



Historic England

04 November 2021

**PLANNING ACT 2008 (AS AMENDED) – SECTION 89 AND THE
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010 (AS
AMENDED) – DEADLINE 4**

**APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A428 BLACK CAT TO CAXTON GIBBET
IMPROVEMENTS**

APPLICATION REF: TR010044

**COMMENTS OF THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION
FOR ENGLAND (HISTORIC ENGLAND)**

In response to matters at Deadline 4, we include here:

1. Responses to The Examining Authority's written questions and request for information (WQ2).
2. Comment on the following submissions made at Deadline 3:
 - 2a) Applicant's responses to Written Reps [TR010044/EXAM/9.21].
 - 2b) Archaeological Mitigation Strategy [TR010044/EXAM/9.23]

An updated Statement of Common Ground will be submitted by the applicant. Comments were sent on 01/11/2021 on a revised version that reflects the current position, towards submission for Deadline 4.

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| 1. Historic England Responses to the Examining Authority's Written Questions and Request for Information (WQ2) | | |
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| Q2.12 Historic Environment | | |
| Q2.12.1 Methodology | | |
| Q2.12.1.1 | <p>Historic England Bedford Borough Council</p> | <p>Question repeated to seek response from specific respondents</p> <p>Alignment with National and Local Policy How is the Black Cat Junction option selection process and the preferred option aligned with relevant Policy documents, particularly the NPS NN, the NPPF, and the Bedford Local Plan 2030.</p> <p><i>Historic England response: We cannot comment on the Black Cat junction options selection process and the preferred option. These consider issues of highway engineering in which we do not have expertise so are unable to confirm if retention of the listed Brook Cottages in situ is possible by an alternative option. We are therefore unable to comment on the alignment with policy, including if due weight has been given to the designated heritage asset in this process.</i></p> |
| Q2.12.2 Brook Cottages | | |
| Q2.12.2.1 | <p>Applicant Historic England Bedford Borough Council</p> | <p>Demolition of Brook Cottages The NPS NN (Paragraph 5.131) states that: "<i>Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II Listed Building...should be exceptional.</i>"</p> <p>a) HistE, in your response to WQ1 [REP1-078, Q1.2.2] and at ISH3 [EV-045] you stated that you were unable to comment on the highways design and layout of the Proposed Development. Explain if this position prevents you from reaching a conclusion as to whether "<i>a clear and convincing justification</i>" can be made for the removal of Brook</p> |



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| <p>Cottages. If it does not prevent you from reaching such a conclusion, state if the Applicant has provided such a justification and what you consider it to be.</p> <p><i>Historic England response: We are not able to comment on the Black Cat junction options selection process and the preferred junction design as these discuss issues of highways engineering in which we do not have expertise. We are therefore unable to comment on the justification for this preferred design and the necessity of demolishing the cottages to implement it. However, we have advised on the potential for the harm resulting from the demolition to be reduced by relocation of some of the listed building's fabric which we consider should also be considered as part of the justification.</i></p> <p>b) BBC do you believe that "a clear and convincing justification" can be made for the removal of Brook Cottages. State if the Applicant has provided such a justification and what you consider it to be.</p> <p>c) ExA considers that the effect of the Proposed Development on Brook Cottages would need to be assessed in line with Chapter 16 of the NPPF (and in particular Paragraph 201) and the intended protection for listed buildings as specified under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. BBC and Histe, comment with reasons. If so, do you believe this justification to be clear and robust in the Applicant's case? Applicant may also comment.</p> <p>Historic England response: We would agree with the Examining Authority that section 66.1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 by which local planning authorities shall have special regard to the desirability of preserving listed buildings and paragraph 201 of the NPPF are key in this case. In particular, paragraph 201 relates to substantial harm to or total loss of the significance of listed buildings, which is proposed for Brook Cottages. Paragraph 201 sets out a number of tests which might be applied in such cases, but we consider the relevant one is that it should be</p> |
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| | | <p>demonstrated that 'the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss'. The 'substantial public benefits' would be delivered by improving the A428/A1 junction at the Black Cat roundabout. We consider it is for the Examining Authority to ultimately decide if these outweigh these benefits against the harm to the listed building. However, in considering the necessity for causing substantial harm and/or total loss of significance to the listed building in order to deliver these benefits we believe there are two aspects to consider. Firstly, if it is possible to design an improved Black Cat junction which would deliver the public benefits without demolishing the Cottages. As the arguments for the preferred option are based on highways engineering issues we are not in a position to assess the robustness of the justification. Secondly, if substantial harm to and/or total loss of the listed building's significance are unavoidable even if it is demolished. In this area we have given advice on appropriate methods to establish the potential for mitigation through relocating the building but as the application stands do not consider a clear and robust case has been made by the applicant.</p> |
| Q2.12.2.2 | Applicant | <p>Surveys of Brook Cottages</p> <p>a) Applicant, at ISH3 [EV-045] you indicated that the intrusive surveys needed to assess the feasibility and value of dismantling Brook Cottages and rebuilding them in a museum setting, or for residential use, could only take place once you had secured possession of the building. Clarify this position, which is different to that previously stated [APP-240, Appendix E], where difficulty gaining access to the property was said to be the reason for surveys not taking place.</p> <p>b) Applicant, notwithstanding the above point, has there been any further progress regarding gaining access to Brook Cottages, to undertake the surveys referred to at ISH3 [EV-045] and previously [APP-240, Appendix E], concerning the feasibility and value of re-locating Brook Cottages to a museum or as a dwelling?</p> |



