

Medworth Energy from Waste Combined Heat and Power Facility

PINS ref. EN010110
Document Reference: 15.4
Revision 1.0
Deadline 6
July 2023



Written Summary of the Applicant's Oral Submissions at CAH3

**We inspire
with energy.**



1 Written Summary of the Applicant's Oral Submissions at CAH3

Contents

Table 1.1 Draft Written Summary of the Applicant's Oral Submissions at CAH3	2
---	---



Table 1.1 Draft Written Summary of the Applicant’s Oral Submissions at CAH3

Item	ExA Question/ Context for Discussion	Applicant’s Response
Agenda item 1 - Welcome, introductions, arrangements for the hearing		
1	The Examining Authority (“ExA”) opened the hearing, introduced themselves and invited those parties present to introduce themselves.	<p><u>Applicant</u></p> <p>The following parties introduced themselves on behalf of the Applicant:</p> <ul style="list-style-type: none"> • Claire Brodrick, Legal Director, Pinsent Masons LLP • Paul Carey, Managing Director, MVV • Gerran McCrea, Head of Development, MVV • Tim Marks, Head of Planning, MVV • David Kenyon, Technical Director, WSP
Agenda item 2 – Purpose of the CAH		
2	<p>A Compulsory Acquisition Hearing (CAH) was held to:</p> <ul style="list-style-type: none"> • Ensure adequate examination of the provisions within the draft Development Consent Order (dDCO) seeking to authorise the CA of land and/or rights over land; • Assess whether the conditions relating to the land and/or rights being required for the Proposed Development or required to facilitate or be incidental to that development are met; • Assess whether there is a compelling case in the public interest for the land to be acquired compulsorily; and • To discharge the ExA’s duty to hear persons affected by CA and TP proposals (Affected Persons (APs)) who request to be heard. <p>See Appendix A.</p>	N/A



