



PLANNING INSPECTORATE COMPULSORY ACQUISITION HEARING

on

15 SEPTEMBER 2023 (AFTERNOON)

Ubiquis (Acolad UK Ltd)
291-299 Borough High Street, London, SE1 1JG
Tel: 0207 269 0370

PRESENT

PLANNING INSPECTORATE

RYND SMITH
JANINE LAVER
KEN PRATT
KEN TAYLOR
DOMINIC YOUNG

CASE TEAM

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)

INTERESTED PARTIES

MICHAEL BEDFORD KC (Whitecroft Care Home)
STUART COOPER (Whitecroft Care Home)
BETH YOUNGS, (Whitecroft Care Home)
CHARLES STREETEN (Glenroy Estates)
SARAH FITZPATRICK (Glenroy Estates)
JOHN LAWSON (Franks Farm)
AARTI O'LEARY (Franks Farm)
HEIDI SMITH (Franks Farm)

1 MR SMITH: Good afternoon, everybody, and welcome to what is now compulsory
2 acquisition hearing 2 in relation to the Lower Thames Crossing. Before we all
3 introduce ourselves, I'll deal with some preliminary matters. Can I first check
4 with the case team and the audiovisual staff that we can be heard online and that
5 the recordings and livestreams have started? I'm seeing all the right signals from
6 all the right places so to introductions. My name is Rynd Smith; I am the lead
7 member of a panel which is the Examining Authority for the Lower Thames
8 Crossing application, and I am in the chair for this hearing. My fellow panel
9 members will introduce themselves and I'll flag that they have biographies, as
10 do I, published in our frequently asked questions online. So I'll start by
11 introducing my colleague, Mr Ken Taylor.

12 MR TAYLOR: Good afternoon, everyone. My name is Ken Taylor, panel member. I
13 might ask some questions this afternoon and I'll be taking notes today.

14 MR SMITH: Thank you very much.

15 MR PRATT: Good afternoon, everybody. It's Ken Pratt here and like my colleague, I'll
16 be keeping an eye on things and taking notes as and when and asking the odd
17 question or two.

18 MS LAVER: Hello again, everybody. Janine Laver, panel member. Thank you.

19 MR YOUNG: Good afternoon. Panel member Dominic Young.

20 MR SMITH: Thank you very much, Mr Young. And as you can see, we are a full bench
21 of five with Mr Young attending virtually and the remainder of the bench
22 attending physically. I'll now introduce our Planning Inspectorate colleagues
23 working with us on these examinations and the team delivering this hearing is
24 led by Mr Ted Blackmore, with case officer Ryan Sedgman with us in the room
25 and Spencer Barrowman online. You will, of course, find information about the
26 application and documents produced for this examination on the Planning
27 Inspectorate's National Infrastructure Planning website, and hopefully you are
28 now more than adequately familiar with that, but please do look at the website
29 regularly because we do use it to communicate with you and to provide access
30 to documents that are produced throughout the examination.

31 I'm shortly going to ask the individual participants to introduce
32 themselves to the hearing. Before I do, I will just note that we are being
33 livestreamed and recorded. Everybody should be pretty used to this by now, but
34 does anybody have any questions about the terms on which our digital

1 recordings are made or kept, or indeed published? I'm seeing no hands raised,
2 so what I'm now going to do is to move to introductions from those who have
3 requested to be heard and what I need to know are the names of the persons and
4 organisations that are being represented, if an organisation is being represented,
5 your role, and briefly confirm the items on the agenda that you've intended to
6 speak on. Although that should be easy, because this is an agenda that is
7 structured around individual representations, I add, so each person who is
8 expecting to speak should find a pre-made slot on the agenda that is just their
9 own, so hopefully the agenda is much easier to follow than it normally would
10 be.

11 So on that basis, I am going to move to the attendance list and just check
12 that we have the people that we expect. I'm going to go through the affected
13 persons stroke interested parties who are requesting to be heard first, and then
14 I'm going to come to the applicant. So firstly, I'm going to go Thurrock Council.

15 MR EDWARDS: Yes. Good afternoon, sir. Douglas Edwards, KC, for Thurrock
16 Council. Thurrock Council wish to speak in terms of item 3(a) on the agenda
17 and we also reserve an opportunity to speak, if necessary, on item 3(b)
18 concerning the Whitecroft Care Home which is within Thurrock's
19 administrative area. So far as the other representatives for Thurrock are
20 concerned, I'll ask the two representatives who sit to my right to introduce
21 themselves in a moment, but Mr Chris Stratford, who is the DCO lead for
22 Thurrock, is present virtually at this afternoon's session.

23 MR SMITH: Thank you very much, Mr Edwards. And if we can then move on to those
24 speaking for agenda item 3(b), Birketts LLP on behalf of Kathryn Homes Ltd,
25 Runwood Homes Ltd, Runwood Properties Ltd, and in relation to the Whitecroft
26 Care Home. And given that the multiple representations there, we will just be
27 referring, moving on, to Whitecroft.

28 MR BEDFORD: Thank you, sir. My name is Michael Bedford, King's Counsel. I'm
29 instructed on behalf of Whitecroft and will be speaking. I am also joined today
30 at the table by Mr Stuart Cooper, who is a senior director with Ardent Property
31 Consultants, who I may ask to contribute when we get to the detail matters, but
32 let's see how we get on. I'm also joined by Ms Beth Youngs from Birketts, my
33 instructing solicitor, but I don't think she will need to speak.

1 MR SMITH: Thank you very much, Mr Bedford. Moving on then, can we hear from
2 those who are here in relation to agenda item 3(c), and that is the Lawson
3 Planning Partnership for an affected person, Mrs J Carver.

4 MR LAWSON: Good afternoon, everyone. Yes, John Lawson from Lawson Planning
5 partnership and I have Aarti O’Leary from the partnership as well, along with
6 Heidi Smith from Sworders dealing with compensation evaluation matters.
7 Thank you.

8 MR SMITH: Thank you very much. Before we proceed any further, can I just ask the
9 case team if we can have the venue switch off certainly the air conditioning
10 closest to the Examining Authority because it’s actually quite a distraction and
11 I do have a concern that the recording won’t be particularly useful to us if we
12 carry on with that amount of noise coming from the air conditioning system. I
13 will, however, complete introductions whilst that work on the air conditioning
14 is done.

15 Now I note not yet at the table for item 3(d), we have Norton Rose
16 Fulbright and Centro for an affected person, Glenroy Estates Ltd. Now, one
17 request that I was going to make. Because you are towards the end of the agenda
18 and I’m going to guess that by that point, at least two of these affected persons
19 will have spoken their piece, so what I was going to request was one, at least, of
20 the affected persons who have completed in the first part of the agenda, (a) or
21 (b), if it’s possible to move to the rear benches and allow the representatives for
22 Glenroy to come forward for the second half of the hearing.

23 MS FITZPATRICK: Sir, it’s Sarah Fitzpatrick from Norton Rose Fulbright. I’m sitting
24 here at the back but Mr Charles Streeten of Counsel is on the bench there and he
25 is representing Glenroy too.

26 MR SMITH: Excellent. Well, on that basis, your colleagues will be around you by the
27 time you have to present.

28 MR STREETEN: I’m grateful. Thank you, sir.

29 MR SMITH: Thank you very much. Okay, so that is the introductions from the affected
30 persons stroke interested parties completed. So I’m then going to turn to the
31 applicant.

32 MS TAFUR: Good afternoon, Sir. My name is Isabella Tafur of Counsel and I’m
33 representing the applicant today – this afternoon, I should say, together with

1 Andrew Tait, King's Counsel, and to his right, Tom Henderson from BDB
2 Pitmans is instructing us.

3 MR SMITH: Thank you very much. Now the agenda sets out the matters which are site-
4 specific now, that we're going to discuss. And what I'm going to do on that
5 basis is I'm going to reverse the normal order of speaking. So we will proceed
6 to the affected person first – I think that makes sense – we'll then hear them,
7 provide the applicant with a right of response. There may then be some minor
8 matters that need to be settled in a final circulation before we end each agenda
9 item. If I can remind everybody who is speaking that when you begin to speak
10 to a new item or question, please do reintroduce yourself by name. I know that's
11 a little troublesome, but it does help people using the livestream or watching the
12 recording afterwards to understand who is representing whom and what is going
13 on.

14 We'll be running this hearing in two sessions, and we will aim to keep
15 these to approximately an hour, hour and a half in length each. And I think in
16 fairness around distribution of time – Mr Bedford had already asked the
17 guidance on this and we've provided it, but my expectation will be that we will
18 deal with items (a) and (b) before a break. We'll then take a brief break and
19 items (c) and (d) after the break. And again, just as was the case this morning,
20 there is no planned fire drill today, so if a fire alarm does sound, it is the real
21 thing, and I would ask you to be ready to leave the room through the marked fire
22 exits to the rear or at this end of the room.

23 So introductions, I believe, are now complete. I will speak briefly to
24 agenda item 2 before moving on and asking for any final preliminary or
25 procedural questions, but I trust that the agenda is very clear; you know why
26 you're here and you just want to get on with saying your piece. So, I'm not
27 going to speak any further around the purposes of this hearing, but before I do
28 move on to the main business of agenda item 3, does anybody have a preliminary
29 or procedural matter that they need to raise now, because it's not going to arise
30 under the remainder of the agenda and they want it resolved? No. Excellent.

31 In which case, I am going to move to agenda item 3. I'm going to ask Mr
32 Edwards to introduce Thurrock's position, and the key focus of interest for the
33 Examining Authority here is to understand the specific nature of the outstanding
34 concerns in relation to individual site-specific matters on CA and TP, where you

1 are in terms of progress, recognising that we've dealt with some of these issues
2 strategically at large, but here now we're focusing down finer grain of detail. In
3 terms of speaking time guidance, you heard us provide the guidance, Mr
4 Bedford, earlier, and hopefully we'll be able to stay within that limit.

5 MR BEDFORD: Thank you very much indeed, sir. Douglas Edwards for Thurrock
6 Council. I'm going to introduce Thurrock's representations on agenda item 3(a),
7 and then I'm going to turn to Mr Church who will deal with some of the details,
8 and I may come back with some concluding remarks before our representations
9 end. So what I propose to do, with your permission, is to deal with item 3(a)(i)
10 and (iii) first, and then return to the specific concerns relating to the absence of
11 non-statutory relief separately. So, so far as agenda items 3(a)(i) and (iii) are
12 concerned, as I indicated on behalf of Thurrock Council this morning, in general
13 terms the council is content in terms of the extent and the justification of the
14 rights that are sought to be acquired through the order, subject to the important
15 points about consideration of alternatives, and that obviously will be returned to
16 in light of your direction later in the examination. So, so far as the specific
17 concerns relating to parcels of land and the approach to acquisition through the
18 order, there are essentially three points.

19 The first is a general point that concerns all of the interests that are sought
20 to be acquired through the order from the council, and that general point relates
21 to the timing of acquisition during a very long construction period. The second
22 point arises in respect of four parcels or series of parcels of land, and it's a point
23 that's referred to in the local impact report of the council, and it concerns parcels
24 where the applicant is seeking powers of compulsory acquisition, i.e. permanent
25 acquisition, in circumstances where a clear indication has been given that they
26 intend to return those parcels to the council, and therefore an issue arises as to
27 whether there is justification for the permanent acquisition as opposed to
28 temporary possession of those parcels.

29 And the third matter is a specific matter relating to some open space, the
30 Ron Evans memorial park, where permanent acquisition and temporary
31 acquisition is proposed. There has been discussion and agreement in principle
32 about replacement land. Thurrock does not have any concerns about the
33 quantum of the replacement or the potential quality of the replacement. It does
34 have a concern about the timing of replacement, and absent those matters being

1 resolved, Thurrock Council's position is that is not appropriate replacement land
2 within the meaning given in section 131, subsection 12. So that's the headline
3 points. And so unless I can be of any further assistance, I'm going to hand to
4 Mr Church, who will then deal with that in a little more detail.

5 MR SMITH: Absolutely. No, let's hear from Mr Church. But before, Mr Church, you
6 do start to speak, could I just check on the condition of the air conditioning once
7 again, because this is really quite hard to follow, I have to say, from the bench
8 here. Are the venue trying to sort it out for us? They are. Okay. Maybe you
9 could urge on them the importance of doing that. Apologies. Mr Church.

10 MR CHURCH: Henry Church for Thurrock Council. I'll be loud.

11 MR SMITH: Be as loud as you can. It helps.

12 MR CHURCH: Thank you. Picking up on the points that Mr Owens raised. Point one,
13 as we alluded to this morning, the applicant has been able to populate a
14 spreadsheet detailing why each plot is required and when it is anticipated it will
15 be required, either permanently or temporarily, but it remains unwilling to bind
16 itself to a timescale, and from an authority point of view, particularly managing
17 public access to land, that is a problem. We're concerned that it wants to give
18 us comfort, but not give us comfort.

19 The second point, right, is these four parcels of land. The council
20 identified at paragraph 14.2.3 of the local impact report four instances where it
21 was advised during meetings between the council and the applicant that land was
22 to be taken permanently but returned. It is unclear to us why the applicant is
23 seeking powers to compulsorily acquire land when it could – that land could be
24 subject to temporary possession. This raises questions as to the proportionality,
25 reasonableness, and timing of seeking greater powers than are required. When
26 land is taken temporarily, there is uncertainty as to how long it will be required
27 for, how often it might be subject to temporary possession, when it will be
28 returned, and in what condition it will be on return.

29 Dealing with the public open space point, sir, if I may, as you're aware,
30 the council has long promoted this legal agreement that we talked about this
31 morning, between us and the applicant, setting out rights and responsibilities,
32 and that point has already been raised. When it comes to public open space, it
33 is my view that it's trite law that where special category land is to be
34 permanently acquired, the acquiring authority needs to re-provide to no lesser

1 amenity. In relation to the Ron Evans Memorial Field, the applicant is seeking
2 to acquire roughly 20.4 acres and re-provide 22.8 acres, and the council is
3 perfectly comfortable with the extent and quality of that. However, and this is
4 particularly important sir, the applicant only anticipates – their word, not mine
5 – that this re-provision will be available five years after the permanent acquisition
6 of the special category land. So that is, in simple terms, land will be taken and
7 no sooner than five years the replacement will be provided.

8 MR SMITH: So there is essentially a five-year deficit in –

9 MR CHURCH: Yeah, indeed. Not less than five years, because in fact if you read the
10 application documents, some of it will be fenced off for – potentially for a longer
11 period to allow planting to mature.

12 MR SMITH: Can I just check then, is it your submission that in relation to that land there
13 should be an essentially operating replacement, even if it's not a perfect
14 replacement earlier or at the very outset?

