

# GEORGE F. WHITE

RESIDENTIAL . COMMERCIAL . RURAL . DEVELOPMENT

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Our Ref: Job-0000804/CH/JH  
Your Ref:  
Date: 09/01/2024

Sent via email only to:  
a66dualling@planninginspectorate.gov.uk

Dear Sirs

## APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED A66 NORTHERN TRANSPENINE PROJECT

### CONSULTATION SEEKING COMMENTS FROM THE APPLICANT AND ALL INTERESTED PARTIES

Further to your letter dated 5th January I wish to raise the following submissions with respect to the relocations of Brough Hill Fair.

In Article 36 in the Order, it states that the scheme for the provision of the replacement Brough Hill Fair Site mentioned in paragraph 36.1 must:

- Make appropriate provision for safe access to and from the replacement Brough Hill Fair Site for vehicles, horses, and persons.
- Make appropriate provision for the treatment of the boundaries for the replacement Brough Hill Fair Site for the use and enjoyment of the site and having regard to the use and amenity of adjacent land and
- Set out the intended arrangements for maintenance and management of the facilities, access, and boundaries, having regard in particular to safety and security considerations.

You will see from the representations I have made throughout the process; these are simply not achieved.

The risk assessment enclosed as part of deadline 6 submission shows that the relocation of the Brough Hill Fair Site to the position proposed by the applicant is indeed unsafe both to the travellers but also to my clients, their families, and their business.

I believe the Applicant has not fully demonstrated the proposed access to the relocation site. The access will use the same access as the haulage yard and farmyard whereby HGV's and machinery will be using the access numerous times every day.

I refer to previous submissions whereby alternative sites were raised, and we still believe that the applicant has not properly consulted with the travellers and or my client with regards to the relocation of Brough Hill Fair Site.

Yours sincerely



Caroline Horn MRICS FAAV  
Partner

For and on behalf of George F. White LLP

*Enc.      Deadline 5 Submission*  
*Deadline 6 Submission*  
*Deadline 7 Submission*

**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**

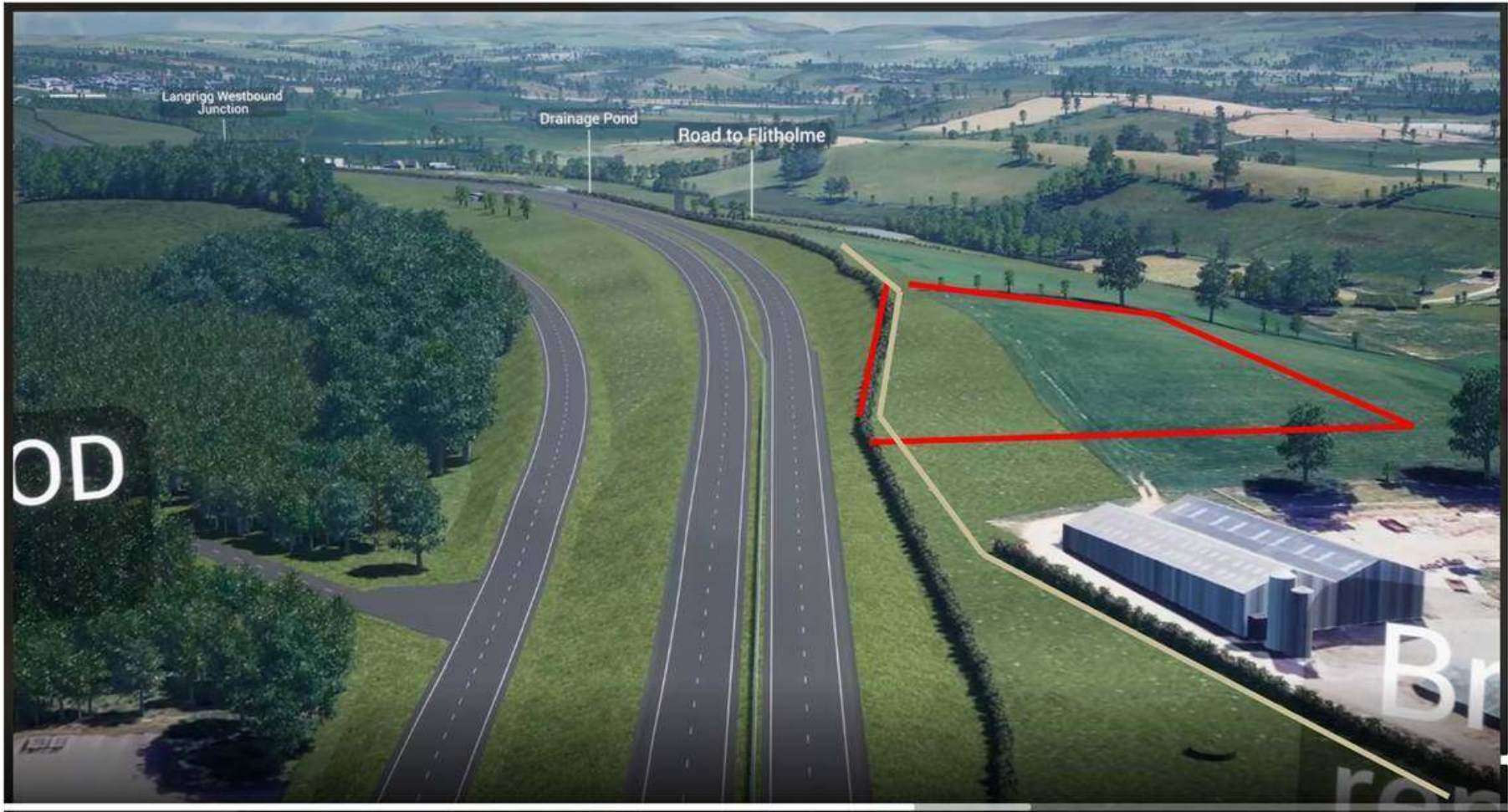
## **Annexes**

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

Feed and Livestock Buildings

Family home

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**







**Deadline 6 Submissions on the A66 Northern Trans-Pennine Project**

**Submitted on Behalf of Messrs Heron**

**4<sup>th</sup> April 2023**

**1. Introduction**

- 1.1 We are instructed to provide a further submission on behalf of the Heron family comprising the families below, 'The Heron Family':

