

**Representors' Unique Ref Nos. Alan Bowe - 20032094, John Lane - 20032106,  
Sarah Crane - 20032112 & James Hare - 20032109**

**IN THE MATTER OF THE NATIONAL HIGHWAYS A66 NORTHERN  
TRANS-PENNINE PROJECT DEVELOPMENT CONSENT ORDER  
APPLICATION**

**AND IN THE MATTER OF LAND TO BE ACQUIRED PERMANENTLY AT  
THE WINDERWATH ESTATE, PENRITH, CUMBRIA**

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**CAH2 HEARING - 01 MARCH 2023**

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**POST HEARING STATEMENT ON BEHALF OF  
JOHN RICHARD LANE, JAMES HARE, ALAN MOORE BOWE  
AND SARAH CRANE AS THE TRUSTEES OF THE  
WINDERWATH 1989 SETTLEMENT TRUST  
("the REPRESENTORS")**

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1. The Applicant seeks compulsory purchase powers to acquire from the Representors approximately 146 acres of land under the draft DCO being sought for the National Highways A66 Northern Trans-Pennine Project ("the Project").
2. The Representors rely on Government guidance in *Compulsory purchase process and the Crichel Down Rules* (updated July 2019), particularly at paras 12 and 13. Essentially there must be a compelling case in the public interest to acquire land compulsorily.
3. For the reasons that follow, the Applicants have not in the Representors opinion made out a compelling case.

4. First, in respect of the Applicant's Response to Written Representations (REP2-015) in response to paragraph 90 of the Representors Written Representations (REP1-129, page 17), where the Representors had said that there is no statutory obligation to provide a net biodiversity gain, the Applicant states "*however opportunities to maximise biodiversity enhancements have been sought where possible*". The Applicant also states in its Responses to the Examining Authorities Written Questions (REP4-011) at the response to question CA1.2 that "*one of the project objectives is to seek to achieve no net loss as a minimum and looks to deliver net gains where such opportunities exist*". These Responses are ambiguous as to whether or not biodiversity net gain is being sought that adversely affects the land of the Representors and goes beyond the present statutory requirements applicable to the Applicants proposals. There can be no compelling case to acquire land for such biodiversity gain, and any such land should be removed from the land to be compulsorily acquired.

5. Second, the Applicant's Response to Written Representations (REP2-015) in response to paragraph 15-19 of the Representors Written Representations (REP1-129, page 4), states that the primary policy document on recognition of the best and most versatile agricultural land is the National Policy Statement for National Networks and not the National Planning Policy Framework (NPPF). The former document however replicates at paragraph 5.168 the NPPF wording. The Representors therefore contend that the location and compulsory acquisition of the environmental mitigation land at Whinfell House being mainly grade 2 is not in line with either policy. As such there is no compelling reason for compulsory acquisition of plots 03-04-04, 03-04-12 and 03-04-14.

6. Third, if some land of the Estate is required for environmental mitigation, the 18 acres of “Adrian’s Wood”, which the ExA inspected yesterday, which was planted in direct anticipation of the scheme should be used for the purpose. The Representors believe that the environmental mitigation calculations ignore this newly planted woodland which should be accounted for. The Representors believe this would remove the need for any of the proposed environmental mitigation elsewhere on the Estate and particularly the blocks of mitigation planting and management proposed on Whinfell House Farm (plots 03-04-04, 03-04-12 and 03-04-14). The Representors maintain that including the habitat benefit that has been created by this new planting and substitution of “Adrian’s Wood” would consequently reduce the area of land being sought for acquisition.

7. Fourth, in their Representations REP1-129 (paragraphs 85-88) the Representors stated that permanent acquisition of land for the environmental mitigation is unnecessary as the Representors will offer rights and enter into restrictive and enforceable positive covenants to plant and manage these areas in an agreed manner. The Applicant is seeking powers to acquire rights in Article 22 of the DCO; these powers can be used, and therefore its requirements can be protected. Rights for these purposes are very common, such as in relation to HS2. To date there have been no proposals from the Applicant on the use of such rights.

8. Fifth, the Applicant has suggested in their Response to Written Representations (REP2-015, page 10 – paragraph starting “Regarding point 20.....) that the loss of land for environment mitigation can be addressed by

compensation. The possible payment of compensation does not justify compulsory acquisition where that acquisition is unnecessary in the first place, either because excessive areas are being sought, or where the Applicant's interest can be protected by taking rights only over the relevant land.

9. Sixth, the DCO documentation still shows the majority of land being permanently acquired. The Representors now know that some areas are only required for temporary purposes such as compounds where unlike the situations set out by the Applicant in their answers to the ExA question CA1.1 (REP4-011) there is no underlying essential environmental mitigation once the temporary use ceases. Examples of this are plots 03-02-01 (majority of the land is required for facilitating the diversion of the major gas main); plot 03-02-18 (compound); plot 03-03-06 (compound and reprofiling); plot 03-03-32 (temporary diversion) and plot 03-02-33 (compound). All these plots are shown on the Environmental Mitigation Maps (APP-041) as "*Agricultural seeded grassland with intention for potential return to landowner by agreement*". It is not therefore essential mitigation land and as such the Representors object to the extent of the proposed permanent acquisition which should be reduced to a minimum and not be acquired permanently.

10. In summary, and to the extent that the above matters demonstrate that excessive and unnecessary areas of land are being sought to be compulsory acquired, the Applicant has no compelling case for the use of powers of compulsory purchase.