



PLANNING INSPECTORATE COMPULSORY ACQUISITION HEARING

on

15 SEPTEMBER 2023 (MORNING)

Ubiquis (Acolad UK Ltd)  
291-299 Borough High Street, London, SE1 1JG  
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PRESENT

**PLANNING INSPECTORATE**

RYND SMITH  
JANINE LAVER  
KEN PRATT  
KEN TAYLOR  
DOMINIC YOUNG

**CASE TEAM**

BART BARTKOWIAK  
TED BLACKMORE  
RYAN SEDGMAN  
SPENCER BARROWMAN

**LOWER THAMES CROSSING**

ANDREW TAIT KC  
ISABELLA TAFUR  
TOM HENDERSON

**LOCAL AUTHORITIES**

DOUGLAS EDWARDS KC (Thurrock Council)  
CHRIS STRATFORD (Thurrock Council)  
HENRY CHURCH (Thurrock Council)  
WILLIAM GULLETT (Thurrock Council)

**STATUTORY PARTIES**

ALEX DILLISTONE (Port of London Authority)  
BEN FANNING (Port of London Authority)  
CHRIS JAKES (Port of London Authority)  
ROBBIE OWEN (Port of Tilbury London Ltd)  
ALISON DABLIN (Port of Tilbury London Ltd)

**INTERESTED PARTIES**

MICHAEL BEDFORD KC (Whitecroft Care Home)  
CHARLES STREETEN (Glenroy Estates)  
JOHN LAWSON (Franks Farm)  
AARTI O'LEARY (Franks Farm)  
HEIDI SMITH (Franks Farm)  
NICK MANSELL (St Modwen Developments Ltd)  
MIKE HOLLAND  
COLIN COTTAGE (Orsett Golf Club)

1 MR SMITH: I'll just deal with some preliminary matters. Can I check with the case  
2 team and the audio-visual staff that we can be heard online and that the  
3 recordings and the livestreams have started? And I'm seeing all of the right  
4 signals from all of the right places, so on that basis, ladies and gentlemen, we  
5 will now move to introductions. My name is Rynd Smith and I am the lead  
6 member of a panel which is the Examining Authority for the Lower Thames  
7 Crossing application, and I am in the chair for this hearing. My fellow panel  
8 members will introduce themselves now, and if you're new to this process, I will  
9 flag that they and I have biographies in our published frequently asked questions  
10 that you will find online, so I'll start by introducing my colleague, Mr Ken  
11 Taylor.

12 MR TAYLOR: Good morning, everybody. I'm Ken Taylor; I'm a panel member. I may  
13 ask some questions as they arise today, and be taking notes.

14 MR SMITH: Thank you very much, Mr Taylor.

15 MR PRATT: Good morning, everybody. I'm Ken Pratt; I'm also a panel member and I  
16 will also be asking questions today as and when.

17 MS LAVER: Good morning, all. Janine Laver. I'll hand you over to Dominic Young  
18 who's on the screen. Thank you.

19 MR YOUNG: Good morning, everybody. Dominic Young. I shall be mainly in the  
20 background today.

21 MR SMITH: Thank you very much, Mr Young, so as you can see, ladies and gentlemen,  
22 we are a full bench of five, but one of us is attending virtually. This is Rynd  
23 Smith, panel lead, speaking again, and I will now introduce our planning  
24 inspectorate colleagues working with us on these examinations. We have a team  
25 led today by Bart Bartkowiak and Ted Blackmore as case managers, with case  
26 officer Ryan Sedgman in the room and Spencer Barrowman online. You will,  
27 of course, find information about the application and all of the documents  
28 produced for the examination on the Planning Inspectorate's national  
29 infrastructure planning website, and that's the place to go to in relation to any of  
30 the supporting documents that we will need access to today. Please do look at  
31 the website regularly, because we use it to communicate with you and to provide  
32 access to updated documents as they arise throughout the examination.

33 Shortly, I will be asking today's participants to introduce themselves to  
34 the hearing and – however, there are just one or two matters that I need to cover

1 before I do. You'll be conscious, no doubt, having participated in previous  
2 hearings, if you have, that we are being livestreamed and recorded. Does  
3 anybody have any concerns or any questions about the terms on which our  
4 digital recordings are made? Trust that everybody then is content and we  
5 proceed with that process. There are no raised hands, so what we're now going  
6 to do, in the normal fashion, is to hear introductions from those who have been  
7 requested to attend here today or have requested to be heard, and what we need  
8 to know is your name, the person or organisation that you're representing – if  
9 you are representing somebody – and your role, and again, briefly confirm items  
10 in the agenda that you are interested in or may wish to speak on.

11 What I'm going to do, slightly in reverse to normal order today, is that I  
12 will proceed to the applicant's team first, if that is agreeable, conscious that you  
13 may not have expected to be first, but I'm also conscious that this is an agenda  
14 that is largely directed towards the applicant, so the applicant will be being asked  
15 the main range of questions arising from today's agenda, so I thought I would  
16 invite you first, and then I'll move around the rest of the room, so to the applicant  
17 first.

18 MR TAIT: Thank you, sir. Andrew Tait, King's Counsel, and to my left Ms Isabella  
19 Tafur of Counsel, to my right, Mr Tom Henderson from BDB Pitmans. There  
20 may be others upon whom we call, but at the moment, that is the team.

21 MR SMITH: Thank you very much. Okay, so moving on, then, from the applicant, there  
22 are local authorities present, and so I am just going to check who is leading for  
23 Thurrock Council.

24 MR EDWARDS: Yes, good morning, sir. Douglas Edwards KC for Thurrock Council,  
25 so Mr Stratford, who's the DCO lead for Thurrock Council is not present in the  
26 room today; he's present online, and there are two other representatives of  
27 Thurrock Council sitting to my right who I'll invite to introduce themselves now,  
28 if I may.

29 MR SMITH: Thank you very much.

30 MR CHURCH: Morning, sir. My name's Henry Church of CBRE. I'm representing  
31 Thurrock Council.

32 MR GULLETT: Good morning, sir. William Gullett, CBRE also, representing Thurrock  
33 Council.

1 MR SMITH: Okay. Thank you very much. We then move on to Gravesham Council  
2 and Michael Bedford KC.

3 MR BEDFORD: Sir, Michael Bedford, King's Counsel. Sir, I am not actually here on  
4 behalf of Gravesham Borough Council.

5 MR SMITH: Well indeed. I was noting that you probably were wearing two hats, or  
6 maybe only one hat, so if you could clarify.

7 MR BEDFORD: Yeah. The formal position is that Gravesham Borough Council did  
8 request to appear at CAH1, but that was before, I think, we'd seen the agenda.  
9 We don't, as Gravesham Borough Council, expect to have anything to say on  
10 CAH1. If that changed and I did say something on behalf of Gravesham  
11 Borough Council, I would be very clear in identifying that that was being made  
12 on behalf of Gravesham Borough Council, but as I say, at the moment, I don't  
13 anticipate needing to say anything. Separately, as you've identified and as I  
14 think the little place Toblerone indicates, I am also separately instructed on  
15 behalf of the Whitecroft Care Home – a number of companies, though I'm using  
16 the word 'Whitecroft' if that's convenient to you because it –

17 MR SMITH: Yeah. We would be very grateful if you would, because I think there are  
18 about four different entities, at least, engaged in that representation, so  
19 Whitecroft, we understand.

20 MR BEDFORD: I'm grateful, sir, so, sir, what I will do when I make contributions is I  
21 will make it clear that I'm speaking on behalf of Whitecroft, unless I separately  
22 indicate that I'm speaking on behalf of Gravesham, but as I say, I don't expect  
23 to do the latter, and so far as CAH1 is concerned, Whitecroft are here largely to  
24 listen to what the applicant has to say, but if we do have matters that we wanted  
25 to address you on, it was most likely to be items 1 and 5 of the agenda.

26 MR SMITH: Thank you very much, very grateful. Moving on, then – and Mr Bedford,  
27 I've brought you in within the local authorities because that was actually the  
28 order that you appeared in on the appearance list, but – so I won't return to you  
29 again when we get to the interested parties and affected persons. You're  
30 introduced already. We will then go to statutory parties, and if I could go, then,  
31 to the Port of London Authority and Ms Dillistone.

32 MS DILLISTONE: Good morning, sir. I'm Alex Dillistone from Winckworth  
33 Sherwood, here for the Port of London Authority, and with me today, I have my  
34 colleague –

1 MR SMITH: Ms Dillistone, I – we’re slightly struggling with volume. Could I ask –  
2 well, firstly draw the mic in, and see if we can get more volume out that way,  
3 but could I ask somebody in charge of the room if we could have the aircon over  
4 the Examining Authority’s desk turned down just a little bit? It’s a little bit like  
5 being in an aircraft. We can’t really hear very well.

6 MS DILLISTONE: I can repeat that, sir.

7 MR SMITH: Thank you.

8 MS DILLISTONE: And I think it may have just got a little bit louder. I’m Alex  
9 Dillistone, here from Winckworth Sherwood for the Port of London Authority.

10 MR SMITH: Thank you very much.

11 MR FANNING: Good morning, I’m Ben Fanning, head of estates at the Port of London  
12 Authority.

13 MR SMITH: Thank you, and is there anybody else with your representation? We did  
14 have a Chris Jakes, I believe, on the list, but...

15 MS DILLISTONE: We do have Chris Jakes in the room with us, sir. We hope that he  
16 will not have to speak, but we –

17 MR SMITH: We see you, Mr Jakes.

18 MS DILLISTONE: He’s here.

19 MR SMITH: And you will introduce him if you need to.

20 MS DILLISTONE: We will introduce him if we need to. Thank you, sir.

21 MR SMITH: Okay. Thank you very much. Let’s, then, go to Port of Tilbury London  
22 Ltd, and I believe we have two representatives here who are both virtual, so Mr  
23 Owen, are you leading this?

24 MR OWEN: Yes, sir. Good morning, Mr Smith. I’m Robbie Owen from Pinsent Masons  
25 on behalf of Port of Tilbury London Ltd.

26 MS DABLIN: And Alison Dablin, associate at Pinsent Masons, also for Port of Tilbury.  
27 Thank you.

28 MR SMITH: Okay. Thank you very much. We do not have any parish councils listed  
29 to appear today, so we will now go onto interested parties and affected persons,  
30 and I believe we have a substantial representation via Norton Rose Fulbright for  
31 Glenroy Estates Ltd, so can whoever speaks introduce themselves?

32 MR STREETEN: Yes, sir. My name is Charles Streeten of Counsel instructed by Norton  
33 Rose on behalf of Glenroy Estates.

1 MR SMITH: Okay. Now, in terms of the remainder of your team, you will introduce  
2 them if you require at the time, presumably.

3 MR STREETEN: I have solicitors but not consultants with me, so I don't anticipate  
4 introducing anybody.

5 MR SMITH: Okay, that's clear. We then, I believe, again, have representation via  
6 Lawson Planning Partnership LPP Ltd for Mrs J Carver. Is Mr Lawson leading  
7 that? Okay, and Aarti O'Leary. We do have spare space at the table; there's no  
8 reason why you should be sitting in the audience, so to speak. And then do we  
9 have St Modwen Developments Ltd, a representative for St Modwen?

10 MR MANSELL: Hi, sir, yes. Nick Mansell from Pinsent Masons, representing St  
11 Modwen Developments Ltd.

12 MR SMITH: Excellent. Okay, so you're virtual. Right, thank you very much. We will  
13 pass over Whitecroft, and then finally, I believe, we should have Mr Mike  
14 Holland, who is representing a substantial body of affected persons. Again, Mr  
15 Holland, if maybe Lawson Planning Partnership can shuffle across, there – a  
16 little bit of microphone sharing might be needed, but if you're going to speak  
17 for more than a few moments, rather than juggling with a roving mic, it would  
18 be useful if you came forward. Maybe just slot yourself in between Port of  
19 London and Lawson. Okay. Now, I do believe that that is everybody who has  
20 requested to be heard. Can I just ask, is there anybody sitting in the room now  
21 who has not been asked to introduce themselves, who believes that they are here  
22 to do more than observe, to speak on behalf of somebody, or on their own  
23 behalf?

24 MR COTTAGE: Sir, I'm not in the room but virtually. Colin Cottage from Ardent. I'm  
25 here on behalf of Orsett Golf Club, mainly to observe but I may have some  
26 comments to make in respect of agenda item 3.

27 MR SMITH: Thank you very much, so we'll get you added to the list and we'll make  
28 sure that we do come to you if that is necessary, so, ladies and gentlemen, having  
29 gone through introductions, turning to today's hearing. The agenda clearly sets  
30 out topics that we will discuss. I think as this is the first compulsory acquisition  
31 hearing to be held at all in this examination, I'm going to just provide a little bit  
32 of the rubric for compulsory acquisition hearings in total, and distinguish  
33 slightly between what we'll be dealing with here and how we will deal with it,

1 and then what we will be – start to deal with in compulsory acquisition hearing 2  
2 that we will begin after the lunch break.

3 Compulsory acquisition hearing 1 – and this is, to a degree, a foible of my  
4 own, but I’ve always found it useful in large examinations to distinguish in the  
5 way I manage a compulsory acquisition hearing between what I would probably  
6 refer to as a strategic hearing, which is a hearing at large across the applicant’s  
7 entire compulsory acquisition case, and is seeking to surface if there are any  
8 concerns or issues of a generic or broadly impacting nature that are, in a nutshell,  
9 that relevant elements of the legal and/or the statutory and/or policy tests  
10 applicable to compulsory acquisition have not been met across the piece. So this  
11 is where we’ll be asking the applicant about their general justifications for CA,  
12 as distinct from their site-specific justifications, their broad approaches, and this  
13 is where we’ll be turning to the represented interested parties and affected  
14 persons and asking if there are large-scale, across the piece, strategic concerns  
15 about the work that the applicant has done and its justification in a global sense.

16 And you’ll see from the agenda that there are a considerable number of  
17 questions, and you’re probably looking at those and thinking, ‘How on earth are  
18 we going to get through those in a morning?’ and the answer is no, we’re not,  
19 because what I have been doing – and again, this is probably a personal foible –  
20 but for a number of examinations over a considerable number of years now, is  
21 essentially just starting gently to pick away at all of the necessary matters that  
22 are the tests, essentially, of the applicant’s strategic case. We make sure that we  
23 start examining them, and we carry on examining them until we get to the end  
24 of the examination and we’ve dealt with them all. It may be, ladies and  
25 gentlemen, that we won’t get through the full agenda today, and if that’s the  
26 case, we have additional time in October, and we have additional time – if we  
27 need it – in November. We will get to the end of this agenda. It may not be  
28 today.

