

Written Submission on behalf of Brough Hill Fair Community.

Comment on hearings with request for further information and clarification regarding rights associated with Brough Hill Fair, attached to Plot No 06-04-43

1. Summary:

The Examining Inspector noted that the Applicant proposes to transfer the rights associated with Brough Hill Fair to Replacement Land, for the benefit of the Fair community. He stated his understanding that these rights are not defined and not registered. The Applicant has stated in the draft DCO that the land is unregistered, and that the Secretary of State for Defence is the Reputed Freeholder. The Applicant asserted at the Hearing that any rights to the holding of the annual fair are not proprietary rights, and they would be transferred as a bundle, without further definition, by a mechanism set out in Article 36 of the DCO.

Representatives of the Brough Hill Fair Community submit, first, that the rights associated with the current site of Brough Hill Fair since time immemorial are in fact prescriptive rights based on long custom and usage, and also proprietary rights in perpetuity, first specified in a Charter of 1330 and included in a conveyance of 1947 and later registered as a Charge on the Land Registry title. Second, that the proposed mechanism for transfer of a 'bundle' of 'any and all' rights is inadequate, since, in the absence of evidence of specific rights transferred in a Deed, those rights could be denied, diluted or extinguished by any new owner. We submit that the rights attached to the land should be defined and transferred in detail and by a Deed.

Please note that the definition and mechanism for the transfer of rights was not disputed or mentioned in our Relevant Representation dated 23rd August 2022 because we had been assured by the Applicant's representative that these rights were secure and were attached to the land. We were surprised to be informed at the Hearing that the land was unregistered, and that the specific rights set out in the 1947 conveyance would not be transferred.

2. Particulars:

Relevant land: Book of Reference, Page 112, Land Plan Sheet No 4. Plot No 06-04-43

Extent, Description and Situation: *Permanent acquisition of 20843 square metres of agricultural land, hedgerow, trees and public right of way (372020), north of Low Gill Beck, Flitholme, Appleby-in Westmorland (Unregistered Land - Absolute Freehold)*

Freehold or reputed Freehold Owners, and Occupiers or Reputed Occupiers: *Secretary of State for Defence, Property Legal Team, Ministry of Defence, Abbey Wood, Bristol BS34 8JH as Reputed Freeholder and Reputed Occupier*

Brough Hill Fair Rights as defined in Draft DCO, Article 36

"the Brough Hill Fair rights" means any and all customary rights, prescriptive rights, rights derived from royal charter and public rights, that relate to the event known as the Brough Hill Fair that may subsist immediately before the Brough Hill Fair rights are transferred or temporarily suspended in accordance with the provisions of this article.

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3. Notes on the Draft DCO and the Compulsory Acquisition Preliminary Hearing

a. Registration and documentation of rights to Plot 06-04-43.

- i. The Inspector stated (31' 30") that he understood there not to be "*any idea of any registration of those rights at all, they are just sort of historical or custom and practice*" and "*Because those rights don't exist in a known place, how would you transfer those rights.*" (32' 25") He also stated: (32' 33") "*They aren't in the Land Registry. They aren't, don't seem to be, in title deeds.*"
- ii. We assume that the Inspector based this observation on the Applicant's Book of Reference, which gives an incorrect description of interests in the land in question. The Inspector pointed out that the Office Copies of the Title had "*disappeared from the Land Registry.*" The Applicant replied (33' 12") "*Possibly so. I can't comment*" and stated (33' 15") that in their opinion the fact of the missing Title does not matter because "*they are not proprietary rights.*"
- iii. As set out in a previous submission, we believe that these are proprietary rights, binding the owners of the land, and have been registered as a Charge or Restriction on the Office Copy of the Title at Land Registry. For reasons which are unclear, although visible in a Land Registry search in 2019, the Office Copy of the title is no longer visible. (2nd December 2022.) We know that the Applicants were aware of the existence of these rights in detail on the Office Copy of the Title in 2019 because we discussed this matter with the Applicant's representatives. We were advised by telephone and in person at a site meeting at that time that the rights were detailed and were binding. (See separate written submission by Mr Welch.) We have submitted requests to Land Registry and MOD for documents, but we are aware of significant delays, so we are now asking that Applicant be requested to provide copies.
- iv. The Inspector asked (33' 38") "*How would you know what those rights were?*" The Applicant appears to be saying (33' 41") that they are not sure what those rights are, and that they would '*possibly not even*' be transferring the rights set out in the conveyance of 1947, but '*similar.*' This is inadequate. In order for the Applicant to assert that the rights to be transferred will be '*similar*' to the 1947 Conveyance, and to assert that they are not proprietary rights, they must have had sight of the detail of these rights at some time. It follows that documentary evidence must exist somewhere within their knowledge. The MoD does not purchase land without a proper conveyance.
- v. If the Applicants have seen the Conveyance, or the Office Copy of the Title, where did they see it? If they have not seen these documents, how can they know that they are not proprietary rights, and transfer '*similar*' rights?
- vi. We are asking for (a) clarification of exactly what rights, if any, the Applicants are proposing to transfer, and (b) exactly how they can be sure they are not proprietary rights, and (c) evidence of title to the land.
- vii. In addition to the clear and specific registered right to hold the Fair in perpetuity deriving from the Charter of 1330, there is also a prescriptive right

