Electricity Wayleaves

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Responsibility of	**Deputy Chief Planning Inspector**
Updated for PEDW. Includes new guidance issued by BEIS in December 2022 regarding the treatment of equipment which supplies both the property in question and other neighbouring properties ('dual purpose lines') as 'third party equipment'. February 2024: Advice regarding status of wayleaves following an application to retain following a Notice to Remove amended to properly reflect the Guidance for Applicants and Landowners and/or Occupiers (paragraph 19).	

Key legislation and policy

Legislation	• Electricity Act 1989 • Human Rights Act 1998 • The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Hearing Procedures) (England and Wales) Rules 2013 (SI 2013/No.1987) • The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013 (SI 2013/No.1986) • The Electricity (Safety, Quality and Continuity) Regulations 2002 (SI 2002/No.2665)
National policy and guidance	• Guidance for Applicants and Landowners and/or Occupiers – Application to the Secretary of State for Energy and Climate Change from 1 October 2013, for the grant of a Necessary (Compulsory) Electricity Wayleave or Felling and Lopping of Trees Order in England and Wales (DECC) • BEIS Note to Inspectors, December 2022 (see Appendix)

Introduction

1. The distribution of electricity in Wales is the responsibility of the Distribution Network Operators (DNOs), which are companies licensed under the Electricity Act 1989. The licenses are granted on condition that they plan, develop and maintain their networks in accordance with prescribed standards. Those standards play an important role in assessing the need for a particular network

development or for retaining an electric line that a landowner may wish to remove from their land. The DNOs are required to maintain a secure and safe electricity supply and to develop and maintain an efficient, co-ordinated and economical system of electricity transmission and distribution. They also have a duty under the 1989 Act to supply electricity on request.

2. Licence holders need a landholder's permission to install their electric lines and association equipment (such as pylons, poles and transformers) on, over or under private land and to have access to the land when needed in connection with maintenance of the line or equipment.

3. Licence holders generally obtain this permission by negotiating with the landowner and/or the occupier of the land. This negotiation may result in a voluntary easement (a right in perpetuity over the land, capable of being registered at the Land Registry) or, more commonly, an agreement for a voluntary wayleave (a terminable right that can only be enforced against the landowner who granted it). In return for keeping its lines and equipment on the land the license holder pays the landowner an annual fee or a capitalised equivalent lump sum. A voluntary wayleave expires when the ownership of the land changes, though there is also usually provision within the terms of the agreement for either party to serve notice to terminate it earlier.

4. The vast majority of permissions are agreed through negotiation for a voluntary wayleave. However, if agreement cannot be reached, paragraphs 6 and 8 of Schedule 4 to the 1989 Act permits the licence holder to apply to the Secretary of State for a necessary wayleave (which is a compulsory wayleave). Necessary wayleaves are usually granted for a period of 15 years and remain in force for the period granted irrespective of whether the ownership or occupancy of the land changes during that period unless notice is served to terminate it. It is the procedures for necessary wayleaves that are covered in this chapter.

5. Applications may be made for necessary wayleaves for new lines or for the retention of existing lines if the previous wayleave has expired or been terminated or in response to a notice to remove lines and equipment served by the landowner/occupier. Applications are made by the license holder to the Department for Business, Energy and Industrial Strategy (BEIS), though up to 2016 the department responsible was the Department for Energy and Climate Change (DECC). The extant Guidance for Applicants and Landowners and/or Occupiers was published by DECC in January 2014.

6. The 2014 Guidance Document provides advice on all aspects of application for a necessary wayleave. Section 2 of the document provides guidance on giving notices to terminate an existing wayleave and notices to remove lines and equipment from the land and guidance on making applications for necessary wayleaves. Section 3 covers the "hearing procedures", which is the term used to mean receive and consider the evidence submitted by the parties, and Section 4 provides guidance on the Inspector's report and the subsequent decision.

