

A428 Black Cat to Caxton Gibbet improvements

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9.34 Written submission of oral case for Compulsory
Acquisition Hearing on 22 September 2021

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure)
Rules 2010

October 2021

Infrastructure Planning

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(Examination Procedure) Rules 2010**

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

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1 Introduction

- 1.1.1 This document summarises the case put forward by National Highways (the Applicant), at the Compulsory Acquisition Hearing which took place via MS Teams on 22 September 2021.
- 1.1.2 Scott Lyness QC of Landmark Chambers represented the Applicant and was assisted by experts at National Highways, AECOM, Ardent, Skanska and Womble Bond Dickinson.
- a. Jonathan Bower (Womble Bond Dickinson) represented the Applicant on:
 - i. The Applicant's strategic case for compulsory acquisition and temporary possession.
 - ii. Affected Persons' Site Specific Representations.
 - iii. The Applicant's update on the compulsory Acquisition Schedule.
 - iv. The Applicant's update on the Statutory Undertakers Progress Schedule.
 - v. The Draft Development Consent Order.
 - vi. Crown Land.
 - vii. National Trust Land and Special Category Land.
 - viii. Human Rights and Public Sector Equality Duty.
 - b. Ted Doherty (AECOM) represented the Applicant on affected persons and statutory undertakers.
 - c. Peter Gibbard (Ardent) represented the Applicant on affected persons and statutory undertakers.
 - d. Julian See (Skanska) represented the Applicant on affected persons and statutory undertakers although was not called upon to speak.
 - e. Terri Harrington (National Highways) represented the Applicant on funding.
- 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 Compulsory Acquisition 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 Compulsory Acquisition Hearing

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 3 – Applicant’s strategic case for CA and TP		
a.	<p>Purposes for which the CA and TP powers are sought comply with s122(2) of PA 2008</p>	<p>The Applicant referred to four principal documents that they would have regard to which were the statement of reasons [APP-030], the book of reference [APP-032], the draft DCO [APP-025] and the case for the Scheme [APP-240]. The Applicant stated that a lot of the information which was being referred to is within the statement of reasons but that they would briefly summarise the legal tests within s122 of the Planning Act 2008.</p> <p>The Applicant explained that the principle aspect of s122 is that the land is required for the development and that there must be a compelling case in the public interest for the inclusion of those powers of compulsory acquisition ("CA"). The Applicant set out that the application seeks to acquire the minimum land necessary in order to construct, operate, maintain and mitigate the Scheme and therefore as a result it was submitted that the Applicant is in compliance with and is proportionate to the Scheme objectives. It was added that the objectives for the Scheme are set out in the case for the Scheme and related to connectivity, cutting congestion and increasing capacity and journey time reliability between Milton Keynes and Cambridge, by providing a free flowing network.</p> <p>The Applicant added that in terms of improving safety this includes the safety of junctions, side roads and private accesses by removing existing side road junctions and private accesses onto the carriageway. The Applicant also mentioned economic growth and how the project will enable growth by improving connections between people and jobs as well as environmental improvements by way of a beneficial impact on the air quality and noise levels in the surrounding area. Accessibility ensuring safety of cyclists, walker and horse riders was also mentioned alongside the importance of customer satisfaction to deliver a better road for everyone as Scheme objectives.</p> <p>It was submitted by the Applicant that the basis of the design to date has been to seek to acquire the minimum land necessary in order to minimise the effects on landowners.</p> <p>In terms of the purpose for delivering the Scheme, the Applicant referred to paragraph 2.2 of the National Networks National Policy Statement ("NNNPS") which states that there is a critical need to improve national networks to address road congestion and the importance of providing safe expeditious and</p>

