



Hearing Transcript

Project:	Five Estuaries Offshore Wind Farm
Hearing:	Compulsory Acquisition Hearing 2 (CAH2) – Part 2
Date:	31 October 2024

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FULL TRANSCRIPT (with timecode)

00:00:02:15 - 00:00:08:27

Well, it's it's now just gone 11 or 20 to 12. So the hearing is resuming.

00:00:10:15 - 00:00:13:24

Um, and I've just got a few questions, um.

00:00:16:06 - 00:00:21:02

To ask in connection with this agenda item before we move on. Um.

00:00:25:08 - 00:00:29:14

During the course of compulsory acquisition hearing one,

00:00:31:00 - 00:00:40:10

um, the examining authority asks the applicant whether the seeking of compulsory acquisition powers and respect to the cable circuits and a substation for

00:00:41:25 - 00:01:10:18

um North Falls would accord with the conditions tests stated in section 1 to 2 of the Planning Act. Um, the applicant submitted that the powers it were seeking for a second project would accord with the provisions of section 122, and in that regard placed reliance on the guidance on associated development for applications for major infrastructure projects, and that guidance dating from April 2nd, 2013. And

00:01:12:04 - 00:01:46:01

asking, well, turning to the applicant. Are you familiar with the Court of Appeals judgment in, um, FCC environment UK limited versus Secretary of State, Energy and Climate Change, which has a Court of Appeal judgment of 2015? Short term, short term, um, reference I think tends to be to Rookery South, which concerned the making of a developed consent order for an energy to waste plant. So the simple initial part of this question is are you familiar with that case or.

00:01:46:03 - 00:01:47:15

Yes or not? No.

00:01:50:19 - 00:02:01:03

Ruling Boswell for the applicant. I'm aware of it, but I'm that I'm not off the top of my head conscious of the point that I assume you're about to make from it.

00:02:02:27 - 00:02:12:05

I'll. I'll try and make the point brief. Hopefully I've got an understanding of what the the court's approach, um,

00:02:13:26 - 00:02:22:24

in me running through that may assist you, Mr. Boswell. Uh, in terms of your recollections of it, if I've got it wrong, no doubt you'll assist in that regard.

00:02:26:23 - 00:02:36:27

I mean, the primary point from that, that judgement, I think, may be a relevance to this case, um, is that

00:02:38:18 - 00:03:25:27

when, um, the appellant, the Secretary of State and the interested parties were giving their position, they arrived at an agreed position in respect in respect of the interrelationship between, um, considerations that are made under sections 143. And 146. And the interplay with section one, two, two. Namely, that it's possible for it to be concluded from an application that the development will be in the national interest and in chords with one or more, um, national policy statements under section 104 three.

00:03:27:00 - 00:03:33:06

But the under section 1046 which relates to any other enactment.

00:03:38:00 - 00:04:12:22

And that might include section 1 to 2 of the Planning Act 2008. There may be circumstances where a conclusion could be reached that although, um, the project in effect got through the National Planning Policy Statement tests. Uh, some or all of the key powers may not meet a test under section 122, and would therefore not accord with section 146, i.e.,

00:04:13:04 - 00:04:39:08

that there was some tension with another enactment. What the Court of Appeals seems to have accepted is that although 143 and 104 six are also part of the same section. Um, that when you look at 146, um, section one, two, two of the Planning Act can be treated as in effect, another enactment.

00:04:45:05 - 00:04:45:26

Disposal.

00:04:47:13 - 00:05:02:05

Has that helped at all in your recollections of the case. And if? If so, is that a reasonable interpretation of what was put to the court and in effect, what the court considered was appropriate?

00:05:06:07 - 00:05:12:14

I'm very reluctant to go down this path without having properly refresh my memory on the detail.

00:05:14:14 - 00:05:14:29

Okay.

00:05:15:15 - 00:05:31:15

That's that's fine, I think. Then what we will ask as a submission. Uh, following from this hearing that perhaps if you could, um, take a look at the judgment and of, for that matter, any other judgments that you think may assist your case,

00:05:33:12 - 00:05:57:16

is it? Certainly. Uh, on my looking of of this rookery case, it does seem pertinent, um, that there is potential, um, for issues to arise. Um, when you're looking at matters under 43. You get through that, fine. But you might not necessarily be able to get through section 146.

00:06:00:21 - 00:06:17:10

Now, turning to any of the affected persons, are any of the affected persons familiar with with either the the court case that I've just referred to or any other court cases that may be of assistance in terms of the cases that you're making.

00:06:24:23 - 00:06:28:06

Gwen. Church, on behalf of Brooks Laney. No, nothing from.

00:06:28:15 - 00:06:30:19

Anything from anybody that's online.

00:06:34:19 - 00:06:39:09

Not seeing a stampede of willing volunteers to to make a comment.

00:06:41:17 - 00:06:52:27

Take it from that, that there is nobody, at least currently online, that's familiar. I think therefore, if we can ask the applicant to take a look at that case. Do you want me to give the details again or.

00:06:54:15 - 00:06:57:01

I've got the neutral citation, if that helps.

00:07:00:15 - 00:07:04:28

You if you could provide it just as a. Double check. I think I found it. Sorry, but it's always helpful to keep your.

00:07:05:18 - 00:07:13:24

The neutral citation is 2015. Um, UK civil 55.

00:07:18:05 - 00:07:21:22

Do you want me to give the parties details again or. Your content.

00:07:22:09 - 00:07:23:15

We're content. Thank you sir.

00:07:53:18 - 00:08:06:27

Moving on to my next question. Could I ask that? Page two of reps two zero 95 be brought up. That is, um,

00:08:08:16 - 00:08:15:01

the representation made by T fairly at deadline to, uh, and there's a, um.

