

TEXT_M25J28_ISH3_Session3_12052021

Wed, 5/12 3:16PM • 1:32:45

00:02

Welcome back, everybody, it's 130 and we are now recommencing this issue specific hearing.

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Can I just remind everybody

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attending by the live stream that you will need to refresh your browsers

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now that we've recommenced and I will point out at this stage that

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whilst it's clear that there's a number of attendees who are in offices at this stage, some may still be working from home. And if we are still

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ongoing,

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to round about 10 past three, we will adjourn again. because that tends to be the time that schoolchildren start coming home etc. So if we need to, we will take another short break then for 20 minutes or so.

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Before we move on to item 3.1 in the agenda, then can I just check whether there are any

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unresolved issues that we still need to cover off or any further comments on our previous agenda items.

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And I've seen no hands raised so with that, we'll move on to agenda item 3.1, which is to discuss whether the outline dust noise and nuisance management plan

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submitted as appendix F of the construction environmental management plan or the camp which is

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referenced rep five, zero to seven in the examination library is sufficient to deal with construction noise.

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And I will turn first to London Borough of favouring

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London Borough of hearing have have outlined or have set out a number of concerns which which they still have over the suitability of outline

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dnn, MP. I'd like to ask Mr. Davis to go through those in a little bit more detail please,

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really with an aim to giving some clarification and showing the aspects of the dust noise nuisance management plan which they believe are still lacking and outlining what they believe should be added to that document in order for it to be satisfactory. So Mr. Douglas, poverty

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like sir, then London borough paving the main issue that we that we set out in our deadlines six submission on the outline dust noise and nuisance management plan was in relation to

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table 3.2 of that have that doc document

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and which concerns the the dusk risk assessment and the mitigation measures

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around that assessment.

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And from havens perspective, whilst we do welcome the the dust risk assessment that was submitted, or has been now added to the dnn, MP,

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we do have some concerns still around

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the specific mitigation measures that

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have been proposed within it.

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We've got concerns that but they don't appear at the moment to be linked to the actual risk assessment itself.

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And their only status being likely measures. So where

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sorts of we've we've got to concern about that, and also just a broader point around the mitigation measures. It's just a concern that they're currently being left to

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in terms of the effectiveness and monitoring of those measures that are being left to to the principal contractor.

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The other point I think haven would want to make about the outline boys and dust noise a nuisance management plan is,

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is really a request really for I think probably just clarity and consistency around around some of the language used not just across that document in relation to to, to noise matters in specifically section 61

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compliance, but also section 60 ones where section 61 are referred to in the react and also and also in the in the in the camp as well.

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At the moment certainly an example it within within within the

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within the plan at the moment is around the the definition of definition of noise of noisy work. So the plan states that

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noisy works would would be accompanied by section 61 application but we do think it's important to actually define what the what the what the definition of noisy works

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actually actually prefer

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Just so there's there's there's an understanding across all the documents of what noisier works mean. So, from hirings point of view, we would define noisy works as any construction activity that causes an adverse or significant adverse impact post mitigation during during day or night.

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And we do think it's important that that's, that that's made clear, not just within within the the odn nmp. itself, but in in certainly chapter six of the environment statement, which covers noise and vibration, and also the register of environmental actions and commitments and the outline construction environmental management plan, as well. Thank you.

05:44

Thank you, Mr. Douglas,

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with any other interested party like to comment on, on the outline, dust noise nuisance management plan at this stage before I go back to the applicants.

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I'm seeing other hands raised. So I will come back to you, Mr. chalice.

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How do you respond?

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Thank you, sir. These being technical matters, I'm going to ask Mr. Lawrence to deal with noise matters and Miss Maya to deal with the dust point that

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Mr. Douglas raised perhaps starting with Miss Maya on on dust if I can hand over to her. Thank you.

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Yeah, hi, you know, my on behalf of highways England,

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I just wanted to note that since we have seen the responses provided by London borough papering deadline six we have had a meeting last week,

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where we have discussed the concerns raised on various points related to noise and dust and we have been in

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contact with the air quality specialists representing London Borough of Hebron in trying to

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agree on

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you know, the consumer the dust mitigation measures, we have provided we have taken into consideration their initial feedback in terms of removing the wording they

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wanted, you know, for example, we set examples of likely mitigation. So we have taken away the ambiguities to get some comfort along number of hearing

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that those mitigation measures are likely to be implemented.

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Old although we thought this This issue has been addressed, will be addressed and we would

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provide some comfort to London.

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I'm air quality specialist from number borohydrate Inc with further information, and we are still waiting to hear from

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from them on whether this

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matter could be put to bed. In our view, we believe that the outline thus news noise nuisance management plan

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is providing satisfactory information and we cannot progress any further this plan as it would have to reflect the construction methodologies and we would not be able at this stage to present the construction methodologies and the likelihood of the mitigation measures we have followed the dmr

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guidance for assessing the

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dust. And we believe that our plan is robust enough for this stage into the process.

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And this matter is reflected in the statement of common ground. And we are providing our position

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on what we found on the dusts risk assessment.

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Thank you, Miss buyer. Before we move on, you cut out briefly there for me at least I don't know for anybody else. Can I just summarise that this is essentially you are saying that you you're in consultation with with the specialists at catering and you are updating the the dn MP to to reflect the conversations that you've been having.

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Is it safe to assume in that case that there will be an update to that document prior to the examination? Yes, it will be and the

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Also we we we are going to update the

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plan to cover the noise aspects which have been discussed last week in terms of providing continuous noise monitoring for

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the receptors like grow farm, so we have agreed to address some of their concerns in the future.

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revised plan. Okay. And as you know this, there's a whole agenda item for growth. So we will come on to that.

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I would at this stage before we then move on to Mr. Lawrence. Can I ask Mr. Douglas,

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whether he's he's aware or has been party to the discussions that have gone on between between the applicant and Thunderbird of hearing on this topic, specifically, and whether

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more of hearing feels that the issues that they have raised are likely to be adequately addressed? addressed? Like you said, any number of hiring? Yes, I've been involved in discussions between the applicant, hiring and our and our,

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our noise and air quality, our quality specialists. I can't confirm that we had we had a meeting last week with the applicant where we, where we discussed

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a number of the concerns that we had in relation to

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documentation when specifically environment statement, chapter six, noise and vibration, and a number of those matters were were have been satisfactorily resolved from hearings perspective. And there'll be there'll be reflected in in updated statements of common ground. The the real outstanding issue is, is the the the, the table 3.2 that I referred to earlier, but we are we are continuing to discuss that with the with the with the applicant. And I'm hopeful that we can come to

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a resolution on the matter. Okay.

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Thank you. Mr. Douglas. Are you? Are you satisfied that the examining authorities is sufficiently aware of your concerns, specifically regarding that, that that table?

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I'm the concern, I suppose that we have is if we,

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if we find this to be unresolved, at closer examination, we will need to understand specifically where the issues that are outstanding, from your point of view still are?

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Yes, the the the the the issue really is is around, as I said before, the clarity on the specific mitigation measures within that within that table. That's really the the crux of it from our point of view.

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And the concern that they don't appear to be linked back to, to, to the risk assessment. That's the main the main the main issue that we've that we've got with that table, we are, we are still discussing that with the applicant and our our air quality and noise specialist, we'll be having a further discussion with the applicant to try and resolve it.

