

A47 Blofield to North Burlingham Dualling

Scheme Number: TR010040

Volume 9

9.19 Statement of Reasons Supplement

Planning Act 2008

Infrastructure Planning (Compulsory Acquisition) Regulations 2010

September 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Compulsory Acquisition) Regulations 2010**

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

STATEMENT OF REASONS SUPPLEMENT

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Author:	A47 Blofield to North Burlingham Dualling Project Team, Highways England

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1 INTRODUCTION

1.1 Summary of document

- 1.1.1 This Statement of Reasons Supplement (“Supplement”) relates to a proposed change to the application for the A47 Blofield to North Burlingham Dualling (Scheme), that has been submitted by Highways England (the Applicant) to the Planning Inspectorate (PINS) acting on behalf of the Secretary of State for Transport (Secretary of State). The application is for development consent to implement the Scheme made under s37 of the Planning Act 2008 (as amended) (PA 2008). A more detailed description of the Scheme can be found in the ‘Introduction to the Application’ (TR010040/APP/1.2) (REP1-002).
- 1.1.2 The proposed change to the application is for the provision of a replacement block valve site belonging to Cadent Gas Limited (as part of Work No.5) together with associated access to the highway. It forms part of the diversion of the intermediate pressure gas main
- 1.1.3 In its DCO application for the Scheme, the Applicant seeks compulsory acquisition and temporary possession powers in respect of certain land interests. A detailed description of the extent and nature of the powers sought is set out by reference to the DCO application documents in Chapter 3 of the Statement of Reasons (TR010040/APP/4.1) (REP4-013).
- 1.1.4 The proposed change has necessitated changes to the compulsory acquisition powers sought in relation to a small number of plots. The purpose of this document is to demonstrate that the additional powers of compulsory acquisition and temporary possession sought in the Development Consent Order (DCO), for the proposed change, are necessary, proportionate, justified, and that legislative and policy tests are met. Detail is provided concerning the extent and nature of the powers sought and how this is set out in the application documents.

1.2 The case for additional compulsory acquisition powers

- 1.2.1 This Supplement sets out the reasons for the inclusion of additional compulsory acquisition powers within the DCO in relation to the proposed change. It explains that it is necessary to include these additional compulsory powers within the DCO so that the Applicant can acquire the land and rights required to accommodate the proposed change. It also explains why the additional powers of compulsory acquisition are necessary to enable the Applicant to acquire rights over land in order to facilitate the proposed change to the Scheme in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising the cost to the Applicant (and hence the public purse) and mitigating the impact on affected landowners.
- 1.2.2 The additional powers of compulsory acquisition and temporary possession sought as part of the proposed change are necessary, proportionate and justified. The powers sought are in accordance with all relevant statutory and policy guidance.
- 1.2.3 There is a compelling case in the public interest for the additional compulsory acquisition and temporary possession powers sought as part of the proposed change as set out in Chapter 6 of this Supplement. The conclusion of this

Supplement is that the grant of the compulsory powers requested in respect of the land affected by the proposed change would be lawful under all applicable legal regimes.

1.3 Human rights

1.3.1 In preparing the request for the proposed change to the Scheme, the Applicant has had regard to the European Convention for Human Rights and the Human Rights Act 1998. Chapter 6 of this Supplement considers how the Scheme complies with this legislation in respect of the land affected by the proposed change notwithstanding any infringement of the private rights of those whose interests in the land may be affected by the exercise of powers of compulsory acquisition and temporary possession.

1.4 Compliance with statutory requirements and policy guidance

1.4.1 This document has been prepared in accordance with the requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, and the 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (DCLG, September 2013) (the CA Guidance).

1.4.2 This document forms part of the request for compulsory acquisition and temporary powers over land affected by the proposed change to be included in the DCO that the Applicant asks be made by the Secretary of State.

1.4.3 The extent of the land interests affected by the additional compulsory acquisition and temporary possession powers sought by the Applicant in relation to the land affected by the proposed change (the Land) is described in Chapter 4 of this Supplement.

1.5 Land Interests

1.5.1 The extent of the land interests affected by the compulsory acquisition and temporary possession powers sought by the Applicant in relation to the Land is described in Chapter 4 of this Supplement.

1.5.2 The Applicant has carried out diligent inquiry, as set out in the APFP Regulations and the CA Guidance, to identify all persons with an interest in the Land (as shown on the Land Plans Supplement **(TR010040/EXAM/9.18)**) and persons with a potential claim for compensation as a result of the proposed changes. The categories of persons identified, and the methods used to identify them are described in Chapter 4 of this Supplement by reference to the categories in the Book of Reference **(TR010040/APP/4.3) (AS-025)**.

1.5.3 The Applicant has entered into negotiations to acquire other parties' interests in the Land voluntarily and is progressing those discussions. These negotiations are not yet complete. The current position on these negotiations is set out in the Compulsory Acquisition Schedule **(AS-028)**.

