

A47 Blofield to North Burlingham

Scheme Number: TR010040

Volume 9 **9.16 Request for a Non-Material Change to the Application**

Regulation 5(2)(d)

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

September 2021

Deadline 4

Infrastructure Planning

Planning Act 2008

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

The A47 Blofield to North Burlingham Dualling
Development Consent Order 202[x]

Request for a Non-Material Change to the Application

Regulation Number:	5(2)(d)
Planning Inspectorate Scheme Reference	TR010040
Application Document Reference	9.16
BIM Document Reference	HE551490-GTY-LSI-000-RP-TX-30069
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Version	Date	Status of Version
Rev 0	September 2021	Deadline 4

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1 INTRODUCTION

- 1.1.1 The Applicant respectfully asks the Panel to consider a change to the draft Development Consent Order (dDCO) and the related application documentation. The Applicant believes the request meets the standards of a non-material change to the Order, for the reasons specified below, and asks the panel to proceed accordingly.

2 FULL DETAILS OF PROPOSED CHANGES

- 2.1.1 The Applicant provides with this Application for the proposed changes the following revised documentation.

dDCO	TR010040/APP/3.1 Rev 3
Draft Explanatory Memorandum	TR010040/APP/3.2 Rev 3
Works Plans	TR010040/APP/2.3 Rev 1
Land Plans	TR010040/APP/2.2 Rev 1
General Arrangement Plans	TR010040/APP/2.6 Rev 3
Masterplan	TR010040/APP/2.3 Rev 2
Book of Reference	TR010040/APP/4.3 Rev 4
Statement of Reasons	TR010040/APP/4.1 Rev 2
ES Appendix 7.5 Visual Receptors	TR010040/APP/6.2 Rev 1

- 2.1.2 The Applicant has provided the above documentation to effect a proposed change relating to the re-provision of an existing block valve site (Existing Block Valve Site) belonging to Cadent Gas Limited (Cadent), which is situated adjacent to and to the south of the current A47. The Existing Block Valve Site is shown on sheet 5 of the Land Plans as plot 5/2 (**TR010040/APP/2.2 Rev 1** submitted at Deadline 4).
- 2.1.3 The Existing Block Valve Site comprises a block valve site, which is a fenced-off, above-ground facility situated where an existing gas main on a north-south alignment (the North-South Gas Main) crosses a second existing gas main on an east-west alignment (the Existing East-West Gas Main) which is to be diverted to a new route (the Diverted Gas Main) (see Work No.5, Schedule 1 to the dDCO (**TR010040/APP/3.1 Rev 3**)).
- 2.1.4 While the Applicant included the permanent acquisition of the Existing Block Valve Site in the Book of Reference, because it is required for the construction of Work No.1 (the new A47), Cadent has subsequently advised that the block valve site will need to be re-established on the line of the Diverted Gas Main, where it crosses the North-South Gas Main. The Existing Block Valve Site will therefore need to be relocated further to the south (the New Block Valve Site).

- 2.1.5 To allow the provision of the New Block Valve Site, a new permanent acquisition plot (plot 5/1e) has been added to the Land Plans (**TR010040/APP/2.2 Rev 1**) and the Book of Reference (**TR010040/APP/4.3 Rev 4**) on land for which temporary possession was previously sought. It is anticipated that this land would be vested in Cadent after completion of works. The extent of this plot reflects the limits of deviation for Work No.5, and a degree of uncertainty as to the precise location of the North-South Gas Main (historical records as to the location of the apparatus of statutory undertakers is generally imprecise).
- 2.1.6 In addition to acquiring the New Block Valve Site, it will be necessary to provide a replacement access to the New Block Valve Site (Replacement Access). The Existing Block Valve Site is accessed directly from the existing A47, however this will not be possible for the New Block Valve Site. It is therefore proposed to provide a new access track, leading south from the access track included in Work No. 23. New rights will be required for the new access track between Work No.23 and the Diverted Gas Main, and this has necessitated the creation of a new rights plot (plot 5/1b). Although the description of Work No.5 does not need to change, the limits of deviation for Work No.5, shown on sheet 5 of the Works Plans (**TR010040/APP/2.3 Rev 1**) need to be amended to take into account the land on which the Replacement Access is to be provided.
- 2.1.7 Finally, the new access track will need to provide sufficient room for van and trailer to turn around. As a result it is necessary for the access track to continue over the line of Work No.5 as far as the Order Limits. This land will remain "blue" land (limited to the acquisition of rights), however in addition to the rights to install and keep the Diverted Gas Main in the land, access rights will also be required over the land. As a result a new rights plot (plot 5/1g) has been added to the Book of Reference (**TR010040/APP/4.3 Rev 4**) and the Land Plans (**TR010040/APP/2.2 Rev 1**).
- 2.1.8 This land is all situated within the existing Order land (red line) boundary, on the line of the Diverted Gas Main (Work No.5) and the North-South Gas Main, to ensure the least invasive option is adopted in the development of the scheme.
- 2.1.9 ES Appendix 7.5 Visual Receptors (**TR010040/APP/6.2**) has had a minor update to acknowledge the change in view due to the New Block Valve Site, with no change to the assessment. No other Environmental Statement documents have needed to be amended.
- 2.1.10 No amendments are required to the Works as described in Schedule 1 to the dDCO as a result of this change.

