

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.72 Applicant response to actions arising from Compulsory
Acquisition Hearing 2

Planning Act 2008

Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules
2010

December 2021

Infrastructure Planning

Planning Act 2008

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

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

**9.72 Applicant response to actions arising from
Compulsory Acquisition Hearing 2**

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1 Applicant Response to actions arising from Compulsory Acquisition Hearing 2

- 1.1.1 Following the Compulsory Acquisition Hearing 2 (CAH2) which was held on Thursday 2 December 2021 the Examining Authority (ExA) published a list of actions arising from the CAH2 on 3 December 2021 which required a response or update at Deadline 6.
- 1.1.2 Of the actions identified a number were identified for the Applicant whilst others were directed to other interested parties.
- 1.1.3 The following table sets out only those actions directed to the Applicant and the Applicant’s corresponding response. In some instances, as noted within the table, further discussions will take place with relevant parties after Deadline 6 and the Applicant will update the ExA at subsequent deadlines as appropriate.

Table 1-1 Applicant responses to actions arising from Compulsory Acquisition Hearing 2

Action No.	Action	Party	Response at Deadline 6
1.	List of the Parties that were represented by Brown & Co for the Compulsory Acquisition Hearing 2	Brown & Co	N/A to the Applicant.
2.	Plot numbers update in Statement of Reasons Annexes	Applicant	Response required at Deadline 10.
3.	Further plot number changes in Book of Reference as they come up through the Examination, with a schedule of changes, highlighting the stages when changes were made through the examination	Applicant	Response required at Deadline 10.
4.	Substantive responses to actions agreed at meeting on 2 November with Bedford Borough Council. Evidence of an established dialogue over outstanding issues, such as schedule of meetings and agreed timetable relative to the Examination Timetable for Bedford Borough Council and the Davison and Co.	Applicant	Refer to Appendix A of this document for the substantive responses provided. A timetable has not been agreed with Bedford Borough Council because the landowner is still considering whether they are interested in entering into an option agreement under the terms proposed by The Applicant. For evidence of the established dialogue please refer to the

Action No.	Action	Party	Response at Deadline 6
			<p>Compulsory Acquisition Schedule [TR010044/EXAM/9.4v3], submitted at Deadline 6.</p> <p>A meeting was held on the 9 December 2021 to agree a timetable for the outstanding issues with Davison and Co.</p>
5.	Update on the engagement with the two new Parties identified for the Book of Reference after the commencement of the Examination.	Applicant	<p><u>Optimum Credit Limited</u></p> <p>Mortgage company identified through land registry update checks. A letter was issued on 05.11.21 to introduce the project and advise the party they can register as an interested party under s102A and engage in the examination. No response or contact has been received to date. This is not unusual for mortgage companies.</p> <p><u>Daniel Heap</u></p> <p>23.08.21 – A letter requesting access to land for drainage surveys was issued to ‘The Occupier’ of the property following information from previous owners that they had sold, land was pending registration.</p> <p>25.08.21 – An email was received by the Applicant from Daniel Heap authorising survey access and confirmation he is the new owner. Further emails regarding the project and arranging meeting. A meeting was arranged for 7 September 2021.</p> <p>07.09.21 – On the agreed meeting date the Landowner did not attend the meeting.</p> <p>30.09.21 – A letter issued from the Applicant to the landowner again noting that he can register as an interested party under s102A.</p>

Action No.	Action	Party	Response at Deadline 6
			<p>03.11.21 – A letter issued from the Applicant to the landowner inviting discussions around acquiring rights via agreements.</p> <p>11.11.21 – The Landowner returned the signed form to enter early negotiations.</p>
6.	<p>Substantive responses to actions agreed at meeting on 12 November with the Church Commissioners for England.</p> <p>Evidence of an established dialogue over outstanding issues, such as a schedule of meetings and agreed timetable relative to the Examination Timetable for Church Commissioners for England, including confirmation of the 4-6 week commitment.</p>	Applicant	<p>The Applicant provided draft Transfer documents and Option Agreement to the Church Commissioners on 8 December 2021. These were delayed slightly due to not receiving the revised Heads of Terms from the Church Commissioners in the timeframe agreed on the 12 November 2021. A draft timetable for the outstanding issues was shared with the Church Commissioners on 10 December 2021. A revised timetable was received by the Applicant and accepted on 14 December 2021.</p> <p>For evidence of the established dialogue please refer to the Compulsory Acquisition Schedule [TR010044/EXAM/9.4v3], submitted at Deadline 6.</p>
7.	Process of detailed design post consent in response to Brown & Co submission.	Applicant	<p>The General Arrangement Plans [APP-011] show the positions and routes of all new access points as agreed with the landowners through the consultation process.</p> <p>The detailed design for the Accommodation Works will commence in March 2022 with the full detailed design development for these works planned for completion by the end of March 2023.</p> <p>This detailed design process will include engagement meetings with the landowners to agree any site-specific details. A meeting</p>

