

A428 Black Cat to Caxton Gibbet improvements

TR010044

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9.126 Applicant's Closing Position

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Infrastructure Planning (Examination Procedure) Rules
2010

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

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1 Introduction

- 1.1.1 In order to assist the Examining Authority and the Secretary of State in the reporting and decision making process, the Applicant has summarised the key themes relating to the Scheme explored throughout the Examination and the Applicant's closing position on these. In summary, the A428 Scheme will bring forward a safe and high quality route to alleviate pressures on the strategic and local road network (LRN). The Scheme is in full compliance with the National Policy Statement for National Networks (NPSNN) and provides substantial economic benefits which can be delivered with a positive Benefit Cost Ratio, resulting in a Scheme which represents high value for the wider public as well as communities locally. At the outset, it is important to remember the reason why this Scheme is being brought forward. There are significant congestion impacts which occur in the local area and this Scheme brings substantial benefits from alleviating those pressures including enabling growth in the region. These benefits are strongly supported by local communities. It is notable that there has been no local community objection to the Scheme from any Action Groups, Parish Councils, or individuals who are not otherwise affected by the Scheme. Local communities overwhelmingly support the Scheme, including the preferred route chosen by the Applicant, as demonstrated through the statutory consultation process (see the Consultation Report **[APP-033]**). Whilst local authorities have been active throughout the Examination, none have an 'in principle' objection to the Scheme proceeding, and have continued to support the delivery of the Scheme throughout the Examination process. The Applicant has sought to mitigate significant impacts associated with the Scheme, as well as deliver enhancements where there are reasonable opportunities to do so.
- 1.1.2 An underlying theme of the Examination has been the relationship between the role of National Highways and the Local Highway Authorities (LHAs). An example is how the process for handover and agreement of highway standards has been explored for both new/altered roads and also de-trunked roads. Notwithstanding that National Highways is a government owned body, not a commercial developer, who has duties under its Licence to maintain the Strategic Road Network (SRN) to a safe and serviceable standard of operation in accordance with the Design Manual for Roads and Bridges, LHAs have been concerned that the highways they inherit will not meet their expectations before taking responsibility for their maintenance. More broadly, issues have been raised (dealt with further below) regarding the extent to which monitoring outside the Scheme or other forms of intervention in respect of the Local Road Network (LRN) should be carried out by National Highways. It is important to view these issues in the context that traffic is generated from a variety of sources including those which lie outside the SRN; and the management of traffic is the responsibility of both national and local bodies, all of which ultimately receive funding from central government to exercise their respective functions. Just as National Highways is allocated funding to maintain and improve the SRN (which also delivers wider benefits to traffic management in LHA areas), funding is available to LHAs to help collectively manage the same overall traffic generated across the country in their administrative areas.

- 1.1.3 Cost is a fundamental factor for public bodies who are also funded by tax payers, but in so far as issues regarding the effect of a strategic scheme are influenced by concerns about the respective allocation of costs between different bodies to manage overall traffic on the network generally, that allocation between bodies is a matter for government policy and does not go to the substance of the planning merits for the Scheme. The Applicant is a public body charged with operating, maintaining and improving England's strategic road network to ensure that it is dependable, durable and, most importantly, safe. The Scheme has been developed through the Roads Investment Strategy (RIS) process for strategic schemes and would deliver benefits which, overall, would be substantial. It would be an unfortunate consequence if the Scheme's costs are escalated by delays to programme caused by additional obligations upon the Applicant, where ultimately the determining factors relate to funding streams which stem centrally from the Department for Transport to deal with traffic management across the national road network in any event. Additional costs incurred through onerous approval or monitoring requirements could affect scheme viability or affect general National Highways budgets, which may mean that other improvements or repairs cannot be undertaken. Funding for road schemes is not indefinite.
- 1.1.4 Similarly, for reasons that are apparent from representations to the Examination, the Applicant rejects any characterisation of the Scheme causing significant impacts on the LRN that it should be expected to monitor and or mitigate. This misrepresents the overall effect of the Scheme, which involves the development of the strategic road network to deliver substantial benefits to the wider network in this area, including the LRN. This explains the absence of any in principle objection to the Scheme; indeed the wide range of support it has received from those who see the clear need for the improvements it would deliver is compelling. It is misconceived therefore to focus on the potential effects of the Scheme on certain junctions within the local road network when the overall advantages of the Scheme are clear. Further, in circumstances where National Highways does not ask Local Highway Authorities (LHAs) for contributions towards addressing impacts arising on the SRN from decisions and events which take place in their areas, any suggestion that it should in principle be expected to monitor and bear all impacts on the LRN arising from a scheme would involve a significant and problematic extension of National Highways' role in delivering improvements to the SRN, through both the RIS process and under the terms of National Highways' Licence, which authorises National Highways in respect of the SRN only. Distinct from private developers who may cause an additional contribution to road traffic in a single area, the Applicant's scheme redistributes rather than adds to the pressures of the strategic and local networks, to their overall advantage. No developer would be expected to fix all the problems on the LRN, and neither should the Applicant be required to do so, particularly when the Scheme delivers such substantial long term benefits to the LRN network generally. It is within this context that the highways impacts of the Scheme should be considered, as should the question of whether the Scheme will enable the LHAs to discharge their Network Management Duty under section 16 of the Traffic Management Act 2004. Unquestionably, the substantial benefits of the Scheme to alleviate congestion on the LRN will assist the LHAs in discharging