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As, as was was mentioned by the applicant further, further iteration has been sent to our to our noise specialists understand that they're reviewing that at the moment. And we hope to have an updated position for the panel that deadlines seven.

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Thank you. I can see my colleague, Mr. Allen, would like to come in here. So I'll hand off to him. Well, I was until this is I was just just the last sentence of his

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I was hoping that you'd have table 3.2 to hand Mr. Douglas, and I was going to ask you to take me

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to specifically in the table the issues that you have, would you is it would you would you prefer to the examining authority to allow matters to to to run? Do you are you anticipating a resolution to these concerns? Very quickly, then, obviously, that before you answer that, as Mr. McCarthy just said, I think it's quite important that the examining authority, you know, is clear on specifically where these issues are, because if they're not resolved by the close, and I will have to report where these concerns lie with with the landmark hearing, what I can't really do is suggest Oh, it's table 3.2. I will need to be more specific as to exactly where the issues lie. So I'm going to invite you, Mr. Douglas to either take me through specifically the table where you have the issues. Or if you would, if you think they're very close to resolution, I'll be content to allow you to kind of carry on with the discussions

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with the petition being updated the deadline seven

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Thank you. So in terms of the the specific issue, it's really around the likelihood that the meeting

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gation measures that are set out in table 3.2. So the control measures set out last set out within table 3.2. There's Sorry, sorry to interrupt you, but there's quite a lot of control issues. There's control of das control of exhaust emissions, there's control of dust emissions, job control dust emissions from general site operations. Is that Is there something you can absolutely point me to as to where what what's causing the council's concern? Do you have the documents in hand? I do have the document to answer it's it's it's not a specific mitigation measures, per se, it's more the likelihood of, of the concern that we've got is

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you've got the control set out in table 3.2.

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And at the moment,

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I believe their status as likely measures. And from our point of view, the concern is that doesn't give us a surety that these are the mitigation measures that are going to be actually implemented as part of the control measures. And that's the key issue for us

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at the moment, so it's not a it's not a specific bullet point within the MCC way and track out activity. For example, it's the is the general concept of these are likely measures as it currently stands and the surety that we've got that they will actually be be delivered. So not not wishing to put words into the applicants mouth or to direct them to how they could resolve this, but in the head in the in the

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title where it says Ted table 3.2 control measures likely to be implemented, if likely was delete was deleted in the next iteration and it said control measures to be implemented during construction activities. Would that give you the assurance that you would you were seeking

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from London borrow havens point of view would be satisfied if that wording was withdrawn? That word was withdrawn? Thank you. Mr. McCarthy.

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Thank you, Mr. Allen.

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I will I will move on at this stage to to Mr. Mr. Lawrence.

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Unless Mr Chalice you have anything further, you'd like to add at this stage before we do move on to the noise specific issues on number of hearing of raised Thank you Mark Chalmers for highways England, only to say

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at the risk of stating the obvious that it is an outline plan.

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And of course, the outline plan will become a detailed plan at the next stage of scrutiny.

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Hence, why not everything about the design and how the scheme will be built can be known at this stage and that is why there is some appropriate flex in the outline version of the plan.

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Understood, thank you.

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So, Mr. Lawrence, if I may, then Can Can I ask you to to comment on on the

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the section 61 if if that's if you're the appropriate person to to comment and the section 61 point that that London Borough of hearing have raised

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and I suppose

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touching on their their definition if you like of of noisy works and whether that that is something that

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can be agreed or whether you your definition differs.

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Okay, thank you, Adam Lawrence for highways England,

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we so on in terms of Section 61 applications, we will be applying for Section 60 ones for any works that take place outside of normal working hours. So that's all of the overnight activities.

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And in terms of where we are defining works to be noisy, our view would be it's noisy if it generates a significant effect other than an adverse effect. So we would certainly be looking to apply for Section 60 ones for anything that we were showing to generate a significant adverse effects during the day, but not for those that are adverse.

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Last episode I was

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how does that square with London birth haven?

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I think for

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London borough pay rent, I think from from, from our perspective it would be to just just to get clarity on what what significant effect would would mean me in the eyes of the of the applicant.

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Thank you Mr. Douglas, Lawrence. So that would be those that we've identified in the environmental statement as being having a significant effects. So we have thresholds for significance which we report in the environmental statement, and it's those ones that we identified there as significant that we would seek section 61 applications

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During the day,

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noted alongside as you already stated section, anything outside of normal working hours would automatically fall under Section 61. Yes.

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Okay, thank you very much. Are there any further comments for many other interested parties before we move on?

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And it seems not. So I will move on to to the next agenda item.

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That which is fairly closely tied in a number of ways to the previous agenda item the impact of what we've referred to

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as peak noise levels, that may not be the most scientific description. Nevertheless, the peak noise levels on the occupants of growth and the contribution of these levels. So the cumulative impact on the occupants And specifically, we're talking about a cumulative impact on growth farm, as opposed to the cumulative impact of other developments, etc, on the scheme as a whole

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on the occupants and whether a justification exists for a noise barrier as opposed to a visual barrier.

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So before I, before I come on to this topic in depth, I think it's worth noting that the the examining authority has has been very concerned about the effects of the proposed development on the living conditions of the occupiers of proform. From the point of view, both noise and visual effects. We note that change request date is proposed to further mitigate the visual effects by moving the currently aggressive growth farm site further away and less nudging the Garden of the property. And we also note the proposal to establish appropriate planting and a visual barrier.

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We will, towards the end of this discussion, see to confirm how these proposals would be secured and delivered in the decio. But in turning to noise, specifically,

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we will be examining sources not at this stage doesn't believe that there's a compelling case made by any party to properly confirm whether noise barrier is or is not needed. And what I had hoped to do in the first instance is invites

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comment from the residents of grow farm, and or their representatives on the current impact of, again, what we're describing as peak noise levels. Those are

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over and above background noise. So for instance, and and this is not an exclusive list, but as screeching of brakes, horns, load engines.

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I know it's

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Mr. Evans, you're ready and waiting. I had hoped that the residents would the owners of Grove farm would be able to comment on this but perhaps you've you, you're aware of the issues that they do or do not face with regard to, to outlying noise, if you like, and please, please do comment. Yeah, okay. Becky Evans on behalf of the group home residents, I think Mr. Mrs. Jones are watching but they might not be attending to discuss the matters today. I think as a company and as the residents of grow farm, we do have serious concerns regarding the noise levels still, on their mental and physical health due to the pros works coming close to the property within, I think within 20 metres. We're in agreement, and we welcome the response from the highways England regarding the change to the egress moving westerly, but we do still have serious concerns on the as you said noise and visual aspects of the proposed change moving closer. And we do feel that the visual impact of visual fencing won't have the impact that it should have on the noise. I think the main concerns are the screeching of the lorries going nearby. As you've mentioned,

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the large hgvs will always be within the left hand lane closest to the property. So there'll be the constant brakes and the lorries moving up and down, the increase in noise and just in general, and just the increase in traffic. Now I appreciate they've mentioned having the

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road servicing that lessens the noise but just generally we feel that there's a human element to this that just hasn't been considered that generally as things continue to move forward, the noise is just going to get exponentially worse.

