



PLANNING INSPECTORATE COMPULSORY ACQUISITION HEARING

on

17 OCTOBER 2023

Ubiquis (Acolad UK Ltd)  
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PRESENT

**PLANNING INSPECTORATE**

RYND SMITH

KEN PRATT

KEN TAYLOR

**CASE TEAM**

TED BLACKMORE

SPENCER BARROWMAN

RYAN SEDGMAN

**LOWER THAMES CROSSING**

ANDREW TAIT KC

ISABELLA TAFUR

MUSTAFA LATIF-ARAMESH

SUKI COE

DR TIM WRIGHT

SARAH COLLINS

NICK CLARK

**LOCAL AUTHORITIES**

MICHAEL BEDFORD KC (Gravesham Borough Council)

TONY CHADWICK (Gravesham Borough Council)

ADRIAN HICKMOTT (Gravesham Borough Council)

**STATUTORY PARTIES**

ALEX DILLISTONE (Port of London Authority)

LUCY OWEN (Port of London Authority)

BEN FANNING (Port of London Authority)

ALISON DABLIN (Port of Tilbury London Ltd)

ROBBIE OWEN (Port of Tilbury London Ltd)

**INTERESTED PARTIES**

COLIN COTTAGE (Orsett Golf Club)

MIKE HOLLAND (Holland Land & Property)

TOM BENTON (Holland Land & Property)

PIERS COLLACOTT (Tarmac Building Products Ltd)

JAMES DEWEY (Tarmac Building Products Ltd)

1 MR SMITH: Good morning, everybody, and welcome to today's compulsory acquisition  
2 hearing 3 for the Lower Thames Crossing. Before we introduce ourselves, I'll  
3 deal with a few preliminary matters. Can I check first with the case team and  
4 the audio-visual staff that we can be heard online and the recordings and  
5 livestreams have started? And I'm seeing all the right thumbs up in all the right  
6 places, thank you very much, so to introductions. My name is Rynd Smith; I am  
7 the lead member of a panel, which is the Examining Authority for the Lower  
8 Thames Crossing application. I am in the chair for this hearing. I'll draw  
9 attention to the frequently asked questions linked to our rule 6 letter and  
10 available on our website, and you'll find the biography of myself and my fellow  
11 members of the Examining Authority, and an explanation for the purpose of the  
12 Examining Authority's appointment there. The panel members with me now  
13 will introduce themselves, and I will start by introducing my colleague, Mr Ken  
14 Taylor.

15 MR TAYLOR: Yes, good morning, everybody. My name's Ken Taylor; I'm a panel  
16 member. I may ask some questions throughout the day today, thank you.

17 MR PRATT: Good morning, everybody. It's Ken Pratt here; I am a panel member, and  
18 likewise, I'll be asking questions as and when.

19 MR SMITH: Thank you very much, Mr Pratt. This is Rynd Smith, panel lead, speaking  
20 again. Having introduced the panel members sitting on the bench with me today,  
21 I will of course note that two members of the Examining Authority are not seated  
22 with us – Ms Janine Laver and Mr Dominic Young – and they're out of the venue  
23 working on other matters. They will be with us during some of the further  
24 hearings during this October hearing period as we move through it.

25 I will also note the presence, sitting on the very far back bench, of Mr Guy  
26 Rigby. Guy is an inspector; he's a chartered engineer and non-practising  
27 barrister by professional background, and he's employed by the Planning  
28 Inspectorate. He is not a member of the Examining Authority, but as is common  
29 on most larger cases, examinations, under the Planning Act of 2008, he is an  
30 inspector who's advising the Examining Authority as required on matters  
31 relating to compulsory acquisition and highways and transportation matters, so  
32 he'll just be sitting very quietly in the background, and we will be mining his  
33 brain if we need to. I thought it was very important that I transparently state

1 who he was and why he was here, so if anybody has any questions about his  
2 role, then please feel free to raise those.

3 I will also introduce our planning inspectorate colleagues working with us  
4 on these examinations. Ted Blackmore is the case manager who is leading the  
5 team today in the venue, and case officer Spencer Barrowman is with him. Ryan  
6 Sedgman is with us virtually, making sure people who are joining the event  
7 virtually are able to join. Now, we're here – and at this point I'm segway-ing,  
8 really, into the second item on the agenda – to hold what is our third compulsory  
9 acquisition hearing, but it's the second of a group of compulsory acquisition  
10 hearings where we are hearing objections to compulsory acquisition and/or  
11 temporary possession requests that have been raised by, or on behalf of,  
12 individual affected persons. Everybody who is speaking today is here because  
13 they have made a formal request to be provided with an oral hearing on their  
14 objection.

15 So I trust everybody knows why they're here, and I think in that respect  
16 we don't need much more introduction to this hearing today, other than to  
17 remind everybody that because examinations under the Planning Act of 2008  
18 are primarily written processes, then the important task to accomplish in oral  
19 submissions today is essentially to cut to what still remains in dispute between  
20 individual affected persons speaking today and the applicant. And particularly  
21 importantly, if it appears that agreement is unlikely to be capable of being  
22 reached either within the time scale of the examination or at all, and if there  
23 therefore may be matters that this Examining Authority is being asked to  
24 adjudicate on in a recommendation to the Secretary of State, the one really  
25 important thing that we need to know before we leave the room is that it is your  
26 opinion that that is the case, and the key focus of the matters that you would like  
27 us to put to the Secretary of State, so that needs to really be the focus of the  
28 discussion.

29 As we have customarily advised on many occasions previously in this  
30 examination, this is a hearing that's being livestreamed and recorded. I trust  
31 everybody is fully understanding of why that is being done and is content that it  
32 proceeds. Don't see any hands rising, seeking intervention on that point, so what  
33 we're now going to do is we're going to introduce the individual speakers. You  
34 will have seen from the agenda paper that there is an order of business, and so

1 what I'm intending to do now is to introduce the speakers in the intended order  
2 of business and then I'll come to the applicant last, so can I first check Mr  
3 Bedford, Gravesham Borough Council – and you are here.

4 MR BEDFORD: Sir, yes, my name is Michael Bedford, King's Counsel, instructed on  
5 behalf of Gravesham Borough Council. With me today, but probably not  
6 speaking, is Mr Tony Chadwick who is the NSIP project manager for the  
7 borough council, and then to his immediate right is Mr Adrian Hickmott who is  
8 the leisure and resilience manager. I suspect that if he speaks it will be more on  
9 the leisure side of things than the resilient side of things, but his job title is leisure  
10 and resilience manager. Thank you, sir.

11 MR SMITH: That's a glorious combination of roles, leisure and resilience. I could do  
12 with a dose of leisure and resilience. Thank you very much, Mr Bedford. Now,  
13 can we move on to the Port of London Authority? I do believe we have Ms  
14 Dillistone online.

15 MS DILLISTONE: We do, sir. Good morning, I'm Alex Dillistone, here from  
16 Winckworth Sherwood on behalf of the Port of London Authority, and with me  
17 today, also joining remotely, are Lucy Owen and Ben Fanning. We were going  
18 to attend in person, but because I'm unwell at the moment, we thought it best  
19 not to spread that any further, and I will keep our submissions relatively short,  
20 and although I hope to be able to respond to any questions the Examining  
21 Authority may have, if I do need to dash off, one of my colleagues will respond.

22 MR SMITH: Thank you very much, Ms Dillistone, and considerable appreciation for  
23 your mindfulness of the good health of everybody else in the room. Port of  
24 Tilbury London Ltd, do we have Ms Dablin online?

25 MS DABLIN: Good morning. Yes, Alison Dablin for the Port of Tilbury, and I'm joined  
26 by my colleague.

27 MR OWEN: Good morning, sir, Robbie Owen, also for the Port of Tilbury London Ltd.

28 MR SMITH: Thank you very much. Excellent, and then we move to what we anticipate  
29 will be the final item that we will hear before a provisional lunchbreak. Orsett  
30 Golf Club, do we have Mr Colin Cottage in the virtual room, please?

31 MR COTTAGE: You do, sir, and first of all, apologies; I was hoping to be with you in  
32 person this morning, but unfortunately my wife was unwell last night and is still  
33 unwell, nothing too drastic but unwell enough that I agreed I'd stay home and

1 look after her, so apologies I'm not there but hopefully we can deal with  
2 everything virtually.

3 MR SMITH: Entirely accepted, and I mean, one of the glories of where Covid has left  
4 us is that we are able to work in this blended manner and actually hold an event  
5 that is both physical, in person, and virtual, so then if we look to the business of  
6 what we intend to be the afternoon. Now, there are a large number of  
7 representations broadly under the umbrella of Mr Mike Holland, and at this  
8 juncture I will just check – rather than reciting all of the individual representation  
9 – just check that we do have Mr Holland with us. I believe we do.

10 MR HOLLAND: Morning, sir. Yes, you do.

11 MR SMITH: Yes, physically, I was looking at the screen then.

12 MR HOLLAND: I may move across, actually. Then we can see each other.

13 MR SMITH: Yes. No, that would be grand because you are literally straight behind the  
14 camera.

15 MR HOLLAND: Indeed. It is slightly off-putting, but Mike Holland, Holland Land &  
16 Property, representing a number of affected parties, landowners and their  
17 development partners. I've also got with me today Mr Tom Benton, if he can  
18 introduce himself as well when we come to that part of the agenda.

19 MR SMITH: Now, I think in fairness to you, Mr Holland, there are two observations that  
20 I'd like to make about your representations, and the first is you've seen that  
21 we've noted a provisional likelihood that we will break for lunch and give,  
22 essentially, you the first run at the afternoon session; the bulk of it, I would  
23 imagine, given the number of people you represent. Now, you are in the slightly  
24 different position from others representing parties here, that you have multiple  
25 parties and what I did just want to indicate was that I leave this in your hands to  
26 a degree, but if there are common themes or common concerns shared between  
27 parties, and it is more efficient for you in marshalling your case to put those  
28 together for as many of the parties as you wish to indicate that they're relevant  
29 for, we're very happy for you to do things that way, or if alternatively you just  
30 want to move individual party by individual party, I leave it in your hands.

31 MR HOLLAND: Thank you, sir. I suppose the most obvious common themes will relate  
32 to ecological mitigation, land and WCH routes, so I'll try to ensure everyone's  
33 good use of time this afternoon by combining as much of that, but just to flag,  
34 there are specific issues to specific landowners in relation to those matters as

1 well, so we may need to just be a little bit flighty around the plates] that I've  
2 submitted and the agenda, yeah.

3 MR SMITH: We certainly will, and in fact you also raise another point which I will pick  
4 up in my opening remarks, which is that there have been a few requests to,  
5 essentially, display plates, maps, plans and as I understand it, those requests have  
6 been facilitated and we do have a member of the applicant's team on hand to  
7 display relevant documents on request. If there's anybody who hasn't spoken  
8 to either the case team or the applicant about the display of plans that they want  
9 to see, it'd be very good to know. Mr Holland.

10 MR HOLLAND: Can I just raise one other thing? I'm conscious that those on my far  
11 left, I think, represent Tarmac Cement and Lime Ltd.

12 MR SMITH: And I am going to come to them.

13 MR HOLLAND: I'm slightly conscious that they are right at the end of the agenda, and  
14 I don't know how long a point they wish to make, but if we get towards the lunch  
15 break and there's time for them to deal with that, I just wonder whether it might  
16 be a good use of their time to go before me.

17 MR SMITH: You anticipate what was going to be my next remark, which simply was to  
18 say that Tarmac – and apologies, because the agenda indicated Tarmac Cement  
19 and Lime, but I do understand, Mr Collacott, that this is Tarmac Building  
20 Products Ltd.

21 MR COLLACOTT: That's correct.

22 MR SMITH: Thank you. What we will do – you were originally on the end of a long  
23 agenda. I think we will have to take things as we see them, and if, having dealt  
24 with Orsett Golf Club, we are in a position to move you in before the lunch, I  
25 will do that, because I think in fairness – and I'm very grateful to Mr Holland  
26 that he's also noted the virtue of that – Mr Holland has a lot of business to do,  
27 and it would potentially be a little boring, sitting there waiting for him to transact  
28 everything on behalf of all of his clients, so that's how we will manage things if  
29 we can. However, if we're very short of time before the lunch break, what I will  
30 suggest, Mr Holland, is, with your forbearance, we might still bring Tarmac on  
31 at the very beginning of the afternoon. Would that concern you?

32 MR HOLLAND: That's absolutely fine, yeah.

1 MR SMITH: And then you would have all of the rest of the afternoon. Okay, so that –  
2 those are the introductions. Yes, as I'm being forcefully reminded, I keep  
3 forgetting the applicant. Mr Tait, I'll come to you.

4 MR TAIT: Thank you, sir. Andrew Tait, King's Counsel, for the applicant. On my  
5 right, Isabella Tafur of Counsel, and on her right, Mustafa Latif-Aramesh,  
6 partner of BDB Pitmans, and those I may be – we may be calling on this morning  
7 and this afternoon include Ms Suki Coe, who's the DCO and planning manager  
8 sitting on my left, Dr Tim Wright, head of consents, and also Sarah Collins,  
9 who's head of land, property and compensation for LTC. There are others  
10 waiting in the wings, but perhaps when we come to them, I'll introduce them at  
11 that point.

12 MR SMITH: I'm very grateful. Now, the drill will be the same as the last individual  
13 objector compulsory acquisition hearing, and so we will allow the individual  
14 objectors to open their case and then we will be returning to the applicant for a  
15 response, and then finally, if needs be, there'll be a brief right of reply by the  
16 individual objector, so that's reversed to the typical issue-specific order of  
17 business, but that's how we normally do it in these hearings. Okay, just a few  
18 very final housekeeping matters before we move on to the substantive business,  
19 I've been informed that there is no fire drill in programme today, so if we hear  
20 an alarm it is the real thing and we will need to exit the building, but in this  
21 venue it's extraordinarily easy. There it is, the fire exit, just behind Gravesham  
22 Borough Council, so we will leave the building by that and then follow the  
23 directions of the staff.

24 We are running the hearing in sessions, as I've already indicated. We're  
25 trying to keep these to approximately an hour and a half in length, so my sense  
26 would be – we are not specifically giving time guidance, but my very strong  
27 hope would be to have heard Gravesham and the Port of London Authority  
28 before the first break. So if we can keep those in mind, the potential time targets,  
29 Mr Bedford and Ms Dillistone, and then Port of Tilbury and Orsett Golf Club  
30 before the lunchbreak, and indeed if we can, Tarmac, so that gives you a sense  
31 of time, hopefully.

32 Finally, if anything – for those speaking virtually – goes wrong with the  
33 technology today and you find yourself no longer connected to the event, contact  
34 the case team. Every effort will be made to try and bring you back into the event.



1 If, for some reason, that proves to be technically impossible, then have the  
2 conversation with them about how to essentially return you to examination,  
3 which may involve either making written submissions at deadline 6 on 31  
4 October, if there is only a small amount of outstanding business that needs to be  
5 covered, or alternatively bringing you back to another compulsory acquisition  
6 hearing in November. But on that point, I will flag, I think, a very important  
7 point that all affected persons who are wishing to speak before this Examining  
8 Authority need to be alive to, and that is that we are moving towards, I guess, an  
9 end state in terms of the processes that we have designed in this examination,  
10 and I think it's important for everyone to be clear that we – the timetable  
11 provides for one more round of major hearings in November, and so we have a  
12 number of outstanding requests to be heard on compulsory acquisition. We  
13 intend to hear them in November.

14 We do also have some hearings reserved for December, but those hearings  
15 are exclusively to hear, if required, requests to be heard arising from the  
16 compulsory acquisition regulations matters, the changes to the application that  
17 had been advertised. Those are not general-purpose hearings open to all  
18 interested parties. They will just be open to those additional affected persons  
19 arising from the CA regs procedure, so in other words, if you're outside this  
20 room listening, thinking, 'I want to be heard on compulsory acquisition. I  
21 haven't been heard yet', you really, urgently, now do need to contact the case  
22 team because we need to slot you in in November, otherwise that will be it.

23 So those are my opening remarks. Introductions and, indeed, agenda item  
24 2 are now complete, but before I move on to the main business of agenda item  
25 3, does anybody have a burning preliminary or procedural matter that they need  
26 to raise now, before we start? I'm seeing no hands in the virtual room, nor am I  
27 seeing any in the physical room, so on that basis, we're going to move to the  
28 agenda paper, and I'm going to ask Mr Bedford to introduce the case for  
29 Gravesham Borough Council, noting that the questions that we are seeking to  
30 ask of all parties at headline level are already outlined on the agenda paper. We  
31 will embroider into them if we need to as we run. Mr Bedford, the floor is yours.

32 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,  
33 it may be helpful in starting this if I could perhaps ask the case team to put up,  
34 first of all, from the land plans, and it's REP5-007, sheet 13, first of all, and what

1 you will see in on there in relation to Thong Lane is the Cascades Leisure Centre  
2 is white, i.e. outside of the order land, which is a leisure facility provided by the  
3 borough council, and what you will also see in the white area – and you can  
4 possibly pick it up on the screen – is the words ‘golf driving range’ on the  
5 north-west side of that facility.

