

A417 Missing Link
TR010056

8.34 Summary of Applicant's
Oral Submissions at Issue
Specific Hearing 3 (CAH3)

Planning Act 2008

APFP Regulation
Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009

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**The Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009**

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Development Consent Order 202[x]

**Summary of Applicant's Oral Submissions at Issue Specific
Hearing 3 (CAH3)**

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1 Introduction

- 1.1.1 This note summarises the submissions made by National Highways ("the Applicant") at the Compulsory Acquisition Hearing (CAH3) held on Friday 29 April 2022 ("the Hearing") in relation to the Applicant's application for development consent for the A417 Missing Link ("the Scheme").
- 1.1.2 The Applicant notes that an Open Floor Hearing (OFH2) and an Issue Specific Hearing regarding changes to the Scheme at FlyUp Bike Park (ISH5) were also held on Friday 29 April 2022. The Applicant made no oral submissions at those hearings and this summary is therefore limited to a summary of the Applicant's submissions during the Hearing.
- 1.1.3 Where the Examining Authority ("the ExA") requested further information from the Applicant on particular matters, or the Applicant undertook to provide further information during the Hearing, the Applicant's response is set out in this document. This document does not purport to summarise the oral submissions of parties other than the Applicant, and summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions in response, or where the Applicant agreed with the submissions of another party and so made no further submissions itself (this document notes where that is the case).
- 1.1.4 The structure of this document follows the order of items published by the ExA on 10 January 2022 in relation to the Hearing ("the Agenda"). Numbered agenda items referred to are references to the numbered items in the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the agenda, therefore this note does not cover items 1 to 2 in the Agenda.

2 Appearances

- 2.1.1 Alex Minhinick of Burges Salmon LLP confirmed that he represents the Applicant. He also introduced Jason Prosser (Design / Solutions lead) and David Brown (DCO / Planning lead) of Arup.

3 Item 3 – brief summary of changes

- 3.1.1 Mr Minhinick explained that the nature of the changes made to the Scheme at FlyUp Bike Park during the Examination were explained in the Applicant's change request letter dated 14 February 2022 (which is available on the Scheme webpage on the Planning Inspectorate's website).
- 3.1.2 The purpose of the change to the Application was to make two amendments to the way in which the Scheme impacts FlyUp Bike Park on Crickley Hill. A minor adjustment to an embankment was introduced to enable the entirety of the car park to be reinstated on completion of construction. An additional access was also introduced to enable separate residential access for the owners of the Bike Park.
- 3.1.3 Delivery of the changes required changes to the compulsory acquisition powers sought by the Applicant. No additional land beyond the original redline boundary has been affected. However, there have been necessary modifications to the extent and nature of land-take within the redline boundary. This included some decreases and increases in the amount of land affected by the compulsory acquisition of freehold land and rights over land, and temporary possession.

Accordingly the Infrastructure Planning (Compulsory Acquisition) Regulations were triggered by the change. All affected land interests fall within plots in the 1/19 series as described in the Book of Reference (Document Reference 4.3 (Rev 2)) and form part of freehold land owned by FlyUp Limited.

- 3.1.4 The Applicant's position remains that the Scheme as originally applied for is robust and acceptable. However, the Applicant listened to affected persons and identified changes that could be made to further mitigate the impacts of the scheme on FlyUp. The Applicant does not consider that the changes at FlyUp affect the justification for compulsory acquisition to facilitate the Scheme. The fact that the Applicant has sought to make changes demonstrates that it has responded to representations from affected persons and enhances the justification for compulsory acquisition in the FlyUp area.

4 Item 5 – representations from affected persons

- 4.1.1 The Applicant noted the representations made by Mr Bruce Fowler on behalf of Mr and Mrs D Field, Mr Huw Richards on behalf of Hanson Quarry Products Europe Limited, and Mr Robert De Lisle Wells.

5 Item 6 – responses by applicant

Mr and Mrs D Fields

- 5.1.1 In response to the representations made by Mr Fowler on behalf of Mr and Mrs D Fields in respect of the plot 1/3d, it was agreed that the Applicant would respond in writing at Deadline 9 following submission of Mr Fowler's detailed written comments at Deadline 8.
- 5.1.2 The Applicant noted during the Hearing that the starting point in relation to the need for compulsory acquisition powers in respect of plot 1/3d is that the Scheme is a nationally significant infrastructure project for which there is a clear need. The Applicant is delivering a programme that incorporates a proportionate level of assessment and design at each stage. The primary reason for seeking compulsory acquisition powers over plot 1/3d is because of the need to deliver mitigation planting. The Scheme design includes a layby on the adjacent plot, which has driven the location of the mitigation planting, because appropriate standards informing design indicate that one is needed. It is correct that the layby could be re-designed as part of the detailed design stage, and the Applicant is willing to give serious consideration to the layby becoming an emergency layby, or being removed from the Scheme altogether. However the Applicant cannot agree remove it at this stage on the basis of the information that is available and there remains a compelling case in the public interest for the compulsory acquisition powers sought.
- 5.1.3 An approach of this sort is common-place in the delivery of projects of this nature. In the event less land was required from the Fields at detailed design than currently anticipated, the Applicant would as a matter of course look to ensure it only acquired the land necessary to deliver its detailed design.
- 5.1.4 The Applicant confirmed that Mr and Mrs Field have not been open to discussions in respect of this plot to date but, in response to the suggestion by Mr Fowler of securing the mitigation planting by way of temporary possession, the Applicant confirmed that it is open to entering into a s.253 agreement with the landowners.