c) Applicant, why has notice under S53 of PA2008 or similar legislation such as S172 of the Housing and Planning Act 2016, not been served to secure access? Will this be done during the Examination and if so, when?

d) Applicant, confirm whether or not the surveys referred to at ISH3 [EV-045] to assess the feasibility and value of dismantling/ rebuilding Brook Cottages will be completed before the end of the Examination.

e) **HistE**, if the survey is not completed prior to the close of the Examination, in your view what level of harm (e.g. Substantial or Less Than Substantial) would the loss of Brook Cottages cause for the purpose of the ExA's assessment.

Historic England response: The demolition would result in total loss of significance of the listed building, which also constitutes substantial harm.

f) Applicant and **HistE**, how can the ExA give any weight to the potential future mitigation of any of the identified harm following the completion of the surveys, if the surveys are completed after the Examination has closed?

Historic England response: The full potential for mitigation through dismantling and relocation of the listed building can only be established through survey work and consideration of options for dismantling. If this information is not available prior to the close of the Examination we are unsure how it could be given weight in decision making. However, we would suggest the Examining Authority consider if the process of exploring potential for mitigation and, if appropriate, its implementation could still be secured by Requirement 16 as an alternative.

g) Applicant, would it be possible to secure potential future mitigation reliant on survey findings, in the dDCO to provide greater assurance and certainty. Explain with reason



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| | | and any relevant precedence. Provide suitable wording for R16 [REP1-003]. HistE and BBC may also comment. |
| Q2.12.2.4 | Applicant Historic England Bedford Borough Council Environment Agency | <p>Black Cat Junction Options</p> <p>As requested at ISH1 [EV-011], the Applicant submitted a summary narrative of the criteria considered in the assessment of alternatives for the Black Cat junction and alignment of the A1 in the immediate and wider area, with particular reference to historic environment, flood risk and floodplain compensation, land take, effects on other residential and commercial uses, the restoration of the quarry, and on the gas main to the south of the existing roundabout.</p> <p>a) Applicant, what evidence, such as costings and metrics is there to support the statements made at [REP1-034, Appendix B, Paragraphs 1.1.4 and 1.1.5 and 1.1.16 and 1.1.17] in particular?</p> <p>b) Applicant, provide evidence relating to flood risk, including compensatory floodplain storage and the role this evidence played in the assessment of alternatives.</p> <p>c) Applicant, how were the issues [REP1-034, Appendix B, Paragraphs 1.1.4 and 1.1.5 and 1.1.16 and 1.1.17], considered as part of the Option development and selection process?</p> <p>d) Applicant, were options, perhaps showing some of the alternatives that would not entail the demolition of Brook Cottages (that were previously referred to and discounted by the Applicant), considered and subjected to any consultation? If so, how was this used in the Option development and selection process?</p> |



