

AENC-NG-CNS-REP-0286

# Norwich to Tilbury

**Volume 8: Examination Documents**

**Document: 8.4.4 Applicant's Comments on any Further  
Information/Additional Submissions Accepted by the ExA**

**Final Issue A**

**February 2026**

**Planning Inspectorate Reference: EN020027**

**nationalgrid**

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# 1. Introduction

- 1.1.1 The Applicant has reviewed the additional third-party submissions accepted by the ExA in advance of Deadline 1, as invited to do so by the ExA, and including those submissions listed in Section 6 of Annex B of the Rule 8 letter [PD-011].
- 1.1.2 Many of the points made in those submissions have been made elsewhere and are therefore addressed by the Applicant in other Examination documents, including the Consultation Report [APP- 066], the **8.4.1 Applicant's Response to the Relevant Representations** and in the summaries of the Applicant's oral submissions at Issue Specific Hearing 1 and Compulsory Acquisition Hearing 1. Where this is the case, the Applicant has included an appropriate signposting cross-reference rather than restate those responses in their entirety.
- 1.1.3 The submissions made by Birketts LLP [AS-053] to [AS-060] (inclusive) which were published on the Planning Inspectorate's project page on 7 January 2026 do raise new points and are addressed in Section 2 below.
- 1.1.4 Richard Allen [AS-062] references an alternative route between pylons TB054 and TB060 near Aldham. He records the Applicant's response to this proposal which refers to multiple reasons for not accepting the change, and focuses on the heritage aspects, but not the reference to the Holford Rules. The respondent is directed to Paragraph 5.4.150 of the April 2024 Design Development Report [APP-359] which provides more information on the development of the Project proposals at Aldham.
- 1.1.5 The East of England Ambulance Service NHS Trust submission [AS-063] reads as a request for a S106 agreement but does not advance a planning case to meet the relevant tests.
- 1.1.6 Ardleigh Parish Council submitted two documents which were published on 29 January 2026. There is a submission document [AS-064] and a "Report on Proposed Route Alignment and EACN Substation Siting in Ardleigh" [AS-065]. These are under review and it is expected that the Applicant will respond at Deadline 2.

## 2. The Applicant's Response to the Birketts Submissions

- 2.1.1 This section of the document comprises the Applicant's response to various additional submissions made by Birketts LLP on behalf of 1) Olive Godbold, Stephen Andrew Baker, Diana Joy Johnson, 2) Thornbush Energy Limited, 3) Trustees of the Godbold Discretionary Settlement Trust, 4) The Executors of the Estate of Herbert Earthy Godbold, and 5) H&O Godbold Partnership [AS-053] to [AS-060] (inclusive) (together the "Birketts Submissions") and accepted into the Examination at the discretion of the Examining Authority on 8 January 2026.
- 2.1.2 Relevant Representations were also separately submitted by a number of the Interested Parties represented by Birketts LLP. This document should therefore be read alongside the 8.4.1 Applicant's Response to Relevant Representations submitted at Deadline 1.
- 2.1.3 The Birketts Submissions are extensive and wide-ranging. It is the Applicant's understanding that [AS-053] forms the primary or core element of the Birketts Submissions, whilst the remainder (i.e. [AS-054] to [AS-060]) constitute secondary or supporting components.
- 2.1.4 Therefore, and in order to enable the Examining Authority's understanding of the Applicant's position on the key issues raised in the Birketts Submissions and to assist in the efficient running of the Examination, the Applicant has sought to respond to matters on a thematic basis. The Applicant's responses are set out in Table 1.1 below, using section headings which correspond with those listed in the Table of Contents in [AS-053].
- 2.1.5 Notwithstanding the absence of substantive merit in the Birketts Submissions as a whole, the Applicant notes the concerns raised in [AS-053] and wishes to confirm, as a matter of record, that it has continued to engage proactively with the relevant Interested Parties. This engagement has included further correspondence and discussions to better understand the points raised and to provide clarification on the proposed land and rights requirements for all elements of the Project.
- 2.1.6 The Applicant's appointed land agent, Fisher German, has remained in dialogue with the Interested Parties' appointed land agent to arrange a further site meeting to discuss Heads of Terms and related practical matters. In parallel, UK Power Networks (UKPN) has engaged directly with the Interested Parties and undertook an initial site meeting on 23 February 2026.
- 2.1.7 This ongoing engagement forms part of the Applicant's established approach to landowner and stakeholder engagement throughout the Examination and will continue alongside the Examination process. Matters raised through subsequent submissions have therefore been progressed through direct engagement, rather than repeated here, with the intention of resolving issues wherever practicable.

