



Hearing Transcript

Project:	Byers Gill Solar
Hearing:	Issue Specific Hearing 5 Session 1 (ISH5)
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Welcome, hello, testing. Welcome. Good morning, everyone. Can I just confirm that everybody can hear me clearly in the room? Please? Can I also confirm with production 78 that live streaming and recording of this event has commenced. Yes, okay. Thank you very much. So good morning to everyone. For those people watching the live stream. Can I advise that, should we at any point adjourn proceedings this morning, will have to stop the live stream recording in order to give us clear recording files as a result, at the point at which we recommend the meeting and restart the live stream, you'll need to refresh your page browser to view the restarted stream. I will remind you of this again. Should we need to adjourn? It is now 10 o'clock and it is time for this hearing to begin. I would like to welcome you all to this issue specific hearing number five on the development consent order in relation to an application made by RWE renewables, UK solar and storage limited, who will refer to as the applicant for an order granting development consent for bio solar. The development proposed consists of a solar farm with over 50 megawatts capacity, ground mounted solar photovoltaic modules and associated mounting structures, inverters, transformers, switch gear and control equipment, a substation, energy storage equipment and underground on and off site cabling. Thank you all for attending this hearing. My name is Andre Pinto and I am a charter town planner employed by the planning inspectorate, and I have been appointed by the Secretary of State for housing, communities and local government as the lead member of the panel to examine this application. I am now going to ask my fellow panel members to introduce themselves.

Good morning everybody. My name is Max Wiltshire. I'm a chartered civil engineer employed by the planning Inspectorate appointed by the Secretary of State to examine this proposal. Thank you.

Good morning everyone. My name is Alex oyebade. I am a chartered transport planner employed by the planning inspectorate, and I have been appointed by the Secretary of State for housing, communities and local government to be a member of the panel to examine this application.

Together, we constitute the examining authority and will be reporting to the Secretary of State for energy security and net zero with a recommendation as to whether the development consent order should be made. The case manager for this project is Jenny savage. Jenny is being supported here today by Mrs. Luxton. If you have any queries about the examination process or the technology we are using for virtual events, they should be your first point of contact. The contact details can be found at

the top of any letter you have received from us or on the project by Joffe national infrastructure website. I will now deal with a few housekeeping matters for those attending in person. Can everybody please set the devices and phones to silent. The closest inclusive and female toilets are just outside this room on this floor, through the same doors that you used to enter the room earlier. There are additional toilets just by the snack bar on the first floor. Downstairs, there are no firewa questions, tests planned for today. Should the fire alarm sound, please make your way to the nearest fire exit door, which is marked behind you, using the fire doors marked in this room and head downstairs. Fire evacuation assembly point is at the square outside the main entrance to this building. Today is a hybrid event, meaning that some of you are present with us today at the hearing venue, and some of you are joining us virtually, using Microsoft Teams for those people observing or participating through teams. Can you please make sure that you stay muted unless you are speaking, if you are participating virtually and you wish and you wish to speak at relevant point into proceedings, please use the hand up function. Please be patient, as we may not get to you immediately, but we'll invite you to speak at an appropriate time. We'll make sure that however you have decided to attend today, you'll be given a fair opportunity to participate. Are there any questions on what I have just set out? I can't see any hands raised in the room or online, so I assume that there are no questions. In addition to the live stream, a recording of today's hearing will be made available on the bios, gills solar section of the national infrastructure planning project, where. Page as soon as practical after the meeting has finished, with this in mind, please ensure that you speak clearly into a microphone stating your name and who you are representing each time before you speak for those at the table, can you please do that by pressing the large button at the base of the microphone. And if you are not at the table, there are roving microphones, so please wait for one of those to be brought to you before you speak. If you are attending virtually and you do not want your image to be recorded, you can switch off your camera. For those in the room that who not want to be recorded. There is an area at the back row that is away from camera shot that you can use, because the digital recording that we make, the digital recordings that we make, are retained and published. They form a public record that can contain your personal information, as to which the general data protection regulations apply only in the rarest of circumstances. Might we ask you to provide personal information of the type that most of us would prefer to keep private or confidential, therefore to avoid the needs pardon, therefore to avoid need to edit digital recordings. Recordings, please try your best not to add information to the public record that you would not wish to not be made private or is confidential. If you feel that personal information is necessary, please provide this in a written document that we can redact before publication. The planning inspectors practice is to retain and publish recordings for a period of five years from Secretary of State's decision a link to the planning inspectors privacy notice was provided in the rule six letter alongside the notification for this for hearings and this, not for notification for this hearing, was published Subsequently, I assume that everybody here today has realized themselves with this document which establishes how the personal data of our customers is handled in accordance with the principles set out in the data protection laws. Please speak to Jenny savage if you have any queries about this. This meeting will follow. The agenda is published, and it would be helpful if you have a copy of this in front of you. Can Can I ask now the agenda to be displayed on screen please?

Can I ask if there is anyone that does not have access to an agenda at the moment, with us in the room or joining us online, raise your hands, please, if you do not have an agenda. I can't see any hands

raised online or in the room, so I will now briefly summarize the agenda. Then item one is welcome in introductions. Item two will cover the purpose of this issue specific hearing. Item three will be on the draft development consent order. Item four will be a review of issues and actions arising. Item five will be any other business and on. Item six will be the closure of the hearing. We will aim to finish this issue specific hearing at 1230 at latest, with a break if needed, around half past 11 for those who are participating virtually, please remember to turn your cameras in microphones off during the break. We will conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. But if the discussions can't be concluded, then it may be necessary for us to prioritize matters and defer other matters to written questions. Likewise, if you cannot answer the questions being asked or require time to get information requested, then please, can you just indicate that so that you need to respond in writing, and we will advise you how to best submit your response. Does anyone have any queries about what I have just set out in the room or online? I can't see any hands raised, so I will now hand over to Mr. Wiltshire, who will do the introductions.

