

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume

9.37 Applicant's comments on other parties response to action
points from Issue Specific Hearing 1

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Rule 8(1)(k)

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October 2021

Infrastructure Planning

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**The Infrastructure (Examination Procedure)
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improvements
Development Consent Order 202[]**

**9.37 Applicant's comments on other parties' responses
to action points from Issue Specific Hearing 1**

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Author	A428 Black Cat to Caxton Gibbet improvements Project Team, National Highways

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Table of contents

Chapter	Pages
1 Introduction	1
2 Applicant's comments on other parties' responses to action points from Issue Specific Hearing 1	2

Table of Tables

Table 1-1 Action Points from ISH1 for other parties.....	1
Table 2-1: Action Points 1 and 2 for East West Rail [REP1-073].....	2
Table 2-2: Action Point 11 for the Local Authorities – Cambridgeshire authorities [REP-103].....	4

1 Introduction

1.1.1 This document sets out the comments from National Highways (the Applicant) on other parties' responses to the action points arising from Issue Specific Hearing 1.

1.1.2 Actions which were incumbent on other parties are as set out in **Table 1-1** below.

Table 1-1 Action Points from ISH1 for other parties

No.	Action Point	Party	Comment
1	Details about the two emerging preferences for the alignments for the East West Rail (EWR) scheme.	East West Rail	See Table 2-1 of this report.
2	Draft wording for protective provisions or cooperation agreement proposed by EWR.	East West Rail	See Table 2-1 of this report.
5	Historic England were unable to attend the ISH; their views are requested to Agenda Item 4 in addition to responses to Examining Authority's First Written Questions.	Historic England	The Applicant has provided comments in the Applicant's comments on other parties' responses to the Examining Authorities First Written Questions [TR010044/EXAM/9.20] .
8	All LAs to provide detailed responses to questions relating to Good Design in First Written Questions (WQ1).	Local Authorities	The Applicant has provided comments in the Applicant's comments on other parties' responses to the Examining Authorities First Written Questions [TR010044/EXAM/9.20] .
11	Elaborate on the works excluded from the definition of 'commence' in the dDCO that would need controls either through First Iteration EMP or other means.	Local Authorities	See Table 2-1 of this report. The Cambridgeshire Authorities were the only respondents to the action point.
12	Historic England, Environment Agency, and LAs to comment on matters relating to historic assets, flood risk, Public Rights of Way and any other matters that would be adversely affected by the Applicant's proposed approach to limits of deviation in the dDCO, referring to specific works plans where appropriate.	Historic England Environment Agency Local authorities	The Applicant has provided comments on Deadline 1 submissions where these matters are covered in the following documents: Applicant's comments on other parties' responses to the Examining Authorities First Written Questions [TR010044/EXAM/9.20] Applicant's comments on Written Representations [TR010044/EXAM/9.21] Applicant's comments on Local Impact Reports [TR010044/EXAM/9.22]

2 Applicant's comments on other parties' responses to action points from Issue Specific Hearing 1

2.1.1 **Table 2-1** sets out the Applicant's comments on Action Points 1 and 2 from Issue Specific Hearing 1 which stated: "Details about the two emerging preferences for the alignments for the East West Rail (EWR) scheme" and "Draft wording for protective provisions or cooperation agreement proposed by EWR."

Table 2-1: Action Points 1 and 2 for East West Rail [REP1-073]

Action Point Number	Action Point Response/Applicant Response
1	<p><i>Details about the two emerging preferences for the alignments for EWR.</i></p> <ul style="list-style-type: none"> viii. An overview of the EWR Project is set out in EWR Co's response to ExAWQ.1.17.4.1(a). ix. Details as to route alignments one and nine are set out in the documentation for the second non-statutory consultation (https://eastwestrail.co.uk/consultation). Relevant extracts from the Consultation Technical Report are provided at Appendix A to this summary. x. In addition, EWR Co has set out further details as to the potential interfaces between the Proposed Development and the EWR Project in its response to ExAWQ.1.17.4.1(b). This includes an analysis of the interfaces between each of the shortlisted route alignments and the Proposed Development.
Applicant's comments	<ul style="list-style-type: none"> viii. The Applicant has provided comments on the response to Q1.17.4.1(a) in the Applicant's comments on other parties' responses to the Examining Authority's First Written Questions [TR010044/EXAM/9.20]. ix. The Applicant notes the provision of this information from East West Rail. x. The Applicant has provided comments on the response to Q1.17.4.1(b) in the Applicant's comments on other parties' responses to the Examining Authority's First Written Questions [TR010044/EXAM/9.20].

