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Fri, 12/11 1:27PM • 1:04:21

00:06

Well, good morning, everybody. And welcome to this compulsory acquisition hearing for the aqualand interconnector.

00:14

This is the second of two compulsory acquisition hearings. So welcome back to those who were involved yesterday, and welcome to those who are not.

00:23

I need to run through a few preliminary matters before we introduce ourselves. Can I check with the case team that you can hear me and that the meeting recording has started?

00:34

Good morning, Mr. Man. Having Jones case manager can hear you clearly the recording started and just to make you aware, Mr. Ward Council on behalf of Mr. capa, Mr. Jeffrey, Peter Carpenter will be joining us shortly they've been having some difficulties will be joining instructions. I see them waiting. I will just let them in very much.

00:56

Please can all participants ensure that they are muted unless invited to speak and please turn off or silence any mobile phones that are not being used to access this hearing.

01:08

This hearing is taking place virtually online. But the format content and procedure will be very similar to the traditional face to face compulsory acquisition hearings that have been held for previous decio examinations.

01:22

And so two introductions. I am Andrew Martin and I was appointed on the 12th of February 2020 under Section 65 of the Planning Act 2008. And the delegation from the Secretary of State to be the lead member of a panel to examine this application.

01:41

My background is in environmental impact assessment and ecology. And I am a chartered environmentalist and a chartered landscape architect.

01:51

My fellow panel members were also appointed under the get delegation from the Secretary of State.

01:57

And I'll ask them to introduce themselves starting with Mr. Wallace.

02:03

Good morning, everyone. My name is David Wallace. I'm a chartered member of the royal Town Planning Institute and have academic qualifications in environmental planning. I'll hand over to Mr. Roscoe. Good morning. I'm Steven Roscoe. I'm a chartered civil engineer and I have a background in engineering and development.

02:26

Thank you very much both. And can I also mention our planning Inspectorate colleagues who are working with us on this examination, some of whom you will have spoken to already have in Jones is the case manager leading the planning Inspectorate case team for this application is accompanied by two case officers Stephen Parker and Caroline Hopewell.

02:48

We are examining an application for an order for development consent for the aquent interconnector which is a nationally significant infrastructure project.

02:58

The application has been made by aquin limited, who we will refer to in this meeting as the applicant.

03:06

You will find information about the application and documents produced for this examination on the planning Inspectorate national infrastructure website.

03:16

This has a landing page for this project, and further pages that set out excuse me set out the examination procedure. The timetable relevant representations and examination documents are rule eight letter of 15th of September 2020 includes the web address.

03:36

The hearing is being held on the Microsoft team's platform, but the chat function is not in use today. Should you wish to make a comment you can use the hand up function. Though Please be advised there may be a delay before we see it. And please wait to be invited to speak. Any telephone participants should clearly state their name if they wish to make a comment. But again, please wait to be invited before making your contribution.

04:04

Please speak loudly and clearly, especially those on the telephone.

04:10

If you participate in the meeting, it is important that you understand that you will be recorded and live streamed and that the digital recording with subtitles will be published.

04:22

The planning inspector to practice is to retain the recordings for a period of five years from the Secretary of State's decision on the development consent order.

04:32

To avoid the need to edit the digital recordings, we would ask that you try your best not to add information to the public record that you would wish to be kept private and confidential. This would include information about such things as your home your address, your health, or your financial situation.

04:51

If you or we consider that there is no alternative to the disclosure of such information, we will agree a process to enable it to be made available

05:00

without informing part of the public record.

05:03

The normal way to do this will be to ask you to make general oral oral submissions, but to include any private and confidential information that you need to support it in a written document.

05:16

Whilst the written document will also need to be published, it can be redacted before publication takes place.

05:25

I will be taking note of any post hearing action points that arise during the course of the hearing. And I will seek to agree these with the applicant before we close the hearing today.

05:35

We will take breaks as necessary during the hearing. Please stay online during all breaks but turn off your camera and microphone

05:43

notes that those watching the live stream may need to refresh their browsers after a break to continue watching.

05:51

Mr. Wallace will now move on to agenda item two.

05:56

Thank you very much. The hearing today will follow the circulated agenda. And from that you will see that is specifically about the powers that the applicant is seeking for the draft development consent order for the compulsory acquisition of legal interests in and rights over land that the applicant contends is required to take the proposed development forward. The hearing is being held so that the examining authority and ultimately the Secretary of State contest this contention in the context of applicable legislation, policy and guidance. As we consider the request for compulsory acquisition, we will take into account not only what we hear today, but also all of the relevant associated information in other application documents or submissions and written representations.

06:50

compulsory acquisition hearings can also take evidence in relation to applications through development consent order for temporary possession, or use of land or rights. parties with an interest in land that is affected by such a compulsory acquisition request are known as affected persons or affected persons have been notified of this compulsory acquisition hearing, and have a right to be heard in relation to any objection about the effects of a compulsory acquisition request on their interest in land.

07:25

We have therefore notified all those parties affected by the application for the proposed compulsory acquisition powers of this hearing, and invited those who have made a substantive objection to the use of proposed compulsory acquisition powers to address us today at this hearing.

07:44

The affected persons that have requested to attend and speak today are Mr. Jeffrey and Mr. Peter carpenter. Sainsbury's supermarkets limited, the University of Portsmouth, and Portsmouth city council Winchester city council has been invited to attend is not an affected person, but nonetheless we are happy to hear from them as an interested party in relation to any relevant compulsory acquisition matters.

