

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.31 Applicant response to actions arising from Compulsory
Acquisition Hearing 1

Planning Act 2008

Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules
2010

October 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning (Examination
Procedure) Rules 2010**

**A428 Black Cat to Caxton Gibbet
improvements**
Development Consent Order 202[]

**9.31 Applicant response to actions arising from
Compulsory Acquisition Hearing 1**

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1 Applicant Response to actions arising from Compulsory Acquisition Hearing 1

- 1.1.1 Following the Compulsory Acquisition Hearing 1 (CAH1) which was held on Wednesday 22 September 2021 the Examining Authority (ExA) published a list of actions arising from the CAH1 on 27 September 2021 which required a response or update at Deadline 3.
- 1.1.2 Of the actions identified a number were identified for the Applicant whilst others were directed to other interested parties.
- 1.1.3 The following table sets out only those actions directed to the Applicant and the Applicant’s corresponding response. In some instances, as noted within the table, further discussions will take place with relevant parties after Deadline 3 and the Applicant will update the ExA at subsequent deadlines as appropriate.

Table 1-1 Applicant responses to actions arising from Compulsory Acquisition Hearing 1

Action No.	Action	Party	Response at Deadline 3
1	Provide a note to set out how the costing of the Proposed Development was weighted in comparison to Compulsory Acquisition (CA) needs, in particular how did the Applicant balance and prioritise costing and CA needs in comparison to one another.	Applicant	<p>NH’s recommended preferred route assessment and decision was based on all elements of the business case. These are:</p> <ul style="list-style-type: none"> • Achievement of the scheme’s Strategic objectives • Contribution to HE’s Key Performance indicators • Economics – Benefits Cost ratio • Financial consideration – scheme costs • Commercial and Procurement considerations • Benefits Consideration • Risk Analysis • Environmental Considerations <p>All points are weighted equally, with the amount of land required for the scheme and the associated costs considered within the economic analysis. Greater land take would naturally</p>

Action No.	Action	Party	Response at Deadline 3
			<p>increase lands costs and reduce the Benefits Cost ratio (BCR). National Highways seeks to deliver schemes with a positive BCR.</p> <p>The selected route option had the best performing BCR in comparison to the other two options as well as generating the best net present value by a margin of nearly £100m, Furthermore, it is considered to have less impact on the environment by following an existing corridor, has a better fit with emerging local and regional planning aspirations and received the greatest public support at non-statutory public consultation.</p> <p>The decision for the Black Cat Junction was again equally weighted. Within the Economic case there is little distinguishing difference between the junction options appraised. When additional factors are considered such as buildability, how the new junction would appear and be used by the travelling public, impacts on land take and environment then Option C, the chosen option, is the most favourable junction solution.</p> <p>Scheme costs estimates are produced at the route options stage and are therefore not a factor in the early stages of scheme development.</p>
4	The process for Temporary Possession (TP) and CA, starting from the point when consent is granted (if consent is granted), detailed design, not acquiring any land that may not be required after detailed design, and the return of compulsorily acquired land if it is not needed.	Applicant	Refer to Appendix A of this document for response to Action Point 4.

Action No.	Action	Party	Response at Deadline 3
5	Joint Position Statement regarding the requirements for bridge to Top Farm, including dimensions and future proofing requirements; and the Applicant's response to the requirements, clearly identifying areas of continued disagreement.	Representative for Little Barford Estate and Applicant	Please see document [TR010044/EXAM/9.40] , submitted at Deadline 3.
6	To consider if the CA of Plot 14/16a by Caxton Gibbet requires further justification in the Statement of Reasons, in light of the representation from the Affected Person.	Applicant	<p>Refer to response to RR-027c in the Applicant's Response to Relevant Representations [REP1-021] where the Applicant sets out the following: 'The Applicant however maintains the position that all land within Plot 14/16a, including the borrow pit land should remain in the Order as Permanent Acquisition, due to the nature of the works proposed on the land and the extent to which it will be materially altered. To impose material changes on a landowner through temporary possession powers and expect the land to be returned to the landowner in a materially changed condition would not be acceptable, therefore permanent acquisition is required.</p> <p>Furthermore, although the land will be materially altered by extraction, the Applicant does not consider that it will be constructing permanent works on this land, so it would be required to reinstate under the current provisions for temporary possession included in the DCO if relied upon. This requirement would be incompatible with the intended use of the land and the extent to which it will be materially altered.</p>
7	a) To provide an update letter to explore if the CA and TP negotiations can move at pace, such as by supplementing the use of the District Valuer's office.	Applicant	<p>Refer to Appendix B of this document for response to Action Point 7a.</p> <p>In connection with Action Point 7b, the Applicant will be providing an updated</p>

