



Hearing Transcript

Project:	Stonestreet Green Solar
Hearing:	Issue Specific Hearing 1 (ISH1) – Part 2
Date:	20 November 2024

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00:00:00:00 - 00:00:35:29

Unknown

Thank you so to to. Do you want to say something? Thank you, sir. I just wanted to refer again to. Can you hear me? Okay? Yes. Yes. Counsel for the applicant referred to the advice counsel's note that had been received by the parish council. And if this is the moment to tackle this. But paragraph 21 talks about a definition of the word maintain.

00:00:36:01 - 00:01:04:07

Unknown

And from the community's point of view, the breadth of that definition is is worrying, and that the reconstruction of this scheme, the word reconstruct, is in. There could be an enormous project. Again, when the technological, technological advances come forward that have been talked about today, and we could even in the space of ten years of the 40 years scheme, see a complete repeat of what we may be facing if this gets consented.

00:01:04:09 - 00:01:29:12

Unknown

I just wondered if you could help me with the mechanism that will be dealt with within the draft ECO that will cover this point to make sure that there is a planning application, an appeal procedure, and perhaps a proper consultation about that which could be a major factor. And I and the community I think is unclear on the safeguards that will be put in place, presumably here within the DCO to cover off that aspect.

00:01:29:14 - 00:02:00:26

Unknown

Thank you. Would that applicant like to see it, what it proposes? Yes. And she found again for the applicant. I can respond to that. So as Mr. Tennant says, it's one of the detailed drafting points in in the note produced on behalf of the parish council and perhaps the. Just so we know what we're talking about. It concerns the definition of maintain in the draft development consent order.

00:02:00:28 - 00:02:47:20

Unknown

You have that definition in Article two on page seven of the draft order that maintain includes inspect, upkeep, repair service, adjust after removal, reconstruct and replace in relation to the authorized development. Provided such works do not give rise to any materially new or materially different environmental effects to today's identified in the environmental statement.

So they the first point we note in response is that RDF approach the definition of maintain has, we say, clear precedent and orders which have been made by the Secretary of State.

00:02:47:20 - 00:03:18:04

Unknown

We can provide those in in writing after this hearing. So it's not not a novel approach which we're proposing here as to as to whether that definition of maintain is too wide, that we say in accordance with previous Secretary of State decisions, it's not the the words which you have in definition of it refurbish, adjust, after, remove, reconstruct, replace.

00:03:18:06 - 00:03:48:05

Unknown

Those are all precisely the sort of things that may be necessary over the lifetime of a project like this to take place, to keep it operating and in effectively and in good condition and doing what it should do. It is it's obviously not envisaged or intended to allow for or building a completely new approach to act, because the definition is those were refit, repair, refurbish, etc..

00:03:48:07 - 00:04:13:09

Unknown

In relation to the authorized development. So it's not a separate development is what is authorized. And that's the first one. The second point, and hopefully this is right, that in some respects it needs to address Mr. Tennant's point, is that you have again, this control in the definition itself that provided such works do not give rise to new or materially new or materially different environmental effects.

00:04:13:12 - 00:04:38:03

Unknown

It prevents it's not entirely open ended. It truly has to be works of maintenance as opposed to things which are outside the scope of what has been assessed, which is important, both from a legal point of view and in a practical level in addressing the issue that Mr. Tennant raises. So that's my response in that point. Thank you.

00:04:38:05 - 00:05:12:14

Unknown

I was just wondering whether if consent is granted and subsequently there are maintenance programs in place, whether there would be a form of outreach with the community to advise

them. Maintenance taking place at a future date. That's something that could be commented on.

00:05:12:17 - 00:05:43:15

Unknown

So, yes, we can certainly consider that it may be that's a management plan or something of that sort could have some provision in that respect to ensure that there is awareness notification, something that sources will take around. That's when I think where it might best be dealt with. Okay. Thank you. Anyone, Mrs. Harman? Thank you. Thank you, sir.

00:05:43:15 - 00:06:25:28

Unknown

Linda Harman, board member, Sex Control. And I listened with great concern to the answer on the question of Skype. The definition of the word maintain as this DCO, if it is granted, gives the applicant sweeping powers. And I'm concerned that any verbal reassurance of engagement with the community is verified somewhere and and ensured. We have lots of experience as a community in working with various different organizations, companies.

00:06:26:01 - 00:07:02:13

Unknown

And I understand and recognize the reason why this process is going through the root of this test. However, there needs to be reassurances for communities. It it's something that is going to impact us every single day. So maintenance of a part of this site involves traffic, involves vehicles on the road that are going to change the character of the place and frankly get in our way.

00:07:02:15 - 00:07:52:28

Unknown

And I think that the very least we can expect is that the applicant works closely with the parish council, with the residents as a whole. And we have actually case studies of where that approach has made a radical difference to the perception of and partnership between a large developer and the community. I know I think it may not be normal, but actually solar farms being an item that goes through this DCI process is also not what the process was designed for originally.

00:07:53:00 - 00:08:25:16

Unknown

So whether or not this phrase has been utilized in previous DCI, I think is something that we should look at and consider because this project will significantly impact our community and we need to put the safeguarding in place to ensure that we have, well, something to match the Paris that's going to be given to this applicant. If you grant this DCI.

