



Hearing Transcript

Project:	Dogger Bank South Offshore Wind Farms
Hearing:	Compulsory Acquisition Hearing 1 (CAH1) – Session 2
Date:	14 January 2025

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TRANSCRIPT_DOGGERBANKSOUTH_CAH1 _SESSION2_14012025

00:06

Okay. The time is now 1552 and I would like to welcome everyone back to this compulsory acquisition hearing for the dog bank, offshore wind farms. I'm now going hand back to hand back to miss Dowling, who will continue with item four on the agenda.

00:23

Thank you very much. So item four in the agenda relates to Section 131 and 132, of the Planning Act, 2008

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as set out in the agenda. I just very like, like to give the applicant the opportunity to very briefly set out the compulsory acquisition and temporary possession case against the test in the act, with regard to this section

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for the applicant,

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I think that,

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yeah, we've set out a case in Section 13 of the statement of reasons. A PP, 030,

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paragraphs, 13.6,

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13.13,

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Adam. I think, I think the short point is that there is, there's only one area of open space

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going to have underground equipment in it, in terms of cables, ultimately, and therefore, in terms of the operation of of the Act we don't need to provide. The key point would normally be, is, is replacement, both space required, and we're confident, for the reasons that we've set out that it isn't and

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and that, I guess that's the essence of our position, without spending any significant time on it.

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Thank you, Mr. Boswell, I suppose the question that, as you, as you quite rightly point out, it's 17 plots, and it mainly relates to the beach

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above and below mean high water springs. I just want to very briefly explore, obviously, your argument is that once the cables are installed and once the temporary beach access is removed, then people will be able to use the beach as they can currently. But I just want to explore if there's during the construction period, if the people will not be able to use the beach at any point in time while you're doing the works on it. I just want to understand, sort of, potentially, the temporary impact on open space,

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and also how long that will last for. Because I think earlier on in the conversations today, there was an illusion that the works in and around the landfall point would take about 18 months

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as Rosemary tingle onshore consents. Margin for the applicant, we would have a number in the original application, we'd had a number of exit pits on the beach as part of the HDD. Here's cross safe and technique type one for each of the drill ports. We have said that we would still allow public access on the beach if that option were to be taken forward. Obviously, there needs to be suitable health and safety measures in place to make sure that there were no incidents in relation to open excavations.

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I think you will note also that in change request, one the offshore change request, we also seek to remove the option for a short HDD with these exit pits associated with and seek for a long HDD. So in that scenario, we would be removing them. I appreciate that the examining panel authority needs to accept that change before we can fully discount it as an option. But I just wanted to make you aware that we have sort of fully assessed it environmentally, from an environmental side, and consider it from an open space side as well. I hope that answers your questions, but I can

03:59

thank you very much. That does help clarify that point. Um, just want to ask, is there anything anyone else wants to raise with regards to this item on the agenda? Because if not, I'll move on to the next item on the agenda. So I think it's just as in the applicant now applicants rather So, in which case I'll move on to Item five, which is Section 135 of the Planning Act 2008 which relates to Crown land. The Book of reference identifies that the 33 plots of land where could the crown hold an interest, and of those you're seeking temporary possession of 16 plots and compulsory acquisition of 20 plots for rights except plot 1806 where you're seeking the freehold

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crown interests are as follows. The Secretary of State, Secretary of State for defense, has an interest in nine plots. The Ministry of Defense has an interest in two plots. And the Secretary of State for Transport has an interest in eight plots, the Crown Estate, on behalf of the king's most excellent matter.

05:00

Just eat in right of his crown has an interest in 16 plots. Can I just check if there's any? And I never know how to pronounce this word ishat or bonovic Cancer land proposed that would be affected because there's none currently listed in the book of reference. But I just want to confirm that there that's actually the case. You

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can Boswell for the applicant. I think it's pronounced s cheat and yes, we can confirm, I'm looking early, that there is no student or one of a county event.

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Thank you, Mr. Boswell, for letting me know how to pronounce that. Can I just confirm whether the draft development consent order would effectively prevent the compulsory acquisition of any interest held by or on behalf of the crown, with particular reference to Article 41 of the draft development consent

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order. Julian Boswell, for the applicant, I think the answer to your question is yes, but I'm not sure. I guess it's one of those occasions where we think we're doing what is the normal position, namely, that you can't acquire crown it's just, it's preserving the fact that you can't acquire Crown land without the Crown's consent, which means that it isn't, in practice, compulsory acquisition. And then, as you know, we've obviously got the old section 135 piece, where there are non crown interests in Crown land. Is there any nuance to this question that might be less obvious? I'm sensing that you might have been burned on the past, that there is something that you want to double check.

