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TC EA One OFTO Limited

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Contents

1.	Application Under S127 of the Planning Act 2008 – (TC East Anglia One OFTO Limited) Statutory Undertakers’ Land	1
1.1	Introduction	1
1.2	Section 127 of the Planning Act 2008	1
1.3	Section 138 of the Planning Act 2008	1
1.4	This Application	2
1.5	Need Case	3
1.6	Proposed Works	5
1.7	Section 127 Application	8
1.8	Statutory Undertakers’ Land	9
1.9	Conclusion	11
1.10	Section 138 Application	12

Table 1.1	Proposed Works and Locations	5
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Abbreviations	14
Glossary	15

Appendix A	Class of Rights
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1. Application Under S127 of the Planning Act 2008 – (TC East Anglia One OFTO Limited) 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 - A representation has been made, and not withdrawn, about an application for development consent; and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 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.
- 1.2.3 Section 138 applies to land if:
- a) There subsists over the land a relevant right; or

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

- 1.3.2 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.

1.4 This Application

- 1.4.1 The relevant statutory undertaker for the purposes of this application is TC East Anglia One OFTO Limited (TC EA1 OFTO). The Applicant proposes to acquire land, interests and rights in land, such land or interest in the land having been acquired by TC EA1 OFTO for the purposes of its undertaking.
- 1.4.2 TC EA1 OFTO has land interests in and operates the EA1 substation as the offshore transmission owner which was delivered under the East Anglia ONE Offshore Windfarm Order 2017. There are therefore shared interests between TC EA1 OFTO and East Anglia ONE Limited (for whom a separate 127/138 submission is submitted separately).
- 1.4.3 The Applicant's **4.3 Book of Reference (Revision F)** identifies the only land plot in which TC EA1 OFTO has a land interest as B-20/199. Through engagement with East Anglia ONE Limited, this plot has been reclassified as Class 8 land with the effect that the land plot is not subject to compulsory acquisition or temporary possession powers. The Applicant intends to clarify this position with TC EA1 OFTO as it is the Applicant's understanding that the OFTO shares the same interfaces as East Anglia ONE Limited although this has not been confirmed definitively by the OFTO. The Applicant has drafted bespoke protective provisions in favour of TC EA1 OFTO based on those offered to East Anglia ONE Limited. The Applicant is further submitting this Section 127/138 submission out of an abundance of caution (and on a without prejudice basis), even though the Applicant recognises that its Book of Reference does not identify any land interests that would qualify TC EA1 OFTO as a Section 127/138 party. Should TC EA One OFTO confirm to the contrary in respect of its Section 127/138 status prior to Deadline 8, this Section 127/138 submission shall either be withdrawn or updated as appropriate. The remainder of this submission therefore assumes that TC EA1 OFTO is a Section 127/138 party with land interests equal to those of East Anglia ONE Limited.
- 1.4.4 TC EA1 OFTO has made a representation to the Planning Inspectorate in relation to the application for development consent [AS-091]. The Applicant is in ongoing discussions with TC EA1 OFTO regarding the application, but its representation has not currently been withdrawn.
- 1.4.5 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 TC EA1 OFTO's statutory undertaking, then the **3.1 Draft Development Consent Order (Revision G)** may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land, by the creation of a new right over land, to the extent that the Secretary of State is satisfied that the requirements of s.127 have been met.
- 1.4.6 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 of the 2008 Act.

- 1.4.7 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).**
- 1.4.8 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 in connection with the project over the land which the Applicant understands TC EA1 OFTO use for its statutory undertaking on the basis of those land interests held by East Anglia ONE Limited include, in particular, the following:

- Construction of an access haul road which will cross over the EA1 underground cable;
- Highway works to Bullen Lane and maintenance of TC EA1 OFTO's access to the EA1 substation along Bullen Lane during the same;
- Maintenance of TC EA1 OFTO's access to EA1/EA3 SuDS pond during the construction and operation period;
- Construction and maintenance of the northern wall extension of Bramford substation which will extend into EA1's ownership boundary;
- Construction of the pulling zone around RG207 which will interact TC EA1 OFTO's access to the SuDS pond; and
- Replacement of any EA1 landscaping removed as part of the Project.

