

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.92 Applicant response to request for further information from the
Examining Authority – Rule 17 [PD-012]

Planning Act 2008

Rule 17(1)

Infrastructure Planning (Examination Procedure) Rules
2010

January 2022

Infrastructure Planning

Planning Act 2008

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

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

**9.92 Applicant's response to the request for further information from
the Examining Authority – Rule 17 [PD-012]**

Regulation Reference:	Rule 17(1)
Planning Inspectorate Scheme Reference	TR010044
Application Document Reference	TR010044/EXAM/9.92
Author	A428 Black Cat to Caxton Gibbet improvements Project Team, National Highways

Version	Date	Status of Version
Rev 1	6 January 2022	Deadline 7

Table of contents

Chapter	Pages
1 Applicant's Response to request for further information from the Examining Authority	1
2 Applicant's Response to the Rule 17 Request for Further Information	2
CONFIDENTIAL – Appendix A contains personal and sensitive information and is not to be published	
Appendix A – Schedule and Evidence of Correspondence regarding the Owner and Occupier of Brook Cottages	

Table of Tables

Table 2-1 Applicant's response to the request for further information from the Examining Authority.....	2
---	---

1 Applicant's Response to request for further information from the Examining Authority

- 1.1.1 This document comprises the Applicant's response to the request from the Examining Authority for further information in relation to Brook Cottages, as set out in the Rule 17 letter **[PD-012]** that was published on 9 December 2021.
- 1.1.2 It should be noted that some of the information that has been submitted comprises personal and confidential information, therefore the Applicant would request that as set out in the Rule 17 letter, the appropriate parts of this document are redacted prior to it being published on the Planning Inspectorate website. Furthermore, please note that Appendix A of this document containing copy correspondence between the parties has been submitted on the basis that it will be treated as private and confidential and will not be published on the Planning Inspectorate website.

2 Applicant's Response to the Rule 17 Request for Further Information

2.1.1 **Table 2-1** sets out the Applicant's response to the request for further information in relation to Brook Cottages.

Table 2-1 Applicant's response to the request for further information from the Examining Authority

Action No.	Action	Party	Response at Deadline 7
R17.2.1	<p>Local Authority's Public Sector Equality Duty</p> <p>1. Provide update on your involvement with the Applicant's Equality Impact Assessment and views regarding PSED in relation to the occupier of Brook Cottages [REP4-049, Q2.1.1.1, Q2.12.2.1] [REP4- 037, Q2.1.1.1, Q2.12.2.1]</p>	Bedford Borough Council (BBC)	<p>Whilst this point is for Bedford Borough Council to provide a response to, the Applicant can confirm that Bedford Borough Council was not involved in the development of the Equality Impact Assessment, and have not made a relevant representation, written representation or comment in the Local Impact Report on it.</p> <p>However, through joint discussions with Historic England regarding survey access, Bedford Borough Council has been informed by National Highways of the concerns raised by the owner of Brook Cottages regarding the impact of the surveys on the occupier, and the requirement to ensure reasonable adjustments are made.</p> <p>The overarching duty, as contained in section 149 of the Equality Act 2010, requires that the Scheme should not disadvantage particular groups identified as having protected characteristics. The EQIA [APP-245] demonstrates how this public sector duty has been complied with.</p>
R17.2.2	<p>Evidence and corroboration to support the Applicant's case</p> <p>1. How can the Applicant's case regarding the efforts made to negotiate with and support the owner, Mr Braidwood, and occupier, Mr Baron, of 1 Brook Cottages, be corroborated? Applicant may refer to evidence provided at CAH2 [EV-085] [EV-</p>	Applicant Bedford Borough Council	<p>The Applicant has set out all of the correspondence that has taken place with the owner and occupier of Brook Cottages in Appendix A.</p> <p>Information contained in the appendix demonstrates how the Applicant has:</p> <ul style="list-style-type: none"> Sought to ensure the owner and occupier have been fully informed of the development of the Scheme from option assessment to the present time. Sought to reduce uncertainty for the owner and occupier by offering to purchase the property early, outside of the discretionary purchase and blight

