

Written summaries of oral representations made at Issue Specific Hearing 3 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 (**SCDC**) (together, the **Cambridgeshire Councils**) at the Issue Specific Hearing on 24 September 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 September 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, 6, 7 and 8 of the Agenda.

2. Written summary of the Cambridgeshire Councils' oral submissions

3. Biodiversity matters, including HRA	
b. Implications if Likely Significant Effects cannot be excluded	
c. Information and timescales for the provision of information necessary for an Appropriate Assessment to be made (if required)	
Agenda item	Cambridgeshire Councils' submission
	In response to discussions on the potential need for an Appropriate Assessment to be carried out, and the mitigation that may be considered, Francis Tyrrell, Pinsent Masons LLP for the Cambridgeshire Councils drew attention to the Cambridgeshire Councils' Written Representation [REP1-048], paragraph 7.15, where the Cambridgeshire Councils' position on mitigation in relation to bats is set out. Mr Tyrrell noted that the Cambridgeshire Councils would like to be involved in discussions about mitigation measures if the analysis were to move through the screening stage onto the

	<p>following stage of the appropriate assessment to determine whether there is an adverse effect on integrity.</p> <p>Mr Tyrrell queried whether the Applicant's view is that the reporting on the surveys and on the conclusion of likely significant effects would be delayed if discussions with key stakeholders were necessary as to mitigation measures.</p> <p>Scott Lyness QC, for the Applicant, responded that it would depend what the survey results say. If the survey results, in combination with the mitigation already proposed for the Scheme, show that there would not be any adverse effect on integrity of the SAC, then it is possible that the Appropriate Assessment can be prepared for Deadline 6. If, however, further discussions are necessary on mitigation measures, then it would be prudent to programme in some time for those discussions and so the Applicant would aim to submit the Appropriate Assessment for Deadline 8.</p> <p>In response, Mr Tyrrell asked for clarification on whether the Applicant will be reporting on whether there is a likely significant effect once the surveys have been conducted and therefore whether the Applicant will be proceeding to the Appropriate Assessment stage. It was noted that Mr Lyness confirmed on behalf of the Applicant that the position could be made known to the relevant parties in advance of the submission of the written reports.</p> <p>Mr Tyrrell noted it would be helpful to Natural England and to the Cambridgeshire Councils to know whether they need to be in discussion in relation to mitigation measures with the Applicant to avoid an adverse effect on integrity of the SAC or whether the Applicant is content, following the surveys, that likely significant effects can be ruled out.</p> <p>The ExA noted that the surveys are being undertaken within the course of the Examination and therefore there is a limited timescale and restrictions and constraints.</p> <p>Mr Lyness confirmed that the Applicant would make the Cambridgeshire Councils aware of the results of the surveys and the Applicant's position in relation to the HRA as part of the general discussions taking place between the Applicant and the Cambridgeshire Councils.</p>
<p>5. Heritage matters, including the effects on listed buildings, on archaeological remains and on the setting of heritage assets</p>	
<p>e. Views on the Archaeological Mitigation Strategy (AMS) [APP-238]</p>	

Mr Lyness for the Applicant confirmed that the comments made by all of the local authorities had been taken on board and that the Applicant would provide an updated AMS at Deadline 3.

Mr Tyrrell welcomed the submission of the updated AMS and queried whether this would address the question of sites and the categorisation of sites since this was a matter of concern for the Cambridgeshire Councils.

Helen McLean for the Applicant confirmed that discussions are still ongoing between the Applicant and the local authorities. The Applicant is confident that the design meets the aims of the mitigation strategy which are primarily to add to existing knowledge in line with public benefit. Ms McLean noted that there are a number of areas where extensions to the AMS have been requested. Based on the results of the excavations, the geophysical survey and the aerial photographic information, the Applicant does not believe that there is justification for these requests. For example, site 32 in field 94 where CCC have requested an extension to the mitigation area to the east and the south. The trenches in those areas were completely blank of archaeological remains and there is nothing on the geophysical survey in those locations. There will be further information in the Applicant's response to the Cambridgeshire Councils' local impact report [**REP2-003**] on individual mitigation areas.