00:08:25:18 - 00:08:51:20

Unknown

Okay. Thank you for that. Mr. Flanagan, on behalf of that applicant, as already indicated, it will go away and look at it. So I propose that you do that and come back with something to submit through the examination process for everybody to comment on. Happy with that said, it might just be useful to say that now. I just had a chance to look at that.

00:08:51:22 - 00:09:41:25

Unknown

The detail. So it's a requirement consistent with this feather in writing, but just so it's raised now, it's requirement 12 operational management plan requires operational management to be submitted and approved has to be in accordance with the outline plan and the operation management plan must be implemented as approved. And the operational management plan currently is APP 156 and that expressly is dealing with the outline version of the plan expressly is dealing with the construction operations operation and maintenance of the project.

00:09:41:25 - 00:10:19:20

Unknown

So it's clearly captured to some extent already and we perhaps can take it away and provide some more detail in due course. Okay. Thank you. This is I'm sorry, sir. Thank you very much for letting me come back. And I refer to a distinct case and I thank Mr. Flanagan for highlighting the point with regards to the operational management plan that will be agreed by the local planning authority, which is not the planning, it's just not the Parish council, which is not the community.

00:10:19:22 - 00:10:56:09

Unknown

And we have got cases locally, specifically in regard to the national grid and to the optimization of the national grid for renewable energy, where there has been an agreement between the local planning authority, the applicant and the applicant to include the parish council in such a way that they can have a say in that construction management plan. And I believe very strongly that that should be the route that this applicant goes down.

00:10:56:12 - 00:11:22:05

Unknown

Thank you. I didn't like to say anything in response Saturday that the plan has to be approved, submitted to and approved by the local planning authority, which is assured by our Council on the basis that they are the relevant authority with the professional offices and it deal with the sorts of matters that would be raised in that management plan.

00:11:22:05 - 00:11:53:16

Unknown

So we say it's appropriate in proportionate that natty approving body and we don't say that extending it further. Is there's any particular need to in this case, with this sort of operational management plan. Obviously there is the clear opportunity now for any comments on the outline operational management plan, which is before this application for this examination as an application document to be commented upon.

00:11:53:19 - 00:12:43:23

Unknown

And if there are any comments, please take those into account. But extending requirement 12 beyond the form that you see it in now, which is the standard form, essentially we would we would say is is neither necessary nor nor proportionate. Okay. Thank you. Move on. This anyone else? Yeah. Alison Oatley representing Old England and Bollington Parish Council. I just want you to say that I still am unhappy about the answer we received earlier about the output edge of the site and there is a misrepresentation in documents in the in the DCI schedule one article, it talks about a minimum 50 megawatts in the explanatory memorandum.

00:12:43:29 - 00:13:13:17

Unknown

It talks about explicitly not setting an upper limit and the benefits and advantages of such. And yet, as we heard earlier, there is information in the design statement that sort of indicates what an upper limit could be, which is all fair and well. But I would just like to log the point that national policy, although obviously there is a a directive to optimize output, it isn't at the expense of all other variables and impacts.

00:13:13:19 - 00:13:40:15

Unknown

One of the main impacts clearly that is going to arise from this particular site is the visual impact and the impact on the landscape. Just because the land is available for development doesn't mean that it should be therefore assumed that the maximum output from that land

available should be what is granted. You're taking away, in that instance, any opportunity to mitigate against landscape and impact.

00:13:40:18 - 00:14:19:19

Unknown

National policy itself talks about looking at different ways of arranging the facing of the panels east west as opposed to south facing which can optimize and reduce the impact on landscape. So I think I would like to make it clear from our perspective that just because the land is available shouldn't be a case that that is a given and that one of the big variables to minimize impacts could be reducing the overall size of the site, which would still optimize output as per national policy, but in a way that is more acceptable in terms of the other negative impacts that we're trying to balance here.

00:14:19:21 - 00:15:12:22

Unknown

Okay. Thank you. I think the key to this is what was said earlier about the capacity going to the grid and we wait for the the applicants to come back on that particular point. We can progress the point. But thank you comments noted it's Mr. Thomson. Thank you, sir. Which which Thomson CPR he can just quickly returning to the point with respect to consultation requirements respect to statutory requirements and the timings for that and clearly the community are going to have a great interest in the these patients when they do come before the Council to determine and we are a bit concerned respect to the time that's being given it, Is it paragraph 17 saying

00:15:12:22 - 00:15:40:00

Unknown

that there's going to be a a period of 14 days to decide whether or not further information is required of the applicant. Well, quite often it's 40 days before a community is even aware that an application is in front of the panel, the council to talk to them, for them to look at, see if very information is required, is going to be extremely tight.

00:15:40:02 - 00:16:20:08

Unknown

Okay. Thank you. I do have some question, further questions of the applicant let her on and the timescales, but not yourself. And interested parties have commented on anybody else in the room would like to know. Mr. MILLS. Thank you, sir, for allowing me to come back from the Mills Borough Council. I erroneously, in closing my comments earlier, omitted to just seek some clarity from the applicants at this stage, if that's possible.

