

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

Written Representation submitted on behalf of Bedford Borough Council in its capacity as owner of land at Black Cat Roundabout, Great North Road, Roxton

Interested Party Reference No: 20028235

1. This written representation is submitted on behalf of Bedford Borough Council (the 'Council') 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 authorised development described in Schedule 1 to the DCO and any other development authorised by the DCO (Scheme).
2. The Council's owns 66 acres of land at Black Cat Roundabout, Great North Road, Roxton held in title P128267, Z1440Z, Z1441Z, Z1444Z (the 'Land').
3. These written representations are made in the Council's capacity as landowner of the Land only. The Council's wider position in respect of the Scheme is set out separately.

Written Representations

4. The Council's position is substantially set out in the Relevant Representations submitted on 9th June 2021 which is attached as Appendix 1.
5. Part of the Land has potential for a sustainable commercial development approximately located at Plot 1/8q of the DCO. The Council seeks agreement with the Applicant for safeguards and protective provisions which are summarised as follows:
 - Assurances that future access to the Land and this development potential is not sterilised by the new Blackcat Roundabout layout and this is capable of accommodating development at the Land. This relates to the layout of the access relative to the new Blackcat Roundabout, as well as confirmation the Council's retained Land will directly abut the public highway (obviating the need for a right of way).
 - Assurances in respect of the restoration and condition of Plot 1/8q on return following temporary acquisition. The Land is subject to existing aftercare remediation planning conditions following quarry use, liability for which currently rests with the Council's Tenant. The Tenancy is coming to an end and may be outlasted by the Applicant's Temporary Possession of this plot. The Council seeks understanding of the effect of the Scheme on the tenancy and planning obligations, and an indemnification from the Applicant for any restoration liability created due to the Scheme.
 - The Council also requires Protective provisions for satisfactory drainage of its retained Land following the completion of construction of the Scheme.
6. The Council objects to the compulsory purchase of approximately 12 hectares of Land identified for flood mitigation (Works No. 24 of the draft DCO). The Council is ready to engage with the Applicant to seek to reach agreement to grant temporary possession and of rights or covenants to deliver Works No. 24 without compulsory acquisition being necessary (subject to being indemnified by the Applicant against any remaining quarry aftercare liabilities) and awaits detail of the Applicant's detailed plans in order to progress discussions.

7. The Council also considers the example 'The Ashton Vale to Temple Meads and Bristol City Centre Rapid Transport Order' (2013) (Order no. 3244) is relevant. The Order authorised works for "Flood mitigation works and construction working area" (Work No. 1A) comprising lowering ground levels to create a large area of flood compensation at Land south-east of Long Ashton Park and Ride (plot 02A/03). The authorised works were secured by power of temporary possession only, without recourse to compulsory acquisition.
8. The Council and its representatives met with the Applicant on 24th June 2021, where the Applicant agreed to a number of actions to progress a potential agreement between the Parties which addresses the Council's concerns.
9. The Council has not heard further from the Applicant since 24th June 2021.
10. The Council notes the Applicant's DCO Statement of Reasons Appendix B refers to the progress of negotiations with affected parties, and in respect of Bedford Borough Council states:

"The Applicant issued an offer of negotiations letter on the 18th September 2020, inviting the land interest to complete and return a form expressing their willingness to discuss the acquisition of their land by agreement. To date the form has not yet been returned."
11. In fact, the parties met on 22 September 2020, and the Council and their agents have been chasing the Applicant regularly in order to achieve meaningful progress in discussions, which to date remains outstanding.
12. The Council urges the Applicant to now urgently accelerate engagement in order to seek to reach agreement without recourse to exercise of compulsory powers.

Carter Jonas LLP

31 August 2021

APPENDIX 1

RELEVANT REPRESENTATION OF BEDFORD BOROUGH COUNCIL – LAND TO EAST OF GREAT NORTH ROAD, CHAWSTON, BEDFORD

1. I write on behalf of Bedford Borough Council (the 'Council') responding to the A428 Black Cat to Caxton Gibbett improvement scheme (the 'Scheme') being promoted by Highways England Company Limited ('Applicant').
2. The Council owns the freehold interest in approximately 66 acres of land at Black Cat Roundabout, Great North Road, Roxton held in title P128267, Z1440Z, Z1441Z, Z1444Z (the 'Land'). The Land is located to the immediate east of the existing Black Cat Roundabout. It is bounded to the west by the Black Cat Roundabout and A1, and to the west by the Great Ouse River.

3. This Relevant Representation relates to the Council's interest of the Land only. Other matters relevant to the Council will be referred to in separate representations.
4. The Land comprises a partially reinstated quarry; mineral extraction is expected to be finished by the commencement of construction of the Scheme.
5. The Council has development aspirations for the western part of the Land which is strategically located in a sustainable location for employment development with direct access onto the Black Cat Roundabout, the A1, A421 and the strategic highway network beyond.

