

Examining Authority  
A428 Black Cat to Caxton Gibbet Improvements

By email only:

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10<sup>th</sup> May 2022

Dear Examining Authority

## **APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR A428 BLACK CAT TO CAXTON GIBBET IMPROVEMENTS**

### **DAVISON & COMPANY (GREAT BARFORD) LTD - INTERESTED PARTY: 20028217**

We write further to our Deadline 10 submissions of 17<sup>th</sup> February 2022 with an update on the status of the negotiations with the Applicant since the conclusion of the Examination and request you accept this additional submission at your discretion.

The Examining Authority (ExA) is aware of Davison & Co's primary concerns expressed during the Examination, about the (a) significant risk that the DCO scheme poses to the potential for a strategic employment development with substantial public benefits to be delivered on their land at Caxton Gibbet and (b) the adequacy and timeliness of engagement by the Applicant to a negotiated solution on the key outstanding issues. By the conclusion of the Examination, two significant issues remained in negotiations as follows:

1. The need to complete lease agreements for the Borrow-pit land (Plot 14/16a) and for the proposed construction compound (Plots 15/6a and 15/6b) ('Leases').
2. Agreeing reasonable land rights to mitigate the risk that compulsory purchase of Davison & Co's land abutting the existing adopted highway will adversely affect the proposed employment development.

#### Update on progress since Examination closed

At Compulsory Acquisition Hearing 2 in December 2021, the ExA expressly requested the Applicant to agree a programme of engagement with Davison & Co relative to the Examination timetable. This was duly agreed between the parties and submitted to the Examination by the Applicant. The programme of engagement scheduled a meeting between the parties for the week commencing 24<sup>th</sup> January 2022, and conclusion of agreements by 15<sup>th</sup> February. On 17<sup>th</sup> January 2022 the ExA also expressly 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".

Subsequently Davison & Co have regularly chased the Applicant seeking to arrange the meeting scheduled for w/c 24<sup>th</sup> January to seek to resolve the Access and Rights issue. Davison & Co have also proposed for the Applicant's consideration several ways in which we consider the Access and Rights issue may be

mutually resolved in a way we believe would be consistent with the Applicant's governance requirements, and enable Davison & Co to withdraw their objection. While correspondence has been exchanged, the Applicant has unfortunately not responded to the meeting dates proposed, and/or declined to provide alternative dates, or to attend a meeting, despite its undertaking to do so in the timetable submitted at the request of the ExA.

While belated progress has been made on progressing the Leases, this has been delayed by the Applicant changing its appointed external solicitors prior to the end of the Examination, and it remains the case that the Leases have still not completed some 3 months after the targeted date agreed by the Applicant.

This unfortunately reinforces Davison & Co's view that the Applicant has not used reasonable attempts to acquire Davison & Co's land by agreement and/or treat compulsory purchase powers as a tool of last resort and therefore (along with other reasons set out in Davison & Co's submissions to the Examination) a compelling case in the public interest has not been demonstrated. This includes a failure by the Applicant to comply with requests made by the ExA on this point. In this regard, we note that "late compliance with any requests made by the Examining Authority" is given as an example of 'unreasonable behaviour' in government guidance relating to the award of costs in applications for development consent.

Should the ExA nevertheless be minded to recommend to the Secretary of State that there is a compelling case in the public interest for the powers sought over Davison & Co's land then we ask that recommendation be accompanied by a requirement for the Applicant to use its best endeavours to complete the Leases, and to proactively engage with Davison & Co in order to seek to resolve the Access and Rights issue.

We are directly familiar with precedent for this approach in the Secretary of State's decision of 2<sup>nd</sup> September 2016 relating to the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order and the objection made by Bloor Homes Southern and Anita Thomas (represented by Carter Jonas LLP). In his decision letter, the Secretary of State encouraged "the applicant to continue to pursue a mutually satisfactory agreement with these objectors" in order to prevent that DCO adversely impact a proposed employment development. Ultimately this led to an agreement after the grant of the DCO which mitigated the risk the M4 (Junctions 3 to 12) adversely impacting on that proposed development.

We would ask if this letter could please be placed before the ExA at your earliest convenience and its contents reflected in its recommendation to the Secretary of State.

Yours sincerely



**Mark Warnett MRICS FAAV**  
Partner