*Mr J Heron, Meadow Bank, Warcop, Cumbria, CA16 6PS*

*Mrs D and Mr I Heron, High Green Farm, Warcop, Cumbria, CA16 6NR*

*Mr J and Mrs M Heron, Brooklyn, Warcop, Cumbria, CA16 6NX*

*Mr S and Mrs C Heron, Eastfield Farm, Warcop, Cumbria, CA16 6PS*

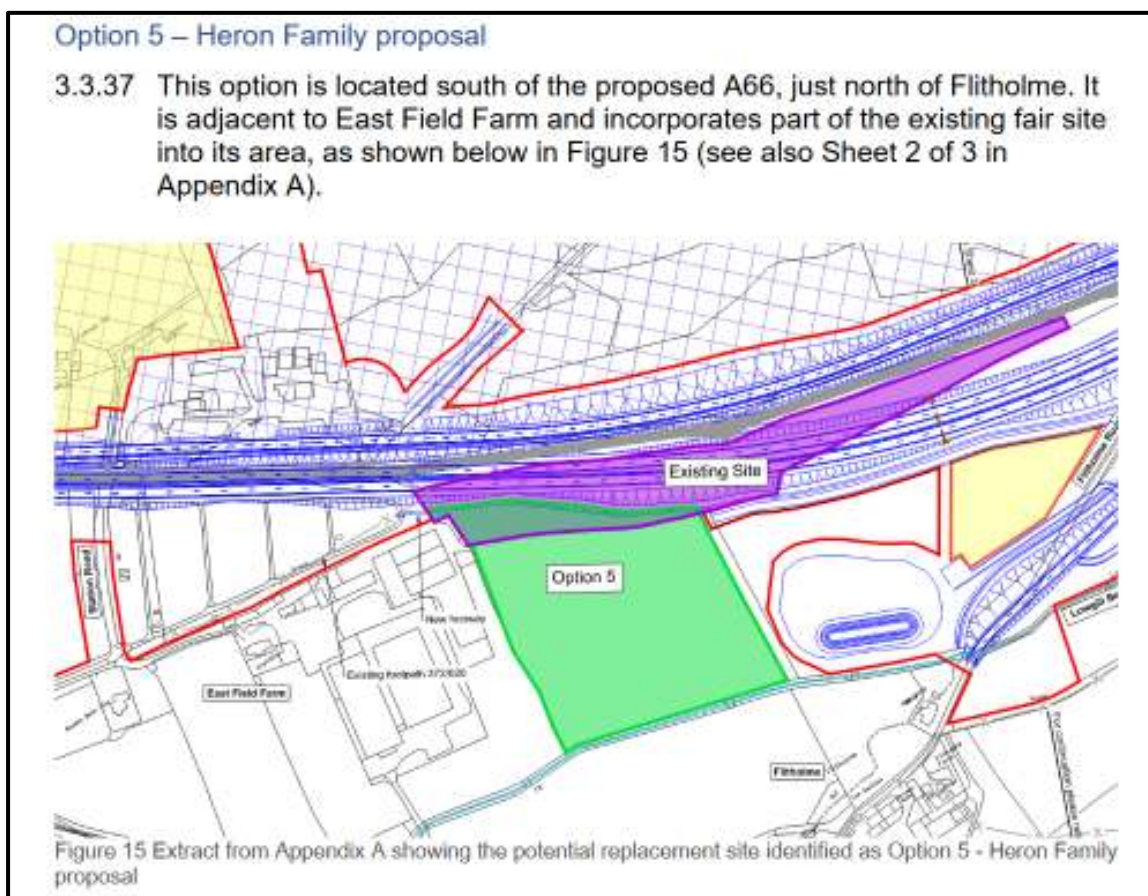
*Mr D and Mrs M Heron, Dacre House, Warcop, Cumbria, CA16 6PR*

- 1.2 The Heron Family have interconnecting farming and commercial enterprises in and around Warcop, and these representations are submitted on their behalf collectively.

- 1.3 We have previously submitted on behalf of the Heron Family written submissions for deadlines 1,2, 3, and 5. We do not propose to repeat those representations, but would stress that the issues raised remain unresolved.

## 2. Applicant's Response to Examining Authority's Request under Agenda Item 10 – Replacement Sites Considered for Brough Hill Fair Conclusion

2.1 We have reviewed the above document submitted by the Applicant at Deadline 5<sup>1</sup>, and make the following comments in relation to the Applicant's consideration of the site proposed by the Heron Family which is referred to as Option 5 and shown in the plan extract below:



2.2 The stated area for Option 5 (6.2 acres)<sup>2</sup> is incorrect because part of the existing Brough Hill location could be incorporated. We assess the total area of the fields to be in the region of 9.4 acres and it can therefore accommodate

<sup>1</sup> TR010062-001546 National Highways Post-hearing submissions

<sup>2</sup> 3.3.39

the target area of 5.4 acres useable space. The relevant area is shown tinted red on the plan below:



2.3 We do not agree with the Applicant's assessment that there would be a useable acreage of 4.0 acres for Option 5, not only because part of the existing site can be incorporated (as it is for Option 1), but also because we submit a greater part of the site would be useable.

2.4 It is not clear that the Applicant's estimate of useable area for Option 1 (5.4 acres) takes into account the bunds and fences etc that would be required. We estimate that the useable area for Option 1 would in fact be less than the required area to replace the existing site.

2.5 Although it is accepted that some engineering works would be required in respect of Option 5, it must be taken into account that works to clear Option 1 would also be required which could extend to the decontamination and

disposal of any buried munitions. It is not clear that the Applicant has properly considered these points in assessing the relocation sites.

2.6 It is submitted that the Applicant is wrong in suggesting that there are services to the Option 1 site but not Option 5. It is our understanding that that there is no water supply at present to the 'Bivvy Site'; but there is however a stand pipe for water on the existing Brough Hill site which would be retained as part of either Option 1 or Option 5. We do not understand the existing Brough Hill site to benefit from an electricity connection or drainage.

2.7 We also respectfully submit that the Applicant has erred in suggesting that a new access would be required for Option 5. The current plans submitted by the Applicant already show a private means of access for the Heron family from the east which could be used for entry and egress from the site avoiding the use of Station Road and therefore reducing the extent of health and safety concerns.

