

# TEXT\_Bramford\_ISH2\_Session2\_081123

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00:05

Thank you very much. I'm going to resume is the live feed up and running again? Yes, it is. I can see that. Thank you. I'm going to flex the exe is discretion on moving the agenda around yet again. And I thank you hopefully in advance for your forbearance. And all seriousness I want to make, as I said before, best use when I when we have the personnel and the relevant experts present. I think I want to make best use of them. Because they're, there's some items that I really, I think I could get the points across equally well in writing. I propose to deal with agenda item seven, and then it and if we have time, I'll go back to the two I have missed out on. I do aim to finish around five o'clock for those of you that have a life outside of the hearing. So with without further ado, I'll get on then with Agenda Item seven. And that's highway related matters. The Suffolk Council's local impact report that was rep one zero 45 said that they'd expect to recover costs associated with operation of the permit schemes and the traffic regulation orders that are subjective articles 12 and 47 of the draft development consent order, respectively. The issue wasn't covered by the first set of written questions. So it was included on the agenda in case the applicant didn't directly address the points in its associated written response. And that was rep 3049. At pages 76 and 77 of that submission, it did indicate that it's amenable to working with the consoles to determine the appropriate forms of agreement. So can I ask of the council's at this stage? Are they content that an agreed resolution can be introduced into the examination at a subsequent deadline? Are we heading in the right direction?

02:29

Madam microbead, for Suffolk County Council, speaking, obviously purely for the position from Suffolk County Council's perspective, it's fair to say that at this stage of the examination, movement is heading in the right direction. There has been discussions more broadly, in terms of heads of terms for a highways agreement. And there has been a response made by the county council to the applicants heads of terms, which I think they need to consider and then respond to the county council on there are matters which are currently set out in the relevant permit scheme. On the part of the county council, the permit scheme, I think it's section 15 deals with the fees arrangements for that. And then obviously, there's the question of then how that gets translated into how it would work in the context of this order. But yes, we would see it's an issue which is being addressed through the discussions. And at this stage. I don't think we think that we would want to put it on your table as an area of disagreement. It may may end up that there's a disagreement in due course, but at the moment, I think the parties are talking constructively.

04:00

That signs very positive. Mr. Bedford, are there any of the other councils that want to contribute on the issue? I don't see. I do see a hand up. Mr. Wiltshire.

04:14

Thank you, mom, would your county council just like to agree with what Michael Bedford has just said we remain focused on reaching an agreement with the applicant on this particular matter. But in relation to the deadline? I'm assuming from your question, mommy referred to the next deadline, which my calendar tells me is the key pardon. My Calendar tells me is

04:50

is the 16th of November.

04:54

It may well be that we would visit we would like to request that we received I'm back to you by deadline five, if that's acceptable, which is the first of December, obviously, I'll have to take this away and speak to my colleagues and highways and transportation, or I can't really kind of commit rather than what their workloads are at the moment. So I just want to ask if that the acceptable T. Thank

05:19

you. No, don't concern yourself in that point, Mr. Bucha, because I actually said a subsequent deadline. So I left it fairly open ended. So if you can work towards deadline five, that would be would be very welcome. Thank you. Thank you. Can I move on from that

05:39

phrase? Yes, ma'am. Madam, other than to say under Article 12, which is the permitting scheme, which was part of your agenda item under seven, one. Both. As you know, both Suffolk County Council and Essex County Council have permitting schemes, those have cost costs and fees. Arrangements. And because we've applied both of those to apply to this scheme, when we apply, we would pay the appropriate fees under those as far as article 47 is concerned, article 47. One lists traffic regulation orders in sheduled, 12. That are in effect made without further publicity or consultation. So there's obviously no fee for that, because they're not being consulted. The DCO is granting those but under Article 47, to that any additional traffic regulation orders that will be needed. And I think it's that Mr. Bedford is quite rightly pointing to saying that we've got discussions with them, they will be consulted, and the the the highway Framework Agreement, or framework highway agreement, as it's actually called, you know, will include provision of financial provision for the council's

07:17

so it seems as if there's think agreement

07:20

is is broken out. I can't understand how that happened.

07:25

Well, it's Welcome to hear regardless. Thank you. And then if I can ask if the applicant in a similar vein, Suffolk County Council have concerns that with the scope of article 11 streetworks and these are set out and answered to the examining authorities first written question that was DC 198. Their response is find a page 40 of their rep 3078. And their concern, I do beg your pardon, it's requirements 11 Rather than article 11, that they're concerned is that the requirement only covers construction, or alteration of

accesses, and not wider highway activities. And they've set out a list of illustrative examples such as visual and structural condition surveys of specified highways, and contributions towards structural repairs to monitor and the damage to them. They suggest three ways in which their concerns might be addressed. Firstly, that requirements elevens amended to provide for such activities. Secondly, associated protective provisions are included in the draft development consent order, or Lastly, the applicant and Suffolk County Council enter into highways site agreement. Is this an issue that the applicants amenable to working with the highway authorities on in order to resolve?

