

AENC-BCLP-LEG-REP-0031

Norwich to Tilbury

Volume 8: Examination Documents

Document: 8.29.1 Application under Section 127 Planning Act 2008 -
Affinity Water Limited

Final Issue A

July 2026

Planning Inspectorate Reference: EN020027

nationalgrid

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1. Application Under s127 of the Planning Act 2008 (Affinity Water) – Statutory Undertakers’ Land

1.1 Introduction

- 1.1.1 National Grid Electricity Transmission plc (the Applicant) submitted, on 29 August 2025, an application for development consent to the Secretary of State for the Norwich to Tilbury project (the project) (application reference EN020027). The application was accepted by the Planning Inspectorate on 26 September 2025.
- 1.1.2 The **3.1 Draft Development Consent Order [Revision F]** includes provision for the compulsory acquisition of land and rights in land, including the acquisition of land and rights in “statutory undertakers’ land”, as defined by s.127 of the Planning Act 2008, as amended (the 2008 Act). As the **3.1 Draft Development Consent Order [Revision F]** will affect statutory undertakers’ land or interests in land, the Applicant believes that s.127 is engaged by the **3.1 Draft Development Consent Order [Revision F]**.

1.2 Section 127 of the Planning Act 2008

- 1.2.1 Section 127 applies to land (statutory undertakers’ land) if:
- The land has been acquired by a statutory undertaker for the purposes of its undertaking;
 - A representation has been made, and not withdrawn, about an application for development consent; and
 - The Secretary of State is satisfied that:
 - The land is used for the purposes of carrying on the statutory undertakers’ undertaking; or
 - An interest in land is held for those purposes.
- 1.2.2 For the purposes of s.127, “land” includes any interest in or right over land (as defined in s.159 of the 2008 Act).

1.3 Section 138 of the Planning Act 2008

- 1.3.1 The **3.1 Draft Development Consent Order [Revision F]** also includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers, and as such the Applicant believes that s.138 of the Planning Act 2008, as amended (the 2008 Act), is engaged by the **3.1 Draft Development Consent Order [Revision F]**.
- 1.3.2 Section 138 applies to land if:

- There subsists over the land a relevant right; or
- There is on, under or over the land relevant apparatus.

1.3.3 Section 138 provides that the **3.1 Draft Development Consent Order [Revision F]** may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the **3.1 Draft Development Consent Order [Revision F]** relates.

1.4 This Application

1.4.1 The relevant statutory undertaker for the purposes of this application is Affinity Water Limited (Affinity Water). The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Affinity Water (Affinity Water's Land) for the purposes of its undertaking.

1.4.2 Affinity Water has made a representation to the Planning Inspectorate in relation to the application for development consent (**[RR-0036]** and **[REP1-197]**). The Applicant is in ongoing discussions with Affinity Water regarding the application, and as such its representation has not currently been withdrawn.

1.4.3 If that representation is not withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on Affinity Water's statutory undertaking, then the **3.1 Draft Development Consent Order [Revision F]** may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land, by the creation of a new right over land, to the extent that the Secretary of State is satisfied that the requirements of s.127 have been met.

1.4.4 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 of the 2008 Act.

1.4.5 The following documents were submitted as part of the application for development consent in August 2025, have been updated throughout the examination and are relied upon to support this application under s.127:

- **2.2 Land Plans – Section A-H [Revision E];**
- **2.3 Work Plans – Section A-H [APP-017 - APP-018, REP4-015, APP-020 – APP-023, REP4-016];**
- **3.1 Draft Development Consent Order [Revision F];**
- **3.2 Explanatory Memorandum [Revision F];**
- **4.1 Statement of Reasons [Revision E]; and**
- **4.3 Book of Reference [Revision E].**

1.4.6 The **4.1 Statement of Reasons [Revision E]** sets out the justification for seeking compulsory acquisition powers within the **3.1 Draft Development Consent Order [Revision F]**.

