

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.12 Submission of Oral Case for Issue Specific Hearing on
Strategic Matters on 18 August 2021

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure)
Rules 2010

August 2021

Infrastructure Planning

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(Examination Procedure) Rules 2010**

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Development Consent Order 202[]

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Regulation Number	Rule 8(1)(k)
Planning Inspectorate Scheme Reference	TR010044
Document Reference	TR010044/EXAM/9.12
Author	A428 Black Cat to Caxton Gibbet improvements Team and Highways England

Version	Date	Status of Version
Rev 1	31 August 2021	Final for Deadline 1

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1 Introduction

- 1.1.1 This document summarises the case put forward by Highways England (the Applicant), at the Issue Specific Hearing on strategic matters which took place via MS Teams on 18 August 2021.
- 1.1.2 Scott Lyness QC of Landmark Chambers represented the Applicant and was assisted by experts at AECOM and Womble Bond Dickinson.
- a. Steven Wood (AECOM) represented the Applicant on transport matters in relation to East West Rail.
 - b. Ian Davies (AECOM) represented the Applicant on carbon matters in relation to the Decarbonisation Plan.
 - c. Ted Doherty (AECOM) represented the Applicant on highway design matters.
 - d. Jamie Gleave (AECOM) represented the Applicant on environmental matters.
 - e. Lorrae Hendry (Womble Bond Dickinson) represented the Applicant on matters relating to the draft Development Consent Order (dDCO) **[APP-025]**.
 - f. Jonathan Bower (Womble Bond Dickinson) represented the Applicant on matters relating to land (compulsory acquisition of rights and imposition of restrictive covenants and the temporary use of land).
- 1.1.3 The summary of the submissions below broadly follows the Examining Authority's (ExA's) Agenda for those items that were covered at the Issue Specific Hearing. It should be noted that due to time constraints not all Agenda items were covered during the Issue Specific Hearing and as such those items are not covered below.

2 Representations at the Issue Specific Hearing on Strategic Matters

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 3 – Need for the Proposed Development		
a.	East West Rail	
ii.	<p>The regard that has been given to the intended EWR scheme in assessing the need and benefits for the Proposed Development</p>	<p>The Applicant confirmed that the traffic forecasts used to assess the A428 Scheme and to calculate the scheme benefits have not taken account of the proposed EWR scheme because there is currently no information available for the Applicant to assess the overall impact of EWR's proposals since the details of the scheme have yet to be confirmed.</p> <p>The Applicant referred to the Combined Modelling Appraisal Report [APP-250]. The traffic forecasts for the Scheme assessment and appraisal were prepared following the Department for Transport (DfT) Transport Analysis Guidance (TAG) Unit M4. This guidance is prescriptive in terms of what is included in the assessment to ensure consistency. The guidance advises that only developments, including transport schemes, classified as being either 'near certain' or 'more than likely' should be included in the 'core' scenario (both with and without the Scheme). At the stage the Applicant was carrying out the assessment the details of EWR were not known.</p> <p>Until the details are finalised relating to route alignment, location of stations and service frequencies, it is not possible to assess the impacts of EWR cumulatively with the A428 Scheme. In accordance with TAG guidelines the EWR Scheme has therefore not been included in the assessment.</p> <p>The Applicant confirmed that as part of the needs case, a high-level assessment of EWR was carried out as part of the option identification and selection stage utilising some information provided by EWR. The Applicant concluded that the EWR scheme would only provide a very partial solution to solving problems on the A428 given that it would only provide a fraction of the traffic relief on the A428 compared to what was needed and would be delivered by the proposed Scheme. Therefore, EWR was not seen as a solution to meet the specific objectives of the A428 corridor and was not taken forward for further detailed assessment.</p> <p>The Applicant's submission is that the EWR project does not affect the need case set out in Chapter 2, The Scheme of the ES [APP-071] and the Case for the Scheme [APP-240]. In particular, the Applicant's</p>