29 The reason I flag that as being important is that we did decide that it was  
30 also very important we do another job today, and that is that we start the process  
31 of hearing detailed individual representations of objection to individual  
32 site-specific requests for compulsory acquisition that the applicant has made and  
33 that affect individual affected persons. We’re going to start that after lunch, and  
34 the one clear undertaking that I am going to give to you today is that we will



1 break this hearing, no matter where we are in the agenda, so that we will hear in  
2 fairness those individual affected persons who we have asked to appear this  
3 afternoon, which then takes me onto the question of compulsory acquisitions  
4 hearings 2 and onwards. Those are hearings where we will hear the individual  
5 objections of affected persons. They are very different in nature, because those  
6 are hearings that are focused around the site-specifics of the objection, and they  
7 are focused on the exploration of the objection of the individual affected person.

8 Now, the reason I make that point is because there are a number of people  
9 seated around this table who are representing parties who are individual  
10 objectors, and I just wanted to make clear that we will have a cutline this  
11 morning and the cutline will be, 'Is this a general strategic matter?' If it is, we'll  
12 deal with it this morning, or in whatever point we adjourn the remainder of the  
13 business at this hearing to. Then, when we switch mode at lunchtime to  
14 compulsory acquisition hearing 2, that's when we want your individual detailed  
15 cases to be drawn out, and very clearly, we limited the number of individual  
16 affected persons invited to this afternoon so that we give you each a fair crack  
17 and that we make sure that we hear your cases. That's why there are only four  
18 of you on the agenda this afternoon, and for anybody sitting in the room or  
19 outside who is an individual objecting affected person, thinking, 'Why am I not  
20 here at this table?' the answer is there will be additional hearings, and we have  
21 in fact just arranged publication of notice for hearings in November that will  
22 include two further compulsory acquisition hearings – in October, we will have  
23 two further compulsory acquisition hearings, and indeed, we think it's very  
24 likely that we will need them in November too. So if you're not invited today,  
25 you're not being excluded; you're just being asked to wait.

26 That's, I think, a reasonably useful introduction to these processes, so then,  
27 very briefly, we will be running this hearing in just two sessions that we're  
28 aiming to keep approximately an hour and a half in length and we will end at  
29 lunchtime come what may. Finally, as far as housekeeping is concerned, there  
30 are no planned fire drills today, so if we do hear a fire alarm then we will have  
31 to leave the building, but it's easy because we're on the outside corner and there  
32 are the fire exits immediately behind me and/or through the main door. So is  
33 everybody clear about why we're here, what purpose of the hearing is and what  
34 it's purpose isn't? Are there any questions, any matters of a preliminary or

1 procedural nature that we need to deal with before we move on to the main items  
2 of the agenda? Mr Lawson.

3 MR LAWSON: Morning, sir. Thank you. It's just when you invited us up to the table,  
4 what I should have said is that we're also accompanied by Ms Heidi Smith from  
5 Sworders, who's here to provide valuation and compensation advice to Mrs  
6 Carver, our client. We're not anticipating getting into that in this morning,  
7 because it's strategic, as you explained, but she may well need to comment in  
8 due course during the hearing.

9 MR SMITH: Absolutely, and I think what that does show – that maybe in the afternoon  
10 we will have a rejigging of the benches, because I suspect we need to provide  
11 more bench space for the individual affected persons for the afternoon, so we'll  
12 make sure that happens. Any other questions before we move on? In which  
13 case, let's get stuck in. Let's move to agenda item 3, and I am going to introduce  
14 the applicant first. I would be content, given that the questions are pre-shadowed  
15 on the agenda, for the applicant to wrap the items under (a) in its submissions to  
16 us.

17 Now, in terms of the extent of land being sought to be subject to CA and  
18 whether statutory tests are met on all land, there is a particular complex of issues  
19 that have been raised by certain affected persons, that it would really help us if  
20 you were able to address in the round, and that is essentially the rationale for the  
21 taking of parcels of land that are sought in mitigation or compensation in  
22 circumstances where that land is not directly required to be taken for the  
23 alignment or for ancillary works to directly support the physical provision of a  
24 road.

25 Now the applicant's stated case around the need for that is reasonably  
26 clear, but you need to be alive to the fact that there are some substantial  
27 objections founded on the proposition that you are taking land that you don't  
28 strictly need, and therefore could you not have taken other land? And this is  
29 where we get into the consideration of both reasonable alternatives to the  
30 specific parcels of land being taken and also reasonable alternatives to CA itself.  
31 Were there other forms of agreement that could have been used – essentially  
32 biodiversity service contracts or agreements between yourselves and providers  
33 that might have put you in a position where you didn't need to actually take the  
34 land?

1                   Then finally in this item there are the two matters, (iv) and (v), which are  
2                   essentially the same questions in relation to temporary possession. I suggest you  
3                   maybe go as far as (a)(iii) and then we'll seek to introduce others and then look  
4                   at (iv) and (v), so Mr Tait, are you happy with that?

5 MR TAIT: Yes, sir, thank you.

6 MR SMITH: Okay, off you go.

7 MR TAIT: So this is dealing with the initial – as I understand it – the initial CA and TP  
8                   request. Just to put that in context, at submission, there were 4,204 plots that  
9                   were included in the application – that's both compulsory acquisition and  
10                  temporary possession, so just by way of overview – and of those, 746 were  
11                  owned – 723 were owned by the applicant. The position at D4 on Tuesday will  
12                  update that to take account of the proposed change which you – number 1 –  
13                  which you've accepted, and the minor amendments which do not entail changes,  
14                  and so the position now is that there will be 4,207 plots, of which 746 are owned  
15                  by the applicant. That's partially also because of the reshuffling of Land  
16                  Registry, the identifications as well. There are 16,770 affected persons affected  
17                  persons overall, and of those, 689 affected persons have an interest which is  
18                  solely related to a half-width in the highway where there's unregistered  
19                  highway, and of those also 16,770, 415 affected persons have an interest limited  
20                  to a category 2 interest, so that's the overall position, including items (iv) and  
21                  (v) TP.

22                  When one comes to the extent of land, in relation to compulsory  
23                  acquisition, the position at application was 1486.72 hectares. That, at D4, will  
24                  be reduced to 1,448.58 hectares. In relation to permanent acquisition of subsoil  
25                  and rights without temporary possession of land, the position hasn't changed  
26                  since the application, 36.36 hectares, and in relation to where there is also  
27                  temporary possession of land, it's 11.16 hectares. That hasn't changed, and so  
28                  far as permanent acquisition of rights, where there is also temporary possession  
29                  of land, that will have changed from 439.56 hectares to 424.9 hectares. So those  
30                  initial figures are set out in the statement of reasons at APP-60, and at D4 they  
31                  will be updated.

32 MR SMITH: And in that regard, you, as an applicant, see yourselves as – continuously  
33                  throughout this process – seeking to subject yourself to test and refine the extent  
34                  of both land and rights required, and, where necessary, to reduce.

1 MR TAIT: Yes, sir. It's been approached as a continuing – on a continuing basis through  
2 both internal scrutiny and external dialogue, and I'll come back to that. So then  
3 coming to item (a)(ii), the statutory tests, just four points by way of overview in  
4 relation to the first statutory test in 122. Annex A of the statement of reasons  
5 sets out why compulsory purchase powers are necessary in relation to individual  
6 plots, by reference to the relevant DCO work numbers and also the nature of the  
7 work set out in schedule 1 to the DCO. Secondly, in relation to the guidance –  
8 specifically the compulsory purchase guidance at paragraph 11 – that is directed  
9 to the policy tests which reflect the human rights obligations in relation to the  
10 three different elements of section 122: first, that the land is needed for the  
11 development and is no more than is reasonably required for the purposes of the  
12 development; secondly, in relation to the mitigation and compensation land, that  
13 the land to be taken is no more than is reasonably necessary for that purpose and  
14 is proportionate, and related to that, it gives an example of where land may be  
15 needed to be acquired for the purposes of landscaping, and the Secretary of State  
16 will need to be satisfied the development could only be landscaped to a  
17 satisfactory standard if the land in question were to be compulsorily acquired.  
18 So I'll come back to that under the head of 'alternatives', because that clearly  
19 engages that.

20 And then thirdly, in relation to exchange land, where the land forms part  
21 of open space commons to be lost in the scheme, the applicant does not hold other  
22 land in the area which may be suitable to offer in exchange, and again, the test,  
23 if needed, no more land than is reasonably necessary and that what is proposed  
24 is proportionate. And just looking at the particular example in the first line about  
25 the applicant not holding other land in the area which may be suitable to offer in  
26 exchange, that is a principle which applies, notwithstanding that the applicant  
27 may have other ambitions for its land, including those which may be of a  
28 benevolent nature, such as at Hole Farm. So that is a powerful principle that  
29 operates, even if, as I indicated, a landowner might have or have had other  
30 ambitions for the land. No doubt come back to that in due course.

31 The third point is that the order limits have been drawn as tightly as  
32 possible to minimise the land requirement to the minimum, and that has involved  
33 a twofold process, as I indicated: first, internally, with a collection of  
34 multidisciplinary workshops to investigate and continue to consider the extent

1 to which land is necessary in response to representations made, but which has  
2 obviously preceded, not only through the formal – which has preceded the  
3 process of application; and secondly, externally, not merely in relation to the  
4 formal consultation process but through various meetings with stakeholders, and  
5 there are many instances where refinements have been made prior to the  
6 application and, as you know, where that is continuing.

7 MR SMITH: Continuing, yes.

8 MR TAIT: And I think the fourth point I would make is that the visions in the DCO  
9 which permit, pursuant to article 25, lesser powers to be engaged following the  
10 detailed design process, is consistent with that.

11 MR SMITH: In that regard, Mr Tait, it's probably worth us observing that those are now  
12 pretty close to standard provisions that have been perceived by multiple  
13 applicants on linear infrastructures over a considerable number of years, so the  
14 principle of the way that that operates is understood. It probably then suggests  
15 that – to the extent that there are outstanding objections – that those matters that  
16 turn on the specifics and detail might best be surfaced this afternoon or in a later  
17 CAH hearing rather than around this table.

18 MR TAIT: Understood. It's an architecture that carries through the legal and policy tests  
19 so that they remain engaged, and there are various design principles in  
20 REP3-101 which specifically require engagement of that process, minimising  
21 footprint of the works in a number of different locations, which we can refer to  
22 in due course, so that is what I wanted to stay in relation to the first bullet. The  
23 second bullet relates to 122(3), which is the global requirement for there to be a  
24 compelling case in the public interest, and that compelling case is set out in the  
25 statement of reasons, chapter 2 in the new document, in regard, obviously, also  
26 to the availability of compensation.

27 So I was then going to come to consideration of reasonable alternatives,  
28 reflecting paragraph 8 of the guidance, and there are three aspects to that. The  
29 first is in relation to alterations to the design and composition, both of all the  
30 categories, both of the highway land and also the mitigation compensation and  
31 the replacement land, and I repeat that has been a multidisciplinary process,  
32 internally and externally. There's a record of the engagement, which has been  
33 updated at deadline 3, annex B of the statement of reasons.

1 MR SMITH: Yeah, and in that respect – again somewhat targeting the Examining  
2 Authority’s interests in these matters – that’s probably where we’re seeking to  
3 dig deepest in these particular items, because I guess – playing the devil’s  
4 advocate for a moment – there are circumstances in which one, looking at a  
5 compelling case, might say, ‘Well, if this is for the mainline of a highway, then  
6 as long as all other matters are properly taken into account and that highway has  
7 been appropriately cited in principle, that there’s at least the germ of a  
8 compelling case’, and equivalently, if you need the land to form a batter, or you  
9 need the land to support the highway, or to enable exit from it or ingress to it,  
10 similarly, there is the germ of a compelling case.

11 There are, however, instances where you are seeking off-lying land and  
12 you are seeking it for, very clearly, a range of broadly environmental  
13 compensation and/or mitigation purposes, which is not to say that those are not  
14 required, but is to indicate that if you are then – as I foreshadowed before –  
15 looking at the broad question about the degree to which a specific parcel is  
16 required, there are potentially arguments that there are ranges of  
17 interchangeability of potential outcomes on different sites that might mean that  
18 that test is beginning to become just a little trickier to evidence. Now, I thought,  
19 again, it’s worth throwing that on the table because that, in a nutshell, as I see it  
20 summarises key aspects of certain individual affected persons cases that do have  
21 a strategic bearing.

22 MR TAIT: In relation to the ecological mitigation and compensation, that’s very much  
23 in collaboration with Natural England, and so the guidance that they have  
24 offered has been very closely considered, and one can see that in the way in  
25 which the ancient woodland compensation proposals, and also the NDEP,  
26 notwithstanding the reduction that we heard about last Friday, that reduction has  
27 been in collaboration, also, with Natural England, following a reconsideration  
28 of exactly the extent to which ecological connectivity can be retained, and  
29 keeping that broad comparability, so that’s my overarching point, that it hasn’t  
30 been in isolation. It’s very much dealing with the statutory body stakeholders,  
31 including local authorities.

32 MR SMITH: And so in strategic terms, you would be directing us, then, when  
33 considering compelling case in the public interest, to have regard to the fact that  
34 another parcel of land in another location, whilst it might deliver and equivalent

1 biodiversity outcome, habitat outcome, would not necessarily deliver the  
2 specific connectivity with existing sites, existing networks, the ability for  
3 existing populations of relevant species to move through and use that land that  
4 would be [inaudible].

5 MR TAIT: That's a critical theme that permeates the ecological thinking, and is one that  
6 Natural England has been anxious to secure, so in relation to biodiversity, that's  
7 the position. In relation to landscape, it's been a very carefully crafted concept,  
8 and the landscaping in its location is extensively justified in the evidence. There  
9 are other areas of mitigation, in particular ponds and alike, and again, that's been  
10 driven by the same very site-specific considerations, so that is my broad answer  
11 to that.

12 MR SMITH: Yeah, and the broad answer at this stage, I think is useful, and one of the  
13 questions across the table that I will then throw out to particularly the local  
14 authorities here, will be the degree to which they are in concurrence with that  
15 position, notwithstanding that they might have a high-level concern about other  
16 dimensions of the proposed development, but Mr Tait, please continue.

17 MR TAIT: Thank you, sir, so under reasonable alternatives, that was really the first point  
18 about changes to the design, both from the internal and external processes,  
19 including with statutory body stakeholders. The second relates to acquisition by  
20 agreement, which the statement of reasons deals with on page 61, and one can  
21 see there that within the order limits there are 76 residential properties and of  
22 those, 43 have been acquired by agreement and there is commitment in relation  
23 to a further four. That's another example of the continuing process, and for  
24 example, the Southern Valley Golf Course – the former Southern Valley Golf  
25 Course was acquired earlier this year as another instance, and the third point is  
26 –

27 MR SMITH: Mr Tait, can I just briefly stop you there, because I think that also raises a  
28 point that I suspect will arise from the floor as well, and that is that, amongst  
29 other things, you have been engaged in a strategic campaign of acquisition such  
30 that if there are particular benefits to an early acquisition, plus agreement with  
31 relevant, affected persons, you have proceeded with those as soon as you are  
32 able. Can you just paint a little bit more of a picture about that? Because again,  
33 one of the issues that arises from various representations is broadly the question  
34 about how you manage what I can very simply characterise as hardship, and the

1 particular needs of, maybe, individuals to seek an early agreement with  
2 yourselves.

