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# Norwich to Tilbury

**Volume 8: Examination Documents**

**Document: 8.29.3 Application Under S127 of the Planning Act 2008  
(Conrad Energy)–Statutory Undertakers' Land**

**Final Issue A**

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**Planning Inspectorate Reference: EN020027**

**nationalgrid**

# Contents

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|           |                                                                                                         |          |
|-----------|---------------------------------------------------------------------------------------------------------|----------|
| <b>1.</b> | <b>Application Under S127 of the Planning Act 2008 (Conrad Energy)–<br/>Statutory Undertakers’ Land</b> | <b>1</b> |
| 1.1       | Introduction                                                                                            | 1        |
| 1.2       | Section 127 of the Planning Act 2008                                                                    | 1        |
| 1.3       | Section 138 of the Planning Act                                                                         | 1        |
| 1.4       | This Application                                                                                        | 2        |
| 1.5       | Need Case                                                                                               | 3        |
| 1.6       | Proposed Works                                                                                          | 5        |
| 1.7       | Section 127 Application                                                                                 | 8        |
| 1.8       | Section 138 of the Planning Act 2008                                                                    | 9        |
| 1.9       | Statutory Undertakers’ Land                                                                             | 9        |
| 1.10      | Conclusion                                                                                              | 12       |
| 1.11      | Section 138 Application                                                                                 | 12       |

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|           |                                                    |    |
|-----------|----------------------------------------------------|----|
| Table 1.1 | Proposed Works and Locations                       | 6  |
| Table 1.2 | Land affected and interest or right to be acquired | 10 |

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Appendix A Class of Rights

# 1. Application Under S127 of the Planning Act 2008 (Conrad Energy)– 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 G]** 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 G]** 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 G]**.

## 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

- 1.3.1 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.
- 1.3.2 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.

- 1.3.3 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 relate

## 1.4 This Application

- 1.4.1 Two Conrad Energy entities (referred to jointly as 'Conrad Energy') have interests in land within the draft Order Limits over which the Applicant is seeking compulsory acquisition and temporary possession powers: Conrad (Billericay) Limited and Conrad Energy (Developments) Limited. The representations made by Conrad Energy refers to 'Conrad Energy' which appears to cover both entities. The Conrad Energy entities are listed as a category 2 party in the Book of Reference as it holds option for lease agreements over various plots within the Order limits for the Project. The Applicant has not had sight of the option agreements. Conrad (Billericay) Limited holds a generation licence and therefore is a statutory undertaker which holds an interest in land for the purposes of section 127 and section 138. Although Conrad Energy (Developments) Limited is not a statutory undertaker, this submission deals with both entities together on a precautionary basis for completeness.
- 1.4.2 The Applicant proposes to acquire interests and rights in land in which Conrad Energy has obtained an option over the various land plots which comprise its development site for the purposes of its undertaking. Conrad Energy has been granted planning permission for the construction and operation of a Solar PV Farm together with ancillary infrastructure and equipment, landscaping and access. A planning application was submitted to Brentwood Borough Council under the reference 24/01263/FUL. The application was approved on 30th April 2025. The site is described for the purposes of its planning permission as the "[I]and Adjacent To Billericay Power Generation Plant Old Church Lane Mountnessing Essex CM13 1UP. Conrad Energy notes in its relevant representation (RR-0695) that its solar development is programmed to be constructed and generating power within two years.
- 1.4.3 Conrad Energy has made a representation to the Planning Inspectorate in relation to the application for development consent ((RR-0695) and [REP6-146]). The Applicant is in ongoing discussions with Conrad Energy regarding the application, but its representation has not currently been withdrawn.
- 1.4.4 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 Conrad Energy's statutory undertaking, then the **3.1 Draft Development Consent Order [Revision G]** 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.
- 1.4.5 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 of the 2008 Act.
- 1.4.6 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 F];**

- **2.3 Work Plans – [Section A (Revision B), Section B [REP6-014], Section C (Revision C), Section D (Revision B), Section E [APP-021], Section F [REP6-016], Section G [REP5-021]];**
- **3.1 Draft Development Consent Order [Revision G];**
- **3.2 Explanatory Memorandum [Revision G];**
- **4.1 Statement of Reasons [Revision D]; and**
- **4.3 Book of Reference [Revision F].**

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

## 1.5 Need Case

- 1.5.1 The need for the project has been established in the **5.6 Planning Statement [Revision B]** and **4.1 Statement of Reasons [Revision D]** 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 2030a 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 land in which Conrad Energy has an interest in connection with the project include, in particular, the following:

- Installation of permanent overhead line conductor between pylons TB202 – TB204 which would oversail the land secured by Conrad Energy for its solar development.
  - The conductors would typically be installed in sections between tension pylons, where the overhead line changes direction. A bowtie shaped pulling site would typically be established at one end of the section with the conductors running out from a tensioning site at the other end of the section, to keep the wires off the ground.
- Erection of temporary crossing protections/scaffolding in relation to pylons TB202 – TB205 in relation to the land secured by Conrad Energy for its solar development.
- Construction of temporary haul road and SUDS in relation to works to erect new pylons TB202 - TB203 within the land which has been secured by Conrad Energy for its solar development.
  - For overhead line construction, the haul road driving surface would be typically 4-6m wide, with passing places (widening to 8m) provided at typical intervals of 200m. 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. 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 stripped and aggregate (e.g. stone) placed on top of the subsoil, delivered to site by HGVs.
- Construction of tower pads, pylon foundation and erection of new pylons TB203 & TB204 within the land secured by for Conrad Energy for its solar development.
  - The working areas around each new pylon would be cleared of vegetation and fenced appropriately. Access to each pylon location would be installed.
  - Temporary appropriate technology / material would be required adjacent to each new pylon location, on which to place plant such as cranes and piling rigs. The stone working areas would typically be 60 m x 60 m (or 70 m x 70 m for angle/terminal/low-height suspension structures and 80 m x 80 m for low-height tension structures). Materials would be brought to site on HGVs and would include the steelwork for the pylons and the conductors (i.e. cabling) wrapped around large drums.
  - The base of the pylons would involve the excavation of the soil. Piling (which may include percussive) would be required at some pylon locations, subject to the ground conditions. A sample series of ground investigation has been completed (the remaining ground investigation would be undertaken by the Main Works Contractor(s) before detailed design) which would inform the foundation designs.
  - Different foundation types can be used for lattice pylons, such as pad and column, vertical tube piles or bored mini-pile foundations, depending on the local

ground conditions. The type of foundation to be used is typically identified during the detailed design stage by the Main Works Contractor(s) following intrusive ground investigation surveys.

- The following works would be required to install foundations:
  - Excavations are required for each pylon leg;
  - Foundation formwork (mould) is then inserted, cast, and filled with concrete;
  - The concrete is left to harden (set);
  - The excavated hole is backfilled to ground level; and
  - The foundation formwork would be removed and any remaining sub-soil subject to its make up would be distributed on site or removed from site.
  - In areas with poorer ground conditions that are unsuitable for pad and column foundations, vertical steel tube pile foundations or bored mini-pile foundations can be used. These are connected by a pile cap at or below ground level.
  - Using a piling hammer supported by a piling rig, steel tube piles are driven into the ground. A maximum transportable length of up to 15 m is driven at a time, and if longer piles are required, additional sections are welded together before continuing the drive.
  - Following the installation of working areas and the appropriate foundations, pylon steelwork can be assembled, and the pylons can be erected.
  - Lattice pylons comprise many separate steel members. These are delivered to site in bundles by HGV. The steelwork for the pylons would be bolted together on the ground and each pylon would be assembled in sections beginning with each of the four steelwork legs being fastened to the stubs. The pylon would be erected using a mobile crane to lift the assembled steelwork into position. Overhead Line Craft persons help guide the sections into place and bolt the pylon together.

Table 1.1 Proposed Works and Locations

| Plot Numbers | Work        | Works Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| G3/26        | Work No. 17 | Construction of foundation and construction of new Pylon TB203 as shown on Section G, Sheet 3. This tower is to the north of Conrad Energy's site and will create a reduction in the area available for solar panels as a result of the tower footprint and the required safety/access stand-off distances. This impact is limited in extent and represents a relatively small reduction when considered against the overall scale of the proposed solar development. The Pylon will be of lattice tower construction resulting in modest, localised shading. |
| G3/50        | Work No. 17 | Construction of foundation and construction of new Pylon TB204 as shown on Section G, Sheet 3. The southern tower is located at the edge of the Conrad                                                                                                                                                                                                                                                                                                                                                                                                        |

