

Representations on the A66 Northern Trans-Pennine Project

Submitted on Behalf of Mr & Mrs Henshaw

18th December 2022

1. Introduction

- 1.1 We are instructed to submit these representations on behalf of Mr and Mrs Henshaw of Mainsgill Farm and Farm Shop, [REDACTED]
[REDACTED]
- 1.2 Messrs Henshaw own and occupy Mainsgill Farm where they run a highly successful Farm Shop. The Farm Shop was established in 1998 and has been extended a number of times, expanding the offering to include Tea Rooms, Gift Shop and a dedicated Butchery. The Farm Shop employs over 50 local people and has been driven by the passing trade on the A66 which averages just under 19,000 vehicles per day¹.
- 1.3 In addition, Messrs Henshaw farm approximately 645 acres of adjacent land, rearing high quality grass fed beef.
- 1.4 The Applicant proposes to acquire permanent rights over plot number 09-03-30 described as "*Permanent acquisition of 2567 square metres of agricultural land, trees, hedgerow, track and beck (Mains Gill), south of Mainsgill Farm, East Layton.*"

¹ Department for Transport Manual County Point 93251 data for 2021

1.5 The critical part of the scheme design for Messrs Henshaw's businesses is how the access to their property will be affected.

2. Representations

2.1 Adequacy of Consultations and Information provided by the Applicant

2.1.1 The Applicant has failed to provide sufficient information in respect of their proposals despite repeated requests. This failure has prejudiced Messrs Henshaw and undermines not only consultations carried out to date, but also the application itself.

2.1.2 We note that the failure to consult in a timely and accurate fashion, or provide sufficient information has also been raised by many other Parties including local authorities ².

2.1.3 The Applicant has repeatedly failed to deliver position statements agreed between the parties as necessary in respect of their proposed acquisition of Land and Rights.

2.1.4 We have requested, and the Applicant has failed to provide sufficient information in respect of:

- i) The extent and location of land and rights required including public rights of way
- ii) Accommodation works
- iii) Drainage
- iv) Impact on retained land
- v) How the design will minimise additional security works and potential for anti-social behaviour
- vi) Future signage

² TR010062-000598-Eden District Council AoC Response

2.1.5 We are also concerned that the plans for providing access to Mainsgill Farm Shop have been changed by the Applicant since the Statutory Consultations were carried out. Given the scale of impact that the access proposals have on Mainsgill, it is essential that accurate and timely consultation is undertaken.

2.1.6 In circumstances where the Applicant proposes to use compulsory purchase powers in a manner that will have a permanent and substantial impact on Messrs Henshaw's existing businesses it is the duty of the Applicant to engage and provide adequate detail and rationale not only to Messrs Henshaw but also the Inspectorate. We submit that they have failed in this duty and for this reason alone, the application should not be allowed to proceed.

2.1.7 We set out below further representations in respect of the proposed scheme as far as we are able to with the limited information provided to date; but must reserve the right to add to or amend these representations if or when further detail is provided by the Applicant.

