

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

**Rule 17 response to Examining Authority's (ExA)
Request for further information dated 7 February 2022
(ExA's ref: TR010044)**

**Central Bedfordshire Council
15 February 2022**

Question 2. High Pressure Pipeline Diversion

2 (i):

CBC are content that the works being undertaken in F44 are in line with the revised AMS [REP4-031]. When the all the archaeological works (including post excavation analysis, assessment and reporting) in relation to F44 are completed, the applicant will have complied with paragraph 5.140 of the NPS by recording and advancing the significance of the heritage assets with archaeological interest that will be impacted upon by the proposals.

2 (ii):

The archaeological remains at F44 will have been investigated but not entirely removed and the excavation is only part of the mitigation process. The full mitigation will only be completed when all the archaeological works including the post excavation analysis, assessment, reporting and deposition of the archive has taken place. Therefore, CBC do not agree that the full mitigation will have been undertaken in advance of construction. Nevertheless, this does not present an issue because the AMS allows for the completion of the post excavation works to be undertaken with the other post consent archaeological works. Furthermore, the works at F44 are subject to a planning condition and therefore, if the scheme did not proceed, measures are in place for the completion of the mitigation works.

Question 7. Network Management Duty

Following the issue of the Rule 17 request for further information, please see below for a position statement on the matter raised under question 7 related to Network Management Duties. The following provides the jointly agreed views of Central Bedfordshire Council and the Cambridgeshire authorities. Bedford Borough Council has submitted a separate response to the Rule 17 request for further information which sets out many of the points raised below. BBC fully supports the additional points and clarifications in this response which have not been included in BBC's individual response to the Reg 17 request. The authorities are also aware of the updated position statements which have been submitted by National Highways with regards to the matters related to the monitoring and management of construction phase and operation phase impacts of the DCO application. To avoid repetition of points across a number of documents, this response also refers to those proposals where relevant.

The views of the local authorities remain consistent with those submitted at Deadline 6. As detailed within that response the guidance issued by the Secretary of State in the documents "Traffic Management Act 2004 Network Management Duty Guidance" dated November 2004 states that:

"Primarily, the network management duty is about dealing efficiently with the traffic presented on the network – both now and in the future – and the various activities that are causing or have the potential to cause congestion or disruption to the movement of traffic."

It is also stated in the guidance that:

"The efficient management of the road network relies heavily upon the collection and use of accurate, reliable and timely data."

and that:

"Authorities are expected to have clear understanding of the problems facing the different parts of their network."

The duty of the respective highway authorities to manage their networks, with due regard to networks managed by others, is one that will remain in place regardless of the A428 scheme. For clarity the LHAs are not seeking to pass this responsibility to National Highways (NH). However, this should not be conflated with the requirement for development to mitigate its own identified impacts, a fundamental requirement of reasonable planning. Without this the ability of highway authorities to discharge their network management duties would become increasingly difficult, and costly, to undertake, as the authorities would be obliged to manage the harmful impacts of development within their networks.

This matter remains a key principle of the disagreement between the LHAs and the applicant on

the matter of monitoring and management of directly attributable scheme impacts. The view consistently expressed by the LHAs throughout the DCO process and summarised in REP6-074 is that the responsibility for monitoring and managing impacts identified within the applicant's submission as being attributable to the scheme, should reasonably fall to the scheme promoter to address.

Paragraph 5.125 of the NPS states that *"The Examining Authority and the Secretary of State should give due consideration to impacts on local transport networks and policies set out in local plans"*, with the LHA submissions at Deadline 6 including reference to relevant local policy, and consider that it is both proportional and reasonable pursuant to paragraph 5.215 of the NPS for National Highways, as the applicant, to mitigate in full the impacts that directly relate to the development, whether these occur on the strategic or the local highway networks.

Paragraph 5.216 of the NPS also states that *"Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible."*

As also highlighted in the representations made at deadline 6, there is a reasonable expectation that unmitigated impacts on elements of the local road network could lead to a worsening of local accessibility.

The LHAs note the proposals contained within the most recent submissions made by the applicant with regards to construction phase (REP9-036) and operational phase (REP9-034) monitoring.

National Highways have also shared a draft update to REP9-034 with the LHA's which proposes a wider coverage of baseline survey sites with specific regards to the construction phase.

Construction Phase

With regards to the updated documents submitted, the increased scope of baseline assessment identified is welcomed, however it is also clear that the surveys proposed are restricted to baseline surveys (i.e.: prior to construction) only. No surveys are to be carried out during construction (i.e.: when impacts could reasonably be expected), and as such there is no actual monitoring process proposed. There is also no commitment to work with LHAs to address issues arising during the construction process.

