

5 October 2021

The Planning Inspectorate  
Menaka Sahai  
Lead Member of the Examining Authority  
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Dear Menaka Sahai,

### **A428 Black Cat to Caxton Gibbet Road Improvement Scheme – Deadline 3**

We write on behalf of the Church Commissioners for England (CCfE) in connection with land it has an interest in, which will be impacted by the A428 improvement scheme. The land is located broadly between the settlements of Cambourne and Eltisley, as previously identified within our Written Representation.

This correspondence relates to 'Deadline 3'. As an Interested Party, there are a number of matters which we wish to cover on behalf of CCfE in advance of Deadline 3 today:

#### **(1) Request for Compulsory Acquisition Hearing 2 (CAH2) to take place week commencing 29<sup>th</sup> November**

As stated in CCE's D1-WR, CCE sought a Framework Agreement with Highways England to cover various points in relation to permanent and temporary acquisition of land and / or rights in which CCE has an interest and provided Highways England with Heads of Terms. At a meeting between representatives of CCE and Highways England on 17 September 2021, Highways England confirmed that it is willing to enter into an option agreement in relation to the permanent acquisition of relevant CCE owned plots, enter into a lease agreement in respect of Plot 14/6e (which is understood to be sought as a construction site and borrow pit) and to include within those documents many of the issues raised in the Framework Agreement Heads of Terms prepared by CCE.

Highways England has not yet provided a detailed response in respect of the above agreements (save for a template option agreement), nor has it provided a timeframe for provision of these documents. Other questions remain unanswered.

CCE is concerned with the lack of progress on negotiations to date. CCE supports the consideration of supplementing the use of the District Valuer's officer if this would enable negotiations to progress and looks forward to reviewing Highways England's response to Action 7 arising out of Compulsory Acquisition Hearing 1 (CAH1) in this regard.

Whilst CCE therefore hopes to avoid presenting its full case at hearing, in the event that negotiations with the Applicant do not progress and an agreement has not been reached, CCE respectfully requests the right to appear at Compulsory Acquisition Hearing 2 scheduled to take place in the week commencing 29 November 2021. If negotiations have progressed, CCE will update the Examining Authority ahead of the hearing.

#### **(2) Comments on responses to the Examining Authority's Written Questions 1**

CCE wish to comment as below on the responses provided by the Applicant to the Examining Authority's First Written Questions (WQ1) published on 2 September 2021. Where relevant, CCE's comments refer to matters relating to these responses arising at CAH1, Issue Specific Hearing 2 (ISH2) and Issue Specific Hearing 3 (ISH3). We note that a number of Action Points arising out of CAH1, ISH2 and ISH3 require submission of further information and / or clarification of points covered by WQ1, on which further comment may be required.

### Q1.5.2.3 Changes to compulsory acquisition and temporary possession:

CCE shares the concerns of the National Farmers Union [RR-074] and Bedford Borough Council [RR-008b] that areas identified for compulsory acquisition are excessive. In particular, CCE is concerned about the extent of the compulsory acquisition of Plot 14/6e which is understood to be sought as a construction site and borrow pit and does not consider that the extent of this land take has been justified. In addition, temporary possession is being sought over Plots 13/10e, 13/4k and 14/6c which are significant.

Further, permanent rights / temporary possession are being sought over Plots 13/10c and 13/10d which again are large plots – this is understood to be on the basis that Highways England requires the land for statutory undertaker work which has not as yet been designed and, once designed, Highways England will narrow down the land subject to the rights. That leaves the landowner in an unacceptable position as it is not able to identify which land will be affected or assess the impact on its land. Highways England indicated at the meeting that it would provide contact details to enable CCE to enter into discussions with the statutory undertakers, but it has not as yet done so.

Highways England has responded to the questions and stated that it is confident that the land identified for compulsory acquisition and temporary possession cannot be further rationalised or reduced, and that the land included within the Order is no more than is reasonably necessary in order to deliver the Scheme. Annex A of the Statement of Reasons is however light on detail.

