



## HEARING AGENDA

### Application by Highways England for an Order Granting Development Consent for the A428 Black Cat to Caxton Gibbet Improvements

Issue Specific Hearing 4 (ISH4)	Social, Economic and Environmental matters, including the dDCO
<b>Date</b>	Tuesday 30 November 2021
<b>Timings</b>	Arrangements Conference: 09:20 am Hearing Start Time: 10:00 am
<b>Location</b>	Virtual event on Microsoft Teams

#### Requested Attendees

1. Applicant;
2. Environment Agency (EA)
3. Historic England (HistE)
4. Natural England (NE)
5. Bedford Borough Council (BBC)
6. Central Bedfordshire Council (CBC)
7. Cambridgeshire County Council (CCC)
8. Huntingdonshire District Council (HDC)
9. South Cambridgeshire District Council (SCDC)
10. Transport Action Network (TAN)
11. Cambridgeshire and Peterborough Campaign to Protect Rural England (CPRE)

In addition, the Examining Authority (ExA) welcomes involvement from all parties at ISH4. You were required to confirm attendance at ISH4 by Procedural Deadline D, Tuesday 16 November 2021.

#### Purpose for the Issue Specific Hearing 4

The purpose of the ISH4 is to discuss those matters relating to Social, Economic and Environmental matters that the ExA consider merit further explanation and discussion among different parties at a Hearing. It is not intended to discuss all Social, Economic and Environmental matters, some of which the ExA may pursue through further rounds of Written Questions. At ISH4, the ExA is looking to clarify and get views on matters relating to:

1. Biodiversity, including Habitats Regulation Assessment (HRA) for the Eversden and Wimpole Woods Special Area of Conservation (SAC);



2. Flood risk, including interactions between different sources and groundwater dewatering;
3. Assessment of alternatives to the junction design and siting at Black Cat, following discussions at ISH3 and subsequent written submissions;
4. Heritage matters, in particular the effect of the Proposed Development on the Grade II listed building Brook Cottages; and
5. Sustainability effects, including climate change.

## Documents

The ExA referred to several documents in the preparation of this agenda, and some of the documents that we will be referring to during the Hearing are listed here. These documents can be located using the Examination Library reference number in [] square brackets:

1. Updated draft Development Consent Order (Clean) - Rev 3 [REP4-006]
2. Consultation Report Appendix B – Options consultation and PRA booklet [APP-035]
3. Eversden and Wimpole Woods SAC Technical Note [REP1-032]
4. Joint Position Statement on matters relating to Habitats Regulations Assessment and mitigation [REP1-033]
5. Black Cat Junction Design Options [APP-247]
6. Overview of the Alternatives considered at the Black Cat Junction [REP4-032]
7. Appendices G to K to the Overview of the Alternatives considered at the Black Cat Junction [REP4-033]
8. Construction Phase Greenhouse Gas Emissions [REP4-042]
9. Barbastelle Bat Surveys and Mitigation Technical Notes [REP4-044]
10. Response to the Examining Authority's request for views on the RIS2 High Court Judgement and other issues [REP4-073].

## AGENDA

The Hearing will start promptly at the indicated time of 10:00 am. All other times in the Agenda are indicative. The ExA will close the meeting at 4:45 pm, or sooner if all relevant matters have been covered.

### 09:20 am Arrangements Conference

1. Registration by the Case Team

### 10:00 am Issue Specific Hearing 4 (session 1)

#### 1. Welcome by the Examining Authority (ExA)



## 2. Procedure for running the virtual ISH4

### 3. Biodiversity matters, including HRA matters

- a. Confirmation of qualifying features of the Ouse Washes SPA and Ramsar sites
- b. Additional Barbastelle bat surveys update and emerging findings, including:
  - Given the duration and time of year of the surveys how representative of the scale and spatial range of Barbastelle bats from the EWW SAC are they?
  - Agreed scope of surveys and update on the two matters listed at Paragraph 4.2.7 [REP4-044] following Applicant and NE meeting on 23 November 2021
  - Implications of scope of surveys not being fully agreed
  - Views on interim results
- c. Any further without prejudice discussions and findings between Applicant and NE to consider measures that could mitigate adverse effects upon the integrity of the SAC
- d. Identified bat underpasses / overbridges, including:
  - Justification for the six identified crossings;
  - Justification for not identifying additional features (such as Toseland Road overpass (EMP sheet 11); Pedestrian footbridge (EMP sheet 8); B1046 bridge (EMP sheet 6); or the Barford Road Bridge (EMP sheet 3) [REP4-047]) in this way; and
  - Effects on bat behaviour of multi-purpose underpasses/bridges such as at Hen Brook [REP4-056].
- e. Implications for the ES of the different Biodiversity Net Gain score obtained using the DEFRA 2.0 metric, in both quantitative and qualitative terms, including:
  - Quantitative
    - Explanation for how the Proposed Developed will meet NPS NN objectives concerning net loss of biodiversity (paragraphs 5.24 and 5.25 and footnote 75), in light of the findings of a quantitative net loss of biodiversity using the DEFRA 2.0 metric
    - Implications of these findings on the Biodiversity Chapter of the ES [APP-077].
  - Qualitative
    - Approach for the DEFRA 2.0 metric for the Proposed Development in terms of not including the 2021 field surveys and so not considering the actual condition of the habitats assessed [REP4-059, Q2.3.2.1]
    - The loss of habitats of medium/ high distinctiveness and that further on-site and off-site compensation may be required [REP4-059, Q2.3.2]



- Length of hedgerows affected by the Proposed Development given three different numbers put forward by the Applicant [APP-077 Table 8-9]; increase of 4.3km [REP1-022 Q1.3.3.1]; and increase of 3.4km [REP4-037 Q2.3.2.1]

