

GUIDANCE ON LAND RIGHTS FOR NEW ELECTRICITY TRANSMISSION ASSETS (ENGLAND AND WALES)

INTRODUCTION

National Grid does not generate electricity but instead connects power generating facilities to its transmission network. That network must have sufficient capacity and as the cost of transmitting electricity ultimately passes through to customers it is important for National Grid to find the best way of connecting new sources of power generation consistent with its duty to maintain “an efficient, co-ordinated and economical” system of electricity transmission.

Under the Planning Act 2008, the majority of new electricity transmission assets in England and Wales, will require a Development Consent Order from the Planning Inspectorate. The Development Consent Order application process provides for associated land rights.

As National Grid owns and operates nationally significant infrastructure, specifically the country's electricity transmission network, National Grid will seek to obtain from the very outset, by negotiation, permanent land rights for all new electricity transmission assets. This is fully consistent with National Grid's approach for new underground electricity cables and gas transmission pipelines where permanent land rights are also sought and obtained.

The purpose of this guidance note is to explain National Grid's process for obtaining land rights for all new electricity transmission assets.

1. NON-CONTACT LAND REFERENCING

The Planning Act 2008 requires National Grid to identify and consult with everyone who has an interest in land which is either the subject of or may be affected by the development of new electricity transmission assets.

People with an interest in land include not only owners, tenants, occupiers and mortgagees but also anyone who exercises rights over land, for example, private rights of way, sporting rights or rights to receive payments in respect of land.

For all new electricity projects, National Grid will seek to identify everyone who has an interest in the land affected by new electricity transmission assets. National Grid will use public sources of information, such as title registration data from HM Land Registry, to identify people with an interest in land and from whom ultimately land rights may be required. This will enable an initial Book of Reference to be compiled by National Grid's land referencing specialists.

2. CONTACT LAND REFERENCING

When a Preferred Route Corridor for proposed new electricity transmission assets has been identified and announced, National Grid will endeavour to contact and arrange face to face meetings with every person having an interest in land within and affected by that Preferred Route Corridor. National Grid's land agents will make enquiries to identify and confirm all relevant land interests as well as the extent to which they apply within the Preferred Route Corridor. At the same time, National Grid will seek to establish full contact details for every person with an interest in land and whether or not they are intending to appoint a land agent and/or solicitor.

Once this information has been collected, National Grid will populate a data sheet with said information. This Sheet will then be returned to the person contacted for checking and amending if required and then sign-off as an accurate record of all interests affecting that person's land. The signed data sheet should then be returned to National Grid to produce a detailed Book of Reference formally recording all relevant land interests within or affected by the Preferred Route Corridor.

National Grid hopes that everyone contacted and any land agents which they appoint will be fully co-operative and provide information on land interests voluntarily. However, if National Grid is unable to obtain this information voluntarily the Planning Act 2008 enables National Grid to seek authorisation from the Planning Inspectorate (under Section 52 of that Act) to serve a statutory notice requiring such people to provide full and accurate information regarding all relevant land interests. National Grid will rely upon this statutory process only as a last resort and after repeated and unsuccessful attempts have been made by National Grid to obtain such information voluntarily.

3. ACCESS FOR ENGINEERING AND ENVIRONMENTAL SURVEYS

At the same time as contact land referencing, National Grid will also seek to discuss the range of engineering, ecological and environmental surveys that may be required. Some ecological and environmental surveys will be time critical and can only be carried out at specific times of the year. Some surveys may also involve the drilling of boreholes or the excavation of trial pits to assess ground conditions. A schedule of proposed surveys, including the type, time of year and duration of surveys, will be discussed in as much detail as possible. These surveys will be undertaken by National Grid's appointed contractors and are critical in identifying and understanding engineering, ecological and environmental constraints that could influence the routing of the new electricity transmission assets.