Highways England commented during CAH1 that the lack of detailed design drawings has an impact on determining the extent of permanent land take required. There is a fundamental question as to the appropriateness of authorities seeking powers of compulsory purchase on such basis.

At this stage, CCE considers that the statutory tests for compulsory acquisition are not met given: (a) Highways England is willing to enter into voluntary acquisitions but is not progressing such acquisitions; (b) Highways England is willing to enter into a lease agreement in respect of Plot 14/6e which begs the question as to whether the Plot actually needs to be permanently acquired in the first place; and (c) Highways England should not be relying on lack of detailed design to justify compulsory powers over significant areas of land .

CCE looks forward to reviewing the further information to be provided by Highways England regarding the process for compulsory acquisition and temporary possession, including the process for the return of land compulsorily acquired but not needed, in response to Action 4 arising from CAH1. At this stage CCE comments only that the promise to return strips of land in the future does not make good the need to determine whether compulsory acquisition is required in the first place.

### Q1.6.2.1 Borrow pits:

CCE shares the concerns of Bedford Borough Council in relation to the level of detail provided about the borrow pits. According to Figure 9.3 annexed to the Environmental Statement, Plot 14/6e has been classified as Grade 2 - very good quality agricultural land. As Highways England has agreed that the land can be leased and returned to CCE (such that compulsory acquisition is not required), it needs to be returned in fit condition.

At ISH3, Highways England maintained that its approach to soil handling and management set out in Annex E (the Soil Handling Management Plan / SHMP) of the First Iteration EMP is proportionate / adequate. At this stage, CCE echo concerns voiced by Affected Persons during ISH3 in terms of a lack of clarity regarding the process for restoration of borrow pits. The SHMP itself states in paragraph 1.1.1 that it is an outline management plan which sets out “generic measures” to be implemented for soil handling and management during construction of the Scheme. CCE would like to see further details / conditions covering a pre-construction soil survey, and ensuring that the soil is restored to the same agricultural land classification / quality as prior to works by way of an agreed specification.

CCE strongly objects to the suggestion set out in the Joint Local Impact Report (LIR) from Cambridgeshire County Council, Huntingdonshire District Council and South Cambridgeshire District Council (at page 23, page 79 and page

103) that an opportunity has been missed to provide on-site biodiversity net gain or mitigation for climate change by use of the borrow pits. The land is capable of being returned and should be returned to the relevant landowners in suitable condition. Compulsory acquisition of land to provide biodiversity net gain is not required for the development and therefore retaining this land for biodiversity net gain would fail to satisfy the limbs of section 122 of the Planning Act 2008.

CCE notes Action 8 and 9 arising from ISH3 requiring Highways England to provide further information regarding borrow pits and looks forward to commenting further at the appropriate stage.

#### **Q1.6.3.2 Agricultural Liaison Officer:**

It is understood that, in its co-operation with agricultural occupiers on previous schemes consented by DCO, there has at times been a lack of consistency in the approach taken by Highways England teams and a lack of understanding of agricultural practice, leading to disputes over compensation which could have been avoided.

CCE agrees with the submission of the NFU [RR-074] in regard to the need for a dedicated Agricultural Liaison Officer (ALO) to liaise with agricultural landowners and tenants affected by the Scheme. Employment of an ALO should be secured through the First Iteration EMP. CCE is broadly in support of the suggested wording provided by the NFU at Annex 5 to its Written Representations submitted in response to Deadline 1.

CCE looks forward to reviewing the response of Highways England to Action 15 arising from ISH3 in regard to the consideration / update of the need, rationale for inclusion and role description of an ALO or team in the First Iteration EMP.