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Appreciate from all aspects from us and also the residents of grow farm there will be additional tree planting. But as we all know tree planting won't take effect for another 10 to 15 years and from research.

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They've got to be a releasable 100 foot width to make any impact that noise impact that will be had from that new proposed scheme.

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I also think that there won't be able to have adequate sleep because of the additional traffic and location

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Forward, the quiet enjoyment in their gardens. And just general day to day, and I appreciate your site is quite noisy already. But I don't think that can just be shrugged off and said, well, it's noisy already, it's not going to make much of a difference. I think there generally is a human element to this that needs to be considered on their mental and physical well being.

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Thank you, Miss Evans, do you have anything further to add?

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I've seen the noise reports, and I can appreciate that they don't show a huge increase. I know what the other day I can say that as well. But from obviously, what we've already echoed previously, there's the toms case against secretary of state that demonstrated on the scientific level, that nose wasn't changing. But on a ground level, when the tribunals said there, there was a clear significant adverse effect on the homeowners. I wonder whether or not if there isn't a site inspection that can be taken on board?

26:02

Well, part of the reason for for hoping to be able to ask, yeah, you asked the applicant said the owner story of growth on themselves is because we, that there's, there's a hole in the evidence, if you like, over this this matter. And what we would like to understand from from, from the owners and residents, is whether whether currently, they feel that

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noise noise levels, and particularly these peak noise levels are, are obtrusive, how they impact on on day to day life.

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And whether they impact on day to day life. And how significant that impact is.

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There is as you as you mentioned, there's there's there's a large amount of data by the applicant and and we are mindful of that and take give that to consideration. But we have this this is an aspect of the issue that we don't feel that we've heard from the owners of grow from the residents of the nearest properties

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properly on appreciate, you may you may need to come back and perhaps submit something in writing on this topic specifically. Yeah.

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Basically, if that's something that you can do by deadline seven, it would be immensely helpful, absolutely not we or we can absolutely speak to the clients and get something in writing to that effect. Thank you. Thank you, I will I will move on then.

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To Mr. Lawrence. I, I assume again,

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just to take us through in in in

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noise noise essentially is what it specifically is it is a fairly specialist topic. One that I will not pretend to know in any any great depth. So in in layman's terms you can take us through and I appreciate we also talked about this in the last hearing. But the ways the ways in which what I'm referring to as peak noise

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events, how they're factored into the the noise levels that you represent within within the reports that have come before the examination.

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Specifically, specifically,

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the terminology of I think you use la EQ, and sometimes use la with a number against them, and perhaps just

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a layman's explanation of what those what those measures mean, what those

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are just just a basic explanation. Okay, no problem. So the unit that we use for the assessment is called La 10. So that represents the highest 10% of noise levels.

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So effectively, if the level is say 70, it means for 10% of the time, the noise level is above 70 Db for 90% of the time, it's below 70.

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And we evaluate that across a day, which is taken to be from six o'clock in the morning through to midnight, and we do an annual average weekday traffic. So we take the day to day, month to month variation in traffic out of the equation, and we use a trigger. So that index has been shown to have a reasonably good correlation with community response. So the way the assessment works is to track noise level against community response and the La 10 index has shown to have a reasonably good correlation. So we know if the La 10 goes up then community adverse reactions go up and conversely if it goes down, the reaction would go down.

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So

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Just to you mentioned the time timeframe, then,

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but you also give nighttime data

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is that measured separately. So yes, so effectively, we also assess nighttime noise levels, they use an LA EQ index, which is an energy average. So that takes the varying noise level and then averages out to be a constant level. And that is assessed over the night time period, which is 11 o'clock at night through to seven o'clock in the morning. So it's a standard eight hour night time period. And in trying to establish them how how peaks of noise. so loud events are factored into this the averaging, how many measurements are taken over over a period of time over an hour, say,

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to contribute to this data? Well, if you were taking a noisy measurement, you will be sampling the noise levels several times a second. So you would measure the noise level on a second by second basis and your sound level metre would tell you, it would do that statistical distribution for you and tell you at what point you're 10%, higher 90% lower?

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Yes. So since you're gone, you're gone. I'm going to say we we basically use that index directly. So we then have a traffic forecast that says there'll be this many 1000s of vehicles. And from that we use our calculation routine to work out what that la 10 level would be. And then we know 10% at the time will be higher than that, but 90% of the time, we lower than that.

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Okay, but again, that's that's true that that's not true for nighttime, or it's a different set the nighttime index, you don't have the percentage above and below because it's done on an energy average basis, rather than a time average basis. Okay, so there's no information in the LA queue about how peaky or not it is. Right? So there isn't there is nothing to tell us. At this stage, what the

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weather there are noise levels that that currently would be

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us significant disturbance to residents at the most disturbing time, if you like? Well, I mean, the the general noise of traffic on roads is very similar from road to road across the country. And so the indexes, and the levels have been set with that in mind. So we've set an LA cue level for nighttime and we've set an la 10 level for daytime, based on levels of significance, which are then who tie in with the various research on community response and responses to okay.

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And so

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that the baseline data that you have, I think I'm right in saying essentially that they're not too dissimilar from from daytime to evening, although I appreciate there are different different measures. But but they're high 60s 6768, I believe. from memory. Yep. For the southern noise growth farm, specifically growth farm specifically, I think the day time measure was very high 60s. I don't remember the exact number for it. The nighttime level is lower than that. But I'm afraid I don't remember how much lower it is. No, I think it's an I appreciate decibels or a logarithmic scale. So if you say it's five decibels less Actually, that's a significant difference potentially. But

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that's,

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that's, that's not really the crux of my point anyway, but that's measured at at the current location of the road layer as it exists that clearly can't be measured or something that doesn't exist. It's also at a point that's in between the grove farm farm house and the two bungalow dwellings. So our prediction point for Grove farm is one metre from the facade of the farmhouse itself. So measurements are taken not at the same point that the assessment is conducted.

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So between the farmhouse and the bungalow dwellings,

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is that that faces towards the M 25. As opposed to the a 12. Off slip and the roundabout specifically. Yes, yes. Although I don't think the grove farm farmhouse will provide much screening of the noise on the a 12 slip road because it will be coming from either side of the farmhouse across

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So, yeah, my, my, my concern, I suppose is is is that the the the residents as they are the owners of Grove farm who live in the farmhouse

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made it made it clear in the last hearing that their their bedroom faces towards the roundabout index at nighttime that is that is arguably the point at which most disturbance would be felt indeed and that is the point that is used in the assessment. So we've got a noise prediction point app first floor of each side of farmhouse and we're using the highest levels and the least status changes to represent that the highest impact Okay, so whilst while we wait for for for critical meant from from the residential growth farm.

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The road is you know, that the off the off slip road particularly as you know, we'll move closer to the to the property

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do you do you happen to have to hand or or within within within within your knowledge,

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approximate levels for for loud vehicles,

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such such as would be travelling around this junction? And I'm thinking particularly lorries travelling at an average speed and, and perhaps motorbikes. Do you? Do you know what the kind of general noise level emitted by by by that kind of vehicle would be?

