

A1 Birtley to Coal House

Scheme Number TR010031

7.5F Statement of Common Ground with Northern Gas Networks Limited

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

[only use if submitted with application]

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Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

The A1 Birtley to Coal House
Development Consent Order 202[X]

STATEMENT OF COMMON GROUND

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Planning Inspectorate Scheme Reference	TR010031
Application Document Reference	7.5F
Author:	A1 Birtley to Coal House Project Team, Highways England

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Rev 0	25 February 2020	Draft

STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) Highways England Company Limited and (2) Northern Gas Networks Limited.

Signed.....

[NAME]

Project Manager
on behalf of Highways England

Date: **[DATE]**

Signed.....

[NAME]

[POSITION]
on behalf of Northern Gas Networks
Limited

Date: **[DATE]**

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1 INTRODUCTION

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground ("SoCG") relates to an application made by Highways England (the "Applicant") to the Planning Inspectorate (the "Inspectorate") under the Planning Act 2008 (the "2008 Act") for a Development Consent Order (DCO). If made, the DCO would grant consent for the A1 Birtley to Coal House (the "Scheme"). A detailed description of the Scheme can be found in Chapter 2 of the Environmental Statement (ES) (**Application Document Reference: TR010031/APP/6.1**)
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available in the deposit locations and/or the Planning Inspectorate website (<https://infrastructure.planninginspectorate.gov.uk/>).
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by (1) **Highways England** as the Applicant and (2) **Northern Gas Networks Limited**.
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by Highways England.
- 1.2.3 Northern Gas Networks Limited is responsible for distributing gas to homes and businesses across Yorkshire, the North East and northern Cumbria. It is one of four main gas suppliers and eight gas distribution networks in the United Kingdom.

1.3 Terminology

- 1.3.1 In the tables in the Issues chapter of this SoCG, "Not Agreed" indicates a final position, and "Under discussion" where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. "Agreed" indicates where the issue has been resolved.
- 1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to Northern Gas Networks Limited, and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that

they are either not of material interest or relevance to Northern Gas Networks Limited.

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2 Record of Engagement

2.1.1 A summary of the meetings and correspondence that has taken place between the Applicant and Northern Gas Networks Limited (NGN) in relation to the Application is outlined in table 2.1.

Table 2-1 - Record of Engagement

Date	Form of correspondence	Key topics discussed and key outcomes
17 April 2019	Email	The Applicant's legal team first contacted NGN to discuss and negotiate protective provisions.
20 August 2019	Email	The Applicant received an email from NGN requesting a teleconference to discuss the layout of the temporary construction compound, and informed the Applicant that NGN wished to retain approximately 9,000m ² of land for the construction of a CNG filling station.
21 August 2019	Teleconference	NGN informed the Applicant that it wished to retain 8,904.m ² of land to accommodate the proposed CNG station.
26 September 2019	Email	NGN submitted a plan to the Applicant via email, which NGN confirmed was a rough plan designed to show potential developers the size of land available. The email also stated that at this stage NGN did not have any detailed information as to the appearance of the CNG station.
16 October 2019	Email	The Applicant emailed NGN to detail its concerns relating to the proposed CNG station (including , request further information (including a detailed plan and timetable) and to request a meeting with NGN. This email followed an initial telephone conversation between the Applicant and NGN where these concerns were raised. In that email, the Applicant confirmed that the DCO had been submitted and that the Inspector would be assessing the application as it stood. It was also confirmed that if additional land was required to accommodate NGN's request, this could require further environmental assessments and public consultation to be undertaken, which would have a cost implication for the Scheme. It was acknowledged that a plan had been sent to the Applicant showing the plot, but clarity was sought on the plan's accuracy and the timescale for the development. Further information was also sought as to how this plot would be used and if there would be a conflict between traffic entering and leaving the CNG site and the construction traffic related to the Scheme.

		NGN responded to acknowledge the concerns raised and confirmed that these had been passed on to the team involved in the CNG station.
21 October 2019	Meeting	Concerns were raised by the Applicant about the impact on the Scheme of NGN retaining the land for the proposed CNG station, and the implications of seeking further land outside the redline boundary were detailed (including the requirement for additional environmental assessment, public consultation and cost implications). Concerns were also raised in relation to the interaction of the proposed CNG station with Scheme construction traffic. NGN confirmed that they would not be involved in the CNG scheme and all detailed design and planning permission would be sought by the CNG developer who would be delivering this scheme. NGN confirmed they had no further detail at this stage that could be provided. The Applicant requested further information with regards to the programme for the CNG works and the anticipated traffic that would use the site, so that it could consider further the impact on the Scheme.
25 October 2019	Email	<p>NGN sent an email confirming:</p> <ul style="list-style-type: none"> - that the size of the plot for the proposed CNG station had been reduced; - an indication of the number of vehicles using the proposed CNG station daily over 5 years; - that there was no firm construction date/programme, but it was expected that the works would run in parallel with the NGN diversion works; - that their only involvement was in leasing the land and providing the connection for the CNG station; and - that planning permission would be sought by the CNG developer, not NGN. <p>This email was acknowledged by the Applicant on 29 October and it was confirmed that the information provided by NGN would be considered further. However, no further detailed plan, confirmation of programme dates or demonstration of how NGN would ensure usage of the proposed CNG station would not impact on the Scheme during construction have been subsequently provided by NGN.</p>
11 November 2019	NGN's written representations	The written representation and the Applicant's responses are set out in the responses to written representation submitted at Deadline 2.
6 January 2020	Email	Following further discussions between the Applicant and NGN, NGN emailed the Applicant

