

TRANSCRIPT_OUTERDOWNSING_CAH1_SESSION2_03122024

Tue, Dec 03, 2024 5:18PM • 56:13

00:00

I

00:06

welcome back. The time is 325,

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and I will recommence this compulsory acquisition hearing now. So coming on to

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responses from TH Clements, I will just before, before I hand the platform over to you, Mr. Westman Smith,

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just making reference to responses to

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the examining authority's questions on ca, so EXQ, one CA, 1.5

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in its response to this question, the applicant notes that the proposed wording for restrictive covenants are set out in column two of schedule seven of the draft development consent order.

00:52

So I'll come to you first on this point. Do th Commons have any further comments on this aspect at this time, and I'll then ask you to just carry on with any other points that you have to raise at this stage. Mr. Westman Smith,

01:10

thanks Mark Westman and Smith for GH Clements,

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I was going to pick up the point about the word is

01:23



Hearing Transcript

Project:	EN010130 - Outer Dowsing Offshore Wind Project
Hearing:	Compulsory Acquisition Hearing 1 (CAH1) – Part 2
Date:	3 December 2024

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of the restrictive covenant proposed in schedule seven DCO tomorrow, because we have some suggestions in relation to the drafting, but the concern, as we have at the moment, in relation to the working of the research team is that it could be seen to bite on what we consider to be ordinary agricultural activities. And you'll have seen our representations that we'll go into later in the week, that when land is waterlogged, machinery can be bogged down, and there is the possibility for contact with the cable. And then secondly, it prohibits excavation beyond point seven, five of the meter. And sometimes we need to do that. And so we would be seeking at least some wording to allow for greater depth of excavation with consent. So so I think it's probably more appropriate having outlined those two concerns to raise that in the drafting DCA tomorrow. That's absolutely fine. Yeah. Thank you. So moving then to matters compulsory purchase. So we set out in introductions earlier on that we've identified a list of relevant borderland plots in rep 2096,

03:01

and there's a little bit more detail on the plots of TH Clements farms in our written representation, which is rep 1050,

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section three,

03:17

before just turning to the points We just want to raise on the compulsory purchase tests, I'll just make two contextual points, the first in relation to negotiations, and the second in relation to mitigation. In the context of compulsory purchase,

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on negotiations, I think Mr. Wright has summarized matters fairly. There are ongoing discussions. We've had a number of recent meetings on proposed heads of terms. Those meetings have been constructive, and I think both parties

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want to head towards a voluntary

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agreement. But there are

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matters still to be agreed,

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and the outcome of those talks will be critical to TH Clements final position in the context of the examination

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and without agreement,

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in a context where some of the land GHC governments farms, they have a proprietary interest in, and that's simple to deal with In terms of compensation others, as we've made clear.

04:42

Other land is farmed without such a proprietary interest, and the result of that is that without an agreement between the applicant and GH tenants is there might be material private loss without compensation. So.

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And we don't think that the applicant has properly accounted for that form of private loss

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in two contexts, one, just the overarching planning balance for two, in the context of this hearing, impacts on human rights and the question of compelling case in the particular context of compulsory acquisition.

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So

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negotiations are ongoing, they are constructive,

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and if we arrive at a voluntary agreement that will resolve th government's issues, but there is a consequence of not arriving at that agreement, and that is unaccounted private loss in the

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various balancing exercises that will be for you

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in your recommendation to the Secretary of State.

05:57

The second contextual point is in relation to mitigation. We've described our business to the examination. It's our written representation, rep 1050,

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and it's sections one and

06:17

we in that explain the importance of the relationship with retail customers, large retail customers like

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test codes and the potential consequences for things like dust damage. The short point is that continuity of supply and quality of goods is essential to meet service level agreements with those contracting customers. And so in order to ensure

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GHC Clements has dhlevens has the ability to consistently meet those obligations, it does need to mitigate the impacts, and there are a number of potential ways of doing that. One might be contracting with a competitor to source

07:04

vegetables in order to fulfill our supply contracts.

07:08

The other would be a form of the same thing, which would be contingency sourcing, where you go out to the market and try and buy both of those would be, in short terms, expensive, and the viable option really is to assess more land through renting more land.