00:16:20:10 - 00:16:53:18

Unknown

In terms of document 7.15, which is the outline rights of way and I'm looking specifically at paragraph 3.1, point three because Mr. Flanagan I think mentioned that it wasn't envisaged to be any other agreement such as the Section 1.6 agreement. But I would like some clarity, please. Well, the Borough Council will be seeking clarity as to how off site public rights of way upgrades which are mentioned in that document would actually be secured.

00:16:53:21 - 00:17:39:28

Unknown

So I but the Borough Council would welcome some confirmation from the applicant. My working assumption is that there potentially would be a scope for a Section 1 to 6 agreement between the parties to identify what was going to be upgraded and where. Thank you for that. Mr. Flanagan, Would you like to respond? Yes. Say that on the paragraph being referred to 3.1.3 of the outline rights of way and access strategy, the specific paragraph is prefaced by the words subject to third party landowner agreement and appropriate permissions for the areas outside the order limits.

00:17:39:28 - 00:18:16:27

Unknown

So it is something that is we think is a possibility and put forward on that basis, But it's not being put forward as something that is directly secure, secured precisely for that reason. It's subject to third party landowner agreement. And respect to the comment regarding and when I say given that it's subject to third party landowner agreements, it couldn't be the subject of a 186 because that would require a 19 year agreement which present it's still subject to saying we say there is no one I think is being put forward on that basis.

00:18:16:27 - 00:18:42:06

Unknown

And at the moment we couldn't put forward one until that agreement had been obtained. So that's the basis on which that specific paragraph is put forward in the right of way. An access strategy we've given it is a potential thing that could be achieved its proper, we say that is mentioned in the strategy, it wouldn't be appropriate to be silent on it.

00:18:42:09 - 00:19:24:22

Unknown

At the same time it is put forward on that caveated basis. Okay, Thank you. Anybody else in the room that I'd like to comment on this agenda item or anybody on Microsoft teams can propose to move on to the examining authority's questions on the DCO as set out in the agenda. The primary purpose of this agenda will be for me to raise some of my own initial questions.

00:19:24:24 - 00:19:59:27

Unknown

Some of these have been touched upon or covered already, so I won't repeat last, but I related parties are very welcome to participate, but I'm not expecting to frame any further detailed positions until the submission of written representations and local impact reports acknowledge that some of the questions I ask may require further consideration by the applicant, and I'm happy for those responses to be made in writing along with confirmation of verbal responses by first deadline on the 10th of December.

00:20:00:00 - 00:20:45:25

Unknown

So if I can move on to Article two and I touched on this slightly at Mr. Flanagan's presentation, this relates to the flexibility proposed as provided, for example, in the maintenance article definition of commencement. And this in particular may be one that you wish to take in. Consider the extent of any flexibility provided by ATC or should be fully explained, such as the scope of maintenance works, ancillary works, limit of deviation, and any proposed ability through tailored pieces of discharging authorities to authorize subsequent amendments.

00:20:45:28 - 00:21:14:28

Unknown

The preferred approach to limit again this flexibility is to limit the works or amendments to those that would not give rise to any materially new or materially different environmental effects which we've touched upon already. Also, further, as to the use of tailored pieces, I would refer the applicant by section 17.5 to face, not 15 on drafting decisions. The drafting, which gives rise to an element of flexibility.

00:21:14:28 - 00:21:50:18

Unknown

The alternative should provide clearly for unforeseen circumstances and define the scope of what has been authorized with sufficient precision. For example, the Secretary of State had to amend Article six benefit of order of the National Grid Richburg connection Project Consent Order 2017 Decision states to remove ambiguous ambiguity. So in relation to the flexibility to carry out advance works and a carve out from definition of commencement should be fully justified.

00:21:50:21 - 00:22:22:16

Unknown

It should be demonstrate that such works are de minimis and do not have an environmental impact. Pre-Commencement requirements should also be assessed to ensure that the carve out from the definition of commencement does not allow works which defeat the purpose of the requirement. Also, I appreciate that at the end of the applicant initially common on this. As I say, it may be something you wish to take away.

00:22:22:18 - 00:22:58:08

Unknown

Yes, sir. Thank you. You've got to gift to the applicant. They, as I said, say this and it does incorporate flexibility in the usual way. And we're conscious of that. The need to justify flexibility and the application documents, the environmental statement and others have sought to do that. We can see taking some way and perhaps provider a more structured response, dealing with elements of flexibility in respect of the definition of commencement point in any carve out having to be justified.

00:22:58:08 - 00:23:43:13

Unknown

Right on that. We're certainly conscious of that point. And indeed, it's a it was a point raised in the council's note produced on behalf of the parish council. So the the position is the definition of commencement, which you defined find in the DCI definition commence rather. Page six, which includes any material operation for part of the authorize development excuse me, other than site enabling works.

00:23:43:18 - 00:24:13:16

Unknown

So it does have that carve out that carve out has been recognized as legitimate and approved and precedent that DCI is made by the Secretary of State. So in principle, we think that is acceptable. And then obviously terms on the definition of site enabling works, which is further on in the in the definitions. And so those are the normal sorts of sites of enabling works that are carved out.