08:15

We have no other requests for participation. But can I just confirm if there are any other affected persons present who wish to speak today?

08:27

Okay, nothing heard. Then move on then to ask for introductions for all the relevant parties. Please indicate your name and if relevant, who you represent on each and every occasion that you speak. I'll start with the applicants representative place.

08:47

Morning Sir, I appear on behalf of the applicant. My name is Simon bird QC and I'm appearing with Mr. Martin Jarvis of Herbert Smith free hills. And so today, our principal spokespersons will be Mr. Martin Jarvis and Mr. Allen Oh, Southern of Addison young, who I have previously introduced to the examination.

09:08

Thank you very much. Thank you, Mr. Baird. And is who is here representing Mr. Jeffrey. Mr. Peter carpenter, please.

09:22

Hold on.

09:27

Good morning.

09:29

Good morning, sir. My name is Chris Jones, who can't sell photos. It's chambers. I'm acting on behalf of the carpenters patron Jeffrey Carpenter

09:39

through Blake Morgan and Anita kassian.

09:44

Thank you,

09:46

and very much, much appreciated. And who is here representing the University of Portsmouth place

09:58

Good morning. My name

10:00

My name is Keith Evans. I'm a principal associate for eversheds Sutherland, and I'm representing University of Portsmouth this morning.

10:08

Thank you very much.

10:10

And who is here representing Sainsbury's supermarkets limited please?

10:17

Good morning. My name is David Conboy. I'm a director at NUS the real estate advisors and we represent things we supermarkets limited in respect to this matter.

10:28

Thank you very much and welcome. And lastly, who is representing Portsmouth City Council, please.

10:37

Come on Morning, Sir Celina Cahoon counsel instructed by Portsmouth City Council. So you'll be hearing from some familiar names. today. Mr. Conliffe, will be our principal in effect witness.

10:51

But Mr. Leavine, is also here. And also Mr. Nash. And Mr. Hayward? Mr. Downing is not here. So I have a very brief bit of housekeeping to raise. I wonder whether you would like to do that now or whether later would be suitable. And if possible, I'd like just to finish the introductions. And then housekeeping matters before we move on in the agenda. That Thank you very much. It's very brief. I just wanted to let me know. Thank you. Thank you.

11:25

I've been a little bit remiss. I've missed off the introductions. Winchester city council. So who is appearing for them today, please? Good morning, sir. It's Steven Como planning officer which is City Council. Catherine Knight, our solicitor is also online that a separate link. as you indicated, sir, we don't have any direct London affected by the proposal. We anticipate today mainly observing the proceedings. But obviously, if something does arise that we can positively

11:58

aid the examination on, we're happy to do that. Thank you. Thank you very much, and much appreciate that. Welcome.

12:07

Okay, they're moving on to the details of today's hearing. We will be examining the application for compulsory acquisition powers and rights in the context of the Planning Act 2008, specifically, sections 122 and 123.

12:26

A link to that legislation is available on the main national infrastructure planning website of the planning inspector. But in brief, we will need to test and advise the Secretary of State on whether the land and rights that are sought are required to build or facilitate the proposed development or relate to necessary replacement land.

12:48

Wherever there is a compelling case in the public interest for the land or rights to be acquired compulsorily. And that what is sought is legitimate, necessary, reasonable and proportionate, will also be mindful of the advice set out in the Guidance by the government in its 2013 publication, Planning Act 2008 guidance related to procedures for the compulsory acquisition of land, which is also available from a link in the guidance section on the national infrastructure planning website.

13:22

Our deliberations and decisions will also be guided by the relevant human rights legislation, including the European Convention on Human Rights article six, eight and 14 and first protocol article one.

13:36

Ultimately, while considering whether to recommend or allow the application for compulsory acquisition powers, both we and the Secretary of State would take great care to weigh any interference of human rights against the public interest associated with the benefits of the proposed development and ensure that any interference is both necessary and proportionate.

14:02

It is for the applicant to demonstrate that all of the proposed compulsory acquisition powers that it seeks are justified within this framework, that all reasonable alternatives to compulsory acquisition have been explored, and that there is a reasonable prospect of it having the funds available to implement any compulsory acquisition rights that may ultimately be granted by the Secretary of State in the time allowed within any development consent order.

14:31

absolutely clear and an obvious link between our examination of the proposed development itself and our examination of the application for compulsory acquisition rights. The two are tested on their own merits according to the case. And whatever our ultimate recommendation to the Secretary of State, it is possible that he or she could grant development consent, but not some or any of the requested compulsory acquisition powers.

15:00

should stress that we will form a view over the full course of the examination on each of the requests for compulsory acquisition powers. And whether or not there is a compelling case in the public interest, not just on the submissions today, but on all the evidence put forward to us.

15:18

For those of you who are less used to a compulsory acquisition hearing, I should explain that we will be referring to a small number of the principal documents from the application to date. These are the draft development consent order at deadline five which is exam Library Reference rep five, hyphen 008. The statement of reasons, rep five hyphen 01 to

15:49

the funding statement, app hyphen zero to free the book of reference, rep five hyphens 014. And the lens plans rep five hyphen 003.

16:06

Together, these provide the bulk of the material relevant to the application for compulsory acquisition powers. In preparing for this hearing. We have also looked at all of our relevant material, including the explanatory memorandum, various chapters of the environmental statement, and the applicants funding statement, all of which are available in the exam library on the planning inspectorates national infrastructure website.

16:34

The land plan identifies all relevant parcels of land and includes a label for each that cross references to the book of reference

16:44

policies one moment was to sort that out.