Table 1.1 Proposed Works and Locations

Plot numbers	Work	Works Description
B-20/181, B-20/183, B-20/185, B-20/202, B-20/203, B-20/215, B-20/179, B-20/191, B-20/195, B-20/209, B-20/174, B-20/180, B-20/182, B-20/196, B-20/197, B-20/204, B-20/205, B-20/214	Haul Road Crossing	Haul road works to allow access to towers RG 207 and RG 208. 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

Plot numbers	Work	Works Description
		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.
	Highways works Bullen Lane and Access Arrangement	Necessary improvement works to Bullen Lane which will enable safe access by 2-way HGVs and Transformer Delivery Vehicles. Details of the specific arrangement and form of the works along Bullen Lane are being confirmed at detailed design stage. The Applicant's DCO stage proposals include for the widening of the Junction with Bullen Lane and B1113 Loraine Way, as well as the construction of passing places along Bullen Lane to achieve a 6.5m carriageway width with spacing guided by the forward visibility along the carriageway. The Applicant recognises that Bullen Lane is a no through road, and therefore no diversion routes available during a closure to provide alternative access to the AP's property. Therefore, our commitment AS03 in 7.2 Outline Code of Construction Practice [REP2-014] would apply. This states that "where practicable and safe to do so, existing access to and from residential, commercial, community and agricultural land uses will be maintained throughout the construction phase, or as agreed through landowner discussions. This may require signed diversions or temporary restrictions to access. Where this is not achievable, alternative arrangements will be made with the affected parties through the land agreements". In practice, in the instance of Bullen Lane it is anticipated that construction of passing places and road widening would involve a managed closure of Bullen Lane. The closure would be necessary for periods where land is required to provide a safe working area adjacent to widening is not available, and thus working within the highway is necessary. The management of this closure is anticipated to include the use of banksmen who would control the traffic management and pause construction activities to enable vehicles to safely pass the works along Bullen Lane.
	Construction & Maintenance of wall extension	The proposed works comprise the construction, extension and maintenance of a boundary wall associated with Bramford Substation, including foundations, wall structures and associated ancillary works. The works would include site preparation, excavation, construction activities, temporary access and working areas, together with all activities

Plot numbers	Work	Works Description
		necessary to facilitate the operation and maintenance of the wall extension. Following completion of the works, temporary works areas would be removed and the land reinstated as appropriate.
	Pulling zone	The proposed works comprise the establishment and use of a temporary pulling zone to facilitate the installation of overhead line conductors associated with the Proposed Development. The works would include the temporary occupation of land, installation of access arrangements and working areas, positioning of conductor drums and pulling and tensioning equipment, conductor stringing operations, installation of associated fittings, and all ancillary activities necessary to facilitate the safe installation of the overhead line. Upon completion of the works, temporary equipment would be removed and the land reinstated as appropriate.
	Replacement Planting	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, 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

Plot numbers	Work	Works Description
		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 and its contractors will undertake a comprehensive risk assessment to evaluate the proposed construction activities, proximity to existing electricity infrastructure, ground conditions, required safety clearances, and the plant and equipment to be used. Consideration will be given to activities such as Pylon construction including foundations, cable stringing, access road construction & drainage works. Based on the assessment, the Principal Contractor will establish and implement a safe system of work, including defined exclusion zones, approved excavation methods, permit requirements, and emergency response procedures. These control measures will be communicated to all personnel through site inductions, daily briefings, and task-specific method statements to ensure a consistent understanding of the risks and associated mitigation measures.
- 1.6.3 The Applicant and its contractors will ensure that all personnel involved in the construction activities are suitably trained, competent, and aware of the requirements for working in proximity to electrical infrastructure. Workers will be briefed on the identification of safe digging practices, and the recognition of potential hazards or damage to infrastructure.