00:24:13:19 - 00:25:02:20

Unknown

So that's the overview I think we would of take away any further comments on commencement and justify them in writing. The only other point I wanted to mention is in respect of limits of deviation, which was obviously something mentioned I think in the July Section 51 letter, the limits of deviation. You don't in this DCI find that provision with those precise words, but in substance you do have that control because the combination of the the authorized development, the works plans and the design principles in effect provide limits of deviation, as in they provide parameters beyond which you cannot go.

00:25:02:23 - 00:25:37:24

Unknown

So I and that provides the control. And we think it's a recognized and acceptable approach. So that's the ideal terms. My last words saying we will take that away further and provider response in writing. Okay, thank you. There are a few other small issues such as this. It is it is advised that explanatory memorandum should provide justification for the definitions differ from those that are provided in Section two three, five of the Planning Act.

00:25:37:27 - 00:26:10:18

Unknown

Also, I would like to consider where the definitions of public rights of way of private road easement and statutory nuisance should be provided and the interpretation. Thank you. So that property rights of way easement interest just the other two you mentioned the definitions that you listed. So sorry it's a question. So we're back to the examining authority, the extra definitions to be included or consider considered to be included in the explanatory memorandum.

00:26:10:24 - 00:26:57:03

Unknown

Public rights of way easement and just my nature, public rights of a private road easement and statutory nuisance. I'm grateful we will consider that and provide answering further that the definition of Business day on page five of the DCO, that being amended to include reference to public holidays as is precedent another day seems okay. Thank you. So that's the same answer.

00:26:57:03 - 00:27:38:05

Unknown

Yes we will. We will look to consider that and come back in writing. And finally on this article, the local planning authority definition given on page seven is given as the borough of Ashford. I've heard that Kent County Council may have some discharging responsibilities. So should that be amended so that they answer that is that although I can tell our number the number of places consulting, they are not a discharging authority.

00:27:38:08 - 00:28:12:27

Unknown

So it is it is correct in saying the Ashford Borough Council knew the discharging authority. Okay. Thank you for this kind of is some moving on Article six and seven relating to the benefit of the odd article six specifically includes UK power and National grid as the undertake in relation to works three and four. They will have the benefit of all of the order provisions, including compulsory acquisition in relation to those works.

00:28:13:00 - 00:28:41:03

Unknown

Additionally, Article seven permits transfer of any of the order to them without the Secretary of State consent. So my question is that the Secretary of State will therefore need to be satisfied that they have sufficient funding to meet any compensation costs for compulsory acquisition, as well as the applicant having sufficient funding which will come to in this afternoon's hearing.

00:28:41:06 - 00:29:26:04

Unknown

How can I have a yes national response on the initial response which confirming in writing or perhaps indeed this afternoon is the UK pow, pow, pow networks is a statutory undertaking can be relied upon to have funding and perform that statutory functions such that you wouldn't expect to include a separate provision that you might expect to need in respect of a private body such as the applicant received natural.

00:29:26:10 - 00:29:43:04

Unknown

That's why it's it can be transferred to National Grid or UK power networks without the consent of the Secretary of State. I'll confirm that. Okay. Thank you.

00:29:43:06 - 00:30:12:14

Unknown

The next question relates to Article eight, subparagraph five, and this is something initially a Ashford Borough Council would come back on this. This looks to to supply the community infrastructure regulations 2110 In respect of the proposed development, my first question is to explore whether this is necessary. So I'd like to ask the Council outline the current policy and position on infrastructure levy.

00:30:12:16 - 00:30:48:06

Unknown

Ashford Borough Council, Sir, isn't a CIL charging Authority, so I'd like ask the applicant. Is this article necessary to give me a moment? So I'm grateful to Mr. Sharpe that the the necessity is because although Ashford Borough Council are not at the moment of charging authority, they could be in the future. So it's to provide for that eventuality.

00:30:48:09 - 00:31:38:10

Unknown

But you don't have any plans to do so? Not as far as I'm aware, sir. Okay. I think they so I'm just pausing because I think our understanding was that could potentially happen, at least some activity, perhaps not recent activity in respect of when. Yes, words on the website are the processes currently on hold. So on that basis, if it were to come up, it's one for discussion and confirmation at a later date.

00:31:38:12 - 00:32:36:29

Unknown

The explanatory memorandum doesn't indicate whether this is a novel of precedent drafting, so it could be looked at before police. Similarly with Articles nine, paragraph one and nine, Subparagraph two, there's no indication of whether these are novel or precedent. I think they are novel. Could you explain what the position is? Yes, they have. Article nine is it the Hillside point which relates to rises out of a recent case in the Supreme Court, which caused great some interest across the planning world as to overlapping planning commissions, essentially.

00:32:37:02 - 00:33:23:23

Unknown

And there hasn't that it was a Town and Country Planning Act case. It wasn't a development consent order case and that has been known to direct consideration of how that the decision on overlapping planning missions in the CPI context applies to 20% of what is essentially and this article is intended to deal with and address the potential uncertainty and ensure that it doesn't create an unnecessary obstacle to delivery of what we say is an urgent and important infrastructure in terms of its novelty or otherwise.

