

# A428 Black Cat to Caxton Gibbet improvements

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Volume 9

9.36 Written submission of oral case for Issue Specific  
Hearing 3 on 24 September 2021

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure)  
Rules 2010

October 2021

Infrastructure Planning

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**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 Issue Specific Hearing 3 on environmental matters which took place via MS Teams on 24 September 2021.
- 1.1.2 Scott Lyness QC of Landmark Chambers represented the Applicant and was assisted by experts at AECOM, Skanska, Reading Agricultural Consultants and Womble Bond Dickinson LLP.
- a. Max Wade (AECOM) represented the Applicant on biodiversity matters, including Habitats Regulation Assessment.
  - b. Paul Swannell (AECOM) represented the Applicant on the assessment of alternatives to the junction design and siting at Black Cat.
  - c. Amy Jones (AECOM) represented the Applicant on heritage matters, including the effects on listed buildings and on the setting of heritage assets.
  - d. Helen Maclean (AECOM) represented the Applicant on heritage matters, including the effects on archaeological remains and on the setting of heritage assets.
  - e. Alastair Field (Reading Agricultural Consultants) represented the Applicant on land-use, including loss of best and most versatile agricultural land.
  - f. Julian See (Skanska) represented the Applicant on land-use, including loss of best and most versatile agricultural land and the high pressure pipeline diversion.
  - g. Grant Paxton (AECOM) represented the Applicant on flood risk, including evidence for the exception test.
  - h. Jon Rooney (AECOM) represented the Applicant on landscape effects, including with reference to designated character areas.
  - i. Steven Wood (AECOM) represented the Applicant on sustainability effects, in particular economic effects.
  - j. Chris Landsburgh (AECOM) represented the Applicant on sustainability effects, in particular economic effects.
  - k. Lorrae Hendry (Womble Bond Dickinson) represented the Applicant on matters relating to the draft Development Consent Order (dDCO) **[APP-025]**.
- 1.1.3 The summary of the submissions below broadly follows the Examining Authority's (ExA's) Agenda for those items that were covered at the Issue Specific Hearing. It should be noted that due to time constraints not all Agenda items were covered during the Issue Specific Hearing and as such those items are not covered below.

## 2 Representations at the Issue Specific Hearing 3

Table 2-1 - Written summaries of oral submissions made at Issue Specific Hearing 3

Item	ExA Question/Context for discussion	Applicant's Response
<b>AGENDA ITEM 3 – Biodiversity matters, including HRA</b>		
a.	Additional Barbastelle Bat surveys update.	<p>The Applicant confirmed that hibernation suitability inspections and crossing point surveys had commenced already in line with the technical note and a licence for trapping in the SAC for use in the advanced survey techniques has been granted by Natural England. It was further confirmed by the Applicant that following the grant of a further license by the National Trust; work had begun the evening before the hearing and was in progress.</p> <p>The Applicant added that the further bat surveys will comprise of hibernation suitability inspections, crossing point surveys and the use of advanced survey techniques.</p> <p>It was explained that the hibernation suitability inspections will be undertaken in order to quantify the potential roosting resource in woodlands within 200 metres of the Scheme to answer the question of whether Barbastelle use any of those woods as hibernation roosts. The Applicant stated that habitat suitability assessments and static detector surveys will also be carried out in five woodlands from October to December 2021 and that Natural England have confirmed that they are in agreement with the Applicant's proposed scope of the surveys. After Natural England expressed an initial view that the crossing point surveys should comprise 40 crossing point locations; Natural England have amended the recommendation and therefore the crossing point surveys will take place from September to October 2021 at dusk within 12 crossing points (seven locations in the western half of the Scheme and five towards the east), all of which have hydro features crossed by the Scheme.</p> <p>The Applicant explained that the question to be answered is what evidence is there that Barbastelle move across the Scheme during Autumn/Winter. Additionally, the Applicant will undertake three transect surveys in September to October 2021 to record Barbastelle's stellar activity within Eversden and Wimpole Woods SAC. Advanced bat survey techniques will be used within this time period in the SAC/woodland which will comprise of the capture and tagging of bats (under a project licence) towards roost and foraging areas.</p>