As also outlined in CBC representation REP09-041, the use of a numerical threshold, based upon the use of Strategic Model flows for identifying survey locations would also not address the range of concerns raised by the LHAs, as:

1. The model coding does not permit HGVs to divert onto weight restricted routes, as such the use of model flows would not address the LHA concerns over increased incidences of weight restriction contravention, with HGV use of inappropriate routes identified as a major concern during the A14 works.
2. The use of numerical thresholds will not address issues of increased incidences of speeding or safety arising from self-diverting traffic.

The Examining Authority (ExA) in WQ3 commented that:

“Monitoring of traffic re-routing during construction

The ExA are unconvinced that there is currently a robust mechanism or methodology agreed between the Applicant and LHAs to effectively monitor and manage the impact of traffic re-routing on to the local network during the construction phases of the Proposed Development.”

As far as LHAs can see, nothing further of significance has been submitted to convince that what is proposed by NH would be a robust mechanism and methodology and the ExA’s initial view on the matter in respect of the construction phase is correct.

Not only is there justification for a DCO requirement on NH to Monitor and Manage impacts including to the local highway network during the construction and operational phases, but there is a precedent for this in the A14 DCO which stated as follows:

“Traffic Monitoring and Mitigation

17.—

(1) No part of the authorised development is to commence until written details of a traffic impact monitoring and mitigation scheme has been submitted to and approved in writing by the highway authority.

(2) The traffic impact monitoring and mitigation scheme must include— (i) a before and after survey to assess the changes in traffic;

(ii) the locations to be monitored and the methodology to be used to collect the required data;

(iii) the periods over which traffic is to be monitored;

(iv) the method of assessment of traffic data;

(v) control sites to monitor background growth;

(vi) the implementation of monitoring no less than 3 months before the implementation of traffic management on the existing A14;

(vii) agreement of baseline traffic levels;

(viii) the submission of survey data and interpretative report to the highway authority; and

(ix) a mechanism for the future agreement of mitigation measures

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker.”

The drafting of the above provision from the A14 DCO is sufficiently broad to cover the operational and construction phases.

Whilst the scheme submitted by NH under Art 17 of the A14 DCO did not cover the construction phase, Cambridgeshire County Council submitted evidence at Deadline 9 confirming and outlining how this resulted in major issues in practice.

As such the LHAs continue to be of the view that approach outlined in REP6-074 (appended to this response for convenience, as Appendix 1) remains the most reasonable and proportional approach to construction phase monitoring. The suggested draft DCO requirements in Appendix 1 provide greater detail than the A14 DCO provision, which is beneficial to the parties and for clarifying the extent of the respective responsibilities. The LHAs would request that the Examining Authority impose a suitable requirement to secure this.

Operational Phase

With regards to the operational phase monitoring, it is noted that the applicant proposes to undertake surveys at a number of locations across the network during years 1 and 5 post opening of the scheme. It is noted that the locations identified in Appendix A of the National Highways submission (REP9-034) are additional to those referenced in the Transport Assessment Annex.

However, it is not clear within the document whether the locations listed in para. 2.1.20 are to be carried out as turning counts with associated queue surveys (which would therefore identify whether capacity issues have arisen following the opening of the scheme) or simply counting link flows on the strategic road network approaches to those junctions, which would not identify issues of congestion or delay and would ignore the resultant impacts on the local road approaches to the junctions in question.

As these locations were identified in the Transport Assessment Annex as being subject to ‘Monitor and Manage’ based upon potential junction capacity rather than link flow issues, a minimum reasonable requirement would therefore be for full turning counts with supporting queue lengths.

It is also noted in paragraph 2.1.13 of REP9-034 that “it would be for LHAs to bring forward measures, should any be required, at locations on the LRN affected by traffic flow increases identified by operation monitoring.”

As such it appears that whilst a limited degree of operational monitoring is proposed by NH, any management element of the “Monitor and Manage” approach, upon which the Transport Assessment Annex is reliant in terms of potential scheme mitigation, is intended to be made the responsibility of the LHAs. This is not considered to be a reasonable or proportional approach and referring back to the question over the ability of the authorities to discharge their Network Management Duty, whilst the LHAs will continue to do so, the acceptance of the ‘Monitor and Manage’ approach currently proposed by the applicant will place a potentially significant further burden upon the LHAs when discharging that duty, which they are neither resourced nor funded to accommodate, but arise as a direct impact of NH’s development.

Reference is also made within the document to the POPE process including monitoring works. However, the scope and extent of the POPE is not known at this stage, and moreover is not secured through the DCO process. As such this can be given very little weight.