Item	ExA Question/ Context for Discussion	Applicant's Response
Agenda item 3 – Site specific issues for the Applicant		
3a	<p>The ExA asked the Applicant to provide a brief update on the progress of negotiations with APs and the timetable for their conclusion. The ExA particularly queried whether the latest version of the Compulsory Acquisition Schedule (Rev 3) [REP4-013] lists all the ongoing negotiations.</p>	<p>Ms Brodrick, on behalf on the Applicant, explained that all of the ongoing negotiations are listed in the Compulsory Acquisition Schedule (Rev 3) [REP4-013], and an update on the status of these discussions since Deadline 4 would be provided in the at the hearing.</p> <p>Ms Brodrick confirmed that Table 1.1 of the Compulsory Acquisition Schedule identifies Affected Persons (APs) where the Applicant his seeking a voluntary property agreement. The Applicant has made reasonable attempts, and continues to make reasonable attempts, to acquire the land or rights over land required for the Proposed Development by voluntary agreement.</p> <p>Table 1.2 identifies those APs with interests listed in the Book of Reference but where the Applicant does not consider it necessary to enter into a voluntary agreement as the affected person is not a landowner or a tenant nor do they have the benefit of restrictions on the use of the land that would be extinguished, suspended or interfered with by the Proposed Development.</p> <p>Ms Brodrick advised of the updates to negotiations since Deadline 4 in relation to APs listed in Table 1.1:</p> <p><u>National Highways</u></p> <p>In respect of National Highways, negotiations are ongoing in relation to protective provisions and an easement for the grid connection and water connection. The documents are currently with National Highways' in-house solicitor, who has confirmed that they will respond prior to Deadline 6. Further updates will therefore be provided by the Applicant at Deadline 6. The Applicant is confident that the protective provisions will be finalised and an agreement reached before the end of Examination.</p> <p><u>Norfolk County Council</u></p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>With regard to Norfolk County Council, Ms Brodrick explained that there had been no substantive change since Deadline 4 in relation to its role as highway authority, with no property agreement being required. A number of updates relating to traffic-related management plans had previously been outlined at ISH6 in order to address concerns from Cambridgeshire County Council (CCC) and Norfolk County Council, particularly regarding impacts on non-motorised users. The Applicant is confident that these issues will be resolved and this will be reflected in the Statement of Common Ground.</p> <p><u>Anglian Water</u></p> <p>Following further discussions with Anglian Water, their submission at Deadline 5 [REP5-041] confirms that the technical concerns with the water requirements of the Proposed Development have been resolved. A couple of minor outstanding points in the protective provisions are currently being finalised. The Applicant anticipates that the outstanding matters will be resolved by Deadline 6 and is confident of agreement being reached before the end of Examination.</p> <p><u>King's Lynn Internal Drainage Board and Hundred of Wisbech Internal Drainage Board (the IDBs)</u></p> <p>A number of discussions have taken place with each of the IDBs since Deadline 4 and the Applicant on further protective provisions and the Applicant is preparing a side agreement to provide further clarity of the procedures and principles agreed. These documents are currently with the solicitors for drafting. The Applicant is confident that agreement will be reached by the end of Examination.</p> <p><u>CCC</u></p> <p>Ms Brodrick explained that discussions are ongoing regarding the s278 agreement required to facilitate access improvements. This also relates to discussions on the Change Application, referred to later in the agenda. CCC has requested further amendments to the protective provisions for its benefit as highways authority and these will be included in the next draft of the DCO submitted at Deadline 6. The Applicant's comments on the agreement have been returned to CCC</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>for consideration but there are only a couple of points that have not been agreed yet. The Applicant is confident that an agreement can be reached by the end of Examination, subject to the points previously raised in ISH6.</p> <p><u>Fenland District Council (FDC)</u></p> <p>Ms Brodrick stated that the Applicant remains willing to enter into negotiations with FDC, but that the Council continues to decline to discuss any voluntary agreements with the Applicant. The position therefore remains unchanged.</p> <p><u>Mr Cowling</u></p> <p>The Applicant is continuing to negotiate a voluntary agreement in relation to the acquisition of a small area of land required for the road widening for access improvement on New Bridge Lane. The latest position is that the Applicant is awaiting comments on proposed heads of terms. The Applicant is hopeful that agreement can be reached prior to the end of the Examination.</p> <p><u>Network Rail</u></p> <p>Ms Brodrick explained that there has been progress on the terms of a voluntary agreement between the Applicant and Network Rail sine Deadline 4. The Applicant met with officers from Network Rail the previous week and the solicitors held a meeting on the day prior to the hearing regarding draft documentation required for the CHP connection and relating to access, as mentioned at ISH6.</p> <p>As noted at ISH6, there has been a MS team meeting and a number of emails between the Applicant, Network Rail and CCC regarding a permissive path for pedestrians and non-motorised users over the disused March to Wisbech Railway, including the form of signage that will be put in place. The Applicant is hopeful that an agreement will be reached before the end of Examination.</p> <p><u>Welle Stream Limited</u></p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>The Applicant has sent a proposal in respect of the design of the acoustic fencing that is being considered by Welle Stream Limited. The Applicant is hopeful that agreement will be reached prior to the end of Examination.