00:33:23:25 - 00:33:56:01

Unknown

It's correct as far as we understand that there is no precedent drafting in any major development consent order which addresses the potential uncertainty which has come out of that inside judgment. There are although we're not completely in the dark, we're not doing

anything completely out on a limb because there are a number of draft development consent orders at advanced stages which are directly addressing this.

00:33:56:07 - 00:34:22:28

Unknown

The same point that we are saying and they are they are major one said that the drafting of a consent order for lower Thames Crossing, for instance, promoted by national highways has such a provision, not in precisely the same terms, but certainly addressing the same thing and in similar terms. Another one for Luton Airport. Also in the process, it does the same thing.

00:34:23:00 - 00:34:51:05

Unknown

Gatwick Airport dropped out of consent, order does the same thing. So a number of major decisions in terms of the stage is there at their at recommendation or decision stage. So there is some possibility that by the time during the course of our examination we might get to my DCO, which would be assistance to use that link and we will update you accordingly, but we can provide a note in response in the meantime.

00:34:51:07 - 00:35:39:00

Unknown

Okay. Thank you. And just in terms of any emerging planning applications that the Council are aware of, is that anything that has the potential to impact the sector? No, sir, I can't. So in relation to nine subparagraph two, the supplement appears to apply to existing planning permissions before the date of the order and any permitted development that was deemed to have been granted permission under the general permitted development order before the order was made.

00:35:39:03 - 00:36:10:13

Unknown

So the provision says that the conditions of any planning permission, including permitted development, will cease to have effect from the date the authorized development was commenced. Among the precisely what is meant by the date authorized development is commenced. Presumably that date on which the first material operation takes place other than the site enabling marks. That is precisely correct.

00:36:10:15 - 00:36:43:08

Unknown

Okay, so following on from that, how would anyone who has the benefit of such a permission be aware that this has happened, that some of the conditions of their permission had suddenly ceased to have effect, that there would be no that in response there would be no direct mechanism for that to be for that to happen. But the conditions that actually stop effect so far is incompatible with requirements of this order.

00:36:43:08 - 00:37:23:13

Unknown

So it wouldn't stop in a whole scale way to supplying conditions or anything of that sort. It's only to the extent that there was any incompatibility. So it's quite we are very limited in that respect. More generally, the fact that it's an overlap and planning permission where whether in an area where there is a made development consent order, would we make it fairly obvious to any promoter of development that may need to regard to the requirements of that developer consent order.

00:37:23:15 - 00:38:09:09

Unknown

Okay. So if we take it a step further, if we are removing conditions in effect, we are either revoking or discontinuing a permission if we were looking at the 1990, except when we're in a different planning act, but that would come come with compensatory provisions. So is that any interface that needs to be considered there in terms of the powers that this article was trying to apply?

00:38:09:12 - 00:38:40:12

Unknown

So I don't have a well, I think rather providing you an off the top of my head answer on that. I think given the nature, it's probably best to take that one away and include it now. And I note in response, if that's the case, I'm happy for you to come back and write so article. Moving on Article nine, subparagraph three.

00:38:40:19 - 00:39:22:18

Unknown

I think this is intended to allow development authorized by the development consent order to be carried out within the order limits pursuant to a planning permission. This would appear to obviate the need in such circumstances to apply to change the development consent order through Section 153 of the Planning Act 2008. Could you comment and justify this? So that's certainly not the intention to bypass that procedure.

00:39:22:20 - 00:40:02:27

Unknown

I think it's a it's the intention as I understand is confirm in writing it for the avoidance of doubt that paragraphs one and two are not inadvertently preventing they undertake from doing well. On the face of it, the says that it can do so, and nor does it prevent the local planning authority from as they're entitled to say, grant planning permission for development within the order limits.

00:40:02:29 - 00:40:59:12

Unknown

So it's essentially legal drafting to try and make clear that although that article prevents Hillside Point, meaning that DCI can't get ahead, it's because of an overlapping planning permission that's been implemented. It doesn't stop the LPA granting planning permission for develop with the order limits, which for instance, would not conflict with the DCI. Thank you. So article moving on Article ten Defense to proceedings in respect of statutory defense, I've that Chapter 14 of the environmental statement states that there are no significant effects predicted from construction noise operationally when the project is implement that question.

00:40:59:12 - 00:42:04:23

Unknown

Therefore as if you are confident in the signing of the noise chapter, then is this article necessary? And if so, are the controls on noise elsewhere in the consent order, such as Article 13 sufficient to justify the defense being provided by this article? The statutory nuisance claims relating to noise Sorry, in response we would say that the entitlement to defense in respect to statutory nuisance should not depend on the outcome of the environment assessment that the provision and respect of the 28 Act and National Interest nationally significant infrastructure schemes to have defenses against and against natural nuisance is in recognition of obviously of their importance and in our case emergency.

00:42:04:25 - 00:42:39:28

Unknown

Obviously its far preferable that that they wouldn't have such effects in any event, and indeed it would be the case with, with many detainees that the effects are reduced to acceptable levels. Such you don't find significant effects for instance in noise and that that shouldn't stop and shouldn't shouldn't mean the entitlement to defense and respect to such nuisance disappears in case the contrary were to transpire.

