

**A66 Northern Trans-Pennine Project
TR010062**

**7.37 Summary Statement on Brough
Hill Fair Relocation**

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

04 April 2023

Infrastructure Planning

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A66 Northern Trans-Pennine Project
Development Consent Order 202x

**7.37 SUMMARY STATEMENT ON BROUGH HILL FAIR
RELOCATION**

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1 Introduction

- 1.1.1 National Highways (“**the Applicant**”) notes that submissions were made at Deadline 5 by the Brough Hill Fair Community Association [REP5-031] and George F White LLP 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 [REP5-044] (the “**Heron family**”) outlining concerns in relation to the proposed replacement Brough Hill Fair (“**BHF**”) site.
- 1.1.2 Mr Billy Welch is the representative of the Gypsy Community and Mr Bill Lloyd is the representative of the BHF Community Association. The Applicant considers that the issues discussed in this document are relevant to both organisations and therefore refers to them collectively as the “**Gypsy Community**” throughout.
- 1.1.3 The Applicant has been in regular consultation with both the Gypsy Community and the Heron family before and throughout the Examination.
- 1.1.4 The Applicant considers that the concerns of the Gypsy Community and the Heron family are linked and has therefore produced this document to assist the Examining Authority (the “**ExA**”), by responding to the current and outstanding issues relating to the BHF and its proposed replacement site. Reference is made to other documents submitted by the Applicant during the Examination as appropriate.
- 1.1.5 The Applicant also refers to the ExA’s Further Written Questions [PD-012] (“**ExQ2**”), specifically questions CA 2.3 and HE 2.1 relating to the replacement BHF site and is using this document to supplement responses to these questions as identified below.

2 Summary of Concerns

- 2.1.1 The Applicant considers that, with regard to the concerns from the Gypsy Community and the Heron family, submitted at Deadline 5, the issues relating to the replacement BHF site that have arisen throughout the Examination can be split into three categories, as follows:
- the suitability of the replacement BHF site and the consideration of alternative replacement sites;
 - the intangible cultural heritage of the BHF, including concerns relating to human rights; and
 - the future management and ownership of the replacement BHF site (previously referred to as the “Bivvy Site”).
- 2.1.2 The following sections set out the Applicant’s response to each issue in turn. In addition, the Applicant has included at the end of this document sections covering other issues that have arisen in relation to the detailed design stage, further support for the Gypsy Community and an update on its Operational Risk Assessment.

3 Consideration of Alternative Sites

3.1 Need for Replacement

- 3.1.1 The Applicant has carried out a full appraisal of reasonable alternatives for the Project as a whole and concluded that all the alternatives assessed, due to the road alignment, would result in a loss of the current BHF site. The Applicant explained the need to replace the BHF site in its material produced for statutory consultation (page 67 'A66 Northern Trans-Pennine project Statutory consultation Autumn 2021, booklet) and in a supplementary consultation. The Applicant also refers to section 5.5 of the Project Development Overview Report [Document Reference 4.1, APP-244] for the initial assessment of the BHF site, particularly paragraphs 5.5.84 – 5.5.89, which set out the development of the design of the Project, including alternative routes considered and the decision-making process.
- 3.1.2 The issue of alternative sites for the BHF is also addressed in the Applicant's Post Hearing Submissions for Compulsory Acquisition Hearing 2 [Document Reference 7.29, REP5-023] under Agenda Item 4.0 in a post hearing note. In that note, the Applicant in turn referred to pages 41-42 and pages 54-55 of its Response to Written Representations made by Affected Persons at Deadline 1 [Document Reference 7.6, REP2-015]. Further detail on this process is provided in the Applicant's Issue Specific Hearing 3 Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.30, REP5-029]. This demonstrates that the Applicant has considered the need to replace BHF throughout the preliminary design stage and into the Examination.
- 3.1.3 The Applicant's project team has engaged with the Heron family and the Gypsy Community throughout the preliminary design stage and discussions are ongoing. This engagement includes meetings with Billy Welch, which are documented in a Statement of Common Ground [the latest version of which, Rev 3 is at Document Reference 4.5, REP5-011, submitted at Deadline 5]. The Applicant has always acknowledged the historic and cultural importance of the BHF to the Gypsy Community.