Table 2.1 The Applicant’s response to matters raised in the Birketts Submissions

Summary of matters raised	National Grid’s response
Section 1 – “The Client and the Farm”	The contents of Section 1 of [AS-053] are noted.
Section 2 – “By 2035”	<p>Section 2 of [AS-053] seeks to challenge the need for the Project to be delivered by 2030, with an assertion that the 2030 date as set out in ‘Clean Power 2030 Action Plan’<sup>1</sup> should be afforded ‘<i>both less status and less weight</i>’ than the provisions in Overarching National Policy Statement for Energy (EN-1)<sup>2</sup> (‘NPS EN-1’) which refer to a 2035 decarbonisation date. It is further stated that the Applicant has chosen to accelerate delivery of the Project.</p> <p>The Applicant <u>does not accept</u> the position as set out in the Birketts Submissions.</p> <p>In outline terms, the Applicant considers that there should be no doubt that ‘Clean Power 2030 Action Plan’ is both relevant and important to the Secretary of State’s decision in respect of the application for the Project, in accordance with Section 104(2)(d) of the Planning Act 2008.</p> <p>Further, NPS EN-1 cannot be construed as mandating decarbonisation only <i>in or by</i> 2035. Contrary to the points advanced in the Birketts Submissions, there is nothing within NPS EN-1 which requires the decarbonisation target <u>to be met by 2035 and not before</u>. EN-1 (2024) makes it very clear that the proposal is to be treated as Critical National Infrastructure which is urgently needed and should not be delayed. The timing and urgency for electricity infrastructure is referred to within NPS EN-1:</p> <p><i>“3.3.68 The volume of onshore reinforcement works needed to meet decarbonisation targets is substantial. National Grid ESO forecasts that over the next decade the onshore and offshore transmission network, some of which is located offshore will require a doubling of north-south power transfer capacity due to increased wind generation in Scotland; ... and substantial reinforcement in East Anglia to handle increased power flows from offshore wind generation (this may also require additional offshore connections coming to land in England)”.</i></p>

<sup>1</sup> Department for Energy Security and Net Zero (2025) Clean Power 2030 Action Plan

<sup>2</sup> Department for Energy Security and Net Zero (2024) Overarching National Policy Statement for Energy (EN-1)

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*“3.3.83 Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.”*

Therefore, it is entirely possible for the Applicant to commit to deliver the Project by 2030 and remain compliant with NPS EN-1.

Since the submission of the application for development consent for the Project in August 2025, the Government has published updated National Policy Statements in the form of Overarching National Policy Statement for Energy (EN-1)<sup>3</sup>, National Policy Statement for Renewable Energy (EN-3)<sup>4</sup> and National Policy Statement for Electricity Networks Infrastructure (EN-5)<sup>5</sup> in December 2025. The Development Consent Order application was accepted for examination before these NPSs were amended, therefore the Project will still be subject to examination pursuant to the 2024 versions.

However, the revised EN-1, EN-3 and EN-5 further reiterate the government's commitment to 'Clean Power 2030 Action Plan', which aims for at least 95% of the UK's electricity generation to come from clean sources by 2030 and emphasises the urgency and Critical National Priority of developing low-carbon infrastructure such as the proposal is delivered as soon as possible and for a variety of reasons including energy security, thereby supporting the urgent need case established for the Project contained in the 2024 version of the EN-1.

NPS EN-5 also states the following regarding Transmission Owners:

*2.8.4 The Secretary of State should also take into account that Transmission Owners (TOs) and Distribution Network Operators (DNOs) are required under Section 9 of the Electricity Act 1989 to bring forward efficient and economical proposals in terms of network design.*

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<sup>3</sup> Department for Energy Security and Net Zero (2026) Overarching National Policy Statement for Energy (EN-1)

<sup>4</sup> Department for Energy Security and Net Zero (2026) National Policy Statement for Renewable Energy (EN-3)

<sup>5</sup> Department for Energy Security and Net Zero (2026) National Policy Statement for Electricity Networks Infrastructure (EN-5)

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*2.8.5 TOs and DNOs are also required to facilitate competition in the generation and supply of electricity, and electricity distributors have a statutory duty to provide a connection where requested.*

Within this context, it is noteworthy that the Applicant is also legally obliged (under its Transmission Owner Licence) to provide electricity transmission capacity at the dates formally agreed in contracts with energy generators (or customers). Contract dates are set out in the National Energy System Operator's Transmission Entry Capacity (TEC) register. Section 3 "Needs Case" of **Document 7.17 Strategic Options Backcheck and Review [APP-355]** states the TEC register background for East Anglia and Essex at the time of submission of the application for the Project (see Table 3.2 "Planned generation for East Anglia" and Para 3.7.17 "Essex Coast Generation Group" respectively). The Transmission System must accommodate these connections to meet the requirements of the National Electricity Transmission System Security and Quality of Supply Standards (NETS SQSS).

At each key stage of the consultation and submission process, the Needs Case for the Project has been reviewed and updated. Both the contracted background, as contained in the National Energy System Operator (NESO) Transmission Entry Connection Register and the NESO Electricity Transmission Ten Year (EYTS) Statement are also reviewed. The most recent update was completed to capture the latest information as of June 2025 as set out in **Document 7.19 2023 - Strategic Options Backcheck and Review [APP-355]**.

Appendix A, Page A3 of **Document 7.19 2023 - Strategic Options Backcheck and Review [APP-357]** sets out the Applicant's Transmission Owner Licence obligations, providing detail as to the duties referred to within The National Policy Statement for Electricity Networks infrastructure (EN-5). In particular:

- 'Condition D2: Obligation to provide transmission services', which includes 'responding to requests for the construction of additional transmission system capacity'.
- 'Condition D3 Transmission system security standard and quality of service' which includes 'Transmission owners are required to at all times plan, develop the transmission system in accordance with the National Electricity Transmission System Security and Quality of Supply Standard ('NETS SQSS')'.