Item	ExA Question/Context for discussion	Applicant's Response
		<p>resilient networks that better support social and economic activity and provide a network that is capable of stimulating and supporting economic growth.</p> <p>The Applicant explained that insofar as there may be any interface with East West Rail in respect of connectivity this is subject to further discussions between the Applicant and East West Rail but the principal purpose of the Applicant's Scheme is to deliver road improvement. The Applicant did not consider it necessary to revise their statement of reasons due to East West Rail connectivity due to this being a standalone Scheme.</p>
b.	<p>Consideration given to all reasonable alternatives to CA and TP.</p>	<p>The Applicant submitted that a Scheme of this size will inevitably involve CA and that it is always the Applicant's objective to seek to acquire as much of the land as it can by agreement. The Applicant added that in terms of designing the Scheme and the extent of land to be acquired, the Applicant did consider alternatives and modifications to the Scheme to minimise potential land intake and that this was an iterative process as part of the consultation prior to the application being made. It was added that modifications of the Scheme were consulted on and that the preferred route has been chosen based on a thorough consideration of the relevant issues.</p> <p>The Applicant added that none of the alternatives or modifications to the project route would obviate the need for CA and temporary possession of land. It was further explained that the assessment of the project route demonstrated that the current route presented the best value for money and had the least impact on the environment and provided the greatest economic return to the other options put forward.</p> <p>Paragraph 2.5 of the statement of reasons was provided as a reference which set out some of the route changes proposed.</p> <p>The Applicant response in terms of costing was that a costing exercise was undertaken to understand the cost implications on both the delivery of the Scheme and also the cost for acquisition of land interests. It was added by the Applicant that whilst those compensation costs are commercially sensitive those factors were weighed in the balance as part of the overall consideration for the Scheme and the costing process formed part of the route selection process.</p> <p>The Applicant agreed to providing further information on the costing exercise that was undertaken in comparison to compulsory acquisition.</p>

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c.	Summary of reasons why the CA and TP rights to be acquired, are necessary and proportionate.	<p>The Applicant submitted that they were satisfied that all of the land subject to CA and TP is necessary and the extent of the land sought is reasonable and proportionate. The Applicant explained that what has been sought is powers of CA or in some instances right of use, in respect of plots or land required for the Scheme even where the Applicant already holds an interest in the land. It was added that this approach has been taken to ensure that the Applicant has the right to acquire the interest it needs in all of the land e.g. subsoil.</p> <p>The Applicant confirmed that, as previously outlined, they have sought to acquire the minimum amount of land and to achieve a balance between minimising land take and securing sufficient land necessary to deliver the Scheme (albeit detailed design of the Scheme is yet to be finalised).</p> <p>The Applicant added that the limits of the land have been drawn as tightly as possible and the Applicant would only seek to acquire that part of the land that is actually required.</p>
d.	<p>Having regard to section 122(3) of the PA 2008, whether there is a compelling case in the public interest for the CA in relation to:</p> <p>i. The need in the public interest for the project to be carried out.</p>	<p>The Applicant referred to paragraph [5.4] of the statement of reasons and submitted that they consider that there is a compelling case in the public interest for the Scheme to be delivered and referenced the NNNPS previously mentioned. The Applicant stated that the way in which the strategic objectives of the Scheme are aligned with this NNNPS is set out in [APP240]. The Applicant added that this clearly demonstrates from the Applicant's perspective that there would be substantial public benefits from the implementation of the Scheme.</p> <p>The Applicant's view was that there is a compelling case in the public interest for the CA powers sought and that the Applicant is satisfied that section 122(3) of the PA is met such that there is a compelling case in the public interested for CA.</p>
	ii. The private loss to those affected by compulsory acquisition	This was considered later in the hearing.

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 4 & 5 – Affected Persons’ Site Specific Representations		
a.	C. Croft & Sons of Little Birchfield Farm	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
b.	Richard Baes and Janet Must	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
c.	Mrs Diane Sharman and H G Sharman & Son	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
d.	Buchanans of Dove House Farm, Wyboston	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
e.	Woodthorpe Hall Garden Centres Limited	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
f.	Travelodge Hotels Ltd	<p>The Applicant provided an update that negotiations are ongoing with Travelodge and are being undertaken by the district valuer on behalf of the Applicant and they will continue to engage as far as possible on this matter. The Applicant did not have a specific response to raise in terms of the prospect of relocation of the facility which was raised by Travelodge but Travelodge now appeared to accept that relocation was not an option and it was now a matter of compensation.</p> <p>The Applicant confirmed they would feedback to the district valuer the points raised on behalf of Travelodge and that the Applicant would seek to acquire the land by agreement and that this does require a claimant to put forward their claim for compensation as an affected party providing a valuation.</p>
g.	Welcome Break Services Ltd	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.

