



Secretary of State for Transport
National Transport Casework Team
Department for Transport
Tyneside House
Skinnerburn Road
Newcastle upon Tyne
NE4 7AR
nationalcasework@dft.gov.uk

Our Ref: 2022/EllandAccess

SPECIAL DELIVERY & EMAIL

Copy by email to Charles Felgate: Charles.felgate@geldards.com

7 April 2022

Dear Sir/Madam,

The Borough Council of Calderdale (Elland Station and West Vale Access Package) (West Yorkshire Plus Transport Fund, Transforming Cities Fund)(Calder and Hebble Navigation Bridge) Scheme 2022 ("Bridge Scheme) and The Borough Council of Calderdale (Elland Station and West Vale Access Package) (West Yorkshire Plus Transport Fund, Transforming Cities Fund) Compulsory Purchase Order 2022 ("the Order").

This is a letter of objection to the confirmation of the Bridge Scheme and the Order made by the Borough Council of Calderdale (the **Acquiring Authority**) on 22 February 2022. In specific, it is understood that the Acquiring Authority wishes to acquire land and water space through the Order to facilitate the construction of two new pedestrian/cycle bridges over the Calder and Hebble Navigation and the River Calder and widening of the towpath of the Calder and Hebble Navigation.

This objection is made by the Canal and River Trust (the **Trust**) acting as statutory undertaker and trustee of the Waterways Infrastructure Trust.

THE PROPERTY

The Trust is the freeholder of the land, bed and bank forming part of the waterway known as the Calder and Hebble Navigation and holds title to such land either for itself or on trust for the public, as the sole trustee of the Waterways Infrastructure Trust.

From our review of information provided by the Acquiring Authority, we understand that the land forming plots 2/1, 2/1a, 2/1b, 2/1c, 2/1d, 2/1e and 2/1f (as detailed on the plans accompanying the Scheme and Order) (**the Property**) belong to the Trust and to which the

Yorkshire and North East

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Patron: H.R.H. The Prince of Wales. Canal & River Trust, a charitable company limited by guarantee registered in England and Wales with company number 7807276 and registered charity number 1146792, registered office address National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire CH65 4FW

Acquiring Authority is seeking to acquire title, or in relation to which rights are sought. The Property is more particularly identified as follows:

Plots 2/1, 2/1a, 2/1b, 2/1c, 2/1d:

The Freehold land known as part of the Calder and Hebble navigation lying to the west of Halifax Road, Elland, registered at Land Registry under title number WYK911714.

Plots 2/1e and 2/1f

The Freehold land being part of the Calder and Hebble Navigation lying to the south of Calderdale Way, Elland registered at Land Registry under title number YY52573.

GROUND OF OBJECTION

The Trust objects to the making of the Orders on the following grounds:

- **Failure to demonstrate meaningful negotiation – Deed of Grant of Easement**

The Trust considers that the Acquiring Authority has made insufficient efforts to acquire the Property through negotiation prior to obtaining the compulsory purchase powers sought under the Order.

With a view to fulfilling its statutory obligations, the Trust's standard practice is to enter into an appropriate form of works agreement and subsequently to provide Acquiring Authorities with a Deed of Grant of Easement or a similarly appropriate negotiated land transfer (as appropriate to the nature of the land interests sought). Such agreements are necessary to ensure that the operations of the affected waterways by the Trust are not negatively affected.

The Acquiring Authority states at Paragraph 3.11 of its Statement of Reasons dated 24 February 2024 that it approached landowners, tenants, and occupiers about the use of compulsory purchase powers. The Trust has been aware that the council had ambitions for a further highway upgrade schemes since July 2019 when it was raised during informal discussions as part of the first phase of the Acquiring Authority's highway upgrade plans; however, they have only started trying to progress meaningful discussions on this second phase with the Trust since autumn 2021. It should be noted that since negotiations have begun, the Trust has asked for detailed scheme drawings of the proposed works to enable us to review the scope of the impact on the waterways arising through the Order and Scheme. To date, these still have not yet been provided, which makes it difficult for meaningful negotiations to take place.