Item	ExA Question/Context for discussion	Applicant's Response
		<p>The Applicant committed to sharing the bat survey data with Natural England in a timely manner, such that findings can be discussed and evaluated by both parties. Any actions arising from these discussions would be recorded by way of a statement of common ground. The Applicant believes that the information required will be achieved by Deadline 7.</p>
b.	<p>Implications if Likely Significant Effects cannot be excluded.</p>	<p>The Applicant explained that if the position was that likely significant effects were found that could not be excluded, then this outcome would need to proceed to Stage Two Appropriate Assessment. The Applicant added that they would use the data that is available from the survey work being conducted and present the results within the context of a report, which looked at the impacts of the Scheme on the integrity of the SAC as part of an Appropriate Assessment.</p>
c.	<p>Information and timescales for the provision of information necessary for an Appropriate Assessment to be made (if required).</p>	<p>The Applicant agreed that the need for such an assessment is hinged on the outcome of the further survey works and confirmed that as they move forwards they would be considering if any mitigation is required and how this is to be dealt with.</p> <p>The Applicant anticipated that they could prepare an Appropriate Assessment by Deadline 6 but if further discussions were required on mitigation this may need to be pushed back to Deadline 8. The Applicant added that it would be useful to know Natural England's views on the mitigation already proposed by the Scheme to prelude the need for any further discussions to take place once the survey results are complete. A hearing action was noted that the Applicant and Natural England are to discuss the options for mitigating adverse effects and provide an update on this at Deadline 3.</p> <p>The Applicant confirmed that they would report the survey results and the conclusion on if a likely significant effect has been found and if an effect is present what mitigation measures are proposed. The Applicant added that they will also inform both Natural England and the local authorities on the position post the surveys being undertaken.</p>

Item	ExA Question/Context for discussion	Applicant's Response
d.	If an Appropriate Assessment cannot exclude adverse effects upon the integrity of the Eversden and Wimpole Woods SAC, and with reference to the National Policy Statement for National Networks (NPS NN), provide without prejudice timescales and details of information required for Derogation of Habitats Regulations (Alternatives / Imperative Reasons of Overriding Public Interest (IROPI))	<p>The Applicant mentioned that any issues relating to a negative Appropriate Assessment would be in consideration by the Applicant in advance of the Deadline but that it was difficult to place a timescale on these matters.</p> <p>It was explained that the result of the analysis would be considered within the Appropriate Assessment but that in terms of alternatives this will depend on the information that is produced by the further survey works which they are yet to receive the results of.</p>
e.	Without prejudice, measures that could mitigate adverse effects upon the integrity of the SAC.	<p>The Applicant explained that once the result of the surveys are received they would look to address more efforts to direct and encourage Barbastelle bats to use the underpasses built into the Scheme which would mitigate effects. It was explained that there are five underpasses within the Scheme and that the Applicant undertook a series of surveys in order to determine where bats are crossing the Scheme and that mitigation is in place at strategic locations identified within the Scheme.</p> <p>The Applicant noted that the survey results would help better inform mitigation but that the use of bat tunnels is a form of mitigation which could be utilised and discussing additional mitigation measures would be of use once the survey results provide this data.</p>
f.	What would be the cumulative (in-combination) effects if adverse effects cannot be excluded?	The Applicant confirmed that this issue would be picked up in Stage Two of the Appropriate Assessment.

Item	ExA Question/Context for discussion	Applicant's Response
g.	Effect on overall Environmental Statement (ES) conclusions on Biodiversity if adverse effects cannot be excluded.	<p>The Applicant stated that there is a need to distinguish between likely significant effects and adverse effects on integrity; as it may be that likely significant effects are found but they can be mitigated. The Applicant added that the conclusions of the Biodiversity Chapter of the Environmental Statement <b>[APP-077]</b> may not need to be changed because the ultimate result is that there would not be any effect.</p> <p>It was recognised however that if the Applicant is in negative Appropriate Assessment territory then the conclusions of the Biodiversity Chapter would need to be updated to reflect that approach within the Environmental Statement.</p>
h.	Value of highway drainage ponds and channels in terms of biodiversity.	<p>The Applicant confirmed that there will be around thirty highway drainage ponds and channels distributed along the route which are set out in the Environmental Masterplan <b>[APP-091]</b>. It was explained that these ponds and channels will provide a habitat for great crested newts and another amphibians and that highway drainage ponds are recognised as having significant biodiversity value. The Applicant referred to the RSPB and Wetland's Trust guide which refer to maximising the biodiversity potential of sustainable urban drainage systems and explained that the biodiversity value derives from the gradient of moisture.</p> <p>The Applicant added that there are relatively few ponds that will be lost to the Scheme and that there is a significant increase in the overall wetland habitat as a result of the Scheme; which will link into those ponds outside of the Scheme which are at a low diversity.</p>
i.	Planting compositions, veteran trees & linear biodiversity.	The Applicant agreed that a consensus needs to be reached with the local authorities in terms of the planting to make the most of the features within the pond areas.
j.	Likely Significant Effects of the Proposed Development on the Ouse Washes SPA, SAC and Ramsar site and the Portholme SAC.	It was confirmed that Natural England agreed with the Applicant's conclusion that there will be no likely significant effects on the Ouse Washes SPA, SAC and Ramsar site and the Portholme SAC within the habitats regulation assessment and therefore there is no need to proceed to the Appropriate Assessment stage.