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| | | <p>e) HistE, BBC, EA what engagement have you had with the Applicant regarding reasonable alternative options that did not entail the demolition of Brook Cottages?</p> <p><i>Historic England response: We have been consulted on the Black Cat design options document. These included options which did not involve demolition, but as the arguments surrounding these options involved matters of highways engineering we do not have the expertise to comment on them.</i></p> <p>f) EA, with reference to NPS NN and the NPPF are you satisfied that the Applicant has had appropriate regard to flood risk, including compensatory floodplain storage, in all of their Option development and selection work?</p> |
| Q2.12.4 Archaeological Remains | | |
| Q2.12.4.1 | <p>Historic England Local Authorities</p> | <p>Archaeological Mitigation Strategy</p> <p>a) Please confirm your views on the scope of the revised AMS submitted at D3 [REP3-010] and its response to the joint Archaeological Design Brief?</p> <p>b) In particular, Cambridgeshire Councils, with regard to the Applicant's comments in [REP3-007, Q1.12.4.2], are you satisfied that all areas are included in the revised AMS [REP3-010]?</p> <p>c) CBC are you satisfied that the revised AMS accords with the approved scopes of work and Written Schemes of Investigation for the advanced archaeological works? BBC, with regard to R9, are you satisfied with the Applicant's revised wording, as described in [REP3-007, Q1.12.4.2]?</p> <p><i>Historic England Response:</i></p> |



We defer to the Local Authorities for overall comment on the conformity of the Updated Archaeological Mitigation Strategy with the detail of the brief.

The remit for detailed comment and advice on non-designated archaeological remains lies primarily with the relevant Local Authority Archaeological Advisors. In our Written Representation, we offered some comments on the overall strategy, offered comment on the proposed methodology from our regional Science Advisor, and included suggestions of further detail we would like to see considered in the AMS in order to ensure that the strategy is robust (REP 077).

We welcome that the revised Archaeological Mitigation Strategy incorporates the majority of the comments made in our Written Rep and are broadly satisfied that our comments have been met, with the exception of one detailed point. This is regarding our advice on employment of a range of techniques to contribute to chronological understanding, set out in our REP1 077bv (Archaeomagnetism, OSL, Dendro etc). We advise that a further update on this point should be added to Section 9 of the AMS, which relates to excavation and sampling strategy, to complement that added to section 10.3.2 concerning geoaerchaeological work.

We also note from Deadline 3 submissions from the Applicant and Local Authorities that whilst the brief has been agreed and included in the Update Archaeological Mitigation Strategy, there are remaining areas of disagreement regarding the Updated Archaeological Strategy, identified by the applicant as relating particularly to the extent of some of the mitigation areas (TR010044/EXAM/9.20 page 156). Submitted documents include comments and the rationale behind them from both the Applicant and the Local Authorities. We note that the Examiner is also still seeking views from all parties on the updated Archaeological Mitigation Strategy and that there will be further representations and responses. Whilst Historic England has been involved in pre-application discussion and development of the DCO submission, we have not been party to detailed discussions on the extent of site areas or the excavation sampling strategies for individual sites, and



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| | | <p><i>we have not undertaken the same detailed review as Local Authorities. If the examining authority requires further comment on the matters under discussion, we would require the applicant to provide maps and plans to illustrate the proposed mitigation areas against the geophysical survey data and the results of trenched evaluation for sites where there is contention, to facilitate our reference back to the original data. We noted in our Written Representation that these plans would be of use (REP1 077bu and REP1 077cp).. At this stage however we would recommend the Applicant and the Local Authorities seek to resolve matters to the satisfaction of the ExA. Please also refer to our comments submitted at Deadline 4, on the Updated Archaeological Mitigation Strategy and the Applicant's Response to Written Reps.</i></p> |
| <p>Q2.13 Landscape and Visual Effects</p> | | |
| <p>Q2.13.1 General</p> | | |
| <p>Q2.13.1</p> | <p>Historic England</p> | <p>Question repeated to seek response from specific respondents Methodology HistE's views are sought in light of heritage assets that are present, including scheduled monuments such as a Bronze Age barrow and medieval moated sites [APP-075, Paragraph 6.6.15], within the affected landscape.</p> <p><i>Historic England Response:</i> <i>The context of the question from the Examiner's First Questions is 'Within a predominantly rural landscape the ES states that the proposed scheme would have significant adverse residual effects, both during construction and operation [APP-076, section 7.9].</i> <i>To provide further clarification, we have provided systematic comment on assets that may be affected by the scheme in sections 3 and 5 of our Written Rep, including consideration of the proposed impact of the scheme of the setting of monuments. We are satisfied that the impacts of the development on the significance of monuments</i></p> |