The LHAs support the ExA’s proposal put forward for comment at Deadline 9 to amend the draft DCO to include a DCO requirement on NH to Monitor and Manage DCO impacts including to the local highway network. As noted above, there is precedent for such an approach as contained in Art 17 of the A14 DCO.

As such the LHAs continue to be of the view that approach outlined in REP6-074 remains the most reasonable and proportional approach to operational phase monitoring and would request that the Examining Authority impose a suitable requirement to secure this.

Conclusion

This matter remains a key principle of the disagreement between the LHAs and the applicant on the matter of monitoring and management of directly attributable scheme impacts. The LHAs are of the view that an applicant for a DCO ought to be required to mitigate the directly attributable impacts of their development, whether occurring on the strategic or local highway network, as reasonable and proportional mitigation.

Not only is there justification for a DCO requirement on the applicant to Monitor and Manage impacts including to the local highway network during the construction and operational phases, but there is a justification and precedent for this as demonstrated by the A14 DCO.

The LHAs have put forward suggested DCO requirements to cover the construction and operational phases as outlined in REP6-074 (Appendix 1) as the most reasonable and proportional approach. The LHAs request that the ExA and Secretary of State impose these as DCO requirements.

Appendix 1

Joint Local Authorities' approach to Monitor and Manage – Requested DCO Requirements

Monitor and Manage

Following Issue Specific Hearing 5, the joint suggested approach of the Central Bedfordshire Council (CBC), Cambridgeshire Authorities (Cambridgeshire County Council, Huntingdonshire District Council and South Cambridgeshire District Council) and Bedford Borough Council to the 'Monitor and Manage' system and means of securing it as directly related to addressing the impacts of the A428 DCO scheme is detailed below.

The local authorities request that the following is inserted as requirements into Schedule 2 of the DCO:

"Construction Phase Monitor and Manage Scheme

1. The authorised development must not commence until full details of a Construction Phase Monitor and Manage Scheme to be implemented by the undertaker at the undertaker's cost in relation to any adverse traffic impacts resulting from the construction of the authorised development have been submitted to and approved by the Secretary of State in consultation with all relevant local highway authorities , which details must include:
 - (a) locations on the trunk highway network where monitoring must take place;
 - (b) locations on the local highway network where monitoring must take place (which will be locations that could be affected by the construction of the authorised development) including (but not limited to):
 - (i) *Bedford Borough:*
 - a. Roxton
 - b. Great Barford
 - c. Willington
 - d. Little Barford
 - e. Chawston
 - f. Colesden
 - g. Wilden Renhold
 - h. Ravensden
 - i. Staploe and Duloe
 - (ii) *Cambridgeshire:*
 - a. Abbotsley

- b. Broadway, Bourn Airfield
- c. Cambourne
- d. Caxton
- e. Coton
- f. Elsworth
- g. Eltisley
- h. Eynesbury Hardwicke
- i. Gamlingay
- j. Great Gransden
- k. Highfields Caldecote
- l. Knapwell
- m. Little Gransden
- n. Madingley
- o. Toseland
- p. Waresley
- q. Yelling

(iii) *Central Bedfordshire:*

- a. Moggerhanger
- b. Blunham
- c. Sandy
 - i. Bedford Road
 - ii. St. Neots Road
- d. Pottton
- e. Wrestlingworth
- f. Everton
- g. Biggleswade
 - i. Hill Lane E
 - ii. Hill Lane W

(c) specification of the monitoring to be carried out at the locations referred to in paragraphs (a) and (b) at the undertaker's expense which will include (without limitation):

- (i) the numbers and type of vehicles by time;
- (ii) periods for collection of initial baseline data;
- (iii) a programme for regular surveys during the period of construction of the authorised development; and
- (iv) a right for the relevant local highway authority to elect at their discretion to carry out any monitoring specified pursuant to paragraphs (i) to (iii) above on the local highway network, without prejudice to the requirement for the cost of carrying out that monitoring to be the responsibility of the undertaker;

(d) the criteria for determining when and what mitigation measures will be necessary on the highways referred to in paragraphs (a) and (b) due to any material adverse traffic impacts resulting from the construction of the authorised development;