their Network Management Duty. It must also be right for the LHAs to work collaboratively with National Highways to discharge their respective duties, as envisaged by the Traffic Management Act 2004 Network Management Duty Guidance (2004 Guidance). Paragraphs 72-74 of the 2004 Guidance does not allocate any responsibility on the part of National Highways to monitor or manage the LRN or commit to temporary or ongoing provision of monitoring information to LHAs. In fact, there is a specific acknowledgement of National Highway's parallel duty for management of its own network.

2 Traffic impacts

- 2.1.1 Notwithstanding the above or that the additional traffic which the Scheme seeks to address arises through growth controlled by the local authorities, the Applicant has agreed to undertake baseline monitoring at a number of locations on the LRN, and this is secured through the Outline Construction Traffic Management Plan (OCTMP) [**TR01004/APP/7.4v5**].
- 2.1.2 However, in relation to construction traffic impacts, it should be remembered that:
- The construction traffic impacts of the A14 scheme are not comparable to the A428 Scheme despite the LHAs suggestion that this is the case. The A14 scheme was predominantly an online scheme whereas the A428 Scheme is predominantly offline. Therefore, the construction traffic impacts for the A14 scheme will be very different and significantly worse when compared to the A428 Scheme.
 - A number of lessons learned from the A14 scheme have already been embedded into the mitigation for the A428 Scheme. These are secured in the OCTMP [**TR01004/APP/7.4v5**] and include, for example, the use of a haul road for construction traffic; agreement not to use certain routes for construction traffic; and the phasing and timing of construction works, all directed to minimise impacts on the wider network by keeping the SRN flowing and reducing SRN delays, and therefore minimising the possibility of self-diverting traffic re-routing from the SRN onto the LRN.
 - Whilst the Strategic Model predicts a worse case (given that not all road users will have knowledge of local routes) and increased journey times across the Scheme are forecast to increase by no than four minutes, the Applicant has included a commitment to work with the LHAs and the police to agree appropriate measures should self-diverting become an issue on the LRN (see paragraph 3.5.10 of [**TR01004/APP/7.4v5**]).
 - Construction interfaces with the road network exist at only three locations. At the largest and most significant of these junctions, the Black Cat roundabout, the VISSIM model outputs actually suggest that under traffic management the roundabout will function no worse than it does presently. No evidence has been presented by local highway authorities to counter this or to suggest that the Applicant's traffic modelling is not robust.
- 2.1.3 Similarly, the Applicant has committed to operational traffic monitoring at certain locations based on representations made by the LHAs and at the request of the Examining Authority. In the case of the LRN, this is secured through new Requirement 22 of the dDCO [**TR010044/APP/3.1v6**] and, for the SRN, is already secured under National Highways' Licence duty to monitor and manage the SRN. Importantly, operational traffic monitoring on the LRN is only proposed in those areas where the Scheme predicts potential adverse impacts on the LRN, and not where benefits are predicted. Monitoring of benefits is carried out under the Post Operation Programme Evaluation (POPE) (see for example [**REP6-041**]). The POPE forms a separate regime for monitoring the benefits of all National Highways schemes, which is a tried and tested mechanism and part

of the company's governance process. The DCO process should not seek to duplicate or prejudge the outcome of locations for monitoring which will be established under the POPE process. It would be highly unprecedented to incorporate a requirement for benefits monitoring within the DCO and, in fact, the A19 Testos scheme recommendation report confirmed, albeit in the context of noise, that where the *"effect of the Proposed Development is predicted to be positive and the submitted evidence supports that conclusion, a requirement for post-construction noise monitoring is not required"*.