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<b>AGENDA ITEM 4 – Assessment of Alternatives to the junction design and siting at Black Cat</b>		
a.	<p>Process and reasoning for selecting the junction option that would require the demolition of Brook Cottages.</p>	<p>The Applicant referred to the written summaries of the oral representation made at Issue Specific Hearing 1 [REP1-031], It was explained that the Applicant developed and assessed the Scheme in accordance with National Highway's project control framework including stage one (option identification), stage two (option selection) and stage three (preliminary design). The details of the option identification and selection process that was undertaken is provided in Chapter Three of the Environmental Statement [APP-072].</p> <p>The Applicant confirmed that they could provide further information to explain why these decisions were taken and the documents referred to may not be able to be provided by Deadline 3 but the process can be indicated by this Deadline.</p> <p>The Applicant stated that the Scheme objectives are defined by reference to what the piece of infrastructure is designed to achieve in Highways terms and is within the Environmental Statement .It was added that these objectives include mainly relief of congestion, increased capacity, resilience and certain environmental considerations relating to noise and air quality</p>
b.	<p>Evidence to show that reasonable alternatives that did not require demolition of Brook Cottages, were considered, and consulted upon with BBC, HistE and other parties.</p>	<p>The Applicant explained that even if for example, cultural heritage, is not specifically identified as a discrete Scheme Objective, this does not mean that this factor has not been properly taken into account in accordance with policy.</p> <p>The Applicant added that when considering various options there are certain sorts of fundamental considerations which have to be met by any alternative option that's under consideration and that there is inevitably a stage where technical feasibility and economic benefits are considered. It was added by the Applicant that the above is not stating that once various options are considered issues relating to cultural heritage are ignored in the overall analysis.</p> <p>The Applicant believes that the question of cultural heritage and Brook Cottages were considered at an appropriate stage.</p> <p>The Applicant added that the Scheme objectives derived from an assessment whereby National Highways identified the key problems within the network and that the absence of a specific reference to cultural heritage in the Scheme objectives should not be taken to mean, in any sense, that alternatives haven't been considered in the proper sense.</p>

Item	ExA Question/Context for discussion	Applicant's Response
		The Applicant confirmed that they would provide further clarity on the reasons for discounting alternative route options.
c.	Consideration given to the proposed use of land to the east of the existing Black Cat Roundabout in the assessment of alternatives.	<p>The Applicant stated that during the design process around twelve options were looked at in respect of the Black Cat Roundabout and that the primary purpose of those options was to develop a design that met the criteria that was needed in terms of traffic flows and safety. It was explained that three of these options were taken forward for non-statutory consultation.</p> <p>The Applicant was requested to provide further information on how the twelve options were created particularly in respect of moving towards the East and they confirmed that this will be taken away to consider.</p>
d.	BBC's view (as Local Highway Authority) if there are other route alignment and junction design and siting options that have not been considered.	The Applicant confirmed that the aspirations of Bedford Borough Council (BBC) had no impact on its decision and that BBC's development aspirations only came to light post the development of the Black Cat junction. The Applicant added that the primary reason for avoiding using land to the East was the impact on the flood plain and that flood plain compensation would be necessary. It was further added that the move to the East would also have meant acquiring additional land and residential properties
<b>AGENDA ITEM 5 – Heritage matters, including the effects on listed buildings, on archaeological remains and on the setting of heritage assets</b>		
a.	Brook Cottages survey and re-location update.	<p>The Applicant mentioned that half of the building at Brook Cottages was still occupied and that they have continued to pursue attempts to access the building to do the necessary intrusive surveys but the owners of the building were still denying access to undertake those surveys. The intrusive surveys have therefore been unable to be undertaken and the Applicant is looking into pursuing powers to enter the building for less intrusive surveys which would provide further information.</p> <p>The Applicant confirmed that they have had a positive response from the Museum of East Anglian Life and have been progressing discussions (including costing) as to relocating the cottages to the museum. However, the Applicant was unable to confirm formally if this will occur as information from the surveys (which cannot be undertaken currently due to the occupier) is needed.</p>