2.8 Figure 10 of the Applicant's submission<sup>3</sup> does not show the proximity of the access to Eastfield Farm. Whilst we appreciate that the ExA have visited the site, we feel it useful to include below an image similarly obtained from Google Streetview showing a slightly wider view for reference:

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<sup>3</sup> 3.3.5



2.9 The Applicant states in respect of Option 5 that:

*“Given the extent of the earthworks required to make this site viable and the other factors outlined above in 3.3.41 and 3.3.43, it was not presented to the Gypsy community for their consideration, nor included in the DCO application documentation<sup>4</sup>”*

We submit that this approach was unreasonable, when the earthworks could easily be resolved and would be no more intrusive than that required on Option 1 site, especially when the impact of Option 1 on the existing Land Owners is far greater than that of Option 5.

2.10 The Applicant refers in respect of Option 1 to a ‘pinch point’ 7m wide<sup>5</sup> between the retained part of the existing site and the Bivvy ground. This clearly presents a health and safety risk by funnelling vehicles and horses into a narrow passageway with a stone wall to the south and the A66 to the North.

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<sup>4</sup> 3.3.43

<sup>5</sup> 3.3.4

It will also be extremely problematic in wet weather; concentrating traffic into such a narrow area will inevitably lead to it becoming impassable if the ground is wet.

- 2.11 The Applicant describes the access to the Bivvy site along Station Road which is described as a local road which, “*currently provides access to a small number of properties*”. We would emphasise that the properties referred to include not only Eastfield Farm but also the Heron Family’s haulage yard and concrete plant and the current intensity of use (particularly by heavy vehicles) is considerably greater than one would expect if for example there were only a small number of residential properties on the road.
- 2.12 Taking into account the points above and considering the summary table at 3.4.1 we submit that Option 5 is viable and should have been properly considered and consulted on.

### **3. Risk Assessment**

- 3.1 Within our previous representations we have raised before the ExA concerns that the Applicant had not carried out a risk assessment in respect of Option 1 which they are promoting.
- 3.2 The Applicant has subsequently appointed a surveyor from AMEY to provide one and who met with the Heron Family, representatives from the Travelling Community, and Rachel Smith & Bernice Sanders from National Highways on the 23<sup>rd</sup> March. Whilst we have not yet had sight of the report prepared for the Applicant, we feel it necessary to raise a number of concerns at this juncture:

- i) The surveyor from AMEY was unnecessarily rude and abrasive furthering exacerbating the stress and anxiety that this matter is causing to our Clients.
- ii) What was presented prior to the meeting as a fact finding exercise to allow the surveyor an understanding of what was happening on Eastfield Farm actually appeared to be an exercise in dismissing concerns, and did not include any substantive review of the operations at Eastfield Farm.
- iii) The meeting was cut-short because of the conduct of the surveyor even after the representatives from National Highways requested that he limit his input to objective fact-finding; with Rachel Smith and Bernice Sanders feeling it necessary to return after he had left in order to finish discussing the health and safety concerns being raised by the Heron Family and Travelling Community.
- iii) The Surveyor appointed by the Applicant did not appear to have an adequate level of knowledge to assess the risks presented at the subject location. He was uninformed on very basic agricultural terminology, machinery and operations including for example a lack of understanding as to what silage, mixer wagons or silos are.
- iv) Bizarrely, concerns raised by the Heron Family in respect of sheep dip tanks and the toxic vapour dispersed from over 1000 head of sheep as they stand and shake after being dipped at the boundary with the Option 1 Site were dismissed arbitrarily



because the tanks and sheep '*are outside*'. It is certain that vapour and dip will reach the Option 1 Site as set out in the Risk Assessment attached as Appendix D6-1.

3.3 Taking into account the above, my Clients have felt it necessary to obtain their own risk assessment prepared by Rhiannon Wilson. We enclose a copy of this as **Appendix D6-1**.

3.4 We understand that the Representatives from the Travelling Community held similar concerns following the meeting on the 23<sup>rd</sup> March, and that they will confirm the same directly to the ExA.

3.5 At the meeting, the Representative from the Travelling Community highlighted how their enjoyment of the Fair and their culture is based around being outdoors and as such Children may be more likely to roam or explore the site rather than staying inside. The reality of this must be considered in the context of the Heron Family's operations, and liabilities now and in the future.

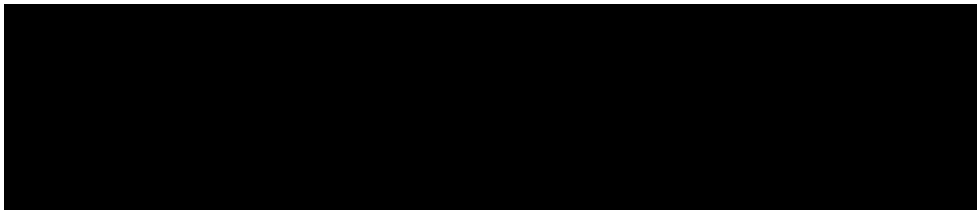
3.6 It is imperative that the scheme does not create unnecessary risks to health and safety, particularly where the future liability may rest with the Heron Family or Travelling Community.

3.7 Given the severity of the dangers raised, we would ask that the Applicant makes clear for the purposes of the examination where liabilities would lie post completion of the scheme.

#### **4. Conclusion**

4.1 In conclusion, in response to the Applicant's further submissions in respect of the proposed relocation of Brough Hill Fair submitted at Deadline 5, we identify a number of key concerns including errors in relation to the area of alternative sites and potential additional costs at their preferred location.

4.2 We also remain concerned that the Applicant has not adequately evaluated or factored in the health and safety risks arising from their proposed relocation of the Hill Fair Site to 'Option 1' i.e. the Bivvy site. We have set out difficulties experienced with the Health & Safety Consultant belatedly appointed by the Applicant, and attach as **Appendix D6-1** a risk assessment carried out by an independent Consultant instructed by the Heron Family.



