

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER

PINS REFERENCE TR050007

**WRITTEN REPRESENTATION ON BEHALF OF
CADENT GAS LIMITED**



1 INTRODUCTION

- 1.1 Cadent Gas Limited ("Cadent") is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks in North London, Central and North West England. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way.
- 1.2 Cadent have made a relevant representation in this matter on 18 July 2023 in order to protect apparatus owned by Cadent. Cadent does not object in principle to the development proposed by the Applicant.
- 1.3 Cadent has, however, low and medium gas pipelines and associated apparatus located within the order limits which are affected by the works proposed and which may require diversions subject to the impact. Cadent's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the order limits need to be maintained at all times and access to inspect such apparatus must not be restricted.
- 1.4 Cadent has identified that it will require adequate protective provisions to be included within the DCO to ensure that its apparatus and land interests are adequately protected and to include compliance with relevant safety standards.
- 1.5 Cadent wish to ensure appropriate land rights are available for any diversion of their assets sitting outside the adopted highway boundary and will require consent to be granted where there are proposals to work within the easement strip of any existing Cadent's Apparatus.
- 1.6 Cadent is holder of a licence under Section 7 of the Gas Act 1986 and operates four gas distribution networks in North London, Central England (West and East) and the North West.
- 1.7 Cadent is required to comply with the terms of its Licence in the delivery of its statutory responsibilities. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its Apparatus, to which see paragraph 2.

2 REGULATORY PROTECTION FRAMEWORK

2.1 Cadent require all Applicants carrying out Authorised Development in the vicinity of their Apparatus to comply with:

- (a) CD/SP/SSW/22 Cadent's policies for safe working in the vicinity of Cadent's Assets;
- (b) ICE (institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations, and
- (c) the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.

2.2 The industry standards referred to above have the specific intention of protecting:

- (a) the integrity of the pipelines and thus the distribution of gas;
- (b) the safety of the area surrounding gas pipelines;
- (c) the safety of personnel involved in working with gas pipelines.

2.3 Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.

3 PROTECTIVE PROVISIONS

3.1 Cadent seeks to protect its statutory undertaking, and insists that in respect of works in close proximity to their Apparatus as part of the authorised development the following procedures are complied with by the Applicant:

- (a) Cadent has had the opportunity to review and consent to the plans, methodology and specification for works within 15 metres of any Apparatus, works which will adversely affect their Apparatus or otherwise breach distances/guidance set out in paragraph 2 above.

- (b) DCO works in the vicinity of Cadent's apparatus are not authorised or commenced unless protective provisions are in place preventing compulsory acquisition of Cadent's land or rights or overriding or interference with the same.
- (c) DCO works in the vicinity of Cadent's apparatus are not commenced unless there is third party liability insurance effected and maintained for the construction period of the relevant authorised works and that the person or body undertaking the works (acknowledging the ability to transfer the benefit of the DCO) has the appropriate net worth to enable it to meet any liability arising from damage to Cadent's apparatus (acknowledging the potential significant consequences of damaging a gas pipeline) or there is appropriate security in place through a bond or guarantee.

3.2 Cadent maintain that without an agreement or qualification on the exercise of unfettered compulsory powers or its Apparatus the following consequences will arise:

- (i) Failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk.
- (ii) Any damage to Apparatus has potentially serious hazardous consequences for individuals/property located in the vicinity of the pipeline/apparatus if it were to fail.
- (iii) Potentially significant consequences arising from lack of continuity of supply;

3.3 Insufficient property rights have the following safety implications:

- (a) Inability for qualified personnel to access apparatus for its maintenance, repair and inspection.
- (b) Risk of strike to pipeline if development occurs within the easement zone in respect of which an easement/restrictive covenant is required to protect the pipeline from development.

- (c) Risk of inappropriate development within the vicinity of the pipeline increasing the risk of the above.

- 3.4 The proposed Order contains specific Protective Provisions expressed to be for the protection of Cadent, but these are currently deficient from Cadent's perspective as explained below.

- 3.5 Cadent contend that it is essential that these issues are addressed to their satisfaction to ensure adequate protection for their Apparatus

- 3.6 Cadent is required to comply with the terms of its Licence in the delivery of its statutory responsibilities. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its Apparatus.

- 3.7 As noted above the Protective Provisions included in the Order are deficient in a number of respects namely:
 - (a) Provision needs to be included within the DCO or a side agreement that the works in the vicinity of Cadent's apparatus are not commenced unless:
 - (i) there is third party liability insurance effected and maintained for the construction period of the relevant works; and
 - (ii) the person or body undertaking the works (acknowledging the ability to transfer the benefit of the DCO) has the appropriate net worth to enable it to meet any liability arising from damage to Cadent's apparatus (acknowledging the potential significant consequences of damaging a gas pipeline) or there is appropriate security in place through a bond or guarantee.

 - (b) The definition of maintenance needs to cover Cadent's ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

- (c) If alternative apparatus for Cadent (or any part of such apparatus) is to be constructed other than land secured by the Applicant, or the Applicant is unable to afford the rights for such apparatus through the DCO, Cadent cannot be under an obligation to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be situated. The Applicant has to be responsible for securing the land and rights for all necessary works (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus), the maintenance of that apparatus and importantly access thereto. Cadent will agree to assist but ultimately the Applicant has to secure the facilities and rights for any diversion of Cadent's apparatus necessitated by the authorised works and the on-going maintenance and access.
- (d) If Cadent's existing apparatus is to be diverted the Protective Provisions need to acknowledge that it may be more appropriate to decommission the existing gas apparatus without removal and in such circumstances the Applicant should take over responsibility and liability for such decommissioned apparatus.
- (e) Due to Cadent's statutory functions and the need to specifically discharge those functions Cadent cannot agree to deemed consent nor a third party or arbitrator approving details which relate to the protection or diversion of Cadent's apparatus or the rights and facilities required for the benefit of Cadent's apparatus.
- (f) Due to the nature of Cadent's apparatus and the implications associated with any damage Cadent may require a watching brief and Cadent must have the ability to recover such costs.
- (g) It is common practice that if the placing of alternative apparatus involves construction costs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, that Cadent will meet the additional costs. This needs to be subject to Cadent's standard carve out namely, where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs should be borne by the Applicant. It may be possible to replace like for like but it may not be appropriate.

- (h) Cadent must have a full indemnity for any costs or claims resulting from the authorised development including any indirect or consequential loss of any third party arising from any such damage or interruption.
- (i) Where the Applicant is acquiring land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) Cadent require motive of the relevant interest to be included on the title. Acknowledging that the Applicant's acquisition of third party land provides an opportunity to regularise existing land interests.
- (j) Notwithstanding article 35 or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

3.8 We will continue our discussions with the Applicant with a view to agreeing appropriate Protective Provisions.