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Act 2008 (Hall Farm BESS Ltd) – Statutory Undertakers' Land

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1. Application Under S127 of the Planning Act 2008 (Hall Farm BESS Ltd) – 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 - A representation has been made, and not withdrawn, about an application for development consent; and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 2008

- 1.3.1 The **3.1 Draft Development Consent Order [Revision G]** 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 G]**.
- 1.3.2 Section 138 applies to land if:

- 1.3.3 There subsists over the land a relevant right; or
- 1.3.4 There is on, under or over the land relevant apparatus.
- 1.3.5 Section 138 provides that the **3.1 Draft Development Consent Order [Revision G]** 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 G]** relates.

1.4 This Application

- 1.4.1 The relevant statutory undertaker for the purposes of this application is Hall Farm BESS Ltd (Hall Farm BESS) which is a subsidiary of Innova Renewables Limited (Innova Renewables). The Applicant proposes to acquire interests and rights in land in land which it is understood that Hall Farm BESS or Innova Renewables have also acquired interests and rights in land for the purposes of its undertaking.
- 1.4.2 Innova Renewables has made representations to the Planning Inspectorate in relation to the application for development consent [REP1-243], [REP1-132], [REP2-051], [REP3-115] and [REP6-205] regarding the Hall Farm BESS development and their approved Parkgate Solar Farm. Innova Renewables does not hold an electricity generation licence for either the Hall Farm BESS development or the Parkgate Solar Farm for the purposes of engaging s.127(8) of the 2008 Act and so it is not a statutory undertaker.
- 1.4.3 However, Hall Farm BESS Ltd is a statutory undertaker (by virtue of its electricity generation licence which was granted in April 2026) and is a wholly owned subsidiary of Innova Renewables. As Hall Farm BESS is the relevant statutory undertaker, this submission refers to Hall Farm BESS throughout, although the Applicant notes that the various representations have been made by Innova Renewables rather than the specific Hall Farm BESS entity.
- 1.4.4 The representations made by Innova Renewables refers to an option over land at Hall Farm, north of Hickling Lane, Swainsthorpe, Norfolk NR14 8DS ('the Hall Farm Site'). The Hall Farm Site is located to the south of the Norwich Main substation. Innova Renewables is not a statutory undertaker in relation to the Hall Farm Site
- 1.4.5 Full planning permission was granted by South Norfolk Council on 25 July 2025 (ref: 2024/3750) for a 400MW energy storage system, including a 132-400kV substation and associated infrastructure ('the planning permission').
- 1.4.6 Whilst it is not certain whether Hall Farm BESS' land interest has been acquired for the purposes of their undertaking, this submission has been prepared on a precautionary basis and the Applicant has proceeded on the basis that the land in respect of which the Applicant proposes to acquire interests and rights over has been acquired by Hall Farm BESS for the purposes of its undertaking (whether directly or indirectly) such that s.127 is engaged. The Applicant is in ongoing discussions with Hall Farm BESS regarding the application, but its representation has not currently been withdrawn.
- 1.4.7 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 Hall Farm BESS' 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.

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

1.4.9 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-H [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].**
- **5.6 Planning Statement (Revision B); and**
- **6.1 Environmental Statement Chapter 1 – Introduction (Revision B).**

1.4.10 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 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 Hall Farm BESS's Land in connection with the project include, in particular, the following:
- Construction of the temporary construction haul route which interacts with the approved flood attenuation basin which was consented as part of the Hall Farm BESS Development;
 - Installation of pylon RG4, and associated working area and permanent access which interacts with Hall Farm BESS' flood attenuation basin;
 - Installation of the temporary construction haul route which interacts with Hall Farm BESS' underground cable swathe;
 - Installation of the temporary construction haul route which interacts with Hall Farm BESS' temporary & permanent accesses to its site;
 - Installation of the temporary construction haul road which interacts with Hall Farm BESS' construction compound due to an overlap with the southeast corner of the Hall Farm BESS construction compound;
 - There would have been a greater number of interactions between the projects if the Applicant chose to construct what was known as the eastern option for the construction of the overhead line between pylons RG001 and RG007. However, the Applicant has confirmed through the **8.11 Approach to Scenarios (Revision E)** submitted at Deadline 7 that it will not proceed with the eastern option. Updated Lands Plans will be submitted at Deadline 8.

Table 1.1 Proposed Works and Locations

Land Parcel Plot	Works Description
A-1/3	Temporary construction haul road which interacts with Hall Farm BESSs flood attenuation basin as shown on Sheet 1 of the Work Plans Section A [APP-017] .
A-1/3, A-1/5	Installation of the temporary construction haul road which interacts with Hall Farm BESS' underground cable swathe as shown on Sheet 1 of the Work Plans Section A [APP-017] .

