

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

WRITTEN SUBMISSIONS OF NFU REGARDING THE A66 Northern Trans- Pennine project

DEVELOPMENT CONSENT ORDER APPLICATION BY NATIONAL HIGHWAYS

PLANNING INSPECTORATE REFERENCE NO TR010062

**SUBMISSIONS OF NATIONAL FARMERS UNION ON ISSUES FOLLOWING THE COMPULSORY
ACQUISITION HEARING ON 2nd DECEMBER 2022.**

DATE 14th December 2022

**Louise Staples
NFU
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire**

1.0 Introduction

1.1 Submissions on behalf of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order (DCO) by National Highways for the A66 Northern Trans-Pennine project. The NFU is making a case on behalf of its members who are affected by the DCO and there are over 25 members directly affected. The NFU is submitting this submission to highlight issues of concern which have been raised by NFU members who will be affected by this project and where raised at the compulsory acquisition hearing on 2nd December 2022.

2.0 **Compulsory Acquisition (CA) powers sought comply with s122(2) of the Planning Act 2008.**

S 122(2) states the following:

*An order granting development consent may include provision authorising the compulsory acquisition of land only if the **[F1Secretary of State]** is satisfied that the conditions in subsections (2) and (3) are met.*

(2) The condition is that the land—

(a) is required for the development to which the development consent relates,

(b) is required to facilitate or is incidental to that development,

It has been raised to the NFU by members affected by this proposed scheme and by their agents who are acting for them that NH is not able to be clear about the extent of land it requires for the scheme or which land it requires on a permanent or temporary basis. The NFU would expect NH to have a clearer understanding at this point in the proceedings about what land is required only on a temporary basis and may be able to be returned back to agriculture. It is not right that NH acquire land permanently even if the land is returned to landowners at the end of the scheme. The impact will be far greater on landowners from the start and they will not know what land may be returned. Whereas if land is only taken on a temporary basis from the start of the project all parties are clearer.

Landowners affected are concerned about the amount of pink land that has been highlighted and believe this to be excessive and when asked NH are not able to give a clear explanation as to why they need that land for the scheme.

NH at the hearing highlighted that the land highlighted for acquisition at the present time is the worst case scenario within the design and does not mean that all of it will be purchased and that they will only take land which is necessary as further design is progressed.

It seems that NH have highlighted the maximum area of land that is required for the construction and build of the proposed scheme and the NFU believes that not all of this land is necessary or proportionate rights to be acquired. Once the DCO is approved it will be very difficult to stop NH acquiring land on a permanent or temporary basis which is not needed for the scheme. All construction contractors will say they need all the land that has been highlighted pink.

If as stated at the hearing NH will only take the land required, how is it going to be possible to enforce this?

Further a lot of land has been highlighted for habitat mitigation, but NH are unable to be clear as to why this land is needed for habitat mitigation, is it to meet no net loss requirements from the construction or to meet biodiversity net gain requirements. In many cases NH will not need to acquire land on a permanent basis for habitat mitigation and the land could be left in the

ownership of the landowners and a management agreement entered into to maintain the land in the required habitat. This must be considered and offered by NH.

At the present time the NFU believe that NH cannot give clear justification for the land that is to be acquired and therefore this DCO application should not be granted until NH can give a clearer explanation as to why different areas of land are to be acquired.

2.3 Reasonable Alternatives to CA and Temporary Possession

It has been brought to the NFUs attention that NH have not been carrying out enough negotiations in the last 6 months with many of the landowners to acquire land by agreement rather than CA. NH are trying to say that they are offering to acquire land by agreement and have offered a 20 percent uplift in value for the land but NH cannot be clear with landowners as to exactly what land is required on a permanent and temporary basis and so this proposal by NH is not able to be progressed in many cases.

The NFU therefore believes that at this point in time the DCO application should not be approved until NH have carried out in depth negotiations with landowners to reach voluntary agreements.

2.4 Land and Rights Proposed are Necessary and Proportionate

The NFU believes that NH cannot clearly say what land and rights are needed due to reasons highlighted above mainly due to lack of design and negotiation with landowners. Therefore, NH cannot say that the land and rights sought are proportionate and necessary.

2.5 Why Notice Periods in the Neighbourhood Planning Act 2017 are not reflected Article 29(2).

The NFU raised at the hearing that they would like to see NH adopting 3 months notice as has been highlighted in the Neighbourhood Planning Act 2017. A three month notice period is in place on HS2 Phase 2a, Birmingham to Crewe and as was highlighted on numerous occasions by NH this is a very large road scheme which is proposed and so landowners to minimise impact on their businesses are going to need as much notice as possible. As stated at the hearing the NFU experience from working on other NSIP schemes is that a 14 day notice is not enough. The NFU does not see how increasing the length of the notice period will reduce the flexibility on NH and their contractors, especially if as stated NH are intending to give prior notification in advance of the statutory notice being served.

2.6 DCO: Article 15 – Authority to survey and investigate the land.

2.6.1 The Examining Authority raised that it would like to better understand the wording at Article 15 (1) (b) which states the following:

- At 15 (1) (b) it is stated that '*the undertaker where reasonable necessary may enter any land which is adjacent to, but outside the Order limits*'.

The NFU raised that they are concerned that this wording has been included and have raised this at other DCO hearings that this is not normally requested and the DCO will only allow the

undertaker to enter land within the Order limits which is affected by the authorised scheme to carry out any surveys or investigation.

Further under Article 2: Interpretation, there is no meaning of the word “adjacent”.

National Highways at the hearing highlighted that the surveys which can be undertaken have to be reasonably necessary for the construction of the scheme and that most of the surveys that will be required outside order limits are likely to be ecological surveys which could include surveys for badgers, reptiles and bats. NH also highlighted that they are taking the everyday meaning of “adjacent” which is next to or near subject land.

The NFU would like to see this definition included under Article 2: Interpretation and as raised at the hearing the NFU would like NH to consider and state a maximum distance that surveys can be carried out within from the order limits. This will then be clear to landowners and occupiers where these surveys can take place. The NFU is not clear how NH will show and justify that the survey is necessary for the scheme.

2.7.2 The NFU thanks NH for including the wording as drafted in the **draft DCO at 15(3) the notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.** The NFU as raise at the hearing believes that Article 15 at 15(3) should also state that the notice must indicate the following:

- Who will be taking entry
- The date of entry and for how long
- The type of equipment if any will be used.

The NFU believes strongly that it is only right that a landowner should know who is coming on to his land, how long they will be on the land for carrying out the survey and the vehicles and equipment that will be brought on to the land.