Thank you, Mr. Pinto I'm going to now ask those who are participating in today's meeting to introduce themselves when I state your organization's name, could you introduce yourself, stating your name and who you represent which agenda item you wish to speak on, if you're not representing an organization, please confirm your name, summarize your interest in the application and confirm the agenda item on which you wish to speak, please. Could everybody state how they wish to be addressed? For example, Mr. Mrs. Ms, miss, miss. Can we start with the applicant, please and any of their advisors. Thank you.

Good morning to the panel. My name is Alex minhik. I'm a solicitor, a partner at Burges salmon, and I'm here representing the applicant, RWE renewables, UK, solar and storage. Immediately to my left is Mr. David Brown, who is a chartered town planner at Arup, who will also be speaking during the course of today's hearing. To Mr. Brown's left is Mr. Michael Baker, who is the DCO project manager at my client RWE. To his left is Miss Lily boys Hunter, who will be in control of screen sharing during the course of today's hearing. Should that be necessary? Miss Boyce Hunter is a junior project manager within the DCO project management team at RWE and to her left is my colleague, Mr. Jonathan cat who is also a solicitor at Burgess salmon, we would anticipate that the speakers will be limited to me and Mr. Brown and potentially Mr. Baker during the course of this morning's hearing. Thank you.

Thank you very much. Mr. Minhinik, could I now turn to the organizations and individuals have given notice to their intention to speak please. Can I start please with the local authorities and Darlington Borough Council?

Thank you. Good morning. My name is Lisa Hutchinson. I'm a development manager at Darlington Borough Council, and together with Mr. Casey, Andrew Casey to my right, who's the council's head of highway network management, will be contributing and answering questions as necessary in regards to Agenda Item three, thank you.

Thank you very much. And I think we've got Stockton Borough Council virtually. Is that correct?

That's correct. Sorry, yeah. It's Helen Boston from Stockton Borough Council, planning, planning, and I'm here to answer questions if necessary or to raise anything during the course of the meeting.

Thank you very much. I'm now going to ask the statutory there's no statutory parties I'm aware of. So I'm now going to ask the parish councils to introduce themselves, starting with great Stanton parish meeting. Please

Good morning, Mr. Colin Taylor, great state and parish meeting. I'm here to represent the meeting on the village. I have no specific items to speak about, but in relation to Item three, I'll answer questions or raise issues as necessary. Thank you. Thank you very much.

Turning to bishopton parish council, please.

I actually said I wasn't giving notice to speak, but the chairs asked me to introduce myself. I'm Steve rose. I'm happy to be known as Steve rose. I'm the parish clerk at bishopton parish council, and to my left is the chair of the parish council, Mr. Norman Mullaney, although I didn't ask to speak, I have been asked by rwv to say later on, to make clear our position on the statement of common ground, which I'll do at the appropriate time. Thank

you. Mr. Rose, you I believe I've got a representative of grindin and Thorpe fuels parish council.

Yeah, well, I'm virtually I'm just here to listen. It's Mrs. Michelle Davies.

Thank you very much. You're I think you're just observing, aren't you? Yes, that's

correct.

Thank you. And I've also got observing Mr. Rose, if he'd last like to introduce himself, please. Sorry you've already done that. I'm do apologize. I'm just working down the list, turning to interested parties, I'll I'll call you as you've been listed on on my spreadsheet. So starting with Mr. Wood, please, from bishopton Village Hall Association,

good morning. My name is Pete, Mr. Peter wood, happy to be dressed as Peter or Mr. Representing Bishop and Village Hall Association. I'm here just to comment on any items that I feel warranted as the day goes on. Thank you.

Okay, can I ask anybody else in the room to be. Put their hand up if they wish to speak, please. And microphone will come to you to introduce yourself and tell us which item you want to speak on. Anybody else in the room, no anybody virtually who wishes to speak. Please. I'm not seeing any hands up, so I think I've asked everybody to introduce themselves. Who wishes to speak? If you haven't made yourself known, please do so now. Okay, thank you. I will now hand you. I'll now hand you back to Mr. Pinto, please, who will lead you through item two of the agenda. Thank you. Mr. Ridge,

thank you. Mr. Wheelchair. Applause.

So item two, purpose of this issue, specific hearing. The purpose of this issue, specific hearing is for the excite to undertake an oral examination of the draft development, consent orders, articles and schedules. Today's hearing will be a structured discussion led by the examining authority. Please be sure that we are familiar with what you have already submitted to us so you don't have to repeat in length anything that you have already put to us in writing. Submissions carry equal weight regardless of the format in which they are put to us. If you do refer to any documents this morning, it would be helpful if you could give us correct examination Library Reference number. Please do try to avoid using any acronyms as people who might be watching in the room might not be as familiar as you are with those terms. Are there any comments that anyone would like to make on item two of the agenda in the room or online, raise your hands please. I can't see any hands raised, so I will then move us on to Item three, which will be draft development consent order. A list of the key written submissions that will inform my questions has been included in the agenda published in anticipation of this hearing. As it is a long list. I do not propose going through it in detail now, but can I ask if anyone has any comments they would like to make on the list included in the agenda for this item? Okay, I can't see any hands raised for any comments on this. What I would like to add on this point then is that at the time of publication, the library references for some of the documents included in the agenda were not available, particularly those that were submitted to us at deadline five, but I am happy to confirm those references now so that everyone can accompany the discussions. So on. On our list we mentioned Rw is responses to ex, q2, d5, submission. The reference for THAT IS rep 5031, we also mentioned the statement of common ground between the applicant in Darlington Borough Council, deadline five. None was submitted at deadline five. So revert back to the previous document, which is rep four, zero, 15. So when we refer to that document, that's the library reference that we'll be using. We also mentioned statement of common ground with Stockton on tees Borough Council, which is rep 5029 we mentioned segment of common ground with Durham County Council, which is rep 5028 we mentioned the statement of commonality at headline five, which IS rep 5027 we also mentioned the schedule of changes to the DCO, which is rep

5009 and the draft DCO, it's itself, the draft development consent Order, which is rep 5002 any questions on that? I

I don't see any hands raised. So before I start my questions, which are mainly aimed at the applicant, at this point, I would just like to state that the questions that we have prepared today mainly focus on specific points and specific sections of draft this year that we wanted to explore in detail with the applicant. However, the applicant is requested to do a thorough review of the draft this year for the next deadline. That will be deadline six, on Friday the sixth of December, 20. 34 as the XA has picked up issues in relation to the wording of certain sections of the DCO that we would like to see changed, particularly around Part One preliminary so can I please have an action for the applicant if you agree to carry a thorough review of the DCO as it is submitted to us now, and submit this to us for next deadline. Deadline six.