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But those opportunities are infrequent and relatively rare, and an opportunity has come up recently

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where we have been able to take out a farm business tenancy on a sizable farm called gospel farm of about 1000 acres. And

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because of the infrequency of land of that nature coming up, we've decided to enter that in mitigation of this scheme.

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And we've entered into an FBT for six years from November last year now, the land isn't as good. It's an inferior quality, so lower yields and higher input costs in terms of

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fertilizers to meet the quality of standards, and it's some distance away from base

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of th tenants operations. So there's additional costs in transport and management of the new side. But what's relevant for your purposes today is, firstly, we are acting properly to mitigate

08:41

loss. Second, secondly, in doing so, we're already incurring significant rental and working capital commitments associated with that mitigation plan. So there's a burden to the business now, even in advance of the scheme's consent and construction.

09:00

And thirdly, without an agreement with the applicant, then there would be no necessary right to compensation in relation to all of the land, and therefore all of the mitigation

09:17

land.

09:19

But if we hadn't the fourth quarter is, if we haven't done this, then we would be talking to you about a potential

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existential threat to the business because of the sensitivity of the issue of continuity of supply.

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Can I then just deal with some of the compulsory acquisition tests? It's not really for TH Clements to sort of draw together all of the strands of the project, and in particular on the benefits side, we're not seeking to undermine the importance of renewable energy and the legislative and policy support behind it. So we leave it to the x8 which, although.

10:00

Conclusions that don't offer a particular conclusion overall, but asks that a number of points are taken into account.

10:11

The first is in relation to alternatives, and you've already pointed out

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the compulsory purchase tests and the guidance paragraph eight says all reasonable alternatives have been explored. And can I just reprise the point I started on

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earlier today, and just say that in terms of land take and cable with,

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sorry cable corridor, with which has got two remaining queries in light of the further information

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provided at PD, 1071,

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page, 400

10:56

and that's Firstly,

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we are not clear as to how the areas for soil storage have been calculated, and they take up a material part of the cable corridor width. And without that understanding, we are short of being able to say, okay, that land take is justified.

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And then secondly, and it's a linked point,

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the corridor, as we understand it, doesn't go below 80 meters wide. There are areas where it's wider, and that's explained,

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but there are a number of locations where it is proposed to use trenchless techniques,

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and in those locations,

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we Do not understand the necessity for

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soil storage alongside those lengths of cable that are proposed to be

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input with trenchless techniques. Now it might be that the soil calculations will explain that, but at the moment, we don't have an answer to that. Plan

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in the context of alternatives. One is also require paragraph 25 of the guidance to seek to acquire land by negotiation. And I've touched on the fact that there have been negotiations and talks are ongoing. And to be clear, we don't seek to criticize the applicant for lack of engagement, as sometimes might be the case, but not the case here. There is just one concern I want to raise in that context. I've mentioned

12:56

in order to mitigate the scheme, there has been financial cost already to this

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objector, and the applicants made clear to us it has no funds available now for advanced compensation, and that will remain to be the case, as we understand it to financial close, and we've been told by the applicant that's 2026

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to 2027

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so the result of that is that you have an effective person who's acting properly to mitigate as they ought,

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and in doing so is preventing existential threats to the business caused by the scheme, but doing so without record pence, and in advance of agreement, without assurance that there will be record pence. And so we've got a situation where the applicant will be able to say, well, the impacts are mitigated in the context of the overall planning balance and compelling case balance, but that's not at a cost to the applicant and is placing a burden on the others, and this is an element of Private loss to be taken into account in the

14:22
compelling case.

14:26
Can I then just touch briefly on

14:32
private loss, and that really runs in the context of

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human rights paragraphs eight and 10 of the CPO guidance and

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paragraph 13, the compelling case where what ultimately you're seeking to do is balance public benefits with private loss,

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as we've explained.