15 MR CHURCH: It's funny you should ask that question, sir, because that's just the point
16 I was coming to. So there are – I've got five matters arising on that. The first
17 one is the proposal to acquire land but not re-provide for at least five years is, in
18 our view, excessive and disproportionate. Secondly, the Planning Act requires
19 replacement open land be provided firstly in exchange – that's the words in the
20 act. In relation to the Ron Evans Memorial Field, the applicant is, as we've
21 discussed, proposing to acquire the land and re-provide in no less than five years'
22 time. This manifestly is not exchange. It's taking and then replacing it at a later
23 date.

24 The second under that subheading is that it requires that replacement of
25 public open space be, I quote, 'No less advantageous than it was before', close
26 quotations. Whilst the area to be replaced is proposed to be larger and maybe of
27 higher quality, the fact that it will be not provided for at least five years means,
28 by its absence, for that period, it is manifestly not no less advantageous.

29 Thirdly, the applicant considers that the five-year time gap, which we've
30 only recently become aware of, is offset by the larger area; if you read planning
31 statement 7.2 annex D, that is what it says. The applicant, however, fails to
32 explain how it has arrived at this conclusion, and you may note that the applicant
33 has reached that same conclusion in relation to some public open space at
34 Tilbury Green, where the re-provided area is only 2.5% larger than the area

1 acquired. This means that a child could experience its formative years without
2 access to a meaningful area or a public open space. Knowing that younger
3 children might have a larger area is going to be no comfort to that child.

4 The fourth point, sir, it is unclear, save in respect of operational land, why
5 the applicant is unable to re-provide public open space prior to permanent
6 acquisition, bearing in mind that it will have powers to acquire, probably before
7 it completes this design process. And it seems to me that it could acquire the
8 replacement and bring that into use. Why they need a five-year time to do that
9 is outwith my understanding. If I gave you a piece of land and asked you to
10 create a garden in there, it wouldn't take you five years to do. The fifth point is,
11 notwithstanding the point I've just raised – yeah, it is why National Highways
12 requires at least five years to lay out that public open space.

13 MR SMITH: That does raise a couple of questions that I had on that at that point, which
14 I guess is around negotiabilities and tradeabilities between the applicant and
15 yourselves around open space, namely. The fact that that which is provided may
16 take a little time to develop into a direct equivalent.

17 MR CHURCH: I appreciate that, sir.

18 MR SMITH: And planting may be required, and landscaping may be required and
19 physical facilities may need to be designed and constructed, etc. Is it your view
20 though that you would still essentially rather have what was almost a bare field,
21 in a sense, with a commitment from the applicant to its ongoing improvement,
22 rather than have the elapse of such a substantial period of time? I mean, does
23 that start to assist it? Because if their notion is that they are providing you with
24 essentially the perfect solution, but they're providing it complete, and part of the
25 rationale for the time is that they have time to do that, then maybe there's a
26 meeting in the middle somewhere that could emerge.

27 MR CHURCH: Sir would it be possible to get plate B6 from appendix 7.2 in the planning
28 statement up on the screen?

29 MR SMITH: I believe so. Do we have somebody on the applicant's team able to –?

30 MR CHURCH: If it helps, sir, that's examination document REF3-108, and it's page –

31 MR SMITH: Looks as though it's appearing.

32 MR CHURCH: Henry Church for the applicant. That plan is fine, thank you. So I mean
33 just in material terms sir, the land that is highlighted yellow is the land that is
34 being acquired permanently. The land that is coloured blue, red, and purple is

1 to be acquired temporarily, albeit for an unknown period of time. Actually,
2 could we go to the other one, sorry, so I can show you where the public open
3 space is? It's the next one down. The two grey areas, sir, on that plan are the
4 replacement public open space. So you will see that in general quantum terms,
5 the area that we're left with, if we could go to the plan before, which is the area
6 to the west of the blue land, and Hatch Green will, in fact, be the only public
7 open space out of that total area that we will have – that Thurrock Council will
8 have at all times.

9 We don't know how long the temporary land will be there. There could
10 be a point where the re-provided land is re-provided whilst the temporary is in
11 place, at which case, we don't have any understanding how we get to the
12 replacement of public open space in the top corner, because there's no – they
13 might touch in the corner – the north-west corner of the land that we're keeping
14 and the south-east corner of the land that we are being given. I mean, let's put
15 it simply this way, I'm not sure that at this stage of the application, we should
16 be so completely unaware of what is actually being proposed.

17 We have a situation where there is a market deficit in public open space
18 within Thurrock already. We have some pretty high-density accommodation
19 near here, with people who that is their public open space, and the health
20 consequences of that on the residents of the borough could be extreme. And it
21 seems to me that the law is pretty clear on what it should do in that respect.

22 The other point under this heading. There was a query, sir, about the
23 implications of compensation, expressed as – the question is the Examining
24 Authority need to understand the basis for the objections. They are partially
25 expressed as objections to compensation, which you correctly note, in principle
26 are not within scope of examination. I think I just wanted to raise two points on
27 that, sir. Firstly, that compensation is a measure of an effect arising from the
28 dispossession. So the lesser the effect, generally, the more likely it is that
29 compensation will be reduced, which of course is broadly in everybody's best
30 interests, and uncertainty is likely to cause additional losses in the broad scheme
31 of things.

32 The second point is, and this is material to this public open space point, is
33 that compensation deals with a financial loss. You've lost something that is
34 worth money or you've incurred costs; that has cost you money, you are

1 compensated for it. The loss of public open space, either permanently or
2 temporarily, simply cannot be monetised. There is no solution. So whilst we
3 perhaps take the view that whilst there may be no legal obligation to re-provide
4 public open space that is subject to temporary possession, given what you've
5 seen is a very significant area of land to be impacted, both in gross terms, number
6 of acres, and as a percentage of the overall public open space, it is considered
7 by us that there is at least a moral obligation for some form of re-provision for
8 the better health of the residents of the borough.

9 MR SMITH: Yes, those are clear submissions and I have one consequential question
10 arising from them that might be picked up by yourself, or indeed in response by
11 the applicant. And that is looking at the nature of the proposed replacement land
12 simply on plane, it seems to be arable field, and if that is true, is there a particular
13 driver for the elapse of time before it's provided? Because if it is an arable field,
14 whilst a farmer would no doubt gravely disagree with me and have considerable
15 concerns about their loss of livelihood, but nevertheless, is there a significant
16 difference in terms of its acquisition next year as opposed to in five years' time?

17 MR CHURCH: Sir, Henry Church for Thurrock Council. I mean, you raise an interesting
18 point there sir, because of course the owner of that land will be compensated for
19 it. I think from putting my agricultural hat on, you could drill grass out here and
20 it would be established within 12 months. This is not – we're not talking laying
21 out the Gardens of Versailles. This is not a hugely complex operation.
22 Something could be provided within that time. I simply do not understand why
23 it takes five years to do it.

24 MR SMITH: Which gets me back to my other in principle question, which is the degree
25 to which you might be prepared to enter into discussions about receipt of,
26 essentially, land subject to an ongoing program of improvement –

27 MR CHURCH: We are.

28 MR SMITH: Rather than land that is perfectly laid out with all manner of interesting
29 facilities constructed on it.

30 MR CHURCH: Henry Church from Thurrock Council. Yes, we would welcome those
31 discussions.

32 MR SMITH: Okay.

33 MR EDWARDS: Thank you, sir. Could I just come – Douglas Edwards for Thurrock
34 Council. Could I just come back on one or two matters? Firstly, sir, providing

1 your colleagues with a reference in the same document that's displayed on the
2 screen, in the text that precedes the two plates, paragraph D 5.39, the applicant
3 states, and indeed recognises in terms, that the field is, in their words, 'well used'
4 by members of the local community for informal recreational purposes such as
5 walking and off-road cycling. That provides some context, perhaps, in terms of
6 the current use that's acknowledged to be made of this field that you will no
7 doubt have regard to in considering the accuracy of the replacement.

8 Secondly, in terms of the point that you raised, sir. I mean, what needs to
9 be replaced is essentially functional open space, and it's functional open space
10 that meets the needs of the community for informal recreation, such as walking
11 and cycling. And an arable field, I would suggest, can straightforwardly,
12 relatively, be adapted to meet functional open space purposes, even if there is an
13 ongoing either objective or requirement for there to be some qualitative
14 improvement as time goes on.

15 And thirdly, just in anticipation of a point that may be raised by way of
16 response. I've already referred to section 131, subsection 12, the Planning Act
17 that defines replacement land, no less in area than the order land, and which is
18 no less advantageous in the case of this type of land to the public. Now as I've
19 made clear, Thurrock Council doesn't have any concerns about spatial element
20 of that; the area of replacement land is greater than that which is taken. And as
21 far as the no less advantageous element of that text is concerned, again, the
22 council doesn't have concerns in respect of the ability to deliver the necessary
23 qualitative requirements. But no less advantageous to the public, in our
24 submission, has a temporal element to it as well, and if what is proposed by way
25 of replacement land, is to be provided so far in the future following the
26 acquisition of the order land itself, then in our submission that cannot be no less
27 advantageous to the public who will be deprived from the use of an important
28 and well-used area of open space for a significant period of time.

29 So those are our submissions, unless Stuart wants to add anything in
30 respect of items 3(a)(i) and (iii), and so we'll come back to (ii) in due course if
31 that's –

32 MR SMITH: Absolutely. Okay. With no further ado, I'm going to pass this over to Ms
33 Tafur for the applicant. Ms Tafur, you heard me articulate the questions that I

1 believe we needed to ask, so if you can pick them up on the run, so to speak, that
2 would be much appreciated.

3 MS TAFUR: Ms Tafur for the applicant. Will do, sir. Before I come onto the Ron Evans
4 Memorial Field, there was a concern raised by Thurrock as to various parcels
5 which are subject to permanent acquisition which are to be returned to Thurrock,
6 and they queried the need for permanent acquisition in those circumstances.
7 They identify the particular plots with which they're concerned in their local
8 impact report, which is REF1-281. Just as a point of caution, it's – we don't
9 believe that all of the plots they have identified there are subject to permanent
10 acquisition and then to be returned to them, but we'll clarify that. One of the
11 plots, at least, is just subject to temporary possession.

12 Leaving that to one side, the justification for permanent acquisition in
13 circumstances where these plots are going to be returned, is that all of the plots
14 that are to be engaged here relate to permanent works to construct highways
15 which will then become the responsibility of the local highway authority, in this
16 instance, Thurrock, and that's pursuant to article 10 of the DCO.

17 Now, the permanent acquisition in those circumstances is something that
18 has been specifically considered and adjudicated upon by an Examining
19 Authority and then Secretary of State in the A303 Sparkford to Ilchester DCO,
20 where both the Examining Authority and Secretary of State had concerns with a
21 suggestion by the applicant in that case that the way in which to achieve that was
22 to take temporary possession and permanent acquisition of rights, and they
23 didn't consider that was the appropriate way in which to acquire land, the
24 character of which is to be permanently changed because a new road is to be
25 constructed on it. And their firm view, and we've made this point in our
26 response to the local impact report, was that permanent acquisition was
27 appropriate in those circumstances.

28 MR SMITH: Can I test one other dimension of that, because I had heard the argument
29 put to me – it was quite a long time ago; I think it was probably the Tesco
30 roundabout examination – that there are certain circumstances equivalent to the
31 ones that you've outlined, where it will nevertheless be seen as necessary by the
32 applicant and undertaker to take the land permanently in order to regrant back
33 the land, taken free of a broad range of historic rights, duties, obligations, etc,

1 that, amongst other things, you may need to extinguish. Is that the case here as
2 well or are we just looking at the A303 argument that was somewhat different?

3 MS TAFUR: Isabella Tafur for the applicant. As a general principle, that is certainly a
4 consideration, and the need to then dedicate these new areas as highways. So
5 the applicant's position is where we're effecting fundamental change to the
6 character of the land which is to be permanent, the correct way in which to do
7 that is through the permanent acquisition of that land, albeit that those will then
8 be local highways, which will be the responsibility of the local highway
9 authority.

10 In their local impact report, Thurrock also raised a concern that there's no
11 positive obligation on the applicant to return those plots that are to become
12 part of the local highway network to them. That's something which we propose
13 to address through the drafting of these additional protective provisions which
14 have been referred to, which are to be submitted at deadline 4. And they will
15 include provision for us to provide to Thurrock final widths of the highways so
16 that we can confirm exactly the plots that are going to be subject to their control
17 once that has been finalised.

18 As to the condition in which they're returned, the protected provisions
19 provide for a procedure in which National Highways issue a certificate of
20 completion. The local highway authority then have the opportunity to inspect
21 the works and to identify any defects, which National Highways then have to
22 remedy within a period of 12 months. And the local highway authority is then
23 entitled to request that land be transferred to them, and National Highways have
24 to oblige of that. There's also in article 10, of course, provision for the highway
25 to be completed to the reasonable satisfaction of the local highway authority
26 which will be engaged in respect of those plots.

27 Public open space. Firstly, the general point about temporary possession.
28 Plainly, as Thurrock have recognised, sections 131 and 132 have not engaged
29 via temporary possession. As to the duration of the temporary possession, that's
30 controlled through article 35.4, which provides that the undertaker may not
31 remain in possession of the land for more than one year after the completion of
32 the relevant part of the authorised development. As to the condition in which
33 the land is returned, that is again governed by article 35.5, which provides that
34 the undertaker must remove all temporary works and restore the land to the

1 reasonable satisfaction of the landowner. And plainly in pursuant to 35.6, the
2 applicant has to pay compensation for any loss or damage that's suffered as a
3 result of the temporary possession.

4 Now, I appreciate the concerns that have been raised, particularly in
5 relation to public open space and the inability to remedy in compensation the
6 impacts. In their local impact report, Thurrock – this is paragraph 14.4.15 – they
7 identify a number of areas of public open space which are to be subject to
8 temporary possession, and they raise concerns, well this could potentially be for
9 up to eight years, and they set out various areas of the affected public open space.
10 And I'd just like to make it clear that the areas that they identify in their local
11 impact report are not quite the full picture. They are the full area of the entire
12 public open space, and in a number of instances, it's a very small parcel of that
13 public open space that's to be subject to temporary possession. So as an
14 example, they set out the Ron Evans Memorial Ground. They set out the whole
15 area, 198,000 square meters, but without confirming or clarifying that it's only
16 6,870 in square meters that will be subject to temporary possession. That's one
17 example. We'll set out each of the examples so you're clear on the extent to
18 which those areas are subject to temporary possession.

19 The impacts during construction of that temporary possession have been
20 considered in chapter 13 of the environmental statement, and they've also been
21 considered in the health and equality impact assessment, and in appendices D
22 and G of the planning statement. The point about the Ron Evans Memorial Field
23 and the timeframe for reinstating, returning that. The two parcels that are to be
24 used as replacement land are subject to temporary possession and are used for
25 construction works. The northern parcel is used for utilities works and southern
26 is to be used as a construction compound. And it's in those circumstances that
27 thereafter, there's a scheme for the laying out of the replacement land to be
28 worked up and the site to be laid out in accordance with that scheme.

