



Housing Development

Where? Bolton

When? 2011 - 2013

Who? IDNO working nationwide

Identifying land owners

An IDNO working in our area was instructed by a developer to manage the connection on their behalf.

A point of connection for the new housing estate was designed and submitted to the estates and wayleaves team at ENWL for review in April 2011. As part of our investigations we established that further consents were needed as the route for the HV cable went through a private road. These consents were unexpected as the road was previously thought to be un-adopted. This was discovered in August 2011.

We then continued to identify and negotiate on-site consents required. However, contact with the IDNO during this time brought to our attention that they held an assumption that ENWL obtain all consents - irrespective of whether they are on-site or off-site. As a result, the IDNO did not pursue the off-site consents and this work was left suspended.

We continued to negotiate and complete the on-site 'right of way' and 'easement' on the un-adopted roads on the housing estates immediately leading up to the substation. This easement with the developer was completed by end of September 2011.

After the IDNO realised they were responsible for obtaining the off-site consents, they immediately re-started their investigations and 12 months later they had identified that in fact another two off-site consents were needed for this development, as a result of the cable route.

Therefore, in total the development required four consents; three of these were off-site consents which were the IDNO's responsibility to identify and negotiate. These were:

- Developer (on-site)
- A local authority Third Party Landowner 1(off-site)
- Third Party Landowner 2 (off –site)
- Third Party Landowner 3 (off-site)

The level of investigation to identify land owners and number of affected parties along the cable route was unexpected, adding complexity to this project.

Negotiation

The project started in 2011, by August 2012, all relevant parties have been identified and one out of the four consents required had been completed.

Generally, we recommend that all third parties agree to the Heads of Terms in parallel. This is because it facilitates a situation where all third parties have equivalent bargaining power, and reduces the risk of one or more using this to gain financial reward for their signature. Heads of Terms were agreed with all three off-site land owners in September 2012. Negotiation for their legal deeds then began.

Check land registry, ask local authority (adopted highway & Land Registry records are available for viewing in most cases). Check the developer is aware of their clients ownership and if not immediately abutting an adopted highway, establish land ownership for the entire route of the cable (both LV & HV cables)

On-site consents... when work needed for your connection is on developers land, we need to get their consent to access and work on their land. The same applies when an ICP carries out the work on a developer's land

Off-site consents... The developer or appointed IDNO/ICP is responsible for negotiating, agreeing and paying for all 3rd party off-site consents based on ENW's standard terms.

Make sure that you fully understand your responsibilities with regards to obtaining consents for on-site and off-site work. Knowing this from the outset could save you delay of up to several months later down the line. (note here if you want to learn more about your responsibilities and on-site/off-site consents can point to website guidance).

It can be more complicated than initially thought to identify land owners, plan in appropriate time for this into your project planning. This stage can take several months, which if not planned, can incur difficult delays to your construction!



Each land owner required their own legal deed, and for each deed there needs to be three parties' agreement/signature. These are:

- ENWL
- Developer
- Land owner

Each land owner has different expectations of what the deeds should consider. As they represent a major milestone prior to construction, some land owners can use this as an opportunity to request funds for agreement. All land owners have the ability to decide whether to apply fees based on the work required on their land. Essentially, the customer or developer is reliant on their permission to proceed with their planned project.

The negotiation process over the deed took about a further 7 months before it was agreed and 'completed'

Expectations

All three land owners required payment for granting an easement. However, the IDNO's customer - the end developer - assumed that all consents were the responsibility of the DNO. As a result, they did not understand why they were required to pay for consents for their project. In their view these costs were additional to those budgeted in their project and were the DNO's responsibility. Furthermore, they believed that the DNO could and would (as a first option) use statutory powers to obtain consents.

The IDNO managed to explain the situation to the developer, and the legal deeds were signed in June 2013. Initially this phase of the project was envisaged to take 6 months, but in fact took much longer as a result of unexpected land ownership, incorrect assumptions and difficulties in negotiation. All of which are common issues across many different projects.

More information

For more information on the whole legal process, please see our flow process on our website.

DNOs have statutory powers to acquire consents by compulsion. However this can take 12 months or more to acquire from DECC. In addition the costs which are borne by the customer are very high. It is therefore usually quicker and less expensive to negotiate voluntary consents from third parties. The statutory route should only be used as a last resort.

Statutory 'power' is a mis-conception - power is not the word really to describe it. There is little power behind this route - it is lengthy and costly to the customer.

Costs of new connection must be borne by the customer. This is something that should perhaps be in your contract with your customer.

Your end customer, or developer may be required to negotiate, agree and to pay for consents to install and retain ENW apparatus in. on or above all off-site 3rd party land. Heads of terms refer to the main terms of agreement before a legal document is drafted. Detailed terms of agreement are then drafted by solicitors.

