

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

THE M42 JUNCTION 6 DEVELOPMENT CONSENT ORDER 202[]

WRITTEN REPRESENTATION ON BEHALF OF CADENT GAS LIMITED

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WRITTEN REPRESENTATION ON BEHALF OF CADENT GAS LIMITED

1. INTRODUCTION

- 1.1 Cadent Gas Limited (“**Cadent**”) has made a relevant representation in this matter on 26 March 2019 in order to protect apparatus owned by Cadent. Cadent does not object in principle to the development proposed Highways England (the “**Promoter**”).
- 1.2 Cadent has medium pressure and high pressure (major accident hazard) gas pipelines, and associated below or above ground apparatus including an above ground gas compound located that is affected by the proposed development (“**Apparatus**”).
- 1.3 Cadent does, however, object to the Authorised Development (as defined in the draft M42 Junction 6 Development Consent Order 20[] (the “**Draft Order**”)) being carried out in close proximity its Apparatus in the area unless and until suitable protective provisions and related agreements have been secured to their satisfaction, to which see further at paragraph 4.
- 1.4 Cadent also objects to any compulsory acquisition powers for land or rights or other related powers to survey, temporary acquisition powers or to override easements or rights or the stopping up public or private rights of access being invoked which would affect its existing Apparatus, or the right to access or maintain its existing Apparatus.
- 1.5 Cadent wishes to ensure appropriate land rights are available for any diversion of its assets sitting outside the adopted highway boundary and will require crossing agreements where there are proposals to work within the easement strip of any existing Apparatus, to which see further at paragraph 2.
- 1.6 Cadent is holder of a licence under section 7 of the Gas Act 1986 and operates four gas distribution networks in North London, Central England (West and East) and the North West (the “**Licence**”).
- 1.7 Cadent is required to comply with the terms of its Licence in the delivery of its statutory duties. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its Apparatus, to which see paragraph 3.

2. CADENT ASSETS

- 2.1 Cadent’s Apparatus is affected by the Authorised Development. The Apparatus may require diversions subject to impact within the highway in the Order Limits as shown on the Plan in Appendix 1.
- 2.2 Detailed design studies have not yet been completed for the high pressure interactions and therefore the detail of the alignment of any pipeline diversions or AGI relocation are currently unknown. At present, only C3 estimates have been provided in relation to the low and medium pressure diversions. Accordingly it is not possible to accurately confirm whether these diversions will be capable of being carried out fully under the New Roads and Street Works Act 1981 or not. Where they extend beyond the adopted highway boundary, Cadent will require new land rights to be secured by the Promoter through the Draft Order for any diverted apparatus. Such rights will need to be made available to Cadent by the Promoter before any existing Apparatus is removed. This is in order to prevent an impact on the Apparatus and Cadent’s undertaking, which is protected by Section 127 and s138 of the Planning Act 2008. Cadent’s apparatus is required for the purposes of its undertaking and it should not be authorised for acquisition where it’s

replacement by way of diversion and delivery of appropriate corresponding rights cannot be secured.

