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1. Application Under s127 of the Planning Act 2008 (Sheringham Shoal and Dudgeon Extensions Projco 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 [GH](#))** 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 [GH](#))** 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 [GH](#))**.

1.2 Section 127 of the Planning Act 2008

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 - A representation has been made, and not withdrawn, about an application for development consent; and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

1.3 Section 138 of the Planning Act

- 1.3.1 The ~~draft DCO~~**3.1 Draft Development Consent Order (Revision [H](#))** 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~~ [3.1 Draft Development Consent Order \(Revision H\)](#).

1.3.2 Section 138 applies to land if:

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

1.3.3 Section 138 provides that the ~~draft DCO~~ [3.1 Draft Development Consent Order \(Revision H\)](#) 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~~ [3.1 Draft Development Consent Order \(Revision H\)](#) relates.

1.4 This application

1.4.1 The Applicant has been in ongoing discussions with Sheringham ~~and~~ Shoal and Dudgeon Extensions Projco Limited (“**SSDEPL**”) in order to determine whether SSDEPL meets the criteria of either or both of section 127 and section 138.

1.4.2 SSDEPL has informed the Applicant that it holds option agreements over two plots within the Order limits for the Project. The Applicant has not had sight of the option agreements. However, the Applicant understands this to mean that SSDEPL is a statutory undertaker which holds an interest in land for the purposes of section 127 and section 138.

1.4.3 The Applicant acknowledges that there is also a wider overlap between the Order limits of the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (“**SSDE Order**”) and the proposed Order limits under the dDCO.

1.4.4 SSDEPL has made a representation to the Planning Inspectorate in relation to the application for development consent (RR-3369, REP1-231, REP3-120 ~~and~~ [REP4-359, REP6-163 and REP7-570](#)). The Applicant is in ongoing discussions with SSDEPL 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 SSDEPL does hold land or an interest in the land used for the purposes of carrying on a statutory undertaking, then the **3.1 Draft Development Consent Order (Revision [G](#))** may only include provision authorising the compulsory acquisition of a right that 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 and s.138 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~~[Sections](#) A-H (Revision [FG](#));**
- **2.3 ~~Work~~[Works](#) Plans – [~~Section A (Revision B), Section B~~[Sections A-H \[REP7-014\] \[REP6-014\], Section C \(Revision C\), Section D \(Revision B\),](#)**

Section E [\[REP7-016\]](#) [\[REP7-018\]](#) [\[APP-021\]](#), **Section F** [\[REP6-016\]](#), **Section G** [\[REP5-021\]](#) [\[REP6-018\]](#);

- 3.1 Draft Development Consent Order (Revision [GH](#));
- 3.2 Explanatory Memorandum (Revision [GH](#));
- 4.1 Statement of Reasons (Revision [DE](#)); ~~and~~
- 4.3 Book of Reference (Revision [FG](#)); and
- 5.6 Planning Statement (~~Revision B~~)[\[REP7-090\]](#).

1.4.8 The 4.1 Statement of Reasons (Revision [DE](#)) sets out the justification for seeking compulsory acquisition powers within the 3.1 Draft Development Consent Order (Revision [GH](#)).

1.5 Need Case

1.5.1 The need for the project has been established in the 5.6 Planning Statement ~~Revision B~~[\[REP7-090\]](#) and 4.1 Statement of Reasons (Revision [DE](#)) 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 ~~EN~~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 critical national priority (CNP) of developing low-carbon infrastructure, thereby supporting the need case established in ~~the ES~~[ES6.1 Environmental Statement Chapter 1 – Introduction \[REP7-152\]](#). 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 As set out in paragraph 1.4.2 above, the Applicant has been told by SSDEPL that it ~~hold~~holds an option agreement over two plots within the Order limits and also acknowledges that there is an overlap between the Order limits of the SSDE Order and the proposed Order limits under the dDCO. SSDEPL has not yet installed its cable and so the below is based on the Applicant's understanding of its proposed location.
- 1.6.2 The works which are proposed over land within that overlap area include, in particular, the following:
- Installation of temporary haul road interacting with the proposed location of SSDEPL's permanent underground cable swathe.
 - Installation of permanent overhead line crossing the proposed location of SSDEPL's permanent underground cable.
 - Installation of permanent overhead line crossing interacting with the proposed location of SSDEPL's temporary spoil heap.
- 1.6.3 There would have been a greater number of interactions between the projects if the Applicant chose to construct what was known as the eastern option for the construction of the overhead line between pylons RG001 and RG007. However, the Applicant has confirmed through the updated **8.11 Approach to Scenarios (Revision E)** at Deadline 7 that it will not proceed with the eastern option. Updated Lands Plans will be submitted at Deadline 8.
- 1.6.4 In any event, the Applicant has given a commitment in paragraph 7 of the bespoke protective provisions to be included in the **3.1 Draft Development Consent Order (Revision GH)** for SSDELP's benefit that it will not pursue the eastern option – on which see further paragraph 1.8.18 below.
- 1.6.5 Similarly, the Applicant has given a commitment in paragraph 7 of those protective provisions to maintain access to SSDEPL's substation and not to plant over that access. As such, any potential interaction between the Applicant's landscape planting and SSDEPL's access has also been removed.