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 Statutory Undertakers’ Land

- 1.8.1 The procedure under s.127 only applies to compulsory acquisition 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.
- 1.8.2 As detailed above, TC EA1 OFTO holds an interest in land plot B/20-199 which would have accordingly engaged ss.127(2) and (3) of the 20008 Act. However, the plot has subsequently been reclassified as Class 8 land meaning that the Applicant is not seeking any compulsory acquisition or temporary possession rights over that land.
- 1.8.3 Further, the Applicant is not aware of any other interests in the Order land held by TC EA1 OFTO however, is engaging with the OFTO to clarify this position. In the absence of confirmation on TC EA1 OFTO’s land rights, the Applicant is precautionarily submitting this Section 127/138 submission on the basis that land interests, most likely the same as those for East Anglia ONE Limited, may be confirmed by the statutory undertaker.
- 1.8.4 Table 1.2 of the **8.29.19 Application under Section 127 Planning Act 2008 - Scottish Power (UK) Renewables Limited (East Anglia ONE) (EA1) (Revision A)** refers to the land rights held by East Anglia One Limited which are subject to the Section 127/138 submission. Given the absence of land ownership, the Applicant assumes that these do not apply but if TC EA1 OFTO does subsequently confirm an interest in such land plots, the Applicant has assumed that these plots will be the

same as for those held by East Anglia ONE Limited and accordingly that the position in terms of the tests under section 127 would be as follows:

- 1.8.5 The Applicant considers that there would be no serious detriment to TC EA1 OFTO's undertaking if it were to acquire the rights and interests set out in Table 1.2 of the **8.29.19 Application under Section 127 Planning Act 2008 - Scottish Power (UK) Renewables Limited (East Anglia ONE) (EA1) (Revision A)** and that the criteria as set out in s.127 are satisfied for the reasons set out below.
- 1.8.6 The Applicant has offered to TC EA1 OFTO a set of protective provisions based on the provisions being provided to EA1 to offer further protection in respect of its operational requirements in the **3.1 Draft Development Consent Order (Revision G)**. The Applicant provided a copy of the provisions, which will be submitted at Deadline 7, to the OFTO on 16 July 2026
- 1.8.7 The Applicant has sought to expand the scope of the protective provisions to provide TC EA1 OFTO with comprehensive protections which:
- ensure access to TC EA1 OFTO's substation from Bullen Lane and to the SuDS pond from TC EA1 OFTO's substation;
 - provide retained apparatus protection in respect of any TC EA1 OFTO apparatus with which the Project interacts, in particular the underground cable;
 - prevent the Applicant from acquiring any of TC EA1 OFTO's apparatus without the prior agreement of TC EA1 OFTO;
 - prevent the Applicant from exercising their CA powers in such a way as to extinguish TC EA1 OFTO's existing access rights along Bullen Lane and the access road to the EA1 substation without any simultaneous regrant of the same rights or otherwise put TC EA1 OFTO back into the substantially same position in respect of its existing land rights to access along Bullen Lane and the access road to the EA1 substation;
 - prevent the Applicant from exercising their CA powers in such a way as to extinguish TC EA1 OFTO's existing land rights related to the apparatus without any simultaneous regrant of the same rights or otherwise put TC EA1 OFTO back into the substantially same position in respect of its existing land rights to the apparatus and;
 - provide TC EA1 OFTO with assurances that any expenses incurred by TC EA1 OFTO in respect of any interference with its apparatus by the Project shall be covered by the Applicant.
- 1.8.8 The protective provisions are subject to further amendment at Deadline 8, if further agreement with TC EA1 OFTO can be reached.
- 1.8.9 The Applicant and TC EA1 OFTO are also proposing to progress heads of terms for a legal interface agreement which shall regulate the details of the interactions set out at paragraph 1.7 above. This legal agreement shall supplement and support the protective provisions provided in the Order and set out further detailed commitments on both parties to ensure the coexistence of each other's statutory undertakings during the construction and operation of the Project. Negotiations with TC EA1 OFTO to acquire the interests and rights required for the project within the order limits voluntarily are ongoing.