29 Now, we appreciate of course that there is a time delay between the impact
30 on the special category land and the replacement becoming available, and that
31 temporal aspect – we agree with Mr Edwards that that temporal aspect is a factor
32 in considering whether the land is no less advantageous, and it has been taken
33 into account, both through the over-provision – or the provision of a larger area
34 than that which is affected, and in terms of the quality of the provision. And all

1 of that is explained in appendix D to the planning statement, which is App 499
2 –

3 MR SMITH: It is. However, I think it's fair to say in relation to our own observations
4 on this, because of the nature of the replacement plan that is proposed to be
5 drawn in here – and then, I may have missed something, but it does appear to
6 me that that is land that is a), capable of being either, if not immediately
7 available, available in pretty early form, and also secondly, because of what it is
8 – probably fat arable land – also capable of being transformed into something
9 that's capable of some measure of beneficial use pretty early, even if there were
10 a range of additional improvements necessary to actually provide it with the full
11 function of the land that was lost. And so I guess the challenge that we're resting
12 in front of you is essentially to say we don't still quite understand why the
13 amount of time needs to elapse. What's being done in the five years? What's
14 the magic?

15 MS TAFUR: Isabella Tafur for the applicant. Well, sir, I'm not sure that there's magic
16 in it. It's a judgment taking into account the delay in the reprovision. A
17 judgment has been made as to the best way in which to address that in terms of
18 quantitative and qualitative overprovision, and the judgment has been reached
19 that taking those factors into consideration, it is no less advantageous,
20 notwithstanding the delay. I hear what you say, sir, about the five years and
21 about it being an arable field and whether any measure of improvement could
22 be achieved before the five-year period, and we will take that away and consider
23 it further and get back to you on that.

24 MR SMITH: Thank you very much. Okay, well I will very briefly then just move back
25 to Mr Edwards in case there are any final closing remarks that he wishes to
26 make?

27 MR EDWARDS: Yes, Douglas Edwards for Thurrock. Mr Church just has one or two
28 observations to make, sir, and then I'll wind this point up on behalf of Thurrock,
29 if I may.

30 MR SMITH: Okay. Thank you.

31 MR CHURCH: Sir, Henry Church for Thurrock Council. I mean, it is the applicant's
32 case that the gap of five years makes – the disbenefit of the five-year gap is
33 overcome by the larger area –

34 PARTICIPANT: By the greater extent.

1 MR CHURCH: But it appears that now they're sort of largely resiling from the position.
2 In fact there is no qualitative assessment, quantitative assessment of how they
3 have arrived at that conclusion. It seems to me that if I've understood what the
4 applicant has said correctly: that the replacement public open space land is
5 actually being put to another purpose before it is then laid out as public open
6 space, and that doesn't explain why they couldn't acquire other land to provide
7 public open space from the get-go. They seem to be wanting to have their cake
8 and eat it: to acquire land temporarily, first to use as a site compound, and then
9 at a later date to provide it for us. Well, that might be bully for them, but it
10 doesn't do any good for the residents of the borough, in whatever form.
11 And whilst Ms Tafur is indeed correct to point out that in article 35, that
12 there is compensation provision, I refer you to a remark I made earlier sir; very
13 simply, that the loss of public open space cannot be monetised. If you suffer a
14 financial loss, you are compensated for it. The loss of public open space, the
15 disbenefits on health are not compensated for items.
16 MR SMITH: Okay, so Mr Edwards.
17 MR EDWARDS: Yes. Sir, just one final – Douglas Edwards, for Thurrock Council.
18 Just one final point from me. It is plainly, as you would expect, common ground
19 between the applicant and Thurrock that as far as section 131 of the act is
20 concerned, it is engaged in respect of permanent acquisition, and so no doubt
21 you will have in mind you need to look at the full picture in practice as to the
22 effect of this scheme on this public open space. And you can't, in terms of
23 looking at the full picture, ignore the temporary acquisition that's taking place,
24 leaving a very small part of this open space available for a multiple number of
25 years. So we'd ask you to have regard to that. And unless there's anything else
26 we can assist with, sir, that's all we wish to say in respect of those two elements
27 of agenda item 3(a).
28 MR SMITH: Okay. I am, however, conscious that there was this second matter of non-
29 statutory relief, so I'm going to suggest that you put your in-principle position
30 in front of us there, and then I'll again go to Ms Tafur, and if need to be, come
31 back to you.
32 MR EDWARDS: Thank you, sir. In respect of item 3(a)(ii), Mr Church is going to
33 address you on that.
34 MR SMITH: Thank you. Mr Church.

1 MR CHURCH: Henry Church for Thurrock Council. There are, sir, as you're probably
2 aware, limited circumstances where a party which is directly impacted by
3 compulsory acquisition can apply to an acquiring authority to have its interest
4 acquired ahead of that compulsory application, it's a polite notice. There are no
5 circumstances where a party significantly affected but not within order limits
6 can force an acquiring authority to acquire its property. This means that many
7 parties significantly affected by a scheme spend years suffering the ill effects.
8 This, we contend, is highly unsatisfactory for those affected, a situation that has
9 been recognised by the promoters of a number of large infrastructure schemes.

10 The council considers that the applicant should offer non-statutory relief
11 schemes to all affected parties, in line with the non-statutory relief schemes
12 offered on other projects, including Thames Tideway, which had an exceptional
13 hardship scheme and a non-statutory offsite mitigation compensation policy.
14 Also, at Heathrow, the third runway where they had schemes including the
15 interim property hardship scheme and a bond scheme, and in relation to High
16 Speed 2, which has had schemes including their express purchase scheme, the
17 exceptional hardship scheme, the need to sell scheme, the voluntary purchase
18 scheme, the rent back scheme and rural support zone cash offer scheme.

19 The schemes that the council requires the applicant to put in place should
20 acknowledge both permanent and temporary impacts of scheme delivery,
21 recognising tension between the benefits of power secured to the applicant and
22 the disbenefits to those impacted.

23 MR SMITH: Thank you very much. I will pass to Ms Tafur.

24 MS TAFUR: Isabella Tafur for the applicant. So this touches upon an issue which you
25 raised earlier this morning about the approach to those on and offline, as it were.

26 MR SMITH: And I think we'll be going there again shortly after this submission.

27 MS TAFUR: Thank you sir. Well, I'd like to touch on that, if I may, now. Now plainly,
28 where land is within the order limits and it's subject to compulsory acquisition,
29 it's incumbent on the applicant to engage with affected parties to seek to acquire
30 land by agreement; in preference, a compulsory acquisition, and that's what the
31 applicant has been doing in respect of that land. There are also a number of
32 schemes, statutory schemes, which provides for those – make provision for those
33 who are offline.

1 They include, for example, the Noise Impact Regulations 1975, which
2 make provision for those experiencing noise levels above a specified level,
3 outside the order limits potentially. Section 28 of the Land Compensation Act,
4 which relates to highway works, that affect the enjoyment of dwellings adjacent
5 to construction sites. There's the provisions in the Highway Act of 1980, section
6 246, which authorises the Highway Authority to acquire land by agreement
7 where its enjoyment is seriously affected by the carrying out of works or the use
8 of work. And sections 10 and 7 of the Compulsory Purchase Act 1965, which
9 provide for compensation for injurious affection. So there are provisions – all
10 of these are covered and explained in the brochures, which Thurrock Council
11 have helpfully included in appendix H of their local impact report, which set out
12 the circumstances in which those schemes are available.

13 National Highways is a government-owned body. Pursuant to its
14 operating licence, it's obliged to comply with the compensation code. I
15 understand that Thurrock have some concerns about the adequacy of what they
16 call the 'so-called compensation code', which plainly isn't a matter for
17 discussion, or for your adjudication.

18 MR SMITH: No, it isn't.

19 MS TAFUR: Any payment above the statutory provisions requires authorisation from
20 the Department for Transport. It requires a full business case and justifications
21 to why it's in the taxpayer's interest to go beyond the provisions that are already
22 in place. National Highways considers that the appropriate way to deal with
23 those affected, either on the site or offsite, through the existing statutory
24 provisions and compensation code, and that is the approach that it has adopted,
25 and indeed, a number of these provisions are specific to highway schemes. And
26 some of the other projects that Mr Church has referred to, in some ways, they
27 try to replicate the highway approach, because there is specific provision in, for
28 example, the Highways Act for these things which isn't necessarily replicated
29 elsewhere and so their non-statutory schemes, in some instances, bring them into
30 line with what is already a statutory provision for highway works.

31 So the applicant's position is that it struck the right balance in prudent use
32 of public funds and providing for those who might experience particular and
33 exceptional hardship.

1 MR SMITH: Thank you very much. So I'm then just going to return briefly to Thurrock
2 before we close this item out, but there are some principles that have emerged
3 from that that I'm sure will get tested by, amongst others, Mr Bedford very
4 shortly.

5 MR CHURCH: Sir, Henry Church for Thurrock Council. It's all very interesting to hear
6 from Ms Tafur about the statutory schemes. Those are, of course, the same
7 statutory schemes that apply in relation to High Speed 2, that apply in relation
8 to the third runway at Heathrow and would arise in relation to Thames Tideway.
9 All three of those schemes, one of which of course is funded by the government
10 – High Speed 2 – recognise the shortcomings of those statutory regimes. They
11 offer cold comfort for those who live, to use the expression, offline, who will
12 suffer for year after year after year, and who may be in a position where they're
13 unable to sell for a very considerable period of time. I recognise the provisions
14 of the discretionary purchase scheme set out in the Highways Act, but again, that
15 does not quite take as to where we feel that the residents of the borough need to
16 be.

17 And it's worth noting, sir, just to put this into context, this scheme takes
18 about 10% of Thurrock Council's borough area. Its impact – I can't think of a
19 scheme that's impacted a single borough more – is massive. And the natural
20 consequence of that is that there are going to be a very significant number of
21 people who are going to suffer potentially very significant effects through the
22 very long construction period that we have here. And I sense, as you do, that
23 Mr Bedford may well pick up on some of these disbenefits shortly. Thank you.

24 MR EDWARDS: So if I may, Douglas Edwards for Thurrock. One brief concluding
25 point. Sir, so far as the point that was made on behalf of National Highways
26 that, well, the other schemes that included specific arrangements within them
27 were not highway schemes and therefore did not or were not subject to
28 provisions of the Highways Act, well that is, of course, right as a matter of fact.
29 But certainly, sir, in our submission, those schemes, even on a cursory
30 examination, go way beyond simply just introducing into those schemes the
31 equivalent of what is set out in the Highways Act, and, well, that, sir, rather
32 demonstrates that as far as the promoters of those schemes are concerned, and
33 those authorising them through the DCO and other processes, recognise that the

1 existing statutory arrangement was insufficient. And so we'll expand upon that
2 in our submission next week.

3 MR SMITH: Thank you very much. Now, Ms Tafur, if there's anything else that needs
4 to follow then in writing, if at all possible, please. In which case, with no further
5 ado, Mr Bedford for Whitecroft.

6 MR BEDFORD: Thank you, sir. Michael Bedford on behalf of Whitecroft Care Home.
7 So can I start by asking the applicant's technical team if it's possible, from the
8 outline transport management plan, which is REF3-121, to go to plate 4.3 which
9 is on page 40. Whether that's the same on the PDF version I can't immediately
10 tell you, but that gives you a clue as to where it is. If we could possibly get that
11 on the screen. Plate 4.3, yes. Illustrative compounds is the title, and HGV
12 construction traffic routes. Thank you. That's the overview. And then if – can
13 we zoom into – I'm hoping that you know where the A1013 and – yeah, so we're
14 getting – yeah, that's sufficient, I think, for purposes of illustrating. Yes, you
15 can actually pick up from the OS space the word Whitecroft.

16 So I know, sir, you and your colleagues yesterday were there, so you're
17 obviously very familiar with the immediate locality, but the reason why I wanted
18 just to highlight that plan, which relates to obviously the construction period, is
19 that that helpfully illustrates the various construction roots. And whilst I'm not
20 going to ask you to zoom around on the plan, but just in terms of the colouration,
21 what one can see is that the dark green are long-term online main construction
22 routes, the purple are construction routes offline, and then you've also got the
23 route alignment and then you've got the short-term roots in lighter green.

24 And perhaps if we just keep that plan, as it were, to hand. What I'm
25 proposing to do, sir, is try to focus the submissions this afternoon on your agenda
26 items. I'm conscious that you will have obviously read our representations.

27 MR SMITH: Yes.

28 MR BEDFORD: In a compulsory acquisition, temporary possession context, which is
29 obviously the purpose of this CAH, I just draw to your attention, within the
30 Whitecroft holdings, there's plot 29254, which is the section of the access which
31 is required to be acquired in order to accommodate the change in the access
32 arrangements, because as you will appreciate, the A1013 is realigned, moved
33 slightly to the north but also placed on a higher level, so you have to handle that
34 transition.

1 There is a highway subsoil plot, which is 29253, and then the parcel of
2 land to the rear of Whitecroft, 29261, is permanently acquired for part of the
3 works of the Lower Thames Crossing and 29258 is a temporary possession of
4 part of that land for the purposes of the construction work. The position,
5 Whitecroft is run by Runwood Homes, but the land is currently owned by
6 Kathryn Homes. That, as we've referred to in our written representations in the
7 process of change, they're all linked companies and there is a process which I
8 think at the moment is, I'd be wrong to say, being held up by the banks, but there
9 is a bank whose agreement, certain documentation is needed, which is why it's
10 not happened as quickly as it might have done. But I'm told that that will
11 certainly be happening during the course of this examination. Hopefully if it's
12 not by the end of this month, by the end of next month.

13 Sir, then what I was not going to do was obviously rehearse the
14 background. We set out quite fully in our submissions after open floor hearing
15 2, where you'll remember my colleague Ms Dring spoke to you. And that's
16 REF1-366, factual information in relation to the Whitecroft, and also in our
17 written representations, REF1-373. The point I would just emphasise from that
18 background is that Whitecroft is the home for up to 56 people currently, I think
19 with 48 in residents. Many of those are placed there by effectively social care
20 through Thurrock Council or other local authorities and for the most part,
21 resident stays – the residents tend to be, because of the particular emphasis on
22 persons with dementia or other cognitive impairments, the residents tend to be
23 persons towards the end of their lives and they typically stay between 6 months
24 and 48 months, but there are obviously outliers to both of those periods.

25 And you will know from the applicant's materials that the construction
26 activity in the vicinity of Whitecroft is between four and a half to five years, so
27 in other words, for the majority of the residents at Whitecroft, who are, as it were,
28 in residence at the outset of the project, they will know nothing else for the rest
29 of their life until they unfortunately are likely to demise than the construction
30 period, because the construction period is longer than their likely remaining stay
31 at the Whitecroft. And that is an important human context which we think has
32 to be kept at the forefront of any consideration of these issues. Now sir, I don't
33 take up time now, but we do still have outstanding concerns in relation to the
34 adequacy of the information that's been provided by the applicant. In our

1 submission, at deadline 1, deadline 2 and deadline 3, we'd commented on the
2 detail, and we've explained where there have been no explanations provided by
3 the applicant on particular matters. That remains the case; the applicant at
4 deadline three choosing not to comment on our REP2 comments.

