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

**NOTE ON PUBLIC OPEN SPACE PROCESS**

**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 Electricity Act 1989 (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 for Energy Security and Net Zero (**DESNZ**). 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 This Statement has been prepared in response to the Inspector's request for a post-Inquiry note in respect of the process to be followed in respect of the public open space included within the Order. This Statement sets out the legislative background governing the compulsory acquisition of land and rights over land comprising open space and the process for obtaining a public open space certificate. This Statement also provides an update on the progress of obtaining the public open space certificate from the Secretary of State for Levelling Up, Housing and Communities (**DLUHC**).

## 2. RELEVANT LEGISLATION

- 2.1 Where a compulsory purchase order includes land or rights over land which is, or forms part of, open space, section 19(1) of the Acquisition of Land Act 1981 (the **1981 Act**) provides that this must be subject to special parliamentary procedure unless the Secretary of State is satisfied as to specified grounds and issues a certificate accordingly. This certificate (a **Public Open Space Certificate**) must indicate satisfaction of one of the following tests:
  - 2.1.1 that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased (section 19(1)(a)); or
  - 2.1.2 that the land is being purchased in order to secure its preservation or improve its management (section 19(1)(aa)); or
  - 2.1.3 that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public (section 19(1)(b)).
- 2.2 Similarly, where a compulsory purchase order includes rights over land which is, or forms part of, open space, paragraph 6 of Schedule 3 to the 1981 Act provides that this must also be subject to special parliamentary procedure unless a certificate is issued by the Secretary of State confirming satisfaction of one of the following tests:
  - 2.2.1 that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before (para. 6(1)(a)); or

- 2.2.2 that the right is being acquired in order to secure the preservation or improve the management of the land (para. 6(1)(aa)); or
  - 2.2.3 that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order (para. 6(1)(b)); or
  - 2.2.4 that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public (para. 6(1)(c)).
- 2.3 For the purposes of section 19 and Schedule 3, “open space” is defined as meaning any land laid out as a public garden, or used for the purposes of, public recreation (or land being a disused burial ground).

### **3. PROCESS FOR OBTAINING A PUBLIC OPEN SPACE CERTIFICATE**

- 3.1 Section 19(2) of the 1981 Act sets out the process for obtaining a Public Open Space Certificate, and this is discussed further in the UK Government Guidance on the compulsory purchase process and the Crichel Down Rules published in 2018 (the **CPO Guidance**).<sup>1</sup>
- 3.2 Where the Secretary of State proposes to give a Public Open Space Certificate, it must direct the acquiring authority to give public notice of this intention to do so. The Public Open Space Certificate can then only be given after:
- 3.2.1 Affording an opportunity to any interested persons to make representations and objections; and
  - 3.2.2 Holding a public local inquiry (where it appears expedient to do so) and having regard to any representations of objections made, together with the report of the person who held the inquiry.<sup>2</sup>
- 3.3 However, the CPO Guidance clarifies that there is generally a preliminary appraisal of the merits of any proposed exchange or additional land which will inform the Secretary of State’s decision as to whether a Public Open Space Certificate can, in principle, be given.<sup>3</sup> This will, in turn, cause the public notice to be issued and trigger the opportunity for any representations or objections.
- 3.4 The CPO Guidance notes that “in most cases” objections to a Public Open Space Certificate will be considered by the inspector into the compulsory purchase order. This suggests that there will be some cases (i.e. where different departments are considering the order and the certificate) in which a different person may hold the inquiry – if, in fact, any inquiry is required.
- 3.5 Where an inquiry has been held into the Public Open Space Certificate application, the appointed inspector will summarise the evidence and make a recommendation in their report. The relevant

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1071500/CPO\\_guidance\\_-\\_with\\_2019\\_update.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071500/CPO_guidance_-_with_2019_update.pdf)

<sup>2</sup> S. 19(2) of the 1981 Act.

<sup>3</sup> Para. 238 of the CPO Guidance.

Secretary of State will then consider and respond to the inspector's recommendation (following the procedure set out in the CPO Inquiries Rules).

