

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**WRITTEN SUBMISSIONS OF NFU REGARDING THE A428 BLACK CAT TO CAXTON GIBBET
SCHEME DEVELOPMENT CONSENT ORDER 201 [...]**

PLANNING INSPECTORATE REFERENCE NO TR010025

**SUBMISSIONS OF NATIONAL FARMERS UNION ON THE COMPULSORY ACQUISITION
HEARING1 ON 22nd SEPTEMBER 2021**

DATE 5th OCTOBER 2021

1.0 Introduction

- 1.1 Submissions on behalf of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order (DCO) by Highways England (HE) for the A428 Black Cat to Caxton Gibbet scheme. The NFU is making a case on behalf of its members who are affected by the proposed DCO.

2.0 Compulsory Acquisition Hearing 22nd September 2021:

2.1 4.0: Affected Persons’ Site Specific Representations.

The NFU raised the following points at the compulsory acquisition hearing on behalf of its members affected by the proposed scheme. The NFU held meetings with members and their agents on Monday 20th September to understand the latest position between HE and landowners and tenants and issues which are arising.

- 2.2 **Communication/One to One meetings:** The NFU understands that meetings have been taking place with landowners/tenants but that there has not been much meaningful negotiation. HE has been consulting on drawings which highlight habitat mitigation areas, balance ponds, flood alleviation areas etc but HE has not really been willing to make any changes which would reduce the impact on the farm businesses. HE know they have a duty to negotiate and engage with landowners and only take the rights they need to build the scheme.

Further the NFU did raise at an early stage with HE to communicate with landowners/tenants and provide information sought. Agents acting for our members are reporting that after meetings when actions have been agreed that HE are not reporting back to agents or landowners/tenants. Some agents have reported that there has been more detail in written responses under the examination than they have obtained in one to one meetings.

- 2.3 **Voluntary/Option Agreement:** HE informed the NFU at a meeting held on 15th September that they had offered Option Agreements to landowners but that there had not been much interest. But agents have informed the NFU that the approach taken by HE has been very half hearted. A standard agreement has been presented to some agents, but HE have not been prepared to enter in to detailed negotiations on the heads of terms within the Option Agreement.

The NFU would expect HE to enter in to detailed head of terms first and for these terms to be included within the Option Agreement offered before sending an Option Agreement to landowners to consider. HE should be prepared to discuss and negotiate all heads of terms within the agreement and it is normal for these types of voluntary agreements to offer better terms than is expected within the terms of the DCO.

On other schemes the NFU along with a working group of agents acting has entered in to and negotiated heads of terms for a voluntary agreement well in advance of even the DCO application for the scheme in question being submitted to the Planning Inspectorate. The NFU believes that HE are behind with their voluntary negotiations and are relying too heavily on compulsory acquisition rights through the DCO being approved.

- 2.4 **Habitat Mitigation – Take Rights Required:** HE must only take the rights they need for habitat and flood alleviation areas. HE may not need to compulsory purchase these areas, lesser rights would be suitable through temporary possession. HE do need to make sure the rights they are seeking are necessary and proportionate. The NFU would like to see HE offering habitat mitigation agreements to landowners where it is not necessary to take these areas permanently, allowing ownership to stay with the landowner. Under a management agreement restrictive covenants can be applied so that maintenance of the site is carried out by the landowners and they receive annual payments for carrying out this work.

2.5 Other Points raised during the Hearing:

- **Taking land for Relocation:** NFU confirmed that it does not support taking land off one landowner for another for relocation purposes of a business or building. This should be agreed on a voluntary basis with landowners.
- **Accommodation works:** The NFU does support that accommodation provisions like a bridge which provide access to severed land must be designed for the future and not just be fit for purpose for the tractors and machinery that are being used on that holding in question today. The NFU did highlight in a consultation response early on with HE that they should be negotiating and agreeing accommodation works.
- **Land Drainage:** The agent, Jeremy Procter raised the issue over how the road scheme drainage needs to work with field drainage and how there have been issues on the A14. He requested a clearer design and specification. The NFU raised how it has sent wording to HE to cover Field drainage in regard to the general requirements it would expect HE and their contractors to follow. This wording was sent to the Examiners on 31st August 2021 in Written Representations.
- **Detailed design:** The NFU highlighted that it understands that HE do not have detailed design for the scheme yet and that this may influence the what land is required permanently. HE has stated that they will only take what land is needed once detailed design is known. The NFU would like this recorded in a document within the DCO along with that HE will only take the rights required to build the road. NFU highlighted that experience from other schemes has shown that it is difficult to HE to engage once the examination of the project has concluded.
- **Clarification on Article 28 and 40:** The NFU believes that HE still need to carry out a further assessment of land to be taken on a plot by plot basis to make sure that each plot can be justified.

Louise Staples MRICS, FAAV
NFU
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ.

Dated: 5th October 2021.

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SCHEME DEVELOPMENT CONSENT ORDER 201 [...]**

**SUBMISSIONS OF NATIONAL FARMERS UNION ON THE ISSUE SPECIFIC HEARING ON 23rd
SEPTEMBER 2021**

**Louise Staples MRICS, FAAV
NFU
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ**

DATE 5th OCTOBER 2021

1.0 Introduction

- 1.1 Submissions on behalf of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order (DCO) by Highways England (HE) for the A428 Black Cat to Caxton Gibbet scheme. The NFU is making a case on behalf of its members who are affected by the proposed DCO.