Table 1.1 Proposed Works and Locations

Plot Numbers	Work	Works Description
A1/15, A1/18	Work No. 2	Works as shown on Sheet 1 of the Work Plans Section A [APP-017] to construct and install a new overhead transmission electric line (Route RG) between the two gantries at Norwich Main Substation (Work No. 1) and the two gantries at Bramford Substation (Work No. 3), including - (a) the foundations and steelwork to construct new pylons; (b) the installation of 69 kilometres of overhead transmission electric line between Norwich Main Substation and Bramford Substation; (c) the installation of conductors, insulators and fittings; and

(d) the installation of fibre optic conductors

- 1.6.6 SSDEPL has informed the Applicant that it holds option agreements in relation to the two plots included in table 1.1 above.
- 1.6.7 All works relating to the delivery of the Norwich to Tilbury scheme will be carried out in close coordination with SSDEPL contractors to ensure safe working within overlapping CDM areas.
- 1.6.8 In relation to works in the areas of overlap with the SSDE Order, 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.
- 1.6.9 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.
- 1.6.10 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.
- 1.6.11 Close coordination with the SSDEPL will be maintained throughout the duration of the project. Regular communication will be upheld to address any changes in conditions or unforeseen risks.
- 1.6.12 Once installed, the permanent apparatus is not anticipated to impede SSDEPL ability to operate and maintain its apparatus.
- 1.6.13 In relation to the specific potential interaction between the Applicant's temporary haul road and SSDEPL's underground cable, the Applicant has been in discussions with SSDEPL's engineering team and has agreed that this interaction is manageable through the installation of ducting and drainage beneath the haul road before the construction of that haul road. The teams will work together to determine who is best placed to construct such ducting and drainage and a commitment on this has been given in paragraph 7 of the protective provisions – see paragraph 1.8.18 below.
- 1.6.14 The construction of the permanent overhead line crossing the proposed location of SSDEPL's underground cable will be managed in accordance with the principles set out in paragraphs 1.6.8 to 1.6.11, which is a temporary impact. Once constructed, appropriate clearances from the OHL would need to be followed by SSDEPL and any works to their underground cable which might impact those clearances would be managed through usual NGET processes. This approach is standard in relation to works close to OHLs.
- 1.6.15 The Applicant notes the potential interaction between the installation of its permanent overhead line close to the current proposed location of SSDEPL's temporary spoil heap. The installation of the overhead line will be managed in

accordance with paragraphs 1.6.8 to 1.6.11. Through engagement with SSDEPL, the Applicant understands that SSDEPL is likely to reconfigure its temporary compound to avoid this potential interaction. The parties will continue to engage on this point to ensure that any interaction is managed appropriately, noting that such interaction would be temporary only and so would not engage s127.

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 GH)** 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 No land owned by SSDEPL needs to be compulsorily acquired. Therefore, ss.127(2) and (3) of the 2008 Act are not engaged.
- 1.8.2 At this point in time, the Applicant understands that the only relevant land interest held by SSDEPL is an option agreement in relation to plot A-1/15 and this would engage 127(5) and (6). SSDEPL do not yet have any apparatus within the Order limits and the Applicant has not seen the relevant option agreement.
- 1.8.3 On this basis, the Applicant’s s127 submissions only need to cover this plot. However, the Applicant acknowledges the wider interactions in relation to the two projects and so in paragraphs 1.6 above and 1.8 below has also included detail on why there is no wider serious detriment caused to SSDEPL by the project.
- 1.8.4 Below is a broad description of the purpose for which SSDEPL’s Land is required and the rights that would need to be acquired (in the context of the interface works described in ~~Paragraph 1.31~~ [1.6 Proposed Works](#) above); see further the **4.3 Book of Reference (Revision FG)** and noting as is explained in the **4.3 Book of Reference (Revision FG)** that 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 coloured according to the most extensive (higher class of right) required:
- 1.8.5 **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.