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- to hold the Fair in the current location by virtue of long continuous customary use at the current location. This right will be lost if the continuity of use at this location is broken by moving to an alternative site. (The text of the 1330 Charter and a note on lawful Prescriptive rights are submitted separately.)
- viii. The Applicant has not defined the Brough Hill Fair Land as Special Category Land in the Book of Reference, although they acknowledge that this is a special case and "*not black and white.*" We submit that, had the missing Land Registry Title been produced, and the prescriptive right from long customary usage been recognised, the status of the land would be much closer to 'Special Category Land,' with ancient rights more similar to Common Land, than to the status shown in the Draft DCO as unregistered Land with no defined rights. We submit that the relevant Land should be subject to at least the same statutory protection of rights and other protective provisions as apply to the Special Category Land.

b. Weakness in the proposed mechanism for transfer of rights set out in Article 36

- i. The Inspector requested evidence of the precedents for the transfer mechanism (35' 40"), and he also asked (36' 30") "*what would be given to the Fair community?*" The Applicants proposed that the rights will be transferred as a bundle by a 'standard' mechanism to deal with non-proprietary rights set out in Article 36. They confirmed that the MoD have given the necessary statutory consent to this transfer procedure, and we ask for evidence of their title.
- ii. The mechanism set out in Article 36 makes no reference to precedents, although the Applicant stated that the procedure had been used before. The Applicant confirmed that the transfer would refer to a bundle of rights, without detailed definition, but that they *are 'different from public rights.'* The proposed bundle refers to 'whatever may subsist immediately before the rights are transferred,' which, in the absence of evidence, is a bundle of nothing.
- iii. We believe that there is a significant danger that these rights will be modified or diluted by the proposed 'bundle' approach. We acknowledge that in general, where rights are ill defined or uncertain, a mechanism by which a 'bundle' of all existing rights are transferred to Replacement Land may be appropriate, but this is an unusual case. The rights granted in the Charter 692 years ago were significant enough to have been attached to the land and specified in the 1947 Conveyance and in the Land Registry Office Copy of the Title. Without the evidence of the detail in those documents, the Brough Hill Fair Community will not be able to prove that the rights ever existed in the modern era. The proposed mechanism which transfers '*all rights which may subsist*' is meaningless unless the evidence of the rights is produced. The Applicant's proposal to transfer a 'bundle' implies some substance, but without the detail, the bundle may be empty and contain nothing at all.

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- iv. The proposed transfer, and the provisions of Article 36, and the opinion that the rights are not proprietary, and the incorrect description of the Plot as Unregistered, appear all to be based on the (alleged) non-existence of a document which we know to exist, and which has been discussed in detail with representatives of the Applicant. Mr Welch has made a separate written submission about the contradictions between the Draft DCO, and the assurances previously given by National Highways.
 - v. The Applicant invited the Inspector (37' 39") to ask for more information in written questions. We respectfully ask the Inspector to request that, for the avoidance of any doubt, the Applicants should produce:
 1. the Office Copy of the Registered Title, or
 2. the content and location of the 1947 Conveyance, and
 3. evidence for their unsupported assertion that these are non-proprietary, undefined rights and do not require definition in the Application or the DCO.
 - vi. We recognise that this Examination is not the place to determine the rights, but we ask that the Applicant provides evidence of their title, and that the rights in the 1947 conveyance are simply transferred *verbatim*.
- c. **Applicant's Post Hearing Note:**
(1:08:29 in video recording. Applicant's summary of proposed post-hearing note.)