09:11

Yes, I think requirement 11 is a requirement about in effect details of the design layout and real estate, a reinstatement of means of access. So although I think the EthicsPoint has been sort of hung up on that that's actually an entirely different provision. I think the point that Essex is making and Mr. Wada, I'm sure can confirm this goes goes somewhat beyond this. This is you know, repair roads and financial provision and so on. And I think this if anything would be better dealt with as part of the financial agreement that or sorry, the framework highways agreement that We will have clearly if Essex County Council is not happy with the direction in which that's going they'll they'll bring that back. But I think that's our that's our intention that those things would be wrapped up in that agreement.

10:17

Mr. Humphries, just for the benefit of the recording, I didn't make your job any easier. I meant to refer to question DC. One. Point 6.93. And that may, but you answered the you give me the correct answer regardless. So thank you for that. And just when, like the examining authority, expect resolution of the matters, subject to this agenda item, I know that I'm asking one hand to clamp and putting that question to the applicant.

10:54

I mean, obviously, I don't know, it's clearly important. And it's important to us. And, and important, obviously, to the council's as well, in the sense to know, from the heads of terms that are being discussed, that agreement is likely to come forward. If it doesn't, then obviously, we will need to inform you as soon as possible because ethics indeed, Suffolk would need to make representations about what should go into the DCO or, or such other submissions as they think appropriate. Can you I think, for the moment sort of leave that with us. I know that draft of the heads of terms on the framework, highways agreement, went over to the authorities. I understand in the last two or three days. That's the best of my understanding that we've had some helpful comments back from Suffolk. I suspect if I'm right, we're still expecting them from Essex, these are on heads of terms. But that would be a views of once we've agreed the heads of terms the the various legal teams would get together and draft up the agreement. So I don't think it's right to say that everything is completely agreed at this stage. But but, you know, we're certainly really refining the issues between the parties, and they are actively discussing them. So if you leave it with us, and maybe we need to give you an update. I'm not sure whether the next deadline, I think that might be too soon. But perhaps the deadline after that we can give you an update or one of the December issue specific hearings, we can give you an update on that.

12:54

Thank you. Thank you. Yes, I see Mr. Witcher wants to make a contribution. So maybe he could assist us in that respect. Mr. Butcher.

13:04

Thank you, mom, mark with Genesis county council growth and development team. I'd just like to thank Miss Dunn for his for giving me giving my comprehensive response to that particular question. Yes, it is very important and necessary to counsel the highway authorities that that any any works to implement the same set don't have a any material detrimental effect on the highway network that we maintain. And yes, we will. We will work with the applicants to look at those particular heads of terms in relation to where we are with the harvest and transportation wants, and work with the grid and their team to seek to get that resolved by the deadline that Miss Thomas just stated. Thank you.

13:45

Thank you, Mr. Winter. But also it's quite positive. Mr. Bedfordshire. Madam,

13:52

yes, I think I can simply content myself with saying that I agree with both the remarks made by Mr. Humphries, and the remarks made by Mr. Mr. Bucha. Thank you.

14:03

Okay, thank you. That's very reassuring to hear from our taste. I

14:08

mean, that is positive. I don't know not wanting to put this would you're on the spot. And I know he's not in the legal department at Essex. But do they have a will? Does he have a feel from his colleagues of when they might be able to get comments back to us? Because obviously, as you said, in the in the one handed clap, point that didn't in a sense, obviously, you know, we can only respond when we've had some comments to respond to.

14:39

Well, I know Mr. Humphries, Mr. Reduce his hand up, but that was something that he and I spoke about. And he had said that deadline for of the 16th of November might be a little tight at the deadline five would be a more realistic proposition. But if that's not Mr. Rogers understanding I'm sure he'll put me right Mr. Wager

15:02

Thank you, mom, marble Genesis county council. You are correct.

15:06

Thank you. That's great. Thank you. Well, thanks to all three parties for your helpful clarification. That's the issues that I wanted to raise under Agenda Item seven. Are there any outstanding points that the examining authority or other parties want to raise on the issue of highway matters before I move on to agenda item 8k? Thank you. I don't see any indication that there are so I will proceed on to Agenda Item eight. And that's any other matters arising from the examining authorities first written questions,

which were PD 005. I appreciate that you are probably still working through responses to the first written questions in preparation for making comments at deadline for on the 16th of November. Although the issues that I've included on the agenda, there's the one matter that I wanted to raise, and that relates to article 53 of the draft development consent order. That deals with the issue of safeguarding. And it's rep 305 to a deadline three, the applicant responded to five associated questions on that article. And it advised that there'd be no direct financial costs incurred by registering article 53 suggested provisions as a local non charge. Other than that, the indirect cost of staff time and doing so which I'm not saying would be inconsiderable on issuing associated consultations on any subsequent planning applications. If the examining authority considered article 53 to be necessary, but can ask counsel, what practical implications would its provisions have for them, if anybody could assist?

