

Application by National Highways (formerly Highways England) for an Order Granting Development Consent for the A428 Black Cat to Caxton Gibbet Road Improvement scheme

Procedural Deadline D

Notification of wish to participate at hearings & outline of main matters to be raised

Central Bedfordshire Council (CBC)

16 November 2021

INTRODUCTION

1. CBC in its previous written representation dated August 2021 was supportive of the proposal in principle and would wish to see it achieve its stated objectives to the greatest effect, whilst minimising any negative impacts. CBC, however, had some concerns as set out in the representation, along with suggested mitigation and changes that it wished to see addressed.
2. To date, the suggested mitigation and changes have not come forward and the concerns remain.
3. They can be summarised under 2 main categories as follows:
 - 3.1 Local highway impacts (including construction, operational, non-motorised user impacts and the Outline Construction Traffic Management Plan etc); and
 - 3.2 Local environmental impacts, in particular air quality and noise.

NOTIFICATION

4. Therefore, CBC notifies that it will be attending the following:
 - 4.1 **Issue Specific Hearings 4, 5 & 6 (30 November and 1 & 2 December)**

CBC would like to attend the Issue Specific Hearings 4,5 and 6 on the 30th November, 1st and 2nd of December.

As Robert Bruce is not available on the 2nd of December, it is possible, although not presently intended that an alternative legal advocate might attend that day.
 - 4.2 **Issue Specific Hearing 5 (1 December)**

Attendees:

 - Andrew Cundy, Principal Planning Officer & Project Lead, CBC -
[REDACTED]
 - Jethro Punter, Highways Development Management Team Leader, CBC,
[REDACTED]
 - Robert Bruce, Partner & Solicitor, Advocate, Freeths LLP
[REDACTED]
 - 4.3 **Air quality & noise impacts**

Additionally, CBC has remaining concerns regarding air quality and noise impacts as further outlined below and respectfully requests to be heard on these issues.

As these concern environmental impacts, CBC respectfully suggests, if suitable to the Examining Authority, that it would appear to be sensible and preferable if this issue could be discussed at the **Issue Specific Hearing 4** for Social, Economic & Environmental matters on 30/11/21 or, if that is not possible,

alternatively at a short Open Floor Hearing on one of the other days (excluding 2 December as all relevant CBC representatives are not available on that day).

Can the Examining Authority please confirm if this would be suitable and the applicable day?

Attendees:

- Andrew Cundy, Principal Planning Officer & Project Lead, CBC -

[REDACTED]

- Guy Quint, Principal Officer, Pollution Team, CBC,

[REDACTED]

- Robert Bruce, Partner & Solicitor, Advocate, Freeths LLP

[REDACTED]

5. Please forward a link to the hearings on Specific Hearings 4,5 and 6 on the 30th November, 1st and 2nd December to the following:

Andrew Cundy [REDACTED]

Guy Quint [REDACTED]

Jethro Punter [REDACTED]

Robert Bruce [REDACTED]

6. Robert Bruce and Jethro Punter will want to talk about the Examining Authority's agenda items 1, 3 and 4 at ISH5:

- Traffic effects on the nearby highway network
- Effects on Non-Motorised Users
- Outline Construction Traffic Management Plan

7. Robert Bruce and Guy Quint will want to talk about the following:

- Air Quality: the impacts on the Sandy AQMA and receptors located therein.
- Noise: the operational noise impacts on the receptors at Rectory Farm in particular.

OUTLINE OF MATTERS TO BE RAISED

8. The matters to be raised at the hearings are ones contained in CBC's written representation dated August 2020 and have been discussed at some length with National Highways (NH).