5 To the point which we think is important, you will be aware that the
6 applicant has corrected errors in the original submission plans, in relation to the
7 structures plans for the heights of bridges to the north of the Whitecroft, in terms
8 of over bridges to the slip roads: the westbound to the A1089, and the westbound
9 to the Lower Thames Crossing northbound from the A13, but it is not explained
10 either how the error occurred, but more substantively from our point of view,
11 whether there are any knock-on consequences for the assessments that were
12 carried out in the environmental assessment.

13 The only one that has been explained is that, in relation to air quality, the
14 applicant has explained, 'Well, it wouldn't have made any difference because
15 we assumed in the air quality assessment that all of the land that was being
16 assessed and all of the highways were all at the same level' – i.e. flat – and
17 therefore it wouldn't matter what the errors were in relation to what the structure
18 showed.

19 We've had no similar assessment in relation to noise assessment, and as
20 we understand the guidance, the height of a noise source is relevant to the impact
21 on receptors. No explanation in relation to the visual assessment or indeed the
22 heritage assessment. We also have not had it explained to us why the assumption
23 made in relation to air quality is a reasonable worst case, in terms of dispersal of
24 air quality pollutants. To assume everywhere is flat, when it's completely
25 obvious from the existing topography, as well as proposed topography, that that
26 will not be the case for the roads. As I say, we make the points, that those matters
27 are still all outstanding.

28 So turning then specifically to the agenda items, and your first matter is
29 effectively seeking further comment on whether the issues that Whitecroft are
30 raising are directly compulsory acquisition objections. And so the way that we
31 would put this is that they are, because they go specifically to the tests in section
32 1.2.2(3) of whether there is a compelling case in the public interest for
33 acquisition. And the acquisition here is of any part of the Whitecroft land, and
34 we know that there is acquisition of part of the holding.

1 And essentially what we say is that if the purpose of the acquisition is to
2 enable the Lower Thames Crossing, and the Lower Thames Crossing will have
3 unacceptable impacts on the remainder of the Whitecroft's holding; land;
4 business; and the occupiers of it, then if you conclude, which we will invite you
5 to do, that the impacts on residents are unacceptable in planning terms, then it
6 would be right to reach the conclusion that the Lower Thames Crossing, in its
7 current form, should not proceed, and that, then, has a direct bearing on whether
8 the section 1.2.2(3) test is made out.

9 I'll expand on it in the written submissions, but I'll draw your attention to
10 the findings of your colleague, who was the examining authority for the A63
11 (Castle Street Improvement, Hull) Development Consent Order 2020. And
12 there, essentially, there was the proposal to demolish, inevitably, because of the
13 route of the improvement, a Grade II listed pub – I think it was called the Earl
14 de Grey, but it had a particular cultural resonance for the residents of Hull, and
15 the applicant proposing to demolish it but then rebuild it some three metres to
16 the north, outside of the alignment of the road, whereas there was a separate
17 proposal, not being promoted by the applicant, which was to relocate it
18 somewhat elsewhere, but within a comprehensive redevelopment.

19 The examining authority concluded that the applicant's proposals
20 amounted to substantial and unjustified harm to a heritage asset, and that the
21 alternative location was preferable – that being supported by Historic England
22 and the local authority – but not something that the applicant could deliver, and
23 there was no certainty in relation to that. The examining authority therefore
24 concluded that, in planning terms, the impacts of the proposal were not
25 acceptable, and then went on to consider the compulsory acquisition tests and
26 concluded that because of the planning harm, and the planning harm not being
27 acceptable and not being outweighed by the benefits of the development, that
28 therefore the compulsory acquisition was not justified and the test in section
29 1.2.2(3) was not met.

30 The key paragraphs – and as I say, I will set the detail in our post-hearing
31 submissions – but key paragraphs are 7.6.7, where that point is made, and then
32 the examining authority's conclusions on the planning merits, at 6.4.6 and 6.4.9,
33 and his specific conclusions on the heritage matters at 4.5.37, 4.5.43 and 4.5.100.
34 And it's an example, but it's an example which, in a sense, encapsulates the

1 point that if the site-specific impacts of a proposal are sufficiently unacceptable,
2 then that's not merely a matter that goes to the planning balance; it also then has
3 a knock-on consequence for the compulsory acquisition tests and the compliance
4 with section 1.2.2(3). It's, can you have a public compelling case in the public
5 interest to do something, if, in planning terms, what you're doing is
6 unacceptable?

7 So I should say, in completeness – and I know the applicant will point this
8 out to you when they have looked through that decision later – the Secretary of
9 State disagreed with his examining authority on the planning judgements – and
10 obviously so the Secretary of State approved that development consent order,
11 but of course that doesn't detract from my point that, if you make the right
12 planning judgements, the consequences still follow that the compulsory
13 acquisition tests would not be made out. So that's really what I wanted to say
14 in relation to the first point of the agenda.

15 In relation to point 2 of the agenda, sir, essentially, we would say the
16 answer to that is no. That's to say: compulsory acquisition or temporary
17 possession for the duration of the works. We see that as not being a viable
18 option, because the implication of that is that, for the residents concerned, they
19 would be potentially faced with two displacements, one to an alternative location
20 –

21 MR SMITH: Can I, at this juncture, maybe clarify, because I think it might assist the
22 way that you are responding to that item, probably – it may be even a missing
23 comma – be made subject to compulsory acquisition – brackets, 'enduring',
24 close brackets – and/or to temporary possession for the duration of the works.
25 Now I take your submission is that something for the duration of the works is
26 something that you are submitting to us is unacceptable, but it may well still be
27 that you say the first of those is unacceptable, but I just thought I ought to clarify
28 a little.

29 MR BEDFORD: Well, sir, no, that is helpful as a clarification. The point – I will just
30 finish the point on, as it were, 'for the duration of the works.' We have included,
31 within our REP1 submissions, a report from an expert healthcare psychiatrist,
32 who deals with persons with cognitive impairment. So that's REP3-177. And
33 one of the many points he makes is the – any relocation carries with it its own
34 downsides, because as far as the person is concerned, any change is deleterious

1 to their condition and stability, and therefore one doesn't, likely, go about a
2 relocation, but if one did go about relocation, you wouldn't want to go about it
3 twice.

4 So that was the first point, but coming back to your second point, we have
5 made it clear in our representations that we do see relocation as being the way
6 forward, and if that required National Highways to amend the scheme to
7 compulsorily acquire Whitecroft, then we wouldn't have a problem with that,
8 but we actually think it doesn't need to be the subject of compulsory acquisition,
9 because we've made clear that, in principle, we are prepared to relocate in order
10 to avoid the adverse consequences of the Lower Thames Crossing on
11 Whitecroft.

12 So, sir, obviously we can't compel the applicant to change either the red
13 line in the scheme or to bring land in for the purposes of compulsory acquisition,
14 but that's certainly an option that's open to them, but equally so is a voluntary
15 transaction. And certainly, were the applicant, for reasons of – whether it's
16 conveyancing or similar – to want to do it by the compulsory acquisition route,
17 so that one gets that clear title and all those, sort of, pragmatic issues – we would
18 not be raising, as it were, the timescale point, because I appreciate that section
19 123 of the procedures for compulsory acquisition – the point you were making
20 this morning about, 'Are we running out of time to do certain things?' – we
21 would not be seeking to create difficulties in that regard, if there was a desire by
22 National Highways to make movement on that front. So that's really so far as 2
23 is concerned.

24 So far as 3 is concerned, we have looked at what we understand to be the
25 National Highways discretionary schemes, but, as we see it, it would not fit our
26 facts, in that it's applicable for purchase of dwellings from persons who have an
27 interest in the land. The residents of Whitecroft – the vulnerable people who are
28 adversely impacted – don't have an interest in the land, because they are
29 residents. It's a nursing care home; their fees are paid by either their family or
30 their local authority.

31 MR SMITH: So they are, at best, licensees. They are distinctly not – they have no tenure.

32 MR BEDFORD: Yes, they are not tenants and/or lessees of the home. They occupy
33 rooms within the home, and, as we understand it, it would fall outside of the
34 National Highways scheme. But that, of course, is not to say that if National

1 Highways wanted to acquire any land – if it saw it as being appropriate for the
2 purposes of delivering the Lower Thames Crossing – it's entirely within its gift
3 to do that, so even if it doesn't fit within the four corners of the scheme, it's a
4 matter that the applicant is perfectly capable of addressing, if it wishes to do so,
5 and we say there are very good reasons why it needs to do so, in this case.

6 And then, in relation to item 4, which is human rights and the public sector
7 equality duty, in relation to our written representations, we have focused
8 significantly on the public sector equality duty, which we have set out our
9 position, but it's obviously right that, so far as the Human Rights Act is
10 concerned, article 1 first protocol applies, but that's perhaps not at the heart of
11 this; it would be article 8, in terms of the – this is the residents' home, even if
12 they might not be anything more than licensees. Having said that, I don't think
13 it probably adds that much to the public sector equality duty angle.

14 But the point which we did say is important is that we maintain that, with
15 respect, neither the applicant nor in due course the Secretary of State, when a
16 decision comes to be made, is able to be satisfied that the public sector equality
17 duty can be discharged, because of the inadequate assessment of the effects of
18 the proposal on persons who are disadvantaged in the applicant's assessment,
19 and I just want to briefly talk about the construction noise issue, because we
20 have set out, in our representations, quite a lot of detail on that.

21 What the applicant has done is to recognise the principle in the health
22 inequalities impact assessment – that's APP-539, at paragraph 7.9.6 and 7.9.21.
23 They've recognised the principle that there is World Health Organization
24 guidance that elderly and vulnerable people experience noise impacts in a
25 different way to the general population. But the noise assessment, which is then
26 relied on for the purposes of the environmental assessment, has used as its
27 benchmarks for LOAEL and SOAEL – I take it you're familiar with these
28 acronyms.

29 MR SMITH: Yeah.

30 MR BEDFORD: And I don't need to spell them out in this presentation – but they have
31 made it quite clear that they have used a common set of benchmarks for all
32 receptors, notwithstanding they've recognised the principle that these receptors
33 experience noise differently to the general receptors. And that position has been

1 reconfirmed by the applicant in its comments on our written representations for
2 that, with their comments in REP2-051, appendix F, at pages 38-39.

3 So the consequence is, we say, that there is no fit-for-purpose construction
4 noise assessment before this examination, in relation to the impacts on
5 Whitecroft, and consequently, one isn't able to adequately assess anything other
6 than that there will be noise impacts, which are going to be greater for the
7 residents of Whitecroft, because of their sensitivities, than for others, and that
8 you cannot rely on the applicant's proposed mitigation as an acceptable way of
9 dealing with those effects. And you can't rely on that for two reasons.

10 One, that point I previously made, that they have not set an appropriate
11 benchmark for assessing those impacts. And then secondly, because they are
12 reliant on the mitigation measures of delivering what they say is up to 10 decibel
13 improvement in terms of the application of best practical means, but that's
14 untested, unproven, and even if you applied it, it's against a benchmark which
15 doesn't apply.

16 So, sir, we say that, in particular in relation to construction noise, it's not
17 possible to come to the conclusion that the public sector health equality duty is
18 satisfied, because all one can see is there is an adverse impact on persons who
19 are vulnerable persons, and there is not an adequate justification for causing that
20 impact. So, sir, those are our in-principle concerns, under the compulsory
21 acquisition heads, and obviously you will appreciate that they are underpinned
22 by our wider planning concerns. Thank you, sir.

23 MR SMITH: Indeed, and obviously the intricate nature of the relationship between the
24 planning merits arguments and the CA position is understood, but we did, given
25 the circumstances, feel that there was a justification to explore this material
26 through the lens of a [inaudible] distinct from its exploration through the lens of
27 a general planning merits issue-specific hearing.

28 Okay. Now, I'm conscious that Ms Tafur will wish to put matters to us,
29 and then, Mr Bedford, I might just need to take it back to you very, very briefly,
30 to deal with points that might be raised again, reminding the pair of you that
31 detailed and consequential points can be put in writing. So, Ms Tafur.

32 MS TAFUR: Isabella Tafur, for the applicant. Sir, we plainly recognise that the public
33 sector equality duty is engaged and that the residents of the Whitecroft Care
34 Home will share protected characteristics, and we have recognised that in our

1 health inequalities impact assessment and in our engagement with the
2 Whitecroft Care Home, prior to finalisation of the – and submission of the
3 application. And we've made a number of changes to seek to minimise impact
4 on the care home, including the relocation of compound CA07 further away
5 from the care home; changes to the A13 junction; and enhanced landscaping
6 around the A13 to reduce visual and, to an extent, noise impacts.

7 Now, we understand that, in spite of those concerns, that the care home –
8 sorry, in spite of those amendments – the care home still have concerns, and we
9 are continuing to engage with them on that. So there was a site visit undertaken
10 by members of the applicant team at the end of June, and then various exchanges
11 of information between the care home and the applicant team since then, in
12 respect of further noise assessments, which the applicant is working on. Now,
13 that's not to say that we accept any criticism of the noise assessments that we've
14 carried out, which we say do set appropriate standards for care homes, and
15 indeed the guidance that has been followed – the British Standard – does
16 specifically refer to those standards for SOAEL and LOAEL being appropriate
17 for health facilities. But we have recognised, in the health inequalities impact
18 assessment, the potential for residents to be disproportionately affected, and that
19 has – due regard has been given to that, in accordance with public sector equality
20 duty.

21 We have made various offers, very recently – to be fair to the care home,
22 which they may or may not have had the opportunity to absorb – but we have
23 made offers for further ventilation and noise mitigation, to further minimise the
24 impact on residents, or to open up discussions about potential compensation that
25 could be paid if some of the rooms had to be kept unoccupied for certain periods,
26 and we are very willing to engage further with the care home, through our
27 technical, noise, air quality, landscape and heritage teams, if necessary, to
28 address the concerns that they've raised.

29 We would point out that we are satisfied that, subject to the best practical
30 means, the impacts on the care home would not be significant adverse, but we
31 understand that the care home may wish to see further commitment to specific
32 measures at this stage, and that's something we are very happy to facilitate in
33 discussion with them, and we hope that that could be a means towards at least a
34 narrowing of issues, if not a final resolution.

1 In terms of compulsory acquisition and temporary possession, well, the
2 land upon which the care home is located is not required for the project or to
3 facilitate the project, and we don't think there would be any justification to
4 require it, pursuant to section 1.2.2 of the Planning Act. Nor is it required
5 temporarily, and so it would be difficult to justify its acquisition, either
6 permanently or temporarily. There are, however, certain plots within the same
7 ownership that are subject to compulsory acquisition, as Mr Bedford outlined a
8 moment ago, and that means, then, that the care home will be entitled, if it can
9 make a case, to compensation for injurious affection, pursuant to section 7 of the
10 Compulsory Purchase Act. 'Where a landowner has part of his land acquired,
11 he is entitled to compensation for injurious affection for any reduction in the
12 value of the retained land attributable to the works.'