4<sup>th</sup> April 2023

## **Appendix D6-1**

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



Situation Assessed:			RA No:	Date: 04/04/2023	Review Date: Wednesday, 27 March 2024	
Risk assessed by: R. Wilson			Risk assessment assisted by:			
Number of persons undertaking the tasks > –unknown			Number of other persons possibly affected –unknown			
Risk/Hazard Rating:	<b>HIGH</b>	Extremely high unacceptable risk. Major injury, critical loss of process or damage to property.	<b>MEDIUM</b>	Moderate risk. Non reportable injury, minor loss of process or slight damage to property.	<b>LOW</b>	Insignificant damage to property or equipment or minor injury
<b>RISK RATING</b>						
Hazards Identified: A hazard is something with the potential to cause harm.					INITIAL	RESIDUAL
1.Fire					HIGH	HIGH
2.Traffic Management					HIGH	HIGH
3.Noise					MEDIUM	MEDIUM
4.Animals					HIGH	HIGH
5. Employees and visitors coming on site					MEDIUM	MEDIUM
6. Bio security					HIGH	HIGH
7. Site Security					HIGH	HIGH
8. Children					HIGH	HIGH
9. Sheep Dipping					HIGH	HIGH

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

### IDENTIFY FACTORS THAT CAN INFLUENCE THE SITUATION

1. Agriculture has the worst rate of fatal injury (per 100,000) of all the main industry sectors, with the annual average fatality rate over the last five years around 21 times as high as the all-industry rate.
2. Every year children are killed on farms.

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT

HAZARD 1.						Potential Mitigation	
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.		
(H) Fire			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Combustible materials (including 150t of straw and/ or approx. 100 tonne of ammonium nitrate ) are stored within 2 metres of the proposed Brough Hill Fair site.</li> <li>2. Camp fires have always been part of the Brough Hill Fair since it began and Mr Welch stated at the inspection that their culture is to have camp fires on Brough Hill Fair as they cook on the camp fire and not in the caravans.</li> </ol>			<ol style="list-style-type: none"> <li>1. Given the size and construction of the cladding of the building's mitigation would be difficult to put in place especially as we are aware of the culture to have camp fires in such close proximity to these buildings.</li> <li>2. Zero camp fire policy which is controlled by a independent party but we appreciate this won't be acceptable to the Gypys as it is part of their culture.</li> </ol>	

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 2.						
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation
(H) Traffic Management			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. SAFE stop will be adhered to on the farm but when using certain equipment these may be left running on the site.</li> <li>2. Eastfield Farm, including the haulage yard and ready-mix concrete plant, share the same busy access road highlighted in blue on the attached map. This road is single access and it is only wide enough for one vehicle. Adding the additional traffic, pedestrians, horses, and dogs to this road poses a risk in relation to traffic management.</li> <li>3. Farm traffic is 24/7 silaging, contractors, feed deliveries, the access road (highlighted blue) is a very busy route</li> <li>4. Gypsies movement in and out of the Bivvy site with vehicles/towing caravans/ horse and carts/ exercising horses/children and dogs on the same road and entrance as above. We are aware that the Gypys will be constantly moving on and off site every day for the duration of the Fair. Mr Welch confirmed at the inspection that the gate must be left open at all times to allow the community to easily and safely access and egress from the site and using double gates will not be suitable.</li> <li>5. Eastfield Access is directly adjoining the proposed access to the Bivvy site therefore exacerbating the risk.</li> </ol>			<p>None due to the likelihood and security of the risk.</p> <ul style="list-style-type: none"> <li>• We cannot control the Gypsys access to the site.</li> <li>• We cannot stop operations of the farm / concrete plant / haulage yard</li> </ul>

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT

HAZARD 3.						Potential Mitigation
HAZARD / RISK	INITIAL RISK RATING	MEDIUM	RESIDUAL RATING	MEDIUM	Controls in place from previous risk assessments or procedures.	
(H) Noise			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. The farm is in operation from between 4am and 10pm, where plant and equipment is in use during these hour, farm machinery constantly working which will have reversing beepers, feeder wagon travelling from the storage shed (10m from proposed Bivvy site) to the dairy cow housing and back numerous times, parlour operations including vacuum pumps, pressure washer and air compressor etc, contractors coming on site.</li> <li>2. Mr Heron starts feeding his stock at 4am every day and the feedstuff are stored within 10m of the Bivvy site so the noise will be most at the boundary of the Bivvy site.</li> </ol> <p>At the time of the fair machinery will be operating in the dark exasperating the risk if there is unauthorised access on the farm.</p>		<p>Controls in place from previous risk assessments or procedures.</p>	None because operations cannot cease during these hours and days of the Fair.



# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 4.								
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation		
(H) Animals			<p>Contributing Factors:</p> <ol style="list-style-type: none"> <li>1. Travellers could bring dogs to site, which if loose could gain access to the farm worrying the sheep and cattle.</li> <li>2. It is understood it is likely that Flashing of horses would be undertaken on Station Road further exasperating the risk with regards to access but also increased the risk of harm to both horse and farm animals.</li> <li>3. Unauthorised persons who enter the cattle buildings and milking facility will be at risk of trampling/kicking/attacks/ serious injury/death from cows protecting their calves.</li> <li>4. Possibility to let cattle/sheep out of their secure housing and end up on the road/lost/injured/severe risk to the biosecurity of the whole farm. Mr Heron is part of the Arla 360 contact which requires the highest standards of biosecurity and animal welfare. This risk puts the whole contract in jeopardy and risk of contaminating the food chain</li> <li>5. Tampering with livestock increase risk of a stampede/suffocation</li> <li>6. Disturbing livestock and spooking causing injury/abortion/death</li> <li>7. Disease risk to humans, salmonella, E.coli</li> </ol>			<p>None because of the culture of the Gypsy community. Mr Welch stated that their culture was to not stay in caravans but to explore the surrounding area.</p> <p>Mr Welch also stated their children our ‘animal lovers’ and would be inquisitive to the animals on the farm.</p>		

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 5.						Potential Mitigation
HAZARD / RISK	INITIAL RISK RATING	MEDIUM	RESIDUAL RATING	MEDIUM	Controls in place from previous risk assessments or procedures.	
(H) Employees and visitors coming on site			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Employees have stated they would be anxious to come to work should the site be approved due to the risk highlighted in the report and likelihood of an accident happening because of the gathering of people.</li> <li>2. Farm employees travelling to and from work dealing with obstruction /dangers causing delays to work and mental health issues.</li> <li>3. Employees trying to do their work with interference from persons not permitted onsite putting the employee at an increased risk of harm/danger/liability. E.g If an unauthorised person if injured/killed the driver of the vehicle/machine could be liable.</li> </ol>			None as the inquisitive culture cannot be controlled nor can operations of the farm / haulage plant concrete plant cease for the duration of the fair.