15:00
And in our written rep. So that's rep 150

15:05
and it's in Section Five. The way farming occurs, certainly in the Lincolnshire fens,

15:14
is on a number of bases, some of which are informal. And the applicants recognize that, and they specifically

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pointed this out in their response to your q1, CA, one point 12, and it's on

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page 39 of their rep, 251, their responses to your questions, and they recognize the informal nature of much farming in this area, and for that reason,

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are seeking to ensure those parties are compensated through voluntary agreements. And so that's recognizing the importance of compensation to those landowners in the particular circumstances of this case and location, and without it, there would be interference, at the very least, with businesses without compensation. And I just draw your attention to the fact that the property cost estimate, which is found in a PP zero 30,

16:28

appears to be based on the ordinary principles under the compensation codes. And so far in so far as we can tell from the document, doesn't account for agreements in relation to informal farming

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arrangements.

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And so in that

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sense, it is not clear that the extent, the full extent private loss, in this case, in relation to non proprietary interests, has been taken into account. And

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we do say that's important, where there is potential for that loss without compensation, and of course, where there is interference without compensation, that's a material factor for your consideration in the overall

17:16

balance. But

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we're here today, because we are not at a point where we have reached agreement with the applicant,

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but you can take some comfort, but we imagine hard behind the scenes to come to that agreement.

17:34

So I'm quite happy with the way this the right summarize things, and we hopefully will be able to update you with progress further into the examination process.

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That's all I intend to say

17:49

to you at the moment.

17:53

Thank you, Mr. West Smith, that was a very comprehensive summary, and I appreciate the time that you're taking to go through that I will go now to the applicant, Mr. Flanagan, if you'd like to respond

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to any or all of those points, please.

18:15

Thank you. Hugh Flanagan, for the applicant, I will seek to try and respond to them in turn. So firstly, obviously, on

18:22

behalf of the applicant, we welcome the recognition from Mr. Westman and Smith. That is correct that negotiations, constructive ones, are happening and we are we are hopeful and expect they can come to a positive conclusion dealing with the points raised. However, wording of the restrictive covenant first and briefly, and suggestions as to including

18:47

a carve out for consent to go deeper. We can.

18:51

We can certainly take that away. And I think it has been raised with us separately, and we can see whether anything can be done with the precise wording.

19:02

Then there were two contextual points. The first one

19:10

concerns material, private loss without compensation, and Mr. Wessman Smith returned to it at the end of his presentation just now this being a point, both for TH Clements and other farmers in Lincolnshire, about the arising from the informal nature of farming

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in Lincolnshire to some extent, and how the applicant has taken that into account. In

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the applicant has taken into account, and obviously Mr. Westman Smith referred to where we've set that out. But just to, just to summarize and explain it, the applicant

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recognizes that there, there is farming on a more informal basis, without tenancies in place.

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The applicant has.

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Ought to ensure that those parties

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can be compensated, and has gone on a voluntary basis above and beyond the compensation code. To do so is an important point. We say

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the compensation code is Parliament's

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view of what is fair and appropriate compensation. That's what we're we're bound to do and provide, if it were to go to tribunal,

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but

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to show willingness to resolve matters by agreement, we are going above and beyond that by creating this mechanism to provide more informal occupiers with a an additional route to compensation through what's been called an occupiers consent arrangement. You'll have seen in some of our written documentation that comprises that occupiers consent mechanism comprises a direct agreement between the applicant and an occupier, an Occupy who might not have sufficient land interest to claim under the compensation code, and it commits the applicant to pay compensation directly to the occupier,

21:14

as if that occupy were a tenant, subject to there being no double counting of recovery, as in that the money wouldn't also then go to the land owner, so no double recovery. It's obviously fair

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that compensation

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in these voluntary agreements covers the full range of potential loss. We think crop loss, loss, loss of rent, additional costs for farming land

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not taken out of production, loss of subsidies,

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improving soil quality, buying in crop, a significant range of matters, and indeed we say that that is equally as wide, if not wider than the discretionary power to which TH Clements have referred in some of their written representations.

22:07

It's precise reference. It's section 22 of the agriculture miscellaneous provisions act 1963

22:16

we say we're incorporating provisions at least as wide as that, if not wider,

22:24

all known occupiers of land affected by the cable route in the order limits have been consulted with so

22:31

that they can benefit from these arrangements so far as is necessary. And the document has been drafted to ensure that it would cover future occupiers as well as current ones, because they may change.