1.5 Need Case

- 1.5.1 The need for the project has been established in the **5.6 Planning Statement [APP-085]** and **4.1 Statement of Reasons [Revision E]** and is underpinned by National Policy Statements EN-1 (2024) and EN-5 (2024).
- 1.5.2 Consistent with the Government's Net Zero target, there has been, and continues to be, growth in the volume of renewable and zero carbon generation that is seeking to connect to the electricity transmission system in the East Anglia and South East regions. UK Government policy clearly sets out the critical requirement for significant reinforcement of the transmission system to facilitate the connection of renewable energy sources and to transport electricity to where it is used. The National Energy System Operator (NESO) published Clean Power 2030: Advice on achieving clean power for Great Britain by 2030 (NESO, 2024). This report states that *'Three projects have been identified as critical to delivering a network which supports the clean power pathways, but at present have delivery dates after 2030. Support is therefore needed to bring these projects forward for 2030 delivery. These are projects in East Anglia and in the southeast that are critical for connecting offshore wind in the North Sea and supporting the flow of clean power. Our assessment suggests that without these projects, the clean power objective would not be achieved, leaving the clean power target short by around 1.6% in 2030 (assuming a typical weather year) and consumers could face extra constraint costs of around £4.2 billion in 2030.'* The Project is specified as two of those three projects. The critical and urgent nature of the project is therefore also recognised in the strongest terms in a recent report in achieving Clean Power 2030 objectives. It is clear that there is a compelling case and established need for the Project and that it will deliver national economic, social and environmental benefits in line with the Government's clear objectives of delivering sustainable development.
- 1.5.3 East Anglia's 400 kV electricity transmission network was built in the 1960s. It was built to supply regional demand, centred on Norwich and Ipswich. For many years, the only significant power stations generating in the East Anglia region were the Sizewell A and the Sizewell B nuclear power stations, Spalding North and Sutton Bridge gas fired power stations, and some further smaller 132 kV connected gas fired power stations.
- 1.5.4 This generation capacity has recently been added to by several offshore windfarms with the existing generation totalling 6,552.4 MW of installed capacity. This is expected to grow substantially in coming years. In the East Anglia region, connection agreements have been signed for 26,919.9 MW of new generation (total generation of 33,472.3 MW minus existing generation of 6,552.4 MW). These future connection agreements comprise a large volume of offshore wind generation (including East Anglia Offshore Wind), gas-fired generation, energy storage projects, and a nuclear power station (at Sizewell C).
- 1.5.5 Without reinforcement, the capacity of the East Anglia and South East existing network is insufficient to accommodate the connection of the proposed new power sources. The 'Thermal Boundary Export Limit' – the physical maximum energy capacity the system can accommodate during planned system faults – would be exceeded, preventing export of power to demand centres beyond East Anglia. In these circumstances, generators connecting in the area would be required to reduce their output and would be compensated via a 'constraint' payment. These costs would be passed on to end consumers. National Grid ESO (now NESO) analysis

shows that, in this case, predicted constraint costs are likely to significantly exceed those of reinforcement.

- 1.5.6 The planning policy support for the Project is very strong. The PA 2008 requires that the application is determined in accordance with the relevant NPS unless certain exceptions apply. The identification of the Project as CNP in NPS EN-1 (DESNZ, 2024a) means that in determining the application the Secretary of State will need to consider the particular circumstances of an application, but will take as a starting point for decision making where non-Habitats Regulations residual impacts remain that such infrastructure is to be treated as if it has met any test requiring a clear outweighing of harm, exceptionally, or very special circumstances within NPS EN-1 (DESNZ, 2024a), NPS EN-5 (DESNZ, 2024b) or any other planning policy. NPS EN 1 and NPS EN-5 establish the urgency of the need for electricity infrastructure.
- 1.5.7 In the Clean Power 2030 report, NESO lays out pathways for how Great Britain can reach a clean power system by 2030. The report identifies that offshore wind will be the bedrock of that system, providing over half of Great Britain's generation, with onshore wind and solar providing another 29%. New dispatchable low carbon technologies, such as using carbon capture and storage or hydrogen, add significant value to the system, with even relatively small levels of operational capacity materially reducing the overall challenge for the rest of the programme.
- 1.5.8 Associated with the new energy generation, the report identifies the need for a major network expansion, in line with published plans for the transmission network and with further strengthening at distribution level.
- 1.5.9 The report identifies the Project as critical to delivering a network which supports the clean power pathways, but at present has a delivery date after 2030. Support is therefore needed to bring the Project forward for 2030 delivery.
- 1.5.10 The policy position supporting the need case for the Project is further supported in the updated EN-1 and EN-5 which came into force on 6 January 2026. The updated EN-1 and E-5 set out the government's commitment to the Clean Power Action Plan 2030, 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 (CNP) of developing low-carbon infrastructure, thereby supporting the need case established in the ES. Given the PA 2008 requirements set out in section 104, the clear statements in the NPS weigh strongly in favour of granting development consent for all energy projects in general and highlights the urgent need for new electricity transmission projects, and that need has been established.

