

IN THE MATTER OF AN APPLICATION FOR A DEVELOPMENT CONSENT  
ORDER

AND IN THE MATTER OF THE A428 BLACK CAT TO CAXTON GIBBET

AND IN THE MATTER OF THE NATIONAL FARMERS UNION

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## **NFU WRITTEN REPRESENTATIONS**

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### **1. Introduction**

1.1 These are the Written Representations of the National Farmers Union (“NFU”) on behalf of their members to the application for a Development Consent Order by Highways England for the identified scheme A428 Black Cat to Caxton Gibbet Improvements.

1.2 The objectives of the NFU are to champion farming in England and Wales and to provide professional representation and service to its members.

1.3 The matters raised in these Written Representations are as highlighted in the outline representations but details of the wording that the NFU would like to see included for water supplies, field drainage, soils, irrigation systems and ALOs in the FIEMP is now included and highlighted in Annex 1 – 5 of this representation.

### **2. Consultation and Engagement**

2.1 One to one meetings have been held between landowners and Ardent the agents acting for Highways England (HE) and the NFU would like to see negotiations continuing with members who are directly affected. The NFU understands from agents that HE is not keeping landowners updated and it is taking HE too long to

respond to queries raised by agents. Further the NFU would like to enter into a Statement of Common Ground to understand and agree outstanding issues, especially the wording that is being sought on practical issues and the NFU would like to see being included in the First Iteration Environmental Management Plan (FIEMP).

### **3. Habitat Mitigation**

3.1. Further to the response submitted to the consultation the NFU would still like to receive clarification as to why so much land is being taken for habitat mitigation and it is understood that (HE) have now identified a 20.5 % net gain. We understand that this might be being achieved through the enhancement of previous identified sites. Further clarification is required as the NFU would not want to see more land being compulsorily purchased to achieve a net gain on a linear infrastructure scheme. The NFU would like confirmation on what management agreements are to be put in place to maintain the habitat mitigation sites.

### **4. Access Routes and Accommodation Works**

4.1. The NFU raised concerns over (HE) addressing new access routes that will be required once the new road is operational to land and also temporary access routes during construction which will be severed by the works. Further concerns were in regard to agreeing accommodation works at an early stage. The response provided by HE in the response consultation document is brief with no detail. The NFU understand from agents acting for members that meetings have been taking place, but further confirmation is required.

### **5. Construction Compound Sites**

5.1 HE on plans submitted under the DCO has identified some large areas of land to be taken for construction compound sites. The NFU would like to see the detail of use for each compound site being detailed in the DCO particularly within Schedule 7, Article 40. At the present time it is stated that the areas will be used as a construction area ***'required to provide temporary storage, laydown areas, access and working space to facilitate the construction of...'*** We require further detail on exactly what works may take place and what type of storage. This should be explicitly detailed for each compound.

## 6. Powers to Survey Land

6.1 It is noted that in the DCO under **Paragraph 23: Authority to survey and investigate the land under 23.1 (b) ii** it is stated that HE can discharge water from sampling operations. The NFU would like further detail on the types of sampling that is to be undertaken and the quantities water that could be discharged.

The NFU is pleased to see that 23.3. does state that the nature of the survey must be stated in the notice. The NFU would further like to see that the ALO as part of its role is to: *“Provide preconstruction survey information to landowners including company name, survey type and equipment to be used, an estimate of how long the surveys are expected to take and where surveys are to take place on land outside of the Order limits, an explanation of why such land is required”*.

## 7. Temporary use of land for carrying out the authorised development

7.1 It is noted that in the DCO at Paragraph 40 ‘**Temporary use of land for carrying out the authorised development**’ it is stated that a 14 day notice has to be served before taking entry. At a minimum the NFU will want to see a 28 day notice being served before entry is taken on to land on a temporary basis. Experience from other schemes is showing that a 14 day notice is not adequate.

## 8. Balance Ponds

8.1 The NFU would like information to be provided to explain why the size and location of balance ponds are required and where these are to be located. Further relocation next to field boundaries would help minimise the impact on the farmland in question. The NFU would like to see further negotiations with landowners on balance ponds and refinement as design is developed.

## 9.0 Waste and Spoil

9.1 The NFU would like information to be provided to explain how waste and spoil is to be treated. The response to the NFU after the first consultation does not clarify where waste and spoil is to be used within the construction. It just states that soils will be delivered back to the respective locations from the storage zones. It will not

be possible to return soil back to respective soil locations without changing the surface level and agricultural classification.

