

TEXT_AQUIND_CAH2_Session3_11122020

Fri, 12/11 1:38PM • 55:43

00:06

Right, the time is now eight minutes past 12. And the hearing is resumed. Just as what I just when you did your earlier section will document the documents that you show to us on the on the screen, it would be useful if you could follow up with exam line library references for those please. Thank you.

00:28

So imation to funding. And the the this topic arises

00:34

largely out of lithium, the discussion yesterday, and the shortness of the funding statement coupled with the submissions by the applicant about funding in the CH one oral transcript.

00:52

And yesterday, sir, you you indicated that it would be helpful for the zoning authority to have the KPMG document which describes about electricity markets. And there was a reference to it being helpful to see whether or how funds quote, unlikely to be available, likely available phrase I think was used. And

01:19

we just want to touch on that briefly. So in this way to clarify on the basis of the funding statement statements, the funding situation before you for this project, and to carefully scrutinise it because as you've seen from our earliest submissions, we submit that the law requires where you've got compulsory acquisition of another person's land against their will, that careful scrutiny be given to it's taking, and that includes careful scrutiny of funding, sir. Now.

01:56

The the phrase likely to be available is you will recall set out in the Secretary of State for housing Communities and Local Government guidance on capacity purchasing ritual down rules, which was updated I think, in June or July of last year as well. And feel notes that appears at stage two, in paragraph 13, on page 12. And in that local situation, an acquiring authority that cannot show that all the necessary resources are likely to be available to achieve the end in a reasonable time scale will be in difficulty showing conclusively that the compulsory acquisition of the land included in the order is justified in public interest. So in the local compulsory purchase acquisition sphere and the TCPA 1990. The test is whether funds are likely to be available. That is not the test under the Planning Act 2008. sphere, so as I'm sure you yourself are aware. So just to reinforce that, sir, we understand your reference to likely availability of funds to be exclusively concerned with paragraph 18 of the Planning Act 2008. Guidance September 2013, where the secular state sets out that such a test concerns exclusively the timing of available funds, as opposed to the availability of funds per se. That availability

is of course, as you recall a prior point, a prior stage. And the question of whether resources are available in the Planning Act 2008 sphere is guided by paragraph nine you may recall, which requires the applicant to demonstrate that there is quote, a reasonable prospect of the requisite funds for Acquisition becoming available a reasonable prospect. Now, sir, that is not the same test is likely available. As I'm sure you and your colleagues are aware it is a higher test. It requires reasonableness in the sense if you look up the word in a dictionary, a rational

04:26

situation and excludes the irrational.

04:30

And we submit that therefore reasonable can't encompass a mere intent. There's got to be a rational basis for the prospect of funds. So so you and your colleagues may be familiar with other DCM applications where funding has been scrutinised, for example, RF Manston and Wilfer. And the third loading, the third crossing loading, where consideration was given to satisfaction of reasonable processing

05:00

And if you look at RF maps in particular, for example, you will see various undertakings and commitments by bodies to ensure funding will be available to use the language of the prior paragraph to timing paragraph 17. And paragraph 17 of the guidance requires the statement from Aquin to explain, quote, how it will be funded, unquote, not how it might be, how they intended to be funded, how it will be funded. And the statement should provide as much information as possible about the resource implications of acquiring the land implementing the project. So we know from the funding statement that the highest Aquin could put its funding case is set out in its statement.

05:50

Because that's as much information as possible that they could provide, there is no more information on their own case, if they're compliant with paragraph 70.

06:02

So, against that

06:05

background, you will recall from the funding statement that

06:12

at Quint have helpfully set out that paragraph 5.4, they estimate the construction costs of so they're the cost of the project be some six to 2 million pounds, you will see there that they also estimated land acquisition costs at 4 million pounds.

06:32

And I just want to cross reference a point that I previously made in relation to that estimate. We would like not today but to have you yourself clarify whether the land acquisition cost of 4 million pounds is a

land acquisition cost which assumes the centrality of exercise or the opportunity to compulsorily acquire land under proposed article 34. I the sea of red, or it's confined to a smaller linear element much narrower.

07:12

Because it seems unclear whether the 4 million pounds is for the totality of your limits, or it's a smaller amount. And I'm sure through your next round the written questions you may ask and we would ask you to scrutinise that figure, including perhaps the underlying basis for it and what it takes into account.