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 6.							
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation	
(H) Bio security			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. As a food producing business, Eastfield Farm must abide by strict biosecurity measures especially since they are part of Arla 360 Starbucks contract</li> <li>2. Visitors to the farm are to kept to a minimum to prevent diseases being brought to the farm.</li> <li>3. We need to keep farm access routes, parking areas, yards, feeding and storage areas clean, tidy and free from obstructions at all times. .</li> <li>4.</li> <li>5. Possibility to let cattle/sheep out of their secure housing and end up on the road/lost/ injured</li> <li>6. Tampering with livestock increase risk of a stampede/suffocation</li> <li>7. Potential risk of contamination of milk stored onsite 20k litres which could result in contaminating the whole dairy processing plant and the food chain.</li> <li>8. Risk of contamination of stored animal feedstuffs resulting in health and welfare issues/death</li> </ol>			<p>None because operations cannot cease for the duration of the fair.</p> <p>Fences will not prevent unauthorised access especially as the access to the farm is adjoining the proposed entrance to the Bivvy site.</p>	

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



	9. Risk of tampering with feeding equipment i.e. molasses tower resulting in injury/death.	
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# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 7.						Potential Mitigation
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	
(H) Site Security		<p>Conflicting factors:</p> <ol style="list-style-type: none"> <li>1. Ready mix concrete plant/haulage yard dangers to unauthorised persons and potential risk of sabotage to plant/ equipment/ trucks and daily operations.</li> <li>2. Tampering with milking equipment/machinery – this could lead to broke equipment which could lead to animal welfare issues and contamination of the food chain.</li> <li>3. Slurry storage which could result in death from accidents/slurry gas- Generation of slurry gases is spasmodic and unpredictable. Reference <a href="https://www.hse.gov.uk/pubns/ais9.pdf">https://www.hse.gov.uk/pubns/ais9.pdf</a></li> <li>4. Risk of injury/death when moving cattle in farm yard, down farm lane or station road</li> <li>5. Potentially unable to carry out milk collections with articulated tankers due to obstruction/danger on Station Road and the farm entrance.</li> </ol> <p>Risk of draining/emptying milk tank</p>				<p>CCTV could be used however will not prevent the risks.</p> <p>None due to any gathering of people will create security issues and security fencing will not prevent unauthorised access as the access to Eastfield Farm is adjoining the proposed Bivvy site entrance. The gate to the Bivvy site could be locked which is not appropriate or acceptable for the Gypsy's.</p>

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 8.								
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation		
(H) Children			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Slurry spreading will be undertaken on site. The gates to the reception pit will be open and unattended during working hours as machinery will be going to and from the pit.</li> <li>2. Children and any persons are not to access the site under any circumstances. We understand from Mr Welch that it is part of their culture that their children are inquisitive and will want to explore the farm. Slurry pits and other dangers could appear to be inviting to children and they won't understand or appreciate the dangers of it.</li> <li>3. There are many items that can be climbed on a farm or appear to be a structure of that found on a playground, such as silage pits, feed towers bales, etc. These are within 10 metres of the proposed site..</li> <li>4. The farm has a robotic silage pusher which is operating itself unattended around the farm yard and in and out of the buildings, these are roughly ¾ tonne of machinery which could hurt/crush a child should they be in its way. The robot operates on various routes on the farm running for 23 hours per day every day.</li> </ol>			<p>None because operations cannot cease for the duration of the fair.</p> <p>Fences will not prevent unauthorised access especially as the access to the farm is adjoining the proposed entrance to the Bivvy site and we understand from Mr Welch that their children and inquisitive and will want to explore the surrounding area.</p>		

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 9.						
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation
(H) Sheep Dipping			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. The dipping tub and holding area is within 2m of the boundary of the Bivvy site.</li> <li>2. Users dipping the sheep will have full PPE on to avoid any harm to them including but not not limited to potential risk of cancer if dip touches skin.</li> <li>3. Once sheep have been dipped, they are held in the holding pen to drainage excess dip. The sheep will shake meaning toxic vapour will disperse into the air including over the boundary into the Bivvy site. This is especially the case when there are approx. 1000 head of sheep in the holding pen.</li> <li>4. See reference <a href="https://www.hse.gov.uk/pubns/ais41.pdf">https://www.hse.gov.uk/pubns/ais41.pdf</a></li> </ol>			Provide full PPE to the attendees to the Bivvy site as the farm cannot not carry out operations because the fair is operational as it is risking animal welfare.

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT



Risk assessment completed by : Rhiannon Wilson

Signature : R Wilson

Date : 04/04/2023

Rhiannon Wilson qualifications attached.



This is to certify that

**Rhiannon Wilson**

has achieved the following qualification

**AIM Qualifications Level 6 Certificate in Personal Injury  
Liability**

with a

**Pass**



32AB208D-8017-4F4A



81CF-335AF1D369B6  
AuthentiQual.com

This certificate is accompanied by a transcript which shows the unit achievements

Chief Executive Officer  
Aim Qualifications and Assessment Group

Qualification ID: 601/5750/1  
Certificate ID: 40021028  
Learner ID: 18309563  
Certification Date: 13/09/2022



# Rhiannon Wilson

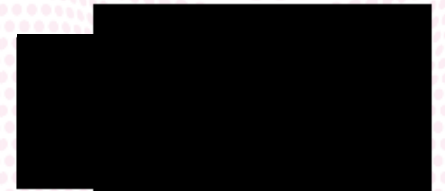
## Component achievement

Title	Code	Level
Personal Injury Liability	J/507/0716	Six

32AB208D-8017-4F4A



81CF-335AF1D369B6  
AuthentiQual.com



Chief Executive Officer  
**Aim Qualifications and Assessment Group**

This is a list of components awarded as part of  
Qualification ID: 601/5750/1  
Certificate ID: 40021028  
Learner ID: 18309563  
Certification Date: 13/09/2022





# Institution of Occupational Safety and Health

Incorporated by Royal Charter 2003

This is to certify that

**Rhiannon Wilson**

was admitted as a

**Associate Member**

on

**11<sup>th</sup> September 2021**

Signed on behalf of the Council



Chief Executive



President



Cert No. 222384

This certificate remains the property of the Institution of Occupational Safety and Health and should be returned if requested