Action Point Number	Action Point Response/Applicant Response
2	<i>Draft wording for protective provisions or cooperation agreement proposed by EWR.</i> iv. Productive discussions between EWR and the Applicant are ongoing.
Applicant's comments	iv. The Applicant can confirm that discussions are ongoing between the parties. However, the Applicant has not yet received any draft protective provisions from EWR.

2.1.2 **Table 2-2** sets out the Applicant's comments on Action Point 11 from Issue Specific Hearing 1 which stated:
"Elaborate on the works excluded from the definition of 'commence' in the dDCO that would need controls either through First Iteration EMP or other means."

Table 2-2: Action Point 11 for the Local Authorities – Cambridgeshire authorities [REP-103]

Action Point Number	Action Point Response/Applicant Response
11	<p>3. ISH1 Action Point 11: Definition of 'commence'</p> <p>3.1. Action Point 11 from Issue Specific Hearing 1 asked local authorities to elaborate on the works excluded from the definition of 'commence' in the draft DCO (dDCO) [REP1- 003] that would need controls either through First Iteration EMP or other means</p> <p>3.2. The definition of "commence" is contained at Article 2 of the dDCO, as follows: <i>"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, environmental surveys, pre-construction mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, temporary hard standing, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and utilities, protection works, demolition (save in relation to Brook Cottages), site clearance, construction compound set up, and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;</i></p> <p>3.3. The importance of the definition of 'commence' in the dDCO is that it provides the trigger for:</p> <p>3.3.1. the completion of and requirement to comply with the Second Iteration EMP (paragraph 3 of Schedule 2 to the dDCO);</p> <p>3.3.2. the completion of and requirement to comply with the traffic management plan (paragraph 11 of Schedule 2 to the dDCO);</p> <p>3.3.3. the completion of and requirement to comply with the written details of the surface and foul water drainage system (paragraph 13 of Schedule 2 to the dDCO); and</p>

Action Point Number	Action Point Response/Applicant Response
	<p>3.3.4. the completion of and requirement to comply with the detailed floodplain compensation scheme (paragraph 14 of Schedule 2 to the dDCO); and</p> <p>3.3.5. the completion of and requirement to comply with the written details of the proposed noise mitigation for the use and operation of the (relevant part of the) authorised development (paragraph 18 of Schedule 2 to the dDCO) [we note that this relates to the use and operation of the authorised development, not its construction].</p>
Applicant's comments	The Applicant notes the comments from the Cambridgeshire authorities.
	<p>3.4. The definition of 'commence' in Article 2 of the dDCO carves out of the definition a long and wide-ranging list of activities, many of which are quite significant construction activities – we highlight in bold those of most potential concern:</p> <p>3.4.1. archaeological investigations and mitigation works,</p> <p>3.4.2. environmental surveys,</p> <p>3.4.3. pre-construction mitigation works,</p> <p>3.4.4. investigations for the purpose of assessing and monitoring ground conditions and levels,</p> <p>3.4.5. remedial work in respect of any contamination or other adverse ground conditions,</p> <p>3.4.6. erection of any temporary means of enclosure,</p> <p>3.4.7. temporary hard standing,</p> <p>3.4.8. receipt and erection of construction plant and equipment,</p> <p>3.4.9. diversion and laying of underground apparatus and utilities,</p> <p>3.4.10. protection works,</p> <p>3.4.11. demolition (save in relation to Brook Cottages),</p> <p>3.4.12. site clearance,</p>

