

OFFICER DELEGATED DECISION 23 FEBRUARY 2021

Report title: Grant of Easement to National Grid Electricity Transmission Plc

Wards: Clapham Common / Clapham Town / Ferndale

Portfolio: Cllr Andy Wilson, Cabinet Member for Finance and Performance

Report Authorised by: Yvonne Hardy, Head of Valuation and Strategic Assets.

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Report summary

This report seeks authority for the Council to enter into an easement agreement with National Grid for the construction of a cable tunnel beneath Council owned land. This is part of a London wide new tunnel for holding high voltage electricity cables.

Finance summary

Ongoing revenue costs will be minimal as the overall management of this property is already incorporated into the overall cost of managing the Council's commercial property portfolio.

There are no capital implications arising as a direct result of this transaction.

Recommendations

- (1) To agree to the grant of the easement agreement to National Grid on the terms set out in this report.

1. CONTEXT

- 1.1 National Grid are proposing to construct a new tunnel to accommodate new high voltage electricity cables. The tunnel is across the whole of South East London and will be located 20 metres below the surface. Part of the tunnel will run underneath land owned by the Council, mainly across Clapham Common.
- 1.2 The tunnel will help National Grid improve the country's electricity infrastructure and is part of the government strategy to modernise the provision of this utility. Such provision will help the Council in achieving growth and development.

2. PROPOSAL AND REASONS

- 2.1 The proposal is to grant an easement in perpetuity for the tunnel under land located within the Council's freehold title. The width of the easement strip is to be 10.5m and the 4.5m wide tunnel itself will be constructed in concrete within this strip at a depth of no less than 20 metres below the ground. There will however be a hypothetical tunnel protection envelope surrounding the tunnel within which the Council must not put any building foundations or piles, but the edge of this boundary is still 14 metres below the surface.
- 2.2 At no time will National Grid be allowed to access the tunnel from the surface of Council owned land, either for construction or maintenance, except to carry out the initial survey. The tunnel which will be under Council owned land runs for a total length of 1364 metres made up of 9 sections.
- 2.3 Whilst terms have been provisionally agreed with National Grid for this easement, they do have statutory rights to install the tunnel and could do so under compulsory purchase powers in the event that terms were not mutually agreed.
- 2.4 Prior to construction, National Grid will be required to undertake a schedule of condition of the properties lying immediately above and will be responsible for making good any damage caused by the works, indemnifying the Council from any liability.
- 2.5 National Grid will be responsible for constructing the tunnel, installing the cabling and maintaining it in a state of repair and complying with all statutes including the Electricity Act 1989 as amended by the Utilities Act 2000. Access will only be permitted underground from adjoining tunnels or shafts. There are no shafts to be constructed on Council owned land.
- 2.6 The grant of the easement will not prevent the Council from using or redeveloping any properties on the surface.
- 2.7 The Council will receive a payment of £13,640 in line with statutory compensation as consideration for the easement and National Grid will pay the Council's professional fees in dealing with the matter.

3. FINANCE

- 3.1 Revenue costs of managing the property are already incorporated into the costs of managing the Council's portfolio. The granting of this easement will result in the receipt of a one-off sum of £13,640 and any professional fees incurred by the council will be paid by National Grid. National Grid will be responsible for constructing the tunnel and for making good any damage caused by the works, indemnifying the council from any liability.

