

**Representors' unique ref no.HAL20307**

**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 FOR THE  
BROUGH HILL FAIR**

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**DEADLINE 5 SUBMISSIONS 14 MARCH 2023**

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**SUBMISSIONS ON BEHALF OF  
J HERON, MRS D AND I HERON, MR J AND MRS M  
HERON, MR S AND MRS C HERON AND MR D AND MRS  
M HERON (“the REPRESENTORS”)**

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**Introductory**

1. These submissions, on behalf of the Representors, concern the Applicant's proposal to acquire land from the MOD (“the Bivvy Site”) for the siting of the Brough Hill Fair (“the Fair”) immediately adjoining Eastfield Farm, Warcop, owned by the Representors.
2. The Representors have occasional agricultural use of the Bivvy Site. This land is Agricultural Land Classification grade 3.
3. In January 2022 the Representors put forward their own proposed site for the Fair on land they own shown at Annex A (“the Heron Site”). This site abuts the existing Fair Site and lies to the south of it. It meets the criteria of a safe site and suitable for the purposes of the Fair. If the Representors claimed privilege for the offer of the Heron Site at the time of the offer, that privilege

is now withdrawn. The Heron Site shows that there is another suitable site for the Fair. It is understood that the Bivvy Site is not acceptable to the parties concerned with the operation of the Fair, the Gypsy and Travellers Representative (Mr Welch), and the Applicant should have, and can still, consult with those parties as to the acceptability of the Heron Site.

4. During the supplementary consultation phase in March/April 2022, the Applicant had put forward an alternative site for the Fair south of the A66 and some 1.6 miles to the east of the current site, with better accesses. That proposal was not brought into the DCO application, but the proposal shows that there are possible sites for the Fair.

5. Notwithstanding the offer of the Heron Site and the above mentioned consultation, the Bivvy and existing Fair Sites are identified for permanent acquisition on Crown Land Plans sheet 4, Scheme 06, plots 06-04-32 and 06-04-43, with the whole of plot 06-04-32, the Bivvy Site, intended for the relocated Fair, together part of plot 06-04-43 not required for the roadworks also for the same purpose.

6. The Representors maintain their opposition to the taking and use of the Bivvy Site (plot 06-04-32) for the purpose of providing a new site for the Fair.

### **Policy considerations**

7. 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.

8. Under paragraph 84(b) of the NPPF 2021 planning policies and decisions should enable the development and diversification of, inter alia, agricultural businesses.

9. Under paragraph 174(b) of the NPPF 2021 planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, including the economic and other benefits of the best and most versatile agricultural land (grades 1, 2 and 3a of the Agricultural Land Classification).

10. Under paragraph 201(e) of the NPPF, planning policies should safeguard existing sites for the manufacture of concrete and concrete products.

11. Each of the above policy considerations are invoked in respect of the use of the Bivvy Site for the Fair.

**Contentions relating to the siting of the Fair**

12. The Brough Hill Fair was the subject of REP3-045 Technical Note 7.16 at Deadline 3 dated 24 January 2023. This replaced Appendix 7 to REP1-009. The replaced Technical Note addressed two matters, noise and boundary security adjoining the A66. The Note did not address the suitability of the Bivvy Site for the location of the Fair. It failed to consider the safety concerns of conjoined use of public and private access roads to the Concrete Plant, the Farm Buildings and the Bivvy Site by heavy commercial vehicles and horse-drawn vehicles.

13. The Plan at Appendix B hereto identifies the following three features adjoining the Bivvy Site.

14. First, the Bivvy Site lies immediately to the north of, and abuts, the farm buildings (“the Farm Buildings”) of Eastfield Farm owned and farmed by the Representors. These buildings are used for an intensive dairy herd enterprise and include livestock and feed buildings, and the milking parlour. In this area there are large agricultural machines operating regularly.

15. Second, the Bivvy Site also adjoins several houses occupied by the Representors as identified in the plans and documents at Annex B hereto.

16. Third, to the west of the Farm Buildings the Representors have a haulage yard and concrete plant (“the Concrete Plant”). This operates 24 hours a day and up to 365 days a year.

17. A substantial number of heavy vehicles will continue to access the Concrete Plant on the completion of the Applicant’s project using public and private access routes shown on the plan at Annex C.