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| | | <p><i>through potential change in their landscape setting or their setting in relation to other heritage assets, has been adequately covered by the methodology of the ES chapter 6 and the Technical Note 'Historic England and Bedford Borough Council Clarification Note' [AS-010] which presented further consideration of heritage specific viewpoints.</i></p> <p><i>One matter remaining, and considered in our Statement of Common Ground with the applicant, is possible impacts on the setting of Pasture's Farm. We would agree with the conclusion of the applicant, that there will be less than substantial harm, and acknowledge the applicant's assessment (presented in The Applicant's Response to Written Reps TR010044/EXAM/9.21) that it will still be possible to understand the site in its landscape context, and in the context of its relationship to surrounding farmland and its connection to medieval villages nearby. However, the applicant's response to REP1077s also notes that the property at Pasture's Farm has a direct line of sight to the elevated dual carriageway and junction, and we welcome the proposed exploration of further landscape visualisation for this site, which could illustrate the scale and height of the proposed elevated elements of the scheme. Notwithstanding, we would confirm the assessment of a less than substantial level of harm.</i></p> |
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Commented [AA1]: David, do you have any other outstanding matters?





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2a) Historic England Comments on the 'Applicant's Responses to Written Representations [TR010044/EXAM/9.21].

In the Applicant Comments on Written Representations (TR010044/EXAM/9.21), the applicant has given further consideration to several designated heritage assets on which we advised in our Written Representations.

- We are content with the Applicant's Comments on the level of impact on Roxton parish church (REP1 077e, page 229).
- We are content with the Applicant's Comments on the level of impact on Croxton Park (REP1 077j, page 321).
- The Applicant's Comments on REP1 077af-at notes that further information is needed and that there are ongoing discussions concerning Brooke Cottages. We agree with this and are actively involved in these discussions, including Requirement 16 of the draft DCO (REP1 077co).
- In relation to the moated site at Pasture's Farm, the Applicant's Comments on REP1 077r (pages 234-5) reflects conclusions in the ES regarding the potential for screening through existing vegetation and proposed scheme planting. We acknowledge the applicant's assessment in response to REP01 77s, that it will still be possible to understand the site in its landscape context, and the relationship to surrounding farmland and its connection to medieval villages nearby. However, the applicant's response to REP1 077s also notes that the property at Pasture's Farm has a direct line of sight to the elevated dual carriageway and junction, and we welcome the exploration of further landscape visualisation for this site mentioned, which would clarify the scale and height of the proposed elevated elements of the scheme. Notwithstanding, to clarify our position, we would confirm agreement with the applicant of a less than substantial level of harm (noted by the Applicant in their response to REP1 077cg).
- In relation to potential impacts on part of a series of non-designated earthworks in the vicinity of Wintringham Hall (REP1 077z), we had advised that remains should be considered in design of construction and planting in this area, noting the potential role of already proposed requirements on the DCO relating to consultation on aspects of final design. The applicant advises that earthworks in this area are no longer extant. To clarify, our response referred to those earthworks noted in the applicant response to REP1-077x to be present within the Scheme Order Limits, the 'part of the plough headland and some ridge and furrow'. To clarify our position, comment is intended to be advisory.
- We note the Applicant's responses to REP1 077au to REP1 077bt and acknowledge updates to the AMS.



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- In response to a comment made in REP1 077bu that it would have been helpful to see the proposed site areas against the cropmark, geophysical and evaluation results in order to visually understand them (also made in REP1 077cp), the applicant has responded that these figures are not presented in the AMS, but that all data was used in the design of mitigation areas and discussed with local authorities. However, the extent of mitigation areas is a key point where Deadline 3 submissions reflect disagreement on the Updated Archaeological Strategy. We reiterate that provision of maps and plans to illustrate the proposed mitigation areas against the geophysical survey data and the results of trenched evaluation would facilitate (for other parties) the cross referencing of proposals back to the original data.
- The Applicant notes our comment REP1 077bv, regarding employment of a range of techniques to contribute to chronological understanding. We advise insertion of a further update to the AMS on this point in Section 9, relating to excavation and sampling strategy, to complement that added to 10.3.2 relating to geoarchaeological work.
- We note the Applicant's responses to REP1 077bw to REP1 077ce and acknowledge updates to the AMS.
- We acknowledge the applicant's response to Rep1-077cg regarding no proposed further mitigation for Pastures Farm, as the effects of the scheme are not considered significant, but also refer to responses on REP1 077r above.