1.5.4 It is necessary to acquire the interests in the Land by compulsory acquisition in order to enable the proposed change to the Scheme to be made. Further details are set out in Chapter 4 of this Supplement.

1.6 Purpose / Need for the Supplement to the Statement of Reasons

1.6.1 This Supplement is required because the proposed change, if included in the DCO, would authorise the compulsory acquisition of land, or of interests or rights in land, and the creation of rights and temporary possession powers in respect of certain land interests, as well as confer on the Applicant the additional powers which are further described in Chapters 2 and 3. This Supplement is also required under section 123 of the PA 2008 and Regulation 5 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (see Chapter 3 of this Supplement).

1.6.2 This Supplement should be read alongside other documents that relate to the compulsory acquisition powers sought as part of this application, including:

- Statement of Reasons (**TR010040/APP/4.1**)(**REP4-013**)
- Draft DCO (dDCO) (**TR010040/APP/3.1**) (**REP4-007**)
- Explanatory Memorandum (**TR010040/APP/3.2**) (**REP4-009**)
- Book of Reference Supplement (**TR010040/EXAM/9.20**)
- Land Plans Supplement (**TR010040/EXAM/9.18**)
- Works Plans (**TR010040/APP/2.3**) (**REP4-003**)
- Funding Statement (**TR010040/APP/4.2**) (**APP-020**)
- The Case for the Scheme and National Networks National Policy Statement Accordance Table (**TR010040/APP/7.1**) (**REP1-042**) and **TR010040/APP/7.2**) (**APP-121**); and
- Introduction to the Application (**TR010040/APP/1.3**) (**APP-003**)

1.6.3 This Supplement serves to justify the taking of additional compulsory acquisition powers and temporary possession over the Land. The extent of the land interests affected and a full justification against the relevant tests is set out in Chapter 4.

2 THE PROPOSED CHANGE TO THE SCHEME

2.1 Description of the Proposed Change to the Scheme

2.1.1 As set out in Schedule 1 of the dDCO the Scheme comprises the NSIP being the alteration of the A47(T) trunk road shown on sheet 1-8 of the works plans, of 2.6 km in length, from east of the junction of the existing A47(T) with Yarmouth Road over the existing A47(T) to east of the junction of existing A47(T) with the unclassified road known as the Windle.

2.1.2 The Scheme consists of the following elements:

- 2.6km of new dual carriageway on the A47
- de-trunking of the existing A47 section between Blofield and North Burlingham
- introduction of a compact grade separated junction at B1140 Junction, including the B1140 Overbridge
- improvements at Yarmouth Road junction, including closure of the central reserve, closure of direct access from High Noon Lane, creation of merge lane, realignment of Waterlow and local access improvements at the Sparrow Hall properties
- a new overbridge at Blofield traversing the proposed A47 dual carriageway, connecting Yarmouth Road with the existing A47
- provision of new drainage systems including an infiltration basin and retention of existing drainage systems where possible
- a retaining wall in the western extents
- introduction of lighting at the Yarmouth Road junction and a new lighting layout at the B1140 junction
- closure of an existing layby and provision of a new layby
- walking and cycling routes connecting Blofield and North Burlingham via the new Blofield Overbridge to the west and the B1140 Overbridge to the east
- provision of North Burlingham Access
- an agricultural access track
- fencing, safety barriers and signage
- environmental mitigation
- diversions of an intermediate pressure gas main and other utilities.

2.1.3 The proposed change to the Scheme is for the provision of a replacement block valve site belonging to Cadent Gas Limited (as part of Work No.5) together with associated access to the highway. It forms part of the diversion of the intermediate pressure gas main.

2.1.4 The existing block valve site (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**) (**REP4-007**)).

- 2.1.5 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).
- 2.1.6 To allow the provision of the New Block Valve Site, a new permanent acquisition plot (plot 5/1e) is proposed to be added to the Land Plans (see Land Plans Supplement, **TR010040/EXAM/9.18**) and the Book of Reference (see Book of Reference Supplement, **TR010040/EXAM/9.20**) 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).
- 2.1.7 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.
- 2.1.8 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.
- 2.1.9 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) is proposed to be added to the Book of Reference (see Book of Reference Supplement (**TR010040/EXAM/9.20**)) and the Land Plans (see Land Plans Supplement (**TR010040/EXAM/9.18**)).
- 2.1.10 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.

