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Planning Act 2008 (Pivoted Power LLP) – Statutory Undertakers' Land

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nationalgrid

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1. Application Under S127 and S138 of the Planning Act 2008 (Pivoted Power LLP) – 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 - A representation has been made, and not withdrawn, about an application for development consent; and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 2008 Act, is engaged by the **3.1 Draft Development Consent Order [Revision G]**.

- 1.3.2 Section 138 applies to land if:
- There subsists over the land a relevant right; or
 - There is on, under or over the land relevant apparatus.
- 1.3.3 Section 138 provides that the **3.1 Draft Development Consent Order [Revision 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 Pivoted Power LLP (Pivoted Power). The Applicant proposes to acquire interests and rights in land, in respect of which Pivoted Power also has interests and rights for the purposes of its undertaking.
- 1.4.2 Pivoted Power has made a representation to the Planning Inspectorate in relation to the application for development consent (RR-2963). The Applicant is in ongoing discussions with Pivoted Power regarding the application, but its representation has not currently been withdrawn.
- 1.4.3 If that representation is not withdrawn and the Secretary of State is satisfied that the land, or an interest or right in the land, is used for the purposes of carrying on Pivoted Power's statutory undertaking, then the **3.1 Draft Development Consent Order [Revision G]** may only include provision authorising the compulsory acquisition of an interest or a right over a 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. Further, the **3.1 Draft Development Consent Order [Revision G]** may only include provision giving the Applicant the power to extinguish rights of, remove or reposition the apparatus belonging to, statutory undertakers to the extent that the Secretary of State is satisfied that the requirements of s.138 have been met.
- 1.4.4 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 and s.138 of the 2008 Act, to which see below at Paragraphs 1.9.5 to 1.9.9.
- 1.4.5 The following documents were submitted as part of the application for development consent in August 2025, have been updated throughout the examination and are relied upon to support this application under s.127 and s.138:
- **2.2 Land Plans – Sections 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];**
 - **4.3 Book of Reference [Revision F];**

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

1.4.6 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 2008 Act requires that the application is determined in accordance with the relevant NPS unless certain exceptions apply. The identification of the project as a critical national priority (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 EN-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 CNP of developing low-carbon infrastructure, thereby supporting the need case established in the **6.1 Environmental Statement Chapter 1 – Introduction (Revision B)**. Given the 2008 Act requirements set out in s.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 which Pivoted Power has rights in respect of a cable easement in connection with the project include, in particular, the following:
- Access/Haul Road works from Mangreen Lane, north of Norwich Main Substation and the Pivoted Power underground cable.
 - Construct and install two new gantries within Norwich Main Substation
 - Proposed planting in the vicinity of Norwich Main Substation and the Pivoted Power underground cable.

Table 1.1 Proposed Works and Locations

Easting, Northing	Work	Works Description
622178.038, 303005.085	Haul Road	Works as shown on Sheet 1 of the 2.3 Works Plans – Section A showing the interaction between the access/haul road from Mangreen Lane and the North of Norwich Main Substation and the already installed cable of Pivoted Power. For overhead line construction, the haul roads would be typically 6 m wide, with passing places (widening to 8 m) provided at typical intervals of 200 m. The frequency of passing places would be determined by site-specific conditions at the detailed design stage and the forward visibility along the haul roads. For the construction of underground cables, CSE compounds and substations, the haul roads would be typically 8 m wide to allow for the delivery and movement of larger equipment using Abnormal Indivisible Load vehicles. The typical cross section of the haul road would be 21 m wide, to allow for topsoil and subsoil storage, drainage, and demarcation fencing. A standard detail showing the typical layout of the haul road is shown in 2.6.3 Design and Layout Plans – Traffic & Transport [APP-043]. For the assessment of haul road construction, it is assumed that topsoil (and some subsoil) would be stripped and aggregate (e.g. stone) placed on top of the subsoil, delivered to site by HGVs. Within the underground cable sections, the haul roads would normally be positioned central to the alignment, i.e. with cable trenches located either side of the haul roads. Therefore, no additional vegetation clearance would be required, except in some cases where the haul road deviates from the underground cable alignment to reach a site access point onto the public highway.