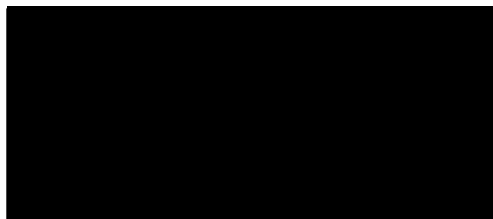
# Level 6 Certificate in Applied Health and Safety

This is to certify that

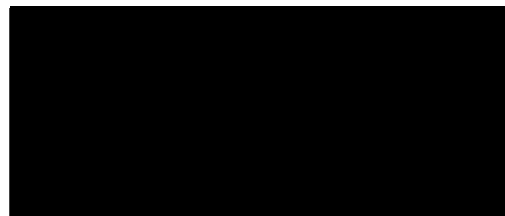
**Rhiannon Wilson**

has been awarded this qualification on

9 June 2021



**Iain Evans**  
Chief Executive



**Geoffrey Podger CB**  
Chairman



Ofqual ref: 601/5735/5  
Candidate No: 186784  
Certificate No: F48E3C6EV

National Compliance and Risk Qualifications  
Registered in England & Wales No 09063141

## Certificate of achievement

High Speed Training certifies that

**Rhiannon Wilson**

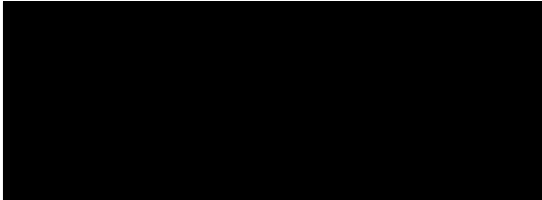
has completed

**DSEAR**

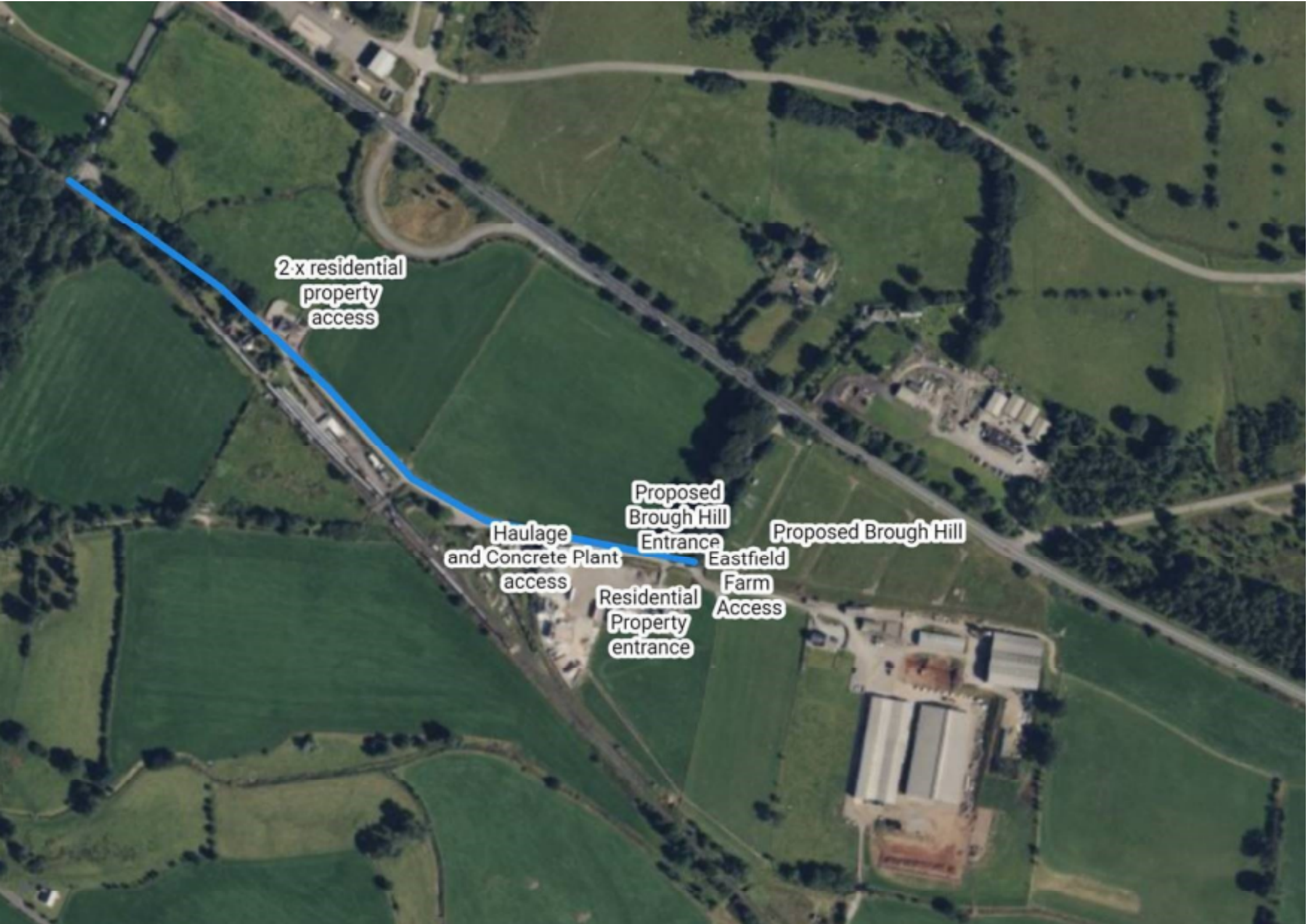
A high quality, interactive training course that helps learners to recognise the risks from dangerous substances and explosive atmospheres in the workplace and comply with the DSEAR Regulations.