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		<p>view is that EWR would not provide a solution to resolve the key issues that the A428 Scheme is seeking to address of reducing delays and congestion and improving journey times and reliability on the A428.</p> <p>The Applicant believes that there is need for an EWR scheme but the two schemes should be regarded as complimentary not competitive, and this position was supported at ISH1 in the oral submissions made by EWR.</p> <p>The Applicant confirmed that the reports detailing the alternative modal assessments undertaken would be submitted at Deadline 1.</p>
	<p>iii. Understanding of any interdependencies between the EWR scheme and the Proposed Development</p>	<p>The Applicant does not see the A428 Scheme and EWR scheme as being interdependent as far as need is concerned. The Applicant noted this was an agreed position accepted by EWR. Secondly, it is the Applicant's submission that the A428 Scheme and the EWR scheme are not interdependent as far as delivery is concerned because they will be delivered independently of each other.</p> <p>As far as interactions are concerned, the Applicant acknowledged the potential for some interaction between the EWR scheme and the A428 Scheme. However, EWR is part of an ongoing consultation process where no final decision has been reached on route alignment. The plans showing the emerging preferences for the alignments produced for the EWR scheme non-statutory consultation have insufficient detail to assess whether there will be interactions with the A428 Scheme. The Applicant has not discussed potential interactions with EWR because the Applicant has not seen information as to how any interactions might arise. In particular, there is no specific detail about location of interfaces and what they might involve as the final alignment of the EWR route has not been determined yet.</p> <p>EWR's submissions indicated that they would propose draft Protective Provisions (PPs) for inclusion in the draft DCO, albeit EWR accept that they have no assets or infrastructure to protect. EWR indicated that the draft PPs would seek to secure joint working as more detail on the EWR scheme becomes known. The Applicant's submission is that matters relating to cooperation are more appropriately dealt with in a cooperation agreement outside of the DCO process.</p> <p>In short, the Applicant does not consider it appropriate to address matters relating to EWR in the dDCO.</p>
<p>b.</p>	<p>Decarbonising Transport: a better, greener Britain</p>	<p>The Applicant does not believe that any commitments presented in the Transport Decarbonisation Plan, 'Decarbonising Transport: A better, greener Britain' undermine either the need for the Scheme or the</p>

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	<p>i. Implications (if any) of Government's commitments set out in Decarbonising Transport: a better, greener Britain in relation to the Proposed Development, including any intended revisions to existing submissions</p>	<p>results of the Greenhouse Gas (GHG) Impact Assessment presented in Chapter 14, Climate of the Environmental Statement [APP-083].</p> <p>The Applicant explained that the TDP which was published in July 2021 applies to transport generally and in terms of road traffic focuses on specific commitments to reduce emissions such as phasing out of new non-zero emission road vehicles by 2040 and supporting demand for charging infrastructure etc. The Applicant's submission further explained that there is nothing within the TDP to suggest that there is no need for new roads, particularly where such roads deal with specific problems on the existing network as is the case here, or that the TDP undermines existing strategies. Instead, the emphasis is on utilising less carbon-intense forms of transport and not necessarily less transport. As far as this topic appears under the rubric of need the Applicant does not consider that there is anything in the TDP that undermines the need case.</p> <p>Impacts of the transport decarbonisation plan are not specifically considered in GHG Impact Assessment presented in Chapter 14, Climate of the ES [APP-083]. Impacts on the Scheme resulting from the TDP relate to potential reduction in emissions from road users consistent with assumptions made in the TDP, but this has not been taken into account in the GHG Impact Assessment to ensure a worst case assessment is presented.</p> <p>GHG emissions from road users presented in the GHG Impact Assessment have been calculated using the DMRB calculator, which is based on the Defra Emissions Factors Toolkit (EFT), with the outputs of traffic modelling for the Scheme. The EFT approach does not currently factor in the impact of recent government policy presented in the TDP, including the forecast uptake of electric and low carbon vehicles. In this respect, road user GHG emissions from the Scheme might be anticipated to reduce in line with implementation of the TDP.</p> <p>The Applicant recognises that they have a key role to play in facilitating the implementation of the TDP. and in fact published their own Net Zero Plan which sets out their commitments to helping the Government achieve its net zero goals and have set targets within the plan particularly around a commitment to publish a blueprint for EV charging services by 2023 as well as publishing our proposed approach to zero carbon 'HGV' trials by the end of 2022.</p> <p>The Applicant confirmed that it does not anticipate that there will be any changes to the GHG Impact Assessment as a result of the TDP.</p>