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2c) Historic England's Comments on the Archaeological Mitigation Strategy [TR010044/EXAM/9.23]

The remit for detailed comment and advice on non-designated archaeological remains lies primarily with the relevant Local Authority Archaeological Advisors. In our Written Representation, we offered some comments on the overall strategy, offered comment on the proposed methodology from our regional Science Advisor, and included suggestions of further detail we would like to see considered in the AMS in order to ensure that the strategy is robust (REP 077).

We welcome that the revised Archaeological Mitigation Strategy incorporates the majority of the comments made in our Written Rep. We also note the commitment to public engagement, and the reassurance on the strategy provided by the applicant in their Applicant's Comments on Local Impact Reports that mitigation areas will be treated in their entirety and not subject to piecemeal excavation related to different construction works [TR010044/EXAM9.22].

We are broadly satisfied that our comments have been met, with the exception of one detailed point (see below). However, we note ongoing discussion on the strategy and disagreement on elements of it at Deadline 3.

The 'Applicant's Response to Written Representation R010044/EXAM/9.21', and the 'Applicants comments on other parties responses to first round of written questions' [TR010044/EXAM/9.20 page 144] highlight that archaeological sampling strategies have been updated in line with an agreed brief that has been issued jointly by the Local Authorities. Local Authorities would therefore be best place to comment on the proposed sampling strategies in relation to the brief.

However, these submissions for Deadline 3 also demonstrate that there are remaining areas of disagreement regarding the Updated Archaeological Strategy, identified by the applicant as relating particularly to the extent of some of the mitigation areas (TR010044/EXAM/9.20 page 156). This and the 'Applicant's Comments on Local Impact Reports (TR010044/EXAM/9.22, page 52) present points made by Cambridgeshire County Council and the Applicant's responses to them, and the rationale behind both, relating to knowledge gain and decisions based on the evaluation data. Further detail is available in the Applicant's Written Submission of Oral Case of Issue Specific Hearing 3 [TR010044/EXAM/9.36] item 5e and in the 'Written summaries of oral representations made at Issue Specific Hearing 3 by the Cambridgeshire Authorities' submitted at Deadline 3 and in the 'Cambridgeshire County Council comments on Written Representations also submitted at Deadline 3'. There are also representations from the Bedfordshire Authorities.

We note that the Examiner is also still seeking views from all parties on the updated Archaeological Mitigation Strategy and that there will be further representations and responses. Whilst Historic England was involved in pre-application discussion and development of the DCO, we have not been party to detailed discussions on the extent of site areas or the excavation strategies for individual sites, responsibility for which lies with Local Authorities, and we have not undertaken the same detailed



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review against the Historic Environment Record and other data held by Local Authorities.

In particular, the applicant has provided further narrative comment on the rationale for areas presented in the mitigation strategy, with reference to trench numbers and archaeological remains from trenches, and statements of case that refer to research aims and the quality of evidence ('Applicant's Response to Written Representation TR010044/EXAM/9.21 pages 138 to 146). It would be usual practice to illustrate this evidence to also allow review.

If the examining authority requires further comment, we would need the applicant to provide maps and plans to illustrate the proposed mitigation areas against the geophysical survey data and the results of trenched evaluation for the sites where there is contention, to facilitate our reference back to the original data and any review of comments. We noted in our Written Representation that these plans would be of use (REP1 077bu and REP1 077cp). At this stage however we would recommend the Applicant and the Local Authorities seek to resolve matters to the satisfaction of the ExA.

We have one detailed comment, regarding our advice on employment of a range of techniques to contribute to chronological understanding, set out in our REP1 077bv (Archaeomagnetism, OSL, Dendro etc). We advise that a further update on this point should be added to Section 9 of the AMS, which relates to excavation and sampling strategy, to complement that added to section 10.3.2 concerning geoarchaeological work.



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