7. A ‘Note to Inspectors’ was issued by BEIS in December 2022 which supplements the 2014 Guidance Document. The advice in this note should be followed where a Notice to Remove seeks only the removal of third party equipment and one or more lines crossing the land serve a dual purpose (i.e. they serve both the application property and another property or properties).

8. PEDW charges BEIS for carrying out this work. The Inspector should therefore keep a detailed record of time and expenses incurred.

Necessary Wayleaves for a New Electric Line

9. The need for wayleaves for new electric lines may occur for a variety of reasons, the most obvious being to provide a new line to supply a new property or properties. A new line may also be needed to divert or substantially alter an existing line, for example to accommodate another new line that crosses the existing line and for which a minimum distance between the lines has to be maintained for safety purposes.

10. The provisions for acquiring such a wayleave are contained in paragraph 6 of Schedule 4 of the 1989 Act, which says the license holder must give the owner/occupier of the land a notice requiring him/her to give the necessary wayleave within a period (of not less than 21 days) before an application is made to the Minister. If the landowner has either failed to give the wayleave within that period or has given it subject to terms and conditions to which the license holder objects, then an application can be made to the Minister.

11. It is BEIS’ practice to continue to encourage the parties to reach a voluntary agreement, and on receipt of a wayleave application, it is usually placed in abeyance for a period to give time for that to be achieved before it is actively processed.

12. Paragraph 6(3) of Schedule 4 of the Act says that the Secretary of State may grant the necessary wayleave subject to such terms and conditions as they think fit, and this is clarified in the 2014 Guidance (paragraph 2.24). It says that the Secretary of State can only grant or refuse any necessary wayleave applied for in the application by the licence holder. Where an application for a necessary wayleave contains more than one electric line, each line in the application will be considered separately, and the Secretary of State has the discretion to grant a necessary wayleave for an electric line in an application, whilst refusing others within the same application.

13. Paragraph 6(4) of Schedule 4 is applicable only to new lines and says that a wayleave for a line over land covered by a dwelling, or over land with planning permission for a dwelling, will not be granted. Furthermore, Paragraph 6(8) defines “dwelling” as including any garden and outhouses usually enjoyed with the dwellinghouse. Thus, necessary wayleaves will not be granted for new lines over gardens, though they may be granted for cables buried under the garden. Note that there is no concept of the curtilage of a building as in planning casework.

14. As for variation of an application, it is generally the case that the Secretary of State cannot grant a necessary wayleave over an alternative route. However, there may be circumstances where an error in the application necessitates a wayleave being granted for a line that varies slightly from the application. Before making such a recommendation, the inspector should seek the views of the parties.

Necessary Wayleaves for an Existing Electric Line

15. Applications for necessary wayleaves for existing lines may occur for several reasons:

- the previous wayleave has expired (e.g. as a result of change of ownership/occupancy for a voluntary wayleave, or at the end of a fixed term in either a voluntary or necessary wayleave);
- the previous wayleave has been terminated by the landowner in accordance with terms making provision for that in the wayleave; or
- there may be no known previous agreement in place.

16. In the first and third of these situations, if the landowner wants the line(s) to be removed, paragraph 8(2) of Schedule 4 makes provision for a Notice to Remove to be served on the license holder. Such a notice is required to specify exactly what line(s) and associated equipment is to be removed (see proforma in the 2014 Guidance). This is often referred to as the one-step procedure.

17. In the second situation above, i.e. where there is a wayleave agreement in existence and the landowner/occupier requires the electric line to be removed, they must first give a Notice to Terminate the agreement in accordance with the terms contained in the wayleave (a wayleave normally contains a clause requiring either 6 or 12 months' notice of termination) (see paragraph 8(1) of Schedule 4). At the end of the required period, the landowner may then serve a Notice to Remove on the licence holder to remove the electric line(s). As two notices are required in such cases, this is often referred to as the two-step procedure.