Where an agreement in relation to taking access to land for engineering, ecological and environmental surveys cannot be reached voluntarily, National Grid will as a last resort utilise its powers under Schedule 4 of the Electricity Act 1989, specifically paragraph 10 which enables National Grid in its capacity as a statutory undertaker to take access to land for such surveys. A statutory notice would be served on the relevant person giving at least 14 days notice of access to land for survey being taken. If access is still refused following the service of a statutory notice, then the relevant person would be committing a criminal offence which carries a penalty fine of currently up to £1000. Section 172 of the Housing and Planning Act 2016 authorises National Grid as an acquiring authority entry in order to survey or value land where there is a proposal to acquire an interest in land or a right over land. A statutory notice would be served on the relevant person giving at least 14 days notice of access to land for survey being taken. National Grid can also seek authorisation for access to land for survey from the Planning Inspectorate under Section 53 of the Planning Act 2008. In recognition of any potential land damage and disturbance that may be caused by carrying out surveys and site investigations, National Grid is proposing a range of advance compensation payments. These payments are set out in National Grid's Payments Schedule for New Electricity Transmission Assets May 2017 and depend on the nature of the survey works being undertaken. This Schedule explains that the specified payments do not preclude negotiation for further compensation where additional and proven land damage and disturbance has been caused.

4. AGREEMENT TO GRANT AN EASEMENT

Once National Grid has identified a final route alignment for the proposed new electricity transmission assets, it will seek to enter into an Agreement to Grant an Easement with owners, tenants and mortgagees of the land across and within which the new electricity transmission assets may be constructed. The Agreement enables National Grid to take entry onto the land on notice following the grant of a Development Consent Order to construct the new electricity transmission assets. The Agreement also provides for changes in the final route alignment within a specified corridor as a consequence of public consultation and during construction as a consequence of engineering requirements, surveys and other routing factors. Once construction is completed the Agreement permits National Grid to call for an Easement in respect of the new, as built, electricity transmission assets.

The Payments Schedule for New Electricity Transmission Assets sets out the amount that will be paid for an Easement. In return for a signed Agreement to Grant an Easement National Grid will pay 25% of the Easement consideration to the land owner. On entry for construction a further 50% of the Easement consideration is paid and the final balance of 25% will be paid if and when the Easement is completed by National Grid.

After the Agreement has been signed, up to either completion of the Easement or expiry of the Agreement itself, land owners, tenants and occupiers will be restricted from doing anything that would adversely affect National Grid's ability to take and benefit from the Easement should it require to do so. Also, if land owners transfer their interest in the affected land, they must oblige the incoming owners to enter into a new Agreement with National Grid on exactly the same terms.

Following the grant of a Development Consent Order, the Agreement authorises National Grid to sign and complete the Easement as an attorney of the land owner, tenant and occupier. The Easement may also be signed on behalf of any mortgagee by National Grid as an attorney, although a separate consent from the mortgagee would also be sufficient.

Even for land over which voluntary Agreements are already in place, National Grid will still apply for compulsory powers to acquire land rights in its application to the Planning Inspectorate for a Development Consent Order, primarily because:

- the Development Consent Order must comprehensively list all necessary land rights in relation to the entirety of the new electricity transmission assets;
- if insufficient or incomplete land rights are obtained through voluntary Agreements, National Grid must be able to rely upon the land rights granted to it under the Development Consent Order in order to avoid any delay and/or additional cost in constructing its new electricity transmission assets;
- National Grid will continue to voluntarily agree land rights with land owners right up to the point at which the Development Consent Order is granted. On submission of its application for a Development Consent Order, National Grid will not know whether or not it will need to rely upon compulsory powers to acquire the necessary land rights. The application must therefore include all land rights needed to construct and subsequently operate the new electricity transmission assets.

