

31 August 2021
20210831 - Buchanan - Dove Farm - Representation



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Dear Sirs

ORDER: Application by Highways England for an Order Granting Development Consent for the A428 Black Cat to Caxton Gibbet Road Improvement Scheme

OUR CLIENT: Mr Buchanan

PROPERTY: Dove House Farm, Wyboston

The Order Requirements

Our client is the freehold owner of the Property. The Property consists of a farmhouse surrounded by large gardens, paddocks and farmland totalling 12.2 acres. The Property falls within the boundary of the above Order. The Order, if made, would give powers for the permanent acquisition of land and rights over part and for the temporary occupation of part.

The impact per plot is as follows:

- (a) Permanent acquisition – 2/8e
- (b) Temporary occupation - 2/8b 2/8c 2/8f 2/9a – subsoil
- (c) Temporary occupation with permanent acquisition of rights - 2/8a 2/8d

The work packages that impact the Property are 20, 28, 29, 30, 31, 32, 33, 34 and 35.

The total area to be acquired permanently is 14,785 sqm (3.65 acres)

Our Client's Proposals for the Property

Bedford Borough Council has prepared a local plan (The Bedford Borough Local Plan 2030) which was adopted on 15 January 2020. Within that plan the Council set out their aspirations for the much needed housing in the locality. Para 10.1 of the Local Plan states:

“The Council’s Strategic Housing Market Assessment Update and addendum (August 2018) establishes the full objectively assessed need for housing in Bedford for the period 2015-30 to be 14,550 dwellings. This includes an objectively assessed need for affordable housing of 4,188 dwellings over the same period equivalent to an average of 279 dwellings per year. This is a significant need which, as the Strategic Housing Market Assessment shows, means that 30% of households will require affordable housing.”

Prior to the announcement of the changes to the Scheme our Client was working up proposals for the delivery of a residential development on the land. Despite the disruption due to the pandemic our Client continues to pursue development on the land. The proposals as they stand will result in the acquisition of 30% of the total developable area with a loss of opportunity to deliver nearly 40 much needed houses.

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Our Representation

In response to Highways England's proposals, we are instructed to give notice of our client's objection to the Scheme and to make the following representations:

- (i) There has been no meaningful engagement between Highways England and our Client to discuss the Order and the potential acquisition of our Clients Land, despite repeated requests.. No offer has been made that has enabled appropriate discussions that could have enabled early acquisition by agreement before resorting to making the Order, which goes against the guidance set out in MHCLG's Guidance on the Compulsory Purchase Process and the Criche Down Rules.

Within their application for a Development Consent Order Statement of Reasons for the compulsory acquisition of land and rights and the temporary occupation of land Highways England State the following:

4.9.1 As well as consulting all persons identified as having an interest in the Land about the Scheme proposals in accordance with section 42 of the PA 2008, the Applicant is aware of the requirement (paragraph 25 of the CA Guidance) to seek to acquire land by negotiation wherever practicable. The power to acquire land compulsorily should only be sought if attempts to acquire by agreement fail.

4.9.2 At the same time, the Applicant notes that the CA Guidance also recognises that where proposals would entail the compulsory acquisition of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiation. As the CA Guidance states "Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset".

4.9.3 The Applicant has engaged with all category 1 landowners, leaseholders and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant's willingness to negotiate to acquire the Land by agreement, and to invite dialogue at that point. Letters were issued to all affected Landowners where permanent acquisition and permanent rights are required on 18 September 2020 and to all Landowners with temporary rights; all leaseholders and occupiers on 15 October 2020. As a result, the Applicant is in the process of engaging with a number of land interests with regard to the acquisition of land and interests by agreement; and negotiations will be ongoing throughout the DCO process. The status of such negotiations is set out in Annex B to this Statement.

The status for Our Client is summarised as follows:

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.

The status shown against our Client is misleading at best. Our Client has been in discussions with Highways England now for two years, having started their discussions in June 2019, in an attempt to understand the impacts on their proposed residential development. To date whilst there have been discussions and correspondence, it cannot be said to be meaningful engagement. There has been no attempt to understand the impact on our Client who is losing nearly a third of their Property nor has there been any attempt made to negotiate the acquisition of land and rights needed to deliver the Scheme. No heads of terms have been received and no offers have been made to our Client to date.

It would be our opinion that Highways England have failed to engage appropriately with our Client and have therefore not discharged their duty under MHCLG's Guidance on the Compulsory Purchase Process and the Criche Down Rules.

- (ii) Insufficient information or explanation has been provided to our Client to enable proper understanding of why the inclusion of the Property is required for the Scheme. In particular the changes in the design of the Scheme between the 2019 and 2020 consultation that included additional land for the creation of the flood storage area.
- (iii) From the limited information provided to date there is no supporting evidence to demonstrate the benefits of using our client's land, as opposed to using alternative sites or as to whether any alternative methods could have been considered to reduce the impact on our client's land.