- 2.1.4 Further, there is no basis in law or policy (under the NPSNN) which requires monitoring where significant benefits are predicted. Regulation 21 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) requires the Secretary of State to: *"(a) examine the environmental information; (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary; (c) integrate that conclusion into the decision as to whether an order is to be granted; and (d) if an order is to be made, consider whether it is appropriate to impose monitoring measures."* The EIA Regulations define a "monitoring measure" as *"a provision requiring the monitoring of any significant adverse effects on the environment of proposed development, including any measures contained in a requirement imposed by an order granting development consent"* (emphasis added). No significant effects have been predicted on the LRN as a result of the Scheme.
- 2.1.5 This approach is also borne out in DCO precedent. Previously, requirements of the nature requested by the LHAs have only been included where significant adverse impacts have been predicted. For example, the A303 Sparkford Scheme found a substantial increase in the number of vehicles using Sparkford High Street and so set a monitoring requirement for this location accordingly. This is very distinct from a broad assessment of benefits, as is being requested by the LHAs.

3 Alternatives

- 3.1.1 There has been a significant focus on alternatives throughout the Examination. The Applicant has followed the Project Control Framework to manage and conduct a robust assessment of alternatives. No party at the Examination has argued that the alternatives assessment has been defective; and no party has at any stage suggested any preferable alternative scheme that would deliver comparable benefits, despite the ExA specifically asking the local planning authority to reconsider the issue. These are highly significant factors in considering the merits of the Scheme.
- 3.1.2 It is also important to consider the early option identification and assessment work that was undertaken by the Applicant fairly and with realism. Schemes of this nature inevitably involve the consideration of options at different stages over a lengthy period of time, within a process that progressively refines or sifts those options as the assessment progresses to a final preliminary design. Options assessment work should not and will not exhibit the same level of detail at every stage; and it would not be proportionate or feasible to require every stage to be revisited and repeated, particularly when (undisputed and fundamental) reasons for rejecting an option have been identified at any individual stage.
- 3.1.3 As explained in the Overview of the Alternatives considered at the Black Cat Junction Report **[REP4-032]** Chapter 4 and demonstrated in Figure 4.1, the option assessment process is iterative. In each iteration, the proportionate development of options is undertaken to allow assessment that informs the sifting out of options. Further development work is then undertaken followed by further assessment and sifting. In each step consideration is given as to whether there are compelling reasons to sift out options based on the evidence available at that point in time. Ultimately, a design which is technically deliverable; meets the scope and objectives for delivery of substantial benefits; and can be safely built, operated and maintained must be progressed. The Applicant has explained how safety factors in particular led to the rejection of potential alternatives when considering the alignment which impacted on Brook Cottages. No party has disputed, or been in a position to dispute, the judgements it has articulated.
- 3.1.4 The Examining Authority has also sought further information on how the sequential approach to flood risk was used to determine the preferred route of the Scheme between the River Great Ouse and Caxton Gibbet roundabout. This is provided in Applicant's response to request for further information from ExA – Rule 17 Letter **[TR010044/EXAM/9.121]**, which confirms that when determining the preferred route, preference was given to locating the Scheme in areas least at risk of flooding. However, in order to meet the Scheme objectives, it was necessary for the Scheme to cross flood plains of the River Great Ouse and Hen Brook, as indeed the NPSNN acknowledges (see paragraph 5.102) may be required in cases of linear infrastructure. Therefore, all options considered had similar impacts on flood risk and there was no reasonably available site in an area of lesser flood risk. Accordingly, the Scheme meets the requirements of the sequential test. The Scheme is also subject to the exception test, and the Flood Risk Assessment (FRA) has demonstrated that the project will be safe for its

lifetime without increasing flood risk elsewhere. In this respect, the Applicant has addressed all of the Environment Agency's outstanding requests to provide further information on flood risk and the management of related impacts. An updated FRA Technical Note **[TR010044/EXAM/9.84v2]** has been submitted at Deadline 10 accordingly. Finally, the substantial benefits of the Scheme have been demonstrated, and this outweighs the potential for flood risk, noting that risk is limited given the agreed position in the FRA Technical Note **[TR010044/EXAM/9.86v2]**.