## **10. Water Supplies**

10.1 There is no information in the FIEMP as to how any water supplies will be treated if affected on a temporary or permanent basis. The main works contractors should have to provide an alternative supply if any supply is contaminated, cut off or the supply is affected in anyway during the construction of the road.

The NFU has specific wording that it would like to see agreed and included in the FIEMP to guarantee that farms will have a temporary and/or a permanent water supply. Wording in regard to private water supplies was sent to Highways England on 4<sup>th</sup> August 2021. Please see the wording in Annex 1. The NFU would like to see this wording agreed for interruption to any water supply.

## **11.0 Field Drainage**

11.1 Land drainage is always one of the main issues which landowners and agricultural tenants are concerned about when land is taken for construction purposes of a major road. Further to raising issues in a response to the consultations in regard to field drainage HE responded that the Drainage Strategy report covers operational drainage and that the FIEMP describes how construction drainage will be dealt with. The NFU is disappointed that HE has not addressed agricultural field drainage that will be severely affected by the construction works. This is particularly important where land will be returned to agricultural use.

11.2 The NFU has specific wording that it would like to see agreed and included in the FIEMP to guarantee that land drainage will be fully reinstated. This wording was sent to Highways England on 4<sup>th</sup> August 2021. Please see the wording that the NFU would like to see in respect of Field Drainage in Annex 2.

## **12. Soils**

12.1. The NFU is pleased to see that there is a detailed section on Soil Handling and Management at Appendix E of the FIEMP which covers soil preparation, sub and top soil stripping, controls during construction, soil storage and restoration. The NFU

would like to see further detail included to cover a pre-construction soil survey which will form the basis of a soil statement to be included within a record of condition.

12.2. Further the NFU would like to see wording agreed to cover soil aftercare which will be linked back to the soil statement and condition of the soil before the construction works started.

12.3. The NFU sent Highways England the specific wording in respect of soils on 4<sup>th</sup> August 2021. The wording is included in Annex 3.

### **13. Dust**

13.1 It is noted that within the FIEMP that dust will be controlled during construction, but clarification is needed on how dust will be controlled during construction to protect arable crops. The project will impact a vast area of arable crops that are grown in this area, quality of the crop is paramount. NFU would like to see details specific to dust control for agricultural crops.

### **14. Irrigation Systems**

14.1. The NFU has not been able to find any information in the FIEMP as to how the effect of construction can be minimised on irrigation systems. The NFU has specific wording that it would like to see agreed and included in the FIEMP to guarantee that irrigation systems are maintained. The wording was sent to Highways England on 4<sup>th</sup> August 2021 and is included within Annex 4.

### **15. Agricultural Liaison officer**

15.1 Liaison with landowners, tenants and agents is essential but there is only mention of a Community Relations Manager within the FIEMP. This is not adequate and the NFU would like to see that the main works contractors will have to employ an agricultural liaison officer to carry out liaison with landowners. The NFU has specific wording that it would like to see agreed and included in the FIEMP which covers the roles which need to be undertaken by the ALO. The wording was sent to Highways England on 4<sup>th</sup> August 2021 and is included within Annex 5.

### **16. Agricultural Use of the A428**

**16.1** The NFU requested confirmation that the proposed A428 will remain for the use of all traffic including agricultural vehicles. HE has confirmed that the new dual carriageway will be designated an all-purpose trunk road. The NFU would like to see this stated in the DCO.

**17.0 Request to Attend Hearings and make Representations**

17.1 The NFU wishes to request to make oral representations at the issue specific, draft DCO and compulsory acquisition hearings which may be held if necessary. The NFU are working closely with the agents that represent the NFU members affected.

Louise Staples  
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DATED 31st August 2021.

**Annex 1: Agricultural Private Water Supplies**

- 1.1 Where an existing mains or private water supply to a farm is adversely and directly affected by the construction of the Scheme, the main works contractor shall, if requested by the farmer or landowner to do so, provide or procure or meet the reasonable cost of the provision of an alternative supply of water (the form and type of which shall be at the contractor's option). Where the supply is affected temporarily by the construction of the Scheme, then the alternative supply need only be supplied for the period during which it is affected.
- 1.2 Where a request is made by the farmer or landowner for a permanent supply due to permanent severance of the existing supply caused by the construction of the Scheme, the main works contractor shall, where provision of an alternative means of supply can be demonstrated by the land owner/farmer to be reasonably required for his business, provide or procure or meet the reasonable cost of a permanent means of alternative supply of water (the form and type (either borehole or mains supply) shall be at the contractor's option).