Both Conditions D2 and D3 oblige the Applicant to ensure sufficient capacity for connections and system reinforcements to reach compliance with the NETS SQSS are in place.

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Furthermore, a delay to the Project would result in additional cost to the consumer. Annex 2 of the NESO Clean Power 2030 Report identifies that if the Applicant delivers the Project by the end of 2031 instead of by the end of 2030, the consumer would be exposed to additional constraints costs in excess of £2.5 billion. This equates to approximately £7 million for every day that the energisation of the Project is delayed into 2031

The factors above show the 2025 updated Need Case continues to indicate the urgent need for reinforcement for both Contracted and ETYS requirements aligned with National Policy Statements and Transmission Licence Obligations. Contrary to Section 2 of **[AS-053]**, the need to deliver the Project by 2030 is not, therefore, '*mere arm waving*' on the part of the Applicant.

### Section 3 – “NG and UKPN – Alternatives”

Paragraph 4 of Section 3 of **[AS-053]** makes the point that UK Power Networks Holdings Limited ('UK Power Networks') is not the holder of an electricity distribution licence from Ofgem (unlike Eastern Power Networks PLC ('EPN') which is). This point is factual. The submission then raises issues about The Town and Country Planning (General Permitted Development) (England) Order 2015/596, which are also raised in Section 4. The Applicant's response to these issues is set out in Section 4 below.

Paragraph 5 of Section 3 of **[AS-053]** contains various assertions regarding a 'Development Agreement' with UK Power Networks. The Applicant's position is that an overarching agreement is being negotiated between the Applicant, UK Power Networks and EPN which will address the diversions required and the commercial arrangements between the parties in this respect. The overarching Agreement is a high-level agreement between the parties and does not expressly address individual land holdings or those Interested Parties represented by Birketts LLP, and nor does it need to. Further, it is not necessary for this overarching agreement to be in place before the Applicant can enter into Heads of Terms for land agreements (or Option Agreements that may follow).

The Birketts Submissions **[AS-053]** purported to make an EIR request to the Applicant via the submission to Planning Inspectorate. This request has not been transferred to the Applicant via the Planning Inspectorate. However, the Applicant's position is that they cannot disclose the development agreement as the request made in the context of **[AS-053]** is for a draft document which is still in the course of completion and so pursuant to Regulation 12(4)(d) of the Environmental Information Regulations 2004 ('EIR'), disclosure is declined. Additionally, and in any event, the disclosure of the development agreement would adversely affect the confidentiality of the commercial interest of the Applicant and UK Power Networks, such confidentiality being provided by law to protect a legitimate economic interest and so, pursuant to Regulation 12(5)(e) of the EIR,

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disclosure is declined. The public interest in disclosing the development agreement does not outweigh the public interest in maintaining the exceptions outlined above.

In response to Paragraph 5.5 of Section 3 of **[AS-053]**, the Applicant confirms that Fisher German are acting for the Applicant and Dalclour McClaren are acting for UK Power Networks in respect of their Heads of Terms for the UK Power Networks apparatus. The Applicant has provided contact details of UK Power Networks' surveyor and has requested availability so that the Applicant can facilitate a joint meeting between all three agents in respect of land held by those Interested Parties represented by Birketts LLP.

Paragraphs 6, 7 and 8 of Section 3 of **[AS-053]** set out various legislative provisions, although no assertions are drawn from these legislative references until Paragraph 8.9 where it is stated that whilst the Applicant and EPN would have the benefit of permitted development rights (outside of the DCO application) this is not the case in respect of UK Power Networks. The Applicant responds further in relation to those issues raised in relation to planning related points in Section 4 below.

The Applicant also notes that the compulsory purchase powers under Schedule 3 to the Electricity Act 1989 are not engaged where the Applicant is promoting a Development Consent Order under the Planning Act 2008.

Section 4 – “The Electric Transmission Line and development associated with that”

Section 4 of **[AS-053]** is predominantly focussed on the permitted extent of ‘associated development’ (within the meaning of Section 115(2) of the Planning Act 2008) in the context of works to electricity distribution apparatus and equipment required to be carried out as part of the authorised development. Those works are referred to as the ‘UKPN Works’ in **3.1 Draft Development Consent Order [APP-056]** (‘Draft DCO’).

The Birketts Submissions seek to advance an argument that *‘the development that concerns the distribution of electricity [i.e. the UKPN Works] cannot qualify as “associated development” because the express purpose of the development relating to distribution is currently authorised by planning permission under SI 2015/596 “for” that category of development. Thereby, that category of development for that “aim” cannot simultaneously qualify as “associated development” for the different purpose of transmission nor to support that purpose.’*

The Applicant disagrees with this.

It is not clear to the Applicant on what basis, whether in statute or guidance, the existence or otherwise of statutory permitted development rights pursuant to The Town and Country Planning (General Permitted Development) (England) Order 2015/596 in relation to the UK Power Networks Works, or indeed any other element of the electricity distribution network, would preclude the inclusion of the UKPN Works within the Draft DCO as ‘associated development’.