The Applicant stated:

- i. *"In relation to Brough Hill Fair, we were going to add to yesterday's action, more commentary about the transfer the rights mechanism and precedents for similar such things."* Further explanation and commentary on precedents for transferring these rights should recognise the law regarding prescriptive rights associated with Fairs and Markets. (see separate submission.)
- ii. Although the Applicant's proposed note may address the matter of precedents, they should please address in detail the Inspector's remarks:
 - *"they aren't in the Land Registry?"*
 - *"How would you know what those rights were?"*
 - *"What would be given to the Fair community on the new site in terms of the rights?"*
- iii. We would also ask the Applicant if they can suggest any mechanism which would prevent these perpetual rights, which have existed for six hundred and ninety two years, from being extinguished at any time after the 'bundle' has been transferred?

Billy Welch, Bill Lloyd,
Brough Hill fair Community Representatives. 9th December 2022

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A66 Dualling – Brough Hil Fair Land Conflicting statements in consultation and in Draft DCO

1. Gypsy and Traveller Representatives (GTR) Bill Lloyd and Billy Welch, acting on behalf of the Brough Hill Fair Community, were first aware of the project for Dualling the A66 in February 2018, when Highways England (as it was then called) contacted the Appleby Fair Multi Agency Strategic Co-ordinating Group (MASCAG) which included GTR.
2. Discussions between GTR and Highways England took place intermittently for a year, via the County Council. Regular direct communication was established in 2019.
3. In February 2021 when it became clear that the land used for Brough Hill Fair (the Relevant land) may be required for the scheme, Traveller Representative Bill Lloyd entered a correspondence with local historian Councillor Anrew Connell on the subject of the rights granted in the 1330 Charter and the land ownership. (Copy correspondence available)
4. As a result, Bill Lloyd carried out a map search at Land Registry. He did not take copies but from memory he recalls that the Registered Title and Plan were visible, showing that the land belonged to MoD.
5. In March 2021 the GTR joined a focus group at the invitation of Rachel Smith of C J Associates, Stakeholder Lead and consultant to National Highways.
6. The Land Registry title was discussed with Rachel Smith and her colleagues. In conversation with Billy Welch she expressed her opinion that the registered rights were clear and secure and that the land could not be taken without the consent of representatives of the rights holder, so we had no cause for concern.
7. A site meeting was arranged with Billy Welch, Rachel Smith and David Keetley, Chairman of Warcop Parish Council. At that meeting Ms Smith repeated her assurances that GTR would be kept fully informed and consulted. In particular she stated that that our consent was required if the land was to be used for the new road. (Mr Keetley can confirm this evidence.)
8. With the support of Warcop Parish Council, Billy Welch expressed a strong preference for a different route which avoided the land at Brough Hill Fair, and which was known locally as 'The Billy Welch straight line'. Mr Welch relied on the assurances he had been given about the rights, and on the fact that the site was protected by its use since time immemorial.
9. At the first Compulsory Acquisition Hearing on 2nd December 2022, National Highways asserted that the relevant land was unregistered, and that the rights were not proprietary rights and would be transferred as a bundle without definition.
10. The GTR referred to a map search of Land Registry to obtain the Office Copy of the Registered Title and Plan but found that the registration entry for this land had been removed. No Title Number was shown, and the land was shown as unregistered.
11. Enquiries have been made at Land Registry and MoD to ascertain when, why and by whom the Registered Title entry was removed from the search, and to request copies of the documents. No replies have been received at today's date. 12th December 2022
12. We submit that National Highways have made conflicting statements, and the sudden disappearance of the Office Copy of the Land Registry Title should be questioned.

Billy Welch, Bill Lloyd
Brough Hill Fair Community Representatives