

**Application by Highways England Company Limited for the A428 Black Cat to Caxton Gibbet Road Improvement scheme (the 'Scheme')**

**Representations made at Deadline 10 on behalf of Davison & Co (Great Barford Ltd) ('Davison & Co')**

**Interested Party Reference No: 20028217**

## Executive Summary

Davison & Co are supportive of the objectives of the Scheme but maintain their objection to the proposed compulsory acquisition ('CA') of their land which, as currently proposed, would significantly prejudice their promotion of a major strategic employment development (the 'Employment Development') on 80 acres of land at Caxton Gibbett. Specifically, Davison & Co object on the following 2 key issues:

1. CA for temporary use (Borrow-pits)

Davison & Co strongly object to the permanent CA of land at plot 14/16a acknowledged by the Applicant as being needed only temporarily for the Scheme for Borrow-pits. CA here is not necessary or justified and would sterilise the Employment Development.

2. Creation of ransom strip by CA

Davison & Co object to the proposed CA of DCO plot 14/6c (land to the north-east of the new Caxton Gibbett junction to create grassland landscaping), unless and until reasonable rights of access to run and connect services are secured ('Retained Land Rights' as shown indicatively at Appendix 1) subject to planning permission for the Employment Development being granted. Davison & Co currently benefit from a boundary abutting the adopted highway in this location. This CA would sterilise the Employment Development or create a ransom strip by compulsory purchase. This would be unconscionable and an inappropriate and unjustified use of statutory powers, particularly given that a key objective of the Scheme is '*supporting new development projects*'

Davison & Co have actively engaged with the Applicant throughout the pre-application and examination stages to seek to resolve these key issues by agreement. While some progress has been made with substantially agreeing heads of terms for a proposed lease to the Applicant of the borrow-pit land (and also for the proposed Scheme construction compound in this location), some 1 month following this position being reached no draft agreements or indeed any further communications on the leases have been received from the Applicant or its solicitors directly contrary to a programme drawn up and agreed between the parties.

Other than this, little if any further progress has been made in putting in place the necessary suite of voluntary agreements due to the continuing failure of the Applicant to proactively and constructively engage with Davison & Co in respect of its key concerns and explore a negotiated solution. Throughout the examination period, the lack of engagement by the Applicant falls clearly well below the required legal and policy standard for a DCO promoter seeking CA powers who are required to (a) use reasonable attempts to acquire the necessary land and rights by agreement and (b) using CA as a tool of last resort both of which feed into the compelling case in the public interest balance which the Applicant must demonstrate to justify the proposed CA of Davison & Co's land .

Davison & Co's preference is to resolve its key concerns summarised above by agreement with the Applicant to enable the Scheme and the Employment Development to come forward in a complementary fashion and they remain willing and able to commit all necessary time and resources to work proactively and constructively with the Applicant to promptly:

1. Complete the lease agreements for the Borrow-pit land and for the proposed construction compound.
2. Agree the grant of reasonable Retained Land Rights to prevent the creation of a ransom strip by compulsory purchase.

The Applicant gave its commitment in their DCO representations "*to continuing engagement with this landowner on matters relating to permanent and temporary land acquisition/possession sought and the detailed design of the scheme, in particular around safeguarding the landowner's development aspirations*" (response to Davison & Co's Written Representations). Davison & Co simply asks the Applicant to honour its commitment, and we are confident the key issues can be resolved even at this late stage in the process.

## Status of negotiations

As the ExA is aware Davison & Co, have previously expressed their concern that the Applicant's efforts to reach agreement on land and rights were falling well below the minimum standard required by a promoter of a DCO. This culminated at Compulsory Acquisition 2 in the ExA instructing the Applicant to agree a timetable of engagement with Davison & Co relative to the Examination timetable. This was agreed as follows:

Timetable	Date	Attendees / Action
Agree HoTs	Week commencing 10 <sup>th</sup> Jan	All
Instruct solicitors	Week commencing 10 <sup>th</sup> Jan	All
Follow up meeting with A428 Team	Week commencing 24 <sup>th</sup> Jan (TBC)	All inc solicitors
Lease / option completion by D9	15 <sup>th</sup> February 2022	Solicitors

On 17<sup>th</sup> January 2022, in response to general concerns about the lack of progress on detailed land matters, the ExA also requested the Applicant "to ensure that every effort is made to maximise the remaining time available during the Examination to progress, and where possible conclude negotiations."

Davison & Co confirmed agreement to Heads of Terms for the lease of the Borrow-pit land 'Without Prejudice' on 14<sup>th</sup> January 2022 and provided the contact details for their solicitors.

Despite the agreed timetable, none of the subsequent milestones have been met by the Applicant. Indeed, since 17<sup>th</sup> January, when the ExA requested that the Applicant "use ensure every effort is made to maximise the remaining item", no contact has been made at all by the Applicant's solicitors to progress the lease, and no draft documents have been circulated. Despite regular chasing, also no meetings dates have been accepted by the Applicant to seek to progress the voluntary agreements. Davison & Co considers this failure to action the ExA's requests and keep to the agreed programme visibly demonstrates that the Applicant has not made reasonable attempts to acquire the necessary land and rights by agreement and/or as a tool of last right. If the ExA and Secretary of State agrees with Davison & Co's assessment that the compelling case in the public interest is not made out, then any CA powers over Davison & Co's land should not be authorised unless and until urgent and meaningful progress is made by the Applicant on the two key issues of objection. In this regard, Davison & Co would invite the ExA to consider a suitable extension to the examination period to enable the Applicant to fulfil its commitment and to meet its statutory and policy requirements.

