

TEXT_SizewellC_CAH1_Session3_17082021

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00:06

Good afternoon, everyone, the hearing is resumed. Now I'll now hand over to my colleague, Mr. Brock who has a few specific questions to ask under this heading. And that's in relation to the acquisition of the Fed Meadow Marsh area site. So Mr. Brock.

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Thank you very much, Mr. Kane.

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You say a couple of specific questions about Marsh Harrier sites and meadows sites, and I'll start with the fen Meadows sites. So this is the questions to I'm going to start with the the applicant please.

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You are seeking full compulsory acquisition of the land for Ben Hall, and Halesworth and taking them.

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afternoon Mr. Philip, what are you doing? Okay, can you hear me? I can hear you, sir. I hope you can hear me and see me as well.

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Yep, we both have based religious.

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So you're doing full full ca for all three sites. But we have acknowledged uncertainty about the likely success of the creation of replacement fen meadow.

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So just a for example, on a recent example, a deadline five, which was less than a month ago, we had Natural England saying things as follows. To summarise, our advice is that creating compensator II habitat at the same quality to that which will be destroyed will be extremely difficult, if not impossible.

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So my question to you and the thing, which troubles me is how can it be said that there was a compelling case in the public interest for compulsory acquisition in those circumstances? Can you help me on that, then I need to know what you what you have to say. Yes, sir. I'll start if I may, by outlining that the essential nature of the case and then I'm going to pass on to Mr. Lewis, to deal with some of

the technical matters that underlie it, that the compelling need in the public interest arises, because of the importance of seeking to do what is possible to

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recreate this habitat on

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land which we control

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of land, which we can therefore manage in a way that makes the recreation of this habitat likely to occur so that the need arises directly as a result of loss of habitat from the project, we've discussed the legal and policy position in relation to that habitat, and therefore the appropriateness of seeking to reproduce it.

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So in so far as the need element of the compelling case is concerned, I don't understand that that is in doubt.

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The second element then comes in asking, Well, if one is seeking to reproduce that habitat,

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how much should be reproduced, bearing in mind the complexities that arise when one is seeking to achieve that. And the advice that has been given by natural England as to the appropriate multiplier, that should be used for the purposes of this particular habitat, incorporates, as I understand it, and Mr. Lewis can correct me if I'm wrong about this, a recognition of those complexities in other words, the number that is used is chosen

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to reflect those difficulties.

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And just

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misfortune just pulls me out there because I don't know about you, but I've got half a screen occupied by a frozen. Mr. Ridley from the county. I don't know. Yes, you do. Sorry. We're having a few technical difficulties, our end that we're trying to get rid.

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Right. I'm sure we'll see what's really to get but thank you very much. Yes. So

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Please do carry on. Yes, yes. So insofar as there are difficulties, I'm going to ask Mr. Lewis, to deal with whether those are fairly characterised by natural England or whether he takes a different view in a moment, but they are reflected in the multiplier that is to be applied. My understanding of the applicants position that Mr. Lewis can elaborate on this is that when account is taken of the conditions at the individual sites that have been selected,

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and the quantum that needs to be achieved, and the quantum of suitable habitat that exists on those sites, it is likely that the quantum will be successfully delivered, so that the natural England

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multiply when applied and it produces an overall figure that must be achieved, is expected to be achieved. and thereafter, as we discussed at the relevant issues specific hearing, there is a further contingency that deals with the question of

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what happens if that amount of habitat is not ultimately delivered. And then one looks to wider a wider area where one can identify schemes to which a financial contribution can be made. And you'll recall Mr. Lewis's evidence that when one looks at the East Anglian region as a whole, there are a number of places where such schemes exist. And in a moment, I'll ask him to deal with the level of confidence that ultimately, a suitable quantum of habitat will be delivered. But it's, it's clearly preferable, in my submission, if it is possible for the applicant to deliver

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the habitat on sites, which it controls, and which are more proximate to the site where the habitat is to be lost, for that to be incorporated within the order. So the applicant takes direct responsibility for it and the losses addressed, as close as has proved to be practicable

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to the site of loss and that there is a compelling public interest in seeking to achieve that. So that's the sort of broad

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outline of the compelling case, but but at the heart of your question, if I've understood it correctly, is the level of uncertainty. This is simply a lost cause. And there's really no likelihood that this will be successful. And I think that is on that point, that are going to ask Mr. Lewis to come in and offer his view if I may.

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And that's fine. And whilst he's just joining us, let me say this that that, yes, you've correctly identified, what I think is the is the difficulty which you face.

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And

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the proposal is to

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compulsorily acquire quite substantial amounts of land in three different different locations for a scheme, where the government's advisor is saying it's unlikely to work. And there are others who expressed serious doubts about it.

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Yes, that's right. That's what hopefully, Mr. Lewis will now address. But I would say to, as I indicated,

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we have a contingency arrangement, if that does prove to be the case. But we don't believe that that is, in fact, a fair characterization position, but I'm not probably veering into the solutions target.

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So as soon as to those two bring the two together. Yes. Mr. Jones, says so as to bring the two together because of my supplementary question on my next question after that is, I mean, how can there be a compelling case, if the fallback is the payment of money? And if the

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the the view is that the scheme is not going to succeed? So if you don't deal with the two of those losers, that'd be great.