		<p>on 6 January 2020 to request a teleconference on 10 January 2020. The Applicant acknowledged this email on 7 January 2020, and confirmed that the information previously sent to the Applicant had been sent to its planning team, to whom a request had been sent to attend the teleconference. NGN responded by email on 8 January 2020 to acknowledge that a further meeting could be held if not all attendees from the Applicant were available on 10 January 2020.</p>
10 January 2020	Email	<p>The Applicant emailed NGN on 10 January 2020 to confirm that its planning team were unavailable for the teleconference. In addition, the Applicant confirmed that the advice from its planning team was that they would be unable to give a definitive answer as to the Applicant's position without further detailed information from NGN. The Applicant offered to rearrange the meeting for a date when its planning team was available and the Applicant's Project Manager offered to dial in to the teleconference on 10 January 2020.</p>
10 January 2020	Teleconference	<p>A teleconference was held to discuss the CNG station and associated land requirement, and the desire to work collaboratively to resolve the issue was restated.</p> <p>The Applicant stated that it still had concerns about the land required, and the interaction with the CNG station during the construction and operational phases of the Scheme. It confirmed that further detail would be required before its planning team would be able to consider the impacts on the Scheme. The Applicant confirmed that they were willing to arrange a meeting between its planning team and NGN, but highlighted that the provision of further detail by NGN would be beneficial to the discussion.</p>
21 January 2020	Telconference	<p>A discussion was held between the Applicant and NGN about the proposed CNG station and the Scheme.</p>
29 January 2020	Meeting	<p>A meeting was held between NGN, the Applicant and the Applicant's main works contractor.</p> <p>The Applicant confirmed that, subject to the additional land request being accepted within the DCO, NGN may very well be able to retain the plot identified by NGN as being the site of the proposed CNG station. The Applicant also confirmed that, should the variation relating to the additional land not be accepted, it would require all the land for the site compound. A copy of the plan of the site compound as detailed in the CEMP was given to NGN.</p>

		<p>The Applicant confirmed that the Secretary of State's decision on the DCO is not expected until January 2021, and that the variation would not be confirmed until this point. NGN confirmed that they would need to consider their position further, including discussion with their CNG developer. NGN confirmed that they did not require a meeting with the Applicant's planning team until this had been considered, and advised the Applicant that they were considering a separate access track to the proposed CNG station which would keep the traffic away from the Scheme's construction traffic. The Applicant had not previously been advised of this option and awaits further details.</p>
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- 2.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) **The Applicant** and (2) **Northern Gas Networks Limited** in relation to the issues addressed in this SoCG.

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3 ISSUES

3.1 Issues related to Northern Gas Networks Limited's written representation dated 4 February 2020

Written representation section	Paragraph Reference	Sub-section	Northern Gas Networks Limited Comment	Highways England Response	Status
Summary	4	-	<p>NGN has found it difficult to obtain details regarding the proposed use and duration of occupation of Plot 3/6c within the Scheme <i>in the form which is currently under consideration by the Planning Inspector</i>. For that reason, NGN does not consider that Highways England has made a clear and compelling case in the public interest for the acquisition of NGN's land at plot 3/6c, and in particular the proposed site of the CNG Station.</p>	<p>Section 122(2) and 122(3) of the 2008 Act have been satisfied. As set out in the Statement of Reasons [APP-016], the compulsory acquisition and temporary possession powers sought are both necessary and justified.</p> <p>The land included in the draft DCO and the plots identified in the Book of Reference [APP-018] represent the minimum land-take required to construct, operate, maintain and mitigate the Scheme.</p> <p>Further, there are no reasonable alternatives to the Scheme that would reduce the amount of land that would be subject to compulsory acquisition. The selection of the working area and the alternatives considered is addressed in response to the Examining Authority's Written Questions 1.3.9 and 1.3.14 [PD-008].</p>	UNDER DISCUSSION
NGN's proposed scheme	10	-	<p>Although the project is in its early stages, NGN does not anticipate any difficulties in obtaining planning permission for the CNG station. In addition, despite Highways England being aware of the proposal for a number of months, no concerns or objections have been raised.</p>	<p>NGN's proposal has not yet been submitted for consideration by the local planning authority. Full details have not been submitted to the Applicant. As such, the acceptability of the CNG Station remains to be proven.</p>	UNDER DISCUSSION