Action No.	Action	Party	Response at Deadline 7
	<p>086] and provide further evidence.</p> <p>2. BBC and its agencies may respond.</p>		<p>process. This approach has allowed the occupier more time to find alternative accommodation than would normally be afforded through the General Vesting Declaration process. However, the Applicant understands that the owner of Brook Cottages would like to pause discussions on acquisition until the occupier has found a new home.</p> <ul style="list-style-type: none"> Engaged with the local authority to support the occupier's search for alternative accommodation. Explained the need for the intrusive surveys but also sought to accommodate the needs and requests of the occupier.
	<p>3. At any stage of the process, has anyone acted on your behalf, such as a friend or relative, a solicitor or a property professional? Would you like to appoint someone to speak on your behalf?</p> <p>4. Has the Applicant (National Highways, previously known as Highways England) previously communicated with you regarding the purchase of your property? If so, can you provide further detail, including any dates, locations of discussions, attendees and matters discussed?</p>	<p>Mr Braidwood Mr Baron, or someone authorised by them to respond on their behalf</p>	<p>Whilst this point is for Mr Braidwood and Mr Barron to provide a response to, the Applicant is actively supporting the owner and occupier through the payment of agent's fees. The agent, Mr de Beer, has been instructed by Mr Braidwood and acts on his behalf. The Applicant is not aware of the Agent's contractual arrangement with the occupier, but Mr Braidwood has expressed that it is his intention that the occupier be rehoused before any transfer of title is completed, and the Applicant is supporting this together with Bedford Borough Council. To date one claim for agent's fees has been received by the Applicant and is being processed.</p> <p>Furthermore, communication regarding the purchase of the property is managed via the District Valuer appointed on behalf of the Applicant.</p> <p>It is understood the property was inspected by Mr Braidwood's agent on the 29 September 2021 and the Applicant is awaiting their valuation to begin discussions. On 10 November 2021, the Applicant requested that a joint inspection of the property was held with the agent on 6 December 2021. However, the Applicant is still seeking to arrange a mutual date to undertake the joint inspection as previous dates offered by the Applicant were not acceptable. Until a recent inspection has been carried out by the Applicant, it is not in a</p>

Action No.	Action	Party	Response at Deadline 7
			position to make a formal offer. Furthermore, the Applicant is awaiting the agent's valuation of the property.
R17.2.3	<p>Reasonable adjustments</p> <ol style="list-style-type: none"> Applicant when did you become aware, and how did you conclude that Mr Baron likely had protected characteristics? What reasonable adjustments have you made since then in order to support Mr Baron engage at pre-application stage, with negotiations regarding CA, and indeed with the Examination process. In light of the evidence provided by Mr Braidwood at CAH2 [EV-085] [EV-086] on 2 December 2021, what, if any, reasonable adjustments are you going to make to support Mr Baron to enable engagement with the CA process during the Examination? <p>Provide evidence to support your responses.</p>	Applicant Bedford Borough Council and its relevant social support agency	<p>Section 20 of the Equality Act 2010 sets out a duty to make adjustments where a [REDACTED] [REDACTED] would be put at a substantial disadvantage. This requires taking such steps as it is reasonable to have to take to avoid such disadvantage. The Applicant is aware that Mr Barron has a [REDACTED] [REDACTED]. The Applicant believes that steps have been taken to avoid any disadvantage being incurred by Mr Barron resulting from his [REDACTED]. These are as follows:</p> <p>During the pre-application stage, the Applicant was informed by the owner that the occupier [REDACTED] [REDACTED]. As a result, the Applicant visited the property to meet with the occupier directly in 2018 and explain the Scheme, how he would be affected and what compensation would be available. Due to the nature of this meeting, to explain the Scheme, it was not minuted.</p> <p>At the meeting held on the 17/11/2020, the Applicant was informed by the owner that the occupier should not be contacted directly [REDACTED].</p> <p>As a result, the Applicant made the following reasonable adjustments:</p> <ul style="list-style-type: none"> Liaised about the Scheme development and need to undertake surveys with the owner of Brook Cottages, see REF-010, REF-017, REF-019, REF-022, REF-028, REF-029, REF-038, REF-041 and REF-048, at Appendix A. Provided further clarity on compensation available to the occupier via the owner, see REF-015 at Appendix A. Provided contact details for the relevant staff at Bedford Borough Council regarding the occupier's application for social housing, see REF-024 at Appendix A. The Applicant also contacted Bedford Borough Council to

