

# A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.45 Applicant's Comments on Landowner submissions at  
Deadline 3

Planning Act 2008

Rule 8 (1)(k)

Infrastructure Planning (Examination Procedure) Rules  
2010

November 2021

## Infrastructure Planning

### Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

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

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### 9.45 Applicant's Comments on Landowner submissions at Deadline 3

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<b>Regulation Reference:</b>	Rule 8 (1)(k)
<b>Planning Inspectorate Scheme Reference</b>	TR010044
<b>Application Document Reference</b>	TR010044/EXAM/9.45
<b>Author</b>	A428 Black Cat to Caxton Gibbet improvements Project Team, National Highways

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 1	4 November 2021	Deadline 4

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# 1 Introduction

- 1.1.1 The Development Consent Order (DCO) application for the A428 Black Cat to Caxton Gibbet improvements scheme (the Scheme) was submitted by National Highways to the Secretary of State for Transport via the Planning Inspectorate on 26 February 2021 and accepted for Examination on 23 March 2021.
- 1.1.2 The purpose of this document is to set out the Applicant's comments on submissions received from Landowners at Deadline 3 of the Examination into the Scheme. These submissions were published on the Planning Inspectorate website on 7 October 2021 and comprise of the following:
- a. Post hearing submissions for the Compulsory Acquisition Hearing, including written submissions of oral case.
  - b. Response to Compulsory Hearing action points.
  - c. Comments on responses to the Examining Authorities first written questions.
  - d. Nomination of additional sites for an Accompanied Site Inspection
- 1.1.3 To ensure there is clarity on what the landowner submission relates to, this is stated alongside the landowner name and representation number.
- 1.1.4 The following representations submitted at Deadline 3 are addressed in this document:
- a. REP3-031 – Anglian Water
  - b. REP3-032 – Bedford Borough Council
  - c. REP3-033 – Bedford Borough Council
  - d. REP3-044 – Deloitte on behalf of the Church Commissioners
  - e. REP3-045 – Davison & Company (Great Barford) Limited
  - f. REP3-046 – Duncan & Maxine Buchanan
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  - h. REP3-050 – National Farmers Union
  - i. REP3-051 – The Executors of N A Alington
  - j. REP3-052 – Travelodge Hotels Ltd

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### REP3-031 – Anglian Water

#### *Post-hearing submission for Compulsory Acquisition Hearing, including written submission of oral case*

Reference Number	Landowner Submission/Applicant's Comments
REP3-031a	<p>It is unfortunate that I must advise having attended the CAH1 Hearing to assist the Examining Authority in progression of the two Anglian Water property matters raised in Relevant Rep (<b>RR-004</b>), that the Highways England/National Highways project team have not made contact with Savills as Anglian Water's property agent.</p> <p>This would appear to be potentially contrary to the Examining Authority's CAH1 Action Point Note and specifically action point 9 to advise the Examining Authority of progress on all land matters by Deadline 3 (5 October 2021).</p> <p>Anglian Water and our property agent Savills remain open to progressing an agreement with Highways England/ National Highways on maintaining 24/7 access to these two operational sites.</p> <p>For ease of reference these two sites relate to access via plots 2/1h, 2/3e &amp; 2/3d and 5/5a &amp; 5/6a set out in the promoter's Book of Reference and acquisition land plans.</p>
Applicant's Comments	<p>The Applicant met with Anglian Water's agent on 12 October 2021 to discuss the issues around maintaining access to their two operational sites, both during construction and post completion of the Scheme. The Applicant confirmed that it will maintain access to the Chawston-Wybston Water Recycling Centre and the land and reservoir to the south-east of Rectory Farm Cottage and west of Potton Road throughout the construction of the works or provide alternative access arrangements. It was agreed that while the Applicant may need to restrict access for very limited periods and will seek to minimise these restrictions as far as reasonably practicable. The Applicant will liaise with Anglian Water to ensure disruption is minimised, and that emergency access required by Anglian Water will be facilitated at all times to both sites throughout the construction of the works. A follow up letter was emailed to Anglian Water on 19 October 2021 confirming this commitment.</p>

## REP3-032 – Bedford Borough Council

### *Post-hearing submission for Compulsory Acquisition Hearing, including written submission of oral case*

Reference Number	Landowner Submission/Applicant's Comments
REP3-032a	<p>SUMMARY OF ORAL REPRESENTATIONS MADE AT COMPULSORY ACQUISITION HEARING 22 SEPTEMBER 2021, ON BEHALF OF BEDFORD BOROUGH COUNCIL</p> <p>Bedford Borough Council (BBC) owns the freehold of land to the south of the existing Black Cat Roundabout. Approximately 7 acres of the land to the west of the parcel is considered suitable for future employment development being in a sustainable location at an important strategic road network junction.</p> <p>The Scheme would have a significant impact on the land including permanent and temporary acquisition and the acquisition of rights. BBC seek agreement with the Applicant and safeguards to ensure the potential of their retained land is not prejudiced by the Scheme.</p> <p>A meeting was held with the Applicant in June 2021, and the Applicant took away several actions necessary to progress matters (as recorded in meeting minutes). BBC has heard nothing further from the Applicant on these actions since the meeting, however notes that some of the points are addressed in the Applicant's response to BBC's Relevant Representation.</p> <p>The Applicant is required to attempt to seek agreement for the acquisition of land and to avoid the use of compulsory purchase. The Applicant should be engaging directly with BBC on agreed action points and not solely through the DCO mechanism; alternatively it suggests the Applicant is not genuinely seeking agreement to obviate the need for compulsory purchase as it should be. BBC are a willing party to negotiations for an agreement and urge the Applicant to engage directly with their agents to progress discussions. The Applicant's presentation of a template option agreement is not a reasonable substitute for the necessary detailed negotiations on property specific terms which would inform a legal agreement.</p> <p>As at 5<sup>th</sup> October 2021 BBC has heard no further from the Applicant or its agents, and urges the Applicant to urgently get in contact.</p>
Applicant's Comments	<p>The Applicant has actively sought to acquire the quarry land by agreement through discussion with Bedford Borough Council, however initial negotiations with Bedford Borough Council's Agent revealed that early acquisition of the land by agreement would not be possible unless the Applicant paid above market value for the land. With no</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>strategic benefit to the Applicant and a duty to responsibly manage public purse expenditure, the Applicant declined and agreed with the agent to move discussions to an option agreement.</p> <p>The Applicant is currently drafting Heads of Terms for the Affected Party's agent to consider and has given a commitment to issue this by 5 November 2021. The Applicant notes that initial discussions were commenced in December 2020, however Bedford Borough Council were not willing to enter into an agreement until the Applicant had made post scheme traffic modelling information available. The traffic model was provided in March 2021, and Bedford Borough Council's Agent was ready to commence discussions in June 2021.</p> <p>Furthermore, the Applicant held a meeting on 2 November 2021 to discuss the points outlined below:</p> <ol style="list-style-type: none"> <li>1. Requirements/timings for land BBC needed for highway.           <p>Update: The initial construction programme assessment indicates the construction at the Black Cat junction will run for the entire duration of the Scheme. As a result the quarry land will be required early in the construction process and for the duration of works.</p> <p>National Highways will send through a Heads of Terms for BBC to review by 05/11/21. National Highways requests BBC to provide estimated value of land with evidence to support valuation.</p> <p>National Highways and BBC are also considering agreement of compensation within Heads of Terms and acquisition through GVD.</p> </li> <li>2. Breedon's Quarry.           <p>Both parties recognise the potential benefit of varying the existing planning conditions for reinstatement. However, measures stipulated by the Environment Agency to achieve this aim would have unacceptable implications for the delivery of the Scheme.</p> </li> <li>3. Land requirements pursuant to BBC's request that BBC's retained freehold title abuts the new adopted highway.           <p>Update: The Applicant will ensure that the Council owned access abuts the public highway.</p> </li> <li>4. Flood compensation</li> </ol>

