

## **M25 junction 28 improvement scheme**

**TR010029**

# **9.111 Position Statement - Proposed Agreement between Highways England, Gardens of Peace and Cadent Gas Limited**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

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# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme

### Development Consent Order 202[x ]

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## 1. Introduction

- 1.1.1 This document provides a position statement on the prospective agreement between Highways England the Trustees of the Gardens of Peace and Cadent Gas Limited. It is provided by Highways England in response to the Examining Authority's (ExA) Action Point 14 from the Issue Specific Hearing 3 (ISH3) held on 11 May 2021 (EV-049) (See REP7-018).

## 2. Summary of the status of agreement

- 2.1.1 As the ExA is aware, Highways England is currently negotiating a tri-party agreement with the Trustees of the Gardens of Peace and Cadent Gas Limited. The purpose of the agreement is to capture in a legally binding agreement the arrangements that have been developed over some considerable time between the parties with a view to minimising the effects of the DCO scheme on the development and use of the Gardens of Peace as a Muslim cemetery. It is necessary for Cadent to divert a high pressure gas pipeline (part of which already runs through the Gardens of Peace site) for the purposes of the DCO scheme within an area that will in due course form part of the new cemetery.
- 2.1.2 The draft agreement relates to freehold land owned by the Gardens of Peace, namely plots 1/8 and 1/8a as shown on the current DCO land plans (**REP5-002**). As the ExA will recall originally the land required by Highways England within the site formed one plot, namely Plot 1/8 (**APP-005**). As a result of the discussions between the parties the land plans were changed, and Plot 1/8 was split into two plots (1/8 and 1/8a) as Highways England was able to reduce substantially the amount of land over which it would require permanent rights in connection with the diversion works. The remainder of the plot would only be needed in order to carry out the works and so was made subject to possession rights only on account of application change request 4 (**REP3A-030** - Report on Proposed Scheme Changes 1-4 and **REP3A-031**- Proposed Scheme Changes 1-4 - Drawings).
- 2.1.3 The draft agreement also relates to a small area of land adjoining Plot 1/8a needed for use by the Gardens of Peace for temporary car parking whilst the DCO works are being carried out. This area is outside the draft Order limits.
- 2.1.4 The draft agreement provides for the Gardens of Peace to carry out its works to create the new cemetery, provided that Highways England and Cadent Gas will be able to enter and use the land it needs on or after a specified date. The agreement remains subject to contract and until it is agreed, the negotiations are without prejudice to the representations made on behalf of Gardens of Peace in the DCO process.
- 2.1.5 As part of the discussions, a number of matters have been agreed between the parties, working co-operatively, including:
- Highways England and Cadent Gas will provide advance notice of their intention to enter the land and agree to a schedule of condition being prepared for the area to be used for the works.
  - The parties have agreed that Cadent Gas and Gardens of Peace will enter into an easement following completion of the Cadent diversion works. The purpose of the easement is to protect the diverted pipeline in the long term

- Gardens of Peace is assured that no prospective burial places will be permanently rendered unavailable on account of the DCO works, as they have been designed accordingly, including Cadent accepting a restrictive limit of deviation (contrary to normal requirements) such that this assurance can be given (see the works plans (**REP6-003**)).
- Gardens of Peace has agreed to grant Highways England and Cadent Gas a licence over the land needed for the temporary car park which is outside of the Order limits. Highways England has also confirmed that it will seek the requisite planning permission for the temporary car park.
- The parties have agreed upon various mitigations measures under the proposed arrangements including that Cadent will only use the service entrance in connection with works as it would not be appropriate for the main cemetery access to be used. Further, Gardens of Peace will be able access and use the temporary internal roads within the Cadent work site in order to be able to reach an area where spoil in connection with the cemetery operation will be stored pending it being taken off site. Certain materials will be used in constructing temporary roads and for the temporary car park to protect the ground. The work site will be appropriately fenced off and this is detailed in a draft plan.

2.1.6 Although good progress has been made, a number of issues remain outstanding including:

- Timing issues. Gardens of Peace wish to complete the cemetery development prior to Highways England entering on the land. It has been agreed that Highways England and Cadent Gas may enter plots 1/8 and 1/8a after 1 April 2021. However, Highways England and Cadent Gas need access earlier in order to prepare for the works, including works for the benefit of Gardens of Peace such as appropriate fencing. The date for early works is yet to be agreed (Highways England has suggested 1 March 2022 in the latest draft). The parties are also seeking to ensure that the schedule of condition accurately captures the state of Plots 1/8 and 1/8a prior to the diversion works commencing.
- Temporary drainage. Cadent Gas and Gardens of Peace have had discussions about drainage from the works site. Highways England understands that Gardens of Peace is reluctant to allow water to run-off into the nearby wooded area which is outside the works area and which may be used for infant burials. Unfortunately, there appears to be no practicable alternative to the works site being drained in this way. This matter therefore needs to be resolved between the parties in some way, but an alternative option does not appear to be available at this late stage.
- Various details in relation to some of the mitigation measures need to be settled.

2.1.7 Highways England expects and hopes that these matters can readily be resolved, and the agreement made prior to the close of examination.

2.1.8 On the question of trees on land owned by TfL on the A12, Highways England cannot undertake not to remove or otherwise deal with them. They are not affected by the DCO scheme, but some are affected by the NMU scheme that

has recently been approved by Highways England under its designated funds scheme. The position is explained in Highways England's note of ISH3 at **REP7-018**, paragraph 6.1.20, with post hearing note.

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