



ICP connection for Housing Development

Where? Cumbria

When? 2016

Who? ICP operating in the northwest

What? 2 HV metered substations and associated cable easements to support 2 solar farms & rights of way

Identifying land owners

An Independent Connection Provider (ICP) was contracted by a large housing developer to provide electricity supplies to a new housing development in West Cumbria, and in late March 2015 we approved the ICP's design.

The offsite works involved the ICP installing a long length of high voltage cabling in a mixture of adopted public highway and public open space. The onsite works within the development site involved the ICP installing a short length of high voltage cabling in a communal area to a new substation, together with the low voltage cabling supplying the housing development. An Independent Distribution Network Operator (IDNO) planned to adopt the substation and low voltage cabling installed onsite.

In April 2015 we asked the ICP to make ownership enquiries with respect to the public open space, which they had initially assumed formed part of the adopted highway. A title search revealed that the green space was owned by the District Council. At this stage we advised the ICP that third party consent would be required to install the cable, and that we would not be in a position to energise or adopt the cable until our post adoption land rights had been legally secured.

Negotiation

The ICP approached the District Council on behalf of the Developer to negotiate their installation agreement and agreement to our heads of terms. The ICP agreed terms on behalf of the Developer with the District Council, and provided us with the signed terms and the third party solicitors' details on 22nd September 2015. This allowed us to formally instruct our solicitor on 29th September 2015 to send a draft tripartite deed of grant to the District Council's and Developer's solicitors.

At this stage, the District Council confirmed that part of the public open space had been erroneously registered at land registry as their land, when in fact it has been included as part of an earlier housing stock transfer to a Housing Association.

This introduced an unexpected addition to the negotiation; a new commercial entity with different priorities and expectations who needed to provide consent before we could proceed.



Avoid making assumptions about land ownership - there are many tools you can use to identify land ownership (some free, some paid). For more information see here



This brought the number of parties included within negotiations to six.

- ICP - commissioned by the housing developer to make the connection.
- Housing developer - end customer, commissioning the ICP to connect their new development on their behalf.
- IDNO - adopting the housing development post energisation.
- ENWL - adopting the assets up to the IDNO boundary post energisation.
- District Council.
- Housing association.

We notified the Developer/ICP of their need to secure their right to install the cable, and to secure the Housing Association's agreement to our post adoption land rights. The Housing Association were willing to grant consent, but on the condition that we indemnified them against all direct and consequential losses and claims arising from the presence of the cable in their land. We were unable to accept this onerous condition, and the developer took on this liability to conclude the negotiations and ensure that the supply could be energised as soon as possible.

Securing third party land rights is not guaranteed; third party land owners have the power to request certain conditions for granting their permission, which you may not have anticipated.

Conclusion

Unfortunately, discovering the complex land ownership arrangements resulted in unanticipated delays whilst negotiations with the additional parties were concluded. As a result, the deed of grants completed on 11th May 2016, some 8 months after solicitors were initially instructed, and some 13 months after the ICP's design was originally approved.

What had appeared to be a straight forward installation of cabling within a public highway became a complicated transfer of land rights from two third parties to the housing developer, and us. This delayed progress meant that the expensive diesel generation had to be installed as an interim measure to supply the new homes whilst the legal process was completed.

Whether you are an ICP or a developer, we recommend that you pay due diligence and investigate and identify land ownership early on in the design process. Carrying out title searches to identify third party ownerships, together with any restrictions or encumbrances affecting the land and/or title defects is vital. This will ensure that legal issues are addressed early on so that land rights are secured, and that supplies to your customers are energised as soon as possible.



In this case the IDNO pursued their adoption rights for the apparatus installed onsite independently of us. In order to avoid additional legal work and cost for a Developer, we recommend that IDNOs follow the Incorporated Rights process wherever possible. This process ensures that our post adoption rights to access our HV switch and incoming HV cabling to the IDNO's substation are incorporated into the transfer or lease between the Developer and IDNO. For more information see [here](#) (link to sources of other info).