Table 1.2 Land affected and interest or right to be acquired

Statutory Undertaker’s land (plot number)	Interest or right to be acquired
N/A	Class 1 (in relation to land owned by SSDEP)
A-1/15	Class 2 (Compulsory Acquisition of Rights – Overhead Line)

- 1.8.6 The procedure under s.127(5) only applies to the compulsory acquisition of a right and therefore is not engaged by plots (such as A-1/18) which are only subject to Articles 27 to 30 (inclusive) of the **3.1 Draft Development Consent Order (Revision GH)** which relate solely to temporary use.
- 1.8.7 The Applicant considers that there would be no serious detriment to SSDEPL’s undertaking if it were to acquire rights and interests in this plot and so the criteria as set out in s.127 are satisfied for the reasons explained below.
- 1.8.8 The Applicant understands that SSDEPL is yet to commence development under the SSDE Order but acknowledges that there is an overlap between the Order limits of that Order and the proposed Order limits under the dDCO.

- 1.8.9 The works to be undertaken by the Applicant close to where it is understood SSDEPL will install their cable connection are limited to those set out at paragraph 1.6.2 and the potential interactions are either temporary in nature (e.g. the Project's temporary haul road) or are manageable through coordination between the Applicant and SSDEPL.
- 1.8.10 Rights sought by the Applicant in the overlapping areas would co-exist within the plots affected alongside SSDEPL and, for the most part, the rights would cause minimal interference to SSDEPL's undertaking.
- 1.8.11 The Applicant has included bespoke protective provisions for the benefit of SSDEPL within Schedule 16 to the DCO. An updated version of these has been included in the DCO at Deadline [78](#).
- 1.8.12 Paragraph 5 of those protective provisions places restrictions on the use of lands powers by the Applicant by requiring that the Applicant must not acquire, extinguish or suspend any rights [or apparatus](#) that SSDEPL has in respect of any apparatus, [cables or access routes](#) without SSDEPL's consent. The Applicant can confirm that it is not seeking to acquire any of SSDEPL's apparatus once it is installed, nor is it intending to remove any apparatus. [It can also confirm that it does not intend to acquire, extinguish or suspend SSDEPL's rights in relation to its cable routes or access routes.](#)
- 1.8.13 Although the Applicant will retain compulsory acquisition rights over land within the overlapping areas, those will be used only to acquire the land rights necessary for the Project and it is expected that any apparatus and rights of SSDEPL will remain in place (such that both parties' apparatus and land rights can co-exist).
- 1.8.14 Given the current status of SSDEPL's project and the absence of land rights beyond the option agreement, paragraph 5 of the protective provisions provides an appropriate level of protection for SSDEPL in ensuring that apparatus will not be removed when constructed, nor land rights in relation to that apparatus extinguished once they are in place.
- 1.8.15 The Applicant understands that SSDEPL is in the process of acquiring further option agreements in relation to land within the overlap area but is not aware that these have yet been granted and does not yet have any detail of these. For that reason, the Applicant is not in a position to provide bespoke protection for those future option agreements [\(other than in relation to cables and access as set out above\)](#) because it cannot be sure how they will interact with the NTT project.
- 1.8.16 There are detailed cooperation provisions in both the bespoke protective provisions (see paragraph 9) and in the proposed side agreement which allow for ongoing detailed engagement between the two projects once the SSDEPL project moves forwards and acquires land rights. In any event the protections in paragraph 7 of the protective provisions addressed in paragraph 1.8.18 ensure that the interaction between the two projects is managed.
- 1.8.17 In relation to any apparatus remaining in situ (once constructed), SSDEPL will have the benefit of paragraph 6 of the proposed bespoke protective provisions which provides for a process to be followed where works are to be undertaken near to SSDEPL's apparatus, to ensure protection for this apparatus from construction impacts. The Applicant will submit a plan to SSDEPL and execute the works in accordance with that plan and any reasonable conditions provided by SSDEPL, including possible protective works.