00:08:17:12 - 00:08:30:19

Pair of images at the top of page two that show, um, what's been proposed in terms of the substation sites for five estuaries and the comparison with North Falls. Yeah. That's it. Thank you.

00:08:36:06 - 00:08:40:07

I'm really directing this question at the applicant. Excuse me.

00:08:43:29 - 00:09:21:27

In respect to the freehold acquisition being sought in relation to the substation sites for five estuaries and North Falls. Given the order limits thought for the latter, i.e. North Wales are less than that for five estuaries. Would a reasonable alternative to the compulsory acquisition powers being sought by five estuary five estuaries be to reduce the extent of the order limits in respect of land plots 17 024 and 17 025, so that in effect north five estuaries was comparable with North Wales.

00:09:22:21 - 00:09:28:27

I'm putting that in the context of a possible alternative to what five Estuaries is proposing.

00:09:38:14 - 00:09:41:01

Upper limit for the applicant. Um.

00:09:43:03 - 00:10:16:06

Fundamentally, no. So We stand, but saw the land take on those plots as driven by our approach to landscaping and our philosophy to landscaping. We can't speak directly to North Falls, these judgment calls on that, but we consider the landscaping that we have proposed is not only necessary, but the policemen offer it closer to the receptors, achieves the outcome and the mitigation more quickly and overall it results in a better outcome. And therefore we stand behind our landscaping proposals and the compulsory acquisition to ensure delivery of.

00:10:56:05 - 00:11:16:06

Thank you, Miss Kelly. Then turning to the affected persons. Um, I think there's perhaps a ask. Excuse me. Um, the executors for Mr. Tabor, whether you wish to make any comment in response to what you've just heard from miss McGeady in response to my question.

00:11:19:22 - 00:11:22:01

You say. But, Mrs. Hibbert, are you.

00:11:31:18 - 00:11:42:19

Hi, there. Hello. Thank you, Catherine Hibbert. Um, no further comments at this stage. Over and above. What's in the written representations? Thank you.

00:11:47:22 - 00:11:48:17

Mr. church.

00:11:49:10 - 00:12:25:06

Gwen church, on behalf of broccolini. The issue here is clearly the lack of. I'm going to use a word collaboration again between five issues and or falls. They're quite distinct. Um, differences. There are quite distinct differences in both their landscape and proposals. Looking at the applicant's proposal, we saw this plan, an option plan approximately five months ago. We immediately requested for it to

be amended, and not least because of the my client fairly and sons, their residential property being hemmed in by a tree belt on all three sides.

00:12:25:18 - 00:12:56:04

Um, also restricting rights of access to um to their buildings on the sort of northern and eastern boundaries to for maintenance and repair. Um, we asked for that area to be removed, or at least to be moved away from the further away from a property to date. Despite a further meeting with the applicant three weeks ago, there's been no changes made. We were then presented with a no false proposals, which I'm on behalf of t fairly we much prefer.

00:12:56:06 - 00:13:21:18

It's as you can see, it's far more sympathetic to the residential property, Norman's Farm. It allows access to the yard and buildings on all sides. It allows future development of a yard should they wish to retain it. Um, it also allows ease of access to their retained land, uh, for future farming and alternative uses. We

00:13:23:08 - 00:14:00:29

cannot stress enough living in a residing in a property such as Norman's farm, with a tree belt on all three sides would be it would hamper the, uh, enjoyment of that property in the long term, irrespective of a substation being a stone's throw away. We acknowledge that there needs to be a tree belt. We also acknowledge that the closer that tree belt is to receptor, the quicker it mitigates the visual impacts of the substation. But there's a fine line of mitigating it quickly and detrimentally, impacting the long term enjoyment of that property for the current generation and future generations.

00:14:01:15 - 00:14:55:14

We have therefore requested that the Five Estuaries proposals for the applicant's proposals mirror views of the North Hall's proposals, and about the use of a curved tree belt to the east is made up of mature species, as opposed to young whips and saplings. With regards to the remainder of the landscape and proposals, we acknowledge that they can't all be mature due to cost implications. But where our client's property is the main receptor, we request that it's a mature, more mature species which are used to mitigate the visual impact quicker, but we can't stress enough that the five series or sorry, the applicants proposals, which were put to us five months ago, have not been changed despite immediately being requested due to the adverse impact it will have on residing in the property, as well as the maintenance and repair and expansion of existing farmyard.

00:14:56:01 - 00:14:56:16

Thank you.

00:15:56:25 - 00:16:04:00

This is valid. You do have anything that you wanted to add to what Mr. Church has said, or has he covered everything that you would potentially say on this point?

00:16:04:19 - 00:16:32:13

I think Mr. Church has covered our concerns very well. They're the same concerns we've raised to the applicant on several occasions. Um, our only qualm with the North Falls one is that it's very close still, just that that bottom point. But that could be straightened out slightly. I think the point is that the overall thing that north wards are showing, it is preferred to five estuaries just because of that outline boundary around the field.

00:16:35:23 - 00:16:50:23

And I. It's very difficult as a landowner to understand what happens if, if investors get their consent based on the first one and that's what they build, but North Falls get the second one, what do we then get left with? Do they take more? That's a really difficult thing to understand.

00:17:18:07 - 00:17:19:27

In response from the applicant.

00:17:21:03 - 00:18:01:10

Uh, well, let me give you for the applicant, um, as I'm sure you're aware, sir, there is a balance of factors to be considered in coming forward with any design. And one of the factors we considered here was the landscaping and its effectiveness. One of the ones we considered is if you look at the tree belt and the carved tree belt as it's being referred to, that comes down towards Norman's farm that goes through the field and therefore over, um, BMV agricultural land and increases the agricultural land impact. That would be a factor that needs to be considered. There's also the landscaping impact of we our landscaping, um, goes around existing field margins and follows field patterns that are there's a lot of factors that had to be considered in coming to any one design.