Land Parcel Plot	Works Description
A-1/8, A-1/5, A-1/3	Installation of the temporary construction haul road which interacts with Hall Farm BESS' temporary & permanent Accesses as shown on Sheet 1 of the Work Plans Section A [APP-017] .
A-1/9, A-1/3	Installation of the temporary construction haul road which interacts with Hall Farm BESS' Construction Compound as shown on Sheet 1 of the Work Plans Section A [APP-017] .
A-1/3	Installation of the new Pylon RG4 and associated working area and permanent access route which interacts with the consented location for Hall Farm BESS' flood attenuation basin as shown on Sheet 1 of the Work Plans Section A [APP-017] .

- 1.6.2 In relation to the flood attenuation basin which was consented as part of the planning permission for the Hall Farm BESS, the applicant is engaging with Hall Farm BESS and Innova Renewables to redesign and relocate the Hall Farm BESS flood attenuation basin to a mutually agreeable position that will allow both projects to be delivered without constraint
- 1.6.3 The haul road interaction with the Hall Farm BESS underground cable can be effectively managed on site through close coordination by delivery partners the details of which are dependent upon both schemes overlapping programme of works. In the likely event the Applicants haul road installation were to proceed ahead of Innova cable installation works then, as agreed with other third parties which have a similar interface in the same manner to effectively resolve to both parties satisfaction, the Applicant would propose to agree haul road ducting installation to allow both projects to deliver without significant impediment.
- 1.6.4 Any interaction between the construction haul road and the Hall Farm BESS temporary and permanent accesses would be effectively managed on site through close collaboration by each project's delivery partners. The volume of interaction is dependent upon overlapping programmes and works to be carried out within those overlapping areas.
- 1.6.5 A small overlap exists between the Norwich to Tilbury haul road and the southeast corner of the Hall Farm BESS construction compound. This can be effectively managed through agreement with Innova to either reorientate or slightly reduce the construction compound footprint or by reducing the width of the Norwich to Tilbury haul road at this location
- 1.6.6 Subject to the redesign of the Hall Farm BESS flood attenuation basin, the proposed redesign will also include a re-positioning of the Norwich to Tilbury Pylon RG4 within the limits of the deviation moving the pylon away from direct interface with the attenuation basin.
- 1.6.7 The permanent access associated with RG4 can be amended within the Norwich to Tilbury Class of Rights allowed at this location to reflect a revised and conflict-free design proposal for pylon RG4 and the attenuation basin for both projects.

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 is Hall Farm BESS. The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Hall Farm BESS (Hall Farm BESS's Land) for the purposes of its undertaking.

1.9 Statutory Undertakers' Land

- 1.9.1 No land owned by Hall Farm BESS 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 Innova Renewables or Hall Farm BESS have an option over the site but no details have been communicated to the Applicant regarding the extent of the option and which plots it would affect. The title information which is available at the Land Registry does not provide any further clarity. Therefore, the Applicant assumes that the plots set out in Table 1.2 below are those most likely to be relevant to the interaction between the Applicant's proposed interests and rights and Hall Farm BESS option extent, but it is not yet possible to confirm this. 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 interests and rights in land are required which may interact with Hall Farm BESS's interests and rights in land (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 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 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
A-1/3	Class 2 - Compulsory acquisition of rights - Overhead line
A-1/11, A-1/8	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 Hall Farm BESS 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 explained below.
- 1.9.6 In its representations, Innova Renewables raised concerns regarding the Eastern swathe of land which would cross the east of the Hall Farm Site. At deadline 7, the Applicant confirmed its intention in the **8.11 Approach to Scenarios (Revision E)** to remove the Eastern Corridor from the DCO. The Applicant intends to submit updated Land Plans reflecting this by identifying the relevant parts of the eastern corridor option removed from CA and TP powers and identifying that land as Class 8 land over which no such powers can be exercised. Therefore, the Applicant is confident that there will be no serious detriment to Hall Farm BESS in relation to the eastern corridor.
- 1.9.7 In relation to the Western Corridor, there is an interaction between the Applicants consented pylon RG4 and the temporary haul road and the Hall Farm BESS consented flood attenuation pond. The Applicant has issued heads of terms for a legal agreement to deal with this interaction by way of agreeing an appropriate design for the relocation for the drainage pond location in order to avoid conflicts between the Project and the BESS in the Western Corridor Alignment. Such a change could be dealt with by Innova Renewables applying for a section 96A non-material change planning application for the agreed changed drainage pond location with the Applicant's support for the cost of this. In the event that Hall Farm BESS do not resolve the conflict with the consented flood attenuation pond the Applicant has sufficient powers within the Associated Development within the DCO to be able to address this conflict themselves once an agreed design has been reached to ensure that there is no practical conflict between the DCO and Hall Farm BESS's scheme.
- 1.9.8 There will also be cross-overs with Innova Renewables' consented main access and underground cabling which runs north towards the substation. These interactions would be capable of being dealt with by way of mutual RAMS to agree working arrangements prior to the commencement of works. As an electricity undertaker, Hall Farm BESS will also have the benefit of the protective provisions contained within Part 1 of Schedule 16 to the DCO. Paragraph 6 of the protective provisions provides for construction in close proximity to Hall Farm BESS's apparatus to be carried out in accordance with reasonable requirements of the Statutory Undertaker for the protection of their apparatus, ensuring it's integrity in accordance with agreement of working methods and protection arrangements. Paragraph 4 also protects Hall Farm BESS's apparatus from acquisition.