Within their Statement of Reasons, Highways England state the following:

Para 5.3.3 The Applicant considers that the land included in the draft DCO is the minimum land-take required to construct, operate, maintain and mitigate the Scheme necessary to achieve the objectives of the Scheme. The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the Scheme, noting that the detailed design of the Scheme has yet to be developed. In that context, the limits of the Land have been drawn as tightly as possible so as to avoid unnecessary land take. In the event that less land proves to be required in a particular area at a later stage, the Applicant would only seek to acquire that part of the Land that is required and in all events, will seek to minimise effects on land interests.

Para 5.5.1 As explained in Chapter 2 of the Consultation Report [TR010044/APP/5.1]; Chapter 3, Assessment of alternatives of the Environmental Statement [TR010044/APP/6.1] and Chapter 2 of the Case for the Scheme [TR010044/APP/7.1] the Applicant has explored alternatives options for the Scheme.

5.5.2 In designing the Scheme and determining the Land subject to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land take. These alternatives and modifications were consulted on and the preferred route has been chosen based on a thorough consideration of relevant issues. This process is described in detail in the Environmental Statement and the Case for the Scheme [TR010044/APP/6.1] and [TR010044/APP/7.1].

5.5.3 Following public consultation, the Applicant selected the most appropriate option. This selection took account of various factors, including, amongst others, views of consultees, including persons with a land interest. Other factors included environmental impacts, meeting the objectives of the Scheme, affordability, value for money, safety, construction and operational considerations.

Despite repeated requests to Highways England and their officers our Client has yet to receive a meaningful response to their queries and technical questions regarding the balancing ponds and flood attention works, in particular. Our Client sought answers to the following:

- (i) Justification and engineering requirement underpinning the need for the works that impact their Property.
- (ii) Site selection process and why their land was chosen over land in the vicinity.
- (iii) Why the impact on their Property worsened in 2020 following the 2019 consultation and additional land was needed to deliver flood attention works
- (iv) Finally justification for the permanent acquisition of land as compared to temporary occupation.

We attach at Appendix 1 examples of the requests that have been made along with answers that we deem are not detailed enough or are simply unacceptable justification for the compulsory acquisition of land. For example, in December 2020 our Client sought a technical meeting to understand the impacts on site. It took Highways England until 18 May 2021 to respond after our Client chased to be told, "Please see below our response to the information you requested. This is included within our DCO application" which is disappointing.

Furthermore, In trying to understand Highways England requirements for the changes to the flood attenuation ponds our Client was told in correspondence that the "I'm afraid I can't supply the full flood risk assessment yet as it is not fully complete" makes for difficult reading. If the technical information did not exist in November 2020, how can Highways England state within their Statement of Reasons that they have undertaken an appropriate site selection process, that their designs are up to scratch and that our Client's Property was the best option for the Scheme.

Finally, our Clients response to Highways England dated 26 May 2021 provides a useful chronology of events and discussions that highlights the difficulties our Client has faced over the last two years in trying to understand why Highways England need to impact their Property in this way and they continue to seek answers to those questions,

As Highways England were unable or unwilling to assist our Client in a meaningful way. Our Client appointed WSP, a reputable firm of engineers to review what information was available, Their advice is summarised as follows:

- i. Whilst the alternative design may require more land than the proposed layout, according to HE's calculations this would equate to 0.0386 hectares of additional land which is considered to be a modest amount in the overall context of the Scheme. Furthermore, due to the drainage design issues described on pages 3 & 4 of this note, subject to further design iteration there would appear to be an opportunity to reduce the land requirement of the alternative design such that the overall land requirement of each design could be broadly similar.*
- ii. These comments are largely due to drafting issues when preparing the alternative design as it was only possible to use pdf versions of the Scheme drawing to generate the alternative design. They could be satisfactorily addressed through further design iteration and through the availability of drawings and topographical information in AutoCAD format.*
- iii. As the extent and amount by which the link road (alternative design) is closer to residential properties is localised, this is not considered to be a significant issue and appropriate noise mitigation measures could be provided if necessary.*
- iv. Similar to iii) above, the nature of this issue is not considered to be significant and could be addressed through localised landscape mitigation works*

A copy of their initial review is attached at Appendix 2.

We ask that the Examiner give consideration to the engineering requirement and justification for the acquisition of land that in our opinion is based on poor / no engineering calculations and excessive in nature. We ask that consideration is given to the relocation or reduction of the land required permanently to allow for the delivery of much needed housing.

Finally, we would be grateful if you could please confirm receipt of this Representation.

Yours faithfully

A handwritten signature in black ink, appearing to be "Kirk Macdiarmid". The signature is fluid and cursive, with a long, sweeping horizontal stroke at the end.

Kirk Macdiarmid
Director - Compulsory Purchase