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h.	Bedford Borough Council	The Applicant responded to the Council's concerns re the development of the land by way of adding that they are willing to engage and will update the district valuer who is taking part in these negotiations as to the comments made. The Applicant added that there is clear willingness on both sides to discuss and to try to reach agreement.
i.	J & J W Lammie	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
j.	W A Infield & Sons	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
k.	The Executors of N A Alington	<p>The Applicant requested further clarification on the experience the executors raised in terms of the land within the A14 Scheme and whether the experience related to land which was subject to permanent or temporary acquisition.</p> <p>The Applicant stated that for this Scheme they would seek to only acquire the minimum amount of land that is required to deliver the Scheme on a permanent basis. The Applicant added that they are not in a position to respond on the situation with the A14; but stated that before the Applicant offers any surplus land to the open market they first have to offer the land to the former owner. It was further explained that there is a set process whereby the former owner has to be given a right to acquire the interest under Crichel Down. The Applicant added that they are looking to progress the detailed design earlier than under normal circumstances which should provide greater certainty over the required land and help to mitigate the issues identified.</p> <p>The Applicant stated that in terms of the detailed design stage there is the potential and hope that agreement is reached between the parties for acquisition by agreement; and in those circumstances the extent of the land which is subject to the exercise of any option would set out the extend of land which is required for the delivery of the Scheme. It was submitted that, on the exercise of CA powers, the extent of the land would be set out once construction has been undertaken.</p> <p>The Applicant added that their understanding of the detailed design process is that if land is deemed not required that they will fundamentally not take it through the process. The Applicant added that the land being taken is the minimum for the Scheme subject to allowances for limited deviation and required</p>

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		<p>landscape mitigation. The Applicant could not respond on the opportunity for areas of landscape to be returned and offered to consider this further.</p> <p>The Applicant explained that they have been engaging with the executors for some time on the design and structure of the bridge and cross section and requested that the executor be specific on the exact cross section width they were asking for. The Applicant's immediate view on the width proposed by the executor was that DMRB is the design standard and 7.3m is in excess of what would be needed. It was added that the Applicant felt they had implemented appropriate measures to deal with the impact of the access track mentioned by the executors and had included these within the detailed design drawings (general arrangement plans). The Applicant stated that they are currently reviewing the justifications for this width and would defer any further responses on their position subject to the review of this and would continue discussions with the executor.</p> <p>The Applicant added that a position statement had been provided to key landowners who have raised representations on Friday of last week and the Applicant had invited various meetings to take place within the coming weeks to discuss these points.</p>
l.	Eynesbury Plant Hire	This agenda item was not covered within the hearing as the Affected Person representative did not wish to speak on this.
m.	Lanesons Limited of Tithe Farm	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
n.	Messers Pearson	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
o.	Davison & Company (Great Barford) Limited	<p>The Applicant maintained the position that the land here is required for permanent acquisition because of the nature of the works being undertaken to it. It was added that the Applicant is willing to discuss and has commenced discussions about the potential to acquire a lease over the land. The Applicant explained that this lease would cover terms such as how the works are undertaken, the level of restoration and consideration to be paid for occupation. The Applicant noted the point raised in terms of the need of engagement from the district valuer. The Applicant agreed to provide a justification for an agreement, such as a lease, outside of the DCO process because it is not possible to acquire a new lease under the powers in the Planning Act 2008.</p>