- (e) who will make decisions on when and what mitigation measures are necessary according to the criteria in paragraph (d) and the decision-making process which process must provide for the approval of the relevant local highway authority (or authorities where junctions or routes are of shared interest) for any mitigation measures relating to the local highway network and the consultation of the relevant local highway authority (or authorities where junctions or routes are of shared interest) for mitigation measures relating to the trunk highway network within their area;
 - (f) a right for the relevant local highway authority to elect at their discretion to carry out any mitigation measures determined to be necessary according to the process referred to in paragraph (e), without prejudice to the requirement for the cost of those measures to be the responsibility of the undertaker;
 - (g) the funding from the undertaker that will be available to implement the monitoring and mitigation required by the Scheme including:
 - (i) a ring fenced fund for specified categories of necessary mitigation on the local highway network and junctions and routes of shared interest with the undertaker; and
 - (ii) full details of how funds will be made available for other necessary mitigation demonstrating that it will be funded so that it can be provided when needed; and
 - (h) details of when the Construction Phase Monitor and Manage Scheme will come to an end.
2. Subject to the local highway authority consenting or agreeing in respect of any works on its local highway network, the undertaker shall comply with and carry out the approved Construction Phase Monitor and Manage Scheme from the commencement of the authorised development until the end date specified within the Scheme.”

Operational Phase Monitor and Manage Scheme

3. The authorised development must not commence until full details of an Operational Phase Monitor and Manage Scheme to be implemented by the undertaker at the undertaker’s cost in relation to any adverse traffic impacts resulting from the operation of the authorised development have been submitted to and approved by the Secretary of State in consultation with all relevant local highway authorities, which details must include:
- (a) locations on the trunk highway network where monitoring must take place;
 - (b) locations on the local highway network where monitoring must take place (which will be locations that could be affected by the construction of the authorised development) including (but not limited to):
 - (i) *Bedford Borough:*
 - a. Roxton
 - b. Great Barford
 - c. Willington

- d. Little Barford
- (ii) *Cambridgeshire:*
- a. St Neots
 - i. Great North Road (between Nelson Road and A428)
 - ii. Cambridge Road (between Station Road and A428)
 - iii. High Street (between Town Bridge and B1043 Huntingdon Street)
 - e. Toseland
 - f. Yelling
 - g. Eltisley
 - h. Cambourne
 - i. Dry Drayton
 - j. Madingley, and
 - k. Coton.
- (iii) *Central Bedfordshire:*
- a. Barford Road (Tempsford)
 - b. Blunham
 - c. Moggerhanger
 - d. Sandy
 - i. Bedford Road
 - ii. St. Neots Road
 - e. Biggleswade
 - i. Hill Lane E
 - ii. Hill Lane W
 - f. Junction 13 M1
 - i. Salford Road
 - ii. Bedford Road N
 - iii. Bedford Road S
 - g. Marston Mortaine
 - i. Beancroft Road
- (c) specification of the monitoring to be carried out at the locations referred to in paragraphs (a) and (b) at the undertaker's expense which will include (without limitation):
- (i) the numbers and type of vehicles by time;
 - (ii) periods for collection of initial baseline data;
 - (iii) a programme for regular surveys during the period of construction of the authorised development; and
 - (iv) a right for the relevant local highway authority to elect at their discretion to carry out any monitoring specified pursuant to paragraphs (i) to (iii) above on the local highway network, without prejudice to the requirement for the cost of carrying out that monitoring to be the responsibility of the undertaker;
- (d) the criteria for determining when and what mitigation measures will be necessary on the highway referred to in paragraphs (a) and (b) due to any material adverse traffic impacts resulting from the operation of the authorised development;

- (e) who will make decisions on when and what mitigation measures are necessary according to the criteria in paragraph (d) and the decision making process which process must provide for the approval of the relevant local highway authority (or authorities where junctions or routes are of shared interest) for any mitigation measures relating to the local highway network and the consultation of the relevant local highway authority (or authorities where junctions or routes are of shared interest) for mitigation measures relating to the trunk highway network within their area;
 - (f) a right for the relevant local highway authority to elect at their discretion to carry out any mitigation measures determined to be necessary according to the process referred to in paragraph (e), without prejudice to the requirement for the cost of those measures to be the responsibility of the undertaker;
 - (g) the funding from the undertaker that will be available to implement the monitoring and mitigation required by the Scheme including:
 - (i) a ring-fenced fund for specified categories of necessary mitigation on the local highway network and junctions and routes of shared interest with the undertaker; and
 - (ii) full details of how funds will be made available for other necessary mitigation demonstrating that it will be funded so that it can be provided when needed; and
 - (h) details of when the Operational Phase Monitor and Manage Scheme will commence.
4. Subject to the local highway authority consenting or agreeing in respect of any works on its local highway network, the undertaker shall comply with and carry out the approved Operational Phase Monitor and Manage Scheme from the date on which it is to commence as specified within the scheme.”