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Hello, sir, in relation to the natural England quote, I think which which you read out difficult, if not impossible, I think. In the written representation from natural England, there was a proceeding a couple of preceding paragraphs which do draw attention to successful examples of femoral creation both in

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UK and, or widely in Europe. And I think in our paper that we submitted as recent deadline, I think to the first round of written questions, and I can provide a link to that and reference later. We do provide that evidence. So we wouldn't accept that it's impossible, we might accept that it's going to be challenging. And of course, one of the reasons for that the nine times multiplier requested by demanded by natural England is to reflect that difficulty. So I think it's the fact that natural England have set that multiplier that recognises that difficulty. And you would have thought that that that if that if the natural England genuinely believed it to be impossible, they wouldn't have set a multiplier. So I think that's probably an important point.

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In relation to a contingency. The contingency fund is not just about payment of money the contingency fund is to fund other Fenn, Meadow opportunities, creation and enhancement across a wider

geographic area where there are likely to be other opportunities to do these works. Does that help? Or Or can I help further with with with the question?

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Well, I think it's up to you raise it to provide the best explanation which can what you think is going to

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help the examining authority over this hurdle.

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Okay, so So I mean, essentially, we, our starting point is to deliver against the natural England's requested multiplier, which, on the basis of our updated lantech figures of naught point 466 hectares of fair Meadow takes us Sr 4.14, Hector's.

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And as was discussed earlier, we've built an element of contingency into that, again, which takes you to 8.31 Hector's, I think, and that is to ensure that we can deliver the 4.14 hectares required by natural England.

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We are convinced and I think we submitted the fen Meadow plan at deadline six. I don't know if the panel have had the opportunity to review that yet in detail. We think that's a compelling document, which describes in detail our approaches each of the sites based on the hydrological data to date, and which includes the spring early summer period, which is the critical groundwater data, which underpins our confidence that we can deliver at these three sites. And obviously, we've chosen these three sites after reviewing a large number of sites across the whole of Suffolk. So we have chosen the optimum sites here, we're not talking about choosing some random sites which have

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poor characteristics to develop this habitat. So so I think once the panel has been able to review that deliverable,

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there'll be confidence that we're able to deliver the habitats.

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I mean, your your, your initial

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fan matter report, which went in with the application material rejected Pakenham.

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The reason we rejected Pakenham, sir, was that we,

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at that point in time, we're not wedded to natural England's

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multiplier, the concept of their multiplier.

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We have we agreed late in 2020, to adopt the multiplier in full. And it is the adoption of that multiplier, the nine times multiplier, which which meant that we had to bring Pakenham into our proposals in the gent January change application, which is why now forms a full part of the proposals in order to hit the the quantum of 4.14 hectares. That's why we've brought Pakenham into the proposals.

14:17

Yeah, but if I go back to that, to that application document when Pakenham was rejected, it wasn't rejected, because he said, Well, we don't need it because we can provide enough on the other two sides. It was rejected because it didn't look very good.

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It was rejected because it was considered to be somewhat more challenging in relation to high hydrology, sir, and I don't think

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we do review the complex hydrology in the current fair Meadow plan, but we think that those concerns are surmountable. Given our approach at that site which doesn't require manipulation of water levels within major surface water bodies. We're going to be an excavating to enter

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groundwater and that is one mechanism by which we don't

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encounter many of the hydraulic hydrological constraints associated with managing surface water networks.

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Okay, okay.

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I hear what you say I'm trying to put to all of the points which are concerning concerning me about it.

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So that's a deadline six documents. Yes, I have seen it You're right. I haven't completely absorbed it yet. I anticipated I will have done by next Friday. However, happy happy to help where there was the next the next Friday. Yeah.

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And

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I mean, I'm going to be assisted by whatever natural England have to say about it as well.

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I'm telling you something which is not perfectly obvious.

15:58

But alright.

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In that case, I now before I move on to a question which I think you'll find one simple about the marsh area. And I just going to ask if there are any other affected persons who would like to contribute on this on these questions which I've just been raising about the fen Meadow

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acquisition

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don't see any hands going up?

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I see one hand going up.

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Sally watts

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Hi, yes, I'm sorry, I still if natural England had

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sort of put in their night nine times multiplier because they want to make sure that naught point seven Hectors or even if they'd want to make sure that 4.14 hectares or whatever we're talking about in the four figure why is it that EDF there need to put another multiplier on top of that? Because Surely, natural England have put in their sort of extra? I'm not sure I can find the exact word but you know, the multiplier to to accommodate what they need to actually deliver us. I don't see why we're doubling it up again. And that's, that's my concern.

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And yeah, I mean, we'll talk later about the procedure of what they've

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how they, EDF have decided that they want to deliver fen meadow. But I mean, in my, when you read your 232 pages and try and understand that,

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you know, it is an experiment, it fundamentally is an experiment for what is fair Meadow takes you years and years to develop. And, and I don't think that's really after 10 years, you're going to be able to say whether it's been a success or not anyway, but those are just the comments that I want to make.

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Or you can use any evidence or ecological evidence about that results. Um, no, I mean, I'm not a scientist, but I've read read the information. I mean, I don't even know who's adjudicating EDS, environmentalists. I'm, I mean, essentially Napoli, England, or and

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it you know, and and I, it's sort of very difficult to, I mean, again, why is it that EDF have identified the paganism site as the only site and stuff but when, you know, if you look at

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an instruction as well, there's there's no point in asking me questions about why he might have identified. But but if you want to make a submission, which is they shouldn't have done because there's something else then by all means make that submission? All right. Well, yeah. Okay. Thank you.

18:55

Okay, are there any other effective parties who want to make

19:01

submissions on this point? Before I hand back to the applicants and give you a wider reply on that? Do you want to respond to Louis or Mr. Philippon? So I was going to ask Mr. Lewis, just to pick up the the explanation of why it is that we have sought to include more than the 4.1 hectares. In other words, that the point that's being made about doubling it up, which is the issue that Miss watts raised in terms of the selection of the site, I think we've probably put in enough in writing at the moment to explain how we came to the view that Pakenham was the appropriate site to add.