3.2 EqlA and Loss of Land

- 3.2.1 In addition, the Applicant notes that the Equalities Impact Assessment ("**EqlA**") submitted with the Development Consent Order ("**DCO**") application [APP-243] acknowledges the importance of the BHF to the Gypsy Community. The EqlA acknowledges that the Project would lead to a direct loss of most of the BHF site, which will be required for construction of the proposed Project. The loss of the majority of the existing site and the proposed alternative sites were discussed in a number of meetings with Billy Welch as representative of the Gypsy Community in the preliminary design stage, leading up to statutory consultation (autumn, 2021). In regard to feedback at statutory consultation, the design team sought an alternative location for the BHF. A supplementary consultation was undertaken (February 2022) where two alternative sites were considered: (1) the proposed replacement BHF site, which lies to the immediate west of the

existing site and is currently used by the Ministry of Defence (“**MoD**”) as a “camping site and training area”; and (2) an alternative eastern site, which sits to the south of the A66, approximately 1.6 miles to the east of the current site and immediately south-west of Brough. A summary of matters raised and the outcomes from this supplementary consultation are provided in Chapter 7 of the Consultation Report [Document Reference 4.4, APP-252] and its supporting Annex P [Document Reference 4.4, APP-273].

3.3 Selection and Suitability of Replacement Site

- 3.3.1 The Gypsy Community had reservations about both sites, however it was concluded by the Applicant’s project team that the proposed replacement BHF site is the preferred replacement site. This was due to several factors arising when the Applicant assessed each of the potential replacement sites against the identified criteria, which are summarised in REP5-029. The proposed replacement BHF site is a relatively flat site, with 5.4 acres of usable area (i.e. the same size as the existing BHF site). The replacement BHF site is within both the extents of Scheme 06 ‘Appleby to Brough’ and the Order limits, alongside being south of the existing A66 and therefore outside the MoD training range and North Pennines AONB. Safe access to the replacement BHF site is provided via Station Road, which is an existing local road. As discussed later in this document, the proposed layout for the replacement BHF site also utilises part of the existing BHF site and the Applicant has reached an agreement with the MoD to acquire the land for the proposed replacement site. In addition, it is this site where appropriate mitigation and management measures could address issues raised with the suitability of the replacement BHF site. This may include additional works to make it wholly suitable for its intended use. The details of this will be confirmed during detailed design but could possibly include re-profiling of the land and appropriate boundary treatments, including fencing, screen planting and bunding along the various boundaries.
- 3.3.2 The details of the formal Scheme for the replacement BHF site would be developed in consultation with representatives of the Gypsy Community and the relevant local authorities and submitted for the approval of the Secretary of State in accordance with article 36 of the draft DCO.

3.4 Public Sector Equality Duty

- 3.4.1 For completeness, the Applicant also refers to Agenda Item 5 and Appendices 5 to 9 inclusive of its Post Hearing Submissions for Issue Specific Hearing 2 [Document Reference 7.3, REP1-009]. Alongside responses already covered above, the Applicant responded to additional concerns from the Gypsy Community at this earlier stage and referenced the EqIA [Document Reference 3.10, APP-243], regarding bunding and noise modelling, which again demonstrates that the Applicant has had regard to its public sector equality duty during the development of its proposals for the Project, alongside ongoing consultation and engagement. The Applicant also confirmed that it understands the concern regarding the loss of cultural connection in relation to the BHF but responded that the BHF has not been at its current location for a particularly long time, when

considered in the long-term context of the BHF's existence. Indeed, the replacement BHF site sits next to the current BHF site and the Applicant is seeking to ensure the continuity of the traditions, rights and activities in relation to the BHF through re-provision and by incorporating as much of the current BHF site that remains following the implementation of the Project into the replacement BHF site as is practicable.