It is therefore considered that:

- Meaningful attempts at negotiation have not been pursued or genuinely attempted by the Acquiring Authority in breach of paragraph 17 of the Compulsory Purchase Process Guidance as published by the Department for Levelling Up, Housing, Communities .
 - The Acquiring Authority has failed to take reasonable steps to acquire all of the land and rights included in the Orders by agreement, in breach of paragraph 2 of the Compulsory Purchase Process Guidance as published by the Ministry for Levelling Up, Housing & Communities
- **Operational Land – Code of Practice**

This objection is made by the Trust as a statutory undertaker, which has a duty to make its waterways available for navigation and to maintain its waterways in a condition suitable for use for cruising under section 105 of the Transport Act 1968.

In order to implement the proposed scheme, the Acquiring Authority should satisfy the Trust that periods of construction and ongoing use of the Scheme will have no long-term impact upon the waterways for navigation. It is unknown whether any substantial works will require the closure of the waterway and if they are, when this will occur. Such works which may affect the interests of the Trust as statutory undertaker for the waterways would ordinarily require the agreement of the Trust before they may be undertaken . The Acquiring Authority has been advised to have regard to the Trust’s ‘Code of Practice for Works Affecting the Canal & River Trust’ (“CoP”). However, there has been little engagement in such negotiation to date.

As such, it is considered that it has not been adequately demonstrated that the Scheme and Order is “unlikely to be blocked by any physical or legal impediments”, such as the need for works to comply with the CoP. This is contrary to the requirements of paragraph 15 of the Compulsory Purchase Process Guidance as published by the Department for Levelling Up, Ministry of Housing, Communities & Local Government.

The Acquiring Authority is advised to review the CoP and to contact the Trust’s Works Engineer (Alan.Daines@canalrivertrust.org.uk) to ensure that any necessary consents are obtained and that the works are compliant with the code.

- **Statutory Undertaker**

The Property was acquired by the Trust for the purposes of the undertaking and is directly related to the Trust’s statutory functions. It is, therefore, “special category land” for the purposes of section 16 of the Acquisition of Land Act 1981. It is considered that the acquisition of the interests in the Property sought by the Orders without an agreement would be incompatible with and would cause serious detriment to the use of the Property by the Trust. The Trust will therefore submit representations to the Secretary of State for Environment, Food and Rural Affairs

that the Orders should not be confirmed to include the Trust's operational land, unless that Secretary of State can be satisfied that:

- a) The Property can be taken without serious detriment to the carrying on of the Trust's undertaking; or
- b) The Property taken can be replaced by other land without serious detriment to the Trust's undertaking

It is the Trust's view that the Acquiring Authority has not demonstrated to the satisfaction of the Trust that either (a) or (b) above is achievable. The Trust considers that the use of this operational land without the appropriate agreements in place could cause serious detriment to its undertaking.

As you will be aware, any objection made by a statutory undertaking, such as the Trust, in respect of land which has been acquired for the purpose of their undertaking and not withdrawn shall mean that the Order will be subject to Special Parliamentary Procedure under section 17(2) Acquisition of Land Act 1981.

For the protection of the Trust's undertaking and for the reasons detailed above, the Trust submits that the Secretary of State should refuse to confirm the Orders, pending the negotiation and agreement of appropriate documentation on terms satisfactory to the Trust, such negotiations to take into account:

- the Trust's obligations under the terms of a Trust Settlement settling the Trust's operational land on the public and appointing the Trust as sole trustee of the Waterways Infrastructure Trust, dated 28 June 2012; and
- the Trust's charitable status and the resulting obligations to comply with the provisions of the Charities Act 2011 in relation to the disposal of interests in land.

The Trust reserves its right to expand upon or add to the grounds of objection set out within this letter.

The level of technical detail to be discussed and agreed between the parties in order to facilitate the proposed Scheme whilst safeguarding the Trust's undertaking cannot and must not be underestimated.

The Trust's address is:

Canal and River Trust
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South Pier Road
Ellesmere Port

CH65 4FW

Please send all legal documentation to the email address of Susannah Rackstraw.
(Susannah.rackstraw@canalrivertrust.org.uk)

Yours sincerely,

Susannah Rackstraw

Susannah Rackstraw
Estate Surveyor

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