

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.78 Written submission of oral case for Compulsory
Acquisition Hearing 2 on 2 December 2021

Planning Act 2008

Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules
2010

December 2021

Infrastructure Planning

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

A428 Black Cat to Caxton Gibbet improvements

Development Consent Order 202[]

**9.78 Written submission of oral case for Compulsory Acquisition
Hearing 2 on 2 December 2021**

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Author	A428 Black Cat to Caxton Gibbet improvements Project Team, National Highways

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1 Introduction

- 1.1.1 This document summarises the case put forward by National Highways (the Applicant), at the Compulsory Acquisition Hearing which took place via MS Teams on 2 December 2021.
- 1.1.2 Jonathan Bower of Womble Bond Dickinson represented the Applicant and was assisted by experts at National Highways, DVS, AECOM, Ardent and Skanska.
- a. Jonathan Bower (Womble Bond Dickinson) represented the Applicant on:
 - i. Affected Persons' Site Specific Representations.
 - ii. Human Rights and Public Sector Equality Duty.
 - b. Phil Harrison (DVS) represented the Applicant on Affected Persons' Site Specific Representations.
 - c. Peter Gibbard (Ardent) represented the Applicant on:
 - i. Changes to the Book of Reference.
 - ii. Affected Persons' Site Specific Representations.
 - d. Ted Doherty (AECOM) represented the Applicant on Affected Persons' Site Specific Representations.
- 1.1.3 The summary of the submissions below broadly follows the Examining Authority's (ExA's) Agenda for those items that were covered at the Compulsory Acquisition Hearing. It should be noted that due to time constraints not all Agenda items were covered during the Compulsory Acquisition Hearing and as such those items are not covered below.

2 Representations at the Compulsory Acquisition Hearing 2

Table 2-1 - Written summaries of oral submissions made at Compulsory Acquisition Hearing 2

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 3 – Changes to the Book of Reference		
	<p>AS-015, AS-016, AS-017 have been submitted by the Applicant to illustrate explanation of changes to the Book of Reference. This is requested to be shared by the Applicant, by exception.</p> <p>The ExA will examine the changes to the Book of Reference to test:</p> <ul style="list-style-type: none"> a. if any changes constitute changes to order limits; b. if there are any changes to the rights over land; c. if there are any new Category 1 and Category 2 Affected Persons; d. if as a result of any changes there is required a process to notify any new Affected Persons of their rights to become an Interested Party and request a Compulsory Acquisition Hearing and Open Floor Hearing; and e. if as a result of any changes Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the 	<p>The Applicant shared AS-015 on screen.</p> <p>The primary document of note is AS-015, which is an abridged version of the Deadline 4 land plans with changes highlighted and comments provided to also explain the corresponding changes to the Book of Reference.</p> <p>In terms of background to the changes, there have not been any changes to the Order limits nor changes to rights sought over parcels of land. No parcels have been removed or added and the changes visible in AS-015 have been renumbering and splitting of parcels. The way the Applicant numbers parcels as standard on plans is different to other applications. Here each parcel number reflects its sheet number as well as ownership, so when ownership changes, the number preceding the parcel needs to change and this consequently means that previous rows are deleted and others added in the Book of Reference. This just reflects the renumbering of the plots.</p> <p>Changes to the parcel numbers have occurred from change of ownership, change of information provided to the Applicant, or a breakdown of parcels to more clearly define the area of borrow pits. For example, one reference has been changed from 1/15 to 1/55, the Applicant has also created new 1/55b sub-plot to show outline of borrow pits. This has been done across all of the borrow-pit sites to define the land needed just for the borrow pits as opposed to for other parts of the scheme construction as well. This is to support the work on lease agreement negotiations.</p> <p>As an example, Plot 1/37c has been split to create an additional plot within the original plot to show the borrow pit area.</p> <p>Plots 9/9b and 9/9c show a change to the numbering as a result of information recently brought to the Applicant's attention. This is the first opportunity the Applicant has had to submit an updated Book of Reference. The landowner owns other land across the project and is not a new party to the process.</p>