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d.	<p>De-trunking proposals</p> <p>i. Explanation as to why de-trunking of the existing A428 of a necessary part of the draft DCO and Proposed Development</p>	<p>The Applicant confirmed that on completion of the Scheme, the existing A428 will no longer be used by strategic traffic and will therefore not be required for or form part of the Strategic Road Network (SRN). Highways England will, therefore, no longer be required to operate and maintain this road.</p> <p>The powers to de-trunk are contained within the dDCO [APP-025] so that all parties are aware of the elements to be de-trunked. This reflects the ethos of the DCO regime of seeking to be a 'one stop shop' for the consents/orders required for an NSIP.</p> <p>The Applicant has discussed and agreed in principle with the affected local highway authorities that they will take on responsibility for the de-trunked sections of road subject to agreement of a handover process and condition of the assets to be handed over. The Applicant has also discussed proposed road numbering for de-trunked sections and included these in the application. The intention is that the section between the existing St Neots roundabout and Cambridge Road Junction will be the A1428 but beyond that between Cambridge Road Junction and Caxton Gibbet Junction it will be the B1428.</p> <p>The Applicant explained that there is no specific threshold for de-trunking. The principle being that the road will no longer be a strategic road and will not carry strategic traffic, and instead will form part of the local road network.</p>
AGENDA ITEM 4 – Assessment of Alternatives		
a.	<p>Black Cat Junction – Option Selection Process</p> <p>i. Overview of the approach adopted for assessment of alternatives, and the consideration given to the Historic Environment</p>	<p>The development of and assessment of the Scheme has been undertaken in accordance with Highways England's Project Control Framework (PCF) including PCF Stage 1, Option Identification, PCF Stage 2, Option Selection and the current PCF Stage 3, Preliminary Design.</p> <p>Details of the option identification and selection process undertaken is provided in Chapter 3 of the Environmental Statement, Assessment of Alternatives [APP-072].</p> <p>A comprehensive options identification and assessment process was undertaken through PCF Stage 1 and Stage 2. This process included initial options identification and assessment (2014), Options development, shortlisting and assessment (2015 – 2016), Non-statutory consultation (2017) culminating in a preferred route announcement (2019).</p> <p>The historic environment was a component in the option identification and selection process with the environmental impacts being qualitatively assessed against the Transport Analysis Guidance (TAG). This</p>

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		<p>assessment was high level and due to the low level of design detail at this stage it was not possible to analyse the full extent to which the options would impact Brook Cottages or could be altered to avoid Brook Cottages if impacted.</p> <p>From a strategic perspective, full offline dualling with grade separation of the existing Black Cat roundabout and grade separation of the existing Caxton Gibbet junction was considered to be the best performing option for a number of reasons including compliance with government policy, ability to address the problems and issues affecting the existing A428, and the greater likelihood of public acceptability.</p> <p>In addition to the route assessment a number of options for Black Cat junction were identified and considered. Details of the junction options considered are also provided in Chapter 3, Assessment of Alternatives of the Environmental Statement [APP-072].</p> <p>Following assessment against a number of criteria including environment, safety, constructability and accessibility, three off-line route options (Orange, Pink and Purple) were identified as the best performing route options as they would meet the majority of the Scheme objectives and would provide the most significant benefits with the lowest potential environmental impact. These three preferred route options were taken forward to the non-statutory consultation.</p> <p>All three of the preferred route options included tie-ins to the existing road network at the western end of the Scheme at the location of the existing Black Cat junction. In line with this, the assessment of the options for Black Cat junction concluded that three online junction options (Option A, Option B and Option C) could be incorporated into the design of the route options and should be taken forward to non-statutory consultation.</p> <p>Between the non-statutory consultation and Preferred Route Announcement a further review of the Black Cat junction option design was undertaken, specifically to avoid impacts to Brook Cottages. Details of this are included in the Black Cat Junction Design Options report [APP-247].</p> <p>The culmination of the option assessment process, which fully took into account the outcomes from the non-statutory consultation, was the Preferred Route Announcement made in February 2019. This confirmed that the Orange Route with Black Junction Option C was to be taken forward.</p>

