

Representations on the A66 Northern Trans-Pennine Project

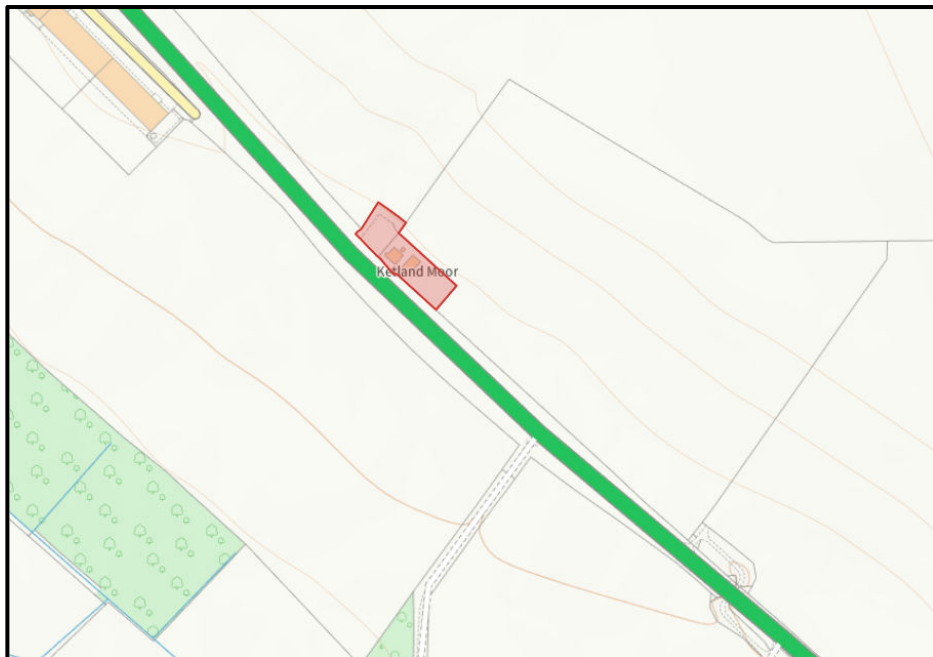
Submitted on Behalf of Mr M Carruthers

18th December 2022

1. Introduction

1.1 We are instructed to submit these representations on behalf of Mr M Carruthers of [REDACTED]

1.2 Mr Carruthers owns and occupies Café Sixty Six which is located adjacent to the existing line of the A66 between Warcop and Appleby. The address for the café is Ketland Moor, Appleby in Westmoreland, CA16 6LN, and the café and carpark are shown outlined red on the plan below:



1.3 The Applicant proposes to acquire permanent rights over the following areas:

06-01-10, 06-01-43, 06-01-46, 06-01-48,

Plus temporary rights over plot 06-01-41.

1.4 Mr Carruthers's cafe is reliant on passing trade, and therefore arrangements during the construction period, and for access thereafter are of critical importance to the viability of the business.

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 Mr Carruthers 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 Authorities¹.

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 In particular, 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 Applicant will mitigate adverse effects on existing businesses during the construction period, and afterwards

¹ TR010062-000598-Eden District Council AoC Response

vi) How the design will mitigate additional risks in respect of security and anti-social behaviour

vii) On-going responsibility for accesses, infrastructure and landforms created

2.1.5 In circumstances where the Applicant proposes to use compulsory purchase powers in a manner that will have a permanent and substantial impact on Mr Carruther's existing business it is the duty of the Applicant to engage and provide adequate detail and rationale not only to Mr Carruthers 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.

2.1.6 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 Mr Carruthers' heads of claim extremely difficult, the Applicant is duty bound to engage with Mr Carruthers 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

