



Department for
Energy Security
& Net Zero

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Dear Robert,

GAS ACT 1986 AND ACQUISITION OF LAND ACT 1981 - THE CADENT GAS LIMITED (WHASSETT TO BARROW HIGH PRESSURE GAS PIPELINE DIVERSION) COMPULSORY PURCHASE ORDER 2023 (“the Order”)

Your client: **Cadent Gas Limited (“Cadent Gas”)**

The Compulsory Purchase Order:

Background

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to refer to The Cadent Gas Limited (Whassett to Barrow High Pressure Gas Pipeline Diversion) Compulsory Purchase Order 2023 (“the Order”), which was submitted to the Secretary of State by CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas, for consideration under section 9(3)(a) of and Schedule 3 to the Gas Act 1986 and Part 2 of the Acquisition of Land Act 1981 (the “1981 Act”).
2. The purpose of the Order is to authorise Cadent Gas to compulsorily acquire new rights for the construction, operation and maintenance of an 850-metre diversion of the 300NB Whassett to Barrow High Pressure (HP) Gas Pipeline (the “HPGP”) located within the embankment / towpath adjacent to the canal on the east side of Ulverston in Cumbria (the “Project”).
3. The Statement of Case sets out the need for the Project. The primary objective of the Project is the continued safe operation of the HPGP in order to maintain and secure the gas network and continue supply to parts of Ulverston and the town of Barrow in Furness as well as gas supply in the long term. This is to be achieved through diverting the HPGP by installing 850 metres of steel pipe in

parallel with the existing pipe, but outside of a canal embankment area affected by ground movement, prior to decommissioning the affected section. The Statement of Case states that the delivery of the Project would minimise the risk of loss of supply to 64 district governors, 113 direct connections and circa 60,000 properties supplied by the downstream network, which is a single source of supply.

4. Cadent Gas holds a Gas Transporter Licence and has a statutory obligation under section 9 of the Gas Act 1986 to develop and maintain an efficient and economical pipeline system for the conveyance of gas. Section 9(3)(a) and Schedule 3 to the Gas Act 1986 empower Cadent Gas to purchase compulsorily any land (including rights in land) required for any purpose connected with the carrying on of the activities which Cadent Gas is authorised by its licence to carry on.
5. The making of the Order commenced on 25 July 2023. The objection period ran from 27 July 2023 to 31 August 2023. During this period, the Secretary of State received three objections. The Order was formally submitted to the Secretary of State on 6 September 2023.
6. The Secretary of State wrote to all interested parties on 20 September 2023, under Rule 3(3) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, to state that the Secretary of State had decided to hold a public inquiry into the Order. For the purposes of Rule 3(3), 20 September 2023 became the 'relevant date'.
7. The Secretary of State also informed Cadent Gas that a Statement of Case must be submitted to each outstanding objector within six weeks of the relevant date. The Secretary of State noted that the Statement of Case must set out in full the case that Cadent Gas intended to put forward at the inquiry, including the reasons for making the Order.
8. The Secretary of State wrote to all interested parties on 20 October 2023 informing them that the inquiry would commence on 13 and 14 February 2024. However, before the inquiry begun, all three objections were withdrawn. The Secretary of State notified both the Planning Inspectorate and Cadent Gas that the inquiry would no longer be required and a decision would be made using the evidence supplied.

Gas and Electricity Markets Authority consent

9. By virtue of paragraph 1(1) of Schedule 3 to the Gas Act 1986, the Secretary of State, after consultation with the Gas and Electricity Markets Authority ("GEMA") may authorise a gas transporter licence holder to purchase compulsorily any land. Paragraph 1(2) makes it clear that the reference to 'land' includes any right over land and the power of the Secretary of State includes the power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.