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Reference Number	Landowner Submission/Applicant's Comments
	<p>BBC prefer to retain ownership of Flood Compensation Areas. The Applicant has established that landscape mitigation areas must be retained and Flood Compensation Areas may be considered similarly. The Applicant is to confirm this point.</p> <p>5. Statement of Common Ground .            Drafts of the Statement of Common Ground have been exchanged.</p> <p>6. Plots 3/3b &amp; 3/3c.            The Applicant has offered BBC acquisition of the landlocked land or permanent rights to access it.</p> <p>7. Future land use.            BBC to provide proposal for consideration by National Highways Operational Division.</p> <p>8. The Statement of Common Ground submitted at Deadline 4 [TR010044/EXAM/8.5 v2] has been updated to fully reflect these summary updates</p>



## REP3-033 – Bedford Borough Council

### *Response to Compulsory Acquisition Hearing Action Point 3*

Reference Number	Landowner Submission/Applicant's Comments
REP3-033a	<p>Compulsory Purchase Association Hearing 22 September 2021 - Hearing Action Point 3</p> <p>Current status of the land to the south and east of the current Black Cat roundabout in the Local Plan or other Policy documents; for instance, if the land has been identified in the site allocation plan or if it has any other policy backing for development.</p> <p>Approximately 8 acres of the land to the west of the boundary is considered suitable for a sustainable employment use. The Scheme in the main seeks Temporary Possession of this land. A plan has previously been submitted on behalf of BBC (at the ExA's request) showing the relevant area.</p> <p>Bedford Borough Council as the Local Planning Authority is process of preparing the local plan. The land has been submitted to the Bedford Local Plan Review call for sites (Site 1005 College Farm Black Cat Roundabout). BBC's planning authority has confirmed in writing that the land may fit with one of the emerging development strategy options. More widely they have confirmed that the A428 to Caxton Gibbet scheme would be relevant to the emerging local plan whichever spatial strategy option is selected. The selection of employment sites will be made having regard to this transport link (proximity and access to the strategic road network).</p>
Applicant's Comments	<p>The Applicant has engaged further with Bedford Borough Council and attended a meeting with them on 2 November 2021 to discuss the points outlined below which had been identified by Bedford Borough Council as of particular concern regarding the land in question:</p> <ol style="list-style-type: none"> <li>1. Requirements/timings for land BBC needed for highway.</li> </ol> <p>Update: The initial construction programme assessment indicates the construction at the Black Cat junction will run for the entire duration of the Scheme. As a result the quarry land will be required early in the construction process and for the duration of works.</p> <p>National Highways will send through a Heads of Terms for BBC to review by 05/11/21. National Highways requests BBC to provide estimated value of land with evidence to support valuation.</p>

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	<p>National Highways and BBC are also considering agreement of compensation within Heads of Terms and acquisition through GVD.</p> <p>Breedon's Quarry.</p> <p>Both parties recognise the potential benefit of varying the existing planning conditions for reinstatement. However, measures stipulated by the Environment Agency to achieve this aim would have unacceptable implications for the delivery of the Scheme.</p> <p>2. Land requirements pursuant to BBC's request that BBC's retained freehold title abuts the new adopted highway.</p> <p>Update: The Applicant will ensure that the Council owned access abuts the public highway.</p> <p>3. Flood compensation</p> <p>BBC prefer to retain ownership of Flood Compensation Areas. The Applicant has established that landscape mitigation areas must be retained and Flood Compensation Areas may be considered similarly. The Applicant is to confirm this point.</p> <p>4. Statement of Common Ground .</p> <p>Drafts of the Statement of Common Ground have been exchanged.</p> <p>5. Plots 3/3b &amp; 3/3c.</p> <p>The Applicant has offered BBC acquisition of the landlocked land or permanent rights to access it.</p> <p>6. Future land use.</p> <p>BBC to provide proposal for consideration by National Highways Operational Division.</p> <p>The Statement of Common Ground submitted at Deadline 4 [TR010044/EXAM/8.5 v2] has been updated to fully reflect these summary updates</p>

## REP3-044 – Deloitte on behalf of the Church Commissioners

### *Request for Compulsory Acquisition Hearing 2, comments on responses to the Examining Authority's First Written Questions (WQ1) and comments on the Proposed Development*

Reference Number	Landowner Submission/Applicant's Comments
REP3-044a	<p>(1) Request for Compulsory Acquisition Hearing 2 (CAH2) to take place week commencing 29<sup>th</sup> November</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant has shared a draft option agreement for the permanent acquisition of land with the Church Commissioners on 14 September 2021.</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>In addition, the Applicant has shared the Heads of Terms incorporating the lease agreement for the land to be used as borrow pits on 7 October 2021.</p> <p>The Church Commissioners responded on 21 October, and the Applicant is currently considering this response and will be responding back before the meeting scheduled for the 12 November 2021.</p> <p>[ADD IN TEXT FROM CA]</p>
REP3-044b	<p>(2) Comments on responses to the Examining Authority's Written Questions 1</p> <p>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.</p> <p>Q1.5.2.3 Changes to compulsory acquisition and temporary possession:</p> <p>CCE shares the concerns of the National Farmers Union <b>[RR-074]</b> 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.</p> <p>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.</p> <p>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.</p>