Action No.	Action	Party	Response at Deadline 6
			has been arranged with Brown and Co on 20 December to discuss.
8.	Response to Issue Specific Hearing 5 Action 15	Parties represented by Brown & Co. and National Farmers Union (NFU)	N/A to the Applicant.
9.	Statement on the evidence relied upon for the assessment of material in Borrow Pit 14 in addition to surveys, trial pits, and other methods described in the Borrow Pits Excavation and Restoration Report.	Applicant	<p>The Applicant was in receipt of previous ground investigation data from the quarry operations that confirmed the depths of the material that is being sought as part of the Scheme.</p> <p>In addition, a Window Sample investigation to a depth of 7.3m and a Borehole investigation to a depth of 25m have been completed to the north of the Black Cat Junction on the east side of the existing A1 adjacent to Borrow Pit 14. These investigations recovered samples of the materials for assessment and testing to confirm their suitability for use as an embankment fill material.</p>
10.	National Farmers Union (NFU) to provide list of their members affected by the perceived lack of engagement with respect to position statements and monitoring agreements.	NFU	N/A to the Applicant.
11.	Respond to Rule 17 letter for occupier of Brook Cottages and representation [AS-018]	Applicant	The Applicant will provide a response to the Rule 17 letter at Deadline 7 (6 January 2022).
12.	Written updates on Agenda Item 5 and 7	Applicant	<p><u>Update on the CA Schedule</u></p> <p>The Applicant has met with the Affected Parties or continued negotiations via email and telephone.</p> <p>Draft Option Agreements have been shared with the majority of landowners who have expressed</p>

Action No.	Action	Party	Response at Deadline 6
			<p>an interest in treating with the Applicant in advance of compulsory powers. Some Affected parties do not hold interests in land where it would be appropriate to enter into an Option Agreement so alternative arrangements are being explored with those parties.</p> <p>There is still a difficulty in agreeing land values due to the volatility in the market as a consequence of development prospects opened up by nearby schemes which are in competition for the same land.</p> <p>The Applicant has begun negotiations for lease agreements with the relevant Affected Parties for any land to be used as a Borrow Pit. Heads of Terms have been issued to all parties and responses have been received and negotiations are progressing.</p> <p>Negotiations with some landowners are on hold pending further detail being provided as detailed design develops.</p> <p>Previously the Applicant was in discussions with five landowners for early acquisition of their land, however, two of these have now reverted to Option Agreement negotiations. Discussions with the remaining two Affected Parties continue.</p> <p><u>Update on the Statutory Undertaker's Progress Schedule:</u></p> <p>Agreement has now been reached with Network Rail, and its representation has been withdrawn.</p> <p>Negotiations are ongoing with the other statutory undertakers and it is still anticipated that agreement will be reached</p>

Action No.	Action	Party	Response at Deadline 6
			<p>before the close of the examination.</p> <p>Refer to the following documents, submitted at Deadline 6:</p> <ul style="list-style-type: none"> a. Compulsory Acquisition Schedule [TR010044/EXAM/9.4v3] b. Statutory Undertakers - Progress Schedule Update [TR010044/EXAM/9.17v3]

Appendix A - Action Point 4

Substantive response to actions from 2 November meeting with Bedford Borough Council

To check the details of the existing National Highways CPO in this area.

The Applicant has checked the old outstanding acquisition case for Bedford Borough Council (BBC). The Highways Agency took entry to the land in 2014 by agreement, and it has still not completed. The proposal is to put the old case on hold and acquire the land for the A428 DCO (the land is already included in the DCO).

To confirm with policy the details of why National Highways would be taken to criminal courts if their DCO commitments were broken.

National Highways' policy to acquire land to be used for essential mitigation

National Highways' long-standing practice is to acquire the land to be used for essential mitigation (landscaping) rather than to offer back the land required to landowners subject to a positive covenant to maintain the land in a certain condition/to a set standard.

Our legitimate concern is that any disposal of essential mitigation land would expose the company to potential criminal sanctions for breach of the terms of the planning consent (granted by the proposed DCO) if the landowner failed to maintain the landscaping as per the Requirements of the DCO. Our understanding is that consent would, in part, be granted on the basis of our provision of essential mitigation. We would find it impossible to mitigate that risk even if we remained constantly vigilant. For our part, our only remedy would be to seek to enforce the covenant against the landowners in the civil courts. There is, thus, an 'imbalance of consequence' here where the company would face greater jeopardy than 'the wrongdoer'. That can neither be a right nor acceptable position for the company.

Further, it would be difficult to justify the exercise of compulsory powers for the acquisition of land that we planned to hand back. The planned mitigation is 'essential' and we are seeking to take no more land than is required. We have confidence in our proposals. If the mitigation were only supplementary in nature, then we would, of course, consider entering into agreements under s253 Highways Act 1980.

We understand that the landowners who have asked us to commit to an offer back are concerned about our stewardship of managed land and particular our alleged inability to control ragwort. We can assure the landowners of our commitment to proper maintenance and they will no doubt be aware of the provisions in the Weed Act that give powers to Natural England to take action if we do not clear weeds within 28 days of a notice being served.

To check policy on whether landscaping land advice (that it cannot be handed back subject to a covenant) applies to flood compensation land .

Land taken as a flood compensation area (i.e. land acquired for the re-provision in part or in full of a flood plain) is as much essential mitigation as land taken for landscaping.

Accordingly, it would be difficult to justify the exercise of compulsory powers for the acquisition of land that we planned to hand back. If the planned mitigation is 'essential' then we should seek to take no more land than is required and have confidence in our proposals.

Just as in the case of land taken for 'essential landscaping', any disposal of essential mitigation land would expose the company to potential criminal sanctions for breach of the terms of the planning consent if the landowner failed to maintain our obligations. That consent would in part be granted on the basis of our provision of essential mitigation.

To issue draft HoTs by 5th November 2021

The draft terms were sent to the land agent on 5 November 2021.

Since these terms were sent, the Applicant met with and the agent on 26 November 2021 where the main clauses were discussed further. The Applicant emailed the agent on 29 November 2021 with revised wording for the Heads of Terms, which are being considered by both parties.