6 Then, you will see parcels 13-09 and 13-03. 13-09 is an area of open land  
7 which comprises a nine-hole golf course. It’s not currently in active use, but the  
8 facility exists, and 13-03 – which is effectively a U-shaped margin around 13-09  
9 – is a vegetated margin which provides, certainly, a walking route on foot, which  
10 is accessible as a recreational route for walks around the nine-hole golf course,  
11 which can be accessed from within the leisure facility, the Cascades Leisure  
12 Centre. It doesn’t directly connect with a public right of way, but it provides,  
13 effectively, a perimeter route around the nine-hole course, and then if I can just  
14 draw to your attention – but not Gravesham Borough Council land – 13-08,  
15 which lies to the south-east, and that is part of the former Southern Valley Golf  
16 Course, which was the 18-hole golf course at sheet 11. It continues to the south,  
17 but as I say, you don’t need to understand that for the purposes of just getting  
18 your bearings.

19 MR SMITH: As a reassurance, as well, Mr Bedford, we have extensively,  
20 unaccompanied, inspected this.

21 MR BEDFORD: Absolutely, sir. I was assuming that was the case; it was just a question  
22 of, as I say, just locating things for the purposes of this morning’s discussion,  
23 and the 13-09 and 13-03 are owned freehold by the borough council, so that’s  
24 our land interest as an affected person. They are currently leased. 13-09 is  
25 leased to Swing Rite – Rite spelt R-I-T-E – who are separately an interested  
26 party and have made their own representations to you, and what the position pre,  
27 effectively, Covid and the making of application – what the position was, was  
28 that Swing Rite operated a golf facility form the location of the Cascades Leisure  
29 Centre, which comprised their golf driving range and the nine-hole golf course.

30 Perhaps I should say the intervening white land between the driving range  
31 and the golf course is currently laid out as football sports pitches, but what that  
32 facility provided was the opportunity both for golfers who wanted to practice  
33 their golf through the use of the driving range to visit the Swing Rite facility, but  
34 also those who wanted to engage in a short game of golf – that’s the nine-hole

1 game of golf – to do so on the nine-hole course, and what it also was that – this  
2 wasn't, as it were, a membership club facility. So as a member of the public,  
3 provided you were happy to pay the charges, you could turn up and if there was,  
4 obviously, an available slot, you could either participate in the driving range or  
5 you could participate in a round of nine-hole golf.

6 And that facility was, as I say, operated as a combined facility, both the  
7 course and the driving range, by Swing Rite, and managed from their building,  
8 which is part of where the driving range facility is located. There is a typical  
9 elongated structure, which is the driving range, and then there are the associated  
10 facilities, and because of, as it were, the spatial relationship between the driving  
11 range and the nine-hole course, it was possible for Swing Rite to manage,  
12 supervise and operate both facilities, but effectively from one fixed point in  
13 terms of having a management present, associated with the driving range, but  
14 with the other areas effectively within view or within a very short distance.

15 Partly as a result of Covid – which, as you will recall, that one of the early  
16 manifestations of the restrictions was to prohibit activities such as golf and other  
17 recreational pursuits – but partly, also, because of the evolution of the project,  
18 Swing Rite closed the nine-hole course to public use. When the Covid  
19 restrictions eased the – from the information they've provided in their  
20 representations, it appears they took the view that whilst obviously the driving  
21 range could return, once that became something that you were allowed to do,  
22 they took the view that the nine-hole course – which was, as they understood it,  
23 to be taken by the project – was something they wouldn't bring back at that time,  
24 so that's why we have the situation that the nine-hole course exists. It's not  
25 currently in use.

26 Separately, as you will be aware, there was the 18-hole course of the  
27 Southern Valley Golf Course, operated as a private facility and that is something  
28 which, separately, the applicant has acquired, albeit it remains within the  
29 compulsory purchase order arrangements, and that, again, no longer operates as  
30 a facility and the Southern Valley Golf Course managers have effectively folded  
31 their tents and done whatever they do.

32 MR SMITH: Yeah, and again, we've observed that transition.

33 MR BEDFORD: Absolutely, so that's the context. If I can then ask the case team if we  
34 can provide – and this is from the oLEMP, the outline landscape, environmental

1 – sorry, ecological management plan. This is from REP4-140, and here are two  
2 plates which are quite helpful, just in terms of understanding the position. First  
3 of all, plate 5.12, which shows – so what you’ll be familiar with – the proposed  
4 new Chalk Park, which straddles around the approaches to the southern portal  
5 of the Lower Thames Crossing. And if you can, as it were – you can see there’s  
6 an indent, if I can call it that, which includes the Cascades Leisure Centre, but if  
7 you look along what would be the north-eastern boundary of that indent, you’ll  
8 see there’s a bit of a dogleg, or an irregular line, and effectively north-east of  
9 that is parcel 13-09, because that’s been taken into the Chalk Park proposed open  
10 space. And then if we can also go, then, in the oLEMP, to plate 5.13 and you  
11 can see that there is a parcel of land which would sit, effectively, just outside of  
12 the Chalk Park, but it’s also outside of the Cascades Leisure Centre, and it’s part  
13 of the former Southern Valley Golf Course.

14 MR SMITH: Indeed, that was my clarification, that we’ve, again, walked across that,  
15 conscious of it, and had identified it as being part of the former golf course.

16 MR BEDFORD: Yes, and indeed, that’s where the golf clubhouse, as it were, the  
17 buildings comprised, sitting in part of that area, which I think you can just pick  
18 up on that – well, yes, you can pick it up on this one. On the OS space you can  
19 see the building and the vehicular access to it. Now, so with that context, the  
20 position as proposed by the applicant at present, and as indicated in the oLEMP  
21 and in the narrative that supports plate 5.13, what the applicant is proposing,  
22 having taken the nine-hole course from the – its current location, is proposing to  
23 provide land within the area shown on plate 5.13 as a replacement nine-hole  
24 course which could be provided.

25 Now, so far as the borough council is concerned, this isn’t an issue which  
26 simply is concerned with the quantum of land which is provided, because purely  
27 in terms of hectarage – and the existing nine-hole course is about half a hectare  
28 in extent; it’s somewhere around about 5,000 square meters – it isn’t a question  
29 of simply providing either the same amount of space or indeed more amount of  
30 space, because I think we accept that that could be provided within the area  
31 shown within the oLEMP. What we are concerned about is whether it will  
32 provide equivalent or better replacement provision.

33 When one looks not just at land area, but one looks at the practicality of  
34 operating an attractive and workable golf facility, and as we understand it,

1 having liaised with our tenant – who is, as I say, the Swing Rite operator of the  
2 facility – that providing a nine-hole course in what we would see as an  
3 operationally remote location, that is not equal or better than what would be lost  
4 by reason of the scheme, because it cannot be effectively managed from Swing  
5 Rite’s existing facilities, focused on the driving range, and that is a concern.

6 There is a concern in terms of management on a – as it were, making sure  
7 that the people who are there are people who have paid to be there. I don’t want  
8 to cast aspersions on people who play golf, but if the opportunity was there for  
9 one to play a round of golf and not pay to do so, there would be some people  
10 who might take advantage of that, if you’ve got a facility which isn’t readily  
11 supervised. There is also the question of possibly those who are not so keen on  
12 playing golf but might take it into their minds to want to damage golf facilities,  
13 whether that’s greens or holes, etc.

14 MR SMITH: And in that regard, I mean, one of the observations that we have made is  
15 that there is already – probably the best way to describe it is an established scale  
16 of, at best, informal, non-golf use on that land and at worst trespassing and  
17 damage.

18 MR BEDFORD: Yeah, absolutely, sir, and as I say, so what we are concerned about is  
19 that a facility that is simply provided, as I say, from an operational point of view,  
20 in a remote location which cannot be readily supervised and overseen from the  
21 Swing Rite centre of operations, which is the driving range, it means is that the  
22 replacement facility is not equivalent or better to what is lost, and that is what  
23 we see needs to be addressed. And we look at this first of all in terms of the  
24 national networks’ guidance on impacts on open space and recreational  
25 provision, in paragraphs 5.166, 5.174 and 5.181 of national networks, and what  
26 we are suggesting needs to happen is that the replacement facility for the loss of  
27 the nine-hole course needs to not only complement the driving range but also be  
28 capable of operation in conjunction with it, and so that is likely to require the  
29 use of some of the land which is closer to the driving range, if the driving range  
30 remains where it is.

31 MR SMITH: In short, it feels as though you’re moving towards a proposition that  
32 existing football pitch land ceases to be football pitch land, becomes an  
33 associated nine-hole course with driving range, but that you’re then looking for  
34 a solution that maybe moves other sports onto the replacement land. Is that...?

1 MR BEDFORD: In part, that is absolutely right, sir, and you may have seen – if you  
2 have looked through the Swing Rite representation – some indications of matters  
3 that they have put forward along those lines. There are a number of, in a sense,  
4 interconnected and somewhat complicated issues, which mean that it isn't  
5 completely straightforward as to how one solves this. One point which one  
6 needs to be aware of – well, I have to say, from my point of view I was  
7 completely ignorant of this because I'm not a golfer, but apparently for those  
8 who do play golf, because of improvements in technology, equipment and  
9 possibly even physical fitness, those who now drive golf balls from a driving  
10 range are now able to do so over a much greater distant than was previously the  
11 case, which means that even at the moment, the golf driving range is probably  
12 shorter than would be optimum if it was being, as it were, designed from today's  
13 standards or practices, and the land which lies to, effectively, the north-east of it  
14 is prone, as it were, to balls from driving range –

15 MR SMITH: Inundation, yeah.

16 MR BEDFORD: Getting to it, so –

17 MR SMITH: Can I make a suggestion that might help us all? I mean, I'm currently  
18 actually looking at the aerial on Google Maps of exactly the land that's shown  
19 on this plate, and if it's possible at all to get that briefly onto screen, then I think  
20 the relationships between the uses might just be a little bit clearer for everybody.  
21 Thank you very much.

22 MR BEDFORD: Excellent, so, sir – sorry, if I return to what I was saying, one of the  
23 issues with the current golf driving range is, as I say, the land which lies to its  
24 north-east is, as it were, prone to incursion by golf balls from the driving range,  
25 and that is a reason why that area wouldn't be particularly suited for use to  
26 provide part of a replacement nine-hole course, but without that land, there isn't  
27 sufficient, as it were, in the remaining land which is the sports pitches' land, to  
28 provide an equivalent facility for a nine-hole course. So although moving the  
29 sports pitches off their existing area onto – if I call it the oLEMP plan, that was  
30 part of the former Southern Valley Golf Course, that may be part of the solution.

31 Something more needs to happen in terms of how you then use the  
32 remaining land, which forms part of the Cascades Leisure Centre complex, in  
33 order to provide a nine-hole course, and it may well include needing – or sorry,  
34 it may well need including a further part of the Southern Valley Golf Course

1 land to provide an equivalent area, but which is spatially – and this is the  
2 important point – spatially sufficiently well related to the driving range that one  
3 can have a combined facility, which, from an operational management and  
4 supervision point of view, all works together. Another permutation – and this is  
5 simply a permutation – would be to relocate the golf driving range from where  
6 it presently is, potentially to a part of the Southern Valley Golf Course land and  
7 again have a spatial arrangement that locates that together with a nine-hole  
8 course.

9 So those are, as it were, matters, we think, for legitimate discussion, but in  
10 terms of the position that you're in as the Examining Authority, and bringing it  
11 then back to a compulsory acquisition focus, our starting point is that what the  
12 applicant has proposed in the oLEMP is not acceptable as a suitable replacement  
13 facility for what is lost and therefore that is not something which should find  
14 favour with the Examining Authority in its recommendations, having regard to,  
15 particularly, the policy tests which are set out in 5.166 and 5.174 of national  
16 networks, and that consequently, we say that a compulsory acquisition which –  
17 to bring about that unsatisfactory state of affairs – is not something that you  
18 should endorse, and we do not see, in terms of the test in section 122 of the 2008  
19 act, that there's a compelling case in the public interest to bring about that  
20 unsatisfactory result.

21 MR SMITH: Can I just check into the contents of that package of argument, briefly?

22 Because that relies strongly on Gravesham, as an authority, having a clear,  
23 essentially, leisure-strategy view that it is important to sustain a nine-hole golf  
24 facility in that location for that community with that nature of operation and  
25 accessibility, because one of the potential ways of dealing with this could  
26 alternatively be that there might be an argument that that might not be the best  
27 location for a facility of the nature of the one that you're outlining, but it may be  
28 possible to provide such a facility as another part of the authority's broad leisure  
29 offer in collaboration with the tenant or another provider, and then do something  
30 in 'different but still valuable in public open space terms' with this land. Now,  
31 that is a devil's advocacy argument, but I think it needs to be tested.

32 MR BEDFORD: Well, sir, I'm grateful for that. Sorry, Michael Bedford, Gravesham  
33 Borough Council. I think it's probably because that, obviously, is something  
34 which you would like to hear, something, probably more from the horse's

1 mouth. It's probably best if I ask Mr Hickmott, who is, as I say the leisure  
2 manager, if he wants to comment on, first of all, what it is that the borough  
3 council is seeking to achieve at the Cascades in terms of the leisure facility, what  
4 it is in terms of golf provision in this part of the borough that is important and,  
5 as it were, maybe less important, so that he can perhaps give you a better handle  
6 on what is appropriate, so Mr Hickmott.

7 MR HICKMOTT: Adrian Hickmott, leisure manager at Gravesham Borough Council,  
8 I'll leave out the resilience bit for now. In terms of strategic need, I think it's  
9 two parts to this. The first part is in terms of our playing pitch strategy, which  
10 was written in 2016, which is probably slightly out of date now. We actually  
11 have an undersupply of playing pitches, and in reality we find that that is the  
12 case in terms of, I suppose, the calls that we get from locals clubs and the  
13 pressure from local leagues, that we do have an undersupply, so in terms of that  
14 part of it, in terms of the Cascades site, playing pitches is very important. It's a  
15 very key site for the borough's provision [inaudible] provision across the  
16 council.

17 In terms of golf provision, in terms of Swing Rite, in terms of the driving  
18 range and the par three course, it's a very well-used site, even at this stage, and  
19 even since Covid, has become even more important, believe it or not. So driving  
20 ranges have become – I think, during the back end of Covid when people were  
21 allowed to get back into sport, golf actually saw a bit of a resurgence, and that  
22 driving range actually is still living off that, and it's a very busy site so in terms  
23 of its – I suppose the demand for even bays at Swing Rite, it's actually very  
24 much in demand, especially during the evening sessions, and the par three  
25 course, obviously, I suppose adds that added dimension in terms of, I suppose,  
26 where people can actually, I suppose, do the coaching and training side before  
27 they actually go onto a full size course.

28 And I think in terms of, obviously, the loss of Southern Valley, that's put  
29 a lot of pressure on 18-hole courses within the borough area, with a lot of people  
30 now actually leaving the borough to go and use courses elsewhere since  
31 Southern Valley has closed, so in terms of the strategic need from the borough's  
32 side, it very much sees the par three course, and Swing Rite as a driving range,  
33 as very much part of that provision.



1 MR SMITH: Yeah, and if I can just ask a brief supplementary to that, which is that there  
2 are certain local authorities that are seeing, I guess, a softening of the medium  
3 to long-range demand for the use of golf facilities; that may be, to a degree, a  
4 demographic issue, etc., but you're not seeing that.

5 MR HICKMOTT: That's not the case that I'm seeing that.

6 MR SMITH: No, okay. Right, Mr Bedford.

7 MR BEDFORD: Thank you, sir, so in that context, we see the solution at this site as  
8 incorporating a mechanism to deliver a nine-hole course in this location, but it  
9 obviously can be done in a number of different ways, spatially, so long as it can  
10 be done in a way which allows the operation of such a facility in conjunction  
11 with the driving range and doesn't also bring about the loss of the sports pitches.  
12 They can be relocated, but we don't want to see their loss either, because they  
13 are, as Mr Hickmott explained also, a valuable resource.

14 MR SMITH: Just before we move on from the sports pitches – and this may be something  
15 that our computer folk can assist us with – if we just zoom in to the pictures  
16 themselves so there – yeah, a little bit further, yeah, a little bit further again –  
17 and we seem to have three – and then if we just draw down so that we can see  
18 the pitches behind the driving range as well as the pitches in front of it. How  
19 many pitches have we got in the space behind the driving range that's currently  
20 somewhat subject to ball overfly? That's two pitches; is that correct?

21 MR HICKMOTT: So there are three adult pitches that you can see, where the ground's  
22 worn, and then to the top end, there's actually two nine-v-nine pitches. We have  
23 different iterations and different layouts depending on what the usage is, but you  
24 can get an adult-sized pitch in that location that's adjacent to the fence line for  
25 the golf and driving range.