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	<p>iii. Consideration given to alternative locations for the junction, for instance to the east</p>	<p>The Applicant explained that in terms of the location of the junction, without significantly increasing the scope of the Scheme, the location of the existing Black Cat Junction was identified as the most appropriate location for improvement. A fundamental objective of the Scheme is to deliver free flow links for the A1 and the new dual carriageway through Black Cat junction. There is little scope to significantly modify the alignment on the approach that would have negated the need to demolish Brook Cottages.</p> <p>Relocating the Black Cat junction to the east was considered, however, the Applicant determined that this was not appropriate.</p> <p>The extent to which the junction can move to the east is constrained by the flood plain to the River Great Ouse and the ability to mitigate impacts on flood risk, as well as the need to increase provision of flood compensation accordingly and the associated additional land take this would require.</p> <p>Moving the junction to the east would directly impact on existing residential properties and businesses to the north and south of the proposed junction. The property known as Greenacres to the south and the commercial premises to the north of the junction would require demolition as a consequence of the need to realign the A1 mainline carriageway to the east. Additional land would also need to be permanently acquired from the properties along Great North Road to the north.</p> <p>Additional protection or diversion for the existing high-pressure gas main running to the south would also be required and given the fundamental service this provides was seen as a key constraint to development of the design.</p> <p>A new, additional viaduct crossing of the River Great Ouse adjacent to the south on the A1 southbound carriageway structure would be required. This would also result in the need for additional flood compensation upstream of the structure and therefore additional land acquisition.</p>
	<p>iv. Reasons for changing the Black Cat Junction options to include the demolition of Brook Cottages, and the subsequent consultation process</p>	<p>As stated in the Black Cat junction design options report [APP-247]; three junction options were presented at the non-statutory consultation and it was stated that Option A “may affect the setting of the listed building to the north of the Black Cat roundabout” and Options B and C “may result in the removal of the Grade II listed building to the north of Black Cat roundabout”.</p> <p>Following the non-statutory consultation, all three options were further reviewed, and this confirmed that all three options would result in the need to demolish Brook Cottages.</p>