1.6 Proposed Works

- 1.6.1 The works which are proposed over Affinity Water's Land in connection with the project include, in particular, the following interactions with Affinity Waters' below ground apparatus:
- Installation of temporary bellmouth junctions
 - Installation of permanent overhead line conductor
 - Installation of temporary crossing protections/scaffolding
 - Installation of temporary haul road crossings
 - Installation of permanent underground cable crossings

- DNO works including overhead line pole dismantlement and installation of permanent underground cable

Table 1.1 Proposed Works and Locations

Easting, Northing		Work	Works Description
603755	233091	Bellmouth Junction	Installation of bellmouth junctions are as detailed in 2.6.3 Design and Layout Plans - Traffic & Transport [APP-043]
603781	231343		
603792	231342		
603903	231386		
603910	231387		
603997	235198		
604448	229484		
604851	230933		
604860	230945		
605299	230042		
605874	229795		
604438	229553	Overhead Line Crossing	Pilot wires would be used to pull conductors between pylons. Additional fittings, such as spacers (to prevent the conductors from touching each other) and dampers (to prevent oscillations in the overhead line), would then be fitted to the conductors. An earth wire would run along the top of the pylons and contain optical fibres to allow transmission of data around the system
605029	229980		
605276	230012		
605873	229724		
605408	230183	Haul Road Crossing	For overhead line construction, the haul roads would be typically 6 m wide, with passing places (widening to 8 m) provided at typical intervals of 200 m. The frequency of passing places would be determined by site-specific conditions at the detailed design stage and the forward visibility along the haul roads.
605423	230170		
			For the construction of underground cables, CSE compounds and substations, the haul roads would be typically 8 m wide to allow for the delivery and movement of larger equipment using Abnormal Indivisible Load (AIL) vehicles.
			The typical cross section of the haul road would be 21 m wide, to allow for topsoil and subsoil storage, drainage, and demarcation fencing. A standard detail showing the typical layout of the haul road is shown in 2.6.3 Design and Layout Plans - Traffic & Transport [APP-043]
			For the assessment of haul road construction, it is assumed that topsoil (and some subsoil) would be

Easting, Northing	Work	Works Description	
		stripped and aggregate (e.g. stone) placed on top of the subsoil, delivered to site by HGVs.	
		Within the underground cable sections, the haul roads would normally be positioned central to the alignment, i.e. with cable trenches located either side of the haul roads. Therefore, no additional vegetation clearance would be required, except in some cases where the haul road deviates from the underground cable alignment to reach a site access point onto the public highway.	
603473	231997	Underground Cable Crossing	Standard opencut installation typically involves the following processes:
603495	231986		
603498	231994		1. Appropriately fencing off the working area to secure the site from trespassing and livestock
603500	231993		
603906	231388		2. Vegetation would be removed where necessary and topsoil would be stripped from the working area and stored for reuse
603942	235233		
603945	235226		3. A haul road would be installed along the alignment to provide access for construction vehicles to the working areas
604012	235189		
604637	231004		4. Several open trenches (typically six trenches each accommodating three cables) would be excavated, ducts would be placed within the trenches and then backfilled with a surround of CBS. Telecommunication and ancillary cables are usually placed adjacent to the main cables and within the CBS surround prior to backfilling
604862	230943		
604863	230942		
605377	230144		
605378	230143	5. Concrete joint bays would be constructed with the High Voltage Alternating Current (HVAC) cables pulled into the ducts from one joint bay to the next using a winch	
605844	229659		
605844	229659		
605844	229659		
605870	229630	6. HVAC cables would be jointed (requiring work in a controlled environment)	7. The joint bays would be backfilled and link pillars installed above ground to allow monitoring of the cables
605874	229752		
		Where open trench is not feasible, for example where the alignment crosses an existing live railway line or other drivers such as for environmental mitigation, trenchless installation may be required. An example of which is Horizontal Directional Drilling (HDD). Typically, for HDD, a construction corridor approximately 200 m wide ²² is required. The underground cable would typically be at a depth of 10 m below ground level; however, the depth would	