07:35

Now, separately, sir, we know from

07:40

the section six of the funding statement, the paragraph 6.2. There is an intention of the outcome to raise finance.

07:51

So we would ask you to clarify the rational basis for its intention in due course, because it has to demonstrate to your satisfaction that a secular state, a reasonable prospect. And we would submit that intention is essentially irrational.

08:07

And you need more than that. And we will submit in due course that if you compare the RF Manston funding situation, that gives you an idea of the kind of commitments that you would want to be satisfied with at this stage in order to pass that test. Now, if you go further, you will also see that helpfully, the applicant

08:28

explains at Section four, the corporate nature and structure of its situation. And I'll come to that in due course, in passing, however, we know to paragraph 4.5, that they've included the accounts to the year end 30th of June 2018. And then they've put in further information at 4.6. At first reading, I mistook that for consequence of paragraph 4.5. But of course, it's not. Because the 4.6 statement is reliant upon the 30th of June 2019 accounts which you don't have before you and answered for Mr. Jarvis's

09:11

representations to you yesterday, when you asked where they're going to update matters, he made no mention of providing updated annual accounts. So sir, to help your situation, we will provide you with the published accounts of aqualand in our submissions.

09:27

Now, what the accounts before you have

09:31

for 2018 is a situation where the

09:37

applicant company has got current assets of essentially about a million pounds, as against a estimate cost for land acquisition are 4 million so there's a 3 million pound shortfall.

09:54

Well, they may say they've got intangible assets of some 12 million on those accounts.

10:00

So they can provide the balance of the formula. And from those, we highlight in paragraph three on page eight of those accounts, and that those

10:14

matters that are raised as intangibles appeared to be categorised as development costs, which are said to be in the account descriptions to be the result of loans from shareholders. And they're all fixed terms of one year each. So the balance of funds for land acquisition of 3 million appears to be restricted in time to

10:40

two, perhaps three years from June 2018, it now being Christmas 2020.

10:46

Now, if you were to go to the 2019 accounts, you'll see a similar situation arising.

10:52

And these

10:54

there's an increase in tangible

10:57

amount, intangible assets summed about 23 million, which is what paragraph 4.6 refers to, but the loans appear to remain time limited to only about a year on fixed term. So in terms of ask yourself, Is there a reasonable prospect of funds being met? Answer, at the moment, the term appears to be too short, to cover the eventuality of exercise of capacity purchase powers against the time period of five years envisaged by the applicant. So we'll wait and see whether the applicant in due course, may resolve that your satisfaction, however, there is a further point so which is of concern to us, this arose on rookery South the very first decio and in that case, there was also private applicant seeking

11:46

development consent for energy from waste plant, it was a private body as well private entity, it was relying on finance privately as well. It was a US company with funds situated in the US and had lots of money, but situated in the US representations were made there sir to bring funds on shore. So that I can pass you purchase a walker be enforced against a bond within the jurisdiction.

12:14

You will see sir, from the explanation in the funding statement of the

12:21

corporate structure at section four and 4.3 you will see that aquin is 100% owned by aquin energy salt, which is a Luxembourg company and we have been unable to get any information about Aqua insol acan energy salt at all.

12:40

We know from the company's house information about aquen limited that somewhat strangely, notwithstanding aquin Sol is 100% shareholder Companies House in England Records Act with limited having a shareholder who has significant control over equity limited but is a protected person as defined in the guidance a company's house which you can find for yourself, sir. And we find it unusual that a company can qualify as a protected person as against an individual. So there's a question mark about

13:13

the control of those

13:16

the act conducted in company who by and the control appearing to be either opaque, protected, offshore and unable to be identified in relation to

13:30

enforcing a compensation will in due course, separately. You'll also have seen for the accounts provided that there is a another company called

13:43

just bear with me called odn Enterprise limited.

13:50

And if you go to the I think that's right, yes, if you go to part 11 of the accounts that you have before you, the company's immediate parent backwards parent was lgn enterprise is limited. They're registered in the BVI. And the directors regarded the auto controlling party to be TMF. BVI limited. So essentially, sir, we've got a situation where we have the controlling entity of ackward limited, apparently in Luxembourg. And we can't find out who it is.

14:28

We've got the person the company has made loans to on a fixed term to subsidise a shortfall potentially of land acquisition costs in the BVI.

14:42

And we can't get to them if we were to enforce a capacity purchase compensation award.

