

D 13.

The Company Secretary
Ridgewood Holdings Limited
c/o Lynn Ascroft
Ashcroft Holdings
Crockstead Farm
Eastbourne Rd
Halland
BN8 6PT

Date: 12th July 2022
Your ref:
Our ref: EDGEWOC/342777.000032
Direct: +44 161 831 8456
Email: ClemmieEdgeworth@eversheds-sutherland.com

By Special Delivery

Dear Ms Ashcroft

The National Grid Electricity Transmission (Little Horsted Substation Connection) Compulsory Purchase Order 2022 ("the Order")**Objection Of Ridgewood Holdings Limited (dated 13 May 2022) ("the Objection")**

We act on behalf on National Grid Electricity Transmission ("NGET") in connection with the above Order.

We write in response to the Objection made on behalf of Ridgewood Holdings Limited ("RHL") in respect of the Order, and specifically the proposed compulsory purchase of the 8.3 hectares of land at Croxstead Farm (included in the Order as plots 58a and 58b). Our responses to the points raised in the Objection are set out below:

(i) Compulsory purchase of plots 58a and 58b is not 'required' for the stated purpose

As acknowledged in the Objection, NGET has acquired circa 9.3ha of land from RHL by voluntary agreement (referred to in the Objection as the 'GSP land' and in the Order as 'plot 35'). A large proportion of the GSP land comprises habitat suitable for protected species including great crested newt (GCN), common reptiles, hazel dormice, breeding birds, badgers and foraging bats.

The proposed construction of new substations on the GSP land will result in the loss of the majority of these habitats. Off-site land is therefore required to compensate for the loss of these habitats and mitigate the impacts on the aforementioned protected species.

We note that some confusion appears to have arisen as to the use of the terms 'biodiversity net gain', 'mitigation', 'compensation' and 'enhancement' in the Statement of Reasons which accompanies the Order.

For the sake of clarity, we confirm that the loss of habitat on the GSP land has the potential to adversely affect protected species. That impact requires mitigation. In this instance, the proposed mitigation is to provide alternative, or compensatory habitat suitable for the protected species. Given that the habitat to be lost (9.3ha) exceeds the site area to be provided

man_003\5560941\1

as compensatory habitat (8.3ha), the quantitative loss must be addressed through qualitative improvements, or 'enhancements' to plots 58a/b.

The creation of compensatory habitat on plots 58a/b is required in order to deliver the Project, as a result of the planning permission and licences secured from Natural England. The planning permission (granted 12 November 2021) included a pre-commencement condition relating to ecology. In order to discharge that condition, an ecological mitigation and management strategy was prepared and approved by the local planning authority in April 2022. The strategy requires NGET to deliver the following measures on plots 58a/b:

- scrub creation;
- wildflower meadow creation;
- woodland enhancement;
- long-term management and maintenance of the newly created habitats; and,
- monitoring surveys to assess the success of the newly created habitats and maintenance of protected species populations.

NGET has also secured a protected species licence from Natural England to carry out works on the GSP land that would otherwise constitute an offence under wildlife legislation. In order to secure the licence, NGET has committed to provide compensatory habitat on plots 58a/b to mitigate the impacts on protected species so as to ensure that their conservation status is maintained. The creation of compensatory habitat on plots 58a/b is therefore a legal requirement, pursuant to the Natural England licence, with which NGET must comply in order to deliver the Project.

It is correct to say that the compensatory habitat on plots 58a/b will, in the longer term (given how long it takes for newly created habitats to develop) provide biodiversity net gain. This is a secondary benefit of the proposals and will be the result of the longer-term management provisions that NGET are committed to. However, the reason for acquiring plots 58a/b is to deliver the compensatory habitat required to mitigate the effects of the Project on protected species, rather than to achieve biodiversity net gain. Indeed, the concept of biodiversity net gain is underpinned by habitat-related metrics, and does not (currently) take species considerations into account.

ii) Impact on farm and business

It is acknowledged that in previous correspondence with RHL, NGET had suggested that it may wish to use plots 58a and 58b to relocate soil removed from the GSP land/plot 35 during construction of the new substations. We can confirm that is not now the case. The land is required and intended for use only as ecological mitigation land, as set out in the Statement of Reasons.

