

**DATE: 8 DECEMBER 2023**

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**THE NATIONAL GRID ELECTRICITY TRANSMISSION PLC (SCOTLAND TO ENGLAND  
GREEN LINK 1) COMPULSORY PURCHASE ORDER 2023**

**NOTE ON MODIFICATIONS TO THE ORDER**

**THE COMPULSORY PURCHASE (INQUIRIES PROCEDURE) RULES 2007**

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**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

**ELECTRICITY ACT 1989**

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## 1. INTRODUCTION

- 1.1 National Grid Electricity Transmission plc (**NGET**) has made The National Grid Electricity Transmission plc (Scotland to England Green Link 1) Compulsory Purchase Order 2023 (the **Order**) (CD D.1) under the provisions of the 1989 Act. The Order has been made in order to acquire the land and rights necessary to deliver the English Onshore Scheme components of the Project.
- 1.2 Following the making of the Order, a number of objections were submitted to the Secretary of State. The Secretary of State has caused an Inquiry to be held in accordance with The Compulsory Purchase (Inquiries Procedure) Rules 2007 (the **CPO Inquiries Rules**). The Inquiry sat on 26 and 27 September 2023, with a site visit taking place on 28 September 2023.
- 1.3 The Inspector commenced a consultation on potential modifications to the Order on 13 November 2023 (the **Consultation**). There have been two consultation responses to the Consultation:
  - 1.3.1 a consultation response dated 4 December 2023 issued by GSC Grays on behalf of the Snowdon family (the **GSC Grays Response**). It is not clear from the GSC Grays Response, but on the basis that GSC Grays represented the landowners who submitted Obj14, Obj15, Obj16 and Obj17 NGET has assumed that the GSC Grays Response has been submitted on behalf of these objectors (rather than just the Snowdons, who submitted Obj14); and
  - 1.3.2 a consultation response dated 4 December 2023 issued by Durham County Council (**DCC**) (the **DCC Response**).
- 1.4 No other parties, including the George.F.White and the NFU, have submitted a response to the Consultation.
- 1.5 This submission has been prepared to provide NGET's comments on the consultation responses on Inspector's procedural decision to allow submissions on potential modifications to the Order. This response should be read alongside NGET's submission dated 25 October 2023 (the **Submission**).

## 2. EXECUTIVE SUMMARY

- 2.1 The GSC Grays Response does not raise any substantive issues with the proposed Order modifications. No other affected landowners have raised any substantive issues with the proposed Order modifications.
- 2.2 The GSC Grays Response does not raise any substantive issues with the form of the proposed Unilateral Undertaking or the substance of the commitments made by NGET. No other landowners have raised any substantive issues with the form of the proposed Unilateral Undertaking.
- 2.3 NGET's position at the Inquiry was that sufficient information had been provided to all landowners throughout the voluntary negotiations to address the matters of substance which were subject to the Consultation. This is reflected by the GSC Grays Response.
- 2.4 NGET's position is that the outcome of the Consultation on the Unilateral Undertaking, both in terms of the positive response received in the GSC Grays Response and the absence of responses from all other parties, demonstrates that NGET's voluntary offer to the affected landowners in respect of these matters is, and has been, sufficient to address the affected landowner's concerns on these matters.

### **3. ORDER MODIFICATIONS**

- 3.1 Save for reiterating a preference for the cables to be installed at a minimum depth of 1.2m rather than 0.9m, the DCC Response does not make any objection to the proposed wording of the Order modifications. This point is also made in the GSC Grays Response. NGET's position is that the cable depth matter was addressed at the Inquiry and is not relevant to the Consultation.
- 3.2 The one matter raised in the GSC Grays Response in respect of the potential Order modifications is that, if the Order were to include a provision regarding good industry practice, it should specifically refer to ENA G57 2019 rather than to good electricity transmission industry practice.
- 3.3 NGET's position is that it is not appropriate to reference extraneous guidance, which could be subject to change, on the face of the Order.
- 3.4 If the Inspector were minded to include the provision regarding good industry practice, which NGET maintains is not necessary, then NGET's position is that this must refer to "*good electricity transmission industry practice*" rather than extraneous guidance.
- 3.5 Neither the DCC Response or the GSC Grays Response raise any other substantive issues with the proposed Order modifications. No other affected landowners have raised any substantive issues with the proposed Order modifications.
- 3.6 NGET's position in respect of the proposed modifications remains as set out in the Submission.