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And that's something which we touched on a moment ago, but I would like the service just to

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see how I still remember my rights.

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But remember that the that initial report which went in with the application, certainly identified

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Ben Hall and

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the name of the other one

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hails me your your two initial. Thank you, Pentland hailesworth

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identified those two and was taken on the next one in the pecking order. It was it was the third best as well. I think at that stage, I'll hand over to Mr. Lewis because that's more appointed substance. Very good. Okay. Thank you.

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Hello again, sir. Yes, this is very much the case. Pakenham was on the shortlist. I gave an answer to Mr. MCI. earlier on today, and I failed to provide the references. But the the two site selection reports which are relevant are Woods 2018, which is

20:57

python 007. And the woods.

21:01

Sound sorry, she stopped. Should we do? Sorry? Should I slow down? Sorry, sir.

21:07

Give me the references to the word reports, please. Yep. So Woods 2018, which was the phase one study was rap for hyphens? 007.

21:21

Yeah. And the phase two would report was word 2019. And this was in the application, it was app, hyphen, 258.

21:32

And the combination.

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The combination of both of those explains how we've got to Pakenham being on the shortlist.

21:42

Okay, okay. Don't do that. And the other question you were being asked by Mr. Phil, what to address the doubling. Yeah. So I covered this briefly this morning, again, in relation to to a question from Miss watts. And I'm going to prepare a note on it. And it was the question about why we need to target an additional quantum over and above the 4.14? Well, the most important thing to say is that the 4.14 hectares is effectively our starting point. So natural England require us to deliver against that multiplier, which which brings you to 4.14 hectares, that's our starting point, we're required to deliver 4.14

hectares. So inevitably, in order to achieve that, and in ecology, nothing is entirely certain. So there'll be some variations in ground level and hydrology, which means that we've got to build in some elements of site specific contingency to deliver that 4.1. For

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that the key reasons are, there's uncertainty in the ground, and groundwater level fluctuations and with a limited ability to control that. And one of the reasons that we've taken the approach that we've had in relation to shallow excavations, rather than surface water management, is so that we don't affect adjacent land holdings by excavating down to intercept groundwater. It's it's an important way of mitigating offsite effects. And the other thing is, it's simply difficult to predict with any certainty that the particular habitat the fair Meadow will occur at a particular location. So by creating a sort of undulating profile with this micro topography, which I described, which uses remove all the topsoil of about 20 to 40 centimetres, it will depend on the site, but ultimately, you're creating a somewhat undulating profile. And that itself will create a range of hydrological conditions, such that we can be confident that we can create a quantum of fen meadow, and by providing contingency and the total of 8.31 that enables us to conclude that we will be able to deliver the 4.1 for required by natural England. Just Does that make sense? And I will provide a note on that.

24:02

Yeah, so what you're saying to me is, there are some uncertainties in order to get to 4.11, you're going to need to have

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some some spare.

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And you were also saying to me that you built is where a mitigation zone, a buffer zone around the site, so that where you do change groundwater, it's not

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well, the effects will be within your own boundaries. Exactly. So So when you look at the polygons that we've defined in the fair Meadow plan, you'll see that the the polygons for the fen Meadow targets are set somewhat back from the surface water features so that we don't disrupt surface water patterns of drainage which was was considered by stakeholders to be very important, not least the

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landowners themselves and adjacent landowners.

24:58

Okay, thank you.

25:00

I'll move on to that case. If that's all you want to say in response to my questions about the westerns and Marsh Harrier compensation.

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Either you can come on screen or both, I don't mind.

25:12

Let me just get some clear sight for Marsh Harrier compensation at wesselton.

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This is to provide foraging land, but only if a secular state says that it should be included.

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So yeah, kiss your land.

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Yeah, I think that's fine. When I look at the land plans, sheet 14, which you'll find in rep, five, five and 040.

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They show the land, Sheldon pink, which means you're doing full compulsory acquisition of the wesselton site. But when I look at your statement of reasons, which is app hyphen, 062.

26:04

I'll give you the paragraph number in a minute that says it's temporary development and that all you're seeking is temporary possession. And when we were at issues, we'll be hearing number seven.

26:16

Either you or or Mr. Lewis or somebody else on the Africans behalf said that temporary possession was what was being sought, as of course, you only need this land. While the Harriers can't overfly the construction site and the temporary site to get to their current foraging areas. It must be slogans, he told me that I don't know.

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So

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that's my question as well. Are you seeking temporary possession or you're seeking full acquisition?

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I'm gonna just hand over to Mr. Lewis, who seems to know the answer to that.

26:57

Very good.

27:07

Hello, I think I'm back, sir. having troubles with the touchscreen?

27:12

Yes. So we, as you correctly surmised, I think in your question, we only require the land for the period of construction. So this would be up to a 12 year period,

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during that period, whereby the the temporary construction area forms a barrier to the marsh areas that breed at minsmere feeding on the size of our marshes to the south. So it's it's it's simply for that period. And it's simply presented as a contingency. In the event that the Secretary of State considers that the onsite provision 48.7 hectares, which is east of our property farming, will east of Laura B farm, in the event that the Secretary of State determines that to be insufficient, which is why we brought this area into the application? Should it be required? no opposition, of course, is that we don't think it is required, because we think the onsite provision is sufficient. But in any event, it would be simply for that 12 year construction period.