Reference is made at p.ii (on page 2) in the Objection to alleged severance of the holding by the compulsory acquisition of plots 58a and 58b, but with no explanation of how this severance is perceived to occur or of the claimed significant adverse impact. Plots 58a and 58b lie on the eastern side of the holding, and if the perceived severance claimed is to land owned to the north, access is still readily available over RHL's land to the west of plots 58a and 58b with existing gateways through to the land to the north. We would welcome the opportunity to discuss this with you further in order to better understand the nature of RHL's concerns.

iii) Alternatives to compulsory acquisition have not been considered

P10 of the Objection refers to the case of *R (Hall) v First Secretary of State* and in particular to three circumstances in which compulsory purchase could not be justified in the public interest, namely:

i. Land proposed to be acquired may be excessive because development proposals can be constructed without needing that land to be acquired

ii. Acquisition of a right over the land, rather than its acquisition, might suffice

iii. Land may be necessary for the development, but [the] landowner may be willing to agree to sell.

The Objection states that "*With reference to point 'ii', in so far as any off-site habitat creation is required to re-create the compensatory habitat (including of woodland for enhancement to satisfy the dormouse mitigation recommendations), compulsory purchase powers are not required because they could be achieved by the use of lesser powers than compulsory purchase (temporary possession and acquisition of rights of maintenance)*".

Firstly it should be noted that while the Housing and Planning Act 2016 includes temporary possession powers, these are not yet in force so are not available to NGET. As to the acquisition of new rights, as explained at paragraph 8.12 of the Statement of Reasons, "*NGET is taking a proportionate approach to acquisition and only seeks to acquire the freehold title to the Order Land for the purposes of above ground permanent infrastructure, namely the NGET GSP substation and the SEPN substation (CPO Plot 35), and to mitigate the impacts of the new substations on the habitat of protected species (CPO Plots 58a and 58b). In all other instances rights in land will be acquired.*"

NGET requires the freehold of plots 58a and 58b because it is necessary for the compensatory habitat to be secured in the long term, and not reversed by subsequent development of, or incompatible uses of, the land, that are not in keeping with maintaining the favourable conservation status of the species covered by Natural England and the protected species licences.

iv) Alternatives to plots 58a and 58b have not been properly considered

Protected species licences can only be issued if they meet three "licensing tests". One of the questions that must be addressed in order to secure a licence is *will the action authorised be detrimental to the maintenance of the population of the species concerned at a favourable conservation status¹ in their natural range ('the FCS test')². Therefore, the land required to compensate for the loss of the protected species habitats and maintain the species favourable conservation status should constitute the following:*

- a) be located in a place that would not risk wildlife mortality; this would be achieved by locating land that avoids crossing highways, such as avoiding land south of the A22;
- b) be ecologically connected to the GSP land and the wider landscape, and as close to the GSP land as reasonably practicable to benefit protected species affected by the Project;
- c) be of low ecological value to minimise impacts to any protected species that might already be using the land during any habitat improvement or creation works; and,
- d) be of an appropriate size/quality.

In line with the above requirements, two fields (totalling c.13.7 ha) were identified by NGET's ecology advisors as potentially suitable for compensatory habitat as they were within 500m

¹ FCS is described as a situation where a habitat type or species is doing sufficiently well in terms of quality and quantity and has good prospects of continuing to do so in future. It must clearly be demonstrated that the mitigation hierarchy has been followed and that all reasonable steps have been taken to minimise/mitigate the impact and that any remaining damage will be adequately compensated. If it cannot be demonstrated that FCS will be maintained, then a licence cannot be issued.

² Natural England (2013), *EPS Mitigation Licensing: How to get a licence*

(the typical natural range for GCN)³ of the proposed substations (located around Pylon 4VM068) and of low ecological value. Both of these fields are owned by RHL. NGET approached RHL (represented by James Ascroft) who explained that RHL were not willing to allow NGET to use these fields but were, in principle, amenable to NGET using an alternative area (included in the Order as plot 58a and 58b) for the creation of compensatory habitat - please see e-mail at Appendix A, which confirms their suggestion to use of this area for "*improvements as part of the project*".

