

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]

NGN COMMENTS: SUBMITTED AT DEADLINE 3

Volume **X**

February 2020

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 WITH NORTHERN
GAS NETWORKS LIMITED**

Regulation Number:	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference	TR010031
Application Document Reference	7.5F
Author:	A1 Birtley to Coal House Project Team, Highways England

Version	Date	Status of Version
Rev [x]	[Date]	[can be either Draft/Final/Application Issues]

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.
15 August 2019	Email	NGN received an email from the Applicant providing a draft layout of the construction compound and identified an additional stockpile area at the land below Plot 3/6c. The Applicant queried whether NGN was the owner, or knew the freehold owner of the additional land.
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

		<p>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.</p> <p>NGN responded to acknowledge the concerns raised and confirmed that these had been passed on to the team involved in the CNG station.</p>
21 October 2019	Meeting	<p>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.</p>
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. NGN asked for the Applicant to get in touch should any further information be needed.</p>
31 October 2019	Email	<p>NGN notified the Applicant of their intent to formally object to the Application.</p>

		NGN reissued the Protective Provisions deed to the Applicant.
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 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.
10 January 2020	Email	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.
10 January 2020	Teleconference	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. 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.
21 January 2020	Discussions prior to and following the preliminary hearing.	Discussions held between the Applicant and NGN about the proposed CNG station and the Scheme. NGN requested information regarding the construction programme and land use requirements for the construction compound at plot 3/6(c)

28 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. NGN has subsequently reduced its land requirements to exclude this access track, as demonstrated in its Written Representations.</p>
12 February 2020	Email	<p>NGN's legal team contacted the Applicant requesting a number of documents which NGN considered that it required to enable NGN to assess the impact of the Scheme on their land. It was noted in this email that the information had first been requested on 21 January, prior to the above meeting, however numerous documents remained outstanding. NGN requested a detailed plan showing the proposed layout of the Construction Compound at Plot 3/6c.</p>
19 February 2020	Telephone Call and Email	<p>NGN's legal team held a phone conversation with the Applicant where the above request was re-submitted to the Applicant's legal team which was acknowledged with the Applicant stating that a detailed layout plan was being requested.</p>
24 February 2020	Email	<p>NGN's legal team again requested that the information should be provided.</p> <p>The Applicant's legal team provided a response, which contained the first draft Statement of Common Ground, and the Compound Location Technical Note. However, this note did not contain an updated site layout of Plot 3/6c.</p>

25 February 2020	Submission of Deadline 2 documents	The Applicant submitted the draft revised CEMP to PINS as part of the deadline 2 submission and this included full details of the construction compound layout.
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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 POSITION OF THE PARTIES

- 3.1 This section details the respective position between the parties in the event of the change request being granted by the ExA (“Amended Scheme”) and where that change request is refused by the ExA (“Unamended Scheme”).
- 3.2 Under the Amended Scheme the order limits will include the additional land in plot 3/13a which will add approximately 5 hectares of land to the area comprising the working compound south of the Kingsway Viaduct. The parties agree that the Amended Scheme represents the most optimal solution for achieving both the Applicant’s objectives under the scheme and NGN’s desired objectives in respect of its land interest in plot 3/6c. It is the agreed position of the parties that in the event of the ExA accepting the Amended Scheme for examination, the land hatched purple on the Land Ownership Plan (HE Drawing Number HE551462) (PINS Reference Number: TR010031) within plot 3/6c would be retained by NGN for the purposes of constructing their CNG station (“CNG Plan”).
- 3.3 Under the Unamended Scheme, the additional 5 hectares of land would not be included within the order limits and therefore the land available for the working compound would be significantly constrained from the perspective of the competing interests of the Applicant and NGN. The parties remain in disagreement over the availability of land in plot 3/6c to deliver the CNG station in tandem with the working compound.

NGN	Applicant
<p>1. NGN does not agree that the Applicant has made a compelling case in the public interest for the acquisition of the whole of Plot 3/6c within the Unamended Scheme.</p> <p>a. NGN does not agree that the plans provided by the Applicant to date are an accurate representation of a working</p>	<p>The Applicant considers that if it is required to carry out the Unamended Scheme, the entirety of plot 3/6c is required for the working compound and that it is both necessary and justified to include plot 3/6c within the limits of temporary possession. Section 122(2) and 122(3) of the 2008 Act have been satisfied as set out in the Statement of Reasons [APP-016]. The Applicant has further addressed the justification for use of Plot 3/6c in the following responses:</p>

construction compound. NGN are therefore of the position that the construction compound plans provided for plot 3/6c are insufficient in their ability to prove the Applicants case for temporarily acquiring NGN's land.