28:16

So you get the shading change that correct on the plans. So I will check and confirm the position on that might my understanding, just having taken brief instructions on it is that it is the duration of the period of time over which the land is required, that at the moment explains the pink shading, in other words, why it has sought to be acquired on a freehold basis. But I'm grateful to you for just highlighting that that apparent discrepancy between the two documents, but rather than provide you with a confirm position now, I'd like if I may, just to take that away to make sure that I understand

29:02

what the position should be. And then I can relay it back to you, sir.

29:07

Yeah, that would be good. If you only need it for the construction period, then you doesn't seem to justify full compulsory acquisition does it? Well, I'll check. I'll check the position. So as I said, my my brief instructions are on the basis of the period of time, I know that sometimes there are issues where you have a very long construction period as to whether it's appropriate to take land away from someone for a temporary period for what will be in excess of a decade and that that's an issue, which I'm familiar with from other cases. And I rather than therefore saying that it's necessarily appropriate to take it on temporary basis. I do want to just check what my clients position is.

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But that's fine. please do let somebody else come onto the onto the screen.

30:00

recognise you, sir.

30:03

Hello, it's Michael Horton. I just got a comment in relation to the marsh Harrier compensation.

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Can I can I come back to you one more question which I want to put about this to the to the applicant, and I will ask you for any affected person parties who want to come in.

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Thank you, Mr. fall apart, let me put it another question to you, which I would like an answer to today. Although Will you have to send somebody scurrying around in the background, I suspect now.

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And it's it's this really. So as you as you say, we don't you say you don't need wesselton, but you are giving it the sector state to decide whether or not you should compensation there.

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What I would like somebody to do, please is to direct me to exactly where in the application material which is before me and my colleagues, we find the expiration of the criteria and the tests that the Secretary of State needs to consider in order to make that decision. I suspect, it comes out of the HRA regime, but point me exactly to what it is and where he or she is to take that decision, please,

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by all means,

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give us chapter and verse in the post hearing written summary. But if at all possible, I would be grateful for an answer either today, or maybe first thing tomorrow morning.

31:36

Thank you. So I've got a note of that point. And we'll send people to scurry if that's what's required. But in any event to identify those points for you.

31:49

Thank you now. So whenever Mr. Horton would like to come in on this, and this is my call for anybody else who wishes to make a contribution on this particular point. Mr. Holden.

32:03

Thank you, sir. I'm sorry to interject, from a truly my point in relation to the temporary possession versus terminal acquisition. Perhaps I could just recount our experience of discussions with Mr. Lewis and delco McLaren and we have been made aware that this is for a temporary possession. Indeed, we are discussing at the moment an option to lease

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in relation to a voluntary arrangement. I have to say that we have significant concerns over the suitability of the weapon site and my presentation later in this issue specific hearing.

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Provide reasons for that and suggestion that there is a more suitable site closer to Marsh area, habitat itself.

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Okay, thank you. And I think I heard you say something along those lines in Isaiah seven didn't time.

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The

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issues relating to the marsh area habitat, an alternative site, which our clients have put forward

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is actually a little bit later than the

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number seven. That's very current and but I'll be alluding to that tomorrow.

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Okay, now, I just I'm just trying to link it up to all I've heard, we've heard before and not it's not to discourage you from making your point.

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Are there any other? Thank you, Mister, if that's it, then you can switch your camera off? Are there any other affected persons who want to contribute at this stage on this point?

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Very good in that case, thank you all very much. I'll pass you back to miss MCI.

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Thank you, Mr. Brock. So if we move on to agenda item three, and that's whether there is a reasonable prospect of the requisite funds becoming available. Now the first sub item three a, that's the resource implications of both acquiring the land and implementing the project for which the land is required. So the examining authorities first questions ca dot one dot 28 and ca dot 129. Question the current cost estimate for the project, and how that has been informed by learning from Hinkley Point C. In response, the applicant indicates that the size or C cost estimate will undergo a series of updates between now and final investment decision. So my first question for the applicant.

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Now that has been has there been any update to the cost estimates of around 20 billion and that's including designed land acquisition and physical construction since that response was provided. And is there any periodic update you before the close of the examination

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Thank you, Madam now to to answer that question, and quite possibly others who may have under agenda item three, I'm going to introduce a new speaker. This is Mr. Joe Ripon. He is the sizewell C. co financing programme manager, and he'll be able to assist you on that. So I'll pass it over to Mr. RUBIN. Thank you.

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Good afternoon. So on the first question you asked, has there been an update to the cost of update? Sorry, cost estimates?

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No,

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sorry, excuse me, the the updates are

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not particularly frequent. So they happen over, you know, over a period of months. So there is a lot of work going on to update the cost estimate. But there isn't a new number since we submitted that response.

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But

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as there will be infrequent, but a number of updates between now and financial close, I think there will be updates

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before the end of the planning process.

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Alright, so obviously, you will, have you got any anticipation as to when you say that periodic updates, you're working on them now, as to what stage before the examination closes? Are you likely to be in a position to provide an update? I think I need to take that way and discuss it with the estimating team. And we also have to bear in mind commercial sensitivities, which might mean we we have to think about why I appreciate I appreciate that.

36:43

Right. Thank you for that. So on the next agenda item, that's three B and that's whether adequate funding is likely to be available to enable the compulsory acquisition to proceed within the statutory period following the draft DCA being made. Now the examining authority has asked a number of first questions on this topic.

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What seems to be the position from those responses is that the applicant is currently in discussion with the government in relation to funding. Those discussions are focused on the ramp funding model, whereby electricity customers will fund the project through its lifecycle.