</p> <p>Following ExA questioning relating to the Applicant's proposals for addressing outstanding objections, Ms Brodrick explained that detailed agreements are being negotiated. It is not yet possible to say that agreement has been reached, but the number of outstanding points is reducing. This is the case particularly with regard to the statutory undertakers, but due to their confidential nature the Applicant cannot provide further information about the nature of the provisions to be agreed. Ms Brodrick highlighted that it is common for agreements with statutory undertakers to only be resolved towards the end of the Examination period.</p> <p>In response to the ExA querying the Applicant's intentions if agreement cannot be reached, Ms Brodrick advised that this will differ based on whether the AP is a landowner or statutory undertaker.</p> <p><u>Landowners</u></p> <p>Regarding those parties that are landowners only, the Applicant remains hopeful that it will reach agreement prior to the end of the Examination period. The Statement of Reasons [REP3-010] sets out the updated position regarding the Applicant's reasonable attempts to negotiate a voluntary agreement.</p> <p>However, in the event that voluntary agreement cannot be reached and as set out in the Statement of Reasons [REP3-010], the Applicant considers there is a strong justification for the compulsory acquisition of the land and rights over land and that there is a compelling case in the public interest for compulsory acquisition powers to be granted. Therefore, if voluntary agreement is not reached, the Applicant will be seeking to utilise the compulsory acquisition powers in the draft Development Consent Order (dDCO) (Volume 3.1, Rev 5 provided at Deadline 6).</p> <p><u>Statutory Undertakers</u></p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>In relation to statutory undertakers, the Applicant will be required to fulfil the tests set out in s127 of the Planning Act 2008. Section 8 of the Statement of Reasons [REP3-010] sets out the relevant tests. The Applicant's position is that the protective provisions it has included in the dDCO, whilst not yet agreed with the relevant statutory undertakers, are suitable to ensure that there will be no serious detriment to the carrying on of that statutory undertaker's undertaking.</p> <p>If Deadline 7 is reached with outstanding objections from statutory undertakers, then the Applicant will submit a more detailed s127 statement to explain why it considers the Secretary of State (SoS) can be satisfied that there will not be any serious detriment to the carrying out of the statutory undertaker's undertaking and therefore why the necessary rights and powers in the DCO can be granted by the SoS.</p>
	<p>The ExA asked the Applicant to provide an update on Table 1.2 of the Compulsory Acquisition Schedule [REP4-013], with particular reference to any changes.</p>	<p>Ms Brodrick stated the Applicant does not believe a property agreement is required for the persons listed in Table 1.2, but discussions have been ongoing, particularly with those business owners along Algores Way.</p> <p>Ms Brodrick further explained that Mr Carey and Mr Marks met with a group of business owners along Algores Way to discuss the Proposed Development. As a result of that meeting, the Applicant will update the Outline Construction Traffic Management Plan (Rev 6 provided at Deadline 6) and the Outline Construction Environmental Management Plan (Rev 6 provided at Deadline 6) to include additional clarification and provisions to address some of the concerns raised.</p> <p>Ms Brodrick added that whilst there therefore remains no update in terms of property agreements, there have been some changes that the Applicant hopes will go some way to resolving the concerns raised in written submissions.</p>
3b	<p>The ExA asked questions of the Applicant about matters arising from written and oral submissions, including [REP4-046] and how the Applicant proposes parties with an interest in 10 New Bridge Lane are reflected in the Book of Reference.</p>	<p>Ms Brodrick explained that the response from the resident of 10 New Bridge Lane which was submitted at Deadline 4 was received after the most recent version of the Book of Reference [REP3-009] which was submitted at Deadline 3.</p> <p>When the next version of the Book of Reference is submitted by the Applicant in accordance with the Examination Timetable (Deadline 7), the entry related to 10 New</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
3c	<p>With no prejudice to the ExA's position in relation to the request submitted by the Applicant to make changes to the proposal, the ExA asked the Applicant to explain the need for the proposed changes and to confirm its position in relation to compulsory acquisition.</p>	<p>Bridge Lane will be updated, with a change from 'unknown occupier' to refer to Ms Morton specifically.</p> <p>Ms Brodrick explained that the Applicant submitted a Change Application Report [AS-028], which sets out in detail the minor amendments that the Applicant is seeking to make to the Order Limits.</p> <ol style="list-style-type: none"> 1. Change 1 is a revised signalised junction scheme at the junction of Cromwell Road and New Bridge Lane, to facilitate access improvements and implement the signalisation scheme. 2. Change 2 relates to minor amendments to the Order Limits to install dropped kerbs to the existing pavement on Salters Way. <p>Ms Brodrick added that neither change instigates the Compulsory Acquisition Regulations 2010 as no additional compulsory acquisition powers are being sought.</p> <p>In respect of Change 1, the Applicant was informed that part of the existing junction arrangement is not yet publicly adopted highway, remaining under Tesco ownership following construction of the store. Due to uncertainty about the timing of when that part of New Bridge Lane will be formally adopted, the Applicant has included a power for temporary possession in respect of plot 12/4b. This is shown in Graphic 1 of the Change Report. An updated Land Plan [AS-019] was also submitted as part of the Change Application.</p> <p>Ms Brodrick explained that the Applicant considers that there are options as to how the works can be implemented:</p> <ul style="list-style-type: none"> • Using article 11 (power to alter layout, etc., of streets) of the dDCO (Volume 3.1) (Rev 5 provided at Deadline 6), which applies to both public highways and private streets where control is retained by the street authority. This would apply in the same way as on Algores Way, where FDC is the street authority. In this case, Tesco would be the street authority for that corner of New Bridge Lane.