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		<p>Prior to making the Preferred Route Announcement (PRA), a variant of Option C, referred to as Option C+, was developed which specifically sought to avoid demolition of Brook Cottages, but as described in [APP-247], the layout resulted in a highly complex junction arrangement with significant technical and safety issues.</p> <p>Based on the above it was concluded that Option C+ was not viable and it would not meet the objectives for the Scheme.</p>
b.	<p>Implication of Black Cat Quarry closure on the assessment of alternatives</p> <p>i. Consideration given to the closure of Black Cat Quarry on the design and alignment of Black Cat Junction and adjoining routes</p>	<p>The Applicant confirmed that the Scheme was designed based on the restoration of the quarry having taken place, and therefore the quarry's ongoing operations were not a constraint to Scheme design.</p> <p>The presence of the quarry did not influence the Scheme alignment and junction design.</p> <p>The Applicant was aware the quarry would be restored in accordance with the requirements of its planning permission, and this formed the context for the assessment of alternatives.</p>
AGENDA ITEM 5 – Environmental Effects		
a.	<p>ii. Timescales for the archaeological excavation work and other scenarios that need to be considered in the Examination</p>	<p>The Applicant confirmed that archaeological excavations commenced on 19 July 2021. The works are programmed to run for 25 weeks and it is anticipated that excavation works will be completed by January 2022 (subject to weather).</p> <p>The Applicant explained that beyond the archaeological works no other advance works in this area (i.e. the pipeline diversion) are currently programmed to take place.</p>
	<p>iii. To discuss the information provided in the ES with regards to any likely significant effects associated with the pipeline diversion</p>	<p>The Applicant explained that the Screening document states that the archaeological effects were the only significant effects that were identified as part of the “Screening Assessment of proposed gas pipeline works for the purposes of section 20 of the Planning Act 2008”, [APP-158]. The Applicant confirmed that subject to the archaeological remains being excavated, the screening process removes any likely significant effects that would have triggered the threshold for the diversion works qualifying as a Nationally Significant Infrastructure Project.</p>
b.	<p>Habitats Regulations Assessment (HRA)</p>	<p>The Applicant's view was that considerable survey evidence about the movements of Barbastelle bats around the area of the Scheme and the SAC has been gathered over some 20 years by the Applicant and</p>

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	<p>i. Update on the Barbastelle bat surveys requested by NE; will the surveys be undertaken and if so, over what timescale?</p>	<p>others, none of which has ever identified a direct connection or link between the SAC and the land associated with the Scheme's Order Limits.</p> <p>The Applicant explained it had been engaging with Natural England on Habitats Regulations Assessment matters since the time of undertaking Environmental Impact Assessment scoping in mid-2019.</p> <p>The Applicant held a workshop with Natural England and local bat groups on 5 November 2020 to discuss the Barbastelle survey data it had recorded, and other available data. Subsequent to this, a draft of the Habitats Regulations Assessment: No Significant Effects Report [APP-233] was shared with Natural England for its review.</p> <p>Accordingly, it came as a surprise to the Applicant that Natural England's Relevant Representation now cites insufficient information being available for it to rule out likely significant effects on the Barbastelle bat population associated with Eversden and Wimble Woods SAC, particularly as this viewpoint had not been expressed to the Applicant before during previous dialogue and correspondence.</p> <p>As such, the Applicant requested Natural England provide any evidence it held to support the position it has adopted within its Relevant Representation. Natural England confirmed on 13 July 2021 that it does not hold any such evidence, not already seen by the Applicant, regarding Barbastelle bat activity.</p> <p>Following this, the Applicant prepared a Clarification Note detailing its position and the evidence gathered as part of surveys and assessments undertaken to date. This Clarification Note was shared with Natural England on 20 July 2021 and a meeting was held with them on the same day to discuss the Applicant's position.</p> <p>Natural England's view remained unchanged following the meeting; however, the Applicant recommended that a further detailed workshop would be beneficial to aid Natural England's understanding of the survey data collected.</p> <p>A meeting was programmed with Natural England to discuss these matters further on Monday 23 August 2021. The Applicant considered this workshop important to ensure there is an accurate understanding of the bat survey work carried out and how the conclusion of no likely significant effects on the SAC has been reached by the Applicant.</p> <p>Additionally, the Applicant proposed to update the Technical Note provided to Natural England for submission at Deadline 1.</p>

