

27th August 2021

The Planning Inspectorate
Menaka Sahai
Lead Member of the Examining Authority
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Menaka Sahai,

A428 Black Cat to Caxton Gibbet Road Improvement Scheme – Deadline 1

We write on behalf of the Church Commissioners for England (CCfE) in connection with land it has an interest in, which will be impacted by the A428 improvement scheme. The land is located broadly between the settlements of Cambourne and Eltisle, as identified within our Written Representation.

This correspondence relates to '**Deadline 1**' as identified within the Rule 8 letter dated 20th August 2021. Correspondence submitted in relation to '**Procedural Deadline C**' will be issued separately.

As an Interested Party, we submit the following information on behalf of CCfE in advance of Deadline 1 on 31st August:

- **Written Representation**

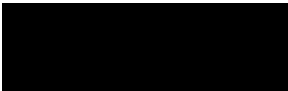
Please find a copy of the written representation prepared on behalf of the CCfE, at Appendix 1.

- **Responses to the Examining Authority's Witten Questions 1 (WQ1)**

CCfE has commenced and continues discussions with Highways England (HE), as the Applicant, with a view to reaching agreement on a way forward in relation to a number of matters as detailed within the submitted written representation at Appendix 1. In this context, Appendix 2 contains responses to the questions currently considered relevant within WQ1. CCfE wishes to reserve the right to respond to the comments made by HE in relation to any other questions, once issued and in advance Deadline 3.

If you would like to discuss any aspect, please do not hesitate to contact my colleague, Nolan Tucker (ntucker@deloitte.co.uk).

Yours sincerely



Deloitte LLP

Appendix 1 – Written Representation

THE CHURCH COMMISSIONERS FOR ENGLAND

INITIAL WRITTEN REPRESENTATIONS TO A428 BLACK CAT TO CAXTON GIBBET ROAD DEVELOPMENT CONSENT ORDER

1 LAND OWNERSHIP

- 1.1 The Church Commissioners for England (**CCE**) purchased on 27 January 2021 the land shown edged red on the plan at Appendix 1. That acquisition is being registered at the Land Registry.
- 1.2 Accordingly, the book of reference should be updated to reflect the fact that CCE are the freehold owners of what appears to be Plots 12/8a, 13/4h-k, 13/10a-e, 13/11a&b (to be checked), 14/6b-e, 14/7a-c.
- 1.3 The land is currently let to George and William Topham and is in agricultural use. It is likely to be promoted for future development given its proximity to Cambourne.
- 1.4 In addition, CCE entered into an option agreement on 27 January 2021 with William, George and Deborah Topham relating to the land shown edged blue on the plan at Appendix 1. Accordingly, the book of reference should be updated to reflect the fact that CCE have an interest in Plots 13/12a & b, 13/10f & g, 14/6a and 14/6e.
- 1.5 CCE reserve their position in respect of the various plots until the referencing has been confirmed by Highways England.
- 1.6 These representations are made on behalf of CCE.

2 OBJECTION

CCE do not object to the principle of the proposed development. However, CCE object strongly to the use of compulsory purchase powers to deliver the proposed development.

3 STATUTORY REQUIREMENTS & GUIDANCE

- 3.1 Section 122 of the Planning Act provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:
 - 3.1.1 the land is **required** for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132; and
 - 3.1.2 there is a **compelling case in the public interest** for the compulsory acquisition.
- 3.2 The following requirements of DCLG's "Guidance related to procedures for the compulsory acquisition of land" September 2013 are of particular relevance.

- 3.2.1 The applicant must demonstrate that **all reasonable alternatives** to compulsory acquisition (including modifications to the scheme) have been explored. The proposed interference with the rights of those with an interest in the land must be for a **legitimate purpose, necessary and proportionate**.
- 3.2.2 The applicant must have a clear idea of how they **intend to use** the land.
- 3.2.3 The Secretary of State must be persuaded that the purposes for which an order authorises compulsory acquisition are **legitimate** and sufficient to justify interference with human rights.
- 3.2.4 Ignoring the potential for replacement land, to satisfy the first limb of section 122, the applicant must demonstrate to the satisfaction of the Secretary of State either:
- (a) that the land in question is **needed** for the development and is **no more than is reasonably required** for the purposes of the development; or
 - (b) that the land is required to facilitate or is incidental to the proposed development – the example of landscaping is given, in which case the Secretary of State would need to be satisfied that the development could only be landscaped to a satisfactory standard if the relevant land were compulsorily acquired, and that the land to be taken is **no more than is reasonably necessary** for that purpose, and is **proportionate**.
- 3.2.5 To satisfy the second limb of section 122, the applicant must persuade the Secretary of State that there is **compelling evidence** that the **public benefits** that would be derived from the compulsory acquisition will **outweigh the private loss** that would be suffered by landowners.
- 3.2.6 There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including compulsory acquisition provisions. For example, the Secretary of State may not be persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme.
- 3.2.7 Applicants should **seek to acquire land by negotiation** wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if **attempts to acquire by agreement fail**. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.