Sir, Alex menick, from the applicant, absolutely yes. We've heard the request. We will do that, obviously. So that will be influenced by the issues that I imagine you're expecting to talk us through during the course of today's hearing,

absolutely. But I just wanted to highlight that in addition to that, particularly on the first couple of pages of the DCO, there are inconsistencies that are quite significant, in significant between the approach that the Excel would imagine, that you would take, and the approach that the applicant has taken and around part one as well preliminary, particularly around the definitions. So please do a review of that and then come back to us with a revised version, if that's all right.

Sarah, Alex, me henick For the applicant, yes, absolutely. I wonder so if it would be possible for you to highlight any particular points that you had in mind as we're running through the DCO today.

I can give you some examples now of the type of things that we have picked up, but I really do think that it just needs to be gone through with a fine tooth comb by the applicant, because I do not really want to spend a lot of time going through it. Now today, I think that we are better off concentrating on other conversations that need some sort of discussion. But for example, at the very start of the DCO, you mentioned single appointed inspectors, which obviously is not the case, also, particularly around definitions of some of the definitions that you have included, say, for example, one of those that I have picked up, which is apparatus, which you state has the same meaning As in section one or five one of the 1991 act, obviously, you defined the 1991 act as new roads and street Works Act. That seems to me not to be the definition of operators that you might want to take on board for this specific scheme. So there are things like that that need to be picked up by the applicant.

Sarah, Alex, for the applicant. Um, we, so we will certainly take those points away. We, I just want to reassure the examining authority that we have reviewed the DTO very carefully in the course of the preparation of the application, noted if there's if there's a reference to a single inspector, obviously we're, we're, we're pick that one up with reference to the definition of apparatus, and that coming from the 1991 act, that that certainly is the approach that we usually take on drafting tcos of this sort. But we will give everything a thorough review and pick up any

that's fine. As I said, I do not want to spend today too much time going through this in that level of detail. I think that's better done either by you when you submit the next version of this CO to us, or by us in writing. If we have to get to that stage, however, we will get to the definition of apparatus when we get into the discussion of the works. But my interpretation is that you perhaps want it to be a little bit more broader than what is limited by the 1991 act when you define apparatus. But if I am wrong in my interpretation, please do correct me when we discuss apparatus and the definition that you have used in works.

Thank you, sir.

Thank you. Right. So I would like to start then, now that we have got that action registered, I would like to start by asking the applicant to briefly provide an overview of each part of the DCO, but with a particular emphasis now on part two, principal powers, part three, streets, part four, supplemental, supplemental powers and part five, powers of acquisition. You

we can take those parts separately if you want one by one.

So thank you, Alex Min hinik, for for the applicant. So it may help if I start just by making sure that we have the right reference numbers for the relevant document. That I'll be referring to, I appreciate you've already referred to the last draft of the development consent order that has been submitted by the applicant at deadline five, which was rep 5002 there is also a track changes version showing changes from the previous version submitted, and the reference number for that one is rep 5003, the draft development consent order, of course, should be read alongside the explanatory memorandum, which provides some additional commentary on the terms of the DCO and the purpose and effect of each provision and the reference numbers the latest versions of the explanatory memorandum which have been submitted are CR, 1015 that's the clean version and CR 1016 which, again, is the Track Changes version. And those versions were submitted as part of the applicants, change request, change application. The the draft DCO at a high level has been drafted having regard to the planning inspectorate, inspectorates guidance, and the guidance contained in the then department for leveling up and homes and communities, guidance entitled Planning Act 2008 content of a development consent order, the planning inspector also has an advice note, advice note 15, which has been followed and we have also had regard to practice and precedence established in other made development

consent orders, both including solar and other energy DCOs and some of those schemes are listed in the explanatory memorandum. Consideration has also been given to the model provisions, which were contained in the infrastructure planning model provisions England and Wales, order 2009 that order has itself since being withdrawn. It no longer has effect. There is no requirement to have regard to those provisions, but it is common practice to do so, and we've noted within the explanatory memorandum where those provisions have been taken into account in the drafting of the DCO. It's worth noting at the outset that the DCO uses very particular language, which comes from the precedent bank of previously made DCOs. So for example, the applicant is referred to as the undertaker in the draft development consent order, and the proposed development is referred to as the authorized development within the development consent order. The draft development consent order to a very high level is proposed to be called the buyers guild solar development consent order, and it would provide for development consent for the construction operation, maintenance and decommissioning of the authorized development, and that authorized development is described in detail in the works, which are listed in schedule one of the DCO. The DCO comprises 47 articles which are grouped into six parts, and then 13 schedules which give effect, which are given effect by and tie into the application of those articles. The DCO itself also needs to be read alongside various plans which have been submitted to the to the application and the examination. So they're both plans showing the location of things spatially. They are also management plans describing how certain management measures or certain aspects of the development would come forward. And importantly, from a development control perspective, the documents which form that detail of how the consented development would be brought into effect are certified under the terms of the development consent order, and the list of those certified documents appears in schedule 13 of the draft development consent order, which are then incorporated into the drafting of the DCO, turning then to the particular parts so that you've asked me to address in the question, part two of the development consent order provides the Principal powers that the applicant seeks as part of the DCO so Article Three would provide development consent for the authorized development, as described in schedule one. Article four relates to whether authorizes the maintenance of the authorized development, and Article Five relates to the operation. Of the generating station. Article Seven then deals with the disapplication and modified modification of certain legislative provisions, which is a feature of development consent orders, whereby they are able to modify the existing application of legislation to the development. Part three deals with streets within the order limits, and the definition of streets is taken from existing legislation which relates to streets and highways. Just pulling out a few reference points from within part three, articles 9, 10, and 11 relate to the carrying out of street works in adopted highways and streets. Article 10 includes detail about the application of the 1991 act, which so you just referred to in your question, which is the new road and street Works Act and article 11 includes certain powers to alter the layout of existing streets. Article 13 and article 14 then go on to provide certain provision relating to the relationship of the development with existing public rights of way, and they are supplemented by detail which is provided in schedule five of the draft order. Article 15 is also then worth mentioning because that includes powers which relate to providing access to works that is the points on the public highway network where the authorized development would take its points of access from Part Four then makes a certain provision for a variety of supplemental powers. It's a it's a collecting place within the draft order for a series of miscellaneous powers. You could refer to them as article 18, relates to the discharge of water. Article 19 protective works to buildings and article 20, for example, to the authority to survey and investigate land. We then come on to part five, which relates to powers of acquisition, which are included within the draft order. They run from articles 21 through to 34