10. Ofgem supports GEMA in its day-to-day work and can make a GEMA consent decision on behalf of GEMA. The Secretary of State is therefore required to seek consent from Ofgem (acting on behalf of GEMA) where any land subject to compulsory acquisition (including rights over land) belongs to another licence holder.
11. The Secretary of State wrote to Ofgem, via email dated 28 July 2023, pursuant to paragraph 1(1) to Schedule 3 of the Gas Act 1986. Ofgem replied to the Secretary of State on 13 August 2023 and made no objections to the Order. In its consultation response, Ofgem confirmed that Cadent Gas will have sufficient funding to meet the implementation and land acquisition/compulsory purchase compensation costs associated with the Project as and when required.

Environmental Impact Assessment (“EIA”) status

12. A request was made by Cadent Gas to the Secretary of State on 4 February 2021 for an environmental determination in accordance with Regulation 6 (1) (a) of the Public Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999 (as amended) (“the 1999 Regulations”) in relation to the Project.
13. Following consultation with South Lakeland District Council (now Westmorland & Furness Council) (the “LPA”), the Secretary of State determined on 5 May 2021 that the Project was unlikely to have significant effects on the environment, and the Project was therefore screened out as EIA development. In reaching this decision, the Secretary of State considered the evidence supplied by the LPA, and the mitigation and method statement provided to the Secretary of State on 23 April 2021.

Habitats Regulations Assessment (“HRA”) status

14. The Secretary of State is content that the Project does not have a likely significant effect on any European site for the purposes of the Conservation of Habitats and Species Regulations 2017. The Secretary of State has considered the HRA screening report in reaching this conclusion.

Consideration of alternatives

15. The Secretary of State notes that Cadent Gas has considered a number of alternatives to the final form of the Project, including a do-nothing option, alternative remediation options, and alternative pipeline diversion options. Cadent has reconsidered its consideration of alternatives throughout the development of the Project and employed a consistent optioneering matrix. The Secretary of State is content with this approach.

Efforts taken to identify landowners

16. The Order relates to plots numbered 1 to 44 which has six different plot owners (more detail on this can be found on page nine in the Statement of Case). It is

noted in section seven of the Statement of Case Cadent Gas' approach which is the creating of new rights compulsorily as opposed to permanently acquiring land. The Secretary of State considers that Cadent Gas' approach to the creation of rights follows a proportionate approach in the use of its powers of compulsory acquisition. Cadent Gas' approach is to only acquire the interests that it requires over the various plots within the Order. Not all plots require the same rights, and so Cadent Gas will compulsorily acquire different classes of rights over different plots. It is also noted that plots 4, 5, 10, 38 and 39 will not be used.

17. The Secretary of State notes that the landowners for plots 22, 23 and 24 are unknown, and that Cadent Gas has taken steps to identify the owners, which include erecting site notices on the land in question or close to it and serving Request for Information forms on all landowners asking them to clarify the extent of their land ownership. The Statement of Case records that no responses were received to these site notices.

Special Categories of Land

Public Open Space Land

18. The Secretary of State notes there are several parcels of public open space which are affected by the Order, and which are classified as special category land under the 1981 Act. These are the Informal Open Space, over which Cadent will be acquiring new rights for a variety of purposes.
19. With respect to these plots of land, Cadent Gas submitted a request to the Secretary of State for The Department for Levelling Up, Housing and Communities ("DLUHC") that it issue a certificate pursuant to paragraph 6(1)(a) of Schedule 3 to the 1981 Act that the Open Space, when burdened with the relevant rights for each parcel of land, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before. The Secretary of State for DLUHC directed Cadent Gas to issue notice of its intention to issue the certificate. Cadent Gas first issued the relevant notices on 16 November 2023 and allowed an objection period, which expired on 8 December 2023. Cadent Gas received confirmation from the Secretary of State for DLUHC that it had not received any objections in this respect. On 15 December 2023, the Secretary of State for DLUHC issued a certificate pursuant to paragraph 6 of Schedule 3 to the 1981 Act. Cadent Gas publicised notice of the certificate on 11 January 2024.
20. The Order is made in the appropriate prescribed form that applies where rights over public open space land are being acquired. The special category land is identified in the Order.