Hanson Quarry Products Europe Limited

- 5.1.5 The Applicant responded to each of the four points raised by Mr Richards.
- 5.1.6 In response to the error in the Book of Reference in relation to plot 6/5c, Mr Minhinick confirmed that the land plans and Book of Reference (Document 4.3 (Rev 2)) are being updated and revised versions will be submitted by Deadline 9. As a post-hearing note, in fact those plans will be submitted at Deadline 8.
- 5.1.7 Mr Minhinick introduced Mr Prosser to address the comments made in respect of the drainage ditch proposed within plot 6/7b. Mr Prosser confirmed that the main function of the ditch is to act as an interceptor ditch to take drainage from the quarry, although it may also act as a surface water ditch. The respective levels of the plots are of limited importance to the need for an interceptor ditch in respect of the quarry and the Scheme. The drainage scheme will be refined at detailed design and, if a reduction in the width of the ditch is possible, the size of the ditch would be reduced. However, on the basis of the information that the Applicant has at this stage based on a robust preliminary design, the proposed ditch is necessary to deliver the Scheme.
- 5.1.8 Mr Minhinick confirmed that there is an existing abandoned watermain within plot 6/7a. The Applicant will limit the extent of land acquisition, as far as possible, and if it does not need to obtain rights in connection with the watermain then it will not seek to do so. However, based on the information available, the Applicant considers that the power to acquire rights in this plot is necessary. The Applicant will only be in a position to review the permanent rights that are necessary once the watermain has been excavated.
- 5.1.9 Mr Minhinick confirmed that the Applicant has been engaging with Hanson Quarry Products Europe Limited in relation to the stand-off areas that would be required to protect the Scheme in the event that the quarry becomes operational. The quarry is dormant so there is no current ability for extraction to be undertaken. The stand-off area that would be required will be driven by the profile of the proposed quarry activity, as different types of extraction will have different impacts. The Applicant is therefore unable to specify stand-off requirements until it has details of the proposals for the quarry. Mr Minhinick confirmed that the Applicant expects to be able to reach an agreed position on this and that any implications arising from stand-off requirements are principally matters of compensation. Any subsequent application for minerals permissions by Hanson Quarry Products Europe Limited would need to address any works necessary to ensure an appropriate stand-off is retained for the highway and would be subject to suitable conditions required to ensure stand-offs.
- 5.1.10 It was agreed by Mr Richards for Hanson that information concerning the proposed quarry layout and future operations would be shared by Hanson with National Highways to inform future discussions and possible agreements over stand-off distances required.

Mr De Lisle Wells

- 5.1.11 Mr Minhinick confirmed that the Applicant will seek to engage with Mr De Lisle Wells in relation to access to his field from the public highway. There is a private means of access to Mr De Lisle Wells' property being secured by the draft DCO (Document reference 3.1 (Rev 4)). Mr Minhinick noted that there is a minor omission within the draft DCO (Document reference 3.1 (Rev 4)), to be rectified,

as an additional means of access to the front field for the benefit of Mr and Mrs De Lisle Wells should also have been included. This is shown on the relevant application drawings but needs to be incorporated into the draft DCO (Document reference 3.1 (Rev 4)) to ensure that the private right of access will be created. As a post-hearing update, there is a minor change which has been identified on the Public Rights of Way and Access Plans (Document Reference 2.5 (Rev 4)) in addition to the update to the draft DCO (Document reference 3.1 (Rev 4)) to address this matter. Both updated documents are being submitted at Deadline 8.

- 5.1.12 Further to concerns raised by the ExA, the Applicant confirmed that it would seek to share any revised documents with affected parties as soon as possible. In the event that any documents must be submitted at Deadline 9, the Applicant committed to submit a schedule of proposed amendments at Deadline 9 so that any affected parties have adequate sight of the nature of the changes such that they have the opportunity to comment at Deadline 9. As a post-hearing note, the Applicant has been able to ensure that any substantive updates to documents forming part of its Application have been updated and provided at Deadline 8.

6 Item 7 – statutory undertakers

- 6.1.1 Mr Minhinick noted that the Applicant's understanding is that Severn Trent Water will be withdrawing its holding objection in reliance on the existing protective provisions within the draft DCO.

7 AOB

- 7.1.1 Mr Minhinick provided an update on two further points.
- 7.1.2 In relation to carbon emissions and climate change assessment, the Applicant has undertaken three further sensitivity tests or assessments that may be helpful to the ExA. Further details are now submitted alongside this summary at Deadline 8 within the Applicant's Comments on Responses Received by Deadline 7 and 7A and changes to the application (Document Reference 8.33).
- 7.1.3 The Applicant noted that a further submission by Royal Mail was accepted into the examination at the discretion of the ExA. The Applicant has now responded to the request for additional controls by submitting an updated version of the Construction Traffic Management Plan (Document 6.4 Appendix 2.1 Annex B, (Rev 2)) alongside this summary at Deadline 8. Further details are provided in the Applicant's Comments on Responses Received by Deadline 7 and 7A and changes to the application (Document Reference 8.33).