4 Loss of Brook Cottages

- 4.1.1 In relation to the loss of Brook Cottages more specifically, Requirement 16 of the dDCO [TR010044/APP/3.1v6] combined with the certified Brook Cottages Heritage Strategy [REP8-021] has been agreed with Historic England and Bedford Borough Council to secure a robust mechanism for the dismantling and, if feasible, relocation of this listed building. Some interested parties have raised the question of whether the loss of Brook Cottages will result in substantial harm or less than substantial harm pursuant to paragraph 5.133 of the NPSNN. However, it is also acknowledged by those parties that this is not a matter which can be established before the dismantling process commences, and this is why the Applicant has maintained its view that a worse case must be assumed. If Brook Cottages was relocated, elements of the original fabric could be lost during the relocation process, be in irreparable condition, and serious damage to the structure of the building may still occur. As such, the conclusions of Chapter 6, Cultural Heritage [APP-075] of the Environmental Statement are robust and the decision maker should assess matters on the basis of total loss or substantial harm, including in respect of necessity for total loss or substantial harm.
- 4.1.2 This approach is consistent with that taken in *Bedford BC v Secretary of State for Communities and Local Government*¹, which specifically considered the threshold of substantial harm. This judgement sets a high benchmark for substantial harm, namely that "very much, if not all, of the significance was drained away".² In terms of physical impacts on an heritage asset this is described as "in the case of demolition or destruction, being a case of total loss" as well as "a case of serious damage to the structure of the building".³ For the reasons explained above, the Applicant takes the view that this threshold could be crossed. Given the uncertainty will not be resolved until dismantling takes place, this conclusion applies equally notwithstanding that the question is a matter of "fact and planning judgement" and the NPPF "does not direct the decision-maker to adopt any specific approach to identifying 'harm' or gauging its extent".⁴
- 4.1.3 Matters in relation to alternatives have been given much attention during the course of the Examination as explained above. Whilst Requirement 16 of the dDCO secures relocation in the event this is feasible and would afford heritage value, the potential for relocation would not cause any failure of the necessity test given that relocation (to the extent feasible) is secured under Requirement 16. Further, to the extent relocation would reduce the level of harm to less than substantial harm, there would be no need to consider whether total loss or substantial harm was 'necessary'.

¹ [2013] EWHC 2847 (Admin).

² Ibid, Mr Justice Jay at [24].

³ Ibid, Mr Justice Jay at [24].

⁴ *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government, Hart District Council, Historic England, The National Trust for Places of Historic Interest or Natural Beauty* [2021] EWCA Civ 320, the Senior President of Tribunals Sir Keith Lindblom at [74].

- 4.1.4 On the basis that a finding of substantial harm engages the necessity test, the Applicant's position remains that it has demonstrated how such harm is necessary to achieve substantial public benefits that outweigh that harm or loss. The loss of Brook Cottages, when placed in its proper context, is significantly outweighed by the overall substantial benefits held in prospect by this Scheme; and there are no reasonable alternatives which would deliver the same benefits, in the same timescale, as the Scheme.

5 Habitats Regulations Assessment matters

- 5.1.1 During the Examination, there has been some discussion as to whether the Scheme will result in likely significant effects on the Eversden and Wimpole Woods Special Area of Conservation (SAC) due to the intervening distance between the Scheme and the SAC. Notwithstanding that the Applicant's surveys show that there is no relationship or functional link between the habitat comprised within the Order Limits and the SAC, the Applicant (without prejudice to its position of no likely significant effect) submitted a Habitats Regulations Assessment: Report to Inform Appropriate Assessment **[REP8-016]** at Deadline 8.
- 5.1.2 The Examining Authority has since requested an update to the in-combination assessment to cover the possibility that SAC Barbastelles use habitats within, or close to the Scheme (notwithstanding the evidence submitted to the contrary **[REP8-016]**). This in-combination assessment has been included within an update to the Habitats Regulations Assessment: Report to Inform Appropriate Assessment **[TR010044/EXAM/9.99v2]** which still reaches a conclusion that there will be no Adverse Effect on Integrity (AEoI) on the SAC either alone, or in-combination with other plans and projects.
- 5.1.3 Natural England has advised the Examination **[REP9-056]** it supports the Applicant's conclusion of no AEoI on the SAC:
"The Stage 2 report [REP8-016] ascertains that the Proposed Scheme will not have an adverse effect on the integrity of Eversden and Wimpole Woods SAC alone, or in-combination with other plans and projects. This is on the basis that SAC barbastelles are not interacting with the area of the Proposed Scheme. Natural England supports this conclusion..."
- 5.1.4 General agreement has also been reached with Natural England that the approach to mitigation for impacts on bats is acceptable, as secured in the Environmental Masterplan **[REP9-037]** and the First Iteration Environmental Management Plan **[TR010044/APP/6.8v4]**. This follows significant discussions during the course of the Examination to explain the surveys undertaken, and to clarify the approach to mitigation and monitoring in order to address comments from consultees and give confidence to stakeholders that the planned measures will be effective.
- 5.1.5 All comments raised by Natural England during the course of the Examination have been addressed within the Applicant's responses, with agreed positions recorded within the Statement of Common Ground **[TR010044/EXAM/8.3v4]**.