3 MR TAIT: There's a difference, perhaps, in respect of the position within the order  
4 limits, and at outside the order limits.

5 MR SMITH: Yes.

6 MR TAIT: So far as within the order limits, there are a number of instances where parties  
7 have wished their interests to be acquired and that opportunity has been seized  
8 by National Highways, so I'm not aware of instances where that has been refused  
9 in the principle. Of course, the detail's another matter. Of the woodland, maybe  
10 something that we'll come to this afternoon, I think, because there are  
11 suggestions of other schemes, but I may just reserve my position to come back  
12 on that off the highway.

13 MR SMITH: Yeah. Well, in terms of reserving your position, what I will do is put a  
14 question onto the table. You may not answer it now. Others may want to pick  
15 up on it and submit to us as a strategic point, but it is in relation to the broad  
16 question of hardship and the distinction between the approach that you take  
17 within the red line boundary – where you've indicated a very clear approach –  
18 and the approach that you take with arguable instances of hardship in relation to  
19 land that is maybe directly adjacent, category 3 persons, etc., whereas we  
20 understand it, at present, your view is that you have not or do not. Is that a fair  
21 characterisation, in general terms?

22 MR TAIT: In general terms, yes, that's that.

23 MR SMITH: Okay, so at least we've got the principle on the table. I'm not going to  
24 pursue that rabbit down the tunnel any further until we're dealing with individual  
25 representation, but I think it's useful to hear your in-principle position on that  
26 divide.

27 MR TAIT: Sir, coming to the third point under reasonable alternatives, that is whether  
28 the mitigation and compensation can be secured by means other than  
29 compulsory purchase, such as a management agreement, which would be  
30 empowered by section 253 of the Highways Act 1980, and a number of parties  
31 have related to that, and reflecting paragraph 11 of the guidance – albeit in the  
32 context, specifically, of landscaping – the broad position is that in relation to the  
33 mitigation of compensation land, the case is that it is necessary to compulsorily



1 acquire that land to ensure that the land is maintained to a satisfactory standard  
2 for the purposes for which it is envisaged.

3 There are exceptions to that, and an example is in relation to Kent County  
4 Council and some of the mitigation land adjacent to Shorne Woods where a  
5 section 253 agreement has been entered into because the Shorne Woods Country  
6 Park operators, Kent, have the facilities and the appropriate personnel and  
7 experience and the local knowledge to manage that in accordance with the terms  
8 of the agreement, but bearing in mind the requirement for very specific  
9 management provisions in relation to ancient woodland recreate – ancient  
10 woodland compensation sites and the NDEP sites, as general proposition, that is  
11 not appropriate to be followed, that course of section 253. There are some other  
12 instances where it may be appropriate, where it doesn't require that standard, but  
13 that's the broad proposition.

14 MR SMITH: Okay. Right.

15 MR TAIT: So that, I think, takes me to the end of (i), (ii) and (iii), which is where I think  
16 you wanted me to pause.

17 MR SMITH: Yes, I did because I think there are distinct – there's a distinct separation  
18 regime when we move to temporary possession, and some separate issues. Can  
19 I just see, then, shows of hands either on the virtual screen or in the room,  
20 anybody seeking to address us on these items under 3(a) up to (iii)? I see  
21 Thurrock. Anybody else? Yes, okay. Yes, and we have Orsett Golf Club.  
22 Okay, so I'm going to start with Thurrock Council.

23 MR EDWARDS: Yes, sir. Thank you, sir. Douglas Edwards for Thurrock Council, so  
24 in terms of responding to these matters, I'm going to begin, then I'm going to  
25 ask Mr Church to deal with some particular items that have arisen. Sir, so far as  
26 the general position of Thurrock, and in response to the first of the questions that  
27 you put to the floor, the council is generally content in terms of both the extent  
28 of acquisition – powers of acquisition that National Highways are seeking and  
29 the justification given for them. Thurrock Council does have concerns in terms  
30 of the implementation of the powers that are sought and I'm going to ask Mr  
31 Church to deal with that by way of a strategic overview under item (a)(i) in a  
32 moment.

1 MR SMITH: That's very helpful and you'll be conscious that we have invited you to  
2 CAH2 to this afternoon because we did have a very clear sense of there being a  
3 balance of site-specifics, and we need to at least make a start on those.

4 MR EDWARDS: Thank you. Sir, indeed, I'm very conscious that there will be an  
5 opportunity this afternoon to raise specific matters, and I'm equally conscious  
6 that this morning [inaudible] strategically, but as I indicated, sir, there are certain  
7 matters of a strategic nature in terms of approach to implementation that I'm  
8 going to ask Mr Church to address you briefly on under item (a)(i), and  
9 additionally, Thurrock Council has concerns about the approach that National  
10 Highways have taken to the consideration of alternatives to compulsory  
11 acquisition, particularly in respect of Thurrock Council, which, again, I'll ask  
12 Mr Church to deal with briefly at this stage under item (a)(iii). Sir, beyond that,  
13 the council does have a number of parcel-specific concerns which we will come  
14 to this afternoon.

15 MR SMITH: And we'll try and pick those up this afternoon.

16 MR EDWARDS: Indeed, sir, so without any further ado, if I could hand over, then, to  
17 Mr Church to address you in respect of agenda items (a)(i) and (a)(iii).

18 MR SMITH: Thank you very much. Mr Church.

19 MR CHURCH: Sir, Henry Church for the Thurrock Council. The council's concerns  
20 relate to three points. Number one, timing and implementation of both  
21 compulsory acquisition and temporary possession. Their view is that without a  
22 binding agreement, the council is unclear what land will be subject to  
23 compulsory acquisition and at what time. Secondly, to the same effect, there is  
24 a lack of binding commitment from the applicant clarifying the condition in  
25 which the land that's subject to temporary possession will be returned, and the  
26 timings for the return of that land that's not required permanently. And thirdly,  
27 the lack of information provided from the applicant means that the council  
28 cannot proactively update its residents regarding the project documentation.

29 There has been exchanges between the council and the applicant. There  
30 has been in production a spreadsheet that details what plots are required and  
31 when, yet the applicant has declined to engage with us, offering any forms of  
32 commitment beyond just that shown in that document. The –

33 MR SMITH: I'm just going to interject very briefly, and obviously part of that relates to  
34 the whole complex of temporary possession, and of the course, Mr Tait hasn't

1           addressed us on that yet, so if I could ask you to hold back your temporary  
2           possession submissions until we've heard –

3 MR CHURCH: Sir, should I move on to the point of (a)(iii), then?

4 MR SMITH: If the rest of this is about temporary possession, yes, do. If you've got  
5           specific concerns about timing in relation to the taking of land compulsorily,  
6           then please finish that.

7 MR CHURCH: So yeah, I mean – so we have specificity about – in the spreadsheet, but  
8           just no commitment to it, and that concerns us. The council can frankly see no  
9           justification for not providing indicative timescales for acquisition which offers  
10          any degree of commitment on its behalf, part. Turning to the point (a)(iii), sir,  
11          the council has long promoted a legal agreement between it and the applicant  
12          which sets out the rights and responsibilities of each party. It's their view and  
13          mine that this could, indeed should, have covered sale by private treaty in that  
14          respect. No offer has been received. When it comes to that legal agreement, in  
15          spite of repeated assurance that a draft would be issued, none has been provided,  
16          and recently, the applicant has suggested that a memorandum of understanding  
17          is suitable. It is not, and we had made that point clear throughout all  
18          engagement.

19                 On the 8 September, the applicant produced a draft memorandum of  
20          understanding, and notwithstanding that it is not legally binding, the draft itself  
21          offers, frankly, little comfort. The council would expect to see reference to the  
22          information previously provided by the – to the council by the applicant, the  
23          spreadsheet detailing the works and undertakings to use, best endeavours to  
24          follow that.

25 MR SMITH: Yeah. I'm going to ask a very specific question of the applicant at this  
26          juncture, which maybe the applicant can note and pick up. Now, we've heard  
27          and seen in relation to certain affected persons' engagements with the process  
28          that the applicant has had some very detailed negotiations and has also acquired  
29          some properties. Has any Thurrock land been advance acquired?

30 MR CHURCH: Not as far as I'm aware.

31 MR SMITH: And if not, is there any reason in principle why local authority land –  
32          because at the end of the day, local authority is a business just like other  
33          businesses. It needs to plan. It needs to programme. It needs to work out what  
34          it's going to maintain when and where, etc. Is there any particular reason why

1 essentially advanced terms could not be discussed with a local authority, with a  
2 view to reaching early settlement, if early settlement is wise, appropriate, etc.?  
3 And I'm very happy for you to continue your submission, I mean – but it struck  
4 me that we had a bit of a gap.

5 MR CHURCH: Sir, Henry Church from Thurrock Council. Now, I've only got a brief  
6 point just to finish up on that. The examining body will be aware that guidance  
7 on these compulsory purchase powers encourages those seeking powers to enter  
8 into discussions with affected parties to both better understand the impacts, and  
9 – this is crucial – seek to agree terms for the acquisition of land interest by  
10 private treaty, the use of compulsory purchase powers being last resort. The  
11 applicant has, we maintain, failed to make an offer for land it wishes to acquire,  
12 and the council requests that the applicant confirms when they intend to  
13 genuinely engage with the council in respect of discussions to acquire the land.  
14 Thank you, sir.

15 MR SMITH: Thank you.

16 MR EDWARDS: Sir, can I just pick up – Douglas Edwards for Thurrock Council – on  
17 that latter point? Sir, as Mr Church indicated, there have been a number of  
18 indications on behalf of National Highways that a draft legal agreement would  
19 be forthcoming for Thurrock to consider, and that agreement would be the  
20 vehicle by which interests in land held by Thurrock Council that the applicant is  
21 seeking could be secured without the reliance upon compulsory acquisition. We  
22 have never seen any draft agreement, and none has been provided, and our  
23 simple point is in accordance with one of the fundamental and longstanding  
24 elements underlying compulsory acquisition, there has been wholly insufficient  
25 engagement with Thurrock Council in terms of seeking to acquire interests  
26 without reliance upon compulsory acquisition.

27 MR SMITH: Okay. Does that take you to the end of your broad strategic submissions  
28 on those points?

29 MR EDWARDS: It does, sir, yes. Thank you.

30 MR SMITH: Thank you very much. Well, in which case, then, I am going to move on  
31 now. I didn't see hands raised from any of the other statutory parties, so I was  
32 then going to move directly to Mr Holland as a land agent for – I think it's  
33 sufficient to say, Mr Holland – a large number of affected persons.

1 MR HOLLAND: Morning, sir. Morning, everyone. Mike Holland for Holland Land  
2 and Property, representing a number of significantly affected landowners across  
3 the route north of the Thames. I'll try and keep these points generic. You won't  
4 be surprised that clearly there are specific issues that we'll come to in other  
5 hearings, no doubt, but just picking up on some of the points that have been  
6 raised this morning in the applicant's setting out, I think it would be fair to say  
7 that both my affected parties and a number of other landowner affected parties  
8 still have a concern around the whole concept of what might be regarded as  
9 needed, and what might be regarded as a want, and that speaks to additionality.  
10 It speaks also to some of the issues that arise from the nature of the acquisition  
11 that's proposed to achieve those. Prime examples, of course, are mitigation land  
12 and also the WCH routes that are proposed by the applicant.

13 I would also make the point about the means by which that land is then  
14 managed, and that, of course, speaks to the fact that much of the mitigation land  
15 – where many of my clients are losing substantial areas off the main alignment  
16 of the LTC route – are due for permanent acquisition. There have been  
17 references in previous hearings and submissions to the – to what might be  
18 regarded as a competent person or authority to manage those areas  
19 post-acquisition, and I would have a concern as to how the applicant sees that  
20 playing out long-term, post-construction, so I think there's more of a general  
21 point there about the basis of why permanent acquisition is proposed for such a  
22 substantial area of mitigation.

23 I would also go back to this point about need and want. There will be  
24 examples where the proposed use of land has changed through the design of the  
25 project. I appreciate these things happen. They will happen, but where a  
26 substantial area of land was proposed for one mitigation purpose has remained  
27 in the order limits and it's transpired that that purpose is no longer fit or required  
28 and the land has remained in the order limits, but is now being used for a  
29 different purpose, that raises questions as to the basis of the justification in the  
30 first instance. I think that speaks to a point which I believe came up in ISH8, or  
31 the Friday hearing in relation to some [inaudible] and disposition land, where  
32 similar points were being made. Those are the general points I wish to raise.

1 MR SMITH: Thank you very much, Mr Holland, and those are noted. Now, I did, when  
2 we started this item, see a yellow hand on the screen and a brief camera presence.  
3 It was Orsett Golf Club, I believe.

4 MR COTTAGE: Yes, it was. Colin Cottage, Ardent, for Orsett Golf Club, and I just  
5 very briefly want to touch on a point that was raised by the representatives from  
6 Thurrock Council. It's along similar lines. Orsett Golf Club has land that's  
7 going to be acquired within the DCO boundaries, and it is also – and I don't  
8 think this is a contentious point – going to have some relatively significant  
9 environmental effects on it caused by the highway. We have been trying to  
10 engage with National Highways over various issues, both the price for the  
11 acquisition of land and also planting, which will help mitigate the impacts of the  
12 Lower Thames Crossing on the golf club.

13 Now, there has been some promising engagement and some verbal  
14 assurances given, but a number of months ago now, we submitted heads of terms  
15 for discussion and those really haven't been responded to, and our concern is  
16 that it's all very well saying that some of these things will be done, but we do  
17 really need to progress legal agreements. And I'm conscious that I don't want  
18 to make this too case-specific, and in danger of doing so, but I think this is  
19 probably a general point, from what we've heard from Thurrock, that there does  
20 need to be just more of an engagement with parties who are approaching  
21 National Highways seeking for agreements, both the mitigation in terms of –  
22 and in terms of agreeing the price of land. There needs to be meaningful  
23 progress with that. And that's just the point I wanted to make.

24 I was encouraged by your comments that there will be future compulsory  
25 acquisition hearings where case-specific issues can be discussed and welcome  
26 the opportunity for Orsett Golf Club to take part in that. And hopefully, I'll be  
27 able to report that there's been some more progress than there has been to date  
28 in terms of actually reaching an agreement.