13 So I know that compensation is something to be explored, but we say that
14 that is available to the care home, and in terms of the additional hardship type
15 schemes that we touched upon a moment ago, it's right that – or Mr Bedford is
16 right in terms of the discretionary acquisition – but there is provision, which is
17 explained in the brochure – your property and compensation or mitigation for
18 the effects of road proposals – that National Highways can provide noise
19 insulation, secondary glazing, supplementary ventilation, etc, and make noise
20 payments, where there are significant – well, where there are noise impacts –
21 which would apply to care homes; it's not limited to residential dwellings in that
22 case. And so that's something that they would be entitled to, and it's – we think
23 – it's the subject to the offer that we've made to them recently.

24 So, I think, in summary, we hear and understand the concerns of the care
25 home. We – there is a disagreement between our various experts on various
26 topics, which we are happy to liaise with them further upon, and we are very
27 willing to discuss matters, further measures, further commitments in the
28 stakeholders' commitment register, or the REAC, to try and pin down
29 construction controls that would provide them with some further comfort.

30 MR SMITH: Okay. Now, I just want to check with my colleagues whether anybody
31 wishes to pursue any matters. I do believe Mr Taylor did.

32 MR TAYLOR: Yes. It's really a request for Mr Bedford. Yesterday at the site
33 inspection, your colleague, Mr Cooper, had some floorplans of the care home,
34 and we would ask, if it's possible, that they are submitted as part of your post

1 submission – post-hearing submission, because they would probably prove quite
2 helpful to us.

3 MR BEDFORD: Thanks, sir. I think, in point of fact, they had already been submitted
4 to your case team, and I think the suggestion has been that they will be formally
5 admitted at deadline 4, so as to not disrupt the timetable, but that action, as it
6 were, has already been put in train and worked on.

7 MR TAYLOR: Thanks very much. That's very helpful.

8 MS LAVER: I don't really have a question but I do just have a statement, really, for the
9 applicant, that I still have concerns for Whitecroft, and I'm not hearing anything
10 that really allays those concerns. Having been to the site, seeing windows open
11 for people to hear the outside and feel fresh air isn't mitigated by acoustic
12 attenuation glazing or, you know, ventilation, which is pumped in. So I still
13 have some concerns and I just want to put that on the record at this point.

14 MR SMITH: Yes. I suspect I speak for all of my colleagues in saying that we do,
15 consequent on our observation of the nature of that particular care home, in its
16 particular site, have some very considerable concerns about the degree to which
17 it will still be, in any sense, a viable living space for the duration of the work.
18 So I think we could probably all quite clearly agree that there is a distinction to
19 be drawn on the apparent facts between circumstances post-construction, with
20 relevant mitigations in place, and the circumstances that would be brought to
21 bear on the operator and the occupants during construction, that still feel as
22 though they will be very, very substantial imposts on living conditions for people
23 who will struggle to engage with and understand the nature of the change that
24 they are experiencing.

25 So, that is not to give you any sense that we have yet formed any final
26 view on this, because it would be utterly appropriate inappropriate for us to have
27 done so. However, it is, I think, in fairness, to give both the care home and the
28 applicant a clear steer that we do have substantial concerns and we will be giving
29 these circumstances very considerable further thought, may need to return to
30 them in writing and/or orally, and in the intervening period, any useful
31 conversations between the applicant and Whitecroft – particularly about the
32 mechanism of addressing the circumstances of those in occupation in a care
33 home in those circumstances during the construction period – would be very,
34 very welcome indeed.

1 Any other observations from the panel? No. Ms Tafur, is there anything
2 else that you need to say before I just briefly return to Mr Bedford?

3 MS TAFUR: Isabella Tafur, for the applicant. Nothing other than to note what you say,
4 sir, and you, madam, and to reassure you that we will certainly engage with the
5 care home and give careful consideration to those matters you've just raised.

6 MR SMITH: Thank you very much for that observation. So, very briefly, Mr Bedford,
7 in closing, for your –

8 MR BEDFORD: Thank you, sir. You will know that in PD009 – sorry, PD029, your
9 EXQ1s, you have asked a question of both us and indeed of the applicant, in
10 relation to, for us, mitigation, and for the applicant, you have asked about the
11 Health Impact Assessment, and Ms Tafur referred to it in her remarks that it
12 comes up as with an assessment of 'slight adverse', but that's only because the
13 only thing it assessed was changes to access arrangements, and we obviously
14 picked up on that in our representations, and you've asked for further
15 explanation in your question.

16 So, sir, because that question is still outstanding, I'm not going to
17 comment on the points that Ms Tafur raised about a recent suggestion by the
18 applicant that there could be more done, whether by way of secondary glazing
19 or similar. But in short, we see that as an inadequate response to providing the
20 tranquil and supportive environment that the residents of the care home currently
21 enjoy and, in our submission, are entitled to continue to enjoy.

22 The only other point that I wanted to stress is that, in the submissions that
23 we are making, we are putting it at the heart of those submissions the impact on
24 the residents. So this isn't an issue where one needs to get into questions of,
25 could it qualify for a claim of injurious affection under the compensation
26 regime? That's the commercial side of things, but that's not where we are
27 putting the focus in these representations. We are focusing on human beings
28 and the impacts on them, in terms of providing them with a caring and supportive
29 environment. And that's what we just think, at the moment, the applicant has
30 not really got it, in terms of getting the point about that, but hopefully the
31 applicant will do so, and to the extent that engagement with us is directed to the
32 real issue, which is, how do you then ensure that the residents are able to enjoy
33 a satisfactory environment? Then obviously we are happy to talk to the
34 applicants. Thank you, sir.

1 MR SMITH: Thank you very much. Now I see Ms Tafur finally wishes to finally just
2 respond. Without this becoming a tennis match, Ms Tafur, do, but I may need
3 to re-engage with Mr Bedford.

4 MS TAFUR: Isabella Tafur, for the applicant, and I'm very grateful, sir. It's just a factual
5 point, just to give you two references in the health inequalities impact
6 assessment, if I may. Construction noise, impact on the care home, are
7 considered at paragraph 7.9.21, and that's APP-539, and operational noise
8 impact are considered at paragraph 7.9.51(c). So it's not just access
9 arrangements; those noise impacts are also considered.

10 MR SMITH: Okay. Well, we'll certainly review all of that in the round once again. And
11 Mr Bedford, I take it you don't need to come back on those. Thank you very
12 much, ladies and gentlemen. Now that has taken us through agenda items 3(a)
13 and (b). I'm going to suggest that we take a break and that we resume – it's
14 actually gone past half past, and given the length of the corridors in this building
15 to our retiring room, I'm going to suggest that we actually resume at 3.50, ladies
16 and gentlemen. That's 3.50. And could I ask that we have some adjustment to
17 the front table during the break, so that, at that point, there will be hopefully
18 more than sufficient working space for both Lawson Planning Partnership and
19 Norton Rose Fulbright, for their respective clients. Let's break. Thank you very
20 much.

21

22 **(Meeting adjourned)**

23

24 MR SMITH: Good afternoon, everybody, and welcome back to this compulsory
25 acquisitional hearing 2, in relation to the Lower Thames Crossing. And it does
26 appear that we have a distinct choice in this venue between baking or being
27 unable to hear. I'm afraid, in the current circumstances, the Examining
28 Authority chooses to bake, in the interests of being able to hear. But if it does
29 get too oppressive, then please do let us know and we'll try and get something
30 done about it, but let's soldier on if we can.

31 Now, I'm very conscious that we are due to move to Lawson Planning
32 Partnership for Mrs Carver, but very briefly, before we do, I just get a little sense
33 that I might have been just a tiny bit urgent in closing the last session, because
34 it did occur, once we had left the venue, that Thurrock Council may have had

1 one or two observations to make on agenda item 3(b). Is that the case, Mr
2 Edwards?

3 MR EDWARDS: Yes, sir. Douglas Edwards for Thurrock Council. Just very briefly,
4 sir. Thank you for giving Thurrock the opportunity to come back. I've spoken
5 to Mr Stratford over the break. We don't have anything to add orally at this
6 stage, save for this: that Thurrock Council are wholly supportive of the decision
7 expressed to you by Mr Bedford on behalf of the Whitecroft Care Home. The
8 care home is an important piece of social infrastructure in the borough and, as
9 Mr Bedford indicated, Thurrock Council do nominate residents to take up
10 occupation in the care home. Sir, rather than take time at this stage in elaborating
11 on those matters orally, we will make some brief submissions next week at the
12 appropriate deadline, just confirming Thurrock's position in respect of this
13 particular matter. Thank you.

14 MR SMITH: Thank you very much. Now, Mr Bedford, I take it that that's probably
15 entirely unremarkable, and Ms Tafur, if I can just check, I'm assuming that you
16 don't wish to come back on that.

17 MS TAFUR: Isabella Tafur, for the applicant. No, thank you, sir.

18 MR SMITH: And Mr Bedford.

19 MR BEDFORD: No, thank you, sir. Michael Bedford, for Whitecroft. If that's
20 convenient to you, I'm certainly hoping to make my excuses, as it were, and
21 depart, if –

22 MR SMITH: You may indeed, and in fact, as a general observation, noting that we are
23 now going from site to site and from party to party, if there is anybody sitting in
24 the back of the room, feeling that they are constrained to stay, when their
25 business is already done, please don't stand on ceremony, and do grab the
26 beginning of your weekend. Okay. Let us move onto agenda item 3(c), and
27 Lawson Planning Partnership for Mrs Carver.

28 MR LAWSON: Thank you very much, sir. It's a bit like a Test match, this. I've been
29 waiting all day to get into bat, so finally got there. Just before I kick off, would
30 it be possible to have plan AS153 up on the screen? There. That just helps put
31 some context in. That was one of the plans that we talked over on the site visit
32 yesterday.

33 MR SMITH: Indeed it was.

1 MR LAWSON: Thank you. So yes, we are representing Mrs Carver, since she is the
2 owner-occupier of Franks Farm, which is a 20-hectare, 50-acre estate in
3 Cranham, and the approximate 500 metre eastern boundary is continuous with
4 the M25 carriageway at the points where the road widening scheme is proposed
5 to expand, to accommodate a larger capacity for junction 29, which is the merge
6 with the A127. As a consequence of that, there's a significant permanent
7 landscape requirement, and that's showing, broadly, on that plan that we've got
8 on the screen at the moment. And to our calculations, it equates to
9 approximately 3.6 hectares, 3.8 acres, on the stretch that follows the M25. It
10 effectively takes out a very significant – or a large proportion – out of a tree belt
11 that Mrs Carver had planted over the years, and it stretches from about 50 metres
12 in depth down to about 40 and then tapers off to about 17 or 18 metres at the
13 northern end.

14 The site has been owned by Mrs Carver, broadly, since about 1980. It was
15 renovated and cherished. It was what you'd probably call, these days, a doer
16 upper; it was a bit more than that, I think. It was a very dilapidated site at the
17 time. And there's a Grade II listed farmhouse there, dating back from the 15th
18 century to the 17th century with the later additions. And there's also several
19 outbuildings, which – some of which date back to the late 19th century, which
20 are indeed Grade II curtilage listed buildings.

21 So, as a consequence of the development, at the moment there are eight
22 lanes of carriageways on the M25. The fourth line was added in about 2012,
23 and we aren't aware of any mitigation or compensation measures that the
24 Carvers benefited from at that time. So we'll go from that to double figures, to
25 about 10 lines. Main issues are, from a planning point of view, with seeking
26 appropriate and proportional mitigation and compensation for the significance
27 of the works, which will have a substantial impact on residential amenity and
28 will have, in our view, substantial harm on the settings of the heritage assets and
29 the potential future use of those heritage assets, particularly the curtilage listed
30 buildings. There will also be significant harm to the rural character and
31 appearance of Franks Farm as a site in the green belt that has established
32 woodland around it, as I've explained.

33 Effectively, Mrs Carver's position is that there are several measures which
34 she would like to see incorporated and taken into account as part of the LTC

1 scheme. And we at Lawson Planning Partnership have been involved with
2 representing her on this project for about five years, and we have had some
3 productive discussions with the National Highways team, going back a few
4 years. Then there was quite a significant gap where there wasn't very much at
5 all, any discussion or communication. And ever so recently – it was actually
6 last week – we met with Sarah Collins and had a very productive discussion,
7 where we were hoping that some of these measures could actually be agreed and
8 finalised, so everyone has the certainty that they will actually be secured.

9 The measures are as set out in our consolidated letter of representation, which
10 is dated 23 February 2023, and the reference to that is RR0753. What I'd like
11 to do now, very briefly, if possible, is just have the second plan shown on the
12 screen, please. The reference to that is AS152. So this shows the limits of the
13 DCO, in as far as it impacts on Franks Farm, and also shows the relevant parts
14 of the Franks Farm title. What we've done here is we've additionally
15 highlighted the listed buildings and ancillary curtilage listed buildings, and in
16 boxes we have identified, to a certain extent, planning permissions, particularly
17 in the courtyard area, where Mrs Carver has aspirations to develop a small
18 collection of office units as part of a business centre, which hopefully will be
19 able to come forwards. Again, that's what we'd discussed – not discussed – but
20 tabled briefly yesterday. There are several measures that we'd like to take
21 account of and there are about seven in total that [inaudible] noted in our
22 representations, but before we quickly walk through those, could we also have,
23 please, the plans – at the rear of our letter of representations there's an old aerial
24 photograph, and – sorry – so that one shows Franks Farm complex prior to – I'm
25 not sure it was prior to the M25, actually, but it's quite an old photograph, but it
26 shows – the bottom end/middle of the picture, a former barn which was on the
27 site, which burnt down prior to our clients acquiring it.

28 It shows the courtyard there, as it was in those days. It's got the horseshoe
29 building, which is still there. It's got the other barn, which is a gymnasium on
30 the right hand side, and it's got the other curtilage building to the top end as well.
31 I think it might be the next page – might be a 19th century – sorry, no, sorry, back
32 one. Yeah, I think that's an 1896 Ordnance Survey extract. Again, it's just there
33 for information, just to show the buildings that were there at that time and

1 demonstrate that several of those are still there and they are in fact either a listed
2 building in its own right – the farmhouse – or their curtilage listed buildings.

3 The applicant’s cultural heritage reports didn’t actually identify or
4 acknowledge two of the curtilage buildings – being the horseshoe one and one
5 of each [inaudible] adjacent to it. So it does have implications for the
6 consequences and the suggested impacts as well, and then I think it’s the
7 illustrative plan, which you heard previously – sorry, back up on, I think it is –
8 there, moments ago – it was in that same letter. That’s the one. So that’s a plan
9 view barn courtyard, with two, three, four, all the existing buildings, and then
10 we got the closed barn at the bottom end and that’s, we’re suggesting, is a
11 suitable mitigation measure to be incorporated into this farm complex and
12 secured in a suitable way. Thank you.