Easting, Northing	Work	Works Description
		depend on the methodology employed and local constraints. The underground cable would be installed using a drilling or boring method (or a suitable alternative method) to pass beneath features. There are different trenchless methods that could be used, and each method would have a different construction footprint (all of which could be accommodated within the Order Limits). Depending on the technique, there may be a need to undertake several passes to make the hole wide enough to allow the ducts (pipes) to be pulled through. Further illustrative details can be found in 2.6.1 Design and Layout Plans - Subs & Cables [Revision C]
604918	230633	DNO Works – Vehicles and equipment would be similar to that required for the proposed 400 kV overhead line and underground cable works but at a reduced scale relevant to the works. A terminal wood pole structure would be installed at each end of the section to be undergrounded to facilitate the transition from overhead line to underground cable. The installation of underground cable diversions is assumed to be in a single trench typically up to 1 m in width with 1.2 m depth to the cover (worst-case for deep ploughing). These would be routed either within the existing highway, highway verges or across farmland (using existing gaps through hedgerows where practicable). An underground cable limit of deviation of 25 m has been applied. It is assumed works would be completed using suitable vehicles, for example standard 4x4 or agricultural type vehicles and an excavator (size relevant to the works), which would use the public highway or existing agreed access routes (for the wood pole line), field gates and hedgerow gaps (where practicable). It is assumed there would be no requirement to create new physical temporary access tracks.
605320	230070	
605372	230135	
605805	229602	
605830	229631	
605866	229587	

- 1.6.2 Following identification of Affinity Water underground utilities, the Applicant will undertake a comprehensive risk assessment that evaluates the scope of work, proximity to the pipeline, ground conditions, and the equipment to be used. Based on this assessment, the contractor will establish a safe system of work, including defined exclusion zones, appropriate excavation methods, and emergency response

procedures. These controls will be clearly communicated to all personnel through site briefings and method statements to ensure a consistent understanding of the risks and mitigation measures.

- 1.6.3 The Applicant will ensure that all personnel involved in the work are competent and adequately trained in pipeline safety procedures. Workers will be briefed on how to recognize potential hazards, hissing sounds, or visible damage to infrastructure. In the event of a suspected or confirmed pipeline strike or leak, the delivery partners will immediately stop all work, evacuate the area, and notify the relevant emergency services if required and pipeline operator without delay.
- 1.6.4 If a pipeline is exposed, the delivery partners will ensure that it is properly supported and protected at all times. Measures will be taken to prevent undue stress, bending, or movement, and no heavy equipment or stored materials will be placed directly over or in close proximity to the pipeline. Where necessary, physical barriers or protective systems will be installed to minimize the risk of accidental impact or loading.
- 1.6.5 Close coordination with the pipeline operator will be maintained throughout the duration of the project. The delivery partners will comply with any specific requirements, supervision arrangements, or permits imposed by the operator to ensure the pipeline's integrity is preserved as detailed within the individual crossing consent certificates obtained per interaction. Regular communication will be upheld to address any changes in conditions or unforeseen risks.
- 1.6.6 A methodology statement has been provided to Affinity Water detailing delivery works required for each type of crossing interaction within the vicinity of Affinity Water assets as identified and allowing Affinity Water commentary of additional mitigations required