and the powers included within this part would allow RWE, as the Undertaker, to compulsorily acquire land permanently, or acquire rights over land, or create new rights, or to take temporary possession of land in order to deliver the scheme. The different powers of acquisition are shown in different colors on the land plans. And it's worth mentioning that article 25 which relates to the acquisition of subsoil land only, was added as part of the applicant's change request. Article 22 is the final specific article that I would mention in passing in relation to part five, which provides a time limit for the applicant to exercise its powers contained within part five relating to the compulsory acquisition of land. So there is then Part six, which is the final part of the schedule of the of the draft development consent order, which includes a series of general provisions. For example, it includes the mechanism that I referred to earlier, earlier for the certification of various plans and documents, which is very important for development control purpose. And it also makes provision for dealing with disputes around the discharge of the remainder of the provisions of the order through article 41 which provides for arbitration of those disputes. So that there is obviously more detail that could be gone into in relation to any particular element of the DCO itself, but that I thought would be a useful introduction.

Yes, thank you. No, that's that, that's, that's sufficient. Thank you very much. I would like us then, after going through the structure, I would like us then to actually focus on some specific parts of the DCO. So perhaps I would like us to start with schedule one. Authorized development in the work is set out in schedule one. So in terms of the wording used in this section. X i ask some queries on this as part of our comments to the DCO to which the applicant has replied. And the replies included within Rw is response to the XQ two deadline Fauci submission, which we have highlighted before as web 5031, and actually, on that note, can I please ask the applicant to, in the future, provide responses to our comments on the DCO as a separate document, and not much it is part of the questions for ex q2 so if we could get those separate documents, that would be really helpful as well, actually, in the future. But I wanted to just go through in a little bit more detail on that. Can the applicant please talk us through their response to our comments to the DCO set out in Table 3.1 of ex of rep, 5031, particularly as they relate to schedule, One end wording,

sir. Alex menick for the applicant. So bear with me one moment when I'm just sure

I can so in terms of pages of the PDF, it will be from page 37 or 53 onwards, the table The first relates to Article four, Crown rights. But then second is paragraph one, schedule one.

That's me, sir. Thank you. I Alex mehnix for the applicant. Would you like me to start with the questions that relate to schedule one, sir? Or would you like me to start at the top?

No, no, not just the schedule one for Sam being Thank you. Thank you.

So Alex menick from The applicant, so, sir, I have the first of those entries starting on page 47 and the the comment of the EXA refers to the definition of electrical cables, which has been included in schedule one. And so the comment from yourselves was that the wording was was unprecise, and that it doesn't correspond to the wording in the Works section, and in particular in relation to electricity distribution and transmission wording it should be that that should be defined separately. The the response that the applicant provided explained the genesis of the drafting that we're using, which, broadly speaking, came from a couple of recent made solar DCOs, so in particular, the mallard pass order and the gate Burton order. And we, sir, in light of the question and the comments that you had raised, we obviously went back and we read through the drafting which was included within the schedule. And I'm afraid to say so we weren't quite clear where the uncertainty was arising in terms of the application of the definition of that defined term electrical cables, which was then used in the descriptions of the work. Yes,

I assume that that might be the issue. So I think that this question was raised when we're going through the DCO, and we noticed that actually throughout specific works, you actually refer to electricity distribution and transmit and transmission cabling. And obviously transmission cabling could be easily interpreted as quite a different type of cabling from electrical cabling. So it was just a little bit of confirmation and clarity about that. So either clarifying the terms that are included and referenced in specific works. I can't actually precise the works that these are defined in now, but I can certainly have a look very quickly. But if memory serves me correctly, it is there and then the only definition that you have included in schedule one in relation to cabling, which is to deal with electric cabling. Does that clarify where our questions come from?

Sarah, does. Thank you. Inevitably, when a point like this is put to you in a room like this, one immediately sees the point as it's been made. So yes, I. And I have the references to distribution and transmission cabling which currently appear in work, numbers three, five and seven. And yes, sir, I can see the inconsistency which appears there. So we will, we will pick that point up. Thank you.

Okay, so can we get to the next comment that we have on schedule one and that you reply to please.

Thank you, sir. I forget

apologies. It's for the record. Apologies. Mr. Mcinnich, an action for the applicant to pick up on that, just to make it very clear for the record. Thank you. Please continue.

Thank you, sir. Alex mahini, for the applicant, so the next comment related to the drafting of auxiliary transformers and associated bunding and the the question, as we understood it from the EXA, was whether any additional definition or information was needed in relation to those terms. In our response,

we pointed to the fact that the term transformer is one that is defined in paragraph one of schedule one. And we also explained that our view was that bunding was a term that was used in draft DCOs in a fairly widespread way, and we didn't therefore think Additional definition was required for that term.