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	<p>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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant has engaged further with the Church Commissioners and a briefing meeting is to be arranged at which details of the proposed utility diversions to be undertaken within their landholding will be explained.</p> <p>The Applicant has sought to engage with the Church Commissioners and has shared draft Heads of Terms for a lease of the borrow pit land and a draft option agreement for the permanent acquisition of the operational highway land. These have been returned to the Applicant and the terms are currently being considered. A further meeting has been arranged for the 12 November to discuss further.</p> <p>The Applicant does not accept that the statutory tests for compulsory acquisition are not met given the above and also the Applicant's response to actions arising from Compulsory Acquisition Hearing <b>[REP3-018]</b> and in particular the response to action point 4 contained in Annex A and action point 6.</p>
REP3-044c	<p>Q1.6.2.1 Borrow pits:</p> <p>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.</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>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.</p> <p>CCE <u>strongly objects</u> 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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant notes CCE's objection to the proposal by the joint Cambridgeshire authorities for the borrow pit restoration to include for biodiversity net gain. The Applicant shares CCE's position in respect of this matter and confirms that it has always been the intention of the Applicant to return the land used for the proposed borrow pits back to agricultural use on completion of the works. Further details can be found in the Borrow Pits Excavation and Restoration Report <b>[REP3-011]</b> submitted at Deadline 3.</p> <p>As the borrow pits are part of the Application, the restoration of the borrow pits will follow measures set out in Annex E Soil Handling Management Plan of the First Iteration EMP <b>[APP-234]</b>. The Soil Handling Management Plan already gives that assurance that where landowner access is given to complete pre-construction soil survey, they will be completed. The survey results for current condition will set out the specifications for restoration and as outlined in the Soil Handling Management Plan, these will be developed for individual land parcels, subject to landowner agreement to the surveys will be completed.</p>

Reference Number	Landowner Submission/Applicant's Comments
REP3-044d	<p>Q1.6.3.2 Agricultural Liaison Officer:</p> <p>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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Principal Contractor will deploy an experienced Community/ Stakeholder Engagement team to manage and support communications and relationships with all stakeholders affected by the Scheme. This will include an Agricultural Liaison Officer (ALO). This individual will be the dedicated point of contact for the farming community throughout the duration of the Scheme construction. The Applicant will continue to engage with the NFU to seek agreement of the responsibilities of the ALO, whilst maintaining cognisance of the expertise that exists within the Applicant's wider team. The ALO will continue to support the wider Community / Stakeholder Engagement team to maintain an efficient and effective service for the community as a whole.</p> <p>The Applicant has discussed this with the National Farmers Union at a meeting held on 29 October 2021. It was agreed in the meeting with the NFU that this role would be provided, however further discussions need to take place between the Applicant and the NFU regarding the extent of the responsibilities of this role. The NFU has set out their position on the ALO role in Annex A of the Statement of Common Ground [TR010044/EXAM/8.7 v2], submitted at Deadline 4. The Applicant will review this further through discussions with the NFU.</p>
REP3-044e	<p>Q1.7.3.17 Article 23 – Authority to survey and investigate the land:</p> <p>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</p>

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	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant has addressed this in Appendix B of the Applicant response to actions arising from Issue Specific Hearing 3 <b>[REP 3 020]</b> and provided examples of both intrusive and non-intrusive surveys that could affect land adjacent to the order limits. The Applicant makes clear that as the nature and scale of the surveys are limited any additional controls within Article 23 (beyond the limits of 'reasonable necessary already within the Article) within Article 23 are not required. The Applicant further confirms that:</p> <ol style="list-style-type: none"> <li>1. the 14 day notice before the powers under Article 23 are exercised</li> <li>2. the compensation available in the unlikely event that loss or damage occurs</li> <li>3. and the presence of a similar power under section 172 of the Housing and Planning Act 2016</li> </ol>



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	further shows the inclusion of these powers are standard, reasonable and necessary.
REP3-044f	<p>Q1.7.3.19 Article 27 – time limits for temporary possession</p> <p>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 for 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.</p>
Applicant's Comments	It is in the interests of the Scheme to return land taken temporarily as soon as reasonably possible. In advance of construction, the Principal Contractor will co-ordinate with landowners and farmers the timeframe for temporary occupancy and the process of reinstatement and return of that land.
REP3-044g	<p>Q1.7.3.20 Article 28 – Compulsory Acquisition of rights and imposition of restrictive covenants</p> <p>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 comments on the impact.</p>
Applicant's Comments	The Applicant notes the comments made and has already addressed this in their responses at Appendix A to Action Point 4 Applicant response to actions arising from Compulsory Acquisition Hearing [REP3-018] namely that the Applicant has factored in "lessons learnt" from the A14 to avoid acquiring land unnecessarily.
REP3-044h	<p>Q1.7.3.21 (a) Article 40 – listing of plots affected by 40(1)(d)</p> <p>The column titled "Status of landowner agreement" in the table at Appendix Q1.7.3.21 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 Highway England (currently the column states that Highway's England has received no instruction).</p>
Applicant's Comments	The Applicant notes the comments provided here and is providing an updated Compulsory Acquisition Objection Schedule (Rev 2) for Deadline 4 <b>[TR010044/EXAM/9.4]</b> in response to question Q2.5.1.1. This schedule will provide an update on all landowner negotiations across the project.