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		<p>In the event that the workshop does not alter Natural England's view on the need for additional bat surveys, the Applicant confirmed that it will then explore with Natural England the viability of what surveys could realistically be undertaken and reported between now and the end of the Examination.</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>The Applicant confirmed that its view that the evidence presented in the Habitats Regulations Assessment: No Significant Effects Report [APP-233] is valid and provides a robust basis on which the conclusion of no likely significant effects had been drawn.</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 would not be adversely affected by the Proposed Development?</p>	<p>The Applicant acknowledges that Barbastelle bat is likely to forage on, or pass through, land identified within the Scheme's Order Limits. However, the tracking surveys demonstrated that the recorded Barbastelle bats are associated with other roost sites nearby and the evidence gathered indicates these are not associated with Eversden and Wimpole Woods SAC.</p> <p>The Applicant has carried out an assessment of the data gathered from assessing the bat activity in the area through various tracking and tagging surveys over a number of years as detailed in Appendix 8.5 – Bats of the ES [APP-192]. It is the Applicant's view that the habitats in the eastern end of the Scheme closest to the SAC do not form or contain the features that would be typically expected as being suitable for Barbastelle in the winter months.</p> <p>The Applicant reaffirmed its intention to submit a Technical Note at Deadline 1 with additional information.</p> <p>The Applicant's submission is that the screening assessment reported within the Habitats Regulations Assessment: No Significant Effects Report [APP-233] specifically considers the SAC and applies the precautionary principle. The Applicant's position is that there is no evidence to suggest that there is a functional relationship between the SAC and the habitat in proximity to the Scheme, notwithstanding the presence of Barbastelle, and applying the precautionary approach one can conclude that there are no LSE.</p> <p>The Applicant confirmed that no trapping or tagging of Barbastelle within the SAC had been undertaken, and that the Applicant had previously informed Natural England of its intention not to undertake such surveys.</p>

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		<p>The Applicant clarified that although measures have been embedded into the Scheme design to mitigate effects on a range of bat species, for example a bat underpass and planting, none of these measures have been identified to specifically mitigate effects on the SAC's Barbastelle population as no adverse effect on the integrity of the SAC is predicted to result from the Scheme.</p>
AGENDA ITEM 6 – draft Development Consent Order		
a.	<p>Land adjacent to order limits</p> <p>i. The provision secured through Article 4 which refers to land within or adjacent to the Order limits</p>	<p>The Applicant clarified that the specific reference being referred to in this question is Article 4(2) of the dDCO [APP-025] and confirmed that the inclusion of this Article is to make it clear that any enactments that may be existing within the Order limits or surrounding area will be subject to the terms of the Order. The purpose of Article 4(2) is to confirm that the Order will take precedence over any enactment. The relevant local Act would therefore be disapplied to the extent it is needed to be for the purposes of the Order.</p> <p>The Applicant confirmed that in its view the Article is a standard provision that has precedence in other made DCOs, the purpose of which is to capture those enactments that we are not aware of.</p> <p>It is the Applicant's submission that the terms "adjacent land" and "surrounding areas" do not need to be defined or secured in the dDCO in the context of Article 4(2) because the purpose of the provision is simply to confirm that the Order will apply.</p> <p>The Applicant will seek to provide to the ExA an example of where this provision has had an impact on a local enactment so that the ExA can understand the scope and impact on adjacent land and surrounding areas. However, the Applicant noted that this may not be possible and that a response either way would be provided at Deadline 1. This article has precedence in the M20 Junction 10a Order and the A14 Order.</p>
	<p>ii. The provision secured through Article 23 which refers to land which is adjacent to, but outside the Order limits</p>	<p>The Applicant confirmed that Article 23 of the dDCO allows for the Applicant (where reasonably necessary) to carry out a defined list of activities to enter onto land adjacent to the Order limits. The defined list of activities includes environmental surveys and boreholes.</p> <p>The Applicant advised that it may be reasonably necessary for it to go outside the Order limits to ensure that it has full information and can understand the impact of the Scheme on a particular species for example.</p>