### **4. UNILATERAL UNDERTAKING**

- 4.1 The Consultation requested comments on the extent to which the proposed modifications and/or Unilateral Undertaking would address objections to the Order.
- 4.2 The GSC Grays Response does not raise any substantive issues with the form of the proposed Unilateral Undertaking or the substance of the commitments made by NGET. No other landowners have raised any substantive issues with the form of the proposed Unilateral Undertaking.
- 4.3 NGET's position at the Inquiry was that sufficient information had been provided to all landowners throughout the voluntary negotiations to address the matters of substance which were subject to the Consultation. This is reflected by the GSC Grays Response.
- 4.4 NGET's position is that the outcome of the Consultation on the Unilateral Undertaking, both in terms of the positive response received in the GSC Grays Response and the absence of responses from all other parties, demonstrates that NGET's voluntary offer to the affected landowners in respect of these matters is, and has been, sufficient to address the affected landowner's concerns on these matters.
- 4.5 In respect of the DCC Response:
  - 4.5.1 DCC have been provided with the conveyance referenced and the definition of Developer's Land, as it was provided to them to enable them to enter into the previous bilateral Section 106 Agreement (see CDC.5); and
  - 4.5.2 the comment regarding paragraph 2 of Schedule 1 to the Unilateral Undertaking, NGET does not accept that this provision is too vague. The obligation is precise in terms of the nature and timing of the obligation. In this context, NGET notes that this provision did not form any part of DCC's objection and that relevant objectors who did raise matters in respect of the role of the agricultural liaison officer have not raised any concerns with this proposed wording.

- 4.6 In respect of the remainder of the Consultation, it is important to note that the scope of the Consultation was focussed on DCC's views specifically on the practicality of enforcing the Unilateral Undertaking.
- 4.7 Importantly in this regard, DCC's position is not that it cannot enforce the Unilateral Undertaking, but that it is exposed to the risk of challenge if it decides not to enforce the Unilateral Undertaking. That is the case in respect of any planning obligation that DCC enters into, or indeed any planning condition which DCC imposes on any planning permission.
- 4.8 DCC state in the DCC Response that the Unilateral Undertaking would place an: "*unnecessary, inappropriate and disproportionate financial and resource burden*". NGET does not accept this. If NGET were in breach of the Unilateral Undertaking (which it does not expect to be) then the standard position in respect of planning enforcement would apply. The obligations in the Unilateral Undertaking are clear and precise; they either will, or will not, have been complied with. If they have been complied with, no enforcement action beyond investigation will be required; if they have not been complied with, DCC can specify the measures required to remedy such breach.
- 4.9 In respect of the assertion that NGET does not have an interest in land subject to the Section 106 Agreement, this is not the case. NGET currently has an interest in the Developer's Land (as freeholder) which is subject to the Unilateral Undertaking. DCC are aware of this. In terms of the structure of the Unilateral Undertaking, the Unilateral Undertaking is in the same form as the bilateral Section 106 Agreement which was negotiated with DCC and which also binds the Developer's Land (see CDC.5).
- 4.10 The reference to not being able to enforce against the freehold owners as a fundamental concern is misplaced, as the freehold owners will not (and could not legally, given that they do not benefit from an electricity transmission licence pursuant to the Electricity Act 1989) carry out the development and so could not take any remedial action to remedy any breach.
- 4.11 There is no definition of interest in land for the purposes of section 106 of the Town and Country Planning Act 1990 (the **TPCA**) and there is no requirement that all parties with an interest in land must enter into any agreement made pursuant to section 106 of the TCPA. There would be no benefit to DCC in ensuring that all landowners were parties to the Unilateral Undertaking.
- 4.12 In respect of the reference to not being able to enforce the covenant against successors in title, the Unilateral Undertaking confirms that the obligations will be enforceable against successors in title and (more importantly given NGET's status as the licensed national electricity system transmission operator for England and Wales) that it will be enforceable against statutory successors to their respective statutory functions.
- 4.13 Therefore, NGET's position in respect of the Unilateral Undertaking remains as set out in the Submission. It is an enforceable planning obligation, but it is not necessary for the reasons set out in the Submission.

## **5. COMPENSATION**

- 5.1 In respect of the matters regarding compensation raised in the GSC Grays Response, these are matters that go beyond the scope of the Consultation and are for GSC Grays as professionally appointed agents to advise their clients.

**6. PLOT 7-27 AND PLOT 6-17**

6.1 The DCC Response states that the Order modifications do not address their objection in respect of Plot 7-27 or Plot 6-17. NGET's position is that this was not the purpose or subject of the Consultation, and both parties evidence in respect of these plots were presented in evidence at the Inquiry.

**7. CONCLUSION**

7.1 NGET's position in respect of the proposed modifications to the Order and the Unilateral Undertaking remain as set out in the Submission.