00:42:40:01 - 00:43:35:10

Unknown

And in terms of references, the statutory nuisance statement and I pay 147 deals with explains why the sense that explains it is it's appropriate to have this article ten notwithstanding the fact that the project happily does not expect to give rise any statutory nuisance. I can also just I'm going to pause also because it seems to me that it would be maybe something that can be identified in precedent as well, that it's essentially standard for it to be included, regardless of whether that's those significant effects that you talk about.

00:43:35:12 - 00:44:45:20

Unknown

Okay. Can I also ask if the defense has been extended the forms of nuisance under the Environmental Protection Act, Section 79. So would the same principles apply to those nuisances? So I'd have to again, Ron, give me a potentially inaccurate answer to why I take that away. If I like you thought, an answer in writing. Sorry. So I said, I'm I think the assumption is it would be the same principles would apply on the basis that the the regime, the intention the regime is the same regardless of the categorization of nuisance for instance, under that section of the ninth, section 79.

00:44:45:22 - 00:45:26:02

Unknown

But if I could just confirm that in writing just after this, please. That's fine. So moving onto Article 11, this relates to the temporary stopping up and restriction for use of streets. Notwithstanding other precedents, justification should be provided as to why the PO is appropriate and proportionate. Having regard to the impacts on pedestrians and others in relation to the temporary working of the site in these streets.

00:45:26:09 - 00:46:09:16

Unknown

So it could be looked at again in terms of the the justification, I'm not clear that pedestrians would be considered. So that certainly can be a matter we can. We were intended to cover to some extent tomorrow and the construction traffic issues specific area. We can provide some further detail in writing in any event. Okay. In terms of Article 12, power to alter the layout of streets, this appears to me to be a very wide power, an alteration if any street whether or not within the outer limits.

00:46:09:18 - 00:46:48:06

Unknown

So could it be made clear why this power is necessary and would it not be more appropriate to limit that to identified streets? You know, that mean that that may be possible? I think that the rationale might be that given the the assessment looks at any specific streets, there's no there's no problem by having a slightly wider power because only certain streets are likely to be impacted.

00:46:48:08 - 00:47:29:09

Unknown

And in data there is a specific control provided because subparagraph four provides that the paragraph, that paragraph two powers can only be exercised with the consent of the streets authority in any event. So that cuts down the potentially wide scope of the power. I think we could provide further justification writing. That's not one justification to Article 20 discharge of water.

00:47:29:15 - 00:48:35:29

Unknown

This is more of a comment rather than a question. I think we should just be mindful of Section 146 of the Planning Act 2008. Potentially read the explanatory memorandum. Notice code that similar moving on Article 31 temporary possession crime rates. Temporary possession is not in itself promote compulsory acquisition articles. Giving temporary possession powers should be considered carefully protecting will not allow temporary possession of any land within the outer limits, regardless of whether or not it is listed in any schedule to the DCO, which details specific plots over the temporary possession where temporary possession may be taken.

00:48:36:01 - 00:49:13:07

Unknown

I see that you've made a justification under the explanatory memorandum as to why those wider powers which also allow temporary possession of land not listed in that such unnecessary and appropriate. However, what I can't see is what steps you've taken on that all the landowners, occupiers, that this is a possibility to you could take that away and look at it in place so we can and indeed perhaps come back in the compulsory acquisition hearing.

00:49:13:10 - 00:50:11:20

Unknown

And you so I'm thinking if we look at Article 31, again, given the parliamentary approval to the temporary possession regime under the Neighborhood Planning Act 2017, which in fact it was NPA 2017 going forward, which was subject to consultation and debate before being enacted. So should any provisions relating to notices, Cabinet notices, which do not reflect the NPA 2017

proposed regime in this article be modified to more closely reflect the incoming statutory regime, where possible.

00:50:11:22 - 00:50:55:11

Unknown

So, for example, the notice period that will be required under that MP 2017 Act is three months substantially longer than the 28 days required under Article 31 and under the NPA 2017. The notice would also have to set a period through which the acquiring authority is to take possession. Such a requirement should such a requirement be included in this case, and the powers of temporary possession must sometimes be justified because the interests of landowners whose land would then need to be acquired.

00:50:55:14 - 00:51:28:15

Unknown

The NPA 2017 ACT provisions include the ability to have counter-notice objecting to the proposed temporary possession so that the landowner would have the option to choose whether temporary possession or permanent acquisition was desirable. Again, should this article make some such provision, whether in the form of NPA 2017? So in fact comment on that place? Yes. Said that the overarching comment is that we said we should operate.

00:51:28:15 - 00:52:02:28

Unknown

We need obliged to operate under the legal regime which exists at present and indeed specifically for nationally significant infrastructure projects rather than some other regime, which doesn't apply and isn't in force yet. Specific interests arrived in respective nationally significant infrastructure projects in terms of bringing matters forward expeditiously, given the need which is to take particular is specific to the development involved.

00:52:03:00 - 00:52:40:23

Unknown

So on that basis, we don't say importing that regime is appropriate and again, we do that based on made decisions and the fact that the 2017 Act, which you referred to, was obviously been around for some time and there's a number of May DCI since that time which have taken the approach, as I understand we have taken. So that's the overarching response, again, to be supplemented or setting out to either in writing.