**1.3 Water Supply Statements**

The main works contractor shall produce Water Supply Statements for landowners / occupiers who rely on private water supplies which could be affected by the Scheme. These shall identify how water supply is to be maintained in the unlikely event that existing supplies are adversely affected as a consequence of the works. The statements shall be produced and provided to landowners / occupiers and The Authority prior to works commencing and include, as a minimum:

- a) Details and locations of existing boreholes which supply the landowner / occupier;
- b) Recorded results from groundwater monitoring undertaken by the main works contractor (as part of the Groundwater Management Plan) that are relevant to those boreholes;
- c) How an emergency will be reported if water is contaminated;
- d) The procedure for getting water to a farm and how it will be distributed to animals and residential properties if water is affected on a temporary basis; and

- e) The procedure for getting a new supply of water whether from a borehole, mains supply or combination of both to a farm if the water from the boreholes is contaminated on a permanent basis

**Annex 2: Agricultural Land Drainage**

- 2.1 Particular care will be taken to ensure that the existing land drainage system is not compromised as a result of construction. Land drainage systems will be maintained during construction and reinstated on completion.
- 2.2 The Agricultural Liaison Officer (ALO) will coordinate drainage surveys to establish the existing drainage position including any related farm drainage that may be affected by the scheme.
- 2.3 The services of a suitably qualified drainage consultant who will have experience of working in the region, will be employed by the contractor to act as a drainage expert during the detailed design process and liaise with landowners or occupiers (through the ALO) to consult on the pre and post drainage schemes required. This will include the design of any land drainage works required during construction, and on the design and timing of any land drainage works required for the subsequent restoration of the land. This process will take due regard of any local and site-specific knowledge.
- 2.4 Existing agricultural land drains, where encountered during the construction of each phase, will be appropriately marked. The location of drains cut or disturbed by the construction works will be photographed, given a unique number and logged using GPRS coordinates. The actual condition and characteristics (e.g. depth of installation, pipe type and diameter) of the existing drainage will also be recorded upon excavation.
- 2.5 During the construction works, temporary drainage will be installed to intercept existing field drains and ditches to maintain the integrity of the existing field-drainage system during construction. Such measures will also assist in reducing the potential for wet areas to form during the works, thereby reducing the impact on soil structure and fertility. Drainage systems however will not be installed into areas where they are not currently present, e.g. environmental wetlands.
- 2.6 Any field drainage intercepted during construction will either be reinstated following reinstatement of the land or diverted to a secondary channel. Landowners and occupiers will be informed of the design of drainage works required during construction, including: pipe layout, falls, dimensions and outfalls (if required). The drainage would be reinstated in a condition that is at least as effective as the previous condition and will follow best practice for field drainage installations taking into account site specific conditions.
- 2.7 Where it is reasonable for the reinstatement of drainage to involve works outside of the order limits it will be done subject to the agreement of the landowner.

- 2.8 Landowners and occupiers will be provided with the opportunity to inspect land drainage works as they progress, subject to health and safety considerations. Furthermore, records of existing and remedial drainage will be maintained by the contractor with copies provided to the Landowner (and the Occupier, if applicable) following the completion of construction works in each phase.
- 2.9 A dispute resolution process will be established including the appointment of a jointly agreed Independent Expert, who shall have at least 5 years experience of dealing with land drainage issues in the region, for drainage design and implementation, if required. Where agreement cannot be reached on the appointment of the expert the matter will be referred to the President of the Institution of Civil Engineers.

### **Annex 3: Soils**

#### **3.1 Preconstruction Soil Statements**

- 3.1.1 The preliminary or main works contractor shall produce and provide to landowners and occupiers if necessary, Preconstruction Soils Statements for areas of agricultural land within individual land holdings that will be temporarily occupied during the preliminary and main construction of the Scheme. These shall provide a baseline schedule of soil condition against which the restoration of the soil will be assessed. The statements shall identify soils resource topsoil and subsoil unit plans and shall include, as a minimum, all pre-construction soil survey information obtained to inform the ES, the development of the Soils Management Strategy (refer to item XXX) and the information gathered from the record of condition surveys (refer to item XXX)
- 3.1.2 The Pre-Construction Soil Survey will include the identification of the physical characteristics of profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed). Soil pits will be examined at appropriate locations to provide additional detail on soil structure. The Pre-Construction Soil Survey will also provide information on the following physical soil characteristics:-
- a) soil horizon depths for topsoil and subsoil horizons;
  - b) soil textures of all horizons;
  - c) soil colour;
  - d) stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;
  - e) presence and characteristics of mottling, a soil wetness indicator;
  - f) presence of manganese concretions, a soil wetness indicator;
  - g) identification of gleyed horizons;
  - h) identification of slowly permeable layers; and
  - i) identification of impenetrable rock layers.
- 3.1.3 A copy of the Pre-Construction Soil Survey shall be provided to the Landowner and any Occupier prior to commencement of the Works.