Okay, I will, we will re evaluate that situation in light of your response. But there is a, I think our question comes also from a perspective that within this DCO, and particularly within the works, and this is quite often the case with other DCOs as well, there was a lot of use of auxiliary and associated and that sort of catch all term. And it is sometimes helpful where we can to define that as much as we possibly can, in order to have yet a little bit interpretation on such a broad reaching term. So I think it was coming from that sort of perspective. Our question in terms of, is there anything that we can do to pick up some of these terms, but we'll certainly have another look at your response and where these features within the DCO. But can I ask the applicant to also have a look please, particularly to other recently made DCOs granted by Secretary of State approved, and how the issue of associated development and auxiliary development in all its forms, has been captured.

Sir Alex and Henrik, the applicant. Yes, we can. We can absolutely go and do that. We at the point of drafting schedule one and the description of works. We certainly took those orders into account. But I am conscious that an order has been made recently, and we will go back and look at the point again in light of that, perhaps as part of our our wider kicking the tyres exercise on the drafting of the DCO that you've you've highlighted at the outset.

Thank you. And also, sort of in the same vein, I think that next comment, and probably the response sort of echoes the response that you have just given now the next comment on the on table three, one where we actually mention ancillary equipment, and on this specific one, I think it's slightly different than the other categories, because it seems to be totally related to the battery, energy storage system. So I do think that even if we cannot define some of the terms that we were discussing before and that were captured by the applicant on the previous line of that table, maybe there is something that we can do in terms of auxiliary equipment, because that seems to be more specific within the dcl,

yes. So we will, we will, Alex menend for the applicant, we will, we will certainly take that thought away. So I think ancillary equipment, or the term ancillary when it's used in this way, is a fairly common drafting tool that is used in the description of works of various development consent order types. So I think it is reasonably well understood in terms of the point of interpretation and the detail of. Of the drafting of the development consent order, but we will certainly take that point away and see if there is anything more that can be done.

If you could, I would appreciate that, because I do accept that it is a term that is broadly used and commonly used on ndcos. But as I'm sure that you appreciate, we, we have an opportunity here to be a little bit more specific. And if we can, and that actually helps the Secretary of State to make a more

precise this year into grant that, then I think that we should, we should try and and achieve that, if it's possible. And I think that, I think that last question that we had in relation to schedule one was mentioning in relation to works number three as well. So can I ask the applicant to just comment on that?

Of course, Alex menick for the applicant. So yes. So this, this, this final comment on schedule one relates to work number three. And the description of the work has a provision which includes fencing, gates, bound, boundary treatment and other means of enclosure. And the the comment is whether we can, or the question from the ex a as I understand it, is whether we can tighten up that that other means of enclosure description, which I accept, is a fairly broad term. The applicant's response there is, firstly that this is, again fairly common drafting which is taken from other development consent orders. So we would say it's been sufficiently precise for the Secretary of State in that context, elsewhere, and with particular reference to fencing and other means of enclosure, there is a particular requirement under the draft development consent order, which is requirement number 16, which will require the applicant to submit for approval by the relevant planning authority written details of permanent and temporary fences and other means of enclosure. So there is that additional layer of precision and control through the requirements of the draft of development consent order, which the applicant would say, gives that precision and control as to what would eventually be delivered under that power. Thank you.

So looking at requirement 16, which you have mentioned, I note, I note that, and I note that it is a little bit more defined. However, it does seem to still be quite broad, particularly because it, I think that the intention in that it will actually link with some of the some of some of the information included within the lamp that will probably need to be ready in conjunction with this. So shouldn't that be specified a little bit more clearly?

Sir, Alex bonok, for the applicant, the SIR, the applicant's position on this, I think, is that the the mechanism that we have in requirement 16 provides sufficient precision as drafted. And if I just set out the steps, if you like, as you will, that would ensure that that precision is there and that control is there. They are principally provided for by so we have, we have requirement 16, which provides for the details of fencing to be submitted and approved. That refers back to requirement three of the draft development consent order, which, as a reminder, is the detailed design approval stage of the application. And if we look at requirement three sir, that includes on its face within sub paragraph one of requirement three, down at paragraph J, that the details which are to be submitted for detailed design approval include fencing at that stage as part of the detailed design approval. So that is one layer of control and detail which is provided for we also then have sub paragraph two. Of requirement three, which requires the details to be submitted to accord with a wide number of documents which have been submitted as part of the DCO application and which will be certified documents under the provisions of the DCO that I mentioned previously. And there may be additional details in other documents, but the one that immediately comes to mind is the design approach document, which is the last document in that list. And the most recent version of the design approach document that the applicant has submitted is rep 5025, and the design parameters. Section of the design approach document, which is Section

Eight of that document, includes certain additional provisions relating to fencing, for example, its height in certain locations and and so the applicant would say that, taken together, that collection into

account. Thank you. Can we you just mentioned requirement three, detailed design approval. And within requirement Three, two, the details submitted must occur with and then you list that the key plans I can't see, landscape and ecological plan. There is there a specific reason why that was not included?

I uh, sir. Alex menick for the applicant, so the ecological landscape and management plan, Sir doesn't appear in that list, but what we do have within that list, sir, is the environmental master plan. Yes, I

can the environmental master plan, okay, but in your definition, that's a different document, correct? Certified differently?

Yes, the environmental Master Plan is a different so

can the app? Can we, in that case, just have an action for the applicant to please check and consider if other documents, particularly the landscape and ecological master plan, should be included within that. Thank you.