00:52:40:25 - 00:53:31:13

Unknown

Thank you. Moving Articles 34 and 38 and Schedule 13 Strategy Undertakings and Apparatus in relation to these articles, I'm mindful of some of the relevant representations made, such as those submitted by Sophie Small and National Grid. So where a representation is made by a statutory undertaking that engages Section 1 to 7, paragraph one of the planning 2008 and it has not been withdrawn, the Secretary of State will be unable or authorize compulsory acquisition powers relating to that statutory undertakings land unless satisfied or specified as set out in section 1 to 7 being made.

00:53:31:15 - 00:54:28:15

Unknown

So if the representation is not withdrawn by the end of the examination, I will need to reach a conclusion whether or not to recommend that the relevant statutory test has been met in accordance with section 127, the Secretary of State will be unable to authorize removal or repositioning the apparatus or extent extinguishment of a right unless satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates to justification will be needed to show that extinguishment or removal is necessary to following on from the applicant advice as to how it proposes to address the statutory undertakings, consents and as are there any updates on negotiations conscious

00:54:28:15 - 00:55:08:20

Unknown

that one of the relevant representations said that they hadn't had a response from the applicant. So yes, I can I can confirm that we are in negotiations with all those statutory undertakings who have responded to and engaged with us. The country is a bit more on due to the compulsory acquisition hearing planning. So that means that the schedule of negotiations lists the state state of play at the date of the application.

00:55:08:22 - 00:55:54:03

Unknown

Since land has been further negotiation, particularly with those key undertakings. National Grid, Amy referred Network Rail. There are advance statements of common ground which will be submitted in accordance with the examination timetable, which set out the position. We have no reason to think that agreement won't be reached with those statutory undertakings and certainly our position is that there isn't anything in terms of the rights that we are seeking when coupled with the protected provisions which would mean serious detriment, which is the task as you said, would arise.

00:55:54:05 - 00:56:47:04

Unknown

And they keep itself a compulsory acquisition related to those undertakings, an extension to the substation and passing under either cables or the railway is an entirely common occurrence based on already happens under the railway and the substation we're concerned with and obviously does across the country. So subject to protected provisions can be dealt with and we understand essentially that such undertakings are saying the same thing now, saying they're not saying there is some in-principle objection here now saying we need a primary protection provisions, which is what we will provide if we could be updated throughout the course of the examination on the status of those negotiations.

00:56:47:04 - 00:57:24:10

Unknown

Thank you. Turning now to Article 45, felling all lopping of trees, tops and removal of hedgerows. So if the felling on lopping article was drafted to allow such actions to trees both within and near the order limits, should consideration should be given to amending that so that only the post trees within are encroaching the order limits rather than idea which is quite wide ranging.

00:57:24:12 - 00:58:02:08

Unknown

So yes, the that is based to say that specific wording comes from the original model provisions for DCA. So it's not something we have come up with ourselves. I certainly take your point about potential threat to that and your alternative wording. You've just suggested saying having had that alternative, we can certainly take that away and think about it and come back to you with a view on that.

00:58:02:11 - 00:58:07:24

Unknown

Okay. Thank you.

00:58:07:26 - 00:58:41:14

Unknown

So Article 47 and part two, schedule two, procedure discharging requirements. So I'm referred to the SO from the Energy bank development consent order where the business energy and industrial strategy Secretary of State removed an article which sought to apply Section 78 and seven Section 79 of the 1998 Planning Act appeal provisions to the discharge of requirements and replaced it with a specific appeal procedure.

00:58:41:14 - 00:59:31:08

Unknown

And the article itself, the Secretary of State, explained in their decision. A specific appeal procedure was the preferred approach for appeals. In this instance, and I think that is supported by advice, not number 15 as well. The Planning Inspectorate has produced standard drafting development control consent order mechanism to deal with the resolution of such disagreements and I'm wondering if this should be and would like it to be more fully justified in the explanatory memorandum to the development consent order.

00:59:31:10 - 01:00:19:00

Unknown

And I would also like confirmation that the discharging authority who would be consulted in relation to the article is willing to assume a discharging role, and the same applies to any arbitrator named an arbitration provisions as well. Again, this is something you probably want to go and look at in more detail. So yes, we can certainly seek to provide some more justification, explanatory memorandum to address that and to confirmation of the discharging authorities willing to bear discharging authority and hopefully between us and the discharging authority sitting opposite me, we could provide that as well.

01:00:19:03 - 01:01:05:24

Unknown

Okay. Thank you. Now move on to the requirements. This was in relation to requirements three and eight, and we touched on this earlier in terms of a phasing plan and timetable. So I move on to requirement nine. This touches upon some comments at yesterday's sessions in relation to archeological remains, just like clarification as to whether measures for any archeological remains not previously identified, but which are revealed when carrying authorized development have been considered.

01:01:05:24 - 01:01:23:01

Unknown

And what mechanism procedure will be adopted if archeological remains are found?

01:01:23:04 - 01:02:00:25

Unknown

The the answers that the archeological management strategy covers that say provides for what is to be done, it makes provision in respect of both any existing heritage in archeology that's discovered in any and provides for what's to be done. If there's any further investigation. It covers new archeology. So yes, the aims is not intended to cover both of those points.