| Plot Numbers                                           | Work                           | Works Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        |                                | Energy development and is expected to have a small impact on the site layout and generating capacity. The Pylon will be of lattice tower construction resulting in modest, localised shading.                                                                                                                                                                                                                                                                                                               |
| G3/26, G3/47, G3/50                                    | Work No. 17                    | Installation of conductors from TB202 – TB204 as shown on Section G, Sheet 3 which would oversail Conrad Energy's solar development. The conductors will be around 20m above the panels causing minimal shading.                                                                                                                                                                                                                                                                                            |
| G3/31, G3/32, G3/39, G3/45, G3/46                      | In connection with Work No. 17 | BT mitigation works to divert existing apparatus as shown on Section G, Sheet 3.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| G3/36, G3/41,                                          | In connection with Work No. 17 | Permanent rights of access as shown on Section G, Sheet 3 across the land which will be used by Conrad Energy for its solar farm for the purposes of maintaining the pylon on the land.                                                                                                                                                                                                                                                                                                                     |
| G3/59, G3/44                                           | In connection with Work No. 17 | UKPN pole mitigation works involving overhead line diversions and installation of underground cables and associated works area as shown on Section G, Sheet 3                                                                                                                                                                                                                                                                                                                                               |
| G3/26, G3/35, G3/36, G3/37, G3/39, G3/41, G3/47, G3/50 | In connection with Work No. 17 | Temporary Haul road construction as shown on Section G, Sheet 3. Construction activities will require temporary access to the tower locations via haul roads, together with temporary construction compounds around the tower bases. The Applicant is exploring the relocation of the northern tower further west within the LoD. Should this be achievable, it would reduce the extent of temporary impacts associated with both the haul road and construction compound on the Conrad Energy development. |
| G3/47                                                  | In connection with Work No. 17 | Installation of temporary crossing protection/scaffolding as shown on Section G, Sheet 3                                                                                                                                                                                                                                                                                                                                                                                                                    |

- 1.6.2 Prior to the commencement of any works within the vicinity of Conrad Energy's apparatus, National Grid would engage with Conrad Energy to identify the location and extent of the apparatus and agree appropriate protective measures. Any works affecting or undertaken in proximity to Conrad Energy's apparatus would be carried out in accordance with agreed method statements, permit-to-work procedures and relevant health and safety requirements.
- 1.6.3 Measures may include, where appropriate, cable location surveys, trial holes to verify apparatus positions, the establishment of exclusion zones, use of safe digging practices, supervision by Contract partners and NG project supervisors, temporary protective works and restrictions on plant movements, excavation activities or loading

over buried assets. No works would be undertaken that could endanger or damage Conrad Energy's apparatus without prior agreement from Conrad Energy.

- 1.6.4 Where works are proposed in proximity to underground electricity cables, National Grid would comply with the requirements of HSG47 Avoiding Danger from Underground Services, Conrad Energy's asset protection requirements and any agreed crossing or proximity arrangements. Excavations in the vicinity of cables would be undertaken using approved safe digging techniques and any required supervision arrangements agreed with Conrad Energy.

## 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 G]** 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 Conrad Energy. The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Conrad Energy (Conrad Energy’s Land) for the purposes of its undertaking.

## 1.9 Statutory Undertakers’ Land

- 1.9.1 No land owned by Conrad Energy 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 Conrad Energy 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 Conrad Energy’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 F)** and the broad description included in the Appendix. Note that, as is explained in the **4.3 Book of Reference (Revision F)**, 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 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 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 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 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                                                            |
|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| G-3/6, G-3/26, G-3/45, G-3/47, 3/50, G-3/53                                  | Class 2 - (Compulsory Acquisition of Rights – Overhead Line)                                |
| G-3/44                                                                       | Class 3 (Compulsory Acquisition of Rights – Underground Cable System)                       |
| G-3/3, G-3/7, G-3/31, G-3/32, G-3/38, G-3/39, G-3/42, G-3/46, G-3/57, G-3/59 | Class 4 – (Compulsory Acquisition of Rights – Overhead line and underground cabling system) |
| G-3/36, G-3/41, G-3/66 G-3/21, G-3/27, G-3/36, G-3/41                        | Class 5 – (Compulsory Acquisition of Rights – Access)                                       |

- 1.9.4 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 G)** which relate solely to temporary use.
- 1.9.5 The Applicant considers that there would be no serious detriment to Conrad Energy'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 below.
- 1.9.6 Private treaty negotiations with Conrad Energy will continue in parallel with the compulsory acquisition process with a view to concluding an agreement as soon as practicably possible.
- 1.9.7 Conrad Energy will have the benefit of the protective provisions contained within Part 1 of Schedule 16 to the DCO. Paragraph 4 provides that the Applicant will not acquire any of Conrad Energy's apparatus without agreement and paragraph 5 deals with alternative apparatus in the event diversion of apparatus is required.
- 1.9.8 Conrad Energy will have the protection of paragraph 6 of the protective provisions which provide for appropriate safeguarding measures to be implemented to ensure the integrity of any apparatus and associated infrastructure, including coordination with Conrad Energy or its appointed representatives prior to the commencement of any

construction works in the vicinity, as well as agreement of working methods and protection arrangements. The Applicant considers that the Project will not cause serious detriment to Conrad Energy carrying on its undertaking due to the application of the protective provisions.