3 EXPLANATION AND RATIONALE FOR THE CHANGE REQUESTED

- 3.1.1 The North-South Gas Main and the Existing East-West Gas Main converge at the location of the proposed dualling of the A47 near Blofield. This location is particularly important given the need to isolate sections of the gas mains, to prevent the flow of gas through the pipes, for inspection and maintenance which is the primary purpose of block valve sites.
- 3.1.2 The Applicant may compulsorily acquire statutory undertakers' land only to the extent it can be replaced without serious detriment to the carrying on of the undertaking (see Section 127 Planning Act 2008). The provision of the New Block Valve Site, and the Replacement Access, is required in this location to replace existing facilities and thereby to prevent serious detriment to Cadent from the loss

of their Existing Block Valve Site. The New Block Valve Site and Replacement Access are being provided at the specific request of Cadent to meet their operational requirements.

- 3.1.3 Advice Note 16 (**AN16**) provides guidance on the explanation for change requests. The guidance outlines the need to provide "good reasons as to why matters driving the change were not identified and dealt with proactively at the Pre-application stage".
- 3.1.4 The Applicant has been in communication with Cadent since 2018, however the need for the New Block Valve Site was only communicated to the Applicant after the Application was submitted. The change is therefore being sought to ensure the effective protection of Cadent as a statutory undertaker and to ensure that their assets can be replaced and properly accessed.
- 3.1.5 This change has been sought at the earliest opportunity when it came to the attention of the Applicant as it was not reasonably capable of identification at an earlier date.

4 ARE THE PROPOSED CHANGES A MATERIAL CHANGE TO THE DRAFT ORDER

- 4.1.1 Before making this application, the Applicant has reviewed the detailed examination guidance (Guidance for examination of applications for development consent, DCLG, March 2015) and AN16 and despite the overall decision resting with the Examining Authority (ExA), the Applicant considers that the changes requested are non-material for the reasons specified below.
- 4.1.2 The Applicant notes there is no legal definition of the term 'material' but the guidance differentiates between material changes and changes that amount to an entirely different project. Paragraph 2.1 of AN16 states:

"2.1 There is no legal definition of 'material' but the tests to apply are whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for. The former constitutes a material change which – provided there is sufficient time remaining in the Examination stage – can be accommodated as part of the Planning Act 2008 (PA2008) process. The latter constitutes a different project for which a new application would be required. "

- 4.1.3 Patently the changes which are proposed do not constitute a different project from the one which was applied for, and the only remaining question is whether the change is "material" warranting further consultation. That is a question of planning judgment for the ExA (see paragraphs 2.1 and 2.3 of AN16).
- 4.1.4 In the submission of the Applicant the proposed changes are not material, and this section of this document sets out why it has reached this conclusion in order to assist the ExA in exercising its planning judgment. The following factors are relevant:
- All of the land required in respect of this change falls within the existing Order limits. The changes affect a relatively small proportion of the Order land, changing 426 square metres] of land from rights land into permanent acquisition land (plot 5/1e) and a second 365 square meters of land from temporary possession land to land over which access rights maybe permanently acquired (plot 5/1b). The Applicant will endeavour to deal with

these changes via commercial agreements with landowners (ie outside of compulsory purchase provisions) as far as possible, however the Applicant still requires compulsory powers for the acquisition in the event that freehold acquisition cannot occur by agreement or within the timeframe required by the Applicant.