01:02:00:27 - 01:02:29:05

Unknown

So question for I think it might come to council in terms of the archeological management strategy. Have you had discussions with the applicant on that? And are you happy with the structure in content? Thank you. Francesca Potter For Kent County Council. We have been in liaison with the applicant on this matter and we provide a detailed commentary on that.

01:02:29:05 - 01:02:57:06

Unknown

We did within our relevant representation and that will be built upon further within our written representation and local impact report. Okay. Thank you. Thank. So those are the questions I have on the draft development consent order. Before we move onto the next item on the agenda. On the agenda, as I think anyone would like to raise at this point.

01:02:57:09 - 01:03:26:28

Unknown

So. Mr.. TENNANT, Jonathan Tenant Support Group, forgive me if I've missed the point here, but I just wanted to go back the point that was being discussed about the level of noise. I think my understanding was that the applicant was saying that it doesn't believe that it will reach a level, it doesn't expect it to reach a level of statutory nuisance, but I think you were looking to supply provisions regarding statutory nuisance.

01:03:27:00 - 01:03:50:01

Unknown

And my query is really whether if there is a dis application, then I'm thinking that's what you were talking about. Does that put out of court the opportunity of an individual who has physical effect, noise, possibly fumes, from making a part One claim in respect to that property, as would be the case, there was a noisy motorway passing by the house, but they had no land taken.

01:03:50:04 - 01:04:32:09

Unknown

Thank you. This application would have that effect if any of the questions. So let's move on to next steps. So the applicant has been kept abreast of action points which we can run through in a second, will not go through in any detail, but just high level. Please indicate if you believe we've set out something different to what we've been discussing.

01:04:32:11 - 01:06:49:11

Unknown

Suffolk had asked the applicant go through to the action points or we could just have a couple of moments to to compile what is hopefully accurate at this stage. So in terms of action points then the time, which is fine to start of them provide update on UK pay and investigations. So now I mentioned secondly, consider an update to the consent order regarding requirement 11, which is the surface water drainage strategy.

01:06:49:13 - 01:07:31:25

Unknown

Thirdly, provide examples of previous drafting of the word maintain the definition of the word maintain and may develop consent orders. Fourthly, consider any updates to the operational management plan regarding outreach. I think you put it, sir, in terms of maintenance works with the community.

01:07:31:27 - 01:08:10:05

Unknown

Next on the public. Right. Provide further explanation for the definitions of public rights of way easement, private road and statutory nuisance insofar as that different from section 235 in the Planning Act 2008.

01:08:10:08 - 01:08:33:13

Unknown

Next, provide any precedent for the provision in respect of community infrastructure levy wording in Article eight and potentially update the explanatory memorandum on that point.

01:08:33:16 - 01:09:16:01

Unknown

Next, provide some further explanation for Article nine on the hillside drafting that included next still on Hillside. Consider the implications of providing the conditions don't have effect on other planning permissions and how that relates to any provisions for the revocation of conditions.

01:09:16:03 - 01:09:50:18

Unknown

Next, considered providing justification to provide justification for the breach of the power in Article 12. Next, the update The explanatory memorandum in respect of Article 20 discharge of water to expand expand the justification.

01:09:50:21 - 01:09:59:29

Unknown

Next relates to Article 31. The temporary possession powers.

01:10:00:01 - 01:10:25:16

Unknown

Provide further commentary and justification on that provision, particularly in light of the provisions of the Neighborhood Planning Act 2017 and whether the drafting should adopt the approach in that Act.

01:10:25:18 - 01:11:11:29

Unknown

Next, update The schedule of negotiations at will throughout the examination, but to do so in any event by deadline. Want to start with then Article 45, which relates to the setting or lopping of trees and consider the justification for the wording. Any shrub on net near any part of the development and consider the alternative wording suggested about encroaching upon.

01:11:12:02 - 01:12:02:20

Unknown

Consider next is relation to discharge mechanisms and part two Schedule two to the DCI and provide further justification for those discharge mechanisms and also separate out provide confirmation that the discharging authority is indeed willing to be a discharging authority and that it does. Okay. Thank you. Sorry I may have missed it, but did you mention the community liaison plan in relation to maintenance provisions?

01:12:02:26 - 01:12:38:15

Unknown

Yes, I did. Yes, I guess it's on my list. Okay. Over the next two sessions as well, I was expecting sounds to keep a list of action points and reporting back so that it's been relayed previously. Yes, I sense that we did have my side of it to be slightly more slack this afternoon. Okay. Thank you. So does anyone have any questions on the action plan?

01:12:38:17 - 01:12:44:00

Unknown

Comments? Okay.

01:12:44:02 - 01:13:11:23

Unknown

So I believe that we have now covered all items on the agenda. Thank you for all of your assistance and attendance during this meeting. Compulsory acquisition hearing on will start at 230 this afternoon. Seating will be available at 2 p.m. and arrangements conference for people attending using Microsoft teams will start at two and I'll close the issue specific hearing.

01:13:12:00 - 01:13:19:10

Unknown

Thank you.