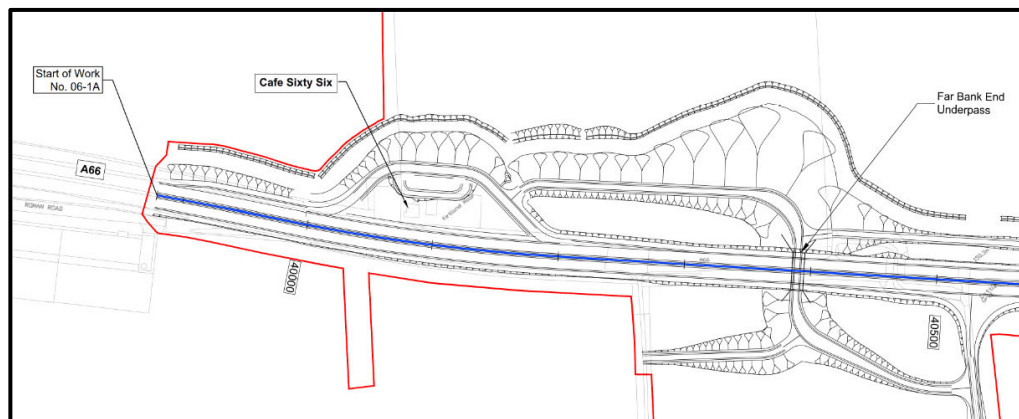
unfairly prejudices Mr Carruthers and we would therefore suggest that this application should be dismissed.

2.3 Access

2.3.1 At present Café Sixty Six visitors wishing to continue westbound turn at the Far End Junction a little under 200m away from the café as indicated edged blue:



2.3.2 The Applicant proposes by design to close the Far End junction, and instead provide an underpass which café customers would not be able to access. A customer wishing to carry on towards Penrith would need to drive an additional 2.5 miles turning at the Sandford Junction near Warcop. The proposed design is shown on the plan extract below:



2.3.3 It is submitted that the Applicant could entirely reasonably provide access to the café via the Far Bank End underpass which would allow westbound traffic to carry on their journey without adding a further 2.5 miles to their journey. Provided that this was accompanied by appropriate signage, this would appear to be a pragmatic, environmentally friendly and cost-effective solution. In addition, we understand some of the other users of the underpass would be satisfied with this proposal.

2.3.4 The café' business model is based around being right on the roadside, and easy to access for anyone travelling on the A66. Providing access through the underpass would help to minimise the losses suffered by the café and retain employment in the local area without requiring any significant additional construction.

2.3.5 In addition, during the construction period customers will simply want to continue through the roadworks and not be in roadworks for longer than they need to be thereby will not stop and visit Café Sixty Six. The Applicant has not considered this impact on Mr Carruthers or Café Sixty Six nor have they addressed how this would be

prevented to ensure Café Sixty Six continues to operate as they are currently.

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

2.4.1 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.

2.4.2 The currently proposed design places a disproportionate burden on Mr Carruthers, with the potential for long lasting reductions in trading volume and as a consequence the underlying property value.

2.4.3 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.

2.4.4 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.

2.5 Land not under Active Management

2.5.1 The Applicant's design for the scheme creates numerous areas of land which will not be actively managed or 'no-mans' land, along the length of the scheme. Aside from creating additional costs in terms of future requirements to manage and maintain these areas, it also invites unauthorised occupation and anti-social behaviour.

2.5.2 If one looks at similar areas of open land in the local area, it is plain to see the issues that they cause, and that here they could be entirely avoided by more careful design.

2.6 Liability for Infrastructure

2.6.1 The scheme should not impose any new liabilities on Mr Carruthers in respect of new infrastructure/ embankments/ roads/ bridges/ ponds.

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

2.7 Demonstration of the Availability of Necessary Funding

2.7.1 As we set out above, we do not consider that the Applicant is promoting the most appropriate design for the Scheme, and nor have they considered the substantial compensation that would be due as a consequence of this design choice (and which might be avoided). On this basis it must be considered that they cannot demonstrate that there is sufficient funding available to carry out the proposed scheme.

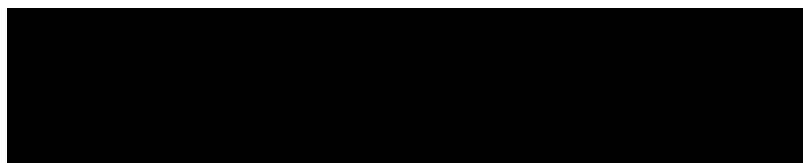
2.7.2 We submit that it would be inequitable to allow the application to proceed and by its existence continue to adversely affect the local

community and Mr Carruthers when it is not clear that the scheme will be viable.

2.7.3 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 in respect of the proposed scheme, and their chosen design is unsuitable for a number of reasons, not least that it exacerbates the impact on Mr Carruther's business and will risk increased levels of anti-social behaviour.
- 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