2.0 Issue Specific Hearing 23rd September 2021:

- 2.1 **8.0: Good Design:** The NFU as stated at the Compulsory Acquisition hearing the day before highlighted that it understands that HE do not have detailed design for the scheme yet and that this may influence the what land is required permanently. HE has stated that they will only take what land is needed once detailed design is known. The NFU would like this recorded in a document within the DCO along with that HE will only take the rights required to build the road. NFU highlighted that experience from other schemes has shown that it is difficult to HE to engage once the examination of the project has concluded
- 2.2 **11.0 Draft Development Consent Order: (g) Roles and responsibilities:** The role identified for the Community relations Manager in the FI -EMP does not provide the equivalent function of an Agricultural Liaison Officer. The NFU as stated in our representation and at the hearing would like to see that the Main Works Contractor will have to employ an agricultural liaison officer who will then work with the Community Liaison Manager. The role we would like to see the ALO undertake was identified in our full written representation and was sent to HE on 4th August 2021. As explained at the hearing the NFU discussed the role at a meeting with HE on 15th September 2021 and it was not at all clear how this role would be covered. The NFU believes this role whether it is undertaken by an individual or a team is essential during the construction of the improvements to the proposed scheme for the A428. The roles that the ALO should undertake and the NFU would expect to see undertaken were sent to the Examiners in the full written representation on 31st August 2021. The NFU can confirm that HE has not been in contact to discuss this further since the hearing.

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**WRITTEN SUBMISSIONS OF NFU REGARDING THE A428 BLACK CAT TO CAXTON GIBBET
IMPROVEMENT SCHEME DEVELOPMENT CONSENT ORDER 201 [...]**

**SUBMISSIONS OF NATIONAL FARMERS UNION ON THE ISSUE SPECIFIC HEARING ON 24th
SEPTEMBER 2021**

**Louise Staples MRICS, FAAV
NFU
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ.**

DATE 5th OCTOBER 2021

1.0 Introduction

1.1 Submissions on behalf of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order (DCO) by Highways England (HE) for the A428 Black Cat to Caxton Gibbet scheme. The NFU is making a case on behalf of its members who are affected by the proposed DCO.

2.0 Issue Specific Hearing 24th September 2021:

2.1 11.0 Draft Development Consent Order:

(a) Article 23 -Authority to Survey and Investigate Land: The NFU as raised would like HE to provide further details on what type of surveys will be carried out on land which is adjacent to, but outside Order Limits. The NFU after checking the wording of other DCOs believes that this is not normally requested and the DCO will only allow the undertaker to enter land within the Order limits which is affected by the authorised scheme to carry out any surveys or investigation.

Further under Article 2: Interpretation, there is no meaning of the word “adjacent”. Therefore, the NFU would like to see it stated how far away from the Order Limits a survey can be carried out. It is essential that landowners and occupiers know what land could be disturbed by surveys going forward during the construction of the works.

(b) Notice Period of 14 days in Articles 22, 23 and 40: The NFU confirmed that it is acceptable for a 14 day notice to be served for surveys to be undertaken under Article 23 but it would like to see that HE will agree to a 28 notice where a landowner may need to get a derogation from Natural England/RPA where land is in an environmental scheme like Higher Level Scheme (HLS) or Countryside Stewardship.

The NFU thanks HE for including the wording as drafted in the **draft DCO at 23(3) *the notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.*** The NFU believes that Article 23 at 23(3) should also state that the notice must indicate the following:

- Who will be taking entry
- The date of entry and for how long
- The type of equipment if any will be used.

The NFU believes strongly that it is only right that a landowner should know who is coming on to his land, how long they will be on the land for carrying out the survey and the vehicles and equipment that will be brought on to the land.

Further at 23 (1) (b) (ii) it is stated that without limitation on the scope of sub-paragraph (i) that the undertaker may investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water from sampling operations on to the land.

This wording highlighted in bold above is not normally included in the article covering surveys and investigation in a DCO and as Article 23 is drafted for the A428, the discharge of water from sampling operations on to land could take place within and outside the Order limits.

The NFU has raised this with HE and would like clarification on the quantity of water to be discharged from the sampling operations.

Article 40: Temporary Use of Land: The NFU as requested would like to see that HE serve a 28 day notice as a minimum on landowners before taking land under temporary possession.

Under Article 40 it states that only 14 days' notice has to be given to a landowner before entry can be taken by the undertaker. The NFU believes strongly that HE should be able to give a longer notice period than 14 days to landowners before taking any land on a temporary basis. The areas of land to be used and taken on a temporary basis are very similar to land holdings which are being affected by HS2. Work that has been on going on HS2 Phase 1 has shown that a 3 month notice is required before entry is taken. HS2 have now given an Assurance to the NFU that a 3 month notice will be served before land is taken on a temporary basis on Phase 2a. It has to be that as a minimum HE serve a 28 day notice.

If the DCO only states 14 days then HE will only serve a 14 day notice. HE has stated that they will be in discussions with landowners about temporary land take in advance of the 14 day notice and if this is the case then it should be possible to serve a longer notice period. Even with a longer notice period it should be stated that HE must take a proportionate approach and cannot increase the burden on landowners. Further just because to date DCOs have been granted with a 14 day notice period does not mean that it is the correct notice period going forward.

HE on the A30 Chiverton to Carland Cross agreed to increase the notice period length to 28 days. A 28 day notice period has also been agreed in the voluntary generic agreement for Hornsea 4. The NFU is expecting HE to acknowledge and accept that on a scheme this size where large blocks of land are being taken from individual landowners for temporary use that a 28 day notice is necessary.

The NFU would like the notice which is served by HE to take temporary possession to state how long the temporary occupation will be for and for details on the programme of works to be provided by the contractor.