- 2.3 Cadent is not satisfied that the acquisition of land, or the acquisition of rights over land, within which Cadent has an interest can be undertaken without there being serious detriment to Cadent's undertaking. Appropriately worded protective provisions for the benefit of Cadent will secure this and prevent serious detriment to Cadent's undertaking.
- 2.4 At this stage in the absence of the detailed design of the diversion works Cadent cannot comment on (i) diversion route and/or (ii) whether the necessary land rights have been secured by the Draft Order. In these circumstances therefore it is essential that protective provisions on Cadent's standard terms are agreed and included in the Draft Order to prevent the acquisition of any of their existing Apparatus. Diversion will then follow in future by agreement between the parties in accordance with the terms of the protective provisions which will require the grant of property rights before the overriding of any existing rights can occur, thus protecting Cadent's undertaking. It should be noted that any consequent program delay arising from the Promoter failing to include the necessary land or rights within the Draft Order, will be as a direct result of the Promoter's failure to commission sufficiently detailed design of the Diversions in advance of promotion of the Draft Order.
- 2.5 In respect of all Cadent infrastructure located within the Order limits, or in close proximity to the proposed project and associated works, Cadent will therefore require protective provisions to be put in place to ensure that:
- (a) all Cadent interests and rights of access are unaffected by the power of compulsory acquisition, grant and extinguishment of rights, survey powers and temporary use powers and temporary or permanent stopping up unless and until diverted under the protective provisions;
 - (b) appropriate protection for the retained apparatus is maintained during and after construction of the project. This includes compliance with all relevant standards on safety as set out in paragraph 3 below; and
 - (c) Deeds of Consent/Crossing Agreements are entered into where any work is proposed in the easement strip of Cadent, which doesn't necessitate its diversion.
- 2.6 Cadent has sought to engage with the Promoter since April 2018. The purpose of Cadent's engagement has been to seek to agree in advance the protective provisions ahead of the submission of the DCO and to avoid engagement in the examination process. However, there was no substantive engagement or response from the Promoter until 16 April 2019, although reasonable progress towards agreeing protective provisions is now being made. Cadent also has various concerns about the drafting of the Draft Order but will liaise with the Promoter directly to seek to resolve any such issue in the first instance. Accordingly we have not raised any of these issues in detail at this stage but reserved the right to raise these issues in due course.

3. REGULATORY PROTECTION FRAMEWORK

- 3.1 Cadent require all Promoters carrying out Authorised Development in the vicinity of their Apparatus to comply with:
- (a) GD/SP/SSW22 – Safe Working in the vicinity of Cadent High Pressure's Gas Pipelines and Associated Installations;

- (b) IGE (Institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations, and
 - (c) the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.
- 3.2 The industry standards referred to above have the specific intention of protecting:
- (a) the integrity of the pipelines and thus the distribution of gas;
 - (b) the safety of the area surrounding gas pipelines; and
 - (c) the safety of personnel involved in working with gas pipelines.
- 3.3 Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.