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p.	The Church Commissioners of England	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
q.	National Farmers Union	<p>The Applicant responded to the National Farmers Union ("NFU") that in regards to where a landowner is requiring something, it is important that this point is expressly made to the Applicant. The Applicant added that if they understood from the landowners themselves which points are an issue, rather than being general points made by the NFU on behalf of members, this would assist in terms of being able to progress issues of concern. The Applicant added that whilst landowners are not present at the hearing they do have the opportunity to submit through written representation and it would assist the Applicant if they were provided with this information.</p> <p>The Applicant added that they had engaged thoroughly and extensively with affected landowners and wanted to make clear that they had considered these comments and implemented changes to the design Scheme (particularly post non-statutory consultation).</p>
r.	Any Others	This agenda item was not covered within the hearing as no other Affected Persons attended.
AGENDA ITEM 6 – Applicant's update on the CA Schedule		
a.	List and update the status of negotiations for all plots in the BofR and Land Plans that are not included in the CA schedule.	<p>The Applicant explained that the CA schedule is a schedule that outlines all the parties who raised a specific objection to CA through their representation and does not include all landowners who submitted a representation.</p> <p>The Applicant added that in terms of negotiations with those within this schedule a district valuer was appointed on behalf of the Applicant to conduct negotiations with affected parties to attempt to acquire the land by agreement, rather than by CA. It was explained that in September 2020, the Applicant wrote to all freeholders of land where permanent acquisition of land or rights were being sought and the letter invited landowners, by return of a form, to confirm whether they were willing to enter into agreements. It was added that the Applicant issued further letters in October 2020 to occupiers of land and freeholders where temporary possession was sought and these again contained a form. The Applicant submitted that in June 2021 a further letter was issued to those parties who had not responded with forms and to confirm whether they wished to enter into negotiations.</p> <p>The Applicant added that approximately 50% of interested parties had returned the forms and the district valuer had begun negotiations with around 85% of these parties. The Applicant stated that some of these</p>

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		<p>negotiations have reached a standstill due to disagreements over the value of land or are on hold pending further detail being released, but that the district valuer is continuing to attempt to reach agreement.</p> <p>The Applicant confirmed that there hadn't been any agreements reached yet and negotiations are ongoing. It was added by the Applicant that the district valuer is instructed to undertake the work on this particular project, but they would consider the option of alternative negotiators as it had been raised by the Examining Authority.</p>
b.	Summarise outstanding objections and progress on negotiations on alternatives to CA	<p>The Applicant raised that this had been covered by the response to agenda item 6a (above) but that discussions are ongoing with parties around their representation points and seek an agreed position on points of objection. The Applicant confirmed that they will continue to engage with affected parties and will also seek to, where possible, agree detailed design points if provided with landowner comfort on those matters. The Applicant submitted that they will continue with joint position statements, option agreements and heads of terms.</p> <p>The Applicant clarified that the reference they made here to detailed design are items such as fencing, hedge or boundary treatments where the Applicant is in a position to agree those up front with individual landowners to provide comfort.</p> <p>The Applicant clarified that usually heads of terms would be issued as a precursor to option agreements as they set out the main points to be included within the agreement which is then passed to legal to draft a formal option agreement. It was further explained that position statements are the term the Applicant has applied to documents where they are agreeing with landowners to set out their position on a matter through ongoing discussions, which will hopefully reach an agreed position.</p> <p>The Applicant considered that the majority of the matters discussed between the Applicant and the individual landowners to be private and confidential but they could provide an update on negotiations within the CA schedule and not include matters of a confidential nature.</p>
c.	Whether any further changes are required to the Order Limits for the Proposed Development.	The Applicant confirmed that at this stage there are no changes proposed to the current Order limits.