Where National Grid has been unable to obtain a voluntary Agreement from a third party, following the grant of a Development Consent Order for new electricity transmission assets, National Grid will seek to acquire the relevant land or land rights over the relevant land through the compulsory acquisition powers granted to it through the Development Consent Order. A copy of the Order and a compulsory acquisition notice will be served by National Grid on the relevant third party and the notice will be posted on or near to the relevant land. Generally, following the processes for compulsory acquisition of land and land rights under both Part 1 of the Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981, National Grid will implement the compulsory acquisition provisions of the Order by serving a “notice to treat” or, if the Order provides, by a “general vesting declaration”. Compensation would then be calculated and, if due, payable to the relevant third party in accordance with the relevant provisions of the land compensation legislation.

5. WORKING WITH THIRD PARTY LAND AGENTS

National Grid wants to engage fully not only with all those having an interest in land which may be affected by its proposed new electricity transmission assets but also with their appointed land agents so as to obtain accurate and comprehensive information about all relevant land interests, access for necessary engineering, ecological and environmental surveys and in relation to National Grid’s acquisition of land rights.

Following identification of the Preferred Route Corridor for the proposed new electricity transmission assets, National Grid will organise information events to which people with an interest in land within the Preferred Route Corridor will be invited together with their professional advisors. At those events National Grid’s project team will be available to answer questions both in relation to the status of the project and the process for acquiring the necessary land rights.

FURTHER INFORMATION CAN BE OBTAINED BY VISITING NATIONAL GRID’S WEBSITE THROUGH THE FOLLOWING LINK: WWW.NATIONALGRID.COM/UK/LANDANDDEVELOPMENT

FREQUENTLY ASKED QUESTIONS

QUESTION 1: IF I SIGN AN AGREEMENT TO GRANT AN EASEMENT WITH NATIONAL GRID, I DON'T UNDERSTAND WHY NATIONAL GRID ALSO NEEDS RIGHTS TO COMPULSORILY ACQUIRE MY LAND?

ANSWER: All land rights which are necessary for new electricity transmission assets must be included within the Development Consent Order application. The compulsory rights enable National Grid to deliver its statutory and contractual duties without interruption if, for any reason, the voluntary rights are subsequently removed, prove to be insufficient or are not granted.

QUESTION 2: I WILL AGREE TO GRANT A WAYLEAVE TO NATIONAL GRID BUT I WILL NOT GRANT AN EASEMENT.

ANSWER: National Grid owns and operates nationally significant infrastructure and can only ensure certainty and continuity of electricity supply through permanent Easements, not Wayleaves.

QUESTION 3: I WOULD PREFER TO ENTER INTO AN EASEMENT NOW RATHER THAN AN AGREEMENT.

ANSWER: National Grid is securing land rights at the same time as undertaking stakeholder engagement and public consultation as required by the Planning Act 2008. Such engagement and consultation as well as the actual determination of the Development Consent Order application may result in changes to the route alignment of the proposed new electricity transmission assets. It would therefore be inappropriate for National Grid to complete land rights and make full payment in relation to those until such time as it obtains a Development Consent Order for the new electricity transmission assets and understands the terms and conditions on which that is granted. This also avoids a landowner having land burdened with an Easement which is not needed.

QUESTION 4: I DON'T NEED TO APPOINT AND USE A LAND AGENT. WILL YOU PAY ME THE FEE (£150.00) FOR COMPLETING THE DATA INFORMATION SHEET?

ANSWER: National Grid acknowledges that land owners may prefer to engage professional assistance in order to properly complete the Data Information Sheet. The fee contribution of £150.00 is therefore offered so that land owners may use a professional advisor. It is a contribution towards that professional cost if incurred. It is not a payment for the completion of the Data Information Sheet itself.

QUESTION 5: I WOULD PREFER TO OBTAIN COMPENSATION THROUGH THE COMPULSORY LAND ACQUISITION PROCESS RATHER THAN AGREE THE EASEMENT CONSIDERATION WITH NATIONAL GRID VOLUNTARILY.

ANSWER: National Grid is confident that those payments set out in its Payments Schedule for New Electricity Transmission Assets May 2017 are extremely competitive in comparison to the likely compensation that may be awarded under land compensation legislation.