14:49

And there is also a split between controlling ownership in Luxembourg. And the resource underwriting individual in the BVI, NASA to be for

15:00

It's safe impractical to you. We would therefore ask you and your questions

15:06

to clarify the in line with the guidance for the Planning Act sphere as opposed to the TCPA sphere and how it is under paragraph nine, there is a reasonable prospect of the funds for Acquisition becoming available within the timescale within which they may be enforced and by the relevant entity and evidence objectively to show that as opposed to mere statements and documents submitted to the examination that assert.

15:39

And we will provide in due course, comparative type analysis from other DCs which the examining authority and other DCs has themselves considered to give you an example of what we anticipate should be being provided you should consider if that's not able to be provided before the close of the examination hearing in March 2021, we would invite you to conclude that there is no reasonable prospect of such funds becoming available and to delete the carpenters land from CPO in its totality, to come full circle. That is not an unorthodox position is not an exception. It is of course, explained in paragraph

16:29

seven and so full of the 16 that there may be circumstances where the secular state could reasonably justify granting development set for a project, but decide against including in an order that provisions authorising compulsory acquisition of the land. So it would not be an exceptional step for you to disconnect the CPO powers from the DCA.

16:54

Now we appreciate practically that the applicant has January and February to find that information. We know because the guidance tells us that they're obligated to provide as much information as possible about funding. And if they have that information, I'm sure that they can provide it to you. And if not, Sir, you are where you are on their application.

17:16

Those are all my summary submission. So thank you.

17:20

Thank you, Mr. Ward.

17:23

Mr. berdahl. Mr. Jarvis, did you wish to come back on that any of that at this stage?

17:35

Yes, please, sir.

17:37

Thank you, Mr. devore. For those submissions with regards to funding, I think this is just to start with regards to the KPMG document. And I think as we discussed, I believe yesterday, we are looking to provide

17:52

that document or extracts of that document to the examining authority on a confidential basis

17:58

where we may do so and we're also looking to see what we can provide with regards to the information that's been provided to the regulators off gem and cre. So it is expected that those are matters that will be addressed directly with the examining authority.

18:15

The second point I've got down that Mr. Ward raised I wanted to respond to today was with regards to the estimate of the land acquisition costs. And that that amount has been updated in the response to the first written questions, it was ca 13103, which it dated up to 4.9 million, I can confirm that it does not include all of the sea of red. For the proposed development, of course, you wouldn't estimate the land acquisition costs based on the limited deviation because that would be nonsensical.

18:44

Moving further on, it was very interesting to hear from Mr. devore. With regards to the 2019 accounts. I would also highlight that those accounts are in the examination. They were submitted as an appendix to the response to the first written questions, and the examining authority already has those before them. And with regards to the comments made in respect of aquin standing,

19:07

there is a question as to whether or not the most of those matters that were raised are relevant.

19:12

where information is not with not disclosed on Companies House that's for lawful reason. And I don't think anyone's questioning the lawful nature of the reason why that isn't on Companies House. Of course, we'd be happy to do so but we don't think that would get very far. And furthermore, the comments made with regards to the offshore nature of odn and ODM BVI den are somewhat irrelevant considering that the undertaker for this decio and the applicant is aquent limited, which is a UK company, it would be acting limited as a UK company which is required to turn funding and it will be aquent limited as a UK company, which exercises the powers of compulsory purchase and who the order could be enforced against and they are all the points I wish to raise today sir. Is there anything else you'd like to raise Mr. Bird

19:58

so just to point out

20:00

If you go to the transcript we submitted for ch one, which addresses the issue more generally in relation to funding that also responds to a number of points which Mr. Salt has raised today.

20:13

Thank you.

20:16

This is why do you wish to come back on any of those points? Obviously, again, I don't wish to get into a tuning or throwing. But is there anything that you wish to say on those?

20:26

And

20:27

only two points? For healthful clarification. Thank you for the clarification in relation to evidence in relation to the accounts. And we hear what you say in relation to the other matters. It's also very helpful that, sir, that aquin have possibly confirmed that the land acquisition estimate of 4 million pounds did not expand to encompass the totality of potential CPOE envisaged under Article 34 that we canvassed earlier.

20:58

And therefore you may wish to consider further that we will certainly make submissions in relation to a tight scope. Thank you.