Item	ExA Question/Context for discussion	Applicant's Response
b.	<p>Scale of harm caused by the removal of Brook Cottages and any effects from its potential re-location</p>	<p>The Applicant said that they have looked into the potential to relocate the building as a residential property and a number of studies have been undertaken into potential relocation sites and how these might impact on the building itself. It was explained that there are a number of other considerations to make (which would not apply to museums) such as conforming to building regulations if the property is relocated as a residential property but information is needed from the intrusive surveys to inform the possibility of this.</p> <p>The Applicant added that until they are able to acquire the building the full intrusive surveys would not be able to be undertaken and so the information which is needed for relocation will not be sought until then.</p> <p>The Applicant concluded that currently, even if Brook Cottages were relocated to a Museum, substantial harm would still be incurred.</p>
c.	<p>With reference to the NPS NN, the evidence to support the exceptional demolition of a Grade II listed building.</p>	<p>The Applicant stated that the essential policy test within the NPS (paragraph 5.133) referring to Heritage sets out where the proposed development sits in respect of substantial harm. It was added that the Secretary of State should refuse consent unless the Applicant has demonstrated that the harm is necessary in order to deliver substantial public benefits that outweigh that loss or harm.</p> <p>The Applicant submitted that they have demonstrated exceptional circumstances when the Scheme is worked through the NPS. The Applicant summarised that the evidence that will be submitted is that it is necessary to demolish Brook Cottages because there is no reasonably suitable alternative for the Black Cat junction design that would avoid demolition. The substantial public benefits of the Scheme are set out in Chapter Four of the Case for the Scheme [APP-240] and the Applicant stated that the public benefits that have been identified sufficiently outweigh the harm that would be occasioned by the demolition of Brook Cottages.</p> <p>The Applicant added that they do not consider that one should assume that you could avoid substantial harm through relocation because substantial harm could well be caused by the relocation and so this would have to be assumed for present purposes.</p>

Item	ExA Question/Context for discussion	Applicant's Response
d.	Use of 2m LIDAR surveys and consequent robustness of archaeological data; implications for consequent construction effects [APP-165] and [REP1-077].	The Applicant referred to paragraph 3.11 of appendix 6.3 of the Environmental Statement [APP-165] which was the analysis of aerial images and explained that the route had actually had one metre assessment level for LIDAR, which is what would normally be required. The Applicant also added that LIDAR data had not been used in isolation and comprehensive evaluation, including geophysical survey and trenching had been undertaken, and in those small areas where there is only the two metre level, there is no change to the assessments.
e.	Views on the Archaeological Mitigation Strategy [APP-238].	<p>The Applicant confirmed that comments had been received from all three local authorities which had been addressed and updated in the Archaeological Mitigation Strategy [APP-238]. The Applicant added that in tandem further discussions had taken place and the joint council Brief was now agreed. The Brief would be appended to the Archaeological Mitigation Strategy at Appendix B, and updates to the sampling strategies of features have been updated in the Archaeological Mitigation Strategy to match the requirements of the Brief.</p> <p>The Applicant added that there are a number of areas where extensions have been requested to mitigation area in Cambridgeshire but, based on the results of the evaluation trenching, the geophysical survey and the aerial photographic information, they did not believe there was a justification to do so. The Applicant provided the example of Site 32 in Field 94, where there is a request from Cambridgeshire County Council to extend the mitigation area to the east and the south, but trenches in those areas were completely blank of archaeological remains and there are no features recorded on the geophysical survey.</p>
f.	Settings of Heritage Assets, including Roxton and Croxton Park [APP-113] and [APP-114], including from Viewpoints VP7; VP8; VP11; VP14 and VP44.	<p>The Applicant added that in relation to Croxton Park and the monuments within the park itself, the clarification document [AS-010] provided did add more research into this area. It concluded that the area to the north of the existing A428 was likely to be a later addition to the park, albeit outside the designated area.</p> <p>It was explained that the Roxton viewpoint was taken from the edge of the conservation area and that a viewpoint had not been taken from the church itself because of the screening presented by existing development. Instead, a view was taken from a point to the north, on the edge of the conservation area, where screening was not present.</p> <p>The Applicant accepted that the surrounding agricultural landscape is part of the setting of the church but that they stood by their assessment regarding the level of impact.</p>