13 So just getting back to what our concerns are, we’ve got design objections
14 and requested revisions, as I mentioned. At the southern end of the site on the
15 LTC plans, as shown, a mitigation pond with an associated compound. We need
16 to fully further explore whether that compound is actually needed at all because
17 it’s not clear. It’s a very large land take. It’s only for temporary purposes, but
18 nonetheless it’s shown on the plan, yet it’s unclear what it’s needed for and why.
19 Mitigation ponds, we understand what the purpose of that is. We’re not
20 convinced that it’s the right size or shape or whether it actually could be located
21 offsite to the south. So again, there’s a question mark over that.

22 Land required for the proposed embankment along our eastern boundary
23 where it’s permanently required. It goes from an embankment to a sheer cliff
24 wall close to where the listed farm complex is. We’ve got that sheer cliff wall.
25 Can’t remember what the technical term for it is, but you know what I’m talking
26 about. There’s an area in front of it showing the land to be permanently
27 acquired, yet it’s not clear what that’s actually for because it’s quite a wide
28 swathe of land. Not proposing any development in it. I understand you may
29 need access rights over it to get further up to the north, but again, there’s a
30 question mark over why that’s shown to be permanently acquired. All these
31 detailed points can be clarified, I’m sure, and we’ll continue to work with the
32 applicant to do that.

33 Another measure we are requesting is use of fencing along the top of the
34 boundary at the top of the carriageway to help offset the noise impacts from the

1 developments, and I think the applicant's noise reports conclude that they're not
2 necessary, but that exercise is inconclusive, as we understand it, because the
3 night time monitoring, measurements and analysis have yet to be complete.
4 They've done the daytime, but they haven't done the night time. The night time
5 is particularly sensitive from a residential receptor point of view.

6 Significant tree removal I've spoken about, and that is significant. It's
7 several hectares and it's several thousand species and it's virtually all the trees
8 on the embankment itself, which was outside of our site, but on the raised part
9 of our site, then there's a band that remains along the side of the paddock, but
10 that's at a low level. So consequence of that tree removal is that the outlook
11 from various parts of Franks Farm complex will be somewhat diminished
12 compared to the situation now where partly as a result of the Carvers' planting
13 scheme, they've actually got to a semi mature situation.

14 So you get quite effective screening, particularly in the summer months
15 when the leaves are on the trees. We'll lose that and we're not quite sure how
16 that actually could be replaced in a comparable way, and we were rather
17 disappointed actually to note that an environmental management plan has been
18 produced in August last month and it shows an updated planting scheme along
19 that neck of the scheme and it's gone from a woodland planting approach to
20 shrub planting with intermittent trees, and I'm afraid to say that wouldn't do for
21 us. It's not a satisfactory offsetting proposal for the significance of that impact,
22 so we're looking for revisions to take account of that.

23 So just to conclude that we feel the substantial harm to residential amenity,
24 substantial harm to the setting of the curtilage listed buildings – there's
25 significant harm to the actual house itself and harm to the rural character and
26 appearance of Franks Farm. Our objective is to agree a suitable package of
27 measures – compensatory mitigation measures – to agree how these can be
28 secured and built into the DCO approval process through a combination, as we
29 see it, of conditions or requirements, [inaudible] obligations, side agreements,
30 commuted sum. Accommodation works inclusion is something else that the
31 LTC spoke about as well, and obviously there's scope, we hope, through
32 stakeholder action and commitments plans as well, and I believe, unless you've
33 got anything to add, that probably covers it.

1 MR SMITH: Okay, Mr Lawson, I've got just a couple of broad questions that flow from
2 that, and then there's a detail point, in fact, I'm going to start with. The list
3 description for Franks Farm itself – again, apologies from us if we have failed
4 to surface it in the many, many thousands of documents that are now before us
5 – however, we don't seem to have it, and so it would be very, very helpful if
6 either it can be surfaced and submitted by yourselves at deadline 4, or
7 alternatively, if the applicant already holds it, it may be that they can easily
8 surface it and submit it.

9 MS O'LEARY: Sorry, if I can interject, I did submit that yesterday, but it may not have
10 come in until this morning.

11 MR SMITH: Ah, in which case – and I know that the case team are queuing up a number
12 of documents for deadline 4, so therefore the reason that we haven't actually
13 seen it is because it awaits that deadline. So many, many thanks, Ms O'Leary.
14 That's noted. Moving then on to the kind of broader questions, taking into
15 account what we saw on the site inspection that helpfully we did carry out just
16 yesterday, we noted that there was this proposition for an access track to be
17 created by the applicant that would run along the toe of the proposed new
18 embankment at the junction point between the land from which existing trees
19 would be cleared, and the approximately one third of that strip where the existing
20 tree cover would be left in situ, and there was a suggestion from yourselves that
21 to the extent that that was necessary to be constructed, you would view it as part
22 of an acceptable broad solution that you were able to make shared use of that
23 with the applicant as part of a means of providing access to the barn – what I'm
24 loosely referring to as the barn conversion area – up on the top, the north-eastern
25 quadrant of the site. So I just want to check that that's something that is within
26 your ask.

27 You've also then spoken around the degree to which an additional barn
28 reinstating the historic loft barn, in what was effectively a crew yard, is
29 something that you are floating the possibility of the applicant themselves
30 somehow providing as a mitigation measure. I just wanted to check that my
31 understanding there was completely correct and then there's a final corollary,
32 which is, to the extent that you're objecting to compulsory acquisition and
33 temporary possession – because there is the other issue about the compound on
34 the southern boundary of the site – this all has the feel to me of being a

1 conditional set of objections, which, were you able to reach what you would
2 view, what Mrs Carver would view, as appropriate terms of the applicant, would
3 be withdrawable objections, and I just wanted to check whether that was correct
4 too.

5 MR LAWSON: Thank you, sir. I'll just deal with each of those matters individually if
6 that's alright. So the dual access, that is something that we would like to pursue
7 and we would see that as a benefit. We have had discussions with LTC over
8 that. I'm sure they'll comment on this, but we can't locate a plan that actually
9 shows that in situ at the moment, and it may be that it's a detail, but it's not clear
10 whether it's actually intended to go the full length up to the northern end of the
11 site. As we pointed out on site, we assume that must be the case because I
12 assume National Highways would need some sort of access for maintenance
13 purposes up by the wall and where the utilities would be right in the top right
14 north-east corner, but I'm sure they can clarify that.

15 And our understanding is if that is needed, we'd obviously hopefully agree
16 a suitable route for where that would be, and the idea, I assume, would be that it
17 would be fenced in with a solid fence as well to give privacy and security. The
18 replacement barn; that has featured in our representations and we see that as
19 certainly a necessary improvement because we can't otherwise see how the area
20 behind it, which is where the sheer wall is, how that could really be mitigated.
21 There's not really much room to do any planting and it'll take a significant
22 amount of time before that planting has any effect at all and there's no
23 embankment there and so on. So there's no other way really of disguising it or
24 mitigating it.

25 Another constraint that we have on this site is that we are of course in the
26 metropolitan green belt and we have previously had discussions with the London
27 Borough of Havering as the planning authority over various things. We've
28 secured various consents, as you can see. We've had discussions over the
29 replacement barn and they said, 'If it wasn't in the green belt, that would be one
30 thing,' but of course it is; very special circumstances apply, and our response to
31 that is that given this substantial piece of infrastructure that is going to be
32 encroaching into the site and the benefits that the barn would give in terms of
33 offsetting that impact and helping to preserve the setting of the listed complex –
34 obviously, that would be very special circumstances, and with LTC support on

1 that, in terms of a written approach, we feel confident that we could secure
2 planning commission for it, and then it's a matter of delivering it after that.

3 Third point was about compulsory acquisition and the temporary areas as
4 well, and we do think they do need to be clarified. It's not certain. We
5 understand in these processes, often the acquiring authority goes for a much
6 larger area and then retracts because it's much easier to do that than the other
7 way around, and there may well be a retraction here, but we would like to try
8 and bottom that out prior to the consent order being made, and I think your \$50
9 million question at the end was, if we agreed all these things, would we be able
10 to withdraw our objections? I think we would. Those are the measures that we
11 feel would be suitable. There's obviously the other side of it. There's the
12 compensation element to it to deal with the diminution of value and so on, but
13 obviously, that's a separate matter.

14 MR SMITH: And that is a completely separate matter, not one that can be argued in front
15 of us because the quantum of compensation is a matter which, if it is in dispute
16 between yourselves and the applicant, falls to be determined by the Upper
17 Tribunal, the Lands Tribunal.

18 MR LAWSON: That's fine, sir. I assume that that's what you would say, so that's fine.
19 So if we could get to all these big ifs, I'm sure we could recommend to our client
20 that the objection could be withdrawn, but there's a bit to do, and hate the
21 expression, but the devil is in the detail and so on, and how many trees, number,
22 size, sighting, species and so on. It's a big thing to get to grips with because if
23 we just had an area that we could plant up immediately adjacent to it, which we
24 could, we could plant over the field, for example, the paddock where the horses
25 were grazing. Not quite sure what that would do. Obviously, it would reduce
26 the grazing area, but it would provide the compensatory forestation that we've
27 got at the moment, but we'd certainly want to get some suitable planting in terms
28 of size and so on, and numbers on the embankments, which you'll appreciate –
29 having seen that on site – the reasons why.

30 MR SMITH: Okay, thank you, Mr Lawson. I'm going to hand over to Ms Tafur, who
31 will respond.

32 MS TAFUR: Isabella Tafur for the applicant. So we have responded to the relevant
33 representation submitted on behalf of Mrs Carver at REP2-051 from page 49.
34 Mr Lawson has raised a number of matters which don't – in my submission, at

1 least – go to compulsory acquisition or temporary possession, and they relate to,
2 for example, landscape and cultural heritage impacts, which I don't propose to
3 deal with at this compulsory acquisition hearing, not least because, in light of
4 your indication as to who we should bring to this hearing, I don't have my
5 cultural heritage or landscape experts available.

6 Insofar as the matters do relate to compulsory acquisition and temporary
7 possession, Mrs Carver's relevant representation raised a query about the use of
8 the land plot 44/07 to the west of her driveway, which we saw on the screen a
9 moment ago, and I would just like to confirm that the reason for that land being
10 subject to temporary possession is set out in the statement of reasons. It's in
11 relation to work MU83, which is to facilitate utility works, provide temporary
12 storage, laydown areas and working space. She has also raised a concern about
13 the balancing pond, which is number 9T, and it's shown on sheet 44 of the work
14 plans. Our position is that the balancing pond is required at that location and the
15 land subject to acquisition is no more than necessary. She's asked whether that
16 pond could be relocated on to land beyond her control –

17 MR SMITH: And this was land immediately to the south and I believe that's part of the
18 golf course?

19 MS TAFUR: Yes, that land is to be used for replacement open space. I think it's the
20 solar farm.

21 MR SMITH: Oh no, it is, you're correct.

22 MS TAFUR: It's the solar farm.

23 MR SMITH: It's the solar farm, yeah.

24 MS TAFUR: So that is proposed for replacement public open space, and we don't
25 consider it be appropriate to put the balancing pond, which would reduce the
26 area of public open space. In any event, if it were to be moved, that would have
27 implications for the multi-utility works, which would probably have to be
28 pushed closer towards the residential property and in this location there is
29 already a lot of utilities infrastructure in the ground and we require the flexibility
30 set out in the limits of deviation to deliver those works. We have, however, as
31 Mr Lawson alluded to, held a meeting with Mrs Carver's representatives just
32 last week, and we have proposed a commitment which will be included in the
33 next iteration of the stakeholders actions and commitments register to review the
34 design of the pond at detailed design stage to see if the size and land take can be

1 reduced at that stage. It's not possible to confirm that at this stage of the design,
2 but we've committed to reviewing that.

3 Sir, I don't think it would be an appropriate use of time today to talk about
4 the request that we reconstruct a barn, that hasn't existed for many years, on the
5 site. The applicant doesn't consider that to be appropriate or necessary as a
6 means of mitigation. We can set out if you think that will be helpful in due
7 course, our further reasons for that. As to the suggestion that the access rights
8 that we retain should form part of a shared access in order to provide a means of
9 access to the development site that Mrs Carver has aspirations for, it seems to us
10 that the nature of that access would be quite different from the access that we
11 would require for infrequent maintenance, and that we don't see a justification
12 for upgrading that access track so that it provides an improved arrangement to
13 facilitate her development proposals.

14 As to the acoustic noise barrier, there is predicted and assessed to be an
15 improvement to the noise levels at Franks Farm during operation, and the
16 request, as I understand it, is a permanent acoustic barrier, which we don't think
17 is appropriate, but as I say, I'm not sure – and as to tree planting, again, I'm not
18 sure that those matters really go to compulsory acquisition and temporary
19 possession.

20 MR SMITH: There's a kind of interrelationship, I think, here between matters that are
21 planning merits matters and/or negotiation points, combined also with an
22 underlying CA position. I mean, to be fair to Mr Lawson, one of our dilemmas
23 has been the question of how to surface this issue and given the march of time
24 against us, the importance of surfacing it at least a hearing at some point before
25 we go too much further along in this examination. So to that extent, I think we
26 have to observe that various possible engagements, including possible
27 appearances at open floor hearings having been suggested – in a sense booked
28 but not taken up – advice was provided through the case team that given the
29 foundation stone nature of the compulsory acquisition matter, that it was in Mr
30 Lawson's client's best interest to get in front of this hearing, at least so we
31 understood what was in scope.

32 I think we do. I do note your point about not having your relevant expert
33 team fully in place because this is a compulsory acquisition hearing, but
34 nevertheless, what I would ask is that they are clearly able to take account of

1 what has emerged and to respond to it in writing, and so I am going to ask you,
2 please, to ensure that your deadline for submission to the extent necessary – and
3 you will no doubt have views about the extent necessary and put those in writing
4 too – but recognising that people aren't here, but can at least absorb what has
5 been said, it will be useful if we could at least get a reasonably robust response
6 to what has been said so that we understand where we stand, and critically, Mr
7 Lawson and his client understand where they stand too, recognising that not
8 everybody participates in nationally significant infrastructure project
9 examinations every day of the week.

10 MS TAFUR: Sir, Isabella Tafur for the applicant. I was asked in the break that if a
11 suitable opportunity arose, that I raise this with you, and I think that the teams
12 think this is a suitable opportunity because everyone's frantically passing me a
13 note to indicate that we will, of course, respond in further detail to the extent that
14 we think necessary to the points raised on behalf of Mrs Carver. We just wonder
15 whether we could perhaps do that for deadline 5 rather than deadline 4?