9. The Examining Authority is reminded that in accordance with the Networks National Policy Statement (NPS), paragraph 5.211 the Examining Authority and the Secretary of State should give due consideration to impacts on local transport networks and policies set out in Local Plans, for example, policies on demand management being undertaken at a local level.
10. Whilst the policies within the adopted Central Bedfordshire Local Plan are more closely aligned to managing more typical development, there are key messages within the associated transport policies which are considered to be relevant to the DCO application. In particular:

- 10.1 Policy T2: Highway Safety and Design (Adopted CBC Local Plan 2015 – 2035) states that:

Development will be permitted where.... (2) The proposal does not impede the free flow of traffic on the existing road network or create hazards to that traffic or other road users... (4) the proposal promotes walking and cycling permeability and ensures that linkages and publicly accessible through routes are created to successfully integrate the development into wider networks... (7) the proposals fully fund where appropriate, or contributes towards the costs of any measures required to cost effectively mitigate the impacts arising from the development.

Policy T6: Where a development will result in the movement of freight as part of its operations, Central Bedfordshire Council will:...(2) Ensure that developments forecast to generate significant freight movements are located where they deliver the greatest benefits for businesses, and the least negative impact on the environment and local communities... (3) Require traffic management measures and developer contributions to mitigate impacts where necessary.

- 10.2 Policy T2 (2 and 7) and Policy T6 (2 and 3) are considered to be relevant to CBC's representations on the impacts of the development on the nearby highway network and the outline construction traffic management plan, and Policy T2 (4) is considered to be relevant to the authority's representations on development effects upon non-motorised users.

Traffic effects on the nearby highway network

11. CBC's position with regards to the monitoring and management of the prolonged construction phase impacts resulting from the DCO submission, in particular those detailed within the submitted Transport Assessment (APP 241 & APP 242), is outlined in the Joint Position Statement with National Highways (REP3-016).
12. CBC would like to use the proposed hearing session to make the case that the measures proposed by CBC are required mitigation and which CBC consider to be a proportional and reasonable response to the predicted impacts of construction phase traffic, (as referred to in Para. 5.215 of the NPS). These proposals have been under discussion since the Open Floor Hearings dated 18th August 2021, and CBC is seeking a firm requirement.

13. CBC is concerned that the Transport Assessment (Annex (APP-243) states that there will be increases in flow on the A1 and A421 following the full opening of the scheme. At the hearing sessions CBC will argue that, whilst the Monitor and Manage proposal has a role to play in addressing the short term impacts of the scheme, it will be requested that certainty is provided in terms of additional provision within the DCO (or relevant incorporated documents listed in Schedule 2 of the DCO) or a Development Consent Obligation (regarding funding and mitigation) so as to specify and control the 'Monitor and Manage' process, including timing, frequency, methodology, governance, triggers for intervention (including detriment to the operation of local road approaches), and funding.
14. As outlined in CBC's previous comments at Issue Specific Hearing 2, the combination of the potential impacts identified within the modelling work and the subsequent lack of definition associated with Monitor and Manage means that CBC would struggle to fully discharge its duties with regards to Network Management, as significant junctions within that network will be subject to a future monitoring and management regime which is currently undefined, and within which CBC has no identified role.
15. In conclusion, CBC is of the view that, as previously set out in its written representation, the requested mitigation should be a requirement of the draft DCO (or relevant incorporated documents listed in Schedule 2 of the DCO) and/or a Development Consent Obligation as applicable.

Effects on Non-Motorised Users

16. CBC is concerned that the proposed bridge associated with the works to Barford Road should be capable of accommodating future pedestrian and cycle movements, in terms of available bridge deck widths. CBC has previously defined the level of provision sought, which is consistent with that being proposed by National Highways at other locations. This should be a requirement on this project.
17. As part of this, the applicant should provide evidence that as part of the project they have used reasonable endeavours to address any existing severance issues that act as a barrier to non-motorised users. In addition, NPS, paragraphs 5.215 and 5.216 are also relevant. These state 'Mitigation measures for schemes should be proportionate and reasonable, focussed on promoting sustainable development' and 'Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated.'