06:41

I think it's, as you say, it's that sort of chicken and egg situation about the fact that you can't compulsory acquire Crown land without crown's consent. So I just think we have to a bit like the environmental statement. Sometimes we just have to check that the right checks and balances have been put in place and that the correct processes are in place. And I think effectively, you just confirm that by saying that article 41 effectively requires the crown to give you consent to compulsory acquire their land. So it's back to the fact that you can't compulsory acquire land without the crown consent. So we just need to make sure that they are aware of all of the all of the plots. So I think that you have actually answered that. If there's nothing else you want to follow up with that, I'm just going to then just ask for a progress update with regards to where you are with discussions with the crown, because obviously it is one of our ongoing issues with national infrastructure that often it's taken right to the end close of examination sometime, plus The close of examination, getting that agreement. So the land right tracker currently advises that you're in discussions with the Ministry of Defense, the Secretary of State for defense and the Secretary of State for Transport, and in relation to the Crown Estate that heads of terms negotiations are ongoing. Could you just provide me with an update on the position where you are with

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with regarding obtaining crown consent.

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Georgina Hurley, on behalf of the applicant, the applicant, together with the landowners, appointed agent, have actively been negotiating heads of terms. Following the update provided on the eight November, the heads of terms are at an advanced stage, with the only outstanding point being the market rate for the right

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comments and evidence on the 20th of December, which the applicants are currently reviewing, and the applicant is still hopeful that a voluntary agreement can be reached for the required rights.

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Thank you. And obviously I have to ask, what are the implications if crown lung consent is not forthcoming by the close of the examination?

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Well, we're then in Julian was over the applicant, we're then into,

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regrettably, an ongoing attempt to secure that consent after the end of the examination, which, as you've already indicated, Madden you're aware, does seem to happen on

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a frustrating number of occasions and and into the decision period. And I may be right that there's even an example of a decision being delayed because of an absence of

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example of a decision being delayed because of an absence of Crown consent. So we are mindful that this is something that needs our best attention,

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and we are engaging on all the appropriate fronts to to progress that. And we on the other hand, most by definition, we're dealing with bodies that don't have a stake in the project, and whilst they are used to this issue,

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it doesn't seem to get much easier. All we can do is keep pressing as early and.

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System need as we can, which is what we what we think we are already doing, and to resolve any issues that emerge in the context of those, those that engagement.

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Thank you. And yes, again, it's something that we will obviously keep an eye on and keep the pressure on throughout the examination, because it is obviously something that if we can resolve before the close of examination, it would be welcome, given the importance of resolving the issue on Crown consent, if it's not been secured before deadline eight, which is provisionally set for the third of July, 2025

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then the examining authority would ask that you submit an explanation at that deadline of how the project can proceed if all Crown land has to be removed from the order land. So could you take that away as an action point?

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So it's actually your section 135 case.

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Your action, the action, just to be clear,

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that that's that would be a very, potentially very serious scenario where we don't, we can't use the Crown land. Do we still have a project type question? Is that the question, effectively, yes. I mean, if you look at the report for horns before they didn't have crown consents in place by the close of the examination. And if you look at the compulsory acquisition chapter there, effectively we had because it is beach access, and there is no the land that the crown Well, a section of the land that the crown holds is, is, is the beach. Effectively, you can't. There's no alternative. You have to come through the coast at some point if you come, if you're bringing something offshore, onshore. And we did actually have to recommend in that report that the order was not made unless that crown consent was forthcoming. So it is quite an important thing to help us with the rewriting of the report. And obviously it underscores in when writing to the secretary of state that it's something that if it's still outstanding, that matter needs to be resolved quickly during their consideration of the report.

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Yes, I suppose I can't resist the observation that,

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particularly in the case of the Crown Estate,

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it would be hard to imagine that one wouldn't reach an agreement with them in the given that they are the landlord and a major beneficiary project. But I accept that in the worst case, one, you know it's it's right that the protection that one is that we're seeking for everything else under the project done by compulsory acquisition powers wouldn't be there in relation to the the interests of the Crown Estate. Yeah, thank you. And I wish you luck in your negotiations, and let's hope that they get concluded before

the close the examination. So if nothing, if no one has anything else to raise. With regards to crown interests, I'm going to propose that we move to item six on the agenda, which is funding.