26 MR SMITH: But at the moment, you haven't got an active pitch there.

27 MR HICKMOTT: We have two nine-v-nine pitches there.

28 MR SMITH: Yeah, you do. You have your two there.

29 MR HICKMOTT: Yeah, and the three.

30 MR SMITH: Yeah.

31 MR HICKMOTT: So there's, at the moment, five pitches on that site.

32 MR SMITH: Five pitches, yeah. Okay, thank you very much.

33 MR BEDFORD: Thank you, sir, so Michael Bedford, Gravesham Borough Council, so,  
34 sir, bringing matters forward, we note obviously the provision of the Chalk Park

1 facility, but we see that as offering a different type of leisure, recreational  
2 facility. It's clearly not a facility which is based on specific sports. Obviously,  
3 through the trails and routes through it, it will be an opportunity for recreation  
4 in terms of walking and seeing the views, etc., but it's not a facility in terms of  
5 taking part in an active sport, and we see the community need as focused around  
6 wanting to ensure that there is adequate sporting recreational provision in the  
7 solution.

8 It's fair to say that in the last few days there has been further engagement  
9 between the applicant and the council, and there is a dialogue. This isn't,  
10 obviously, the forum for talking about compensation in any kind of financial  
11 sense. The engagement that there has been is helpful in that it is part of a  
12 dialogue, but it's fair to say that we don't, at the moment, see the parties as,  
13 effectively, on the same page and where they are in that discussion.

14 MR SMITH: Haven't reached a point of agreement around what is equivalent in relation  
15 to the provision of replacement land able to accommodate the facilities that you  
16 would say are equivalent.

17 MR BEDFORD: Yeah, so, sir, the way we see it is that we are, obviously, happy to  
18 continue that dialogue and see whether or not we can reach a satisfactory  
19 solution, and I would not say that at the moment we're in a position where it is  
20 manifestly clear that the parties are incapable of coming to that, but there is,  
21 certainly at the moment, quite some distance to go before the parties are likely  
22 to reach that concluded position. So there could well be, by the closing stages  
23 of this examination, an outstanding issue for you in terms of the compulsory  
24 acquisition tests – the test in section 122 – as to whether that has been made out  
25 a compelling case in the public interest, and I think – well, we would put it  
26 simply.

27 We would say that simply on the material that is presently before the  
28 examination – and that is the proposal that is currently in the oLEMP – we think  
29 that you could readily conclude that that is not suitable or acceptable, and that  
30 therefore that the tests are not met, but we are open to discussing with the  
31 applicant whether there is a way in which, spatially, it is possible to better  
32 manage the recreational resources that are available in this locality, so as to  
33 provide a solution which delivers replacement nine-hole golf course, which is  
34 capable of being managed in conjunction with a driving range either in its

1 existing location or itself somewhere else, and if, in that process, the sports  
2 pitches are themselves to be relocated, they also need to be relocated in a way  
3 which is functional and operational to provide an equivalent provision.

4 MR SMITH: Which feels to me as though at least part of this argument is resting less in  
5 the question of the specific area of the band that the applicant offers you, and  
6 more in the world of the works that might be carried out, and/or payment in lieu  
7 of works to ensure that you end up with a facility that is equivalently manageable  
8 to the one that you currently have.

9 MR BEDFORD: Yeah. That's right, although in terms of area, sir, I would say it would  
10 seem that one of the possible areas where there may need to be some movement  
11 by the applicant is looking again at the extent of land that is made available to  
12 the Chalk Park compared to the extent of land that is made available to what you  
13 might call active leisure facilities, and that may be an area where there needs to  
14 be a bit more dialogue and discussion.

15 MR SMITH: And pressing you on that point, it's at least your starting proposition that  
16 the balance between active sport facilities and 'environmental enjoyment' and  
17 walking, cycling, etc. is perhaps at the moment, in your view, a little too far in  
18 favour of the latter and not sufficiently emphasised in favour of the former, in  
19 favour of the active sports offer.

20 MR BEDFORD: Yes. That would be fair, sir, yes. Thank you, so, sir, I think that's  
21 probably what we would want to say by way of a summation of the issues as we  
22 stand at present.

23 MR SMITH: Okay. Well, listen, I'm going to go across to Mr Tait, or whomever from  
24 the applicant side will lead this. This, clearly is a moving feast, it feels, but again  
25 you heard my opening remarks, which is we do need to move now very quickly  
26 to an understanding of that which we may have to adjudicate upon if we're called  
27 to, so Mr Tait.

28 MR TAIT: Thank you, sir. Five points, if I may. The first is that so far as the replacement  
29 land is concerned, the figures are – I think there was a slightly different figure,  
30 but the figures are that comprises 7.76 hectares compared to the 6.3 hectares that  
31 would be – that is the subject of plot 13.09, and both in terms of size and shape  
32 and overall proximity, it's considered by the applicant that that is a suitable area  
33 for replacement which can accommodate the appropriate facilities at a  
34 reasonable proximity. I may ask Ms Suki Coe just to elaborate on that, but that's

1 only the first point, because the second is the one you've observed, that it is a  
2 fluid situation in terms of the ambitions of Gravesham and also Swing Rite, and  
3 those ambitions have been factored into the controls that we have proposed,  
4 which is the third point, because in section 5.13 of the oLEMP, and also design  
5 principle S3.17, those expressly allow a replacement recreational facility to be  
6 provided, but to be developed in consultation, coordination with Gravesham, so  
7 it allows either the existing situation or the proposed ambitions of Gravesham  
8 and Swing Rite to be given effect, and those have been crafted specifically with  
9 that flexibility in mind, so that's the third point.

10 The fourth point is that there have – as is readily apparent from the  
11 schedule of negotiations at REP5-028 – been extensive discussion on this. We  
12 haven't reached agreement but we haven't quite reached the point where it has  
13 to go into the adjudication box, I would suggest. The applicant has paid for a  
14 specific study to look at the preferred configurations from – that the stakeholders  
15 currently have, and there have been both financial and other discussions, and  
16 that leads me to the fifth point, which is that the applicant does intend to carry  
17 those forward. It's heard the way it's been put about potential for some spatial  
18 thought to be given further, as well as the financial conversations which are  
19 going on at present.

20 MR SMITH: I think there are two dimensions to that that feel as though they're  
21 potentially in a space where further conversations could usefully occur, because  
22 there's the spatial dimension around, essentially, the creation of a coherent  
23 single operation – so a driving range plus a nine-hole course that operates as a  
24 single entity – and secondly, there was the point raised about informal access  
25 and damage, and so therefore the degree to which something that can be formed  
26 is capable of, for want of a better description, from a single point with reasonable  
27 ease, if that's achievable. So that seemed, possibly, to be part of the spatial mix,  
28 where there's scope, because of the amount of land available, for a conversation  
29 to happen that might settle on a way of distributing the placement uses that  
30 you're happy with and, indeed, the council are potentially happy with. But  
31 you're not there yet. In terms of it getting there, essentially, by the next deadline,  
32 which is deadline 6, 31 October, which is horribly close, but are there any  
33 reasonable prospects of further discussions before then, or are we looking at  
34 deadline 7, 17 November? I just raise this because, of course, by 17 November,

1 we are very, very close and will have settled agendas for the November hearings.  
2 And also, we are looking at issuing a further round of written questions on 14  
3 November, which does really mean that if we do end up needing to adjudicate  
4 this, then certain solid points of disagreement need to be clear by at least those  
5 points. So we are, I think, looking at deadline 6, horribly.

6 MR BEDFORD: So we would certainly be looking at deadline 6 for further dialogue.  
7 Whether it's realistic to have a concluded view by deadline 6 is another matter.  
8 That may be more heroic, but, and certainly, that's something, we would regard  
9 deadline 7 as a long stop in relation to seeking to break the current impasse. But  
10 we do see the scope for further discussions prior to deadline 6.

11 MR SMITH: Okay. Mr Bedford, is that your response?

12 MR BEDFORD: It's only – if I could briefly call Ms Suki Coe, just to look at, in terms  
13 of the current configuration, broadly speaking, how that's envisaged, that would  
14 work. But very briefly, because I'm conscious of all the time consumed.

15 MR SMITH: Yes, indeed.

16 MS COE: Thank you, sir. Suki Coe, for the applicant. We haven't identified this piece  
17 of land just from the top of our heads. We've looked very carefully at how you  
18 could use the land for a replacement nine-hole course, and certainly, in our  
19 conversations with Swing Rite and Gravesham, we've looked at a variety of  
20 different configurations, and that's largely led us to the design principle that  
21 allows for some flexibility. So we're not saying it has to be a nine-hole course;  
22 so we're cognisant of all of this debate. We have been talking to Gravesham  
23 and Swing Rite quite regularly. I'm not sure that we're quite at an impasse. The  
24 latest negotiations were on 12 October and we're waiting for a response. So this  
25 is part of that continuing dialogue and we'll certainly continue to work hard to  
26 try to find a conclusion.

27 MR SMITH: Well I'm very, very grateful for all efforts in that respect because I am  
28 going to, once again, raise the spectre of the end of the examination, and to be  
29 very clear that, if it hasn't settled by that point, then we do have to turn our minds  
30 to the principle of the recommendation based on the question of, essentially, the  
31 adequacy of the replacement land, and we will give very careful consideration  
32 to the arguments advanced on both sides of that point. But it feels to me as  
33 though there's scope for something between parties to arrive that might be better

1 and clearer than that. That's a bit kind of judgment of Solomon. So over to you  
2 for the next few weeks. Okay, so Mr Tait, are done?

3 MR TAIT: Yes, sir, that concludes.

4 MR SMITH: Mr Bedford.

5 MR BEDFORD: Thank you, sir. Yes, sir, I think that there isn't anything substantive to  
6 say. The only point I should say, by way of a correction, when I refer to half a  
7 hectare, what I've done is I've mangled, in my mind, the area of plot 1303, which  
8 is about half a hectare, with the larger plot, which is, as Mr Tait said, about 6.3  
9 hectares. So apologies for that.

10 MR SMITH: Okay. Well, we'll go back through it from first principles, in terms of the  
11 plots and land areas in any case. Okay, thank you very much, Mr Bedford. In  
12 which case, with no further ado, can we then move on? By the way, what I will  
13 say, given that the nature of these hearings are not very inter-connected, that  
14 you're unlikely to be particularly interested, Mr Bedford, in the arguments that  
15 follow. Unless you are, then, please, without even asking, be excused. And the  
16 same goes for anybody else. Once you've said your piece, if you've nothing  
17 further to listen to or add to, please feel free to leave. Okay. So let's move to  
18 Ms Dillistone of Winckworth Sherwood, for the Port of London Authority. And  
19 Ms Dillistone, you've heard how we've dealt with Gravesham's case; if you're  
20 content to run yours on the same basis, that's how we will proceed.

21 MS DILLISTONE: That's fine, sir, thank you. Alex Dillistone, for the Port of London  
22 Authority. In terms of the outline for the current scope of objections, the  
23 applicant has included compulsory acquisition powers within the order and  
24 proposes to use those to acquire the land required for the tunnels. While the  
25 PLA recognises why those powers have been included within the order, those  
26 powers are supposed to be used as a matter of last resort. But that doesn't appear  
27 to be the applicant's intention because the PLA has attempted to have  
28 discussions with the applicant about entering into a property agreement through  
29 which the applicant would acquire the subsoil for the tunnels. But there has been  
30 nothing that can be realistically described as a negotiation between the parties  
31 on this front.

32 Now I appreciate, and as Mr Bedford raised earlier, that compensation is  
33 not a method for the Examining Authority to consider, but I can't explain the  
34 progress of negotiations without at least mentioning it. The PLA has proposed

1 to the applicant the headline terms under which the subsoil for the tunnel could  
2 be acquired, and the applicant's response has been simply that it will not accept  
3 that the market value for the subsoil is any value over £50, and unless the PLA  
4 accepts that figure – and that is a figure that is starkly inconsistent with any  
5 previous subsoil acquisition under the River Thames – the applicant will not  
6 enter into discussions as regards any agreement. So there really are no ongoing  
7 negotiations and no room for discussion, as regards that.

8 So as to what we are currently objecting to, firstly, on the compulsory  
9 acquisition, the PLA objects to compulsory acquisition powers in principle, on  
10 the basis that its land should not be subject to compulsory acquisition. The PLA  
11 is a statutory undertaker and because of its particular role in managing and  
12 conserving the River Thames, we don't accept that the PLA's land should be  
13 subject to compulsory acquisition. But then, even if compulsory acquisition  
14 powers are included within the order, which they are, paragraph 25 of the  
15 Planning Act 2008 guidance, related to the procedures for compulsory  
16 acquisition, states that applicants should seek to acquire land by negotiation  
17 wherever practical and, as a general rule, authority to acquire land compulsorily  
18 should only be sought as part of an order granting development consent if  
19 attempts to acquire by agreement fail.

20 Now that hasn't been the case here. As I've mentioned, the negotiations  
21 have really not started, yet the powers have been included within the order. The  
22 statutory guidance also states that the applicant must be able to demonstrate that  
23 all reasonable alternatives to compulsory acquisition have been explored. We  
24 consider that there has not been a reasonable attempt to acquire development  
25 interest by agreement. The applicant will not engage in discussions until the  
26 PLA agrees a nominal compensation figure. So the position is that the PLA  
27 objects to the compulsory acquisition of its land, particularly because no  
28 reasonable attempt has been made by the applicant to acquire it by way of  
29 agreement.

30 MR SMITH: Can I just ask a brief question there? In relation to your standing,  
31 obviously, as a statutory undertaker, if you look at section 127 of the Planning  
32 Act of 2008 – I just want to be completely clear – you're saying, amongst other  
33 things, that the subsoil land is statutory undertakers' land for the purposes of that  
34 section, or not?

1 MS DILLISTONE: That is right, sir, yes.

2 MR SMITH: Yeah, it is, in your view.

3 MS DILLISTONE: In our view, yes.

4 MR SMITH: And the applicant is no doubt going to address us on this point, but I'll put  
5 the alternative question to them right now, so they do pick it up. If it's their  
6 view that it isn't or can't be, then we need to have that made very clear as well,  
7 from them, so that you can respond to it.

8 MS DILLISTONE: Yes. Thank you, sir. Then the only point other than that – I'm sure  
9 the applicant will respond to the point that I've raised on compulsory acquisition  
10 – that as regards temporary possession, there we are more positive. The PLA  
11 has been in discussions with the applicant about the drafting relating to  
12 temporary possession in the order, and provided that the amendments we have  
13 discussed with the applicant are submitted to the examination, we will no longer  
14 have an issue with temporary possession in the DCO. Firstly, this is because the  
15 order now excludes the temporary possession of the tunnel plots.

16 And secondly, we discussed, in previous hearings, the issue of temporary  
17 possession being taken and then retained, in the event of a delay to the project,  
18 with the land remaining unused. The applicant and the PLA have agreed drafting  
19 in the protective provisions to address conditions under which temporary  
20 possession may be taken, which addresses this matter to the PLA's satisfaction.  
21 We thank the applicant for the progress on this matter and, as I mentioned,  
22 provided they are submitted to the examination, our issues with the temporary  
23 possession in the order will be resolved.

24 MR SMITH: Okay. Right, are there other points that you need to draw out, or is that the  
25 –

26 MS DILLISTONE: I think that's the nub of it. What I would say, in terms of where we  
27 expect to get to, we would normally, at this point in the examination, either have  
28 reached agreement or be hopeful that we were close to reaching it, but we are  
29 quite far from that point. Unless there is a substantial shift in the applicant's  
30 approach, I don't see how we can reach an agreement, a property agreement, as  
31 regards the compulsory acquisition plots, and we could well be in the position  
32 of maintaining our objection to the compulsory acquisition. But what we would  
33 like is for the applicant to meaningfully engage in discussions so that we can



1 engage into a property agreement to secure the land that's otherwise earmarked  
2 for compulsory acquisition.

3 MR SMITH: Okay. Clear submissions – I'll just check with my colleagues if there are  
4 any questions – in which case, over to the applicant for a response on this.

5 MS TAFUR: Isabella Tafur, for the applicant. Just picking up on the points Ms Dillistone  
6 made at the end, as to the drafting reflecting the agreements that have been  
7 reached with the PLA, that is intended to be submitted at deadline 6, and we  
8 hope that will resolve those concerns.

9 MR SMITH: Can I just briefly trespass outside the land of the individual objection and  
10 back into the high-level strategics, because there is a potential virtue in  
11 equivalent drafting in relation to broader temporary possession, not just for this  
12 party but for other parties. Have you looked at it through the lens of inter-party  
13 negotiations, or have you been prepared to use an equivalent provision more  
14 broadly on TP?

15 MS TAFUR: Isabella Tafur, for the applicant. The drafting will be in protected  
16 provisions for the PLA.

17 MR SMITH: Right. So it's about benefitting the specific PLA interests and protecting  
18 them. You're not looking at this as a more general principle at present.

19 MS TAFUR: No, sir.

20 MR SMITH: Fine.

21 MS TAFUR: As to the question that you raised with Ms Dillistone on section 127 and  
22 whether the land within subsoil fell within that category of statutory undertakers'  
23 land, the applicant agrees with the PLA on that. So it is engaged.