With reference to **5.14 Details of Associated Development, with references to documents [APP-121]**, it is the Applicant’s position that all elements of the UKPN Works satisfy the legal requirements under Section

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	<p>115(2) of the Planning Act 2008 and are consistent with the core principles as set out in 'Planning Act 2008: Guidance on Associated Development Applications for Major Infrastructure Projects'<sup>6</sup>.</p> <p>The Applicant would also point to extensive precedent underpinning its proposed approach, including The National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 (S.I. 2024/958), The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 (S.I. 2024/393), The National Grid (Richborough Connection Project) Development Consent Order 2017 (S.I. 2017/817), and The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648).</p>
<p>Section 5 – “Development – Article 10 and Hillside”</p>	<p>Section 5 of <b>[AS-053]</b> appears to raise several, somewhat conflated, points which the Applicant understands are as follows:</p> <ul style="list-style-type: none"> <li>(A) That the availability of ‘Class B land development rights’ means that the statutory test under Section 122 of the Planning Act 2008 related to the authorisation of powers of compulsory acquisition is not satisfied.</li> <li>(B) That the inclusion of Article 10 is in and of itself inconsistent with underlying Parliamentary intentions in light of the Supreme Court’s decision in <i>Hillside</i>.</li> <li>(C) That the inclusion of Article 10 within <b>3.1 Draft Development Consent Order [APP-056]</b> (‘Draft DCO’) evidences both ‘an objective doubt’ as to the correct scope of the authorised development and also an acknowledgement that UKPN intends to rely upon its statutory permitted development rights for the purpose of carrying out the UKPN Works.</li> </ul> <p>For the reasons set out in the following paragraphs, the Applicant <u>disagrees</u> with all elements of Section 5 of the Birketts Submission.</p> <p><b>(A) Nature of Permitted Development Rights:</b></p> <p>The assertion made in Paragraph 11.17(g) of Section 4 of <b>[AS-053]</b> that the existence of ‘<i>Class B land development rights</i> [...] engenders an automatic alternative of fact in respect of the section 122, Planning Act 2008’ is both factually and legally incorrect.</p> <p>It is a fundamental mischaracterisation of the nature of statutory permitted development rights to suggest that they constitute an alternative to the use of powers of compulsory acquisition and/or temporary possession. Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015/596 makes clear that the effect of those statutory permitted development rights is to automatically grant planning</p>

<sup>6</sup> Department for Communities and Local Government (2013) Planning Act 2008: Guidance on Associated Development Applications for Major Infrastructure Projects

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permission for 'the classes of development described as permitted development in Schedule 2.' Therefore, and as is the case in all other instances where planning permission is sought and obtained for development, it is a wholly separate question as to whether or not the party wishing to implement that permission is able to lawfully access the land in question for that purpose.

It is for precisely this reason that statutory undertakers seeking to rely upon statutory permitted development rights must do so in combination with land rights secured either through voluntary agreement or through the promotion of a compulsory purchase order.

### (B) Article 10 of the Draft DCO:

The nature and purpose of Article 10 is already explained in paragraph 3.14 of **3.2 Explanatory Memorandum [APP-057]**.

Its inclusion is considered wholly justified, not only to provide a legal mechanism which would avoid any legal risks arising from the Supreme Court's *Hillside* judgment, but also to ensure that, in the event that development consent is granted for the Project, such consent cannot be undermined by subsequent third-party development that would otherwise create an inconsistency in law.

Submissions made in Paragraph 12 of Section 4 of **[AS-053]** seek to question the validity of Article 10 on the basis of what are, in effect, a series of wholly selective extracts from the Second Reading (House of Lords Committee Stage) of the Planning and Infrastructure Bill in September 2025. Particular weight appears to be placed on submissions made in that context by Baroness Taylor of Stevenage.

From the Applicant's perspective, these submissions must be disregarded in their entirety, noting that the legal obligation on the Secretary of State as regards the determination of the application for the Project is set out in Section 104 of the Planning Act 2008, and further that the Secretary of State cannot lawfully fetter his or her discretion (see, for example, *R (Sandiford) v SSFCA* [2014] UKSC 44 at Paragraphs 78-81).

Even if the Secretary of State was permitted to fetter his discretion, the statements made by Baroness Taylor would be wholly insufficient for that purpose. It is noteworthy that Baroness Taylor's remarks were made for the purpose of resisting an opposition amendment to a primary piece of legislation. The High Court has previously expressed doubt as to the utility of such statements, especially where the purpose is to thwart opposition amendments to proposed legislation (see, for example, *R (Unison) v SoS Health* [2009] EWHC 3221 (Admin) at Paragraphs 91-93). Further, it is a long-established legal principle that a statement made in Parliament cannot form the basis for a court to interfere with a decision made by the Secretary of State (see, for example, the Bill of Rights 1689).

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**(C) Scope of the authorised development:**

Paragraph 11.17(b) of Section 4 of **[AS-053]** asserts that the inclusion of Article 10 creates what is termed as 'objective doubt' as to the proper scope of the authorised development and that such doubt must be resolved in favour of the Interested Parties represented by Birketts LLP.

The Applicant disagrees entirely with this assertion.