- 3.6 Where there is no inquiry, the relevant Secretary of State's decision will be made having regard to an appraisal carried out in respect of the proposal (being either the appraisal mentioned at para. 3.3 above or a subsequent, more detailed appraisal instructed by the Secretary of State) together with the written representations from any objectors and the acquiring authority.<sup>4</sup> It follows that, if no objections or representations are submitted in respect of the Public Open Space Certificate, the Secretary of State only needs to consider this appraisal together with any materials originally submitted with the application by the acquiring authority.
- 3.7 The CPO Guidance sets out which Secretary of State should receive an application for a certificate under section 19 of and/or Schedule 3 to the 1981 Act. In the case of open space, the CPO Guidance notes that applications should be submitted to the Secretary of State for DLUHC.<sup>5</sup> This process is separate from the application to confirm a compulsory purchase order which, in the case of orders relating to electricity and gas undertakings or onshore electricity development consents, must be submitted to the Secretary of State for DESNZ.<sup>6</sup>
- 3.8 This is reflected in other CPO decisions which have confirmed that different departments have the power to confirm different elements of a project. For example, on 30 March 2022 the Secretary of State for Transport made the decision to confirm (with modifications) the compulsory purchase and side road orders made by Buckinghamshire Council in respect of the A4010 South East Aylesbury Link Road.<sup>7</sup> This decision notice states that "a separate decision letter regarding the related Section 19 Certificate will be issued by the Secretary of State for Levelling Up, Housing and Communities."
- 3.9 The CPO Guidance notes that an application for a public open space certificate should be made at the point that the Order has been submitted for confirmation.<sup>8</sup> The application must be accompanied by supporting information (which, by and large, replicates the information used to support the application to confirm an Order, such as copies of the Order, including any schedules, and the Order map, as well as the Statement of Reasons). There are no provisions, either in the CPO Guidance or the 1981 Act, that require the Order and the Public Open Space Certificate to be considered or decided concurrently.
- 3.10 Once the Secretary of State has granted the Public Open Space Certificate, the acquiring authority must publish a further notice stating that the certificate has been granted. This must be in one or more local newspapers in the area of the land subject to the certificate. Objectors have a further opportunity to challenge (the validity of the certificate only, not the merits) by an application to the High Court within 6 weeks of the date of first publication of the notices.

#### **4. THE SEGL1 PUBLIC OPEN SPACE CERTIFICATE**

- 4.1 A Public Open Space Statement (the **Statement**) (**CD D.5**) was prepared to support a request by NGET to the Secretary of State to grant a certificate pursuant to Section 19(1) and Paragraph 6(1)(a) of Schedule 3 to the 1981 Act in respect of the compulsory acquisition of land and rights

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<sup>4</sup> Para. 238 of the CPO Guidance/

<sup>5</sup> Paras. 224 and 235 of the CPO Guidance.

<sup>6</sup> Para. 224 of the CPO Guidance.

<sup>7</sup> Department for Transport reference NATTRAN/SE/HAO/230; <https://programmeofficers.co.uk/Aylesbury/Decision.pdf>

<sup>8</sup> Para. 236 of the CPO Guidance.

over land comprising open space. This Statement provided full details of the land and rights over land to which the certificate relates.

- 4.2 On 2 March 2023, NGET wrote to DLUHC to apply for the Public Open Space Certificate, copying in Case Officers at DESNZ (who were managing the Order process on behalf of the confirming authority). In this application, NGET noted that, while objections had been received in relation to certain Order plots, no objections had been received in relation to the proposed acquisition of informal public open space or exchange land nor to the proposed acquisition of rights over areas of public open space.
- 4.3 On 20 April 2023, following further correspondence with the allocated Planning Casework Officer within DLUHC, NGET confirmed that the Order had been submitted to DESNZ as the confirming authority for the Order (on the basis that it had been made pursuant to 1989 Act), but the Public Open Space Certificate application had been submitted to DLUHC pursuant to the CPO Guidance.
- 4.4 On 1 August 2023, after a period of correspondence between NGET and DLUHC regarding the documents and plans supporting the application, the Planning Casework Officer within DLUHC confirmed that an officer had been assigned to consider the application and that the “officer report” was awaited (i.e. the initial appraisal report referenced in para. 3.3 above). This was expected in mid-September. NGET notified DLUHC that the public inquiry into the Order was timetabled for late September and, on 20 September 2023, requested an update from DLUHC on progress but no response was received.