21:05

Thank you, Mr. Bird, was there anything that you wish to come back to on that? Just one point that I wish to come back to john is, to the extent that the land is identified to the terminal acquisition being the pink land on the land plans that are shown on screen just now. The land acquisition valuation has been submitted in the examination does consider all of that land in that valuation? Thank you.

21:30

Thank you.

21:32

Mr. Was there anything from you before we finish on this? This particular part of the agenda? Yes, just clarification, and I don't think fragment to answer but if they if a reference could be provided in due course, to documents which positively show the relationship of the extent of land, which generates the 4 million pounds to the extent of land potentially covered by the article 34. compass.

22:04

And similarly, if one were to shrink to fit the capacitor acquisition to simply the Blue

22:14

Cross hatched track, going through the sea of red, what the difference would be in relation to the acquisition costs, because one would expect them to go right down if one excluded a lot of the land.

22:29

Thank you, Mr. Jarvis. Is there anything that you wish to come back on that at this stage?

22:34

No, nothing further at this time, sir. Thank you. Okay. Thank you very much. That brings us to the end of the representations from Jeffrey and Peter carpenter. Thank you to all

22:47

the next on the list then is Sainsbury's supermarkets limited.

22:53

Mr. Conway?

22:55

Yes.

22:57

Just about an afternoon. Good afternoon, if you would wish now to give your representation in respect of Sainsbury's supermarkets limited I have before me, the representations that you've put in, which are basically rep 1303.

23:20

That's right. That's the letter of the sixth of October 23. That's correct. Yeah. Thank you. Thank you.

23:27

outlined in in that correspondence. Sainsbury stores limited to a job that referred to a Sainsbury's or the freehold owner of the farlington store extends to both the food store itself and the the large car park that sits to the west store.

23:50

The proposals on the DTO relate to the acquisition of rights over a significant extend to that platform. It doesn't just relate to the extent of the car park. It relates to the entrance routes from the adopted highway into the car park, which is the primary and sole access routes available to customers frequenting the store.

24:13

It relates to the access to the petrol filling station that relates to or comes off of that property of that access routes. And also the extent of a carwash, which is included in the rights to be secured over the land

24:30

being presented these acquisition rights is necessary and that it's proportionate because the cabling route needs to run under St. Mary's carpark in order to fulfil the project's ambitions. The connections

24:49

are complete concern as expressed in our correspondence

24:55

is one of proportionality. Whether this access route is required

25:00

But as per the guidance that all reasonable alternatives have been explored, and that the interference is proportionate, necessary.

25:09

We also questioned whether there's a clear intention, an idea of what's been proposed to use the land given the large extent of land that was included in the cla.

25:19

We are being referenced that there are two cables to be extended, there will be trenches, probably two metres wide, in terms of the distance between the two trenches, yet we have a very significant area of land that's being proposed to be acquired.

25:38

When you have free

25:40

real concerns that we wish to present today,

25:45

what we consider to be the lack and concern over considerations when alternative cabling routes, Overlander fall into

25:55

the they extend to the acquisition rights proposed

26:00

and the lack of engagement

26:04

that we've experienced to date in regards to addressing those concerns. I

26:11

think

26:13

where we start is directly the strategic steam principles are outlined and one of the key ones that have been presented by the Quint in their presentation, their environmental statement was at the onshore cabling room will be laid in the highway.

26:30

Now what's proposed here is a very significant deviation. From that statement, we have a cabling route that follows a significant extent with private land to be placed in there permanently.

26:44

Not only does that influence the neuter the development of capacity of that land going forwards in respect to whether its cabling routes are laid.

26:56

But it also results in significant disruption to Sainsbury's and their store operation during the construction work related to those routes.

27:10

no justification in our minds been provided as to why the caving route needs to extend across the length of the entirety of the compound.

27:19

We acknowledge having engaged with Quinn's and their surveyors that there is logic as to why the cable needs to go underneath the railway that's raised and then paint to the south of the store. And that does require

27:35

the cabling with the pottery part of the carpark.

27:39

But our view is that this cabling route should move into the public highway at the earliest possible opportunity. And there are opportunities for that to be actioned much, much earlier than this proposed under the current ambitions of over Quint.

27:58

Significantly,

28:01

it's very evident to us is a route that's followed by other power cables that pass through the site.

