1	Sheet 1 of 16 (v8.0)	Sheet 1
2.2.2	Sheet 2 of 16 (v8.0)	Sheet 2
2.2.3	Sheet 3 of 16 (v8.0)	Sheet 3
2.2.4	Sheet 4 of 16 (v8.0)	Sheet 4
2.2.5	Sheet 5 of 16 (v8.0)	Sheet 5
2.2.6	Sheet 6 of 16 (v8.0)	Sheet 6
2.2.7	Sheet 7 of 16 (v8.0)	Sheet 7
2.2.8	Sheet 8 of 16 (v8.0)	Sheet 8
2.2.9	Sheet 9 of 16 (v8.0)	Sheet 9
2.2.10	Sheet 10 of 16 (v8.0)	Sheet 10
2.2.11	Sheet 11 of 16 (v8.0)	Sheet 11
2.2.12	Sheet 12 of 16 (v8.0)	Sheet 12
2.2.13	Sheet 13 of 16 (v8.0)	Sheet 13
2.2.14	Sheet 14 of 16 (v8.0)	Sheet 14
2.2.15	Sheet 15 of 16 (v8.0)	Sheet 15
2.2.16	Sheet 16 of 16 (v8.0)	Sheet 16

The Works Plans listed below—

**Table 7**

<i>(1) Application documents no.</i>	<i>(2) Sheet number</i>	<i>(3) Document description</i>
2.3.0	Sheet 0 of 16 (v4.0)	Overall Location Plan and Master Key Plan
2.3.1	Sheet 1 of 16 (v4.0)	Sheet 1
2.3.2	Sheet 2 of 16 (v4.0)	Sheet 2
2.3.3	Sheet 3 of 16 (v4.0)	Sheet 3
2.3.4	Sheet 4 of 16 (v4.0)	Sheet 4
2.3.5	Sheet 5 of 16 (v4.0)	Sheet 5
2.3.6	Sheet 6 of 16 (v4.0)	Sheet 6
2.3.7	Sheet 7 of 16 (v4.0)	Sheet 7
2.3.8	Sheet 8 of 16 (v4.0)	Sheet 8
2.3.9	Sheet 9 of 16 (v4.0)	Sheet 9
2.3.10	Sheet 10 of 16 (v4.0)	Sheet 10
2.3.11	Sheet 11 of 16 (v4.0)	Sheet 11
2.3.12	Sheet 12 of 16 (v4.0)	Sheet 12
2.3.13	Sheet 13 of 16 (v4.0)	Sheet 13
2.3.14	Sheet 14 of 16 (v4.0)	Sheet 14

2.3.15	Sheet 15 of 16 (v4.0)	Sheet 15
2.3.16	Sheet 16 of 16 (v4.0)	Sheet 16

The Access and Rights of Way Plans listed below—

**Table 8**

<i>(1) Application document no.</i>	<i>(2) Sheet number</i>	<i>(3) Document description</i>
2.4.0	Sheet 0 of 16 (v5.0)	Overall Location Plan and Master Key Plan
2.4.1	Sheet 1 of 16 (v5.0)	Sheet 1
2.4.2	Sheet 2 of 16 (v5.0)	Sheet 2
2.4.3	Sheet 3 of 16 (v5.0)	Sheet 3
2.4.4	Sheet 4 of 16 (v5.0)	Sheet 4
2.4.5	Sheet 5 of 16 (v5.0)	Sheet 5
2.4.6	Sheet 6 of 16 (v5.0)	Sheet 6
2.4.7	Sheet 7 of 16 (v5.0)	Sheet 7
2.4.8	Sheet 8 of 16 (v5.0)	Sheet 8
2.4.9	Sheet 9 of 16 (v5.0)	Sheet 9
2.4.10	Sheet 10 of 16 (v5.0)	Sheet 10
2.4.11	Sheet 11 of 16 (v5.0)	Sheet 11
2.4.12	Sheet 12 of 16 (v5.0)	Sheet 12
2.4.13	Sheet 13 of 16 (v5.0)	Sheet 13
2.4.14	Sheet 14 of 16 (v5.0)	Sheet 14
2.4.15	Sheet 15 of 16 (v5.0)	Sheet 15
2.4.16	Sheet 16 of 16 (v5.0)	Sheet 16

The Plans of Important Hedgerows Affected

**Table 9**

<i>(1) Application document no.</i>	<i>(2) Sheet number</i>	<i>(3) Document description</i>
2.5	Sheet 1 of 9 (Rev 1)	Sheet 1
2.5	Sheet 2 of 9 (Rev 1)	Sheet 2
2.5	Sheet 3 of 9 (Rev 1)	Sheet 3
2.5	Sheet 4 of 9 (Rev 1)	Sheet 4
2.5	Sheet 5 of 9 (Rev 1)	Sheet 5
2.5	Sheet 6 of 9 (Rev 1)	Sheet 6
2.5	Sheet 7 of 9 (Rev 1)	Sheet 7
2.5	Sheet 8 of 9 (Rev 1)	Sheet 8
2.5	Sheet 9 of 9 (Rev 1)	Sheet 9

The additional documents listed below—

**Table 10**

<i>(1) Application documents no.</i>	<i>(2) Document description</i>
6.1	Environmental Statement: Chapter 1 Introduction (November 2018)
6.1.1	Environmental Statement: Appendix 1.4 Traffic and Transport Technical Note (July 2019)
6.2	Environmental Statement: Chapter 2 Alternatives and Design Evolution (November 2018)
6.3	Environmental Statement: Chapter 3 The Proposed Development (July 2019)
6.3.1	Environmental Statement: Appendix 3.1 Proposed Pole Schedule (November 2018)