Reference Number	Landowner Submission/Applicant's Comments
REP3-044i	<p>Q1.7.3.22(b) Article 40 – adequate notice</p> <p>CCE submits that the notice period in respect of Article 40 should be increased to 28 days to minimize the impact on farm businesses and tenants. The notice period in Article 23 should also be increased from 14 to 28 days' notice.</p> <p>This needs to be 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.</p> <p>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 consulted as a result of the DCO application process.</p>
Applicant's Comments	<p>In relation to Article 23, similar powers to survey land under Section 172 of the Housing and Planning Act 2016 provides a 14 day notice; the 14 day notice under Article 23 is sufficient. In addition, in relation to article 40 the Applicant points to its responses to question 2.7.3.10 and 2.7.3.11 in <b>[TR010044/EXAM/9.47]</b>.</p>
]REP3-044j	<p>Q1.11.2.6 Business and property access</p> <p>It is noted that the Applicant will consult with landowners on the final detail of the accesses e.g. pavement construction widths, fencing, gate details and security details. Highways England should provide further details as to minimum specification of any replacement access and a clear commitment in the DCO to consult with owners and seek agreement.</p> <p>It has been discussed with Highways England that there may be temporary disruption to accesses. Farm businesses required 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.</p>
Applicant's Comments	<p>In consultation with landowners to date the Applicant has explained that any accesses, gates, fencing etc will be replaced like-for-like, including security which might have been provided originally by hedges, ditches etc.</p> <p>Where appropriate the design of new/replacement accesses for businesses and properties will be in accordance with those set out in the MCHW (Manual for Contract Documents for Highway Works) and or the DMRB (Design</p>

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Reference Number	Landowner Submission/Applicant's Comments
	<p>Manual for Roads and Bridges) however where a more bespoke design is required to address particular site conditions the Applicant will consult with the owners on the detailed design of the access or associated elements.</p> <p>Planned works which may cause disruption will be notified by the Applicant to all affected parties in advance and, in the case of unexpected events or an emergency, best efforts will be made to contact any affected parties as soon as possible, and mitigation measures deployed.</p>

**REP3-045 – Davison & Company (Great Barford) Limited**

***Post-Hearing submission including written submissions of oral case as requested by Examining Authority***

Reference Number	Landowner Submission/Applicant's Comments
REP3-045a	<p>SUMMARY OF ORAL REPRESENTATIONS MADE AT COMPULSORY ACQUISITION HEARING 22 SEPTEMBER 2021, ON BEHALF OF DAVISON AND CO (GREAT BARFORD) LTD</p> <p>Davison and Co (Great Barford) Ltd own farmland at Caxton Gibbet. Approximately 77 hectares is being promoted through the Local Plan for employment use. A large proportion of this strategically important potential development land will be adversely affected by the Scheme in respect of which the Applicant is seeking powers of compulsory acquisition, temporary possession or the acquisition of rights over this land.</p> <p>While the Landowner's position is set out in its Written Representations, in summary, the Landowner's main concern is that the proposed compulsory purchase of 35 hectares for borrow pits (plot 14/16a) is unnecessary and unjustified. The Applicant themselves have acknowledged they do not need to retain plot 14/16a permanently. The Landowner contends there is no compelling case in the public interest to compulsorily acquire plot 14/16a because a lesser power is sufficient to deliver the requirements of the Scheme (i.e. temporary possession). The Landowner is prepared to enter into a voluntary agreement with the Applicant to obviate the need for compulsory acquisition and/or temporary possession powers in the DCO.</p> <p>To reach agreement requires urgent acceleration of engagement on the part of the Applicant. The Landowner and the Applicant met in June 2020, when the Applicant undertook to prepare outline heads of terms. These did not follow, and in early July 2021 the Landowner's agent provided detailed heads of terms which also have not been responded to. The Applicant has said they agree in principle to enter into a temporary lease for plot 14/16a, however they are not yet prepared to discuss the terms of this arrangement and in respect of the Land more generally and the necessary safeguards.</p> <p>The Landowner's agents continue to chase the Applicant and urge them to progress negotiations, however there has been very limited progress on engagement, other than on the high level principle of the proposed arrangement. The Landowner seeks urgent agreement on the heads of terms of the proposed voluntary agreement and thereafter on the detail of the agreement itself, the negotiation of the detail and drafting of which will be time consuming.</p>

A428 Black Cat to Caxton Gibbet improvements  
 Applicant's Comments on Landowner submissions at Deadline 3

Reference Number	Landowner Submission/Applicant's Comments
	<p>As at 5th October 2021, no response had been received by the Applicant on the Heads of Terms, despite the Landowner's agents chasing by email and phone. Time is of the essence and it is no longer sufficient for the Applicant to say they are a willing party; tangible action is required by the Applicant.</p>
<p>Applicant's Comments</p>	<p>The Applicant shared Heads of Terms for a Lease agreement with Davison &amp; Company on 7 October 2021. This was followed up with a phone call to their agent who confirmed receipt. Further discussions were had regarding the leasehold rent. The agent is to seek client instruction. This was followed up with a further phone call on 15 October 2021, but there was no response. A further phone call was made to the agent on 22 October 2021 to discuss progress on the Heads of Terms. These were being reviewed and discussed with Davison &amp; Company and a response is anticipated week commencing 1 November 2021.</p> <p>The Applicant also is currently in discussions with Davison &amp; Company's agent about the option agreement for the permanent acquisition of land for the operational highway. Davison &amp; Company is currently setting out amendments to the draft option agreement for the Applicant's consideration. It is anticipated these will be returned to the Applicant week commencing 1 November 2021 together with the amendments for the Heads of Terms for the borrow pit lease mentioned above.</p>