So yes, we can. We can have a look at that. I Alex menick for the applicant. I don't immediately have a response here today, sir, but we will take that point and have a look at it. I think it may the reason why it may not appear, may have something to do with the sequencing and the phasing of these documents and how the detailed design stage and the the submission of the final Lem and its approval under requirement 12 take place, but so we'll have a look and come back, yes,

and then provide that justification, if that is actually the case of justification, why you don't believe that it needs to be included? Thank you. Right. That's all the questions that I wanted to ask. And schedule one. I

so moving on now. I wanted us to have a quick discussion about the issue of optionality and cabling elements, which we have asked several questions about as part of ex q2 particularly this CO 2.2 the CO 2.3 and this CO 2.4 so those references are the reference of the exact questions that we have asked as part of our second round of written questions, which the reference is, PD, 011, and those three questions that I have just mentioned refer or link to an element of optionality linked with cabling that we have discussed on several previous hearings. So the main question, the main purpose of those questions, was for the exercise to ask the applicant if the applicant felt the need to define on road and

off road cabling, consider their significantly the significant difference in different impacts. Can the applicant please clarify its position on this matter? Mr. Mehn,

sir. Thank you. Alex menick, for the applicant. So in the applicant's responses to those questions, which is the reference number for which is, is rep five, zero, 31, so we've, we've explained that we, we. We acknowledge that the on road and the off road cabling options are are different, but so we didn't immediately think that the draft development consent order required any drafting amendments on its face to cater for either of those options and the I suppose, the broad strands which influence that response are, firstly, that I'm not aware that draft development consent orders for other projects have drilled down to that level of detail in terms of the location of the cabling, whether It's, for example, on road for a public highway, whether it's running through off road, Greenfield land, the when, when drafting the description of development, which is provided for in a draft development consent order, whether it's cabling or whether it's any other elements of the proposal, One doesn't tend to include reference to the environment that that development has been carried out in. The focus is on the nature of the development which is being carried out. And in this case, that's the electrical cabling, which, as we've touched on already during the course for this hearing, incorporates drafting which has been included within other made development consent orders. The second strand then, sir, is again, something that we've already touched on during the course of this hearing, is the requirement for the approval of the detailed design of the project, which comes through in requirement three of the draft development consent order. And so it's the applicant's position that any well when, when we come to the point of having the detailed design of the scheme settled under requirement three, and those details are approved, obviously, that fixes the location of the cabling as as between on road and off road, and the details which will be submitted to and approved by the local planning authorities would then inform the location of those cabling marks.

Thank you. Thank you for that response. Mr. Mcinnich, I think that the exercise reasoning for this question is linked with the fact that we discussed previously the possibility of delivering the proposed development either through a wholly Well, ideally, and I understand that this use was the applicant submission at the beginning was to deliver it with no on road cabling. I think that, following from that, particularly in light of the previous hearings that we have had, I sense that that option is becoming less and less viable in terms of for the applicant to actually deliver this proposed development, in that we are moving to a stage of development where some components of on road cabling will be required, I think that that's more likely to be the scenario that we're looking at. Can the applicant confirm if feels that that is the case, or is the applicant still proposing to try and deliver the proposed development via off road cabling completely and wholly?

Sir, Alex meninic for the applicant. So, I think so there are two, probably two sides to this response. I think in the first instance, at a very granular level, the applicant has identified a small number of small areas where some on road cabling will be required as part of the final design solution. And we can call those in broad terms, crossing points, if you will. They're points where the cabling, whether it's on road or off road, will need to get from one side of a public highway to another. So inevitably, it will run

through the highway in that location we've we've referred so to those as fixed on road sections, and they're shown in a drawing, which is figure 2.13, to the environmental statement, the reference number for which is rep 2022, I. Two. So though there will be at least a small number of locations where some on road cabling is required. So that's, that's the first one, sir. The second point then goes to the applicant's general approach to a. The laying of cables for this project. And so I don't, I don't think I do agree with the direction of travel that you sketched out in your your questions, which is that the information beam that the applicant may be looking to use more on road cabling than earlier in proceedings. I would resist that suggestion. It remains the applicants in preferred approach to use off road cables wherever possible, and that has been explained in the environmental statement for the project. And it's, it's, it's, it's a strand that flows through various application documents, including the statement of reasons, the negotiations which are being carried out for those off road, cables continue. They continue to be pursued by the applicant. Mr. Baker, for our we provided an update on progress with negotiations for those off road easements during one of our previous hearings in October. You'll have to forgive me, so I can't remember exactly which hearing it was, but progress has been made, and progress continues to be made for those off road cable routes, and it remains the applicant's preference to use those off road cables subject to detailed design, and to do so on a voluntary basis wherever possible. Thank

you, Mr. Mcinnich, just to clarify, I understand that that is your intention. My query is actually a little more linked with how likely it is that you will be able to deliver your intention fully or not. And it seems, and that was what was informing my question. But I think there are two things here that I think that we need to separate. So one thing is the applicant's intention from the outset to deliver the development, proposed development without or with a very minimum of on road cabling. And another situation is how likely it is for that intention to be delivered on the ground. And what I was trying to highlight with my question is that particularly considering the change request that the applicant has just submitted, it seems to me that the direction of travel, particularly informed by the change request that the applicant has now asked us to consider is that there will be perhaps a more significant component of on road cabling than it was initially the intention of the applicant to deliver because, as we have established, the applicant wanted to deliver It mostly off road with minimum on road. So the change request puts the project traveling in slightly different direction. That was my point, that I wanted to actually get to the bottom of

Sarah Alex for the applicant. Thank you for explaining that question and the thinking on the part of the examining authority. So I think the so the the the applicant continues to seek compulsory acquisition powers for the off road cable options. It seeks the compulsory acquisition of rights to lay and maintain those off road cables in the locations which are shown on the land plans which have been submitted as part of the application. And as we've we've discussed that the applicant remains to the view that the off road cabling route would be preferable. The the reasoning for that preference is identified in the environmental statement and the statement of reasons, and it draws on a number of number of strands, which includes the likely environmental effects of pursuing either option, whether that's on road or off road, the so the applicant's preference remains to use the off road cabling options, and for that reason, it is seeking the compulsory acquisition powers to enable it to deliver those options the introductions of

The potential use of compulsory acquisition compulsory acquisition powers for the on road sections is something that, again, we've, we've discussed and talked about in previous hearings. And so the applicant would, would, would not intend that the inclusion of those powers within the draft DCO, if that. That ultimately is the outcome of the change request and application which has been made the applicant wouldn't doesn't intend that the inclusion of those powers should be seen as indicating a new preference, or a change in preference for more or additional on rate cabling the instead, the reason for including those powers is to deal with the factual uncertainty. Mr.

