

A428 Black Cat to Caxton Gibbet improvements

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9.79 Written submission of oral case Issue Specific Hearing 6
on 2 December 2021

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure)
Rules 2010

December 2021

Infrastructure Planning

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Development Consent Order 202[]

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1 Introduction

- 1.1.1 This document summarises the case put forward by National Highways (the Applicant), at the Issue Specific Hearing 6 on highways matters including the draft Development Consent Order which took place via MS Teams on 2 December 2021.
- 1.1.2 Scott Lyness QC of Landmark Chambers represented the Applicant and was assisted by experts at Skanska and Womble Bond Dickinson LLP.
 - a. Julian See (Skanska) represented the Applicant on the Pre-Commencement Plan **[REP4-038]** and roles and responsibilities.
 - b. Lorrae Hendry (Womble Bond Dickinson LLP) represented the Applicant on matters relating to the draft Development Consent Order (dDCO) **[REP4-006]**.
- 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 Issue Specific Hearing.

2 Representations at the Issue Specific Hearing 6

Table 2-1 - Written summaries of oral submissions made at Issue Specific Hearing 6

Item	ExA Question/Context for discussion	Applicant's Response
AGENDA ITEM 3 - Pre-commencement plan		
a.	Views on the Pre-commencement plan [REP4-038]	<p>The Applicant explained that there was a limited need for traffic management for pre-commencement works. The Applicant offered to include references to the local authorities for road space bookings and permits into the Pre-Commencement Plan [REP4-038] to assist.</p> <p>The Applicant clarified that the traffic access points would be within the Central Bedfordshire area and would come from the Strategic Road Network. Some level of information concerning the level of construction traffic generated by the pre-commencement activities could be included in the pre-commencement plan.</p> <p>The Applicant suggested that Bedford Borough Council would be similar to Central Bedfordshire Council due to the proximity to the Black Cat roundabout. Regarding Cambridge County Council (CCC), access would be via local authority side roads, however, noted that the traffic would be minimal.</p> <p>The Applicant confirmed that it is able to provide more information on this, which would include the average number of vehicles per week for those works. The Applicant could also give an indication of how long the duration of the activities would be. ExA noted that this would be useful to have.</p> <p>In respect of paragraph 1.2.2 of the Pre-Commencement Plan, the Applicant acknowledged the scope and method was indicative. However, the Applicant confirmed that mitigation would apply to all pre-commencement works as it is secured as a standalone certified document by virtue of Requirement 20 of the dDCO [REP4-006]. In response to the ExA questioning the broad nature of the mitigation activities listed, the Applicant confirmed that this was due to the broad nature of different activities that could be undertaken as pre-commencement works. After some discussion, the Applicant offered to make it clear where there were specific mitigation measures that would apply to certain pre-commencement works as requested.</p>

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		The Applicant confirmed that in accordance with Requirement 20, the controls contained in the Pre-commencement Plan would be triggered by any steps taken as pre-commencement works and therefore further clarity around the Pre-Commencement Plan is not necessary.
b.	Views on the need for a definition of Pre-commencement in the dDCO	The Applicant confirmed that the dDCO submitted at Deadline 4 contained a definition of 'pre-commencement works' in Article 2. The Applicant acknowledged the request from CCC to make subsequent amendments to the definition of 'commence' as suggested by CCC and is considering this further.
AGENDA ITEM 4 – Article 4 - Development consent etc. granted by the Order		
a.	Views from parties on the definition of 'adjacent land' proposed by the Applicant	See below.
AGENDA ITEM 5 - Article 23 - Authority to survey and investigate the land		
a.	Views from parties on the definition of 'land adjacent to but outside the order limits'	<p>In respect of an undertaker being able to enter onto land for surveys without consulting the landowner. The Applicant signposted that they have previously addressed this and acknowledged that there is no formal consultation built into article 23. However, in practice, the Applicant does commonly seek a voluntary arrangement with landowners prior to entering onto their land.</p> <p>In the event of a voluntary agreement not being reached, the Applicant pointed out that compensation is linked to the article. There are also similar powers in legislation to allow surveys to be undertaken. The Applicant sought to demonstrate the usefulness of the power to deliver an efficient scheme and reiterated that the power is limited to carrying out surveys.</p> <p>The Applicant clarified that it was not possible to define a scope (as suggested by the National Farmers Union (NFU)). The use of 'adjacent land' demonstrates the proximity and there is additionally a requirement that the Applicant's entering onto the land be 'necessary'.</p> <p>The Applicant was asked to provide a note of the meeting with NFU dated 24 November 2021 where survey discussions took place (these discussions were said to include surveys for newts, badgers and</p>

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		<p>water voles and suggested the water voles were the furthest species away, at 500m). It was further posited that if the surveys can be defined, then it should also be possible to give distances for them.</p> <p>The Applicant noted NFU's points but confirmed that it would need to take further instructions internally from the EIA team to ascertain with sufficient certainty any distances. The Applicant also noted the importance of flexibility here due to the transient nature of the species involved and their potential to move to locations at differing distances away.</p> <p>The Applicant confirmed that it will also consider (and take instructions) on whether the scope of such surveys could be limited to the types of surveys to be conducted instead of a distance based scope.</p>
b.	Notice Period	<p>In respect of the impact of increasing the notice period to 28 days. The Applicant does not think the increase would impact on the viability of the Scheme as a whole. However, the Applicant is seeking to commence activities quickly and have a tight construction programme. The Applicant highlighted that 14 days' notice was consistent across many made DCOs and that the parties who are affected by this notice period have been warned about the fact that it would be 14 days through the consultation process, they have been consulted, they are in the book of reference and they will be informed of the making of the Order.</p> <p>The Applicant will need to consult with the construction and delivery partners for specific consequential effects. The Applicant also needs to respond on viability, covering both Article 40 and 23 notice periods.</p>
<p>AGENDA ITEM 6 - Article 40 – Temporary use of land for carrying out the authorised development and Article 41 – Temporary use of land for maintaining the authorised development</p>		
a.	Notice Period	See above. Agenda items 5 and 6 were dealt with jointly.