3.2.8 Applicants are urged to consider offering full access to **alternative dispute resolution** techniques for those with concerns about the compulsory acquisition of their land. These should involve a suitably qualified independent third party and should be available throughout the whole of the compulsory acquisition process.

4 **APPLICATION OF STATUTORY TESTS / GUIDANCE**

4.1 CCE wishes to enter into an agreement with Highways England that secures for Highways England the land and rights necessary to construct and maintain the scheme. Indeed, Highways England has informed CCE that it is in discussions with a number of landowners regarding acquisition by agreement. CCE is in discussions with its tenant regarding such an agreement and the matters raised below.

4.2 In the circumstances, and taking into account the adverse impacts on CCE's ownership should compulsory acquisition proceed:

4.2.1 the use of compulsory powers is not necessary and there is no compelling case in the public interest; and

4.2.2 there is a reasonable alternative to compulsory acquisition.

4.3 Highways England must seek to acquire the land by negotiation. Attempts to acquire by agreement have not failed. Conclusion of an agreement with CCE is practicable. Alternative dispute resolution should be available if negotiations failed, but CCE see no reason why that should be required.

4.4 In any event and critically, CCE are concerned that Highways England have not justified the breadth of the powers and land take sought. It is not possible for the Secretary of State to conclude that the powers sought are no more than is reasonably required.

5 **BASIS OF AGREEMENT**

5.1 CCE proposes that a Framework Agreement be entered into with Highways England to cover certain areas set out below.

5.2 **Permanent acquisition:**

5.2.1 CCE acknowledges that permanent acquisition of Plots 12/8a, 13/10b, 13/11b (to be checked), 13/4j and 14/7a is likely to be required (together with Plot 13/10g in respect of the land subject to the option agreement).

5.2.2 CCE are deeply concerned about the extent of Plot 14/6e, part of which is understood to be sought as a construction site and borrow pit. It is not considered that this extent of land take has been justified.

5.2.3 Highways England have accepted in a meeting that the land subject to the borrow pit can be reinstated and returned to CCE. The grant of a lease to Highways England on appropriate terms requiring reinstatement has been discussed. CCE are ready, willing and able to help facilitate such

arrangements through the Framework Agreement. There is therefore no compelling case for acquisition of the land.

- 5.2.4 CCE note Highways England's explanation that Article 28 allows Highways England to simply acquire new rights over land rather than permanent acquisition. Whilst that may be beneficial to landowners, equally, it may not. The position as to permanent land take requires clarity which, in this case, can be resolved through discussions between CCE and Highways England.

5.3 **Temporary possession:**

- 5.3.1 CCE are concerned regarding the significant plots to be possessed temporarily (Plots 13/4h, 13/4i, 13/4k, 13/10a, 13/10c, 13/10d, 13/10e, 13/10f, 13/11a (to be checked), 14/6b, 14/6c, 14/6d, 14/7b, 14/7c and, in respect of land subject to the option, Plot 14/6a)). On the information available, it is not possible for the Secretary of State to conclude that the powers sought are no more than is reasonably required.
- 5.3.2 In particular, Plots 13/10d, 13/10e, 13/4k and 14/6c are substantial plots and the justification for possession of such areas is questioned. Only 14 days' notice of entry is required which could have adverse implications for farming practice.
- 5.3.3 Further, the right to take possession is extensive – Highways England has 5 years to do so and can remain in possession until 1 year from completion. The need for this additional period has not been justified. There are also rights to enter the land to maintain the works.
- 5.3.4 At this stage, CCE remain unclear as to the intent of Article 40 (particularly Article 40(9)) in respect of the CCE land and require clarity in this regard.
- 5.3.5 A Framework Agreement could enable Highways England to access the above plots by licence in an agreed form in order to carry out the proposed development. This would enable the impact of the development to be properly understood, with a reasonable notice period and the impacts managed by CCE.
- 5.3.6 CCE note that Plot 13/2c comprises part of the old road which is to be stopped up. That road is unregistered. Plot 13/10c would be permanently isolated from the remainder of CCE's land as a result. Whilst it may be the case that Plot 13/2c could be registered to CCE as adjoining landowner, that is subject to a presumption of ownership to the centre line that is rebuttable. Accordingly, there is no certainty that CCE would be registered as freehold owner. Further, the angular design of Plot 13/2c does not lend itself to clean application of the rule. CCE consider that Plot 13/2c should be acquired by Highways England and transferred to CCE as incidental to delivery of the scheme and avoid a potentially adverse impact and isolation of Plot 13/10c.