28:09

That's about halfway up site. And if you were referring to a drawing would be advantageous. So I just present this

28:18

on the screen, if it can be seen. Mr. combo, I probably won't be able to see that if you could give me a reference to it. If it's in the examination library at the moment, I'd be grateful. What I've also got to got to work off is an appreciation of the site viewing it on our accompanied site visit so if you want to explain my talk about I've obviously got the land plan that's on the screen at the moment. And I've got my recollection of the unaccompanied site visit.

28:49

But the Learning Plan is the clear thing with respect to where there is pedestrian access points and levels, set the site appreciate if you zoom in and you can see the central area. Could I just say if I could just come in in and out here just to ensure that I'm following it. There is a bus stop on the highway just

29:15

above the car park if I can if I can say say that just just next to not far from a road junction there. And then there was a main pedestrian way through the car park, I think to get to the stores area if you like is it that how is it in relation to that is pretty much in that location. South of your cursor is a ramp in that location provides access between the pedestrian highway. Yeah. And the carpark

29:49

of you is that if the cabling route needs to come through st Queenslander though, are we doing? acknowledge there is a good rationale for why that needs to come through.

30:00

The southern part of the carpark

30:02

that location provides an ample opportunity to put the cabling route back into the pedestrian highway and allow Sainsbury's to continue to utilise the vast majority of this carpark and principally the access route from the adopted highway at Fitzherbert road without any form of interference.

30:27

Right. So just so that I can I can be clear in it. What you're suggesting, then I've seen it in the representation is this suggestion is that the root of the road proposed development follows the highway in eastern road, I think it is down to South of that bus stop, fine, continue to talk about the bus stop.

30:49

And then and then down down the bank and into the southern part of the carpark to allow for the HDD compound in the southern area on the land plant where the number 710 are basically, essentially, yes, thank you. We think that routes, which can either be in the highway itself, or given the width of the

pavement in that location we consider that provides a potential position to lead the company we actually live in the pavement rather than the Highland by reference to public highway was effectively

31:22

back a footpath to back for like generically, but it does vary. Yeah, no, I appreciate it. And I generally to highway as comprising both the pavement and the road surface itself.

31:35

But I think we would like to highlight that there is capacity given the width of that pavement for those cables to be put into the pavement itself rather than the actual road, if necessary.

31:50

starts out by the guidance.

31:54

We believe a reasonable alternative exists for the cabling routes to not go through private LAN and it's not proportionate to

32:04

require the cable to go through Sainsbury's access road. The alternatives exist and insufficient. I'll be honest, no explanation has been given sufficient. say why that would can't be.

32:24

To follow that route would limit the level of impact on saints Greece, it would say, no doubt, the acquirer is the authority here. And compensation. We've just heard from Mr. Schwartz as to whether they've got sufficient budget and given the limited company in the UK, the recourse that compensation if they didn't have the necessary funds. But they would also prevent the neutering of the land to the north of that access round, where it's comfortable for the beat development in the future.

33:01

And respect to the second point that we wish to make it's one in respect to the extent of the acquisition of rice.

33:10

Firstly, you can see from the plot area of 710. And I do appreciate that they've been revisions to this to reduce that area, but it's a significant area of land that's being sold. Even with those revisions, that really doesn't bear any resemblance to the words that are proposed.

33:27

We've had car washes, and immediately stroke

33:32

Birdland, a recycling centre already included within the order that limits irrespective of the fact that these are my two cabling routes that are a few metres apart, and can be positioned very close to the boundary. So not to cause undue interference with the rest of the sun.

33:55

We're also concerned that the order doesn't permit pose any defined period of time in which the rights are to be utilised. Wherever a very significant parcel of land, we have undefined periods of time as to when, how and what works can be undertaken by queens, which obviously gives my clients significance of concerns, given their ability to trade from this property is solely dependent on access being available to customers.

34:32

Again, was there anything else? That Yes, sorry, I was pausing just to check my notes.

34:38

So again, we come back to this point about the scheme's principles, that the cabling route should be placed in the highway. Yet we have again the continued deviation from this without seemingly any consideration to the impact of, of land owners, particularly saints within the circumstance.

35:00

The third point briefly to mention is basically the lack of engagement. We have been engaging with a queen since May 2020. We have set out the principles of what we seek, in respect of operating our sort of construction works on the land,

35:18

that those works, they are to happen on our land.

35:26

And the otter sainsburys land, happen outside a story ping times, so not to interrupt and disturb trade.