3.5 Consideration of Sites suggested by the Gypsy Community and the Heron Family

3.5.1 In relation to the suggestion by the Gypsy Community that the A66 road alignment be moved to the north further into the Area of Outstanding Natural Beauty following what is known as the "Billy Welch straight line", the Applicant refers to its Responses to the Examining Authority's Written Questions submitted at Deadline 4 [Document Reference 7.24, REP4-011] at PC 1.1. Here the Applicant explained that although this alignment would retain some local accesses, the MoD playing field and the current Brough Hill Fair site, due to impacts on both the AONB and operational MoD land the Applicant does not believe this alternative alignment to be a deliverable proposal. There is a risk that operational MoD land could not be secured and, given these impacts, development consent would not be granted for the Project with this alternative alignment. Given that the DCO could not authorise the compulsory acquisition of such land without Crown consent, any proposal which is reliant upon such land which may not be secured by the Applicant from the MoD poses deliverability challenges. As such, the "Billy Welch straight line route" was not developed or considered further by the Applicant. In addition, the Applicant also refers to its Post Hearing Submissions for Issue Specific Hearing 1 [Document Reference 7.2, REP1-006] in which it explained under Agenda item 2.2 the route selection process in this location including in respect of alternative alignments to the north of the proposed route.

3.5.2 In relation to the alternative site proposed by the Heron family, this option is outlined in the Applicant's Deadline 5 Submission – 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority's Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.32, REP5-029], from paragraphs 3.3.37 to 3.3.43 including the reasons for not taking it forward. As outlined at paragraph 3.3.45, the primary reasons for the selection of the replacement BHF site include the means to improve the access to the site via the local road network, the comparable size and topography of the site and the proximity and means to connect with the existing BHF site to maintain the cultural connection that is of significance to the Gypsy Community.

3.6 Acquisition of Land for the Replacement BHF Site

3.6.1 The Applicant is making good progress in discussions with the MoD for the acquisition of the land sought for the replacement BHF site. The Applicant anticipates being able to provide the necessary Crown consent letter by the end of the Examination and refers to the confirmation of this in its Post Hearing Submissions for Compulsory Acquisition Hearing 2 [Document

Reference 7.29, REP5-023] under Agenda Item 5.2. The Applicant also notes that Section 2.10 of the EqIA [Document Reference 3.10, APP-243] identifies potential positive impacts on the Gypsy Community as a result of the relocation of the BHF site. The proposed replacement BHF site will provide greater separation from the A66, alongside safer access as it is accessed from local roads rather than directly from the A66.

4 Intangible Cultural Heritage of Brough Hill Fair and response to ExQ HE 2.1

4.1 Introduction

4.1.1 The Applicant notes that the Gypsy Community raised concerns in relation to the consideration of the intangible cultural heritage of the BHF at Issue Specific Hearing 3 and in its Deadline 5 submission [REP5-031]. The issue of intangible cultural heritage has not been raised by any party prior to that point either during the Examination or during the Applicant's pre-application statutory consultation.

4.1.2 The Applicant provided a response in its Post Hearing Submissions for Issue Specific Hearing 3 [REP5-024], at Appendix F, to some of the concerns of the Gypsy Community with reference to the Environmental Statement's Volume 1 Chapter 8 Cultural Heritage (APP-051), ES Volume 1 Chapter 13: Population and Human Health (APP-056) (and the Equalities Impact Assessment (EqIA) (APP-243). These documents consider the impact on the BHF site within the scope of the topic under consideration, such as the human impact considered in chapter 13 of the ES and the impacts on a group with protected characteristics within the EQIA. This section addresses the consideration of intangible cultural heritage and explains how the Applicant has had regard to the issues raised on this subject by the Gypsy Community, at Issue Specific Hearing 3 and in its Deadline 5 submission [REP5-031] and how these issues have informed the development of the Project and specifically informed the consideration and identification of an alternative BHF site.

4.2 Convention for the Safeguarding of Intangible Cultural Heritage

4.2.1 In summary, the Convention for the Safeguarding of Intangible Cultural Heritage (the "**Convention**") was adopted by the general convention of UNESCO in 2003. However, the UK has not signed up to the Convention and therefore the Convention has no standing in UK law.

4.2.2 The Convention includes a lengthy definition of "intangible cultural heritage" in Article 2, but confirms that intangible cultural heritage is manifested in the following ways:

- Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- Performing arts;
- Social practices, rituals and festive events;
- Knowledge and practices concerning nature and the universe;
- Traditional craftsmanship.

