

Written summaries of oral representations made at Issue Specific Hearing 4 by the Cambridgeshire Authorities

1. Introduction

- 1.1 This note summaries the submissions made by Cambridgeshire County Council (**CC**), Huntingdonshire District Council (**HDC**) and South Cambridgeshire District Council (**SCDC**) (together, the **Cambridgeshire Councils (CC)**) at the Issue Specific Hearing 4 on 30 November 2021 (the **Hearing**) in relation to the application for development consent for the A428 Black Cat to Caxton Gibbet Road Improvement Scheme (the **Scheme**) by National Highways (the **Applicant**).
- 1.2 This document does not purport to summarise the oral submissions of parties other than the Cambridgeshire Councils, and summaries of submissions made by other parties are only included where necessary in order to give context to the Cambridgeshire Councils' submissions in response, or where the Cambridgeshire Councils agreed with the submissions of another party and so made no further submissions themselves.
- 1.3 The structure of this document follows the order of items in the agenda for the Hearing published by the Examining Authority (**ExA**) on 22 November 2021 (the **Agenda**). Numbered agenda items referred to are references to the numbered items in the Agenda. The Cambridgeshire Councils' substantive oral submissions relate to items 3, 4b and 7 of the Agenda.

2. Written summary of the Cambridgeshire Councils' oral submissions

3. Biodiversity matters, including HRA matters	
d. Identified bat underpasses/overbridges	
Agenda item	Cambridgeshire Councils' submission
i. Identified bat underpasses/overbridges, including: <ul style="list-style-type: none"> • 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 	<p>The ExA asked the Applicant to comment on why some of the proposed bridges and underpasses (Toseland Road underpass, the pedestrian footbridge on EMP sheet 8, the B1046 bridge on EMP sheet 6 or the Barford Road bridge on EMP sheet 3 [APP-234]) had not been identified as proposed bat crossing points. The ExA also noted that one of the identified crossing points was the East Coast main line and asked the Applicant to comment on why that was identified as such.</p> <p>Max Wade for the Applicant noted that National Highways was still in discussions with Natural England on the subject of mitigation and so some issues had not fully been resolved yet.</p> <p>Mr Wade set out that the results of surveys showing the number of bats using the scheme and areas around it</p>

underpasses/bridges such as Hen Brook [REP4-056].

revealed very low levels of bat activity. The exceptions are the two crossing points at the River Great Ouse and the hedgerows between Sir John's Wood and Boys Wood which had significant numbers of bats and other species. This is explained by them being surrounded by woodland and the river.

Mr Wade outlined however that it was anticipated that the pattern of bat movements will change in time as a result of the habitat created as part of the Scheme. Given the anticipated increase in bat activity, the Scheme provides for 3 crossings. One of those is the East Coast main line railway bridge, which affords good permeability through the Scheme. The Hen Brook and West Brook or Pillar Plantation underpasses also provide future proofing for movements of bats which may increase as a result of the scheme. Additionally, Mr Wade argued that the movement of bats from east to west will be facilitated by the Scheme and the legacy A428 road. The remaining crossing points mentioned by the ExA (i.e. the footbridges) are additional features that bats would be able to use and were identified as specifically necessary within the Scheme.

The ExA asked Mr Wade whether bats currently travel along the East Coast mainline given that there are high speed trains using it.

Mr Wade confirmed that bats do use railway lines as corridors of movement. The space available there is quite considerable and the habitat either side of the railway line is suitable for them. He believed it has good potential for the bats in future.

The ExA asked for comments from the CC.

Francis Tyrell, Pinsent Masons LLP for CC advised that the concern was principally on the assumptions that have been made in relation to some of these underpasses. Mr Tyrrell noted that there was a design issue related to NMU routes and ensuring they function as best as they can as such. There is a concern around a lack of holistic approach since the routes are to provide bat mitigation and function as NMU routes but the design does not reflect this.

The Applicant's answer to question 1.13.3 in **REP 3-007** clarified that there will be no lighting for underpasses in order to make them attractive to bats, but this is inconsistent with use for NMUs. Mr Tyrrell clarified that the concerns are twofold:

1. Are the assumptions for the suitability of routes well founded?
2. How will the design be guided to make sure that there will be design principles to make the routes attractive for NMUs and also bats?

Mr Tyrrell invited Deborah Ahmad to comment further.

Ms Ahmad for CC reiterated that the main concern was to make sure that the design of the routes, if designed for bats, worked for NMUs as well. Ms Ahmad also advised that CC had not seen much detail in terms of where the routes would be positioned. Bats have quite strong flight lines and there are examples of this at the response to Q2.3.5.1(c) of **REP4-059**. There is evidence to say that if you put a bat crossing nearby and not actually on the flight path, the bats will not relocate; they will simply continue to cross at that point. Similarly, if the height of the passageway is different to their usual height of flight, they may not adjust. Ms Ahmad mentioned that CC had not seen evidence such as cross-sections which would help to understand if the routes are in the right location and at the right height.