## REP3-046 – Duncan & Maxine Buchanan

### *Post-Hearing submission including written submissions of oral case as requested by Examining Authority*

Reference Number	Landowner Submission/Applicant's Comments
<p>REP3-046a            (note that the text in the Landowner Submission/Applicant's Comments box has been copied verbatim from the PINS website this includes several spurious symbols)</p>	<p>To date we have heard and read repeated assurances from the applicant that the basis of design to date is to "Acquire the minimum amount of land necessary." This forms the basis of our concern that the scheme to date does not fulfil this statutory requirement.</p> <p>We have been presented with a more expensive proposal that requires the acquisition of more of our land. We remain skeptical of the reasons we have been given by the applicant that this excessive land acquisition is necessary.</p> <p>It seems logical to us that if there is an opportunity to reduce land take as well as provide "the best value for money" then the Applicant would seek to pursue this?!</p> <p>Losing in excess of 4 acres of our land and it appears bearing the entire burden of this part of the scheme, we need a greater understanding of the weighting that is given to neighbour objections versus cost, reduced land take and the apparent "standard Highways England practice to keep to a minimum the number of affected landowners."</p> <p>Whilst we accept it is necessary to respond to feedback from local residents (in our case feedback from Nags Head Lane Residents) where their objections are baseless and our belief ridiculous it is not acceptable to us to increase land take simply to silence "aggressive objectors."</p> <p>Lacklustre arguments and reasoning that centre around habitat preservation, screening, light pollution have been successfully refuted during our email responses. It is therefore not acceptable to us that the Applicant then fails to respond to us when we refute their evidence!</p> <p>We feel certain there will be assurances of "extensive engagement." To this end we would need from the Applicant a definition of what constitutes "effective" or extensive engagement. We do not believe there has been meaningful engagement.</p> <p>To date we have merely endured: repetition of arguments that have been successfully refuted, assurances that our concerns raised are not unjustified or unreasonable only for them then to be ignored, and the withholding of key</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>reports, statistics and calculations what would alleviate our concerns that our land is being used to compensate others.</p> <p>Our concerns are not mutually exclusive and addressing one area of concern does not, we believe justify the ignorance of other areas of concern. We attach a file entitled "Anthony WSP Tech Note" to this submission. This is a report we have paid for which poses many unanswered questions that will be key to our understanding of the avoidance of some areas of land and alleviate our concern that we are losing our land unnecessarily and enduring a major impact to our development opportunity.</p> <p>To conclude we are asking the applicant to produce the evidence that justifies their design and in accordance with this fulfil their obligation to "seek to acquire only that land which is required." At present we do not have that clarity.</p>
Applicant's Comments	<p>The Applicant notes Duncan and Maxine Buchanan's comments on land acquisition, consultation and engagement. The Applicant has previously provided Duncan and Maxine Buchanan with a detailed explanation of the Scheme design and contends that due consideration has been given to the land required and other Scheme impacts. The Applicant has informed Duncan and Maxine Buchanan where the requested flood calculations can be found on the Planning Inspectorate website and reiterated financial support is available to land owners who require the services of a land agent.</p> <p>The Applicant remains confident that the design of the Roxton Link road is the most appropriate solution with the least amount of overall impact on residences and the environment. The Applicant is committed to engagement with Duncan and Maxine Buchanan and a meeting is scheduled on 11 November 2021 to discuss the matters further.</p> <p>For details that address the points raised in the WSP Technical Note, please refer to the Applicant's comments on the WSP Technical Note in relation to the Roxton Road Link [TR010044/EXAM/9.53], submitted at Deadline 4.</p>

## REP3-047 – Duncan & Maxine Buchanan

### *Nomination for additional sites for Accompanied Site Inspection*

Reference Number	Landowner Submission/Applicant's Comments
REP3-047a	<p>We were given the opportunity to identify our land on the map during the previous site inspection dated 21/09/21.</p> <p>As our land at Dove Farm, The Lane Wyboston and significantly the areas of concern to us would not be visible on the minibus route we discussed the submission of photographs to then allow you to decide if a site inspection would be necessary and beneficial in order to understand our concerns. We would welcome a site inspection as it puts the site, the scale of land take and setting into a context that is, we believe, not easy to appreciate from photographs.</p>
Applicant's Comments	The Applicant notes these comments.
REP3-047b	<p>Further to identifying our land on the map on the accompanied site inspection 21/09/2021. We remain unconvinced by the Applicant's justification for the use of so much of our land. Our main concern has and continues to be unfair and excessive land acquisition. We present photographs for your reference but feel a site inspection would put our concerns into context.</p> <p>The change of the alignment has meant more of our land being used than is, we believe, necessary. To date the Applicant has provided the following reasons for the change to the alignment which resulted in us losing further land to the scheme:</p> <ul style="list-style-type: none"> <li>• Preserve Habitat: Photographs demonstrate that if habitat preservation is indeed the applicants intention then the neighbouring paddock affords a greater opportunity to preserve habitat as it does not have horses who are notorious for destroying habitat. Furthermore the current scheme requires the removal of a hedgerow whereas the previous did not.</li> <li>• Screening to Existing properties: It is difficult to see the properties in the photos provided which demonstrates our point that the properties on Nags Head lane are adequately screened. The removal of the second hedgerow in excess of 75m would not, we believe be necessary</li> </ul> <p>Mitigate Light Pollution: The photographs show the houses front the opposite direction and therefore headlights would not, we believe, cause light pollution. We have repeatedly requested a copy of the Applicant's light and impact assessment report. This information is important to us as it will demonstrate how the previous design would</p>



Reference Number	Landowner Submission/Applicant's Comments
	<p>cause light pollution and how the latest proposal mitigates. To date we have not been provided with this documentation.</p> <ul style="list-style-type: none"> <li>• Preserve setting of listed buildings: We remain unconvinced that the setting of a listed building would be harmed when it is so adequately screened.</li> </ul>
Applicant's Comments	<p>The primary driver for the change in alignment between the concept design and the Scheme design was road safety. These are discussed in the Applicant's comments on the WSP Technical Note in relation to the Roxton Road Link [TR010044/EXAM/9.53] submitted at Deadline 4. The concept design alignment of the Roxton Road Link, created a straight section of road that would not have encouraged compliance with the speed limit. An alternative alignment, that is now the Scheme design, was prepared and was found to offer significant benefits in terms of speed control and allowed a sensible change in the speed limit between 40mph for the section of road south of Chawston Lane and 30mph to the north of Chawston Lane.</p> <p>It is assumed that the comment about 75m of hedge removal relates to the hedge to be removed between the boundary of Dove Farm and the field to the south, which would not have been necessary if the concept design had not changed (the actual extent of removal of this hedge is 27m). Hedges need to be removed along the route of the Roxton Road link in order to construct it, that is unavoidable, and whilst hedge removal should be minimised the choice of road alignment cannot be based on hedge removal outweighing road safety, so whilst the concept design may have required less hedge removal than the Scheme design, it could not be adopted because of the road safety issues. The alternative design put forward in the WSP Technical Note 1368-WSP-00-XX-RP-CV-0001 dated 22/07/2019 [REP3-046] did require more hedge to be removed than the Scheme design and the hedge in question was one that will provide screening to properties on Nagshead Lane, including the Grade II listed building Scuttle Cottage, whereas the hedge that is to be removed as part of the Scheme does not.</p> <p>The Applicant cannot comment on the propensity or otherwise for horses to destroy habitat.</p> <p>As the road is not lit the Applicant does not anticipate a light pollution problem and this has not been assessed. Light pollution was an issue voiced by some residents along the route of the Roxton Road link whose rear gardens will face towards the road. No concerns with light pollution from the Roxton Road link have been raised by these residents since the application was submitted.</p>