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And this is this arrangement has been done in liaison with land interests. So it's been finalized with the solicitors Action Group, which is a working group of solicitors representing the majority of landowners. So we've done it in liaison with the relevant interests. So

23:03

first point is, in summary, we don't, we say it's not we are providing conversation in accordance with the code. We're going beyond it. So we don't say there's material private loss without compensation.

23:16

The arrangements fully cover any such loss.

23:21

And then the the,

23:25

the final point on it, I think, is the the property cost estimate point. Mr. Westman Smith mentioned

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the observation that the property cost estimate is based on the ordinary principles of the compensation code and a query as to whether it extends to the full extent of private loss, for example, that is covered by the occupiers consents. The answer to that is that

23:54

double double recovery is not envisaged. So

23:58

if landowners

24:01

claim, claim the loss, then that's where the the funds will be directed, the to the extent that an occupier occupy uses the occupiers consent mechanism instead, then the compensation goes to the more informal occupiers instead. So it's not a matter that the it's not the case that the property cost estimate underestimates matters. It's looked at the full potential compensation. Precisely who is the recipient of that compensation depends on

24:30

who comes forward and the nature of the arrangements, as in the nature of the farming arrangements.

24:37

So that is that

24:39

point. I should mention that Mr. Hubner is here from Shepton Wedderburn, who's been involved in the drafting of those agreements. To provide more detail if required.

24:48

In terms of other points raised, Mr. Westman Smith talked about the 1000 acres which

24:56

he explained has been taken by way of mitigation. We.

25:00

We recognize that is a helpful and sensible approach.

25:05

There was a, I think it led on to a point about the timing of loss on the basis that if that land has been taken now, but

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compensation wouldn't become due until powers are exercised, which would not happen until, well after, certainly after the development consent order is made.

25:31

So we say that is that is a function of the fact that the entitlement compensation does not arise until exercise of the powers of compulsory acquisition, for good reason, because unless and until those powers are exercised, in the absence of a voluntary agreement, nothing has been taken, and so compensation is not payable.

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Parliament has created a provision for advance payment

26:01

under Section 52 of the 1970 Land Compensation Act, 1972

26:08

but again, those advanced payment provisions

26:12

become mandatory on giving notice of entry or making a general vesting Declaration the stage we are now in development consent order hasn't even been made yet,

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so hardly surprising that

26:26

compensation is not being handed over at present that

26:35

deals with the timing point the alternatives, A couple of points raised under alternatives relating to soil storage and a query as to how the soil storage areas have been calculated.

26:50

I'm sure we can provide some detail on that calculation. Can't do so now, but if I can ask to come back in writing on with some detail on that calculation, and at the same time, I think a related point about in those locations where there is trenchless techniques for the cable,

27:11

the necessity for soil storage alongside those areas. Again, on that technical point, I could come back in writing,

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I think looking down my list, I think that covers the matters I wanted to reply on. Thank you very much.

27:28

Thank you, Mr. Flanagan. I think

27:32

from, from my point of view, I will, I will go back to TH Clements in just a moment, but, but what I what I'd like to avoid, and I think you, you've actually made the point quite eloquently yourself, the we're not, we're not at a stage where we're even ready to, remotely ready to make a recommendation to the Secretary of State, let alone there be a decision. And the

27:53

subject of compensation is not one for us to examine in in any way. So whilst it is mindful that it's an important topic, and I'm no doubt quite close to the top of th claimants list of priorities. It's not one that I want to delve into in any great depth at this stage. But I just wonder whether, particularly in terms of the discussions that you and th, the applicant and th claimants are having, whether this subject of the property cost estimate and how those figures have been arrived at, would would warrant perhaps some further, some further discussion, possibly clarification between yourselves, rather than within, within this forum at This stage.

28:40

Yes, you found the applicant. I think that's certainly possible. We do have speaker Wright, who has been involved with the property cost estimate, but it would be a matter of fairly detailed calculation and explanation. And I yes, if we can both take that away and consider whether it's best explored

29:01

in with TH Clements, rather than using time in this forum, that would be, I think, useful.