Outline Construction Traffic Management Plan

18. The scheme itself, due to the scale and complexity of works involved, is expected to take a considerable period of time to fully construct, with a works programme extending to 45 months. As such, whilst construction phase impacts will be temporary, the duration is such that they will have a considerable impact upon local roads, the travelling public and the local communities which they pass through, in their own right.
19. As detailed in the Council's Deadline 4 submission (REP4-063), CBC note that some additional information has been provided with regards to the use of Station Lane, Tempsford for Construction Traffic. Within previous submissions, including Written Representations, CBC had requested that significant construction traffic should be via

an extension of the main construction route for the A428 works approaching from the West, with any use of Station Road being minimal due to the constrained nature of the access route.

20. The Examining Authority is reminded that in accordance with NPS, paragraph 5.211 that it and the Secretary of State should give due consideration to impacts on local transport networks and policies set out in Local Plans, for example, policies on demand management being undertaken at a local level.
21. In conclusion, the routing of construction traffic and additional mitigation requested in CBC's written representation dated August 2020 should be a requirement of the draft DCO (or relevant incorporated documents listed in Schedule 2 of the DCO) and/or a Development Consent Obligation as applicable.

OUTLINE OF ADDITIONAL MATTERS ON WHICH EXAMINING AUTHORITY IS REQUESTED TO ALLOW TO BE RAISED

Air Quality: the impacts on the Sandy AQMA and receptors located therein

22. CBC is concerned that the proposal is predicted to have an adverse impact on the Sandy Air Quality Management Area (AQMA), particularly due to an increase in nitrogen dioxide levels, and there is not currently any proposed any mitigation to counteract or offset that. The size of the impact or number of affected properties or people is not the principal material factor as far as CBC is concerned – anything that is likely to result in an adverse impact on the health of CBC residents at this highly sensitive location and is likely to counteract our fundamental efforts to improve air quality in the AQMA is not acceptable, particularly without any (or adequate) mitigation measures to offset those adverse impacts. In CBC's view, this constitutes a significant impact. In any event, CBC consider an impact on 7 residential properties (as referenced in CBC's written representation dated August 2020) cannot be considered "small" or "not significant" for this purpose. As such, CBC's view is supported by paragraph 5.12 of the NPS that states "substantial weight" must be given to such impacts. At the hearing sessions CBC will argue that mitigation must be incorporated and a requirement of the draft DCO (or relevant incorporated documents listed in Schedule 2 of the DCO) or a Development Consent Obligation.
23. The inspector is reminded to give due consideration to NPS 5.6, 5.10, 5.11, 5.12, 5.13, 5.14 and 5.15 on this issue. In particular, the following is noted in relation to relevant NPS paragraphs:

- 22.1 Paragraph 5.10 states that "The Secretary of State should consider air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the scheme. In all cases the Secretary of State must take account of relevant statutory air quality thresholds set out in domestic and European legislation. Where a project is likely to lead to a breach of the air quality thresholds, the applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached."

This is relevant. CBC has already declared an AQMA in Sandy because of a breach of the objectives. The Air Quality Impact Assessment (AQIA) has predicted that the project will lead to an increase in NO₂ levels within the AQMA which CBC contends is contrary to this paragraph. It is understood that NH is suggesting that the impacts are not significant because the increase is small

(although they have also produced evidence to suggest there may be some variation in the results due to uncertainties etc) and because only 7 properties (less than 30 which is their benchmark for significant impact) are affected by this. As outlined above, this is not accepted by CBC as the appropriate measure of significance and acceptability and the lack of any (or adequate) mitigation is not accepted.

- 22.2 Paragraph 5.11 notes “Air quality considerations are likely to be particularly relevant where schemes are proposed... where changes are sufficient to bring about the need for a new AQMA or change the size of an existing AQMA; or bring about changes to exceedences of the Limit Values.”

The latter is considered to be applicable as there is a predicted increase and therefore an impact.

