

Secretary of State for Transport
C/o Brenda Taplin
Programme Officer
Persona Associates
1st Floor Bailey House
Barttelot Road
Horsham
RH12 1DQ

Our ref: .6.975110.32.AW.

Your ref:

16 January 2019

Dear Sir/Madam,

Network Rail (London to Corby) Land Acquisition, Level Crossing and Bridge Works Order

Background and Context

We act for Cadent Gas Limited who objected to the above Order on 27th July 2018. Cadent submitted a Statement of Case on 12th October 2018. As set out in our statement of case, Cadent Gas Limited have apparatus in the Order Land for the above Order within Land Plan Sheets 1, 6 and 7. Cadent have remaining concerns over the compulsory acquisition powers sought in relation to plot 617 within Land Plan 6, that have not yet been resolved by Network Rail to Cadent's satisfaction or at all.

Cadent do not have concerns in relation to the interaction of their assets and the Order in Land Plan 1 as all Cadent assets sit within the adopted public highway and will be dealt with under the New Roads and Streets Act 1991. In relation to their assets in Land Plan 7, Cadent note that Network Rail intend to withdraw the powers in the land acquisition order in respect of plots 701 to 719, as per their letter to the SoS dated 25th October 2018 notified to Cadent on 12th November 2018. Provided the Order is amended as suggested in respect of plots 701 to 719, Cadent's remaining objection relates to the temporary possession powers sought under Article 19 of the Order during the construction period in respect of plot 617.

Cadent has been requesting further discussion on the interaction with their assets since 10th October 2019. No further clarification or responses have been received in relation to these interactions from Network Rail. Cadent has had negotiations with Network Rail's solicitors in connection with an Asset Protection Agreement. The last correspondence on this matter was from SHMA to Winckworth Sherwood dated 20th October 2018. No further responses on the Asset Protection Agreement have been received since that date, although Network Rail's solicitors did provide notification on 12th November 2018 that they were withdrawing plots 701 to 719 from the Order.

The Issue in respect of Plot 617

Cadent requested a GIS file to check the overlay with their rights on the 17th December 2018. This was provided by Network Rail's solicitors on the 7th January 2019 at which point it was established,

in the absence of prior meetings between clients, that there was still a remaining interaction with Cadent's assets in Plot 617.

Network Rail's Solicitors have confirmed on the 15th January that they are only seeking oversailing rights in relation to Plot 617, although Plot 617 is only included in the Order in respect of Schedule 5 (Temporary Possession) but isn't included in Article 22 for oversailing. As such Cadent still require confirmation that Temporary Possession rights will not be taken in relation to Plot 617. Plot 617 is within Land Plan 6 and contains two Cadent Gas Pipelines (a LP and an IP pressure) both sitting outside of the adopted public highway at this point in private land. They meet at an Above Ground Gas Installation within Plot 617. A screen shot and supporting Asset Plans are provided as Appendix 1, which show the location of these assets within plot 617. The temporary possession powers in Article 19 include the power at Article 19 1(b) to "remove any buildings and vegetation from that land". The MP and LP Gas Mains and the above ground AGI are essential elements of Cadent's Gas Distribution Network and cannot be removed from Plot 617. Additionally Cadent consider that it is inappropriate in safety terms that temporary possession is taken of plot 617 either to their exclusion, or even where access is maintained for Cadent, due to the risk of works being carried out on this land plot in such closed proximity with their above ground assets. For the same reasons Cadent feel that it is inappropriate for their above ground assets in Plot 617 to be over sailed by a crane, certainly unless and until all details for protection of their retained apparatus have been agreed.

In the absence of the exclusion of plot 617 from the Order, Cadent wish to bring it to the Inspectors attention that they maintain their objection to the temporary possession rights and/or oversailing rights sought over this plot on safety grounds. The Order should not be confirmed with temporary possession powers included over plot 617 nor should it be confirmed with oversailing rights sought without adequate protective provisions being in place for Cadent.

If for any reason the Inspector and the Secretary of State feel that there are compelling reasons to justify the granting of temporary possession powers over plot 617, these rights need to be modified in this case to prevent any damage being caused to Cadent's Assets in this plot and the powers in Article 19 (1) b, c and d need to be modified to prevent any removal of Cadent Assets/buildings, construction of any temporary buildings in conflict with Cadent's operations and/or construction of any permanent works/mitigation in conflict with Cadent's statutory undertaking and land rights. Furthermore it is essential that Protective Provisions are included in the Order for Cadent's benefit to ensure protection for their retained apparatus.

Protective Provisions

The current protective provisions included in the Draft Order at Schedule 6 are not sufficient to protect Cadent's position in this situation. Schedule 6 as drafted provides for protection for Statutory Undertakers apparatus in stopped up streets (not applicable to plot 617) and import the provisions in Section 271 to 274 of the Town and Country Planning Act 1990. In this case, where temporary possession power are sought over plot 617, the wording of s271 of the TCPA 1990 does not provide any protection to Cadent. Section 271 of the TCPA 1990 requires a second authorisation from the Secretary of State where it is proposed to either remove or extinguish apparatus. The temporary possession powers sought do not necessarily require either the removal or extinguishment of Cadent's existing rights, so section 271 will not necessarily be engaged, although the rights proposed under Article 26 could still have unacceptable safety implications on Cadent's Assets including above ground assets. As such the current Schedule 6 to the Order affords Cadent no protection.

Network Rail's solicitors have agreed in principle on 15th January 2019 that certain key protective provisions for Cadent's benefit can be included within the Order and offered to send us some draft wording to consider.

We are happy to continue to seek to agree matters with the promoter's solicitors in the intervening period for the start of the Inquiry. In the absence of agreement we will provide drafting setting out Cadent's requirements in terms of protective provisions for inclusion in the Order in this instance. We will provide an updated position before the 5th February 2019

Yours sincerely

A handwritten signature in black ink that reads "A Walters". The signature is written in a cursive, slightly stylized font.

Abigail Walters

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