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No, I don't, but the current a 12 slit road is around 50 metres from the property, and it is moving to be around 30 metres from the property. So a point so a single noise source on that slip road would be four DB higher, due to that reduction in distance from 50 to 30. I'd also point out that traffic similarly moving on the M 25, junction 28 roundabout and on the M 25. Slip road, they remain in exactly the same position. So any p noises going on the roundabout and up the 25 slip road are in exactly the same place as they are today. Is that is that based on the the calculation that as you move?

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As you double distance noise reduces by six decibels. Yes, for point source? Who is yours? Yeah, is it normal to use a point source on a road for individual vehicles you would but for road traffic as a whole, you're looking at the aggregate over all vehicles. And so that's a classed as a line source rather than a point source at which it's three DB for a doubling of distance. So the background noise would would reduce or black background noise would increase by three DB or background noise is generally driven by traffic on the M 25 Main Line carriageway, which doesn't move at all.

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Thank you. So coming back, I think it would be it would be there's there's little point in speculating about what what a what a noise level would be for if we don't have the information? It would be useful to I think to know

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and but i think is it reasonable to say that the types of noises that I gave examples of motorbikes, diesel lorries are are typically higher than the background noise levels that have been recorded,

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will have the background noise level that was measured will have included those vehicles doing that. So that level that was measured will have included a number of vehicles doing that. So but it is a significant part of the mitigation and the reasons for not not recommending a permanent noise barrier is a significant part of that not to say that the background noise is at such a level that the these peak noises are effectively not going to be an issue. But the reason for not recommending a noise barrier is because there's no change in noise level expected at Grove farm. So the main thrust of the noise

comes from the 25 carriageway which doesn't move and isn't altered. So the overall noise levels at Grove farm do not change by much. I fully accept the slip road moves closer, so the traffic that's on that slip road is closer. And as a consequence, any peak noises from those vehicles will be perhaps more noticeable because they are closer. But I also think that where you have a vehicle with a particularly distinctive sound, for example, a siren, you will hear it from a long way away, not just within this short section of the scheme. That's right close to grow farm you will hear it from some distance away and then

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It'll pass through and you will hear it go another way.

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Yeah. So I think what I'm trying to get to is, is really to understand that worse there is background noise and that that background noise measurement does take account of of peak noises it if, unless, let's say for argument if a if a motorbike 30 metres away from from the bedroom window is, is at around 80 decibels. And that's that's surround about, I think it's that's twice as loud as the background noise roughly, is that correct?

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So,

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yes, to a degree with Mr. Weber, we're got levels of around 70 predicted at Grove farm, on a subjective basis, a 10 Db change in noise level would be twice as loud or half as loud, depending on whether you were going up or down. So some peak noise around 80 could be perceived to be twice as loud as the ambient levels.

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But, but again, we don't have you don't have those peaks. To to, to, to give us really the two remaining questions I have.

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round off this point that and I can I'll then ask my colleague to to come in as well. But

41:25

what we're trying to establish, what I'd like to establish is really what would a noise barrier effectively mitigate? Again, let's say for sake of argument, it's 80 decibels. We're not we're not taking that as gospel at all. But we did with the noise barrier effects, effectively mitigate that kind of peak anyway, if it were in place, if it weren't. So if we were to put a noise barrier up at approximately where the visual screen has been put forward as going, it would reduce noise levels by I think around about half a decibel. And that's because most of the noise is coming from the M 25. And a barrier in that position does not scream noise from the M 25. So you would reduce noise from traffic on the slip road. But overall, you've got slip road plus around about plus m 25. Slip Pro plus m 25 main carriageway, and then further roads so that the noise barrier wouldn't wouldn't reduce the background noise which is

already there. Yes. That that's that, I guess isn't isn't a surprise, and wouldn't be an issue in terms of assessing this, this particular issue.

42:44

But then again, would would it have any effect on the types of peak noise levels that that we're talking about? So what was was, was used to what subjectively louder? Would would a noise barrier make a subjectively louder of events? Would it make any difference to that would would it become subjectively less loud with a noise barrier in place?

43:07

I think my view is that for the peak noises that are moving vehicles.

43:14

Any barrier would only have an effect for that portion of time that the vehicle is directly behind that barrier. So if it were a motorbike, it would come down the slip road it will go past grow farm and off in another direction. So the barrier may have a small effect on the peak noise levels as that vehicle passes behind the barrier. But it's not going to change your overall subjective view of that passed by because you'll have heard it from way before it starts the barrier through to way after it's gone past the barrier.

43:47

Okay.

43:49

I actually don't think there's anything I need to ask at this stage. I'll hand over to my to my colleague, John. Thank you. Yes, thank you, Mr. McArthur, Mr. Lawrence, just just to just to, for my for my simple brain, if you would just just

44:08

I want to be absolutely clear, just on that last point. So we if we if we take a vehicle that is particularly loud in a pink noise, like a motorbike or a screeching lorry or something.

44:22

I think what you said is a noise barrier at the point in which that vehicle is there, excuse me, would have an effect in dealing with that noise? Yes, it would. Yes. Thank you.

44:38

Excuse me. I only had to two questions other than that.

44:42

I need to draw really on what Mr. McArthur was just saying a few minutes ago, you know that you have not in the CS provided what the actual figures are above the 10%. Have you? You have you have an average you've given us the average of the La 10 have we

45:00

You say 10% of the time, the noise is that is above that level. But you haven't given us those figures have you? You we don't know whether it's one decibel over, or 10? decibel is over? We don't know, do we? That's right. And I don't know that either. Because those those numbers aren't, they don't exist. So the calculation methodology is about predicting that noise for that index. If you wanted to look at the LA one, which would be the level 1%, higher, or the La 90 or the La 99, you would need a different prediction procedure. And those prediction procedures aren't available. Yes. And that kind of answers. My second question, actually, which was that, and this is I think, where the examining authorities really focusing on is is I think the accusation towards the applicant is that there hasn't been that assessment of those individual peak noises and the effects that they have on the on Mr. Mrs. Jones, of of Grove farm, you've assessed it in respect of the average, and you've concluded in because it's the 25 noise. There isn't a Harmon weeks week set that evidence that you say, but it is about those peak noises 20 metres from the house or so, which haven't been assessed that that that is essentially, the applicants position, isn't it? I'm not so I'm not criticising you for it, I'm simply trying to establish the fact that that Pete noise hasn't been assessed against their living conditions. It is true that that has not been assessed. But it is also true that there is no methodology against which I could assess that I would have to come up with a methodology for doing so which would then need to be the correct methodology. So there is no methodology for assessing peak noise from traffic.

46:54

Really the case? Yeah, it's everything is done using la 10. And that's because la 10 has got that reasonably good correlation with community response. So the community response takes into account that is noisier at some points and quieter other points, and it varies from hour to hour. And that overall response is built into the why we use the La 10 index, because the general correlation with noise overall, which takes into account the peak noises and the quieter noises and the variation in noises, that responses set and based on that value, la tech. So in the La 10 value has a consideration of the effect of the peak noises. But that effect of the peak noises isn't quantified.

47:38

That's very interesting. And I think that's Miss Evans, his point isn't, it is about because we don't know whether those peak noises go a decibel over two decibels, 10 decibels over half 11 at night, for example, that would be sufficient to wake people up quite, quite considerably. And it's an assessment on a human level. That's very interesting, Lawrence, I think you've been that's a very helpful answer. Thank you very much. Thank you, thanking astrologers, before we move on, is it is it the case then that there exists no way of? Or am I right, in understanding that, essentially, there exists no way of measuring the impact on individuals as opposed to community response?