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		<p>A similar power is contained within section 172 of the Housing and Planning Act 2016 that allows a person authorised in writing by an acquiring authority to enter and survey or value land.</p> <p>The Applicant explained that the purpose of the dDCO is to ensure that the applicant has all the powers that it needs so that it isn't prevented from carrying out the surveys it requires. This will avoid the situation where the Applicant is prevented from carrying out survey work because it is unable to secure landowner consent for example. By securing the power in the dDCO we are ensuring that the Applicant can bring forward the authorised development in a timely manner.</p> <p>The Applicant confirmed that the provision is subject to 14 days' notice and compensation provisions and during the hearing the Applicant stated that it does not believe it is possible for a landowner to object. Since the hearing the Applicant can confirm that Article 23(7) of the dDCO refers to section 13 of the Compulsory Purchase Act 1965 which allows the Applicant to obtain a warrant if entry is refused or hindered.</p>
	<p>iii. Definition of scope and extent of land adjacent to order limits, where it is secured, and how can it be monitored or controlled</p>	<p>The Applicant confirmed that in respect of Article 23 of the dDCO, the extent of this power will only extend to land adjacent to the Order limits as far as it is reasonably necessary to carry out the activities listed.</p>
<p>b.</p>	<p>Pre-commencement</p> <p>i. If the definition of pre-commencement should be in Article 2</p>	<p>The Applicant's submission is that a separate definition of pre-commencement is not required because of how the current definition of 'commencement' operates, i.e. a separate definition would merely repeat the current definition of commence.</p> <p>The Applicant explained that the definition of "commence" operates by ensuring that a material operation will trigger the requirements of the Order, however the definition goes onto exclude a number of activities which might otherwise be a material operation so the result is a list within the definition of commencement that would ultimately be the pre-commencement activities. It is the Applicant's view that if we were to go onto define "pre-commencement" it would be defined by reference to the definition of commence and therefore a separate definition is not required.</p> <p>The Applicant notes that the ExA has raised a question on this point (Q1.7.2.1) and in responding to that question the Applicant has proposed a draft definition for "pre-commencement" for the consideration of the ExA.</p>

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	ii. Including details about pre-commencement works in the First Iteration Environmental Management Plan	<p>As pre-commencement activities are generally of a minor nature it is the Applicant's view that the controls set out in the First Iteration EMP are not required for those works. The Applicant has considered the exclusions as listed and thought about appropriate controls and where necessary has brought these out in a separate document. The relevant controls can be seen in the Archaeological Mitigation Strategy [APP-238] and the Biodiversity Pre-Commencement Plan [APP-239]. The Applicant confirmed that these are certified documents.</p> <p>The Applicant confirmed that it will provide the Cambridgeshire authorities with an indication of what "pre-construction mitigation works" might comprise.</p>
d.	<p>Associated Development</p> <p>i. Explanation of the Applicant approach to not differentiate the NSIP and associated development works in Schedule 1</p>	<p>The Applicant confirmed that the dDCO does not differentiate between the NSIP elements and the associated development elements. This is due to the complexity of the Scheme which means that drawing this distinction can be very difficult and potentially lead to error. The Applicant confirmed that it is not aware of a legal requirement to differentiate between the NSIP and associated works.</p>
	ii. Justification of the inclusion of 'further associated development with the Order limits' listed in paragraphs (a) to (u)	<p>The Applicant confirmed that this approach is common across a number of Highway DCOs including the A14 Cambridge to Huntingdon Scheme, see paragraph 2.1.25 of the Explanatory Memorandum [APP-028] and ensures that the consent contains powers for all of the works necessary to carry out the Authorised Development without resulting in more complicated and repetitive Works Descriptions.</p> <p>The inclusion of this provision prevents there from being an extremely repetitive list of these numbered Works, for example many of the numbered Works within the Schedule would include works to the verge of a public highway.</p> <p>Given the nature of a highways scheme and the complex nature of the works it is appropriate that the description of the numbered works does not list every minor work that could be carried out in connection with them.</p>
	iii. Whether the works described in paragraphs (a) to (u) are too broadly defined	<p>The operation of this part of the schedule will be subject to the controls in the DCO. The Applicant confirmed that it will clarify where in the drafting it is secured that the provisions of the DCO will apply to all these works.</p>