Min hinick, I understand, I understand what you're saying, that it shouldn't be read as an intention, or not intention from the applicant to not invest as fully as the applicant has had up until this point to deliver the preferred option of of road cabling. I accept that, and that's on record. My question is actually linked with how that is reflected within the DCO, in the articles of the DCO. So if, if we are moving, if we are moving towards a proposal that will it's likely, despite the applicant's intentions, to have a more significant component of on road cabling than before. My question, which I was trying to ask, is, how is that going to be reflected with the DCO, and how will those changes between and how will those changes in term in relation to the amount of on road cabling that is required will be accommodated within the articles of the DCO?

Sir. Alex menick for the applicant, thank you for outlining those questions. So the applicant's position is that the the existing drafting of the draft development consent order already provides the framework that is needed for the eventual choice of cabling option, which is taken and approved by the local planning authority through the detailed design mechanism, which is included in requirement three. The the applicant's position is that that framework and the existing drafting that attaches to those control mechanisms provides the level of precision which is needed in terms of describing and authorizing the proposed development.

Okay, thank you for that confirmation. Let's move on from this specific point. Then, in relation to part five of the DCO, can the applicant please explain how the articles included here, again, having in the back of our minds the change request that the applicant has submitted on the 18th of October, 2024 with that in mind, has article 25 which I believe is acquisition of subsoil, only relate to the change request. And if the change request is not accepted, then can the applicant confirm that it will revert back to a position? What position will the applicant refer to back in relation to Article 25 acquisition of subsoil only,

sir. Thank you. Alex minhini, for the applicant, I take the question at the broad level first, if I may, before honing in on on Article 25 as you've asked me to so. So at a at a very broad level, the compulsory acquisition and temporary possession powers which are included in part five of the draft development consent order reflect those powers as they've been included in other made DCOs by the Secretary of State, both for solar developments, other energy developments and wider infrastructure projects. The inclusion of Article 25 has you're absolutely right, so it's been triggered by the change request. And the

reason for that is that article 25 is an article which has been included in other major DCOs, where they have included powers of acquisition which have related expressly to or potentially related to acquisition, which would be exercised only against subsoil interests in land. So the way that I would suggest article 25 should be thought of conceptually is that it provides an additional layer of detail or a gloss on the exercise of. Existing compulsory purchase powers, which are currently set out in in Article 21 in relation to the acquisition of land and article 23 in relation to the acquisition of interests over land. Article 25 therefore operates to limit the extent of the land take that is delivered on Drive of those articles where it's appropriate to do so, and particularly in relation to sub soil cabling. So, sir, we thought it appropriate to introduce that limitation in the version of the draft development consent order, which was submitted as part of the change request, because the one of the key changes that that change request focused on was the inclusion of powers of compulsory acquisition of rights Over land comprising subsoil to existing public adopted highway in the event the change request is not requested, and the proposed provisions that the applicant seeks in relation to those on road cable routes are not eventually incorporated into the DCO or the made DCO. Should, should, should, should that come to pass, and should we get to that stage. So I think naturally article 25 would probably fall away, and we would be left with the version of the draft DCO that was submitted as part of the DCO application.

Thank you for that clarification. Mr. Mcinnich, I'm actually comparing both versions of the DCO so the version that you have submitted as part of the change request and version that you have submitted as part of deadline five. And it does appear to me that article 25 is substantially, if not wholly, the same article in both versions. So what I would suggest, in light of your response in terms of changing how the article applies, that perhaps there is a review of that specific article and how that will work in relation to whatever decision the xi makes once the change application comes to us. But, and I would have that as an action, please, but I would like us to actually go, in that case, into a little bit more detail in terms of the relationship between article 25 acquisition of sub soil only, and article 29 rights and in over streets, because obviously that was one of the key articles that would secure the delivery of the cabling when cabling when it's the on road option tabling. So in light of those two articles, and in light of what we clarified on previous hearings, in terms of the importance of distinguishing the highway strata, which obviously will be applicable to 29 and then subsoil rights. How do these two articles work together, and how can they be interpreted together?

Sir, thank you. It's, it's Alex menick for the for the applicant. So I will absolutely answer that specific question as to how article 25 and 29 speak to one another in relation to highway works and land within highways. But so it may be helpful if I firstly just explain the way in which I see the various provisions of Part Five operating. And broadly speaking, I think they can be seen as falling into two categories. There is one bundle of provisions, which late, which relate to the compulsory acquisition of land or rights over land, and then there is a second bundle of powers, which relate to temporary possession, which, of course, is is a different process and a different mechanism to the compulsory acquisition of land, or the compulsory acquisition of rights over land. So, so taking that that first bundle of powers, first the compulsory acquisition of land, or the compulsory acquisition of rights over land. So the relevant powers of the draft DCO, which relate to that bundle of powers are. Articles 21 through to Article 28 there are some additional provisions which are included in there. And broadly speaking, what those

