

A428 Black Cat to Caxton Gibbet Road Improvement Scheme

Written summaries of oral representations made at the Issue Specific Hearing by the Cambridgeshire Authorities

1 Introduction

- 1.1 This note summaries the submissions made by Cambridgeshire County Council (CCC), Huntingdonshire District Council (HDC) and South Cambridgeshire District Council (together, the Cambridgeshire Councils) at the Issue Specific Hearing on 18 August 2021 (the Hearing) in relation to the application for development consent for the A428 Black Cat to Caxton Gibbet Road Improvement Scheme (the Scheme) by Highways England (the Applicant).
- 1.2 This document does not purport to summarise the oral submissions of parties other than the Cambridgeshire Councils, and summaries of submissions made by other parties are only included where necessary in order to give context to the Cambridgeshire Councils' submissions in response, or where the Cambridgeshire Councils agreed with the submissions of another party and so made no further submissions themselves.
- 1.3 The structure of this document follows the order of items in the agenda for the Hearing published by the Examining Authority (ExA) on 10 August 2021 (the Agenda). Numbered agenda items referred to are references to the numbered items in the Agenda. The Cambridgeshire Councils' substantive oral submissions relate to items 3, 5 and 6 of the Agenda.

2 Written summary of the Cambridgeshire Councils' oral submissions

3. Need for the Proposed Development	
d. De-trunking proposals	
Agenda item	Cambridgeshire Councils' submission
i. explanation as to why de-trunking of the existing A428 is a necessary part of the draft DCO and Proposed Development	<p>The ExA invited CCC as local highway authority (LHA) to comment at a high level on the de-trunking proposals.</p> <p>Francis Tyrrell, Pinsent Masons LLP for the Cambridgeshire Councils explained that the LHA does not have an issue in principle with de-trunking roads which are no longer considered strategic or considered to be part of the Applicant's network, noting that each road will need to be considered on its merits. The LHA does not wish to make the case that de-trunking is not necessary. Mr Tyrrell further explained that the LHA does not have an issue with the Order providing a</p>

	<p>one-stop shop for all elements of the Scheme.</p> <p>Mr Tyrrell explained that the LHA does have concerns in relation to the standards of those roads when they are de-trunked and that the LHA is very strongly of the view that no road should be de-trunked unless and until the LHA is content with the standard of that road.</p> <p>Mr Tyrrell emphasised that the LHA is concerned that de-trunking occurs automatically as a matter of law under the terms of the Order and that the trunk road should not be considered to be de-trunked unless and until the prior approval of the LHA as to the standard of that road has been obtained. Accordingly the draft DCO will need amending to that effect.</p>
<p>5. Environmental Effects</p>	
<p>b. Habitats Regulations Assessment (HRA)</p>	
<p>i. Update on the Barbastelle bat surveys requested by NE; will the surveys be undertaken and if so, over what timescale?</p> <p>ii. The expected contribution of surveys requested by NE to the current understanding of the effects of the Proposed Development on the Barbastelle bat population of the Eversden and Wimpole Woods Special Area of Conservation (SAC)?</p> <p>iii. If the surveys are not undertaken, or would not be completed within the timescales of the examination, or would not alter the current understanding of matters, can no Likely Significant Effects (LSE) be concluded?</p> <p>iv. ES [APP-077, paragraph 8.6.24] concludes that Barbastelle bats are likely to forage or pass through the Order Limits. If LSE cannot be excluded, then is there currently sufficient evidence in the application to conclude that the integrity of the Eversden and Wimpole Woods SAC</p>	<p>The ExA invited Camilla Davidge, Natural England (NE) to explain NE’s concerns with the Barbastelle bat surveys undertaken by the Applicant.</p> <p>Ms Davidge explained that NE is not satisfied that there is sufficient information on which to conclude there are no likely significant effects on this species. NE has requested that year-round surveys are conducted, including some more further cross point surveys. The Applicant has identified 40 potential cross points, but only a handful had been surveyed. NE requests that either more of those points are surveyed, or the reasons provided to explain why they were not surveyed.</p> <p>Ms Davidge explained that this would provide NE with a greater understanding of any potential fragmentation that could occur as a result of the Scheme between roost sites and foraging sites for the Barbastelle bat special area of conservation (SAC). NE recommends that the requested cross point surveys begin imminently, as there remains about one month left of the species’</p>