17:42

Michael Baptists, Suffolk County Council madam since this was not a point that I was precisely anticipating rather than giving you an off the cuff answer, I think we'll probably if you're happy, take that away and respond in writing when I've actually got the benefit of the team being able to say, well, what are the practical implications, particularly in terms of land charges and matters of that nature?

18:06

That that's perfectly acceptable. Mr. Bedford, there was one other question that I was going to ask in the same vein. And in response, it was to Suffolk councils local impact report, and that was rep 3049. The applicant said that the obligations placed on the council's by this article wouldn't be onerous, and fulfill a valid planning function. And I was going to ask if you agree with that statement. So if that's a matter that can be addressed as well, notwithstanding that you are going to assist in writing Mr. Bedford, at the stage. Is there anything that the that Suffolk County Council or any of the council's want to add in respect of the applicants stated rationale for article 53?

19:04

No matter microbead? Well, I think we'll pick that up in our comments on what the applicant has said. So you'll have it in writing.

19:10

And Mr. Wilde is would you be of the same mind to deal with it and writing? Yes, ma'am. Thank you. Thank you. Thank you. I don't know if there's anything that the applicant wants to add other than to see what transpires

19:27

that Yes, exactly. We'll we'll we'll see what happens. Thank you.

19:31

Okay. Thank you very much. I will revert then to agenda item if you just bear with me.

19:49

Agenda item for just one minute I organized my papers.

20:10

that agenda item was looking at the party's positions on that three matters specified on the agenda. And for the benefit of the recording, I'll run through them firstly considering what would constitute materially new or materially different environmental effects from those assessed in the environmental statement. Secondly, the case for the amendment of article 57 and or shedule, 17. Those are both of the draft development consent order, and the need for an appeal mechanism if agreement couldn't be reached on the issue of materiality. So if I can start with the applicant, on the issue of arbitration as to materially new or materially different effects from those assessed in the ies, you address the issue in response to one of the questions in the exe is first written questions you did so in rep three, zero 52. And the question, I hope I have the right reference was DC, one, point 6.1 Or seven? By way of setting the scene, could you just briefly recap on your position. And I'd be grateful if you would steer away from using Article Five as an example of your approach, as I do have a separate question on that particular element of the draft development consent order.

21:59

Yes, madam Michael Humphries. Obviously, and I think this is closer to New York, your point about Article Five, because that's the situation where the Secretary of State would be determining whether or not something was terribly new and ditto also. In in your schedule three, paragraph one for the draft DCO, where there's approval from the highway or the relevant planning authority. So in some circumstances, we are not the the party that determines whether something is is materially new or materially different. The Can I just sort of sit back for a moment, I hope, hopefully to try and explain why these types of provisions materially new or materially different have come in because it explains why it's important. So the original EIA directive and the UK legislation, the regulations on this, of course, don't talk about reasonable worst cases or stuff like that the concept is likely significant effects, what is likely the concept of then looking at reasonable worst cases, or has in effect come in because of things like the Rochdale envelope, but not just that, where there is some flexibility. And so you look at well, what's what's the worst that could happen within the particular envelope? What has then happened and it's happening now and a lot of the DTOs is that the applicants are then being held to the environmental effects as assessed in their environmental statement. But of course, to the extent that those are likely rather than worst case clearly, things could be somewhat different from that, but that is that is in effect what is imposed for many smaller projects, Town and Country planning projects. Obviously, there are mechanisms by which you can go back and through officer decisions, you can get small amendments to two projects. That's simply not the case or at least not easily the case with DCA is the consequence of that for very large projects, which when they come forward at DCA stage will inevitably, quite rightly, not have all of the detail that will not be contractors. What applicants are extremely concerned about is something that was an assumption underlying the environmental statement coming forward. But when the contractor comes on board, it's not quite like that they use a different type of digger, or they want to do directionally drilling in a slightly different way from that that was assumed. And everybody recognizes that that's perfectly proper, and that we shouldn't have to go back through some huge change mechanism through the DCO. And so people like me now over a number of years have started to introduce words like materially new and materially different. Now, in most instances, it is our case that it is us as the applicant, the person with a statutory responsibility of delivering the project that actually has to determine that and that an arbitration process is simply not appropriate, it would take time it would slow things down. But it is important to remember that the local authorities ultimately do