6 Carbon impacts

- 6.1.1 Representations have been made by the Transport Action Group (TAN) regarding the carbon impacts of the Scheme. The Applicant acknowledges the importance of carbon emissions and the implications of climate change. On that basis, the Applicant has undertaken a full assessment of greenhouse gas emissions in accordance with policy. There are no confirmed regional or sectoral based targets against which an assessment can be made and it is not possible to assess against a target or threshold that does not exist. Therefore, all the Applicant is able to do, and can be required to do, is to undertake an assessment against the legally binding national targets and come to a conclusion on whether it would materially impact the government's ability to meet their obligations under the CAA 2008. This accords with the requirement in paragraph 5.17 of the NPSNN.
- 6.1.2 During the course of the Examination, the validity of the decision in *Transport Action Network Limited) v SoST*⁵ was called into question by TAN who had sought permission to appeal the High Court's decision from the Court of Appeal. TAN's application for permission to appeal the decision was refused on 13 January 2022. Therefore, this decision remains in full force. This decision accepted the Department for Transport's judgment that the carbon emissions from RIS2 would be legally "insignificant" and even if the Secretary of State (SST) had not taken them into account, "*they were so insignificant in the context of setting RIS 2 under the IA 2015 that a failure by the SST to take them into account could not have materially affected the decision*".

⁵ [2021] EWHC 2095 (Admin).

7 Good design

- 7.1.1 Good design is fundamental to the approach which has been taken by National Highways from the outset. The Applicant has formally consulted with local authorities and key stakeholders during the design development phase and has continued to engage with them as part of the Examination process. In the case of the Scheme, detailed design is already underway and this has enabled the Applicant to produce Scheme design approach and design principles **[REP9-015]**. As a result, there is now a significant amount of information on how the detailed design for the Scheme will be progressed, particularly when compared to previous schemes promoted by National Highways.
- 7.1.2 In order to meet the programme for delivery of the Scheme, detailed design will be substantially complete before a decision on the DCO application for the Scheme has been reached. Therefore, any requirement imposed for consultation on detailed design post-consent would significantly impair the ability of the Applicant to maintain the programme. Even very short delays of a few months can delay construction by many months and in some cases a year or more where construction works are seasonally dependent. This is not to say that the Applicant does not intend to engage stakeholders on detailed design, and in fact this is already secured through other mechanisms within the dDCO. In the case of new or altered roads, for example, through Article 13, and in the case of environmental mitigation, including planting and landscaping, through development of the Second Iteration Environmental Management Plan and Landscaping Scheme, for which consultation is secured under Requirements 3 and 6 of the dDCO respectively.
- 7.1.3 Given the level of engagement with stakeholders already secured under the dDCO, which follows the usual precedent for National Highways schemes, it would be unusual for consultation to be required post consent on detailed design specifically. No interested party has suggested that there is a particular element of the present Scheme, or its specific location, which warrants a change to the usual approach taken for National Highway schemes. When considering this issue, the benefit of taking such an approach given the level of involvement for stakeholders secured elsewhere in the dDCO and the comfort afforded by the Scheme design approach and design principles **[REP9-015]**, will need to be carefully balanced with the cost to the public, which could be in the order of millions of pounds even for a short delay of a matter of months, as well as the delay to realising the substantial wider benefits of the Scheme.

8 Other Environmental issues

Biodiversity Net Gain

- 8.1.1 Whilst the Applicant has sought to demonstrate to the Examining Authority and key stakeholders how it will meet its aspirations for Biodiversity Net Gain (BNG) across the Scheme, there is no requirement in law or policy for promoters of Nationally Significant Infrastructure Projects to deliver BNG.
- 8.1.2 Paragraph 5.25 of the NPSNN states "*development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives*". However, the Scheme does not result in significant impacts on biodiversity and therefore paragraph 5.25 is not engaged.
- 8.1.3 Further, as has been agreed with Natural England (see the Statement of Common Ground agreed with Natural England and submitted at Deadline 10 [TR010044/EXAM/8.3v4]), the BNG calculations carried out by the Applicant and submitted throughout the Examination are entirely separate to the assessment of environmental effects reported in Chapter 8, Biodiversity [APP-077] of the Environmental Statement.