4.2.3 The definition in Article 2 of the Convention further confirms that intangible cultural heritage is "transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a

sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”

4.2.4 By its nature then, intangible cultural heritage, while it may be manifested through objects, is fundamentally an activity or practice rather than a thing or object.

4.2.5 As part of the wider context and consideration in relation to this issue, the Applicant notes that the Design Manual for Roads and Bridges LA106 (guidance on cultural heritage assessment) is the key guidance in relation to the assessment of the impact to cultural heritage of major highway projects. The Applicant’s heritage assessments accord with industry guidance, good practice and is based upon the EIA Scoping Report, including responses from heritage consultees.

4.3 Paragraph 5.125 of the National Networks National Policy Statement

4.3.1 However, the Applicant notes that paragraph 5.125 of the NNNPS affords the Secretary of State the opportunity to consider impacts on non-designated heritage assets that arise during Examination. Whilst it is not clear to the Applicant that the intangible cultural heritage of the Gypsy Community expressed at the existing BHF comprises a “non-designated heritage asset” within the terms of paragraph 5.125 of the NNNPS, should the Secretary of State wish to consider and arrive at a different conclusion the Applicant has set out below its consideration of the issue.

4.3.2 Throughout the development of its proposals for the Project, the Applicant has had regard to the importance of maintaining the continuity of the traditions, rights and activities in relation to the BHF. The Applicant has directly enabled this through its engagement with the Gypsy Community on the development of the Project and its proposals for the relocation of the BHF. This process, and the Applicant’s consideration of alternative locations for the replacement BHF site, are set out in detail in Document 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [REP5-029].

4.3.3 In relation to the suitability of the replacement BHF site, the Applicant also notes that the existing BHF has not been at its current location for an extended period of time (since 1947), when considered in the long term context of the BHF’s existence, which is traced back to 1330. The Applicant notes that, to the extent that the location of the existing BHF is a characteristic of its intangible cultural heritage, the replacement BHF is located on a site adjacent to the existing site and incorporating as much of the existing site as is practicable that remains following the Project’s implementation.

4.3.4 In this regard, it is of critical importance to consider how article 36 of the Applicant’s draft DCO [REP5-012] will operate to ensure that activities (i.e. the intangible cultural heritage) carried out at the existing BHF site will be enabled to continue should development consent be granted.

- 4.3.5 Article 36 provides that the Applicant is not to take exclusive possession of the existing BHF site for the purposes of the Project until the Secretary of State has approved a Scheme for the provision of the replacement BHF site and certified that the Scheme has been satisfactorily implemented. Article 36(2) goes on to explain that the Scheme must include facilities that are at least equivalent to those of the existing BHF site, and it must make provision for safe access to the replacement BHF site for vehicles, horses and persons. The Scheme must make appropriate provision for the treatment of boundaries of the replacement BHF site to secure the safe use and enjoyment of the site having regard to the use and amenity of adjacent land and set out the intended arrangements for maintenance. Article 36(3) requires the Scheme to be developed in consultation with the representatives of the Gypsy Community, the owners and occupiers of adjacent land, the relevant planning authority and the local highway authority.
- 4.3.6 Article 36 therefore ensures that there is continuity to the aspects of intangible cultural heritage expressed at the existing Brough Hill Fair site as there can be no interruption to those activities unless the Scheme has been developed in consultation, approved by the Secretary of State and then satisfactorily implemented.
- 4.3.7 Consequently, given the high degree of protection afforded to the activities carried out at the existing BHF site by the provisions of article 36 the Applicant considers it to be unnecessary to make further provision within the Environmental Management Plan. The safeguards contained in article 36 ensure that the cultural activities, traditions and associations of the BHF would be retained and provided with continuity on the replacement BHF site.
- 4.3.8 This is not to say that the Applicant will not have regard to the cultural heritage of the Gypsy Community as it takes forward the Project, if development consent is granted. In this regard it is relevant to note that, the Applicant's Detailed Heritage Mitigation Strategy (Environmental Management Plan Annex B3) [REP3-010]], includes a section at paragraph B3.2.5 that sets out a research agenda that provides a framework for all future historic environment investigation within the Order limits, covering both research topics/questions on a period basis and across four key 'data themes'. Included amongst these four key data themes is the identification of new sites or research topics and which makes clear that this extends beyond archaeological or built heritage to include a wider range of subject areas including 'intangible heritage'. Measure D-CH-01 contained within the Environmental Management Plan (a revised version of which is submitted at this Deadline 6) ensures that this strategy is further developed prior to the start of the Project.
- 4.3.9 The Applicant believes that the above detail in relation to intangible cultural heritage also constitutes a sufficient response to HE 2.1 of ExQ2 [PD-012].