Action No.	Action	Party	Response at Deadline 7
			<p>discuss the process for preparing an application for social housing and made BBC aware that the occupier would not be able to prepare an online application or attend an in-person meeting, see REF-035 at Appendix A.</p> <ul style="list-style-type: none"> • Outlined the benefits of early acquisition through agreement for the occupier, see REF-036 in Appendix A, to: <ul style="list-style-type: none"> - Reduce uncertainty. - Allow more time to find alternative accommodation than would normally be afforded through the General Vesting Declaration process. - Link the completion date of the early property purchase to the securing of alternative accommodation. • The Applicant decided not to use powers to survey Brook Cottages, in recognition [REDACTED]. Instead, the Applicant collaborated with the owners and agent to undertake interim intrusive surveys by agreement and in a suitable manner that minimised undue stress to the occupier. This included limiting the survey to the unoccupied side of Brook Cottages only. The Applicant also offered hotel accommodation to the occupier whilst the surveys were being undertaken, see REF-029 and REF-052 at Appendix A. • The Applicant notified the agent, Mr De Beer, on 19 October 2021 that the Examining Authority's Second Written Questions had been published and there were questions directed to his clients, see REF-052 at Appendix A. • The Applicant notified the agent, Mr De Beer, on 23 November 2021 of the Compulsory Acquisition Hearing that was being held on 2 December 2021, see REF-054 at Appendix A. • The Applicant notified the agent, Mr De Beer, on 13 December 2021 that the

Action No.	Action	Party	Response at Deadline 7
			<p>Rule 17 letter had been published, see REF-055 at Appendix A.</p> <ul style="list-style-type: none"> The Applicant is actively supporting the owner and occupier through the payment of Mr De Beer's agent fees, see REF-047 at Appendix A which sets out that he has been instructed to represent the owners.
R17.2.4	<p>Protected characteristics</p> <p>1. Provide further information about the protected characteristics of Mr Baron, in line with S4 and S149(7) of the Equality Act 2010, in order to test the effects of the Proposed Development, the adequacy of the proposed measures and proportionality assessment.</p>	Bedford Borough Council and its relevant social support agency	<p>Whilst this point is for Bedford Borough Council and its relevant social support agency to provide a response to, based on discussions held with the owner of Brook Cottages, the Applicant understands the [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
	<p>2. The Equality Act 2010 lists various 'protected characteristics' which we as the Examining Authority must take into account if applicable to you. It would be helpful to know if you consider any of these characteristics apply to you in relation to the effect of the Proposed Development? If so, why.</p> <ul style="list-style-type: none"> Age (for example, being elderly) Gender reassignment Being pregnant or on maternity leave Disability 	Mr Baron, or someone authorised by them to respond on their behalf	The section is not applicable to the Applicant.

Action No.	Action	Party	Response at Deadline 7
	<ul style="list-style-type: none"> Race including colour, nationality, ethnic origin or national origin Religion or belief Sex Sexual orientation 		
R17.2.5	<p>Children under the age of 18</p> <p>1. Do children under the age of 18 live at this property with you? Would they be affected? If so, how?</p>	Mr Baron, or someone authorised by them to respond on their behalf	The section is not applicable to the Applicant.
	<p>2. You may provide your understanding of the above questions.</p>	Applicant Bedford Borough Council and its relevant social support agency	The Applicant has not been made aware of children under the age of 18 living at Brook Cottages.
R17.2.6	<p>Relocation and other relevant processes</p> <p>1. Applicant, you have referred to a number of processes that you have started to support Mr Baron [REP4-037, Q2.1.1.1, Q2.12.2.1]. Provide evidence and an update including an indication of timescale for completion relative to this Examination.</p>	Applicant Bedford Borough Council and its relevant social support agency	<p>The processes that have been referred to are set out below:</p> <p><u>Acquisition by agreement</u></p> <p>As outlined previously in response to R.17.2.2, the Applicant has sought to acquire Brook Cottages early by agreement. The status of negotiations is set out in the Compulsory Acquisition Objection Schedule [REP6-024] and is set out in summary below:</p> <ul style="list-style-type: none"> The Applicant wrote to the owner on 18 September 2020 offering a meeting to commence discussions on entering into a private voluntary agreement to secure the land and rights in land sought for the Scheme. The form with that letter was returned on 7 October 2020 expressing an interest to enter into negotiations and discussions are underway with the Applicant.