35:35

Further, more than that they are undertaken in a way that's approved by sneeze brizo relevant transport of three relevant traffic management strategies can be put together to make sure that the impact isn't as significant as it might otherwise be.

35:54

It wasn't until the 26th of November that we've had any substantial feedback on any of these links.

36:01

It's been proposed peak trading periods will be avoided. Those peak periods being Easter and Christmas, something that we welcome

36:10

but it's not being proposed that the construction works happen outside of store trading times. There will be periods of time that queens are advising will have to happen in respect to their works during the step going store trading periods.

36:28

explicitly relates to the work that happened at northern end of the site relating to the access road between the stores car park and Fitzherbert road

36:38

sure inspected can evaluate in a way up to significant interference of that proposes to have have on Sainsbury's operation

36:48

for the promoter here to be suggesting that it's not possible to work outside and store trading hands down to take these works is something that really can't be countenanced by Sainsbury's. It's just not an acceptable format of working Given the importance of that access route to the stores operation.

37:17

The requests of the inspector

37:20

are fairly simple.

37:23

We did not think it's necessary for the rights proposed to be acquired. Those the extent of those rights are

37:30

too far reaching and disproportional.

37:35

There is an alternative cabling route that is available, it should be adopted. And consequently, the rights that has to be secured over the land should be limited to the southern parts of the site at most. And providing for the acts for that claim being returned to the public highway at the earliest possible opportunity, as believing that reasonable opportunity is presented by the ramp that provides the pedestrian access between the public highway and the carpark itself.

38:06

saying that the inspector considers that the route that is proposed by the Queens is the only reasonable reason we do not agree with that position. But if we assume that that was the case,

38:18

we think that the rights need to be limited so that they relate to only the period of works and for any reasonable access there are to maintain the cabling routes.

38:29

And that can be a far smaller area of land and then the rights proposed to be secured as RF was present. But that those work should happen outside the store trading hours to make sure that the impact on Sainsbury's is not disproportionate to the work that needs to be undertaken.

38:50

There are summary points that we wish to make.

38:53

I'm happy to answer any questions if you have any need to expand or or clarify any of the points that I've made. They're the principal concerns of things, reason and requests, man.

39:05

Thank you. I just had one question for clarification initially.

39:11

Mr. Conway, you mentioned store opening hours. What are they at the current time?

39:17

Oh, I will have to check that. I believe the shots in the 30 late evening about 10pm.

39:25

If you bear with me, I would check. Right okay, I'm happy I'm happy to take this I was going to ask as well.

39:33

In order to bring the points that you've made together in one document, would we be able to get a deadline six submission from you just to run through what you've what you've just said. I realise that it's been put in various places previously, but but if that could be done just to update us on what's been said. And if that could actually include the store opening hours then that would be useful. Okay, I've got a store up you know that there's 7am till 10pm daily with the exception of Sundays, which is

40:00

Then the default. Okay, thank you. Thank you. So the deadline submission?

40:05

Again, please if we if we could have that.

40:09

Mr. Jarvis, do you wish to respond to anything that's just been said at this stage?

40:14

Yes. Sullivan will respond on

40:19

December, Mr. Sullivan.

40:24

Thank you, sir. I'm dealing with the points in the order they were raised. And I think first of all, on the the lack of consideration of alternatives. I think it's fair to say from the changes which have been made

40:40

to the proposed development,

40:43

especially since the consultations took place in early 2018. And in early 2019, there's been a substantial amount of land removed from the eastern road. And

40:58

this is, you know, to pick the least impactful route along the cable corridor.

41:06

You also know that in the the refinement of the order limits, which was submitted a deadline one further area of Eastern road which runs adjacent to that land field was removed from the order limits. Again, because the preference there is to run the cable roof roof within the edge of zetland fields to minimise the impact on the highway. And I think in terms of looking at the alternative that Mr. Mr. Conway has suggested,

41:36

and this would remove a length of 150 metres of cable routes from Sainsbury's land. And again, looking at us two circuits, that's approximately 300 metres of trenching

41:55

and based on the

41:58

inflation rate, which is being looked at of 100 metres per week,

42:03

that would be in and around three weeks work.

42:08

And Mr. konvoy also made reference there for the potential for the cables to be installed in the pavement of Eastern road in the area he was suggesting.