4.4 Public Sector Equality Duty under the Equality Act 2010

4.4.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty on a number of public bodies, including the Applicant. Section 149(1) requires:

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.4.2 The Applicant has had due regard to its public sector equality duty throughout the development of the Project and will continue to have full regard as the Project progresses.

4.4.3 The Applicant's Equalities Impact Assessment [APP-243] records its consideration of its public sector equality duty. The Applicant identified the Gypsy Community as a key stakeholder in the development of the Project. In the baseline (section 2.6), under the Protected Characteristic Group (PCG) of 'Race', it acknowledges the presence of the Gypsy Community in the study area, the historic nature of both the Appleby Horse Fair and the BHF, and the cultural significance of these gatherings. It notes that Appleby Horse Fair is "a historic gathering of Gypsies and Travellers" and that "for the Gypsy and Traveller community, Appleby Horse Fair is a major cultural event with attendees from all over the UK and abroad coming to show and trade horses, meet family and friends, and sustain traditions". It also highlights that "Brough Hill Fair is an annual Gypsy and Traveller fair" and that "a horse Fair has been held in the local area for over 700 years and the Gypsy Community have had a longstanding historic association with the fair".

4.4.4 Section 2.9 of the EqIA assesses the potential effects on the Gypsy Community as a result of the construction of the Project on both fair sites and the traditions, rights and activities. It also assesses the potential impacts during construction on journeys to the Appleby Horse Fair (being the larger and substantially more well-attended of the two fairs), despite the Appleby Horse Fair site no longer being directly affected by the Project.

4.4.5 The EqIA, at section 2.10, acknowledges the potential negative effects of the Project on the Gypsy Community during construction and operation of the Project, and notes the potential positive impacts that may result. The Applicant is continuing to have regard to these potential positive and negative impacts and will continue to do so should development consent be granted.

4.4.6 The Applicant therefore considers that it has had due regard to its public sector equality duty.

5 Future Management and Ownership of the Replacement Brough Hill Fair Site and response to ExQ CA 2.3

- 5.1.1 The Applicant noted in its Post Hearing Submissions for Issue Specific Hearing 3 [Document Reference 7.30, REP5-024], at Agenda Item 10, that discussions with the MoD regarding transfer of ownership of the BHF site to the Applicant were ongoing. The Applicant also considers that the below detail in relation to the future management and ownership of the replacement BHF site, including the suggestion of a transfer of this site to the Heron family, constitutes a sufficient response to CA 2.3 of ExQ2 [PD-012].
- 5.1.2 The Applicant expects that ongoing management and maintenance responsibilities in relation to the proposed new BHF site, once details are provided as required by article 36 of the draft DCO, will need to be discussed with the Gypsy Community as part of the discussions relating to the terms of their use of the replacement BHF site between the landowner and the Gypsy Community. The Applicant notes, however, that the terms of the Gypsy Community's use of the replacement BHF site will always be subject to the BHF rights – the Applicant is not proposing to alter the nature of the BHF rights in any way. The Applicant will take part in discussions with the Gypsy Community in relation to how the BHF rights are exercised in practice, in relation to the replacement BHF site and the improved facilities that this offers.
- 5.1.3 The Applicant notes that details in relation to ongoing management and maintenance will also need to be provided to the Secretary of State as part of the process of securing approval of the Project required by article 36, so that the Secretary of State can be informed as to how the replacement BHF site will be managed and maintained in the future. The Applicant refers to its amendments to article 36 of the draft DCO, made at Deadline 5, which make this clear.
- 5.1.4 The Applicant considers that the above approach is consistent with the Applicant's Response to Written Representations made by Affected Persons at Deadline 1 [Document Reference 7.6, REP2-015], as summarised in paragraph 3.1.2 above.
- 5.1.5 The Applicant has been in discussions with the representative of the Heron family in relation to the suggested transfer of the replacement BHF site to the Heron family. The draft DCO provides for the transfer of the BHF rights to the replacement BHF site which the Applicant intends to acquire, alongside the existing BHF site, from the MoD via a Crown Authority Consent Agreement. Should the DCO be granted in the form applied for in this regard, the Applicant understands that the Heron family would wish to buy the replacement BHF site (being the replacement BHF site and the remaining part of the existing BHF site) from the Applicant. The Applicant notes that in any scenario, the replacement land remains subject to the BHF rights – in essence, the BHF rights will apply to the land irrespective of the ownership of the land.
- 5.1.6 The Applicant does not object to the proposal in principle. However, as a public body, the Applicant is required to comply with the Crichel Down rules