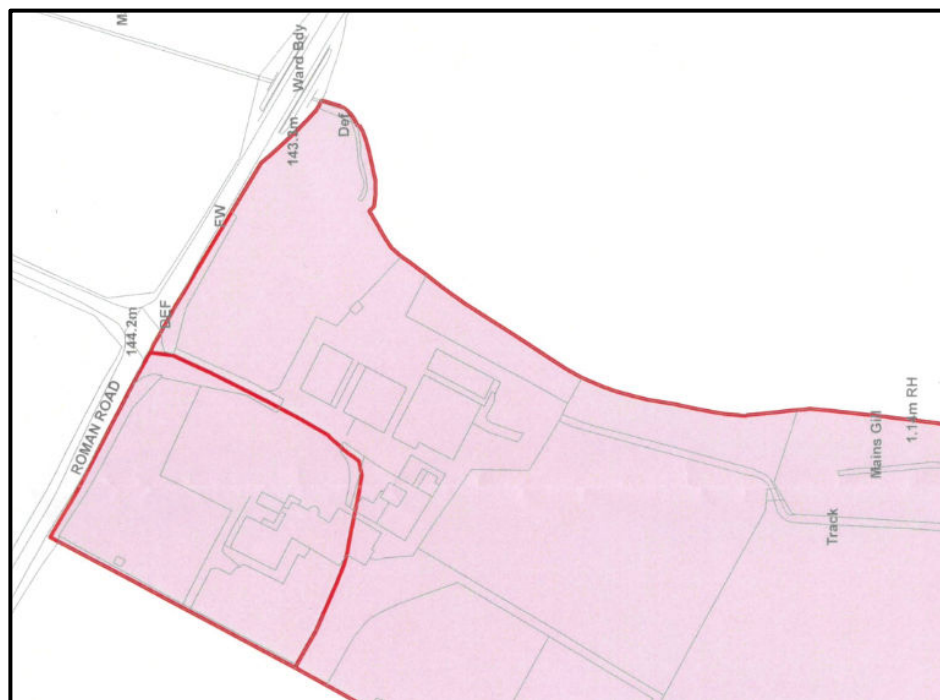
2.2 The Extent of Negotiations to Date

2.2.1 Whilst the inadequacy of information provided as referred to above does make any assessment of Messrs Henshaw's heads of claim extremely difficult, the Applicant is duty bound to engage with Messrs Henshaw and negotiate in respect of their proposed acquisition.

2.2.2 To date, no meaningful negotiation has been carried out in failure of this duty. As with the failure to provide adequate information, this unfairly prejudices Messrs Henshaw and we would therefore suggest that this application should be dismissed.

2.3 Access to Mainsgill Farm Shop

2.3.1 The existing access to Mainsgill is direct from the A66 as shown on the plan and photograph below:



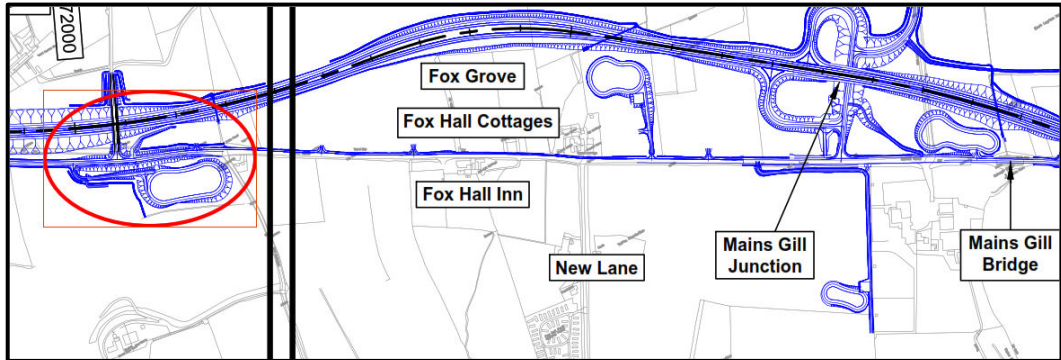


2.3.2 This access was created in 1999 following extensive consultation and negotiation between the Highways Agency and Highways Consultants instructed by Messrs Henshaw. It has enabled the development of the Farm Shop as it stands today.

2.3.3 As alluded to above, the initial design as provided for the Statutory Consultations included a service road from Warrener Lane to Brownson Bank. This was purely a service road only and access could not be taken directly onto the A66 at Brownson Bank. Messrs Henshaw discussed this with the Applicant during the Consultations periods and understood that this was the design that was being pursued. On this basis no objection was raised to the access proposals.

2.3.4 Since then, The Applicant has changed the design without consulting Messrs Henshaw, meaning that the once proposed service road is now in fact a through road and all vehicles can take access onto the A66 at Brownson Bank. For ease of reference, we

include below a plan extract showing ringed red, the additional access onto the A66 at Brownson Bank:



2.3.5 As is stands, the Applicant's proposals will deprive Messrs Henshaw of their existing valuable road frontage and direct access onto the A66; the additional junction at Brownson Bank will exacerbate the increased remoteness from passing trade, and mean that a proportion of the passing vehicles which otherwise would have used the Mainsgill junction will 'leak away' via Brownson Bank.

2.3.6 We do not believe that the environmental and financial costs of the additional junction at Brownson Bank can be justified when the Mainsgill junction will only be a short distance to the east. The Applicant has not provided any indication of the additional costs, financial, environmental or otherwise of their amended proposal, but we assume that in addition to the construction and land acquisition costs the additional junction at Brownson Bank will also generate a further requirement for land to offset the ecological impact.

2.3.7 For the grounds outlined above, we submit that the Applicant's modified proposals regarding access to the A66 at Brownson Bank have not been subject to proper consultation and will have a greater detrimental impact on Mainsgill than that initially proposed; but for clarity we confirm that we do not otherwise have any objection to the access arrangements for the Stephen Bank to Carkin Moor section of the scheme.

2.3.8 With appropriate consultation it is envisaged that mitigation measures can be put in place

2.4 Land between Mainsgill Farm Shop and the re-Aligned A66

2.4.1 At present, Messrs Henshaw enjoy road frontage onto the A66.

This allows them to ensure that their 'shop window' onto the main road is kept well maintained, free from litter, and attractive to passing traffic. They are also able to take the necessary security measures to minimise the risk of unauthorised visitors or anti-social behaviour taking place in front of the shop.

