

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

NORWICH TO TILBURY DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN20027

DEADLINE 6

**WRITTEN SUBMISSION OF ORAL
REPRESENTATIONS MADE ON BEHALF OF
NATIONAL HIGHWAYS LIMITED AT CAH3**



INTRODUCTION

This is a written submission made on behalf of National Highways Limited in respect of oral submissions made at the Compulsory Acquisition Hearing 3 on 24 June 2026. This written submission seeks to set out the oral submissions and to provide further detail in relation to the same.

Individual Site Representations	
Agenda Item 4	Updates on progress on negotiations from affected persons registered to speak. Each party will be given three minutes to update the ExA on matters and progress. The schedule of attendees is shown in annex A of this agenda and this will also comprise the order in which the ExA will hear from those parties. The applicant will have the opportunity to reply and the ExA may ask further questions.
	1 Overview of NH's Objection 1.1 NH objects to the powers being sought over approximately 154 plots of land owned or occupied by it for the purposes of its statutory undertaking¹. Compulsory Acquisition powers may only be used in accordance with the statutory framework as set out in NH's previous submissions.² This submission provides an update on NH's objection. 2 To date NH's Grounds of Objection are as follows:- 2.1 Compulsory acquisition of operational land is not necessary. 2.1.1 Discussions in this regard are ongoing. However, it expected that agreement can be reached that the Applicant need not obtain compulsory acquisition powers over the SRN or land controlled by National Highways. The relevant works are either already authorised by the DCO, subject to protective provisions, or access can be secured through protective provisions and agreement. It is noted that the Examining Authority at the hearing queried whether as a result of an agreed position, the Applicant would amend the

¹ NH's position remains largely as previously set out at CAH2 on 30 April and Deadline 5A submission of 17 June.

² **Section 122** of the Planning Act 2008 provides that an order granting development consent may include provision authorising compulsory acquisition of land only if the Secretary of State is satisfied that the land is (a) required for the development to which the development consent relates, (b) required to facilitate or is incidental to that development, or (c) replacement land given in exchange. In addition, under **section 123**, there must be a compelling case in the public interest for the land to be acquired compulsorily, taking into account the availability of alternatives and proportionality. The DCLG Guidance (September 2013) elaborates on these tests, emphasising that the applicant must demonstrate that the land sought is necessary (i.e., no more land is included than is reasonably required) and that the proposed interference is proportionate to the objectives of the scheme. NH submit that the statutory tests of necessity, proportionality and without detriment are not satisfied

Class of Rights sought in the Book of Reference to Class 8 Rights (effectively white land). It is NH's position that if agreement is reached on these plots, it is entirely appropriate for those plots to be either removed from the Book of Reference entirely or moved from being shown as Class 1 Rights plots to being Class 8 plots. Such an approach would mirror the approach being taken in the Oxfordshire Strategic Railfreight project interchange DCO [TR 050008] which has recently been accepted for examination.

2.2 Acquisition of rights is not necessary

2.2.1 NH object to the acquisition of rights, principally for overhead lines and underground cabling. Most affected plots are operational highway forming part of the SRN. It is NH's position that rights are not in fact required because the Applicant already has an adequate statutory route to carry out the relevant works. In relation to overhead lines, the Electricity Act permits overhead line works over land dedicated to public use with the consent of the street authority, such consent not to be unreasonably withheld. Accordingly, the Applicant has a statutory power in the Electricity Act 1989 s10(1) and Schedule 4 1(1) to install "*under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing— (a) (i) any electric lines or electrical plant; and (ii) any structures for housing or covering any such lines or plant; and (b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes— (i) opening or breaking up any street or any sewers, drains or tunnels within or under any street (ii) tunnelling or boring under any street; and (iii) removing or using all earth and materials in or under any street; but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.*"

2.2.2 Article 11(6) of the DCO3 mirrors the Electricity Act provisions for Street Works, and expressly provides that:

"(6) The authority given by paragraph (1) or (2) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act". Article 11(7) also provides that the powers conferred in paragraphs (1) and (2)[of Article 11] are without limitation of the powers of the undertaker under the 1989 Act".

2.2.3 S48(3) of The New Roads and Street Works Act 1991 ("NRSWA") defines "Street Works" as including the placing of apparatus or inspecting maintaining, adjusting, repairing, altering or renewing apparatus, changing