For the reasons outlined above, including within **3.2 Explanatory Memorandum [APP-057]**, the inclusion of Article 10 in and of itself does not mean that the development for which development consent is sought, is incomplete. Article 10 is simply intended as a fall-back which would operate *if* future circumstances were to dictate as such, including in respect of other third-party developments where clearly the Applicant has no control. In the absence of Article 10, there is a real risk that those third party developments may operate to frustrate the delivery or continued use of the Project, the critical national need for which is already established.

Section 6 – “Farm Geography – Access, Soil and Water”

The Applicant recognises the importance of maintaining farm access and agricultural operations during construction. The Project has been designed to minimise disruption to farm access wherever reasonably practicable, and temporary impacts during construction are both anticipated and managed through **7.2 Outline Code of Construction Practice [APP-300]** ('Outline CoCP') and the Requirements set out in Schedule 3 to **3.1 Draft Development Consent Order [APP-056]** ('Draft DCO').

While parts of the land in question would be affected by construction activity at different times, the works are phased and geographically sequenced. As a result, impacts are temporary and localised, rather than affecting the holding as a whole at any one time. Once the phasing of the works has been established, relevant mitigation and, where appropriate, compensation measures can be agreed to support ongoing land management.

Temporary access arrangements, diversions and reinstatement measures are secured through the Outline CoCP and the relevant Requirements, ensuring that reasonable access is maintained throughout construction, consistent with good practice for linear infrastructure projects. Commitments specific to individual landholdings can be agreed through Heads of Terms negotiations.

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As is explained at Paragraph 1.2 of the Outline CoCP, the Outline CoCP *'provides the preliminary framework for the principles and procedures that the Main Works Contractor(s) must implement to minimise, manage and mitigate the potential environmental impacts of construction works associated with the Project'*. Compliance with the Outline CoCP, and indeed with any and all future versions of the same, is secured through Requirement 4 (Construction management plans) within Schedule 3 to the Draft DCO. Breach of the terms of a DCO without reasonable excuse is a criminal offence.

Further, and with reference to **6.5 Environmental Statement Chapter 5 EIA Approach and Method [APP-135]**, it is observed that the Outline CoCP secures what are termed by the Applicant as *'standard mitigation measures'* (i.e. management activities and techniques which will be implemented throughout construction of the Project), which operate alongside *'embedded mitigation measures'* and *'additional mitigation measures'*. These mitigation measures have been taken into account by the Applicant for the purpose of ascertaining whether or not any likely significant residual effects are likely to arise during construction and/or operation of the Project.

Therefore, and contrary to the lengthy submissions made at Paragraphs 14 and 15 of Section 6 of **[AS-053]**, there can be no question or element of doubt as to whether or not potential future impacts of the Project on soil, water resources and/or land drainage have been properly and robustly assessed; and nor can it be said that there is an absence of what **[AS-053]** refers to as a *'binding contract to ensure that the Main Contractor would execute the Project [...] within clearly defined "constraints".'* For the submissions in **[AS-053]** to indicate otherwise reflects a fundamental misunderstanding as to the approach to environmental impact assessment adopted by the Applicant on this Project, noting that the approach is, in and of itself, consistent with that followed in the context of countless other NSIPs across a range of sectors.

The appointment of a main contractor post-consent is in and of itself a normal and lawful approach for NSIPs and does not undermine the adequacy of assessment at this stage. The environmental effects have been assessed at a level proportionate to the nature of the Project, with further detail appropriately secured through Requirements.

The Applicant does not accept that the landholding in question would be rendered unviable as a consequence of the Project. Temporary restrictions are inherent to major infrastructure construction but do not equate to

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permanent loss of access or agricultural capability. The Project has been assessed on the basis that farming activity can resume following construction and reinstatement, which is the established approach for NSIPs of this nature.

The Applicant acknowledges that parts of the Order Limits pass through areas of best and most versatile (BMV) agricultural land, including Grade 2 soils. This is fully recognised in Volume 6: Environmental Statement and **5.6 Planning Statement [APP-085]**.

In accordance with Overarching National Policy Statement for Energy (EN-1)<sup>7</sup> (NPS EN-1), the Applicant has:

- Sought to minimise land take through route selection and design refinement
- Limited permanent land take largely to pylon foundations and essential infrastructure
- Provided for temporary land use during construction, with restoration secured through Requirements.

More specifically, the Outline CoCP (including **7.2 Outline Code of Construction Practice Appendix C - Outline Soil Resource Plan [APP-303]**) includes legally binding commitments upon the Applicant and the Main Works Contractor to:

- Strip, store and replace soils appropriately
- Prevent unnecessary compaction
- Reinstatement land to a condition suitable for its former use following construction.

The Applicant does not agree that the Draft DCO provides 'unfettered' powers. Limits of deviation are a standard and necessary feature of DCOs, especially those of a long linear nature, enabling micro-siting within controlled parameters to respond to factors such as local ground conditions while remaining within the environmental parameters assessed. Any deviation giving rise to materially new or different environmental

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<sup>7</sup> Department for Energy Security and Net Zero (2024) Overarching National Policy Statement for Energy (EN-1)

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effects from those already assessed would require further approval, ensuring environmental controls remain effective.