24 MR SMITH: It is engaged.

25 MS TAFUR: Yes.

26 MR SMITH: Right.

27 MS TAFUR: But, plainly, the applicant's view is there will be no serious detriment to  
28 the undertaking through the exercise of rights, given the protective provisions  
29 that have been negotiated with the PLA. As to compulsory acquisition and  
30 alternatives, the applicant has attempted to acquire, by negotiation, the rights.  
31 And this negotiation has been undertaken by the Valuation Office Agency, on  
32 behalf of the applicant, who were in contact in March of 2022, to make an offer,  
33 to which the PLA responded, I think, some 17 months later, in July of 2023, with  
34 a counteroffer, which was, in turn, rejected by the PLA. There is an issue as to

1 the value of those subsoil plots between the parties. Each party has its position,  
2 and the applicant is advised and represented by the Valuation Office Agency in  
3 this. The efforts are genuine, but there is a disagreement as to the market value  
4 of those subsoil rights, which –

5 MR SMITH: And the quantum will, of course, go to the upper chamber of Lands Tribunal  
6 if you don't agree.

7 MS TAFUR: Precisely, precisely that. So it's not that the efforts aren't genuine; it's just  
8 that there is a dispute which can be resolved through an alternative tribunal, if  
9 necessary.

10 MR SMITH: Indeed, and we need to be very careful and mindful of the bar between  
11 what we do and what that tribunal does. And so we will be very careful about  
12 not trespassing across that line, only though to remark that if there are  
13 circumstances where negotiation can be moved from the stalled to the  
14 substantive within the framework of this examination, then the greater clarity  
15 that we have, in terms of the ability to recommend to the Secretary of State, will  
16 be a significant movement forward. So there is some virtue in trying to make  
17 progress on matters that may not be relevant considerations for us, if they help  
18 you to resolve matters that are relevant considerations for us, if that makes sense.  
19 And in that regard, all I would suggest to you, and indeed for passage onto the  
20 Valuation Office Agency, is that there is a body of, essentially, precedent around  
21 sub-Thames structures, and valuations must have been struck, for example, for  
22 subsoil rights on, say, the Silvertown Tunnel. And other public bodies, TfL in  
23 that respect, have been the proponent, and there may well be ways in which that  
24 previous practice – you may have pulled all this already, but if you haven't, it  
25 might be time to, simply in the interests of trying to move things on, so that you  
26 and the authority are then closer to points of agreement on the matters that matter  
27 to the Secretary of State, that this Examining Authority can recommend on,  
28 rather than just reaching impasse and throwing the whole kaboodle over onto  
29 our desk.

30 MS TAFUR: Isabella Tafur, for the applicant. All of that is well understood, sir. We  
31 believe the position is that everything will be agreed with the PLA, at the end of  
32 this examination, bar this issue, which really does come down to the value of the  
33 subsoil plots. Now, plainly, the Valuation Office Agency has had regard to  
34 precedents and considers that their position is aligned with those, and the PLA

1 take a different view. But I don't think that is holding up agreement on any of  
2 the other matters.

3 MR SMITH: Okay, right. Well, Ms Dillistone is obviously listening to this conversation  
4 and will have her reply at the end of it, and I will only make the remark that it  
5 does feel, to me, to be necessary to perhaps build a kind of pale fence around the  
6 question of quantum, recognising that that may remain completely disputed  
7 between the parties, but that there are still other matters that we need to deal with  
8 that don't need to be disputed just because quantum is outstanding. So quantum  
9 alone should not be seen as the barrier in circumstances where there is a separate  
10 tribunal to test that.

11 MS TAFUR: Isabella Tafur, for the applicant. Understood, sir. Yes, I think we're  
12 following the very approach that you're encouraging us to follow.

13 MR SMITH: Okay, well, unless you've got anything further to say, I should return to  
14 Ms Dillistone, who will probably have some observations, but – Ms Dillistone.

15 MS DILLISTONE: Thank you, sir. Alex Dillistone, for the Port of London Authority.  
16 We do recognise that the applicant has been very clear that the applicant will not  
17 move on the valuation. The quantum is going to remain at issue. But it does  
18 feel, from our point of view, though there is space for negotiating, or at least  
19 trying to reach agreement as to the other matters, regards to a property  
20 agreement. A property agreement is not purely about the quantum.

21 MR SMITH: And furthermore, as you have emphasised in very clear submissions, it's  
22 also advised – it's supported by the guidance. And so there's every reason for  
23 you to, during the tenure of this examination.

24 MS DILLISTONE: Quite. So that is what we are hoping, and we would hope that the  
25 applicant can – that there is space for the applicant to find the time, albeit that  
26 we are getting very close to the end of the examination, to at least progress  
27 matters more than they have been to date.

28 MR SMITH: Well I think we can – we've heard your submission on that; I've seen Ms  
29 Tafur nodding, who knows as well as you do that, fundamentally, there can be a  
30 pale fence put around the quantum disagreement and you can still make progress  
31 on the other matters, as long as both of your negotiating teams approach this  
32 from a standpoint of the quantum matter being understood to be reserved and  
33 not an impediment to other matters. So I would just urge progress, as fast as  
34 possible, between the pair of you on that basis.

1 MS DILLISTONE: I think that would a step forward. Thank you, sir.

2 MR SMITH: Let's see how we go. But again, yes, if we can see some progress  
3 documented at deadline 6, that would be very, very helpful. Anything else you  
4 want to add, Ms Dillistone?

5 MS DILLISTONE: No thank you, sir. That's everything from the PLA's side.

6 MR SMITH: In which case, ladies and gentlemen, we are roughly halfway through the  
7 appointed business for the morning. I'm going to suggest that we take a break  
8 until 11.35. When we resume at 11.35, we will be hearing from Ms Dablin and  
9 Mr Owen, for Port of Tilbury London Ltd. Thank you very much, ladies and  
10 gentlemen.

11

12 **(Meeting adjourned)**

13

14 MR SMITH: Welcome, ladies and gentlemen, to the second session of this compulsory  
15 acquisition hearing 3, in relation to the Lower Thames Crossing. My name is  
16 Rynd Smith. I'm the lead member of the Examining Authority. Can I just ask,  
17 before we go any further, if somebody could ask the gardeners to desist because  
18 I think we will find ourselves unable to proceed with that amount of noise  
19 outside? Thank you very much, much appreciated. Best negotiation I've seen  
20 in several years.

21 And we do now have on screen the Port of Tilbury London Ltd, Mr Owen.  
22 Mr Owen, you've seen how we've dealt with submissions so far. Are you  
23 content to proceed on the same basis, lead in for Port of Tilbury London Ltd, we  
24 will ask questions as we run, and then we'll pass to the applicant for a response?

25 MR OWEN: Good morning, sir. Robbie Owen, for Port of Tilbury London Ltd. Yes,  
26 that's absolutely fine, from our point of view. And I'm here with Alison Dablin,  
27 and she may well also need to chip in on matters, particularly, I'm thinking, in  
28 response to questions that you may ask on points of detail that she's been dealing  
29 with.

30 MR SMITH: Okay. Well, the floor is yours.

31 MR OWEN: Thank you very much, sir. And I wanted to start off, to assist the progress  
32 of the examination and understanding of you as Examining Authority, with a  
33 brief update on the progress and status of negotiations with the applicant, before  
34 turning to compulsory acquisition and temporary possession matters proper, if

1 you like. We had a meeting with the applicant last Thursday, 12 October, in  
2 which agreement in principle, on a number of important issues, was reached,  
3 I'm pleased to say, including reiteration of what had already been agreed  
4 previously between principals, that the applicant would not seek to place any  
5 environmental mitigation or compensation on port-related land. A number of  
6 matters do remain under discussion, including the treatment of compulsory  
7 acquisition and temporary possession powers within the protected provisions of  
8 the draft DCO. We hope, incidentally, to receive a mark-up of the protected  
9 provisions from the applicant shortly, with a view to providing an update, at the  
10 next examination deadline, on the extent to which those are agreed.

11 Despite this in principle progress that's been made, which is currently  
12 being documented in a revised version of a proposed framework agreement,  
13 which we are expecting to receive back from the applicant at the end of next  
14 week, we do recognise that, without full agreement, this hearing is our  
15 opportunity to state our case in respect of the compulsory acquisition and  
16 temporary possession, and therefore are approaching today from a sort of 'no  
17 agreement' world. But as I say, the broader context is that progress is being  
18 made in negotiations with the applicant and we're hopeful that the framework  
19 agreement I mentioned will be largely agreed by deadline 7, on 17 November,  
20 and certainly with a view to having reached full agreement by the close of the  
21 examination. And we are also anticipating submitting an updated principal areas  
22 of disagreement summary statement at deadline 6, identifying where matters are  
23 now agreed in principle.

24 MR SMITH: And actually, Mr Owen, that's a very, very valuable point, which applies  
25 equally to others participating in today's hearing, and indeed, the compulsory  
26 acquisition hearings to come. The PADSS system is new; I think we were only  
27 the second examination to test it. It's one of a basket of reforms that are currently  
28 under evaluation. Nevertheless, we are using it, and it is proving to be very  
29 valuable. So one of the observations I will make is that for those who have  
30 submitted PADSS into the examination, please don't feel afraid to leave  
31 compulsory acquisition or temporary possession outwith. Please merge them in  
32 because us having a single, clear picture, particularly at the end of the  
33 examination, they will amount to a written summary of closing positions and be

1 very, very useful to us. So thank you very much for that reminder, and a  
2 generalisation for others. Okay, Mr Owen.

3 MR OWEN: Thank you, sir. Robbie Owen for Port of Tilbury London Ltd. I will,  
4 actually, throughout this submission, make reference to where we understand  
5 matters of principle affecting our submissions have now been agreed, albeit yet  
6 to be documented. Sir, the starting point is that Port of Tilbury London Ltd is a  
7 statutory undertaker, within the meaning of section 127 of the Planning Act, by  
8 virtue of being the statutory harbour authority for the Port of Tilbury, and the  
9 commercial operator of that port. And as such, section 127 is engaged by the  
10 proposed acquisition of interests in and rights over land by the applicant. It's  
11 important to recognise, in our submission, that the question of serious detriment  
12 to a statutory undertaking is, plainly, a holistic test where the decision-maker  
13 has to consider the impacts of a scheme on the port's operation as a whole,  
14 including the commercial consequences, and importantly, not only current but  
15 future operations.

16 It may assist the panel to refer to the Examining Authority's  
17 recommendation report in the matter of the Lake Lothing Third Crossing  
18 development consent order, which was made on the application of Suffolk  
19 County Council, in relation to an opening bridge, now under construction,  
20 crossing the operational Port of Lowestoft. And the report there – I was involved  
21 in that case for the applicant, and there was a lot of discussion, in hearings, on  
22 the extent of the serious detriment test in relation to harbour undertakings, and  
23 various authorities were referred to, and it's a helpful summary, I think you'll  
24 find, in that report, of the discussion and examination that took place.

25 So as such, the question of serious detriment is not just one relating to the  
26 acquisition of the particular plots in question – in this case, as we'll come on to  
27 see, Substation Road and along the alignment of the proposed Hall Road – but  
28 the other, wider impacts of that compulsory acquisition on the port as a whole.  
29 And by way of summary, our written submissions to date do say that, in the  
30 port's view, serious detriment to the carrying on of its undertaking would be  
31 caused in a number of different respects. First is the compulsory acquisition of  
32 rights for utilities within Substation Road. That could affect a number of issues,  
33 including the access over the main road, where the utilities works are to be  
34 carried out, and that is – Substation Road is a main arterial road for Tilbury2. It

1 could affect the existing conveyor to the CMAT terminal – that acronym is the  
2 construction, materials, aggregates terminal – which, it appears to us, the  
3 applicant has not properly taken into account. And if a diversionary utility  
4 around the conveyor was required, that would impact upon wider port land.

5 Another example of how the compulsory acquisition of rights for utilities  
6 within Substation Road could affect the port is the movement of rail to the  
7 railroad terminal, equally could affect existing utility supplies to the port and  
8 surrounding land uses. And finally, there's the potential for creating new stand-  
9 off or restricted zones to apparatus, within which current or future port  
10 operations could no longer take place, including linked to existing utilities  
11 belonging to other statutory undertakers currently located below or in Substation  
12 Road.

13 Another aspect of serious detriment that we anticipate relates to the  
14 temporary possession of land in and around the port, including the area  
15 designated, as you'll be aware, as freeport land. That land, if temporarily  
16 possessed without the port's consent, could hinder or prevent, and ultimately  
17 sterilise, the ability of the port to develop the land, for example, if the drainage  
18 earthworks or management of contamination is not handled in the way that is  
19 mindful of the port's future developments and operations. Another example of  
20 serious detriment relates to ecology. I'll come back to this in a bit more detail  
21 but, in essence, concerns about ensuring that the applicant's decisions, in terms  
22 of ecological management of the freeport area, in both temporary possession and  
23 compulsory acquisition of rights land, doesn't restrict or prevent development  
24 and future port operations. There are also two examples of temporary possession  
25 of plots, which you may recall. The first is plot 21-10, which is in the entrance  
26 to Tilbury2, which is prime port real estate for leasing. And National Highways,  
27 the applicant, has now agreed that this can be removed from the application, but  
28 that's yet to be done. We understand it will be done at deadline 7, and we're  
29 hopeful of seeing plans of that in advance, so that we can comment on any  
30 matters of detail that arise.

31 And the final version, which again I'll come back to, but just scene-setting,  
32 is the proposed temporary possession of two plots, 21-18 and 21-19, seeking to  
33 link the construction compound to the CMAT conveyor. Even though there is  
34 no commitment at the moment, this is something we're discussing with the

1 applicant, actually to use materials from the CMAT and, therefore, there's no  
2 certainty that conveyor will actually be needed. But the concern is that the  
3 temporary possession of the plots, for the conveyor, could negatively affect our  
4 tenants' operations at the CMAT and also negatively affect the water vole  
5 mitigation area, which was put in place as part of the Tilbury2 development  
6 consent order. And again, our view is that this shouldn't be permitted without  
7 the port being able to put in place controls to make sure there is no detrimental  
8 impact to port operations and commitments given to third parties.

9 So that's just a summary of how various powers, if unrestricted, could  
10 cause a serious detriment to the port's statutory undertaking, and in essence,  
11 being able to run the current port and to expand it. And I think this is particularly  
12 important in the context of the port's statutory duties as a harbour authority. As  
13 we have put out in our written representation, the port is required to provide  
14 open access to existing port facilities, and that's secured by the so-called open  
15 port duty. I'd also, perhaps more importantly in this context – of more relevance  
16 in this context, I should say – is, there is a policy expectation, if I can put it that  
17 way, that the port will continue to grow and expand. I think that is set out pretty  
18 unequivocally in section 3 of the ports national policy statement, which sets out  
19 – and I know you're familiar with that, sir – the central role of ports in the UK  
20 economy, and that, 'The provision of sufficient seaport capacity will remain an  
21 essential element in ensuring sustainable growth in the UK economy.' And we  
22 also see this in the draft national networks national policy statement, that has  
23 been issued by the Department for Transport earlier this year. That further  
24 recognises the importance of port growth, stating, at paragraph 3.93, that, 'Ports  
25 are also predicted to grow to meet that economic demand,' and that, 'It is vital  
26 that port infrastructure growth is mirrored in the growth in national network  
27 capacity and connectivity.'

28 So I think, in summary, on this element of our submissions, it's our view  
29 that any activity that results in a reduction in the utility of port land, or affects  
30 the ability to use or develop it, will, by definition, be causing serious detriment  
31 to the port undertaking in a number of different ways: firstly, by impacting on  
32 port operations from taking place or reducing the effectiveness, flexibility, and  
33 responsiveness of those operations; secondly, reducing the amount of land  
34 capable of development, whether directly or indirectly; thirdly, reducing the



1 ability to develop the land, for instance, through utility stand-off distances; and  
2 finally, making development more challenging or difficult, such as by creating  
3 land rights that must be managed and accommodated.

4 If I can then turn to just deal with a few site-specific issues, again, these  
5 are all under discussion with the applicant and we are making some progress.  
6 But I think, given this is our opportunity, in today's hearing, it's important just  
7 to – without going into too much detail – just summarise those, if I may. The  
8 first relates to the areas of land that, as you will recall, the port has already  
9 entered into leases with the applicant. There are four leases for four areas of  
10 land to be used for the main northern portal construction compound. This land  
11 is ecologically diverse and is crossed by numerous existing utilities and, under  
12 the leases, the port has secured protection from the applicant from carrying out  
13 activity, under the leases, that would harm the port's undertaking. Nevertheless,  
14 the applicant is still seeking full powers of compulsory acquisition, including of  
15 rights, and powers of temporary possession, over not just the land that has been  
16 leased to them already, but also other land. And therefore, the concern is,  
17 certainly in relation to the leased land first, that without protection from the  
18 exercise of powers of compulsory acquisition and temporary possession, the  
19 leased land could be taken by the applicant and occupied other than in  
20 accordance with the terms of the agreed leases, for example, to extend the period  
21 of occupation beyond the end-date of the leases and, possibly, to avoid  
22 performance of some of the covenants in the lease. When the leases were under  
23 discussion, the port did ask provisions to be included in the leases in effect  
24 excluding DCO powers, but that was not agreed by the applicant. So that is why,  
25 through the DCO process, we are now seeking protections from compulsory  
26 acquisition and temporary possession in relation to the leased land as well as  
27 other land.