	the position of apparatus or removing it. Section 105 NRSWA confirms that references to works “in” a highway include works under, over, across, along or upon it. In addition, there are powers in NRSWA that regulate the exercise of the rights⁴. By way of an example, S51 of NSWRA means that the Applicant needs a statutory right or a licence to undertake street works but the Applicant already has a statutory right through both the Electricity Act and the DCO (as set out above) and so do not need a licence, furthermore S83–85 of NSWRA govern what happens when the authority's own works affect apparatus e.g. S84 NSWRA sets out what happens when major highway works are proposed that affect an undertaker's apparatus. 2.2.4 Further, Article 3(2)(a) and (b) of the DCO authorises construction and retention of the authorised development, which includes the overhead lines. 2.2.5 Accordingly, the Applicant already possesses statutory powers under the Electricity Act 1989 and NRSWA, and will have powers under the DCO to install, maintain and repair apparatus in a public highway. 2.2.6 Taken together, those provisions provide a complete and workable statutory framework for the installation, retention, maintenance and repair of apparatus in, under and over the public highway. They are specifically designed to regulate utilities' interaction with highways while protecting NH's responsibility for the safe operation and management of the highway. Accordingly, National Grid can undertake overhead line works without the need for Compulsory Acquisition, and the inclusion of these plots is again not necessary or proportionate as required by the Compulsory Acquisition Guidance. 2.2.7 NH understand that the Applicant does not wish to rely on those public law powers and instead seeks an easement. The Applicant's proposed approach would convert a public regulatory issue into the acquisition of private rights over public highway land, granting private rights in airspace that is also subject to the statutory rights of other undertakers. This is objectionable in principle. 2.2.8 The highway is held and managed for public highway purposes, and the appropriate mechanism for utility apparatus in the highway is the statutory street works and electricity code regime, not the compulsory imposition of private easements. Any legitimate concerns as to safety, access, maintenance, clearances, asset protection or future highway operation can be addressed through the street authority consent process, protective provisions, technical approvals and conditions. Those mechanisms are more targeted and proportionate than the acquisition of permanent rights. Nor is it sufficient for the Applicant to say that an
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	easement is the “safest” way of proceeding. Compulsory acquisition powers must be justified by reference to necessity, proportionality and a compelling case in the public interest. A preference not to rely on existing statutory powers does not meet that threshold. The Applicant has not demonstrated that the existing statutory regimes would prevent the authorised development from being constructed, retained or maintained. 2.2.9 Moreover on Yorkshire Green it is understood the Project Team have accepted that the installation and retention will proceed rights in the DCO/Electricity Act and NRSWA with no easement being pursued. In response the Applicant noted that it was content to rely on the DCO powers and the Street Works statutory provisions for protective interventions for scaffolds, enabling works for abnormal loads, temporary constructions matters and activities that are necessary to protect the SRN but that the statutory regime is not a land rights regime for NSIPs. The Applicant noted in this regard that support for this position is found in the Cambridgeshire Wastewater Treatment Plant DCO where, the Applicant notes, the Secretary of State accepted the argument that an easement was justified. The Applicant also noted that, in relation to Yorkshire Green, it is understood that the DCO was granted with an easement and that the project team on Yorkshire Green is not taking the approach NH have set out above. In response to the ExA's queries, as to what additional rights are required over and above the Electricity Act and NRSWA powers, the Applicant noted that further submissions would be forthcoming in relation to the above following further legal analysis. NH note that the easement position at Cambridge Wastewater is not at all comparable to the Norwich to Tilbury DCO easement position on the basis that Cambridge Wastewater relates to an underground pipe whereas the easement issue in this case relates solely to the overhead lines. 2.2.10 Where an underground cable may require an easement, because the proposed cable depth falls within the subsoil, NH is prepared to grant such easement by agreement, and discussions are ongoing. 3 Summary and Conclusion 3.1 NH's objection is that the statutory tests of necessity, proportionality and without detriment are not satisfied. The Applicant can achieve its objectives through existing statutory powers, protective provisions and voluntary agreement.
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	4 Post Hearing Update 4.1 The ExA's commented at the hearing, and it is acknowledged by NH, that there are less than seven weeks before the end of the Examination Period. NH is keen to move matters forward with the Applicant. However, and as noted by the Applicant, it is possible that there may be two different versions of the protective provisions (Applicant set and NH set). The Applicant also noted that it was the intention of the parties to schedule a meeting for the week following the hearing. Whilst there has been some correspondence in relation to a meeting, to date no further meeting has been scheduled. NH are keen to continue working with the Applicant to resolve all outstanding matters. NH look forward to the Applicant's further submissions as to why an easement for the OHL is necessary and how that requirement accords with the compulsory acquisition statutory framework.
Agenda Item 5	The ExA will seek an update on progress on the following matters: a) statutory undertakers (including progress and position on protective provisions) b) crown land c) negotiations with affected persons d) whether design development has progressed, and details thereof, relating to localised changes within the order limits that may reduce or remove CA or TP requirements e) progress of UKPN land negotiations, how this is being tracked and what information is before the ExA to justify CA or TP for their taking of land and or interests
	The ExA invited written submissions on these items. NH at ISH3 indicated that there is concern that agreement will not be reached on the form of NH's protective provisions. Please see NH's comments on Deadline 5 submission, submitted at Deadline 6 which comments on the protective provisions within the draft DCO submitted at Deadline 5.