48:26

The impact of noise levels on an individual in such such as we're talking about in this case? Yeah, I mean, you would, because the community response is done as an overall community levels. So research was done in the past, which asked number of people their opinions of different levels of traffic noise, at which point you end up with a effectively a dose response function, this much noise equals this much annoyance, and that, that the curve that's in that equation is where which is the one that we use in order to set the community response and effectively the significance.

49:05

So if an individual such as such as is the case, at grow farm were to say that actually, they are suffering significant annoyance? How is how is how would that be defined? How would that be argued out in in,

49:22

in in a court? What data would be used to establish that they are or are not suffering annoyance? Would it be this same the community response information that you're that you're talking about?

49:35

I don't know, I think is the short answer.

49:42

Because essentially, the community response is, it's an average. So there will be some people that are more annoyed by one noise and there will be other people that are not annoying, not as annoyed by the same noise. Now where one person sits,

50:00

In that distribution, we can't know there's there's no way of predicting where someone sits in the annoyance distribution. They are either more annoyed or less annoyed by a noise of any kind.

50:13

Okay.

50:14

Yeah, I think I think I understand I think I'm somewhere where we need to go with with with with that information as well. Thank you very much, Mr. Lawrence. I will ask if there are any other comments on these points from interested parties before we move on.

50:35

And it does appear not. So in that case, I will, I will say thank you, Mr. Lawrence. and move on to item 3.3 in the agenda, which is whether the control of noise genuinely should form a separate requirement within the draft decio.

50:52

And I will ask,

50:55

I will ask interested parties, again, starting with the London Borough of hearing to respond first, and then then ask the applicants to come back. And at that point, I will then hand over to Mr. Allen, because it segues nicely into general DCA decio points on which he will lead. So Mr. Douglas, do you would you like to comment on whether controlling noise should be a separate requirement in the draft? dcl. Please, Thank you, sir. Then London verify you bring in short hiring is of the view that separate

requirements should be included within the decio for the control of noise. we've, we've we've we've made this position that I think they're lines four, five and six in terms of respond to the updated draft DCI itself

51:44

and the the main reason around that is whilst it is noted that in in as has been discussed within the react and within the odn MP, and within the outline camp, there are there are references to securing section 61 consents with the local planning authority, given that they are they are outlined documents at this stage it would provide us with with the surety we need at that time and we'll be we'll be involved in section one consents section 61, consents for for nighttime works out of hours working etc.

52:22

we would we would put forward as a suggestion for a requirement.

52:28

That's the principal contractor will apply for Section 61 consents under the control of the Pollution Act 1974. Some construction work, if noisy, weekend out of hours or nighttime working?

52:42

This should be discussed when engaging with the local authorities prior to works commencing and any additional assessment undertaken at that stage. And that would be the the requirement that we would propose. Thank you.

52:53

Thank you, Mr. Davis. That is that is that wording with us already? Have you submitted that already? Or?

53:02

No, sir. We haven't submitted that precise wording. It would be our intention to do so at deadline seven. Thank you. Thank you very much. And so in terms of the suitability of the existing wording, is it is that the only the only amendment that you would wish to make

53:18

within the dcl?

53:21

In relation to the current control of noise? Yes. Thank you.

53:26

And I'll ask Transport for London whether they have any comments. Mr. reinberg.

53:35

If you're I'm back Transport for London. We don't have any specific comments on requirement for a

53:43

requirements on noise now.

53:48

Thank you, Mr. reinberg. Are there any other interested parties who wish to comment at this time?

54:01

I'm Seeing no further. No further hands. I will. I will hand over to Mr. Allen now. And I'd also at the same time ask the applicant to respond to what they've heard from London Borough of hearing. Mr. Chalice please. So thank you, Mark chelas for highways England, in response to the question is put should there be a separate requirement in the decio for noise?

54:28

We think not in that it is already dealt with under the camp and there will be the DOJ the dust noise and nuisance management plan that we've been discussing. So I can't see any basis why there would need to be a separate

54:43

requirement in Section 61 issues are dealt with in that plan. So I think what we're really talking about is comment upon the existing outline and how that feeds through to the final version. And I'm afraid I couldn't write quickly enough to

55:00

Get down what Mr. Douglas said, but obviously we'll consider that But no, I think what we've got, as one of the plans in the camp will suffice.

55:11

Yes, thank you, Mr. Chair. Mr. Douglas, I have to say I'm I'm not entirely clear why you think this needs to separate requirements.

55:23

That requirement for couldn't deal with it. Now. I bet we have asked this before, of course, you did provide an answer, but I think it would be helpful to just explain, if you could, exactly why requirement for as it currently stands, doesn't deal with the issue, given these chances to answer just now.

55:52

On birth, how you bring in terms of in terms of requirement for of the, of the the draft decently the draft decio, which I'm currently looking at, at the moment, which covers the construction environmental

56:08

management plan, I think from from, from our perspective, whilst, whilst requirement four sets out the specific documents that are going to be included within within the camp itself. And we note that that includes the dust noise nuisance management plan.

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As well as the as, as well as the

56:31

the broad the broad document of the camp itself. We I think he even feels that

56:37

there isn't the the detail within requirement for to, to to kind of give us the reassurance we need that, that section 51 agreements will be, will be or section 61 consents, rather, we'll be we'll be kind of met with the with the local authorities as and when they're as and when they're required, really. So even though it is set out in the dust noise use management plan as it currently stands, there will be

57:07

section 61 will be will be dear to you, nonetheless, feel that it should be in the wording of the requirements as opposed to contained within the document.

57:19

That is opposition. Yeah, yeah. The concern that we've got is well, whilst it is referred to in the dust noise and nuisance management plan,

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as as you've said, so that that's that's part of the the the outline, that is an outline document as it stands as part of the the outline camp. And the concern is

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that

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well, whilst

57:45

the applicant May, May May state now, it would be included in the final document that's produced by the principal contractor, as it is currently an outline document. We don't have the CRN see that that we require, which is why we suggesting that it should be a separate requirement.

58:03

Or you're suggesting then that it's possible that the applicant could remove that from the final

58:10

dust noise news and management plan. They could remove essentially a require that from the document. Well, also it goes it goes into really what may be discussed under the next item, which is which is that at the present time.

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The position from the applicant is that that the final documents

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have to be substantially in accordance with the outline documents. And that price substantially in accordance with doesn't give us the insert the certainty that we that we need that, that that, that that for that that reference to Section 60 ones will be included in the final documents.

58:53

Right. Okay.

58:56

Well, I wasn't planning on on talking about that specifically, because I already know your position on that. Mr. Douglas, and I think I said at the last hearing that the exam is on is very likely to amend that in its decio. So there was nothing further to add. But but but if so, for example,

59:17

maybe without prejudice to your position that if

59:21

the examining authority were in it when it when we issue our changes scheduled changes the decio. If we were to say that, that requirement for must be the document must be in accordance with the outline document that would be sufficient, would it not

59:39

to overcome your concern if the applicant wasn't willing to do a separate requirement? If the word substantially was removed? Yes, it would. Okay, that's very helpful. Thank you. Thank you, Mr. Douglas.