have a sanction, if they think we are doing something which is not within the terms of the development consent order. Under Section 161. They they can't actually Institute proceedings and if proceedings are successful, they can under think is under Section 167. Issue notices against us. And obviously, it is not wanted or anticipated, that that would ever be necessary. But that is why because of that ultimate sanction. That is why any applicant, including national grid, is going to work very closely with the local authorities to make sure that they are satisfied that something a difference. It's a different dumper truck that's used from the one that was used in the noise assessment that understand underlay the environmental statement, that that is not causing something that they are or noise or level of disturbance that goes beyond what is material in terms of the environmental statement. Now, you know, our position is that that is a pretty well now understood position, this form of words is very well understood I'm not aware of but obviously I don't read all DCS, I'm not aware of there being a formal mechanism in any other case. And of course, in all of the hundreds of miles of headlines that we have all over the rest of the country, there is no formal mechanism if we maintain, and something is put back in a slightly different way from what really what it originally was that there is some formal arbitration agreement for those sorts of things. So I the pragmatic solution to this is that we're talking about very minor things here. We do think we've environmentally assessed reasonable worst cases. And so this is extremely unlikely to happen. If you're a contractor with someone else did do something that was materially different, then, you know, it is obvious to us that either the county councils or the district councils would have something very soon to say about that, and and the ultimate sanction is that you have built this outside the terms of the development content or consent order. And that is a very effective solution in my respectful submission.

28:43

Mr. Humphries, thank you, you. That's a very nice segue into my last question, which if you are sorry, my next question, which if you if you if you bear with me, I'm going to repeat some of what you've said back to you. But by way of setting the scenes if you bear with me in conclusion to your answer to Question DC one, point 6.1 A wit of your response to the authorities first written questions. So it was you said in your rep threezero 52, that if a local authority felt that there was an issue, as regards your exercise of discretion, in respect of materiality, then it could rely on section 167 of the Planning Act of 2008. That would empower it to require information from you. If it appears that an offense has been committed under two other provisions of that legislation, namely section 160 development without planning consent, or section 161 Breach in terms of an order granting development consent. What I read to be the council's stance is that A consider that the she'd have an upfront proactive role in determining materiality. Whereas reliance on section 167 would not only be dependent on the alleged breach coming to light, which which raises a different set of circumstances, but also what they consider harm from a material change possibly or already having occurred. Still, the question I put in that context, is that really the only practical scope for them to have a say on materiality?

30:39

Well, madam, no, in the sense, that was what I was trying to get at, because of that ultimate risk for us that that we have not constructed in accordance with the terms of the development, consent order, and 161, what you can be pretty sure of is that any responsible developer and contractor and that would obviously include National Grid is going to be discussing these things pretty closely with the local authority to satisfy them, we're hardly going to want to risk going out tight side the terms of the DC



DCO. I think the problem with a formal mechanism is that you'd say it is I know, we want to use a different type of truck to a truck that was assessed, you know, the idea that we have to only apply to the county council to use a different truck on a particular occasion, when is pretty obvious that it's not really going to make any material difference, and that they will need to consider that and presumably take time to consider at that just seems to be disproportionate, this, so far, as I'm aware doesn't occur on any other project anywhere else in the country. And we just consider it's completely disproportionate. The whole idea of this materially different, materially new materially different was simply, it's in effect, a common sense. Provision, it's, there are some things that are so small, that you don't need to make a change, that there's just no effect. Here, and I'm just not aware for many other projects that I've ever worked on that this has ever been a problem. Now, that means I'm not aware. I mean, it could have been, I'm not aware of it ever being a problem on on a project that's use this terminology. Okay,

32:54

thank you, Mr. Humphrey. So it seems that the applicant is espousing cooperative and prove proactive working relationship, because they don't want to fall foul of those provisions of the planning.

33:11

In fairness, I think I should say on behalf of the National Grid, that, you know, that that is always what they seek to do. You know, as I said, they have hundreds of miles of overhead lines, which do undergo things like repair and maintenance and things like that they, as a matter of internal routine, talk to communities, landowners, and people like that, that that's just part of what they have of what they do and what they require their contractors to do. So I think, you know, the, I think the prospect of them willingly or knowingly doing something in order to cut a corner or try and go outside the environmental segment is just not what they would be seeking to do. As I say, I'm not asking you to, in a sense, rely on that. I'm asking you to rely on the fact that ultimately, there is a legal sanction and that that legal sanction, is what even if it wasn't National Grid, drives good behavior, because the consequences of prosecution and having to stop the work would be obviously extremely serious.

34:28

Thank you, Mr. Humphries can ask the council's they've heard their concerns on this point in their local impact reports, and have the responses that they've heard from the applicant and or what they've heard here today, addressed those concerns or laid them in any way.