28 The second specific issue I wanted just to summarise relates to the plots I  
29 mentioned a moment ago, 21-18 and 21-19, for the conveyor from the CMAT  
30 to the Lower Thames Crossing construction compound. And again, I remind  
31 you that, at the moment, there is no commitment that the applicant has given,  
32 actually, to use materials from the CMAT for construction purposes. Therefore  
33 there's no guarantee that the conveyor will be needed because, clearly, if the  
34 CMAT is not intended to be used, no conveyor is necessary. And therefore,

1 we're having to have these discussions against that backdrop. The current  
2 difficulty, which the applicant is now engaging in, is that the port considers that,  
3 owing to the REAC commitment relating to the conveyor, which contains some  
4 minimum distances from the banks of the ditches in the water vole mitigation  
5 area, we're not at all sure that, actually, there is indeed any room for the  
6 conveyor to be put in place, due to that commitment and also other physical  
7 constraints in the area, not least an overhead electricity pylon. The conveyor  
8 would also block an access track close to the water vole mitigation area, which  
9 is needed for access to it.

10 These constraints have been highlighted to the applicant during a site visit  
11 earlier, a long time ago, on 4 October 2022, but it's still an outstanding issue, in  
12 terms of whether the conveyor can actually be built. This is something that now  
13 the applicant is considering further. I think the port's ultimate position is,  
14 subject to construction of the conveyor being managed appropriately, to make  
15 sure that access for the port and for the port operations and development  
16 purposes is maintained, and that there's no disturbance to the water vole  
17 mitigation area, the port is content that a conveyor may be built with these  
18 appropriate approvals and controls. There is also the need to make sure that the  
19 current tenant of the CMAT is content with the proposals for a conveyor, given  
20 that the conveyor would terminate within the CMAT and, therefore, within that  
21 operator's tenanted land. So essentially, all of this needs to be controlled to  
22 make sure the negative impacts and operational effects that I've spoken of don't  
23 arise, which, in our view, mean that there needs to be the fairly standard express  
24 consent mechanism agreed and then implemented through a detailed contractual  
25 agreement.

26 I'll come on to talk about ecology. This is the third specific area I wanted  
27 to mention. The starting point for the port is that the treatment of ecology,  
28 including the relocation of protected species, damage to existing habitats, and  
29 general disturbance of species from construction works, clearly has the potential  
30 to cause serious detriment to the port in ways I'll explain, including through the  
31 displacement of species that are protected, or are otherwise of conservation  
32 concern, onto land that would currently be available for development. This  
33 would occur, for example, if the applicant were to recognise in due course that  
34 it has insufficient compensational mitigation land, potentially due to a change in

1 environmental commitments or, indeed, revision to its biodiversity net gain  
2 calculations. And that may arise due to an increase in baseline biodiversity value  
3 identified through pre-construction surveys or due to designation of land as a  
4 protected site, following which multipliers would need to be applied to the  
5 calculation of baseline value, of course, or indeed because the applicant is  
6 required to provide biodiversity net gain for temporary impacts exceeding two  
7 years. And the port is concerned that the applicant could use compulsory  
8 acquisition and temporary possession powers to place mitigation or  
9 compensation on the port's land.

10 This would mean, at best, that the port would be responsible for providing  
11 appropriate mitigation and compensation for the loss of that land, and at worst,  
12 that large quantities of land would be sterilised by ecological mitigation, and  
13 intensification of the existing operational port may be made more challenging  
14 due to being located next to high-value, ecologically constrained land. So you  
15 can see the port has a real interest in this. And it has broader concerns in respect  
16 of ecology too, in that, as species migration onto the port's land may have the  
17 same impact on development as compensational mitigation intentionally placed  
18 there, it's important, therefore, that pathways for migration are appropriately  
19 managed through boundary treatments, and this applies to both land taken  
20 temporarily and the boundary of the permanent elements of the applicant's  
21 scheme, such as Tilbury Fields.

22 MR SMITH: So in a nutshell, here, Mr Owen, amongst other things, you're seeking  
23 further commitments to measures to control the potential unintended uplift in  
24 the biodiversity value of the port land.

25 MR OWEN: Yes. It's a series of commitments, sir. For example, it's important the  
26 applicant manages the land in its possession appropriately, to make sure it  
27 doesn't, for example, fall into a state of neglect, but becomes a desirable habitat  
28 for species, which would then present difficulties for restoration of the land on  
29 return, as well as an increased risk of species migration. We put to the applicant,  
30 and I think it's been agreed in principle, that there will be agreed boundary  
31 treatments, with appropriate oversight from the port's ecologists, along with an  
32 ecology working group, which would proactively manage various ecological  
33 considerations in the area. So we have, I think, got broad, in-principle agreement  
34 to the solution here. We're working through the detail. As I said earlier, it has

1           been agreed between the port and the applicant's principals that the applicant  
2           will not place any ecological compensation or mitigation on the port's land. This  
3           is except in relation to work E14, which is the Tilbury Fields one referred to in  
4           the DCO as environmental mitigation works to create a site for protected species.  
5           And this now just needs to be secured in documentation, to an extent in the  
6           protective provisions, but largely in the proposed framework agreement. So  
7           that's where we are on ecology.

8           I wanted just to make a couple of further points. One is on temporary  
9           possession under article 35. At the moment, there is no protection for the port  
10          by virtue of the – or under the – protective provisions from the use of DCO  
11          powers to take temporary possession of port land, and the concern here is  
12          particularly the uncertainty of the duration of occupation of port land under  
13          article 35 which would clearly, in our view, cause serious detriment to the  
14          undertaking. This is largely due to it not being possible for the port, without any  
15          controls, to effectively plan for its own expansion of the port into the temporary  
16          possession area, which as I said in opening is part of the designated freeport and  
17          clearly intended for that expansion in the foreseeable future. It's not possible to  
18          plan when you don't know when the land's going to become available again.  
19          And therefore we are seeking, within the protective provisions, protection from  
20          the use of temporary possession powers over port land without the port's  
21          consent, and this will provide the certainty necessary to at least mitigate, if not  
22          avoid, serious detriment to the port's undertaking and in particular the long-term  
23          expectation of the port to expand, to support, in support of the UK economy.

24          And I should say, sir, in relation to all of these various controls that we're  
25          seeking to secure under protective provisions and under that umbrella in a  
26          detailed legal agreement, that we recognise there may be a concern that  
27          protection from the use of compulsory acquisition – temporary possession –  
28          powers over a wide area may make the applicant's scheme harder to implement.  
29          It's important to point out, though, that the port, under our proposals, would be  
30          obliged under the protective provision to act reasonably, and that is both an  
31          explicit requirement in elements of the protective provisions, but also as a matter  
32          of the well-established principle that protective provisions in development  
33          consent orders and similar such instruments must be implemented in the overall  
34          context of the scheme concerned, having received in principle consent by virtue

1 of the DCO being made, and therefore, in answer to any concern there may be  
2 about the port simply being able to block implementation of the scheme were  
3 the DCO to be made, we don't recognise that for the reasons I've just said.

4 We are only seeking, and would only be able to use, provisions and powers  
5 to make sure that the implementation of the scheme is done in a way that does  
6 not harm the carrying on of the existing statutory undertaking and as that  
7 undertaking may be expanded through development in the future. But at the  
8 moment, without adequate protection from the exercise of the various powers  
9 by the applicant, it is our position – and will remain our position – that the use  
10 of compulsory acquisition and temporary possession powers will cause serious  
11 detriment to the undertaking.

12 But, as I say, good progress is being made in the development of an  
13 agreement that we hope will allow us to change that position of serious detriment  
14 based on controls that we hope can be agreed in terms of providing mechanisms  
15 and other controls to govern the various aspects of implementation.

16 MR SMITH: Mr Owen, in respect of our sight of and understanding of progress in those  
17 negotiations – obviously I'm looking at part 10 of the protective provisions at  
18 present in the most recent deadline submission draft DCO – but I'm getting a  
19 sense there that there is further movement that you are seeking in relation to the  
20 drafting that I'm seeing in front of me. So your first point is 'watch this space',  
21 and then you're talking about a side agreement, and of course we need to be  
22 careful about trying to draw back the curtain on that because that is a private  
23 agreement between parties – between yourself and the applicant, assuming  
24 they're willing to enter into it. But to the extent that the Secretary of State is  
25 going to place weight on that as addressing these concerns, there will need to be  
26 a disclosure to us of those terms on which you rely that are agreed between you  
27 and the applicant under their own force, that deliver things of value for the  
28 Secretary of State's consideration. So we're looking at needing two building  
29 blocks in the wall that are currently not yet constructed and not yet in place. Is  
30 that fair?

31 MR OWEN: Yes, sir, I think that is a fair summary. Certainly so far as the protective  
32 provisions included in the draft DCO are concerned, at the moment they are  
33 woefully inadequate, in our view, in a number of respects, not least the fact they  
34 do not contain the standard provision for statutory undertakers land that there

1 should be no compulsory acquisition or temporary possession without consent  
2 of the undertaker, but also the extent to which they provide for the approval of  
3 works and the categories of works – specified works is the term used – is very  
4 narrow, and if you compare the scope of the protective provisions with those,  
5 for example, for the Port of London Authority, you’ll see quite a stark difference,  
6 and we don’t think that difference is justified.

7 If you look at recent development consent orders in this part of the world,  
8 not least for Tilbury<sup>2</sup> but also Thurrock Flexible Generation Plant and indeed  
9 Silvertown Tunnel, you’ll readily appreciate that the scope of protective  
10 provisions for statutory harbour authorities is considerably wider than we’ve  
11 currently been afforded by the applicant. So that is why we are pressing for the  
12 position to be materially improved on the face of the order including on the face  
13 of the order a standard blanket protection from the exercise of compulsory  
14 acquisition and temporary possession powers. But that is documented by –  
15 sorry.

16 MR SMITH: Which, again, getting back to your arguments and so I’m completely clear  
17 – you are saying it is sufficient to satisfy the applicant that your approvals would  
18 not be unreasonably withheld, and therefore the applicant need have no fear.

19 MR OWEN: Exactly. And then the second brick in the wall, as I think the phrase you  
20 used, sir, is this intended side agreement – or we call it a framework agreement  
21 – which will be a contractual agreement that will in effect govern how the rather  
22 bare provisions of the protective provisions end up being implemented, because  
23 by their nature protective provisions are quite skeletal in terms of their wording  
24 and it’s entirely normal for parties – an applicant and a protected undertaking –  
25 then to flesh out in an agreement how the operation of the protective provisions  
26 will work, including in relation to what mechanisms will be put in place if  
27 compulsory acquisition is required, or how the consent process would work. So  
28 that framework agreement is quite a detailed piece of work. We will need to  
29 discuss with the applicant quite what is submitted into the examination by way  
30 of evidence of the framework agreement. It may be that we prepare a summary  
31 of the agreement and put that to you rather than the agreement itself.

32 MR SMITH: That’s exactly – I mean, I was going to say, if it’s any assistance – in  
33 previous examinations that I’ve been involved in, what has occurred here is there  
34 is an agreed document between the parties – maybe annexed to a PADSS or a

1 statement of common ground – which stands for the fact that the parties have  
2 subscribed to the following things, and then it sets out what amounts to heads of  
3 terms, but the point is, by being subscribed to by both parties it stands for the  
4 proposition that (a) these things are agreed, and (b) these things are relevant to  
5 the Secretary of State’s consideration, and because they are enforceable, some  
6 weight can be accorded to them, which overcomes the difficulty of us otherwise  
7 needing to take a microscope to the contract which we are realistically not  
8 entitled to do, you would probably not want us to do, and nor would the  
9 applicant.

10 MR OWEN: Yes, I would agree with that, sir. So I think in summary, therefore – in  
11 conclusion, rather – that is where we are at. We are thankfully still in detailed  
12 negotiation on all these issues. We await to hear back from the applicant. If we  
13 can, we would hope to indicate, in relation to the protective provisions, quite  
14 soon where we stand on those. I think the framework agreement will take  
15 another month or so – maybe even six weeks – to conclude, but we are hopeful  
16 and confident that we will be able to conclude an agreement. There’s been a  
17 good level of understanding between principals and it’s a matter now of just  
18 working through obviously what is a lot of detail. But in the meantime –

19 MR SMITH: In a relatively short amount of time.

20 MR OWEN: Indeed, yeah. I mean, obviously we and the applicant have been looking  
21 at this draft documentation for quite some time, it should be said, but  
22 nevertheless it does take time. But we have made good progress, particularly  
23 recently, and therefore I’m sure the applicant will understand that what we’ve  
24 bene saying this morning is our backstop position, if you like, in terms of the  
25 protection of section 127 and the fact that – of the Planning Act of 2008 – and  
26 that we do consider that without, one, adequate protective provisions, and, two,  
27 the side agreement dealing with the whole host of matters of detail, the  
28 acquisition of land proposed by the applicant couldn’t proceed – a [inaudible],  
29 that is – because it would cause material detriment to the carrying on of a  
30 significantly important statutory undertaking for much of the south-east of  
31 England, given the importance of the port to the economy of the region. So I  
32 think that’s all I need to say by way of submission. Thank you.

33 MR SMITH: Thank you very much. There’s one possibly very detailed question that I  
34 have now, that actually runs slightly beyond where you’ve already been, Mr

1 Owen, which is that amongst other things in REP5-123, the most recent  
2 submissions from yourselves at paragraphs from 6.8, you deal with the Asda  
3 roundabout and the potential need for additional land. Now, obviously you said  
4 that you're going to address us on that at ISH 10, but where we are obviously  
5 at the moment in terms of additional land is the applicant has made some changes  
6 that do invoke the CA regulations and so there is additional land in scope, and  
7 this is not included in it.

8 Is there anything further that you need to say at this juncture about, I guess,  
9 the practical nature of dealing with that Asda roundabout proposal? If you  
10 persuade us that it's necessary, what process, if any, would you then advocate in  
11 CA terms is required? It may well be that you don't want to address us on that  
12 orally now because you probably haven't prepared for that argument, but it  
13 would be very useful if in written response at deadline 6 you were able to pick  
14 that point up.

15 MR OWEN: So we can certainly do that, and I can indicate now that at the moment we  
16 are focussing on developing a proposal for mitigation at the Asda roundabout  
17 that does not depend on or require the acquisition of third party owned land. We  
18 are looking at a scheme that we think could be done within the existing highway  
19 land boundaries. That has yet to be – it's about to be put to the applicant this  
20 week, and we haven't reached agreement in principle with the applicant on this  
21 issue, but again it's on the list for discussion.

22 MR SMITH: For the purposes of this hearing, though, I think you've told us everything  
23 that – you don't anticipate any additional CA power, or any additional land being  
24 required and so we don't have to concern ourselves with that.

25 MR OWEN: Yeah. Well, we've reflected on the applicant's strong position here and  
26 that they clearly have no intention of bringing additional land within the scope  
27 of the order, and therefore we've taken a pragmatic view as to whether there can  
28 be an acceptable mitigation scheme within the current [inaudible] boundary. I  
29 think Ms Dablin may want to come in here and just say something.

30 MS DABLIN: Yes. It's mostly just a point of, I guess, administration. We made  
31 submissions that we were going to take you through the Asda roundabout  
32 mitigation in our written submissions. However, since then the agenda has been  
33 published that the focus appears to be on areas away from it, so it's, I guess, a  
34 question of, would you prefer that, or would you prefer us to share it with the



1 applicant with the view that both of us make written submissions at the next  
2 deadline?

3 MR SMITH: I have to say – as my colleague Mr Young will make clear in the opening  
4 for that particular hearing – we did find ourselves shifting in the focus around  
5 that agenda from, I guess, matters that were still outstanding matters in relation  
6 to key intersections where there were modelling issues being taken into account.  
7 It had felt that those would be matters that we would need to interrogate further  
8 at that hearing, and part of the justification for holding that hearing was that was  
9 felt to be the case.

10 Now, having worked our way through all of the written material, it does  
11 feel to us as though in broad terms there is still movement between the parties  
12 that would mean it was almost premature to have that conversation. This time,  
13 and that we need actually to look at a snapshot in time in November by which  
14 point hopefully discussions have landed a whole range of things that are  
15 currently in progress but not quite landed.

16 So I think at the moment it would be best maybe that we leave that to rest  
17 through the written process and/or we return to it in November because the  
18 nature of the agenda for ISH 10 is now that very strong focus on the unexamined  
19 in principle, which is all the non-motorised user and related considerations. So  
20 that's where we have landed with that. I hope that helps you think about how  
21 you frame what you do next.

