

# A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.73 Applicant response to actions arising from Issue Specific  
Hearing 6

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[ ]

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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/9.73
<b>Author</b>	A428 Black Cat to Caxton Gibbet improvements Project Team, National Highways

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## Table of contents

<b>Chapter</b>	<b>Pages</b>
<b>1 Applicant's Response to actions arising from Issue Specific Hearing 6</b>	<b>1</b>

### **Table of Tables**

Table 1-1 Applicant's response to actions arising from Issue Specific Hearing 6 .....	1
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# 1 Applicant’s Response to actions arising from Issue Specific Hearing 6

- 1.1.1 Following Issue Specific Hearing 6 (ISH6) which was held on Thursday 2 December 2021 the Examining Authority (ExA) published a list of actions arising from ISH6 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’s response to actions arising from Issue Specific Hearing 6**

Action No.	Action	Party	Response at Deadline 6
1.	Consider the following changes in the Pre-Commencement Plan: <ul style="list-style-type: none"> <li>• Re-wording Section 1.2 in relating to the wording to describe scope and method.</li> <li>• Closer alignment to First Iteration Environmental Management Plan in some of the larger activities.</li> <li>• Mitigation measures to be set out for each specific activity.</li> <li>• Further details for contaminated land, traffic management measures, road space booking and likely Heavy Goods Vehicle flows.</li> </ul>	Applicant	Refer to the Pre-commencement Plan [TR010044/EXAM/9.48v2] submitted at Deadline 6, which addresses these points.

Action No.	Action	Party	Response at Deadline 6
2.	Local Authorities (LAs) to Provide any further comments on Pre-commencement plan, such as through a marked up copy.	LAs	N/A to the Applicant.
3.	Provide agreed detail of the discussion and any agreed actions at recent meeting with National Farmers Union (NFU), particularly regarding the types and distances of surveys required under Article 23.	Applicant	The Applicant held a meeting with the NFU on the 24 November 2021. At this meeting the Applicant went through the draft SoCG with the NFU, along with further information relating to the ALO role. Following the call, both documents were issued to the NFU for comment. At the time of writing no responses have been received on the SOCG as yet. In relation to surveys under Article 23, please refer to the SoCG for the current position of both parties.
4.	Consider whether specific surveys could be referred to in terms of the meaning of access required to adjacent land.	Applicant	<p>The Applicant has considered this request made by the Examining Authority further and notes that while it may be possible to provide a list of potential surveys that may be undertaken using this power the very fact that these surveys would include environmental surveys means that this proposition is unworkable. The reason for this is that species that may need to be surveyed may not be known at this stage but may move into the area prior to the commencement of construction. Including an express list of specific surveys would not allow the Applicant any flexibility in dealing with this possibility.</p> <p>In addition, and as has been said previously, this power is similar to a power that would be available to the Applicant pursuant to section 172 (rights to enter and survey land) of the Housing and Planning Act 2016. Section 172 of that Act allows a person authorised in writing by an acquiring authority (which in this context includes the Applicant) to enter on and survey or value land in connection with a proposal to acquire an interest in or a right over land. Section 172 of that Act then goes on to state that an authorisation under this section may</p>

Action No.	Action	Party	Response at Deadline 6
			<p>relate to the “land which is the subject of the proposal or to other land”. It is therefore clear that this ‘other land’ referred to in section 172 could include land adjacent to, and it is not limited to land to be compulsorily acquired.</p> <p>Finally, this power has wide precedent in many made Orders to date including the Silvertown Tunnel Order, the M42 Junction 6 Order and the A303 Stonehenge Order.</p> <p>In the recommendation report for the M42 Junction 6 Order, the ExA concluded at paragraph 9.2.53 that "the ExA is therefore satisfied that in principle, such articles are well precedented and are acceptable in the particular circumstances of this application".</p>
5.	<p>Applicant to confirm whether increasing the notice period to 28 days in Article 40 and Article 23 will impact the construction programme and any other part of the Environmental Assessment. If so in what way. Substantiate your response. NFU and any other Interested Parties to explain with reasoning what the operational benefits would be to landowners of increasing the notice period from 14 to 28 days.</p>	Applicant NFU	<p>The Applicant maintains its previous submissions on this point made both in writing and submitted to the Examination at various Deadlines and during the various Issue Specific Hearings. The Applicant does not propose to list or repeat that information here.</p> <p>In terms of direct impacts on the Applicant, there is the potential for a significant impact on the overall construction programme, and consequently an impact on the ability of the Scheme to be delivered by the committed Open for Traffic milestone. While the timeline for delivery is considered condensed by industry standards, at this stage in the process it is not common to have prepared a detailed construction programme. Without such detailed construction programme, it is difficult to show the anticipated delays which would be caused. However, from practical experience, the following delays are anticipated to arise:</p> <p><u>Article 40</u></p> <p>Development of the Scheme contains many seasonal construction activities, such as earthworks, which can only be carried out during specific windows in the year. An extended notice period during a</p>