18. Cumbria CC and Eden DC have both declined to take on responsibility for the management of the Bivvy Site for the Fair: see REP2-028. It seems the MOD is not prepared to continue any management role and intends to sell the Bivvy Site, subject to the Crichel Down Rules.

19. The use of the Bivvy Site for the relocated Fair is not acceptable to the Representors for the following reasons.

20. First, the Applicant has failed to carry out any assessment of the noise and disturbance that the Fair will cause to the use of the farm buildings for the dairy herd. Dairy cows are very sensitive to noise and disturbance, and milk loss is a likely consequence of frightened dairy cows. These are very serious animal welfare concerns.

21. Second, there would be a high risk to milk safety and security due to potential contamination of the Bivvy Site and surrounding environment due to a concentration of people and horses on land immediately abutting the Farm Buildings. Such contamination would not be limited in time to the duration of the Fair, but would continue for some time thereafter and be dependent on proper and effective management.

22. Third, there would be a high risk to animal feed bio-security.

23. Fourth, safety of farm employees

24. Fifth, potential accessibility issues for milk collections.

25. Sixth, the conjoined use of the public and private access routes, as shown on Annex C, by heavy vehicles accessing the Concrete Plant 24 hours a day and horse driven vehicles accessing the Bivvy Site for the Fair, is both dangerous and wholly unacceptable. The Representors understand that the Applicant has failed to carry out any risk assessment taking into account the heavy vehicle use of the Concrete Plant or at all.

26. Seventh, inadequate arrangements for ownership, management and regulation for either the period of the Fair each year and the periods between Fairs. As noted above, there are considerable risks to the Farm Buildings and the dairy herd enterprise which must be managed during a Fair and for some time thereafter.

27. Eighth, the Fair on the Bivvy Site will be within 10m of one house and 20m of another residential home, and close to three others raising concerns of noise disturbance, the possibility of waste close of houses, and possible security issues. See Annex B.

28. Ninth, the following alternative sites have been suggested:

- (1) The Heron Site to the east of Eastfield Farm, incorporating a part of the existing Fair site, as detailed on Annex A hereto.
- (2) By moving the A66 to a route further north “the Billy Welch Straight-Line” and leaving the Fair in situ.
- (3) An alternative site elsewhere such as that put forward in the March/April 2022 supplementary consultation at NH A66 Northern Trans-Pennine project Winter Update March 2022.

29. Tenth, the above concerns might be mitigated if, after the Bivvy Site is acquired by the Applicant, it is then transferred to the Representors, subject to the rights of the Fair, so that the Representors can manage the Site.

30. Eleventh, there has been an unwillingness on the part of the Applicant to engage on the problems that will be caused by the siting of the Fair immediately abutting the Representors’ homes, Farm Buildings, Concrete Plant and accesses thereto, which is very unhelpful.

31. Twelfth, some of these issues are readily apparent from the two letters at Annex C hereto from the NFU dated 18 October 2021 and from Arla, the milk buying company, dated 25 October 2021.

### **Summary**

32. First, for the reasons set out above, in particular having regard to the possible alternative sites, including the Heron Site, the Applicant has shown no compelling case for the use of powers of compulsory purchase to acquire the Bivvy Site and terminate any interest the Representors may have in it, and then use it for the Fair. There are alternative sites for the Fair that address the above concerns.

33. Second, the taking of grade 3 agricultural land, and the creation of potential harms to the use of the Farm Buildings for the dairy and related enterprises, would be contrary to the advice in paragraphs 84 and 174(b) of the NPPF.

34. Third, by placing the Fair on the Bivvy Site, there will be unacceptable risks from conjoined use of access roads to the Concrete Plant contrary to paragraph 210(e) of the NPPF.