59:50

Mr. Charles, do you want to come back on anything you've heard or if you say do what you need to say? Thank you. So I don't think I've got anything very substantial to add to

1:00:00

What I have already said it's dealt within the plan that we've been discussing. And I think that's adequate. And as will be appreciated, the final version has to go through a consenting an approval process via the Secretary of State. And I don't think that the section 61 point actually does merit specific detail in the requirement.

1:00:23

I mean, it's not saying it's an unimportant aspect. I'm not saying that at all. But it's already covered. And I don't think it needs to be a detail, as it was sort of picked out and dealt with separately. Thank you.

1:00:37

Any other matters or noise that anybody wants to raise before I move on to item four?

1:00:45

None at all. And I can't see any hands. So.

1:00:48

Okay, so I'd like to now move on to item four, please on the agenda, which is to do with the draft development consent order.

1:00:58

You'll see from the agenda that I have a few items to discuss, specifically.

1:01:05

So if we could start with 4.1.

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And as my colleague Mr. McArthur said, a few moments ago, this leads on to or from the discussions we've just had about Grove farm.

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And I think my concern here is that

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if we were to acknowledge that change request eight is due to come in, I don't particularly want to examine that specifically, because it's not before us at this precise moment.

1:01:38

But there is proposals for a visual screen to be put up, if we set aside the noise for just a moment was not clear to me, Mr. Chan, this is how this is being secured and delivered.

1:01:53

Because yes, it will be shown on drawings, yes, there'll be maybe react commitments to this as well. But that, of course, will only give you permission to do it as such, but not actually deliver it. So now, this, of course, comes from previous for when we discussed this at the previous hearing, we asked, we dealt with an action point 16. From that, we asked you a written question, PC 2.4. And we've on on on on this. And of course, we acknowledge your responses to it. But if there are to be specific measures for Grove farm, and let's assume that the Secretary of State agrees with you that no noise barrier is needed is just a visual screen.

1:02:40

I'm not clear to how you will deliver it. And perhaps you could answer that. Thank you. So allow me to explain.

1:02:50

I mean, to take the visual barrier as a good example, an element of what we're proposing. And we're pleased by the way that Mr. or Mrs. Jones would grow pharma are receptive to the steps that highways England wishes to take to accommodate them, that would be shown on our preliminary environmental design document,

1:03:14

which is Rab 5020, in its latest version, and we would, I think, annotate that to show exactly where the fencing would go, it also shows planting as well. And then the intention is that would feed through to the landscape environment management plan, which is the subject of requirement five, and as will be appreciated, the landscaping scheme to be approved by the Secretary of State has to be

1:03:47

substantially in accordance with the preliminary environmental design, which is a drawing in fact, rather than a written document. And so, that is how that will be

1:03:59

secured. And, and that therein lies my problem, Mr. Chalice because you use the words in your response their intention, and obviously the the word substantial in accordance which of course, some Yes, it would be yes, I acknowledge that it could be set out in the lamp. But that still doesn't compel the applicant to deliver it that that's that's where I'm there is still an issue, correct me, Mr. chalice and convinced me otherwise.

1:04:31

There is nothing compelling the applicant to deliver the visual screening, they could choose not to do it. They could get permission to do it, but they could choose not to do it. And this is what I'm trying to ascertain is how the applicant can be compelled to doing it particularly given this unique circumstances that we have here with Grove farm.

1:04:54

Thank you. So Well, let me try and convince you. requirement five says that the authorised development must be lands

1:05:00

date in accordance with the landscaping scheme and lamp and therefore, on the basis that the preliminary Environmental Design feeds through to the lamp because that is how it will work, there would be a requirement and therefore compulsion on highways England to deliver what it says is going to deliver on what it wishes to deliver.

1:05:22

Right. Okay.

1:05:24

So

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having considered that answer, Mr. Chalice I, in two weeks time when I believe the examiner authority has issues, its decio. schedule changes. We remain concerned, let's say that we don't we don't think it is adequately secured. Would How is the applicants

1:05:50

receptive to the idea of a specific requirement dealing with Grove farm, which would deal not only with any visual or noise screening if if ultimately, that the Secretary of State determined a noise screen was needed?

1:06:07

But also the bespoke planting? and any other measures that were considered necessary for grow farm?

1:06:15

How would the applicant feel if the app if a site specific plan requirement was added?

1:06:24

So I'm just answering this off the cuff if I if I may, but we do understand your concerns. And I do think what's in the set of requirements already

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does accommodate the position because the landscaping needs to be approved in the in the way that I've just mentioned. But if the examining authority feels that there it needs to be broken down further, then

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I can see why that might

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you might feel that some more satisfactory solution, even if I'm not convinced it's actually necessary?

1:06:59

Well, I take your answer, thank you very much. I will certainly consider it.

1:07:05

But I think the you will, no doubt and the applicant will no doubt be aware that the examining authority is, as Mr. MacArthur said, you know, we've got a property very, very close to this to this proposed works and and where the road is going closer to it. Albeit the evidence you've you put into say that the harm, certainly noise isn't significant. But nonetheless,

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it may well be that the examining authority considers that the circumstances are such where for this property,

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bespoke measures may well be needed. But nonetheless, I will

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understand I mean, just a thought really just having with requirement five open it says in five, three, requirement five, three, the landscaping scheme must include certain details. I mean, one way of dealing with it, taking the visual fence, for example would be to add a little g to the end of that.

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To ensure that it's covered.

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I will leave you to think about that Mr. Mr. China. So no doubt you can add it to the next iteration of the

1:08:16

the of the DTO at the next deadline. And of course, if if as I say we feel that it an additional requirement is needed, notwithstanding that change, we can we can issue our schedule changes the following week. Thank you. So yes.

1:08:32

Thank you.

1:08:34

On a similar, it's not quite the grow farm. But it did occur to me in drafting some questions. And following change request number seven Mr. Chinese. But I wondered if the same issue or same concern exists for work number 32. And to do with the the golf course. Because again, whilst you may be agreeing, a plan of action for the golf course, and we've certainly noted,

1:09:01

and as i'll come on to later on, and that that part of the agenda, the responses received by the examining authority from Ludington, golf and Cleveland's

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that you're close, or if not agreeing at certain works at the golf course, to their their satisfaction. But again, I just want to be satisfied that you are compelled to do that, as opposed to walking away from this. And and I just want you to take me through again, if you can, where were you say that the highways England would have to carry out these works? And I couldn't say we've changed our minds. We've got permission to do it, but we're not going to bother. Thank you, sir. Well, we're certainly not going to leave the golf course with just 17 holes. I don't think that is a realistic possibility. But I'm just looking through the well let me say that I mean, the first part of my answer is we are

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at the moment, drawing up

1:10:00

An agreement with the landowner at Cleveland estate and also the owners of the golf course,

1:10:07

which will cover numerous aspects of the works that would need to be done. So that is how it would be controlled.

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And of course, we've got every intention of of doing that otherwise, we wouldn't have included it in the scheme.

1:10:22

I mean, as regards something specific in the requirements to make us do it.

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I'm not sure there is anything specific. And so I do recognise your concern.

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And it's something we could we can we can pick up, maybe put to you.

1:10:45

Okay.

