



Ms M Sahai
The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our reference JTY/1172923/O115179849.2/JTY

Your reference TR010044

14 February 2022

Dear Ms Sahai

**A428 Black Cat to Caxton Gibbet Road Improvement Scheme
Vodafone Limited response to Examining Authority's commentaries and proposed changes to the draft Development Consent Order (DCO)**

I write on behalf of Vodafone Limited ("Vodafone") in response to the Examining Authority's ("ExA") commentaries and proposed changes to the latest version of the draft DCO.

Vodafone Limited is part of the Vodafone Group, which is one of the largest mobile and fixed network operators in Europe with 300m mobile customers, more than 27m fixed broadband customers, over 22m TV customers, and has Europe's largest 5G network.

The Examining Authority published its proposed amendments to the draft DCO on 14 January 2022. Within this document, at Q4.3.6.1, a number of questions were raised to Vodafone and other statutory undertakers.

Vodafone has since engaged with the Applicant in order to consider the subject matter of these questions. In doing so, Vodafone has been able to understand the Transfer of Benefit proposals in more detail which has, in turn, informed Vodafone's response to the ExA's questions. Accordingly, please find enclosed within this letter (at **Appendix 1**) Vodafone's response.

Yours sincerely

A black rectangular box redacting the signature of Gordon Smith.

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Appendix 1

Application by National Highways for an Order Granting Development Consent for A428 Black Cat to Caxton Gibbet Improvements (Application Reference: TR010044)

Examining Authority's (**ExA**) commentaries and proposed changes to the latest version of the dDCO [REP6-002]

Responses for and on behalf of Vodafone Limited

Question Number	Question	Vodafone Response
Q.4.3.6 Article 11 – Consent to Transfer the Benefit of the Order	(a) The ExA requests each of the bodies in Paragraph (5) to provide evidenced statements to demonstrate that they have the ability to deliver the works that could be transferred to them as stated in Paragraph (5). Applicant may comment.	<p>Article 11(5)(g) of the dDCO provides that the consent of the Secretary of State is not required where the transfer or grant of the DCO is made to Vodafone for the purposes of undertaking Work No. 42, 81, 97 and 104. Vodafone understands that Work Nos. 42, 81, 97 and 104 are for the diversion of underground communication cables as shown on sheet 3, 8, 9, 12, 13, 13A, 14 and 14B of the works plans.</p> <p>Vodafone is classed as an 'Operator' under the Communications Act 2003 and is granted powers under the Electronic Communications Code (Schedule 3A of the Communications Act 2003). Accordingly, Vodafone has the ability to install, maintain, alter and repair electronic communications apparatus.</p> <p>Vodafone notes that Virgin Media Limited and Openreach Limited also have apparatus connected with some of these Work Nos. However, following engagement with the Applicant, the Applicant has clarified that Vodafone would not be asked to relocate apparatus belonging to another undertaker and that the intention would only be to transfer the benefit of the Order to Vodafone for its related equipment and works.</p>



		Therefore, Vodafone confirms that it has the ability to deliver the works in relation to its apparatus in the event that the benefit of the DCO is transferred to Vodafone.
	(b) Alongside, Applicant to provide detailed justification for each of the bodies in Paragraph (5) to explain why the transfer of the benefit of the Order is acceptable without SoS consent.	Vodafone notes that this question is directed to the Applicant. Notwithstanding this, Vodafone considers that its response to Q.4.3.6(a) (above) could be used to help explain why the transfer of the benefit of the Order to Vodafone without SoS consent is appropriate in these circumstances – namely because Vodafone is a statutory undertaker with powers under the Communications Act 2003.
	(c) ExA notes Applicant's response [REP1-022, Q1.7.3.9], and the provision in Paragraph (3) where the liability for the payment of compensation remains with the undertaker, where the benefits or rights transferred are exercised by a statutory undertaker or an owner occupier of land pursuant to Article 28(2). The ExA is not convinced by the widely drawn powers and proposes that Article 11 should exclude the transfer of the liability for the payment of compensation to any party (including the 9 statutory bodies in Paragraph 5) without the consent of the SoS. To achieve this, the ExA proposes including an additional Paragraph explicitly stating the exclusions, and making related changes to wording in Paragraphs 3, 4, 5 and any others. Applicant to provide suitable wording to dDCO and relevant changes to EM.	<p>Vodafone notes the Applicant's response to this question submitted at Deadline 9 [REP9-024] which explains that where powers of compulsory acquisition are transferred to the listed statutory undertakers (including Vodafone) the compensation liability will remain with the Applicant, and the Funding Statement [APP-031] has been submitted on this basis. Vodafone also recognises that the Applicant has amended Article 11(3) of the dDCO submitted at Deadline 9 [REP9-005] to reflect this.</p> <p>Vodafone understands from discussions with the Applicant that a legal document (for example, a Deed of Transfer) would be entered into to give effect to any transfer of benefit, even where the SoS's consent is not required. Vodafone understands that this would be a private commercial agreement to be agreed between the parties and which would make clear the responsibility and roles of each of Vodafone and the Applicant in discharging requirements and</p>



		carrying out the works.
	<p>(d) Should the Applicant disagree with d), the Applicant and the 9 named bodies in Paragraph (5) to provide justification for permitting the transfer of CA powers, including the liability for the payment of compensation to each of the bodies in Paragraph (5). This justification must also include evidence (or, to the extent that it has already been provided, identify) that each of the bodies have the requisite funds to meet any CA costs. Applicant and the 9 bodies in Paragraph (5), provide confirmation that each of the bodies in Paragraph (5) would be covered by Paragraph (3) and the liability to meet the CA costs would remain with the undertaker where CA powers were transferred.</p>	<p>Please refer to our response to Q.4.3.6(c) above.</p>