Item	ExA Question/Context for discussion	Applicant's Response
	<p>Compulsory Acquisition Regulations) is engaged; and</p> <p>f. if as a result of these changes there are any corresponding changes to the dDCO the Statement of Reasons and Funding Statement.</p>	<p>The sheet 12 new landowner is fully aware of the process. This interested party was included in the Section 56 process and is a party to the hearing today.</p> <p>There are additionally new parties who have been discovered. Land ownership is a fluid process and changes over the course of examination, so the Applicant is continuing to refresh land registry information and as soon as new interests are identified, these parties are communicated with and informed how they can get involved in the process. Any additional new parties will be reflected in the final Book of Reference for the Deadline 9 submission.</p> <p>Regarding sheet 14, the changes here again all relate to the same change of ownership as previously referred to. Also a new parcel has been added in to define the borrow-pit land and additionally on this sheet new parcels have needed to be split out.</p> <p>Most changes identified in the updated Book of Reference were picked up prior to the section 56 stage and so those new parties have had an opportunity to be involved in submitting representations. A number of parties who have been identified post-this process and two parties identified through the examination process (one being a change to residential ownership, and another a change of mortgage company) were written to as soon as they were identified as an interested party and informed about the ability to register as an interested party under s102A.</p>
	<p>The ExA asked if any of these parties have expressed an interest in being an Interested Party?</p>	<p>They have been informed that they have ability to become an interested party under s102A and become engaged in the process but understand neither have chosen to do so.</p>
	<p>The ExA queried if the Compulsory Acquisition Regulations are engaged?</p>	<p>No because no additional land has been introduced to the application and no additional rights have been sought over the order land.</p>
	<p>The ExA queried if there are any changes to the Statement of Reasons or Funding Statement?</p>	<p>There will be changes to Annexe A and Annexe B of the Statement of Reasons which lists out the plot numbers; these will be updated and submitted at Deadline 9 along with the final version of the Book of Reference. The Applicant reiterated these are just changes in numbering.</p> <p>There are no changes required to be made to the Funding Statement as a result of the updated Book of Reference and Land Plans.</p>

Item	ExA Question/Context for discussion	Applicant's Response
	The ExA queried if there was anything in the Schedule of Changes [AS-016] and [AS-017] to be highlighted?	AS-016 sets out the change from the application plot number to the Deadline 4 plot number and AS-017 goes through every change in the Book of Reference to explain what that change is. This includes where parties have been added or had a name change. The Applicant has been made aware of some additional plot changes required through a Deadline 5 submission, and these changes will be picked up at Deadline 9. Alongside the final Book of Reference, a similar schedule of changes will be submitted.
	The ExA pointed out it would be helpful if the Schedule of Changes takes account of changes throughout the Examination. The headings are largely clear but asked what 'added interest' and 'removed interest'	The Applicant confirmed that the schedule of changes to be submitted at Deadline 9 will reflect changes since the application was submitted. This is where a new party name has been added to a plot but the plot number remained the same and likewise the inverse. This does not reflect changes to rights over land, for example if a plot of land is owned by four family members and one passes away.
	The ExA queried what was the new information received at Deadline 5?	The Church Commissioners would like their category 2 interest in a few plots included in the Book of Reference (as submitted in their Representation at Deadline 5) and this will be included in the Deadline 9 version of the Book of Reference.
AGENDA ITEM 4 – Affected Persons’ Site Specific Representations		
	The ExA will give an opportunity to Affected Persons to make an oral representation in addition to any submissions that are already in Examination. The ExA will invite the Applicant to respond to each representation individually in this agenda item	N/A

Item	ExA Question/Context for discussion	Applicant's Response
	<p>Mark Warnett acting for Davidson and Co and Great Barford Limited made the following representations:</p> <p>Compulsory Acquisition on this land is not seen as justified or satisfying section 122. The parties can enter into a Lease by agreement. Negotiations are ongoing, but these negotiations should be conducted with more urgency. The Applicant considers the agreement needs to be in place before the Secretary of State's decision, whereas Mr Warnett's client wants an agreement in place by the end of the examination period. Mr Warnett sought confirmation of the target date for any agreement, and asked the Applicant to increase the urgency to secure the lease agreement.</p>	<p>The Applicant confirmed that it has continued to negotiate with Mr Warnett with regards to Davidson and Co and Great Barford Limited and a meeting was held on 26 November where Heads of Terms were discussed at length and an email went out on 29 November with a response received on 30 November. Negotiations are continuing at pace.</p> <p>The Applicant has drafted Heads of Terms for the Borrow Pits and shared these with the landowner. A meeting was held on Friday last week (26 November) to discuss the Lease and Option agreement. Heads of Terms have been amended and shared with all parties. The Applicant confirmed its aim to reach agreement by the close of the examination.</p> <p>The Applicant confirmed an update on negotiations can be provided through the Compulsory Acquisition Schedule.</p>
	<p>Mark Warnett acting for Bedford Borough Council (BBC): made the following representations:</p> <p>BBC have been in discussions with the Applicant about a potential option agreement. BBC's main focus is in resolving matters before the close of the examination, including the protection of BBC's retained land which is a separate matter to the option agreement. Mr Warnett emphasised the need for urgency to progress matters.</p>	<p>The Applicant noted that compensation points are not for the Secretary of State to form a view on and so are not relevant for the purposes of this Examination. This is a case where one public body (the Applicant) is seeking to acquire an interest from another public body (BBC) so the public purse needs to be considered and best value should be achieved.</p> <p>Initial discussions between the Applicant and BBC to acquire began last year but these discussions broke down. Discussions then progressed around a voluntary option agreement. The Applicant shared Heads of Terms with Mr Warnett to proceed negotiations, which were returned on 19 November 2021. A meeting was then held on 26 November, and an initial response provided to Mr Warnett on 29 November. The Applicant is currently drafting a full response.</p>