5.4 **Permanent rights:**

- 5.4.1 Highways England seek permanent rights over Plots 13/4h, 13/4i, 13/10c, 13/10d, 14/6b, 14/7b comprising:
- (a) broadly new rights for installation / maintenance / use of electric lines, cables, equipment and apparatus for utilities;
 - (b) the right to pass over the land with / without vehicles and plant; and
 - (c) restrictive covenants to protect the apparatus from excavation and to prevent access to that apparatus being made materially more difficult.
- 5.4.2 The securing of such broad rights over the specified plots is likely to adversely affect the ability to farm and the future development potential of such plots and is neither justified nor necessary. It is understood that the broad rights over and extent of Plots 13/10d and 13/10c in particular results from the detailed design of utilities not yet being completed. The lack of detailed design is not adequate justification.
- 5.4.3 CCE are prepared to work with Highways England through the Framework Agreement to facilitate the granting of appropriate rights as necessary once detailed design has been established. The use of powers of compulsory acquisition is disproportionate and is not justified. This is particularly the case given the lack of clarity around Article 28.
- 5.5 **Other:**
- 5.5.1 CCE are prepared to enter into licences with Highways England to permit them to access the land for surveys, investigations etc. There is no justification for use of powers of compulsory purchase.
- 5.5.2 This is of particular concern to CCE given the extremely broad power sought in Article 23(1)(b) such that Highways England seek rights over land adjacent to the Order limits for survey or investigations, including excavations and retention of apparatus. The extent of this power is not justified.
- 5.5.3 In acquiring land and exercising their rights, Highways England should be obliged to act reasonably having regard to farming practice. The landowners' experience to date is that, too often, Highways England fail to have regard to crop cycles even for non-time critical work and conversations about compensation are difficult.
- 5.5.4 In particular, compensation should be paid if a farmer fails to plant crops as a result of Highways England's anticipated programme, where that programme subsequently changes such that access is not required. Further, Highways England should be obliged to maintain land under its control free of weeds, so that adjacent land is not adversely affected. It is understood that these concerns have been raised by those farming the land as a result of experiences to date.

5.5.5 CCE invite clarification from Highways England as to the precise impact of reference to “land ... adjacent to the Order limits” in Article 4(2) in the context of the CCE land.