42:21

Again, I think on first sight, there are quite a number of trees sitting right next to that pavement. So, again, the applicants preference would be

42:32

to avoid the the root protection areas, for those, those trees which would have the effect of pushing the cable route out into the highway itself. And the applicants view at the moment is that those impacts would would potentially have a more significant

42:51

effect on Sainsbury's than than than running the cables through their land

42:57

in terms of the extent of the land requirements

43:01

on the 26th of November, and the applicant has sent a memorandum to Sainsbury's setting out a number of measures and in response to some of the queries they have raised.

43:16

And just as a number of the highlight from

43:22

from that memo, and the first is to avoid, avoid key working times which Sainsbury's have, have, have raised the two main ones and area being two main areas, two main times being the run up to Christmas.

43:42

And that period around Christmas, when obviously the the shop would be very, very busy. And the second would be the period of running up to and during Easter.

43:53

And the memo addresses those points and provides that the the applicant would would be willing to commit to those measures.

44:02

And Mr. Conway also made reference to the store opening times and avoiding work during during those times. And so, what the applicant has proposed in the memorandum is that works could only commence at 630 in the evening and would have to be completed by 7am in the morning

44:24

against what was this would involve carrying out work for approximately three and a half hours was the store would be open and the applicants view is that the

44:36

the vast majority of the

44:40

suppose the traffic and or the footfall which would use the

44:44

store would have actually used to find out points of the day already. And this also ties in with the noise and vibration chapter and where the applicant is committed not to

45:00

undertaking any

45:03

of the the more significant noise and noise generating activities such as

45:09

tarmac cutting or pneumatic braking

45:14

during the hours of 10pm and 7am. And this

45:21

the relevance in this area is that there are residential receptors just to the west of the junction between Eastern road and farlington Fitzherbert road I should say.

45:31

And so, the applicant has put forward measures there which which do significantly

45:38

reduce the impacts over those three weeks which, within which the the works would take place over the area, Mr. Conroy as referenced, I think in terms of the

45:52

reference to the extent to the land which is required.

45:56

And again, the memorandum provided on the 26th of November assesses a number of areas where it will be possible to remove land from the order limit.

46:06

And there are approximately three different areas where this is possible. In addition, it also assesses areas where it should be possible to reduce the rights required from new connection works rights to temporary use of land.

46:29

It also sets out that the the applicant would be

46:33

willing to agree to an appropriate appropriately worded continuation clause and to agree communications protocol with Sainsbury's so they're given adequate notice of planned activities on device.

46:45

And it also even sets out some measures in relation to the works with which which which could take place on Fitzherbert road and which is outside of Sainsbury's land ownership.

46:57

And in terms of the lack of engagement, I think this is

47:02

it's worth looking back a couple of years on this. So in in late 2017.

47:08

We first engaged with Sainsbury's in relation to permissions to carry out ground investigations and to underpin the microtonic solution under the railway.

47:22

And this permission came through in 2018. When the works were undertaken from memory, it was either September or October of 2018. And we provided a significant amount of information about the project at the time. And I had a further meeting with with Sainsbury's in person in March 2019, to take them through the consultation document which was used used as part of the consultation exercise by the applicant.

47:54

Again, that meeting was summarised, and another detailed email was sent to Sainsbury's in relation to the proposed development and how it has the potential to impact things, Bruce. And I think Unfortunately, it wasn't until May of 2020, that any substantive feedback was received in terms of

48:17

Mr. Conroy being appointed, which we which we welcome greatly. And the memorandum of the 26th of November, which Mr. Mr. Conway refers to was based on a number of meetings and discussions which have taken place between the parties since his appointment and his firm's appointments. And I think we're confident that we can agree the matters that need to be agreed, and the applicant doesn't believe that rerouting the cable routes into eastern road provides any benefits whatsoever. And in effect, we are positioned as a but actually ever more negative impact on on Sainsbury's than carrying out the works in their car park,

49:03

you know, between the hours of 6:30pm and 7am in the morning. And again, if there are any further points which the examining authority would like to query them, I'm happy to answer those. Mr. Sullivan just on that. First thing that occurs to me is that you've gone through a number of measures there or I could also call them restrictions. Is it and it could be that Mr. Jarvis may wish to answer on this, is it the applicants intention that they would be secured through the draft decio in any way or not?