22 MS DABLIN: No, that's very helpful. Thank you.

23 MR SMITH: Okay. In which case, both of you, unless there are any further questions  
24 from my colleagues, I'm then going to take this across the table to the applicant.  
25 Who will be leading on this?

26 MR TAIT: Thank you, sir. Andrew Tait, together with Dr Tim Wright.

27 MR SMITH: Thank you very much.

28 MR TAIT: So, sir, I am just reflecting on Mr Owen's introductions to where we are and  
29 his emphasis on the good progress having been made on the CA TP side. As he  
30 mentioned, of course, there are the four leases for temporary land use which  
31 have been agreed over 28 plots. The option agreement, in addition, to purchase  
32 permanent land takeover of seven plots, and agreement to remove two parcels  
33 of hardstanding from plot 21-10. And in relation to prospective agreement, there  
34 is first of all the framework agreement which Mr Owen indicates may be

1 forthcoming within the next month or six weeks. We wouldn't disagree with  
2 that. That's to sit alongside those land agreements and certainly we anticipate  
3 both sides are committed to putting that in place before the end of examination.

4 And in addition there are the protective provisions which are the subject  
5 of discussion, and on this side, we anticipate agreement being reached on those  
6 by deadline 7, with at present two matters potentially being placed in the  
7 adjudication box. The first relates to the question that Mr Owen raised about  
8 consent by Tilbury for any temporary or permanent land take, and it's the  
9 applicant's position that there will already be an approval function for the Port  
10 of Tilbury in relation to all works, and that encompasses the freeport in Tilbury,  
11 and that provides very strong protection which is sufficient in all the  
12 circumstances. Going beyond that does present potentially some risk.

13 And the second that may fall into that box is the issue of whether there  
14 should be an indemnity for consequential losses which the applicant certainly  
15 considers goes beyond that which is appropriate. And therefore your idea of  
16 flagging those issues not only within the framework agreement – rather in a side  
17 note framework agreement – but also expressly in protective provisions, we  
18 would endorse. It may be, on both sides, that there may be further discussion on  
19 that, but at the moment that's where we see matters landing.

20 MR SMITH: Okay, well that would be very, very helpful if you are essentially able to  
21 point up those matters that you are throwing into the adjudication pot. Do have  
22 regard in your conversations, as I'm sure you will with the port, to the establish  
23 practice and precedent in other port undertaker protective provisions, so that –  
24 because there are quite a lot of examples of such provisions in made orders now,  
25 so it's not as though we're looking at things afresh or from first principles.

26 Yes. I mean, again, I have to express a measure of concern about the time  
27 pressures in this because there's a lot to be done and a relatively short amount  
28 of time now to do it, and I don't need to tell either of you again that obviously  
29 there is a considerable premium in there being the greatest clarity about what is  
30 agreed and the least extent of what is unagreed at the point at which this  
31 examination closes, because at that point our [inaudible] gate comes down and  
32 we can't look at any subsequent conversations you then have before we submit  
33 a report to the Secretary of State.

34 MR TAIT: Understood, sir.

1 MR SMITH: Okay.

2 MR TAIT: Would it be helpful for Dr Wright briefly – there were three specific issues  
3 additionally that Mr Owen referred to, and it may be helpful just to get a flavour  
4 of the applicant’s response on those three specifically.

5 MR SMITH: Yes, indeed. Dr Wright.

6 DR WRIGHT: Tim Wright, for the applicant. So on the three issues, first of all the  
7 question of the relationship for leases and acquisition of powers. It’s our  
8 position that we need to retain the acquisition powers in case, for example, a  
9 lease were to fail or some other situation, so clearly our preference – and I think  
10 it’s demonstrated by the work we’ve done today – is to enter into leases or  
11 agreements, and we will continue to do so, but that doesn’t mean that we will be  
12 comfortable moving away from the powers that we have set out.

13 Secondly, with regard to the conveyer, I agree it is a complex engineering  
14 feat to put that in, which will be a challenge for our detail designers to work on.  
15 I appreciate the position set out by Mr Owen which said that in principle there  
16 were no fundamental concerns subject to the correct approvals in place. Now,  
17 my colleague referenced the protective provisions. We put in approval rights  
18 for the port which are quite extensive. We have actually – just to make sure that  
19 was heard – we’ve extended that beyond the port land itself to the wider Freeport  
20 area, so that that works to give that protection to the port, both of their existing  
21 asset but also their potential future. They will cover both environmental, the  
22 engineering, and also working with the tenant on that site.

23 MR SMITH: And that tenant takes me back to the final question that I was going to ask  
24 which relates to the CMAT terminal, and the question of the engagement of the  
25 tenant. I’m just trying to recall amongst the very large number of submissions  
26 whether they are actually engaged, and whether – and you may be able to answer  
27 that. And secondly, is there a degree to which some of this needs to be tripartite?  
28 So maybe the side agreement will need to reflect CMAT operator/tenants’  
29 position, and they will need to prospectively be a signatory to it in addition to  
30 the port. Is that possible?

31 DR WRIGHT: Tim Wright, for the applicant. So in terms of whether the tenant is  
32 engaged, I can give a commercial answer and obviously we have to balance the  
33 commercial versus planning. Clearly, we are talking with them as part of  
34 prospective supplier to the scheme and will continue to do so.

1 MR SMITH: No, I mean very much in the planning sense whether they're likely to want  
2 to turn up in front of a compulsory acquisition hearing, or – and I get the sense  
3 they're not.

4 DR WRIGHT: I understand from my colleagues that we don't think they're an interested  
5 party. I suggest we might come back and confirm that in writing.

6 MR SMITH: If you could. I mean, maybe take that as an action because it's sometimes  
7 hard to tell from an interested party, who has maybe had only limited or no  
8 engagement subsequent to the submission of relevant representation, whether a  
9 name is a particular entity or not, but yeah. It would be useful for us to have  
10 confirmed in simple terms whether the CMAT operator is or is not an interested  
11 party or an affected person.

12 DR WRIGHT: Tim Wright, for the applicant. We'd be happy to confirm that. We will  
13 double check before doing so to make sure we're right.

14 MR SMITH: You're in the same place that we were in, trying to find out whether they  
15 were or not.

16 DR WRIGHT: The third matter I wanted to pick on was the ecology and I wanted to  
17 confirm our position that we are not proposing – with the exception of Site E14  
18 of Mr Owen identified – we're not proposing to translocate or mitigate using  
19 Port of Tilbury land and that is something that we're actively talking with them  
20 in terms of what form of agreement, whether that might be covered by the  
21 framework agreement, how we might demonstrate that to them.

22 MR SMITH: You will have heard from Mr Owen's submission a measure of what I  
23 could best characterise as anxiety, I guess, that, for example, unintended  
24 cross-boundary movement of relevant species might be as much of a concern to  
25 the port in terms of its strategic options moving forward as anything intentional  
26 that you might do. Is there scope to look at, essentially, boundary management  
27 principles and how one might prevent, if that's appropriate, unintended uprating  
28 of the biodiversity value of land that the port strategically identified in port  
29 development?

30 DR WRIGHT: Tim Wright, for the applicant. So the answer, in short, is yes, and that is  
31 all part of the discussions that we were having with the port about how we frame  
32 those arrangements around the boundary interfaces between the two sites. They  
33 are closely physically located and for various reasons we need to look at how

1           that boundary will work together, and that's all part of the conversation we're  
2           having.

3 MR SMITH: Okay.

4 DR WRIGHT: So with regard to that, what I would say is, the framework agreement  
5           suggestion that we bring forward a document. I would be more than happy to  
6           work with Port of Tilbury team to bring forward something that would set out  
7           what we're covering in the framework agreement for your understanding of the  
8           nature of the matters within that. That's a very sensible idea that we support.

9 MR SMITH: Thank you very much. Okay. Mr Tait, is that...?

10 MR TAIT: That concludes our response. Thanks.

11 MR SMITH: Thank you. So I'm going to return to the port just to see if there are final  
12           concluding remarks that need to be made. Mr Owen.

13 MR OWEN: Robbie Owen for the Port of Tilbury London Ltd. Thank you, sir. Just  
14           very briefly, mindful of time. I welcome what Mr Tait and Dr Wright said, and  
15           I think I just need to come back on two short matters. The first in relation to the  
16           protective provisions and what Mr Tait referred to as the adjudication pot, I think  
17           your comment in response anticipated what I was planning to say, which is that  
18           both in relation to indemnities for consequential losses and compulsory  
19           acquisition and temporary possession bars without consent, both those  
20           provisions are well precedented in protective provisions for statutory harbour  
21           authorities, both included in development consent orders and other similar  
22           instruments, and I would just say that the provision we're seeking – that there  
23           should be no compulsory acquisition or temporary possession without the port's  
24           consent – is one that goes on to say, 'Such consent not to be unreasonably  
25           withheld', and we don't think it's enough for the applicant to say, 'Well, we're  
26           going to give them rights to approve various works. Therefore they don't need  
27           approval of compulsory acquisition as well.' We think we do. That is very well  
28           precedented in our view and we obviously will need to put to you those  
29           precedents if we are unable to reach agreement with this. But approval of works  
30           and acquisition of interests in and/or rights over land for the purposes of those  
31           works are two very distinct issues with different impacts, and therefore they do  
32           need to be controlled.

33 MR SMITH: I think it is worth reflecting on, amongst other things, progress and delivery  
34           of a number of very substantial infrastructure projects in only recent weeks, and

1 the fact that one of the lessons one takes away from them – some of what has  
2 occurred – is that one can hold land and have completed a CA process but then  
3 find that works for some reason are not proceeding, or are not proceeding in the  
4 manner as anticipated, so I think there seems, in our view, to be an in principle  
5 common sense basis for the argument that a statutory undertaker prospectively  
6 affected by the taking of land and the delivery of works may want to bite both  
7 of those cherries and may reasonably wish that to be the case in case land is  
8 taken and then strategic objectives change and works are changed or works are  
9 never delivered. Because if the approval waits until the works approval, there  
10 may be the passage of a number of years between the taking of the land and the  
11 final resolution and form of the works that are subject to the consent. So I can  
12 see immediately the basis for that measure of anxiety, and the reason I'm  
13 articulating it like this is again I suspect it's something that runs to more than  
14 one set of protective provisions. It may well bear on other statutory undertakers  
15 as well.

16 MR OWEN: Yeah. Sir, thank you for that. That does summarise our view that we do  
17 need to bite at both of these issues and we're not really clear why it should be  
18 contentious because as we say, we think it's very well precedented and established  
19 way of dealing with impact on statutory undertakers' land, but be that as it may,  
20 we're hopeful that we can reach agreement on this, but that may not be possible.

21 The only other point I wanted to make, secondly and briefly, that applies  
22 to the CMAT, and we have briefly checked – but again we'll confirm – but it's our  
23 understanding that the relevant Tarmac entity that operates CMAT and has a lease  
24 of the land from the port for that purpose is not an interested party or an affected  
25 person. But I think that irrespective of that, we will clearly need to discuss with the  
26 applicant, as part of the ongoing discussions on the framework agreement, how we  
27 do engage with Tarmac in relation to certainly implementation of the framework  
28 agreement in the event of the conveyer being built. So we will take that away and  
29 discuss it with the port, obviously, but also the applicant and hopefully therefore  
30 deal with that interface in that way.

31 MR SMITH: Okay.

32 MR OWEN: Sir, that's all I wanted to say by way of response. Thank you.

33 MR PRATT: Just one question, Mr Smith. The agreement – everybody's going to write  
34 the summary agreement by when?

1 MR SMITH: Well, that's a very, very interesting question, isn't it. Deadline 6, I suspect,  
2 will be distinctly too early. Looking at the timetable, I think we all need to be  
3 alive to the fact that there will be a consultation initiated by us. We will issue a  
4 commentary on the draft of development consent orders that will deal with a  
5 number of these issues, and particularly will wrap up our outstanding questions  
6 about provision within the protective provisions.

7 Now, in an ideal world it ought to appear before then, but I think there  
8 isn't a deadline that helps us to get it early enough for then, so I think we are –  
9 we will have to think about the words that we include in that consultation,  
10 recognising that certain discussions will still be outstanding at the point when  
11 we issue it. So I think we are looking at deadline 7. Is deadline 7 feeling like  
12 it's achievable, Mr Owen, or...?

13 MR OWEN: Robbie Owen for the Port of Tilbury. I think deadline 7 – which is a month  
14 today, isn't it – for inclusion of the entire agreement and agreement on the  
15 protective provisions is feeling a bit tight, I think, because we have another  
16 meeting planned for 2 November to consider a draft agreement due to be  
17 received next Friday, which I think is 27 October. But the 2 November meeting  
18 will not be the end of matters, I am quite sure, and therefore it may well be that  
19 by 17 November we know exactly where we are in terms of agreement or no  
20 agreement on the protective provisions, but the framework agreement itself is  
21 still under discussion, and for the purposes of your further ongoing consideration  
22 of the DCO itself, it may be then appropriate that we have to put in something  
23 in deadline 7 that gives you a steer as to where we are on the protective  
24 provisions as opposed to everything else.

25 MR SMITH: That would be very helpful, and what I then will flag is deadline eight is  
26 the beginning of what I will loosely and colloquially refer to as the bandstand –  
27 the point at which people need to articulate their final positions so they can all  
28 cross-respond to each other at deadline nine, and then the applicant can make  
29 what amounts to its closing submissions at deadline ten. So if it goes on any  
30 longer than deadline eight, you will be in a position where we will have to take  
31 unresolved and unagreed matters in front of the Secretary of State and deal with  
32 them. So there's a very, very strong pressure to make sure that all conversations  
33 that have outstanding matters embedded in them need to have landed by deadline  
34 eight, if that's at all possible.

1 MR OWEN: Yeah, so I would think that should be possible. We will definitely aim for  
2 that as a backstop. I mean, the port wants to achieve agreement as soon as  
3 possible and I imagine the applicant does as well, and these things just take a bit  
4 of time to work through, but you can have my assurance that all resources are  
5 being deployed on the part of the port to make sure that happens and that they  
6 are very focussed on this.

7 MR SMITH: And if, by deadline 7, for the purposes of an action that we will write, we  
8 can have essentially a snapshot of the parts that are, in your view, settled, then  
9 that would help us substantially because it will give us a gauge about progress.  
10 Are we moving in the right direction or not? And obviously if it appears not at  
11 that point, we'll have to react very swiftly, but we do have hearings in  
12 mid-November at which we can come back and have a conversation about what  
13 isn't working and why. Okay. Right. Thank you very much, Mr Owen. That  
14 brings us, I believe, ladies and gentlemen, to the end of Port of Tilbury London  
15 Ltd's submissions.

16 Now, just before I ask Mr Cottage to speak for Orsett Golf Club, looking  
17 at the passage of time, I am going to suggest that Tarmac Building Products Ltd,  
18 the best thing that I think we all suggest we do is we come to you directly after  
19 lunch with Mr Holland's forbearance, but I think that would be fairer than having  
20 you sitting here thinking you're going to get a go before lunch, because we have  
21 to give a fair opportunity to Mr Cottage to set out his stall, and I think by the  
22 time he's done that and the applicant have responded, we will have reached a  
23 point where we need to break for lunch. I trust that's acceptable to everybody  
24 in the middle bench. Thank you very much. So, Mr Cottage online, please, for  
25 Orsett Golf Club.

26 MR COTTAGE: Thank you, sir. Sorry, just took slightly longer than I was hoping there,  
27 but I'm with you, sir. What I'd like to do is just briefly give a bit of background  
28 to the club, speak about how the Lower Thames Crossing scheme might affect  
29 it, talk about what the club is then seeking to do or achieve in terms of mitigation  
30 of those impacts, and then give a bit of an update on where we are in discussion  
31 with the applicant.

32 Orsett Golf Club's a well-respected, 125-year-old golf club that would be  
33 significantly affected by the construction of the Lower Thames Crossing. The  
34 club has a full membership and also supplies recreation facilities for the local



1 community to enjoy. Around 21,000 rounds of golf are played on the course  
2 annually, both by members and visitors, many of whom live locally. In addition,  
3 the course club house is also used for social events and on average is used at  
4 least twice a week for events such as wakes, weddings, birthday parties,  
5 anniversary dinners, Sunday lunches, something called a fish night – I have to  
6 confess I’m not 100% sure what that is – and weekly quiz nights. On many  
7 occasions the hall will be booked for something like a wake or a wedding where  
8 99% of attendees are non-members.

9 The building of a six-lane motorway very close to the course will reduce  
10 the environmental quality, amenity enjoyment of the course for users, and  
11 therefore risks both the reputation of the golf club and the value of the course.  
12 The extent of the impact was highlighted in the DCO application environmental  
13 statement which identified a moderate adverse visual impact, which I have to  
14 say in the club’s opinion is an underestimate, and a major adverse increase in  
15 noise of over five decibels over the majority of the course.