00:18:02:03 - 00:18:09:00

Um, and I don't think there's actually terribly much more I can add to that at this point at this time. So.

00:18:22:00 - 00:18:37:03

Apologies. So there was one point and I'd forgotten, um, the request for the use of mature trees. I think we did very briefly cover this the other day when it was noted by, I think, Essex County Council that Essex is the driest county. Um and Mrs. Phillips um

00:18:38:19 - 00:19:00:24

responded in part that the use of whips ends up with less failure because the established, better root systems are no more withstanding the drought. So tree selection cannot be driven only by, um, you know, one factor. Again, there is some balancing to be taken into account there. And we have, for example, the competing pressure of nobody wants to use to die because we have a dry year.

00:19:05:06 - 00:19:36:14

And on that we have Tamsin Fairley for tea. Fairley we have explained to the applicant that this particular area of land has an extremely high water table, and I'm sure that we can find a landscaper somewhere who who will provide some background as to whether these trees, given that it's got a high water table, would be okay. It's done elsewhere. And yes, a mature tree requires more care to ensure that they don't die and that they can take hold.

00:19:36:16 - 00:19:40:01

But it is possible. I think this is just coming down to cost.

00:20:23:00 - 00:20:29:03

Did the applicant want to make any further comment on the size of tree point and watering, and the management.

00:20:54:18 - 00:21:21:08

That, um, was really the the last the questions I thought I need to ask in respect of agenda item 31, when we compiled the agenda, we thought we might have more affected persons attending today, and therefore there might be more coverage and potentially more questions that I might need to raise. But, um, that's not been the case. So I think now I'd like to turn to gender item 3.2.

00:21:23:17 - 00:21:40:09

Um, and really seeking here initially from the applicant. Can you give an update as to where negotiations might be going or have progressed in terms of agreeing heads of terms since you last gave an update?

00:21:43:15 - 00:21:46:00

Am Adam Canning, on behalf of the applicant.

00:21:47:15 - 00:22:22:01

Um, the applicant has been in dialogue with all the agents individually and has now met with arranged further meetings and requested meetings with those affected to discuss land specific matters. The last update since the latest update since the last hearings on the status of negotiations with affected parties, is set out in the Land Rights Tracker's document. Reference rep 148. Today, 36 heads of terms have been issued to affected parties and nine covering the cable route and temporary construction areas have been agreed and signed.

00:22:23:01 - 00:22:36:08

The heads of terms were a key stage prior to agreement of the formally legally binding option agreements, and have become through the negotiations over the past 18 months. Composite document setting out a lot of detail that will make the main option agreement

00:22:38:05 - 00:22:57:08

of the remaining heads of terms 15 are represented by Brooks Lini, whom we've had recent meetings with, to further discussions on the outstanding points. We have made some progress and we expect to be in a position to finalise these terms in the coming months once we've addressed the outstanding comments that they're on the agenda for a meeting on the 1st of November

00:22:59:05 - 00:23:34:15

since the compulsory acquisition hearing one, the applicant and its advisers held a meeting on the 18th of October with T30 and Sons Limited regarding the rights being sought across their interests, but with specific focus on the land subject to the proposed substation. The key areas of disagreement and concern were discussed, with reasoning being provided by the applicant and feedback taken on board from the landowner. Constructive dialogue is ongoing and we are hopeful reaching a voluntary agreement. We have this week issued the minutes of notes from that meeting to the landowner's agent, and we'll be seeking further meetings with the Verdi family and the agent, Mr.

00:23:34:17 - 00:23:36:06

Church, to progress the terms.

00:23:38:19 - 00:24:03:15

Since compulsory acquisition hearing one, we've also held a productive meeting with Mr. Fell on behalf of his client, Stratton Park Farms, the most recent of which was on the 30th of September. And we're now further progressed on principal terms with the hope to conclude. And then before the end of examination, the key outstanding point of difference is the applicant's interaction with the proposed residential development, which is not yet in planning and in which little detail or certainty is accordingly available at this stage.

00:24:05:06 - 00:24:39:11

Since Compulsory Acquisition Hearing one, the applicant has issued populated head terms to Cobra missed on the 18th of October. We understand that Mr. Gold is not yet content with the commercial content of those terms, but commercial discussions are ongoing. Well, the remaining heads of terms, the general outstanding points relate to intricate commercial points regarding solar farm option agreements and some agreements where, despite our best efforts, we're yet to receive any recent comments from those landowners or their instructed representatives. There are two instances of this, and they relate to areas at landfall and near Little Bromley.

00:24:40:26 - 00:24:55:23

The applicant has continued to make endeavours to engage, and has offered meetings with all affected parties, and considers that negotiations are at an advanced stage with a number of landowners and expects to secure further voluntary agreements prior to the conclusion of examination. Thank you.

00:25:35:09 - 00:25:40:05

Mr. church, do you have any comments to make in response to what you've just heard from the applicant?

00:25:41:17 - 00:26:14:16

Gwen Church, on behalf of Brooks Lini. Um, the applicant is correct. The applicant agent is correct. And that we act on behalf of approximately 15 of the sets of heads of terms over landowners affected. Um, the reason for not at this point being in a position to sign any voluntary agreements, um, predominantly is whilst there's been engagement, there's been sort of lack of meaningful engagement. We, in regards to the easement, are struggling with the fact that we could still be subject to to cable easements.

00:26:14:18 - 00:27:00:06

The applicants are no false. Up to 60m apart within a 100 metre corridor has alluded to earlier. And as you'll appreciate, some clients where this proposal of dissects at a significant farm, um, or farms having a up to 100 meter swathe through the middle of that farm with subject to two, uh, cables being up to 60m apart, will be detrimental to, um, future opportunities and farming. So until we are more comfortable with that, the applicant is collaborating with no falls then, and that they are obligated or directed by the Planning Inspectorate to line those cables side by side, then it would be more flexible and meaningful to sign in the voluntary agreement as to the substation sites.