29 MR SMITH: Okay. And actually, you do raise a useful point there, which I will state to  
30 the record so that anybody who's watching after the event is alive to it. If you  
31 are an affected person, if you are a person whose land or rights are sought to be  
32 taken by the applicant as part of their request related to the application to  
33 construct the Lower Thames Crossing, and you have not yet – and you object to

1 that, and you have not yet asked to be specifically heard, you do have a right to  
2 be heard.

3 And whilst we have set a deadline and asked for requests to be heard, we  
4 will exercise some flexibility about admitting people who are affected persons  
5 and whose land or rights are directly affected and try and ensure that those  
6 people are actually provided with an opportunity to speak at an individual – a  
7 site-specific compulsory acquisition hearing. So thank you very much for those  
8 submissions.

9 I believe that brings us to the end of all the items up to (iii), and we need  
10 to provide the applicant with an opportunity to respond there. I'll just cast my  
11 eye around the room in case there's anybody still waiting to speak on that. I  
12 don't see any hands, so, Mr Tait, briefly, and again, you can make detailed  
13 responses in writing if you so wish, so this only has to be highlights.

14 MR TAIT: Excellent. Understood. In relation to Mr Church and Mr Edwards' points  
15 and your point, there's no reason in principle why the applicant couldn't acquire  
16 land in advance from Thurrock Council. They haven't, and we understand  
17 Thurrock have not asked us to acquire there.

18 MR SMITH: There was a look of surprise when you said that, Mr Tait. We may need to  
19 dig into that a little bit.

20 MR TAIT: What they have asked is for an agreement which regulates the, in particular,  
21 temporary possession and specifies periods. And they have asked in relation to  
22 highway land that there is specificity about the condition in which it's handed  
23 back and those matters. In relation to the specificity in which it's handed back,  
24 that is regulated by article 10. And there is a further protective provision, which  
25 is coming in at deadline 4. So that's my understanding of the position.

26 There is a memorandum of understanding which, given that the precise  
27 boundaries of the highway that are proposed are not fixed, given the preliminary  
28 design and the limits of deviation, is the appropriate vehicle at this stage because  
29 it reflects very much what is set out in the full appendix H to the Thurrock LIR,  
30 which has a record of questions and answers in relation to the various points  
31 they raise about timing. So I think that's all I wanted to say on that aspect.

32 So far as Mr Holland and Mr Cottage's points, Mr Holland is – that's a  
33 rather specific point, which I don't think I can really come back to, but we will  
34 if we understand it more fully.

1 MR SMITH: I think his general point ran in part to the question that I tabled, which was  
2 about the degree to which, where one is dealing with compensation or mitigation  
3 land, particularly in circumstances where a seaport is, that maybe land emerged  
4 into the red line boundary with one particular justification is now still in the red  
5 line boundary with a different one, and broadly, how sound the judgments have  
6 been that lead one to the conclusion that particular parcels of land are required.

7 Now, I'm very clear we've got a bit of a boundary line difficulty here  
8 about what's strategic and what's detailed. And we may get to it only through  
9 the individual detailed conversations. However, there is a high level, essentially,  
10 almost a quality control issue, which is the nature of confidence that this  
11 Examining Authority has in the process design and the delivery of that process  
12 around the assessment of land requirement that has then driven the overarching  
13 approach to CA. And we want to essentially test the effectiveness of that process  
14 with a degree to understanding what level of warranty, for want of a better  
15 description, it comes with, so that we can be clear about the degree to which the  
16 tests have been met strategically.

17 MR TAIT: Yes, sir. I will come back to that specifically, but it's in the context. And I  
18 need to be clear about the specific point before responding, either specifically or  
19 generally. But it's in the context where there are, of course, the multifunctional  
20 roles, but I'll say no more about that.

21 In relation to Orsett Golf Club, Mr Cottage, there was a meeting on  
22 23 August, and the applicant is expecting progress over the next month, if that's  
23 any assurance for Mr Cottage. And I repeat the reference to annex B to the  
24 statement of reasons, which does have an up-to-date catalogue of all the  
25 engagement that has occurred. And it is a very full list of engagement, even  
26 though not everyone may have the same view as to its accuracy, but we certainly  
27 are of that view.

28 MR SMITH: Okay, thank you very much. A sudden raising in volume – apologies for  
29 that.

30 On that basis, are we ready to move on to the final items under 3(a), which  
31 are essentially the same questions to the applicant around the extent of land  
32 sought to be subject to temporary possession and also broadly, strategically, the  
33 justification of the land to be subject to temporary possession, because again,  
34 this is in a context where we do have a number of individual affected persons'



1 representations, broadly around concern that land is proposed to be taken  
2 temporarily but that other possible land could be used for the same purpose with  
3 no detriment to the scheme, that maybe their understanding of precisely the  
4 nature of why their land has been brought forward isn't as clear as they might  
5 expect it to be.

6 And again, that is a broad, in strategic terms, quality assurance interest  
7 from our perspective at present. And I know my colleague, Ms Laver, wishes  
8 to come in on this as well.

9 MS LAVER: Thank you. Mr Smith. I don't so much want to come in on this point. It's  
10 coming back to Mr Holland's point before we move on to that item. It was about  
11 the justification for land where the purpose has changed. I don't think you  
12 addressed that at all.

13 MR TAIT: I haven't addressed it because I'm not quite sure of the specific instances  
14 you're referring to. But I will address it if that's more focused.

15 MR SMITH: And I'm quite happy – part of the purpose of this hearing is to get some  
16 general propositions onto the table. We won't necessarily solve them all because  
17 they will, I suspect, be sold in the specifics once we start to march through  
18 individual objections but useful to set the groundwork before we go there. Now,  
19 I'm very conscious that before we move on to items (iv) and (v), I believe  
20 Mr Edwards for Thurrock did have a point.

21 MR EDWARDS: Could I just come back briefly on the engagement with Thurrock  
22 Council? Sir, as you observed, we were rather surprised to hear the submission  
23 made on behalf of National Highways. Thurrock Council's position has never  
24 been that it is opposed in any way to engaging with the applicant to secure  
25 acquisition of the interests that are required by National Highways by private  
26 agreement. We're rather surprised to hear the point being made to the contrary  
27 on behalf of National Highways this morning. That has always been Thurrock's  
28 position.

29 So far as the approach indicated by National Highways, again, we were  
30 equally surprised to hear the way it was put. It is not a matter for those whose  
31 land is proposed to be acquired to approach National Highways before they  
32 default to compulsory acquisition; the position ought to be the other way around,  
33 and that is precisely what the compulsory purchase guidance expects, namely,  
34 that a party proposing to acquire land or interests in land should approach those

1 whose land – who are the landowners – at the time to explore whether they're  
2 alternative means to compulsory acquisition. And that is the process that should  
3 have been undertaken by National Highways.

4 Now, so far as finding a way forward on this, Thurrock Council remains  
5 prepared to engage with National Highways with a view to acquiring interest by  
6 agreement rather than compulsory acquisition. And so, could I just invite you  
7 to consider as a potential way forward that that engagement continues from now  
8 on through the examination process and at a particular point in time and at a  
9 particular deadline, you invite Thurrock Council and National Highways to  
10 provide to you a position statement indicating where things have got to. And  
11 there seems to be ample opportunity for that to be done during the remainder of  
12 the examination in order to seek to assist you and your colleagues in resolving  
13 this matter.

14 MR SMITH: In principle – and I will return to Mr Tait on that point – in principle, that  
15 appears to be a very reasonable submission that would assist us. The only  
16 question that remains about it is, 'And when ought it be done' – because I'm  
17 conscious that it's potentially just in relation to Thurrock alone – a big task. And  
18 there are, therefore, some capacity and timing issues that might need to be  
19 bedded down. So, before we just throw out an action, I'm happy to hear from  
20 Mr Tait on in-principle usefulness and also work to be done when –

21 MR TAIT: In principle, we welcome that, and that reflects our attempts to engage over  
22 a long period. And we were happy to have that take place. Could I just make  
23 two additional short points? It hasn't been the approach of National Highways  
24 only to respond to requests for acquisition. That was a very specific point about  
25 Thurrock Council, which I will – it's my second point.

26 But as a general proposition, National Highways has sought to proactively  
27 acquire land by agreement. The position with Thurrock specifically is that that  
28 council has not been willing to engage on the sale of its land interests until they  
29 have further details on the timescales that relate in particular to matters that we  
30 cannot definitively state in circumstances where it's a preliminary design and  
31 that is not capable of being done in that way. So that is a roadblock at present,  
32 and if the means of addressing that is what Mr Edwards has indicated – and  
33 you've indicated also could be a way forward – then we welcome that.

1 MR SMITH: At risk of prolonging this, then, I'm going to go back to Mr Edwards and  
2 say if it would be acceptable in Thurrock's view to unshackle the specific  
3 question of precise timing from the general question of willingness in principle  
4 to engage towards agreements on specific parcels of land, then you may find  
5 yourselves, it sounds, pressing at what looks as though might be a slightly more  
6 open door than it may have felt to have been in the past few months.

7 MR EDWARDS: Absolutely. The answer to your question – Douglas Edwards for  
8 Thurrock Council – the answer to your question is yes. As far as Thurrock is  
9 concerned, having taken instructions from Mr Church, we've never sought to  
10 bind matters of compulsory acquisition with other matters concerning  
11 implementation, so I don't think it's going to help you and your colleagues to  
12 prolong this matter any further at this stage.

13 But we are prepared, as I've indicated, to engage openly and  
14 constructively with National Highways on the matter of acquisition.

15 MR SMITH: Okay, thank you. In which case, in terms of timing and the preparation of  
16 that sort of joint statement, I'm looking indicatively, I think, at deadline 6  
17 because that rests after the next round of hearings that will include individual  
18 and compulsory acquisition hearings, but sufficiently before hearings that we  
19 would then hold in November that would have to have final statements of  
20 contended case if for some reason you still end up in deep disagreement on this  
21 point. Does that feel like it's doable? And I'll just check with Ms Laver.

22 [Sotto voce discussion]

23 MR SMITH: We must make sure that we actually issue a reasonably precise action on  
24 this. Date okay?

25 MR TAIT: Yes, sir.

26 MR SMITH: Yes. Okay, right. I think we need to turn back to where we thought we  
27 were on the agenda and then move on to the two TP, temporary possession,  
28 items. Maybe to assist us in the amount of time we allocate to this and the detail  
29 that's dealt with orally as distinct from in writing, what I would just like to do is  
30 just have an indication by way of show of hands of those parties who wish to  
31 speak on specific strategic issues around temporary possession. I see North  
32 London Authority. I don't see anybody else. Oh, there's a hand. And Port of  
33 Tilbury, too.

1           So this is very much a riverine matter. I think, Mr Tait, that provides your  
2 team with useful guidance. You can put the generalities to us in writing. Let's  
3 confine the oral process to the direct interests of folk in the room so that we deal  
4 with ports and port-related matters. I mean, don't let me stop you providing a  
5 general explanation of your position if it's – it will assist us anyway, but we can  
6 pick up detail in writing.

7 MR TAIT: I'm going to be very brief – in general terms. Then, if I may, it would be  
8 useful to hear the high-level points, so I'm not anticipating points that I'm not –

9 MR SMITH: No, I think that's very fair.

10 MR TAIT: –be concerning. Just two points, essentially. So far as the extent of the land,  
11 it was at application 420.11 hectares and at D4 that will be reduced to  
12 414.59 hectares. And again, there is the provision for similar flexibility under  
13 article 35(1) to deploy the temporary possession in circumstances where that's  
14 appropriate as an alternative to compulsory acquisition, having regard to the  
15 principles and the precedents you've already mentioned.

16           In summary, the justification for the land sought to be subject to temporary  
17 possession is that that is land which is required for construction of the  
18 development only to ensure it can be constructed safely and is not required for  
19 the development in use. So that is a summary of the position, which I think is  
20 fairly conventional.

21 MR SMITH: It is very conventional. And you can set out a more detailed position in  
22 writing because that will obviously assist us in our broad consideration of the  
23 balance on all of this and also assist the affected persons. Let's then go firstly  
24 to Ms Dillistone and the Port of London Authority.

25 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority. I  
26 should begin by saying that we are content with the justification for the land  
27 sought to be subject to temporary possession but with one significant caveat.  
28 Article 37 of the order applies to any order land belonging to statutory  
29 undertakers, so that is land to be acquired or used permanently or temporarily.  
30 It allows the applicant to compulsorily acquire land and acquire and extinguish  
31 rights and impose restrictive covenants over any order land, so including land  
32 identified for temporary possession.

33           So regardless of the purpose for which the order identifies land, the  
34 applicant can acquire land and rights and impose restrictive covenants over any

1 other land. It means that the applicant could, if it wanted to, take the land that  
2 is identified for temporary possession on a permanent basis.

3 Now, the general principle of DCOs, these kind of orders, is that an  
4 applicant identifies the land that it needs to construct and maintain the scheme  
5 and the purpose for which it needs it. It applies to the order on that basis. The  
6 order is made. The applicant can acquire the land and the rights which was  
7 specified in the order.

8 Here, the applicant is taking a slightly different approach when it comes  
9 to statutory undertakers. It's saying that it will identify the land it needs to  
10 construct and maintain the scheme as usual, and the purpose for which it needs  
11 it as usual. But this provision, article 37, is saying that for any land belonging  
12 to a statutory undertaker, regardless of the purpose for which the land is  
13 identified, the applicant can compulsorily acquire it. So what is it about land  
14 belonging to a statutory undertaker that makes it so hard to identify the purpose  
15 for which that land is acquired?

16 Now, the wording on the page here may seem the same as another – it is  
17 the same as another DCO. But the extent of the general application of it to all  
18 land of statutory undertakers is unprecedented, and the effect about which we as  
19 the PLA are particularly concerned is that any land subject to temporary  
20 possession, which is what we're talking about here, that, to the PLA, is a much  
21 larger area of land than it is required for permanent powers. Any of that could  
22 be compulsorily acquired, so it very clearly extends the scope of the DCO in a  
23 way which we are not at all convinced is justified in this DCO.

24 And you were talking earlier, sir, about the application of general,  
25 statutory or policy issues. This provision is one that I would expect would  
26 seriously concern any statutory undertaker, and I can absolutely see why an  
27 applicant would like this provision. It would like to go for the flexibility  
28 afforded by the provision. But this provision effectively reduces statutory  
29 undertakers to second-class citizens when it comes to certainty about land use,  
30 and it sets a very undesirable precedent.

31 So we have to ask, firstly, can the applicant identify why it needs this  
32 provision – particularly why it's taking the unprecedented step of applying it to  
33 land identified for temporary possession. And secondly, if it can be justified,  
34 we would like the exercise of power to be restricted over the River Thames in

1 the same way as the restriction in article 33, which applies to the acquisition of  
2 subsoil and airspace. Thank you, sir.