1.7 Section 127 Application

- 1.7.1 Section 127 of the 2008 Act applies where a statutory undertaker makes a representation (which is not withdrawn). In these circumstances, the **3.1 Draft Development Consent Order [Revision F]** may only include a provision authorising the compulsory acquisition of statutory undertakers' land where the Secretary of State is satisfied that:
- The land may be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - The land can be replaced by other land belonging to, or available for acquisition by, the statutory undertaker without serious detriment to the carrying on of the undertaking.
- 1.7.2 Sections 127(2) and (3) are set out below:
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).*
- (3) The matters are that the nature and situation of the land are such that—*
- (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*

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

- 1.7.3 Sections 127(5) and (6) contain equivalent wording in respect of acquiring rights over statutory undertaker's land and are set out below:

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

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

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

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

- 1.7.4 There is no statutory definition of “serious detriment”. The test for “serious detriment” is wide and holistic, it being more than a mere disadvantage. In the Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport regarding The Lake Lothing (Lowestoft) Third Crossing Order 2020, the Examining Authority recognised at paragraph 8.5.138. *“that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach”.*

1.8 Section 138 of the Planning Act 2008

- 1.8.1 The draft DCO also includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers, and as such the Applicant believes that s.138 of the Planning Act 2008, as amended (the 2008 Act), is engaged by the draft DCO.
- 1.8.2 Section 138 applies to land if:
- a) There subsists over the land a relevant right; or
 - b) There is on, under or over the land relevant apparatus.
- 1.8.3 Section 138 provides that the draft DCO may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the draft DCO relates.
- 1.8.4 The relevant statutory undertaker for the purposes of this application is Affinity Water. The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Affinity Water (Affinity Water’s Land) for the purposes of its undertaking.

1.9 Statutory Undertakers’ Land

- 1.9.1 No land owned by Affinity Water needs to be compulsorily acquired; only rights over that land. Therefore, ss.127(2) and (3) of the 2008 Act are not engaged.

- 1.9.2 The Applicant understands that the rights and interests in the plots set out in Table 1.2 below have been acquired by Affinity Water for the purposes of its undertaking. Interests and rights in the plots set out in Table 1.2 are required by the Applicant in order to deliver the project. Therefore, ss.127(5) and (6) are engaged.
- 1.9.3 Below is a summary of the purposes for which Affinity Water's Land is required and the land, interests and rights that would need to be acquired (in the context of the interface works described in paragraph 1.6 above). See further the **4.3 Book of Reference [Revision E]** and the broad description included in the Appendix. Note that, as is explained in the **4.3 Book of Reference [Revision E]**, where multiple types of interest, rights or powers are sought over a given plot (such as temporary use for construction, mitigation and maintenance, as well as permanent rights of access), the plot is classified according to the most extensive (higher class of right) required:
- Class 1 (Compulsory Acquisition of Land) – acquisition of all interests and rights in the land.
 - Class 2 (Compulsory Acquisition of Rights – Overhead Line) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 3 (Compulsory Acquisition of Rights – Underground Cable System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 4 (Compulsory Acquisition of Rights – Overhead Line and Underground Cabling System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 5 (Compulsory Acquisition of Rights – Access) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.

Table 1.2 Land affected and interest or right to be acquired

Statutory Undertaker's land (plot number)	Interest or right to be acquired
N/A	Class 1 (in relation to land owned by Affinity Water)
C-14/110, C-14/118a, C-14/120 C-15/2, C-16/1, C-16/46a	Class 1 (in relation to land in which Affinity Water has a right or interest only)
C-17/76, C-17/79, C-17/81, C-13/24, C-13/25, C-13/36, C-13/42a, C-17/28, C-17/33, C-17/39, C-17/74, C-17/76, C-17/79, C-17/80, C-17/81, C-17/84, C-17/86	Class 2 (Compulsory Acquisition of Rights– Overhead Line)
C-17/57, C-17/66, C-9/65, C-9/74, C-11/92, C-12/38, C-12/57, C-12/69, C-12/74, C-13/28, C-13/48, C-13/65, C-13/77a, C-14/107, C-14/108, C-17/57, C-17/60, C-17/66, C-12/57, C-12/78	Class 3 – (Compulsory Acquisition of Rights– Underground Cable System)