16:48

The burden of reference includes a comprehensive table that lists each parcel of land, the power sought, and everybody that has been identified with a legal interest in it. It was the applicants responsibility to undertake diligent inquiry into the existence of all such affected persons in advance of making the development consent application.

17:12

The statement of reason sets out in detail why the applicant believes there is a compelling case in the public interest for it to be granted compulsory acquisition powers in the draft development consent order that these unnecessary proportionate and justified many of you will have read these application documents and provided us with your own opinion on such matters in your own written representations in advance of this hearing.

17:40

Finally, may I remind you that the focus of today's hearing is explicitly on the proposed compulsory acquisition powers and specific parcels of land or legal interests in parcels of land. And we will be not being taken any submission or evidence on any other aspects of the proposed development, including the planning merits are the wider concerns, there will be ample opportunity to write or speak to us on these broader aspects later in the examination.

18:10

Similarly, we cannot take evidence on the quantum of compensation that may be sought or awarded to any individual affected person, or the application of the compensation code is this is strictly outside the terms of reference.

18:26

to complete our preliminary item about the purposes of this hearing today, may I request all affected persons who make oral representations today to submit a follow up written submission after this hearing by deadline six, which is Wednesday, the 23rd of December. Written submissions should also be based on your representation today, rather than introducing new material, but they can include more detail and cooperative or supporting evidence. An action point list from this hearing would be helpful Mr. Mon is taking notes. We're grateful if the applicant could as well. Before I hand on to Mr. Roscoe just one or two housekeeping matters. Miss Cahoon

19:10

you wish to speak?

19:15

I'm very grateful sir. Celina Cahoon Portsmouth City Council. Very briefly this arises out of the mess that I made yesterday about the answers to questions 8.1 and 8.2. From ch one's agenda. I can confirm that the the answer to the question 8.1 in with regard to where

19:40

the local Highway Authority powers are under the DDC Oh, that is in paragraph 3.15 and three point sorry 3.16 and 3.17 of the response to the is h one hearing sir

19:59

the

20:00

answer to question 8.2, which perhaps is more import or equal imports Forgive me is, is the, the response to what consents would be required in the absence of draft decio powers. Now, that has not been fully set out. And so, given what we're supposed to be concentrating on today, I was going to suggest that if it's acceptable, we do a written note on that, as opposed to asking Mr. Hayward, for example, to speak to it, because I think in fact, it goes wider than Mr. Mr. Hay was expertise in any event. So in order to be of help and give you the best information, that's what I propose. I hope that's acceptable. I'm, I believe it is I can see my colleague, Mr. Roscoe nodding as well. So yes, that's perfectly fine. Thank you. There was one other very small thing and because you didn't mention it, and I raised it with Mr. Jones earlier that the the pre hearing is that I know, we've got to hear from a number of people today. But

21:08

we were hoping to speak for about 20 minutes on our representation. I hope that's acceptable. And and that, that you want wanting to if you wish to constrain that, then we need to know and we'll we will fill it as necessary. But I just thought I'd raise that given the length of time that some representations take. Okay, Miss, Mr. Moscow, is that okay with you?

21:34

Yes, I'm, I'm content with that. I mean, obviously, it would need to be relevant matters that you're raising to the particular hearing today, of course.

21:43

20 minutes, I I think if we, if we keep to that, then that should be perfectly acceptable. Thank you. I'm very grateful. So thank you.

21:51

Okay. Just before I hand over formally to Mr. Roscoe, I know. Mr. strat, your hand is raised. Do you have a point that you wish to raise?

22:02

No.

22:03

Oh.

22:06

Right. Okay, that hand has gone down. And I've seen a hand raised by Mr. Conboy.

22:12

Yes, thank you. And I've been talking with Pepin earlier today, in respect of the presentation of our oral evidence, it would be greatly aided by being able to reference some drawings, to highlight the point to offer a great level of clarity, talk through our points with the aid of those drawings.

22:34

Obviously, with your leave with, and I appreciate we don't have the ability to share information on the screen, so that we could

22:42

make something work in that regard. I'm talking about three or four images, and nothing more than that. It will be of great assistance to all, as they often say, a picture tells 1000 words, and I'd rather not fill the time available with my 1000 words, when a picture will do.

23:01

Right. Okay. I mean, we haven't, to the best of my knowledge received any pictures to date from you. It's not within the evidence put forward so far. We will be putting lens plans on the screen during the course of today's hearing. And we will be referring to those now. I'd advise that if there's any further material wish to submit to clarify your position that you do. So for deadline six, which is the 23rd of December. Mr. Roscoe, do you have anything to add to that?

23:37

Really, Mr. Conway, it was just to add that I, I believe that we could have a reasonable discussion about the points that you wish to raise based on the submissions that you've made so far. And the evidence that we've seen in those.

23:51

We have obviously looked at the site from from public areas,

23:56

in terms of art, and accompanied site visit. And so I'm happy to continue the discussion on that basis. And then it's for you to submit any photographs that you wish to do at deadlines. Six, thank you.

24:08

Good, No, thank you. Thank you. If you could lower your hand, Mr. Combine.

24:15

Okay, now officially hand over to Mr. Roscoe for the remainder of the agenda. Thank you.

24:21

Thank you. So turning now to agenda item three, which is summary of decio provisions, agenda item 3.1. applicant to set out briefly the DCR articles that engage compulsory acquisition and temporary possession powers. Mr. Byrd

24:38

Is it your intention to follow through these these matters or for Mr. Jarvis to do so.