Item	ExA Question/Context for discussion	Applicant's Response
<b>AGENDA ITEM 6 – Land-use, including loss of BMV agricultural land</b>		
a.	<p>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>The Applicant explained how the Scheme has a shortfall of class one and class two materials and added how these are materials that will generally be excavated, moved and placed as part of the earthworks process along the length of the alignment. The Applicant added that key deficit areas were identified on the Scheme at Caxton Gibbet and at the west end for the new Roxton Road Bridge.</p> <p>It was further added that the process for the removal of the material in the borrow pits will be very similar to that used on the main line and that the Applicant will strip and store topsoil and subsoil from the area of the borrow pit and will then extract and fill the material from the area using standard earthworks and transport the material to a site with a deficit.</p> <p>The Applicant stated that a process would be undertaken to reinstate the subsoil and topsoil over the extent of the borrow pits back to the required levels in order to be returned to agricultural use (if land drainage was present originally this would also be installed). It was explained that the nature of the earthworks process means that material is generated across the site which will not be of sufficient quality to be incorporated into the highways embankments.</p> <p>The Applicant responded that the classification of agricultural land is primarily concerned with characteristics of the soil profile to a depth of 1.2m and that the intention within Annex E Soil Handling and Management Plan of the First Iteration EMP [APP-234] is that the physical, chemical and biological characteristics would be recorded before any works started and would provide a specification for restoration of the soils in order that the soil profile is returned to the same condition.</p> <p>The Applicant referenced annex II of the First Iteration EMP in explaining the proposals in respect of the borrow pits.</p> <p>The Applicant would consider further the query regarding specific information on the biodiversity value of the borrow pits and a technical note referred to in respect of the borrow pits is to be submitted at Deadline 3.</p> <p>The Applicant added that following the above restoration of the soils there would be a period of aftercare during which the restored soils can be monitored. There is control within the Annex E of the First Iteration EMP [APP-234] to remedy any deficiencies.</p>

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		<p>The Applicant added that Annex E of the First Iteration EMP is high level and addressed within requirement 3 of the dDCO [REP1-003] but that further detail will be added to individual soil management plans following consent.</p> <p>The Applicant submitted in response to providing further information on soil restoration that their current position is that there is sufficient information before the Examination as contained in Annex E of the First Iteration EMP. It was explained that there are a series of steps within Annex E which provide sufficient assurances to not just the methodology but the quality and objectives of what the Applicant is trying to achieve. The Applicant also did not consider it necessary to introduce specific measures in terms of borrow pits and stated that Annex E is the most appropriate vehicle to do this and the dDCO secures the further iterations of the Environmental Management Plan. The Applicant stated that they would however consider the concerns of the local councils.</p> <p>In terms of biodiversity the Applicant explained that the biodiversity value of the field would be less post restoration although this is quickly recovered. It was added that the biodiversity value is low regardless of the restoration process.</p> <p>The Applicant confirmed they would consider further the impact of noise within the borrow pits and a technical note will be provided at Deadline 3.</p>
b.	Update regarding the postponed soil surveys.	<p>Paragraph 9.4.6 within Chapter 9, Geology and Soils [APP-078] of the Environmental Statement explains that soil surveys to inform the geology and soils assessment were planned to be carried out in 2020; however, due to the Covid-19 pandemic and associated local lockdown restrictions, these were unable to be undertaken. The Applicant has committed to undertake this sampling in 2021 subject to the lifting of lockdowns. Most landowners requested that these surveys are carried out after harvest to avoid any potential damage to growing crops, so these surveys commenced in September 2021 and are due to be completed in November. Following the completion of the fieldwork and the analysis of findings, a report will be prepared by the Applicant and submitted to the Examination on or before Deadline 6.</p>