18. It is not always clear-cut whether a wayleave exists or not, as an implied wayleave may exist where a new landowner/occupier has received and accepted wayleave payments over a period of time, even though no formal wayleave exists. Nevertheless, an implied wayleave agreement may have been created between the parties such that the one-step approach may be considered to be unfair. In such circumstances, it is a requirement that reasonable notice be given, and it is expected that 6 months prior notice be given to the license holder before a Notice to Remove is served, i.e. the two-step procedure.

19. Once a Notice to Remove has been served, should an application for a necessary wayleave be made within 3 months of the date of the Notice to Remove, any existing wayleave is temporarily continued until the application is determined by the Minister. After the three month period, the licence holder can still make a valid application to the Secretary of State for a necessary wayleave

but if the line is being retained on the land without the consent of the owner and/or occupier then the line will be in place without legal authority.

20. A Notice to Remove may require all or only some of the lines on the land to be removed. Over the last few years there have been a large number of wayleave applications following the receipt of Notices specifying that all lines are be removed except those serving the landowner's property itself, which are to remain. These often follow a consistent pattern and form and have the same agent.

21. Whilst the subsequent application for a necessary wayleave clearly needs to cover all the lines for which removal has been requested, it is not limited to such lines. It is a matter for the licence holder if it wishes to apply for more lines.

22. Applications for necessary wayleaves are made through the BEIS Energy Portal via an on-line proforma.

Procedures for Considering Applications

23. Applications are managed in house by BEIS, and cases are only passed over to PEDW when they are ready for an Inspector to consider the evidence submitted or to arrange an oral hearing.

24. Paragraph 6(5) of Schedule 4 of the 1989 Act says that, before granting the necessary wayleave, the Secretary of State will afford the owner and the occupier of the land an opportunity of being heard by a person appointed by the Secretary of State. The 2013 Rules elaborate on this requirement in paragraph 3 of Part 1, and it is clear that the term "hearing" is taken to mean either a written representations procedure or an oral hearing procedure.

25. BEIS will seek the approval of the parties for the written representations procedure to apply and will take into account whether any exceptional circumstances require an oral hearing to be held. It will then notify the parties and initiate the procedures in accordance with the 2013 Rules. Thus, the appropriate procedure will have been decided before an Inspector is appointed. However, this does not prevent an Inspector from recommending that an oral hearing be held rather than written representations if they consider it is more suitable.

Written Representations Procedure

26. For the written representations procedure, BEIS will have organised the submission of written statements from each party and the submission of any further comments each party may wish to make on the other party's statement. Part 2 of the 2013 Rules set out the procedures for written representations.

27. The Minister will then appoint the Inspector to conduct the "hearing", and in most cases all of the necessary information will already be available. However, the Inspector may request further information from either or both parties, if they wish, and will usually carry out a site visit. The nature of the site visit depends

on the site circumstances and may be accompanied, access required or unaccompanied. Most visits (especially where the site is a domestic garden) can usually be carried out unaccompanied as the electric lines and equipment can be viewed from the highway. It is up to the Inspector to decide what sort of site visit is needed.

28. BEIS has particularly asked that the Inspector to act as their "eyes" on the site and expects the Inspector to check that the lines and equipment specified in the application (and on the application plan) are correct. It has been found in numerous cases that the plans are inaccurate: lines and equipment may be shown in the wrong location; or they may be of a different type (e.g. underground rather than overhead). If inconsistencies are found, the Inspector should consult the parties to confirm the correct details. It can also be useful to take photographs of any discrepancies. If there are additional lines on the land, their presence should be reported, but they cannot be added to the current application.

Oral Hearing Procedure

29. If BEIS decides that an oral hearing should be held, the case will be passed over to PEDW and an Inspector will be appointed before any further action is taken. In such cases, the Inspector is initially presented with very little information about the parties' cases and, unlike the written representations procedure, it falls to PEDW to organise the submission of the relevant statements.