Statutory Undertaker's land (plot number)	Interest or right to be acquired
C-17/69, C-17/72, C-12/70, C-12/71, C-12/72, C-12/77, C-12/88, C-12/93, C-13/20, C-13/26, C-13/33, C-13/41, C-13/41a, C-13/41a, C-13/56, C-13/56a, C-13/74, C-13/78, C-13/78a, C-13/87, C-17/5, C-17/13, C-17/24, C-17/32, C-17/42, C-17/47, C-17/69, C-17/72, C-12/71, C-12/77, C-12/88	Class 4 – (Compulsory Acquisition of Rights – Overhead line and underground cabling system)
C-12/33, C-12/37, C-12/96, C-12/82	Class 5 - (Compulsory Acquisition of Rights – Access)

- 1.9.4 The Applicant considers that there would be no serious detriment to Affinity Water's undertaking if it were to acquire these rights and interests and that the criteria as set out in s.127 are satisfied for the reasons set out in paragraphs 1.9.5 to 1.9.9 below.
- 1.9.5 Engagement with Affinity Water to agree appropriate protective provisions is ongoing, with a comprehensive draft having been prepared and issued to Affinity Water for review and comment. Notwithstanding that the Protective Provisions are not fully agreed, paragraph 5 of Protective Provisions for Affinity Water's benefit included in Schedule 16 of the **3.1 Development Consent Order [Revision F]** provides extensive protections for Affinity Water, including requiring Affinity Water's approval to any use of compulsory acquisition powers under the Order or powers to "acquire, appropriate, extinguish or interfere with any Apparatus or easement or other land interest of Affinity Water" (Paragraph 5)
- 1.9.6 There are then comprehensive protections and processes secured by the Protective Provisions to ensure that any impacts would not cause any serious detriment to Affinity Water's undertaking. These include protections in respect of the removal or diversion of apparatus, the provision of alternative apparatus and means of access, the carrying out of works in close proximity to Affinity Water's apparatus and costs provisions to prevent the financial burden falling to Affinity Water. These provisions ensure that there is no serious detriment to Affinity Water carrying out its undertaking and are explained in more detail below.
- 1.9.7 There are no planned/agreed diversions of Affinity Water's apparatus and the rights sought by the Applicant would co-exist within the plots affected alongside those of Affinity Water such that minimal interference would be caused to Affinity Water's undertaking. In the event that any diversions of apparatus are required the Protective Provisions (paragraph 6 and 7) provide a mechanism to ensure that diverted apparatus and accompanying land rights are in place prior to the removal of any existing Affinity Water Apparatus, to avoid any serious detriment to their undertaking.
- 1.9.8 During construction of the project, the Applicant must seek approval of Affinity Water for any works in close proximity of their Apparatus or which crosses their Apparatus in accordance with paragraph 8 of the Protective Provisions for Affinity Water's benefit. This gives Affinity Water control to ensure that all works that may affect their Apparatus are carried out in a safe manner for the protection of their undertaking.
- 1.9.9 Post construction of the project (noting that the Applicant will seek to agree with Affinity Water in advance the timing of those operations required to be undertaken in proximity to Affinity Water's operational assets), any other potential interference would be limited to maintenance or emergency works to the Applicant's equipment.

On such occasions, the Applicant would consult with Affinity Water in order to cause as little disruption as practicable during those maintenance or emergency works.