#### **3.2 Monitoring of Soil During the Works**

- 3.2.1 The Developer's soil expert shall consult with the landowner/occupier (through the ALO if necessary) to assess as to whether to continue with or commence the Works in circumstances where long term and/or adverse weather conditions have led to cumulative wetting of the land so as to make it unsuitable for the Works to be carried out, provided that this regulation shall not apply where the Developer is required to work on stone or other similar material (including inter alia roads, access tracks and compounds).

- 3.2.2 Works that have been suspended or not commenced under paragraph 6.2.1 may be carried out only with consultation having taken place with the Soil Expert and the landowner/occupier. The Soil Expert may suggest the conditions necessary before works start again.
- 3.2.3 Soil will be stored and managed in accordance with DEFRA Construction Code of Practice for Sustainable Use of Soils on Construction Sites (Ref PB1328) or the latest relevant available guidance.
- 3.2.4 The Developer shall as far as reasonably practicable reinstate and put back subsoil and top soil into the same condition as it was in prior to its opening or breaking up for the purpose of carrying out the Works but shall not be obliged to reinstate the soil into any better condition than as evidenced by the Schedule of Condition and the Pre-Construction Soil Survey.
- 3.2.5 The Developer shall procure that any topsoil stripped from agricultural land shall be preserved and stored in a bund.
- 3.2.6 Any damaged topsoil will be replaced with topsoil of equivalent grade (The Developer shall use reasonable endeavours to procure is free of contamination or disease).
- 3.2.7 The subsoil will be stored in a separate bund to the topsoil.
- 3.2.8 If required in accordance with Environment Agency Guidelines, the Developer shall install around each relevant bund entrenched vertical entrapment fences (also known as silt fences) provided that even if it is not required in accordance with Environment Agency Guidelines, the Developer may still choose (but shall not be obliged) to install the same.
- 3.2.9 If requested by the Landowner/occupier each topsoil bund that has been in situ for more than 6 (six) months shall be seeded with a rapid-growing grass mix to minimise erosion.
- 3.2.10 The Soil Expert shall carry out an assessment to consider where water may pond on subsoil in the stripped working area and, where appropriate, shall determine (such determination to be binding on both parties) means to drain this water away through the bund;
- 3.2.11 The Developer shall procure the control of weed growth on the topsoil and subsoil bunds (and otherwise on the Construction Strip) before the weeds flower, where necessary hand roguing wild oats or black grass and taking precautions not to allow weed spray to drift onto adjoining crops adjacent to the Construction Strip.
- 3.2.12 The subsoil from agricultural land shall be loosened (by appropriate sub-soiling) before any top soil is returned.

### **3.3 Restoration and Soil Aftercare**

- 3.3.1 Restoration of agricultural land and aftercare: Where land is to be restored to agriculture the main works contractor shall liaise with the landowner / occupier, through the ALO, and set out the detail for restoration on each specific area of farmland. The land restoration will proceed with full consultation between the

landowner/occupier and the main works contractor including inspection of works where applicable and in accordance with requisite site health and safety procedures.

- 3.3.2 Where land is to be used temporarily and returned to the landowner/occupier, the ALO will carry out the following:
- a) liaise with the landowner on the working methods and the detail for restoration of each specific land parcel and the restoration of the soil shall be assessed against the baseline schedule of soil condition (pre-construction soil statement);
  - b) the schedule of aftercare maintenance is to include soil testing, appropriate to the target specification for a period of up to five years following completion of the relevant construction work.
  - c) undertake site inspections during construction to monitor working practices and compliance of the contractors with their obligations to landowners and occupiers under the OEMP;
  - d) liaise with the landowner/occupier on the reinstatement measures following completion of the works;
  - e) During the aftercare period, there will be annual monitoring of physical soil characteristics and soil nutrient levels to set aftercare management requirements for the following year. Undertake inspections of restored agricultural land with the landowner/occupier and the Developer's soil expert to assess the progress of the restoration;
  - f) coordinate the appropriate remedial actions or compensation agreed within the parameters of the compensation code and/or any previous agreements made at the time of acceptance of the initial restoration works and handover to the landowner/occupier.
- 3.3.3 The land will be handed back to the landowner/occupier at the earliest opportunity once the restored land is in a suitable condition to be returned to its former use.
- 3.3.4 The landowner shall approve and agree the reinstatement works before and after soil replacement. A final report to determine the final handover condition of the agricultural soil will be produced.