13:10

So under Regulation five to H of the infrastructure planning applications, prescribed forms and procedure regulations 2009

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if a proposed author would authorize the compulsory acquisition of land or an interest or writer over land, a statement of reasons and a statement to indicate how an order that contains the authorization of compulsory acquisition proposed to be funded are required. The applicant has provided both a statement of reasons, which can be found at ASO seven, one, and a funding statement which is a P, P 012, under the

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Department for communities and local government guidance, the applicant has to demonstrate that there is a reasonable prospect of the requisite funds for acquisition being available, and the funding statement should provide as much information as possible about implications both acquiring land and implementing the implementing the project for Which land is available. The reason for this is obviously the development consent order, if made, gives the right to compulsory acquire land, and you don't want to be in a situation where the applicant would be able to require land and then choose not to proceed with the scheme. As the only reason to allow the compulsory acquisition of land is to enable the scheme to go ahead

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so the examining authority has the role where it must consider whether there is reasonable prospect that the funds needed to cover the scheme can be secured, and that this would include the amount of money needed to cover the cost of land. So it's a two fold thing. Do you have the cost? Do you have the money to build the scheme out, and do you have the money to acquire the land? So having said all of that, I'm very concerned that the funding statement as submitted doesn't deliver this. It's an exceptionally high level document and provides no detail. For example, it simply says that scheme would cost 7 billion pounds. And one thing I'd just like to clarify, I think I know the answer, but I just do want to clarify, because there are two.

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Few different different definitions of billion is that 1000 million or a million million, when we're talking about 7 billion,

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1000 million, 1000 million. Thank you for confirming that. By going through the funding statement, I can pick up some of the costs as to how that go towards making this 7 billion. So for example, there's 173

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million set aside for mitigation costs. But again, there's no breakdown of how this figure has been reached, and at this stage, there is also a concern that we don't even know the level of compensation needed. So how reliable, how much reliance can we place on that figure of 170 3 million. Is it a conservative estimate, or is it worst case scenario estimate

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in the region of 26 point 2 million is the amount of money put aside for land acquisition costs and compensation claims, including a 10% contingency. But again, there's no breakdown as to how the final figure the 7 billion has been arrived at. I do accept that with regards to land acquisition costs, the appendices to the funding statement that's provided by darklor McLaren does provide some more breakdown with regards to the land acquisition element to the scheme.

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I also note that paragraph 36 of the funding statement notes that there's an upward pressure on supply chain so that actually the 7 billion overall cost for implementing the scheme may actually be higher at the point at which it comes to be implemented. Should consent be granted,

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whilst I recognize that there is a lot of detail to be worked up reviews for individual topic areas have highlighted that there are currently significant unknown financial implications, and particularly given the lack of any kind of breakdown within the funding statement, I'm unclear, unclear how these have been allowed for in calculating the costs of what the scheme would cost to build out. So just to take one example to give you the kind of understanding of the concern I have is

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I don't currently know from the information provided how much money would be required to compensate for landowners breaking agri environment agreements and Stewardship schemes.

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And I also note that that potentially liability has increased significantly since the application was submitted, because originally, when the application was submitted, you identified that 37 hectares would be affected, but in a recent update, it's now increased to 227

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hectares.

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And also, for example, we've touched on it at today's hearing. I don't know, for example, if there's a difference in cost, if air insulation versus gas installation, for the controversy, stations would have implications for funding.

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In addition, within the funding statement, there is no detail of the cost for each of the possible build out options. So for example, if only one offshore wind farm was built, whether you're going to build them

sequentially, whether you're going to build them concurrently, and how they all relate back to the quoted 7 billion I do acknowledge that some of that detail is provided in chapter 28, of the environmental statement, which is a PP 217,

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where paragraph one to seven states that it would cost 3.5 billion if, what, only one offshore wind farm was built in isolation, and 7 billion if both, if projects were either built sequentially or concurrently. So firstly, I'd like to ask why this information isn't provided in the funding statement to enable me to understand how you've achieved the cost of 7 billion and to understand whether that's a realistic cost that scheme would cost to build

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Julian Boswell for the applicant,

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What we have done, madam, is to look at how funding statements have been provided for other offshore wind farms. We accept that there is always a spectrum as to how much detail can be provided or could be provided, and we think that what we have done here is within the spectrum that has been accepted on multiple occasions by by the Secretary of State,

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And so that has very much informed our approach

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in terms of the

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terms of what's underlying this topic, as you've indicated, there are sort of two, two questions if we are to be given a.