34:55

But I'm Michael Bedford, Suffolk County Council I know that correct me if I'm wrong, but I'm not sure that from the Suffolk County Council perspective, that we had taken a particular position in terms of wanting ourselves to be the arbiter of whether something that was done under the various provisions which refer to materially new or materially different ways of carrying out the works, I don't think that had been something that we'd specifically requested, we had raised some drafting points. And I know that one of those drafting points in relation to the formulation of that phraseology, in shedule, one, as regards associated development has been picked up by the applicant at one of the revisions that was made the deadline to just to bring that language consistent with the language used elsewhere, where that phrase is used. And I think we do have a point which again, I think a drafting point, potentially, it may be more than a drafting point on the language used in shedule. Three requirements one, four,



where the phraseology will be that it refers to minor or material changes, which are not materially new, or materially different. There, there is a qualification so that it's only unlikely to be materially new or materially different, and there is a difference of position on that. But that's a that's not really your wide issue that you're asking about at the moment. And we accept, the point that Mr. Humphries has made is that ultimately there is a criminal sanction, which would apply to whoever was the Undertaker, were they to do things which were not in accordance with the terms of the development consent order. And since we agree that that is ultimately the acid test of whether or not one has carried out works, which go beyond the scope of the allowance for what is not materially new or materially different. So I think that's our overall position, we would the risk of trespassing slightly out of the agenda item, we would just make the as it was a cross reference point. That of course, some of the concerns around this topic would be more likely to be allayed if one had more clarity about the control documents, because the more that there is a, as it were a loop within the control documents that once the applicant knows, taking Mr. Humphreys example, what type of digger they want to use, etc, if that were potentially to have different noise effects or different air quality effects to what had been assessed in the environmental statement. If there was that further consent process, it would assist in resolving those matters. But I say that's trespassing slightly beyond where you are on your agenda item.

38:09

There's quite an element of synchronicity Mr. Bedford, because it's actually the subject of my next question. But I do want to give Miss Hibbard from Braintree the opportunity to come in before I hear anything more from the applicant as hampered

38:27

by their Katherine habits on behalf of sad Simpson. District Council, can you hear me okay?

38:36

This up Could you could you just start again for the recording please because the the reception cut out? Thank you.

38:44

Hi there. Catherine Hibbert on behalf of Braintree District Council on Essex County Council. Thank you for the introduction there. And the council's have, you know gone over this point a few times in the various representations made already. And you know, it's hard to argue with the way Mr. Humphreys presented, how it was all going to work sounds totally reasonable. I think the concern here is that so much of the detailed design hasn't been pinned down yet and may only I don't think there's any argument is there that that's not going to be pinned down until after a main works contractor has been appointed. You know, whilst there is provision to make changes to the control documents to pick up any changes in in working or operations which do give rise to materially different or new effects. And we would be relying on the applicant to bring those forward to the attention of the council's And if there is a great dialogue working, and it all goes well, good, if not, you know, there could be things which aren't coming to the attention of the council's and which weren't, you know, properly assessed at this stage before the DCO is confirmed. So that's where the counselor is coming from on this point, having quarters the sanction, yes, it's threatening, but, you know, really, parties don't want to be planning to end up in court to deal with points, which could be sort of formally dealt with in consultation.

40:41

Thank you misheard that. That was the point, I'd actually maybe in a roundabout way, tried to include within my question about that, it would actually have to come to the local authorities light. And that's not casting, casting aspersions on the integrity of the applicant. But you can only enforce if you're aware of a breach. So I had had raised that issue. So thank you very much. Mr. Humphries. Is there anything you want to say, arising from the both counsel submissions?

41:19

No matter? I mean, I've set out you know, what our position is on, on on this and why this this type of wording appears now in a number of DCs? Thank you.

41:33

The next question, and it's the one that Mr. Bedford was moving towards. The examination has previously touched on the issue of requirements for being amended to allow for finalized management plans being subject to approval by local authorities. Now, in its response to the ethics Council's local impact report, at rapid three, zero 50. It referred to the change process set out in the construction environmental management plan, that's rep three zero 24. And that's fine that section 15 Five as the way of disseminating information on updated control documents. It added that in the event of a disagreement between the applicant and the council's as to a proposed change to one or more of the management plans or other control documents, there would be recourse to the appeals mechanism set out in schedule four of the draft development consent order. At this stage, is there anything that the council is wanting to add on the issue and response to the applicants comments on their local impact reports in this respect, Mr. Bedford, I will hand over to you because that you had touched on this already.

43:01

Thank you, Michael Bedford, Suffolk County Council. The position which we obviously did rehearse, in part at this specific hearing. One is whether the control documents in their current state provide you as the examining authority, in the light of the comments that they particularly the host, local authorities have made sufficient information to know that this really is the port of call for resolving matters as to regulation, or whether you conclude in the light of what you've heard, that actually, because of the flexibility, the applicant wants for its reason that it's not appointed a contractor, that the level of detail in those reports, those control documents, is not sufficient to enable you to be satisfied that all relevant matters have been appropriately assessed, such that there ought to be a further opportunity for the regulatory authorities, the host authorities to have submitted to them for approval documents once the detail is known. Now, as I see it, the way that the applicant has dealt with this is it was put down a gauntlet to the local authorities. In their comments, particularly on our local impact report, our local impact report is rep one. Oh 45. And in their comments on, I think section 1757 of our local impact report in their comments at rep three dash x 49. I think it's on page 106. They effectively say, We think we've given you sufficient information to make the control documents fit for purpose. And we don't think that we need to provide more. And the goal that they've put down effectively is to say, if you give us tangible examples of more information that you think is needed, then we will consider whether or not we need to revise those documents or take a different approach. I think that probably you would be

