

Application by Highways England Company Limited for the A428 Black Cat to Caxton Gibbet Road Improvement scheme

Written Representations submitted on behalf of Davison & Company (Great Barford) Limited

Interested Party Reference No: 20028217

1. These Written Representations are submitted on behalf of Davison & Company (Great Barford) Limited ('Landowner') in response to the application by Highways England Company Limited ('Applicant') for the A428 Black Cat to Caxton Gibbet Road Improvement scheme ('DCO'). The DCO seeks development consent for the proposed authorised development described in Schedule 1 to the DCO and any other development authorised by the DCO ('Scheme').
2. The Landowner's property at Crow Green (the 'Land') comprises 164 hectares situated to the northeast of Caxton Gibbet junction. A significant proportion of the Land would be adversely affected by the Scheme.

Summary of Written Representations

3. The Landowner's position on matters remains as substantially set out in the Relevant Representations submitted on 9th June 2021 which are attached at Appendix 1 of these Written Representations.
4. The Landowner does not object to the principle of the Scheme.
5. Nevertheless, the Landowner objects to the proposed compulsory acquisition of the Land and in particular that part of the Land identified for extraction of aggregates from borrow pits to be used for the purposes of the Scheme (plot 14/16a of the DCO). The Landowner contends that either temporary possession powers, or (preferably) a voluntary contractual agreement are sufficient for the rights sought by the Applicant in respect of plot 14/16a, and, therefore compulsory acquisition powers are neither necessary nor justified in the public interest.
6. The Landowner also seeks other safeguards by agreement of protective provisions as set out below..
7. Despite the Landowner's best endeavours there has only been, to date, limited engagement with the Applicant. The Landowner requests that the Applicant proactively engage s in discussions on detailed heads of terms for a voluntary agreement and the Landowner awaits a substantive response from the Applicant in this regard.
8. In light of the accelerating DCO timetable, the Landowner now seeks urgent engagement with the Applicant to progress detailed discussions on a potential voluntary agreement.

Written Representations

9. The Landowner does not object in principle to the Scheme and considers its objectives broadly align with the Landowner's own development proposals for part of the Land. The Landowner has advanced proposals for a strategically important major employment development on the Land. They seek urgent agreement with the Applicant to safeguard the proposed development of the Land (the 'Proposed Development'), which may otherwise be adversely impacted by the Scheme. In the absence of such safeguards and protective provisions the Landowner objects

to the details of the Scheme and the proposed permanent and temporary compulsory purchase powers sought by the Applicant over the Land.

10. The Landowner submitted a Relevant Representation on 9th June 2021 which is attached below as Appendix 1. The Relevant Representation substantially sets-out the Landowner's position in respect of the Scheme, and the safeguards and protective provisions sought.
11. These Written Representations should be read together with and alongside the Relevant Representations. The Written Representations supplement and update the Relevant Representations where necessary .
12. Central to the Landowner's position is that there is no or no compelling case in the public interest for the permanent acquisition of the Land and in particular Plot 14/16a. The authorised development affecting Plot 14/16a is set out in Schedule 1 of the draft DCO ('dDCO') as follows:

"Work No. 111 – As shown on sheets 14 and 15 of the works plans a construction area including borrow pit and site compound area north-east of the Caxton Gibbet junction north Roundabout (Work No. 109b)."
13. The Landowner contends that powers of temporary possession will suffice for Work No. 111, particularly where the Applicant has confirmed that they would not intend to retain ownership of Plot 14/16a following completion of the works in this location.
14. The Landowner notes that other Interested Parties have also made representations that the extent of compulsory acquisition powers sought by the Applicant are excessive. The Examining Authority has put questions to the Applicant seeking further information and justification for the powers sought (Q1.5.2.3 of The Examining Authority's written questions and requests for information (WQ1) Issued on Friday 20 August 2021).
15. In any event, the Landowner's primary case is that neither compulsory purchase or temporary possession powers are necessary or justified as it is willing to enter into a suitably worded agreement with the Applicant to grant them, subject to appropriate safeguards and protective provisions, such temporary rights as are necessary for the purposes of the Scheme and specifically at Work No 111.
16. The Landowner also seeks safeguards (either as protective provisions in the DCO, or by agreement with the Applicant) to ensure that the Proposed Development and the Scheme are otherwise compatible. The following matters are relevant and others matter that may emerge in the course of the DCO Examination and in discussions with the Applicant:
 - That an access to the Land suitable for development from the new road layout around the Caxton Gibbet junction is not precluded by the design of the Scheme.