Easting, Northing	Work	Works Description
621440.051700, 392361.579100	Installation of new gantries	Works as shown on Sheet 1 of the 2.3 Works Plans - Section A to construct and install two new gantries within Norwich Main Substation associated with the overhead transmission electric line (Route RG). The proposed works comprise the construction and installation of new gantries within the Main Substation associated with the Proposed Development, including foundations and steelwork; the installation of conductors, busbars, switchgear, fittings, downleads and down-droppers; the installation of fibre-optic conductors and associated equipment; modification of existing apparatus where required; temporary conductor pulling and tensioning works; and all associated construction, access, landscaping, mitigation and ancillary works necessary to facilitate connection of the Proposed Development to the existing transmission network.
621553.372000, 302312.301800	Replacement Planting	Works as shown on Sheet 1 of the 2.3 Works Plans – Section A to landscape and plant associated with above. The proposed works comprise the reinstatement and replacement of trees, hedgerows, woodland planting and other vegetation removed or affected as a consequence of the construction of the Proposed Development. Replacement planting would be undertaken in accordance with the approved landscape and ecological mitigation measures and would include all associated site preparation, planting, protection, maintenance and aftercare works necessary to establish the replacement vegetation. The works would include the preparation of planting areas, cultivation of soils, importation or reinstatement of topsoil where necessary, and the planting of native trees, shrubs and hedgerow species appropriate to the location and surrounding landscape character. Replacement planting may comprise individual trees, hedgerows, woodland blocks, shelterbelts, ecological mitigation planting and other landscape features. The works would further include the installation of stakes, guards, fencing, mulch and other protective measures required to facilitate successful establishment of the planting. Temporary access arrangements, working areas and construction activities associated with the delivery of replacement planting may also be required. Where replacement planting cannot reasonably be accommodated within the Order Limits owing to engineering, operational or safety requirements,

Easting, Northing	Work	Works Description
		replacement planting may be delivered at alternative locations through off-site planting arrangements. The proposed works would also include ongoing maintenance, monitoring and management of planted areas during the establishment period, including watering, weed control, replacement of failed specimens and other necessary aftercare measures to secure the successful establishment of the replacement vegetation. The purpose of the works is to restore landscape features affected by the Proposed Development, maintain landscape character and visual screening, replace lost vegetation and habitat features, and deliver the landscape and ecological mitigation objectives of the Proposed Development.

- 1.6.2 The Applicant will undertake a comprehensive risk assessment that evaluates the scope of work, proximity to the cable, ground conditions, and the equipment to be used. Based on this assessment, the contractor will establish a safe system of work, including defined exclusion zones, appropriate excavation methods, and emergency response procedures. These controls will be clearly communicated to all personnel through site briefings and method statements to ensure a consistent understanding of the risks and mitigation measures.
- 1.6.3 The Applicant will ensure that all personnel involved in the work are competent and adequately trained in appropriate safety procedures. Workers will be briefed on how to recognize potential hazards or visible damage to infrastructure. In the event of a suspected or confirmed cable strike, the delivery partners will immediately stop all work, evacuate the area, and notify the relevant emergency services if required and cable operator without delay.
- 1.6.4 No heavy equipment or stored materials will be placed directly over or in close proximity to the cable. Where necessary, physical barriers or protective systems will be installed to minimize the risk of accidental impact or loading.
- 1.6.5 Close coordination with Pivoted Power will be maintained throughout the duration of the project. Regular communication will be upheld to address any changes in conditions or unforeseen risks.

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 undertakers' 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 **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]**.

1.8.2 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 **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.
- 1.8.4 The relevant statutory undertaker for the purposes of this application is Pivoted Power. The Applicant proposes to acquire interests and rights in land, such interest in the land having been acquired by Pivoted Power for the purposes of its undertaking.

1.9 Statutory Undertakers' Land

- 1.9.1 No land owned by Pivoted Power 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 Pivoted Power 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) of the 2008 Act are engaged.
- 1.9.3 Below is a summary of the purposes for which land in which Pivoted Power has an interest is required and the rights that would need to be acquired by the Applicant (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, maintenance, as well as permanent rights of access), the plot is classified according to the most extensive (higher class of right) required:
- Class 1 (Compulsory Acquisition of Land) - acquisition of all interests and rights in the land.
 - Class 2 (Compulsory Acquisition of Rights – Overhead Line) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 3 (Compulsory Acquisition of Rights – Underground Cable System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 4 (Compulsory Acquisition of Rights – Overhead Line and Underground Cabling System) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.
 - Class 5 (Compulsory Acquisition of Rights – Access) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions.

Table 1.2 Pivoted Power's interest affected and interest or right to be acquired

Statutory Undertaker's interest (plot number)	Interest or right to be acquired
N/A	Class 1 (in relation to land owned by Pivoted Power)
B-20/188, B-20/198, B-20/203, B-20/208, B-20/221, B-20/230	Class 1 (in relation to land in which Pivoted Power has a right or interest only)
B-20/253, B-20/258, B-20/259, B-20/260	Class 2 (Compulsory Acquisition of Rights – Overhead Line)
B-20/233, B-20/242, B-20/243	Class 3 (Compulsory Acquisition of Rights – Underground Cable System)
B-20/257	Class 4 (Compulsory Acquisition of Rights – Overhead line and underground cabling system)
B-20/190	Class 5 (Compulsory Acquisition of rights – Access)