The Applicant recognises the presence of land drainage infrastructure within the affected landholding and has assessed potential impacts on that infrastructure as part of Volume 6: Environmental Statement. Indeed, the Outline CoCP includes specific measures relating to drainage and water management, including:

- Identification and protection of existing drains where practicable
- Temporary diversion or replacement of drainage during construction
- Reinstatement or replacement of drainage systems following works.

The Applicant does not accept the contention that drainage systems would be permanently destroyed. Temporary disturbance during construction is anticipated and addressed through replacement drainage schemes where required, informed by specialist input and consultation with relevant drainage authorities.

Potential effects on watercourses, groundwater and surface water have been assessed in accordance with NPS EN1 and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The Draft DCO includes provisions requiring:

- Consent for discharges to watercourses
- Compliance with environmental permitting regimes
- Implementation of pollution prevention measures.

The Outline CoCP also contains detailed measures to manage water quality during construction, including buffer zones, sediment control, spill response and reinstatement of watercourse crossings. These measures reflect established best practice and are subject to approval by relevant authorities.

The Applicant does not accept that the Project would result in unassessable or unacceptable impacts on water resources. Volume 6: Environmental Statement demonstrates that, with mitigation, effects would not be significant.

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	<p>The Applicant is satisfied that the Environmental Statement provides sufficient information to enable the Examining Authority and Secretary of State to reach a reasoned conclusion on environmental effects.</p> <p>Nonetheless, the Applicant notes the concerns raised in Section 6 of <b>[AS-053]</b> and would welcome further engagement with the Interested Parties to discuss these matters in more detail.</p>
<p>Section 7 – “The Taking of Land against the citizen’s will”</p>	<p>Section 7 of <b>[AS-053]</b> raises concerns around the application of the Rochdale Envelope in the context of minimising land take (and agricultural land use) as well as issues around reinstatement to Grade 2 agricultural land and how soil quality will be guaranteed to be restored, asserting that these issues create reasonable doubt which would be sufficient to exclude ‘127 Plots’ from the Development Consent Order and <b>4.3 Book of Reference [Revision B]</b>. Reference is made to the decision in <i>Prest</i> in terms of any doubt created from any of the issues raised in the submission being construed against the acquiring authority.</p> <p>The Applicant has responded to concerns regarding soil quality in Section 6 of this response (above) and to the proper application of principles derived from case law in Section 9 (below).</p> <p><b><u>Application of the Rochdale Envelope:</u></b></p> <p>The Applicant has, in common with most Development Consent Order applications, taken an approach of including Limits of Deviation (“LoD”) in the Draft DCO, which are environmentally assessed, in a manner which is wholly consistent with the Rochdale Envelope approach, to understand the potential for the Project to give rise to likely significant environmental impacts. LoD will play an important role in ensuring that the extent of land and rights required on a permanent basis is minimised wherever practicable and, especially so, in the context of a lengthy linear infrastructure project. LoD also allow reasonable flexibility to deal with unknown constraints encountered “on the ground” without the need for further amendments to the DCO. Particular reference is made in this context to Paragraphs 4.5.1 to 4.5.2 of <b>ES Chapter 4 – Project Description [APP-130]</b>.</p> <p><b><u>Section 127 of the Planning Act 2008:</u></b></p> <p>The Applicant understands that reference to ‘127 Plots’ is intended to mean Section 127 of the Planning Act 2008. Given that that particular legislative provision is intended to operate for the benefit and protection of</p>

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statutory undertakers (as defined in the legislation), and on the understanding that none of the Interested Parties represented by Birketts LLP qualifies as a statutory undertaker for these purposes, the Applicant does not consider that this particular element of [AS-053] is of relevance. Further, the substantive content within Paragraphs 18.4 to 18.13 of Section 7 of [AS-053] is considered to be misconstrued, noting that Section 127 of the Planning Act 2008 does **not** operate for the protection of any of these particular Interested Parties.

### Approach to Compulsory Acquisition:

Section 7 of [AS-053] also asserts that the Project is approaching the compulsory acquisition of land from a 'first resort' approach, contrary to Paragraph 2.6.3. of NPS EN-1. The Applicant rejects the assertions in this regard.

In the first instance, the Applicant considers that the Birketts Submissions (at Paragraph 17 of Section 7) have erroneously referred to EN-1 in relation to submissions made regarding Paragraph 2.6.3. It is assumed that reference was intended to be made to Paragraph 2.6.3 of EN-5.