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The powers of the compulsory acquisition

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that should only be done if we've met the public interest test, and part of that is ensuring any effect, that

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those powers are not granted inappropriately, and that landowners don't have the threat of those powers hanging over them on behalf of a body that couldn't realistically use them, and therefore it's creating uncertainty

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each of the projects that has come forward

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like this, and it's not only offshore wind plant course use the special Purpose Vehicle arrangement, which is explained in high level terms in in the funding statement.

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And

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therefore,

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unlike, I don't know national highways, for example, who have sort of substantial assets

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that they there's a whole there's a very established model for promoting schemes using SPV companies. And so

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as you, as you, as I imagine, you're aware this.

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This question goes back over multiple ecos, and what is now article 44 and or variations on that theme of our DCO has become

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an established approach whereby, if you've got an SPV company that it's right, that doesn't isn't necessarily fully funded, certainly not At the point that the DCO is being granted that there should be a mechanism that prevents the compulsory powers from being used until, unless and until

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the suitable form of guarantee or other security has been put in place that satisfies The Secretary of State to release, to allow those those powers to be used. So I do think that in regards as regards the

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ability to fund compulsory acquisition compensation, that that measure provides a considerable amount of legal comfort, which had been accepted on multiple occasions, and to some extent,

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the yes, we have provided estimates of the property costs and the potential compensation, if compulsory power is used, and at the at the margin, you know, potentially there are opportunities to provide more information. But we do think that it's fair to say that, because of the protection that article 44 provides, that there, there ought to be, as it were, a limit as to how, how far that exercise needs, needs to go.

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Turning to the project costs.

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Again, we have explained in high level terms how, how the funding of these types of projects work, and Mr. McAllister, sitting to two spots along from me,

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can confirm directly, if needed, that the current expectation is that this, these

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the financial strength the two entities that the parent entities that own these projects are W, E and master is such that even at a cost of 7 billion going up, they have the ability to fund that themselves on balance sheet

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equally, and perhaps This is more common, that they can set up a project finance arrangement, and that in turn, as you may know

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from from Hornsey, four and other other matters in the way the UK market operates. At the moment, everything turns on getting a contract for difference. There are annual auction rounds. Each project that is coming through the system is, in practice, targeting one or more of those auction rounds in terms of in terms of bidding. That is a that is a competitive process, process in terms of bidding, for us, a strike price. And whilst in theory, projects can come forward on a so called merchant basis, ie, without the benefit of a contract difference. There's only been one partial example of that so far in the UK, and that's not not the sort of normal model. And so the discipline, the financial discipline, that goes into the deliverability of of the project.

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And the cost is, is comes under enormous scrutiny in terms of bidding that to win the contract difference. And so I suppose I'm politely navigating towards the question of yes, one could provide more of a breakdown to to the 7 billion number and more of an explanation of where sort of cost pressures are. But in the end, it becomes a bit of a black box whereby

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either, either there is a track record of these projects being successfully delivered. That means that there is a high level of underlying credibility

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project like this being responsibly given compulsory acquisition powers. And it's very straightforward to provide evidence that that is the case, that there are a whole series of projects in the UK in the last whatever 10 years that have been delivered on that model and under the CFD regime. If there was a sort of reason to imagine that this project had, for some reason, difficulty in relation to that, or these

developers, for some reason, had difficulty in relation to their track record, then that might provide a basis for sort of more rigorous, sort of examination and more and more detail. But I guess I'm I'm going back to where I started. I'm just mindful that,

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yes, we can provide more detail, but there, there will, there would become a limit to that. There might, in some cases, there may be some commercial confidentiality in the mix. And so, for example, the approach that we adopted to the habitats, compensatory measures. Number did have some commercial confidentiality in the mix in relation to two aspects of

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how that was, how that number was built up. So

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I I hear the concern that you've expressed, and we can obviously consider what more information we can provide in the in the light that you indicated. But

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as I sort of ending where I began, we are mindful that the kind of approach that we have adopted has been accepted multiple times by by by the Secretary of State. And we think both the headings that I've mentioned there are,

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there are limits to how much we can sort of constructively provide more detail. I