EFFECTS OF SCHEME

6. The Land is affected by the Scheme, as summarised below:
 - Plot 1/8p – 575 sqm, temporary possession and permanent rights
 - 1/8q – 30,994 sqm, temporary possession
 - 1/8r – 148,549 sqm, permanent acquisition
 - 1/8s – 18 sqm, permanent acquisition
 - 1/8t – 1,156 sqm, temporary possession
 - 1/8u – 1,706 sqm, temporary possession
 - 1/8v – 474 sqm, permanent acquisition
 - 3/3a – 69,824 sqm, permanent acquisition
 - 3/3b – 4,796 sqm, temporary possession and permanent rights
 - 3/3c – 5,426 sqm, temporary possession
 - 3/4a – 128 sqm, permanent acquisition
7. The Scheme's core economic rationale is to support new development and growth:
"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').
8. The Council seeks commitments from the Applicant to safeguard delivery of the full potential of the Land (in particular in respect of plot 1/8q) for a sustainable strategic employment development. To date there has been engagement between the parties, but no tangible commitments from the Applicant to safeguard suitable access to the Land from the new junction. The Council, in its capacity as a directly affected landowner, therefore objects to the detail of the Scheme including any recourse to the use compulsory purchase powers until such safeguards are agreed.
9. The Scheme affects the Land more specifically as follows:

MAINLINE CARRIAGEWAY

10. Approximately 10 hectares (permanent acquisition) comprising a strip of land running east to west to the north of the Land is identified for the mainline carriageway, extension of the Black Cat Roundabout and associate landscaping.

FLOOD COMPENSATION

11. Approximately 12 hectares identified for permanent acquisition. The Council objects to the detail of the Scheme proposals because the permanent acquisition of the Land for flood compensation is not reasonably necessary in the circumstances. The case of 'R(oao FCC Environment (UK) Ltd) v Secretary of State for Energy & Climate Change [2015] EWCA Civ 55' considered, among other things, the statutory requirement in S.122(3) of the 2008 Act. In the decision in that case the example was provided that a compelling case in the public interest may not be demonstrated where acquisition of a right over the land, rather than its acquisition, would suffice. The temporary acquisition of this part of the Land by agreement would be sufficient and the Council is ready to negotiate with the Applicant to enter into covenants or management agreements necessary to satisfy the Applicant's requirements here in the long term.
12. At a meeting between the Council's agent and the Applicant (11th August 2020) the possibility of the flood compensation requirement being satisfied by temporary possession and rights was discussed. It was agreed that the Applicant would provide details of requirements for flood compensation management as required in order to progress negotiations for the provision of land and rights needed for the Scheme by agreement. To date these details are still awaited.
13. Generally, the area identified for Flood compensation appears excessive and the Council seeks this be reduced or to see evidence that this is fully justified.

UTILITIES DIVERSIONS & 'WORKING ROOM (TEMPORARY POSSESSION AND PERMANENT RIGHTS)

14. It is assumed the use refers to utility diversions and construction works. The Council requires full details of uses proposed on this area of the Land.
15. The effect of permanently acquiring the land identified for flood storage would in effect 'landlock' this part of the Land identified for temporary acquisition for 'Permanent Access Rights' and 'Working Room'. The Council therefore objects to the current proposals in the absence of further information and safeguards.

CONSTRUCTION COMPOUND – TEMPORARY ACQUISITION (PLOT 1/8Q)

16. This part of the Land comprises approximately 3.1 hectares. A direct access onto the new Black Cat Roundabout is proposed. We understand a construction compound of approximately three years duration will be located here. The Scheme's Statement of Works states the use as follows:

“Required to provide a temporary construction area. Required to provide temporary storage, laydown areas, access and working space for this construction area, the construction of the realigned Greenacres access track, the construction of the flood compensation area south east of the new Black Cat junction circulatory, and the quarry restoration works.”

This part of the land is suitable for a sustainable employment development and the Council seeks agreement with the Applicant to ensure this potential is not fettered by the Scheme.

PROVISION OF LAND AND RIGHTS BY AGREEMENT

17. The Council now seeks urgent engagement with the Applicant aimed at reaching agreement to provide the land and rights necessary to deliver the Scheme while also safeguarding the potential of a sustainable strategic employment development on the Land. Specifically the Council seeks the following:

- i. Securing access to the Land in this location from the Black Cat Roundabout and which will be suitable for the proposed development
- ii. Design sufficient capacity into the new road layout to accommodate associated traffic
- iii. Agreement on terms for condition of this part of plot 1/8q when possession is returned to the Council
- iv. Protective provisions for satisfactory drainage
- v. Minimisation of the flood storage area to maximise the developable area on a sustainable and well-connected development and ensure that drainage strategy does not prejudice the delivery of development on what is a strategically important site
- vi. Agreement to provide rights sufficient to satisfy Scheme flood mitigation requirements on the Land, there-by obviating the need for permanent compulsory acquisition.