**REP3-050 – National Farmers Union**

***Post-Hearing submission including written submissions of oral case as requested by Examining Authority***

Reference Number	Landowner Submission/Applicant's Comments
REP3-050a	<p>2.0 Compulsory Acquisition Hearing 22<sup>nd</sup> September 2021:</p> <p>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 20<sup>th</sup> September to understand the latest position between HE and landowners and tenants and issues which are arising.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant began meeting landowners in 2017, and as a result the Scheme design has been shaped to accommodate their needs and mitigate impacts on their operations and landholding where possible. This engagement has also benefitted the Scheme through the landowner's knowledge of the local area and landscape. Landowners have been party to information pertaining to their land ahead of public consultation events and consulted directly on any changes which may affect their land. Where possible engineering design details have been provided to landowners to help in understanding the proposals. As an example, engineering design details for the bridleway 1/18 accommodation access and bridge crossing were provided to the affected landowner for their information and review.</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>Examples of Scheme design changes as a result of landowner consultation include revisions to road alignment, over bridge and underpass widths, shape and location of borrow pits, extent of landscaping and flood mitigation areas. Changes made have been shared with landowners.</p>
REP3-050b	<p>2.3 Voluntary/Option Agreement: HE informed the NFU at a meeting held on 15<sup>th</sup> 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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The Applicant has held meetings with almost all landowners or affected parties on the scheme. Where a permanent interest is to be acquired draft option agreements have been issued together with land acquisition plans. Affected Parties who have expressed an interest in entering into an option agreement have been invited to comment on the draft document and put forward any changes they would like made for the Applicant to consider. Many Agents have responded to say they will seek their client's instruction, but have yet to confirm their client's position. Several of the main agricultural landowners on the scheme have declined to enter into an option agreement. These are:</p> <ul style="list-style-type: none"> <li>• Wynne Estate</li> <li>• Executors of the Alington Estate</li> <li>• Judith Clements and the Jack Settlement Trust</li> <li>• Terez Rowley</li> </ul>

Reference Number	Landowner Submission/Applicant's Comments
	<ul style="list-style-type: none"> <li>• RH Topham</li> <li>• GW Topham</li> <li>• Pearson</li> </ul> <p>After a change of Agent both Abbotsley Farms and the Executors of the Bakers Estate have reopened discussions. The remaining agricultural landowners who have yet to confirm are:</p> <ul style="list-style-type: none"> <li>• Diane Sharman</li> <li>• Robert Sharman</li> <li>• Bates and Must</li> <li>• Executors of the Russell Estate</li> </ul>
REP3-050c	<p>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.</p>
Applicant's Comments	<p>Please see Appendix A: Response to Action Point 4 of the Applicant response to actions arising from Compulsory Acquisition Hearing [REP3-018] which confirmed that lessons from the A14 have been taken into account to avoid acquiring land that is not required.</p>
REP3-050d	<p>2.5 Other Points raised during the Hearing:</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>

Reference Number	Landowner Submission/Applicant's Comments
	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
Applicant's Comments	<p>Taking Land for Relocation: The Applicant confirms that it has no plan or intention of taking land off one landowner for another for relocation purposes of a business or building.</p> <p>Accommodation works: The Applicant can confirm that meetings to identify and discuss accommodation works with landowners and occupants will be held during the coming months. It should be noted that the Applicant is unable to future proof the Scheme design for any speculated increase in size or type of equipment used. The Scheme design has to be based on current, confirmed evidence of usage/need.</p> <p>Land drainage: land drainage is a detailed design issue but the Applicant recognises that it needs to be managed appropriately. Any land drains severed by the scheme will be picked up in/by the pre-earthworks drainage. Any damaged land drains within temporary land-take will need to be repaired prior to returning to the landowner or compensation paid.</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>Detailed Design: Please see Appendix A: Response to Action Point 4 of the Applicant response to actions arising from Compulsory Acquisition Hearing [REP3-018] which confirmed that lessons from the A14 have been taken into account to avoid acquiring land that is not required.</p> <p>Clarification on Article 28 and 40: The Applicant does not accept that a further assessment of land to be taken on a plot by plot basis to make sure each plot can be justified. The Applicant is confident that the land and rights sought by the Scheme are what is necessary at this stage to bring forward the Scheme.</p>
REP3-050e	<p>2.0 Issue Specific Hearing 23rd September 2021:</p> <p>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</p>
Applicant's Comments	<p>The Applicant notes the request by the NFU and will continue to engage with them on this point (along with others raised through their submissions) through the SOCG, an updated version of which is due to be submitted for deadline 4.</p>
REP3-050f	<p>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 4<sup>th</sup> August 2021. As explained at the hearing the NFU discussed the role at a meeting with HE on 15<sup>th</sup> 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</p>

Reference Number	Landowner Submission/Applicant's Comments
Applicant's Comments	<p>The Principal Contractor will deploy an experienced Community/ Stakeholder Engagement team to manage and support communications and relationships with all stakeholders affected by the Scheme. This will include an Agricultural Liaison Officer (ALO). This individual will be the dedicated point of contact for the farming community throughout the duration of the Scheme construction. The Applicant will continue to engage with the NFU to seek agreement of the responsibilities of the ALO, whilst maintaining cognisance of the expertise that exists within the Applicant's wider team. The ALO will continue to support the wider Community / Stakeholder Engagement team to maintain an efficient and effective service for the community as a whole.</p> <p>The Applicant has discussed this with the National Farmers Union at a meeting held on 29 October 2021. It was agreed in the meeting with the NFU that this role would be provided, however further discussions need to take place between the Applicant and the NFU regarding the extent of the responsibilities of this role. The NFU has set out their position on the ALO role in Annex A of the Statement of Common Ground <b>[TR010044/EXAM/8.7 v2]</b>, submitted at Deadline 4. The Applicant will review this further through discussions with the NFU.</p>
REP3-050g	<p>2.0 Issue Specific Hearing 24th September 2021:</p> <p>2.1 11.0 Draft Development Consent Order:</p> <p>(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.</p>
Applicant's Comments	<p>The Applicant provided examples of both intrusive and non-intrusive surveys that could affect land adjacent to the Order limits in Appendix B of the Applicant response to actions arising from Issue Specific Hearing 3 <b>[REP 3 020]</b>. The notice provisions under Article 23, the right to compensation, the frequency of the surveys and the presence of similar powers under made legislation (please also see our response to REP3-044e above for further clarification) provides sufficient control and justification of Article 23.</p>

