

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**WRITTEN SUBMISSIONS OF NFU REGARDING THE A428 BLACK CAT TO CAXTON GIBBET
SCHEME DEVELOPMENT CONSENT ORDER 201 [...]**

PLANNING INSPECTORATE REFERENCE NO TR010025

**SUBMISSIONS OF NATIONAL FARMERS UNION ON THE COMPULSORY ACQUISITION
HEARING1 ON 2nd DECEMBER 2021**

DATE 14th DECEMBER 2021

**Louise Staples MRICS, FAAV
NFU
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ.**

Dated: 14th December 2021.

1.0 Introduction

- 1.1 Submissions on behalf of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order (DCO) by National Highways (NH) for the A428 Black Cat to Caxton Gibbet scheme. The NFU is making a case on behalf of its members who are affected by the proposed DCO.

2.0 Compulsory Acquisition Hearing 2nd December 2021:

2.1 Position Statements.

James Bailey from Brown & Co raised concerns at the hearing over the use of Position Statements with clients and the fact that they are not legally binding. James Bailey actually raised this issue with the NFU on 25th October 2021 and highlighted that he had raised the issue with NH and that they had responded as follows:

“As for your question on position statements/ SOGCs, Highways England have opted to use position statements with landowners on the scheme. The intention is that they will be signed once both parties are in agreement on the said matters and will be used to form an agreement between, HE and the landowner”.

The NFU and Brown & Co are concerned about issues which are raised and not agreed on behalf of clients/members before the end of the examination due to the problems which have occurred on the A14 Improvement scheme especially in regard to accommodation works.

The question which is being asked of NH is how clients/members can enforce matters in the position statement and what weight they can give to even relying on them.

The NFU raised this issue with NH at the meeting which was held on 24th November 2021 and the NFU does understand this time that NH are recording all issues and requests within the position statements which did not happen on the A14. NH have confirmed to the NFU that they are intending for both parties to sign the position statements and that this does show an intention by NH to agree to the issues and requests made. But from experience on other schemes NH can start at the beginning of a scheme with good intentions but it is difficult to implement some of the intentions when construction of a scheme is coming to an end and landowners are wanting to see accommodation works implemented. The NFU believes that it is essential that accommodation works should be agreed within the position statements which should include specification details for example gates, fences, accesses.

The NFU would like to see it stated somewhere within the DCO perhaps under ‘Requirements’ that accommodation works stated within position statements are carried out.

2.2 Detailed Design.

James Bailey from Brown & Co raised the issue over detailed design and how this is not achieved by NH until way through the construction of the scheme. Therefore, how do landowners/farmers influence final design and what triggers NH having to negotiate final design with landowners and farmers especially in regard to accommodation works. The NFU raised that this had also been an issue which was discussed during the hearings for the A303 Stonehenge Scheme. It was very difficult on the A14 Improvement Scheme to get NH to negotiate on accommodation works once the examination of the scheme had concluded.

If there is a Design Principles document, is it not possible to include a section in this document which stipulates that final design and accommodation works must be negotiated with landowners

and farmers. Perhaps it could also be included as a role for the ALO to instigate and coordinate discussions on final design and accommodation works.

It has been agreed with NH that the role of the ALO will be included within the first iteration of the Environment Management Plan.

Previously the NFU highlighted that it understands that NH do not have detailed design for the scheme yet and that this may influence what land is required permanently. NH has stated that they will only take what land is needed once detailed design is known. The NFU would like this recorded in a document within the DCO along with that NH will only take the rights required to build the road. NFU highlighted that experience from other schemes have shown that it is difficult to get NH to engage once the examination of the project has concluded. This is another reason for final design to be negotiated with landowners/farmers and as requested before it does need to be stated within a document which forms part of the DCO.

2.3 Voluntary/Option Agreement

Further to the last submission of the NFU, the NFU again raised the issue over voluntary agreements with NH at the meeting on the 24th of November 2021. The issue was raised because agents are still informing the NFU that NH are not entering properly into voluntary agreements which was raised by Mark Warnett at the hearing.

It is really important that NH are prepared to enter into detailed heads of terms first for an option and it is normal that these heads of terms would be discussed and negotiated before any values are negotiated. It is impossible to discuss values until all heads of terms are known. The NFU has highlighted this to NH and is therefore surprised that it is expecting the DV to negotiate all heads of terms.

The NFU believes that NH need to address this issue immediately where voluntary agreements are requested otherwise NH are just relying on the DCO being granted and receiving compulsory purchase powers.

2.4 Outstanding Issues with National Highways

2.4.1 Soils: The NFU has agreed wording in regard to soils which was submitted to the Examiners within the full written representation 30th August 2021 and to NH where it is now highlighted within the **Annex of the SoCG, number 6**. There are two sections of wording that NH has not agreed to under 'Monitoring of Soil During the Works' which is as follows:

3.2 Monitoring of Soil During the Works

- 3.2.1 *The Developer's soil expert shall consult with the landowner/occupier (through the ALO if necessary) to assess as to whether to continue with or commence the Works in circumstances where long term and/or adverse weather conditions have led to cumulative wetting of the land so as to make it unsuitable for the Works to be carried out, provided that this regulation shall not apply where the Developer is required to work on stone or other similar material (including inter alia roads, access tracks and compounds).*
- 3.2.2 *Works that have been suspended or not commenced under paragraph 6.2.1 may be carried out only with consultation having taken place with the Soil Expert and the landowner/occupier. The Soil Expert may suggest the conditions necessary before works start again.*

The NFU would like to know if this wording cannot be agreed, the procedure that NH will follow during long term/ very adverse weather conditions as to when works are stopped and the decision to re start the works.

2.4.2 Under 6.3 Restoration and Soil Aftercare within the Annex to the SoCG at 6.3.2 (b)

NH are only agreeing aftercare maintenance of soil for 12 months. It will not be possible to carry out the required aftercare to soils after major construction of a road scheme like this within 12 months. The NFU has requested that after care is carried out over five years and has requested the following wording:

- *the schedule of aftercare maintenance is to include soil testing, appropriate to the target specification for a period of up to five years following completion of the relevant construction work.*

Linked to this the NFU has requested the following wording:

- *During the aftercare period, there will be annual monitoring of physical soil characteristics and soil nutrient levels to set aftercare management requirements for the following year. Undertake inspections of restored agricultural land with the landowner/occupier and the Developer's soil expert to assess the progress of the restoration.*

NH have not agreed to this wording as they have stated as above that aftercare can be carried out within 12 months. The NFU strongly believes that this is not possible and requests that NH agree to the above wording which is linked to aftercare being carried out over five years.

The NFU have the requested that the wording '*The landowner shall approve and agree the reinstatement works before and after soil replacement*' is agreed and accepted at 6.3.4 in the Annex but NH have deleted this wording.

The NFU would like NH to agree to all of the above wording to be included under 'Restoration and Soil Aftercare', the NFU hopes that the Examiners can see how important the correct aftercare of soil is for land that is to be returned back to agricultural use.

2.4.3 Agricultural Land Drainage: The NFU has requested wording to be included to cover agricultural land drainage and again this is highlighted within the Annex of the SoCG. At 5.3 the NFU has requested that *the services of a suitably qualified drainage consultant, who will have experience of working in the region, will be employed.*

NH have not accepted that the drainage consultant should have experience of working in the region which the NFU believes is essential. Reinstating all of the agricultural field drainage will be one of the main reinstatement works that NH have to carry out and so a consultant with experience of drainage in the region is essential.