				<p>The Applicant raised concerns in relation to the proposed CNG station by email on 16 October 2019, and reiterated these concerns in a meeting with NGN on 21 October 2019. Concerns were raised by the Applicant about the impact on the Scheme of NGN retaining the land for the proposed CNG station, and the implications of seeking further land outside of the redline boundary were detailed (including the requirement for additional environmental assessment, public consultation and cost implications). Concerns were also raised by the Applicant in relation to the interaction of the proposed CNG station with Scheme construction traffic</p>	
Impact on NGN's proposed scheme if land is occupied by the Applicant	12	-	<p>NGN understands that is it Highways England's intention to occupy Plot 3/6c for up to four years, which would result in significant delay to the delivery of the CNG Station. This would delay construction of the CNG Station, and consequently the realisation of the environmental benefits delivered by the CNG Station for a period of up to four years, resulting in higher levels of pollution during that time. Furthermore, given that CNG is an emergent technology, and given the scarcity of suitable sites as NGN has outlined above, there is a risk that the delay of the CNG Station at Lamesley could have the effect of delaying the transition to cleaner fuels across the North of England.</p>	<p>The Applicant has identified the duration of construction as being three years.</p> <p>In the absence of any substantive assessment provided by NGN, the Applicant does not accept that a delay to the delivery of the proposed CNG station (if, indeed, such a delay would occur as a result of the Scheme) would have the effect of delaying the transition to cleaner fuels across the North of England.</p>	UNDER DISCUSSION

Impact on NGN's proposed scheme if land is occupied by the Applicant	13	-	CNG is also predicted to play an important role in the transition of road transport from petrol/diesel fuels to hydrogen as a fuel, which would effectively decarbonise road transport. Delays to the establishment of a viable CNG network in the North of England could therefore have the second-order effect of delaying the decarbonisation of road transport.	In the absence of any substantive assessment provided by NGN, the Applicant does not accept that a delay to the delivery of the proposed CNG station (if, indeed, such a delay would occur as a result of the Scheme) would have the effect of delaying the decarbonisation of road transport.	UNDER DISCUSSION
The Applicant is over-acquiring	18	-	Despite NGN continually pressing Highways England for its justification of the land requirements, NGN has not received a detailed justification from Highways England explaining why it needs to occupy the CNG Site, or a timetable which clearly demonstrates the duration of the intended occupation. There is only one plan which purports to show the way in which Highways England will use the land at the Junction 67 Compound, which can be found on page 68 of the Outline Construction and Environmental Management Plan (the " Outline CEMP ").	<p>Section 122(2) and 122(3) of the 2008 Act have been satisfied. As set out in the Statement of Reasons [APP-016], the compulsory acquisition and temporary possession powers sought are both necessary and justified.</p> <p>The land included in the draft DCO and the plots identified in the Book of Reference [APP-018] represent the minimum land-take required to construct, operate, maintain and mitigate the Scheme.</p> <p>Further, there are no reasonable alternatives to the Scheme that would reduce the amount of land that would be subject to compulsory acquisition. The selection of the working area and the alternatives considered is addressed in response to the Examining Authority's Written Questions 1.3.9 and 1.3.14 [PD-008].</p> <p>In addition, the Applicant has contacted NGN in order to ascertain the nature of the information required, and subsequently provided further information and plans detailing the proposed use of Plot 3/6c.</p>	UNDER DISCUSSION

