

Electricity is distributed in the UK, from Bulk Supply Points, through primary substations which step down the voltage from 33kV to 11kV and then via smaller secondary substations which further reduce the voltage to 400/230V for customer use. As electricity substations play a critical role in the distribution network, we look at issues raised in substation leases, and statutory rights afforded to utility companies.

Duration of the lease

Electricity substations are often occupied on long leases (typically 99 years) and meet the qualifying criteria set out in section 23 of Part II of the Landlord and Tenant Act 1954 as the substation site is being used for the purpose of a business. This means the utility company will have security of tenure, essentially being a statutory right enabling it to renew tenancy at the end of the lease term or be paid compensation in the event of non renewal. Utility companies should be aware that landowners/developers can request a term that compels the utility company to remove the substation, cables and make good the demised site at the end of the term (however it expires).

Rent and rent review provisions

It is not unusual for substation leases to include terms of a peppercorn rent or other small yearly payment. This is because leases are often subject to a tenant covenant that the utility company can only use the site for the purpose of a substation, and this does not justify a market rent appropriate to other uses. Despite this, utility companies should be aware that landowners may try to negotiate an upward market or other rent review clause, during negotiations, before the lease is *first* entered into, as case law suggests courts will refuse to imply this at a later stage. A one-off premium may also be payable to a landowner/developer on entering into the lease.

Indemnity Clause

Generally, utility companies should refuse indemnities to third parties. Should an event occur resulting in a claim, the landowner will have little choice but to rely upon common law remedies. As such, they may request the utility company take out insurance with a reputable insurer (or self-insure) against third party and public liability.

Future relocation of substation or cabling routes

Electricity substations deliver electricity via cables running from the substation to local end consumer properties. If landowners or developers intend to develop land through which these cables run (or on which the substation is located), they will seek to protect their interest in the land by including a "lift & shift" provision. This allows the landowner to request the utility company to relocate the cables or the substation in the future. Utility companies may agree to this provided the landowner offers a suitable alternative site/route and pays all costs associated with cable diversion or substation relocation. A lift & shift provision may not provide complete protection for the landowner, as utility companies have a right pursuant to the Electricity Act 1989 (EA 1989) to apply to the Secretary of State for a wayleave permitting it to install, keep installed and have access to maintain electricity cables under or across private land.

Utility companies should request a formal easement (for the right to install, retain and replace the cables) documented by deed (for a term in perpetuity), which is required to be completed by registration against the title register pursuant to section 27(2)(d) of the Land Registration Act 2002, to bind successors in title.

Registration of leases at the Land Registry when a development site, on which substation is to be located, is backed by lender financing

If a development is being financed by a lender through a Facility Agreement (FA), typically, under the terms of that agreement, any disposals relating to the development land/site will require prior lender consent and as such, any grant of a lease or easement to a utility company) will require prior consent. Developers typically seek a carve out for this consent requirement in the FA for a disposition made on arm's length terms, beneath a value threshold and/or to any utility company, to enable them to grant the requisite leases and easements to utility companies without having to seek protracted lender consent. Whilst this means that a consent under the FA may not be required for the actual lease grant or easement, practically speaking, as any lease over seven years duration will require consent from the lender (and will therefore be subject to any restriction on title accompanying a lender's security registered at the Land Registry), and must be registered at the Land Registry the *true benefit* of this carve out is to ensure that consent for registration of the lease/easement at the Land Registry is not refused and that the relevant disposition can be properly registered in due course.

Compulsory purchase powers

Lastly, utility companies have legal rights, under the EA 1989, to private property (following obtaining consent from the Secretary of State), without current owners' consent via a Compulsory Purchase Order (CPO) in return for compensation, if the property falls within a public or private construction project or scheme.

Andrew Chapman, from our Real Estate Practice, and Rob Broom, from our Energy & Natural Resources Practice, look at the fine print that should be considered by utility companies, landowners and developers when leasing land for electricity substations.

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Contacts



Andrew Chapman

Senior Associate, London

T +44 20 7655 1597

E andrew.chapman@squirepb.com



Rob Broom

T +44 207 655 1263

E robert.broom@squirepb.com

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