CHARLES RUSSELL SPEECHLYS LLP

August 2021

CAMBOURNE EXTENSION LAND
APPENDIX 1 SITE PLAN



NOT TO SCALE



UNEX HOUSE 132-134 HILLS ROAD
CAMBRIDGE
CB2 8PA

Tel: +44 (0) 1223 347000

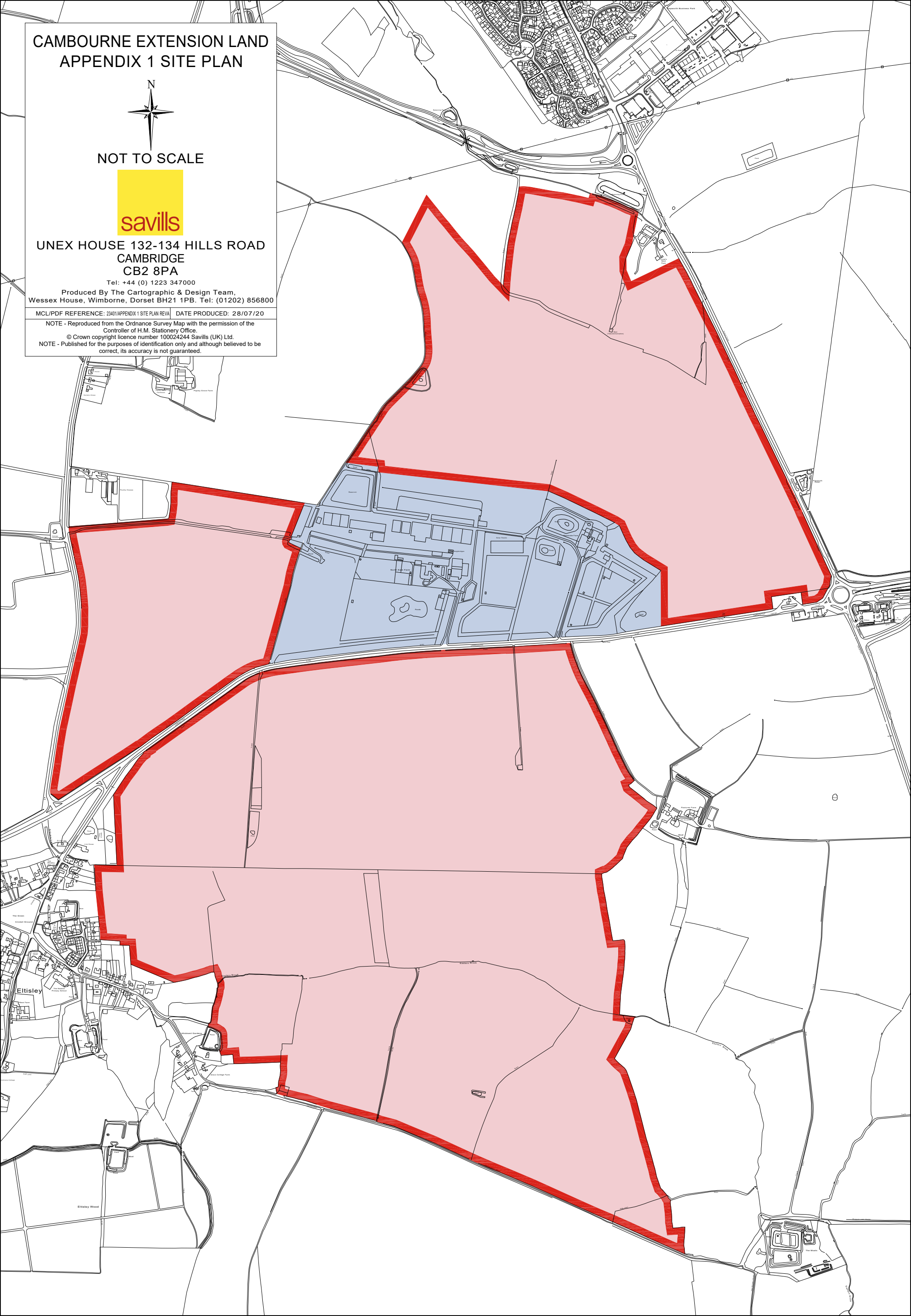
Produced By The Cartographic & Design Team,
Wessex House, Wimborne, Dorset BH21 1PB. Tel: (01202) 856800

MCL/PDF REFERENCE: 23401/APPENDIX 1 SITE PLAN REV A | DATE PRODUCED: 28/07/20

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Appendix 2 – Response to Written Questions

The Church Commissioners for England

Response to First Written Questions

1.1 Introduction

- 1.1.1 This response to the First Written Questions (WQ1) has been prepared on behalf of the Church Commissioners for England (CCfE) in connection with land it has an interest in, which will be impacted by the A428 improvement scheme. The land is located broadly between the settlements of Cambourne and Eltisley, as identified within our Written Representation.
- 1.1.2 CCfE has commenced and continues discussions with Highways England (HE) as Applicant, with a view to reaching agreement on a way forward in relation to a number of matters as detailed within the submitted Written Representation (WR). In this context, the response to WQ1 relates to questions currently considered relevant.

1.2 Response to Questions

Q1.5.2.3 Changes to compulsory acquisition and temporary possession

- 1.2.1 The above question identifies that the National Farmers Union and Bedford Borough Council (BBC), have expressed concerns that areas identified for compulsory acquisition (CA) and temporary possessions (TP) are excessive and seek clarity as to whether the land identified for CA and TP can be further reduced. If changes can be made, the Examining Authority (ExA) requests a timetable of how these changes could be reasonably accommodated within the Examination or, if changes cannot be made, questions whether the Applicant would like to make any further justification.
- 1.2.2 Whilst the questions are posed to the Applicant, we wish to reiterate the concerns raised regarding the extent of the land identified for CA and TP. As detailed within the WR submitted on behalf of CCfE, there are deep concerns regarding the extent of the permanent acquisition of Plot 14/6e, part of which is understood to be sought as a construction site and borrow pit. It is not considered that the extent of this land take has been justified. With regards to temporary possession, again there are concerns regarding the significance of a number of plots to be possessed temporarily. The WR details the concerned plots but of particular note are Plots 13/10d, 13/10e, 13/4k and 14/6c which are substantial in scale and again, the justification for such areas is questioned.
- 1.2.3 It is proposed that a Framework Agreement could be entered into with the Applicant, allowing it to access the above-mentioned plots by licence in an agreed form, in order to carry out the proposed development. Initial discussions regarding the use of a Framework Agreement have commenced with the Applicant however, in the instance that this cannot be agreed, CCfE reserves its right to uphold its concerns regarding the extent and justification for CA and TP.