49:38

So the applicants intention at this time is that they're looking to enter into a voluntary agreement to secure the rights overland that are required permanently and both in connection with construction and that those matters would be contained within that voluntary agreement. However, we do recognise that should Sainsbury's not seek to enter into that voluntary agreements and on the basis that the applicant is

50:00

willing to commit to those measures that it may be appropriate at that time to include those to be secured through the development consent order. That that is sort of subject to how discussions go with the science brief in the future, but it is something that we're aware of that would be needed for the examining authorities. Recommendation period. Thank you, sir. I can. Thank you. I can entirely understand that.

50:22

Mr. Conway, was there anything that you wish to come back on, as I've said before, in the hearing, I don't wish to get into a tooing and froing. But if there were particular a particular points that you wanted to respond to at this stage, just very briefly, I agree. It's not the forum for for debate, it's just to examine some of the points that are made. Firstly, the suggestion at half 6pm it works start at that time, it wouldn't interfere with peak trading periods. It can only highlight that half six in the evening is probably when most people are commuting home and probably are doing their shopping, if they are employed during the working day. So half six to 10 is a busy period. There is a reason Sainsbury's trade during those periods, it wasn't a period where there was a substantial amount of trade, they wouldn't make them. So the suggestion that a half six would avoid any significant or notable disruption because most of the trade of the day has happened by that point. And it just frankly nonsensical.

51:25

There was reference to, you know, the least impactful route being explored the least impactful route to genuine public or to Sainsbury's, you know, that that's not being refined as to what that measures being considered against.

51:41

Putting the cabling routes along this area, to the north of the carpark area we're referring to has a significant impact free weeks of trade is not inconsiderable,

51:54

particularly when there is an alternative of being able to put the cabling route into the public highway that we find.

52:03

And then, finally, just on the points of engagement, we have been engaged since May 2020. I agree with Mr. Solomon, there has been meetings in that period. But I think it's very evident to me that since May 2020, the only form of written

52:23

assurances, including the source, because if the heads of terms were four days in advance of the deadline, or the 30th of November, we have been pressing for various commitments from the outset of our discussion. And it's only been recently that any type of commitments or suggestion of commitments has been volunteered. So I don't agree with position it's

52:49

that there's been active engagement has been discussions. But I'll be honest, a lot of the discussions have been repeating the same points as previous

52:57

conversations reflecting the fact that

53:01

direction directions weren't receivable from from Mr. Sullivan's clump.

53:06

Thank you.

53:08

Mr. Jarvis. Was there anything that you wish to come back on at this stage? Just two points, please, sir. The first is with regards to the work being proposed to start at 630. And everything is obviously a balance that the applicant needs to strike in terms of carrying out the work in good time. And therefore, the proposed start time of 630 is to allow for the bracing and cutting activities to take place which allow for a reasonable rate of installation, whether works or started to leave time and noticing that in our view, it would not be acceptable for those work to be carried out after 10pm. because of the proximity of residential receptors, it would take a considerably longer time for the work to be carried out which would have more of an impact on Sainsbury's, we put forward on the basis to be there for a longer period. With regards to the sort of queries in respect of the least impactful route. Again, it's for the applicant to take into account the balance of the impacts that it identifies in relation to the works being carried out. Some of those are environmental impact considerations. Some of those are considerations in relation to the impact on Sainsbury's in connection with the works being undertaken here. What is not the case the limitations of lesson plans are heart limits the ability for persons to entertain this car park, the applicant has put forward measures to ensure that access is retained on the most of the carpark remains able to be used. So it is acknowledged that there will be an impact with balancing all of the relevant factors. It is the applicants view that this is the least impactful option for those reasons. Thank you, sir.

54:39

Mr. Conway, was there anything else that you wish to say under this agenda item? No, I don't want to go in. Thank you. Thank you very much. Right. That brings us to the remaining representations or representations from the University of Portsmouth and Portsmouth City Council. It is now just gone one

55:00

clock so I would be taking the lunch adjournment now. But those are the first items that we'll deal with following the lunch adjournment. Just before I do adjourn, was there anything anybody wish to raise with me before I do that?

55:16

Okay, nothing heard. Thank you. I should just remind those on the live stream that if they have difficulties getting on after the lunchtime adjournment, they should refresh their browser.

55:27

The time is now just gone. One o'clock, I will adjourn the hearing to be resumed at two o'clock. That's two o'clock. Thank you.