- 1.9.9 The Applicant has issued heads of terms for a side agreement to Hall Farm BESS' solicitors. Private treaty negotiations with Hall Farm BESS will continue in parallel with the compulsory acquisition process with a view to concluding an agreement as soon as practicably possible.
- 1.9.10 As outlined above, there is no statutory definition of "serious detriment" and the test for "serious detriment" is wide and holistic. The extent to which detriment is 'serious' is a matter of judgement. As the Applicant has confirmed its intention to remove the Eastern Corridor from the DCO, this minimises the level of interaction with the Hall Farm BESS on the eastern side of its site. The Applicant considers that serious detriment to Hall Farm BESS' site will be avoided as the interaction with the pylon RG4 relates to the location of the Hall Farm BESS drainage SUDs pond which is ancillary to their consented electrical infrastructure. The conflicting location of the flood attenuation basin can be redesigned and relocated to a mutually agreeable position that will allow Hall Farm BESS to deliver its project without any serious detriment.
- 1.9.11 Compulsory acquisition powers are sought in the **3.1 Draft Development Consent Order (Revision G)** over Hall Farm BESS's Land because, given the need for the project, the Applicant must have certainty that it is able to deliver the entirety of the project. Since voluntary land agreements are not yet in place with Hall Farm BESS (who the Applicant understands has an interest in the form of an option), the Applicant has no certainty that the land, interests and rights it requires for the project will be secured by voluntary agreement with Hall Farm BESS. Therefore, compulsory acquisition powers are required as a fallback to guarantee the project's timely deliverability and that sufficient land rights can be acquired from all persons with an interest in the land.

1.10 Conclusion

- 1.10.1 Given the need for the project (see in particular the need case as signposted in Paragraph 1.4 (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 Hall Farm BESS's statutory undertaking given the nature of the interactions explained in this submission and the protection put in place for Hall Farm BESS (as explained in Paragraphs 1.8.5 to 1.8.10 above), with 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 operational assets.
- 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 Hall Farm BESS' 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, the draft DCO [**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 may be a relevant right and/or relevant apparatus vested in Innova Renewables or Hall Farm BESS 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 Hall Farm BESS 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 Hall Farm BESS for the reasons explained in paragraphs 1.9.5 and 1.9.10;
- c) In the absence of powers for the Applicant to ultimately extinguish such rights and/or remove such apparatus, in the unanticipated 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 an equivalent basis.

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 Hall Farm BESS 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 G)**; 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 G)**; and
- to carry out any activities ancillary or incidental thereto.

A.1.4

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.1.5

Class 4a (Compulsory Acquisition of Rights – Works for the Protection of Existing UKOP Apparatus Affected by the Authorised Development) – 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 and install all above ground and below ground apparatus required for the protection of existing UKOP apparatus affected by the authorised development (including, but not limited to, permanent above ground monitoring apparatus) 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 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 apparatus constructed and installed for the protection of existing UKOP apparatus affected by the authorised development, including without limitation to 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 but provided that in all cases nothing shall prevent the carrying on of normal agricultural operations to a maximum depth of 600mm below the finished ground level, including the growing of shallow rooted crops or the grazing of livestock;
- 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.1.6

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.

A.1.7

Class 6 (Compulsory Acquisition of Rights – Drainage) – 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 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 the means of access to them;
- thereafter to infill and/or 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 (including the means of access);
- to remove any buildings, structures, pylons, apparatus, equipment, and vegetation from that land;
- to carry out activities ancillary thereto; and
- 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.

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