powers do is authorize the compulsion acquisition of land or rights over land, and they also then incorporate existing legislative mechanisms which apply to the exercise of those powers and existing acts, including, for example, the compulsory purchase act. And you can see, for example, the article 28 provides for modifications to the existing processes which exist and are incorporated into the exercise of compulsory purchase powers through the draft DCO. So the first bundle of powers in Part Five relates to the compulsory acquisition of an interest in land, or a right over land. What the second bundle of powers which are in the draft DCO, which there are other provisions in Part Five, but the key articles that I'm focusing in on here are articles 29 through to 31 broadly speaking. So what I would suggest to you is that those articles should be read as the second bundle of powers which relate to temporary possession of land. Article 30 in the version of the DCO submitted a deadline five, so that's rep 5003, provides for the temporary use of land for the carrying out of authorized development. And article 31 then provides the temporary use of land for maintaining the authorized development. Now this, what these articles do, is they incorporate, and they provide for temporary possession as compared to the compulsory acquisition of land. And again, these articles reflect temporary possession provisions which have been included within many made DCOs. And the genesis of the drafting, I believe, comes from Transport and Works, act orders, which, of course, were continued to be part of the legislative environment, and we used to a greater extent before the introduction of the development consent order regime. So what I would suggest is that article 29 falls into that second bundle of housing rights, which are provided for by part five, and it should be read as part of that temporary use of land category of powers. And what it doesn't provide for is the permanent acquisition of an interest in land in relation to rights in under, in on or under the sub soil of a street, or airspace above the street. So so the the way that I would suggest that article 25 and article 29 are seen is as mirroring that broad structure of part five of the DCO, which provides, on the one hand for compulsory acquisition, and then on the second hand, temporary possession, and it's what those two powers are reflecting, perhaps, is that the street environment, or the environment of a public highway, is one that should be seen and is one that is treated through the various legislative codes as being of a slightly different category to regular land holdings. I hope that's helpful, sir.

Thank you. Thank you, Mr. Mcinnich, right. I'm mindful of the time, and I did say that we would aim to have a quick break half past 11. I do have some further questions on other parts of the DCO that I want to explore. But while we still have a little bit of time, can I just ask if any member of the XA has any further questions they would like to ask at this point? No, thank you.

Alex, yes. Thank you. Thank you. Mr. Pinto, the question I have with the DCO relates to Article 12. Article 12 of of the DCO Where is to do with so if you look at sections one, two and three of that article, the maintenance of the highway, it says the permanent alterations to the. Each of the streets so has to be completed to the reasonable satisfaction of the highway authority, and unless agreed by the highway or unless otherwise agreed by the Highway Authority, the alterations, including any COVID bonding or other structures laid under it or supporting it must be maintained by and at the expense of the undertaker for a period of 12 months from their completion, and then from the expiry of that period, by and at the expense of the highway authority. I just like to remind the applicant that the objective of the maintenance period is to ensure that the highway remains in adoptable standard, and any defects

on the highway will have to be corrected by the applicant before passing on to the highway authority. So I feel that that this section need to be rewarded to ensure that the Highway Authority actually inspects that highway and once the Highway Authority is satisfied that the this section of the highway is still in adoptable standard, then the highway authority can take over the highway. And just to remind you the sort of defects ranges from, say, minor defects in terms of skid resistance or resurfacing that might be minor, it can go into more significant defect that will require longer time to rectify, so that 12 months can actually Change to 24 months, for instance, depending on the timing of the correction to the highway. So that needs to be modified to ensure that the Highway Authority actually inspects after the maintenance period. Once the Highway Authority is satisfied that the highway is still inadoptable standard, then the highway authority can take over. So that's that section needs to be firmed up. So I think it's a little bit evasive in terms of responsibility there, and it's a critical thing I need to mention. So that follows onto the second one as well. You relate that 12 months as well, needs to be subject to the inspection by the highway authority. In some authorities, the ways done is a certificate will have to be issued to say this, a completion certificate before the highway authority takes over. So the third part of it as well may become redundant. So if we found off one and two the third section, where it says any action against a loss or damage might slightly become redundant.

Sir. Alex minik for the applicant, sir, thank you for explaining that. And the I think the question is for the applicant to consider that and whether any drafting changes are needed to the articles. Is that right?
Sir,

it's not just about consideration. This is, this is something that is has to be done. So, so it's for the applicant to make sure that this is corrected, and then the local authority is given the opportunity to inspect, because it depends on the applicant as well. You might want to program the works. You might not get the right contractor at the right time. The 12 months might become 24 months, so you need to work with the local authority, and the local authority might want to send the inspector out. The inspector might not be available at the right time. So subject to the local authority satisfied that the highway is indeed in adoptable standard, then the highway authority can take it over.

Sarah, Alex for the applicant, sir, thank you. This. This is not an issue that the applicant has been able to prepare for. We didn't appreciate that the questions on Article 12 might be coming up during the course of this particular hearing. But so looking looking at article 1212, two, as drafted, it does, it does currently provide for the works to be constructed, altered or diverted. Limited and completed to the reasonable satisfaction of the relevant Highway Authority. So, sir, I would, I would suggest that that level of control over the completion of the works and the approval of the relevant Highway Authority is is already provided for in the drafting of that article.

Sorry, Mr. Mcinnich, that part satisfied the first part of it, initially, when the highway is constructed, is constructed to an adoptable standard. The local authority is satisfied with it. It has to be constructed to an adoptable standard that the Highway Authority will be satisfied with it. That's part one. Now, the

onus now is on the applicant to maintain the highway for a period of 12 months. So within that period of 12 months, anything can happen. So there might be damage to the highway. So what this is now saying, After that 12 months, you just pass the baton to the highway authority. It doesn't work like that. So the highway needs to be inspected again to make sure that the highway is indeed in adoptable standard second time round, then the local authority will take over.

Sarah Alex for the applicant, sir, I thank you for that additional explanation and question and absolutely understood the distinction that you're making between immediate completion of the works and then the state of the road after 12 months and prior to adoption by the local authority, sir the the we can certainly take this point away, if we may, and provide a written response in due course. But, but, but, sir to the the the applicant initial position is that the drafting of that 12 to where it talks about the highway being maintained by the by the by the Undertaker, for that period of 12 months. So I think our starting point would be that that adequately provides for it being in that adoptable standard at the point of adoption after a 12 month period. There are other provisions within within the DCO, which, for example, provide for agreements with street authorities to be put in place in relation to works to highway So, sir, if we may, this is something that we'll take away and consider and come back to you on

Thank you, Mr. Oobaly, can I ask before we break for an interval? If anyone has any questions that you would like to raise now, any immediate questions on what we have just covered so far in the room or online, I can't see any hands raised. Then, in that case, it is now to 1128, so I will propose that we break for 20 minutes and we return back At 11. 1150 so 1010, to 12. Thank you. Applause.