- 2.1.11 The Land subject to, and affected by, the additional powers of compulsory acquisition is set out in detail in Annex A, together with justification for the seeking of those powers on a plot-by-plot basis.
- 2.1.12 The extent of Land where new permanent acquisition or new rights are sought (plots 5/1b, 5/1e and 5/1g) is 846 square metres (0.08 hectares).
- 2.1.13 Taking into account the proposed change, the total area of land to be acquired (including permanent acquisition and permanent rights) by the Scheme is 47.44 hectares, as well as 15.68 hectares that is already owned by Highways England.
- 2.1.14 As a result of the proposed change, the total area of land required for temporary use by the Scheme is 40.12 hectares, including 12 hectares for new rights land over which temporary powers are also sought.

3 COMPULSORY ACQUISITION

3.1 Scope of additional compulsory acquisition powers sought

3.1.1 This document forms part of the request for additional compulsory acquisition and temporary powers over the Land to be included in the DCO that the Applicant asks be made by the Secretary of State. As described in Chapter 2, the additional compulsory powers over the Land sought as part of the proposed change to the scheme comprise new powers of compulsory acquisition over plot 5/1e, the compulsory acquisition of new rights over plot 5/1b and additional rights over plot 5/1g.

3.1.2 The full extent of compulsory acquisition powers sought by the Applicant in relation to the Scheme are set out in Part 5 of the dDCO (**TR010040/APP/3.1 (REP-007)**).

3.1.3 Section 122 of the PA 2008 provides that an order granting development consent may include provisions authorising compulsory acquisition of land. To the extent that this is sought, the decision maker (i.e. the Secretary of State) in respect of the Application must be satisfied that the land is:

- required for the development;
- required to facilitate or is incidental to the development; or
- the land is replacement land which is to be given in exchange for the order land under section 131 or section 132 of the PA 2008 .

3.1.4 In addition, section 122(3) of the PA 2008 requires the decision maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in a DCO. The way in which the inclusion of additional compulsory acquisition powers in relation to the proposed change meets these conditions is considered in Chapter 4 of this Supplement.

3.1.5 In addition to powers of compulsory acquisition, section 120 of the PA 2008 provides that a DCO may make provision relating to, or to matters ancillary to, the development in respect of which a DCO is sought. The matters in respect of which provision may be made includes (but is not expressly limited to) matters listed in Schedule 5 of the PA 2008 , including:

- The acquisition of land, compulsorily or by agreement (paragraph 1);
- The creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement (paragraph 2);
- The abrogation or modification of agreements relating to land (paragraph 3); and
- The payment of compensation (paragraph 36).

3.2 The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

3.2.1 Under section 123 of the PA 2008 , a development consent order may only contain a provision authorising compulsory acquisition if one of the following conditions have been met:

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land .

In the Examining Authority's view, conditions (2) and (3) above have not been met in relation to the additional compulsory powers sought over the Land and consequently, the prescribed procedure referred to in section 123 (4) of the PA 2008 must be followed. The prescribed procedure is that set out Regulations 4-19 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations).

3.2.2 Regulation 5 of the CA Regulations requires the following documents to be submitted as part of a request to include additional powers of compulsory acquisition in a DCO:

- a supplement to the book of reference
- a land plan identifying the land required as additional land, or affected by the proposed provision; and
- a statement of reasons as to why the additional land is required and a statement to indicate how an order that contains the authorisation of the compulsory acquisition of the additional land is proposed to be funded.

This Supplement forms the statement of reasons to explain why the additional land is required. The other documents required by the CA Regulations have been submitted at the same time as this Supplement.

3.3 Scope of additional compulsory acquisition powers with reference to the draft DCO

3.3.1 The main powers authorising the compulsory acquisition of land, or interests in, or rights over land, are contained in Articles 23 (compulsory acquisition of land) and 26 (compulsory acquisition of rights and imposition of restrictive covenants) of the DCO. Other compulsory acquisition powers are sought in the DCO (identified below) and these similarly relate to land and will, or may, interfere with property, rights and interests. In addition, powers are sought in the DCO to enable the temporary possession and use of land. In each case the owner of the land, or the interest or right in the land, may be entitled to compensation.

3.3.2 The other powers referred to in the paragraph above are listed in full in Chapter 3 of the Statement of Reasons (**TR010040/APP/4.1**) (**REP4-013**).

4 WHY COMPULSORY ACQUISITION IS JUSTIFIED FOR THE LAND AFFECTED BY THE PROPOSED CHANGE TO THE SCHEME AGAINST THE RELEVANT LEGAL AND POLICY TESTS