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AGENDA ITEM 7 - Article 55 – Traffic regulation		
a	Applicant, confirm if different parts of the Proposed Development will be open for public use at different times [REP1-051]. If so, then the ExA could see the point made by the Cambridgeshire Councils [REP1-051] that the provisions in this Article are ambiguous; for instance, would the period of 12 months in Article 55(3) and 24 months in Article 55(7) then be different calendar periods? How would this be managed and monitored?	The Applicant noted that their response was omitted in error. Article 55 was amended in the most recent draft of the dDCO [REP4-006]. The Applicant clarified that the drafting has changed to address the ambiguity highlighted and the fact that some parts of the Scheme will open at different times so Article 55 has been amended in order to make the trigger from the last part of the authorised development being open for public use.
AGENDA ITEM 8 - Article 55 – De-trunking		
a	Overview of handover process for de-trunked assets and local highways, and proposed timescales [REP4-039, Paragraph 1.3.2]	<p><u>Legal Agreement</u></p> <p>The Applicant provided an update on the status of negotiations with CCC and the contents of the document. Meetings are ongoing, some principal points are still outstanding but the parties have agreed to fortnightly meetings and progress has been good.</p> <p>The Applicant confirmed that while ExA has not seen the document, the Applicant has provided an overview of the handover process [REP4-039], which sets out what the legal agreement aims to secure.</p> <p><u>Highways Assets and Legal Agreement</u></p> <p>The Applicant confirmed that the legal agreement encapsulates the de-trunking handover plan and the handover process for local highway assets which will be based on an agreed set of highway standards.</p> <p>The Applicant believes that further certification within Article 13 of the dDCO (as suggested by CCC) was not necessary as the local highway assets are secured in Article 13 of the Order (to be constructed to reasonable satisfaction of the local highway authority). The Applicant clarified that the legal agreement is</p>

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		<p>not expected to be secured under the DCO and confirmed that the dDCO should be considered on its own merits.</p> <p>The Applicant and CCC agreed that securing the legal agreement was not necessary and was not the intention of either party.</p> <p>The Applicant clarified the timescales for the negotiation of the legal agreement, expecting them to be completed by the end of the examination period. The Applicant and CCC agree to update the Statement of Common Ground (SoCG) by Deadline 6. The Applicant will consider whether it can include the items which have not been agreed and will consider and take instructions as to whether the current version of the legal agreement could be submitted to the Examination.</p>
b	Progress, timescales and content of side agreements with Local Highway Authorities (LHA)	As above.
c	Implications of not reaching agreement with LHAs on handover	<p>The Applicant stated that while completing the legal agreement is the priority, the current drafting of the dDCO is sufficient and provides sufficient controls on the handover of local highway and de-trunked assets.</p> <p>In respect of the additional drafting sought by CCC to Article 13 not being agreed, the Applicant explained that we need to be clear about de-trunked assets and the handover of new or altered local highway assets. On de-trunking, the dDCO allows the Applicant to propose a de-trunking date on which de-trunked assets would transfer to the highway authority. The Applicant confirmed that it was considering an amendment to the dDCO which would require the Secretary of State to consent to the de-trunking date (after consultation with the relevant local highway authority). The Applicant outlined that these proposed amendments would restrict the handover of de-trunked assets. The Applicant is basing this approach of the precedent set within existing made Orders, such as the A14 Order and A585 Windy Harbour, where Secretary of State (SoS) consent was required for the de-trunking.</p> <p>The Applicant confirmed that it will set out its respective position in the SoCG, including an agreed timetable for progress of negotiations with reference to the examination.</p> <p>The Applicant confirmed that it will provide a further report to ExA by Deadline 8.</p>

Item	ExA Question/Context for discussion	Applicant's Response
		<p>The Applicant explained that the SoS is experienced in these matters and would presumably assume that two highway authorities would be able to come to an arrangement as to how these things will be done. The Applicant clarified that it is still ensuring that the legal agreement process continues. However, the SoS referral should provide comfort that the Applicant cannot hand over a de-trunked asset, which is not at an acceptable standard. The Applicant also noted that it is trying to replicate powers under section 10 of the Highways Act 1980 which allows the SoS to de-trunk and hand assets over to the highway authority and that the dDCO should therefore reflect this approach.</p>
AGENDA ITEM 9 - Discharging Authorities		
a	Agreement, if possible, on provision with respect to discharging authority	See below.
b	Balance of nationally significant highway schemes where SoS is the only discharging authority, and others where LHAs are also discharging authorities	<p>The Applicant confirmed that it has reviewed all nationally significant highway schemes and in all cases barring A19/A1058 scheme (granted during period of change between the Highway Agency and Highways England involving and change in governance) the SoS was discharging authority, save for some Scheme specific scenarios, for example those concerning archaeological mitigation works.</p>
AGENDA ITEM 10 - Roles and responsibilities		
a	Traffic Management Officer	No update required.
b	Agricultural Liaison Officer	It was confirmed that wording has been agreed between NFU and the Applicant.