24:44

So Mr. Jarvis again, sir. Thank you, Mr. Jarvis. And I wonder if you could read the transcript, which is document 557.

24:55

The sections 3.1 and 3.2. Thank you.

25:00

So the article is that the draft development consensual, which engaged compulsory acquisition powers article 22, the compulsory acquisition of land, which empowers the undertaking to acquire land within the permanent limits as shown on the land plan, Article 23, the composer acquisition of rights and imposition of restrictive covenants which authorises the undertaking to create, right, impose restrictions just come in. I'm not I can hear what you're saying, I can't hear it particularly clearly. And I'm conscious that other parties might not be able to hear it clearly, either. I wonder if some adjustment could be made on that, please? Is that any better? very slightly at my end?

25:43

I guess

25:50

that doesn't seem to be any better. I'm just conscious that I mean, I should say that I will be asking you to read a number of sections of your transcript in the introduction in the introductory agenda items. And so I would like to get this right now.

26:09

I am being told actually that others, others are hearing it quite clearly. So maybe that adjustment will suffice.

26:16

Okay, I'm surrounded by microphone, so I'll do my best. And if it's still not working, well, we'll try something else.

26:24

And I just say now that it does seem to be working now. Thank you very much so we can continue like this. Okay, thank you, sir. I'll continue from article 23. If that's okay, sir. Thank you. So article 23 is the

composer acquisition of rights in the imposition of restrictive covenants, which authorises the undertaking to create rights and impose restrictions over land, as indicated in the book of reference, as well as acquiring existing rights and the benefit of existing restrictions. Article 22, which is the time limit for exercise of authority to acquire land compulsorily, which restricts the time limit within which powers of composed requisition may be exercised to seven years from when the order is made. And article 25, which is the application of the compulsory purchase vesting declarations act 1981 and article 26 modification of part one of the proposed repurchase act 1965, which make provision for the application of the relevant tax to the exercise of the powers of compulsory purchase contained within the order of Article 27, which is the acquisition of sub soil and airspace only under Article 28. Acquisition of certain properties, which make provision as to the ability of the undertaker to acquire less than the entirety of land held by a land owner. The articles of the draft development consent order which engage temporary possession powers or article 29 rights under or over sts which authorises the temporary use of land under Overstreet article 30 temporary use of land for carrying out the authorised development, which authorises the temporary use of the parcels of land listed in sheduled 10 for the purposes set out in that shedule

27:54

article 31, which is the time limit for exercise of authority to temporarily use land for carrying out the authorised development, which restricts the temporary use of land for carrying out the development to five years. From the day the order is made. And article 32 temporary use of land for maintaining the authorised development which authorises The Undertaker to temporarily use land for maintenance within five years of operational use commencing and to stay in possession of such land as long as reasonably necessary for that purpose. Thank you, sir.

28:23

Thank you, Mr. Jarvis. I wonder if you could just update us on the seven years that you mentioned under two of those articles.

28:30

I believe it's seven years in the transcript, sir. But I did refer to five years when speaking and I can found that it has been amended in the draft development consent order to refer to five years with the time limits changed. So apologies if I refer to seven, sir. I confirm it is five years. Thank you very much. Right just Is there anything from anybody else on this particular agenda item which is just a generic summary of the DCA provisions in this regard?

28:57

Okay, nothing heard. Thank you. Amen to agenda item 3.2, which is the applicant to briefly summarise any other provisions in the DCR relating to compulsory acquisition and temporary possession. Mr. Jarvis. Thank you, sir. The following articles deal with the acquisition of land held by statutory undertakers and special category land they are article 33, but extra undertakers, which confirms that the powers of compulsory purchase and interference with rights provided for in the decio apply to land and rights held by statutory undertakers subject to compliance with the protective provisions contained at sheduled 13 to the draft development consent order, Article 36 special category land, which relates to land identified as common open space, as sorry as common open space of fuel or field allotments

and provides such land will be discharged many rights were there continuance would conflict with the order powers. An article for seven crown rights which contains protections relating to crown interest and crown land, and the following articles do not directly relate to powers of compulsory purchase or to

30:00

Temporary possession does enable the undertaker to carry out the authorised development without being restricted by tax and interest which burden the relevant land. There are 21 statutory authority to override easements for the right, which provides that the undertaking has statutory authority to carry out the authorised development notwithstanding any interference with or breach of rights which burden your land article Secretary one fee provides that this right also applies in relation to rights held by statutory undertakers, albeit subject to the protective provisions in chapter 13 and article 24 private rights of way, which provides the private rights of were extinguished when land is compulsory acquired or appropriated for the past have you authorised development unless the undertaker provides notice otherwise?

30:41

This is Jarvis thank you again, is there anything anybody wish to raise on what has just been said?

30:48

Okay, Nothing hurts. Thank you. Um, then to Section four in the agenda, which is human rights and duties under the Equality Act 2020 2010. Item 4.1 applicant to set out briefly the consideration in Article One of the first protocol to the European Convention on Human Rights.