- b. NGN maintains that the land required to construct the CNG Filing Station can be accommodated within the Unamended Scheme by the Applicant and should not be temporarily acquired.
 - c. Likewise, NGN considers that the case for the Applicant acquiring the land required for the CNG Filing Station is not made out in the Amended Scheme.
2. NGN remains supportive of the Amended Scheme, provided that, should the Amended Scheme be accepted for examination, the CNG land (hatched purple in the CNG Plan) will be retained by NGN.

1. Deadline 2: The selection of the working area, the proposed duration of its use and the alternatives considered is addressed in response to the Examining Authority's Written Questions 1.3.9 and 1.3.14 (Applicant's Responses to ExA's First Written Questions, Appendix 1.0 E [REP2-006]) and demonstrates that a detailed assessment of alternatives sites was carried out. These sites were discounted for environmental reasons and due to the proximity of the current compound with the main working areas, being the Allerdene Railway Bridge and the Kingsway Viaduct.
2. Deadline 2: The proposed layout and use of the working compound is outlined on page 68 of the Outline CEMP [APP/7.4] and demonstrates in indicative terms, the configuration of the compound taking into account that which would be reasonably required to operate a working compound.
3. Deadline 3: The Applicant submitted further detailed representations on its position in respect of the CNG station in response to NGN's Deadline 1 and 2 submissions and relevant representations [EXA/D3/004]. This submission makes clear that the Applicant is willing to consider proposals to enable the CNG station to operate in tandem with the working compound but that the land we have included represents the minimum land necessary for us to

	<p>operate the compound to programme.</p> <p>4. Deadline 4: The Applicant submitted its change request and additional land Environmental Statement Addendum [EXA/D4/009] which outlined the proposed duration of the construction programme and the duration of use of the compound. The Applicant also provided NGN with the CNG Plan showing the proposed land to be retained by NGN in the event that the additional land is accepted into the examination. This land was heavily informed by NGN's requirements for the CNG station.</p>
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4 PROTECTIVE PROVISIONS

4.1 Update on negotiations between the parties on the protective provisions

Para	Provision	HE Response	NGN Comment	HE Response
6(6) Removal or diversion of apparatus	Regardless of anything in sub-paragraph (5), if the Undertaker gives notice in writing to the Statutory undertaker in question		NGN cannot allow the undertaker to have the right to execute works on NGN's network	This provision envisages self-lay scenarios, such as where works will be carried out as part of

	<p>that the Undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the Statutory undertaker, must be executed by the Undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the Statutory undertaker.</p>			<p>the Scheme and elements are best performed by suitably qualified contractors on behalf of the Applicant. In such circumstances, that should be acceptable to the Statutory undertaker, subject to any connections to its regulated network being carried out by the Statutory undertaker.</p>
<p>8 Retained apparatus: Protection</p>	<p>(1) Not less than 56 days before commencing the execution of any Works that will or may affect any apparatus, the removal or diversion of which has not been required by the Undertaker under paragraph 6(2) or otherwise or by the Statutory undertaker under paragraph 6(3), the</p>	<p>This is the standard position, since NGN has the ability to object if it thinks it has a likely issue and can impose conditions under (7). If NGN has an unusual concern making it different from other undertakers, then it can explain accordingly.</p>	<p>NGN cannot accept the deemed approval or the omission of paragraphs (4)-(7) below</p>	<p>The Statutory undertaker should provide further justification – this is the standard approach in protective provisions.</p>

	Undertaker shall submit to the Statutory undertaker in question a plan showing the Works and the apparatus.			
9(6) Expenses	An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.		NGN cannot accept this inclusion.	This is the standard position where the scheme would not result in any requirement for increased capacity on the gas network. The Statutory undertaker should justify why the Applicant should potentially be required to better the existing network.
11(4)(b) Indemnity	Any indirect or consequential loss of any third party arising from any such damage or		NGN will not accept this insertion.	The Statutory undertaker must justify why the Applicant should be

	interruption, which is not reasonably foreseeable.			liable for losses which are so remote that they are not foreseeable.
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APPENDICES

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