35. Fourth, the Representors contend that powers to acquire the Bivvy Site should be removed from the DCO.

**Falcon Chambers  
Falcon Court  
London EC4Y 1AA**

**BARRY DENYER-GREEN  
Counsel  
14 March 2023**

## **Annexes**

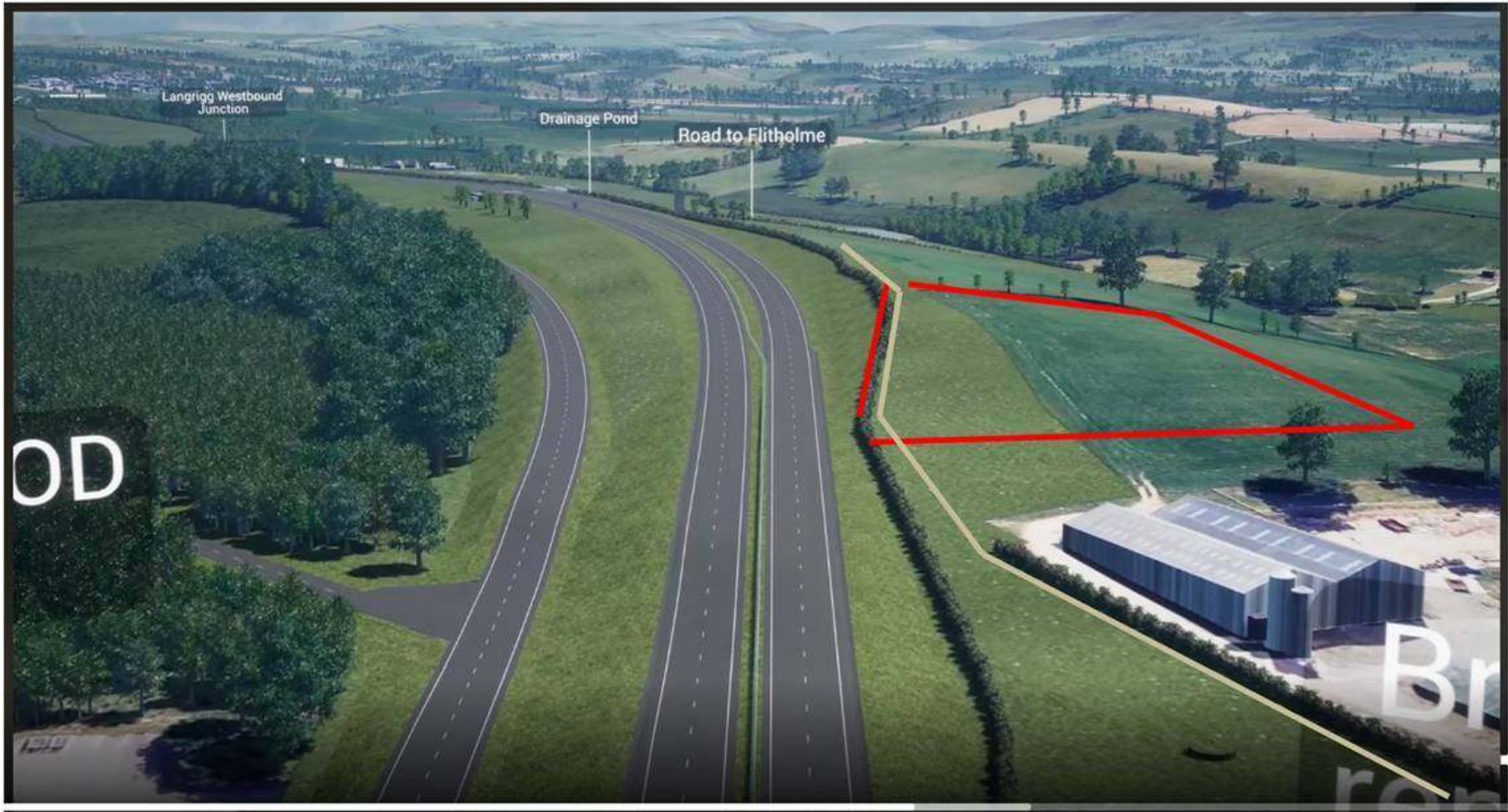
Annex A: identification of the Heron Site

Annex B: layout of Farm Buildings, residential homes, haulage yard and  
Concrete Plant near Bivvy Site

Annex C: plan showing access routes for the Farm Buildings, the Concrete  
Plant and the Fair when project completed



Annex A: identification of the Heron Site



— Proposed boundary not to scale

— Road from Flitholme junction

Annex B: layout of Farm Buildings, residential homes, haulage yard and Concrete  
Plant near Bivvy Site



Family home

Access into farmyard,  
haulage yard and  
batching plant and  
family homes

Batching Plant and Haulage Yard

Proposed Brough  
Hill Site

Family home

Feed and Livestock Buildings

Intensive Farmyard including dairy unit

Annex C: plan showing access routes for the Farm Buildings, the Concrete Plant and the Fair when project completed

**Applicant's Proposed access routes to Farm Buildings, Concrete Plant and the Fair post completion**