Kasia Gdaniec on behalf of the Cambridgeshire Councils welcomed the move to update the AMS [**APP-238**] to one that better aligns with the local authorities' Joint Archaeology Design Brief. This is the primary document that sets out local standards and requirements and the Cambridgeshire Councils expect all developments to comply with those. The Joint Archaeology Design Brief contains proportionate strategies to ensure that a good level of understanding of sites is documented before the sites are lost. This is particularly important in relation to National Networks National Policy Statement (**NN NPS**) policies 139 and 140 which contain the requirement to record sites and ensure that they are properly understood before they are destroyed. The sites in question are expected to experience major adverse harm and the Cambridgeshire Councils would expect to have further discussions with the Applicant in order to agree excavation areas in line with the Cambridgeshire Councils local requirements. The Cambridgeshire Councils disagree with the Applicant's assessment that some sites can be lost because they are not likely to provide further knowledge gain. The data gathered has been good but does not justify the total loss of these sites as there needs to be more detailed understanding of the

	<p>grain of some of the pioneering Iron Age sites on the clays.</p>
<p>6. Land-use, including loss of BMV agricultural land</p>	
<p>a. Details of the excavated materials to be taken from the Borrow Pits and the materials to replace them, together with their future status relative to the Proposed Development</p>	
	<p>Roy Romans for Bedford Borough Council commented that the Applicant’s proposal for restoration has not been as clear as it could have been. The aim for restoration should be clear from the outset so that the impacts can be assessed. This would be the expectation for a minerals application.</p> <p>Mr Tyrrell agreed with Bedford Borough Council that there is a need to be clear as to how the borrow pits will be restored. Mr Tyrrell stated that there is a clear process set out in policy 19 of the Cambridgeshire and Peterborough Minerals and Waste Local Plan (MWLP), as set out in section 13 of the Cambridgeshire Councils’ Written Representations [REP1-048] and reiterated in the response the Cambridgeshire Councils gave to Written Question 1.6.2 [REP1-051]. Mr Tyrrell noted that Bedford Borough Council would likely have a similar policy in terms of restoration where, if the site is to be restored to agricultural use, it should be the best agricultural use possible. Mr Tyrrell also noted that the restoration of the borrow pits should have regard to biodiversity requirements, as set out in the Cambridgeshire Councils Local Impact Report [REP2-003] and that it is possible to both restore the best agricultural use possible and do so in a way which delivers the best possible outcome from a biodiversity and landscape point of view. Mr Tyrrell emphasised that policy 19, which would apply for other applications, should apply to the application.</p> <p>Mr Tyrrell noted that it is not clear how restoration of the borrow pits would be carried out and how that would be secured. Mr Tyrrell noted that the First Iteration Environmental Management Plan [APP-234] and the Environmental Masterplan [APP-091] do not address the detail. Mr Tyrrell explained that the Cambridgeshire Councils have requested an amendment to draft Order to introduce a Requirement to align the restoration of the borrow pits with policy 19 of the MWLP.</p> <p>Matthew Breeze, on behalf of CCC, explained that following a meeting with the Applicant, the Applicant provided a borrow pits technical note which has not been submitted to the Examination. Mr Breeze noted that this technical note was very helpful and queried whether it might be possible for this to be submitted into the Examination. Mr Lyness for the Applicant responded by</p>

confirming that the Applicant would do so at Deadline 3.

Mr Tyrrell highlighted that Annex E of the First Iteration EMP [APP-234] is a methodology for soil restoration. Annex E notes at section 1.72 that the methodology applies to areas where soils are to be restored. Mr Tyrrell emphasised that nothing in that establishes the principle of how those borrow pits are to be restored or encapsulates the principle that, where land is to be restored to its agricultural use, it should be restored to the same or better agricultural land quality as it was pre-development. Mr Tyrrell also found nothing in the First Iteration EMP [APP-234] that considers biodiversity issues when restoring the borrow pits or similar and so the position is unclear. Annex E deals with soil restoration and not the wider questions and principles to be applied to the borrow pits.

The ExA queried whether the Cambridgeshire Councils would expect future iterations of the EMP to address these matters.

Mr Tyrrell explained the Cambridgeshire Councils are aware that it is the Applicant's position that borrow pit restoration is part of detailed design and will be developed as matters progress. Mr Tyrrell confirmed that the Cambridgeshire Councils' position is that this matter needs to be dealt with by Requirement and this has been proposed in the Cambridgeshire Councils' Written Representations [REP1-048]. As there is nothing on this issue contained in the First Iteration EMP [APP-234] and the second iteration EMP builds upon the first, Mr Tyrrell noted that the Cambridgeshire Councils do not have confidence that the second EMP would have this information in it. Under the Order, the second iteration EMP must be produced in accordance with the DMRB and substantially in accordance with the first iteration EMP.

Mr Breeze added that part of the issue stems from the overlooking of Policy 19. In a framework where there is detailed design yet to come, if it is based upon an Environmental Management Plan which is incomplete, the Cambridgeshire Councils would like to make sure that there are sufficient safeguards to make sure that policies, such as policy 19, which affect the outcome of restoration are adequately considered.