Air quality

- 8.1.4 During the course of the Examination, the Applicant has explained why the imperceptible increase within the Air Quality Management Area (AQMA) at Sandy does not require mitigation [REP8-014].
- 8.1.5 As the predicted changes at the properties within Sandy AQMA are less than 1% of the objective value, they are imperceptible. A change of this magnitude is so small as to be beyond both monitoring and modelling precision. The approach taken by the Applicant in this respect, is mirrored in the approach taken by other statutory bodies, such as the Environment Agency⁶ and Natural England⁷ when assessing impacts at a level which is imperceptible.
- 8.1.6 The air quality assessment reported in Chapter 5, Air Quality [APP-074] of the Environmental Statement has also demonstrated that within one year of opening of the Scheme, NO₂ concentration levels will be lower than levels predicted in the opening year. This negligible level of change does not trigger a significant air quality effect under the NPSNN or DMRB LA105, and accordingly mitigation measures are not required.

Noise impacts from borrow pits

- 8.1.7 Concerns have been raised as to whether sufficient information has been provided to assess construction noise impacts from borrow pits and whether mitigation for those specific impacts is secured.

⁶ Environment Agency, *Air emissions risk assessment for your environmental permit*, 2021.

⁷ Natural England, *Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations*, 2018.

8.1.8 The Applicant has sought to explain its approach which accords fully with the methodology required by DMRB. In order to address concerns from Interested Parties, the Applicant has also sought to secure a specific Borrow Pits Management Plan within Annex R of the First Iteration Environmental Management Plan [TR010044/APP/6.8v4]; this Plan includes both generic and additional/site specific noise mitigation measures for receptors likely to be affected by activities associated with the borrow pits (see Tables R-6 to R10).

Operational noise impacts

8.1.9 In its Rule 17 letter dated 7 February 2022 [PD-017], the Examining Authority requested a requirement so as to secure the operational noise monitoring described in paragraph 11.10.2 of Chapter 11, Noise and Vibration [APP-080] of the Environmental Statement and "*ensure that intended noise mitigation measures would achieve their desired outcome*".

8.1.10 The Applicant has already put forward measures to secure this within the First Iteration Environmental Management Plan (see [TR010044/APP/6.8v4]) by requiring the low noise road surfacing to be installed in accordance with the manufacturer's specification, and therefore achieve the certified noise reduction performance. Therefore, the Applicant considers that no further amendments to Requirement 18 to secure the noise mitigation and its desired outcome are necessary. However, without prejudice to its position, the Applicant has put forward a requirement as requested. Notwithstanding this, it should be noted that highways schemes do not assess or monitor noise in the way asserted by the local authorities. Road traffic noise sources cannot be isolated from other noise sources (such as overhead lines, railways, agricultural vehicles etc.) and therefore noise monitoring at individual receptor locations will not establish the effectiveness of mitigation as intended by the Examining Authority.

8.1.11 In addition, the Applicant has explained why noise mitigation at Rectory Farm is not required in order to comply with the NPSNN. Even though Rectory Farm is likely to experience a major increase in road traffic noise levels due to the Scheme, the predicted levels are below the Significant Observed Adverse Effect Level, and although the Applicant has considered a number of different types of mitigation, it has been concluded that mitigation would not be 'sustainable' within the terms of the NPSNN.

9 Non-motorised user provision

- 9.1.1 Concerns have been raised on a perceived lack of non-motorised user (NMU) provision brought forward within the Scheme and that the Applicant has not complied with paragraph 5.205 of the NPSNN. Paragraph 5.205 states that *"Applicants should consider reasonable opportunities to support other transport modes in developing infrastructure..."*. However, the Applicant has mitigated all NMU impacts as well as taken all reasonable opportunities for enhancement of NMUs as part of the Scheme.
- 9.1.2 A specific request has been made to provide a cycle route along the existing A428 to be de-trunked between the Cambridge Road junction and the Caxton Gibbet junction, as well as an NMU route along Brockley Road. Such enhancements are outside the scope of the Scheme. They are not required to mitigate the effects of the Scheme nor is their need supported by usage from NMU surveys undertaken by the Applicant. Provision of these NMUs would require compulsory acquisition of additional land and give rise to new environmental effects which have not been assessed as part of the Scheme. The Applicant must demonstrate that the land over which powers of compulsory acquisition are sought is necessary for the Scheme to proceed and that there is a compelling case in the public interest for the land to be acquired compulsorily. The Applicant is of the view that these tests could not be met if the enhancements sought by the LHAs were included in the Scheme. In short, provision of these NMU routes cannot be described as offering a reasonable opportunity to enhance NMUs as part of the Scheme.
- 9.1.3 However, outside of the policy requirements, and therefore the DCO process, the Applicant has gone further to secure the use of Designated Funds to establish the feasibility of certain NMUs requested by the LHAs. This same mechanism delivered the preliminary design of the footway/cycleway along St Neots Road (Gap 1a) in consultation with the Cambridgeshire Authorities and enabled the delivery of the Papworth Everard to Caxton Gibbet roundabout NMU provision, currently being constructed.