30. Part 3 of the 2013 Rules set out the procedures for an oral hearing, supported by paragraphs 3.9 – 3.21 of the 2014 Guidance. The Inspector may hold a pre-hearing meeting (PIM) if he/she considers it would enable the hearing to be run more efficiently, during which the issues will be set out, arrangements will be made for the hearing, and the timetable for the submission of statements will be agreed. A note should be issued after the PIM confirming these matters. It is the applicant's responsibility to provide a suitable venue for the hearing (and the PIM). It is noteworthy that the 2013 Rules make provision for the PIM to be conducted by video or telephone as well as face-to-face, and nowadays the hearing may also be held as a virtual event.

31. As an alternative to holding a PIM, it is usually sufficient to issue a pre-Hearing note to the parties; indeed, this is the practice that is usually adopted. The Inspector should agree the contents of the note with the case officer, who will issue it to the parties. It should specify the time, date and venue for the hearing, the procedure to be followed at the hearing, the topics to be covered, and the timetable for the submission of statements. The 2013 Rules state that the latter should be no later than 10 days before the date of the hearing.

32. Although referred to as a hearing, it should be noted that these oral events do not always comprise of a round table discussion led by the inspector. Wayleave hearings are sometimes more closely aligned to what would be expected at a public inquiry with witnesses called to give evidence for the respective parties and this evidence being subjected to cross-examination and

re-examination. The 2014 Guidance is written on this basis, but it is up to the Inspector to decide on the degree of formality used taking into account the scale and nature of the matters at issue. An informal hearing is the most suitable format for almost all wayleave cases.

33. Even if an inquiry format is adopted, wayleave hearings are more limited than a public inquiry held for a planning case. Wayleave hearings are directed at private land rights rather than the general public interest. Although the wayleave is usually held in public, the general public have no rights to appear, and a party may even ask for the public to be excluded.

34. The inspector may undertake a site visit at any time before, during or after the hearing if it is considered necessary for the determination of the application. It is also recommended that inspectors undertake a pre-hearing visit to familiarise themselves with the site and the surrounding area. An accompanied visit is likely to be required at the end of the hearing, and paragraph 13 of the 2013 Rules specifies that the inspector must visit the site if requested to do so by one of the parties.

Key Issues to be Considered

35. The key topics are referred to in the legislation and elaborated upon in the 2014 Guidance. Paragraph 3 of the Guidance says: *"The purpose and scope of the necessary wayleave hearing procedure (both by written representations and oral hearing) is to receive evidence as to:*

- *why it is necessary or expedient for the electric line to cross the particular land in question; and*
- *what the effects are of the line on the use and enjoyment of the land in question."*

36. Paragraphs 3.1 and 3.2 provide further advice on other matters that might be relevant. These include:

- effects on ability to farm the land;
- effects on use of machinery;
- effects on wild fauna and flora;
- outlook from buildings (w.r.t a new overhead line);
- costs and effects of any necessary local diversions; and
- impact on landowner's/occupier's property rights under Article 1 of the First Protocol of the European Convention on Human Rights.

37. Sometimes landholders object to the application on the grounds that the compensation offered by the licence holder is inadequate. Issues which relate to the impact on the use or enjoyment of the land and may subsequently be the subject of a claim for compensation can be raised in evidence. However, the Minister does not have power under Schedule 4 to the 1989 Act to prescribe financial conditions in a necessary wayleave case or to resolve disputes regarding the level of compensation. Compensation will fall to be settled by

agreement between the parties or, failing agreement, by the Upper Tribunal (Lands Chamber) at the request of either party.

Necessary and Expediency Tests

38. For this test it only needs to be established that it is necessary or expedient for the electric line to be installed or remain over the land in question. The *'necessary test*' is more exacting than the '*expediency test*' and relates to cases where there is absolutely no alternative to the route included in the application.

