

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**

Deadline 6 – 4th April 2023

**FURTHER SUBMISSIONS OF
JOHN RICHARD LANE, JAMES HARE, ALAN MOORE BOWE AND SARAH CRANE AS THE
TRUSTEES OF THE WINDERWATH 1989 SETTLEMENT TRUST
("the REPRESENTORS")**

1. The Representors make the following submission in respect of the DCO application made by the Applicant and submission made at Deadline 5.
2. Document 7.31 Issue Specific Hearing 3 (ISH3) Post Hearing Submission – Response to ExA Request under Agenda Item 3.2 Environmental Mitigation Area Sizes and Locations (REP5-027 – Pages 4-8)
3. The Representors wish to make the following points in response to the Applicants submissions in this documents as follows:-
4. Plot 03-02-01
5. In principle the Representors do not have an objection to the works required for the service diversion and the return of the main plot area to agriculture and back into the hand of the Estate.
6. The issues are about the placing of mitigation works on the Light Water Beck running north, where in paragraph 3.1.2 it states that where plot 03-02-01 diverts to the north it supports Salmon. The northern/northwestern spur of this plot is not a watercourse and indeed is shown on the mitigation plans as land to be returned to agriculture. How can it therefore support Salmon?

7. The Representors would also question the presence of Salmon in the Light Water Beck itself and require the Applicant to provide such evidence.
8. It is actually plot 03-02-06, which covers the Light Water Beck and includes for mitigation works and although the Representors are not as against the use of mitigation along such watercourses, they have raised on numerous occasion with the Applicant as to how those areas would be segregated, where bespoke mitigation is required as against normal agricultural operations on the land adjacent. Effectively there will be fenced strips along these watercourses that will cause all sorts of issue in terms of future maintenance and access to them. To date the Applicant has not given any clear answer on this which is required.
9. There will inevitably be some disturbance to the Light Water Beck by culverting works and the widening of the A66, but the Representors do not believe that the works likely warrant the extent of mitigation proposed to the north.
10. Plot 03-04-04
11. As the ExA will be aware the Representors object and have done since the early public consultations to the provision of such extensive environmental mitigation in this plot and the adjoining plots 03-04-14, 03-04-10 and 03-04-12.
12. The Representors submitted an extensive explanation for why the areas proposed are not suited for environmental mitigation in their Deadline 5 Submissions (REP5-072). That explanation included the serious potential impacts on shoot management and road safety issues associated therewith if the mitigation goes forward as proposed. Nothing in the Applicants post hearing submission alters that view.

13. Paragraph 4.1.1 states the area of woodland planting proposed is to substitute for some 4.48Ha of broad-leaved and coniferous woodland on Scheme 03. To date The Representors have not been directed to the mapping and schedules in the DCO documentation that shows the location of this lost woodland. The Representors require one to be provided.
14. Paragraph 4.1.2 acknowledges that the widened road will cause increased mortality in red squirrels, barn owls and bats, particularly in the vicinity of the two existing woodlands north and south of the A66 to the north of Swinegill Plantation. This is exactly the point the Representors made in their Deadline 5 Submission (REP5-072) about the potential for increased mortality of pheasants for the same reasons. That road safety concern has not been addressed and the proposals would make the situation worse by encouraging pheasants towards the road.
15. Paragraph 4.1.3 again refers to fish being present in the Swinegill. Please can the Applicant provide the evidence of this.
16. Paragraph 4.2.2 mentions the obvious gap in the connectivity from Whinfell Forest to Swinegill and the other isolated woodland in this area and why this area of mitigation was selected. Again, in the Representors Deadline 5 Submission they explained that this was deliberate having been established over many years for the benefit of the shoot in this area, by allowing birds to be drawn out and driven towards the right areas without any impact on the current road. That would not happen with the proposed mitigation woodland particularly and has not been taken into account by the Applicant.
17. Paragraph 4.2.6 mentions in a number of places the discounting of other previously proposed areas of mitigation on Scheme 03 because of the impact on “high value agricultural” and “Grade 2” land. As has been raised numerous times the land in this plot is Grade 2 and as such should be considered in the same way as the previous alternative location and be discounted in line with

both the National Policy Statement for National Networks and the National Planning Policy on the use of the best and most versatile agricultural land.

18. Paragraph 4.3.1 raises a number of points that the Representors contest.

- Size – the area of Adrian’s Wood is not just 2.71 Ha. It amounts to 7.47Ha of woodland as set out on the plans and details in Appendix 2 of the Representors original written representations (REP1 – 129). Therefore, in terms of replacement woodland there is significantly more area than the proposals for plot 03-04-04. In terms of scrub area the Representors have offered alternative areas adjacent to Adrian’s Wood for such use.
- Riparian habitat - the Applicants response acknowledges that the alternative areas offer the same benefit as the proposed.
- Red Squirrel - Adrian’s wood does contain 20% Douglas Fir and Spruce (see Written Reps Appendix 2 – REP1 – 129). The Representors would also argue that there is indeed connectivity for red squirrels to the north, via numerous hedges and woodland areas on the north part of the estate and as shown on the plans of estate woodland submitted with the Deadline 5 submission (REP5-027).
- Reptiles/great crested newts – alternative land could be provided adjacent to Adrian’s Wood to allow for adequate pond creation and connectivity for such reptiles, when the Applicants response also acknowledges that these areas are to be receptor site for reptiles for other areas of Scheme 03, unconnected to the proposed mitigation area.
- Badgers/otters/barn owl/bats – the Applicants response state that similar opportunities are provide by Adrian’s Wood subject to the size of habitat. Clearly, as noted above, there is a greater area of woodland habitat and the offer of scrub habitat to more than replicate the areas proposed to the south.