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Now, the ramp funding model, the applicant's position is that that has a proven track record for attracting infrastructure investors, and that would enable the applicant to raise capital from equity and debt investors. Legislation would be required to secure this. But at this point in time, the discussions with the government are ongoing, and the proposed funding model and the timing of that remains to be confirmed, although the applicant expresses confidence that a funding model will be developed which will enable the project to be realised. So I had three questions from the applicant. So firstly, could you confirm that what I've said provides a fair albeit extremely brief summary of the information and the current position on funding. Secondly, isn't it anticipated that confirmation of the ramp funding model as the outcome of discussions with the government will be achieved before the end of the examination.

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In the absence of that, or confirmation of any other funding model. How can the examining authority recommend to the secretary of state that there is a reasonable prospect of the requisite funds for Acquisition becoming available based on the applicant's expressions of confidence?

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Madam, what I'm going to do, if I may is I'm going to ask Mr. Ripon to deal with the first two points, first of all, whether what you've said is a fair summary. And secondly, whether it's anticipated that there'll be a decision on Rob, before the end of the examination, and then I might come in to respond to at the third in the light of what he said. I should though, say in relation to the first point, that of course, our position in relation to funding needs to be considered

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by reference to everything that we have said in the funding statements and in response to the written questions we've had already. And in response to the further written question that we've had, in the second round of written questions, so buy it without any disrespect our position in therefore

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In terms of any summary can't be taken as cutting across anything we've said in those documents. So with that important caveat in mind, I'll pass over to Mr. Gryphon. Thank you.

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Thank you.

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Your answer to question number one? Yes, I can confirm your summary is correct. The discussions are ongoing with the government.

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And as you have said, The Rab model has an extensive track record for providing funding and securing financing for big infrastructure in the UK and internationally. And we are very confident that if the funding model is confirmed, that we will be able to secure the finance, we are required to proceed on timelines. Yes, we do believe that the RAF and the model will be confirmed during the examination period. We are the extensive discussions with the government go far beyond the funding model. So they are well aware of the project's timelines and the importance of developing the funding model with respect to those timelines. So So yes, we are confident that that will happen. Thank you.

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Mr. Robot. Yes, madam says so far is the question of

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confidence in the question of funding, if the

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use of the Rab model is not confirmed by the end of the examination. I just tackle it in this way. First of all, one needs to look at the test that is set by the compulsory acquisition guidance. And what that tells us in paragraph nine is that the applicant should be able to demonstrate there is a reasonable prospect of the requisite funds for Acquisition becoming available. And then paragraph 18, that the applicant is able to demonstrate that adequate funding is likely to be available to enable the promoter to carry out the compulsory acquisition within the statutory period following the order being made. So both of those are concerned with two things. First of all, they're concerned with the costs of compulsory acquisition.

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Secondly, they're concerned with a consideration of what is likely to occur in the future. In other words, after the order is made, it's not a question of whether funding is available or certain, at present, are come on to develop that second point in a moment, but just coming back to the first point, which has to do with the costs of compulsory acquisition,

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what the applicant is proposing, and will be set out that deadline seven is the addition of provision within the decio. committing to the principle of a bond, which is capable of being thrown upon prior to its implementation of any compulsory acquisition powers. Sorry, Mr. Phil, pop, could you just repeat that I missed the start of that, of course, madam. Deadline seven, the applicant will be introducing a a new provision in the decio, which commits to the principle of a bond capable of being drawn upon prior to its implementation of any compulsory acquisition powers. That's the sort of provision which is quite commonly found in development, consent orders, and one of the things we'll do at deadline seven is just referred to some precedents, which include that is quite a common provision. And it's important to distinguish it from the sort of exceptional provision which one saw in the will the draft decio, which you may recall, also dealt with the wider question of project funding because of the peculiar circumstances that arose in that case that that's a rather unique position. What we're proposing is something which is much more common provision which deals with security for the costs of compulsory acquisition, specifically, and it's not unusual for there to be such separate provision at Hinkley Point C, that there

was separate provision made for that or that was done from recollection through the section 106 obligation, but that's funding for compulsory acquisition, not funding for the project as a whole so far is that the funding for the project overall is concerned that is, of course, relevant to

44:58

the broader issue.

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compulsory acquisition because one needs to have a reasonable degree of confidence that the scheme will go ahead. But there is of course, a separate

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the separate consideration that arises in relation to meeting the costs of compulsory acquisition. And that's that's what that first point is dealing with. Then coming on to the the broader question of project funding more widely.

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The decision maker having regard to the guidance that exists needs to look at what's reasonably likely to occur.

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And that reflects the inevitable degree of uncertainty that commonly exists with regard to the funding of major infrastructure projects ahead of a decision on the development consent order. And so for example, one sees in the guidance at paragraph 17 acknowledgment that some point it may not be intended to be independently financially viable or the details can't be finalised until there's certainty about the assembly the necessary land. And in those circumstances app considered to provide an indication of how many potential shortfalls are intended to be met, including the degree to which other bodies have agreed to make financial contributions or underwrite the scheme, and on what basis contributions are or underwriting has to be made. In other words, it doesn't necessarily expect agreement to have been completed at that point.

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And moreover, it recognises the need for examining authorities and also the decision maker, the Secretary of State to avoid having to pre judge decisions, which were made by other bodies, and in this case, the government itself and pursuant to a different process, where that decision is ultimately

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not necessarily going to be made to laughter DCA itself is in place.