39. The basic requirement of these tests is to determine why a proposed or an existing electric line is needed. This will invariably relate to the licence holder's licence conditions and its duty to transmit or distribute electricity in accordance with industry standards, in particular the National Electricity Transmission System Security and Quality of Supply Standards (NETS SOSS), and relevant network engineering standards, particularly the latest Engineering Recommendation on Security of Supply (EREC P2/7).

40. Once the need for the electric line has been established, consideration should be given to whether the land in question can be reasonably avoided. Landholders may seek to argue that the application should be refused on the ground that there is a suitable route elsewhere or an alternative option is available, such as placing the line underground.

41. In the case of a proposed new electric line, the licence holder would normally carry out a routing study which takes into account the uses of the land along the proposed and alternative routes. The licence holder would have been involved in negotiations with the owners and occupiers of the various landholdings affected by the proposed electric line, and some may have entered into voluntary wayleave agreements. If the land in question cannot be avoided without reopening negotiations with the grantors' then this is material to the issue of expediency. Other factors that would normally be considered material to the issue of expediency include timescales, costs and the licence holders' statutory duties to develop and maintain an efficient, co-ordinated and economical system of electricity distribution/transmission.

42. In the case of an existing electric line, the licence holder would normally submit options for complying with a Notice to Remove. These options could impact on other land (such as overhead line diversion), involve new rights from other landholders, disruption to the local area and additional expense. Such factors are material to the issue of expediency.

Use and Enjoyment Tests

43. The landowner usually argues that the line affects (or would affect) the use and enjoyment of the land. Such effects are site specific and focus on private land interests.

44. The reasons for landowners objecting to an application may include matters such as:

- impact of the construction requirements on the land in question (new electric lines);
- site access requirements during construction and for future maintenance of the electric line;
- safety risks associated with use of equipment on the land;
- effect of the siting of overhead line supports on the land;
- drainage requirements and effects of underground lines on land drainage;
- effects of overhead lines on views from a principal building

45. It is noteworthy that in some cases the landowner's agent makes no attempt to submit arguments about direct effects on the use and enjoyment of the land, other than to make general statements, such as: the license holder's assets are on the land without any fair and equitable agreement; this affects their enjoyment of their property; it is an infringement of the landowner's rights to enjoy their land without burden; and it is contrary to their rights under Article 1 of the First Protocol of the European Convention on Human Rights. These are not site-specific arguments and can only be considered as general principles.

46. So far as human rights are concerned, the compensation scheme available for the grant of a wayleave may be a mitigating factor in balancing the conflicting arguments. However, the amount of compensation is not a matter for consideration in the wayleave application process. The main issue for human rights arguments is whether any interference is justifiable and proportionate, which requires the decision maker to have regard to and balance the interests of the parties.

Writing of Report

47. Part 4 of the 2013 Rules sets out the procedures for the submission of the Inspector's report and the decision-making process, and these are further explained in Section 4 of the 2014 Guidance.

48. The Inspector's report normally explains the procedural and legislative framework, summarises the cases for the applicant and the landowner/occupier, presents an appraisal of the evidence and the Inspector's conclusions, and makes a recommendation on whether or not the wayleave should be granted.

49. As explained above, BEIS has asked Inspectors to act as their "eyes" on the site, to identify any errors in the description of the electric lines and other equipment in the application and to correct the application (if possible). The Minister has no powers to grant a wayleave for something quite different from the original application but can vary it to a limited extent with the approval of the parties (or if the Minister is satisfied that neither party would be prejudiced), e.g. underground rather than overhead.

50. In such a case, the Inspector's recommendation might be as follows: *"I recommend that the application be varied to describe the electricity assets as*

[include new description here], and that the wayleave be granted/refused etc…". If useful photographs have been taken, they could be attached to the report.

51. Returning to the nature of the Inspector's report as a whole, for cases where both the landowner's and the license holder's statements follow a standardised form and content (as they do word-for-word for many cases where the landowners are all represented by the same agent), there is much to be said for the Inspector also using similarly standardised paragraphs in his/her report. Not only is this efficient use of the Inspector's time, but it also ensures consistency in addressing exactly the same arguments. Copies of previous Inspectors' reports are available from the Business Support team.