Action No.	Action	Party	Response at Deadline 6
			<p>season window could mean that whole phases of construction 'jump' between different construction seasons. Activities which couldn't be completed within traditional construction seasons would not be undertaken in 'out of season' periods, and would need to be paused at the end of one season prior to the commencement of the next season the following year.</p> <p><u>Article 23</u></p> <p>The construction programme allows for pre-construction ecological surveys to be undertaken prior to construction works commencing. The assumption has been made that the results of these pre-construction surveys will not identify any new ecological species not previously identified, and that they will not identify new locations where ecological species reside. As such, walkover ecological surveys are anticipated to be sufficient to administer prior to works starting in new areas throughout the overall construction programme.</p> <p>However, the risk exists that, due to the transient nature of ecological species, at any point during the construction programme, ecological species might be identified in an unexpected location. Should this occur, access would need to be obtained to survey the area before determining a suitable course of action. When working with/around ecological species, seasonal calendars place constraints on when mitigation works can be undertaken. For example it is imperative to avoid particularly sensitive periods such as hibernation and nesting periods. Should Article 23 be required to access land, increasing the notice period to 28 days could mean that the species oriented window for survey work is missed and consequently works are prevented from commencing in a timely manner because construction is stalled until the next ecological window becomes available. It is necessary for the Applicant to maintain agility with regards the timing of carrying out these surveys to allow</p>

Action No.	Action	Party	Response at Deadline 6												
			<p>works to commence in a timely manner when ecological seasonal calendars have an impact.</p> <p>For any identified and planned survey works, increasing the notice period to 28 days is not considered to be significantly impactful, and the Scheme would plan in this additional time period. However, this cannot be said for unplanned works, when increasing the notice period to 28 days might, as stated above, mean that works cannot be completed within specific seasonal time constraints.</p>												
6.	Update in relation to de-trunking agreement to be provided in the next Statement of Common Ground with Local Highway Authorities (LHAs). Timetable for agreement of the De-trunking agreement to also be provided.	Applicant LHAs	<p>Where progress has been made this is reflected in the Statements of Common Ground.</p> <p>The Applicant and Bedford Borough Council have agreed the below timeline leading up to the completion of the legal agreement:</p> <table border="1" data-bbox="914 1099 1433 2040"> <thead> <tr> <th data-bbox="914 1099 1098 1167">Date</th> <th data-bbox="1098 1099 1433 1167">Step</th> </tr> </thead> <tbody> <tr> <td data-bbox="914 1167 1098 1350">17 December 2021</td> <td data-bbox="1098 1167 1433 1350">BBC will have provided any amendments sought to the legal agreement in so far as they relate to the new highway assets.</td> </tr> <tr> <td data-bbox="914 1350 1098 1570">17 December 2021</td> <td data-bbox="1098 1350 1433 1570">NH to arrange meeting/call with the Operations Directorate Team to discuss the assets to be de-trunked and handed over.</td> </tr> <tr> <td data-bbox="914 1570 1098 1753">14 January 2022</td> <td data-bbox="1098 1570 1433 1753">BBC will provide any amendments sought to the legal agreement in so far as they relate to the de-trunked assets.</td> </tr> <tr> <td data-bbox="914 1753 1098 1937">14 January 2022</td> <td data-bbox="1098 1753 1433 1937">The Applicant to provide comments on the amendments sought to the legal agreement in relation to the new highway assets.</td> </tr> <tr> <td data-bbox="914 1937 1098 2040">21 January 2022</td> <td data-bbox="1098 1937 1433 2040">The Applicant to provide comments on the amendments sought to</td> </tr> </tbody> </table>	Date	Step	17 December 2021	BBC will have provided any amendments sought to the legal agreement in so far as they relate to the new highway assets.	17 December 2021	NH to arrange meeting/call with the Operations Directorate Team to discuss the assets to be de-trunked and handed over.	14 January 2022	BBC will provide any amendments sought to the legal agreement in so far as they relate to the de-trunked assets.	14 January 2022	The Applicant to provide comments on the amendments sought to the legal agreement in relation to the new highway assets.	21 January 2022	The Applicant to provide comments on the amendments sought to
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			21 January – 15 February 2022	The parties will work towards agreeing a final version of the legal agreement by Deadline 10 prior to the close of the Examination.																
			<p>The Applicant proposed the below timeline to Central Bedfordshire Borough Council but by the time of the Deadline had not received a response confirming whether it was agreed.</p> <table border="1" data-bbox="916 869 1441 1429"> <thead> <tr> <th>Date</th> <th>Step</th> </tr> </thead> <tbody> <tr> <td>17 December 2021</td> <td>CBC will have provided any amendments sought to the Legal Agreement.</td> </tr> <tr> <td>14 January 2022</td> <td>The Applicant to provide comments on the amendments sought to the legal agreement.</td> </tr> <tr> <td>14 January – 15 February 2022</td> <td>The parties will work towards agreeing a final version of the Legal Agreement by Deadline 10 prior to the close of the Examination.</td> </tr> </tbody> </table> <p>The Applicant has agreed the following timeline with Cambridgeshire County Council for the completion of the legal agreement:</p> <table border="1" data-bbox="916 1581 1441 2013"> <thead> <tr> <th>Date</th> <th>Step</th> </tr> </thead> <tbody> <tr> <td>14 December 2021</td> <td>CCC will have provided its further comments on the legal agreement.</td> </tr> <tr> <td>7 January 2022</td> <td>The Applicant to provide comments on the amendments sought to the legal agreement.</td> </tr> <tr> <td>10 January 2022</td> <td>The parties will attend an escalation meeting to seek</td> </tr> </tbody> </table>		Date	Step	17 December 2021	CBC will have provided any amendments sought to the Legal Agreement.	14 January 2022	The Applicant to provide comments on the amendments sought to the legal agreement.	14 January – 15 February 2022	The parties will work towards agreeing a final version of the Legal Agreement by Deadline 10 prior to the close of the Examination.	Date	Step	14 December 2021	CCC will have provided its further comments on the legal agreement.	7 January 2022	The Applicant to provide comments on the amendments sought to the legal agreement.	10 January 2022	The parties will attend an escalation meeting to seek
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7.	Provision of the current version of the detrunking side agreement and two associated documents.	Applicant	<p>The Applicant is of the view that providing a copy of the current working draft of the legal agreement, which includes a process for handing over the new/alterd local highway assets and the de-trunked assets, is not necessary at this stage. The reason for this view is twofold, the first being that the Applicant submitted at Deadline 4 the Overview of handover process for de-trunked assets and local highways <b>[REP4-039]</b> which clearly sets out what the legal agreement contains and the process required for handover of both the new/alterd local highway assets and the de-trunked assets. The second reason is that the agreement is in a state of flux and currently being negotiated between the parties. For example, any amendments made in track changes have not necessarily been contemplated by both parties, nor agreed, and would not provide a clear picture as to the present position.</p> <p>It is also the Applicant's view that securing the legal agreement is not an essential requirement for the Panel to make its recommendation in relation to the Scheme. This is because the updated dDCO submitted at Deadline 6 <b>[TR0120044/APP/3.1 v4]</b> contains sufficient control to ensure that the</p>										