Action No.	Action	Party	Response at Deadline 7
			<ul style="list-style-type: none"> The Applicant held meetings with the owner on 17 November 2020 to begin discussions for early acquisition of the property. Correspondence has been ongoing and further meetings have been held with their Agent on 20 October 2021. Discussions are ongoing, however the Applicant understands that the owner of Brook Cottages would like to pause discussions on acquisition until the occupier has found a new home. On 10 November 2021, the Applicant requested that a joint inspection of the property was held with the agent on 6 December 2021. However whilst that did not take place the Applicant understands that the agent did however undertake a unilateral inspection and the Applicant is still seeking to arrange a mutual date to undertake the joint inspection as previous dates offered by the Applicant were not acceptable. Furthermore, the Applicant is awaiting the agent's valuation of the property. <p><u>Timescales</u></p> <p>Through discussions with the owner, the Applicant has agreed not to complete the voluntary acquisition of Brook Cottages until such a time that the occupier has secured alternative accommodation.</p> <p><u>Social Housing Application</u></p> <p>As previously set out in response to R17.2.3, the Applicant has engaged with Bedford Borough Council regarding the social housing application for the occupier.</p> <p><u>Timescales</u></p> <p>It is the Applicant's understanding that from the point of a successful housing bid, the timescale to completion is two months. There is no guarantee that a suitable property can be found in the area within the timescales, however the Applicant understands that Bedford Borough Council has elevated the occupier's application to the highest priority.</p>

Action No.	Action	Party	Response at Deadline 7
			<p><u>Other</u></p> <p>Furthermore, the Applicant has paid fees for an agent, Mr De Beer, to act on behalf of the owner and occupier.</p>
	<p>2. Do you have friends and family nearby? How far do they live? Do you have any regular visits from your friends and family, or from the Council?</p> <p>3. Has any progress been made with the Council or the Applicant to locate a new home for you?</p>	Mr Baron, or someone authorised by them to respond on their behalf	The section is not applicable to the Applicant.
R17.2.7	<p>Other scenarios</p> <p>1. What do you think will happen if, you are no longer able to live at the property?</p> <p>2. Do you have anywhere else you could go if you are no longer able to live at the property?</p> <p>3. Are there other people living at this property that would be affected?</p> <p>4. In future how would you like the Examining Authority to communicate with you, via post or email? If these options are not suitable then please let the Case Team member know when they telephone you, and we will take your requirements into consideration.</p>	Mr Baron, or someone authorised by them to respond on their behalf	The section is not applicable to the Applicant.
	5. You may provide your understanding of the above questions.	Applicant Bedford Borough	The Applicant set out approximate timescales for possession of the property if secured through the GVD process (minimum 3 months).

Action No.	Action	Party	Response at Deadline 7
	6. What would be the implication on Mr Baron if agreement is not reached with the Applicant?	Council and its relevant social support agency	In order to avoid such a short timescale for relocation of the occupier the Applicant, in a letter to Mr Braidwood dated 2 December 2020 (REF-036 at Appendix A), reaffirmed commitment to purchasing the property by agreement and willingness to delay completion of the sale until the occupier has relocated. It was confirmed by Bedford Borough Council at the Compulsory Acquisition Hearing held on 2 December 2021 that the occupier of Brook Cottages has been actively bidding for properties and as of 30 November 2021, their priority has been increased to the top level, see the transcript of the hearing [EV-089] at 1:35:43.
R17.2.8	Tenancy Agreement 1. What type of Tenancy Agreement do you currently have and what is the notice period?	Mr Braidwood Mr Baron, or someone authorised by them to respond on their behalf	The section is not applicable to the Applicant.
R17.2.9	Reasonable alternatives to Compulsory Acquisition 1. 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 specific reference to the relevant policy tests.	Applicant Bedford Borough Council	Paragraph 8 of the CA guidance sets out that applicants should be able to demonstrate that " <i>all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.</i> " The Applicant has considered all reasonable alternatives to compulsory acquisition, namely an alternative design to the Scheme which does not acquire the acquisition of Brook Cottages and in the alternative, acquisition by agreement. Taking the first alternative, unfortunately there are no suitable design alternatives which avoid the demolition of Brook Cottages. In summary, at non-statutory consultation stage, option C+ was considered which sought to retain Brook Cottages, but subsequently this option was discounted as it did not result in a safe design solution which met the technical requirements, or the need or objectives for the Scheme. Brook Cottages needs to be acquired to ensure that the preferred route alignment of the main carriageway is in compliance with design safety standards. The full justification of the preferred