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think that was potentially a very complicated answer to actually quite a simple question. I mean, you've actually got quite a lot of this information in other elements of your submission already, as I pointed out, you know, your socio economic chapter provides a breakdown of what the costs for building one offshore wind farm, building concurrently in building sequentially would be, albeit that I do have some concerns, because to me, there seems to just be some very simple arithmetic going on there where the cost of building one is simply half of what the estimated cost of building two is, whereas in reality, surely the costs of building one would be significantly more. And then again, there will be some cost benefits to building concurrently that wouldn't necessarily be gained with building sequentially. So my concern is, is that the information that you provided is exceptionally high level. And when we look at the tests that are set out or in the guidance and in the act with regards to us having a confidence that a, we know what the project will cost, and that you would have the funding to cover the cost of the project, and B, you have the cost to cover the cost of compulsory acquisition. I don't think that those tests are currently met, and I wouldn't be satisfied to be able to write to the Secretary of State recommending that they would allow the CA that you are seeking to be included within the order on the basis of the information that you have at the moment. So I accept what you said, that this may have been accepted in the past, the past of the past we're looking at the current situation, and I think that you know, going forward, we do need some more meat on the bones with regards to the funding statement, as to exactly how you've come to the costs that you've indicated. I mean, as I say, I know, I acknowledge that appendix A does

include some of that detail for the land compensation elements of it, but I do need to understand, given there are so many.

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The unknowns with regards to the financial implications of things like the compensation measures, things like the compensation for breaking agricultural environment agreements or stewardship scheme agreements, that they may have quite big implications on the actual overall cost. And I need to understand and be satisfied

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I'm not asking in great detail. And again, I do accept, you know, the confidentiality with regards that you'll need to make with regards to some of those numbers. But I do think we need some more information so that we can be satisfied that A, 7 billion is a realistic figure and B, that you do have the again, that you know that the companies involved

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could actually cover the cost of paying for those things, because at the moment, you know you are quite right. R to be and mastar do have very good security ratings, but they are not technically the applicants. The applicants, as you've indicated, are

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special purpose vehicles specifically created for this application. And in terms of liability, at the moment, as far as I understand it, they only have just over half a billion of asset to them, so they don't actually have everything that they would need to build out the scheme. Albeit, I do recognize that funding, it comes on a milestone basis. And as you progress through the process obtaining consent and going forward into development each that they may well have more funding, but I need to have that set down, set down for me. So I think, in brief, what I'm looking for is a reassurance for you to that the funding for the scheme would be available. And

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as set out at the moment, I don't feel that the funding statement says that. So what I'd like you to do is to take away my concerns. Look at the funding statement and see what additional information you can provide me with to reassure me on those points, so that when I write my report to the Secretary of State, I can be confident that if we are suggesting that the order is made that you do have the means to acquire the land and also to build out the scheme.

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So anything that you'd like to add in response to that? Mr. Bottle, no, that's very clear. Thank you. Thank you. So I'm now going, if no one else has anything else to raise on this gender item, I'm now going to have that hand back to Mrs. Shawnee to deal with the remaining items on the agenda. So, sir, nothing else anyone wants to raise. We've got this matter

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which case Mrs. Shawnee,

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okay, thank you. Going then to item seven action points and close of the meeting, I would suggest that, given the number of action points, rather than going through these in detail now that they will be published on the project page of the national infrastructure website in the next day or two, if that's okay with everyone.

32:55

Item eight, any other business. We've not been notified that anyone wishes to raise any other business that is relevant to this hearing. But before we close, can I ask if there are any other matters that any party wishes to raise?

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No. Okay, so if there are no other items that are relevant to this hearing, may I remind you that the timetable for this examination requires that parties provide any post hearing documents on or before deadline, one which is provisionally set for 29th of January, 2025

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although this will be confirmed by our rule eight letter, may I also remind you that the recording of this hearing will be placed on the project page of the national infrastructure website as soon as practical after this hearing, the next event for this application will be issue specific hearing one on the scope of the draft development consent order, which will be held tomorrow, Wednesday, 15, January 2025, at 10am

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this is a virtual event which will be conducted online. The agenda for this event is available on the project website of the National Infrastructure website under EV 4002,

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if you are participating in the hearing, you will need to use the link sent to you by the case team for tomorrow, as today's link will not work. Registration will start at 945

34:19

for those who are watching the live stream, you will need to use the link that is available on the project page of the national infrastructure website. If anyone has any questions regarding access for tomorrow, then please contact the case team. After this meeting has been adjourned, closed, their details can be found on the rule six letter, which is PD zero 10. Before we close, we would like to thank all of today's participants for their time and assistance during the course of this hearing, we shall consider all of your responses carefully, and they will inform the examining authority's decision when drafting is written question questions and deciding whether a further round of hearings will be necessary. So.

35:00

The time is now 1627,

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and this compulsory acquisition hearing for the proposed dagger bank sales offshore wind farm is now closed. You.