The Applicant is over-acquiring	19	-	<p>This drawing shows the CNG Site as being occupied by a topsoil screening bund and a staff carpark. NGN does not consider that this drawing reflects the results of a detailed study of HE's requirements. NGN considers this drawing to be a rough schematic, which may not reflect the final use of the Works Compound. For example it would be unusual if the land requirements for the Plant Store (I), the Material Store (J) and the Subcontract Store (K) were precisely equivalent, which they appear to be on this drawing. We also suggest that the positioning of a site office (which we presume would be installed by a crane) beneath a pair of high voltage power lines demonstrates the provisional nature of the drawing and a clear lack of care and consideration for the site compound, despite repeated objections to its use.</p>	<p>The plan at page 68 of the Outline CEMP is an indicative plan to show the likely uses and layout which a contractor may choose to adopt. However, the precise use and layout of the site would be determined by the contractor. The Applicant's analysis of alternative sites for a site compound is set out in its reply to Written Question 1.3.14 and the annexed supporting report by Morgan Sindall.</p> <p>In addition, the Applicant contacted NGN in order to ascertain the nature of the information which it required, and subsequently provided further information and plans detailing the proposed use of Plot 3/6c.</p>	UNDER DISCUSSION
The Applicant is over-acquiring	20	-	<p>There is other land in the vicinity of the Junction 67 Compound which Highways England could have sought to acquire in the months following NGN making clear its requirement, particularly to the South of the compound. Highways England could and should have had regard to NGN's representations, and could have submitted revised redline plans. We are aware that Highways England is doing this now, and we are grateful that efforts have been made to accommodate NGN within the new scheme. Depending on the detail of the revised redline, NGN would be minded to support such a move by Highways England. However currently this proposal has not been accepted by the</p>	<p>The Applicant was not informed of the proposal for the CNG station until 20 August 2019, six days after the application for the Scheme was submitted.</p> <p>The Applicant's analysis of alternative sites for a site compound is set out in its reply to Written Question 1.3.14 and is reiterated by the annexed supporting report by Morgan Sindall. The report was produced to analyse alternative sites, and demonstrates that no other sites would have been suitable.</p> <p>The Applicant is in the process of applying for a variation in order to acquire additional land to the south of the compound. If granted, this variation may very well enable a proportion of</p>	UNDER DISCUSSION

			Inspector as forming part of the Scheme, so we do not address it in detail in this representation.	Plot 3/6c to be released for use by NGN for its CNG station. However, that proposal is not currently before the Examination.	
Protective Provisions	21	a	Paragraph 7(6) of Schedule 11 of the draft DCO which gives the Highways England the power to construct or remove gas apparatus. NGN objects to the inclusion of such a provision as such interference with NGN's assets would pose a risk to the gas supply to NGN's customers. There are very limited circumstances under which NGN permits third parties to carry out works on its network, and this is always subject to stringent terms and conditions, and vigilant supervision by NGN. We therefore object in the strongest possible terms against granting any power to Highways England to carry out works on NGN's network, and we would always seek instead to work with Highways England to achieve the outcomes envisaged by the DCO.	The ability of the undertaker to execute work in connection with the construction or removal of apparatus was included in the A19/A184 Testo's Junction Alteration Development Consent Order 2018 at paragraph 7(6) of Schedule 9. NGN have not provided a justification for the departure from this precedent in respect of the Scheme.	UNDER DISCUSSION
Protective Provisions	21	b	Paragraph 9 of Schedule 11 of the draft DCO authorises Highways England to carry out works in the vicinity of NGNs apparatus. Whilst NGN is committed to working with Highways England in the delivery of the Scheme, NGN has serious concerns about the mechanism within paragraph 9(3) which assumes NGN's approval of any proposed works after a period of 21 days of having been notified by Highways England. For health and safety reasons, and to ensure that the supply of gas is not interrupted to its customers, NGN requires that its explicit approval be sought for works in the vicinity of	Paragraph 9 of Schedule 11 of the DCO contains protections for utility undertakers where works are to be carried out in, on or under any land purchased, held, appropriated or used under the DCO that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker. The protective provision requires the undertaker to submit to the utility undertaker in question a plan of the works to be executed. Paragraph 9(2) provides that the works must be carried out in accordance with any requirements imposed by the utility undertaker. The mechanism under	UNDER DISCUSSION

			<p>its apparatus, and would urge that the draft DCO is modified to reflect this requirement.</p>	<p>paragraph 9 is not a question of the approval of the utility undertaker. Rather, it allows requirements to be imposed on the undertaker prior to the works in question being carried out. To this end, paragraph 9(3) does not assume approval of the works after a period of 21 days. Instead, it provides that any requirements to be imposed on the works must be requested within this period. In addition, it is noted that paragraph 9 has precedent in the A19/A184 Testo's Junction Alteration Development Consent Order 2018.</p> <p>NGN's request for the inclusion of a requirement for explicit approval to be sought from the utility undertaker for works in the vicinity of its apparatus is not accepted. The ability of the utility undertaker to impose requirements allows the utility undertaker to address any health and safety or interruption risks and, in addition, paragraph 9(2) states that the utility undertaker is entitled to watch and inspect the execution of the works. Therefore, the concerns as to health and safety and interruption of supply are already addressed by paragraph 9. In addition, in previous DCOs where NGN have been a utility undertaker (such as the A19/A184 Testo's Junction Alteration Development Consent Order 2018) no such requirement for explicit approval of works in the vicinity of apparatus has been included.</p>	
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Compensation	22	-	Highways England will have to pay compensation to NGN for its temporary acquisition of NGN's land. Given the strategic value of this CNG Site, and its demand on the open market, the value of the CNG Site could be considerable. NGN considers that there is land available in the vicinity of the Junction 67 Compound which Highways England could acquire which would represent better value to the taxpayer than the CNG Site.	The value of land and compensation payable is not a matter for the Examination.	UNDER DISCUSSION
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