Issued On: 27/08/2021  
Recommended Renewal Date: 27/08/2022

Certificate Number: T-2587541-2714664  
To verify please visit: [www.highspeedtraining.co.uk/verify](http://www.highspeedtraining.co.uk/verify)



On behalf of High Speed Training



2 x residential  
property  
access

Haulage  
and Concrete Plant  
access

Proposed  
Brough Hill  
Entrance

Residential  
Property  
entrance

Eastfield  
Farm  
Access

Proposed Brough Hill

**Deadline 7 Submissions on the A66 Northern Trans-Pennine Project**

**Submitted on Behalf of Messrs Heron**

**9<sup>th</sup> May 2023**

**1. Introduction**

- 1.1 We are instructed to submissions on behalf of the Heron family comprising the families below, 'The Heron Family':

*Mr J Heron, Meadow Bank,* [REDACTED]

*Mrs D and Mr I Heron,* [REDACTED]

*Mr J and Mrs M Heron,* [REDACTED]

*Mr S and Mrs C Heron,* [REDACTED]

*Mr D and Mrs M Heron,* [REDACTED]

- 1.2 We have previously submitted on behalf of the Heron Family written submissions for deadlines 1,2, 3, 5 and 6. We do not propose to repeat those representations, but would stress that the issues raised remain unresolved.

**2. Deadline 7 Submission**

- 2.1 Further to the concerns previously raised by the Heron Family, the Applicant has produced an updated '*Operational Risk Assessment*' (ORA) in respect of their proposed relocation of the Brough Hill Fair to their preferred 'Bivvy Site' adjacent to Eastfield Farm in Warcop.
- 2.2 The Heron Family submitted their own risk assessment dated 4<sup>th</sup> April 2023 within their Deadline 6 submission, and now offer their comments in relation to the equivalent document prepared by the Applicant.

## 2.3 Transport/Vehicle Movements

2.3.1 The mitigation measures proposed by the Applicant are:

- Warning signs
- Passing areas
- Brough Hill Fair participants to avoid movements during peak periods
- Introducing a stop line with the intention that Hill Fair traffic stops and gives way to vehicles on station road

2.3.2 We submit that these measures are not appropriate. The Hill Fair Participants will need access at all times and access along station road will be constant meaning that the idea of '*avoiding movements during peak periods*' is unrealistic.

2.3.3 The representatives for the Travelling Community have also stated that they will use Station Road as a 'flashing track' to show the horses that they wish to sell, therefore they will not want to 'give way' or 'stop' or 'pass' when they wish to show their horses.

2.3.4 The dual use of the access route will give rise to a high chance that accidents will occur. We therefore fundamentally disagree with the Applicant's scoring on likelihood and impact in this respect.



## 2.4 Vehicle/pedestrian/horse movements

2.4.1 The Applicant states that there are no records of children or horses straying. This contradicts the position communicated a number of times to the Applicant by both the Heron Family (who have owned land adjacent to the existing site for over 60 years) and also Mr Billy Welch in his role as representative for the Travelling Community.

2.4.2 The Applicant's risk assessment does not refer to the fact that the access to the Bivvy Site is directly next to the Farm entrance for Eastfield Farm. It will not be feasible to shut the gates for either the Hill Fair Site (during the period of the Fair) or Eastfield Farm meaning that the proposed mitigation of a fence will not be effective. We therefore do not agree with the Applicant's scoring in respect of likelihood and severity.

2.4.3 The Applicant's Risk Assessment does not make clear whether they have referred to the HSE Guidance 'Preventing Accidents to Children on Farms<sup>1</sup>', or 'Handling and Housing Cattle<sup>2</sup>' which highlights the dangers associated with cattle.

## 2.5 Horse/Dog/Children Movements

2.5.1 As identified above, the gates to the Fair will need to remain open at all times for traffic entering and leaving the site. Horses, dogs and children will disperse via the farm access lane/yard or through the onto Station Road conflicting with the Heron Family's heavy

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<sup>1</sup> ISBN: 978 0 7176 6602 7

<sup>2</sup> Series Code: AIS35(rev1)

agricultural and commercial traffic. We therefore disagree with the Applicant's scoring on likelihood and severity.

2.5.2 The Applicant also refers to the use of a 'Pegasus Gate' but we are unclear as to what this is or would entail, and would welcome clarity on this point.

## 2.6 Horse Flashing

2.6.1 As referred to above, the representatives for the Travelling Community such as Mr Welch have previously advised the Applicant that the 'Bivvy Site' is not long enough to accommodate a flashing lane, and therefore Fair Participants will use Station Road. The Applicant's proposed mitigation measures will therefore not be feasible and we do not agree with their scoring in terms of risk and severity.

## 2.7 Noise (Fair Activities)

2.7.1 The Bivvy site is only 12m away from Meadow Bank house, only 12m from Eastfield House and 3m from livestock buildings. The proposed bunding and hedge would be inadequate in reducing the noise at such close proximity leading to an unacceptable burden on both farmhouses and livestock housing.

## 2.8 Noise (Farming Activities)

2.8.1 The Applicant does not take into consideration that the yard for the loading of cattle and feed/silage pits are located only 8m from the proposed fair site.

2.8.2 Tractors and telehandlers are operating at noise levels over 100+ decibels, and we submit that it would be unfeasible to create a noise barrier between the farmyard and the proposed site to an acceptable level.

## 2.9 Contamination (cattle feed)

2.9.1 As identified above, Fair Participants will come through over the southern boundary or use the open gate onto Station Road to access the farm meaning that there remains a risk of children or teenagers causing contamination by interfering with animal feedstuffs.

2.9.2 The Feed Stuffs also pose a hazard to any trespassers as identified in the HSE Guidance note 'Grain Dust'<sup>3</sup>.

2.9.3 The Applicant's proposed mitigation in respect of waste generated by the Hill Fair is that it will be controlled by Fair Participants and disposed of using facilities provided by the Applicant. We do however understand that the Applicant intends to sell the site after completion of the works and therefore query how future waste disposal measures will be funded and/or enforced.

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<sup>3</sup> Series Code: EH66 (Third edition)

2.9.4 On the basis of the above, we submit that the Applicant's mitigation measures are not practical in regard to reducing the risk of contamination and we do not agree with the Scoring Assessment.

2.10 Contamination (Milk)

2.10.1 As outlined above, the Applicant's proposed measures will not prevent Hill Fair Participants from entering farm buildings and posing a risk to the milk stored in bulk tanks pending collection by the dairy.

2.11 Air Pollution (Sheep Dipping)

2.11.1 The Applicant's Risk Assessment misconstrues the issue and we would respectfully suggest that this risk is not air pollution, it is harm to people from sheep dipping.