#### **Q1.7.3.17 Article 23 – Authority to survey and investigate the land:**

CCE raised concerns in its D1-WR regarding the broad power in Article 23 in respect of the grant of powers to undertake surveys and investigate land which is outside of the Order Limits. It is unclear what “adjacent” means, as in how far it could possibly extend. The term should be defined narrowly with a tight limit linked to a clear justification as to what is required. It is somewhat concerning that the Applicant notes it may wish to undertake surveys of ecological receptors - all ecological receptors affected by the Scheme and survey needs should have been identified.

Further, Highways England makes reference to the need for excavations and boreholes, to investigate groundwater and to discharge water onto land (and appear to make no point as to precedent on these particular requirements). Whilst such work may be de minimis, they may also be substantial, and cannot be justified without appropriate limitations and conditions in place.

It is quite clear that the impact on landowners could be considerable, and yet is unascertainable. This is unacceptable and goes beyond what the statute permits – seeking powers to tackle “unforeseen and unforeseeable circumstances” does not meet the statutory test.

CCE is however prepared to grant appropriate access via licence and powers of compulsion are not necessary in respect of CCE’s interest in land.

It is noted that Action 14 arising out of ISH3 requires Highways England to provide further details of what “adjacent” in the context of Article 23 may mean, and to comment on what further controls could be introduced with respect to this word. CCE may wish to provide further comment once the requested information is submitted.

In respect of (b), the need to carry out the Scheme efficiently needs to be balanced with the impact on affected landowners and occupiers. It is not clear what “consultation” Highways England is referring to, but if that is consultation on the DCO itself, that is not adequate. Any carefully thought through programme should be able to accommodate 28 days’ notice and further advance notice to occupiers.

## Q1.7.3.19 Article 27 – time limits for temporary possession

Where land has been taken temporarily, the landowners are reasonably entitled to have possession of their land returned to them as soon as possible. A particular concern for agricultural tenants is that the land is properly maintained during temporary possession, to avoid for example weeds growing which can spread to farmed land. This is aggravated if Highways England are retaining land that is no longer needed for the works for say up to a year.

## Q1.7.3.20 Article 28 – Compulsory Acquisition of rights and imposition of restrictive covenants

Please note our comments above regarding the lack of certainty as to the locations in which the acquisition of rights is indeed “required”, such that it is impossible for landowners to properly comment on the impact.

## Q1.7.3.21(a) Article 40 – listing of plots affected by 40(1)(d)

The column titled “Status of landowner agreement” in the table at Appendix Q.1.7.3.21 of Highways England’s Response to WQ1 needs to be updated in respect of land owned by CCE to reflect that discussions have commenced and CCE await further information from Highways England (currently the column states that says that Highway’s England has received no instruction).

## Q1.7.3.22(b) Article 40 – adequate notice

CCE submits that the notice period in respect of Article 40 should be increased to 28 days to minimise the impact on farm businesses and tenants. The notice period in Article 23 should also be increased from 14 to 28 days’ notice.

This needs to be set in the context of the general need for Highways England to enter into continued dialogue with occupiers and give considered information as to the future programme and in return to seek understanding of its impact on farming cycles. It is inappropriate for Highways England to simply rely on consultation at the DCO application stage as sufficient.

Further, where surveys or investigations are being undertaken on land outside, but adjacent to, the Order Limits, it follows that owners / occupiers of adjacent land will not have been consulted as a result of the DCO application process.

## Q1.11.2.6 Business and property access

It is noted that the Applicant will consult with landowners on the final details of accesses eg pavement construction widths, fencing, gate details and security details. Highways England should provide further details as to the minimum specification of any replacement access and a clear commitment in the DCO to consult with owners and seek agreement.

It has been discussed with Highways England that there may be temporary disruption to accesses. Farm businesses require access to their land 24-7 and there must be mechanisms in place to secure access at all times. Highways England should commit to implementing such measures so as to secure access 24-7.

If you would like to discuss any aspect, please do not hesitate to contact my colleague, Nolan Tucker (ntucker@deloitte.co.uk).

Yours sincerely



Deloitte LLP