3 MR SMITH: Thank you for those submissions, and clearly, when we finish this item,  
4 Mr Tait, I will pass them to you for your response. But before I do, so we do  
5 have a hand from Mr Owen for Port of Tilbury London Ltd, so Mr Owen.

6 MR OWEN: Thank you, Mr Smith. Can you hear me?

7 MR SMITH: Very well.

8 MR OWEN: Excellent, thank you. We have a couple of concerns here in relation to  
9 temporary possession. I'll deal first with a general point in that Mr Tait referred  
10 just now to the temporary possession land being land that is required – and I  
11 emphasise that word – for the construction – indeed, the safe construction of the  
12 works, the subject of the order.

13 It doesn't appear to us that all of the land that is proposed to be subject to  
14 temporary possession powers is actually strictly required. We don't think that  
15 the applicant has, in every case, demonstrated that the extent of temporary  
16 possession powers is proportionate or necessary. It appears to us that, in some  
17 cases, the applicant is seeking too much flexibility.

18 We understand why some flexibility is, of course, necessary, and that is  
19 entirely conventional. But they appear to be seeking to retain all optionality  
20 even where they have confirmed – certainly in one case – that the land is no  
21 longer required, but they still wish to keep it within the scope of the development  
22 consent order, which we think is unacceptable. So, as I say, we're not satisfied  
23 the generality that all of the land subject to TP powers is necessary.

24 There are a couple of instances, which we will be happy to detail in writing  
25 in our submissions. They do – this is where we're moving from the strategic, I  
26 think, to the specific, and we're not due to attend the hearing this afternoon, and  
27 that's absolutely fine. So we will detail a couple of particular places where we  
28 can particularise this concern. So that's the first point.

29 The second point is exactly, in effect, the same as you just heard on behalf  
30 of the Port of London Authority in relation to that article that you've heard about  
31 – article 37, that is – and we just do not understand why the extreme breadth that  
32 the applicant has in this case expressed that is necessary – we don't think it  
33 would allow the Secretary of State to be satisfied in relation to section 127 of  
34 the Planning Act that the compulsory acquisition of that land – in relation to,

1 certainly, Port of Tilbury London Ltd – could take place without detriment to  
2 the carrying on with the undertaking.

3 So we have a real concern about the way in which article 37 has been  
4 drafted, and it is, of course, in concept, well precedented, as Ms Dillistone said.  
5 But if you look at the precise way in which the applicant has changed the drafting  
6 from other National Highways DCOs, the result is a much greater potential  
7 application in relation to statutory undertaker's land.

8 And, particularly, we've done comparisons with the most recent National  
9 Highways development consent order for the A303 Stonehenge tunnel, and the  
10 difference is quite marked in subtle ways. And it's quite a complex issue to  
11 explain, and I don't think I need to take up any more time, really. We will do so  
12 in writing. We will supply the comparisons with other relevant development  
13 consent orders.

14 But we do wish to see a justification for the approach the applicant has  
15 taken, whether it's actually a – has been the result of a 'Oh, that would be a nice  
16 power to broaden', or whether, actually, there's a specific need for it. And we  
17 certainly haven't seen anything approaching justification in terms of specific  
18 need, so that, in essence, is what we'd like to say – I already mentioned  
19 temporary possession – at this moment in time.

20 MR SMITH: Thank you very much, Mr Owen. I think there's a clear underpinning point  
21 that arises from that. If we turn to sections 127 and indeed 138 of the Planning  
22 Act of 2008, and we think back to the intentions of the draughtspeople of that,  
23 what was in the mind of the authors of the legislation, essentially, they were  
24 seeking to recognise statutory undertakers as a class of persons who merited  
25 specific protection under the legislation.

26 Now, if that was necessary, and that flowed through in relation to the form  
27 of sections 127 and 138, as they are currently embodied in legislation, there does  
28 seem to be a little bit of a statutory draftsman's signal that it was maybe not  
29 within the original conception of what the act might sensibly do, to then use  
30 other powers under an order to create, essentially, what is a sweeping class of  
31 land take against the same recipients, because if they require careful and  
32 individualised consideration and protection under 127 and 138, in one box under  
33 the act, but then you use a broad power under the order to, on suggestion, quite  
34 sweepingly take, and indeed, potentially, uncertainly take land from them.

1                   Are you doing honour to the underlying intentions of the act in terms of  
2                   the need to protect statutory undertakers' land and rights? So that's a general  
3                   issue that, Mr Tait, you might want to respond to, either now or in writing. So,  
4                   I don't believe we've got anybody else wanting to speak on this issue. I'm going  
5                   to go to Mr Tait, and indeed, general issues around this agenda item can, of  
6                   course, flow through in writing afterwards, so we can speak on these matters.

7 MR TAIT: [Inaudible]

8 MR SMITH: Can I just see if we can resolve the sound issue that's occurring? We seem  
9                   to have interference on Mr Tait's channel. Ah, that's a good solution. When in  
10                  doubt, use a new microphone.

11 MR TAIT: Yeah, in relation to the first one, which is a very specific point [inaudible].  
12                  Article 35(10) provides that the temporary possession land is not subject to  
13                  compulsory acquisition – that's article 35(10), but under that deadline 4,  
14                  [inaudible] following dialogue with the PLA, providing they submit wording to  
15                  article 37, which will mean that same description's in article 33 as the DCO. So  
16                  we think that should address the [inaudible].

17 PARTICIPANT: Sir, can I come in? We're having difficulty hearing Mr Tait, in fact.  
18                  He was very clear before.

19 MR SMITH: Yes. The square one is still crackly. Keep pushing through. Let's see if  
20                  we can push through the interference. Sorry, Mr Tait, you might want to just  
21                  step back over the last couple of points.

22 MR TAIT: [Inaudible]

23 MR SMITH: That is very bad, and I will flag that that sounds bad in this room. It will  
24                  be very troublesome indeed on the recording. So, try again. Maybe just draw  
25                  the microphone a little – tech team, can we have just a little bit more volume on  
26                  that channel for the second microphone? Cheers.

27 MR TAIT: So in relation to this instance [inaudible].

28 MR SMITH: No, it's not. I don't believe that microphone is reaching or if it is, it's –  
29                  maybe we could just bring a roving microphone to Mr Tait, because I'm very  
30                  conscious of time. I'm not wanting to prolong this. Try that one. No. The  
31                  roving mic, please. And deep apologies, Mr Tait, but could you – no, it's not  
32                  on. You'll need to – it is on.

33 MR TAIT: It's on. Sorry.

34 MR SMITH: I think we've solved your audibility problem.



1 PARTICIPANT: Thank you very much.

2 MR TAIT: There's two points in relation to Ms Dillistone's. First of all, we don't share  
3 the interpretation of article 35, bearing in mind article 35(10), but, in any event,  
4 following dialogue with the PLA, we are bringing forward some drafting to –  
5 further drafting to relate to article 37, which will mean that the same restrictions  
6 in article 33 will explicitly apply, so I think with that clarification, that should  
7 address that point, but I'm not asking for a response now, of course.

8 Secondly, in relation to Mr Owen's points, we do not consider there's too  
9 much flexibility or that the areas are sweeping. There has been discussion about  
10 two very small plots which we proposed to remove, which would be touched  
11 upon under item (c), and that's consequent upon the construction of road  
12 infrastructure, which now makes those two plots redundant, so that has  
13 happened. And that is something that I was intending to signal under (c). And  
14 in relation to your broader point, of course, National Highways are very  
15 conscious of the protection that statutory undertakers get under 127 and 138.  
16 But those are specific tests which we have applied and which National Highways  
17 say are met. But the position is, I think, set out clearly in relation to the stage at  
18 which this project, of this scale, has reached and the danger of drawing  
19 boundaries too tightly at this stage, which would have an adverse effect.

20 PARTICIPANT: I didn't get the sound.

21 PARTICIPANT: Sir, we're unable to hear you.

22 MR SMITH: No. Ah, that is working. Ladies and gentlemen, we had approached very  
23 closely the point at which I was wishing to take a break in any case. Mr Tait  
24 was finished, I believe, on that point. Just then to flag that we would then move  
25 on to agenda item 3(b).

26 It is now 11.35. Can I suggest we resume at 11.50, but can I ask for a  
27 report back to the Examining Authority in relation to the condition of the sound  
28 system – because, plainly, we would like the issues that we've had up to now  
29 with sound to be cured during the break. And if the break needs to be extended  
30 for five minutes, fine. So, let's break – provisionally 11.50 but bear with us if  
31 additional time is needed to cure the sound system. Thank you very much, ladies  
32 and gentlemen.

33

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**(Meeting adjourned)**

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MR SMITH: Ladies and gentlemen, it is now 11.50, and so we will be resuming this compulsory acquisition hearing number 1 into the Lower Thames Crossing. And it gives me very considerable pleasure to hear the microphones restored to normality. Hopefully, that sustains itself. So, ladies and gentlemen, we are now into item 3(b) of the agenda. Now, we are conscious that we're in a set of circumstances where there are change requests that have been made by the applicant, at least one of which seeks additional land or rights, and in respect of which, therefore, a compulsory acquisition regulations process has also commence.

What I think I should make clear is that there will be a reopening of relevant representations in relation to that process and that part of the virtue of their still being reserved hearing time in November in this timetable is that we intend to provide, should it be required, additional hearing time to deal with that element of the process in November.

But what would be, I think, at this stage, useful would be if the applicant could just walk us through where we currently are in relation to the change requests, and specifically, the additional land request. And I think it might be worth making that a little bit of a shine forward of the torch into the darkness as well as we also ask the related question, is there anything else that we're unaware of – because it is very useful for us, and indeed useful for other interested parties and affected persons, to know what might be in the offing. So I'm going to go Mr Tait, and then, as needs be, I will introduce other speakers on this item. Mr Tait.

MR TAIT: Thank you, sir. So far as the accepted changes are concerned, one is wholly productive, MRCO-1, and the other, MRCO-2, has no implications in respect of land take.

So far as MRCO-3, which is the third of the proposed changes which have been accepted, the east Tilbury utilities relocations and order limits reduction, that is a package of changes which affect the applicant's utilities proposals in east Tilbury. And the context is that the effect of the changes is reductive in terms of the amount of land required to deliver the utility works in this location, moving the construction works away from potentially impacted residents. But

1 there is a related land designation change in respect to a small number of plots  
2 of land to accommodate the relocation of the Linford bore pipeline.

3 And the effect of that is that the plots of land, where previously proposed  
4 to be subject to temporary possession only but now will additionally be sought  
5 to be subject to permanent rights over those plots, and those have been identified  
6 in the notification of the proposed changes. And there is a process which has  
7 followed from that, that CA regulations do apply to MRCO-3, or, well, at least  
8 the applicant will proceed on that basis that they do.

9 Targeted non-statutory consultation was carried out, but consents from  
10 affected parties weren't received in response to that, and so there's been a notice  
11 of proposed provision. And it's anticipated that the statutory notices will be  
12 placed in the week beginning 2 October and to follow. And the period for  
13 relevant representations open in around 10 October, so that process is underway  
14 following your decision to accept.

15 And the second point is that, in relation to the second formal application,  
16 which relates to two changes, ECO-1 and ECO-2, each appears to engage the  
17 CA regulations in the same way as MRCO-3 might. And the applicant is  
18 suggesting, subject to your acceptance of those proposed changes, that MRCO-3  
19 and these two in the second proposed changes could form the basis of a  
20 combined representation period under the CA regulations.

21 MR SMITH: And that would seem, in principle, unless anybody has a very good reason  
22 why it isn't sensible to be a sensible position. So, at the moment, we're working  
23 with a view to achieving that.

24 MR TAIT: The second point under the heading is whether the statutory conditions and  
25 policy on additional land is met. That's a reasonably technical question.

26 MR SMITH: It is.

27 MR TAIT: But the short answer is that – is yes. In relation –

28 MR SMITH: Indeed. And I think probably subject to the detail that you'll set out in  
29 writing, that's probably good enough in the here and now. But what I will do is  
30 I'll throw it open to the rest of the parties because even though we're not yet in  
31 a position where we are formally statutorily examining a CA regs request, let's  
32 use the time, let's get in front of ourselves. And if anybody is prepared to raise  
33 matters on that question, then we are very happy to hear them.

1 MR TAIT: Yes, and there was a third notification of proposed changes, ECO-3 and  
2 ECO-4, and none of those would involve the acquisition of interests or rights  
3 over additional lands. So the only other matter is to signal that on a  
4 precautionary basis in relation – as arising from the tunnel depth report, in  
5 relation to the insertion of Ordnance Datum (Newlyn) as the reference point.

6 We intend to submit material which, as I say, on a precautionary basis,  
7 deals with whether or not there is a proposed provision required or may change.  
8 In both those instances, we think there is not, and it is already inherent in the  
9 scope of the order we have in any event – and are anticipating full consent from  
10 all those parties with an interest in any event. The PLA have agreed to that in  
11 principle, but we're seeking to go to the step beyond. And other parties have  
12 also agreed. National Grid is the other party. There's also an interest, Telewest  
13 Communications Cable Ltd, who have advised they don't have an asset in the  
14 land plot in any event.

15 MR SMITH: Right. What about their successors? Because I believe they are the  
16 foundation stones on which Virgin Media and/or what is now Virgin O2 –

17 MR TAIT: Yes. So that's the same. Yes. It's their successors who have responded.

18 MR SMITH: Oh, excellent. So...

19 MR TAIT: Yes. So that is just to advise that that is a document that we intend to submit  
20 to you for your consideration.

21 MR SMITH: Yes. Just to be clear for everybody around the table, that is, as I understand  
22 it, limited, in geographic extent, to that part of the red line boundary that  
23 describes the location of the tunnel –

24 MR TAIT: Yes, sir.

25 MR SMITH: – in the bed of the River Thames, and confined between its banks, and so  
26 principally it affects the interests of Port of London Authority and river users,  
27 and in principle, probably doesn't extend beyond that.

28 MR TAIT: We would concur with that position.

29 MR SMITH: Okay, and then in timing terms, there is the question of: if it is to be put in,  
30 when? Because if it requires any form of consultancy process, then there is a  
31 desirability for that being carried out in tandem with the other ones that are  
32 essentially queued up, because there's nothing more confusing than having  
33 multiple consultancy processes all slightly staggered in start and end points.  
34 There is also the desirability of, if consultancy processes are required, enabling

1 those to be effectively delivered and completed in sufficient time for there to  
2 still be a hearing opportunity, and/or an opportunity to make written reps before  
3 the closure of the examination.