1:10:47

With that, thank you very much. Indeed, yes. I mean, if you have a if you're doing a an agreement, that may be a private agreement with the golf course, in there. But if you can just confirm that to me that that might whilst there may be nothing within this order to compel you to do it, but nonetheless, you have signed a private agreement that that sits outside, you know, that that may suffice. But at the moment, I just need to know how I do see your point. So we are confident an agreement will be forthcoming, because of course, we changed the golf course proposals in line with what the golden course wanted. So again, I think we're pushing it an open door. But I think at the moment,

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the description of work number 32, only ties it into

1:11:38

work sheets, work plan sheets, one and three. I believe. So that is that is why I think I need a little bit more certainty than that. Again, I've got a question as again, does it need a site specific plan? Perhaps that's something but not an additional requirement? But that's something perhaps you can consider and get back to me deadlines? Yes, thank you.

1:12:08

I do just do the representatives of Grove farm want to come in at that point on anything that I've said,

1:12:17

on respect of an additional requirement or anything? Or did miss miss Evans, do you want to come back at all at that point, or you can take to move on? And we'll bring Mr. Western in just almost Western in just a moment. Sorry. But

1:12:34

no, hello, sorry, Becky Evans, on behalf growth. I think at the moment, we're content with the responses, so I will obtain some further information from the clients.

1:12:46

Thank you very much.

1:12:49

Thank you. So I believe we got a hand up. Oh, no. Oh, yes, you hadn't. As most of you got a hand up Transport for London. Good afternoon, Tony Weston, on behalf of Transport for London. I just wanted to come in there on the proposal for a requirement in respect of the visual barrier, or screening for grow farm. Obviously, at the moment, the position is is that highways England are asking Transport for London to take on responsibility for the off slip road. Now, that position hasn't actually been agreed by Transport for London at the present time. But we are mindful that should that position arise and TfL does take on responsibility for the off slip, then some of the screening for growth could actually be on or adjacent to the highway, which TfL ultimately take some responsibility for. So I think if we were to have a requirement, which deals specifically with the growth farm mitigation, then I think TfL should be consulted on their any proposals so that it can obviously have in regard to the impact of that mitigation, and also things like future maintenance and liabilities and costs for maintaining and managing

1:13:58

a separate requirement. As I'm suggesting.

1:14:03

Or considering, I should say, in respect of a grow farm, would that make it easier for Transport for London to certainly be able to see where I whether it's a visual screen or a noise screen, the Secretary of State will undoubtedly make make the decision on that. But anything that goes there and where it goes and whose responsibility would be a separate requirement would make that easier for you to be involved in that process, would it not? It would very much so I mean, we can obviously input into the design of it. And it might also inform the extent to which Transport for London takes on responsibility. I'm obviously mindful that the noise barrier the visual screening is going to be partly on highways England highway and then partly on the off slip which TfL might ultimately be responsible for. So I think TfL would need to be involved in that discussion. And there would need to be a conversation between the two authorities about who will be responsible for maintenance in the future.

1:15:00

Because if it was a physical barrier, it doesn't always make sense for two highway authorities to be maintaining separate parts of the barrier. So I think there was quite a lot of detail, which has yet to be

resolved and a requirement would certainly ensure that that detail was resolved at an early opportunity. I think some of your answer there is, is mixed in with what we're about to come on to talk about in the wider anyway. But yes, okay. That's, that's very helpful. Thank you for your certainly considered your response in deciding what we will do. Mr. Charles, do you want to come back, I'll give you the last word on this particular matter having heard from tropical plants, anything you want to add or or not at this stage? Thank you. So only the insofar as grow farm will be dealt with under requirement five as part of our landscaping scheme. Of course, TfL would already be consulted, being the relevant Highway Authority for the a 12 under requirement five one. So just to point out something of which I expect you're well aware. I suppose the only one one of the the issues there, of course, is that if you could find the length being held up, in some ways by this this issue of growth farm, whereas otherwise, he wouldn't be if there was a separate requirement.

1:16:18

Possibly. So that's possibly the cases.

1:16:22

Thank you. Thank you.

1:16:25

Can I move on then to the next item, which is 4.2 in respect of articles, 31 and 32 of the decio. And I'll be grateful if relevant parties particularly transport land and the applicant can have cited that. I put it down as a discussion points I'd like to come to I presume it's you Midwestern who will be leaning for Trump or for Latin? If that's not the case. Do? Do tell me.

1:16:56

This is in response to your letter at deadlines six rep six Oh, 44. And particularly with paragraph 210, of your your letter, where you cite issues with this, with this requirement. Sorry, this this article in the next article, perhaps you could just explain for the benefit everybody here, but also, for me, again, explain what your your concerns with these these articles are?

1:17:26

Yes, of course, Attorney Western for Transport for London. So as I understand it, the particular provisions that we're talking about were introduced into articles 31 and 32. To address impart some of transport for London's concerns about ensuring that the necessary London rights would be transferred or passed to them to allow them to manage and maintain works, which they might ultimately become the highway 44.

1:17:54

So that provision was introduced in the agreement. But having considered the provision we believe that agree that provision will only achieve and address transport for London's concerns, if we are also able to conclude a side agreement with highways England. And at the present time. We don't have a side agreement with highways England, and we are very concerned that we are running out of time to conclude the agreement within the examination period. Because there are a couple of sticking points,

which we will obviously come on to later in the agenda. But in terms of the concerns with articles 31 or 32, I think there are there are two main concerns with the provisions. Firstly,

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the wording gives highways England a power to vest and acquire land on behalf of third parties. But it doesn't actually compel them to do that. So obviously, they have the discretion, they could exercise that power in order to acquire London rights for TfL. But it doesn't compel them. And as we understand it, the only way they would be compelled was if a side agreement or protective provisions were were concluded. And we have never had those things in place at the moment. And then the second issue we have is really regarding the mechanics of how that London those rights would be vested and acquired for the benefit of TfL or or some other third party. And that really turns on the wording of the provisions themselves. So firstly, the article, Article 31 five talks about the acquiring authority, being able to execute vesting declarations to acquire land rights were expressly authorised. And it's not entirely clear what is meant by the term expressly authorised means

1:19:40

the there's no reference made it talks about being able to acquire or vest those interest where they're expressly authorised to acquire them for the benefit of a third party. But there's nothing in the decio at the moment which identifies particular land or rights which are expressly able to be acquired for third party

1:20:01

And so so that that's kind of the main concern around that. And and also if if there is some kind of separate Express authorization that is required to be given before they can exercise that power, who is going to give that express authorization? Is that something that Secretary of State would need to give? So I think it's just trying to understand kind of how that, that that provision would actually work in practice, because it's just not clear at this time.

1:20:26

I think in terms of the second issue we have is really that this vesting provision only relates to land and rights, which highways England is authorised to acquire pursuant to the decio.

1:20:41

Now, at the present time, highways England already owns land, which potentially could be passed to Transport for London or needs to be passed to Transport for London in order for Transport for London to maintain sections of highway and this particular provision wouldn't deal with that, because obviously, this is just acquiring landed rights over third party land potentially for TfL. So it's not clear how that point would be addressed. And, and it may be that I was England's answer to that is that it will be addressed in a side agreement. But as I say, we don't have the agreement in place at the time.

1:21:14

And then I think the final point that we have is really our concerns around when this power would be exercised. So when with land rights Fest in Transport for London, perhaps not so concerned with rights, but in particularly in connection with land.