19. Paragraph 4.3.2 sets out the main justification and reasoning for the mitigation to the south in plot 03-04-04 and particularly the woodland planting as being in order to provide connectivity to the Whinfell Forest county wildlife site.
20. Noting the main driver from the Applicant's perspective and in an attempt to offer a further compromise solution, attached to this submission and headed "Deadline 6 Submission - Alternative Mitigation Proposals as referenced in Submissions by Trustees of Winderwath Estate - 4-4-23" is a proposed alternative planting and mitigation solution, which the Representors would be prepared to implement through positive and restrictive covenants in a form that allowed the proposals to be implemented whilst not requiring the permanent acquisition of the areas and thus allow the continued use of the areas for sporting purposes.
21. The alternative proposal the Representors believe achieves the Applicants core objective of connectivity between the woodland areas and habitats, replaces the lost woodland areas but also preserves the ability of the estate to properly manage the shoot safely and without the risk of increasing road safety issues on the A66 at the Swinegill crossing. This is achieved through the creation of scrub headland and hedge planting, creation of part of the scrubland area and relocation of the woodland planting, which then provides connectivity through new and existing mature hedgerows and trees to Whinfell Forest county wildlife site.
22. Document 7.29 Compulsory Acquisition Hearing 2 (CAH2) Post Hearing Submission (including written submissions of oral case) (REP5-23 – Pages 29-31)
23. The Representors note in the penultimate paragraph on page 30 that the Applicant acknowledges in respect of utility diversion and mitigation works in relation to plot 03-02-01 that its approach where the landowner's preference is to retain land is to grant rights and where those can be agreed, then the Applicant would not exercise powers of compulsory acquisition.
24. No mention is made in the Applicants response to the Representors continued assertion that if environmental mitigation is required in plots 03-04-14, 03-04-10 and 03-04-12 then rights should

be taken, and the area not compulsorily acquired. The Representors have repeatedly offered to discuss positive and negative covenants that would achieve this aim and facilitate the continued use of the land by the estate for its sporting activities whilst securing the appropriate management for the purpose of environmental mitigation under the scheme.

25. The Representors require early proposals from the Applicant on how rights, as the applicants seeks under Article 22 of the draft DCO or under the Planning Act 2008, can be applied in this case.

26. Document 7.11 Compulsory Acquisition Status of Negotiations Schedule (REP5-018 – Pages 3-4)

27. The Representors would draw the ExA's attention the lack of negotiation and progress on early acquisition of the Representors interests between the return by the Representations of the Applicants offer letter of the 28th March 2022 and now.

28. The ExA are aware of the offer by the Applicant under "project speed" of either early sales or option agreements to Affected Parties if either exchange of contracts or options agreements are signed by 20th July 2023.

29. Despite negotiations over that time on the quantum of the land acquisition and compensation figures the Applicant has failed to produce any form of draft option agreement until the 27th March 2023. This was despite a meeting held on the 14th December 2022 between the Representors land agent and senior representatives of the Applicant where draft documentation was promised swiftly. It has taken continued pressure from the Representors since December 2022 to obtain draft documents only a week ago. There appears to have been no thought, planning or preparation by the Applicant for the uptake of the option proposals by Affected Parties.

30. There has been no sense of urgency from the Applicant in progressing the option proposals and one might suggest that the offer was merely a PR exercise to demonstrate to the ExA that efforts had been made to negotiate.

31. There needs to be significant URGENT effort from the Applicant in resolving issues around the option agreements which have been raised by the Representors since the meeting in December 2022 and have not been properly addressed in the draft documents. There is very little time now till 20th July to conclude agreements.

32. Footpath – FP311004

33. The Representors raised their objections to the diversion of this footpath along a proposed private means of access on the Representors land. These concerns were raised in the Representors written representations (REP1 – 129). To date we have had no substantive response from the Applicants to the concerns raised.

34. The Applicants has already proposed the segregation of public and private rights of way to the north of the A66 on Scheme 03 under their proposed DCO changes, but the matter of this footpath remains unresolved and of significant concern to the Representors as already stated.

35. The Representors require an urgent update from th Applicant on this matter.

36. Summary

37. The Representors still wish to reach an agreement with the Applicant on these matters, but there needs to be flexibility and agile thinking in respect of their approach to these matters if a solution is to be found to suit both the Representors and the Applicant.