4 So that does push us towards needing to see something from you very fast  
5 – I mean, by not much later than – I don't know – 24, 25 September.

6 MR TAIT: Yes, sir. Very fast is certainly the guidance under which we're operating,  
7 because we recognise that, if it is necessary – we don't think it would be  
8 necessary, but if it is necessary, it is important to be able to concertina the  
9 processes of consultations, so there's one event, as it were.

10 MR SMITH: Okay. Is there anything else then that you need to deal with at a high level  
11 in relation to item (b)?

12 MR TAIT: No, thank you, sir.

13 MR SMITH: Okay. Well, I'm going to ask for a show of hands from the room, but I  
14 note the direct engagement of Port of London Authority on this matter. Without  
15 even asking for a hand, Mr Dillistone, are you going to be speaking to us on  
16 this? Because clearly some sense of where we are in relation to the Newlyn  
17 Datum point, and I guess the question about whether that, in your view, does or  
18 does not relate to any additional land or rights would be very, very useful indeed.

19 MS DILLISTONE: Yes, sir. Alex Dillistone for the Port of London Authority. I will  
20 wish to briefly reply, but it can be brief.

21 MR SMITH: Okay. Anybody else wishing to speak on this point before I – ah, yes. I  
22 do see Mr Holland. Okay. In which case, Ms Dillistone, are you happy to lead  
23 on this? And then I will go to Mr Holland, and then we'll move back to the  
24 applicant.

25 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority. I,  
26 as I said, will be brief. We are happy with the amendment. I do need to check  
27 with my client, but I know, in principle, we are happy with the amendments  
28 made to article 35(10).

29 MR SMITH: So there's an in principle – and again, this is all very much subject to  
30 negotiation, but an in-principle position from yourselves, that, even if it turns  
31 out that what's put before us has an additional land requirement, and so in  
32 principle triggers CA regs, that it might be something that was sufficiently  
33 agreeable to your client, that they would agree to it, and therefore, discharge the  
34 engagement of the regs by agreement.

1 MS DILLISTONE: Yes, sir. I expect that to be the case. I cannot guarantee it today,  
2 but we are moving in the right direction on it, and I'm hopeful.

3 MR SMITH: Okay. Well, indeed, I cannot commit the Examining Authority to any  
4 formal view about whether this is a), a change that is something that needs to be  
5 treated as such, and if so, b), whether it is one that actually does trigger the CA  
6 regulations, because without having seen it, we're not going to give you any  
7 sense of that judgement here and now, but what we will give you both a  
8 commitment to do is – subject to the applicant delivering it in the timescales  
9 being discussed, we will wish to deal with any procedural decision that needs to  
10 be made very swiftly indeed, because what we don't want is a matter of this  
11 nature becoming a holdup. There's probably little more that can be said on that  
12 point.

13 Okay. In which case, Mr Holland.

14 MR HOLLAND: Thank you, sir. Again, just to be helpful to everyone in the room,  
15 particularly to the panel, I'm just going to say one or two words about MRCO-  
16 3, and also ECO-2. Turning first to MRCO-3, just to clarify that the changes to  
17 the utility boundary and the land take were agreeable to the affected party. The  
18 reason full consent didn't come forward is because there is an overhanging issue  
19 in relation to the permanent rights for what is a temporary waterpipe. That's a  
20 general point of principle, which I think is worth airing now, which no doubt  
21 we'll come to in due course in subsequent hearings, once that point is examined.

22 Equally, in relation to ECO-2, the point about utility access, which was  
23 specifically for National Grid, that's agreeable and understood, except that the  
24 consultation that was presented to us also referred to other asset locations  
25 without any specific plans that identified those asset locations for us to be able  
26 to assess that. Now, whilst the principle of access to statutory undertaker  
27 apparatus is understood – again, hence why full consent didn't come forward,  
28 because we didn't feel we had all the information in front of us, and at some  
29 point, having requested that, no doubt the applicant will produce it. Thank you.

30 MR SMITH: And again, that's noted, and again, reverting to the applicant, obviously, in  
31 terms of facilitating this process by agreement to the largest extent possible, if it  
32 is possible then to provide responses to reasonable information requests that  
33 might arise from statutory undertakers, I think that seems to be a sensible request  
34 that Mr Holland has made.

1 MR TAIT: Sir, that's noted and understood.

2 MR SMITH: Okay. Is there anybody else then, given that we have shone the torch  
3 forward under item (b)3, slightly into darkness – is there anybody else that wants  
4 to speak on any of these matters at all? No.

5 Mr Tait, before we leave this matter, I know I might be asking you to look  
6 at the tealeaves at the bottom of your cup, but I thought, in fairness, it was  
7 important just to note the time that we are currently sitting at in this examination,  
8 and therefore, to flag that if further additional land requests were to emerge,  
9 they're beginning to move into a time when their complete examination within  
10 the timescale of examination left to us becomes quite difficult.

11 We can accommodate the one that has been discussed between yourselves  
12 and Port of London Authority, in relation to the Newlyn Datum change, but if  
13 we were three weeks further down the line, we would be in a position where the  
14 completion of the necessary – well, if statutory processes were to be necessary,  
15 their completion would be difficult to accommodate. So I just wanted to leave  
16 that point resting on the table.

17 Okay. Let's then move onto item (c), which can probably be brief. I think  
18 it's important that I make clear the Examining Authority's broad approach to  
19 circumstances where an applicant for an NSIP is seeking to withdraw a little  
20 from the extent of the land or extent of rights that they have sought or the extent  
21 of temporary possession, and that is broadly to flag that changes in relation to  
22 land are typically seen as running on a one-way ratchet, that where changes  
23 increase the extent of land or increase the extent of rights sought, that we are  
24 very, very careful indeed about the prospective effects of those increases on  
25 potential additional affected persons.

26 Where changes are in reverse, where they are decreasing the extent of land,  
27 yes, we review them, but our in-principle position will tend to be that an  
28 applicant in those circumstances is doing its duty in relation to the broad policy  
29 position and the statutory position in relation to CA, because it is seeking to most  
30 efficiently use land, and therefore, in turn to reduce its land take or its rights take  
31 to the extent it can.

32 Very occasionally there are circumstances where individual affected  
33 persons are essentially saying, 'We don't understand the nature of your proposed  
34 reduction here, and it doesn't make sense, and you leave me with something that

1 is useless in any case.’ Now, most of those sorts of issues will fall into individual  
2 submissions, rather than strategic case submissions, but if there is anybody with  
3 a general view that the applicant is conducting itself poorly, inefficiently,  
4 leaving relevant parcels around here or there in a way that needs to be  
5 considered, again, as a, in a sense, almost a quality control measure by ourselves,  
6 now’s your opportunity to speak on that.

7 Is there anybody wanting to speak with a broad concern about the way in  
8 which reductions in land and/or rights are being handled? I’m not seeing  
9 anybody. In which case – ah. Yes, no, I do see Ms Dablin.

10 MS DABLIN: Thank you. Alison Dablin for the Port of Tilbury. It might be a little bit  
11 premature, but seeing as the applicant referred to that it intends to remove two  
12 plots of land at deadline 4, I wonder if we could clarify precisely which plots so  
13 we can avoid, essentially, making arguments about those plots at deadline 4 for  
14 a matter that might be resolved. Thank you.

15 MR SMITH: That’s a very sensible question.

16 MR TAIT: Two parcels within plot 2110.

17 MR SMITH: Ms Dablin, does that give you the information you need?

18 MS DABLIN: It does. Thank you. That’s very welcome.

19 MR SMITH: Thank –

20 [Crosstalk]

21 MR TAIT: Yes.

22 MR SMITH: Thank you very much. I think we’ve bottomed out that item. Now, if we  
23 then move onto item 3(d), the purpose and adequacy of the funding statement.  
24 I’ll be asking Mr Tait to address us here. I think there are two prefatory remarks  
25 that I’m going to make in relation to that.

26 Firstly, being that an entity such as National Highways, within the funding  
27 framework provided to it by the RIS, is in a very different position in relation to  
28 the operation of a funding statement within an examination than, say, for  
29 example, an in-principle, solely private sector applicant, who, if they are  
30 proposing compulsory acquisition can’t, for example, draw on treasury funds or  
31 any strategic commitment to a project by government, and so have to  
32 demonstrate that they have funds at readiness to deal with the global extent of  
33 potential compensation liability that falls upon them.



1 Now, unless anybody submits to the contrary, our starting view would be  
2 that that is not the case in relation to an entity that is, essentially, a government-  
3 owned company, providing a project within the framework of a government  
4 strategic position, but I will ask if anybody wants to put anything to us on that  
5 point, but Mr Tait, can you just introduce the position?

6 And in so doing, there is a second point that I was just going to lay on the  
7 table that you might cover off, and that is that we have seen, by way of  
8 administerial statement, obviously, in this particular case, a shift in the  
9 anticipated commencement date of the project, and we covered off that in terms  
10 of requests for information from yourselves. I guess, though, there is a kind of  
11 underlying remaining question about the strategic commitment of government  
12 to the project, and whether that has any implications at all for the funding  
13 statement and/or the availability of funding to meet compensation liabilities in  
14 due course.

15 I mean, in a nutshell here, whatever happens to the project, there should  
16 not be circumstances in which anybody who's seeking compensation, should it  
17 still be falling due, can't obtain it because the project no longer has a line of  
18 credit, so to speak.

19 So that was the second point that I wish to put to you on this. So if you  
20 can pick those two up, and then I'll check to see if anybody wants to speak on  
21 this item.

22 MR TAIT: Sir, in relation to your point, it's right that, as you acknowledged, that the  
23 applicant is government-owned and funded, and so is in a different position to  
24 private developers in respect of the reasonable prospect test set out in paragraph  
25 9 of the guidance, and related to that, the funding mechanism is through the RIS  
26 process, and RIS2 identifies it as committed, and therefore, funded, and the  
27 written ministerial statement that you referred to, dated 9 March, deals with the  
28 delay point, but it also – the Secretary of State confirmed that the government  
29 remains committed to Lower Thames Crossing, and I believe junior minister, in  
30 answer to a question a month later – I think this is in one of the procedural  
31 documents – confirmed that as well, in April 2023.

32 Now, this is obviously subject to the approval of final business case, like  
33 any other project – HM Treasury approval, but it's no different from any other  
34 project of this nature, and so there are no circumstances in which it can be

1 reasonably envisaged where the applicant/government will not be in a position  
2 to address the compensation issues.

3 MR SMITH: Okay. Before we move on, is there anybody with any concern about that  
4 in-principle position? No. Okay, so Mr Tait.

5 MR TAIT: Sir, I've got nothing to add to...

6 MR SMITH: Okay.

7 MR TAIT: To that in the absence of any other points.

8 MR SMITH: Yep. No, no, no, I wasn't expecting you to respond to anything. I was just  
9 expecting you to move on to the second point.

10 MR TAIT: Oh, yes. Sorry. Well, those are the two points, really.

11 MR SMITH: I suppose you –

12 MR TAIT: One is the special position, the commitment of the government, and the  
13 second is that there aren't therefore circumstances –

14 MR SMITH: Apologies.

15 MR TAIT: – that compensation obligations would not be met.

16 MR SMITH: Okay. Does anybody wish then to speak to any of the balance of this as an  
17 issue? We will continue, obviously, to be alive to it as an issue throughout  
18 examination. If any questions emerge in the public domain that bear on it, we  
19 will obviously return, either in written or at a hearing, and we will surface those  
20 questions, but that's where we currently rest on that point.

21 Now, then the broad question that is asked at (f) is the general question  
22 that we ask on an enduring basis throughout the entirety of the examination until  
23 the day it closes, essentially, of ourselves, and for the applicant, provision of  
24 best information to enable us to answer it to the best extent that we can, and in  
25 that respect, we will be continuing to test it until you say 'goodbye' to us all, but  
26 at this interim point, Mr Tait, is there anything further that you want to put in  
27 front of us by way of a summary position, other than just, in your view, yes?  
28 Noting that, of course, we then open up the opportunity for anybody who wished  
29 to strategically take the view that, 'No, there is not,' and we will then hear them,  
30 and if that's the case, we will return to you for a response.

31 MR TAIT: Sir, it's tempting to go for the longer option, but I shall opt for the shorter  
32 one, which I think will assist you, but yes.

33 MR SMITH: Okay. So we know where the applicant stands, and you know we are in a  
34 state of continuous monitoring of this issue. Is there anybody who wishes to

1 speak to the proposition that there is, for reasons, not a compelling case in the  
2 public interests for a compulsory acquisition and/or temporary possession  
3 provisions advanced in the draft development consent order overall? Is there  
4 anybody wishing to make that point, aside from merits of the scheme?

5 MR BEDFORD: Sir, yes, that's absolutely just the point I wanted to clarify, because –  
6 sorry. Michael Bedford, Whitecroft. In relation to your detailed agenda for  
7 CAH2, as directed to the Whitecroft issues, you haven't entirely captured this  
8 point, but it seemed to me it was implicit –

9 MR SMITH: It is.

10 MR BEDFORD: – in the point, and I just wanted to clarify that. I wasn't intending to  
11 address you on this in the strategic debate.

12 MR SMITH: I think it's fair to say, as a guidance item, that we will always be seeking  
13 an opinion on that point from every individual affected person who is an objector  
14 to CA and/or CP. So we look forward to your submissions in due course. In  
15 which case, ladies and gentlemen, that does bring us, I think, to the end of that  
16 item, because I don't see anybody else wishing to speak on it. So unless Mr Tait  
17 wants a reprise, which I guess he probably doesn't, we'll close out item 3.

18 I think before we just make a start on agenda item 4, I will just briefly  
19 speak to housekeeping, and talk about where it looks as though we are going to  
20 draw this particular hearing to a close, in relation to this agenda. We must, I  
21 think, reasonably finish by 1.00 p.m., because that gives the staff the opportunity  
22 to reconfigure the room for the afternoon hearing. It also gives the option to  
23 those who are speaking in the afternoon who may not be here yet to arrive,  
24 register, etc, and for those of us delivering that hearing to do our preparation and  
25 have some lunch, so we will be ending in approximately half an hour.

26 What we will do is we will make a start on agenda item 4, and as I indicated  
27 at the outset of this hearing, we'll be coming back to the remaining items on this  
28 agenda in later hearings, because these are questions that remain alive until the  
29 end of the examination. So I trust that's agreeable to everybody, and it doesn't  
30 mean in any way that anybody making individual representations this afternoon  
31 is circumscribed in relation to presenting their case. They can cover all of their  
32 CA case in the afternoon session.

33 So let's move then back to Mr Tait on agenda item 4, and we, to a degree,  
34 we dipped our toes into this water, because we started to talk about the statutory

1 undertakers' positions, but can Mr Tait just take us to the highlights of the  
2 current condition of negotiations? And what I think we're most interested here  
3 are particular outstanding matters, rather than anything else.