10 Letters of no impediment

- 10.1.1 Where a Letter of No Impediment (LONI) is required, it has been obtained and submitted to the Examination. The Applicant has submitted LONIs obtained from Natural England in respect of Badgers, and Great Crested Newts in Cambridgeshire, within its Consents and Agreements Position Statement **[TR010044/EXAM/3.3v4]** submitted at Deadline 10.
- 10.1.2 In addition, the NatureSpace Partnership has confirmed that there is no impediment to the Applicant using District Level Licensing for the Scheme to mitigate impacts on Great Crested Newts in Bedfordshire **[TR010044/APP/3.3v4]**.
- 10.1.3 No direct impacts on bats are predicted and therefore no LONI in respect of bats is required.

11 Statutory Undertakers

- 11.1.1 Agreement has been reached with all statutory undertakers where possible regarding the protective provisions contained within Schedule 9 of the Development Consent Order submitted at Deadline 10.
- 11.1.2 It has not been possible to reach agreement with Anglian Water on the precise detail of the protective provisions contained in part 7 of Schedule 9, but only two outstanding points remain. These relate to cost-sharing provisions and deferment provision. With regards costs sharing, there is no situation where both the New Roads and Street Works Act 1991 (NRSWA) and the Protective Provisions could apply because the wording of the Protective Provisions are clear that the NRSWA will apply to all apparatus caught by that Act separately. The Applicant, additionally, cannot agree that Anglian Water should not contribute, yet should still claim the benefit of renewed assets both in and outside the street. This does not meet the Street Works (Sharing of Costs of Works) (England) Regulations 2000 for projects identified as a Major Works. A Statement of Common Ground has been submitted at Deadline 10 **[TR010044/EXAM/8.11]**, which outlines these key issues of dispute between the parties in more detail. The Applicant maintains its position is entirely reasonable given the explanation above.
- 11.1.3 There are a small number of points not fully agreed between the Applicant and National Grid. Whilst the Applicant anticipates resolution shortly, this may not be possible in advance of the close of Examination. The main matter of ongoing discussion relates to specific interactions where a more detailed package of protective measures is required, for example, regarding access arrangements at certain apparatus. The substance of this has now been agreed but is still being documented.
- 11.1.4 In relation to the Cadent gas pipeline diversion at Work 51, an updated screening report has been submitted at Deadline 10 **[TR010044/APP/6.3v2]** which confirms that there is no likely significant effect from the pipeline diversion as a result of 99% of the archaeological remains now having been excavated from the site. The Examining Authority can make recommendations to the Secretary of State accordingly on whether it is necessary to treat the pipeline diversion as a Nationally Significant Infrastructure Project in its own right.
- 11.1.5 East West Rail (EWR) have maintained their position throughout the examination that protective provisions are required for their prospective scheme (for which a route has still yet to be announced). However, in advance of Deadline 10, the Applicant has reached agreement with EWR and consequently it is the Applicants understanding that the need for protective provisions maintained by East West Rail has now been withdrawn.