- 4.1.1 This chapter explains why the Applicant considers that the conditions in s122 PA 2008 and the tests set out in the CA Guidance are satisfied in relation to the inclusion of additional compulsory acquisition powers in the DCO in relation to the Land that are required to enable the proposed change to the Scheme to be made.
- 4.1.2 S122 of PA 2008 states that: "An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met."
- 4.1.3 The conditions are:
- in subsection (2) that the land is:
 - a) required for the development to which the development consent relates;
 - b) required to facilitate or is incidental to that development; or
 - c) replacement land which is to be given in exchange for the order land under s131 or s132 (not relevant to this Scheme); and
 - In subsection (3), that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 4.1.4 With regard s122(2)(a) and (b), it is the case that the Land is required to facilitate the Scheme. The Land is required for the provision of the New Block Valve Site that is required by Cadent Gas Limited to enable its operations to continue following the construction of the Scheme and for the provision of a replacement access track to the New Block Valve Site.
- 4.1.5 Paragraph 8 of the CA Guidance states that the applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate. Annex A of this Supplement sets out why compulsory powers are necessary in relation to each individual plot of the Land, with reference to the relevant DCO Works numbers, and the nature of the Works is set out in Schedule 1 of the dDCO.
- 4.1.6 The Land is the minimum necessary land-take required to enable the proposed change to the Scheme to be made and is therefore proportionate to the Scheme objectives.
- 4.1.7 With regards to the requirement for a compelling case in the public interest, as set out in s122(3) and in the CA Guidance, there must be compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. This Supplement and the other application documents, including the Case for the Scheme and National Networks National Policy Statement Accordance Table (**TR010040/APP/7.1**) (**APP-121**), demonstrate that there is a very strong and compelling case in the public interest for the Scheme to be

delivered. The proposed relocation of the Existing Block Valve Site is a necessary part of the Scheme, without which, Cadent Gas Limited would be unable to operate its gas main and therefore subjected to serious detriment under section 127 of the PA 2008.

- 4.1.8 It follows that there is a similarly compelling case in the public interest to include the additional compulsory acquisition powers sought by the Applicant in relation to the proposed change to the DCO. The exercise of the additional compulsory acquisition powers that are sought is shown throughout this Supplement to be necessary and proportionate to the extent that interference with private land and rights is required.
- 4.1.9 In the absence of the additional compulsory powers sought, the Scheme would have an unacceptable impact on Cadent Gas Limited and cause it serious detriment. It would therefore not be possible to proceed with the Scheme. Consequently, the public benefits of the Scheme as outlined in the Case for the Scheme (**TR010040/APP/7.1**) (**REP1-042**) would not be realised.
- 4.1.10 Paragraphs 8 to 10 of the CA Guidance set out a number of considerations that the Applicant must demonstrate to the satisfaction of the Secretary of State in justifying an order authorising compulsory acquisition. This includes that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. Paragraph 25 also requires that applicants seek to acquire land by negotiation wherever practicable.
- 4.1.11 The Applicant is in discussions with landowners and occupiers as described in paragraphs 4.1.15 and 4.1.16 below is therefore pursuing reasonable alternatives to compulsory purchase.
- 4.1.12 With regard to modifications to the Scheme, alternatives to the Scheme have been considered, options were consulted on and the preferred route has been chosen based on a thorough consideration of the relevant issues. This process is described in detail in the Consultation Report (**TR010040/APP/5.1**) (**APP-022**).
- 4.1.13 Following public consultation the Applicant selected the most appropriate option. This selection took into account various factors, including amongst others views of consultees including land interests. Other factors included environmental impacts, meeting Scheme objectives, affordability, value-for-money, safety and construction and operational considerations. None of the alternative options would obviate the need for the compulsory acquisition and temporary possession of land.
- 4.1.14 The Land is no more than is reasonably required for the construction, operation, and maintenance of the New Block Valve Site and the creation of a new access track to the New Block Valve Site and the limits of the Land have been drawn so as to avoid unnecessary acquisition or use of land. In the event that less land proves to be required in a particular area at a later stage, the Applicant would only seek to acquire that part of the Land that is required and in all events will seek to minimise effects on landowners.
- 4.1.15 The Applicant recognises that the authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. However, the Applicant notes that the CA Guidance

also recognises that, in some cases, it may not always be practicable to acquire each plot of land by agreement. Where this is the case, the CA Guidance confirms that it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. It also recognises that in some cases it may be preferable, or necessary, to acquire land compulsorily rather than by agreement.

- 4.1.16 The Applicant is in discussions with landowners and occupiers to acquire the Land by agreement; please refer to the Compulsory Acquisition Schedule (**AS-028**) for the current status of these discussions. However powers of compulsory acquisition and temporary possession over the Land are required to ensure that the Scheme can be delivered in the event that it does not prove possible to acquire the Land and/or rights over the Land by agreement.
- 4.1.17 The Applicant notes that it is under a duty to acquire land at best value, as the Scheme is funded by public money, and that it is required to deliver the Scheme within a specified time frame, to meet timescales set out by the Department for Transport.
- 4.1.18 Therefore, the Applicant has concluded that acquisition by agreement may not be achievable in all cases or in any event within the timescales necessary to ensure that the programme for the construction of the Scheme would be met.