- Provision for direct access to the public highway from the new road layout at the Caxton Gibbet junction (i.e. such that the Landowner does not need to rely on a right of way to access the Land in this location).
 - That ducts for services and utilities are to be left open.
17. By way of update to the Relevant Representations on the engagement between the Landowner and the Applicant:
- a. In the absence of the Applicant providing draft head of terms for a voluntary agreement (as had previously been agreed), the Landowner drafted and sent to the Applicant detailed heads of terms for a land and works option agreement on 7th July 2021. Amongst other things, these draft heads of terms proposed that the Landowner would provide the Applicant with:
- Temporary possession of Plot 14/16a necessary to complete the borrow pits works as set out in Works No. 111 of the dDCO.
 - Temporary possession of Plots 14/16b and 15/6b necessary to undertake the authorised works sought in the dDCO.
 - Permanent acquisition of the freehold interest in DCO plot 14/1b and 15/6a necessary to undertake the authorised works sought in the dDCO.
- b. No substantive response has been received from the Applicant to these draft heads of terms. The Applicant's agent has recently indicated that the Applicant is interested in entering into a lease agreement for the borrow pit land at Plot 14/16a. However, the Applicant has suggested that the Applicant is still looking into how this can be accommodated and what terms would be acceptable to the Applicant.
- c. The following actions agreed by the Applicant at a meeting between the Parties on 20 June 2020 also remain outstanding. These actions are:
- Prepare draft agreements for acquisition of land and rights
 - Provide estimates of the soil to be removed from borrow pits
 - Layout and location of construction compound at Plots 14/16b and 15/6b.
18. The Landowner now seeks urgent and sustained engagement from the Applicant to seek to agree terms for a voluntary agreement in the mutual interests of both parties and to obviate the need for requesting the draconian compulsory powers sought in the DCO. In this regard, the Landowner notes that the CPO Guidance requires compulsory purchase to be a tool of last resort and for reasonable attempts to be made by an applicant to acquire land/ powers over land by agreement.

19. However, In the absence of a suitable voluntary agreement being reached with the Applicant which avoids the permanent acquisition of Plot 14/16a and provides for appropriate safeguards to avoid or mitigate significant adverse impacts of the Scheme on the Proposed Development, the Landowner objects to the details of the Scheme and the proposed DCO powers sought over the Land which (for the reasons set out above and in the Relevant Representations) are neither necessary nor justified in the public interest.
20. The Landowner reserves the right to supplement these Written Representations orally and/or in writing at or following the forthcoming Compulsory Purchase Hearing.

Carter Jonas LLP
31 August 2021

APPENDIX 1

1 INTRODUCTION

- 1.1 This is the Relevant Representation of Davison & Company (Great Barford) Limited (the 'Landowner') to the A428 Black Cat to Caxton Gibbet Road Improvement Development Consent Order (the 'Scheme') application being promoted by Highways England Company Limited (the 'Applicant').
- 1.2 The Landowner's property at Crow Green (the 'Land') comprises 164 hectares situated to the northeast of Caxton Gibbet junction. If consented, the Scheme would impact a significant proportion of the Land as follows:
 - Plot 14/16a (35.04ha) – proposed Permanent acquisition powers for 'borrow-pits' purposes.
 - 14/16b (3.53ha) – proposed temporary possession powers to provide temporary storage, laydown areas, access and working space to facilitate a construction area
 - 15/6a (0.36ha) – permanent acquisition powers for highway purposes.
 - 15/6b (6.79ha) – temporary possession powers for construction compound and ecology areas purposes
- 1.3 The Landowner has advanced proposals for a strategically important major employment development on the Land. They seek agreement with the Applicant to safeguard the proposed development of the Land, which may otherwise be adversely impacted by the Scheme. In the absence of such safeguards and protective provisions the Landowner objects to the details of

the Scheme and the proposed permanent and temporary compulsory purchase powers sought by the Applicant over the Land.

2 THE LAND

2.1 The Land is being promoted by the Landowner and Endurance Estates as part of a sustainable strategic employment development for allocation in the emerging Greater Cambridge Local Plan (the 'Proposed Development'). The Planning Authority has recently carried out a consultation on the emerging Local Plan and they aim to consult on a Preferred Option in summer or autumn 2021 with a Draft Plan prepared by summer 2022.

2.2 77 hectares of the Land is suitable for built development with the remainder for green infrastructure and solar photovoltaic electricity generation. The Proposed Development can accommodate a range of end-user requirements within Use Classes B1b (R&D), B1c (light industry), B2 (general industrial) and B8 (storage & distribution). Using 'employment density' figures from Homes & Communities Agency guidance, it is estimated that the Proposed Development could provide between 4,500 and 6,500 new jobs FTE.

2.3 While the Proposed Development is deliverable with or without the Scheme it is considered to be consistent with the Scheme's core economic rationale:

"Economic growth: Enable growth by improving connections between people and jobs and supporting new development projects." (paragraph 2.2.1 of 'Introduction to the Application')

2.4 The Proposed Development and the Scheme are therefore complimentary in principle and purpose. However much of the Land is included in the DCO for permanent acquisition and there is also the significant risk that absent suitable safeguards and protective provisions that the Scheme could fetter or complicate access to the Proposed Development (compared to existing arrangement).