- 1.9.10 Given the inclusion of the Applicants version of the bespoke protective provisions for Affinity Water's benefit and notwithstanding that they are not fully agreed with Affinity Water, it is the Applicant's view that any interference caused (if at all) will be managed and controlled under the Protective Provisions and accordingly there will be no serious detriment to Affinity Water carrying on its undertaking. All relevant rights to be acquired will co-exist with those of Affinity Water and, for the most part, cause minimal interference with Affinity Water's undertaking. The Applicant therefore does not consider it necessary to replace the land over which rights are required for the project.
- 1.9.11 The procedure under s.127(5) only applies to the compulsory acquisition of a right, and therefore is not engaged by plots which are only subject to Articles 27 to 30 (inclusive) of the **3.1 Draft Development Consent Order [Revision F]** which relate solely to temporary use. The Applicant has explained all interactions with Affinity Water's undertaking in section 1.6 above for completeness but it is only the permanent works which necessitate the permanent acquisition of a right which are directly relevant for the purposes of s.127.
- 1.9.12 Compulsory acquisition powers are therefore still sought in the **3.1 Draft Development Consent Order [Revision F]** over the Affinity Water Land as, given the need for the project, the Applicant must have certainty that it is able to deliver the entirety of the project. Therefore, compulsory acquisition powers are required as a fallback to guarantee the project's deliverability.
- 1.9.13 However, any exercise of compulsory acquisition powers relevant to Affinity Water will be undertaken pursuant to the protective provisions included in the **3.1 Draft Development Consent Order [Revision F]** for Affinity Water's benefit which secures the protection of Affinity Water's operational assets as set out in paragraph 1.9.5 above.

1.10 Conclusion

- 1.10.1 Given the need for the project (see in particular the need case as signposted in Paragraph 1.5 (Need Case)), the Applicant considers that there is a compelling case in the public interest for the inclusion of the compulsory acquisition powers within the **3.1 Draft Development Consent Order [Revision F]**.
- 1.10.2 For the reasons set out in this application, it is the Applicant's position that, pursuant to s.127 of the 2008 Act, the Secretary of State can be satisfied that the prescribed tests of s.127 have been met as there will be no serious detriment to the undertaking of Affinity Water given the nature of the interactions explained in this submission and the protections put in place for Affinity Water explained in paragraph 1.9.5 onwards above and that interests and rights in Affinity Water's Land may be included for compulsory acquisition in the **3.1 Draft Development Consent Order [Revision F]**.

1.11 Section 138 Application

- 1.11.1 As noted above, the **3.1 Draft Development Consent Order [Revision F]** gives the Applicant the power to extinguish the rights of, or remove the apparatus belonging to, statutory undertakers over or within the order limits. However, this is

only permitted where the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the draft DCO relates.

1.11.2 Section 138 of the 2008 Act is set out below:

(1) This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—

a) there subsists over the land a relevant right, or

b) there is on, under or over the land relevant apparatus.

(2) “Relevant right” means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—

a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or

b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(3) “Relevant apparatus” means—

a) apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or

b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

1.11.3 The Applicant understands that there is a relevant right and/or relevant apparatus vested in Affinity Water in, on or under the plots listed in table 1.2 above.

1.11.4 For the purposes of this application, it is the Applicant’s case that:

- a) Works associated with the project are necessary over the plots listed in table 1.2 above (as described in Schedule 1 to the **3.1 Draft Development Consent Order [Revision F]** and shown on the Work Plans to carry out the project);
- b) The project could affect relevant rights and/or relevant apparatus vested in or belonging to Affinity Water as a result of carrying out the authorised development, in circumstances where diversions are necessary. However, in this eventuality, the Applicant would not remove any apparatus or rights until alternative apparatus and accompanying land rights had been re-provided as set out in paragraphs 1.9.5 onwards;
- c) In the absence of powers for the Applicant to ultimately extinguish such rights and/or remove such apparatus, in the event that diversions are required, the authorised development could not be guaranteed to be carried out; and
- d) Protective provisions have been included at Schedule 16 of the draft Order, which ensure that all appropriate steps must be taken by the Applicant to protect retained relevant apparatus and/or to ensure that alternative apparatus is provided on an equivalent basis – on which see paragraphs 1.9.5 onwards above.

- 1.11.5 Therefore, taking account of the nature of the proposed works and the inclusion of protective provisions in the **3.1 Draft Development Consent Order [Revision F]**, the Applicant contends that specifically in relation to section 138, the Secretary of State can be satisfied that the rights of Affinity Water whilst potentially subject to extinguishment or removal, the powers to do so are necessary for the project to proceed but, nevertheless, the statutory undertaker's rights and apparatus are adequately protected by the protective provisions.