00:27:00:09 - 00:27:31:21

Um, as alluded to in the issue specific hearing on Tuesday, I believe my memory serves me correctly for better terms for the substation site were issued, um, probably 2 or 3 months post ahead of terms, um, for the cable easement. So as you'll appreciate in regards to TI, fairly um, and the executives of Charles Tabor, that they were not in a position to sign the heads of terms for the cable easement, or even consider negotiating on them until they'd seen they had two terms for the substation site.

00:27:32:28 - 00:28:12:03

Um, we have to review those collaboratively, um, and assess them as a, as a whole, not separately. We've also just touched on the considerable differences between the applicant's drawings and no false drawings in terms of substation site and how at this moment in time, we were expected to sign any voluntary agreement without clear collaboration between the two projects and designing the same scheme. Um, it must be understood and appreciated. We're not in a position to sign up to a voluntary agreement where we're entirely, not entirely clear as to how the residential property owned by T fairly limited is to be affected.

00:28:14:16 - 00:28:45:00

We've also got the concern with T fairly with regards to this temporary access. Sorry, sorry. Temporary, um, acquisition of the whole road split and how that will affect an unnecessarily affect. Sorry for, um, farming on the land at Norman's farm. Again, there's a distinct, uh, difference between the applicant and North Halls as to what? A bit of grass in a field corner, um, has in terms of ecological value.

00:28:45:16 - 00:29:20:06

And that's causing significant disruption to the, uh, balance of a land. So we are engaging we are holding meetings with the applicant. But there are a lot of unknowns at this moment in time, which prohibits us from signing any agreement. As I say, majority of my clients are only subject to the cable easement. And the main stalling point at this moment in time, sir, is regarding the potential 60 meter strip between the applicants project and cables and know falls, which is causing great concern.

00:29:20:10 - 00:29:21:00

Thank you.

00:29:47:21 - 00:30:02:28

Mr. judge. As you sit here today, do you think that by the close of the examination there is a prospect that heads of terms, at least amongst some of your clients, might be signed?

00:30:13:09 - 00:30:19:12

As you'll appreciate, it's very difficult for me to answer that fairly without my clients all being present. But at this moment in time.

00:30:22:27 - 00:31:01:01

I would struggle to say that they would sign without this point of ease. Two cables being 60m apart, up to 60m apart. So I appreciate some cases that they may well align, but there seems to be no, um, sort of obligation for them to be aligned at this moment in time. I don't think a lot of my clients will be willing to sign because of a significant adverse impact both projects would have on their holding. Uh, but that's sort of a general comment for the majority of the route, more specifically in relation to, uh, Mary Cooper and T Fairley and executors of Charles Taber.

00:31:01:07 - 00:31:10:20

There are a lot of uncertainties on the whole road, as we touched on on Tuesday. Um, the impact that may have on the soil structure following.

00:31:11:00 - 00:31:11:15

Um.

00:31:12:03 - 00:31:16:28

All the abnormal loads being brought in off Bentley Road and also the.

00:31:17:13 - 00:31:17:28

Uh.

00:31:18:05 - 00:31:24:29

Clear differences between the applicant scheme and North Hall scheme in relation to landscaping around the substation sites.

00:31:27:26 - 00:31:39:08

We are going to continue to engage because it's only right to do so. But I can't sit here and confidently say that will be signed up by the end of examination period, because there's still so many unknowns and uncertainties. I'm afraid, sir.

00:31:49:18 - 00:31:54:15

If it's of course, if it's any of of any assistance, would be very happy to hold a company site visits

00:31:56:05 - 00:32:03:08

in due course to express areas of concern. Um, and sort of pinch points, as you alluded to earlier.

00:32:07:13 - 00:32:25:03

Yeah. On the, on the site inspection. But we'll, we'll come to that later in the the agenda. Um, one thing I would say on site inspection side of things is that the examining authority goes solely to the site to observe the site. We do not hear any evidence while we're on the site.

00:32:59:02 - 00:33:17:13

Before I ask, um, with the applicant wants to respond to what Mr. Church has just said. Mrs. Fairley, is there anything from your side that you want to add to what Mr. Church said? Or has he covered everything in respect of progress on whether heads of terms may or may not be going?

00:33:18:02 - 00:33:55:22

Tamsin Fairley, for instance. I think Mr. Church has primarily covered it. I just would like to add that, yes, we have had a meeting on the 18th which was requested by the applicant, and we were more than happy to engage with them. But it's and they said that they took took our points on board and went away. But it was quite disheartening sitting here today. And it now seems like Mrs. McGeady is saying that actually, you know, we've got no no interest in doing that whatsoever. It just feels like what was the point in having that meeting if we can't make any progress or come to a compromise on 1 or 2 items, this, it's just not going to go anywhere.

00:34:22:15 - 00:34:34:11

And for the executors of Mr. Tabor and Mrs. Hibbert. Anything that you wish to add, in addition to what Mr. Church has just said in respect of negotiations.

00:34:37:19 - 00:34:49:26

Nothing additional. Thank you. Um, Mr. church has been leading those, uh, negotiations on our client's behalf, and he's had said what there is to be said. Thank you.

00:34:49:28 - 00:34:50:15

Thank you.

00:34:52:04 - 00:35:01:19

So, turning to the applicant, is there anything that you want to say in response to what Mr. Church has said in terms of where negotiations are or are not going?