5 HUMAN RIGHTS ACT AND EVIDENCE OF COMPLIANCE

5.1.1 The Human Rights Act 1998 incorporated into domestic law the provision of the European Convention on Human Rights. The relevant articles can be summarised as follows:

- Article 1 of The First Protocol – protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
- Article 6 – entitles those affected by compulsory powers to a fair and public hearing.
- Article 8 – protects the right of the individual to respect for his private and family life, his home and his correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.

5.1.2 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the ECHR.

5.1.3 Paragraph 10 of the CA Guidance sets out how applicants should take into account Human Rights.

5.1.4 “The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.”

5.1.5 The proposed change to the Scheme, if approved, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:

- There is a compelling case in the public interest for the compulsory acquisition powers included within the DCO, and that proper procedures are followed.
- Any interference with a human right is proportionate and otherwise justified.

5.1.6 A detailed schedule of meetings and progress with each affected landowner is provided in the Compulsory Acquisition Schedule (**AS-028**).

5.2 Compliance with the convention

5.2.1 It is recognised that the proposed change to the Scheme may have an impact on individuals; however this is outweighed by the significant public benefits that will arise from the Scheme. The dDCO strikes a reasonable balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the DCO) and the private rights which will be affected by the compulsory acquisition.

5.2.2 In relation to Article 6 it is the case that proper procedures are being followed for both the consultation on the proposed change to the Scheme and for the

determination of the additional compulsory acquisition powers sought within the Scheme as contained in the CA Regulations.

5.2.3 In relation to both Article 1 and 8, the compelling public interest case for the additional compulsory acquisition powers included within the DCO has been demonstrated in Chapter 4 and in The Case for the Scheme and NNNPS Accordance Table (**TR010040/APP/7.2**) (**APP-121**). The Land over which the additional compulsory acquisition powers are sought is the minimum necessary to ensure the delivery of the proposed change to the Scheme. The relocation of the Existing Block Valve Site has been designed to minimise harm whilst achieving its objectives. In this respect the interference with human rights is both proportionate and justified.

5.2.4 Any person affected by the proposed change may submit representations to the Application in response to a notice given under Regulations xx and XX of the CA Regulations; and may attend any compulsory acquisition hearing held under Regulations of the CA Regulations 2010, at which each affected person is entitled to make oral representations about the compulsory acquisition request.

5.2.5 If the DCO is made and includes the proposed change, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of PA 2008.

5.3 Fair compensation

5.3.1 Any person affected by the exercise of compulsory acquisition powers or by the exercise of temporary possession, may be entitled to compensation. This entitlement to compensation is provided for by the existing compensation code.

5.3.2 Paragraph 9 of the CA Guidance states that there must be a reasonable prospect of the requisite funds for the Scheme becoming available. Certainty of funding for the Scheme to the extent of a guarantee that all compensation claims will be funded is detailed in the separate Funding Statement (**TR010040/APP/4.2**) (**APP-020**). The Applicant has the resources to pay such compensation and demonstrate in the Funding Statement that these resources are available. Funding for the Land affected by the proposed change is considered further in the covering letter submitted with this Supplement

5.3.3 Any dispute in respect of the compensation payable can be determined by the Upper Tribunal (Lands Chamber).

5.4 Equalities Impact Assessment

5.4.1 The Applicant has carried out an Equality Impact Assessment (**TR010040/APP/7.9**) (**REP1-052**) which has been submitted as part of this DCO application to ensure that the Scheme does not discriminate against any disadvantaged or vulnerable people. The proposed change does not affect any of the conclusions reached in the Equalities Impact Assessment.

6 LAND INTERESTS

6.1 How diligent inquiry has been used to identify and consult land interests

6.1.1 The full extent of the Land subject to additional powers of compulsory acquisition and required in order to enable the Applicant to construct the New Block Valve Site and provide the new access track as described in Chapter 4 of this Supplement is shown in the Land Plans Supplement (**TR010040/EXAM/9.18**). It is further described in the Book of Reference Supplement (**TR010040/EXAM/9.20**).

6.1.2 Diligent inquiry, under s44 of the 2008 act, was undertaken in relation to the Land by the Applicant's land referencing supplier in identifying and listing affected landowners, those with interests in land, and those with a potential claim. Land referencing will continue to be undertaken to ensure that any changes in ownership or rights are identified, and these changes will be reflected in ongoing engagement.

6.1.3 Identification of Category 3 Parties relating to the Land, under s44(5) of the 2008 Act, was undertaken at the early stages of Scheme development, in preparation for the DCO application, and will remain under review. The methodology for identification of those parties is set out below. The methodology was followed for the entire Scheme and the extent of the Order land has not been affected by the proposed change. No Category 3 parties were identified in relation to the proposed change.