Lydia O'Hagan on behalf of the Church Commissioners for England strongly objected to the borrow pits being restored to provide biodiversity net gain and in the Church Commissioners' view, the land should be returned to agricultural use.

	<p>In response, Mr Tyrrell highlighted that, as set out in the Cambridgeshire Councils representations, it is possible to restore the land to agricultural use whilst having regard to biodiversity and invited Mr Breeze to comment further.</p> <p>Mr Breeze commented that within the Cambridgeshire Councils' submission, reference is made to the MWLP, adopted in 2021, which includes policies in relation to borrow pits and restoration (policy 7 and policy 19). These are local planning policies for development and are relevant to the consideration of the Scheme. Policy 19 is particularly relevant as it sets out that efforts should be made to make best beneficial after-use of land which might be through biodiversity net gain by way of hedgerows, for example, flood mitigation or green infrastructure. Until an assessment of that policy has been undertaken, which it has not been at this time, it is difficult to say what opportunities could be realised. The Cambridgeshire Councils hope to work with the landowners and the Applicant to see what the best outcome would be regarding the borrow pits.</p> <p>The matters relating to borrow pit restoration proposals are to be included in the relevant Statement of Common Ground to be submitted at Deadline 4.</p>
<p>7. Flood risk, including full evidence for the exception test</p>	
<p>c. Why have different climate change allowances been used for different connected watercourses – main rivers and ordinary watercourses? [APP-220]</p>	
	<p>Mr Tyrrell noted that the Cambridgeshire Councils understand the differences in the fluvial modelling and the different percentages that have been applied. As set out in the Cambridgeshire Councils Written Representation at paragraph 14.6.1 [REP1-048], the Cambridgeshire Councils believe that similar methodology, taking into account a worst case allowance, should be applied to test the drainage systems that have been proposed. This would be for the mitigation measures for drainage, overland catchments, ponds, culverts, drains, etc. It should also be assessed in the same way on the 100-year return period storm. The Applicant confirmed that this had been done.</p>
<p>8. Landscape effects, including with reference to designated character areas</p>	
<p>a. Screening of prominent structures and locations [APP-113] and [APP-114]</p>	

<p>i. New bridges, such as at Toseland and Little Barford</p>	<p>The ExA asked whether the agenda captured the matters of principal concern.</p> <p>Emma Lilley on behalf of the Cambridgeshire Councils identified that structures crossing the Ouse valley were also of concern and would require mitigation as well as some of the footpath bridges which have not been designed to any detail so are more difficult to assess. These items are listed at section 8.6 of the Cambridgeshire Councils' Written Representations [REP1-048].</p> <p>Jon Rooney for the Applicant explained that mitigation for bridges relates to the placement of structures in the landscape. Where possible, locations are selected on higher ground where the route is in cutting. In cases where the bridge crosses the route at grade, the Scheme has been extended so that tree and shrub planting can be provided.</p> <p>Mr Rooney referred to the Environmental Masterplan [APP-091] which provides substantial belts of trees and shrubs proposed on the embankments on the western side on the approach to the River Great Ouse. The viaduct has been designed as a structure that fits with the landscape and minimises the loss of existing vegetation. On the eastern side, there is an area of land between the River and the Great Barford Road where the Applicant proposes to take more land and reshape this to include species rich grassland and include belts of trees and shrubs to integrate the structure into the landscape setting.</p> <p>Mr Rooney explained that each bridge has been designed with the host landscape in mind and to make best use of opportunities for connecting habitats across the road.</p> <p>In response to Mr Rooney's comments, Ms Lilley explained that whilst there are some very good mitigation measures in place, the Cambridgeshire Councils remain of the view that the bridge at Toseland would benefit from additional screening along the existing A428 and the Toseland Road junction to help minimise effects on residential properties and Croxton Park. Similarly, for the viaduct over the River Great Ouse, to better embody the landscape character in which vegetation is present in stands and blocks, the red line boundary could be extended northwards to provide a more natural vegetation pattern. Moving the screening closer to residential receptors would have a greater mitigating effect than if the screening were immediately adjacent to the viaduct.</p>
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In response to comments made by Louise Staples on behalf of the National Farmers Union (NFU) that the NFU would not wish to see additional land taken to provide screening, Mr Tyrrell highlighted that the request from the Cambridgeshire Councils in relation to the Great Ouse viaduct, as set out in paragraph 8.6 of the Cambridgeshire Councils Written Representation **[REP1-048]** is the creation of additional vegetation along the Great Ouse corridor, and areas of land to the north and the west of the Great Ouse River. Mr Tyrrell referred to Sheet 3 of the Environmental Masterplan **[APP-091]** and that site is to be laid out as grassland. That grassland area could be treated differently with vegetation that would provide a greater screening effect. The Cambridgeshire Councils are not suggesting that vast swathes of forestry be planted on agricultural land.