- 1.8.18 Engagement between the Applicant and the SSDEPL has identified a number of specific potential interactions between the two projects which will need to be managed and detailed provision on these is included in paragraph 7 of the bespoke protective provisions included at Deadline 7, as follows:
- The Applicant has committed not to construct the eastern route option for the OHL between RG001 and RG007. This follows a request from SSDEPL and reduces the interfaces between the two projects significantly.
 - The Applicant has committed to maintain SSDEPL's [permanent](#) access to its substation in accordance with an easement which the Applicant will be granting to SSDEPL separately to this DCO Examination process. It has also expressly committed to not plant over that access as part of its landscape and ecological management plan. This addresses previous concerns of SSDEPL that construction of the authorised development would prohibit its access to its substation. [Further, the Applicant has made the same commitments in relation to SSDEPL's temporary access to the substation \(which has a slightly different alignment\) for the period during which it is in use as a temporary access.](#)
 - The Applicant has committed to not construct pylon RG006 or any associated working area for that pylon within that part of SSDEPL's cable corridor which sits within the overlap area between the two projects. This follows a request from SSDEPL and reduces the interfaces between the two projects significantly.
 - The Applicant has committed not to locate attenuation ponds within the overlap area and not to carry out tree planting within the SSDEPL cable corridor. Again, this follows a request from SSDEPL.
 - The Applicant has agreed to liaise with SSDEPL as regards its haul roads and, specifically to agree the responsibility for and timing of the inclusion of ducting and drainage beneath the Applicant's haul road. This is to ensure that both projects can continue their works within the overlap area. Further, [where that agreement requires such ducting and drainage to be in place prior to the commencement of work on the haul road,](#) the Applicant has committed to ensure such ducting and drainage is in place before ~~commencing work on its haul road,~~ [that commencement](#) so long as SSDEPL has provided a specification for it 60 business days' prior. This appropriately deals with SSDEPL's concerns about the location of the haul road causing delay to the construction of its cable.
- 1.8.19 Taken together, these provisions demonstrate the ways in which the Applicant has responded to concerns of SSDEPL to ensure that it is able to continue to construct its project without serious detriment to its undertaking.
- 1.8.20 In addition to the protective provisions, the Applicant is in discussions with SSDEPL to provide further protection through a side agreement to provide a more detailed framework for ongoing engagement and co-operation between the parties. The Applicant's view is that in light of the inclusion of the Protective Provisions for the benefit of SSDEPL at D7 including the protections in paragraph 5, 6 and 7 any interference caused (if at all) will not be a serious detriment to SSDEPL carrying on its undertaking.

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 GH)**.
- 1.9.2 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 and that interests and rights in SSDEP's Land may be included for compulsory acquisition in the **3.1 Draft Development Consent Order (Revision GH)**.

1.10 Section 138 Application

- 1.10.1 As noted above, the **3.1 Draft Development Consent Order (Revision GH)** 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 GH)** 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 The Applicant understands that SSDEPL has not yet constructed any apparatus pursuant to the SSDE Order. It is also unclear, as yet, whether any option agreements which SSDEPL is party to provide a right to lay apparatus. However, to

the extent to which section 138 is engaged in relation to SSDEP, it is the Applicant's case that:

- a) Works associated with the project are necessary over land in the areas of overlap between the DCO and the SSDE Order (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 SSDEPL 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 SSDEPL for the reasons explained in paragraphs 1.8.7 to 1.8.20;
- 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 Schedule 16 of the draft, which ensure that all appropriate steps must be taken by the Applicant to protect retained relevant apparatus – on which see paragraphs 1.8.17 and above.

1.10.4 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 SSDEPL 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 2 (Compulsory Acquisition of Rights – Overhead Line)** – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:
- with or without vehicles, plant and equipment to enter the land to construct the overhead electric line and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
 - with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
 - with or without vehicles, plant and equipment to enter the land to access any adjoining land;
 - with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
 - to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the overhead electric line, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
 - to fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
 - to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports) soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
 - to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds;
 - including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
 - to carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the 3.1 Draft Development Consent Order (Revision F); and
 - to carry out any activities ancillary or incidental thereto.

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