00:35:17:25 - 00:35:53:28

I'm Paul McCartney for the applicant. I don't particularly intend to respond to anything, Mr. Church said. I would very briefly like to to try, and if I possibly can assuage Mrs. Fairly its concerns, we are listening. Unfortunately it does. When the land agents take points away, it does take us a bit of time to work with them, and the points that we're raising, for example, have to go to the landscape specialists

and and work through that process. And I understand it's very frustrating. But until we've been through that process and have worked out what we can and can't do within the confines of our proposal and our design and our assessment, we can't commit to anything.

00:35:54:00 - 00:36:10:13

It's not that we're not listening, it's just that we can't move quite as quickly as it might be ideal. Especially, um, this week, for example, where we've all had very much, many other things to do in it, as taking us a little bit of time to work through these requests and see what is in the realm of the possible.

00:36:15:26 - 00:36:39:02

Tamsin Ferry for tea Fairlie and sons I do appreciate what you're saying and I appreciate the meeting was only on the 18th and we wrote that in our written representation. But you've just sat in front of us and said, no, we're not prepared to consider what North Falls are showing, which suggests to us that you're not prepared to change what you've done. So that's quite. And now you're saying, oh, no, we need more time to look at it. So which one is it?

00:36:55:03 - 00:37:28:08

If I may, said Gwen Church, on behalf of Brooks Linney, just one additional point to Mrs. Fells Point. There is, um, as to progress and changes. We had requested a change to the ecological landscape drawings circa five months ago, and yet we're still sat here with no changes made. Um, so I am concerned that if we're going to request something very minor in the grand scheme of things, five months ago, how is it that we sat here, no changes made, and we're talking about signing voluntary agreements within the next few months. I think the applicant needs to consider this quite seriously.

00:37:28:24 - 00:37:57:07

Um, this is incredibly sensitive to our clients, whether it's just a cable easement or the substation site. We've engaged we've hosted meetings numerous times. Only once have we had the applicants in House of Land Manager attend maybe twice to meeting. Um, and at that moment we felt that progress was slightly being made. But to wait five months to have a change made to plan, which still hasn't been made. Concerns me that we're not going to be any further forward with this in the next few months. I'm afraid so.

00:38:31:15 - 00:38:34:26

Anything further to add to to what's just been said?

00:38:35:22 - 00:38:36:07

Uh.

00:38:36:27 - 00:38:38:00

Well, thank you for that. But again,

00:38:39:29 - 00:39:11:00

purely in an effort to assess that, I'm nervous that this is going to cause more consternation than it exists. When I say we're looking at what we can do, I am not proposing that we are going to change the north wall's design. We are looking at what we can do, for example, around Norman's farm, um, to reduce or the impacts and address the other issues that they are. There. I'm not that. That's what I mean when I say we are looking at in the realm of the possible, we are not going to change our entire approach to landscaping and philosophy. We work, but we are open to exploring ways to address issues where we can.

00:39:11:02 - 00:39:26:16

And that is the work we are currently doing. I apologize if there's anything that's not clear about that. Very happy for the team to have a discussion with Mrs. Fairley if it's helpful. But when I see in the realm of the possible, I am not talking about completely changing the approach to landscaping.

00:39:37:15 - 00:39:48:20

I think what might assist is as an action arising out of this hearing, if the applicant could give an indication as to what

00:39:50:11 - 00:40:04:08

consideration it is giving to perhaps making some changes in and around the Norman's farm location, at least that would give examiners authority greater clarity and would perhaps affect fairly, etc..

00:40:42:00 - 00:40:49:06

Uh, Mr. Phelan, in respect of your clients, is there anything that you want to comment on in terms of negotiations?

00:40:52:09 - 00:40:54:17

Uh, I think, um,

00:40:56:11 - 00:41:42:14

As Mr. Canning said, we we had a discussion. We've got, um, another one lined up next week. We have been in the process of engaging with our consultants and in terms of designs and how we can try and mitigate some of the proposed development to fall within line of that. So, you know, these are sort of discussions that, you know, you can't just happen at the, uh, flick of a switch. But, um, so, um, I think, you know, some of the issues that we have with them, we can't sign the agreement because there's an obligation on us not to promote our land for other alternative use as well.

00:41:43:03 - 00:42:20:04

Clearly, we can't do that. So, um, but will we have a good chance of getting this sorted by the end of March? Yeah. I can't see any reason why that isn't possible. As long as we can get to terms that are acceptable to everyone. And in some ways, I think we've made some good progress the other day in terms of temporary possession land. So maybe we can we can get that mended to give us more comfort. The issues, though, still arise around the conflict with our development, and if there's an ability to look outside, as I talked about earlier on the current corridor, if there isn't that flexibility, then it comes down to a matter of compensation, which, you know, it's not for discussion here.

00:42:20:06 - 00:42:21:13

So, um,

00:42:23:00 - 00:42:47:17

I mean, the other points I think, uh, are easily achievable. Um, it's mainly that. So yeah, with goodwill, I think it requires like we just heard, um, positive engagement from the developer and willingness to consider give some greater consideration to the concerns of landowners and not just sort of ignore those concerns. And if everyone's willing to

00:42:49:11 - 00:43:21:00

meet in the middle, if it were or try and mitigate both risks, then I think our clients, my clients would be more than happy to do that. But it does require positive engagement rather than just being told it's

not possible all the time. And because I think, as you've probably heard from Miss Valley and Miss Valley and others, that that gets a bit frustrating from our point of view. We are professionals. I have plenty of experiences. I know the other team have got better experiences, but I've been doing pipeline jobs for many years now and I know everything is possible.

00:43:21:02 - 00:43:28:05

You know, there's lots of technical reasons why you can't do things, but there are often solutions. So if we're all willing to work together, then that's fine.

00:43:34:19 - 00:43:35:20

Thank you, Mr. Powell.

00:43:38:07 - 00:43:42:13

Was there anything that the applicant wanted to comment on on what Mr. Fells just said?