16 MR SMITH: Yeah, that's fair.

17 MS TAFUR: Thank you.

18 MR SMITH: That's giving you a little more than two days.

19 MS TAFUR: Thanks, sir, and there's still quite a bit to do for those days. So what we
20 suggest, sir, if this is acceptable to you, is that in Mr Lawson's submissions on
21 behalf of Mrs Carver, if he summarises those points, which in some cases, do go
22 a bit beyond what's already in the written material, we will then be able to absorb
23 those and make sure that our response at deadline 5 picks up all of the areas of
24 concern to him.

25 MS SMITH: Okay, so that's the sort of double action, which is – Mr Lawson, it would
26 be perfectly normal for any party speaking at any hearing to provide a post
27 hearing written submission, and that is essentially at deadline 4. I think in these
28 circumstances, if you provide that, that should be pretty close to hand already
29 because you've spoken. So any speaking note that you have formed to help you
30 speak can be quite rapidly transformed into that. It enables you to pick up the
31 debate; the discussion that took place. If that comes in at deadline 4 – and we
32 are formulating an action on this – then I think my request to the applicant for a
33 fulsome response, which does not subdivide this into just merely compulsory
34 acquisition matters, recognising that we do have to address the planning

1 merits/arguments in the round as well, is something that will be forthcoming at
2 deadline 5.

3 So I think that will assist your client's position, and hopefully what we can
4 then do is, if we feel that there are further matters that need to be explored, we
5 can either deal with them in writing or we can make an appropriate arrangement
6 in one of the remaining hearings that I suspect would probably end up being an
7 issue specific rather than anything else, if there is anything else that we think
8 needs to be further heard in the interests of providing a proper hearing for your
9 client.

10 MR LAWSON: Thank you for clarifying that, sir, because we weren't under the
11 impression that we couldn't raise planning considerations today and we'd rather
12 support what Mr Bedford was saying earlier in his submissions about planning
13 harm. If planning harm's not justified, then the CPA merits may not be justified
14 either, and in our view, the applicant's response to our submissions and evidence
15 now isn't very satisfactory in that regard because we simply haven't done it, and
16 then if they're going to come back with the written response – obviously we get
17 the right to reply to that – but I would be inclined to agree with you, sir, that a
18 separate hearing to run through all this might be appropriate.

19 MR SMITH: We will make that judgement when we see both sides, and in that respect,
20 I think there is another observation that I will make and that is that if – the best
21 way forward with this will be to remain in close dialogue with the case team
22 because I am conscious that part of the reason why we're here is because there
23 were various approaches made around possible appearances at an open floor
24 hearing.

25 There was at least one opportunity that was 'booked but not taken up,' and
26 we were becoming distinctly concerned about the possibility of the examination
27 moving forward and us not really having bedded down the fullness of your
28 client's position, which again, goes to why we asked you to come to this hearing,
29 because we knew that compulsory acquisition was at the foot of it and so
30 therefore, this hearing did seem to be the earliest appropriate point to offer you
31 an opportunity and I'm very grateful for the fact that you did attend.

32 I think moving forward, what we need to make sure is, if there is a balance
33 of anything else that needs to be heard – as opposed to investigated in writing –
34 that there's an ongoing conversation with the case team, so that we are clear

1 when dates are being set and agendas are being set, that we are taking your
2 client's needs and issues as fully into account as we reasonably can in the
3 circumstances.

4 MR LAWSON: Thank you, sir. Just one other point of clarification in that case. Do you
5 still advocate continuing liaison between ourselves and the applicants to try and
6 resolve some of these –

7 MR SMITH: Well, it's not our place to give you planning advice, Mr Lawson. However,
8 as a matter of general principle, we would always indicate that there are
9 potentially benefits to be obtained for any affected person in continuing to
10 engage in dialogue with an applicant about the scope of a compulsory acquisition
11 and indeed, also about the effects of the proposed development in planning terms
12 on their land or their clients' land.

13 Have conversations, but be aware that those are essentially matters
14 between you and they're not matters that we will engage in the detail of or
15 regulate, other than that if they become relevant to a settled position where you
16 come before us and say, 'Actually, these matters are off the table now because
17 we've agreed them,' of course we'll take that into account, or equally, if at the
18 end of the examination you're clear nothing has been agreed, we'll take that into
19 account too, but it will be for you to plough your own furrow in terms of
20 conversations with the applicant, if that makes sense.

21 MR LAWSON: Makes perfect sense, sir, and we will hope to pursue that with the
22 applicant and we sense there's been a bit of backpedalling since we last met,
23 which is, again, disappointing, but hopefully we can recover some of that
24 ground.

25 MR SMITH: Okay, well, thank you very much for your time, Mr Lawson. I'm going to
26 suggest now, unless there's anything further that Ms Tafur wishes to raise in
27 response to that brief exchange, that it's time to shift finally to the last agenda
28 item of the day – or the last substantive agenda item of the day – in item 3D, and
29 so noting that we are now dealing with Glenroy Estates.

30 MR STREETEN: Yes, good afternoon, sir. Charles Streeten, instructed by Norton Rose
31 Fulbright for Glenroy Estates. Glenroy owns land to be acquired at Folkes Farm,
32 which is north of the A127 and west of the M25. You'll find it on REP3-013,
33 sheets 45 and 46, where the land plans identify the parcels for compulsory
34 acquisition. The applicant seeks powers to acquire that land permanently,

1 primarily for ancient woodland compensation, but also in very small part for
2 highway and utility works we think, and just to deal with the latter of those first,
3 in terms of the small parcels of land proposed to be acquired for highways and
4 utility works, we're very willing to sell those to the acquiring authority. This
5 submission [inaudible] upon the remainder of the land, specifically the land that
6 is proposed to be compulsorily acquired as compensation for ancient woodland,
7 and in essence our case is that the applicant has failed to demonstrate a
8 compelling case in the public interest to justify the permanent acquisition of that
9 land for that purpose.

10 In support of that, I make two overarching submissions. The first is that
11 National Highways has not justified its selection of Glenroy Estates land as a
12 location for ancient woodland compensation or provided evidence to
13 demonstrate its suitability for that purpose, and the second is that on any view
14 there's considerable uncertainty about the success of ancient woodland
15 compensation on that site, such that permanent acquisition for that purpose is
16 unjustified and at best National Highways evidence justifies acquisition such
17 that should the compensation fail, there can be a return, and we have written
18 with a set of heads of terms essentially suggesting how that could be achieved
19 through a lease with break clauses in.

20 MR SMITH: Can I just interject? You very helpfully have provided the plan reference,
21 so I was just wondering if the applicant's team could put up the relevant extract
22 of that plan. Would it assist if that was returned to so that...? Ah, no, here we
23 are. Or at least I think we are.

24 MR STREETEN: Yeah I think I saw it flip past. So to the north of the A127 and to the
25 west of the M25. Yes, essentially 45/61, although slightly more complicated
26 than that, but for our purposes, 45/61, and so as I say, I have two overarching
27 points to make. The first overarching point is that National Highways has not
28 justified its selection of that land for ancient woodland compensation and as a
29 result hasn't demonstrated a compelling case in the public interest to justify the
30 grant of compulsory purchase over it. I say that for three reasons. I'll summarise
31 them and then develop each.

32 The first is that there's been inadequate investigation of the suitability of
33 the land. The second is that relevant factors have not properly been taken into

1 account which suggests it may be unsuitable, and thirdly, there's inadequate
2 consideration of alternatives.

3 So dealing with the first of those: inadequate investigation. Essentially,
4 what we said is that National Highways has failed to conduct any proper
5 investigation into the suitability of this site for ancient woodland compensation.
6 The success of ancient woodland compensation planting depends very much on
7 the suitability of the site for providing such a compensatory habitat and that is
8 especially so, whereas, as appears to be proposed here, the habitat involves the
9 translocation of ancient woodland soils, and we understand that that's proposed
10 from the outlying landscape ecology management plan at paragraph 8.23.
11 Again, the reference from the examination library is REP3-106.

12 The relevant best practice guidance makes quite clear, and this is published
13 by the Highways Agency itself back in 2003, along with the Construction
14 Industry Research and Information Association – that's paragraph 2.3 of that
15 guidance – that the success of such compensation turns firstly on the suitability
16 of the receptor site in terms of soil series, PH, nutrients, hydrology, aspect and
17 slope. Secondly, that that can only be ascertained through a proper site
18 investigation and that, thirdly, if you don't properly conduct that investigation,
19 there's a high probability of failure.

20 In this case, National Highways has not conducted, so far as we are aware,
21 any of that investigation – doesn't know the soil series, PH, nutrients, hydrology,
22 etc. – and so essentially we say the probability of failure is high, even just on its
23 face. We certainly say there's no evidence of any such investigation having
24 informed the site selection or being undertaken at a time when it could have
25 done. We say that's pretty surprising because we did grant permission to
26 National Highways to come onto our land and we just haven't seen the result of
27 that. So either they didn't use that permission –

28 MR SMITH: Can I just investigate that? Essentially, either they came onto the land and
29 there has been a survey, but there is no exact result of that survey, or
30 alternatively, you granted them consent to access the land and as far as you're
31 aware, they haven't even visited the land. Which of those –

32 MR STREETEN: That was the Morton's fork I was about to give you, sir. I don't know
33 which of those – it doesn't matter which it is. We don't know that they've come
34 onto the land, if that makes sense. So we're not aware of them having done so,

1 but if they did so and didn't tell us that they were exercising that permission,
2 then we haven't seen the result of it.

3 MR SMITH: So there's nothing sitting in the document set that we've got available to
4 us that –

5 MR STREETEN: Insofar as we're aware, no, and so we essentially say that there just is
6 inadequate investigation in relation to the site and certainly inadequate
7 justification in light of whatever investigation has taken place. That's my point
8 1 of 3. My second point is that there are things which seem to suggest an issue
9 in terms of this site as a location for ancient woodland compensation. Essentially
10 two points to make. We wonder if it might be helpful at this point to have the
11 works plan on site, which is sheet 45 of REP3-039, essentially just to show how
12 close the site is to the road. Yeah, there we go, and essentially the first of the
13 two sub points on this is that it is located very close to the road and the applicant
14 itself acknowledges that nitrogen deposition is capable of having a range of
15 injurious effects on ancient woodland habitats.

16 You'll see that from the ES appendix 8.14 designated site for air quality
17 assessment, paragraph 4.2.3, which for your note is document APP-403, and so
18 what we essentially say is where it recognises major adverse effects, for
19 example, on Codham Hall Wood, which is the other side of the motorway – and
20 that reference is taken from paragraph 5.12.1 of the same document – it seems
21 very likely that there are adverse effects likely to be caused to the proposed
22 compensatory planting from the same source.

23 The second of the two reasons why we say there seem to be some prima
24 facie issues is that the site has been subject to numerous planning enforcement
25 notices between 2010 and 2014 for breaches of planning control involving a
26 range of industrial uses including vehicle storage and braking, skips, hard core
27 and soil importation, storage and distribution and essentially just the sort of uses
28 that you might think are unlikely to be conducive to establishing compensatory
29 ancient woodland planting, and so, without investigation, it's very unclear how
30 much the applicant knows. There's no reference, so far as we can tell, to those
31 enforcement notices in their site selection decision making, and we just say
32 essentially it seems that National Highways hasn't taken into account what
33 looked to us like obvious impediments to using the land for the purpose it's
34 proposed to be acquired for.

1 So before I turn to my third of three points in relation to this first
2 overarching issue and look at reasons 1 and 2 that I've given together, what we
3 are essentially saying is that there isn't enough evidence that this site is suitable
4 for the purpose that it's proposed to be acquired, and that essentially the
5 applicant runs headlong into the CPO guidance and particularly section 15 of
6 that, in that it's entirely unclear whether or not the site's characteristics would
7 impede its use for the purpose for which it's proposed to be acquired, and that
8 really is, we say, CPO 101 and we just would have expected it to be dealt with
9 in the application documents and I think perhaps that goes to the point that you
10 were making earlier about quality assurance.

11 We just say that the quality assurance isn't there when we've dug into this.
12 We haven't found the quality that we would have expected in terms of
13 justification and we understand that that issue isn't unique to our site. So I know
14 that Thurrock raised a similar issue in a different context in relation to
15 Buckingham Hill landfill, which is proposed for different environmental
16 mitigation measures, as to which I think they dealt with it in their representation
17 – reference REP1-281 at paragraph 10.6.8 – but essentially they were saying,
18 similarly, a site that was landfill was inappropriate for the proposed mitigation
19 measures and it hadn't been investigated.

20 MR SMITH: Can I just test something, because my understanding is that we don't have
21 detailed technical evidence from your client and nor indeed would it necessarily
22 be appropriate at this hearing because, as Mr Lawson very clearly reminded us,
23 this is a compulsory acquisition hearing, not an issue specific hearing into
24 contaminated land considerations, but there's always an intricate relationship in
25 any CA matter between merits, considerations and the justifications for CA. Is
26 it your submission to us – and if it is, we're going to have to work out how to
27 find a means of asking you to put the evidence in – that this is or has been a
28 landfill and/or there have been activities – whether lawful or not – on the site
29 that have left it in such a condition that, frankly, it isn't an appropriate site for
30 an ancient woodland mitigation or compensation?

31 MR STREETEN: Not that it hasn't been a landfill, no. We're not suggesting landfill.
32 It's a series of, I'd say, industrial unlawful uses over what appear to be an at
33 least a four year period. What we do say is that there isn't justification from the
34 applicant that they've looked at what the soil quality is and that they can show

1 that it's acceptable for what they're proposing to do with it, and that's why we
2 put it in the context of compulsory acquisition.

3 MR SMITH: And in that respect, your proposition is that the evidential burden falls to
4 be discharged by the applicant. They should at least be clear as to whether or
5 not the purpose of their acquisition has a reasonable prospect of success.

6 MR STREETEN: Precisely. That's my point. The evidential burden falls upon them.
7 That's why we raise it in the context of compulsory acquisition, and again, we
8 did discuss it with your team as to what would be the appropriate time to raise
9 it, and this was agreed to be the time. We put in a speaking note, which I know
10 has been rejected, but we will amplify this, and the speaking note is intended
11 essentially to be the basis of our deadline for representation, so that the applicant
12 will have a full opportunity to understand what we're saying.

13 MR SMITH: Now, my colleague, Ms Laver, has a follow up question in relation to the
14 one that I just asked. Ms Laver.

15 MS LAVER: It's not really a follow up question. It's just we had a hearing last week
16 which was about the biodiversity mitigations, and some of those things were
17 talking about nitrogen deposition, and questions were asked of the applicant
18 what surveys had been undertaken on the nitrogen deposition compensation
19 sites, and there will be a follow up from the applicant in response, in writing,
20 because we got through that agenda item. What we didn't get through was the
21 ancient woodland impact, and there certainly on the agenda was a question
22 around the extent of surveys for ancient woodland, and I really think that will
23 get picked up because that was an element of the hearing we didn't get through
24 and it was deferred to be reheard in October. So the only reason I mention that
25 is because I don't want the applicant to feel they've got to go down the road
26 today, and I realise that you're seeking those answers, but we had a published
27 agenda and that formed part of it.