- 1.8.10 The Applicant would also note that as part of the optioneering and consultation process, it has already agreed to restrict the overhead line limit of deviation over plot number B20-199 in addition to the reclassification of the plot as Class 8 land to avoid an interaction between the oversail of the OHL and the TC EA1 OFTO substation.
- 1.8.11 Compulsory acquisition powers are sought in the **3.1 Draft Development Consent Order (Revision G)** as set out in Table 1.2, including Class 1 land (over which TC EA1 OFTO may have rights and interests) in order to deliver both the upgraded access route along Bullen Lane (which is currently shared) and the northern boundary wall extension of Bramford substation. The EA1 underground cable crosses through this area. It should be noted that:
- 1.8.12 The land over which the extension to the substation boundary wall will be constructed is not utilised by TC EA1 OFTO for its statutory function save that the EA1 underground cable runs beneath the land into the Bramford substation. The Applicant is committed under the retained apparatus provision in the protective provisions to protect the underground cable. Further, as the overground area is not used by TC EA1 OFTO for its statutory function, save to access the underground cable which the Applicant will not restrict, it is the Applicant's view that there will be no serious detriment as a result of the acquisition of the Class 1 land plots. Where the cable route and the Class 1 land intersect the Applicant has given the protection in Paragraph 2(2) of the Protective Provisions to ensure that TC EA1 OFTO's rights in relation to the underground cable are preserved or maintained;
- 1.8.13 In relation to any interactions between TC EA1 OFTO's land or rights with the Applicants proposed Class 1 land rights for the access to Bramford Substation, the Applicant has given the protection in paragraph 2(1) of the Protective Provisions to ensure that TC EA1 OFTO's access rights are preserved or maintained;
- 1.8.14 Other than during construction of the project (in particular for access to the TC EA1 OFTO site along Bullen Lane and noting that the Applicant will seek to agree with TC EA1 OFTO in advance the timing of those operations required to be undertaken in proximity to TC EA1 OFTO's operational assets, for example, ALLs will only be permitted where notified in advance and subject to reasonable mitigation measures such a surface level road protections to prevent as far as possible any damage to TC EA1 OFTO's underground cable), potential interference would be limited to maintenance or emergency works to the Applicant's equipment. On such occasions, the Applicant would consult with TC EA1 OFTO in order to cause as little disruption as practicable during maintenance or emergency works; and
- 1.8.15 The rights sought by the Applicant would co-exist within the plots affected alongside those of TC EA1 OFTO and the rights would cause minimal interference to TC EA1 OFTO's undertaking. The Applicant therefore does not consider it necessary to replace the land over which rights are required for the project.

1.9 Conclusion

- 1.9.1 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)**.
- 1.9.2 There would be no serious detriment to the carrying on of TC EA1 OFTO's statutory undertaking given the nature of the interactions explained in this submission and the

protection put in place for TC EA1 OFTO (as explained in Paragraphs 1.8.7 to 1.8.11 above), with the protective provisions included at Part 20 of Schedule 16 to the **3.1 Draft Development Consent Order (Revision G)** securing the protections identified above operational assets.

- 1.2.4 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 TC EA ONE OFTO Land may be included for compulsory acquisition in the **3.1 Draft Development Consent Order (Revision G)**.

1.10 Section 138 Application

- 1.10.1 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 draft DCO relates.
- 1.10.2 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.*
- 1.10.3 If TC EA1 OFTO confirm they have wider land interests than Plot B20/199 then s138 would be engaged and in this situation TC EA1 OFTO would hold a relevant right and/or relevant apparatus vested in TC EA1 OFTO in, on or under the plots listed in tables 1.2 of the **8.29.19 Application under Section 127 Planning Act 2008 - Scottish Power (UK) Renewables Limited (East Anglia ONE) (EA1) (Revision A)**.
- 1.10.4 In this situation and 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 1.1 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 TC EA1 OFTO 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 TC EA1 OFTO for the reasons explained in paragraphs 1.8.5 and 1.8.15;
- 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 20 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 – on which see paragraphs 1.8.6 to 1.8.8 above.

1.10.5 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 TC EA1 OFTO 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 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 Order; and

- to carry out any activities ancillary or incidental thereto.

A.1.3

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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