Reference Number	Landowner Submission/Applicant's Comments
REP3-050h	<p>(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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Who will be taking entry</li> <li>• The date of entry and for how long</li> <li>• The type of equipment if any will be used.</li> </ul> <p>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.</p>
Applicant's Comments	<p>The 14 day notice is a period that has been deemed adequate in a number of DCOs (including the most recently granted A1 Birtley Coal House Improvement Scheme). It is also the notice period used in Section 174 of the Housing and Planning Act 2016 in relation to the survey power. This period is therefore considered by the Applicant as sufficient.</p> <p>In relation to the notice provisions, Article 23(3) confirms the notice will detail the nature of the survey / investigation being carried out. In relation to the person entering the land, that person is already required to produce written evidence of their authority to do so (Article 23(4)).</p>
REP3-050i	<p>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.</p>



Reference Number	Landowner Submission/Applicant's Comments
	<p>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.</p> <p>The NFU has raised this with HE and would like clarification on the quantity of water to be discharged from the sampling operations.</p>
Applicant's Comments	<p>The sampling operations refer to the collection of groundwater samples from monitoring boreholes located within and possibly outside of the Order Limits. The sampling operation typically involves the use of hand-held bailers or a small portable pump to abstract water from the boreholes. Water is initially purged to ensure that the sample collected is representative of the aquifer/strata being monitored and this purged water may be discharged onto the ground. If there is visual or olfactory evidence of any contamination, the purged water should be collected and removed off-site and hence no water would be discharged onto the ground. In the absence of any obvious contamination, the purged water is discharged to the ground. The volume of water depends on a number of factors including the depth and diameter of the borehole, the groundwater level and the permeability of the strata together with the sampling technique employed. Accordingly, it is difficult to provide a precise volume of water discharged as this will vary between boreholes.</p> <p>If only hand-held bailers are used, it is unlikely that the volume of water will exceed a few litres (generally less than 10 litres). Where a portable pump is used, pumping normally continues until field monitoring shows that the water quality has stabilised. In this case, the volume of water could exceed 10 litres.</p>
REP3-050j	<p>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.</p> <p>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.</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>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.</p> <p>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.</p> <p>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.</p>
Applicant's Comments	<p>The 14 day period was included in the Model Provisions and numerous other granted development consent orders including the recently granted The A303 (Amesbury to Berwick Down) Development Consent Order 2020; The A63 (Castle Street Improvement, Hull) Development Consent Order 2020; The A1 Birtley to Coal House Development Consent Order 2021; The A19 Downhill Lane Junction Development Consent Order 2020 and The A303 Sparkford to Ilchester Dualling Development Consent Order 2021. It is therefore considered adequate.</p> <p>Although the notice period of 14 days is less than that envisaged by the Neighbourhood Planning Act 2017 (NPA) (which is not yet in force in any event), the owners and occupiers of the land will have been consulted and notified of National Highways' need to temporarily use the land to carry out the authorized development as a result of the DCO application process. An outline programme will be provided to landholders at the start of each phase to provide a forward look of upcoming access requirements. The 14-day notice period will confirm precise dates within the broader outline programme</p> <p>National Highways needs to ensure that the Scheme can be carried out efficiently and expeditiously following the making of the Order. Therefore, a longer notice period is considered to be unnecessary given that the relevant landowners will already have had prior notice via consultation.</p> <p>The relevant provisions (sections 18 to 23) of the NPA are not yet in force and it is unclear whether or when they will be brought into force, and whether further regulations will be introduced to provide more detail on the operation of the temporary possession regime. As the NPA is not yet in force, National Highways is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by</p>

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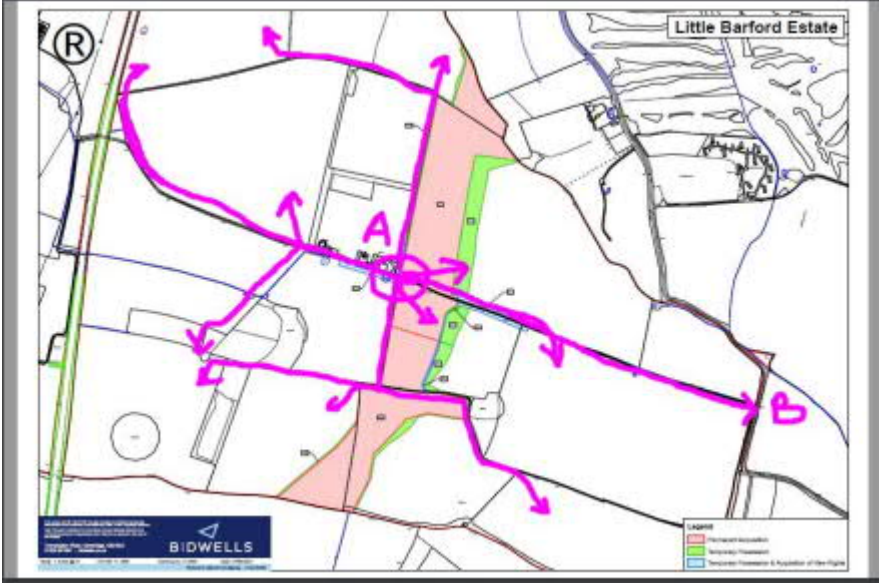
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	Parliament in respect of DCOs. It is not yet known whether the provisions will apply to DCOs or whether there will be any transitional arrangements. National Highways has therefore applied the 'tried and tested' temporary possession regime that has been included in numerous DCOs to date, and is well understood by practitioners, agents and contractors.

## REP3-051 – The Executors of N A Alington

### *Post-hearing submission for Compulsory Acquisition Hearing, including written submission of oral case*

Reference Number	Landowner Submission/Applicant's Comments
REP3-051a	<p>At the Compulsory Acquisition Hearing the Planning Inspectorate requested that we supply a plan of Top Farm indicating the access routes from the Top Farm Buildings to the land that will be adversely impacted by a bridge of restricted width.</p> <p>The Top Farm buildings are located in the centre of the farm at A and a short distance to the east of these is the area which is the junction of all the main routes to the fields (pink circle). This lies under the proposed land acquisition and the route of the new road. The point is that from Top Farm and this hub location it is possible to move between fields with all the main cultivation and harvesting equipment without having to demount it from tractors, even if that does mean running on grass verge or folding some equipment. The widest cultivation kit is up to 12m wide (the sprayer is wider) but that is a hydraulically folding and it can be reduced relatively simply to the mounted width. Currently the widest fixed mounted width of the fixed bed cultivator or folded equipment is 6m. To reduce the width further the equipment can be detached from the tractors and trailed at a narrower width for road transport. The rubber tracked Case Quadtrac and combine are just over 4.1m wide (the latter nearer 4.5 m width the access ladder mounted) so will not safely fit over the bridge proposed.</p> <p>This is current size. The hardcore track could be widened as it adjoins farmland or is situated in wide grass headlands (field edges).</p> <p>The diagram indicates that there will be restricted access to large parts of the farm if a bridge of limited width is provided.</p> <p>The request for a 7.4m wide bridge was based on providing a travelling surface width of at least 6m wide, plus margin for movement, and a footway so that future shared pedestrian access avoids farm traffic. The specification referred to in the submissions was the nearest 'standardised' specification for indicative purposes only. It is accepted that as being essentially a private crossing some of the design features of that particular style may not be necessary.</p>