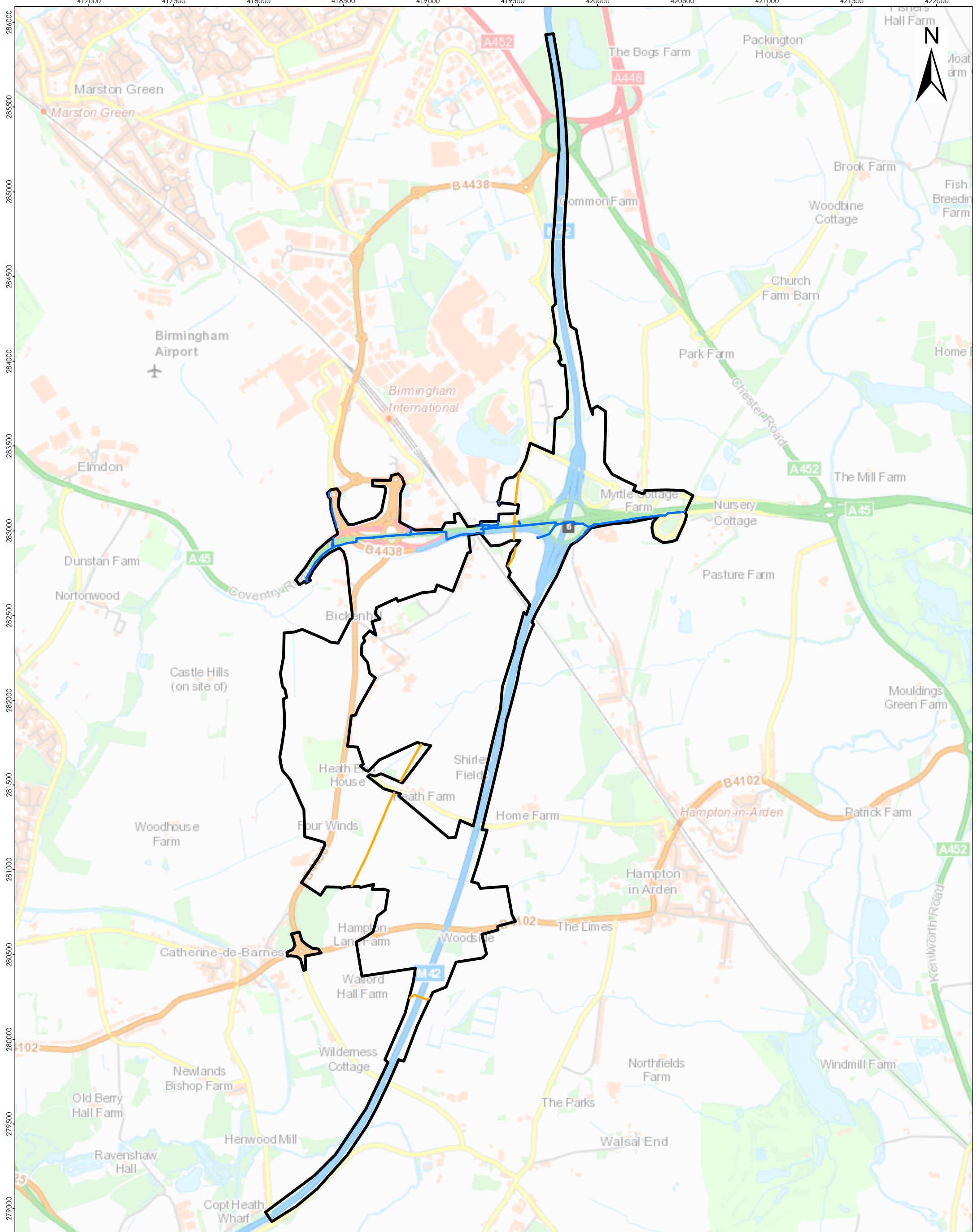
4. PROTECTIVE PROVISIONS

- 4.1 Cadent seeks to protect its undertaking, and insists that in respect of connections and work in close proximity to their Apparatus Cadent is in control of the plans, methodology and specification for works within 15 metres of any Apparatus, works which will adversely affect their Apparatus or otherwise breach distances/guidance set out in paragraph 3 above.
- 4.2 Cadent maintain that the exercise of unfettered compulsory powers or connection to its Apparatus the following consequences will arise:
- (a) failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk;
 - (b) any damage to Apparatus has potentially serious hazardous consequences for individuals/property located in the vicinity of the pipeline/apparatus if it were to fail; and
 - (c) potentially significant consequences arising from lack of continuity of supply.
- 4.3 Insufficient property rights have the following safety implications:
- (a) inability for qualified personnel to access apparatus for its maintenance, repair and inspection;
 - (b) risk of strike to pipeline if development occurs within the easement zone in respect of which an easement/restrictive covenant is required to protect the pipeline from development; and
 - (c) risk of inappropriate development within the vicinity of the pipeline increasing the risk of the above.
- 4.4 The Draft Order does not yet contain fully agreed protective provisions expressed to be for the protection of Cadent to Cadent's satisfaction, making it currently deficient from Cadent's perspective. The Draft Order also does not address fully how property rights will be made available for the diversion of Cadent's assets to its satisfaction where compulsion, rather than agreement with a third-party landowner is necessary.
- 4.5 Cadent contend that it is essential that these issues are addressed to its satisfaction to ensure adequate protection for their Apparatus and that protective provisions on its standard terms are provided.

4.6 Should this not be possible and attendance at a Compulsory Acquisition Hearing or Issue Specific Hearing is necessary then Cadent reserve the right to provide further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage once they have received a substantive response from the Promoter.

4.7 List of Appendices:

Appendix 1 – Location of Cadent’s Assets overlaid against the Draft Order Boundary



OVERVIEW WINDOW

0 205 410 820
Metres

REVISION: B
 CLIENT: **Cadent**
 SCHEME: M42 JUNCTION 6 IMPROVEMENT SCHEME
 TITLE: CPO AREA ASSET INTERACTION
 SCALE: 1:20,000 @ A3
 DATE: 04/09/2018

LEGEND:

- HP
- LP
- MP
- CPO Boundary

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