



# The Planning Inspectorate

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The Applicant

Bedford Borough Council

Cambridgeshire Councils

Central Bedfordshire Council

Environment Agency

Natural England

Your Ref:

Our Ref: TR010044

Date: 7 February 2022

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Dear Sir / Madam

## **Planning Act 2008 (as amended) – Sections 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17**

### **Application by National Highways for an Order Granting Development Consent for the A428 Black Cat to Caxton Gibbet Improvements**

#### **Request for further information**

##### **1. Habitats Regulations Assessment**

The Examining Authority (ExA) has noted the representations made by the Applicant and Natural England regarding the Eversden and Wimpole Woods Special Area of Conservation (SAC), and whether an Appropriate Assessment (AA) is required or not, including [APP-233] [RR-076] [EV016] [REP1-032][REP1-033][REP4-044][REP-006][REP6-027][REP8-009][REP8-016][REP8-048][REP8-049][REP9-023][REP9-026][REP9-056].

In light of this, and particularly Natural England's comments at Deadline 9 (D9) [REP9-056], including those concerning the Bat activity surveys April/May to October 2018 (transects) and June to October 2019 and April/May to October 2018 (statics) and Bat Crossing Point Surveys May to September 2019; and given the small sample sizes from the various surveys tagged and tracked in the SAC or in and near to the Order Limits; the differences between the 2018/19 and 2021 surveys including in terms of scope and time-of-year undertaken; and the absence of comments from the Cambridgeshire Councils at D9, the ExA, taking a precautionary approach, is not currently satisfied that there is adequate evidence that likely significant effects (LSE) on this SAC can be definitively ruled out.

Furthermore, the ExA is not satisfied that the Applicant's position [REP8-016, Paragraph 6.3.1] for not considering in-combination effects at Habitats Regulation Assessment (HRA) Stage 1 – Screening, is sufficient.



Given the outstanding concerns regarding the 2018/2019 surveys that have been raised and the small sample size of Barbastelle bats tagged and tracked in the SAC or in and near to the Order Limits, the ExA does not believe it has been demonstrated that for screening and AA stages the Proposed Development would have no effect on the SAC.

In line with [Government guidance](#) for Stage 1 Screening and Stage 2 Appropriate Assessment, where there may be an effect on a SAC, which on its own is not significant, then an assessment must be made as to whether this effect could combine with effects, which on their own are not significant, from any other proposal planned or underway affecting the same SAC. The ExA notes that no assessment of in-combination effects is in the submitted evidence.

The Competent Authority may need to undertake an AA of the effect of the Proposed Development on the integrity of this SAC. Notwithstanding the comments from Natural England [REP9-056, Page 5] the ExA is not satisfied that there is sufficient information in the evidence, including the Report to Inform Appropriate Assessment [REP8-016], for the Competent Authority to undertake an AA, given the absence of any assessment of in-combination effects.

- i. Applicant, respond to the outstanding concerns raised by Natural England with regard to the 2018/19 surveys, which are set out in their D9 submission [REP9-056], in particular those concerning the Bat activity surveys April/May to October 2018 (transects) and June to October 2019 and April/May to October 2018 (statics) and Bat Crossing Point Surveys May to September 2019.
- ii. Natural England's view on the Applicant's Report to Inform Appropriate Assessment [REP8-016] is: *"The report confirms that the barbastelle bats that were observed/heard along the A428 route are not attributed to the SAC barbastelle population. This is not to say that none of the SAC barbastelles use the A428 scheme area as all survey data sets used were relatively small samples"* [REP9-056, Page 6, 1]. In light of the possibility that some SAC bats may use the area and so may be affected by the Proposed Development, Applicant, provide an assessment of any in-combination effects of the Proposed Development with other plans and projects that are planned, approved or underway in the area.
- iii. Natural England and Applicant, consider whether any mitigation measures for the SAC population of Barbastelle bats are needed for the AA, and incorporate any further SAC mitigation measures and monitoring measures into the Environmental Master Plan and First Iteration Environmental Management Plan (EMP).

## 2. High Pressure Pipeline Diversion

Applicant and Central Bedfordshire Council (CBC), the ExA has regard to your representations and updates on the matter relating to the archaeological excavation on Field 44, site 7 (planning permission reference CB/20/04185/FULL) [REP1-022, 3.8] [REP1-055] [EV-052] [EV-047] [REP8-014, Q3.8.3.1] [REP8-038, Q3.8.3.1]. Consider jointly the completed findings of the excavation work and the updated screening assessment, prior to Deadline 10 (D10) and provide jointly considered responses to the following, highlighting disagreements if any.

- i. Can Applicant and CBC confirm that the archaeological excavation pursuant of planning permission CB/20/04185/FULL is being undertaken in line with the Archaeological Mitigation Strategy (AMS) [REP4-031]. In doing so, explain with reasons how the archaeological excavation when completed would effectively and



adequately mitigate the adverse effects to the archaeology in Field 44, in a way that satisfies the standard expected for any archaeological works authorised, should this Order be granted.