#### **4. Flood risk, including interactions between different sources and groundwater dewatering**

- a. Adequacy of proposed groundwater management and drainage at the proposed Black Cat interchange
  - Timescales for further modelling and sensitivity testing [REP4-068].
- b. Adequacy of proposed drainage and flood risk management arrangements
  - Effects on FRA of a) (above)
  - Status and availability of the FRA Technical Note referenced by the EA [REP4-068] [REP4-013]

**11:00 am Break**

**11:15 am Issue Specific Hearing 4 (session 2)**

#### **5. Assessment of alternatives**

The ExA is examining the alternatives with respect to Black Cat Junction and the consequent demolition of Brook Cottages, in three related but distinct areas: EIA, loss of historic asset and Compulsory Acquisition and the Human Rights Act, in particular Article 1 of the First Protocol and Article 8, of the European Convention on Human Rights. The ExA expects the case of alternatives to be justified in all three areas with specific reference to the relevant policy tests. The case for alternatives will be tested at this Hearing to justify the loss of a historic asset. The ExA will test it again at Compulsory Acquisition Hearing 2 on Thursday 2 December 2021, from the point of view of Human Rights and CA.

- a. Further clarification of the option development and selection process for the Black Cat Junction that led to the selection of a preferred option that involved the demolition of Brook Cottages, including:
  - Were the twelve Stage 2 options [REP4-032 Table 4-4] sufficiently detailed, given the somewhat equivocal (and differing) assessments of the effects of the proposal at the non-statutory consultation stage?
  - Broad brush alternative junction options prepared by Bedford Borough Council that may have retained Brook Cottages [EV-043 ISH3 Action Point 5]



- Re-consideration of the Stage 2 options once it became apparent that all three of the options taken to non-statutory consultation were likely to require the demolition of Brook Cottages
- Evidence to support the discounting of the two stage 2 options that were likely to retain Brook Cottages on road safety grounds [REP4-032 Options 1d and 1e, Table 4-4]
- In light of the concerns over safety in the Black Cat Option selection process, does the Proposed Development fully accord with DMRB standards in this regard?
- Clarification of the non-statutory consultation given the limited, and somewhat equivocal / differing information provided in relation to the three options [APP-035 Section 10 Public Consultation Brochure March 2017] [APP-072, Table 3-2]
- Confirmation that Option A is a combination of two Stage 2 options, 1a and 1c [REP4-032, Table 4-4]. Explanation of how Option A was identified as an option that did not require demolition of Brook Cottages [APP-035 Section 10 Public Consultation Brochure March 2017] [APP-072, Table 3-2], when Stage 2 options 1a and 1c both identified that demolition was likely [REP4-032, Table 4-4]
- Explanation of the development of Option C+ following non-statutory consultation; why was a variant of Option A not developed as well and where is the evidence to support this?
- Why was Option C+ combined with the Pink and Purple Route Options but not the eventually preferred Orange Route [REP4-033 Section 5.4 Appendix K]
- Information provided at Statutory Consultation stage
- Effect of the existing A1 on the setting of Brook Cottages and the bearing this had on assessment of alternatives

## 6. Heritage matters concerning Brook Cottages

- a. Brook Cottages survey and re-location update, including:
  - Timescale for the notification of reasons for the delay to intrusive survey work
- b. Scale of harm caused by the removal of Brook Cottages and any mitigation effects from its potential re-location
- c. Requirement 16 of the draft Development Consent Order [REP4-006] concerning the demolition and potential reconstruction of Grade II listed Brook Cottages, including:
  - Greater clarity in terms of specific and detailed reasons that would prevent reconstruction [REP4-006 R16 (2)(b)]
  - Timescale and mechanism for demolition and reconstruction, if considered appropriate [REP4-049 (Q2.12.2 b)] [REP4-006, provision in R16]



**12:45 pm Lunch Break**

**01:30 pm Issue Specific Hearing 4** (session 3)

## **7. Sustainability effects, including climate change**

- a. Understanding the significance of effects of the greenhouse gas emissions (GHG) of the Proposed Development by making like for like comparisons at a local, regional, national and international level
- b. Relative significance of the lifetime GHG emissions of the Proposed Development in comparison with other RIS2 schemes
- c. Assessment of the effects of the national RIS2 programme against UK Carbon Budgets
- d. Calculated emissions of the Proposed Development, given disagreements amongst the parties in this regard, and including with reference to paragraph 5.19 of the NPS NN which seeks to ensure that the carbon footprint of the Proposed Development is "*not unnecessarily high*"
- e. R (Transport Action Network Limited) v SoST [2021] EWHC 2095 (Admin) (Appendix A [REP3-020]), including the interpretation of *de minimis* in the judgement [REP4-073] [REP5-014]
- f. Implications of the Proposed Development for UK net zero carbon emissions by 2050, given its measured 60-year lifespan would extend beyond 2050, and given the current uncertainties surrounding how the net zero figure will be achieved
- g. Implications of the lifetime greenhouse gas emissions of the Proposed Development on the available global carbon budget to avoid dangerous climate change, including in light of the declared Climate Emergencies locally, regionally, nationally and internationally
- h. With reference to S104(4) of PA2008, the assessment of the Proposed Development
- i. Cancellation of the Oxford Cambridge Expressway, including the specific differences with the Proposed Development, such as respective costs and benefits

**03:00 pm Break**

**03:15 pm Issue Specific Hearing 4** (session 4)

- a. As needed

## **8. Procedural decisions, review of actions and next steps**

## **9. Closing remarks**