00:43:45:27 - 00:43:51:01

I'm the Mr. Fellow on a number of occasions. Reference.

00:43:53:24 - 00:43:54:13

I do hope,

00:43:56:06 - 00:44:00:17

but for you, you might just have gone offline because of a system failure at your end.

00:44:01:01 - 00:44:12:11

No it's fine. I've just got we've got a wedding happening here at our house at the weekend for 250 people. So there's a bit chaos here. But anyways, I keep going and it's half term and children everywhere, but keep going. Well.

00:44:12:28 - 00:44:45:14

Um, you may or may not be aware, but teams is actually very good at filtering out what might be extraneous noise. So whatever might be happening in the background, we're not hearing it. It might be affecting your goodness. It's not affecting us. Um, yeah. Reference has been made on on a few occasions now in this hearing, I think a compulsory acquisition hearing won and perhaps in written submissions as well to a development scheme that your clients are promoting. We haven't seen any detail of that.

00:44:45:16 - 00:44:57:14

Could you possibly produce a plan that at least just identifies the land that is affected by it, so that we understand how that might relate to us. Five stories are proposing.

00:44:58:13 - 00:45:31:24

Yeah, yeah. We've, um, we've split our development into, uh, proposals into two phases. And, um, I think as I alluded to previously, the phase one, uh, Mr. Canning and I think, uh, are confident that we can develop phase one without having any impact on the proposed route. Uh, for five estuaries. I think it's the phase two element that causing the problem, um, or potential problem. And I think. Yeah, absolutely. That's where we've just been trying to work around how those two can potentially co coexist.

00:45:31:26 - 00:45:59:25

But yeah, I'll get some plans to give you some latest idea of where we are and where the hopefully relatively smaller areas are. And those plans have only just become available to me this last week. So I know Mr. Canning, I've got a meeting next week to talk a bit more about that depth, and then we will get something across to you. Do you want that submitted separately or do you want that just the next deadline date or would you like that doing.

00:46:00:01 - 00:46:20:07

Yeah, we'll we'll talk about actions in a bit. But yeah at the at the earliest opportunity in terms of one of the fixed deadlines, um, and perhaps just a few words accompanying that plan, just explaining what it is, is a local plan promotion, or is it a site that has already gone down the planning route?

00:46:21:18 - 00:46:24:20

Uh, it's a it's a promotion site. Yeah. Um, if you.

00:46:24:22 - 00:46:29:18

Could just give a little bit of a background as to what what what that is that would assist us.

00:46:30:12 - 00:46:30:27

Yeah.

00:46:31:13 - 00:46:31:28

Comms.

00:46:37:11 - 00:46:44:21

Then really, just turning to Mr. Fairley and negotiations. Is there anything that you want to comment on?

00:46:59:01 - 00:47:18:19

Well, I was expecting to ask a question about negotiate or a further question about negotiation, but I think I'm I'm not I don't see the need to ask that. Um, so I think that therefore concludes agenda item 3.2 outside. Mr. Harrison's got a point.

00:47:20:14 - 00:47:40:20

Thank you. Um, question for the applicant team. Um, whilst you're here in relation to National Highways, um, we noted from their deadline one submission. Uh, rep 1066 um, in section 6.1.

00:47:41:10 - 00:48:16:24

Um, they had made a comment in relate or set out concerns relating to the proposed trenching cable crossing underneath the A120. Um, obviously saying yes, that's it's technically possible that that's all fine. Certain things can be covered under protective provisions. Um, but making the comment that the subsoil beneath the A120 is owned by National Highways, um, and at that time not included in the book of reference.

00:48:17:04 - 00:48:34:25

Um and also um, commenting they're not prepared to consent to the compulsory acquisition of the subsoil of the strategic road network. Um, but do say they're open to further discussions. I wonder if the applicant's team, um, could update, um, you know, progress since then, please.

00:48:50:21 - 00:49:03:08

Adam Kendall for the applicant. Uh, yes. We have met recently with National Highways. Um, and address the points that they've raised in relation to their ownership and how that is recorded in the book of reference.

00:49:12:10 - 00:49:28:24

Thank you for confirming that on the book of reference. Um, so, so that's going to be that's going to be added. Um, and our national highways indicating that there may be, um, some possibility in relation to the compulsory acquisition then.

00:49:29:15 - 00:49:51:02

So just to clarify, Adam Kendall, for the applicant, the uh, National highways ownership is recorded in the book of reference already. I think there was some confusion between the applicant and National Highways as to how, um, that is recorded. I think they were looking for subsoil ownership, but actually it's recorded it's freehold ownership ownership.

00:49:53:09 - 00:50:03:03

Um, but there is a separation between their ownership and how we deal with the technical crossing in relation to protective provisions.

00:50:23:06 - 00:50:23:21

Yeah.

00:50:28:20 - 00:51:06:24

Uh, Mr. Kendall, in terms of this plot, is this clearly land that was transferred to National Highways when they were created, or is it something that might still be held with the Department for transport. I have had other cases where, um, there were plots that weren't transferred at the due date for administrative type reasons rather than anything else, but it has caused problems for other cases. Um, is it your understanding that this land was clearly what it would have been, the predecessor to National Highways? Um, but but the transfer did take place.

00:51:12:09 - 00:51:24:15

It does seem that on some other projects, when you actually look at some motorway schemes, there are odd plots in the middle of live carriageways that, for whatever reason, were not transferred.

00:51:26:27 - 00:51:49:01

Adam Kendall for the applicant. Yes. I think it's probably, um, easier if we can reply and clarify the ownership status, because there are a number of, uh, plots relating to national highways. And there are, um, as you're alluding to. Some anomaly type plots. So perhaps we can we can clarify how we see the ownership.

00:52:36:14 - 00:52:52:03

Okay. That concludes our agenda item three. And now we're moving on to agenda item four. Any other business. Firstly I would look to the room to ask if anyone present has any matter they wish to raise in relation to this hearing.