- ii. Given that the excavations work is likely to be completed before the close of the Examination, would it not ensure that with the archaeology removed, the site has been fully mitigated in advance of construction activity? Consequently, with the screening assessment updated before the close of the Examination, would it be possible for parties, and for the ExA to have a view to offer, for consideration by the Secretary of State (SoS), if the high pressure pipeline diversion is a Nationally Significant Infrastructure Project (NSIP) or not. The ExA acknowledges that irrespective of the pipeline diversion being an NSIP or not, the Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) will be important and relevant in the ExA's considerations.
- iii. Notwithstanding your response to First Written Questions (WQ1) and the flowchart [REP1-022, 3.8], summarise and update the steps required by the Applicant, Cadent Gas, and subsequently by the Secretary of State (SoS), after the close of the Examination.
- iv. Applicant, notwithstanding your case [APP-240, Appendix B] and response [REP1-022, Q1.8.4.2], can you confirm if you notified the Health and Safety Executive (HSE), about the high pressure pipeline diversion and of your approach regarding Health and Safety and Major Accidents, in compliance with policy requirements in NPS EN-4 (Sections 2.4 and 2.19)? Provide evidence that this approach has been agreed or provide reasons why the HSE were not required to be notified or involved.

### **3. Noise effects of Borrow Pits**

Bedford Borough Council to respond to the Applicant's comment regarding noise associated with Borrow Pits [REP9-023, WQ3.6.2.1] and confirm their position with regard the adequacy of information provided to the Examination to date

### **4. Operational Noise Monitoring**

The Applicant's attention is drawn to the ExA's proposed changes to the dDCO, specifically that relating to Requirement (R) 18 – Noise Mitigation [PD-015, Q4.8.1.6]. As requested, and without prejudice, Applicant provide additional wording in the First Iteration EMP and/ or R18 of the dDCO relating to operational noise monitoring. Alternatively, the ExA may propose an amendment to R18 of the dDCO to secure operational noise mitigation.

### **5. Statements of Common Ground (SoCG)**

To avoid any scope for conflicting information being provided to the ExA, when SoCGs are being finalised, the ExA would remind all Parties to work with the Applicant to ensure that submissions reflect the most up to date positions of the relevant signatories. In particular, Bedford Borough Council's position relating to baseline noise monitoring and assessment methodology appears to conflict with that discussed at ISH2 [EV-020].



It should also be noted that all SoCGs must be signed by relevant parties and submitted to Examination by D10, and unsigned SoCGs will carry no weight in the Examination.

## **6. Deadline 10 submissions**

The ExA notes that the Cambridgeshire Councils intend to submit its comments on the Applicant's traffic modelling and mitigation measures at D10 [REP8-027] [REP8-032] [REP9-042]. The ExA encourage Cambridgeshire Council to share their comments with the Applicant prior to D10 so as to enable the Applicant to provide a response or clarification at D10, prior to the end of the Examination

## **7. Network Management Duty**

Notwithstanding submissions received at Deadline 8, having considered all the information submitted during the Examination, including but not limited to additional traffic modelling and sensitivity testing, Local Highways Authorities explicitly state whether the Proposed Development will enable you, and the Applicant, to effectively discharge your statutory Network Management Duty, as defined in S16 of the Traffic Management Act, 2004?

## **8. Flood Risk**

Applicant, in your response to the ExA's first written questions [REP1-022, Q1.9.1.1 a)], and your response [REP3-007] to the Environment Agency's (EA's) comments on your approach [REP1-076], you have not addressed the sequential approach taken to determine the route of the Proposed Development between the river Great Ouse and Caxton Gibbet roundabout, which sought to avoid areas at risk of flooding. This land is predominantly Flood Zone 1, but the preferred route crosses a number of ordinary watercourses at a higher risk of flooding, together with parts of their floodplains. Following a selection process three route options were considered at Non-Statutory Consultation, prior to the announcement of the preferred route [APP-035].

Environment Agency, you have raised concerns with the Applicant's Flood Risk Assessment (FRA) during the Examination, including at [REP1-008][REP1-076][REP4-068]and [REP8-046]. The ExA notes that a version of the FRA Technical Note [REP6-042] will be shared with you by the Applicant, prior to the submission of a final version to the Examination at D10 [REP9-023, Q3.9.2.2].

- i. Applicant, explain how the sequential approach to flood risk was used in determining the preferred route of the Proposed Development between the River Great Ouse and Caxton Gibbet roundabout. Environment Agency please provide comments.
- ii. Applicant and Environment Agency, please ensure that any unresolved differences, with the FRA and FRA Technical Note, and their significance, are clearly set out in the final SOCG or in a supporting document to be submitted at D10.

## **9. Designated Funds**

The Applicant has confirmed at various points of the Examination that measures including schemes and forward design will be funded through the use of Designated Funds. Applicant, provide a definitive list of all schemes within the geographical extent of the Order Limits of the Proposed Development, or likely to be affected by it, that have been allocated funding from Designated Funds, an indication of timescales and



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any caveats for delivery, such as being subject to the SoS approval of the Proposed Development and, or, external or joint funding with Local Authorities being required. Whilst it is acknowledged that these matters are not secured in any way in relation to the Proposed Development, the ExA consider that the SoS should be made aware of the Applicant's approach to dealing with issues and concerns raised during the Examination.

The ExA requests responses by **Deadline 10, Tuesday 15 February 2022**, as per the Examination Timetable [PD-011, Annex A]. If you have any queries on this matter, please contact the Case Team via the details at the head of this letter

Yours sincerely,

*Menaka Sahai*

**Lead Panel Member of the Examining Authority**

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