47:04

Now, the

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in those circumstances, it's necessary to look to what the government itself has said, in addition to what the applicant has said, about the position for funding in this case, and in relation to the use of the ramp model. And we've we've dealt with this

47:27

fairly extensively in writing. But in short, it identifies a situation whether a good prospect, so the scheme being funded using the raw model that the government favours and is a tried and tested approach to funding such infrastructure. And we we note that, in July of this year, 25th of July, the Minister for energy, clean growth and climate change reaffirmed the government's position that Rob is a credible model for financing large scale nuclear projects. And we say in the light of that

48:06

it is not necessarily for the examinee or authority itself, to have to go behind the government's position on that matter, and seek to duplicate the separate process which is being undertaken to assess whether a Rob model is appropriate. We say it's sufficient in these circumstances, that to know that the government considers that this is a credible model. And the evidence that that model has a strong successful track record and delivery of infrastructure, that negotiations are continuing positively, and that there are strong incentives on both sides to reach agreement. And that is, that strong incentive reflects the government's strong continued support for the development of new nuclear. And it's reflected in the fact that that agreement was ultimately reached on funding Hinkley Point C. And that is actively involved in negotiating how best to fund Sizewell B, and that

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the applicant is firmly committed to the scheme. And that's reflected in the position that it finds itself in having

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undertaken considerable expenditure and continuing to do so in pursuit of that application is reflective of its confidence that ultimately, what is likely here is that the funding will be agreed and that there is at the very least, a reasonable prospect of the funding becoming available for the construction of the project as

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Hole, that that is, of course,

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over and above the relatively relatively small costs of the compulsory acquisition, because although they are substantial, when you look at the overall cost of the scheme, they are a relatively small element of it. So, unless I can assist further on that point, that is what I would say by way of summary.

50:26

No, that's, that's fine. I understand your point. So, I mean, in terms of you feel the sufficient evidence for the CIA test in that respect be met. And you don't feel there's a need for a Wilford type provision?

50:46

No, not not, not at all. And so far as the Wilbur position is concerned, just to comment specifically on that, as I said, that was a highly unusual provision. I'm not conscious I may be wrong, but I'm not conscious that a proposed article of that sort has been used in any other decio. And the circumstances are very unusual because the project had been publicly suspended by its promoters.

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At the time, the examining authority was apparently its its report. And the reason for that was that it had not proved possible the reach agreement with the government on funding. And so we won't be proposing an article in the decio,

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which is effectively as in the wilfer case, sought to defer the decision on whether the scheme had met the compulsory acquisition guidance to a post decio stage, we think that that's an unsatisfactory approach to adopt. Because the issue of funding for the implementation of the scheme is relevant when deciding if there's a compelling case, to authorise compulsory acquisition and the judgement needs to be made at the time of making that decision. And whilst one understands why that unusual approach was taken in the peculiar circumstances of Wilbur were essentially, one either put in a clause like that, or withdrew the application. And it does seem to be an option of rather sort of last resort. And we're in very different circumstances here. And so it's an option that we say doesn't have to be considered. But in any event is not one that we would support. Because an approach that effectively defers consideration of the issue of funding for implementation in its entirety, rather than make a judgement on the basis of the available evidence, until after the decision to authorise compulsory acquisition powers has been made. It is one which we think is not sufficiently robust in terms of in terms of the challenge risk. And so we say in this case, both you as the examining authority, the Secretary state can and will need to make a judgement on this issue, having regard to the evidence that is presented before you and that at least all that's been said and done by the government to develop a negotiated funding model, which would apply to sign as well see, so we are not proposing to put forward such an article. And we consider that it wouldn't be justified, it wouldn't be robust, because this is a very different situation to that faced by the promoters at Wilbur.

53:33

Now, thank you. Just two quick, more fairly short points following on from what is

53:41

in the CAA guidance. And perhaps this is the purpose of part of the purpose of the bond that you've indicated, will be provided by whatever inclusion in the decio. So the first was

54:00

if the applicant can find an indication if if that funding isn't too great by the time that the examining nation closes. So, that would be how any potential short fund falls in funding would otherwise be met. And then the other point which you referred to earlier, have any other bodies agreed to make financial contributions or to underwrite the scheme at this stage.

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So the the

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bond that we have

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suggestion in which we will be putting forward would provide certainty that the funds that are needed for Acquisition will be available before those powers are used.

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So far as contribution some others

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are concerned we dealt with that in response to a written question. And I am not aware of any update to that. I'll just check. There's no updates to the written answer that we gave on that point.

55:20

Thank you.

55:22

Mr. Horton, I see you have your hand up at this stage.

55:27

Okay, thank you so much Mrs. McKay. Perhaps I could just ask about how the bond is going to be made up. And the adequacy of the bond, and particularly in relation to the extensive injurious effects the seventh claim to to lightly from various elements of the in theory, compulsory acquisition, indeed, also by acquisition by agreement, what percentage of property interests are likely to attract those types of compensations sometimes?

56:01

I'll just ask this to fill possibly wants to respond to that. Thank you.

56:09

I've got a note of the question that was asked, I think what I propose to do there is to take that away and ask those who are looking at these things to provide a response which we can give in writing.

56:25

Thank you, Miss Phil plot.

56:28

Right. Thank you, Mr. Horton. Thank you.

56:35

Now, just on the timing of availability of funding, the CAA guidance paragraph 18 says that the timing of the availability of the funding is also likely to be a relevant factor. So a question of the applicant, the applicant has submitted an implementation plan. Does this remain feasible and on track, given that the funding model is not yet agreed with the government? And could you please provide an update on the anticipated timing of the final investment decision? And whether that has any implications for the implementation plan?