assisted most Madam, if we were to take up that gauntlet and try in our submissions, hopefully, we will be able to do so sufficiently well, at deadline for but whether we are able to complete a review of all of the documents to control documents by deadline for, or whether we may need to say to you, these are the ones we're dealing with a deadline for, but there will be others that will have to deal with it deadline five, I don't know because it won't be me that's doing the work. But what we will try to be giving you are concrete, concrete examples of where we see, there are either deficiencies in the documentation, or there are assumptions, which are used, which we don't think are necessarily going to be borne out by actuality. So as to, as it were put more flesh, on our argument, that the best way to deal with this is to treat the current control documents, as it were outline or framework documents, but then subject to a further process of submission of details when the detail is known. And so that's what we will endeavor to do to you. And then you will probably have a better idea as to whether to accept the applicants approach that this is sufficient and nobody needs any more, or whether indeed, we are writing what we say, and that more needs to be done. And as I say, we think that the best way of doing that is to deal with it by way of outline or framework documents. So I don't think it's probably helpful for me to try to do that. Now. But I say I think that, given the way that the applicant has put it, we really need to give you in a sense a bit more substance as to why we have those concerns, and why we're not persuaded by the way that the applicant is currently proposing to deal with them.

47:24

Thank you very much. Mr. Bedford. Is there anything that any of the other councils want to say? I see Miss Hebert has her hand raised? If I can hear from her on the issue, please.

47:36

Either Catherine Hibbert for Essex County Council and Braintree District Council. I think we'd just be interested to see what comes out of that discussion or dialogue between Suffolk and the applicant. And have a look at that and come back to you in due course if that's okay. Thank

47:57

you, Mr. Shepherd. Likewise, for the reasons that Mr. Bedford said, I think it would be a worthwhile piece of work that would be of great assistance to the examining authority and determining whether requirements for meets all the necessary tests. This is the anything that the applicant wants to add on the issue before I revert to another concern that Mr. Bedford had raised.

48:30

Yes, madam, I mean, the first point is that the management plans are written having regard to the standards of management plans that were considered appropriate in in other projects. And obviously, every project is bespoke, but these were measured plans, documents that were considered appropriate. And we see that there's no particular reason why that standard of detail would not be appropriate here. We do think, therefore, that they are appropriate and provide sufficient levels of detail and they contain cross references to other mechanisms such as the control of Pollution Act, for example, section 61 in relation to noise and and so on, and I think it's perhaps slightly unkind to say we've thrown down a gauntlet actually what we've tried to do is make an offer and say, Look, if you think there are things that are wrong, could could we have a discussion on that? Could you let us know what they are and we can try and take those on board and so far there's there's there's there's not been

any response. I welcome I genuinely welcome the offer now that that some points will be raised and it will be helpful. And I'm sure we would like to discuss those with the county council. I think underlying this appears to be the county council wanting once again to control things, in other words, or they should be detailed, and we should be the approving body for these things. Part of the purpose of the 2008 Act for which the local authorities are not the planning authority. They are consultees in these things is so that nationally significant infrastructure can be dealt with, by approval of the Secretary of State. And clearly it's in our interest. And what we want to try to do is encompass the necessary controls in the DCO without having to go for for further consensus, unless that really is necessary. Now, we think it's not necessary in this case. And therefore, it's It's in that context that the offer from Suffolk County Council and indeed any other of the authorities would be would be welcomed. But our objective is to have finalized plans that the Secretary of State, depending on your recommendation, and and his ultimate decision can approve. That's our position.

51:24

Thank you, Mr. Humphreys. I've certainly noted your marker. But as I say, and and and I know that you're not dissenting from the position, I would see great utility in the course of action that the county council is proposing,

51:40

madam, absolutely. I emphasize again, we have been asking for this for some time. And, you know, that's not criticism. Let's let's kind of move forward from where we are. But we've been promised some comments, and that's helpful. We welcome it.

51:59

Well, maybe we just draw a line under that and and look forward to deadline for and or Condor five, and see where that takes us. Thank you. Mr. Bedford, you'd mentioned requirements. One, four, it wasn't something I'd specifically flagged up. But of course, if it can move forward in reconciling issues with regard to the draft development consent order, I'd certainly like to hear from you and not.

