



Department for
Business, Energy
& Industrial Strategy

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22 March 2018

Dear Ms Brodrick,

**The Electricity Act 1989 and Acquisition of Land Act 1981
The FAB Link Limited (Budleigh Salterton to Broadclyst) Compulsory Purchase
Order 2016 – Your client: FAB Link Limited**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to The FAB Link Limited (Budleigh Salterton to Broadclyst) Compulsory Purchase Order 2016 (“the Order”) submitted to the Secretary of State on behalf of your client, FAB Link Limited (“the Applicant”), on 10 January 2017 for consideration under section 10 of, and Paragraph 1 of Schedule 3 to, the Electricity Act 1989 (“the 1989 Act”) and Part 2 of the Acquisition of Land Act 1981 (“the 1981 Act”). The Secretary of State wrote to yourselves as agents of the Applicant on 1 February 2017 requesting further information and clarification regarding the Order. Following receipt of this further information and clarification on 22 February 2017, the Secretary of State formally accepted the Order for consideration on 6 March 2017.
2. The Secretary of State received ten objections to the Order during the objection period. Four representations were also received but these were not from “qualifying persons” for the purposes of the 1981 Act. All ten objections were withdrawn before the opening of a scheduled public inquiry due to commence on 15 August 2017. The inquiry was subsequently cancelled.
3. Consent was requested from the Gas and Electricity Markets Authority (“GEMA” or Ofgem) in respect of land owned and leased by National Grid Electricity Transmission plc (“NGET”) for plots 3, 4 and 5 within the Order. The Secretary of State wrote to Ofgem on 10 April 2017 requesting GEMA consent as, before the Secretary of State can confirm the Order, he must receive GEMA consent where any land subject to compulsory acquisition, including rights over land, belongs to



another licence holder. The Secretary of State received GEMA's consent for the Order on 24 November 2017 (copy attached).

4. It was also requested on behalf of the Applicant, that the Order be modified by the Secretary of State in the event it is confirmed, in respect of plots 1, 24, 24B, 28, 59, 60, 69, 70 and 73, so as to exclude conflict with the interests belonging to Western Power Distribution (South West) plc as it is not the Applicant's intention to compulsorily acquire any interests belonging to Western Power Distribution (South West) plc in these plots.
5. An application for an Open Space Certificate pursuant to paragraph 6(1)(a) of Schedule 3 to the 1981 Act was also made by the Applicant to the Secretary of State for Communities and Local Government (now Ministry of Housing, Communities and Local Government "MHCLG") on 17 January 2017 in respect to plots 11A, 12, 12A, 12D, 14, 99, 101, 104 and 109. A Certificate was granted to the Applicant by MHCLG on 19 May 2017.

Decision: The Secretary of State has therefore decided to confirm the FAB Link Limited (Budleigh Salterton to Broadclyst) Compulsory Purchase Order 2016 with modifications to exclude conflict with any interest belonging to Western Power Distribution (South West) plc in respect of plots 1, 24, 24B, 28, 59, 60, 69, 70 and 73.

Consideration of the Compulsory Purchase Order

6. In consideration of the Order, the Secretary of State has weighed up the relevant impacts of the proposed cable route and if the rights over the Order Land that are sought interfere with the human rights of those with affected land. The Secretary of State is also required to consider whether, in accordance with MHCLG "Guidance on Compulsory Purchase Process and The Critchel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion"¹ section 2 that, a compelling case for compulsory purchase in the public interest is made out, and that the interference is proportionate to justify the use of compulsory purchase powers in this instance.
7. The Secretary of State considers that the Applicant has taken a proportionate approach to the interests of those affected by the Order and accepts that the exercise of compulsory purchase powers should be used as a last resort.
8. The Secretary of State has taken the view that the rights over the land sought by the Applicant will interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol of the European Convention on Human Rights. However, he is satisfied that the Applicant has sought to keep interference to a minimum in respect of the rights

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication_FINAL2.pdf



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sought over the Order Land and has considered that any interference is necessary and proportionate. The Secretary of State also considers any interference strikes

a fair balance with the public benefit of delivering an important Interconnector scheme² that will help to guarantee the UK's future energy security, whilst also helping to further the Europe-wide internal energy market.