29:08

Thank you. I think we just recorded an action point for that to happen, and

29:14

I think not, not at deadline three, but I wonder if the the examining authority could have an update at deadline for there, may there may well be some questions at that point as well on those discussions.

29:28

Yes, sir, can do that. Thank you. And I'll come back to Mr. Westman Smith, just whether you have anything, anything quick to say in response to what you've heard from Mr. Flanagan before we move on.

29:45

Yes, so mark Westman Smith at TH Clements and I will be quick.

29:52

Thank you for the indications that the applicants made that they'll come back on soil, calculations, trenches.

30:00

Techniques, and then, with regards to the property cost estimates, just one overarching point. We are obviously very conscious that compensation importance to landowners, but not to you in the context of this examination, but what is important to you is to take into account any private laws, particularly where it is not compensated for. And it is towards that issue that

30:33

my submissions have been directed, so we understand that. And just going back on one point, Mr. Flanagan has said there isn't any dispute between ourselves. That's between the scope of the compensation code, no surprise there. And obviously it's welcome that this applicant has sought to extend that scope through voluntary agreements. But if we don't have those voluntary agreements, then there won't be compensation, and it will lead to private loss. And that does not disappear just because of the scope of the compensation code provided by Parliament. If it's outside of that scope, then it's in your balancing exercise, and it's all the more weighty for want of compensation. And so that's all I need to say in response.

31:26

Thank you. And that is clear, and it is, it is very much understood from the examining authority's point of view as well. Mr. Flanagan, is there anything that you would like to say in conclusion on this topic?

31:37

So that there's any one point, I won't repeat anything, and it's just a loose end

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so that it's on the record that obviously we are mindful of in Section 87

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of the Planning Act 2008

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which expressly, and I'm sure you've had it in mind when making your point a moment ago.

32:04

It provides that the examining authority

32:08

may disregard representations which relate to compensation for compulsory acquisition of land or of an interest in a right or right over land so expressly parking compensation for essentially, the upper tribunal

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not to say that the point about private loss is ignored. We recognize that, and we sought to address it, but

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in terms of statutory underpinning for for our approach in suggesting that the detail of compensation valuation, etc, is not for this forum. That's the that's the legal basis for it, Section 87 in particular.

32:49

Thank you, Mr. Flanagan. And with that, I think we'll move on. The examining authority is aware of the thrust of CH Clements argument and where, where they would like us to direct our consideration, which

33:05

we note, is not specifically to do with as you, as you said, Section 87 of the Planning Act, but that your representation is nonetheless noted. I'm going to move on to item two on our agenda at this point, which relates to Crown land.

33:24

Now, we've heard a little from from the applicant already in relation to Crown land, and Mr. Wright gave us a summary of the status of voluntary agreements with the Crown Estate.

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But I would like the applicants, if they have any anything further to say, specifically in relation to,

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well, particularly whether to confirm whether all crime land has been identified. And I think you've touched on that already, but if there's anything more that you would like to say, if, if that,

33:58

that it has all been identified within part four of the book of reference and on the crown line plans.

34:07

And further to that, then, if the applicant could touch on Item B as well within the same statement, whether the draft DCO would effectively prevent compulsory acquisition, acquisition of any interest held by or on behalf of the crown. With particular reference to in our agenda, it was article 43 I believe it's now article 44 in the updated draft development said Order, order submitted at deadline to Mr. Flanagan.

34:39

So thank you, Hugh Langan, for the applicant. So in relation to point A The answer is yes, the applicant is confident that all Crown land has been identified in part for

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the book of reference that's based on diligent inquiry and land referencing, and we've also got the security that the applicant has issued the plot now.

35:00

Members and land plans to the Crown Estate, and they have not identified any further

35:06

Crown land.

35:08

So that gives us confidence on that front as to Item B. So as you say, what was article 43 now becomes. It's become article 44

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we consider it would be effective. So firstly, Crown interests are all excluded from compulsory acquisition in the book of reference,

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then article 44 also provides protection against interference with Crown rights.