Item	ExA Question/Context for discussion	Applicant's Response
	<p>BBC confirmed the meetings that have taken place including the 2 November meeting which have a number of priority actions.</p> <p>By Deadline 6 BBC seek substantive responses on points raised in the meeting of 2 November and ideally a dialogue set up with Applicant's operational development team, which was suggested by the Applicant in the last meeting.</p> <p>The ExA requested an agreement on a timetable with respect to BBC and the division of how this is going to progress over next two months. The timetable should bear some reference to the examination timetable.</p>	<p>The Applicant confirmed that it currently seems to be a make or break situation on certain terms that the Applicant is unable to accept but whether this remains the position is yet to be seen.</p> <p>The Applicant confirmed it will agree a timetable with BBC and Davidsons to show how negotiations will progress over the next two months before the close of the examination.</p>
	<p>Claire Fallows representing Church Commissioners (CC):</p> <p>The Applicant has produced Heads of Terms for lease of borrow-pit and Heads of Terms for document on border cooperation for rights and access to CC's land. A draft option was produced, but this was just a template with no tailored content so now awaiting further update. A meeting is scheduled with the Applicant tomorrow. At this stage, CC are not able to respond on all matters of detail because CC don't know what the Applicant's response would be on things</p>	<p>The Applicant confirmed that in relation to the specific query about rate of progress, both the Applicant's representative (Mr Bower) and CC's representative (Ms Fallows) have attended a number of meetings since the Compulsory Acquisition hearing 1. Different advisors are acting on the land agreements for both parties. The Applicant's summary would be that there has been an increase in the rate of progress since the Compulsory Acquisition hearing in September. There is a meeting scheduled for tomorrow and there has been an exchange of correspondence between the parties as identified. Both parties will seek to reach agreement this side of Christmas on the outstanding issues between them. As far as the request in seeking to reach agreement within 4-6 weeks, this is something that will depend upon finalising outstanding points and documenting any agreement that is reached, but on the basis of information available so far, the commitment of 4-6 weeks seems achievable. .</p> <p>The Applicant has shared the draft Heads of Terms with CC and the latest Heads of Terms were shared on 23 November which are with the Applicant's legal team with the aim to share the draft lease and land agreement tomorrow. To date the parties have not discussed values, and the Applicant is waiting on</p>

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	<p>like land to be stopped up. CC confirmed it would be helpful to have a further hearing in February.</p> <p>CC are a major landowner taking a long term view on interest; CC are ready, willing and have the resources to enter into an option with the Applicant so an agreement is a practicable solution here.</p> <p>CC would like to explore a timetable for next steps with the Applicant.</p>	<p>values from CC. The basis of the Heads of Terms, save for the valuation points, seem to be in agreement between the parties.</p>
	<p>James Bailey representing a number of different landowners to be confirmed in writing regarding the detailed design made the following submission:</p> <p>All landowners have one objection in common surrounding detailed design stage and Statements of Common Grounds (SoCGs). The concern is that the Applicant is not providing SoCGs with their clients; instead they are only providing position statements. If these are to be relied upon, the points of detail need to be binding. Landowners want to see specific measures and deadlines for active engagement over the detailed design stage. Where new accesses are to be created, sufficient rights of access need to be provided to land owners and need to be adequately recorded.</p> <p>It was asserted that only one client has been contacted to talk about detailed</p>	<p>The Applicant confirmed that this is a project where detailed design is taking place at a much earlier stage than the A14. This should hopefully provide some comfort that the process is different here than on the A14. Accesses to be provided are set out as part of the application.</p> <p>Unless it is the acquisition of a new right that is being created (which can form part of a general vesting declaration), any new right needing to be regranted to an adjacent owner cannot form part of general vesting declaration process, and would instead have to form part of the necessary granting of new rights post completion of construction of the scheme. This would be part of the staged process relating to design, undertaking of the works and then the relevant rights would be granted back to the beneficiary once scheme is constructed and access can be taken.</p> <p>The Applicant has engaged significantly with affected landowners in respect of the principal requirements of the design as detailed in the application documents. In terms of the specific details for construction, this is to be taken forward by the contractor and his designers. The Applicant has held meetings to discuss specifics about the requirements of landowners such as fencing requirements, access, and gates. These discussions are still ongoing. The intention is that they will include those specific details in the position statements.</p> <p>In terms of the position statements, they effectively have the same standing as a Statement of Common Ground. The position statements are intended to be private and confidential, and to reflect the detail of what has been agreed with the landowners. 32 position statements have been issued to date and a number of meetings have taken place to support the detail. Only one of Mr Bailey's clients has accepted the Applicant's offer for a meeting, but the Applicant remains open and willing to further discussions.</p>