Notices to Remove seeking only the removal of 'third party equipment'

52. BEIS have also provided advice on how another matter should be dealt with. It is common for a Notice to Remove to specify that all electric lines that do not serve that landowner's property are to be removed from the land but that all those that do are to be retained, and the license holder then makes an application for a necessary wayleave in respect of all the lines on the land.

53. BEIS advises that the 2 types of line should be considered separately, i.e. those that are required to serve the property in question, and those that are not, and that they should be considered to fall within the scope of different sub-sections of paragraph 6 of Schedule 4 of the 1989 Act.

54. The relevant parts of paragraph 6 are as follows:

- 6(1)(b) *"*the *owner or occupier of the land, having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice-*
  (a) has failed to give the wayleave before that period; or
  (b) *has given the wayleave subject to terms and conditions to which the licence holder objects*

- 6(2)(b) *"the owner or occupier of the land has given notice to the licence holder under paragraph 8(2) below requiring him to remove the electric line;"*.

55. Thus, paragraph 6(2) applies to the lines that the Notice to Remove sought to have removed, whilst paragraph 6(1) is taken to apply to all other lines, which in these types of case are the lines needed to serve the site property itself. This is significant, as an application for a necessary wayleave for lines covered by paragraph 6(1) cannot be made until a period of at least 21 days has been given for the landowner to enter into a voluntary wayleave. Thus, in such cases, if the license holder has not demonstrated that provision was made for the 21 days period, then any wayleave granted cannot include those lines.

56. In such a case, the Inspector's recommendation might be as follows: *"that the wayleave be granted in part in accordance with the application made by*

[Applicant's name] on [insert date of application], subject to the exclusion of the lines and equipment needed to serve the property itself".

57. This interpretation of paragraph 6(1) is relatively recent, and PEDW's previous understanding was that paragraph 6(1) [and hence the 21 days' notice requirement] only applied to new electricity lines. That was also reflected in paragraph 2.18 of the 2014 Guidance, which says:

    "… before a licence holder applies to the Secretary of State for the grant of a necessary wayleave to retain an existing electric line it is not necessary for it to serve a notice on the owner and/or occupier in accordance with paragraph 6(1)(b) of Schedule 4 to the 1989 Act as this only applies to new electric lines".

58. However, BEIS has recently confirmed its interpretation as follows:

    "… if the landowner and/or occupier was to serve a Notice to Remove to the DNO [the license holder] *where they have clearly stated that only certain equipment is to be covered by the Notice …. and the DNO still wished to apply for <u>all</u> the equipment on the land … then the DNO would need to offer the landowner a voluntary wayleave allowing the 21 days in accordance with paragraph 6(1)(b) … before the application is made to the Secretary of State for <u>all</u> the equipment on the land. Without the DNO doing so, if the landowner has specifically stated that certain equipment is not to be removed, it has been deemed that the Secretary of State will only be able to consider the electrical equipment covered by the Notice"*.

Dual purpose lines

59. Where the Notice to Remove seeks only the removal of third party equipment, ambiguity can arise where a line subject to a wayleave application serves <u>both</u> the application property <u>and</u> one or more neighbouring properties. BEIS' position is that these 'dual purpose lines' should be considered as 'third party equipment'. Consequently, instead of being granted in part, the application could be granted in full, as all lines and equipment are considered as 3rd party equipment. BEIS' Note of December 2022 is included as an appendix to this note and provides more advice and worked examples.

Felling and Lopping of Trees Orders

60. The same license holders may apply to BEIS for a Felling and Lopping of Trees Order, and it is possible that such an Order would be referred to PEDW, though they are extremely rare. Should that occur, the same 2013 Rules and 2014 Guidance apply as for Necessary Wayleave Orders, and the same procedures would be followed.