57:14

Thank you, Madam, I'm going to ask Mr. rippen. To respond to this, as as I understand it is to point that I think has been raised in a number of the written questions, including questions, I think, in particular, in the second round, this is concerned with the date of the final investment decision and how it relates to

57:41

the implementation plan that has been put forward. And there are queries raised which we're going to respond to in writing about that, the timing of that, so I'll ask Mr. Gryphon, to just pick that up. But he will, of course, be getting a full response in writing and divorce. Thank you.

58:03

So

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the timing of the funding model.

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As I said in my earlier response, we are working on the development of the funding model and the timing of that with in the context of the timing of the project more generally.

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So at the moment, we are confident that the funding model will be developed to a timeframe that is consistent with the implementation plan.

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And the same is true for foreign investment decision, we are working towards achieving a final investment decision in 2022. The development of the funding model is as that's kind of in its considerations, including in the timing, if there was a change to the final investment decision date, then

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we would have to work out the consequences of the implementation plan at the time, but we at the moment we do not.

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We believe Finally, this condition will be consistent with your mentation plan.

59:05

thank thank you. Could I just ask also, I think in response to first question ca dot one dot 36. The applicant has stated that if discussions on the Rab model are not successful, alternative funding models could be considered such as the contract for difference model. But my question on that is what would be the timing implement implications should be found that a different funding model would need to be progressed.

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Madam are going to ask Mr. Evans to answer that as best he can. But in inevitably, I would suggest that it is it's

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not easy to forecast how long that would take because when

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Looking at a rather uncertain position? In other words, what would that alternative be? And that was something that one would,

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one would need to know before knowing what the timing implications were. But nevertheless, I'll ask Mr. Gryphon, to do his best to answer that question.

1:00:23

Thank you. I, I agree, it's a very difficult question to answer. There are a range of potential alternative funding models.

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And for each of those, the timing and implications of developing it to the point of supporting the project are very uncertain.

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But I would just finish by emphasising how confident we are that the revenue model will be the one that is applied size will see. And so hopefully, the question, does not, we are confident that the question will not be tested.

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Thank you.

1:01:09

Right.

1:01:11

Mr. Bedford, do you have your hand up? If I could hear from you please?

1:01:18

Thank you, man and Michael Bedford, Suffolk County Council. Just one brief point in relation to funding matters more generally. It's a point we've just highlighted in our notes to you, on compulsory acquisition matters that rep six zero 60 simply in relation to the two

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proposed highway

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schemes, that's to say the two village bypass and the site as well link road

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in so far as they are then constructed, and post construction, there are part one of the land Compensation Act 1973 act claims arising from consequences of their construction or use, we've made the point that we would expect insofar as any of those claims might be directed to the county council, once it has adopted those roads, should that be the situation that there be a full indemnity provided to the county council for the cost of any such claims from the applicant. So that's simply it related to your topic of funding, but it's a it's a discrete point, I just didn't want it to be lost in the as our consideration of financial implications of the scheme that we are looking to the applicant to indemnify us for any liabilities that might arise under the 1973 Act. Thank you. Mr. Bedford. We've we've got that one in.

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So Mr. Grant, you have your hand up.

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Thank you, ma'am. David grant photo farm.

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Just a naive question. They used to be involved in funding.

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If If sufficient if the applicant is saying that sufficient funds are apparently available, all three acquisition costs.

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Why is it in EDS latest financial report? the ADF is discussing additional funding up until the final investment decision period

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that would indicate cash flow issue.

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Right Mr. Scott? I'll

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ask Mr. Phil port to respond to yourself. Mr. Bedford.

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Thank you, man. Can you see and hear me? I'm having some difficulties with my camera today. I can't see you. But I can he clearly I gonna have to see if I can get it rebooted over the next break. But I'll see to do what I can just through the microphone now. So far as Mr. bedfords.

1:04:10

query is concerned, I'm told that there is a meeting tomorrow with the County Council in order to discuss all sorts of matters related to sec issues of this sort. So I think that will be picked up as part of that. I think that's essentially a matter for discussion negotiation between the parties. Hopefully, we won't need to trouble you with it. But I'll report back if that if that fails to produce agreement. So far as the second point is concerned, I would have to take instructions in relation to

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the point that Mr. Grant has made is no advance notice of that. So

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I'd have to find out the position and report back to you. Thank you, if you would do that.

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Right.

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If there are no more points on funding, we'll move on to the next agenda item.

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So that's agenda item four, and whether the purposes of the proposed coal poultry acquisition are legitimate, and would justify interfering with the human rights of those with interests in land affected. So sub item four, a. So in relation to Article eight of the European Convention on Human Rights, the applicant has provided a response to ca dot one dot 38, which states that no residential properties are required to be demolished as part of the project. And instead, they will be protected in situ. And there's also a response to ca dot one dot 45 in respect of the residential properties that are to be acquired for the project.

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The examining authorities second question, CA dot one dot 11 seeks further information in respect of certain of those properties. So I won't pursue that today unless the applicant wishes to provide an update on discussions with the owners and occupiers of those properties.

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But, um, so far as the residential properties are concerned, as you say there, there's a further written question on this matter. And my proposal is we deal with your question through that written means I

don't believe that I've got anything that we are, we need to convey today that we can't adequately convey and write in

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fact, thank you, Mr. filk. out our other way, the response to that question. Mr. Bedford, do you have your hand up?

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Is there anything you wanted? My apologies? Oh, sorry. That's again, a legacy legacy, right? It's a bit like me leaving myself muted.

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Right. Hopefully, I've got my camera back on as well.