- 22.3 Further reiterating the above, the following is noted:

- a. Paragraph 5.12 states that “The Secretary of State must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to EIA and / or where they lead to a deterioration in air quality in a zone/agglomeration.”
- b. Paragraph 5.14 states that “The Secretary of State should consider whether mitigation measures put forward by the applicant are acceptable...”
- c. Paragraph 5.15 states that “Mitigation measures may affect the project design, layout, construction, operation and/or may comprise measures to improve air quality in pollution hotspots beyond the immediate locality of the scheme. Measures could include, but are not limited to, changes to the route of the new scheme, changes to the proximity of vehicles to local receptors in the existing route, physical means including barriers to trap or better disperse emissions, and speed control. The implementation of mitigation measures may require working with partners to support their delivery.”

24. In conclusion, CBC has suggested a number of mitigation measures from CBC’s Air Quality Action Plan that could be considered over and above the embedded project measures (which will still result in an increase in NO₂ levels, as currently predicted). Options for these are set out in CBC’s written representation.
25. CBC consider additional mitigation to be justified as a requirement of the draft DCO (or relevant incorporated documents listed in Schedule 2 of the DCO) or a Development Consent Obligation having regard to relevant parts of the NPS.

Noise: the operational noise impacts on the receptors at Rectory Farm in particular.

26. CBC is concerned that the project will result in a significant adverse daytime and night-time noise impacts on a small number of receptors in our area (see CBC written representation dated August 2020) and that this will not be mitigated against. CBC will argue that it is simply not acceptable to expect existing residents, no matter how small in number, to be subjected to such significant long-term adverse noise impacts as a

result of the operation of the new road scheme and not identify and incorporate further noise mitigation measures into the draft DCO requirements (or relevant incorporated documents listed in Schedule 2 of the DCO) or a Development Consent Obligation that could be implemented to alleviate those impacts. Such impacts are considered “significant” in the context of paragraph 5.195 of the NPS as quoted below without adequate mitigation. The inspector is reminded to give due consideration to NPS 5.193 to 5.200 in this regards.

27. In particular the following is noted:

25.1 Paragraph 5.195 states that “The Secretary of State should not grant development consent unless satisfied that the proposals will meet, the following aims, within the context of Government policy on sustainable development:

- avoid significant adverse impacts on health and quality of life from noise as a result of the new development;
- mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and
- contribute to improvements to health and quality of life through the effective management and control of noise, where possible.”

As noted above, CBC considers at present significant impacts will result unless adequate mitigation is put in place. There are some, albeit a small number of receptors in CBC’s area will be exposed to significant adverse impacts on health and quality of life from noise as a result of the development (9dB increase as outlined in the CBC’s written representation dated August 2020). However, the NPS’s “significance” criterion does not equate “significant adverse impacts” as ones suffered by “large” numbers of people and it would be wrong in principle and planning terms to limit the NPS policy in such a way, particularly where mitigation measures could be introduced.

25.2 Paragraph 5.197 states that “The Examining Authority and the Secretary of State should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. The Secretary of State may wish to impose requirements to ensure delivery of all mitigation measures.”

25.3 Paragraph 5.198 states that “Mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:

- engineering: containment of noise generated;
- materials: use of materials that reduce noise, (for example low noise road surfacing);
- lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural or purpose built barriers;
- administration: specifying acceptable noise limits or times of use (e.g., in the case of railway station PA systems).”

28. In conclusion on noise, CBC consider additional mitigation to be justified as a requirement of the draft DCO (or relevant incorporated documents listed in Schedule 2) and/or a Development Consent Obligation as applicable having regarding to the NPS.

CONCLUSION

29. Whilst CBC remains supportive of the proposal in principle, this should not be misinterpreted as meaning that significant impacts should not be mitigated or that any additional mitigation is unnecessary or unjustified under NPS policy. CBC is of the clear and firm view that the mitigation requested is justified and in its view is a requirement of the proposal to mitigate its impacts acceptably and adequately, including by reference to relevant parts of the NPS.
30. CBC will make the case on this at the hearings, but is open and willing to discuss the matter further with NH beforehand with a view to agreeing adequate mitigation should NH be open to such discussions.