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	<p>design, and further detail is required on details of gates and dimensions of underpasses.</p>	<p>The Applicant confirmed that it would provide a response on the detailed design by way of a written response at Deadline 6, but noted that this would reflect the detail presented in the application documents.</p> <p>The access locations are known and this has all been discussed and agreed with each affected party. The Applicant has endeavoured to detail accurately as far as reasonably possible the layout and size of access arrangements. The Applicant accepts more detail is required but that will be forthcoming as the Applicant goes through detailed design stage. There is much more agreement achieved at this stage compared with what was achieved on the A14 scheme.</p> <p>The Applicant confirmed that position statements were circulated with invitations for meetings, with a follow up 2 weeks later, and even again 2 weeks ago.</p>
	<p>James Bailey representing Mr and Mrs Doherty and DHT Ltd making representation regarding Borrow-Pit 14, plots 13/6 a, b and c and 13/7 a, b, and c.</p> <p>The affected parties are concerned about the disruption from the borrow-pit being 100 m away from residence and business.</p> <p>The Borrow Pits Restoration report (document 9.24) stated that no trial pits were excavated, and therefore this is no certainty of what material is available. The borrow-pit proposed here is 7m deep (in comparison to others that are 2/3 m deep). The borrow pit should be removed from DCO as it is not thoroughly considered or justified.</p>	<p>The Applicant confirmed that the effects of the borrow pits have been the subject of environmental assessment. The Applicant can follow-up in writing to signpost for the benefit of Mr Bailey and his clients where the assessment in relation to the borrow pits for those properties are detailed.</p> <p>On the specifics of the design of the borrow pits and the bunding, the site of the proposed borrow pit is a previous quarry site. The Applicant has undertaken sufficient assessment to understand the ground conditions in that area and what it is expecting to secure from that borrow pit. The depth of that particular borrow pit is deeper because the Applicant is taking into account that the land has been previously quarried and backfilled. The intent is to remove and stockpile the material to mitigate the impact of the borrow pit on Mr Doherty's property. More detail on this will be included in the Borrow Pit Management Plan to be submitted at Deadline 6.</p> <p>There is existing mitigation around this site already in the form of a bund around the quarry site and the Applicant has committed to maintaining that bund to support and maintain that mitigation. The Applicant amended the land take to deliver that commitment and the extent of the borrow pit was adjusted so as not to go beyond that bund.</p> <p>The Applicant can provide justification of its knowledge and understanding in respect of the land. By virtue of the fact that the site has been quarried previously, there is a clear understanding of this. The Applicant is seeking the clay material beneath the quarry.</p>

Item	ExA Question/Context for discussion	Applicant's Response
	<p>National farmers Union members (NFU) (represented by Louise Staples) made the following submission:</p> <p>NFU considers that there are a lack of detailed negotiations taking place with landowners with regard to voluntary agreements.</p>	<p>The Applicant confirmed that it would be helpful to know specifically which affected persons Ms Staples is acting on behalf of, in order to focus its activities.</p> <p>The Applicant confirmed that position statements will be signed and confirmed that this level of detail was not available on A14.</p>
	<p>The ExA queried that the account provided by the Applicant in the hearing today and that of AS-018 seem to differ?</p>	<p>The Applicant confirmed its understanding is that the party has not registered as an interested party, albeit they have received all notifications from the Applicant to enable engagement in the process.</p> <p>The Applicant confirmed that the relevant property is one of the two properties referred to in Response to ExA's written questions 2, Question 1.1.1, the other property being Brook Cottages.</p> <p>This property is within the Borough of Bedford and is on one side of the A1.</p> <p>The Applicant has had several meetings with the resident, first meeting in December 2020 at the village hall to talk through the process so they could understand and plan for the acquisition, with a further site inspection with a surveyor at the property in March 2021, and another meeting in August this year. The Applicant has room booking references and email correspondence which can confirm the meetings that have taken place. Responses have been received from the party, and the Applicant has spoken to them by telephone.</p> <p>The Applicant has sent a section 56 letter (and did not receive a 'return to sender undelivered' response) and a number of other generic communications (totalling 2) as well as meetings, email correspondence and phone calls with the party in question.</p> <p>The Applicant made a formal offer to acquire which was rejected, and the Applicant has not received a counter offer. There has been no response to date. The Applicant spoke with one of the residents yesterday over the telephone who requested the Applicant write to them instead.</p>
	<p>The ExA queried if it is possible that communication fell through to prevent this opportunity being provided to the interested party.</p>	<p>The party did receive a section 56 notice and has received correspondence throughout informing them of the opportunity to take part in the process. The Applicant is not in a position to speak for that party but from the Applicant's perspective it is satisfied that the level of engagement has been sufficient to enable the party to take part should they wish to do so.</p>