31:06

Mr. Jarvis, please. Thank you, sir. Oscar, one of the first protocol to the European Convention of Human Rights provides every natural legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law. The applicant considers there to be a compelling case in the public interest for the proposed development to the reasons set out in the needs and benefits report, which is document referenced a pp 115 and the needs and benefits reported denden which is document reference RNP 1136. The compulsory purchase power so to know more than a necessary to ensure delivery and future safe operation of the project, the location extensive the land onshore, which the composer acquisition powers relate to, has been carefully considered and designed to optimise the route to cause as little disruption as possible to take the minimum amount of land possible and to avoid the unnecessary sterilisation of land in the future. Where further again were further engagement with landowners and further engineering work suggested that the order limit and the area of land over which powers have compulsory patches required could be reduced without affecting the applicants ability to implement and operate the project. The applicant sought a reduction to the order limit through its request for change to the draft development consent order, and the examining authority accepted these changes on the 11th of November 2020. extend to the land which would be subject to compulsory acquisition powers into the draft. DCR is therefore considered by the applicant to be no more than is reasonably necessary in connection with the construction, operation and maintenance of the proposed development for which there is a clear and compelling case in the public interest. The applicant therefore considers that the granted powers of compulsory acquisition sought would comply with Article

One of the European Convention of Human Rights. Thank you, sir. Mr. Jarvis. Thank you anything from anybody else on this? Okay, nothing heard. Thank you. On that to agenda item 4.2. applicant to set out briefly the consideration of Article six. Mr. Jarvis. Thank you, sir. Article six of the European Convention of Human Rights provides in the determination of his civil rights and obligations. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The procedures into the Planning Act 2008 are compliant with the Human Rights Act 1998. And in so far as these duties are observed by the applicant, the applicant's duties under the Human Rights Act 1998 are discharged. In particular, the draft development consent order process provides opportunities to make representations under sections 42 and 44 of the Planning Act 2008. The applicant consulted all known owners and occupiers of the land, proposed development persons who would or might be entitled to claim compensation under Section 10 of the compulsory purchase act 1965, or part one of the Land Compensation Act 1973. beneficiaries of restrictive covenants and other rights overridden may claim compensation under Section 10. The public can make representation in response to notices served under Section 56 of the Planning Act 2008. And or during the examination of the examination, for example, in the compulsory acquisition hearings, or in any written representations procedure, the examining authority called if the DCR is made by the Secretary of State, a person aggrieved could make judicial review challenge in the High Court under Section 118 of the Planning Act 2008. And the disputed compensation, there is a right to apply to the tribunal of the land at the Lands Chamber independent tribunal. Thank you, sir. Thank you, Mr. Jarvis. anything from anybody else on this agenda item?

34:39

Okay, Nothing hurts. Thank you. agenda. Item 4.3 applicant to set out briefly the consideration of Article eight. Mr. Jarvis. Thank you, sir. articulated the European Convention of Human Rights provides. Everyone has right so everyone has the right to respect for his private and family life, his or his home and his correspondence.

35:00

There should be no interference by political authority with the exercise of this right except citizens in accordance with the law. And as is necessary in a democratic society in the interest of national security, public safety, or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The applicant understands that in determining whether interference with convention rights in Article eight is proportionate, a fair balance must be struck between the public benefits sought and the interference with the effective private rights. Seeking to strike that balance. The applicant has had regard to the need for the proposed and the public benefits or the need for the proposed development and the public benefits that would bring and the interference with effective private rights as a consequence of the proposed development. The applicant has in particular designed a scheme which does not require the compulsory acquisition of any residential properties. on balance. The applicant considers that the public benefits which the proposed development would bring substantially outweigh the private loss which would arise from the interference with private rights. The applicant therefore considers that the proposed compulsory acquisition of land rights over land is legitimate, necessary and proportionate. Thank you, sir. Mr. Jarvis. Thank you anything from anybody else on this particular agenda item? Okay, nothing heard. Thank you. On to agenda item 4.4. applicant to set out briefly any duties under the

Equality Act 2010. Mr. Jarvis. Thank you the Equality Act 2010 prohibits discrimination on the grounds of protected characteristics which are age, disability, gender reassignment, marriage and civil partnerships pregnancy and maternity, race, religion or beliefs, sex and sexual orientation, which are the protected characteristic groups. Section 149 of the Equality Act 2010 requires political authorities to have due regard to a number of equality considerations when exercising their functions to the public sector equality duty. The public sector equality duty requires public authorities to have due regard to the need to eliminate discrimination, harassment, victimisation in any other conduct that is prohibited by or under the Equality Act 2010. Advance equality of opportunity between persons who share a relevant protected characteristic, not share it, and foster good relations between persons who share a relevant protected characteristic person to do not share it. The applicant is not a public authority, as defined in the Equality Act 2010 and is therefore not itself subject to the public sector equality duty that the Secretary of State will be subject to the public sector equality duty when deciding to grant or refuse the development consent order to assist the Secretary of State in making a decision on the application taking into account of the duties under the Equality Act 2010. The applicant would be pleased to submit an equality statement at deadline six. The purpose of the equality statement would be to the extent relevant to identify and assess any likely effects of the proposed development on protected characteristic groups identify the measures to minimise any such adverse effects on protected characteristic groups, and identify any relevant and proportionate measures to further enhance any beneficial effects on the protected characteristic groups. The equality statement would consider the effects of the development identified in the application document, in particular, the findings of the environmental statement, it would assess the potential effects and equality and consider whether significant effects are identified and if they would impact on protected characteristic groups differently to the general population. Thank you, sir. Thank you, Mr. Jarvis. Yes, I would wish to see a quality set of statements submitted at deadlines six. Thank you. Anything from anybody else on this particular agenda item?

38:41

Okay, nothing heard. Thank you.

38:43

On to section five of the agenda, which is a reject a review of the compulsory acquisition shedule. An updated document has been submitted in terms of the statement of reasons deadline five.