(the “**CD rules**”) in relation to the disposal of surplus land compulsorily acquired or acquired under the shadow of compulsion. In general terms, the CD rules require National Highways, before disposing of land for sale on the open market, to first offer it back to the person from whom it was compulsorily acquired. The CD rules specify a range of circumstances where either the rules do not apply, or where there is an exemption from the duty to offer back the land for sale. The Applicant would not be in a position to reach a determination on the application of the CD rules until such time as it has acquired the land and it has become surplus. Consequently, the Applicant is not currently in a position one way or the other to agree to the suggested disposal to the Heron family. However, subject to compliance with the CD rules, it is possible that the land may be offered for sale on the open market in which case the Heron family would be entitled to negotiate for its acquisition. The Applicant notes, again, that the replacement BHF site will remain subject to the BHF rights and therefore assumes that it will attract market interest accordingly.

6 Additional Issues relating to Detailed Design

- 6.1.1 The Applicant notes that concerns have been raised in relation to boundary treatment and the condition of the proposed replacement BHF site throughout the Examination. The Applicant has responded to these concerns as outlined below, with references to documents submitted to the Examination.
- 6.1.2 Regarding boundary treatment to the south of the proposed site, the Applicant responded to concerns raised by George F. White LLP on behalf of the Heron family, in their Deadline 1 submissions [REP1-074 and REP1-075]. The Applicant's Deadline 2 Submission – 7.6 Applicant's Response to Written Representations made by Affected Persons at Deadline 1 – Rev 1 [Document Reference 7.6, REP2-015], notes that as part of the design of the proposed BHF site, earth bunding is included at the boundary of the BHF site and Eastfield Farm. Such bunding will provide visual screening and attenuation of noise from the BHF site at ground floor level, i.e., around animal head height, at Eastfield Farm.
- 6.1.3 Regarding boundary treatment to the north of the proposed site, alongside the proposed A66 dual carriageway, the Applicant has responded to concerns raised by the Gypsy Community at various points throughout the Examination process.
- 6.1.4 At Issue Specific Hearing 2 (“ISH2”) on 1 December 2022, the Applicant clarified the proposals at that time included bunding along the northern edge of the site to provide screening and noise attenuation from the proposed A66 dual carriageway (refer to Agenda Item 5.0 of the Applicant's Deadline 1 Submission – 7.3 Issue Specific Hearing 2 (ISH2) Post Hearing Submissions [Document Reference 7.3, REP1-009]). Within REP1-009, the Applicant included Appendix 6, containing visualisations of the proposals, as shared with the Gypsy Community in April 2022. In addition, Appendix 7 contained the “Brough Hill Noise Assessment Technical Note”, which reported on the assessment work undertaken at the time regarding noise impacts at the proposed site.
- 6.1.5 In response to points raised by Mr Welch at ISH2, the Applicant acknowledged that further work was to be undertaken to consider how this proposed boundary treatment could be developed to form an effective barrier for horses that may escape from the site. The resulting assessment included fencing along the northern edge of the site, and was presented in the Applicant's Deadline 3 Submission – 7.16 Brough Hill Fair Technical Note – Rev 1 [Document Reference 7.16, REP3-045].
- 6.1.6 In the Examining Authority's Written Questions (ExQ1) published on 31 January 2023 [PD-011], question PC 1.2 asked both the Applicant and the Gypsy Community to provide further comment on the fencing proposals. The Applicant responded in their Deadline 4 Submission – 7.24 Applicant's Responses to the Examining Authority's Written Questions [Document Reference 7.24, REP4-011] to confirm the proposed fencing arrangement, noting that details will be confirmed during the detailed design stage. The Gypsy Community responded in their Deadline 4 Submission – Comments on Deadline 3 Submission – REP3-045 [REP4-041], and in this response