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And the form of the drafting of Article 44 is in the standard form in recently may development consent orders, for example, the development consent orders for East Anglia, one north and two is in the same form. So it's been essentially endorsed

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by secretaries of state. So in short, yes, we do think it would be effective. Thank you.

36:07

Thank you. Moving on then,

36:13

I'm sure, a question you've no doubt been anticipating. But for the record, what is the applicant's view of the implications for the proposed development, proposed development, if crown line consent is not forthcoming by the close of the examination,

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yes, certainly if anticipated that

36:33

in terms of contingency, contingency plans,

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the short answer is, we don't anticipate it will not be forthcoming, and that's not to dodge the question, but we

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recognize the importance of obtaining it, and therefore negotiations are advanced, and we have confidence that they will be brought to conclusion, and the Crown Estate have given us no indication whatsoever that that is not possible. So

37:03

we don't think that there is any realistic possibility of that occurring. Obviously, we'll keep it under review if

37:13

matters transpired differently. Well, then we would have to cross that bridge when it arrives before the end of the examination. But in light of where we are, we don't see it necessary to put forward a sort of detailed contingency plan at the moment,

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okay, and on the same topic, and give given the importance of resolving the issue,

37:38

if crown consent hasn't been secured before deadline five, which is Thursday, the 13th of March.

37:47

Can, can the applicant reasonably provide an explanation at that deadline of how the project would proceed before Crown land has to be removed from the order land?

37:59

Yes, so we can, we can take that as a

38:03

point in time to provide better information. Yes, we can do that. Thank you. And we'll just record that as an action point as well.

38:11

That's, that's good. That's all I have on on Crimeline. So we'll move on to Item three,

38:18

which relates to the case for compulsory acquisition and temporary possess. With regards to section 131, and 132, of the Planning Act that is commons, open space or fuel or field allotments. Now the book of reference submitted at deadline two, which is rep 2016,

38:36

notes that there are four plots of open land which are plots 01001, 0100124,

38:44

and five and one plot of common land, which is plot 17, 001,

38:49

which the applicant is seeking to compulsorily acquire permanent rights over section 1.4 of the book of reference notes that only section 132 of the Planning Act would apply to these plots, as the applicant is

not seeking to compulsory, compulsorily acquire, I'm going to struggle with that word, I'm afraid, to acquire the land, just merely rights over the land in that

39:15

on that basis, can the applicant set out its compulsory acquisition case against the test in The act for the acquisition of these rights in relation to these plots of land, please.

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It's Hugh Flanagan for the applicant. So if

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I deal with

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open space first,

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as you've noted, there are four plots of open space, which is the around the landfall

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and the in this location, the offshore export cables will be installed using trenchless techniques when coming under the land.

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As such, no works are proposed which would affect the use of the open space.

40:00

Or its physical appearance, and therefore the test is satisfied in section 132,

40:06

subsection three, that the land, when burdened, would be no less advantageous than it was before.
And

40:17

the

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that's recorded on the face of the DCA, as it's required to be in the in the statute,

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that's open space in common land. It's, as you say, one, one plot 17, double A one Hall gate, the track, again, trenchless techniques are proposed such that the set the set the test in section 132, subsection two is satisfied. Land, when burdened with the rights, will be no less less advantageous than it was before.

40:50

Once the cable is installed, no works are proposed which affect the use of the land or its appearance on the surface. So on both fronts.

41:02

It goes under the relevant land and does not affect its utility or

41:07

advantageousness. And that, we say, addresses the statutory test.

41:14

Thank you, Mr. Flanagan,

41:17

and we will move on then to Item

41:21

four, within within 3.2 of our agenda, temporary possession and or compulsory acquisition. In in order to establish that the applicant is making an appropriate and reasonable distinction between the use of temporary possession and compulsory acquisition powers, can I ask the applicant to briefly set out how they have decided whether a plot would be needed for compulsory acquisition or whether temporary possession could be used, and how long they are seeking temporary possession to last.

41:52

Thank you, Sir Hugh Flanagan, for the applicant, so

41:56

the applicant has identified those areas which are only required for one of four purposes. Just say what they are briefly in a moment, and the result of them only be required for those four purposes. Means that only temporary possession is required.