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e.	<p>Compulsory acquisition of rights and imposition of restrictive covenants</p> <p>i. Explanation of the broad scope of Article 28(1), and the lack of statement in the Explanatory Memorandum</p>	<p>The Applicant confirmed that the objectives behind Article 28 are twofold: 1) to facilitate where the case may arise which enables the undertaker to acquire just new rights over land instead of the freehold that is authorised to be acquired permanently under Article 25 (Article 28(1) or 2) specifically where they are listed in Schedule 5 the undertaker can only acquire new rights over that land (Article 28(4)).</p> <p>There are therefore two options – either the undertaker is acquiring a new right over that freehold land and not acquiring the freehold outright or if it's listed in Schedule 5 acquiring only those new rights. The provisions are explained in the Explanatory Memorandum in paragraph 4.1.107 and they have the effect of reducing the extent of freehold acquisition if the undertaker can acquire just a new right over that land instead of the freehold.</p> <p>The public benefit of this is that it would allow Highways England, if possible, to reduce the area of outright acquisition and rely on rights instead.</p>
	<p>ii. If it requires clarity that Article 28 only applies to the plots listed in Schedule 5</p>	<p>The Applicant confirmed that Article 28(1) is subject to the following paragraphs of this article which refers to Schedule (5) at paragraph (4).</p>
	<p>iii. Or if undefined rights are sought on land not listed in Schedule 5, then should this intent be clearly identified and the need for it justified in the Explanatory Memorandum and Statement of Reasons</p>	<p>The Applicant explained that the extent of the land is not known at present; however it could be the case that the undertaker can reduce the extent of freehold acquisition once the full scheme design has been completed.</p>
f.	<p>Temporary use of land for carrying out the authorised development.</p> <p>i. Justification and explanation of Article 40(9)(a), if it allows the creation of permanent rights under Article 28(1) over land which is intended for Temporary Possession alone</p>	<p>The Applicant referred also to Article 25 which authorises the compulsory acquisition of land which of itself is subject to both Articles 28 and 40(9).</p> <p>Article 28 authorises the compulsory acquisition of rights over land which is authorised for permanent compulsory acquisition.</p> <p>Article 28(5) expressly limits the compulsory acquisition of rights on certain land which are shown on the land plans and detailed in schedule 5.</p> <p>As noted, if land is authorised for permanent acquisition the undertaker could acquire a new right over that land instead of the freehold under Article 28(1). However, as Article 40(9) has a bar on the permanent compulsory acquisition of land if it is authorised for temporary possession only (under Article 40(1)(a)(i)) it</p>

Item	ExA Question/Context for discussion	Applicant's Response
		<p>is not possible to acquire new rights over that land – in those circumstances because it is not possible to rely on the provisions of Article 28(1). Article 40 does permit acquiring new permanent rights over land if those new rights are expressly authorised under Article 28. The land plans show that those areas of land where temporary possession only is permitted (as shown coloured green).</p> <p>The Applicant confirmed that it will set out the interrelationship between article 28(1), article 40(9) and article 40(1)(a)(i), Schedule 7 and article 25 in a written response. This is that written response.</p>
g.	<p>Limits of deviation</p> <p>i. Justification for no maximum limit of horizontal deviation in metres in the dDCO</p>	<p>The Works Plans [APP-009 to APP-010] show the Limits of Deviation (LoD) for both utility diversions (shown by blue lines) and non-utility works (shown by pink shading), whilst the dDCO does not contain reference to a metres limit there are clearly defined LoDs on the Works Plans themselves.</p> <p>The approach taken is broader than simply looking at the highway works themselves. The LoD cover all sorts of activities including drainage and landscaping. Effectively the approach taken is to show the LoD to cover the extent of permanent land acquisition but keeping in mind that the actual construction of the Scheme is limited by both the LoD shown on the Works Plans together with the physical constraints already in place. The Applicant's view is that by using the shading it allows more flexibility for the Applicant but is also a more realistic view of where the LoD might exist.</p> <p>The Applicant confirmed that this is an approach taken on made DCOs. There have been a number of other Schemes which have used the Works Plans to show the horizontal LOD. The Cambridgeshire authorities confirmed that it agrees that this is a standard approach for DCOs.</p>