Action Point Number	Action Point Response/Applicant Response						
	<p>3.4.13. construction compound set up, and</p> <p>3.4.14. the temporary display of site notices or advertisements.</p> <p>3.5. The activities listed above could all be carried out without the various plans and written details referred to in paragraph 3.3 being in place.</p> <p>3.6. Only the archaeological mitigation strategy and biodiversity pre-commencement plan might apply to the activities pursuant to paragraphs 9 and 20 of Schedule 2 to the dDCO. However, we are not certain of that in relation to the bio-diversity pre-commencement plan as that applies to 'pre-commencement operations' which does not appear to be defined in the dDCO. We request confirmation from the applicant and clarification in the drafting that all the activities excluded from the definition of commence, as listed in paragraph 3.4 above are 'pre-commencement operations' for the purposes of paragraph 20 of Schedule 2 to the dDCO, so that the biodiversity pre-commencement plan will apply.</p>						
Applicant's comments	<p>The Applicant is considering the above points in the context of developing a 'Pre-commencement plan'. It is anticipated that this plan will cover the topics in point 3.4 above and provide a more detailed scope of works and appropriate control measures to be implemented, focusing particularly on the activities emboldened in point Section 3.4 of the Cambridgeshire Authorities response.</p> <p>It is the intention of the Applicant to incorporate the Biodiversity pre-commencement plan within this overall Pre-commencement plan.</p> <p>The Pre-commencement plan will be produced for Deadline 4 (4 November 2021).</p>						
	<p>3.7. The Examining Authority asked for specific examples of matters of concern, by way of non-exhaustive illustration, we flag the following:</p> <table border="1" data-bbox="528 1155 1953 1428"> <thead> <tr> <th data-bbox="528 1155 1003 1254">Activity excluded from 'commence'</th> <th data-bbox="1003 1155 1480 1254">Concern</th> <th data-bbox="1480 1155 1953 1254">Absent protection</th> </tr> </thead> <tbody> <tr> <td data-bbox="528 1254 1003 1428">pre-construction mitigation works</td> <td data-bbox="1003 1254 1480 1428">There is no clarity as to what this term might encompass, or how significant the works might be. It could encompass works for flood, traffic, noise or other environmental</td> <td data-bbox="1480 1254 1953 1428">EMP traffic management plan</td> </tr> </tbody> </table>	Activity excluded from 'commence'	Concern	Absent protection	pre-construction mitigation works	There is no clarity as to what this term might encompass, or how significant the works might be. It could encompass works for flood, traffic, noise or other environmental	EMP traffic management plan
Activity excluded from 'commence'	Concern	Absent protection					
pre-construction mitigation works	There is no clarity as to what this term might encompass, or how significant the works might be. It could encompass works for flood, traffic, noise or other environmental	EMP traffic management plan					

Action Point Number	Action Point Response/Applicant Response		
		mitigation. It appears odd to carry out works of mitigation for areas before the relevant plans relating to mitigating such impacts have been approved. It is difficult to gauge the possible scale of these works.	written details of the surface and foul water drainage system detailed floodplain compensation scheme written details of proposed noise mitigation
	remedial work in respect of any contamination or other adverse ground conditions,	These works could be significant with high potential environmental impact. They could require significant HGV movements.	EMP Traffic management plan
	temporary hard standing	This could have drainage and other related impacts.	EMP written details of the surface and foul water drainage system detailed floodplain compensation scheme
	receipt and erection of construction plant and equipment	This could have significant traffic impacts as well as potential noise impacts	EMP Traffic management plan
	protection works	Again, it is difficult to gauge the scale of such works without further clarification, but they could be significant.	EMP traffic management plan written details of the surface and foul water drainage system detailed floodplain compensation scheme

Action Point Number	Action Point Response/Applicant Response		
	demolition	Works of demolition can cause significant dust and noise impacts as well as HGV movements.	EMP traffic management plan
	Site clearance	Site clearance can cause significant dust and noise impacts as well as HGV movements	EMP traffic management plan
	construction compound set up	This could have significant traffic impacts as well as potential noise impacts	EMP traffic management plan
	<p>3.8. We are of the view that the Requirements in Schedule 2 to the dDCO and / or the definition of 'commence' in article 2 to the dDCO be amended so that the 'absent protection' we highlight in the table above should be approved before and applicable to the various activities we highlight above unless the Applicant can demonstrate to us and the Examining Authority what other appropriate protections are in place.</p>		
Applicant's comments	<p>The Applicant is considering the above points in the context of developing a 'Pre-commencement plan'. It is anticipated that this plan will cover the topics in point 3.4 above and provide a more detailed scope of works and appropriate control measures to be implemented, focusing particularly on the activities emboldened in Section 3.4 of the Cambridgeshire Authorities response.</p> <p>It is the intention of the Applicant to incorporate the Biodiversity pre-commencement plan within this overall Pre-commencement plan.</p> <p>The Pre-commencement plan will be produced for Deadline 4 (4 November 2021).</p>		