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 5 – Applicant’s update on the CA Schedule		
	This is to be covered off by a written update.	The Applicant confirmed that a written update can be provided in the same format as previously.
AGENDA ITEM 6 – Public Sector Equality Duty and Human Rights		
a	Update from BBC on the Applicant’s Equality Impact Assessment and views regarding PSED in relation to the occupier of Brook Cottages [REP4-049, Q2.1.1.1, Q2.1equal2.2.1] [REP4-037, Q2.1.1.1, Q2.12.2.1]	N/A
b	How can the Applicant’s case regarding the efforts made to negotiate with and support, particularly the owner(s) and occupier(s) of Brook Cottages, be corroborated? BBC and its agencies or the owner(s) and occupier(s) of Brook Cottages may respond.	The Applicant acknowledges this is a sensitive issue and fully notes what has been said and has been treating its approach with a high degree of sensitivity. In terms of previous unsuccessful bids for properties by the occupier, a significant change has been noted as to the priority of this resident and so the Applicant would echo hopes that procedures will now allow greater opportunities for that person to be successful in securing a property with the Council/registered provider.
h	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	The Applicant referred to its submissions made in relation to Human Rights at CAH1. The only additional point to be made in the case of looking to alternatives are the efforts being made to seek to acquire the interests by agreement. The Examining Authority has heard about the engagement in broad terms from Mr Braidwood (as representative for Brook Cottages) and the Applicant can go into specifics, but the Applicant has sought to acquire the interest from both the owner and the occupier. The Applicant can follow-up in writing with detail of the engagement to date in response to the ExA’s Rule 17 Letter. Alternatives to scheme design has been covered significantly under Heritage at ISH4. The case in relation to alternatives and Compulsory Acquisition are tied together. The attempts to seek to avoid acquisition of property came out of the alternatives assessment carried out by the Applicant.

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	<p>specific reference to the relevant policy tests. The case for alternatives will be tested at Issue Specific Hearing 4 on Tuesday 30 November to justify the loss of a historic asset. The ExA will test it again at this Hearing from the point of view of Human Rights and CA.</p>	
h	<p>The ExA has discussed at ISH4, the alternatives and option selectin process and grounds of consultation in coming up to third option for the proposed development. There is recognition that occupier does have protected characteristics, in light of that, what reasonable adjustments were made at various stages of consultation to enable this person to understand and engage in the options and the process that the ExA are told is ongoing.</p>	<p>The Applicant will provide a written response</p>
	<p>It is not just the point became aware, it is adjustments made since then, and what further reasonable adjustments can be made from this point on would be helpful. This will be framed in rule 17 letter.</p>	<p>Noted.</p>

Item	ExA Question/Context for discussion	Applicant's Response
h	Mr Braidwood thanks the Applicant for their response. In principle, we are not against the property being purchased for the wider benefit of society, we just want the occupier to be handled humanely and sensitively before this happens and I think progress is now being made.	<p>The Applicant thanked Mr Braidwood for those comments.</p> <p>Everyone wants to receive a satisfactory outcome and the helpful update will hopefully enable things to move forward in a more positive and timely way.</p> <p>Mr Braidwood acknowledged that everyone was trying hard to reach a solution. He was not against the purchase of the property which would be for the benefit of wider society.</p>
	c, d, e, f, g will be contained within Rule 17 Letter.	This is understood by the Applicant.
AGENDA ITEM 7 – Applicant’s update on Statutory Undertakers Progress Schedule		
	The ExA confirmed that this will be dealt with by a written update.	This is acceptable and the Applicant will provide a written update in relation to Agenda Item 7.