38:58

And also the compulsory acquisition schedule has been submitted previously. Mr. Jarvis onto agenda item 5.1, then the applicant to summarise outstanding objections and progress with negotiations on our top alternatives to compulsory acquisition, on the basis that I've just explained the most recent documents that we've had on these subjects. I'm happy for you just to read

39:23

the your transcript in terms of agenda item 5.1. Thank you.

39:31

Thank you, sir. So the current status of negotiation with landowners statutory Undertaker's and other apparatus owners is summarised. independencies B to D as a statement of reason, and an updated version of the statement of reasons to submit it deadline five to reflect the most recent position. Thank you, sir.

39:50

Thank you.

39:52

Was there anything else? Anything from anybody else on this particular agenda item?

39:58

Okay, nothing heard. Thank you.

40:01

I now turn to Section six on the agenda which is representations from affected persons and other interested parties. Now the affected persons who requested a compulsory acquisition hearing and wish to make oral representations, I will list in a moment I will in giving the order of appearances. I will hear first from those who haven't yet had the opportunity to speak at a compulsory acquisition hearing. So the first party I would wish to hear from would be Jeffrey and Peter carpenter. The second would be Sainsbury's supermarkets limited. The third would be the University of Portsmouth, and the fourth Portsmouth City Council. So turning first to Jeffrey and Peter carpenter, and that I understand is Mr. Zwarte.

40:58

This is what you are unmuted. Good morning, sir. Yeah, yes. Can you hear me, I can. Thank you. Now, just before we start, as has been said previously, everything that you say at this hearing will be broadcast live stream, it will also be recorded, and the planning Inspectorate will hold a record for five years. My question is, do you have your clients consent under GDPR? To discuss the matters relating to your case and evidence in this way? Yes. Thank you very much. And if I could just remind you about the information that was given about personal details in the introduction as well. Now, in terms of your representations, I've received your written submission, submission deadline five, obviously, and have considered that Rep. 5108. And my understanding from that, is that you wish to start off reading the executive summary, is that correct?

42:04

Sir, we've been monitoring and listening to the hearings of the last two days. And I'm very happy to take as read everything that's been submitted to date, and to try to narrow the matters between the various parties to assist you going forward. And I think that might be a more appropriate way, rather than just reiterating what's already been submitted. Thank you, thank you, I do have to offer a slightly different approach to to the situation in these hearings, I obviously need to offer the ability to speak and make oral representations at the hearing. But I am very grateful for the the solution that you've given me on that. So I'm happy to take the oral submissions, which is the first page and indeed the remainder of the representations, as read on that basis, then I have a number of points of clarification that I wish to raise

within those representations. And I would also then offer, Mr. Jarvis, the opportunity to respond to the reference representations and indeed to respond to any of the responses to the points that I might raise. Are you content with that method of dealing with this particular section of evidence? Yes, can I make an alternative suggestion for your consideration? Please do

43:30

which is

43:32

recognising the particular situation which our clients find themselves in in relation to the location of certain elements of the proposal.

43:41

And having listened to the

43:45

points

43:47

between you and Mr. Jarvis that have emerged over the issues, one DTO hearing, and also the CH one hearing. And given what was said, and having taken into account the applicants own oral submissions, may I may I approach our representations on the basis of topics? And then it may be that the questions that you have maybe answered in passing, and if not, perhaps at the end of each topic or during it, you might have your further particular questions. And that might make best use of time.

44:20

I'm content to do that. Please bear in mind then that I will have to link the topics with my understanding of my own questions in relation to the representations that have been put in. But I'm quite happy to proceed on that basis, if that's the basis on which you would wish to make your statement. And we'll see how it goes. Yeah, I can I can take my questions at any time. And I would obviously sort of and anticipate and expect some form of answer from them. And so I'm happy to be flexible in this regard. Thank you very much. So because Mr. Smart because you're not

45:00

actually reading from a transcript? And how long do you think you would be in setting out the matters in the options? is just what just just to give an indication if

45:12

you've got a comfort break, I think 11 o'clock in about 15 minutes alone? Yes. Yeah. And there are essentially

45:23

three, three topics. The first is the extent of the development. Right? I can I just can I just say I'm not looking to put any restriction on on this, at this stage. Just a general indication of how long you think

you think they might be, I don't need to need to know the subject areas at this time. Thank you. I would have thought about 15 minutes per topic. If I can canter through and answer any topics you have about three topics, right. Okay. I'm alive to the extensive written submissions that have been made already. And also that there will be follow up written submissions arising out of these matters anyway. So the level of detail I need to go into today is not great. But it will help to draw strands together and clarify and focus matters out of the plethora of material that you use, adding authorities vectors have before you. Okay, that's fine. Thank you very much, Mr. Watt.

46:20

If you wish to proceed, thank you, if I could just

46:24

deal with some clearing matters. Firstly, the European human rights convention points that have been flagged up in general terms. We're not going to address those specifically today. But you'll be aware that article one and article eight require essentially two matters to be satisfied. One is that the measures pursue a legitimate aim, and that our submissions may bear upon. Secondly, that they be proportionate. And that encompasses both need and compensation. And so you'll need to satisfy ourselves in relation to those aspects. But I'm not going to address those with any more particularity than that.

47:05

In relation to the

47:10

extent to the development, you will recall that the guidance for capacity acquisition

47:18

under the Planning Act 2008, issued by the Secretary of State indicates that there can be an overlap between the authorised development and the capacity purchase. And that overlap appears to arise in this match as well, for reasons I've come to.