Item	ExA Question/Context for discussion	Applicant's Response
c.	Update on progress regarding regenerative agriculture soil re-provision.	The Applicant mentioned the importance of realising that regenerative agriculture is a means of actually managing the land rather than the status given to a particular soil type. The Applicant added that the soils that would be affected are currently subject to regenerative agriculture and will be treated no differently to any other soils within the Scheme. The Applicant explained that surveys would establish organic matter and nutrient levels in those areas subject to regenerative agriculture which would be the target for restoration and after care.
d.	The economic value of lost BMV agricultural land.	This agenda item was not covered in the hearing and would be dealt with by way of written questions.
<b>AGENDA ITEM 7 – Flood risk, including full evidence for the exception test</b>		
a.	What specifically would be the wider sustainability benefits to the community that would outweigh the risk of flooding?	The Applicant stated that the policy test which requests the widest tenable benefits to the community within paragraph 5.10 and that the policy does not define community in any restrictive sense by reference to a geographical area or community group. It was added that the policy tends to demonstrate the need for the infrastructure in the wider sense. The Applicant submitted that the sustainability benefits can be appropriately defined by reference to cutting congestion, increasing capacity, journey time reliability and improving the network. The Applicant added that there will be an improvement in communication in people and in jobs and that it is sufficient to take those in a broad sense as matters which benefit the public and it is not necessary to define this to any particular community.
b.	In what way would the status of the proposed development as a Nationally Significant Infrastructure Project meet the wider sustainability and safety needs?	The Applicant responded that they it is not their position to say that just because the Scheme is a Nationally Significant Infrastructure Project that of itself means that the exception test is met as part of the wider policy test. The Applicant submitted that they accept that they have to go through the test and demonstrate what those benefits are rather than simply referring to the fact that the Scheme is a Nationally Significant Infrastructure Project.
c.	Why have different climate change allowances been used for different connected watercourses – main rivers and ordinary watercourses? [APP-220].	The Applicant noted that climate change allowances ("CCA") are indicated in the assessment documents [APP-219] and may indicate a difference in the allowances for main rivers and ordinary watercourses. The Applicant stated that the same CCA principles were applied to both types of watercourse which included the 1% Annual Exceedance Probabilities, worst case 65% CCA and floodplain compensation of 35%.

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		<p>It is also noted by the Applicant that the Environment Agency, as a statutory consultee, uses the management catchment CCA from the peak river flow map as benchmarks. The Applicant added that the Governments' peak river flow map, published on 27 July 2021, indicates that the watercourses crossing the Scheme, within the western section, fall within the Upper and Bedford Ouse Management Catchment which now has a higher central CCA of 30% and watercourses crossing in the eastern section, that are located within the Cam and Ely catchment, have a higher central CCA of only 19%.</p> <p>The Applicant submitted that in accordance with the Government's guidance on flood risk assessments the CCA, the high central allowances, should be used for essential infrastructure in flood zones 2, 3a and 3b. The Applicant added that the current flood risk assessments for the Scheme are therefore considered a robust conservative approach given the reduction in climate change allowances now applicable to the Scheme.</p> <p>The Applicant explained that the 65% was chosen for the ordinary watercourses as a more cautious approach as the Environment Agency has confidence in the main river modelling using the 35% CCA, since the Environment Agency has greater existing flood data available for main rivers relative to ordinary watercourses.</p>
<p><b>AGENDA ITEM 8 – Landscape effects, including with reference to designated character areas</b></p>		
<p>a.</p>	<p>Screening of prominent structures and locations [APP-113] and [APP-114] including:</p> <p>i. New bridges, such as at Toseland and Little Barford.</p>	<p>The Applicant stated that the requirements for screening prominent structures and locations have been considered from the outset and through the iterative design process alongside the landscape and visual impact assessment.</p> <p>It was added that the landscape and visual impact assessment is set out in document [APP-077] and demonstrates that visual effects of the Scheme by year 15 of operation would largely relate to views in close proximity where a larger extent of the Scheme would remain in view. The Applicant further explained that the visual impact assessment demonstrates the effectiveness of the embedded mitigation with the significant effects reducing from 73 receptor groups in year one operation to 30 of the 184 visual receptor groups by year 15 of operation.</p> <p>The Applicant submitted that the first principles applied to the design of the new bridges related to the placement of the structures within the context of the landscape. It was explained that Barford road bridge locations were selected to coincide with areas of high ground within the region which minimises the visual impact of bridge abutments and structures and views of traffic passing beneath. The Applicant added that</p>