Statutory undertakers land

21. There are plots of the Order Land that are owned by statutory undertakers. These are listed in the Statement of Case as being Plots 7 and 8, which are owned by Network Rail Limited (“Network Rail”). The Statement of Case states that voluntary agreements were entered into with Network Rail, and that a supplementary easement to one of the agreements remains subject to negotiation, but in any case Network Rail has not made an objection. Network Rail does not appear to have made a representation under paragraph 3 of Schedule 3 to the 1981 Act nor have they made an objection to the Order.
22. A number of additional statutory undertakers are noted in Table 2 of the Order as being other qualifying persons under section 12(2A)(b) of the 1981 Act. None of these statutory undertakers have made an objection, nor do they appear to have made a representation under paragraph 3 of Schedule 3 to the 1981 Act.
23. Paragraph 3 of Schedule 3 to the 1981, which sets out special parliamentary procedures in respect of statutory undertakers’ land, only applies in the event the relevant statutory undertaker made a representation to the appropriate minister which is not withdrawn. Neither Network Rail nor the statutory undertakers noted in Table 2 appear to have made such representations and therefore the special parliamentary procedure does not apply. Moreover, paragraph 4(3) of Schedule 3 to the 1981 Act confirms that a compulsory purchase order shall not be subject to the special parliamentary procedure where the persons acquiring the interest is a statutory undertaker. As Cadent holds the Transporter Licence, it is a statutory undertaker for the purpose of the 1981 Act (by virtue of section 7 to the Gas Act 1986 Act). Accordingly, special parliamentary procedure does not apply to the Order.

Local authority land

24. Several other plots are local authority land belonging to the LPA and a temporary licence for those plots is still subject to negotiation. The LPA has not made an objection to the Order, nor do they appear to have made a representation under paragraph 4 of Schedule 3 to the 1981 Act. Moreover, paragraph 4(3) of Schedule 3 to the 1981 Act confirms that a compulsory purchase order shall not be subject to the special parliamentary procedure where the persons acquiring the interest is a statutory undertaker. As Cadent holds the Transporter Licence, it is a statutory undertaker for the purpose of the 1981 Act (by virtue of section 7 to the Gas Act 1986 Act). Accordingly, special parliamentary procedure does not apply to the Order.

Consideration of the Compulsory Purchase Order:

25. In consideration of the Order, the Secretary of State has weighed up the relevant impacts of the proposed project and has considered whether the rights over the land requested for the Order interfere with the human rights of those with an interest in the affected land. The Secretary of State has also considered whether, in accordance with the relevant guidance, a compelling case for

compulsory purchase in the public interest is made out, and whether any interference with the human rights of those affected is sufficiently justified and proportionate in light of the purposes for which the compulsory purchase order would be made in this instance.

26. In considering whether there is any interference with the human rights of those with an interest in the land affected, the Secretary of State has taken account of the compelling public interest justification for the development. As noted above, all objections have been withdrawn, meaning there are no live objections to the Order.
27. The Secretary of State has taken the view that the rights over the land sought by the Applicant will interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. However, the Secretary of State is satisfied that the Applicant has sought to keep interference to a minimum in respect of the rights sought over the Order land and considers that any interference is necessary and proportionate. The Secretary of State also considers that any interference strikes a fair balance with the public benefit of delivering an important scheme that will help to guarantee the UK's future energy security.
28. The Secretary of State needs to be satisfied that there are sufficiently compelling reasons for the powers to be sought at this time. It is noted that there is a risk posed by the HPGP in the event of a catastrophic failure. This is because the HPGP section proposed to be diverted has a history of leakages linked to stress corrosion cracking and therefore any effects of future settlement pose a threat to the HPGP's integrity. Advice from technical consultants recommended diverting the compromised section of the HPGP. For these reasons, the Secretary of State is content with Cadent Gas' approach.
29. The Secretary of State also notes from section 9 of the Statement of Case that there are no planning impediments to the project as it is permitted pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO").
30. Article 3(1) of the GPDO grants planning permission for certain developments comprised in Schedule 2 to the GPDO, subject to any exception, limitation or condition specified in Schedule 2 to the GPDO. Permitted development rights are also subject to general restrictions specified within Article 3 and Article 4 of the GPDO. None of the general restrictions specified in Article 3 or Article 4 of the GPDO apply to the Project.
31. The Secretary of State has therefore concluded that there would not be an unlawful interference with human rights under Article 1 of the First Protocol or in the case of a dwelling, Article 8 of the European Convention on Human Rights