9. The Secretary of State has concluded that confirmation of the Order would not result in any unlawful interference in the landowner or occupiers rights under the European Convention on Human Rights and concludes there is therefore a compelling case for confirmation of compulsory purchase powers as sought in the Order.
10. The Secretary of State is aware that an application for planning permission under the Town and Country Planning Act 1990 for the converter station to be built near Exeter International Airport was granted outline planning permission on 5 July 2017 by the local planning authority East Devon District Council. The transition joint bay and the onshore cable route are permitted development under Class B, Part 15 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015. Planning permission is not required therefore for those works. The Local Authority has also confirmed that plans to lay the underground cables between the substation, the converter station and the landfall of the subsea cables at Budleigh Salterton are considered to be lawful development.
11. The Secretary of State has acknowledged that the Order land includes land which is owned by the National Trust, by the Local Authority and also Statutory Undertakers. There are no remaining objections from any of these interested parties. The Order land does not include any land or other interests owned by the Crown, there are no protected assets such as buildings or scheduled monuments within the Order land. The Mining Code has been included within the Order to ensure that the cables are adequately protected should mining or minerals extraction be permitted to take place in the future. The Secretary of State sought further clarification from the Applicant on 21 December 2017 relating to the application of paragraph 1 of Schedule 3 to the 1989 Act. The Applicant confirmed in their letter dated 24 January 2018 to the Secretary of State, that there are no rights held by electricity licence holders adversely affected by the Order in relation to other plots of land within the Order.
12. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

² The FAB Interconnector is a 'Project of Common Interest' (PCI) under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, referred to as 'the TEN-E Regulation'



13. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
14. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010, and is satisfied that there is no evidence that granting this Order will affect adversely the achievement of those objectives.

Secretary of State's decision on the Compulsory Purchase Order

15. The Secretary of State has taken a balanced view between the intentions of the Applicant and the concerns expressed by the objectors as set out in their original objections ahead of the cancelled public inquiry. The Secretary of State has considered that the onshore cable connector is necessary to facilitate the interconnector between Great Britain and France (via Alderney) and, as a designated Project of Common Interest ("PCI") under the provisions of the EU Regulation No 347/2013 on guidelines for Trans-European Network for Energy ("TEN-E Regulation"), will increase energy security for both countries, and help create an integrated European energy market supporting integration of renewable energy. He has also considered that the scheme is in accordance with the relevant national policy as set out in National Policy Statements EN-1³, and EN-5⁴, and having regard to moving to a low carbon economy whilst maintaining security of energy supply.
16. **The Secretary of State has therefore decided to confirm the Order with modifications to exclude conflict with any interest belonging to Western Power Distribution (South West) plc in respect of plots 1, 24, 24B, 28, 59, 60, 69, 70 and 73.** The confirmed Order is enclosed together with the plans referred to in that Order. The Order and plans are authorised on behalf of the Secretary of State.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37050/1942-national-policy-statement-electricity-networks.pdf



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17. Your attention is drawn to the notice obligations in section 15 of the 1981 Act, including that relating to publishing a confirmation notice in one or more local newspapers circulated in the locality of the land subject to the compulsory purchase order. The Order will become operative on the date which notice of Confirmation is first published. It is important you advise the Secretary of State of this date. We should be grateful if you would in due course, send to the Secretary of State a copy of the pages from the local newspaper containing the Notice of Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.

18. The validity of the Secretary of State's decision may be challenged by making an application to the Planning Court. Such application must be made not later than six weeks from the date on which notice of the confirmation or making of the compulsory purchase Order is first published in accordance with section 15 of the 1981 Act.

Yours sincerely,

Gareth Leigh
Head of Energy Infrastructure Planning