4. LEGAL AND DEMOCRACY

- 4.1 The Council is responsible for the protection and management of Clapham Common under a scheme for the local management of the Common made by the Inclosure Commissioners on 24 August 1876 under the Metropolitan Commons Act 1866 and 1869. The Scheme is found in 2nd schedule to the Metropolitan Commons Supplemental Act 1877. The Scheme makes no provision for the grant of right of way or other easements over the Common. Further, Paragraph 4 of the schedule states that the “Board shall maintain the Common...free of all encroachment and shall permit no trespass on or partial or other inclosure thereof...”.
- 4.2 Section 123 of the Local Government Act 1972 permits the Council to dispose of land in any manner it wishes, save that it cannot dispose of it at less than best consideration without obtaining the Secretary of State consent. Further section 123 (2A) of the Act provides 2A) that a principal council may not dispose of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them. Section 270 of the Act defines “land” to include any interest in land and any easement or right in, to or over land. Therefore if the Council does have the power to grant an easement, there may be a requirement to advertise such disposal for two weeks in a local newspaper and considering any objections prior to making any decision on the disposal.
- 4.3 Section 38 of the Commons Act 2006 prohibits work being carried out on common land without obtaining the consent of the appropriate national authority which is the Planning Inspectorate. The restricted works are defined as works for the resurfacing of land, or works having the effect of preventing or impeding access to or over the land and in particular the erection of fencing, the construction of buildings or other structures, or the digging of trenches, ditches or the building of embankments. This prohibition does not apply to works which are carried out under a power conferred in relation to that particular land by or under any enactment or works on any land where the works are carried out under a power conferred by or under any enactment applying to common land, or works for the installation of electronic communications apparatus for the purposes of an Electronic Communications Code network. The Planning Inspectorates’ ‘Common Land Guidance Sheet 2d’ suggests their consent is required for underground utility works pursuant to section 38 of the Commons Act 2006.
- 4.4 Section 10 of the Open Spaces Act 2010 states that where a local authority has any estate or control over any open space, subject to any conditions under which the estate was acquired is to hold and administer the open space in trust to allow, and with a view to, the enjoyment thereof by the public of the open space and under proper control and regulation and for no other purpose.
- 4.5 The Council’s Constitution requires that issues of an important or sensitive nature will be published on the Council’s website for five clear days prior to the decision being taken (Constitution, Part 2, Section 3) by the Cabinet Member or officer concerned. It is suggested that this proposed decision is published online in the interests of transparency. Any representations received during this period must be considered by the decision-maker before the decision is taken.

5. CONSULTATION AND CO-PRODUCTION

5.1 The Assistant Director of Neighbourhoods Environment and Streetscene, Residents' Services has been consulted and has no comments on the matter.

6. RISK MANAGEMENT

6.1 No potential risks have been identified.

7. EQUALITIES IMPACT ASSESSMENT

7.1 No EIA has been carried out in view of the nature of the works, being a tunnel 20m below ground level.

8. COMMUNITY SAFETY

8.1 No community safety implications arise as all works will be carried out below ground.

9. ORGANISATIONAL IMPLICATIONS

Environmental

9.1 None.

Health

9.2 None.

Corporate Parenting

9.3 None.

Staffing and accommodation

9.4 None.

Responsible Procurement

9.5 None.

10. TIMETABLE FOR IMPLEMENTATION

10.1 National Grid expect to commence work on this section of the cable tunnel in March 2021.

AUDIT TRAIL

Consultation

Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Councillor Cllr Andy Wilson	Cabinet Member for Finance and Performance	11/02/21	12/02/21	
Councillor Tim Briggs	Ward Councillor for Clapham Common	11/02/21		
Councillor Joe Corry-Roake	Ward Councillor for Clapham Common	11/02/21		

Councillor Joanna Reynolds	Ward Councillor for Clapham Common	11/02/21		
Councillor Linda Bray	Ward Councillor for Clapham Town	11/02/21		
Councillor Nigel Haseldon	Ward Councillor for Clapham Town	11/02/21		
Councillor Christopher Wellbelove	Ward Councillor for Clapham Town	11/02/21		
Councillor Jessica Leigh	Ward Councillor for Ferndale	11/02/21		
Councillor Joshua Lindsey	Ward Councillor for Ferndale	11/02/21		
Councillor Irfan Mohammed	Ward Councillor for Ferndale	11/02/21		
Fiona McDermot Executive Director	Finance and Investment	11/02/21	12/02/21	
Nisar Visram, Assistant Director, Corporate Finance	Finance and Investment	06/07/20	07/07/20	3.1
Greg Carson Legal Services	Legal and Governance	06/07/20	22/01/21	4.1 to 4.4
Maria Burton Democratic Services	Legal and Governance	11/02/21	12/02/21	4.5
Kevin Crook	Assistant Director of Neighbourhoods Environment and Streetscene, Residents' Services	06/07/20	07/07/20	5.1

REPORT HISTORY	
Original discussion with Cabinet Member	11/02/21
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	Not applicable
Background information	None
Appendices	None

APPROVAL IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal and Democratic Services and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: **David Gobel, Senior Surveyor**

I approve the above recommendations:

Signature: _____ **Date:** _____

Post: **Yvonne Hardy, Head of Service, Valuation and Strategic Assets**