42:13

Those are, firstly, temporary construction lay down areas.

42:18

Secondly, temporary vehicular access, tracks, thirdly highway alterations, and fourthly enabling accesses.

42:29

So those works are all temporary in nature

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and not required for the ongoing operation of the maintenance of the project. Hence, temporary possession only

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there's a second category, a second important category, which is that the temporary possession powers under Article 28

42:52

of the DCO

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may also, in addition to the specific plots which are listed in schedule nine, also can be used in respect of other order land,

43:06

in respect to which no notice of entry or general vesting declaration has been served, and the applicant's approach will be to initially use temporary possession along the length of the cable corridor both the 275 and 400 KV cables to construct the project as is, this is common practice, essentially. And the benefit is that the cables can be laid using temporary possession. And therefore the use of compulsory acquisition of rights is subsequently only limited on the areas where the cables are physically laid, rather than the entire width of the working corridor, which is wider, so initially temporary possession, but then only taking rights over a narrow area, so that minimizes the applicant's

43:56

extent of acquisition in terms of rights also minimizes

44:04

compensation liability as well.

44:07

So we say that that is the sort of proportionate approach that temporary possession is designed for,

44:14

and is also advised by the guidance

44:20

the

44:23

there are

44:27

masses other to cut.

44:30

So I think hopefully Mr. Wright is here again, if further details provided. But that's, I think, hopefully an answer to your question in the first instance, at least,

44:41

I think it does for now. Thank you very much.

44:44

I will for now. Well, I will move on to the next item agenda, the securing of HRA compensation measures that have been advanced on a without prejudice basis. Now

44:56

the applicant has proposed

44:59

compensation.

45:00

Measures of this kind on without prejudice basis for

45:07

for a number of

45:09

affected receptors, based on the HRA tests, and

45:19

I would just like the applicant to clarify whether any of the measures that they they have proposed on or without prejudice basis would require the compulsory acquisition or temporary possession of land to enable them to be delivered. Yes.

45:35

Thank you, sir. Hugh Flanagan, for the applicant, I'm going to provide a short summary, and then Mr. Jake laws is who I introduced at the beginning, HRA and derogation manager can can fill in any any detail that's necessary. So

45:49

in answer to the question, we don't say that the compulsory acquisition or temporary possession powers are required in respect of these compensation measures, either the the ones non without prejudice or the without prejudice ones, it's helpful to separate them into offshore and onshore. Compensation method measures for offshore there are

46:19

the examining authority will have seen in the schedule 22 of the DCO, there's artificial nesting structures, and there's two areas identified for those in the works plans. And there's also, secondly,

46:37

a biogenic reef, again identified within as work number 10,

46:44

should it be required?

46:47

So in terms of those areas,

46:52

at deadline to the there's a letter of comfort was submitted from the Crown Estate,

47:02

someone to learn. Left. I might provide the reference in a moment. The letter from the Crown Estate confirms that they have the ability, in principle, to grant the rights which would be anticipated to be required for the construction of both the artificial nesting structure and the biogenic reef

47:24

and

47:25

the they also confirm the same in respect of removal of redundant infrastructure,

47:32

if necessary. And they are obviously the land right. They own the land rights in question.

47:40

It's rep two, hyphen zero, 62 the Crown Estate letter of comfort.

47:47

There's also a letter of comfort, still off dealing with offshore matters from BT group

47:56

and who again confirmed they are, in principle, content with the removal of redundant infrastructure as a compensation measure. So that's a third measure, essentially that letters rep two, hyphen zero, 63,

48:10

so again, comfort that that can be achieved without the need to have compulsory acquisition or temporary possession powers. And of course, here we are dealing with,

48:22

we're dealing offshore, and so where the Crown Estate are likely to own the land, and therefore it couldn't be compulsorily acquired in any event, such that we would rely on

48:35

the crown of Crown estates consent to providing these measures if necessary.