introduced the suggestion of provision of a double gate system at the access and egress point to the site.

- 6.1.7 Following Issue Specific Hearing 3 on 2 March 2023, the Applicant provided further information on the selection process for the replacement BHF site in their Deadline 5 Submission - 7.32 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair [Document Reference 7.32, REP5-029]. Paragraphs 3.3.45 to 3.3.49 of REP5-029 summarise the primary reasons for the selection of the site and development of the proposals since the beginning of the Examination process, having regard to continued engagement with both the Gypsy Community and the Heron family.
- 6.1.8 Regarding concerns over the condition of the site, these were discussed during a site visit attended by Mr Welch and the Applicant in March 2022 (refer to paragraphs 3.3.31 and 3.3.32 of the Applicant’s Deadline 5 Submission, REP5-029). Paragraph 4.1.3 of the same submission outlines next steps to be undertaken during detailed design.
- 6.1.9 The Applicant also notes that the Heron family have raised concerns in relation to safety and accidents on their farm from visitors to the replacement BHF site. This will be considered in the Applicant’s outline Operational Risk Assessment, as described at section 8 below.
- 6.1.10 In any event, the Applicant considers that the ongoing management and maintenance responsibilities in relation to the proposed new BHF site, information on which is to be provided by the Scheme required to be approved under article 36 of the DCO, cover its obligations in relation to risk and safety and give confidence that the final detailed design of the replacement BHF site will take into consideration the views of the Gypsy Community, the owners and occupiers of adjacent land and the views of the relevant planning authority and local highway authority. Furthermore, the Secretary of State’s function of approving the required Scheme relating to the BHF site under article 36 of the DCO would include consideration of safety issues as part of overall maintenance and management issues.

7 Further Support for the Gypsy Community

7.1.1 The Applicant notes that, as part of the ongoing consultation and engagement with the Gypsy Community, it sent a letter to Billy Welch on 17 February 2023 which set out details of the discussions between the Applicant and the Gypsy Community alongside a summary of the issues raised and the Applicant's position, in order to provide some consistency to the ongoing engagement.

7.1.2 In addition, the Applicant's engagement with the Gypsy Community has continued after Compulsory Acquisition Hearing 2 and Issue Specific Hearing 3 and the Applicant has offered, by email to Bill Lloyd, to fund legal support to the Gypsy Community in order to further understand their concerns around the legal basis for the transfer of rights proposed by Article 36 of the DCO.

7.1.3 In addition, the Applicant notes that Bill Lloyd has also raised the following concern in relation to the transfer of the BHF rights:

"We have been advised that Prescriptive Rights can only be transferred by way of a Deed, since the Rights must be binding on the Landowner of the replacement site. Under your proposed mechanism for transfer, it would be open to the owner of the replacement site to argue that the Prescriptive Right, which arose from the Doctrine of Lost Modern Grant (See previous submissions for evidence that the criteria have been met), no longer applies, because the criteria have not been met on the new site.

The question is then whether a court would recognise that a Statutory Instrument approved by the Secretary of State would be sufficient to defeat that argument by the landowner of the replacement site. We have been advised that it might not do so, and we would be unable to prove the prescriptive right on the replacement site, which is why we are asking that the transfer of rights be made by a Deed.

The matter is complicated further by the fact that the title to the existing site appears not to be registered at Land Registry, and the only documentary evidence for the Prescriptive Rights is included in the conveyance of 1947".