6.3.2	Construction Environmental Management Plan (July 2019)
6.4	Environmental Statement: Chapter 4 EIA Approach and General Methodology (November 2018)
6.4.1	Environmental Statement: Appendix 4.1 Noise and Air Quality Technical Note (November 2018)
6.5	Environmental Statement: Chapter 5 Planning Policy (November 2018)
6.5.1	Environmental Statement: Appendix 5.1 Mineral Resource Assessment (November 2018)
6.6	Environmental Statement: Chapter 6 Landscape and Visual (November 2018)
6.6.1	Environmental Statement: Appendix 6.1 Landscape and Visual Assessment Methodology (November 2018)
6.6.2	Environmental Statement: Appendix 6.2: Landscape Baseline, LCA Sheets and Assessment (November 2018)
6.6.3	Environmental Statement: Appendix 6.3: Visual Baseline, Viewpoint Sheets and Assessment (November 2018)
6.6.4	Environmental Statement: Appendix 6.4: Cumulative Landscape and Visual Impact Assessment (November 2018)
6.6.5	Environmental Statement: Appendix 6.5: Residential Visual Amenity (November 2018)
6.6.6	Environmental Statement: Appendix 6.6: Photomontages and Wirelines (November 2018)
6.6.7	Environmental Statement: Appendix 6.7: Issues Raised and Responses to Scoping Opinion (November 2018)
6.7	Environmental Statement: Chapter 7 Ecology (November 2018)
6.7.1	Environmental Statement: Appendix 7.1: Ecology Assessment Methodology (November 2018)
6.7.2	Environmental Statement: Appendix 7.2: Ecology Baseline (November 2018)
6.7.3	Environmental Statement: Appendix 7.3: Extended Phase 1 Habitat Survey (November 2018)
6.7.4	Environmental Statement: Appendix 7.4: Arboricultural Survey (November 2018)
6.7.5	Environmental Statement: Appendix 7.5: Ornithology Surveys (November 2018)
6.7.6	Environmental Statement: Appendix 7.6: Amphibian Surveys (November 2018)
6.7.7	Environmental Statement: Appendix 7.7: Bat Surveys (November 2018)
6.7.8	Environmental Statement: Appendix 7.8: Otter and Water Vole Surveys (November 2018)

6.7.10	Environmental Statement: Appendix 7.10 Issues Raised and Responses to Scoping Opinion (November 2018)
6.8	Environmental Statement: Chapter 8 Historic Environment (November 2018)
6.8.1	Environmental Statement: Appendix 8.1 Historic Environment Assessment Methodology (November 2018)
6.8.2	Environmental Statement: Appendix 8.2 Historic Environment Baseline and Assessment (November 2018)
6.8.3	Environmental Statement: Appendix 8.3 Historic Environment Heritage Asset Tables (November 2018)
6.8.4	Environmental Statement: Appendix 8.4 Historic Environment Viewpoint Assessment (November 2018)
6.8.5	Environmental Statement: Appendix 8.5 Historic Environment Scoping Opinion Response (November 2018)
6.9	Environmental Statement: Chapter 9 Flood Risk, Water Quality and Resources (November 2018)
6.9.1	Environmental Statement: Appendix 9.1: Flood Risk, Water Quality and Resources Assessment Methodology (November 2018)
6.9.2	Environmental Statement: Appendix 9.2: Flood Risk, Water Quality and Resources Baseline and Assessment (November 2018)
6.9.3	Environmental Statement: Appendix 9.3 Issues Raised and Responses to Scoping Opinion (November 2018)
6.10	Environmental Statement: Chapter 10 Socio- Economic (November 2018)
6.10.1	Environmental Statement: Appendix 10.1: Socio-Economic Methodology (November 2018)
6.10.2	Environmental Statement: Appendix 10.2: Socio-Economic Baseline and Assessment (November 2018)
6.10.3	Environmental Statement: Appendix 10.3 Issues Raised and Responses to Scoping Opinion (November 2018)
6.11	Environmental Statement: Chapter 11 Land Use and Agriculture (November 2018)
6.11.1	Environmental Statement: Appendix 11.1 Issues Raised and Responses to Scoping Opinion (November 2018)
6.12	Environmental Statement: Chapter 12 Cumulative Effects (November 2018)
6.12.1	Environmental Statement: Appendix 12.1 Intra Project Cumulative Effects (November 2018)
6.13	Environmental Statement: Chapter 13 Summary of Environmental Effects (November 2018)
6.14	Environmental Statement Figures (Figures 1.1 – 4.2) (November 2018)

	Environmental Statement Figures (Figures 6.1 – 6.4) (November 2018)
	Environmental Statement Figures (Figures 6.5 – 6.9) (November 2018)
	Environmental Statement Figures (Figures 7.1 – 7.10) (November 2018)
	Environmental Statement Figures (Figures 8.1 – 11.2) (July 2019)
6.15	Environmental Statement: Non-Technical Summary (November 2018)
6.16	Environmental Statement: Glossary (July 2019)
7.2	Construction Report (November 2018)
Diagram 3.2	Environmental Statement: Diagram 3.2 Illustration of Pole Types (July 2019)

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises SP Manweb PLC (referred to in this Order as the undertaker) to install and keep installed, use and maintain, a 132kV underground cable, 1.2 km in length and a 132kV electric line above ground, 21.3 km in length in Shropshire and to undertake lower voltage line diversions and works to the Oswestry and Wem substations. The Order permits the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the land plans and the works plans and the book of reference mentioned in this Order and certified in accordance with article 35 (certification of plans etc.) and Schedule 9 of this Order may be inspected free of charge during working hours at Wem Library, High Street, Wem SY4 5AA