47:35

You will also be familiar that that guidance doesn't presuppose that compulsory purchase powers necessarily follow from a determination to grant a development consent order, they're not co joined. And it's not an exception under the guidance that that co joining or disjoining might occur.

47:58

So you can have a free standing development consent order without any CPA powers, or without CPOE powers that have been trimmed back to suit the material for you during the examination period. And the guidance is not cast. To make that an exception. It's simply the approach. And this recognises you'll recall, that in circumstances that you find yourself in with a nationally snippet infrastructure project, that the guidance on the ear one or so forth, in gender is a form of presumption in favour of that development. Whereas by contrast, there is a legal obligation to undertake least intrusive measures in relation to the person having their land taken. So there's an inherent call in opposite directions on the

each category, the authorised development and the capacity purchase, and in this particular situation, so that tension, I will come to and show you why it manifests itself in different ways.

48:59

In relation to the extent to the development, we've made extensive submissions so far in relation to the scope of the authorised development.

49:10

We've heard. We've summarised our case already, we've given you case law and analysis of the scope of the Planning Act, the scope of the sections, and also the application of the second set guidance on associated development. In a nutshell, our first point, as you've seen is that the scope of the Act doesn't allow for inclusion of commercial telecommunications, save through the commercial descriptions provided for by the secular state.

49:43

And there's nothing to suggest that those are relied on. So that's our start point.

49:49

The next layer is that the question of whether or not what's been applied for is associated development. There are two aspects to that one is the scope of the second states direction

50:00

You have our submissions on that. In a nutshell, we say it's blindingly obvious that the second state had no information about the commercial telecoms before him. It was a mere intention. And he left the evaluation of whether it might or might not be for you to evaluate and make recommendations to him in due course. And that's subject of the situation here today. You have our submissions in relation to whether the guidance is satisfied or not. It's not statutory guidance is merely guidance, and therefore our prior point about the scope of the statute ready excluding it remains found. And are that's reinforced by submissions in relation to the Associated guidance associated with guidance also not being satisfied.

50:47

In a nutshell, sir, you asked, I think it was a ch. One. Is there something which prevents the commercial telecoms use as a land use form in some way being included within the compass of the associated development? Answer? Yes, the commercial telecoms has a discrete separate purpose from the electricity bearing support monitoring function, purpose of the balance of the fibre optic cables inside the cable. And it's that discrete separate purpose, which precludes in law, the inclusion of the

51:29

use of fibre optic cables, otherwise, then for a support monitoring function, and it's as simple as that. And that's on the applicants own case, under their fibre optic cable submission document, paragraphs, 5.234 and so forth. They spell it out in terms for you. Related to that, sir, the telecoms building, they spell out, I think it's in paragraph 5.4 is exclusively or solely, I think they say,

52:03

for the commercial telecoms. So it's parasitic on that point. So when we come in due course, to the land extent, we say this if we're right, in relation to the commercial telecoms, that removes the cables on our land in relation to that element, and it takes with it the telecoms building.

52:26

Now, to answer a question that may be in the back of the examining authorities mind.

52:33

So, what

52:35

the cables, we know that we have from the description development from for example, plates and 3.2 of the chapter three of the EBS volume one document reference 613. And similarly, plate 3.3, where the fibre optic cables are shown

52:57

a bundle of cables inside one large cable of which a an amount will be used for support function in relation to monitoring and intercommunication between covered stations. And the

53:11

otherwise use less balance

53:16

will simply be providing a packing function to maintain the outer diameter as it were, of the cable.

53:25

Well, so far as those those presence of those cables make a difference. They make a difference when they emerge onto our clients land as a separate feed like a railway track, budding away from the main cable and being plugged into the telecoms building, which itself is operational development.

53:48

So both the telecoms building operation development, and that cable coming out operation development, our development on our clients land, so it makes a difference for that reason. So there's no answer is the applicant may say that, so what the cable has fibre optic cables in it, there's no material difference, there is certainly a material difference. And we helpfully heard from Mr. Jarvis yesterday, when he candidly on behalf of aquin. Limited the applicant accepted that you could write out right down the decio to exclude those fibre optic cables, which were anticipated to be used for commercial telecoms. And it would make no difference to the application. We agree and we provided you with submissions previously that show where you would delete in your DCA draft to come in in the spring.

54:46

They deleted provisions.

54:49

Similarly, if you look to the funding statement, you will find no evidence anywhere in the documentation before you that there is any form of financial cross subsidy or otherwise coming from the

55:00

As cables, even if they are due to be leased to third parties for some form telecommunications, so to answer the so what question, sir, it's net no difference to exclude them from the totality of the application. It's as simple as that. Conversely, would they make a difference in relation to being present on the land? In any event? Answer Yes. Because only because of the commercial telecoms use envisage. Would there be present physically a telecoms building and associated carpark

55:34

only because of that, is there a proposal to compulsorily acquire that land. So you can see as the secular state's guidance indicates, for capacity purchasing the planet 2008 sphere, there can be an overlap between the development and the CPO and here there is such an overlap. So we would say in relation to the extent of land take arising out of the associated development, that logically if we're correct, that would remove the telecoms building, it would remove the fibre optic cables, physically as an engineering operational development from our clients land, it would leave the balance of the project completely intact, because there will simply be the operation development that comprise the the H, V DC and AC cables, which will simply have a balance of use less fibre optic cables,

56:29

maintaining the diameter of the cable as it goes through the scene through the ground. So so that in a nutshell is our direction of travel that arises out of our submissions, as we've set out.