Item	ExA Question/Context for discussion	Applicant's Response
d.	Timescales and expected progress over the course of the Examination.	The Applicant submitted that it is the intention of the Applicant to seek to acquire as many interests as is possible by agreement. In terms of expected progress the Applicant would provide this within the letter requested by the Examining Authority in terms of the next steps taking place.
AGENDA ITEM 7 – Representations from Statutory Undertakers		
a.	National Grid Electricity Transmission Plc and National Grid Gas Plc (National Grid)	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
b.	South Staffordshire Water plc	This agenda item was not covered within the hearing as the Affected Person or representative did not attend.
c.	Anglian Water Services Limited	The Applicant added that they understood that as of 15 September 2021, Anglian Water had confirmed through their property consultants and solicitor that the parties would be able to reach a satisfactory agreement on the outstanding issues and that it was just a case of progressing the documentation. The Applicant noted the request to reach a resolution by deadline three and hoped that this could be resolved by this deadline but that they would report this back to those undertaking these discussions.
AGENDA ITEM 8 – Applicant's update on Statutory Undertakes Progress		
a.	The Applicant to summarise progress on negotiations with Statutory Undertakers.	The Applicant added that the Examining Authority had the benefit of the statutory undertakers progress schedule submitted at deadline one [REP1-036] and confirmed that discussions continue with all the statutory undertakers. The Applicant responded that they did not believe from their perspective that there were any fundamental differences.
b.	Timescales and expected progress over the course of the Examination.	The Applicant's estimate for the timescale for securing the agreement was certainly before the close of the examination in relation to each of the parties. The Applicant added that as to the specific timetable this was very much dependent upon progress between the Applicant and the relevant undertaker. The Applicant provided the example of the Government Legal Department who have only just recently instructed their external legal advisors to be able to progress the necessary legal agreements.

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		<p>The Applicant submitted that they are progressing with each undertaker and if an update is required on a particular undertaker to let them know but it was not envisaged that there were impediments to securing agreements with each of the statutory undertakers.</p> <p>The Applicant responded that on East West Rail negotiations, they understood that an update would be provided by East West Rail to the Applicant next week.</p>
AGENDA ITEM 9 – Draft Development Consent Order		
a.	Article 25 – Compulsory acquisition of land, and alignment with of Advice Note 15 (paragraph 23.4).	<p>The Applicant submitted that the drafting of Article 25 mirrors if not every, but a significant majority, of all previous DCOS dealing with CA of land. The Applicant added that paragraph 23.4 of Advice Note 15 states that an amendment to the draft Order may be necessary to reflect that provision. The Applicant mentioned that they are proposing as part of the next update to the draft DCO to include a provision to state that Article 30 applies to any land acquired under Article 25 but also in relation to Article 28 which relates to the CA of rights over land.</p>
b.	Applicant's approach to crossover plots and the information provided during consultation with Affected Persons.	<p>The Examining Authority confirmed that crossover plots were those plots over which temporary possession plots will then have permanent rights acquired. The Applicant explained that the provisions of the draft DCO provide for the ability to take temporary possession over land over which new rights are also to be acquired. It was added by the Applicant that in terms of the land listed in Schedule 7 only temporary possession can be taken over that land and not the compulsory acquisition of new rights.</p> <p>The Applicant responded that the crossover plots would be those plots which appear in Schedule five; because temporary possession can be taken over those plots prior to any permanent rights having been acquired.</p> <p>The Applicant confirmed that the land under Schedule 7 has an express limitation on any exercise of permanent freehold compulsory acquisition powers and is only for temporary possession at the point of construction; whereas any land interests which are listed in Schedule 5 will require a level of permanent acquisition of rights for the maintenance for the duration of the project.</p> <p>The Applicant added that the provisions in the Order for both permanent acquisition and new rights provide for the ability to temporarily take temporary possession of land and in respect of whether there is any merit in having a separate schedule (where the Applicant would proceed from temporary possession</p>