48:43

Fourth measure to refer to is potential for extending existing special areas of conservation

48:53

to the extent that is necessary. It would be delivered strategically by the government through what's called the marine recovery fund. So

49:02

not appropriate to include as temporary possession or compulsory acquisition as it's a, essentially a strategic measure,

49:09

apparating as a operating at a higher level than we can deliver. So that's the offshore measures onshore, just before we move on. Short, if I could just ask a question of clarification, you noted the kitty wake compensation measures, and I will just

49:32

you may have gone on. I may have missed it again, but just the question specifically relates to, without prejudice, compensation measures, which, as I understand it, the kitty wake is, is not proposed on a without prejudice based basis, raise bill and Gill and what compensation measures are. So if you, if you could just clarify in relation to those measures specifically, please do.

50:00

So yeah, sorry. Apologies for any confusion.

50:04

There's an artificial nesting measure for kitty wakes, as you say, which is not without prejudice, but the the Gila mots, for instance, which is without prejudice. It's in part two of schedule 22 also includes artificial nesting measures. That's why I mentioned it. But so I take your point,

50:27

not a without prejudice measure, but

50:31

returning then to the those which are without property, without prejudice.

50:37

We then go onshore,

50:42

two to mention here.

50:45

Firstly, without prejudice, prejudice, measure of predator control

50:52

at the playmon seabird reserve in Jersey,

50:58

again, positions similar in terms of we rely on

51:03

partnerships and letters of comfort. So we have, at PD one, hyphen zero, 99

51:10

a letter from an email from the Jersey government

51:15

confirming that consent has been granted to install the fence that would comprise this compensation measure on the and the land.

51:27

An application for planning commission has been made for the for

51:31

the what's required.

51:34

There's also a delivery partner, the National Trust of Jersey, with whom the applicant has exclusivity and exclusivity agreement, so that we say gives us confidence that that can be delivered.

51:47

So that's the first one. The second one is

51:51

alternative orc compensation measures in the southwest of England. So that's razorbel and guillemots,

51:59

the applicant for these compensation measures in the southwest of England doesn't necessarily anticipate that land rights would be needed to implement the compensation as the key disturbance pressures have been identified to come from the seaward side, as opposed to onshore

52:18

habitat management.

52:21

And also the first point, and also, again, agreements are being progressed with delivery partners so that to the extent that land is required, there would be a mechanism for it to be provided.

52:36

So in summary, we say there's a, obviously, a suite of without prejudice measures. There's a combination of letters of comfort

52:49

delivery, partnerships and measures being put in place such that we say that sufficient confidence can be had without compulsory acquisition or temporary possession, and indeed, the nature of the measures is such that compulsory acquisition or temporary possession wouldn't necessarily be appropriate, given those those measures are still

53:14

being designed, and therefore precisely defining the land involved is may not be possible at this stage.

53:22

So sir, that that's the relatively high level response. If further information is required, that can be provided. Mr. Laws would probably be the man to do it. Thank you.

53:53

Thank you, Mr. Flanagan, I think we, we will follow up in in further written questions, rather than, rather than going into further detail now, I think we will fairly rapidly stray into

54:09

more scientific than compulsory acquisition grounds, I think, and that's certainly not my field of expertise.

54:17

So I will move on to

54:21

agenda item six, within, within 3.2 of our agenda,

54:27

which is funding. Now I've noted the applicant's response to the examining authorities questions. Question one, CA, 1.17

54:39

but we'd like the applicant to expand a little on this response,

54:44

to set out the current status of the project within the CFD, the contract for difference process, if you could just elaborate a little on where the project sits within within that term.

55:00

Scheme, please.

55:07

Thank you, sir, yes, that's understood. If you could just give me a moment to find the appropriate person to question, just to confirm, to explain

55:19

where the project currently sits within the conference contract for difference arrangements

55:27

and

55:28

details as to, I suppose, timing or potential timing on that front.

55:33

Yes, yeah, but by all means,

55:36

how much time do you think you need?

55:40

If a matter of minutes, I think would be sufficient.

55:45

Well, I'm happy if, if you need five minutes, I'm happy for us to adjourn for five minutes.

55:53

You're off, Mike, I can't hear you. Apologies. Yes, five minutes would be, would be welcome and sufficient. Thank you very well. We will adjourn. The time is now 21 minutes past four, so we will reconvene at 26 minutes past four. You.