1:21:30

Obviously, if, you know, under a normal and decio scheme, the acquiring authority would look to invest land, an early stage of the project in order to deliver the scheme. So we're talking about land be invested in Transport for London foreign advanced, potentially of when the actual scheme will be commenced or completed. And TfL has some serious reservations about that. Because essentially, they would become the owner of land, which could just be strips and scrub land and things like that. And the scheme wouldn't have commenced and yet TfL would be the owner of that land and potentially would have liability for it. And obviously, as any responsible authority, where you're the owner of land, you would be expected to control that land, have in places insurances. And obviously, to manage that land properly, just in case it gives rise to any liabilities or issues. I think there's another practical aspect, which we're not entirely clear how it would work in practice, which is obviously, if highways England did extra that exercises power and land festered and Transport for London, highways, England then needs that land in order to deliver the scheme. But there is at present no contract or provision, which would allow highways England to then go on to that land, which is now in tfls ownership in order to deliver the scheme. So I think there's some kind of practical issues and legalities around, you know, how, how is England with an access land which they invested in a third party?

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Thank you.

1:23:01

Now, you said that

1:23:06

had that or if there were a side agreements in place, then some of the all of the points that you've raised with article 31, may well be addressed in that in that side agreements is that that's correct, potentially, yes. So that we are tfls preference remains that we have protective provisions built into the draft decio. And the retention provision just a moment? Well, yeah, I was gonna say was there protective provisions could deal with how this article operated. And then, if they weren't in the protection provisions in the decio, then the site agreement could deal with how these articles

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effectively implemented on tfls behalf? Well, let's let's that brings me actually quite nicely onto your protective provisions. Now, this, of course, is what you submitted in at the request of the examining authority at the last issue. Hearing you submitted that deadline for now, if that were in the decio. Today, if that was sitting there in sheduled. Nine.

1:24:07

It's your wording, obviously, this decio, not the applicants. So as it's worded, does this deal with all the issues that you're that you've you've raised, or do you need to amend it? I think we would then need to amend and revisit it because obviously, those protective provisions were submitted at deadline for the revised wording in Article 31 or 32. Came out later. So I think we would just need to revisit.

1:24:34

Yeah. Okay.

1:24:46

So the question I was going to ask,

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so

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if I could bring Mr. Chalice back in at this point, please.

1:25:02

Now I've got another an item on the agenda to deal with protective provisions for updating the examining authority on protected versions slightly later on. But it may be worth bumping up transport for London's bit here as we're dealing with it

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how a power negotiations are progressing on on the side agreements.

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So they are progressing and there is a draft

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travelling

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between the parties, there are some sticking points as Miss Weston rightly said, we still very much want to conclude decide agreement with TfL before the end of this examination, and I very much hope we can. But of course, we cannot make TfL or anybody come to that sign any agreement. And so, if

1:26:01

it appears that no side agreement is going to be reached, then we will we will put forward some alternative protective provisions. So, you know, you have two versions to to look at that, we hope that won't be necessary, but we recognise it might be let's work on the proviso, Mr. Chinese for the moment, that it's that the signed the side agreement isn't going to be forthcoming before the close of the examination. And in which case, I think the only authority will need to put forward protective provisions for the Secretary of State to consider,

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albeit on the on a caveat that it can come out. If subsequently when the Secretary of State chooses to make a decision, or what when he's ready to make his decision. You've you've signed an agreement with TfL and can inform them accordingly. Now, you'd I don't believe you've offered any comments on the on the transport for London's protected revisions submitted at deadline for

1:27:03

what I was going to ask, but I don't know whether that's going to be the right thing to do now, given Miss westerns answer that that needs to be revisited. I was going to ask you whether you could in your next iteration of the end of the decio is to actually insert the protective provisions into the decio, almost as that fallback position that like if by the close

1:27:32

the agreement is not reached, and then I can offer that up to the Secretary of State or be it that it can come out if it's not needed in detail. So I think if that's what you would like us to do them, of course, we will do that. We have in fact commented upon tfls protective provisions or proposed protective provisions.

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Unfortunate, I can't give you offhand a reference number, but

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we did we did comment upon them. Okay, I did go through your responses to their Appendix A and B, or Appendix A, I didn't see anything, but I may have missed it. So I'm very happy to. But if I think that would be helpful to me, if you could put CFOs

1:28:21

protects provisions in, even if it's for the time being, or the caveat that you don't think it's necessary, but nonetheless, I think it would be. I think it's easier to have it in and then take it out, as opposed to me to try and insert it at a later stage. I understand. I'm sorry, Mr. Speaker, it may be necessary. Of course, if we can't get an agreement, I like to think there's a lot of goodwill between the parties and that we can reach an agreement. But obviously, I can't I can't entirely control that. Thank you. Question. Your Oh, sorry.

1:28:52

Thank you, Tony Western for Transport for London, I thought I would just try and assist Mr. chalice and yourself by saying that highways England did comment on the protective provisions, but they didn't produce the track change version of the protective provisions if that's what you were thinking might have been there. We have had a track change version of the protective provisions last week from highways.

1:29:15

And we are having a look at them. But there are a couple of sticking points, which is obviously slowing progress.

1:29:22

Okay. I think it would be helpful as I say, I think even because if one could be added for the time being and then subsequently amended, as you both perhaps agree, setting aside the side agreement just for a moment to agree the protective provisions and and update the dcl accordingly. And as I said, it may

well be that last knockings of this examination, you're able to advise that it doesn't need to be there and take it out or whatever it might be or I can advise the secretary of state that it's no longer required and can come out or whatever it might be. But I think I would like it in there. At least for the moment. Yes, of course. It probably gives

1:30:00

Transport for London comfort as well. Thank you.

1:30:05

So what whilst we're discussing the TfL issues, and you began your questioning by asking about paragraph two point 10 of TfL response, this was the one dealing with article 31. And article 32 of the draft decio. Yeah, which I think were inserted a deadline for but not necessarily.

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With TfL in mind, actually.

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And Miss Western made some comments about that. And there's actually more common ground actually, between us the might have been appreciated. I think we do accept that it's a power run, and not an obligation and that articles 31 and 32, are not of themselves sufficient to,

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you know, automatically vest land in TfL require highways England, to do so. So I do accept, we accept

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the broad thrust of what Miss Western was saying when she addressed you on those points.

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And really, the answer to that is that those matters of detail if I can describe them in that way, are necessarily or better dealt with in

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a signed agreement or protected provision. So we are not arguing that articles 31 and 32 do the job of themselves. And I think what Miss Western said was was fair comment by and large.

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Thank you.

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Have no further questions on that?

1:31:48

on that specific issue, Miss Western has anything else you want to add on just on those two articles? And no, thank you. Okay.

1:31:59

Bring my colleague back in here at this point, Miss McArthur it is approaching sort of 10 past three, I have no idea how, how long the next discussion point might be 4.3 on the agenda and the appropriate wording for requirement three.

1:32:18

Just wondering if this might be a good point that we just take that take a tea break and perhaps resume.

1:32:26

I don't know. Maybe sort of 25 plus three or something like that. But I think so. Let's do that. Let's take a short break. Now. we'll resume as Australia says it's 25 plus three. Thank you.