52:45

Thank you, man. If you look at sheduled three, so Michael Bedford, Suffolk County Council, if you look at shedule, three, on the requirements and requirements, one four, which deals with the scope for there to be minor or immaterial changes, that where it has been demonstrated to the satisfaction of the relevant Highway Authority, or the relevant planning authority, that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. And that phraseology, which it doesn't entirely match the phraseology, where the materially new or materially different approach is taken elsewhere in the DCO. Because that introduces, I say, the the rider or qualification about it being unlikely, as opposed to it being something which either is or isn't materially new or materially different. And I said, the moment we see that as being something which we're not clear is precedented. And we're not clear that there is a justification for it. I mean, in one sense, it could be said, Well, it's helpful. If you the county council as the relevant Highway Authority, it gives you more leeway. But obviously, this applies not merely to things which are matters for the county council to discharge, it applies to the matters, which are for the local planning, authority, and discharge. And it's where we think that there

probably needs to be more clarity. And so at the moment, we're not persuaded that the unlikely isn't appropriate. We see what the applicant has said, which is the applicant has said well, it's impossible to ever have certainty. Well, that's true, but that incense also applies, when we see this phrase used in other parts of the development consent order, because it For example, the phrases used in Article Five, or where there is a, an ability to vary the vertical limits of deviation provided that the Secretary State is satisfied that they would not give rise to a materially new or materially different environmental factors if there's no unlikely to do so, test in there. And similarly, in the definition, in relation to associated development, and that's in shedule. One and it is, as part of the definition of associated development allows in item are other works, etc, etc, which do not give rise to any materially new or materially different environmental effect, again, without that qualification of unlikely. So there is, in a sense, a consistency point there, there is a justification point there. And so at the moment, we're not entirely persuaded that what the applicant has said, by way of explanation, adequately answers that.

56:22

Thank you, Mr. Bradford, Mr. Humphries is something you're able to grapple with.

56:29

But not willingly, but I will. In requirement one, four, the reason for unlikely here is because, in fact, we're looking at this point, at some, at some future event, this is dealing with approvals. And so the satisfaction of the hiring authority that this is unlikely to give rise to a materially new or materially different effect, if one, for example was to look at the definition of maintain on page six of the DCO.

57:19

Various things can be done, provided such works do not give rise to materially new or materially different environmental effects. Because at that point, you're trying to say, well, what is maintain maintain is, if you don't give rise to materially new event, what we're dealing with in one, four, is them approving something where we put forward a report saying this will not give rise to a materially new or materially different effect, they have to approve it on the basis. Okay, we accept that this is unlikely. And that's, that's why and that's why on page 106, of our response to Suffolk County Council, we say the African considers the use of the word was is unlikely to be entirely appropriate in this context, given the future temporal nature of the element of the provision. It's talking about something in the future. And that's, you know, that's, that's why we've included it there, which we thought was appropriate.

58:26

Thank you for that. I know, I'll have to think about that one.

58:32

Well, what an indie Batman and but with respect, if I just stay with Article Five, or which is the ability to go beyond the limits of vertical deviation, that, again, is dealing with a prospective or future situation where it is demonstrated by the undertaker to the Secretary State satisfaction. And the Secretary State following consultation with the relevant local planning authority and any other person take the state considers appropriate, having regard to the proposed deviation in question and the set of the roles and responsibilities such person certifies accordingly, that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects, those identified in the

environmental statement, the same future temporal point applies, but it's a different treatment. That's in a sense, part of the response to that. So we're just not at the moment persuaded that the different treatment is justified.

59:39

Madam look, I'm not going to go on a discussion. We've set out our point we will certainly take it away and have a look at it. Again, I think both Suffolk County Council and we know what we're trying to achieve here This is a matter of getting correct drafting. But this is not intended to, to introduce some sort of new or different layer of complication here. Because in any event, we have to do this to the we have to demonstrate to the satisfaction of the relevant highway or planning authority, they are the ones that are going to determine this, and therefore, they are the ones who are going to determine whether or not they think it's likely or unlikely. So, ultimately, this is not in our control. But that, but I've explained why we used it in that particular context.

1:00:46

Okay, thank you for that. I know I'll have to reflect on that. I don't have a follow up question at present, but it's something that I will tax my brain, Mr. Wilder, any of the other consoles? I don't see any hands up. So I move on. My next question is to do with Article Five. And that is back to our old hobbyhorse the limits of deviation. And I want to look at Article Five, four. And that Article of the draft development consent order it reads as any exceedance of the maximum limits of vertical deviation and the proceed in the preceding paragraphs, engaging the review process cited therein. So they don't apply. Only where the Secretary of State has certified that a deviation in excess of them would not give rise to any materially new or materially different effects to those identified in the environmental statement. This appears to be at odds with your interpretation in response to the in response to question DC, one 613. At the first written questions, you set out you're sorry, you set out your response in rep 3052 at pages 90 and 91. And my interpretation appears to be at odds with yours. To say in response to the aforementioned question, you say that in the first instance, it would be incumbent upon the applicant to satisfy itself, that a deviation in excess of the limits in the preceding paragraphs of Article Five wouldn't give rise to any new sorry, any materially new or materially different environmental effects from those reported the environmental statement and compiled such evidence as may be necessary to demonstrate this, as a matter of fact, to the Secretary of State. And I have two concerns arising from that. Firstly, my reading of Article Five, four doesn't allow for that interim self assessment. And secondly, the element of discretion that you're suggesting the draft develop consent order allows is arguably at odds with the checks and balances function of Article Five for I know, that's quite a convoluted question at this end of the day, but I would welcome your view on both those concerns.