In addition to the options on RHL's land, four other nearby land parcels (belonging to different landowners) were identified as being potentially suitable for compensatory habitat, on the basis that they were likely to be of low ecological value and were connected to the proposed development site through the wider natural landscape. Of these options, only three could be directly accessed from a road, which would be necessary to facilitate access for the intended long-term management of the land. However, only the RHL land avoided crossing any highway and was located within the natural range of GCN (500m). The RHL land was therefore identified as the most suitable option to compensate for impacts arising from the development.

Ecological surveys of the RHL land (Plots 58a and 58b) were carried out to acquire baseline habitat information. In addition, a pond located immediately south of plots 58a/b was confirmed to have a low population of GCN and as such enhancing this land would provide benefits to the metapopulation of GCN in the area thus, ensuring the species remained at a favourable conservation status. The information demonstrated that plots 51a/b met all the requirements outlined at a)-d) above (**Ecological mitigation/compensation land requirements**), making these plots appropriate for compensatory habitat.

This land is ecologically connected to the GSP land via outgrown hedges and a watercourse. It is approximately 440m from the GSP land, with no barriers in-between to impede species movements (such as roads or major watercourses). It also falls within the normal foraging ranges for many of the protected species associated with the GSP land. Its close proximity and connectivity to the GSP land is such that populations of protected or otherwise notable species that will be affected by the Project will directly benefit from the measures proposed here. Other land options are less favourable/suitable, due to their separation by public highways, which limit their connectivity to the land affected by development.

Furthermore, the land is currently of low ecological value and would provide the gains for protected species and wider biodiversity, following the implementation of the compensation measures proposed. As noted above, it is also directly accessible from Sand Hill Lane. As well as avoiding adverse impacts associated with creating site access to alternative plots, this will enable ongoing access to complete the necessary monitoring surveys and long-term (at least c.25-30 years) management of the newly created and improved habitats. In addition, this option would avoid any severance of the remaining RHL (Plate 1).

As such, NGET did consider several alternative locations for ecological compensation/mitigation. However, plots 58a and 58b are the most ecologically suitable and their use for this purposes was, in fact, suggested by RHL. Moreover, RHL confirmed, in the context of NGET's applications for protected species licences, that this land could be used as compensatory habitat (please see Appendix B).

Attempts to acquire land by agreement

The Objection confirms that RHL do not object to the principle of the Project. It acknowledges that the GSP land was acquired by NGET from RHL by voluntary agreement, and that there has been a long history of engagement/negotiation between NGET and RHL on the Project proposals.

As is clear from the correspondence at Appendix A and B, RHL were consulted on and fully aware of the need for compensatory habitat and indeed suggested that the land included in

³ English Nature (2001), *Great Crested Newt Mitigation Guidelines*.

the Order as plots 58a and 58b be used for that purpose in preference to other RHL land identified by NGET.

Following an initial offer to acquire land for compensatory habitat in March 2021, discussions have continued. RHL appointed a land agent in October 2021 to represent them and, having been provided with a breakdown of the Project's land and rights requirements, RHL's land agent emailed Fisher German on 15 March 2022 setting out his understanding; his client's position; and his assessment of expected losses due to the Project and proposed payment for the land and rights required. Discussions have continued and NGET's intention is to continue negotiations in an amicable and constructive manner in order to secure land and rights without the use of CPO powers.

We trust that this letter confirms the need for the acquisition of plots 58a and 58b and their inclusion in the CPO and would like to reiterate that NGET remain committed to reaching voluntary agreement with RHL in relation to the acquisition of plots 58a and 58b, if at all possible. Should RHL wish to discuss any matter arising from this response, it should not hesitate to get in touch.

Yours faithfully

Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP

cc:
Matthew Berryman, CLM Farming, Sackville House, Sackville Lane, Hartfield,
East Sussex TN7 4AW (Matthew@c-l-m.co.uk).

Mark Warnett, Carter Jonas, One Chapel Place, London W1G 0BG
(mark.warnett@carterjonas.co.uk)