Item	ExA Question/Context for discussion	Applicant's Response
		<p>at Toseland bridge the footprint of the Scheme has been extended beyond the total embankments to accommodate areas for trees and tree planting. It was explained that the Environmental Masterplan [APP-091] sets out the substantial belts of trees and shrubs which will be incorporated into areas such as on the approach to the River Great Ouse.</p> <p>The Applicant added that in respect of the River Great Ouse landscape and visual effects are dealt with separately, although there is a relationship between them in the landscape visual impact assessment process within which they explained that they have defined local landscape characters.</p> <p>The Applicant submitted that whilst open to discussion with the local councils they did not see the need to make changes to the proposals/models used for these assessments.</p>
	<p>ii. New embankments, such as to the north of Tempsford.</p>	<p>The Applicant summarised that the Scheme incorporates embankments where the route rises up above the surrounding landscape, such as where it crosses the East Coast Mainline and that planting is proposed on embankments where space allows to assist in integrating the Scheme into the landscape.</p> <p>The Applicant provided the example of the embankments 1.4km north of Station Road, Tempsford where the south facing embankments will be planted within linear belts of trees, shrubs and woodland blocks (see sheet 3 of the Environmental Masterplan [APP-091]) and that by year 15 of operation these blocks will ensure that the effect on views would not be significant. It was also added that significant adverse residual effects would remain for a small number of residential properties in close proximity.</p> <p>The Applicant added in response to queries around areas where no planting was proposed is that it is not their intention to leave large areas bare but that they would look to leave small patches of bare ground to allow natural colonisation. The Environmental Masterplan shows very significant areas of planting on embankments and indicates where hedgerows are proposed.</p> <p>The Applicant also confirmed on response to concerns around maintenance of planting that a five year establishment aftercare period at the end of each growing season is secured. It was added that after the fifth year maintenance would be handed over to the area contractor.</p> <p>The Applicant confirmed that the area between Croxton and Toseland which forms part of the historic landscape will include more hedgerows with trees. In other areas, where trees are less characteristic for example, south east of St Neots, they are proposing less trees in the hedgerows. At Wintringham, power lines were explained to be present which means they cannot plant trees and it was added that trees also cannot be planted in close proximity to watercourses.</p>

Item	ExA Question/Context for discussion	Applicant's Response
	<p>iii. New interchanges, such as at Eltisley and the three Grade Separated Junctions.</p>	<p>The Applicant confirmed that the Black Cat junction was originally a three tier junction with the A1 remaining at grade but a design decision was made early in the design process to lower the A1 into a cutting to minimise visual impacts. It was added that substantial tree and shrub planting is proposed around the junction to assist in screening it in views from Roxton to the South and Chawston and Wyboston to the North.</p> <p>The Applicant explained that the mainline beneath the new interchange at Cambridge Road would be in a cutting which would screen traffic and that substantial planting is proposed around the junction, particularly to the South where the landscape is more open.</p> <p>It was added that there is already substantial vegetation on the Northern edge of Eltisley which would be retained and would screen the majority of views from the south. In addition it was submitted that the mainline of the Scheme would cross the Caxton Gibbet junction over a flyover and would therefore be more elevated above the surrounding landscape.</p> <p>The Applicant responded in terms of species that Annex L of the First Iteration EMP [APP-234] includes indicative species lists that have been developed in consultation with the local authorities.</p> <p>The Applicant added that they had taken account of comments regarding grassland and have maximised the areas of species rich grassland.</p>
b.	<p>Mitigating the effects on landscape character, particularly in views of historic settlements, or across the agricultural landscape.</p>	<p>This agenda item was not covered in the hearing and would be dealt with by way of written questions.</p>
c.	<p>Provision of suitable trees within Hedgerows, and the retention or provision of deadwood within habitats to support invertebrate populations.</p>	<p>The Applicant confirmed that there is one veteran tree within the Scheme and have found that a typographical error was made in relation to cherry trees which are not in fact veteran trees and that this has been communicated to the Woodland Trust.</p>
d.	<p>Species mix appropriate to the local climate, and depth of planting.</p>	<p>This agenda item was not covered in the hearing and would be dealt with by way of written questions.</p>

Item	ExA Question/Context for discussion	Applicant's Response
<b>AGENDA ITEM 9 – Sustainability effects, in particular economic effects</b>		
a.	Consideration of the lifetime greenhouse gas emissions of the Proposed Development. What are the implications of the Proposed Development for net zero carbon emissions by 2050?	<p>The Applicant referred to Chapter 14 of the Environmental Statement [APP-083] which presented the lifetime greenhouse gas emissions for the construction, operation and use of the Scheme and that paragraph 5.17 of the NPSNN requires the Applicant to provide evidence of the carbon impact product and assessment against governance projects.</p> <p>The Applicant submitted that the conclusion of no significant effects within the Environmental Statement could be sustained as it relates to the cumulative effects of the Scheme with other existing projects. The Applicant referred to the recent case of Transport Action Network v Secretary of State for Transport [Transport Action Network Ltd, R (On the Application Of) v Secretary of State for Transport [2021] EWHC 2095 (Admin) (26 July 2021)] within which it was agreed that the various measures of carbon emissions from roads programmes were legally insignificant when assessing the effect on climate change objectives.</p>
b.	Consideration of commuting routes that would inform consumer user benefits.	This agenda item was not covered in the hearing and would be dealt with by way of written questions.
c.	Implications for the Proposed Development of the announcement of the cancellation of the Oxford Cambridge Expressway in March 2021. How is the evidence that informed that decision different from the evidence supporting the Proposed Development?	This agenda item was not covered in the hearing and would be dealt with by way of written questions.