Q1.6.1.2 Approach to the construction programme

- 1.2.4 Q1.6.1.2 is posed to the Applicant and in part asks for the construction programme to be updated if necessary and queries what confidence there is that the length of the construction programme will not be exceeded. In addition to seeking confidence regarding the proposed length of the proposed construction programme, on behalf of CCfE clarity is also sought as to what extent the farming calendar has been given consideration in the formulation of the programme.

Q1.6.21 Borrow pits

- 1.2.5 BBC has expressed concerns over the level of detail regarding the borrow pits and how they will be worked and restored. Within Q1.6.21 the ExA questions what further detail BBC think should be provided for Examination and secured in the draft Development Consent Order (dDCO).
- 1.2.6 CCfE raise similar concerns to those of BBC. As detailed within the WR, the extent of the land take proposed in relation to Plot 14/6e which is understood to be used as a borrow pit, is significant and is not considered justified. In a meeting held with the Applicant, the Applicant accepted that the land subject of the borrow pit can be reinstated and returned to CCfE, and the grant of a lease on appropriate terms requiring reinstatement has been discussed. Discussions with the Applicant are ongoing however, in the instance that a suitable lease cannot be agreed, CCfE reserves its right to uphold its concerns regarding the extent and justification of the identified borrow pits.

Q1.7.3.3 Article 4 – Development consents etc. granted by the development

- 1.2.7 The ExA requests the Applicant to define the scope and extent of land adjacent to and outside Order limits mentioned in Article 4 and identify where within the dDCO, the scope and extent is secured. Whilst this is a question posed to the Applicant, CCfE wish to reiterate the need for the precise impact of reference to “land...adjacent to the Order limits” in Article 4(2), to be clarified, particularly in the context of its own interests.

Q1.7.3.17 Article 23 – Authority to survey and investigate the land

- 1.2.8 Q1.7.3.17 requests comment on the provision in Article 23(1) for the undertaker to, for the purpose of the construction, operation or maintenance of the authorised development, enter any land which is adjacent to, but outside of the Order limits.
- 1.2.9 Article 23(1)(b) is of particular concern to CCfE given the extremely broad power sought, which includes for excavations and the retention of apparatus. The extent of this power is not justified.
- 1.2.10 Furthermore, providing only 14 days’ notice of entry is required, which could have adverse implications for farming practices on CCfE interests.

Q1.7.3.21 Article 40 – Temporary use of land for carrying out the authorised development and Schedule 7 – Land of which temporary possession may be taken

- 1.2.11 Part ‘d’ of Q1.7.3.21 is directed towards Affected Persons and requests comment on Article 40(4) and 40(7). Schedule 7 identifies the land of which temporary possession may be taken, in specific relation to CCfE interests this includes Plots 13/4g, 13/4k, 13/10a, 13/10e, 13/11a, 14/6c, 14/6d, and 14/7c.
- 1.2.12 As detailed in response to Q1.5.2.3 and WR submitted on behalf of CCfE, a Framework Agreement can enable the Applicant to access the plots in an agreed form to carry out the development. This would enable the impact of the development to be properly understood and the impacts managed by CCfE, mitigating the concerns of CCfE. Discussions regarding a Framework Agreement are ongoing between CCfE and the Applicant.

Q1.11.7.8 Construction road closure timings and frequency

1.2.13 Q1.11.7.8 is directed to the Applicant and asks that in order to better understand the impacts of full road closures on highway users and local communities, further detail on the anticipated number and frequency of such closures should be provided. CCfE concur with the requirement for this request, in order to better understand the potential implication on existing farming operations associated with its interests.

1.3 Other

1.3.1 CCfE wishes to reserve the right to respond to the comments made by the Applicant in relation to any other questions, once issued and in advance Deadline 3.