3 COMPULSORY ACQUISITION & AGREEMENT

3.1 The Landowner seeks urgent detailed engagement with the Applicant aimed at reaching agreement both to safeguard delivery of the Proposed Development and secure relevant synergies with the Scheme.

3.2 Specifically, the Landowner is seeking to enter into an agreement with the Applicant providing them with the temporary rights necessary in respect of plot 14/16a (for the purposes of borrow pits) thereby rendering the proposed permanent acquisition of this land as provided for in the draft DCO unnecessary. Borrow pits are areas of land where materials are extracted (typically clay, sand and gravel) to supply construction material where there is a net deficit.

3.3 The Applicant's has confirmed they do not intend to permanent retain Plot 14/16a, which could be returned to the Landowner. While the suite of DCO application documents, including the statement of reasons, is silent on this point, we understand the Applicant is seeking permanent

compulsory acquisition of this land because the borrow pit works would result in permanent change to the land (notwithstanding their planned restoration). We do not consider this is an adequate public interest justification for the permanent acquisition of the land, among other things, when:

- a. The Applicant has been granted approval for a succession of new highway DCO's with powers of temporary possession providing for permanent alteration of land (which then reverts to the landowner on completion).
- b. The temporary possession provisions in the Scheme draft DCO (Article 40 'Temporary use of land for carrying out the authorised development') include powers for the Applicant to "construct any permanent works" [paragraph (1)(d)] and to not be required to "restore the land on which any permanent works have been constructed under paragraph (1)(d)" [paragraph (4)(d)].
- c. In accordance with the Planning Act 2008 ('2008 Act'), the Secretary of State may only authorise the permanent compulsory acquisition of land where there is a compelling case in the public interest for the proposed acquisition [S.122(3) 2008 Act].

The DCO's 'Statement of Reasons' is silent on the reasons for permanent acquisition of land required for borrow pits. It states however that the Applicant will seek to acquire land by negotiation wherever practicable.

The case of 'R(oao FCC Environment (UK) Ltd) v Secretary of State for Energy & Climate Change [2015] EWCA Civ 55' considered the requirements in S.122(3) of the 2008 Act. Three examples were given in that case by the Secretary of State (paragraph 11) of circumstances where a decision maker may conclude that there is not a compelling case in the public interest for the proposed compulsory acquisition notwithstanding an established need for the proposed DCO development, namely where:

- Land proposed to be acquired may be excessive because development proposals can be constructed without needing the land to be acquired;
 - Acquisition of a right over the land, rather than its acquisition, might suffice;
 - Land may be necessary for the development, but the landowner may be willing to agree to sell.
- d. Subject to agreement, the Landowner is open in principle to granting the Applicant such reasonable and proportionate temporary rights over the Land as are reasonably necessary for the purposes of the construction of the Scheme, thereby obviating the need for the proposed permanent and temporary powers of compulsion sought in the application for the Scheme over the land.

- 3.4 For the main reasons summarised above (to be further particularised in the Written Representations) the Landowner considers that there is no or no compelling case in the public interest for the permanent acquisition of the Land (and in particular Plot 14/16a) given that powers of temporary possession will suffice, and the Landowner is, in any event, willing to enter into a suitably worded agreement with the Applicant to grant them, subject to appropriate safeguards and protective provisions, the temporary rights necessary for the purposes of the Scheme.
- 3.5 The Landowner has been open to negotiating an agreement with the Applicant at the pre-examination stage and requested an early meeting with the Applicant's representatives to discuss matters which was held on 23 June 2020. At this meeting the Applicant agreed to a number of actions necessary to reaching a suitable agreement including:
- i. Preparing draft agreements for acquisition of land and rights
 - ii. Providing estimates of the soil to be removed from borrow pits
 - iii. Providing the proposed justification for the permanent acquisition of Plot 14/16a
 - iv. Layout and location of construction compound.
- 3.6 Some 12 months on from this meeting, while progress has been made on some issues (e.g. location of SUDS pond) the bulk of these actions remain outstanding.
- 3.7 The Landowner requests that the Applicant now proactively engages with it in detailed discussions to agree a suitably worded lands agreement to provide the temporary rights for the construction of the Scheme, while protecting the Landowner's ability to deliver the Proposed Development.
- 3.8 In the absence of a suitable agreement being reached which avoids the permanent acquisition of Plot 14/16a and secures appropriate safeguards to avoid or mitigate significant adverse impacts of the Scheme on the Proposed Development, the Landowner objects to the details of the Scheme and the proposed powers sought over the Land.