Ms Ahmad confirmed that there is a low activity of bats in the area as outlined by Mr Wade, but believed this should not preclude any additional structures for mitigation outside of high activity areas.

The ExA thanked Ms Ahmad and confirmed that detailed design would be covered in the hearing the following day.

Janet Nuttall for Natural England confirmed that discussions on this subject were ongoing and thanked Mr Wade and the local authorities for their helpful submissions.

Mr Tyrrell for CC stated that the Scheme Design Approach and Design Principles (**REP3-014**) does not mention making the underpasses acceptable for bat use. He argued that this was a principle that needed to be captured. CC appreciates that Natural England is the lead on this matter but given the need for these structures to function holistically (i.e. as NMU routes too), CC believes the authorities need to be involved in those discussions now.

e. Implications for the ES of the different Biodiversity Net Gain (BNG) scores obtained using the DEFRA 2.0 metric, in both quantitative and qualitative terms

<p>i. Differences between scores from the DEFRA 2.0 metric and the National Highways metric</p>	<p>The ExA asked the Applicant and Natural England to briefly summarise the difference between the two metrics used for the BNG scores (the National Highways metric and the DEFRA 2.0 metric) and outline why they produce such significantly different results. The EXA also asked Natural England and the Applicant to highlight whether there was any evidence that either of the metrics had been used in other nationally significant infrastructure projects (NSIPs).</p> <p>Mr Wade for the Applicant outlined that it is initially important to put the metrics into context. They are the beginning of quantifying biodiversity net change. Mr Wade noted that the Applicant was using data for the DEFRA 2.0 metric that was collected for other purposes in terms of the environmental assessment. Mr Wade outlined that the Applicant took a highly precautionary approach in terms of how it entered the data. He believes that would explain to a significant extent why the hedgerow metric came out as low as it did on the minus side. Making modifications in terms of how the data is entered would be likely to produce a net gain in terms of hedgerows.</p> <p>Mr Wade mentioned that it is also important not to see the three metrics within 2.0 as being able to be aggregated. You cannot add them up and divide by 3. The more significant part of the metric is in relation to habitats and on that the two metrics (of DEFRA and of National Highways) are very similar.</p> <p>Ms Nuttall for Natural England was not able to comment as she argued it was not within Natural England's remit to delve into the differences between the two metrics. The extent of Natural England's submissions on the matter are summarised in the responses to the second written questions (REP4-070). Natural England supports the Applicant in the use of the DEFRA 2.0 metric and are happy that this has shown a BNG.</p> <p>Ms Banham for Bedford BC confirmed that the three metrics within the DEFRA 2.0 metric do indeed need to be taken separately and for a scheme to say that it results in a BNG, all three of those metrics within the DEFRA metric need to show a gain. In this case, the hedgerow metric is showing a loss.</p> <p>Ms Ahmad for CC outlined that the user guide accompanying the DEFRA 2.0 metric confirms the point made by Ms Banham.</p>
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	<p>Ms Ahmad for CC believed this was not accurate at this stage. It has not been fully justified in the calculations in REP3-012. The largest concerns CC has are in terms of area calculations. These do not take into account the rules. In REP3-013, all the habitats which have not been adequately compensated for (high and medium distinctiveness) are highlighted in red. As they haven't been compensated for, there is going to be an overall net loss as the guidance makes clear that you cannot trade down habitat.</p> <p>The ExA noted that there are nuances on this subject which may need to be covered in written questions.</p> <p>Ms Ahmad for CC confirmed in response to the ExA's earlier comment that no NSIPs had come forward in Cambridgeshire since the DEFRA 2.0 metric had been published. Ms Ahmad also noted that Table 8.10 of the Chapter on Biodiversity in the Environmental Statement (APP 077) states that for woodland there will be an overall benefit, which is not correct as there will be a loss of highly distinctive habitat. Ms Ahmad queried how the loss of priority habitat had been incorporated into that conclusion. Ms Ahmad also noted that pasture and reed beds had not been reflected in that table.</p> <p>Mr Tyrrell for CC confirmed that CC would submit a copy of the User Guide for the DEFRA 2.0 metric that Ms Ahmad had been referring to, a summary of their policy assessment of the metric and a list of NSIPs which had used the DEFRA metrics.</p>
<p>4. Flood risk, including interactions between difference sources and groundwater dewatering</p>	
<p>b. Adequacy of proposed drainage and flood risk management arrangements</p>	
<p>Drainage and flood risk</p>	<p>The ExA asked the lead local flood authorities for their views on the adequacy of the proposed drainage and flood risk management arrangements.</p> <p>Mr Tyrrell for CC confirmed that CC had no specific points to raise on the matter beyond those set out in the written representations. Mr Tyrrell also noted that CC would be grateful for sight of any other technical notes which the Applicant may submit following discussion at the hearing.</p>
<p>7. Sustainability effects, including climate change</p>	