28 MR STREETEN: Yeah, and we did ask about attending that hearing and it was suggested
29 that it would be better for us to attend today, and to be clear, I think what we're
30 doing is throwing down an evidential gauntlet as much as anything, and that's
31 the nature of a compulsory acquisition. They have to justify their position.

32 MS LAVER: Oh, and I certainly think it helps inform some of the questions we'll be
33 going to when we come back to nitrogen deposition in ancient woodland,
34 because we certainly weren't done with it last week, so thank you.

1 MR STREETEN: No, I'm grateful. That also feeds into my third reason in relation to
2 'Compelling case in the public interest,' which is about the inadequate
3 exploration of alternatives and essentially relying on the first two points; no
4 evidence to suggest that the site is suitable and apparent issues that haven't been
5 explored. What we say is we'd expect evidence to justify why this site is
6 necessary rather than alternatives that we say might be better located or at least
7 better able to deliver the compensatory habitat, and we're not aware of any
8 meaningful evidence which demonstrates why this site has been selected in that
9 way. National Highways positional alternatives, as set out to some degree earlier
10 in the strategic discussions, is about connectivity with the network of
11 compensation sites.

12 In terms of response to that, firstly, if a site is unsuitable, then it doesn't
13 really matter where it falls on the network because it's not going to deliver the
14 compensation. It's a prior question to that. Secondly, we're not aware of any
15 specific justification for the selection of this site in those terms set out in the
16 applicant's written documentation, and thirdly, as we've already explained, the
17 site is bounded by linear infrastructure on two sides and so we say in terms of
18 connectivity, it's unlikely to be the very best place to put it. That's my point 1
19 overall, with three reasons to support it.

20 My second point I can take more briefly. Essentially it is that even if the
21 applicant were to make all of those things good, on any view, there's a risk that
22 if attempts to establish ancient woodland compensation on this land fail, we say
23 that the applicant at least implicitly recognises that in the environmental
24 statement summary – table 17.4, document reference APP-155 – and so we say
25 in those circumstances permanent acquisition is unjustified. We say in the event
26 that attempts to establish ancient woodland compensation on this land fail, then
27 the land should be returned to our client. The measure of success is already
28 essentially defined in the outline landscape ecology management plan,
29 paragraph 8.23.8 – that's REP3-106 – and we've written to National Highways
30 – admittedly very recently – with draft heads of terms expressing a way in which
31 we think that can be achieved, and so we say that, on any view, we can't see a
32 justification for acquiring more than that interest in our land.

1 MR SMITH: Okay, does that draw your submissions to a close? Excellent. Obviously,
2 I'll come back to you once we've heard from Ms Tafur, but I will go to her now.
3 Ms Tafur.

4 MS TAFUR: Thank you, sir. Isabella Tafur for the applicant. Sir, so we've been
5 engaging with the Glenroy Estate since 2021, most recently sending them a letter
6 and an invitation to negotiate at the end of June of this year. You'll be aware
7 they didn't submit a relevant representation. They submitted a very short written
8 representation and we were very grateful to receive their speaking note
9 yesterday, but it does raise a number of detailed ecological points that haven't
10 been foreshadowed in any of their previous submissions, and in respect of which
11 we propose to respond in writing in due course, which, sir, won't be at deadline
12 4, I'm afraid, for the reasons we discussed earlier and it may be something that
13 we can pick up, as Ms Laver suggested, in response to the actions following the
14 hearings last week in respect of ancient woodland.

15 Generally speaking, you've heard – and I'll keep it at a high level – but
16 you've heard the applicant's approach to ancient woodland compensation
17 planting, where it's followed the principles of seeking to create high quality
18 woodland habitat to offset that which is lost as a result of the project and to link
19 it to existing woodland in order to build resilience into the ecological network
20 and that's an approach that's been discussed at length and agreed with
21 stakeholders, including Natural England and the Forestry Commission.

22 In this instance, the project will result in the loss of ancient woodland in
23 the Codham Hall Wood west, and it's in order to offset that loss that the applicant
24 has looked to identify land in the vicinity of that loss that offers the opportunity
25 for woodland creation, and the applicant's position is that this plot of land is
26 ideally located in order to achieve that. There's an explanation in the project
27 design report, which is APP-510, which discusses the impacts on the Codham
28 Hall Wood ancient woodland and the proposed woodland areas which have been
29 designed to further add to the strong wooded character and create a connection
30 to existing woodlands. There's also a reference there to the new A127 bridge
31 which is to be softened on its northern axis by this compensation planting on this
32 site.

33 The statement of common ground with the Forestry Commission, which
34 is APP-095, notes that the ancient woodland compensation design proposed by

1 the applicant follows Natural England's advice to strengthen existing ancient
2 woodland and create links between retained woodland blocks and the statement
3 of common ground with Natural England, which is REP2-008, welcomes the
4 applicant's approach to the compensation areas that have been identified with
5 the aim of enhancing the resilience of affected sites by strengthening the
6 ecological connectivity between them. So that's the position with the nature
7 conservation authorities that we've engaged with.

8 Sir, as to the potential contamination, now, that is a point that isn't even
9 raised, I don't think, in the speaking note that was circulated yesterday, as far as
10 I can tell – and I may have missed it, so apologies if I have – but it would be
11 helpful if Glenroy Estates could submit the enforcement notices to which they're
12 referred with their written representation so that we can have a look at those.
13 The point about surveys more generally we will pick up in writing, as Ms Laver
14 suggested.

15 So there also has been a suggestion in their written representation –
16 Glenroy Estates suggested that a potential alternative to compulsory acquisition
17 would be a section 253 agreement in which they were responsible for the ancient
18 woodland planting and maintenance, and you heard Mr Tait this morning
19 explain why that position is not acceptable to the applicant. In their most recent
20 correspondence they've suggested an alternative, which isn't a 253 agreement,
21 but is an alternative arrangement – potentially a long lease. That's something
22 they've only raised very recently, and we're very happy to discuss that with them
23 outside the forum of this hearing.

24 MR SMITH: Okay, just taking a couple of the points emerging from there. I think,
25 notwithstanding your general submissions on essentially the burden of proof –
26 that it is for the applicant to essentially make their case and justify their request
27 for compulsory acquisition – there is nevertheless a need, that if you are relying
28 on enforcement action to substantiate your position that it is not an appropriate
29 site and that's only literally just come into the process, I think I speak for all of
30 my colleagues if I say it will greatly assist us if you can get that material at least
31 into us so that we can have it in the examination library. Would it be desperately
32 horrible of us to ask for that by deadline 4?

33 MR STREETEN: The short answer is no, that's absolutely fine. There are 13 notices.
34 We've got hold of all of them. They only came to us essentially today, which is

1 why it is as new as it is. Although perhaps just to go back to my point n
2 evidential burden, they're just the sort of thing that if you did a land search in
3 relation to land that you were proposing compulsorily to acquire, you will find,
4 but anyway, we have them. They don't seem to require remediation in the way
5 that you might have wanted them to, which is one of the reasons for our concern.
6 We will provide them at deadline 4 along with a detailed note of our position.

7 MR SMITH: Okay, now, there was a related point there that you did, I believe, a quote
8 – some guidance from CIRIA – and what I would again say is, obviously, if
9 we're looking at matters of general law/policy, that we don't ask for those to be
10 submitted into the examination library because, by definition, they bind us all.
11 We know where to find them. However, once we're moving into bodies of
12 guidance and/or best practice that emerge from relevant peak bodies, etc., we do
13 ask for those if possible to be put into us because we can't make the natural
14 assumption that everything is freely available, and in fact, a number of such
15 bodies publish material that is then behind a paywall, etc., so we would ask if
16 you wish us to refer to that, that that also come in at deadline 4. Is there anything
17 else colleagues want to observe on this?

18 MS LAVER: Yeah, just a point of clarity, really, for the applicant. Ms Tafur, what I
19 referred to – the information that we covered last week – was nitrogen deposition
20 compensation. We had to adjourn the section of the agenda on ancient
21 woodland, but we will be revisiting it. So when you said you'd respond in
22 writing on the basis of what was coming from last week, certainly we didn't
23 even touch upon ancient woodland. So I think really the point to respond on is
24 just about this site today and anything wider related to ancient woodland
25 compensation will be picked up in October and we've already set a date for that
26 hearing.

27 MR SMITH: And if you're looking for it in the statutory notice that's been circulated,
28 then there is a hearing broadly on biodiversity and related matters and it will nest
29 in there.

30 MS TAFUR: Isabella Tafur for the applicant. Thank you very much, madam. That's
31 very helpful. I understood it wasn't dealt with. I just wasn't clear whether it
32 was going to be dealt with prospectively through written questions and responses
33 or at another hearing, but I think that's because I haven't yet seen or absorbed
34 the notices to –

1 MR SMITH: I think we're all struggling against pieces of paper or digital equivalents
2 thereof that have only just appeared in the last 24 hours, but nevertheless, those
3 notices have now gone out, and so it's only fair to you to be clear about what we
4 do think we're going to be dealing with orally, and that will be one of the matters.
5 Okay, I will then just return to Glenroy Estates for any final responding points.

6 MR STREETEN: No, sir, no response.

7 MR SMITH: Nothing. Okay, thank you very much for those submissions and that has
8 brought us to the end of the substantive matters on this agenda. So all that
9 remains for me to do now is to move through to the final agenda item and to deal
10 with next steps and closure. As is normal, we do have some action points arising.
11 We will attempt to push these out as swiftly as we can, noting that there are
12 certain of them, notwithstanding the very close position of deadline 4 that do
13 rest on deadline 4. So what I'm actually just going to do is I'm going to confirm
14 those orally because I'm very conscious of the fact that we might not have a
15 written note out in good time for people to actually respond to these. So there
16 is a reference in relation to Whitecroft to the submission of plans.

17 These are a care home land ownership plan and floor plan to the
18 Examining Authority and any other plan showing the footprint of the care home
19 on its land parcel, specifically identifying the location of any outdoor resident
20 recreation and amenity space, should such a plan be available, and we did
21 request that by deadline 4. My understanding, in fact, is it's probably already
22 in. It just hasn't come through to us yet, so I think that one's probably discharged
23 and that will be published for deadline 4, and I did receive a positive indication
24 from the case team. Then we have for Mr Lawson submission of his speaking
25 notes to facilitate a more fulsome response by the applicant to essentially the
26 planning merits dimension of his concerns at deadline 5, but that he was going
27 to put his bare speaking notes in at deadline 4, so we're going to deal with his
28 material in two stages.

29 And then a final deadline for Glenroy Estates, which, again, is speaking
30 notes, which, again, if they do come in at deadline 4, we know that's very close,
31 but we trust you will be able to render what you have just said into writing
32 reasonably swiftly, and that, again, will facilitate a better, clearer and fuller
33 response by the applicant by deadline 5. There are one or two other actions, but

1 they're only out at deadline 5, so that's everything for 4, so hopefully nothing is
2 an ambush for 4.

3 MR PRATT: Mr Smith, can I just check when we are expecting the guidance to become
4 available? Was that deadline 4 or deadline 5?

5 MR SMITH: The Syria...?

6 MR PRATT: The Syria guidance.

7 MR SMITH: Yes, I think that, realistically, has to be deadline 5, because it's only –
8 unless you've got –

9 MR STREETEN: We can provide it at deadline 4.

10 MR SMITH: You can provide it at deadline 4.

11 MR STREETEN: We can provide it at deadline 4 for representation.

12 MR SMITH: Okay, fine. Deadline 4 it will be then.

13 MR PRATT: Thank you very much. I just wanted to clarify that.

14 MR SMITH: Okay, so that's the action list. Now, I'm not going to reiterate the advice
15 that I gave in the closing of compulsory acquisition hearing 1 this morning,
16 which was to run through the sequence of further hearings that we propose to
17 hold. If anybody is interested in finding out what hearings we propose to hold
18 in the period between 17 and 24 October, please refer to the shortlist we
19 published recording of the tail end of compulsory acquisition hearing 1, and
20 there you will hear everything set out and/or you will very, very shortly see the
21 statutory formal notice for those events.

22 So that then takes me to thank the speakers today for their contributions
23 and to assure you that everything that has been said will be carefully considered,
24 and as you've already seen, there are matters that we will pursue via other
25 methods including written questions and in other hearings, and then, before we
26 close, I will thank the case team. Not only for supporting this particular hearing,
27 but for working like Trojans across an extraordinarily busy fortnight. These are
28 people who have been going to bed very late and getting up very early indeed to
29 keep in front of what amounts sometimes to a tsunami of documentation, so a
30 huge thank you to all of the case team who've been helping us. Unless there's
31 anything else that anybody wants to raise – and I am seeing from Mr Stratford,
32 for Thurrock Council, a hand raised in the room, so I am going to invite you in,
33 Mr Stratford, before I close.

1 MR STRATFORD: Thank you, and let me apologise for my dress. I wasn't expecting
2 to speak, so I've changed. I just wanted to clarify whether there were any actions
3 coming out of Thurrock's submissions earlier this afternoon in your action list.
4 The reason I ask is that I'm trying to advise the team so that they can prepare
5 over the weekend. It would be helpful to know –

6 MR SMITH: Yes, I do believe that our actions arising from this morning's hearing were
7 sent to publication over the lunch. Can I just confirm with the case team that
8 they should now be available?

9 MR STRATFORD: They are. They are already published. I meant this afternoon's
10 submissions related to Ron Evans. There's no actions at all.

11 MR SMITH: No actions on you.

12 MR STRATFORD: Fine, okay, thank you.

13 MR SMITH: You got away with that one.

14 MR STRATFORD: We did indeed, yes.

15 MR SMITH: Thank you very much, Mr Stratford.

16 MR STRATFORD: Thank you.

17 MR SMITH: Okay, in which case, unless there are any final matters, I am now going to
18 draw compulsory acquisition hearing 2 and this fortnight of events at Orsett Hall
19 to a close. I wish you all goodbye and to give my colleagues an opportunity to
20 say their goodbyes.

21 MR TAYLOR: Yes. Ken Taylor, panel member. Goodbye from me and thank you for
22 this fortnight. It's been very helpful.

23 MS LAVER: Thanks, everyone. I've enjoyed your company, but I'm glad not to see
24 you all for a while.

25 MR PRATT: As everybody said, it's been a long fortnight, so thank you very much for
26 your help and it's nice seeing you. Goodnight.

27 MR YOUNG: Good evening from me and have a nice weekend.

28 MR SMITH: And Rynd Smith, panel lead, signing off and looking forward very much
29 to seeing you in October, but hopefully not before then. Thank you very much,
30 ladies and gentlemen.

31
32 **(Meeting concluded)**