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		onto CA) they did not think it was practicable at this stage because they would be repeating what is already contained in the Order elsewhere.
c.	Further clarification on Article 28 and 40, particularly with respect to the information provided during consultation with Affected Persons.	<p>The Applicant submitted that in negotiations and engagement with all affected landowners they made it clear precisely what land was required for what purpose and whether acquisition would be permanent. It was added that draft land plans were presented to those affected land owners during consultation which detailed the extent of interests to be acquired and so the Applicant believed they did adequately consult with them.</p> <p>The Applicant said that they considered that where anything had changed they had made this clear and as part of the supplementary consultation had reissued the updated land plans which clearly identified where there were changes to the rights that were being sought. It was further explained by the Applicant that where there had been other changes to rights they had contacted the specific landowners to advise of these changes.</p> <p>The Applicant responded that the land plans do make clear from the different colouring that if the land is green it is only for temporary possession and if coloured blue it is for both temporary possession and the acquisition of new rights. It was explained that unless there were any changes to the Order, the Applicant would be constrained to only be able to acquire temporary possession over those green plots.</p>
AGENDA ITEM 10 – Crown Land		
a.	Update of progress in securing written consent under s135(2) from the Crown Estate for inclusion of the Crown plots.	The Applicant stated that is was originally dealt with in section 7.1 of the statement of reasons but that meetings have been held with the parties. The Applicant confirmed that there is no indication that there will be any issues in securing consent.
b.	Confirmation that criteria in s.135(1)(a) have been met.	The Applicant added that subject to receipt of the necessary consents the provisions of s.135(1)(a) would be met.
AGENDA ITEM 11 – National Trust Land and Special Category Land		
a.	Applicant to confirm that National Trust Land and Special category Land is not included in the order limits.	The Applicant stated that this is confirmed as per paragraph 7.2 of the statement of reasons.

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AGENDA ITEM 12 – Funding		
a.	Any further updates to the Funding Statement.	The Applicant responded that there are no specific updates to the funding statement. The Applicant added that they could update on the fact that the full business case was approved which is the final investment approval.
b.	Whether adequate funding is likely to be available to enable the CA to proceed within the statutory period following, and in the event of the dDCO being made.	<p>The Applicant added that having the funding set aside in the delivery plan means that they expect to have full investment approval for the project in place as a result of taking the full business case through approval. The Applicant explained that they were able to do this early for the A428 Scheme because it is a Scheme under their new regional delivery partners framework which means that they agreed budgets early on in the process.</p> <p>The Applicant said that they thought the above provided a good degree of confidence that the Examining Authority can take that the Scheme is committed and that the funding is available as required.</p> <p>The Applicant stated they were not aware of any changes which could risk this as there is a clear allocation of funding for the project and that they did not think there's a risk that the funding will not be available.</p> <p>The Applicant added that the benefit cost ratio on the majority of projects has reduced as a result of updates to the transport appraisal guidance but that on this Scheme they expected that this will be levelled out as they progress and the Scheme was in a strong position. The Applicant added that the project is in the medium value for money category and therefore from that perspective it is not a risk as with lower value for money ratio Schemes may be.</p>

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AGENDA ITEM 13 – Human Rights and Public Sector Equality Duty		
a.	Regard given to Articles 8 and 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol.	The Applicant stated that the assessment of this regard is set out in section 6.1 of the statement of reasons and outlines that any infringement of human rights would be authorised if there is a compelling case in the public interest and that proper procedures are followed, and that any interference with human rights is proportionate and otherwise justified.
b.	The degree of importance attributed to the existing uses of the land proposed to be acquired.	<p>The Applicant added that they had paid particular attention to the residential properties that would be affected because of the interference with the right to protection of property and addressed Brook Cottages and Kelpie Marina.</p> <p>It was further explained by the Applicant that in terms of weighing the assessment of the impact on human rights it was considered if there was an infringement of rights and whether these are proportionate and legitimate and would be in the public interest.</p> <p>The Applicant submitted that it was both proportionate and appropriate to grant the necessary CA powers in this regard.</p>
c.	The weighing of any potential infringement of ECHR rights against the potential public benefits if the dDCO is made.	The Applicant stated that they had also provided a summary of the range of benefits that can be shared by groups which included improved access to walking, cycling, horse riding as well as safer more efficient conditions for drivers. It was added that the impact assessment also considered direct employment opportunities for local people with protected characteristics
d.	Implications arising from the Public Sector Equality Duty.	The Applicant confirmed that section 6.3 of the statement of reasons deals with the consideration of duties under the Equality Act and that the Applicant has carried out an equality impact assessment. It was added that the impact assessment specifically covered Brook Cottages and the Kelpie Marina and that the Applicant is working with the owners of Brook Cottages to identify alternative housing options