Concerns about the Applicant's lack of progress and engagement on land agreements are echoed by many other Interested Parties with notable similarity. Indeed, of 95 freeholders listed in the CA Schedule (17<sup>th</sup> January 2022), no agreements are complete, and only two are agreed (subject to contract).

Davison & Co welcome the agreement with the Applicant to key terms on the Borrow-pit Lease, however are frustrated by the subsequent silence on the legal agreements and by the absence of any further progress on terms for an agreement for the proposed permanent land acquisition. They therefore maintain that the Applicant has failed to satisfy the minimum legal and policy requirements to reach agreement by negotiation, using compulsory purchase as a last resort.

In maintaining its objection, Davison & Co do not seek to frustrate the Scheme outright and, in principle, they support the objectives of the Scheme being promoted by the Applicant. What Davison & Co are seeking is suitable protective provisions in the agreements to enable the significant Employment Development, with its substantial public benefits, to be brought forward on the retained land. Moreover, Davison & Co consider that there is still the possibility to reach agreements with the Applicant which

would enable them to withdraw their objections to the compulsory purchase of their property. To this end Davison & Co have presented the Applicant with distilled solutions to the two core issues as follows:

1. Borrow-pit lease (DCO plot 14/16a)

Davison & Co have set-out in previous representations the failure by the Applicant to demonstrate a compelling case in the public interest for the CA of land in accordance with S.122(3) of the Planning Act 2008. The Applicant acknowledges this land is only needed on a temporary basis. It is clear that the rights required could be achieved through the use of Temporary Possession powers and the case of 'R(oao FCC Environment (UK) Ltd) v Secretary of State for Energy & Climate Change [2015] EWCA Civ 55' is directly relevant.

The matter is of great significance to Davison & Co who are promoting this land (along with other land) for the Employment Development. The development would be completely fettered if plot 14/16a is compulsorily acquired. As such, if the compulsory acquisition of this plot of land is authorised Davison & Co would have no choice but to legally challenge such a decision.

Heads of Terms for a lease agreement have been agreed with the Applicant which would obviate the need for the use of compulsory or temporary powers for the Applicant to deliver the scheme.

Davison & Co are ready to commit all necessary resources to progress legal agreements to completion. We ask the Applicant to now provide legal drafts by return and work with Davison & Co's professional team to progress the documentation to completion without any further delay.

2. Retained Land Rights

Davison & Co have confirmed to the Applicant that they are ready to either (a) agree an option for the purchase by the Applicant of this land or (b) withdraw their objection to the proposed compulsory purchase of the 'highways land' (DCO plot 14/6c), subject to a binding commitment from the Applicant that, following transfer or vesting of that land, that the Applicant will agree to re-grant reasonable rights of access and to run services across it. It is accepted by the Applicant that the grant of these rights would be dependent on the future grant of planning permission for the proposed Employment Development of Davison & Co's retained land.

The Applicant has already acknowledged and acceded to the principle of supporting the proposed Employment Development through re-locating, by agreement, the Scheme attenuation pond to the east following the Supplementary Consultation in order to leave enough space for an access road to service the Employment Development (see Appendix 2).

An agreement for the Retained Land Rights follows logically on from this. In essence, such reasonable rights would run over a stretch of 75 meters of land identified by the Scheme for 'proposed grassland' (shown at Appendix 3), conditional on planning permission for the Employment Development being granted. This would not adversely impact the DCO scheme, because such planning permission would authorise associated development, including mitigation for a small area of grassland to provide for an access road. A conditional agreement to grant the Retained Land Rights would not jeopardise or undermine in any way the public interest justification for the CA of the highways land being promoted in the DCO now, which is to provide landscaping required for the scheme land as is in the current circumstances. When justifying compulsory purchase, it is not necessary to demonstrate a requirement for the proposed highways land as DCO scheme mitigation in perpetuity which would be impossible as circumstances and needs change over time.

Grant of the reasonable Retained Lands Rights sought would also be consistent with Department for Levelling Up, Homes and Communities guidance on the use of CA powers which requires public sector organisations to “*be prepared to engage constructively with claimants about... mitigation and accommodation works*”.

In conclusion, for the reasons set out above, Davison & Co consider that the Applicant has not demonstrated a compelling case in the public interest for the CA of the land contrary to the requirements of S.122(3) of the Planning Act 2008, and the proposed CA of Davison & Co’s land would be unconscionable and should not, therefore, be authorised. Davison & Co have put to the Applicant their concerns which have been distilled down to two key issues and provided practical and achievable solutions to solve these issues and to enable the Scheme and the Employment Development to be brought forward in a complementary fashion. Davison & Co would urge the Applicant to engage urgently and constructively with them to find a mutually agreeable position which meets both parties’ objectives.