6.2 How diligent inquiry has been used to identify and consult land interests – Category 1 and 2 persons

6.2.1 A Shapefile of the Land, being the proposed land requirements, was submitted to the Land Registry so that a search could be completed of the index map. Ongoing Land Registry searches have been used to ensure that any changes in Title were identified. The official copies of the Registered Titles and Plans were examined to identify all land interests. At completion of this initial desk based exercise it was then possible to identify the extent of unregistered land interests.

6.2.2 In order to establish ownership of unregistered land that falls within the proposed land requirements, public sources of information were used, such as site visits, the posting of site notices, the Planning Portal, Rural Payments Agency website, DEFRA, Natural England, Companies House website, the relevant Highways Authority, records held by Statutory Undertakers, Electoral Registers and online resources. A land charges search was also carried out.

6.3 Contact Referencing

6.3.1 Following the initial non-contact methods above, identified parties were issued with a letter and questionnaire requesting return of information about land in which they may have an interest. This was then followed up by telephone and letter contact.

6.4 The extent and nature of the Land subject to compulsory acquisition powers

6.4.1 The full extent of the Land subject to additional powers of compulsory acquisition and required in order to enable the Applicant to construct the New

Block Valve Site and associated access track as described in Chapter 2 of this Supplement is shown on the Land Plans Supplement (TR010040/EXAM/9.18) It is further described in the supplement to the Book of Reference (TR010040/EXAM/9.20)

- 6.4.2 As a result of the proposed change to the Scheme, the total area of land to be acquired (including permanent acquisition and permanent rights) by the Scheme is 47.44 hectares, together with 15.68 hectares already owned by Highways England. The total area of land required for temporary use by the Scheme is 40.12 hectares, including 12 hectares for new rights land over which temporary powers are also sought.
- 6.4.3 The extent of Land where new permanent acquisition or new rights are sought (plots 5/1b, 5/1e and 5/1g) is 846 square metres (0.08 hectares).
- 6.4.4 The purpose for which each plot of land is required is described in Annex A of this Supplement.
- 6.4.5 Table 6-1 below sets out which plots are required for the proposed change and summarises the nature of the rights sought.

Table 6-1 : The relevant works and plot numbers for New Rights:

Note: for all plots listed, a surface right to pass and repass with or without plant and vehicles and including access to highways is sought.

Plot No(s).	Work No	Nature of proposed new rights and restrictive covenants
5/1b,5/1d, 5/1g, 5/1f,	5	New pipeline for Cadent Gas Limited. New rights will be sought for Cadent to install, use, and maintain its gas main, together with a right to pass and re-pass. Restrictive covenants will be sought to protect the apparatus that is installed from being dug up or exposed or access to the pipe becoming materially more difficult.

6.5 Restrictive Covenants

- 6.5.1 Table 6-1 above also provides a summary of the restrictive covenants that will be sought over the new rights plots to protect the installed apparatus. The power to seek restrictive covenants is contained in article 26 (compulsory acquisition of rights and imposition of restrictive covenants) of the draft DCO.
- 6.5.2 The restrictive covenants are necessary to protect the apparatus of the statutory undertakers that will be installed in the relevant lands. It is normal practice for such restrictive covenants to be sought by agreement by statutory undertakers for their protection. A number of previously made development consent orders contain precedent for such restrictive covenants being sought when the purpose and need for such powers is justified and explained.
- 6.5.3 The Applicant believes that for the proper protection of the statutory undertakers whose apparatus is being relocated for the Scheme, it is appropriate for the Order as made to contain powers to allow for such restrictive covenants to be sought by compulsion if not agreed.

7 THE CASE FOR ADDITIONAL POWERS OF COMPULSORY ACQUISITION

7.1 The statutory conditions and CA Guidance

7.1.1 In seeking additional compulsory acquisition and temporary possession powers in the DCO, the Applicant has had regard to the conditions in section 122 of the 2008 Act and to the tests set out in the CA Guidance.

7.1.2 Section 122 of 2008 Act states that:

"An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met"

7.1.3 The conditions are:

- In subsection (2), that the land is:
 - a) required for the development to which the development consent relates;
 - b) required to facilitate or is incidental to that development;
- In subsection (3), that there is a compelling case in the public interest for the land to be acquired compulsorily.

7.1.4 The CA Guidance (paragraph 11) sets out the considerations which the Secretary of State will take into account in deciding whether the condition in subsection (2) has been met. It states:

- In respect of whether the land is required for the development, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.
- In respect of whether the land is required to facilitate or is incidental to the proposed development, the Secretary of State will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more than is reasonably necessary for that purpose. In respect of the condition in subsection (3), the CA Guidance states at paragraphs 12 and 13 that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

7.1.5 Paragraphs 8 to 10 of the CA Guidance are also relevant, setting out a number of general considerations to be taken into account by the applicant in seeking compulsory acquisition powers:

- That all reasonable alternatives to compulsory acquisition (including modifications to the Scheme) have been explored.