Item	ExA Question/Context for discussion	Applicant's Response
<b>AGENDA ITEM 10 – High pressure pipeline diversion</b>		
a.	Update on the archaeological excavation.	<p>The Applicant provided an update that the work started on site in July and the programme is being run for 25 weeks and is being monitored by the archaeologists. The Applicant reported that 35% of the archaeology is completed and work is progressing as expected.</p> <p>The Applicant added that if the works proceed as planned there would be a screening assessment carried out at the request of Cadent by the Secretary of State to confirm that the diversion works would be covered by permitted development rights and the Applicant is proceeding on a cautious basis that this confirmation may not be received before the close of the Examination,</p>
b.	Any information that might be available on the Screening Assessment.	The Applicant stated they would provide an update when they have been provided with any information in this regard.
<b>AGENDA ITEM 11 – Draft Development Consent Order</b>		
a.	<p>Article 23 - Authority to survey and investigate the land:</p> <p>i. The provision secured through Article 23 which refers to land which is adjacent to, but outside the Order limits.</p>	<p>The Applicant submitted that the ability to use this power is somewhat limited by the current draft within Article 23 of the dDCO [REP1-003] and there is a notice period within the dDCO article so that notification would be provided to the adjoining landowners before this power would be exercised on their land. The Applicant added that it is correct that they could force a land owner to provide access but that this would be subject to compensation.</p> <p>The Applicant added that it is not possible at this time to definitively define the extent of what would be considered as adjacent other than to refer back to what would ordinarily be considered as adjacent or refer back to the limitations within the article of 'reasonably necessary'.</p> <p>The Applicant in response to the concerns raised offered to provide examples of the types of surveys which the Applicant would be considering under this power in order to provide further comfort.</p>

Item	ExA Question/Context for discussion	Applicant's Response
b.	<p>Notice period of 14 days in Articles 22, 23 and 40 <a href="https://infrastructure.planninginspectorate.gov.uk">https://infrastructure.planninginspectorate.gov.uk</a> Page 6 of 6:</p> <p>i. Implications for the Applicant to accommodate 28 days' notice period.</p>	<p>The Applicant described that the implication on a programme of this nature if a 28 day period across the board for each of the different powers or articles referred to was applied would have significant cumulative impacts. However, each power should be considered in turn because they each have slightly different purposes.</p> <p>It was explained by the Applicant that Article 22 of the dDCO [REP1-003], regarding protective works to buildings, has the risk of increasing damage to a property or buildings if the period of 14 days is extended and so the Applicant submitted that 14 days is appropriate here (as was also included in the model provisions).</p> <p>The Applicant added that Article 23, relating to the surveying and investigating the land, should also be 14 days and referred to other DCOs and the inclusion of this time frame within the model provisions.</p> <p>It was added that increasing to 28 days could have quite a significant cumulative effect on the Applicant's programme which are run as quickly as possible in order to reduce the overall impacts of a construction scheme of this size and nature.</p> <p>The Applicant explained that this extension of notice needs to be considered across the board and the request for a longer notice period also assumes that the Applicant would not be in regular contact with landowners who would be affected by this power which the Applicant submitted was not a safe assumption across the board. It was further explained that this 14 day period is a minimum and if there are specific instances (e.g. livestock to be moved) where landowners need additional time there is a possibility that those landowners could be accommodated on a case by case basis.</p> <p>The Applicant also made the point that the 14 day period for Article 40 was included in numerous made Orders to date and is as set out in the model provisions. The Applicant was interested in the NFU providing examples of made Orders where a 28 day period had been provided within Article 40 to consider whether this was relevant or applicable. The Applicant added that this Article involving temporary possession would involve those parties or landowners who have been involved in the process from the beginning so have been informed of this and there is also the possibility of accommodating specific requirements on a case by case basis where this has been discussed.</p> <p>The Applicant was unsure on the context of the point that the NFU point raised around derogation and requested further clarification so they could perhaps respond more fully at a later Deadline.</p>