Action No.	Action	Party	Response at Deadline 6
			<p>Applicant will be unable to handover an unsatisfactory asset to the relevant local highway authority. The control in relation to new/alterd local highway assets is contained within Article 13 of the dDCO [REP4-006]. Article 13 requires that the highways constructed, altered or diverted under this power must be completed to the 'reasonable satisfaction' of the local highway authority. Therefore, the local highway cannot be complete until that first test is met i.e. that it has been completed to the reasonable satisfaction of the local highway authority. Only when that test is met could the local highway be considered to be 'complete' and then transferred over to the local highway authority in accordance with Article 13. If this was not the correct interpretation, reference to 'reasonable satisfaction' would be obsolete. This means that the Council's point that by operation of law the relevant highway will be handed over to the local highway authority when complete is not entirely correct and in fact the relevant highway must be completed to the reasonable satisfaction of the local highway authority.</p> <p>In relation to the de-trunked aspects, the Applicant has inserted a new paragraph (9) to Article 14 in the updated dDCO submitted at Deadline 6 that requires any de-trunking date to be consented to by the Secretary of State after consultation with the relevant local highway authority. The inclusion of this new step ensures again that the Applicant is unable to handover the de-trunked assets without any measures in place to protect the receiving local highway authority.</p> <p>Based on the above, while the legal agreement would complement the process for handing over de-trunked or new/alterd local highway assets it is not an essential element given the controls already in place within the dDCO.</p>
8.	Update to be provided on the progress made with de-trunking agreements at each deadline going forward until agreed.	Applicant	A further updated on progress will be provided at Deadline 8 and ongoing as required by this action.

Action No.	Action	Party	Response at Deadline 6
9.	Clarification as to why the second version Environmental Masterplan was provided at D4, and provide a schedule of changes.	Applicant	The Environmental Masterplan was provided at Deadline 4 due to the addition of bat underpasses on the drawing. A further updated Environmental Masterplan [ <b>Figure 2.4v3 of TR010044/APP/6.2</b> ] has also been submitted at Deadline 6. The Schedule of Changes to the Environmental Masterplan [ <b>TR010044/EXAM/9.88</b> ] sets out the changes that have been made to the Environmental Masterplan since submission of the DCO Application.