4 MR TAIT: That's understood, sir, and you have some questions, 1513 and 1514, that  
5 relate to this, so we will be providing that information –

6 MR SMITH: In writing by the deadline, yes.

7 MR TAIT: By way of context, there are 44 statutory undertakers within the order limit  
8 boundaries, 43 of which relate to 127 and 138, insofar as dealing with CA, rather  
9 than only TP. 25 of those did not make any representations in relation to CAH1,  
10 so that left 18, and in relation to those 18, three, as you know, have been  
11 withdrawn: Anglian Water, Southern Gas Networks and Cadent Gas, so leaving  
12 15, and of those, 12 appear to relate to matters relevant to 127 and/or 138,  
13 because some of the matters are not relevant to land matters, and of those 12,  
14 there are some who have double counting, because they appear more than once  
15 under a different name, and there are three of those.

16 So there are, effectively, nine who fall into – when one excludes the double  
17 counting, and standing back, in relation to those that remain, the applicant does  
18 have an overall confidence that agreement on all matters will be reached during  
19 the examination period, because there has been a very extensive dialogue.

20 So as I said, Anglian Water, Cadent have been withdrawn. The  
21 Environment Agency's matters do not relate to 127 or 138, and there is  
22 discussion about drafting the protected provisions relating to the environmental  
23 permitting regulations. So again, that's confident that's going to be addressed.  
24 Essex and Suffolk Water, part of Northumbrian Water, there are discussions  
25 relating to an agreement here in relation to further arrangements for the  
26 protection of their apparatus, which was touched upon last week, and so that is  
27 at an advanced stage.

28 The London and Continental Railways have not objected, and HS1 only  
29 have a holding objection, so there's no issue there, particularly. Lumen – that,  
30 again, doesn't relate to section 138 and the only discussion there is about varying  
31 statutory deferment of renewal costs and again, the applicant's confident that,  
32 one way or another, that narrow issue is going to be addressed.

33 National Gas – that is also very advanced, and National Grid Electricity  
34 and National Grid plc, that's one of the examples where they're the same.

1 Network Rail – there are some interface matters that are being discussed and an  
2 agreement circulating. The PLA, I appreciate, can speak for themselves, but I  
3 think it's fair to say that matters are advanced in relation to seeking to agree the  
4 residual issues that remain. The Port of Tilbury – again, there is a draft  
5 circulating, and the particular point is obviously to ensure that there isn't a  
6 detrimental effect on the statutory functions, so that remains live, but again, that  
7 is progressed.

8 Royal Mail, no objections. Southern Gas, withdrawn. Southern Water,  
9 there are some discussions relating to water quality, and pollution  
10 contamination, but again, those are advanced, and Thames Water, I believe, has  
11 withdrawn, and Thurrock Flexible Generation Ltd – there's a discussion about  
12 the scope of the powers and protective provisions are being put forward by  
13 Thurrock Power's solicitors, and that is, again, a matter that is under discussion.

14 MR SMITH: Under discussion, and clearly, you're going to draw all of this together into  
15 one of the summary tables that we requested pursuing to our procedural decision.  
16 So we'll see that at deadline 4, so we don't need to dwell on detail, and just a  
17 couple of items cropping out of that and things we've observed on-site – the  
18 Thurrock Generation – oh, no, what are they called? Thurrock –

19 MR TAIT: Flexible.

20 MR SMITH: Flexible Generation, yeah – DCO. That is in implementation now. They're  
21 on-site, so it's a matter, I assume, of broad agreement, that you're dealing  
22 concretely with what is as they start to construct.

23 MR TAIT: Yes, sir.

24 MR SMITH: Yep, good, because we saw a lot of trucks and a lot of gravel the other day.  
25 Okay, good. Can I then just go around the room and see a show of hands? And  
26 again, without picking on you, Ms Dillistone, I think your hand is probably  
27 straight into the frame, and I do see Mr Owen, Port of Tilbury, as well. Is there  
28 anybody else who wants to speak on this matter? No. Okay. Ms Dillistone, can  
29 I go over to you? And the I'll go to Mr Owen.

30 MS DILLISTONE: Alex Dillistone for the Port of London Authority. I will take Mr  
31 Tait's word and say that matters are indeed advanced in seeking to agree the  
32 issues which remain, so thank you. There is one further point that I would like  
33 to raise, which is about creating a new paragraph for temporary possession and  
34 acquisition of rights provisions. Partly the reason for this is a housekeeping one,

1 because there was an amendment made in paragraph 1,044, at deadline 1, which  
2 is in the facilities for navigation paragraph, but deals solely with temporary  
3 possession. So we were going to suggest that that should be moved to a new  
4 paragraph for temporary possession and the acquisition of rights, and then the  
5 second one is slightly more fundamental.

6 There is an increasing tendency for projects of this sort to be paused for  
7 some period of time, and we've already seen with lower Thames Crossing that  
8 the start of construction will be delayed by two years, and where that happens  
9 there is an impact on landowners. For example, it could stop the PLA from  
10 granting a temporary licence over land over which the applicant has exercised  
11 powers, but for which it has no immediate need.

12 So we've proposed to the applicant that a new subparagraph be added to  
13 the paragraph dealing with the powers of temporary possession, compulsory  
14 acquisitions of right, and the imposition of restricted covenants, and that those  
15 powers shall be limited in time from the applicant last having carried out any  
16 activity in, over or under the relevant land. Now, we are in discussions with the  
17 applicant concerning a provision of that sort, but I just wanted to mark that we  
18 are in discussions on it.

19 MR SMITH: And there is a point of general principle that flows up from that which is,  
20 essentially, the question about any form of delay or setback to the project, in  
21 relation to circumstances where, particularly with temporary possession, any  
22 landowners' possession has been entered into over that land, because, I guess,  
23 looking at compulsory acquisition, if compulsory acquisition has been pursued,  
24 and/or the land has been acquired by private treaty, then it is sold. The relevant  
25 landowner is essentially in receipt of the purchase price at that point, so there's  
26 maybe less of a concern or issue in relation to delay, but in relation to temporary  
27 possession, potentially quite a substantial one.

28 So Mr Tait, if you could pick that up when I return to you and ask for  
29 closing, but Ms Dillistone, is there anything else you wanted to add, or are you  
30 dealt with?

31 MS DILLISTONE: No, thank you, sir. That was all.

32 MR SMITH: Excellent. Right, I'm then going to go to Mr Owen, Port of Tilbury.

1 MR OWEN: Thank you, Mr Smith. Robbie Owen, for Port of Tilbury London Ltd. Mr  
2 Tait referred to the fact that a draft agreement was circulating, and that is indeed  
3 the case.

4 The issue we have is more in relation to the protected provisions included  
5 in the draft DCO, and you'll recall from the Port of Tilbury's written  
6 representation, and indeed from the relevant representation, that we're not  
7 content with the form of protected provisions currently included in the draft  
8 DCO. They are materially different and confer much less protection on the Port  
9 of Tilbury than the equivalent ones do for the Port of London Authority, for  
10 reasons we do not understand, and it is essential for the port to be content with  
11 the protected provisions in the draft DCO, as well as having a satisfactory  
12 framework agreement, because at the moment there is no protection conferred  
13 by the DCO on the Port of Tilbury in relation to a whole swathe of DCO powers,  
14 not least compulsory acquisition and temporary possession, and until that  
15 position is remedied, the port will be maintaining its objection under section 127  
16 about detriment on the carrying on of its statutory undertaking, because it is a  
17 harbour authority, just as the Port of London Authority is, and therefore, it is no  
18 answer just to be told, 'Oh, well, we're going to negotiate a framework  
19 agreement with you, which will deal with the issue,' because the position must  
20 be satisfactory to the Port of Tilbury on the face of the DCO as well, and that is  
21 entirely conventional position.

22 So that is where things currently stand. We will continue to pursue this,  
23 but certainly, following submission of our written representations, we've  
24 received a markup of the protected provisions that we included in our written  
25 reps which is far from satisfactory. So at the moment, that is how things stand.  
26 We continue to discuss matters with the applicant, ever optimistic that we will  
27 be able to achieve a satisfactory result in the coming weeks. Thank you.

28 MR SMITH: Thank you very much, Mr Owen, and that does take me to another point of  
29 general application, which is the operation of the ticking clock. We are in a  
30 statutory time-scaled examination. The examination must close on the closure  
31 date just before Christmas, as noted on the Planning Inspectorate's website.

32 As a matter of practice, we as an examining authority wish to do our  
33 utmost to report to the Secretary of State on the basis that positions between  
34 parties are fully understood, in that they are either agreed and there is therefore

1 a broadly supported position put before the Secretary of State, or they are not  
2 and we have enough information in front of us to make what amounts to an  
3 adjudicatory recommendation so that we can suggest the Secretary of State  
4 manages the issue in a certain way.

5 What we distinctly do not like to do, because it is not a good reflection on  
6 the professionalism of an examining authority's process and the discharge of its  
7 own obligations, and frankly, because we know that Secretaries of State do not  
8 like it either, is to kick the can forward and to suggest that the Secretary of State  
9 might undertake further consultations on outstanding matters around the  
10 resolution of protected provisions during the decision period. That is not what  
11 a decision period is for. To the extent that anybody has had any concerns about  
12 the potentially extending durations of decision periods, one of the observations  
13 that I would make is that it's important that processes are not loaded into those  
14 periods that they were never statutorily intended to encompass.

15 So if we've got outstanding matters, such as that raised for Mr Owen, we  
16 need very rapidly now to move to a point where we either understand what an  
17 agreed position might be between the parties, or if that is not possible, we've at  
18 least received submissions from you both that put us in a position where we can  
19 make the necessary adjudicatory recommendation.

20 Okay. Mr Tait, you probably want to respond on all of that, so I'll move  
21 to you, and then I think we might even get Crown – possibly even commons,  
22 open spaces, etc – in before lunch, but we'll see. So Mr Tait.

23 MR TAIT: Sir, very briefly on Ms Dillistone's point, part 8 of schedule 14, which was  
24 the protected provisions for the Port of London Authority, do already have  
25 provisions in relation to approval, detailed design and 98(4) and (5) include  
26 provisions relating to expiry if the undertaker doesn't commence constructing  
27 or carrying out of the approved specified work, or exercise of the specified  
28 function, within a prescribed period, and 98(8) deals also with timing, in relation  
29 to delay and the like. So in broad terms, I'd respond that there is provision there  
30 already, along the lines Ms Dillistone is referring to, but if there are any  
31 additional comments, obviously we will receive them and consider them.

32 MR SMITH: Okay.

33 MR TAIT: And in...

34 MR SMITH: Yes, no. Do carry on. You were going to move on.



1 MR TAIT: But only very generally, in relation to Mr Owen, I wasn't suggesting matters  
2 had been agreed. There is a protected provisions draft proceeding between the  
3 parties, and so that is continuing. We have sent our comments back, and we  
4 await the next step and look forward to that dialogue continuing.

5 MR SMITH: Okay. On that point, I'm just having a quick look at the timetable, because  
6 I'm conscious that we are due on 14 November to publish, should it be  
7 necessary, and I think it clearly is going to be necessary, a commentary on and/or  
8 schedule of changes to the draft development consent order.

9 I think it's clearly then desirable that we move to the closest possible  
10 statement of draft protected provisions by deadline 6, because if we haven't seen  
11 them by deadline 6, we are, to a degree, in the land of speculation, and in fairness  
12 to all parties around the table, what we want to be able to do, when we issue the  
13 commentary on the draft development consent order – we wish to be able to  
14 identify what we believe are outstanding matters, and whether, in our view, there  
15 are potentially useful, lawful resolutions to those matters, in forms of drafting,  
16 if needs be, and that's an important process because it means, amongst other  
17 things, that everybody is, in fairness, aware of the case against them, and then  
18 has the final bandstand deadlines in the examination to have the opportunity to  
19 say that, 'Actually, things ought be done in a different way, because...' if they  
20 so wish.

21 Also, it still leaves us the hearings between 20 and 28 November to take  
22 something apart on the workbench if we need to do that. So can I ask that  
23 anybody – not just Port of Tilbury, but we note their particular point, but if there  
24 is anybody with outstanding negotiation positions in relation to protected  
25 provisions and/or any other provisions that bear on the operations of statutory  
26 undertaker that they put those to us in writing no later than deadline 6?

27 Okay. Can we then move on to agenda item 4(b), and the Crown? Now,  
28 there's one very particular focused question that I'm going to lay on the table  
29 before introducing yourself, Mr Tait, because we've got Ms Dillistone in the  
30 room, and that relates to the degree to which there is or is not a Crown interest  
31 in the land – the term I hesitate to use, when you're talking about land under  
32 water, but the land at the bed of the River Thames, because none of us profess  
33 to be experts on the intricate passage of statutory relationships between the  
34 Crown and its interests in, generally, the tidal seabed, and also, the very

1 particular powers of particularly the Port of London, but any other port authority  
2 as well, and we just wanted to make sure that we weren't in circumstances where  
3 our understanding was that things are capable of being authorised by or for a  
4 port authority and it turns out that there might be an interest in the Crown, and  
5 of course, the Crown's interests, in terms of the operation of CA, are very  
6 different to everybody else's, and so if we're in a position where it actually might  
7 be the Crown and not a port authority, we need to look at things in a very  
8 different way.

9 So I thought it was worth surfacing that, and also surfacing an observation  
10 that I would make about potential solutions in that space if we need them, and  
11 that is to say that if it's unclear whether we're dealing with circumstance, or if  
12 it's even in dispute as to whether we're dealing with the Crown or a port  
13 authority, then one possible way forward is for without-prejudice submissions  
14 to be made, and on the basis of, 'It is the view of the authority that our powers  
15 are operable here, and there is no Crown interest. Therefore, it is our in-principle  
16 submission that things can be dealt with in this way,' but that's without prejudice  
17 to the position of the Crown, and similarly, if it looks as though there are Crown  
18 issues, that similarly, a without-prejudice position, what would almost amount  
19 to a comfort letter and/or form of draft letter of consent under Planning Act 2008  
20 section 135, could also be advanced, where the Crown wasn't asked to concede  
21 its position either, if needs be.

22 Now, the reason I'm suggesting that that might be a way forward is that  
23 I'm conscious there might be some uncertainty on this. I leave it in both of your  
24 hands. You may tell me that we don't need to worry about such matters. Mr  
25 Tait.

26 MR TAIT: Thank you, sir. We haven't identified that as an issue through the land  
27 referencing process or otherwise, but we will take that away to see whether it  
28 has any legs in the first –

29 MR SMITH: It may have no legs.

30 MR TAIT: – and then if it does, obviously, we need to contemplate what you were just  
31 setting out, but that's not our understanding, but I'd like to respond on a fuller  
32 basis.