2.4.2 As a consequence of the paucity of detail and engagement from the Applicant we remain unclear as to how they intend to deal with the area of land between the re-aligned A66 and Mainsgill Farm Shop in terms of ownership or management responsibilities. This information is critical in assessing the impact of the scheme on Messrs Henshaw.

2.4.3 We have offered to the Applicant that Messrs Henshaw would be prepared to take ownership and management responsibility for the area in question, whether converted to wetlands or otherwise. If the Applicant does not agree to this, then it is imperative that they provide further clarity as to their intentions for the land, including how they intend to minimise the risk of unauthorised use or anti-social behaviour through design. It is also critical to understand who will be responsible for the future management of the areas, and what accountability or obligations they will have.

2.4.4 In the absence of such information, it is manifestly unfair to Messrs Henshaw to let the Applicant proceed.

2.5 Justification for the permeant acquisition of land or rights over land, and temporary land occupation; and the extent of those needs

2.5.1 We remain unclear that the Applicant does in fact require all of the permanent and temporary rights that they seek. The lack of detail or explanation from the Applicant has made it impossible to properly assess the extent of their need for the areas in question or efficiency of design.

2.5.2 The currently proposed route places a significant burden on Messrs Henshaw in particular through distancing their Farm Shop from the A66 and removing their direct access.

2.5.3 Due to the lack of substantive engagement from the Applicant, we are unclear whether they appreciate this impact and/or have allowed for it within their budgeting for compensation.

2.5.4 The compulsory acquisition of land and rights must not be taken lightly, and the burden falls on the Applicant to prove that it is entirely necessary to acquire the rights that they seek. If they fail to do so, as we suggest that they have here, there is no equitable way that the Application can proceed.

2.6 Proposed Ecological Mitigation Measures

2.6.1 The areas identified by the Applicant for ecological mitigation along the entire scheme route appear to have been arbitrarily identified without any reference to the nature or quality of the land in question. We are concerned to note that large area of the best agricultural land in the local area have been earmarked for ecological mitigation.

2.6.2 We have offered a number of times to meet with the Applicant's ecologists in order to identify more suitable areas for this, but to date the Applicant has failed to do so.

2.6.3 It is respectfully submitted that it '*should*' be regarded as common sense to locate these areas on the most marginal or poorer areas of agricultural land. This ensures not only that the impact on agricultural production levels is minimised but also that the compensation due to landowners is reduced through acquiring

lower value land, and minimising the adverse effects on farming enterprises.

2.6.4 The National Planning Policy Framework stipulates that planning and policy decisions should protect the best and most versatile agricultural land, and preserve soil quality³.

2.6.5 We therefore submit that the Application is substantially flawed in failing to properly consider or locate the ecological mitigation areas.

2.6.6 In order to control their 'shop window' between Mainsgill and the A66 as referenced above, Messrs Henshaw have offered to take ownership and responsibility for any wetlands located between the Farm Shop and the re-aligned A66. At the date of submission there has been no feedback or comment from the Applicant on this offer.

2.7 Liability for Infrastructure

2.7.1 The scheme should not impose any new liabilities on Messrs McSkimming in respect of new infrastructure/ embankments/ roads/ bridges/ ponds.

2.7.2 We would ask that the Applicant confirms that this will be the case.

2.8 Demonstration of the Availability of Necessary Funding

2.8.1 As we set out above, we do not consider that the Applicant is promoting the most efficient design for the Scheme, and nor have they considered the substantial compensation that would be due as

³ National Planning Policy Framework, Chapter 15 para.174 (a) – (b)

a consequence of this design choice. On this basis it must be considered that they cannot demonstrate that there is sufficient funding available to carry out the proposed scheme.

2.8.2 We submit that it would be inequitable to allow the application to proceed and by its existence continue to adversely affect the local community and Messrs Henshaw when it is not clear that the scheme will be viable.

2.8.3 Furthermore, we have identified a number of instances where it can be shown that the Applicant will unnecessarily incur additional costs and/or compensation burdens. The application must therefore be revised in order to avoid this and ensure that the Applicant does not fail in their fiduciary duty to ensure best value from public funds.

3. Conclusion

3.1 In conclusion, the Applicant has failed to provide adequate information or consult properly in respect of the proposed scheme, and their chosen design is unsuitable for a number of reasons. There has been a failure to properly consider the location of the ecological mitigation areas or provide clarity on how they will be managed in the future.

3.2 The Applicant has also failed to show that they have adequate funds available to implement the scheme, and has not attempted to negotiate in respect of the proposed acquisition.



18th December 2022