**Annex 4: Irrigation**

4.1 Details of the irrigation system on each land holding, where relevant, will be gathered during the detailed design stage and irrigation plans will be developed. The Agricultural Liaison Officer (ALO) will be responsible for consulting with each individual landowner to obtain the relevant information and to be a point of contact to report concerns regarding irrigation systems during construction. The plans will include the following information:

- Location of boreholes and water supplies used by each farmer;
- Irrigation or impoundment licence granted by the EA; and
- System of irrigation applied and the location of irrigation network for each field.

**Annex 5: Agricultural Liaison Officer**

- 5.1 The ALO will be appointed by the Developer prior to the commencement of the Works and will be the prime contact for ongoing engagement about practical matters with the Landowner, the Occupier (if applicable) and their respective agents before and during the construction process. The Developer shall be permitted to appoint more than one ALO if required.
- 5.2 The ALO (or their company) will be contactable between 7am and 7pm during the construction phase of the Works by and with the Landowner, the Occupier (if applicable) and their respective agents and will provide 24-hour team or company contact details for use in the event of emergency.
- 5.3 The ALO will have relevant experience of working with landowners and agricultural businesses and will have knowledge of the compulsory acquisition process (if required) and working on a linear infrastructure project.
- 5.4 The ALO will remain appointed for up to one year after completion of the Works in order to manage remediation issues.
- 5.5 The role of the ALO will involve having responsibility for liaising with the Landowner, the Occupier (if applicable) and their respective agents in respect of the following:
  - 5.5.1 The ALO will be responsible for coordinating the provision of the Schedule of Condition and Pre-Construction Soil Survey.
  - 5.5.2 The ALO will also undertake pre-construction liaison with affected parties to minimise disruption, where possible, to existing farming regimes and timings of activities (which will include endeavouring to keep the Landowner informed at least 3 months in advance (where practicable) of the Developer's intention to take entry in order to commence the Works);
  - 5.5.3 Provide preconstruction survey information to landowners including company name, survey type and equipment to be used, an estimate of how long the surveys are expected to take and where surveys are to take place on land outside of the Order limits, an explanation of why such land is required;
  - 5.5.4 coordinating drainage surveys and sharing pre and post construction drainage schemes with the Landowner or Occupier (if applicable) in advance for their consideration;
  - 5.5.5 coordinating water supply statements;

- 5.5.6 ensuring the Landowner and the Occupier (if applicable) are consulted in respect of requirements to field entrances and accesses across the Works to landlocked and severed land parcels;
- 5.5.7 Liaise with owner/occupiers regarding:
  - (a) measures to be implemented to maintain livestock water supplies which may be affected due to construction works;
  - (b) fencing requirements both during and post-construction;
- 5.5.8 Liaise with landowners prior to any proposed discharges to existing drains if any such discharge is necessary;
- 5.5.9 discussing the location, grouping, and marking of Inspection Chambers with the Landowner and the Occupier (if applicable);
- 5.5.10 advising on risks relating to the translocation of soil diseases, where necessary, and ensuring appropriate protective provisions are implemented;
- 5.5.11 Liaise with affected landowners/occupiers about activities which may affect their land/business prior to public release of information about those activities;
- 5.5.12 Liaise with the affected landowners/occupiers regarding balancing pond locations;
- 5.5.13 Liaise with the affected landowners/occupiers regarding gate design where agricultural access is required;
- 5.5.14 Liaise with private water abstractors should any pollution incidents occur which may impact on private water supplies;
- 5.5.15 arranging quarterly meetings with the Landowner, the Occupier (if applicable) or their respective agent representatives;
- 5.5.16 Undertake pre-construction and day-to-day discussions with affected owner/occupiers to minimise disruption, where possible, to existing farming regimes and timings of activities;
- 5.5.17 Undertake site inspections during construction to monitor working practices and compliance of the contractor/s with their obligations to owner/occupiers under this OEMP;

- 5.5.18 discussing and agreeing reinstatement measures following completion of the Works.