16 Amendments to the original route of the road has moved it closer to the  
17 course and the decision to no longer lay the road in a cutting will not only add  
18 to the noise and visual impact, but would necessitate the movement of a large  
19 gas main that runs along Brentwood Road, that will require the gas authority to  
20 undertake large land movements, causing disruption and damage to the wooded  
21 boundary, and potentially to the ninth hole championship tee where land rights  
22 will be permanently required. National Highways is also seeking temporary  
23 possession of land as well as permanent rights to place bat boxes on the course  
24 and obtain access to those boxes.

25 The club has no in principle objections to the Lower Thames Crossing,  
26 and acknowledges that the applicant’s view that the crossing is needed to reduce  
27 traffic congestion and pollution. The club also welcomes the applicant’s stated  
28 intention to lessen the impact of the motorway on those affected along its route.  
29 However, the club feels strongly that the applicant could have assisted in  
30 mitigating some of the damage to chosen routes of the Lower Thames Crossing  
31 will have on the course in order to achieve a proper balance between the public  
32 interest and the club’s private loss, and it objects to the acquisition of lands and  
33 rights to the course until an agreement can be reached over those mitigation  
34 matters.

1 Just quickly running through what those mitigation issues are, the road  
2 will be clearly visible and constantly heard along the southern boundary of the  
3 course, and the club wishes to reduce the impact of this with screening through  
4 the planting of new trees – the early planting of new trees. The club is aware  
5 that the applicant has set itself a target of planting a million trees to offset the  
6 carbon effects of the Lower Thames Crossing project, and believes the  
7 applicant’s agreement to funding tree planting and fencing to provide screening  
8 for the course, and replaced trees lost through acquisition, will be consistent with  
9 this objective.

10 To help improve the visual impact and reduce noise, the club feels large  
11 mature tree transplanting that hides the motorway is not the answer, and favours  
12 the less expensive option of planting a leylandii hedge and then planting more  
13 native trees in front of the hedge close to the southern boundary along the ninth  
14 hole that will eventually hide most of the leylandii. This will help give all  
15 year-round screening. The native trees the club plans to use are already  
16 successful on the course so that good survival rates can be expected. An  
17 irrigation system will also need to be installed to ensure the trees flourish. In  
18 addition to the screening, the club’s pleased that National Highways intends to  
19 purchase land surrounding the golf course for planting –

20 MR SMITH: Mr Cottage, I believe you have frozen, certainly in terms of your video  
21 connection. If you can hear us, what I’m going to suggest you maybe try to do  
22 is just switch your video connection off and see if we can restore voice.  
23 Sometimes the drop in bandwidth helps. Mr Cottage is still frozen. Can I just  
24 check with the case team, has Mr Cottage attempted to contact in the – has he  
25 messaged or emailed? Is it possible to maybe just message him just to tell him  
26 to leave and re-join? Thank you. He has left. Hopefully he will re-join. Bear  
27 with us, ladies and gentlemen.

28 Whilst we’re here – I will just note very briefly so that everybody knows  
29 what I’m doing – occasionally I do glance at my phone. I can assure you that  
30 I’m not looking at personal messages, but I do have Google Maps aerial live on  
31 that and it really does assist to actually look at the individual sites at issue in  
32 aerial image as they’re being spoken to. Occasionally, it’s useful to have it on  
33 the general screens as well, but I felt it would be a little bit of a distraction,  
34 certainly in the early stage of Mr Cottage’s submission, to ask for that. Yes, the

1 current news is that we're not receiving further content – further contact with  
2 Mr Cottage. The AV company have checked all of their connections.  
3 Everybody else is connected. So there is an, in principle, individual connection  
4 issue affecting Mr Cottage.

5 What I am then going to suggest is we wait for a further five minutes, and  
6 that if we can't restore his connection at that point, the arrangement that we'll  
7 make is that we will ask him, provisionally, to attend tomorrow if he can,  
8 because we can probably just about squeeze him in to tomorrow's agenda, and  
9 if that doesn't work for him, then we will look at an alternative in November  
10 and/or a written submission at deadline 6, but I think, for the purposes of our  
11 attending representatives for Tarmac, it would be best if we stick to our  
12 resolution that we'll come back to you after lunch, because by now you're not  
13 going to get a good run at your case – end up breaking it over lunch in any case.

14 Yes, Mr Holland.

15 MR HOLLAND: Sir, whilst we're on the subject of frozen, is there anything they can do  
16 about the temperature of the room over lunch, please?

17 MR SMITH: Your point is a very good one. We did actually raise it during the morning  
18 break. Yes. I mean, there's coolness necessary to keep agility of mind, and  
19 there's coolness of the refrigeration chamber. We're beginning to get towards  
20 the latter.

21 Ladies and gentlemen, I think we've probably got about another couple of  
22 minutes to go before the end of a reasonable timescale within which to see if we  
23 can restore Mr Cottage. It does seem, I believe, that Mr Blackmore from the  
24 Planning Inspectorate might have found some other telephone numbers, so he's  
25 just leaving the room to make some calls. We'll wait for those to be completed.

26 MR COTTAGE: Apologies for that. I did say earlier that I hope there would be no  
27 problems with appearing virtually, but there obviously were, so sorry for that.  
28 I'm afraid I was reading from a screen, so I'm not quite sure at what point you  
29 lost me.

30 MR SMITH: It happened very swiftly, so I don't think you need to worry about a gap,  
31 so to speak, when we didn't hear you. So if you just take yourself back to just  
32 before you fell off, then I'm sure that will be fine, and if there appears to be a  
33 discontinuity or a gap, we'll tell you.

1 MR COTTAGE: Okay. You may need to assist me, though, as I was reading from some  
2 notes on the screen. I'm not –

3 MR SMITH: You'd taken us beyond the boundary treatment point, and you'd talked  
4 about the leylandii option.

5 MR COTTAGE: Okay, so I hadn't got onto rabbit fencing.

6 MR SMITH: Yes.

7 MR COTTAGE: So you lost me at rabbit fencing.

8 MR SMITH: Yeah, that makes sense.

9 MR COTTAGE: Okay, so the club's pleased that the applicant intends to purchase land  
10 surrounding the golf course for planting in order to further offset the carbon  
11 impacts of the Lower Thames Crossing, and wholly supports this initiative.  
12 However, such land is a breeding place for rabbits, and rabbits can inflict terrible  
13 damage to a golf course. The club is therefore requesting that, to keep rabbits  
14 off the course, it's agreed that on the boundary between the land to be used for  
15 planting and the course an appropriate and reliable rabbit fence is erected and  
16 maintained by the applicant.

17 In relation to the bat boxes that the applicant is looking to put on the  
18 course, the club's happy to accept that principle, but would like it to be subject  
19 to a detailed agreement of how the bat boxes will be installed and maintained.  
20 So in summary, the club's looking for the applicant to enter into an agreement  
21 to fund screening, planting, irrigation, and rabbit fencing, and considers that  
22 such an agreement will help reduce a future compensation claim. An agreement  
23 of the type that's being proposed could also set out parameters for how the  
24 applicant and the club would interface with each other during construction of  
25 the Lower Thames Crossing to minimise any [inaudible] that might be incurred  
26 during that period.

27 In terms of where we have got to in terms of discussions, the applicant and  
28 the club have met on a number of occasions to discuss the various mitigation  
29 measures the club is seeking to put in place, and on the whole, the club has been  
30 encouraged by the applicant's apparent willingness to undertake these measures.

31 However, progress with progressing any kind of formal agreement  
32 between the parties has been very slow. In an effort to pick up the pace, draft  
33 heads of terms were sent to the applicant on 23 June 2023, but there's been no  
34 response to that draft to date. Since compulsory acquisition hearing 2, when I

1 initially raised the club's concerns to the Examining Authority, some further  
2 progress has been made, and on 4 October, a golf course specialist appointed by  
3 the applicant made a visit to the course, principally to consider the extent of tree  
4 planting. His report is awaited.

5 The applicant has also confirmed its valuation of the land it intends to  
6 acquire permanently. The applicant says that its aim is to have an agreed  
7 position on all matters prior to the end of the examination. This is welcomed,  
8 and all the club is trying to achieve is a greater degree of certainty that the  
9 applicant will commit to what it says it intends to do. However, to achieve this,  
10 progress with the heads of terms and a documented agreement needs to be  
11 accelerated. The club wants to bring this matter to the Examination's attention,  
12 and enlist its assistance in ensuring that agreement is reached between the parties  
13 that achieves the proper balance between the public interest and the club's  
14 private loss.

15 MR SMITH: Thank you very much. Now, in relation to those points and the timing  
16 points are quite key, and you will have heard already this morning our discussion  
17 with the applicant and other affected persons on the question of when matters  
18 can be documented by and reasonably to enable us to view them either us settled  
19 between parties, or if they're not, to enable us to adjudicate on outstanding  
20 matters that might be relevant to the Secretary of State's decision, given the  
21 explanation that you've just provided of what has been done and when, before I  
22 go to the applicant, my outstanding feeling would be that, again, it feels as  
23 though asking you to have all matters capable of settlement settled by deadline  
24 6 is probably not going to happen, but equally, we are looking at deadline 7  
25 being quite late, because that is just prior to November hearings and so gives us  
26 very limited room for manoeuvre, in terms of looking at what may need to be  
27 additionally taken up, and we must be very clear that if we do not have concrete  
28 positions by deadline 8, that's the point at which the bouncedown to the end of  
29 the examination occurs, where people are essentially just responding to what  
30 others have said, rather than putting new in-principle positions into the  
31 examinations.

32 So deadline 8, 5 December, is the absolute underline, full-stop end of the  
33 time available if something is to be put in front of this Examining Authority that

1 we can then report on to the Secretary of State and the Secretary of State can  
2 rely on. So those timing considerations, I think, are worth bearing in mind.

3 What I'm actually going to do, Mr Cottage, unless you've got further in  
4 principle submissions that you want to make, is I'm going to see who will be  
5 leading the applicant's case. Is it Mr Tait?

6 MR TAIT: Yes, sir.

7 MR SMITH: Yes, it is. Okay, let's hear from Mr Tait, see what he has to say, and then  
8 I'll come back to you for final remarks in relation to the points that he's put to  
9 us. So Mr Tait.

10 MR TAIT: Thank you, sir. Mr Cottage mentioned three items of mitigation. The first:  
11 screening through planting, and a specialist, on behalf of NH, has visited the site  
12 on 4 October to ascertain whether the proposed location for planting, proposed  
13 mix, will have the benefits that the golf club anticipate, but the applicant has  
14 agreed, in principle, that the planting can be done early, prior to the main works  
15 so it is established in advance. So there's agreement in principle there.  
16 Secondly, on the rabbit fencing, the request there has been agreed to, and thirdly,  
17 in relation to the bat boxes, it's anticipated that will take effect through a section  
18 253 agreement. So again, there is agreement, I understand, as to the substance  
19 and method.

20 So what remains is to ensure that there is agreement about the planting,  
21 and the mix and location, and to reflect that in an agreement, and D7 is probably  
22 a realistic deadline for that.

23 MR SMITH: Yeah, and in terms of that agreement being a side agreement between  
24 yourselves, just as we have with others, again, a jointly agreed document  
25 between you that illustrates that which is agreed that you wish to rely upon  
26 before the decision of the Secretary of State is what we are going to need,  
27 because we don't, again, want to see all the detailed mechanics of what is a  
28 private contract between yourselves, but we do need to have the reassurance,  
29 and the Secretary of State needs to be able to rely on the fact that certain matters  
30 are agreed and settled.

31 MR TAIT: Yes, sir. We should be able to convey that effect by that time.

32 MR SMITH: Okay. So Mr Cottage, it feels like deadline 7 ought to be a date with a red  
33 star on it in your diary. Does that help? And it feels, also, that the principle of

1 most of your submissions are matters on which applicant has either already  
2 moved or is minded to move in the direction that you've indicated.

3 MR COTTAGE: Colin Cottage for Orsett Golf Club. Yes, I'm very pleased to hear what  
4 Mr Tait has said. We're very happy to work to deadline 7. The club would just  
5 like to progress an agreement as quickly as possible, and to be fair to the  
6 applicant, from our perspective, that's been the issue to date. The principle of  
7 what we're asking for does not seem to be being contested, and in fact, as Mr  
8 Tait said, is agreed.

9 There is some detail around that, in terms of exactly what form of planting  
10 takes and where it should go, but I'm sure those matters can be agreed. All we're  
11 really seeking is for an agreement to be progressed, things to be put down in  
12 writing so that everybody knows where they stand, and how these things are  
13 going to move forward. So quite happy with everything I've heard, and also  
14 quite happy with deadline 7 being the date we're working to.

15 MR SMITH: Thank you very much. Well, on that basis, unless there's anything else  
16 that you need to put to us or that Mr Tait needs to come back on – I'll just check  
17 with my colleagues: any further questions? No. Mr Cottage, thank you very  
18 much for those submissions. Apologies for making you wait for the bulk of the  
19 morning, and then thankfully, we did at least manage to resolve the technical  
20 issues and you are now fully heard on this point. So thank you once again, and  
21 finally, before we break this morning, apologies to Tarmac Building Products  
22 Ltd. We will come to you, but it'll be immediately after lunch, which we're  
23 going to have now. Can we resume in this room, please, ladies and gentlemen,  
24 at 2.00 pm? 2.00 pm. Thank you very much.

25  
26 **(Meeting adjourned)**  
27

28 MR SMITH: Good afternoon, ladies and gentlemen. My name is Rynd Smith, lead  
29 member of the Examining Authority for the Lower Thames Crossing  
30 application, and this is the afternoon session of compulsory acquisition hearing  
31 number 3. With no further ado, as discussed this morning, we will move to hear  
32 submissions on behalf of Tarmac Building Products Ltd, and then when we've  
33 heard from Tarmac, we will move to Mr Mike Holland, who is representing a  
34 broad range of clients. So firstly, let's hear from on behalf of Tarmac, and then

1 I'll obviously turn to the applicant to introduce them in response. So who do we  
2 have for Tarmac? Is it Mr Collacott?

3 MR COLLACOTT: Hi. Good afternoon. Piers Collacott representing Tarmac. To my  
4 left is James Dewey, a colleague, who's also supporting and representing  
5 Tarmac. I'll be doing most of the talking when it comes to questions and so on.  
6 It may be a combination of both of us. Well, first of all, thank you to you and  
7 to Mike Holland for rearranging the agenda and putting us in now, and then  
8 straight into talking about the specific issues that affect Tarmac with this. I'm  
9 not sure if you've managed to inspect Tarmac's site yet, and if you haven't,  
10 you're more than welcome to, and we can facilitate that if time allows, but for  
11 the time being, perhaps it's useful to quickly bring up the first slide to show what  
12 the Tarmac site is like.

13 MR SMITH: Yes, that would be very helpful.

14 MR COLLACOTT: I can talk you through a little bit of high level information about the  
15 operations. Thank you. Is it worth zooming in slightly? And you'll see it.  
16 Okay, this is an 85-acre manufacturing site. It's a strategic block manufacturing  
17 site for Tarmac, where they manufacture about 1.7 million blocks per month,  
18 which are then distributed nationally for the construction industry. There are  
19 approximately 120 employees, and there are two manufacturing buildings on the  
20 site called Linford 1 and Linford 2, then there is – which can be in operation,  
21 sorry – well, they can be in operation 24/7, depending on the market demand.

22 There are various yard areas where there's used for stacking finished  
23 product and storing of raw materials for them. Production of the blocks – and  
24 there's also – oh, sorry, for stacking finished product, and also there's an area,  
25 to the rear of Linford 2, where there's damaged product, which gets stored before  
26 it gets taken off to the landfill for recycling or landfill. It's a busy operational  
27 site with many processes going on 24/7. As mentioned, in the south-west corner  
28 of the site, there's authorised landfill for inner waste, where some of the blocks  
29 get crushed and landfilled, and in that area, there is port holes for regular ground  
30 water monitoring.

31 Across the site, there are two overhead power lines operated by UKPN and  
32 National Grid, and they've both got pylons on Tarmac's site. If you quickly slip  
33 down to the second slide, I think you can see them. PAB19 and PAB18 are the



1 UKPN route, handily called the PAB route, and then there's the pylon ZJ016,  
2 which is part of National Grid's infrastructure, and is the ZJ route.

3 MR SMITH: Can I just hold you there for a second? Because we do seem to have lost  
4 the monitor screens. Yes, they're back. No, they're gone again, and they're  
5 back. The digital gods are not kind to us today. Look, soldier on. We will turn  
6 and if we turn our backs to you, it's not because we are not paying attention. It's  
7 because we need to follow the plans.

8 MR COLLACOTT: Okay. Well, hopefully the slides will remain. Both UKPN and  
9 National Grid have rights, either through an easement or a wayleave, to enter the  
10 site for the purpose of installing, maintaining, repairing, renewing, inspecting,  
11 improving and removing the apparatus. The two network routes – the PA route  
12 and the ZJ route – follow the wide blue corridor shown on the land plans on the  
13 second slide, or I think the land plan might be the third slide, actually. I beg  
14 your pardon.