Action No.	Action	Party	Response at Deadline 3
	b) To also provide an update on the negotiations on all plots (without diverting resources from the ongoing tasks).		Compulsory Acquisition Objections Schedule (CAOS) at Deadline 4 that will contain the details of all freeholders contained within the Book of Reference [APP-032] along with an update on negotiations and objections raised through any submitted Relevant Representations and written Representations.
8	To provide a written update on discussions with East West Rail (EWR) scheme, in light of the written submission expected from EWR.	Applicant	Further to the update provided to the Examining Authority by the Applicant during the Compulsory Acquisition Hearing on 20 September 2021, the Applicant and EWR Co have prepared this joint statement for submission at Deadline 3. Discussions between the parties as to protective provisions and a side agreement are ongoing, with drafts to be provided by EWR Co's Legal Team for the Applicant's consideration shortly. As such, it is anticipated that discussions on this point will continue and full update will be provided to the Examination at Deadline 4.
9	Report issues with ongoing negotiations with specific reasons and location (with reference to plots numbers in the Land Plans).	National Farmers Union, all Parties	The Applicant will update the position on outstanding negotiations and objections through the CAOS at deadline 4.
10	To provide an update on the possibility and process of landscape hand-back and mitigation management agreements.	Applicant	Upon further review it has been established that any disposal of essential mitigation land would expose the Applicant to potential criminal sanction for breach of the terms of the DCO if the landowner failed to maintain the mitigation area. That consent would in part be granted on the basis of the Applicant's provision of essential mitigation. National Highways's only remedy would be to seek to enforce the covenant against the landowners in the civil courts. There is thus

Action No.	Action	Party	Response at Deadline 3
			an 'imbalance of consequence' where the Applicant faces greater jeopardy than the wrongdoer. The Applicant therefore considers this an unreasonable risk. Mitigation management agreements are therefore not proposed.

Appendix A: Response to Action Point 4

CAH1 Hearing Action Point 4

The process for Temporary Possession (TP) and CA, starts from the point when consent is granted (if consent is granted), detailed design, not acquiring any land that may not be required after detailed design, and the return of compulsorily acquired land if it is not needed.

Response

- 1.1.4 Land will be acquired for the A428 Black Cat to Caxton Gibbet scheme using General Vesting Declarations (GVDs).
- 1.1.5 Land was also acquired on the A14 using GVDs, but the land for that scheme was acquired before detailed design was complete and based on the DCO Land Plans. This meant that more land than was ultimately necessary for the scheme was acquired. As the land was acquired by GVD the title to this land was transferred to the Acquiring Authority and is now subject to disposal under the Crichel Down rules.
- 1.1.6 The Applicant has learnt lessons from the A14 scheme to help avoid acquiring any land that is not required for the construction of the project. Unlike the A14, at the time the GVD notices are served on individual landowners affected by the A428 Black Cat to Caxton Gibbet Improvement scheme, the scheme detailed design will be complete, and so only land that is required for the scheme should be acquired.
- 1.1.7 The Applicant will therefore not be in the position of having long strips of surplus land that will need to be disposed of once construction is completed.
- 1.1.8 Inevitably there may be some areas of land that once construction is complete will be declared surplus to requirements and these areas of land will be offered back to the former owner under the Crichel Down rules, as per government policy. If the former owner is not interested in acquiring the land back from National Highways it will be offered for sale on the open market. This part of the process is managed by the Applicant's Estates team and takes place once construction is completed.

Appendix B: Response to Action Point 7(a)

CAH1 Hearing Action Point 7(a)

To provide an update letter to explore if the CA and TP negotiations can move at pace, such as by supplementing the use of the District Valuer's office.

Response

1.1.9 This is the Applicant's response to Action number 7 of the actions arising from Compulsory Acquisition Hearing 1 held on Wednesday 22 September 2021.

'National Highways contracts with District Valuer Services (a trading arm of the Valuation Office Agency) for the supply of a full valuation service tailored to the needs of the Applicant. Under that contract, all property valuation work must be instructed to DVS and the Applicant has no ability to contract additional valuation services (within the scope of that contract) outside of the terms of that arrangement. Resource levels and supplier performance are under constant review and the Applicant has confidence that, overall, DVS has sufficient capacity to meet the demands it puts on the contracted services. However, both the Applicant and DVS recognise that there will be times when the Applicant will need to seek additional resource from DVS to meet spikes in demand for valuation input or to meet longer-term challenges. DVS is uniquely placed to respond to those demands not only because it has the single largest complement of compulsory acquisition valuers in England but also because it can draw on the wider resource base of the Valuation Office Agency.

Given the need to meet the requirements of the A428 Black Cat to Caxton Gibbet Improvement scheme to actively engage with affected landowners and to progress negotiations for early purchase, Heads of Terms, Option agreements etc as quickly as possible, the Applicant has requested additional resource from DVS and received formal confirmation that the DVS team was augmented on Monday 4 October by a specialist agricultural Valuer and that a fully qualified surveyor will join shortly thereafter. Additionally, DVS will deploy a number of graduate surveyors to assist the existing lead valuers for this scheme.'

The DVS will also continue to work alongside representatives of Ardent Management on land referencing and DCO preparation as well as Aecom and Skanska on matters relating to design, to assist in concluding negotiations wherever possible.