00:52:57:18 - 00:53:02:02

Nobody in the room. Is there anybody online who may wish to raise any

00:53:03:23 - 00:53:04:16

matter?

00:53:08:09 - 00:53:09:21

No. Hands up.

00:53:12:28 - 00:53:44:28

To those present. This will be a final opportunity for affected parties to suggest viewpoints that may not be available from public areas. Already during this hearing, we've heard potential occasions where this may occur. Um, can I ask therefore, that, um, anybody present or online may wish now to propose certain areas. Or would you prefer to do that in writing?

00:53:49:09 - 00:53:52:03

Gwen church on behalf of Brooklyn. No further comments from me.

00:53:52:17 - 00:53:53:09

No comments.

00:53:53:11 - 00:53:53:27

Right.

00:53:54:14 - 00:53:54:29

Um.

00:53:58:00 - 00:53:59:21

Miss Foley, no further.

00:54:00:16 - 00:54:01:03

Sorry.

00:54:01:21 - 00:54:05:20

I think okay. I'll just do. When Mrs. Foley first.

00:54:05:27 - 00:54:16:19

Tamsin ferry for Tea Valley and sons. Obviously, we'd be happy for you to look at. It would be useful to look at Norman's farm. Um, and if there's any way you can't access from the public roads, then we'll be happy to facilitate it.

00:54:17:03 - 00:54:23:06

Right. I don't, I think actually, um, my colleagues who have already done an unaccompanied site visit.

00:54:23:20 - 00:54:36:11

Yeah, I think we've probably, as far as Norman's is, we can see most of what we need to see from the, the, the public, um, highway and or public footpaths in the area. Um.

00:54:38:16 - 00:55:08:29

But if there was anything that you thought that we needed to see, perhaps within the farmyard with, we certainly happy to, um, make an inspection that potentially could be the candidate for what we'd term as an access required site inspection, where the landowner grants us access to the land, and we then arrange a time, but we're not accompanied by anybody else.

00:55:09:10 - 00:55:17:12

And all that happens during that, um, access required inspection is that we view literally the landholding. Um,

00:55:18:28 - 00:55:54:07

the the only slight complication with that is if there are any health and safety reasons that mean we need to be escorted, that can also be accommodated, as long as it's fully understood that whoever is doing the escorting cannot say anything to us about the case. And what we usually ask for under those circumstances is that whoever the chaperone is, is somebody that's not been giving evidence but just understands the landholding. And therefore, if we wanted something pointed out as a reference point, they would be able to do that.

00:55:54:09 - 00:56:06:16

But they they would clearly not be able to engage with us if if we felt that we needed to make an inspection, would an access required type inspection be feasible?

00:56:06:18 - 00:56:07:23

Yeah. Yeah, yeah.

00:56:15:14 - 00:56:18:08

Uh, Mr. Fowl, you were about to say.

00:56:21:22 - 00:56:43:28

Um, sorry. Uh, obviously it's about saying no, no, no further comments from me. At this stage, I think I take the note about the plan and we'll get that over in due course. Um, of course, if you did want to have a site inspection, there's no no issues with allowing you a site inspection to look at the, um, outside as well, if you wanted to.

00:56:45:03 - 00:57:13:21

And Mister, Mister, fill in that connection. If again, we took the view that perhaps an access required site inspection would be more manageable than a fully fledged, um, accompanied site inspection, because that usually ends up with a coach tour and could be quite difficult on farmland, particularly as we're heading into the winter months. Um, would an access required site inspection be something that would be possible, uh, in respect of your client's land?

00:57:14:25 - 00:57:26:08

Yes, absolutely. Yeah. No problems. And there are farm tracts that you can access in. And, um, if you just let us know, and then we can we can make sure any gates are open and give you a map of where to go for.

00:57:26:10 - 00:57:56:10

Any access required site inspection that we undertake, uh, the case team would make prior contact with the affected persons to arrange a suitable time. Um, and then any health and safety issues could be raised as to how we then have to accommodate those. Um, there is a lot of experience in dealing with access required site visits when we deal with the appeals side of things. So it's something that the inspector is generally very familiar with.

00:58:02:13 - 00:58:02:28

Oh.

00:58:04:24 - 00:58:06:08

Yeah. Um.

00:58:08:04 - 00:58:16:00

Mr. Fairley, is there anything that you think you might want us to see? So all of everything is, uh,

00:58:17:21 - 00:58:20:10

visible from public vantage points? Yeah. Okay.

00:58:22:02 - 00:58:33:26

Just turning to the applicant. Are there any, um, locations that you think that we might need to see, that we cannot see from public land?

00:58:38:07 - 00:58:53:29

Well, I'm looking for the applicant outside of the sites that have already been identified, potentially the Stratton Park land, or, for example, Mr. Brown's land, where access and visits would probably be appropriate. The only one that would spring to mind is if you wanted to go to awkwardness. That would take quite a bit of logistical planning.

00:58:55:17 - 00:59:26:27

Uh, we will almost certainly need to go to awkwardness at some stage, but I think we need we need to really let the change request side of things run through, see what representations might flow from that before we decide the best way to address that it. I suspect that will have to be done as a free standing visit. Um, and we'll just have to cross the bridge, no pun intended. In terms that really was not deliberate.

00:59:27:04 - 00:59:40:06

Um, as to what the best logistical arrangements for that will be, because I presume it's either Cobra Mist or National Trust, or a combination of both that would have to facilitate access.

00:59:41:02 - 00:59:48:03

Um, yes. Our fundamentally, um, Mr. Gold of Cobra has been assisting us in getting access to that site so far.