Item	ExA Question/ Context for Discussion	Applicant's Response
		<ul style="list-style-type: none"> Due to a level of uncertainty as to the status of the land, the Applicant considers it is proportionate to include temporary possession powers in case the clarity of the land as being a street is called into question. Temporary possession powers are sought in order for the Applicant to enter onto the land and carry out the junction improvement works. <p>Ms Brodrick advised that the Applicant does not consider it appropriate or necessary for the DCO to regularise the position in respect of the formal adoption of this corner of New Bridge Lane. The question of whether land should be adopted as public highway being a matter between CCC and Tesco under an existing S106 Agreement, with only the landowner able to facilitate adoption.</p> <p>With regard to the need for the land and the implications if the land was not secured, Ms Brodrick stated that in respect of the area shown coloured green, temporary possession powers are being sought. This is required to deliver the signalisation scheme requested by CCC. If temporary possession powers are not granted, as discussed at ISH6, there are a number of different ways in which access could be facilitated.</p> <p>The Applicant also notes that in the agreement between CCC and Tesco, there are step-in powers to allow CCC to enter onto the land and rectify any issues that are preventing the issue of the certificate required to formalise the adoption. The Applicant also believes that, as part of the highway, there are other highway powers that may be available and could be utilised. The Applicant therefore believes that there are a variety of ways in which signalisation could be facilitated.</p> <p>Ms Brodrick reiterated that the change is being made at the request of CCC. The Applicant's modelling and junction designs did not identify a need for signalisation; it has been included at the request of CCC.</p> <p>Ms Brodrick noted that in terms of its status, this plot quite clearly appears to be part of the highway/junction and therefore the Applicant does not consider that Tesco would suffer any inconvenience or loss as a result of the use of temporary possession powers. The Applicant is in discussion with Tesco's estates team to try and resolve the matter</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>directly. The Applicant is hopeful that they will have written confirmation from Tesco by the end of the non-statutory consultation period that there are no objections to the temporary possession powers that are being sought by the proposed Change Application.</p>
<p>Agenda item 4 –Site specific representations by APs</p>		
4a	<p>The ExA deferred questioning of APs relating to the setting out of outstanding concerns in relation to compulsory acquisition and/or temporary powers for the land which they own and/or occupy to written questions.</p>	N/A
4b	<p>The ExA asked the Applicant to comment on REP-046, justifying or not the compulsory acquisition of this property on New Bridge Lane, and explain why this is not being pursued.</p>	<p>Ms Brodrick explained that with regard to 10 New Bridge Lane, the Applicant is seeking the acquisition of rights only to install and maintain an acoustic fence. This is required for noise mitigation and was identified through the Environmental Statement Chapter 7 Noise and Vibration [APP-034]. The acoustic fence is required to be in place prior to the commencement of the authorised development. This is secured by Requirement 19 of the dDCO (Volume 3.1) (Rev 5 provided at Deadline 6).</p> <p>Ms Brodrick added that the purpose of this fence is to reduce noise effects at the property so that they are not significant. As this form of mitigation has been identified as being available and appropriate, having the impact of reducing effects to being 'not significant', the Applicant considers that the acquisition of rights only is proportionate.</p> <p>Ms Brodrick noted that it is important that the Applicant seeks only those rights that are necessary to deliver the Proposed Development. The acquisition of the whole of the property would be disproportionate due to the less onerous solution of rights for the acoustic fence being available. Furthermore, the Applicant has held discussions with the landowner, during which the owner has expressed a wish to retain their property, therefore there is no willingness to enter into a voluntary agreement for the acquisition of the whole property.</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>The Applicant has only sought the minimum rights necessary to mitigate the scheme and that is the installation and maintenance of the acoustic fence.</p>
	<p>The ExA asked if any businesses wanted to raised concerns as to the level of consultation and communication.</p>	<p>Ms Brodrick noted, for those unable to attend this hearing, that the Applicant set out in detail in the Applicant's Response to CAH2 Action Point 6 - Revision 1.0 [REP5-036] the approach to consultation and notification of acceptance of the DCO Application, particularly with reference to the businesses on Algores Way. The document sets out the timeline of actions undertaken by the Applicant and provides as an appendix which includes evidence of delivery of a number of notices to the businesses on Algores Way. This document has been heavily redacted for the version made publicly available on the website, but names and address details have been made available to the ExA in order to clearly correspond with those listed in the Book of Reference [REP3-009].</p>
<p>Agenda item 5 Site Specific issues from Statutory Undertakers</p>		
<p>5a</p>	<p>The ExA asked the Applicant to confirm when the Compulsory Acquisition Schedule [REP4-013] will be updated to reflect the latest information regarding the resolution of outstanding objections, particularly considering National Highways' submissions at REP5-051.</p>	<p>Ms Brodrick explained that the response provided by National Highways [REP5-051] relates to an action and second written question linked to information provided at a much earlier hearing by Ms Smith, who queried whether some land within the Order Limits fell under her ownership. The Applicant held discussions with Ms Smith to identify her land and concluded that it did not include any land within the Order Limits.</p> <p>One plot, 10/1a, that Ms Smith believed may be under her ownership was registered to National Highways and forms part of the A47. National Highways has confirmed that it is the registered owner of this land. In agreement with National Highways, the Applicant is therefore not proposing to update the Book of Reference.</p> <p>In respect of previous concerns raised by National Highways regarding the use of compulsory acquisition powers, Ms Brodrick advised that there had been some confusion within National Highways and the person drafting the relevant representation [RR-021] had not appreciated that National Highways had agreed that Grid Connection could be located in the verge of the A47. The objection therefore did not reflect the</p>



Item	ExA Question/ Context for Discussion	Applicant's Response
		<p>significant discussions that had been undertaken between the parties and was perhaps firmer than required.</p> <p>In respect of other statutory undertakers, Ms Brodrick explained that there remained no further updates to those already summarised earlier in the hearing. Ms Brodrick confirmed that the Applicant had notified all relevant statutory undertakers of the proposed Change Application as part of the statutory consultation process. Any utilities with apparatus in the affected portion of highway have been notified of the proposed change.</p>
5b	The ExA deferred questions of Statutory Undertakers about matters arising from written and oral submissions to written responses.	N/A
Agenda Item 6 Review of issues and actions arising		
		N/A
Agenda item 7 Any other business		
		N/A
Agenda item 8 Closure of the Hearing		
		N/A