and that in confirming the Order there would not be a disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

32. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to the need to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and
- foster good relations between persons who share a relevant protected characteristic and those who do not.

33. The Secretary of State has considered the potential impacts of granting the Order in the context of the public sector equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the relevant protected characteristics.

34. The Secretary of State notes “the general biodiversity objective” to conserve and enhance biodiversity in England, in section 40(A1) of the Natural Environment and Rural Act 2006 and its duties under section 6 of the Environment (Wales) Act 2016 and considers the application consistent with furthering the aforementioned objective and duties, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has also had regard to the requirements of the Habitats Directive, as required by regulation 9(3) of the Conservation of Habitats and Species Regulations 2017, so far as they may potentially be affected by his confirmation of the Order. The Secretary of State is of the view that the application considers biodiversity, environmental impacts and protected sites to accord with this duty.

Secretary of State’s decision on the Compulsory Purchase Order:

The Secretary of State has carefully considered the intentions of Cadent Gas regarding this Order.

35. Energy security is one of the government’s priorities. The Powering Up Britain policy paper launched in March 2023 made clear how important the planning system is to deliver the government’s commitments on energy security, net zero and energy prices. The National Policy Statements (NPS), which may be relevant considerations for projects consented under the Town and Country Planning Act 1990, set out the government’s policy for delivery of major energy infrastructure and explains the urgent need for significant amounts of large-scale energy infrastructure in meeting the government’s objectives.

36. The primary objective of the Project is to reinforce the gas network and maintain supplies to parts of Ulverston and the town of Barrow in Furness. This is required

in order to continue to provide security of supply to up to 64 district governors, 113 direct connections and circa 60,000 properties.

37. Cadent Gas is also aware of its duties to the wider public and given that the pipeline is currently located in a publicly accessible area the risk of further subsidence causing a catastrophic failure poses a risk to the health and safety of the wider public.
38. The Secretary of State has carefully considered Cadent Gas' Statement of Case which sets out a justification for the making of the Order. The Secretary of State concludes that there is a compelling, proportionate and justifiable case in the public interest for the acquisition of the Order land.
39. **The Secretary of State has decided to confirm the Order with one minor modification.**
40. The confirmed Order is enclosed together with the plans referred to in that Order. The Order and plans are authorised on behalf of the Secretary of State. One minor slip was corrected in the table for special categories of land to include an omitted address.
41. Your attention is drawn to the notice obligations in section 15 of the 1981 Act, including that relating to publishing a confirmation notice in one or more local newspapers circulated in the locality of the land subject to the compulsory purchase order. The Order will become operative on the date which Notice of Confirmation is first published. It is important you advise the Secretary of State of this date. We should be grateful if you would in due course, send to the Secretary of State a copy of the pages from the local newspaper containing the Notice of Confirmation of the Order. The page should identify at the head thereof the name of the newspaper and the date of publication.
42. Section 15(6) of the 1981 Act provides that a confirmation notice shall be a local land charge and requires it to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the Acquiring Authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.
43. The validity of the Secretary of State's decision may be challenged by making an application for Judicial Review to the Planning Court. Such application must be made not later than six weeks from the date on which notice of the

confirmation or making of the Order is first published in accordance with section 15 of the 1981 Act.

Yours sincerely,

John McKenna

Head of Network Planning
Energy Infrastructure Planning Delivery Team
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Department for Energy Security & Net Zero.