In any case, the Applicant does not accept the contention (see, for example, at Paragraph 17.15 of Section 7) that CA powers may not be included in a DCO application until after "last resort" status has been achieved. Crucially, the submissions advanced in [AS-053] in this regard overlook the preceding Paragraph 2.6.2 of EN-5 which states in Footnote 12: *"Note, as set out in Compulsory purchase and compensation guidance, compulsory purchase is intended as a last resort and acquiring authorities are expected to try to acquire land by agreement before resorting to compulsory purchase. They can seek to acquire the land by agreement at any time and should attempt to do so before and/or alongside taking steps to acquire land by compulsion"* (emphasis added). Footnote 12 cross-refers to the extant 2021 CPO Guidance, which is to the same effect. Accordingly, and as somewhat of a recurring theme (to which see further at Section 9 of this document), the Birketts Submissions are divorcing Paragraph 2.6.3 of EN-5 entirely from its proper context. When Paragraph 2.6.3 is read alongside Paragraph 2.6.2 (and, thus, given its ordinary construction), it does not support the apparent assertion in [AS-053] that negotiations must first be exhausted (and "last resort" status reached) before a DCO application can make provision for CA powers. Negotiations and steps towards CA can be "twin-tracked" (as Footnote 12 in EN-5 makes clear and as was specifically noted by the Examining Authority in the

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recent context of the Bramford to Twinstead Reinforcement Project<sup>8</sup>). Indeed, from the Applicant's perspective, and when considered in the context of the statutory requirements under the Planning Act 2008, it is the actual authorisation of compulsory acquisition powers (at the point at which the DCO is made) and not the seeking of those powers (during the pre-application and Examination phases) which should be considered to be the point of "last resort". Until that point is reached, it therefore remains entirely permissible for the Applicant to pursue its current "twin track" approach.

Accordingly, Paragraph 25 of the 2013 Guidance and the relevant paragraphs of EN-5 are capable of being applied in a manner which is not contradictory.

**Requirement for Compulsory Acquisition Powers:**

The Applicant also disagrees with the assertion that the landholding of the Interested Parties should be excluded from the draft DCO. The CA powers sought over the land in question are required to facilitate discrete elements of the authorised development, comprising both National Grid Electricity Transmission ("NGET") works and associated works to electricity distribution apparatus to be undertaken by UK Power Networks ("UKPN").

In particular, the landholding of the Interested Parties is required to accommodate sections of the overhead electricity transmission line, including pylon foundations and associated construction activities, together with temporary construction compounds, access, working areas and related temporary possession necessary to deliver and reinstate the works. In addition, the authorised development includes associated development in the form of works to existing and new electricity distribution infrastructure, to be undertaken by UKPN, which are required to enable the connection and integration of generation and related energy infrastructure in the locality, including within and adjacent to the solar farm area.

In common with the remainder of the Project, the extent of land and rights sought has been defined through an iterative design and construction led assessment process and is limited to that which is reasonably required to

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<sup>8</sup> See Paragraph 6.6.14 of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy Security and Net Zero (12 June 2024).

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construct, operate and maintain the authorised development. The Applicant's justification as to why there is a compelling case in the public interest is set out in **4.1 Statement of Reasons [APP-059]** and is further explained in **8.5.2 - Applicant's Written Summary of Oral Submission and Response to Action Points for Compulsory Acquisition Hearing 1**.

Permanent acquisition of land is largely confined to substation and highways works, and permanent rights are sought for the construction, operation and maintenance of tower/pylon foundations and associated oversail, underground cable systems, drainage, access and essential infrastructure. The majority of land required on a temporary basis during construction is subject to reinstatement secured through the draft Development Consent Order and the Outline CoCP.

The expanded descriptions of the Classes of Rights sought are set out by the Applicant in the **Book of Reference [AS-018]**.

### Engagement with Interested Parties:

The Applicant has engaged with the Interested Parties in relation to the land rights required in respect of the Project since 2022, offering repeated opportunities to meet and discuss the Project either directly or through appointed agents.

Throughout both the non-statutory and statutory phases of the Project, members of the Applicant's project team have met on several occasions (including a site meeting September 12th 2024) with the appointed land agent, the Godbold Family, and representatives of Alcemi in relation to a proposed battery storage development to the south of the existing Bramford Substation. This engagement was regarded as constructive and resulted in refinement to the Project design where possible to accommodate the planned Alcemi development.

An early engagement letter issued in May 2025 confirmed the Applicant's preference to secure land rights through voluntary negotiations and invited recipients to enter into discussions, alongside early consideration of potential accommodation works based on the current Project design. Template Heads of Terms were issued in July 2025 to parties known to have a freehold interest in the land and their appointed agents.