Mr Rooney on behalf of the Applicant noted that screening is not always appropriate to fit the land in its context. In response, Mr Tyrrell highlighted that the relevant areas have local landscape character designations already applicable to them. In relation to this area, it is understood that the assessment applicable to the area has characterised it as being a semi-enclosed character with clusters of woodland characteristic of the landscape. That is the reasoning for the Cambridgeshire Councils' suggestion as it is in keeping with the existing character that there should be the screening that has been suggested.

Ms Lilley added that the Ouse Valley has quite an intimate character enclosed by stands of willow which is the nature of the Cambridgeshire Councils request in terms of mitigation. The Cambridgeshire Councils consider that the landform that will be introduced is alien to a low lying landscape which has a very organic pattern and the stands of woodland proposed would help to break up that linear appearance and integrate it better into the landscape as well as mitigate visual effects.

Mr Tyrrell highlighted that, in relation to Toseland, the Cambridgeshire Councils' position is set out at paragraph 8.6.2 of the Cambridgeshire Councils' Written Representation **[REP1-048]**. The specific proposal in relation to Toseland is that there are several locations where there are additional stretches of woodland and tree planting within already proposed native hedgerows could help to better integrate the new features into the landscape and to help in the aims of the Huntingdonshire Landscape Character Assessment. This would be within the existing remit of the Scheme.

<p>ii. New embankments, such as to the North of Tempsford</p>	<p>Ms Lilley commented that, with regard to some of the embankments, the Cambridgeshire Councils have noted that in several locations, there are embankments which have no planting proposed at all; the proposal being to leave the ground bare for it to be populated by self-seeding vegetation. The Cambridgeshire Councils have some concerns about the quality of the vegetation that might populate that area. It is likely to be opportunistic species rather than any specialised local species which would be much more desirable in terms of landscape character. The Cambridgeshire Councils would like a more sympathetic planting scheme in those locations. Ms Lilley referred to Sheet 16 of the Environmental Masterplan [APP-091], where there is an embankment to the east of St. Neots which has an existing footpath which needs to be retained. This is one location where there is bare ground proposed on the embankments. Mr Rooney clarified that it is not the Applicant's intention to leave large bare areas of ground but this would be small patches to allow colonisation and this area would be planted with species rich grassland.</p> <p>Mr Tyrrell queried whether it is intended that all embankments will be planted only to grassland or whether other mixes may be used and, if so, where. Paragraph 1.10.3 on page 126 of the First Iteration EMP [APP-234] refers to amenity grassland on embankments and paragraph 1.10.7 refers to open grassland.</p> <p>Mr Tyrrell noted that these are items that can be discussed and honed down in the Statement of Common Ground between the parties and it is hoped that a conclusion can be reached.</p>
<p>iii. New interchanges, such as at Eltisley and the three Grade-Separated Junctions</p>	<p>Mr Tyrrell confirmed that the Cambridgeshire Councils had no further specific points to make on this matter.</p>
	<p>The ExA requested clarification in relation to the species mix for the proposed planting.</p> <p>Mr Rooney explained that the Cambridgeshire Councils commented on a previous iteration of the planting mix and not the First Iteration Environmental Management Plan [APP-234].</p> <p>Ms Lilley responded by explaining that the Cambridgeshire Councils had noted several changes to the proposed planting mix at section 8 of the Cambridgeshire Councils' Written Representation [REP1-048]. These include grasses, tree mixes and wetlands. One of the Cambridgeshire Councils' key issues is that less amenity grass would be preferred and much more</p>

species rich grassland, both for biodiversity and landscape. It is considered that amenity grassland should only be located in hard to mow places and otherwise the proposal should be for species rich grassland.

In response to Mr Rooney's comments, Mr Tyrrell noted that the Cambridgeshire Councils do refer to APP-234. Mr Rooney noted that this matter would be clarified at Deadline 3.

In response to a related question on the biodiversity value of planting compositions, veteran trees and linear biodiversity, Mr Tyrrell noted that in the Cambridgeshire Councils' Written Representation [REP1-048], in addition to the planting commentary at section 8 in terms of landscape, there is also commentary on suitable planting at section 7 of the Written Representation [REP1-048] in relation to biodiversity where the issues about elm and climate change were raised. Mr Tyrrell suggested that these issues are considered further at a later date pending the Applicant's response at Deadline 3.