2.11.2 We disagree that the sheep dipping activities are carried out away from the proposed Hill Fair Site. The sheep exiting the dipping bath would only be 3m away from the proposed new site and attendees.

2.11.3 The Applicant also refers to the outdoor location minimising risk, but to be clear the risks come from vapour as well as gas/air pollution. It is not clear what evidence the Applicant relies on in their position or assertions.

2.11.4 The Applicant's proposed mitigation measures are not agreed as correct and therefore the Risk Assessment Scoring is also wayward.

2.12 Air Pollution (Traffic)

2.12.1 As outlined above, silage pits and feed stores are located around 8m from the Bivvy site. When dry feed or straw is being loaded and mixed in the feeder wagon, this creates a huge amount of fine dust into the surrounding atmosphere. The Heron Family employees wear dust masks for the prevention of respiratory issues when carrying out these operations. There would also be fumes from diesel engines operating on the farm.

2.12.2 The Applicant states that the current and future concentrations as predicted in the Environmental Statement are below levels set by the UK Air Quality Objectives. We are unclear how these predications have been made without an understanding of the machines in use and their movements, or the nature of feed-stuffs being handled.

2.12.3 The Applicant identifies the absence of mitigation measures at present in relation to the current location for the Hill Fair; however this oversimplification overlooks the differences in distances and relative positions of the site and active parts of the Farm steading.

2.13 Air Pollution (Smoke)

2.13.1 The Applicant states that there are currently no mitigation measures in relation to smoke coming from the existing Hill Fair Site; but as with 2.12.3 above, this oversimplification overlooks the differences in distances and relative positions of the site and active parts of the Farm steading.

2.13.2 The proposed mitigation of the current situation is that there would be '*ownership and management of fires by responsible adult*'. It is the experience of the Heron Family over the 60 years that they have farmed next to the current site that there has been many cases of inappropriate positioning of fires by children or teenagers.

2.13.3 The Applicant states that there is no record of fires, but does not provide a reference for this statement which contradicts the first-hand experiences of the Heron Family.

2.13.4 The straw, fertiliser and hay all located in buildings close to the boundary of the Bivvy Site all pose a fire risk, particularly given the Yorkshire Boarding sides intended to allow airflow through the buildings would also allow sparks in. The presence of livestock in neighbouring buildings only serves to highlight the risks.

2.13.5 Without prejudice to our position that the Applicant's proposed mitigation measures would not be effective, we would also stress that they do not set out how the management of fires would be policed or the consequences of ignoring any recommendations from them.

## 2.14 Security (concrete plant)

2.14.1 As outlined above, Mr Welch has stated that the access gate for the fair must be open at all times meaning that horses, dogs and children will disperse via the boundary and down Station Road, potentially entering the concrete plant or haulage yard. The haulage yard and concrete plant are very busy with heavy plant and

machinery constantly moving. It is recognised as dangerous area, and it is submitted that a 'STOP' line would not constitute adequate mitigation.

2.15 Security (farm)

2.15.1 As with the Concrete Plant, controlling access between the Bivvy Site and Eastfield Farm would not be a realistic proposition leading to the potential for conflict between Fair Participants and Heavy Machinery. The Applicant's suggested mitigation measures of fencing and a double gate will not be effective.

2.16 Interruption to Farm Activities

2.16.1 The proposed mitigation works will not be effective. In regard to the measures suggested by the Applicant we comment as follows:

2.16.2 Signage – this will have no real effect, and the Travelling Community Representatives have confirmed this to the Applicant in meetings.

2.16.3 Traffic Plan – the would be impossible to do as farm traffic, HGV movements and concrete wagons do not adhere to a fixed timetable. Even if a plan was created, the Applicant does not detail who would control or police it (and at whose expense). It is submitted that this suggested measure would amount to nothing more than a paper-exercise with no real effect or benefit.

2.16.4 Moving Access to Bivvy Site to the northern end of the side - moving the access to the northern end of the site would then create

another serious risk by meaning that Fair Participants would meet with farm traffic on a blind corner. This does not remove any of the concerns we are raising and is not an appropriate measure.

2.16.5 Stop Lines – These will be disregarded, and of no real use.

## 2.17 Generally

2.17.1 The Applicant has requested details of the existing security

measures in place at Eastfield Farm, but this misses the point that the issues arising stem from the proposed relocation from the Hill Fair to the Bivvy Site.

2.17.2 The Heron Family have owned land adjacent to the existing site for

over sixty years, and have offered to make available alternative land for the re-location; they do not take issue with the Hill Fair, but the specific site proposed by the Applicant i.e. The Bivvy Site.

2.17.3 The issues and disputes arising where there is conflicting uses of

land and roads between Fair Participants (whether at Brough or Appleby) and other road users is well documented in the press and of serious concern to the Heron Family.

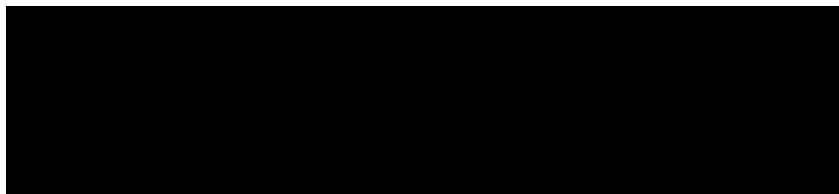
2.17.4 We remain unclear as to who carried out the Applicant's risk

assessment or if they have any experience or understanding of the agricultural experience. We have requested clarification on this point from the Applicant, but at the date of writing, none has been forthcoming.



### **3. Conclusion**

- 3.1 In conclusion, the Heron Family have previously submitted their own risk assessment in relation to the proposed relocation of the Brough Hill Fair to the 'Bivvy Site' and within this document review the assessment prepared by the Applicant.
- 3.2 The proposed Bivvy Site will give rise to substantial risks which cannot be effectively mitigated. It should be kept in mind that once the scheme is completed, the reality of the situation is that the Heron Family will be left with an increased exposure to risks and the associated liability simply trying to carry on their existing businesses.
- 3.3 We do not agree with the Applicant's assessment of the risks posed, or proposed mitigation measures; and are not clear that the Applicant's Risk Assessment was prepared by a Consultant with adequate experience and understanding of agricultural operations. We would therefore urge the Examining Authority to rely on the Assessment provided by the Heron Family in their deliberations.



9<sup>th</sup> May 2023