Abbreviations

Abbreviation	Full Reference
AIS	Air Insulated Switchgear
AONB	Area of Outstanding Natural Beauty
BNG	Biodiversity Net Gain
CPRSS	Corridor and Preliminary Routeing and Siting Study Report
CSE	Cable Sealing End
DCO	Development Consent Order
DNO	Distribution Network Operators
EACN	East Anglia Connection Node
EIA	Environmental Impact Assessment
ES	Environmental Statement
ESO	Electricity System Operator
GIS	Gas Insulated Switchgear
GW	Gigawatts
kV	Kilovolt
NSIP	Nationally Significant Infrastructure Project
NETS	National Electricity Transmission System
NETS SQSS	National Electricity Transmission System Security and Quality of Supply Standard
NGET	National Grid Electricity Transmission
Ofgem	Office of Gas and Electricity Markets
PEIR	Preliminary Environmental Information Report
SOBR	Strategic Options Backcheck and Review
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest

Glossary

Term	Description
Alignment	The proposed overhead line and underground cable route.
Ancient woodland	Land that has been continually wooded since at least 1600 in England. Regarded as 'irreplaceable habitat' in national planning policy and guidance. Ancient woodland greater than 2 ha is recorded on the Natural England Ancient Woodland Inventory.
Biodiversity	The variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.
Biodiversity Net Gain	An approach for developments to ensure habitats for wildlife are left in a measurably better state than they were before the development.
Cable	An insulated conductor designed for underground installation.
Cable Sealing End compound	Electrical infrastructure used as the transition point between overhead lines and underground cables. A compound on the ground acts as the principal transition point.
Conservation Area	An area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance as defined in s69(1)(a) in the Planning (Listed Building and Conservation Areas) Act 1990.
Development Consent Order	A statutory instrument which grants consents and other rights to build a Nationally Significant Infrastructure Project, as defined by the Planning Act 2008.
Distribution Network Operator	Companies that own and operate the power lines and infrastructure that connect the National Grid network to individual properties.

Appendix A.

Class of Rights

Appendix A

Class of Rights

A.1.1 **Class 1 (Compulsory Acquisition of Land)** – acquisition of all interests and rights in the land.

A.1.2 **Class 2 (Compulsory Acquisition of Rights – Overhead Line)** – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:

- with or without vehicles, plant and equipment to enter the land to construct the overhead electric line and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
- with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
- with or without vehicles, plant and equipment to enter the land to access any adjoining land;
- with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the overhead electric line, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
- to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports) soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds;
- including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the **3.1 Draft Development Consent Order (Revision F)**; and

- to carry out any activities ancillary or incidental thereto.

A.1.3

Class 3 (Compulsory Acquisition of Rights – Underground Cable System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:

- with or without vehicles, plant and equipment to enter the land to construct the underground cable system and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
- with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
- with or without vehicles, plant and equipment to enter the land to access any adjoining land;
- with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the underground cable system, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
- to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports), soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the **3.1 Draft Development Consent Order (Revision F)**; and
- to carry out any activities ancillary or incidental thereto.

Class 4 (Compulsory Acquisition of Rights – Overhead Line and Underground Cabling System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:

- with or without vehicles, plant and equipment to enter the land to construct the overhead electric line and/or the underground cable system and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
- with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
- with or without vehicles, plant and equipment to enter the land to access any adjoining land;
- with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the overhead electric line and/or the underground cable system, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
- to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports) soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the **3.1 Draft Development Consent Order (Revision F)**; and
- to carry out any activities ancillary or incidental thereto.

Class 5 (Compulsory Acquisition of Rights – Access) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:

- of way with or without vehicles, plant and equipment at all times over the land;
- to remove any buildings, structures, pylons, apparatus, equipment, and vegetation from that land;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with sight lines associated with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with sight lines, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to construct, use or maintain works (including the provision of means of access);
- to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports), soakaways and attenuation ponds on the land, and thereafter infill and/or to retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land; and
- to carry out activities ancillary thereto.

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