00:59:52:19 - 01:00:10:28

And I think we should just just clarify with the applicant, are you content that for visits? Um, perhaps excluding awkwardness, but the others that we've talked about, would you be content that we do them on an access required basis rather than trying to arrange a coach trip or whatever?

01:00:11:20 - 01:00:39:11

Uh, Parliament could do that again. Yes, sir. If there is one point of clarification, if I could raise this on the site visits point, it has on the, um, examination timetable for us to submit a draft determination with an ACI at the next. It sounds like that is not particularly what is being proposed. However, if that is not, we would. We would request to be allowed to put in, um, a list of points that we think that the panel should go and look at on your various site visits, if that's acceptable.

01:00:39:13 - 01:01:09:27

Yeah, it part of the reason for having this session now is that no affected person up to this point has actually asked us to go and visit a site which is quite unusual when you're dealing with a project that's, um, 20, 22, 24km onshore. Um, and we've now asked twice for suggestions. So we've taken the view

that this was perhaps the best forum to, at least with those affected persons that were here to get some indication where they might like us to go and visit.

01:01:10:13 - 01:01:29:24

Uh, but yes, by all means, um, we're not precluding you from suggesting where you might think we ought to go, whether we share the same view that that's another thing. Um, yeah, by all means. Um, proceed on that basis. But you're generally content that, um, visits can be done on an access required basis.

01:01:30:07 - 01:01:30:28

Yes, sir. We are.

01:01:36:24 - 01:01:58:21

Right. That concludes, um, any other business? Uh, I think we'll move on now to item five, which would be review of matters and action actions arising um, from this discussion on compulsory acquisition. And I'll ask the applicant's team to provide a list of those noted during this part of the hearing.

01:02:00:26 - 01:02:11:01

Uh, for the applicant, um, the applicant does submit a plan showing the location of the water main in the proximity to port 070 11, which we think we can do by deadline three.

01:02:13:11 - 01:02:14:00

Thank you.

01:02:14:18 - 01:02:24:03

Uh, Brooks lady, to submit a note, setting out the particular concerns or works and the impacts on farming operations at specific plots or locations.

01:02:26:00 - 01:02:29:16

I would that be deadline three as well, Mr. Church?

01:02:29:19 - 01:02:32:13

Gwen church on Selena yeah that's fine. Okay.

01:02:33:01 - 01:02:33:16

Thank you.

01:02:34:21 - 01:02:54:27

Uh, the applicant, the applicant to respond on the application of the Court of Appeal judgment and FCC, um, against the Secretary of State for Energy and Climate Change and any other case law that we want to raise. And it's pertinent to the point, the reason that junction we would ask that that was deadline for just so that we have the other any other case law point is the one that might take us a little bit of time.

01:02:55:25 - 01:02:58:20

But also look. Thank you.

01:03:00:08 - 01:03:00:23

Um.

01:03:02:12 - 01:03:11:13

The application, the applicant to provide an indication what consideration is being given to making changes at the proposals around Norman's farm. And we can do that at deadline three.

01:03:13:14 - 01:03:14:02

Thank you.

01:03:15:02 - 01:03:25:11

Uh, Mr.. Failed to submit a plan showing, uh, where his affected client as proposing development and to provide a brief background note on the planning status of that.

01:03:25:20 - 01:03:28:21

Um. Mr. Fowler with deadline three okay for that one?

01:03:29:09 - 01:03:30:25

Yes. Absolutely. Fine. Yeah.

01:03:31:11 - 01:03:31:26

Thank you.

01:03:33:17 - 01:03:40:19

The applicant to clarify, the National highways ownership, particularly in the subsoil of the A120 highway, and we can do that at deadline three.

01:03:42:15 - 01:03:44:14

And thank you very much.

01:03:45:27 - 01:03:56:17

And, um, the applicant at deadline three, in place of a draft itinerary for NSI is to submit its requests or the consideration of the panel on site visit locations.

01:03:57:19 - 01:03:58:07

Thank you.

01:04:07:13 - 01:04:18:09

All right. Uh, can I ask if anyone present either in the room or online, um, have any comments to make on those action points? Mr.. Mr.. Church.

01:04:18:24 - 01:04:31:05

Gwen Church on behalf of broccolini. Just a quick point of clarification from my point of view when submitting our responses. Are you happy if I document it in one letter, but specifically refer to the landowner and the plot number or you?

01:04:31:13 - 01:04:38:15

I think I think we need to be absolutely specific about actually identify the plots of land that that were.

01:04:38:17 - 01:04:40:10

I appreciate that, but.

01:04:40:20 - 01:04:41:21

I think, I think

01:04:43:12 - 01:04:49:19

one way to do it is as Brooks Lane via your relevant rep and then list out.

01:04:49:21 - 01:04:58:01

Happy to do that. Yeah, exactly. So as long as I've as opposed to on behalf of a client, on behalf of myself with this client's name and number, that's fine. I think the.

01:04:58:03 - 01:05:26:04

Issue that we had, particularly at deadline two, was that we got the 13 letters, which were all very similar. They were identical. And the only way we could differentiate whether they were for Mr. X, Mrs.. Y was using the electronic labeling. Um, and that I know cause case team some difficulties, and it also caused difficulties for the colleagues who then have to compile the library and get it published.

01:05:26:06 - 01:05:29:29

Yes, I appreciated that, so I'll do it differently this time. I see.

01:05:33:16 - 01:05:55:15

Thank you, Mr. Church. I don't see anybody online waving their hand desperately. Um. Uh, the written action list will be published in due course. Um, we'll move now to closing this hearing. Uh, I thank you all for your attendance today, and I will now close the compulsory acquisition hearing. The time is 1246. Thank you.

01:05:56:08 - 01:06:09:05

Just a general reminder for those that are attending, issue specific for the issue specific hearing for which is on DCO matters. That will commence at 3:00 this afternoon. Thank you.