7.1.4 The Applicant does not agree that for the rights to be transferred and future-proofed, this must be achieved via a Deed. The draft DCO is more than sufficient to preserve the status quo of the BHF rights and the Applicant has added Article 36(7) to the draft DCO [Document Reference 5.1, REP5-013], which constitutes a straightforward technical provision to clarify that the transfer of the Gypsy Community's rights to the replacement BHF site by the DCO should not be regarded as an interruption of the Gypsy Community's enjoyment of their rights. It is not the function of the DCO process to detail those rights and, in any event, the Applicant does not yet own the land on either the current BHF site nor the replacement BHF site. Therefore, a Deed to crystallise the Gypsy Community's rights is not within the Applicant's remit.

7.1.5 The Gypsy Community is not prejudiced in this context; should consent be granted for the Project, their rights will be transferred to the replacement BHF site by the DCO. It would then be for the Gypsy Community to discuss these rights with the Applicant and to document these in respect of the

replacement BHF site, but as these are not documented in relation to the current BHF site (other than as a reservation in the conveyance of 1947), the Gypsy Community is not prejudiced by the approach being taken by the Applicant, pending its ownership of the replacement BHF site.

- 7.1.6 The Applicant believes that this approach supports the consistent position that it has maintained with the Gypsy Community throughout the Examination and is appropriate for guaranteeing the future of the BHF. The Applicant recognises, following recent correspondence with Bill Lloyd, the Gypsy Community's intention to establish prescriptive rights and to that end has included a provision in article 36(7) of the draft DCO [Document Reference 5.1, REP5-013], which ensures that the transfer of the rights to the replacement BHF site shall not be taken as an interruption of their enjoyment of those rights.

8 Applicant's Operational Risk Assessment

- 8.1.1 In its Post Hearing Submissions for Issue Specific Hearing 3 [Document Reference 7.30, REP5-024], the Applicant committed to provide an outline Operational Risk Assessment for the proposed BHF site. The Applicant undertook a site visit on Thursday 23 March 2023 to gather information to develop the risk assessment. The visit was attended by Mr Heron and his representative as well as representatives of the Gypsy Community. The Applicant is in the process of preparing the risk assessment document and intends to submit it at Deadline 7.
- 8.1.2 This will assess the potential risks arising from the intended use of the replacement BHF site for the period of the annual BHF. It will also consider if any mitigation measures will need to be considered during the detailed design stage of the Project. During the site visit the Gypsy Community raised a number of concerns with respect to the cultural aspects of their community. The Applicant will consider this feedback during the preparation of the Operational Risk Assessment.
- 8.1.3 The Applicant is engaging with the Gypsy Community and the Heron family and will share the draft Operational Risk Assessment with both the Heron Family and the Gypsy Community. The Applicant notes that it will, therefore, no later than 13 April, share with the Gypsy Community a list containing the risk location, hazard description and hazard effect in relation to each risk, for their feedback and commentary on. Subject to the receipt of this, the Applicant will then update the draft Operational Risk Assessment with a 'scored' assessment, alongside proposed mitigation for each risk, for further comments by the Gypsy Community and the Heron family.
- 8.1.4 The Operational Risk Assessment will also consider the safety of and access to the replacement BHF site.
- 8.1.5 The Applicant notes that the local highway authority has not raised concerns about safety of and access to the replacement BHF site and also that the local planning authority has raised no concerns regarding the suitability of the replacement BHF site.
- 8.1.6 The Applicant also notes that the Heron family have, via their representative, repeated a concern in relation to animal biosecurity. This concern was initially set out in their Deadline 1 submission [REP1-074] and appends a letter from Arla Foods which details that "*maintenance of the highest animal welfare and biosecurity standards are critically important for both Arla's operations and the maintenance of the UK's food supply chain as a whole*".
- 8.1.7 The Applicant confirms that the Operational Risk Assessment will consider issues relating to animal biosecurity.
- 8.1.8 The Applicant envisages that the Operational Risk Assessment will then be updated during the detailed design stage and will form part of the package of information to be submitted to the Secretary of State for Transport, following consultation with the Gypsy Community and others, as part of the process to obtain approval for the Scheme under Article 36 of the DCO.