

Application by Highways England for an Order Granting Development Consent for A428 Black Cat to Caxton Gibbet Improvements (TR010044)

Examining Authority’s (ExA) commentaries and proposed changes to the latest version of the dDCO [REP6-002]

Responses for and on behalf of National Grid Gas Plc (NGG)

Dated 25 January 2022

1 NGG RESPONSE TO Q4.3.6.1

1.1 The table below sets out the Examining Authority’s commentaries and proposed changes to the latest version of the dDCO and associated questions at Q4.3.6.1, and the response on behalf of National Grid Gas Plc:

No.	Ex A Question		NGG Response
Q4.3.	PART 2 PRINCIPAL POWERS		
Q4.3.6	Article 11 – Consent to transfer benefit of Order		
Q4.3.6.1	Applicant National Grid Gas Plc Cadent Gas Limited EXOLUM Pipeline System Ltd AWG Group Limited South Staffordshire Water PLC UK Power Networks (Operations) Limited Openreach Limited Virgin Media Limited Vodafone Limited	<p>Article 11 – Consent to transfer benefit of Order</p> <p>(a) The ExA requests each of the bodies in Paragraph (5) to provide evidenced statements to demonstrate that they have the ability to deliver the works that could be transferred to them as stated in Paragraph (5). Applicant may comment.</p>	<p>Article 11 (5) provides that the consent of the Secretary of State is not required, where the transfer or grant is made to NGG the purposes of undertaking Work No. 41.</p> <p>Work No. 41 is shown on sheet 3 of the Order works plans and comprises the diversion of an underground gas pipeline (320 metres in length), commencing north of the new dual carriageway (Work No. 40) and terminating south of the new dual carriage way, west of the realigned Barford Road (Work No. 43) (the “Diversion”).</p> <p>NGG confirms that the works comprising Work No.41 have already been undertaken and the Diversion completed. No further works are required to be carried out.</p>
		<p>(b) Alongside, Applicant to provide detailed justification for each of the bodies in Paragraph (5) to explain why the transfer of the benefit of the Order is acceptable without SoS consent.</p>	<p>Question for the Applicant.</p>

	<p>(c) ExA notes Applicant's response [REP1-022, Q1.7.3.9], and the provision in Paragraph (3) where the liability for the payment of compensation remains with the undertaker, where the benefits or rights transferred are exercised by a statutory undertaker or an owner occupier of land pursuant to Article 28(2). The ExA is not convinced by the widely drawn powers and proposes that Article 11 should exclude the transfer of the liability for the payment of compensation to any party (including the 9 statutory bodies in Paragraph 5) without the consent of the SoS. To achieve this, the ExA proposes including an additional Paragraph explicitly stating the exclusions, and making related changes to wording in Paragraphs 3, 4, 5 and any others. Applicant to provide suitable wording to dDCO and relevant changes to EM.</p>	<p>Question for the Applicant.</p>
	<p>(d) Should the Applicant disagree with d), the Applicant and the 9 named bodies in Paragraph (5) to provide justification for permitting the transfer of CA powers, including the liability for the payment of compensation to each of the bodies in Paragraph (5). This justification must also include evidence (or, to the extent that it has already been provided, identify) that each of the bodies have the requisite funds to meet any CA costs. Applicant and the 9 bodies in Paragraph (5), provide confirmation that each of the bodies in Paragraph (5) would be covered by Paragraph (3) and the Responses are due by Deadline 9: Tuesday 25 January 2022 Page 10 of 16 liability to meet the CA costs would remain with the undertaker where CA powers were transferred.</p>	<p>Please see response to Q4.3.6.1(a) above. This is no longer relevant to NGG.</p> <p>NGG has seen a draft copy of the Applicant's response to Q4.3.6.1 (c) and (d). NGG otherwise supports the Applicant's response to these questions.</p>