1:04:01

Madam, sorry, and trying to find our responses and the particular paragraphs I've, I've slightly missed your two questions. So you asked questions, as I understand it, a DC 1.6 point 13. And we responded on pages 90 and 91 of our response and in relation to that response. I do apologize, but what is their home face? So the question I'm trying to get to the documents while you're

1:04:42

it's a very long question, and it's probably very unfair to pose it at this stage of the day it was to be earlier in the agenda. I think maybe given the time of day and that we still have a couple of of the wrapping up agenda items to get through. Maybe it will be held If I included the second set of written questions,

1:05:03

it'd be helpful to me.

1:05:07

I think even though the person answering it, sorry, asking it, it would be helpful to me.

1:05:12

Thank you. I do I genuinely am. desperately trying to get to know a reading from and while I was doing that you were asking, asking me questions. No, no, I wasn't listening. Sorry.

1:05:24

Let's deal with it that way. I think that that's, that's fair as to all parties. That was actually the last question that I had on agenda item four. Is there anything else that my colleagues on the examining authority or the consoles want to raise in that respect? No, thank you. I don't see any hands up either in the room or virtually. Thank you. In addition to that lengthy question that's hung over from agenda item four. The questions that I have on Agenda Item five, really do sit will sit very well as written questions. The main things that I wanted to get some interactive dialogue on today, we've covered so I thank you for that. So coming on, then to Agenda Item nine. Any other business? There's nothing that myself or the examining authority want to raise at the stage of the day? Is there anything that the other parties wanted to raise with us?

1:06:46

No matter not? For our part. Thank you.

1:06:50

Okay. Thank you. I don't see i i see head shaking rather than any indication to the contrary. So thank you very much for that. And thanks for your helpful contribution to my questions today. I'll hand over to Mr. Mallen. Today with today's action points. Thank you.

1:07:11

And my writing has deteriorated anything during the day. A couple of for the applicants and a couple for the counselors on my list. First one was for the applicants. And that was to give us some more detail in what was assumed in the environmental impact assessment in relation to working hours and alternative weekend working. Second one, I'm going to ask for assistance. And that was the construction schedule with a critical path analysis and its relationship to the baseline scenario and Scenario one. And that to be related to requirements three. Is that correct? Having that? Excellent. So those are the two I've got noted for the applicant?

1:08:01



Sorry, can I just to supplement that in the context of the way that you had worked out the different days from baseline one, if you can maybe to scenario two, and Scenario three, if you could give an explanation other than the time limits elements without the Okay, as well, what assumptions have you made regarding the time limits?

1:08:37

Thank you.

1:08:37

Thank you. Thank you for that. Thank you for that.

1:08:43

And then the two other points for action I've got on my list of both for the councils. The first one is for Suffolk County Council and Braintree District Council and both wants to respond in writing in relation to the implications of the proposed article 5.3 of the council's. And the final one really is not particularly an action point because I think it's something you were going to respond to in due course rather deadline pi or or deadline five, but I mentioned it anyway. And that was your critical review of the management plan control documents and comprehensive answers to those the gauntlet question that's all I have. I don't know whether I've missed anything whether anybody's got her action points that I've missed. That is plenty. Thank you.

1:09:40

I just clever I think in relation to it. Michael Bedford for the Suffolk County Council, in relation to the first point to the council's was concerned with the safeguarding issue and whether we had issues with that, which I may have missed written. Thought I'd written down Article Five Rebbe surely is Article Five three. It

1:10:03

is Mr. Bedford. Yes,

1:10:04

that was my understanding, but we may be wrong

1:10:10

Yes, i Yes. i

1:10:13

Five, three yes and 53 5.3

1:10:16

That's what was confusing me. I was looking at Article Five sub clause. Yeah,

1:10:20

though lawyers always speak, that's five sub 50.

1:10:26

It's late in the day, but we're all agreed nouns. Okay, it's just no other action points arising that I'm aware of. So can we move on to agenda item 11. At closing the hearing. If there are no other items that are relevant to this hearing, Can I remind you that the examination timetable requires parties to provide any post hearing documents on or before deadline for which is the 16th of November can remind you also that recording of this hearing will be placed on the inspectors website as soon as practicable after we close. And just reminds me to thank all of today's participants for their time and their assistance this afternoon. We will consider your responses very carefully and they will inform our next set of written questions and our decision as to whether further hearings will be necessary. The time is now eight minutes to five and this issue specific hearing is now closed.