33 MR SMITH: Yeah, no, that's very fair, and I just wanted to, essentially, float the issue.  
34 It may not turn out to be an important issue, but because of the timing point that

1 I've made earlier, that if it did, then it needs surfacing now, not in three weeks'  
2 time or –

3 MR TAIT: That is certainly correct.

4 MR SMITH: Yep. Ms Dillistone.

5 MS DILLISTONE: Alex Dillistone for the Port of London Authority. I would agree  
6 with the position that Mr Tait has just put forward. The PLA is the owner of the  
7 riverbed, and the owner of the port. We do not expect the Crown to have any  
8 interest in this land. Obviously, I won't speak for the Crown, but that would be  
9 our understanding as well.

10 MR SMITH: Now, obviously, part of our issue is that we don't have the Crown in any  
11 of its particular guises in the room, as far as we're aware. One of the ways  
12 forward that is normally taken in relation to the potential relationship between  
13 the Crown and CA matters is once we're past the midpoint in an examination  
14 that an applicant would normally engage in a final dialogue with relevant Crown  
15 authorities, work out what the extent of section 135 consent might need to be,  
16 and/or work through how the Crown's relationship to the broader CA request is  
17 finally resolved, and I think it's, again, probably useful to indicate that that's a  
18 process that I'm sure is probably being had already, but if it's not, needs to kick  
19 off.

20 MR TAIT: In relation to that specific point, it may be helpful if, in collaboration with  
21 PLA, we provide something jointly, which sets out that position on as  
22 authoritative a basis –

23 MR SMITH: As you can.

24 MR TAIT: – as possible as to the absence of a Crown interest.

25 MR SMITH: Yeah. I do raise the point more generally, though, because this is not just  
26 the PLA. Just in terms of your diligence around Crown interest across the  
27 entirety of what is a very large CA, if anything's likely to crop up that needs  
28 Crown consent, then that needs taking on.

29 MR TAIT: Yes, sir. Sir, as you'll know, more generally, we have been in dialogue with  
30 the Crown, and so far as the Crown estate is concerned, that is really dealing  
31 with interests arising from dissolved companies, the bona vacantia position, and  
32 there were three companies split over 17 plots, and the Crown has confirmed  
33 that two have been disclaimed and that it has no vested interest in the other plots.

1                   So, additionally, the Duchess of Lancaster has one bona vacantia interest,  
2                   in respect of a dissolved company, and the applicant is in dialogue with the  
3                   Duchess' solicitors, and is in the process of obtaining disclaimers for these  
4                   interests, which it hopes to have before the examination. Secretary of State for  
5                   Transport's position in relation to HS1 – there's a tripartite legal agreement  
6                   which is being worked on, so we anticipate that section 135 consent will flow  
7                   from that, and there are various other plots that Secretary of State has, other than  
8                   through HS1, and again, there's legal agreement being discussed, with section  
9                   135 as the output.

10                   Secretary of State for Health and Social Care, as you know – that's been  
11                   confirmed that consent is in place, and so far as Defra is concerned, that's  
12                   essentially Forestry England and there are a number of matters still in discussion  
13                   with them, but those are very advanced, and a draft SCG, as you know, is in  
14                   place.

15 MR SMITH: Okay. So from your perspective, it all looks as though it's – in terms of air  
16                   traffic control – circling, ready to – and the wheels are descending.

17 MR TAIT: I don't want to talk about air traffic control.

18 MR SMITH: That's a bad analogy at the moment, isn't it?

19 MR TAIT: We hope to do better than that, but yes.

20 MR SMITH: Okay. Right. Is there anything else that anybody wants to raise or put to  
21                   us on that particular point, agenda item 4(b), Crown interests? No. I am then  
22                   looking at the amount of time left in this hearing before we must close, which  
23                   is, essentially, just 10 minutes. My guess would be that agenda item 4(c) is a  
24                   bigger item. Can I just see an indication of people who might wish to speak on  
25                   this?

26 MR EDWARDS: Sir, Douglas Edwards for Thurrock Council. We have a particular  
27                   matter relating to a particular area of open space –

28 MR SMITH: You're on the agenda for site specifics this afternoon.

29 MR EDWARDS: Yeah.

30 MR SMITH: So if you're prepared to deal with that as a site-specific point –

31 MR EDWARDS: That was my intention, sir.

32 MR SMITH: Excellent. Right. Anybody else wishing, specifically, to raise anything in  
33                   relation to commons and open spaces and the related provisions, sections 131,  
34                   132 or 139 of the Planning Act 2008? I'm not seeing any other hands. Mr Tait,

1 were there any general observations that you wish to make in relation to those  
2 points, in terms of handling progress?

3 MR TAIT: In terms of progress, sir, you will know that, in relation to the landowners, in  
4 whom the special category land is vested in, and thus whom the replacement  
5 land will be invested, there is a degree of agreement in principle as to the  
6 replacement land. Kent, in terms, confirmed that it complies with the relevant  
7 tests. We'll hear from Thurrock this afternoon, so I won't deal with them, and  
8 Forestry England are also, in general, satisfied with those proposals. So there's  
9 quite a bit of common ground in relation to the adequacy and appropriateness of  
10 the replacement land, in respect to the landowners from whom the land is taken.

11 In respect to from whom the replacement land will be taken, there's, I  
12 think, probably fair to say, less common ground. In relation to Cranham, there  
13 is a voluntary agreement with Cranham Solar Ltd, and other discussions  
14 advanced with Cranham Golf Course, and of course, there's Hole Farm, which  
15 is under the ownership of National Highways. So there is complete agreement  
16 with them, in relation to that aspect.

17 So that's really all by way of update, but there are a number of more  
18 detailed negotiations that we can set out in due course, but not before lunch, I  
19 suspect.

20 MR SMITH: Not before lunch, and at this juncture, I'm going to indicate, Mr Tait, in  
21 writing, only to the degree you need to additionally state them, because, of  
22 course, we've got our standard table monitoring process, and that's probably  
23 good enough, and the purpose of this oral process was to provide you and us  
24 with the ability to have conversations about the highlights emerging from that,  
25 which I trust we have now done. We can come back to elements of this agenda  
26 item at a subsequent compulsory acquisition hearing if we need to.

27 MR TAIT: Sir, could I mention one other matter? There's, obviously, Claylane Wood,  
28 where the fact – it was included on a precautionary basis, and the landowner has  
29 now confirmed and signage has been erected. That is private land, not open  
30 space, so that's the subject of EAO-1, and so clearly, 131 is no longer engaged.

31 MR SMITH: No longer engaged. That's useful confirmation. Then on that basis, I'm  
32 going to suggest that we draw a line at that point, noting that we are broadly  
33 heard on agenda item 4. That doesn't preclude the possibility that aspects of,  
34 indeed, any of these agenda items that might change as a consequence of

1 diligence – we might touch back on at a later hearing, and/or in writing before  
2 the close of examination.

3 What it leaves, specifically, unheard is agenda item 5, and deep apologies  
4 to anybody who has sat here with a view that that is the only matter that they  
5 wish to speak on. For anybody who is here representing an individual affected  
6 person, as I've said before, the fact that we haven't got to it in the strategic  
7 process doesn't stop you raising it in your own individual reps. So if you need  
8 to raise it this afternoon, specifically applicably to you or your client, raise it,  
9 but we will come back to it at a later agenda. I'll reserve that for a future  
10 compulsory acquisition hearing.

11 In which case then, ladies and gentlemen, we move on to the closure of  
12 this hearing. You will note that an action list has been in preparation, and that  
13 we have about four actions. We will aim to get those published as soon as we  
14 can after this event. Noting the proximity of deadline 4, we will try to do that  
15 today, and that's a 'try.' I'm just looking at my case team colleagues at the back  
16 of the room.

17 [Sotto voce discussion]

18 MR SMITH: Are there no D4 actions? No, actually. That's a very good point.

19 [Sotto voce discussion]

20 MR SMITH: Yes. The Newland Datum point is probably the most immediately urgent  
21 one, but the others are deadline 6, deadline 6 and deadline 5. Look, we'll do our  
22 best to publish, but if we can't, nobody should be concerned that they're only being  
23 left with two days to do something.

24 Moving on from actions, obviously, a lot of people in this room are alive  
25 to the fact that we have the first compulsory acquisition hearing into individual  
26 objections this afternoon. That will commence on time, which is good news, here,  
27 compulsory acquisition hearing 2.

28 We have very recently – and you probably won't yet have seen it –  
29 circulated notice of hearings for the October window. I will just flag that we have  
30 compulsory acquisition hearing number 3 that will proceed on Tuesday, 17  
31 October, and 4 on Wednesday, 18 October. Those will deal with, collectively, any  
32 remaining outstanding issues, to the extent that we can, flowing from this hearing,  
33 and they will also deal with individual objections. So, again, for those who weren't  
34 heard today, we will be trying to draw you in to one or the other of those.

1                   We won't necessarily be able to give you your specific preference of a  
2 date, because at the end of the day, we've just got to make sure that everybody is  
3 heard, and in that respect, if there is anybody out there who is still being, I guess,  
4 slightly diffident about considering which hearing they might put forward their  
5 compulsory acquisition case, I need to flag that we are getting close to the end of  
6 the examination, and it is very important that people use – swing on the first rope –  
7 use the opportunity for the next hearing if you possibly can, because the better  
8 closure that we can reach on the compulsory acquisition cases earlier, the better it  
9 is for all concerned.

10                   So we've also circulated notice of some additional issue-specific hearings:  
11 8 on Thursday, 19 October, which will be broadly dealing with construction of  
12 operational effects that are not of a traffic-related nature, issue-specific hearing 9,  
13 broadly dealing with ongoing environment and biodiversity matters, including  
14 matters around compensation mitigation, flowing on from the discussions that  
15 we've already had, issue-specific hearing 10 on 24 October, that again, will be  
16 dealing with balance of traffic and transportation matters, matters specifically in  
17 dispute between Thurrock Council and the applicant around modelling, but also,  
18 moving into the world of non-motorised users – walkers, cyclists, and horse riders.

19                   So those are the hearings that we've notified. We have also notified on  
20 Friday 20<sup>th</sup> of an additional accompanied site inspection, where the Examining  
21 Authority will be viewing one of the Chiltern tunnel compounds in the HS2 project.  
22 This is, essentially, to inform our understanding of the nature of the operations that  
23 take place at a compound supporting a TBM, and because that will take place on  
24 private land and operational land, delivering a major project, the people that will be  
25 admitted to that land are in the gift of HS2 Ltd, and so we have made clear in serving  
26 the notice for that event: yes, it's an accompanied site inspection, but it will be a  
27 limited attendance with, essentially, a small number of representatives of the  
28 applicant.

29                   We very much welcome a representative of the two local planning  
30 authorities, who have tunnelling processes proposed for their land. So Thurrock  
31 are very welcome to nominate an attendee, as, indeed, are Gravesham, and we  
32 would also extend an invitation to Thames Crossing Action Group, TCAG, to send  
33 one representative, but because of the health and safety issues, and the limited  
34 nature of the site, we won't be able to accommodate three busloads of general

1 attendees, and we trust that everybody will understand that this is an inspection that  
2 is about us informing ourselves as best we can about the technical processes and  
3 effects of an active tunnel and compound.

4 That's all I think I need to say about arrangements moving forward. So I  
5 would like to take this opportunity to thank all speakers for your contributions, and  
6 everything that has been said will be very carefully considered, and again, we may  
7 pursue or take up matters in written questions or in further hearings, and again, I  
8 would very much like to thank the case team for supporting these hearings so well.

9 So unless there's anything else anybody needs to raise right now, I'm  
10 going to –

11 MR BEDFORD: Sir.

12 MR SMITH: Yes.

13 MR BEDFORD: Sir, Michael Bedford, Whitecroft. Sir, I'm just thinking ahead to this  
14 afternoon. I appreciate CAH2 is its own process, but I'm also conscious it's a  
15 Friday afternoon. You've got four separate entities. Have you, in your mind, given  
16 any indication of approximately how long you expect each of the four to take?  
17 Because, obviously, for my part, it would be useful to have some kind of idea of  
18 what time period, and that might help some of the others.

19 MR SMITH: Yes. I mean, no, we haven't specifically time-limited, because  
20 conventionally, on individual objections, compulsory acquisition hearings, we  
21 don't, unlike open floors, where we do, but I think it's fair to say there is more  
22 liberty than there would be at an open floor, but clearly, that liberty is not boundless.

23 So let me hopefully help and set some ground rules. I think we are looking  
24 at, broadly, principal statements of case from affected persons of in the region of  
25 20 minutes, because I think what that will enable is a fair distribution of the time,  
26 plus some reserve time for the applicant to respond, noting that, just as in an open-  
27 floor hearing, the applicant takes things away and responds in writing. I'm not  
28 saying you can't speak to the highlights, Mr Tait, but what I'm urging upon you is  
29 the virtue of dealing with detail in writing again. Now, I'm not telling you to speak  
30 for 20 minutes, Mr Bedford. If you can bring us to your key points in 10, I will be  
31 very, very pleased and very, very grateful. I will also flag that we intend to proceed  
32 in agenda order, so if anybody's looking at that agenda and thinking, 'Well, when  
33 am I likely to be called?', hopefully that helps.

34 [Sotto voce discussion]



1 MR SMITH: Mr Holland, you are here for multiple parties. Now, what I just wanted to  
2 have a quick checkpoint on – just let me refer to the agenda for this afternoon, so  
3 just bear with me a second. I’ve got it in front of me now.

4 Now, in terms of how we’re dealing with this, I think it’s important to  
5 identify that we are aiming to hear specifically about the individual identified  
6 parcels that we put on the agenda. Now, with Thurrock, we know that’s multiple  
7 parcels – and part of the nature of the conversation we want to have with Thurrock  
8 is, again, a condition: ‘Where are we in the run of the individual objections?’ So  
9 that’s the conversation we want to have with Thurrock, so that’s why we think we’ll  
10 deal with Thurrock first, but other than that, it is our view that we will then deal  
11 specifically with Whitecroft. We’ll then deal specifically with Mrs Carver, and  
12 then we will deal specifically with Glenroy Estates at the end.

13 Now, Mr Holland, what that does, sadly, mean is we won’t deal with –

14 MR HOLLAND: I wasn’t expecting you to, if that helps, sir. I’m simply here in an  
15 observing capacity this afternoon.

16 MR SMITH: Excellent. I’m very pleased to hear that, and do get your pin on behalf of  
17 your clients in the map for one of the later hearings. Thank you. Let’s draw this to  
18 a close. Let’s resume on time to commence compulsory acquisition hearing 2 at  
19 2.00 p.m. Compulsory acquisition hearing 1 is now closed.

20  
21

**(Meeting concluded)**