<p>i. Local carbon budgets</p>	<p>The ExA outlined that it was not convinced that the emissions of a single scheme against the UK’s carbon budget was a sensible comparison (as suggested by the Transport Action Network). It outlined that it would like to engage with the parties in the Examination to assess how a more sensible comparison could be made for the Secretary of State with regard to compliance of the proposed development with paragraphs 4.17 and 5.17 of the National Policy Statement for National Networks (NPSNN).</p> <p>The ExA also outlined that it would like to hear from local authorities on:</p> <ul style="list-style-type: none"> - community cumulative effects on the scheme even if considered acceptable when assessed on an individual basis; and - the carbon impacts of the project. <p>Mr Tyrrell for CC introduced Emma Davies who would speak to local budgets on behalf of CC.</p> <p>Ms Davies confirmed that a number of local authorities had adopted budgets produced by the Tyndall Centre. Ms Davies confirmed there are carbon budgets for Huntingdonshire and South Cambridgeshire as well as Bedford and Central Bedfordshire. It would seem that any assessment against local targets should take place against those carbon budgets</p> <p>The ExA asked if those local budgets were in the Examination Library.</p> <p>Ms Davies believed not but advised she would submit them for Deadline 6.</p>
<p>ii. Significant levels of greenhouse gas emissions</p>	<p>The ExA asked CC for its views on what would be a significant level of greenhouse gas emissions in the context of this scheme.</p> <p>Mr Tyrrell for CC commented that it would not be appropriate for CC to opine on the national significance of the scheme as this is a question for the Secretary of State. CC would be interested to see a local assessment however.</p> <p>Mr Tyrrell noted that CC does recognise the difficulties for the Applicant in the assessment of carbon as the DEFRA emissions factors toolkit does not allow for future declines in carbon emissions from vehicles as a result of vehicle technology.</p>

iii. Relationship between the Paris Agreement, the Climate Change Act and the NPSNN

The ExA noted that there had been many references to the NPSNN, which was published prior to the declaration of climate emergency by the UK Parliament in 2019. The government has stated in its decarbonisation plan that the NPSNN should be reviewed but that this is unlikely to happen before Spring 2023.

The ExA sought the views of the Applicant and the parties on whether it can be satisfied that the proposed development has considered this urgent issue in an appropriate manner. If not, the ExA asked what would be the appropriate legislative and policy basis for an alternative approach.

Mr Lyness for the Applicant commented that insofar as the obligations or objectives of the Paris Agreement require an urgent response, that has been addressed by the government through its policy choices and approach it takes under the Climate Change Act. That does not alter the fact that the NPSNN is still in effect and for the purposes of legislation, this application needs to be determined in accordance with that NPS. Mr Lyness noted that the Paris Agreement doesn't have any further bearing beyond the approach to assessing the scheme against national carbon targets pursuant to paragraph 5.17 of the NPSNN.

Mr Tyrrell for CC agreed with the comments of Mr Lyness in relation to the Paris Agreement. CC also reiterated that there is a possible overstatement of the carbon impact due to the DEFRA toolkit and the way it measures emissions. Mr Tyrrell agreed with Mr Lyness on the status of the emergency aspects. Mr Tyrrell noted that the emotion of the UK parliament does not have effect in law or policy and therefore the law and policy remains as set out in NPSNN. The focus of CC is therefore what can be done locally in terms of mitigation. Mr Tyrrell invited Ms Davies to speak to local mitigation measures.

Ms Davies for CC noted that CC had received requested clarifications on construction phase emissions at deadline 5. The detail was welcome. CC has encouraged more detailed identification of materials that are able to reduce emissions such as low-temperature asphalt. CC understand there will be further detail on such materials to be used provided throughout the course of the Examination.

Ms Davies noted that CC was seeking further clarification on how the Applicant will seek to minimise

residual emissions for the scheme. That request will form part of the deadline 6 submissions.

Mr Tyrrell thanked Ms Davies.

Mr Tyrrell also outlined in response to comments from Mr Todd on behalf of Transport Action Network that CC has local transport policies in place and this scheme is part of those and supported by them. CC would not support any assertion (such as that from Transport Action Network) that the de-trunked A428 should suddenly disappear.

Reference had been made by Mr Todd to local transport provision and Mr Tyrrell noted that that should be viewed from a local transport perspective as part of the wider policy context which also includes support for public transport upgrades and schemes such as the Cambridge to Cambourne scheme. This scheme is therefore part of a holistic package in terms of public transport and road upgrades.