- AN16 states that the extension of the Order land and the addition of new plots of land or interests for compulsory acquisition may be factors suggesting a material change. This test of materiality is not met, as the application does not extend the Order land, and does not add new plots of land or interests for compulsory acquisition which were not previously affected by compulsory acquisition.
- Moreover, the procedure under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 is not engaged. Regulation 4 prescribes the application of the rules in the event that an order for development consent proposes to authorise the compulsory acquisition of additional land only where a party with an interest in the land has not consented to the inclusion of additional land. The Applicant does not consider that the proposed changes provide for the acquisition of additional land, however in any event both the freehold owner Norfolk County Farms (the Freeholder) and Mr Nigel Adams (the Tenant), have consented to the proposed changes. Their letters of consent are copied at Annex 2 and 3 respectively. It follows that in any event the additional procedures under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 are not engaged.
- The consent of the Freeholder and the Tenant to the inclusion of additional land sought for compulsory acquisition, demonstrates the minor, uncontroversial nature of the proposed change and reasonable nature of the request for a change to the Application.
- Moreover, the wording of Work No. 5 in Schedule 1 of the dDCO, which sets out the works necessary to construct the Diverted Gas Main remains unchanged, as the references to highway access are covered by its current wording.
- Furthermore, the effect of the proposed changes on the evaluation contained in the Environmental Impact Assessment (EIA) has been considered. Despite the removal of some additional trees from the New Block Valve Site, the Applicant has concluded there are no significant environmental effects as a result of the changes and subsequently no deviation from the initial assessment provided with the Application. This is supported by the addition of further tree planting, which is to be secured to account for the tree loss at the New Block Valve Site. AN16, paragraph 2.1 provides that where the change would generate new or different likely significant effects that might suggest that the change is material. In this instance the amendments to the Environmental Statement demonstrate that there will be no new or different likely significant environmental effects, again suggesting that the amendment is not material.

4.1.5 Overall, while the determination of whether the change is material is a matter of planning judgement for the ExA, for the reasons set out above the Applicant submits that the change requested quite clearly does not amount to a material change, nor an entirely different project, as there is no change to the fundamentals of the underlying project or its objectives.

5 RESPONSES TO INITIAL CONSULTATION

5.1.1 The Applicant has consulted all parties affected by the proposed change to safeguard their interests and inform them of the proposed change. Although the Applicant has not given the parties a formal 28 days' notice under the Section 42(1)(d) of the Planning Act 2008, it has consulted with both of the landowners of the affected land (ie the Freeholder and the Tenant) and obtained their consent. It has also obtained confirmation from Cadent that the proposed changes will address their concerns about the loss of the Existing Block Valve Site (see Annex 1).

6 IS FURTHER CONSULTATION NECESSARY?

6.1.1 The Applicant has consulted all parties affected by the proposed change to safeguard their interests and inform them of the proposed change. Although the Applicant has not given the parties a formal 28 days' notice under the Section 42(1)(d) of the Planning Act 2008, it has consulted with both of the landowners of the affected land (ie the Freeholder and the Tenant) and obtained their consent. It has also obtained confirmation from Cadent that the proposed changes will address their concerns about the loss of the Existing Block Valve Site (see Annex 1).

6.1.2 If the ExA considers that any further consultation is necessary, the Applicant would welcome its recommendation on further parties to consult.

7 FINAL CONCLUSIONS IN RELATION TO THE PROPOSED CHANGES

7.1.1 The Applicant does not consider that any further consultation is necessary, since in its submission the proposed changes are not material:

- The changes are minor in nature.
- The changes are all within the Order land.
- Although the changes require some easement land to be taken permanently, and some temporary land to be made subject to private rights, only a small area of land is involved and the owners have given their consent to the amendments.
- No further steps are necessary under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 since, as demonstrated above, those regulations are not engaged.
- The changes do not require an amendment to any of the descriptions of the works in Schedule 1 of the dDCO, and only a small amendment to Sheet 5 of the Works Plan to allow for the construction of the Replacement Access.
- The change would not generate new or different likely significant environmental effects.

7.1.2 The Applicant respectfully asks the ExA to accept that the proposed amendments detailed in this document are not material and further to accept the proposed changes for examination without the need for further consultation.