<p>would not be adversely affected by the Proposed Development?</p>	<p>maternity season, and then the surveys continue into the winter hibernation season.</p> <p>In response to a question from the ExA, Ms Davidge explained that the duration of those surveys would be down to the Applicant.</p> <p>Ms Davidge explained in response to commentary from the Applicant that Barbastelle bat roosts outside the SAC may still be functionally linked with the SAC and therefore still within the scope of the HRA.</p> <p>Mr Tyrrell on behalf of the Cambridgeshire Councils explained that the Cambridgeshire Councils shared NE's concerns on these points, that these concerns would be detailed in the Written Representations and that the Cambridgeshire Councils will defer to NE on these matters. Those representations would highlight the need for survey work if these can be carried out in the relevant timeframe. The Cambridgeshire Councils understand that male bats roam a wide area and are in habitats outside the SAC however male bats are important functionally to SAC habitat particularly in its function as a maternity site.</p> <p>My Tyrrell further emphasised that it was important to have regard to the precautionary principle and appropriate mitigation measures. The Cambridgeshire Councils have not received details of mitigation measures for this species, for example bat underpasses, which may help safely to conclude no material adverse effects.</p> <p>It was agreed that, following a scheduled meeting between NE and the Applicant, a joint position statement would be provided outlining the positions of NE, the Applicant and the Cambridgeshire Councils on this matter. The joint position statement has been provided to the Applicant for submission at Deadline 1.</p>
<p>c. Good design</p>	
<p>i. If there is adequate information about visual appearance (scale, height, massing,</p>	<p>The ExA highlighted that this matter was covered comprehensively in the First Written</p>

<p>alignment, and materials) and location of structural elements in the Application to assess good design and visual impact</p>	<p>Questions and requested that the local authorities are clear on the further information that needs to be provided to assist the ExA.</p> <p>Mr Tyrrell confirmed that the Cambridgeshire Councils would indicate where further information is required. The Cambridgeshire Councils' response to the relevant First Written Questions with reference to their Written Representation provides this detail. The Cambridgeshire Councils' opinion on design issues so far as the necessary information is available will also be included in the Local Impact Report to be submitted at Deadline 2.</p>
<p>6. draft Development Consent Order</p>	
<p>b. Pre-commencement</p>	
<p>i. If the definition of pre-commencement should be in Article 2</p>	<p>The ExA queried whether the draft DCO (APP-025) should contain a definition of "pre-commencement".</p> <p>In response Lorrae Hendry, Womble Bond Dickinson for the Applicant explained that, in the Applicant's view, this was unnecessary due to the inclusion of the definition of "commence".</p> <p>The ExA invited the local authorities to comment on the list of works included in the definition of "commence".</p> <p>Mr Tyrrell explained the Cambridgeshire Councils' initial view that the definition of "commence" is wide and may allow substantial works to begin without compliance with the first iteration of the environmental management plan. As an example, if there is remedial work to be carried out in respect of contamination, this would need to be carried out in accordance with specified plans and methodologies.</p> <p>The ExA requested that the local authorities provide further comment on the definition of "commence" as part of the submissions for Deadline 1 or Deadline 2 (see point 11 of the ISH action list). The Cambridgeshire Councils' comments on the definition of</p>

	<p>“commence” will be submitted as part of the submissions for Deadline 2.</p> <p>Mr Tyrrell requested clarification from the Applicant as to the meaning of “pre-construction mitigation works”.</p>
<p>g. Limits of deviation</p>	
<p>ii. Justification for the range in limits of horizontal deviation in the Works Plans [APP-009 and APP-010], which appears to extend up to approximately 100m in Composite Sheets 4, 5, 6, 8, 10, 11.</p>	<p>Mr Tyrrell acknowledged that it was standard in DCOs of this type for powers of deviation in respect of principal works to be included. However, Mr Tyrrell explained that the Cambridgeshire Councils were concerned as to how the powers of deviation operated in respect of footpaths and other public rights of way (PROW). The requirements to construct the PROW was set out in article 18 and Schedule 3 and Schedule 4 to the draft DCO. The PROW were to be as shown on the <i>Streets, Rights of Way and Access</i> plans. Those plans did not include any limits of deviation (but rather the limits were shown in general terms on the <i>Works Plans</i>). The Cambridgeshire Councils had experience in the context of the A14 scheme where PROW had been constructed otherwise than as shown on the relevant plans attached to the A14 DCO and, he was instructed, outside the limits of deviation for that DCO. That had caused significant legal difficulties for the County Council in relation to the definitive map. The Applicant should clarify how the powers of deviation operate in respect of PROW and to what extent PROW may deviate.</p> <p>Further, in relation to new local roads for which the County Council is to become the local highway authority (or in relation to works on roads that are to be de-trunked), the County Council would want to have a say on the extent of deviation of those roads.</p>