56:42

What then does does that complete your first matter?

56:50

Yes, sir.

56:51

Right.

56:54

And so from what you said previously, we have another two. Is that correct? Yes, sir. Thank you. If I could just have subject headings for the further to what's going through my mind at the moment is when to bring Mr. Jarvis into this. I'll deal with that in a moment. But I just wanted to know those headings first, please. Yes. We're going to look

57:19

next at the

57:26

the Watchtower long below

57:28

as against land take.

57:33

And this is looking at the question of the extent of the land. Right. I don't need to know any description, just the headings, please. So you've given me that for number two Mistake number three, please.

57:43

Yep. And number three, is, is funding. Because within the second topic, I indicated there were three rocheleau. envelope. Atlantic point addresses matters which you yourself raised about the extent of lantech yesterday and ch one sir. Ron, how to narrow the issues right down within that. And that will include our proposal for alternatives. And then that leaves a discrete topic of funding afterwards. Okay, thank you. Now I've got a an overview of what you're intending to do. Because you have

58:23

departed from the oral submission. That was actually put in not not the party, but done it in a different way. In terms of the oral submission that was written out. We do ask for a written summary of what has been said at deadlines in the hearing at deadline six.

58:39

Could that be provided purely because it will allow your comments to be brought together your statement oral statement to be brought together in one place? Yes. And I'm alive. The fact that we've drawn on our previous written submission is to say what I've said as well, but it will help you to crystallise where we're going. Absolutely. Thank you. Thank you. Right. Okay.

59:01

So, Mr. Jarvis,

59:05

do you wish to respond to what's been said so far? In terms of the section on extensive development?

59:14

Yes, just pick up on a few discrete points. Right, just just before you

59:22

just before you do, I do have the option of either asking you to do it now. Or waiting until after the after the short break that will have about this time.

59:33

If you were only going to be a couple of minutes doing it, I would do it. Now. If you were going to be any longer I'd leave it till after the break. Which do you think it might be? I really won't take me very long for

writing in order. Okay. Thank you In order to be teener in this then I'll hear it now and then I'll take the break after that. I should just add that in terms of the clarifications that I had missed what

59:58

they were really relating to

1:00:00

to almost more practical matters, because I could understand the submissions that being that had been made.

1:00:08

And so they don't actually probably fit. And directly under one of the categories, one of the sections that you've actually given me, I think I may possibly leave those until the end, and then effectively have a washing up or a cleaning session just just to go through any outstanding points from me. Thanks. So I'm mindful of your direction of travel. I picked up I hope, yesterday and your questions, and I hope that mindful of that I can address as many practical points as you've indicated just now. It's, it could well be and that's another reason for me leaving mine until the end. Thank you. Okay. Mr. Jarvis. Thank you.

1:00:50

Thank you. So just a few points of clarification. Mr. svart has set out that

1:00:57

commercial telecoms could not be included because the project did not apply for Section 35 direction for business and commercial project. The section 35 direction was for an energy project, which the proposed development is the commercial telecommunications use is associated development, and is to be determined in accordance with section 115 of the Act. There is nothing in Section 115 is the act or in the guidance as the only thing that can be associated development to those parts of development or those types of development rather, that fall within section 14 of the Act. So Mr. vaut is fundamentally wrong in law with his submission there.

1:01:33

The further the point was made that the outer diameter of the cables, or rather the additional cables are included within the overall cable to maintain the outer diameter that is wholly wrong. In terms of what we've submitted to date. The fact is, the outer diameter of the cable has to be searched diameter to protect the glass fibres to whisk. So they can withstand the various pressures to which they will be subjects during transportation installation and operation. The outer diameter of the fibre optic cable would not change irrespective of how many glass fibres are contained in it. The point is that the amount of fibres you can fit within that outer diameter is 192.

1:02:17

Furthermore, Mr. Schwartz purported, the state that I accepted you could write down a DTO and that it would make no difference to the application that is wholly wrong. What I did yesterday was respond to a question from the examining authority as to how if they were to determine that the associated development as we put forward, the commercial telecoms was not associated development, you could

address that in the decio such that the decio could be granted without the commercial development, it is definitely not our case that it would make no difference to the application. And that brings me on to my final point in relation to funding and cross subsidy, Mr. Waters, correct, there is no cross subsidy, it would not be in accordance with the guidance or the law for there to be cross subsidy from the commercial telecommunications cable. It is not the case. However, there will be no net difference from the loss of the commercial use of the telecommunications cable. There are significant public benefits to the ability to use those for telecommunications purpose for commercial purposes. And they are clearly set out in the news and benefits reported eiendom are set out in the hearing yesterday, sir, we will respond to all of the substantive points in relation to the fibre optic cable infrastructure and writing that they were the clarifications I wish to make today. Thank you, sir.

1:03:26

Mr. Jarvis. Thank you. Mr. Swart. I obviously don't want to get into too much of a tooting and froing on here, but was there anything in particular you wish to respond to in terms of what's just been said?

1:03:38

This is what I think you're still on mute.

1:03:45

I'm so sorry. So I'm going to use the technology. No, thank you. So we're, we're responding writing.

1:03:51

Thank you very much. And we appreciate Mr. Johnson's clarification.

1:03:56

Thank you. Right. Okay, the time is now, four minutes past 11. I'm minded to take the screen break. I will therefore adjourn the hearing to be resumed at 1110. That's 10 past 11. Thank you.