- 1.9.9 Although Conrad Energy will have the benefit of the protective provisions, the Applicant is committed to engaging in further discussions with Conrad Energy in order to agree a legal agreement. At this stage of the Project, detailed design has not yet been undertaken and the precise design of the Project and exact interaction with Conrad Energy will be further defined in due course, as part of the ongoing cooperation with Conrad Energy. While there will be some loss of part of Conrad Energy's permanent footprint, the Applicant's view is that the majority of the interference caused to Conrad Energy's land interests can be effectively managed through design so that no serious detriment will be caused to Conrad Energy carrying on its undertaking as set out below. The legal agreement will set out any relevant measures to be agreed between the parties to manage the interaction during construction and on a long-term operational basis.
- 1.9.10 Two of the proposed tower locations overlap with the Conrad Energy development site: one to the south and one to the north. The southern tower is located at the edge of the Conrad development and is expected to have only a minimal long-term impact on the site layout and generating capacity.
- 1.9.11 The northern tower will create a reduction in the area available for solar panels as a result of the required safety stand-off distances. However, this impact is limited in extent and represents a relatively small reduction when considered against the overall scale of the proposed solar development. Notwithstanding this, the Applicant has raised a design change request to investigate whether the tower can be relocated further west within the Limits of Deviation (LoD) to further reduce impacts on Conrad Energy's scheme. Therefore, this would limit any detriment caused to Conrad Energy. The change request is a detailed design matter which will be subject to review during the DCO decision period.
- 1.9.12 Conrad Energy has shared an indicative layout of its site indicating that panels may be omitted from their layout beneath the overhead conductors. The Applicant has confirmed that this restriction is not required by National Grid, and there are numerous locations where solar developments are proposed or pre-existing beneath overhead line conductors.
- 1.9.13 Conrad Energy previously raised concerns that conductor stringing activities could require the removal of a significant area of solar panels. The Applicant has since developed an alternative construction approach that avoids the need for a large pulling area within the site. As a result, the extent of temporary panel removal required for conductor installation is expected to be substantially reduced.
- 1.9.14 The Applicant has provided further information on the proposed tower specifications and will continue to provide additional details as these become available to support Conrad Energy's assessment of potential shading impacts.
- 1.9.15 Based on the current design, any shading effects are anticipated to be limited given the lattice structure of the towers and the significant height of the conductors passing over the site. Nonetheless, the Applicant will continue to engage with Conrad Energy as further design information becomes available.
- 1.9.16 As outlined above, there is no statutory definition of "serious detriment" and the test for "serious detriment" is wide and holistic, and whether detriment is 'serious' is a matter of

judgement. The Applicant considers that although there will be some detriment to Conrad Energy's site due to the location of tower, the interface between the Applicant and Conrad Energy can be managed and mitigated to avoid any 'serious detriment' to Conrad Energy's undertaking taking the ongoing actions into account,

- 1.9.17 Further, the Applicant will pay compensation to Conrad Energy where it is due either under the Compensation Code or relevant statutory provisions in the usual way in light of loss of generation capacity, earthing impacts and shading impacts where proven in accordance with the Compensation Code.
- 1.9.18 Compulsory acquisition powers are required in the **3.1 Draft Development Consent Order [Revision G]** over the Conrad Energy Land for the reasons set out in table 1.2.

## 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 G]**.
- 1.10.2 There would be no serious detriment to the carrying on of Conrad Energy's statutory undertaking given the nature of the interactions explained in this submission and the protection put in place for Conrad Energy (as explained in Paragraphs 1.9.5 to 1.9.18 above), in light of both the provisions of the compensation code and the protective provisions included at Part 1 of Schedule 16 to the **3.1 Draft Development Consent Order (Revision G)** securing the protections identified above.
- 1.10.3 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 and that interests and rights in Conrad Energy's Land may be included for compulsory acquisition in the **3.1 Draft Development Consent Order [Revision G]**.

## 1.11 Section 138 Application

- 1.11.1 As noted above, **3.1 Draft Development Consent Order [Revision G]** 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 Conrad Energy 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 draft DCO 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 Conrad Energy as a result of carrying out the authorised development, albeit in no circumstances would the Applicant interfere with relevant apparatus in such a manner as to be to the detriment of the undertaking or operations carried out by Conrad Energy for the reasons explained in paragraphs 1.9.5 and 1.9.18;
- 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 works associated with the project could not be guaranteed to be completed; and
- d) Protective provisions have been included at Part 1 of 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 which see paragraphs 1.9.7 and 1.9.9 above.

1.11.5 Therefore, taking account of the nature of the proposed works and the inclusion of protective provisions in the draft DCO, the Applicant contends that specifically in relation to section 138, the Secretary of State can be satisfied that the rights of Conrad Energy 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.

# Appendix A.

## Class of Rights

# Appendix A

## Class of Rights

A.1.1 **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 G)**; and
- to carry out any activities ancillary or incidental thereto.

**A.1.2 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 G)**; and
- to carry out any activities ancillary or incidental thereto.

**A.1.3 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 G)**; and
- to carry out any activities ancillary or incidental thereto.

A.1.4 **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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