12 Compulsory Acquisition

- 12.1.1 Having regard to all of the elements set out above, the Applicant's case is that the DCO should be made, and therefore this must be followed by an assessment by the Examining Authority of whether the compulsory acquisition powers sought in the draft DCO should be granted.
- 12.1.2 In its DCO application for the Scheme, the Applicant seeks compulsory acquisition and temporary possession powers in respect of certain land interests set out in the Book of Reference [TR010044/APP/4.3v3]. The Applicant needs these powers in order to acquire the land interests ready for the construction and operation of the Scheme, as well as to use land temporarily and acquire, suspend, interfere with or extinguish rights over land and impose restrictive covenants in order to construct and maintain the Scheme. The Applicant has sought to deliver the Scheme in a way that is both proportionate and in the public interest, by reducing environmental impacts, minimising the cost to the Applicant (and therefore the public purse) and mitigating the impact on affected land interests. The Secretary of State can be confident that the grant of compulsory powers requested is in accordance with section 122 of the Planning Act 2008 (PA 2008) as the purposes of acquisition or temporary possession of each plot is set out in Annex A of the Statement of Reasons [TR010044/APP/4.1v2], as well as the compelling case in the public interest. In designing the Scheme and determining the Order Land subject to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land take. The alternatives and modifications were consulted on and the preferred route was chosen based on a thorough consideration of relevant issues. None of the alternatives or modifications considered would obviate the need for the compulsory acquisition and temporary possession of the Order Land. The Applicant is confident that there is reasonable prospect of the necessary funds for acquisition being available for the reasons set out in the Funding Statement [APP-031].
- 12.1.3 The Applicant recognises that the Scheme may have an impact on individuals' human rights but considers that the substantial public benefits which will arise from the Scheme outweigh any harm to those individuals, and this is set out further in the Statement of Reasons [TR010044/APP/4.1v2]. In addition, the Statement of Reasons considers the Applicant's duties under the Equality Act 2010. The Applicant has had careful regard to any known interests with protective characteristics, has made reasonable adjustments and sought to deal with these as sensitively as possible.
- 12.1.4 The Applicant has carried out diligent inquiry, as set out in the APFP Regulations and the Compulsory Acquisition Guidance, to identify all the persons with an interest in the Order Land (as shown on the Land Plans [REP4-002]) and the persons with a potential claim for compensation as a result of the Scheme. This process of diligent inquiry has continued throughout the examination, and the Book of Reference and Land Plans updated accordingly as either new ownership information has come to light. Plots of land have also been broken down to clearly define the land needed for the borrow pits in order to support lease

agreement negotiations. No additional land has been introduced to the application or additional rights sought over the Order Land during examination. The Schedule of Changes to the Book of Reference **[TR010044/EXAM/9.122]** sets out the changes to the Book of Reference since the start of the examination. All those persons identified in the Book of Reference have been consulted in accordance with the PA 2008.

- 12.1.5 The Applicant has entered into negotiations to acquire other parties' interests voluntarily and has continued these negotiations throughout the Examination. As the Compulsory Acquisition schedule **[TR010044/EXAM/9.4v5]** shows, the majority of those who hold freehold interests in the Order Land have not objected to, nor made relevant representations about, the Scheme, and of those who have objected, a large number of those parties are not interested in acquisition by agreement, despite the Applicant's efforts to acquire voluntarily. The Applicant has also taken a number of negotiations as far as it is possible to do so at this stage, until the detailed design for the Scheme has been finalised. The Applicant will further these negotiations once the detailed design is complete, and is confident that some agreement can be reached in due course. In respect of the remaining ongoing negotiations, the Applicant continues to seek to acquire interests by agreement wherever possible. However, the powers sought are required to ensure that the Scheme can be delivered in a reasonable timescale and in the event that it does not prove possible to acquire all of the Order Land by agreement.

13 Conclusions

- 13.1.1 The A428 between St Neots and Caxton Gibbet is the only stretch of single carriageway on the SRN route between Milton Keynes and Cambridge. It provides a vital link between the M1 (near Milton Keynes) and the M11 (at Cambridge), connecting the communities of Bedford, St Neots, Cambourne and Cambridge and is already operating at close to capacity. If no intervention is made, this situation is expected to continue to worsen and the route will exceed capacity by the design year and beyond, resulting in continued and worsened unreliable journey times and delay.
- 13.1.2 The Scheme successfully delivers its objectives; it resolves existing traffic problems, supports future growth, and improves safety and reliability. It delivers substantial benefits to the public for which there is widespread local support. Where matters have been raised by Interested Parties during the course of the Examination, the Applicant has sought to respond and address these positively. As a result of the careful design of the Scheme and mitigation, it results in few significant environmental effects, given the scale, nature and complexity of the design. It would not have any significant effects on designated landscapes, biodiversity sites or protected species and it would not give rise to adverse effects on integrity of any European site either alone or in-combination with other plans and projects. It would also not result in an overall increase to flood risk and would not lead to any breach of statutory air quality thresholds. Whilst the Scheme would require the loss of the Grade II listed building, Brook Cottages, this is necessary in order to deliver the substantial public benefits resulting from the Scheme. These benefits overwhelmingly outweigh the Scheme's adverse effects.
- 13.1.3 The Scheme accords with the NPSNN, which is the primary basis upon which the Scheme must be assessed and determined. An updated Policy Accordance Table has been submitted at Deadline 10, which signposts to updates provided throughout the Examination [TR010044/EXAM/9.125]. The updated Policy Accordance Table includes an analysis of the effects and wide-ranging benefits of the Scheme. There is no policy or legislative reason that precludes the acceptability of the Scheme. There is a clear and justified case for the DCO to be made. On this basis and in accordance with section 104 of the Planning Act 2008, the Applicant invites the Examining Authority to recommend that the DCO be made and the Secretary of State to so make it.