- That the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.
- That the applicant has a clear idea of how they intend to use the land which is to be acquired.
- That there is a reasonable prospect of the necessary funds for acquisition becoming available.
- That the purposes for which the compulsory acquisition powers are included in the application are legitimate and sufficiently justify interfering with the human rights of those with an interest in the affected land.

7.1.6 Finally, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable.

7.2 Need for the Land and the purposes for which the additional compulsory acquisition powers are sought

7.2.1 The Applicant is satisfied that the condition in section 122(2) of the 2008 Act is met. As explained in Chapter 3 of this Supplement the Land subject to compulsory acquisition powers is needed to facilitate the development (ie: the Scheme) The relocation of the Existing Block Valve site is required by Cadent Gas Limited to mitigate the impact of the Scheme on its gas apparatus.

7.2.2 At Annex A of this Supplement, the Applicant sets out why compulsory powers are necessary in relation to each individual parcel of the Land , with reference to the relevant DCO works numbers, and the nature of the works as set out in Schedule 1 of the dDCO.

7.2.3 The Applicant considers that the Land required for the proposed change is the minimum land-take required to construct, operate and maintain the New Block Valve Site and associated access track. The Applicant has sought to achieve a balance between minimising land take and securing sufficient land to ensure delivery of the New Block Valve Site and associated access track, noting that the detailed design of the New Block Valve Site has yet to be developed. In the event that less land proves to be required for the proposed change following the detailed design stage, the Applicant would only seek to acquire that part of the Land that is required and, in all events, will seek to minimise effects on landowners.

7.2.4 The compulsory acquisition powers are also required to override any existing rights and interests in land as well as grant the right to take temporary possession of land for construction and maintenance purposes. Again, without these rights over the Land, the Scheme will have an unacceptable impact on Cadent Gas Limited and cause it serious detriment under s127 of the PA 2008. The Applicant is accordingly satisfied that the proposed additional compulsory powers over the Land are reasonable and proportionate.

7.3 Compelling case in the public interest

7.3.1 This Supplement sets out the reasons for the inclusion of additional compulsory acquisition powers within the DCO in relation to the land affected by the proposed change. It explains that it is necessary to include the additional compulsory powers within the DCO so that the Applicant can acquire the land

required for the construction of the New Block Valve Site and the associated access track. It also explains why powers of compulsory acquisition are necessary to enable the Applicant to acquire or extinguish rights over land in order to construct the New Block Valve Site and associated access track in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising the cost to the Applicant (and hence the public purse) and mitigating the impact on affected landowners. The case for the Scheme as a whole is set out in Chapters 3 and 4 of the Case for the Scheme (**TR010040/APP/7.1**) (**REP1-042**). Together, they demonstrate that there is a compelling case in the public interest for the Scheme to be delivered.

7.4 Consideration of alternatives

The Applicant is in discussions with landowners and occupiers as described in paragraphs 4.1.15 and 4.1.16 above and is therefore pursuing reasonable alternatives to compulsory purchase.

7.5 Reasonable prospect of funding

The Applicant is content that it will be possible to fund the additional compulsory acquisitions sought using the existing funds for acquisition as set out in the Funding Statement (**TR010040/APP/4.2**) (**APP-020**). The funding for the Land affected by the proposed change is considered further in the covering letter submitted with this Supplement.

7.6 Negotiations to acquire by agreement

- 7.6.1 As well as consulting all persons with an interest in the Land about the Scheme proposals in accordance with section 42 of the 2008 Act, the Applicant is aware of the requirement (paragraph 25 of the CA Guidance) to seek to acquire land by negotiation wherever practicable.
- 7.6.2 The CA Guidance also recognises that where proposals would entail the compulsory acquisition of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiated agreement. As the CA Guidance states, *"Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset."*
- 7.6.3 The Applicant has engaged with all landowners and occupiers of the Land with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant's willingness to negotiate to acquire the Land by agreement, and to invite dialogue on this point. As a result, the Applicant is in the process of continuing to engage with a significant proportion of landowners with regard to the acquisition of land by agreement; and negotiations with this objective will be ongoing throughout the DCO process. The status of such negotiations is set out in the Compulsory Acquisition Schedule (**AS-028**).
- 7.6.4 Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Scheme within

a specified timescale. It has concluded that it may not be possible to acquire all land interests necessary to deliver the Scheme within this timescale.

7.7 Conclusions on the case for additional Compulsory Acquisition Powers

7.7.1 The Applicant is satisfied that the conditions in section 122 of the 2008 Act are met and that the tests in the CA Guidance are satisfied in relation to the additional compulsory powers sought in relation to the Land.

7.7.2 All of the Land subject to compulsory acquisition and temporary possession powers is necessary to construct, operate, maintain and mitigate the New Block Valve Site and associated access track. The extent of the Land sought is reasonable and proportionate.