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	<p>Further engagement was progressed in June 2025 through the issue of Section 42 notifications by the Applicant's land agents, Fisher German. Engagement in respect of survey licences required in respect of the Project continued in parallel throughout this period.</p> <p>On November 18th, 2025, a letter was received from Will Barton at Landbridge Chartered Surveyors, on behalf of their client Mr Baker, raising concerns about the Heads of Terms, the extent of land impacts, and the lack of effective engagement and responses to issues previously raised. Following this correspondence the Projects Land Rights Manger confirmed that Fisher German had already issued a request to meet and that this was still open to be accepted. A meeting was arranged and took place on December 12<sup>th</sup> 2025, attended by representatives from Fisher German on behalf of the Applicant, the Interested Parties' land agent and their appointed legal representatives from Birketts LLP.</p> <p>The Applicant's appointed land agent, Fisher German, has remained in dialogue with the Interested Parties' appointed land agent to arrange a further site meeting to discuss Heads of Terms and related practical matters. In parallel, UK Power Networks (UKPN) has engaged directly with the Interested Parties and undertook an initial site meeting on 23 February 2026.</p> <p>In the context of this engagement, it also merits noting that the fact that certain commercial agreements are currently being negotiated with other third parties does not invalidate earlier negotiations, nor does it render them 'meaningless'. It is not uncommon for large infrastructure projects to require coordination with multiple parties, and this does not undermine the legitimacy of the Applicant's engagement strategy or its reliance on compulsory acquisition powers where agreement cannot be reached in time.</p>
<p>Section 8 – “Secondary Legislation – The Draft Development Consent Order”</p>	<p>Section 8 of <b>[AS-053]</b> sets out quotations from various parts of <b>3.1 Draft Development Consent Order [APP-056]</b> ('Draft DCO') and <b>7.2 Outline Code of Construction Practice [APP-300]</b>. Emphasis has been added in places but without further commentary.</p> <p>The Applicant understands that Section 8 should be treated as an appendix to the preceding sections of <b>[AS-053]</b>, many of which cross-refer to the same quotations from the Draft DCO. Therefore, the Applicant does not consider Section 8 to contain any further substantive points requiring rebuttal.</p>
<p>Section 9 – “Law and Legal Requirements”</p>	<p>Section 9 of <b>[AS-053]</b> quotes extensively from a range of legislative and judicial sources. As with Section 8, the Applicant understands that Section 9 should be primarily treated as an appendix to the preceding sections of <b>[AS-053]</b>, the responses to which are set out within this table.</p> <p>That said, the Applicant does note that there is a general tendency within <b>[AS-053]</b> to rely, somewhat selectively, upon particular words and/or phrases within judgments and elevate them all to statements of legal</p>

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principle. As the Court of Appeal set out in *Revenue and Customs Cmrs v Decon Wase Management Ltd* [2021] EWCA Civ 584 (at Paragraph 91):

*'care should be taken to identify what principle of law a previous case establishes. It is trite law that a case is only authority for what it decides, that judgments are not to be read as if they were statutes, that every judgment has to be read in the context of the facts of the case and the issues argued, and that it is dangerous to take words of a judgment and apply them uncritically to other facts and different issues.'*

In this context, extensive reference is made to the decision in *Prest v Secretary of State for Wales* (1983) 81 L.G.R. 193, which is cited as being authority for the overarching proposition that any doubt arising from any of the matters raised in the application submission for the Project should, as a matter of law, be construed against the Applicant as the acquiring authority. Whilst the Applicant agrees that *Prest* is authority for the fact that the burden of proof rests with an acquiring authority in a compulsory acquisition context, and that the onus remains on the Applicant to demonstrate a compelling case in the public interest, the Applicant does not agree that the decision in *Prest* means that any element of doubt within an application must automatically be construed in favour of those represented in the Birketts Submissions. It is helpful to refer in this context to the decision in *De Rothschild v SST* (1988) 57 P&CR 330, in which Slade LJ held (emphasis added):

*"...Though all the judgments in Prest contained observations regarding onus, I, for my part, read them as doing no more than giving a warning that in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge on Wednesbury/Ashbridge grounds unless sufficient reasons are adduced affirmatively to justify it on its merits".*

Further, whilst the Applicant does not dispute the fact that the burden of proof, in a compulsory acquisition context, rests with it as the acquiring authority, it disagrees with the assertion made in [AS-053] that there is any form of principle of '*contra proferentum*' which operates against the acquiring authority at all stages in this context.

The principle of '*contra proferentum*' is a canon of construction, which operates in the private law sphere, and which provides that where there is doubt as to the meaning of a contract, the words in question will be construed against the person who put them forward. Notwithstanding the fact that there is doubt as to the continued existence and utility of that principle (see *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29 at Paragraph 111), the intention is that the principle should operate in a contractual context rather than in the context of compulsory acquisition where the Applicant is ultimately reliant upon legislative provisions which it did not draft. Its relevance is, therefore, disputed.

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Similarly, the Applicant notes the reliance placed in **[AS-053]** on the decision in *R(on the application of Sainsbury's Supermarkets Ltd) Wolverhampton City Council* [2011] 1 AC 437, in which reference was made to remarks made in an earlier decision of the High Court of Australia that '[...] where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights.'

It appears to the Applicant that a general line of argument is being advanced in **[AS-053]** such that *any* statute which *could* lead to the authorisation of compulsory acquisition powers must be interpreted restrictively and in a way which minimises interference with private property rights.

The Applicant disagrees with this line of argument, noting that a number of decisions concerning the general interpretation of the Planning Act 2008 have made no mention of the need for a restrictive interpretation of provisions despite the fact that the Act could authorise the compulsory acquisition of land or rights (see, for example, *Tidal Lagoon (Swansea Bay) plc v SSBEIS* [2022] EWCA Civ 1579 and *R (Innovia Cellophane Ltd) v Infrastructure Planning Commission* [2011] EWHC 2883 (Admin)). From the Applicant's perspective, it is incorrect to argue that any and all provisions within the Planning Act 2008, regardless of their nature and content, must always be interpreted in favour of individual landowners.

National Grid plc  
National Grid House,  
Warwick Technology Park,  
Gallows Hill, Warwick.  
CV34 6DA United Kingdom

Registered in England and Wales  
No. 4031152  
[nationalgrid.com](http://nationalgrid.com)