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Moving on to subitem, four B, the degree of importance attributed to the existing uses the lamp proposed to be acquired. We've already covered this to quite an extent, and refer to the applicants response to first question ca dot one dot 38. So we've already considered this aspect, in looking at whether there's a compelling case for compulsory acquisition, can I just ask affected persons, whether there are any additional points that they wish to make on this topic in the context of human rights,

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Mr. Bedford,

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but again, it's probably more gonna be a matter for tomorrow. But in relation to existing uses, Article One and first protocol property rights rather than obviously,

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the

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right to homes, etc. The, we've made the point about the importance of the

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household waste recycling facility, at least and has an existing use, and that's a consideration. Also, in our reps, six, zero

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50, we'd have referred to the other location where we have a property interest, that's to say, the old Academy in terms of the educational provision for the recreational facilities. And clearly, we're in hopefully, positive dialogue and discussion with the applicant about resolving those matters. But simply in so far as your tests are concerned, that existing educational use, which is an existing use of that

facility, is clearly one that we would attach high importance to. And obviously, that's part of the overall picture. So that's what we want to say on this. Thank you. Thank you, Miss Bedford.

1:09:30

Mr. Phillpotts, do you want to make a new response at this stage? I just wanted to understand so far as the counter counsels position is concerned, is it suggesting that there is something specific about the county Council's interest in land that engages the Human Rights Act? Clearly, there's a question which needs to be dealt with under the compelling

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case, which which applies to the county Council's land, but we're here dealing with human rights. And I'm just not entirely clear whether it's being said that under the human rights or something specific to the county Council's position, I just be grateful if that can be clarified. So that we know if there is something we need to respond to perhaps in writing

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it No, it's a simple point that the county council as landowner, or has property interests in both the least and site and in the academy site, because of the way that education is obviously currently managed with local management to schools, there is actually an academy, which is utilising that land, but the County Council have an overall interest as the owner of that land in the way that it is used. And the existing use of that land is perceived by the county council that says educational use, is perceived by the county council as being of high value in the same way that the household waste recycling use, seen by the county counsellor at the least and site is of high value, there are of high value to the community. And those are factors that need to be taken into account in considering the interference with county Council's property interest because they are currently in what we would regard as highly beneficial uses. So that's the simple point. I mean, it does wrap into the earlier considerations. But it isn't, I think a point other than to note that that is an issue that arises and it falls under this part of the umbrella as much as it falls under the previous boundaries umbrella.

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Thank you, Mr. Bedford.

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Mr. Phillpotts?

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I don't know that that's I don't think it's being said that the county council relies on anything in relation to the Human Rights Act as going beyond the

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compelling case issue, which of course, generally speaking, one would expect the two things to be entirely aligned. Just Also, my understanding, is that for the waste recycling site, I'll be corrected if I'm wrong. I don't believe the county council has an interest in the site. At present. I understand all these points are being negotiated and discussed with the current council outside the examination with the

hope that they will be resolved. But I don't believe at present, the county council has an interest in the land, although it remains an occupation.

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I think if I deal with perhaps the first point First, I would certainly accept Mr. Phillpotts point that if the

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compulsory purchase tests are met, then we're not saying that the sum separate.

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Just so just just miss just sound there. I don't know if it was just me. I apologise. Oh, it was me. Not D muting myself. Yes. Going back to the boys. Mr. Phillpotts first point. We're not saying that the Human Rights Act implications add anything further to the test that you've already got to satisfy in relation to compulsory purchase under the Planning Act 2008. So there isn't an additional point. It's simply that they, they march in the same direction. And in relation to Mr. Phillpotts second point, in relation to the least in sight. There was a lease, the county council has been holding over. And as I understand it, the county council has been continuing to pay rent on the premises. And that has been accepted. And therefore there is whether it's a de facto tenancy, whether it's a periodic tenancy, I have to say I'm not entirely sure that's a matter that the property lawyers can sort out. But there is a property interest there. It's clearly not a freehold interest. And that's a matter which I agree is a matter that's being positively discussed in the negotiations at present.

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Thank you.

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Mr. Philpott. Was there anything you wanted to add before I move on?

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No, madam, I didn't have anything to add that that's helpful clarification. Thank you. And

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so looking at subitem for see that's the weighing of any potential infringement of EC HR rights against potential benefits of the draft D

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CEO is made. The applicant has responded first question CEO 138 and say 140 on this topic. So really, it was just to see if there are any affected persons that had any additional points that they wish to make in the context of the human rights.

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Now, I don't have any hands up there, perhaps the applicant just could just then briefly summarise its position on that.

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Yes, madam, in short, the position on human rights is that there's no violation of the rights in question where it's been demonstrated that the proposed interferences in the public interest and the

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tests for deciding whether or not the compulsory acquisition of land gives rise to any

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breach of the Human Rights Act effectively mirrors the compelling case in the public interest test. So, because they are essentially both concerned with the question of whether there is lawful authority, whether it's for an appropriate purpose, whether it is justified and proportionate consideration of alternatives and matters of that sort, essentially, you come to the same answer, you should come to the same answer. Whichever of those

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tests is being applied, there is all authority, which eventually confirms, and we can supply that, if helpful in the written summary in due course, but for the reasons that we've identified in the statement of reasons as to why there's a compelling case in the public interest. In other words, that this is for legitimate purpose that it's necessary and that it is proportionate. For the same reasons, the associated interference with EHR rights is justified and will be lawful.

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Thank you, Mr. Phil plot.

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Well, I don't see any other hands up. So that brings us to the end of that agenda item for what I propose to do is to take a short break now until quarter past three, and Mr. Phil pop, perhaps you can get your team to look at that camera for you. In the meantime, I will I will. It's rather disconcerting, but at least it must

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follow, follow what you're saying. And so we'll adjourn now until quarter past three