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Reference Number	Landowner Submission/Applicant's Comments
	
Applicant's Comments	<p>The Applicant notes the comments from the Executors of N A Alington and would refer to 9.40 Joint Position Statement with the Executors of N A Alington in connection with The Little Barford Estate [REP3-025]. A meeting was held on the 21 October 2021 with the landowner to discuss the position further. The design of the bridge and current operational farming requirements were discussed.</p> <p>The Applicant is currently reviewing the design of the bridge as discussed at the meeting on 21 October 2021 and the Applicant is considering whether an alternative width is deliverable as a compromise between the two parties. The Executors Agent is also considering whether this alternative width is acceptable to their Client.</p>

## REP3-052 – Travelodge Hotels Ltd

### *Post-hearing submission for Compulsory Acquisition, including written submission of oral case*

Reference Number	Landowner Submission/Applicant's Comments
REP3-052a	<p>SUMMARY OF ORAL REPRESENTATIONS MADE AT COMPULSORY ACQUISITION HEARING 22 SEPTEMBER 2021, ON BEHALF OF TRAVELODGE HOTELS LTD</p> <p>Travelodge's hotel at the existing Black Cat Roundabout would be compulsorily acquired as part of the proposed Scheme. The Applicant has stated in their view it will be necessary to extinguish the hotel business.</p> <p>The hotel provides employment and supports the safety of the strategic road network in accordance with government policy. Travelodge objects to compulsory purchase of the Hotel in the absence of appropriate support from the Applicant to assist re-location on the strategic road network.</p> <p>The Applicant is required to seek to acquire land by negotiation wherever practicable. Authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.</p> <p>The Compulsory Purchase Association Land Compensation Claims Protocol is a statement of best practice in relation to land compensation claims. Adoption of the Protocol is a relevant consideration in the award of costs in an Upper Tribunal decision. It provides guidance on what reasonable attempts to acquire an interest by agreement looks like. The Protocol states:</p> <p>"2.2. A compensating authority is encouraged at an early stage: 2.2.1. to provide information or valuation evidence available to it potentially relevant to a Compensation Claim and if possible before the claim is made; and 2.2.2. provide their valuation to assist with the constructive dialogue between the parties."</p> <p>To date the Applicant has not provided their valuation of Travelodge's compensation nor for the freehold interest. The Applicant has not inspected the Hotel nor asked to inspect the Hotel for the purposes of valuing compensation.</p> <p>The Applicant is invited to engage with Travelodge's agent as a matter of urgency in order to make reasonable attempt to acquire the interests by agreement.</p>
Applicant's Comments	<p>The Compulsory Purchase Association's claims protocol is a non-binding protocol but one which is considered best practice to follow in the context of compensation claims involving compulsory acquisition. It is primarily aimed at</p>

Reference Number	Landowner Submission/Applicant's Comments
	<p>compensation claims submitted post exercise of compulsory acquisition powers. It is not government policy and is not as Travelodge state in it its "Deadline 3 Submission - Post-hearing submission for Compulsory Acquisition, including written submission of oral case" [Doc Ref REP3-052] "<i>guidance on what reasonable attempts to acquire an interest by agreement looks like</i>". However, insofar as the document broadly advises that parties should exchange sufficient information to understand each other's positions and discuss those positions thoroughly and constructively, the Applicant has sought to engage in this manner whilst also having regard to "Planning Act 2008 - Guidance related to procedures for the compulsory acquisition of land" and "Guidance on Compulsory purchase process and The Criche Down Rules".</p> <p>The Applicant has engaged with Travelodge's advisor in seeking to acquire by agreement. This began in August 2020. It had been agreed between the parties that it would be nearly impossible to value a hotel in the then current market as the leisure sector had effectively been shut down by the Covid-19 pandemic. The valuation of the interests in the land are very much led by the valuation of the business. The Applicant requested trade information from Travelodge in June 2021 to be able to undertake a valuation and make an offer. That information has not yet been forthcoming. Whilst the Applicant cannot commit to early acquisition of the interest ahead of the decision on the Order it has proposed and supplied in early September 2021 a draft option agreement.</p> <p>The Applicant requested prior to the first Compulsory Acquisition hearing (held on 22 September 2021) supporting evidence from Travelodge in order for the Applicant to make an offer but has still not received this information. Taking all of this into account the Applicant considers that it has actively sought to reach agreement for acquisition by agreement and looks forward to receipt of the accounting information from Travelodge to progress this further.</p> <p>The Applicant is cognisant of the requirement to pay compensation in accordance with the Compensation Code to landowners in the event of compulsory acquisition and has budgeted for this accordingly in respect of all the land and rights required for the Scheme.</p> <p>As noted above the Applicant has commenced discussions with Travelodge to seek to determine the appropriate amount of compensation by making a request to Travelodge in a meeting held on 15 June 2021 for their trading information for the Hotel premises in relation to the years immediately preceding what will become the valuation date. This trade information is an essential part in agreeing the appropriate market value under Rule 2 of section 5 of the Land Compensation Act 1961 and the appropriate amount of compensation for the Hotel land. The RICS Valuation – Global Standards, effective from 31 Jan 2020, states in Valuation Practice Guidance - Application 4: The Valuation of Individual Trade Related Properties:</p>

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	<p>"1.6. The valuer should emphasise within the report that the <i>valuation</i> is assessed having regard to trading potential and <b>should refer to the actual profits achieved</b>. If the trading potential and/or the actual profits vary, there could be a change in the reported value." [emphasis added]</p> <p>The Applicant does not consider it would be appropriate or reasonable for it to provide a valuation as suggested in representation [REP3-052] submitted on behalf of Travelodge Hotels until after this essential trade information has been provided.</p>