

## **M25 junction 28 improvement scheme**

**TR010029**

### **9.132 Applicant's comments on Cadent Gas's Deadline 9 submission**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme Development Consent Order 202[x ]

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<b>Rule Number:</b>	Rule 8(1)(k)
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# Table of contents

Chapter	Pages
1. Purpose and structure of this response	4
2. REP9-079 Cadent Gas’s response to the Examining Authority’s consultation draft Development Consent Order	5

## 1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to Cadent Gas's Deadline 9 submission (REP9-079) submitted to the Examining Authority (ExA) on or before Deadline 9 (30 June 2021).
- 1.1.2 Highways England has sought to provide comments where it is helpful to the Examination to do so, for instance where a representation includes a request for further information or clarification from Highways England or where Highways England considers that it would be appropriate for the Examining Authority (ExA) to have Highways England's views in response to a matter raised by an Interested Party in its representations. Where issues raised within a representation have been dealt with previously by Highways England, for instance in response to a question posed by the ExA in its first round of written questions or within one of the application documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 Highways England has not provided comments on every point made within the representation (for instance, Highways England has not responded to comments made about the adequacy of its pre-application consultation given that Highways England has already provided a full report of the consultation it has undertaken as part of its application for the Development Consent Order (DCO)) and the Planning Inspectorate has already confirmed the adequacy of the pre-application consultation undertaken when the application was accepted for Examination. In some cases, no comments have been provided, for instance, because the written representation was very short, or because it expressed objections in principle to the Scheme or expressions of opinion without supporting evidence.
- 1.1.4 For the avoidance of doubt, where Highways England has chosen not to comment on matters raised by Interested Parties, this is not an indication Highways England agrees with the point or comment raised or opinion expressed.

## 2. REP9-079 Cadent Gas's response to the Examining Authority's consultation draft Development Consent Order

Response reference:	Representation Issue	Highways England Response
REP9-079-01	2.1 Cadent's preferred form of protective provisions (the Cadent PPs) were appended (Appendix 1) to Cadent's Deadline 5 submission. The Cadent PPs are the form of protective provisions that Cadent requests are included in the DCO and have been the subject of detailed submissions by Cadent throughout the examination of the Project.	Highways England submitted at Deadline 6 (REP6-017) the current form of PPs it is proposing for inclusion in the DCO for Cadent's benefit as well as a comparison showing the differences between the protective provisions proposed by Highways England and those proposed by Cadent at Deadline 5, making clear the few substantive points of principle between the parties.
REP9-079-02	2.2 Cadent has sought to engage with the Applicant to reach an agreed position on protective provisions across all schemes that it is promoting (subject to any scheme specific requirements), and negotiations are ongoing. However, Cadent has been unable to reach an agreed position with the Applicant. Cadent remains committed to reaching an agreed position if possible and will continue to engage with the Applicant notwithstanding the forthcoming close of the examination.	Both parties have sought to reach an agreed position on protective provisions across all schemes that it is promoting (subject to any scheme specific requirements), and negotiations are ongoing. Highways England remains committed to reaching an agreed position if possible and will continue to engage with Cadent. It is hoped that this form of PPs can serve as the template between the two parties for future projects.
REP9-079-03	2.3 In respect of the Cadent PPs to be included in the draft DCO, Cadent agrees with the amendments that the ExA has requested that the Applicant make within the Schedule of ExA's recommended amendments to the Applicant's	Following the ExA's recommendation, Highways England included the proposed form of PPs for Cadent's benefit in the draft DCO submitted at D8 (REP8-002), making clear the few substantive points of principle between the parties on which submissions have been made by both parties and its preferred drafting on those

Response reference:	Representation Issue	Highways England Response
	draft DCO Version 6. This form of the Cadent PPs has been fully justified through the examination of the Project.	points. Highways England considers that its representation, made throughout the examination, explain and justify the form of PPs it seeks.
REP9-079-04	2.4 Cadent's position on the three outstanding issues, and the ExA's recommendations, is set out below.	Highways England agrees these are the three substantive matters that are not yet agreed.
REP9-079-05	1. Paragraph 11 Indemnity - Cadent agrees with the ExA's recommended change to the draft DCO and Cadent's position has been set out and justified in its submissions to the examination. The Applicant has not justified its position.	Highways England does not consider that Cadent's Deadline 9 response (REP9-079) contains any substantive points and relies on the submissions it has previously made to the ExA to justify its preferred form of PPs.
REP9-079-06	<p>2. Paragraph 10 Expenses - Cadent agrees with the ExA's recommended change and Cadent's position has been set out and justified in its submissions to the examination.</p> <p>Whilst the Applicant has made a number of submissions, none of these justify the inclusion of this wording on this scheme.</p> <p>Cadent's position is based on analogous primary legislation. The Applicant has not been able to demonstrate a justification for the wording on this scheme and instead has sought to rely on legislation which is not analogous (NRSWA and the Highways Act 1980 which only regulate works within the street). The Applicant's reference in its Deadline 8 submission to previous schemes does not justify the position on this scheme</p>	Highways England does not consider that Cadent's Deadline 9 response (REP9-079) contains any new substantive points and relies on the submissions it has previously made to the ExA to justify its preferred form of PPs.

Response reference:	Representation Issue	Highways England Response
REP9-079-07	<p>3. Paragraph 3 - Cadent agrees with the ExA's recommended change and Cadent's position has been set out and justified in its submissions to the examination.</p> <p>The Applicant's position was introduced late in the examination and is inconsistent with the agreed position that Cadent and the Applicant have reached on all previous DCOs and which regulates the specific costs relationship between Cadent and the Applicant.</p> <p>The introduction of Paragraph 3(3) does alter the specific costs relationship. Just as Article 39 (7) of the draft DCO is included to apply costs sharing to the compensation principles set out in Article 39 (which the Applicant states in its Explanatory Memorandum is necessary so that "the cost sharing provisions under that Act will apply instead of the compensation provision in this article", so Paragraph 3(3) is included to seek to apply costs sharing provisions instead of the costs provision in Paragraph 3.</p>	<p>Highways England would reiterate that, as previously submitted, its proposed introduction of paragraph 3(3) is intended to clarify (rather than change) the meaning and effect of the protective provisions as regards costs sharing.</p> <p>Highways England does not consider that Cadent's Deadline 9 response (REP9-079) contains any new substantive points and relies on the submissions it has previously made to the ExA to justify its preferred form of PPs.</p>

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