7.7.3 Further there is a compelling case in the public interest to include the additional compulsory acquisition powers sought by the Applicant in the DCO. The exercise of the additional compulsory acquisition powers that are sought is shown throughout this Statement to be necessary and proportionate to the extent that interference with private land and rights is required. In the absence of the additional compulsory powers sought, the Applicant considers that it would not be possible to proceed with the Scheme because it would have an unacceptable impact on Cadent Gas Limited and cause it serious detriment, and therefore the public benefits of the Scheme would not be realised.

8 SPECIAL CONSIDERATIONS

8.1 Crown Land

8.1.1 There is no Crown Land affected by the proposed change to the Scheme.

8.2 Special category land – land forming part of a common, open space, or fuel or field garden allotment – including any exchange land arrangements

8.2.1 There is no open space or other qualifying special category land within the Order lands.

8.3 National Trust “inalienable” land

8.3.1 There is no land held by National Trust within the Order lands.

8.4 Statutory Undertaker land

8.4.1 The proposed change to the scheme will, if made, authorise additional compulsory acquisition powers over land in which statutory undertakers have apparatus.

8.4.2 Negotiations with undertakers with apparatus in the Land are ongoing and it is hoped that a private agreement can be achieved with all relevant statutory undertakers. The Applicant will update the examination at the earliest opportunity to aid the Examining Authority’s consideration of this issue.

8.5 Heritage and Landscape Designations

8.5.1 There are no Scheduled Monuments, Registered Parks and Gardens, Registered Battlefields or Conservation Areas in the vicinity of the Scheme.

8.5.2 There are no designated landscapes or registered parks and gardens in the vicinity of the Scheme.

8.6 Other consents

No consents or licences other than those identified for the Scheme are required for the proposed change.

9 SUMMARY AND CONCLUSIONS

9.1 Overview

- 9.1.1 This Supplement sets out why compulsory acquisition powers have been sought and explains why they are necessary, proportionate, and justified in relation to the land affected by the proposed change. Without the grant of the additional compulsory acquisition powers it will not be possible to construct the Scheme, or realise the public benefits arising from it.
- 9.1.2 With regards to the legislative tests set out in the PA 2008, it has been demonstrated that the Land is required for the Scheme and is the minimum necessary that would allow the Applicant to construct, operate and maintain the New Block Valve Site and associated access track. It has been shown that there are significant public benefits arising from the Scheme which will outweigh any effects on individuals, therefore there is a compelling public interest case for the Scheme.
- 9.1.3 The proposed change to the Scheme also complies with the policy requirements set out in the DCLG CA Guidance in respect of such matters as the consideration of alternatives and human rights. Funding and compensation matters are not considered in this Supplement as they are detailed in the separate Funding Statement (**TR010040/APP/4.2**) (**APP-020**). Funding in relation to the Land affected by the proposed change is considered in the covering letter submitted with this Supplement
- 9.1.4 Progress in negotiations with affected landowners for the purposes of compulsory acquisition powers is set out below in the Compulsory Acquisition Schedule (**AS-028**).

ANNEX A

Details of the purpose for which the additional compulsory acquisition powers are sought.

The specific purposes for which each plot of Land subject to additional compulsory acquisition powers is required are set out in the tables in this Annex. The first column of each table identifies the plot number (as shown on the Land Plans Supplement) and used in the Book of Reference Supplement. The second column of each table sets out the corresponding Works numbers as shown on the Works Plans and the broad uses for which the plot in question is required.

The tables in this Annex A should be read in conjunction with and by reference to the:

- Land Plans Supplement (TR010040/EXAM/9.18)
- Works Plans (TR010040/APP/2.3) (REP4-003)
- Draft DCO (TR010040/APP/3.1) (REP4-007)

Acquisition of Land – by Plot Number		
Plot Number/Land Plan sheet:	DCO Work No.	Purpose for which the land is required:
5/1e	5	Diversion of a gas main together with accesses to highways and associated infrastructure

Acquisition of Rights – by Plot Number		
Plot Number/Land Plan sheet:	DCO Work No.	Purpose for which the land is required:
5/1b	5	Diversion of a gas main together with accesses to highways and associated infrastructure
5/1d	5	Diversion of a gas main together with accesses to highways and associated infrastructure
5/1f	5, 26B	Diversion of a gas main together with accesses to highways and associated infrastructure Temporary diversion of permissive equestrian/walking route
5/1g	5, 26B	Diversion of a gas main together with accesses to highways and associated infrastructure Temporary diversion of permissive equestrian/walking route

Temporary Possession of Land – by Work Number		
Plot Number/Land Plan sheet:	DCO Work No.	Purpose for which the land is required:
5/1a	1-44	Material storage and laydown areas
5/1c	1-44	Temporary compound