- 1.9.4 The Applicant considers that there would be no serious detriment to Pivoted Power's undertaking if it were to acquire these rights and interests and that the criteria as set out in s.127 are satisfied for the reasons set out in Paragraphs 1.9.5 to 1.9.9 below.
- 1.9.5 Private negotiations with Pivoted Power will continue in parallel with the compulsory acquisition process with a view to concluding an agreement as soon as practicable.
- 1.9.6 The Applicant understands that Pivoted Power has completed the installation of its underground electricity cable connecting its battery project (a battery energy storage system on land east of Norwich Main Substation, Mangreen Hall Lane, Dunston, Norfolk) to the Applicant's Norwich Main Substation (the Cable), pursuant to a Deed of Grant dated 18 July 2025 which granted Pivoted Power the rights necessary for the installation and operation of the Cable in land of which the Applicant is the freehold owner. The Cable has been installed and is currently awaiting a fibre optic pull. The works to be undertaken by the Applicant close to the installed Cable are limited to the construction of new accessways, hardstanding areas and new compound areas which are in proximity to, and partially overlap with, the Cable and existing easement within the Order Land, together with the use of the haul road leading from the public highway to the Project (the Haul Road) during the construction and maintenance period of the Project. The Applicant has also identified that Biodiversity Net Gain (BNG) land will need to be delivered on parts of the site where Pivoted Power's Cable lies beneath. Save for a small part of the Haul Road at plot B-20/190, all of the works to be completed by the Applicant falls within land in which the Applicant is the freehold owner. As such, the interactions are minimal on land outside of the Applicant's ownership.
- 1.9.7 Pivoted Power will have the benefit of the protective provisions contained within Part 1 of Schedule 16 to the Order. Paragraph 4 provides that the Applicant will not acquire any of Pivoted Power's apparatus without their agreement. The Applicant can confirm that it is not seeking to acquire any of Pivoted Power's apparatus, nor is it intending to remove any of Pivoted Power's apparatus, however Pivoted Power also

has the benefit of the protections in paragraph 5 (which provides protection for Pivoted Power by ensuring that any apparatus it has placed in land acquired by the undertaker cannot be removed until alternative apparatus has been constructed and is operational).

- 1.9.8 In relation to Pivoted Power's Cable remaining in situ, Pivoted Power 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 the Cable and associated infrastructure, including coordination with Pivoted Power or its appointed representatives prior to the commencement of any works in the vicinity, as well as agreement of working methods and protection arrangements. Planting in the vicinity of the Pivoted Power cable will be managed in a way that will not conflict with the integrity of the cable and this would also be controlled under paragraph 6 of the protective provisions.
- 1.9.9 In addition to the protective provisions contained within the Order which will provide Pivoted Power with adequate protection, the Applicant is in discussions with Pivoted Power to provide further protection through a side agreement. In light of the above explanation of the protection afforded under Part 1 of Schedule 16, the Applicant's view is that any interference caused (if at all) will not be a serious detriment to Pivoted Power carrying on its undertaking.

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 For the reasons set out in this application, it is the Applicant's position that, pursuant to s.127 of the 2008 Act, the Secretary of State can be satisfied that the prescribed tests of s.127 have been met as there will be no serious detriment to the carrying on of Pivoted Power's undertaking given the nature of the interactions explained in this submission and the protection put in place for Pivoted Power (as explained in Paragraphs 1.9.5 to 1.9.9), with the protective provisions included at Part 1 of Schedule 16 to the **3.1 Draft Development Consent Order [Revision G]** securing the protection of Pivoted Power's operational assets. The interests and rights in land in which Pivoted Power has an interest 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 **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 **3.1 Draft Development Consent Order [Revision G]** 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 Pivoted Power in, on or under the plots listed in Table 1.2 above.

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

- a) Works associated with the project are necessary over the plots listed in Table 1.2 above (as described in Schedule 1 to the **3.1 Draft Development Consent Order [Revision G]** 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 Pivoted Power 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 Pivoted Power for the reasons explained in Paragraphs 1.9.5 to 1.9.9;
- c) In the absence of powers for the Applicant to ultimately extinguish such rights and/or remove such apparatus, in the event that diversions are required, the authorised development could not be guaranteed to be carried out; and
- d) Protective provisions have been included at Schedule 16 of the draft, 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 **3.1 Draft Development Consent Order [Revision G]**, the Applicant contends that specifically in relation to s.138, the Secretary of State can be satisfied that the rights of Pivoted Power 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 included at Part 1 of Schedule 16 to the **3.1 Draft Development Consent Order [Revision G]**.

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 F]; 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 F]; and
- to carry out any activities ancillary or incidental thereto.

A.1.5

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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