Action No.	Action	Party	Response at Deadline 7
	<p>The case for alternatives and the loss of a historic asset is being examined and does not need to be covered here.</p> <p>Applicant, provide further justification in line with CA guidance that for Brook Cottages, all reasonable alternatives to CA, including modifications to the scheme, have been explored. Are there any additional points of justification you would offer with respect to CA guidance?</p> <p>2. BBC may comment.</p>		<p>route in this location is set out in the Black Cat Junction Design Options report [APP-247]. It has not been possible to avoid these residential properties as their demolition is required for the construction of the Scheme. Separately, the Examining Authority has requested further details on the consideration of alternatives to the Scheme design and its potential for modification as a result of the loss of Brook Cottages, but as requested in the Rule 17 request, the further information submitted in response to these requests has not been repeated here.</p> <p>Considering now the second alternative, the Applicant has sought to acquire the owner's interest in Brook Cottages by agreement. The Applicant has met with the owners of the occupied dwellings several times to establish how it can support them. The Applicant has actively pursued acquisition by voluntary agreement and an offer has been made. The scope of compensation payments available has also been shared.</p> <p>The Applicant understands that the owner of Brook Cottages would like to pause discussions on acquisition until the occupier has found a new home.</p> <p>The Applicant has engaged with Bedford Borough Council (BBC) and supporting agencies to ensure the occupier was supported in their application for social housing and that the case was considered with the urgency which the circumstances of this DCO application create. This included preparing a supporting letter outlining the reasons and timescale for proposed demolition of the property, see REF-036 at Appendix A, and arranging direct support for filling out of the application for housing, see REF-035 at Appendix A.</p> <p>At the owner's request, the Applicant ceased direct contact with the occupier, but the Applicant is aware that the application for social housing has been submitted and the occupier is actively seeking alternative accommodation through this process. The Applicant has also outlined compensation available to the occupier to support a house move.</p>

Action No.	Action	Party	Response at Deadline 7
			<p>Paragraph 10 of the CA Guidance sets out how applicants should take into account Human Rights, namely that “<i>The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.</i>”</p> <p>The draft DCO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:</p> <ol style="list-style-type: none"> a. There is a compelling case in the public interest for the compulsory acquisition powers included within the draft DCO, and that proper procedures are followed. b. Any interference with a human right is proportionate and otherwise justified. <p>The Applicant recognises the impacts of the Scheme on the individuals at Brook Cottages, but considers that the significant public benefits which will arise from the Scheme outweigh any harm to those individuals. The acquisition of these interests strikes a fair balance between the public interest in seeing the Scheme proceed (which could not happen without these interests) and the private rights which will be affected by the compulsory acquisition.</p> <p>There is a compelling case in the public interest for the compulsory acquisition of Brook Cottages, and the Scheme overall has been designed to minimise harm whilst achieving its publicly stated objectives. The interference with human rights is both proportionate and justified.</p> <p>In the written summary of the Applicant's case of Compulsory Acquisition Hearing 2 [REP6-038] the Applicant noted that Mr Braidwood had acknowledged everyone was trying hard to reach a solution. He was not against the purchase of the property, or the Scheme itself, which would be for the benefit of wider society.</p>

CONFIDENTIAL – Appendix A contains personal and sensitive information and is not to be published

Appendix A – Schedule and Evidence of Correspondence regarding the Owner and Occupier of Brook Cottages



The Planning Inspectorate

Reference	9.92
Name	A428 Black Cat to Caxton Gibbet improvements
Document	Applicant response to request for further information from the Examining Authority – Rule 17 [PD-012] - Appendix A
Status	Confidential

This document contains confidential information and is only available on request to those who have a legitimate need to view it.