61. In those cases, the issues likely to be relevant are: the reasons the tree(s) interfere with the electric line(s); the reasons the tree(s) constitute(s) an unacceptable source of danger; and the use and enjoyment of the tree(s) in question. The Inspector will provide further advice in the 2014 Guidance.

Appendix: BEIS Note to Inspectors – Dual purpose lines, December 2022

1. **Please Note:** Schedule 4, 6(1)(a) requires decision makers to consider whether it is 'necessary **or** expedient' (emphasis added) for a licence holder to install and keep installed an electric line on, under or over any land. This is reiterated in paragraphs 35 and 38 of this ITM chapter.
2. The BEIS note refers to 'necessary **and** expedient' (emphasis added). The Act and main body of the ITM should be followed.

Department for
Business, Energy
& Industrial Strategy

Note for Inspectors

Firstly, thank you to all Inspector's for your continued work providing BEIS with reports. We very much appreciate your skills and expertise proving us with your recommendations.

We have previously provided guidelines on the consideration of applications and the interpretation of equipment. It is very pleasing to see that this advice has been taken onboard. The majority of Notice's to Remove, particularly those submitted by Barlow & Sons Ltd, are seeking the removal of 3rd party equipment only. The Landowner's own supply is not to be removed or altered in any way.

In these circumstances, we deem only the line directly serving the property to be considered as the main supply. All other equipment, regardless of whether it supplies the property indirectly, is to be treated as 3rd party equipment.

If it is considered necessary and expedient to keep the lines and equipment installed, and the effect on the use and enjoyment of the land is minimal, then the application can be allowed in part. The Landowner's supply is not granted as per the Notice to Remove, but all other equipment can be granted.

Where a Notice to Remove does not stipulate the removal of 3rd party equipment, the application can be allowed in full, if the two tests mentioned above are met, as all equipment is covered by the Notice to Remove.

New Approach – dual purpose lines

Recently, while considering your recommendations we have had some ambiguity over what can be considered as the landowner's supply or 3rd party equipment. This is because some lines are serving multiple properties, and therefore have a dual purpose.

We have taken the stance that where a line has a dual purpose, it is should be considered as 3rd party equipment, in the interests of the security of supply. Therefore, instead of partially granting an application, in accordance with a Notice to Remove, it can be granted in full, as all lines and equipment are considered as 3rd party equipment.

Where we have come across applications with this particular issue, you may find us disagreeing with your recommendation to allow the application in part. It should be noted that although we might be disagreeing with your recommendation, we do not consider that an error has been made in the assessment of the case. We have simply changed our approach which we wish to inform you about, so that this can be taken on board for future applications.

Therefore, we are asking Inspector's to consider carefully, whether any lines and/or equipment serves a dual purpose as this will impact on whether an application can be allowed in part or in full.

If you have any queries, please don't hesitate to get in contact.

I have provided some examples below:

Department for
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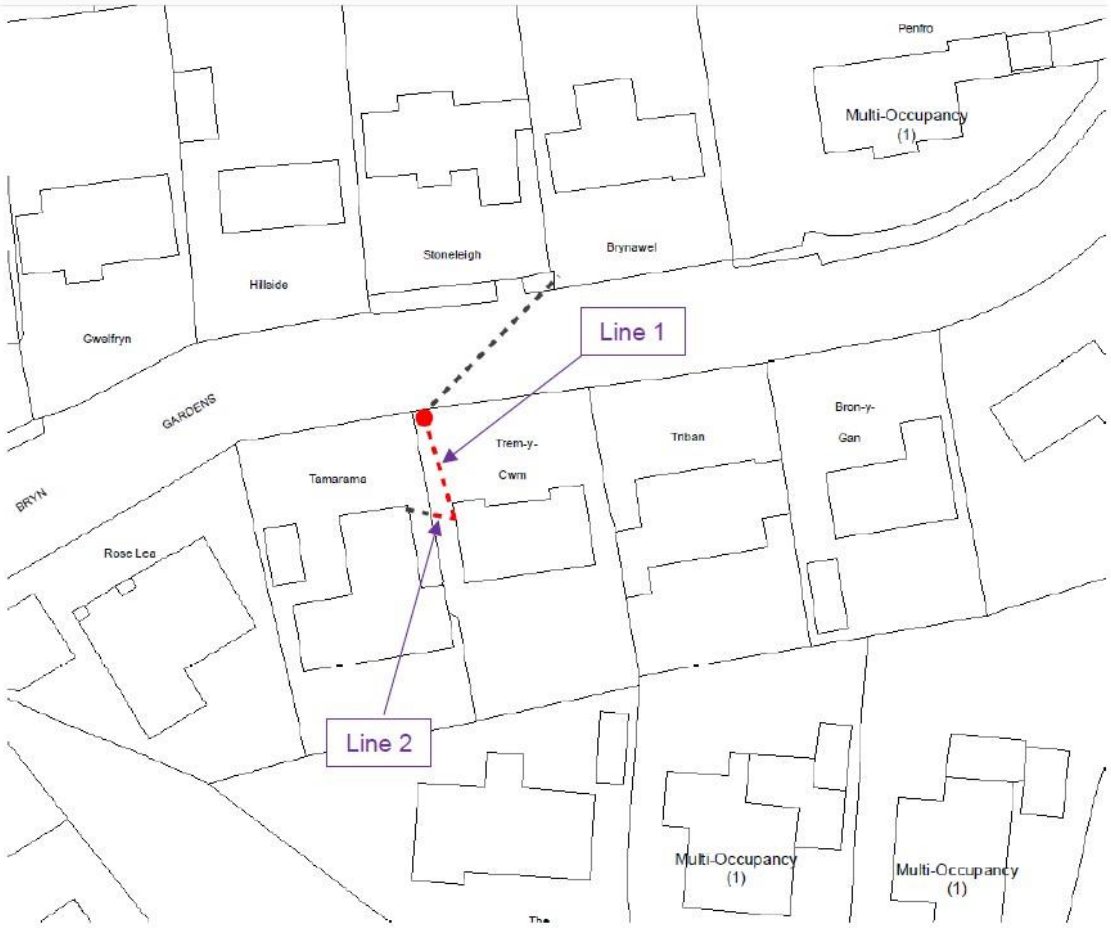
Example 1

Old approach

Line 1 and pole form the Landowner's direct supply. Without the line and pole the Landowner is disconnected from the grid. Line 2 is 3rd party equipment as it is serving the neighbouring property. If the Notice to Remove referred to 3rd party equipment only, the Secretary of State would consider allowing the application in part, granting consent for line 2 only.



New approach

There is no denying that line 1 and pole form the Landowner's direct supply. However, if the Secretary of State did not give consent for these, the Network Operator does not have permission to enter the land to repair or replace the line and equipment. In the unlikely event that the line and pole were removed, then line 2 would no longer be connected, meaning the neighbouring property would also be cut off from the electricity supply. Therefore, line 1 and pole have a dual purpose, to provide electricity to the Landowner and their neighbour. In this circumstance the Secretary of State considers it beneficial to consider line 1 and pole as 3rd party equipment. As all equipment is considered as 3rd party equipment, the application could be allowed in full.

Example 2

The Landowner's direct supply is line 2. Without line 2, then there is no supply to line 3, which connects the adjoining properties in both directions. Line 2 serves a dual purpose and should be considered as 3rd party equipment. Therefore, all lines and equipment can be considered as 3rd party equipment and the application could be allowed in full.

Example 3

The Landowner's direct supply is line 3. Without line 3, then there is no supply to line 4, connecting the adjoining property. Line 3 serves a dual purpose and should be considered as 3rd party equipment. Therefore, all lines and equipment can be considered as 3rd party equipment and the application be allowed in full.