15 Okay, and in terms of the reasons for objection, the scheme impacts on the  
16 operations of Tarmac's site in a number of different ways, and Tarmac object to  
17 the compulsory acquisition and temporary possession powers contained in the  
18 draft DCO for four principal reasons. Albeit, there is overlap between reasons  
19 three and four. The reasons considering the compulsory acquisition tests, i.e.  
20 need, minimum tests, last resort, compelling case, are as follows. Firstly, there's  
21 no clear justification for the imposition of new rights to authorise the applicant  
22 to access and carry out works to the UKPN and National grid infrastructure on  
23 Tarmac's site.

24 Secondly, the proposed routes are unnecessarily intrusive and potentially  
25 dangerous, and the proposed temporary possession powers are also inconsistent  
26 with the proposed permanent rights. Thirdly, the compulsory acquisition and  
27 temporary possession powers in the landfill will hinder Tarmac's ability to fulfil  
28 its Environmental Agency monitoring obligations; and fourthly, the compulsory  
29 acquisition and permanent possession powers in the landfill area will also hinder  
30 Tarmac's ability to fulfil its local authority and land restoration obligations.

31 I'm happy to deal with each of the grounds for objection in turn. However,  
32 I will be led by you. If you would like me to then end at each issue, in order for  
33 the applicant to respond, or if you'd rather me set it out all in one go, I'm happy  
34 with either.

1 MR SMITH: I think our preference would be for you to set it all out in one go, so that  
2 the applicant is alive to the entirety of the case that is being put to it before it has  
3 to respond. I think that's the fairest to the applicant, and I'm seeing the applicant  
4 nodding, so there we go.

5 MR COLLACOTT: Sure. Okay, the first objection – back to slide 3, if you may. The  
6 proposed rights, which are represented by the blue wide corridors, plus a short,  
7 narrow spur immediately off the highway site – sorry, off the highway, into the  
8 site – which are all shown on the land plans, are said to be required to enable the  
9 applicant to undertake works to the overhead line network. In our opinion,  
10 permanent rights are unnecessary, as there are alternative solutions, and  
11 therefore the tests, in respect of need, are not met.

12 There are two existing legal agreements that govern the apparatus, and  
13 within the agreements, there are rights for the operators to access, install, repair  
14 and maintain, which encompasses all the works set out in the draft DCO at OH4  
15 and OH5, relevant to pylons numbers PAB18 and PAB19, and for the UKPN  
16 network, and ZJ016 for the National Grid network. The applicant has advised  
17 that the powers are required because National Highways cannot compel the  
18 operators to undertake the works, and therefore, the applicant needs to secure  
19 the powers to do the works if UKPN and National Grid effectively decline to do  
20 them.

21 It's our view that the applicant is going to undertake the works – sorry. It  
22 is our view that if the applicant is going to undertake the works on the UKPN  
23 and National Grid apparatus, which we find highly unlikely, then there still  
24 remains alternative options to implementation of CP powers.

25 Firstly, a binding assurance could be secured from the applicant and the  
26 operators, confirming the operators will undertake the works pursuant to their  
27 existing wayleave agreements, and the easement. Or secondly, the applicant and  
28 Tarmac enter into a temporary licence agreement to enable the applicant to do  
29 the works. I can confirm that Tarmac would be prepared to enter into such an  
30 agreement, but so far, the applicant has declined to enter into discussions on this  
31 basis.

32 It is unknown to us whether the first option has been pursued, but in regard  
33 to the second option, we raised this on 29 June, and we're yet to receive a  
34 response. Our view is that there have not been genuine attempts to consider

1 alternative solutions, and instead, the applicant appears to want to rely on  
2 compulsory purchase powers, rather than being a method of last resort. The  
3 acquisition of permanent rights goes beyond that which is required by the  
4 applicant.

5 Whilst it is understood that National Highways will, if agreement is not  
6 reached with the statutory undertakers, undertake the work, it is highly doubtful  
7 that National Highways will maintain the apparatus and the network in the  
8 future. We're certainly not aware of National Highways maintaining UKPN or  
9 National Grid infrastructure. There is, therefore, no need for permanent rights  
10 when Tarmac is willing to offer temporary rights for the proposed work. In our  
11 opinion, the rights applied for in the draft DCO go beyond the requirements of  
12 National Highways.

13 As a final point, we would also like to point out that the approach with the  
14 temporary rights that I'm going to come to is inconsistent with the acquisition  
15 of these permanent rights, because the applicant will not be able to access the  
16 blue land, PAB and the ZJ routes after completion of the proposed works, as  
17 access rights are only temporary.

18 Okay. The second objection – slide 2, I think, is the best one for this. The  
19 proposed temporary rights, shown by the narrow green corridor lines on the land  
20 plans – the pylon slide, as you've got on the screen – are included to provide  
21 formal temporary access corridors to the site – sorry, across the site – to the  
22 pylons, but these are unnecessarily intrusive, and also potentially dangerous to  
23 site employees and users of the routes.

24 Whilst these corridors might not be necessary as the existing legal  
25 agreements of the apparatus already include rights of access, it is accepted that  
26 formalising the arrangements on a temporary basis, subject to agreement over  
27 access routes, might be a sensible approach to mitigate potential impacts of  
28 contractors accessing the site, and also be a safer option for all.

29 In an effort to progress this matter, draft heads of terms setting out  
30 alternative, less intrusive, safer access routes were presented to the applicant in  
31 June 2023, but these weren't returned until 3 October. This matter is therefore  
32 live and ongoing, but with both sides seemingly willing to find an agreement, it  
33 cannot be said that negotiations have failed and therefore powers should not be  
34 confirmed.

1           The fourth area – sorry, the third area of objection – I think it might be the  
2 last slide – is easiest. Okay. There is some overlap here with the third and  
3 fourth, but I’ll try and separate them out. The proposed compulsory acquisition  
4 and temporary possession of land within the landfill area overlaps land that is  
5 subject to an EA permit. There is a key down-gradient monitoring borehole,  
6 BH2, within the permanent acquisition land, and the powers interfere with  
7 Tarmac’s ability to monitor and surrender the permit in the future.

8           There have been a few meetings held between the applicant and Tarmac’s  
9 technical permitting manager to seek to resolve the issues, and in the last meeting  
10 on 25 September, the applicant presented updated and previously unseen text,  
11 article 68, interfaced with waste operation permits, which is being proposed to  
12 address Tarmac’s concerns. There has not yet been sufficient time for a legal  
13 review of this article, as the applicant has only just confirmed that it will give an  
14 undertaking for Tarmac to seek legal opinion on the adequacies of mitigation  
15 measures. This seems to be moving in the right direction, but it is too soon to  
16 confirm whether Tarmac are comfortable with what is being proposed.

17           In other compulsory acquisition hearings, the Examining Authority has  
18 expressed the shortness of time available to get matters, which can be resolved,  
19 resolved. We feel that this is another example of the applicant dealing with  
20 matters too late in the examination process, and we have little confidence this  
21 will be resolved before the end of the examination.

22           As a follow-on to this point, and on a similar basis, paragraph 15 of the  
23 compulsory acquisition guidance states that an applicant needs to show that a  
24 scheme will not be blocked by any need for planning permission or other  
25 consents or licences. We feel that the applicant has not been able to demonstrate  
26 this in respect of Tarmac’s planning and licensing requirements, and indeed, we  
27 are not even sure if work has been done properly to analyse this, and therefore,  
28 they cannot show that this test is met.

29           Finally, we would also like to point out that the applicant is yet to make a  
30 private treaty offer to require any of the pink land, which is not in accordance  
31 with paragraph 25 of the guidance.

32           The fourth objection, as I say, has reasonable amount of overlap with the  
33 third here. The proposed compulsory acquisition and temporary possession of  
34 this land within the landfill area also overlaps land that is subject to restoration

1 as part of planning conditions, and powers interfere with Tarmac's ability to  
2 restore within a specific timescale, and this has potential to result in a planning  
3 condition breach.

4 There can't be a compelling case in the public interest if, in planning terms,  
5 you do something unacceptable, and therefore the use of compulsory purchase  
6 powers cannot be justified. This was a point made by Mr Bedford in his  
7 representations on behalf of Whitecroft Care Home.

8 To allow Tarmac to consider the impacts of the compulsory acquisition  
9 and the restoration programme, and whether they are likely to breach planning  
10 conditions, technical 3D modelling data has been requested from the applicant  
11 to understand relevant land heights at the interface between the scheme and the  
12 retained land. The applicant has not been able to provide this key information,  
13 and it is not clear if such modelling data exists, and as a result of this, Tarmac  
14 has not been able to consider their options. If a 3D modelling data has not been  
15 prepared, we do not understand how the applicant can have assessed the impact  
16 on Tarmac's planning obligations, and by extension, how the Examining  
17 Authority can be satisfied that any planning harm is justified.

18 In terms of reliefs, for the first area of objection, Tarmac would like to see  
19 the proposed new permanent rights in respect of UKPN and National Grid  
20 network groups removed from the draft DCO, or a commitment from National  
21 Highways not to serve notice in respect of this land. With works undertaken  
22 either by the operators under their existing agreements, or under a temporary  
23 licence agreement between the applicant and Tarmac, the applicant simply does  
24 not need the proposed rights, because it is inconceivable to think that National  
25 Highways will be responsible for maintaining UKPN and National Grid's  
26 infrastructure after the relevant scheme works have been completed, or indeed,  
27 able to access the apparatus, as rights across the site are only temporary.

28 In relief for the second objection, Tarmac would like to see a short, narrow  
29 spur immediately off the highway into the site, which is subject to new  
30 permanent rights, and all other temporary access corridors, removed from the  
31 draft DCO, or similarly, a commitment from National Highways not to serve  
32 notice in respect of this land, and be replaced with a suitable voluntary  
33 agreement that will allow the applicant, UKPN and National Grid to access the  
34 site as needed, but in a less intrusive and safer manner.

1           Finally, reliefs for the third and fourth objection I'll take together. Tarmac  
2 accepts that the compulsory acquisition and temporary possession of this land  
3 within this area is likely to be required for the scheme, and it is accepting of this,  
4 but in regard to the EA permit area, it requests that sufficient time is given for a  
5 detailed review of the recently provided article 68 provisions to ensure it  
6 provides sufficient protection to Tarmac to allow them to fulfil their ongoing  
7 monitoring obligations, and provides them with an ability to surrender the permit  
8 in the future. The compulsory acquisition powers should not be confirmed until  
9 this is satisfied.

10           Then, in regard to the landfill area, it is requested a 3D model of the  
11 scheme highway and embankment design in this area, so it can consider relative  
12 heights at the interface between the scheme and their retained land. Without  
13 fuller analysis, we do not understand how the Examining Authority can be  
14 satisfied that a planning breach is acceptable.

15           To conclude, Tarmac has no in-principle objection to the Lower Thames  
16 Crossing scheme, but strongly objects to the proposed permanent rights being  
17 sought by the applicant. Tarmac are intent on reaching agreement with the  
18 applicant to ensure that National Highways can deliver their scheme, but based  
19 on temporary arrangements only. Tarmac also objects to the proposed  
20 temporary possession powers for the proposed access routes, but do see the merit  
21 in formalising temporary access agreements.

22           Tarmac have recently received Tarmac's – sorry, Tarmac have recently  
23 received the applicant's response, and this is now under consideration. On the  
24 face of it, this matter does appear to be moving in the right direction, and we're  
25 hopeful that a satisfactory resolution will be reached reasonably soon.

26           Tarmac have objected to the proposed compulsory acquisition and  
27 temporary possession powers in the landfill area, as acquisitions interfere with  
28 Tarmac's ability to monitor in accordance with the permit, and may also impact  
29 their ability to surrender that permit in the future. The applicant has recently  
30 presented an updated article 68 in the draft DCO to Tarmac's solicitor, and  
31 Tarmac's solicitor will shortly be reviewing this to see if it offers the comfort  
32 needed; and finally, the powers in the landfill area also overlap with Tarmac's  
33 planning obligations to restore –

34 MR SMITH: We have lost the monitor screens again, so if I can just –

1 MR COLLACOTT: I'm very nearly finished.

2 MR SMITH: No, don't worry. I'm not hurrying you. I'm just hoping that somebody in  
3 the tech team can – to make sure that we do have those, but please do continue.

4 MR COLLACOTT: Yeah, very nearly finished, and finally, the powers in the landfill  
5 area also overlap with Tarmac's planning obligations to restore the landfill land,  
6 and a 3D model has been requested, which will allow Tarmac to consider their  
7 position further. The sooner this can be provided, the better, but the compulsory  
8 acquisition powers, in respect of this land, should not be confirmed until the test  
9 can be satisfied, and that's it from me. Thank you.

10 MR SMITH: Thank you very much. Now, there are a couple of questions that I'd like  
11 to just check back with you on before I pass this over for an in-principle response  
12 from the applicant.

13 Firstly, in relation to the extent of the landfill area on the site, those  
14 submissions are made and, I think, understood by myself and my colleagues, but  
15 I was also interested in the effect of the permanent rights being sought in relation  
16 to the UKPN and National Grid transmission components on the site, and you've  
17 articulated a concern that the powers sought are excessive, because in your view,  
18 the development required can be carried out within the existing bundle of rights  
19 held by those two operators, but I just wanted to ask you: what are the  
20 operational land holding and employment consequences, as you see it, if those  
21 permanent rights were to be confirmed? In other words, what's the harm?  
22 What's the damage that would be caused to your operation as you currently see  
23 it?

24 MR DEWEY: James Dewey on behalf of Tarmac. I think, from our perspective, there  
25 may be implications in terms of future expansion to the site, future operation of  
26 the site, future proposals for the site if the current status quo that seems to work  
27 is changed.

28 MR SMITH: Okay. Now, in terms then of matters like health and safety, and the degree  
29 to which your workforce can co-exist with works being done to those assets, can  
30 you shine any more light as those as issues?

31 MR COLLACOTT: Piers Collacott. You're talking about the second ground of  
32 objection, regarding the access routes around the site, I think. So we've got a  
33 heads of terms circulating, and we proposed a fundamentally more perimeter  
34 route across the site to – you come in off Buckingham Hill Road, turn left, access

1 ZJ016, I think it is – that pylon there, and then shoot round the back towards the  
2 landfill site, access the PAB18 pylon, I think, and that takes away a lot of the  
3 internal routes that are proposed, and there would be less conflict between  
4 construction vehicles on site and the applicant’s contractors.

5 Getting to the pylon PAB19 is more challenging, but I get the feeling from  
6 the applicant the number of incidences that they might need to visit that pylon  
7 are likely to be few and far between, if at all.

8 MR SMITH: One of the questions I’ll put on the table now, not for yourselves but for  
9 the applicant, is to characterise the nature of the works sought, and therefore, the  
10 degree to which permanent rights are, in the view of the applicant, essential to  
11 deliver those works, as distinct from relying on the existing rights that the  
12 existing undertakers benefit from. I mean, what we’re trying to get a sense for  
13 here is the degree to which the nature and extent of rights sought are  
14 proportionate to the works being carried out. Okay. I’ll just check with my  
15 colleagues – are there any further questions to Tarmac before we hand over to  
16 the applicant? Yes, Mr Taylor.

17 MR TAYLOR: Yes, so Ken Taylor, panel member. Yeah, Mr Collacott, I just wonder  
18 if you could just help me to understand the issue that you have, because my  
19 understanding is that existing operators have a number of rights to both access  
20 and then carry out really quite a wide range of works, and I just want to fully  
21 understand where the harm arises for the applicant then having fairly similar  
22 rights that would be through the DCO. So I just really want to understand where  
23 the difference lies that would result in a change or an increase in harms.

24 MR DEWEY: So James Dewey on behalf of Tarmac. First of all, I think if we deal with  
25 the access route across the site, at the moment, you can see that there is a  
26 spaghetti network – I’m going to call it – of routes across the site in all sorts of  
27 different directions. At the moment, the current rights that the current operators  
28 have, so UKPN and National Grid, are far more – or are less intrusive. Let’s put  
29 it that way – circumnavigate around the outside of the site, and I think their  
30 frequency use is relatively small and there aren’t major works going on, so the  
31 vehicle movements are relatively minor in that respect. So that’s the difference  
32 in respect of those access routes.

33 In respect of the rights, I just think that the rights are there. They’re  
34 already in existence, and therefore, why do those rights need to be extended



1 further to National Highways? There is a level of, I suppose, permanence about  
2 those rights as well, but yeah, as I say, why is there a need for compulsory  
3 acquisition and removing the status quo when those rights are already in  
4 existence for them to do what they want to do?

5 MR SMITH: In that respect, there is a question that, again, I'm going to throw onto the  
6 table because I would like the applicant to pick this up, which is if one looks at  
7 the existing extent of rights to support the UKPN and National Grid alignments,  
8 if something were being sought by way of permanent acquisition because the  
9 applicants say that nothing less than permanent acquisition is good enough  
10 because they need to assure themselves that these works will be done, but were  
11 confined to the extent of the existing rights enjoyed by the two undertakers  
12 already.

13 So in other words, to use your words, the spaghetti of access arrangements,  
14 for example, was consolidated down to a much more simplified form of access  
15 that mirrored what is already provided, is there a compromised position? That  
16 is, that you might be prepared to consider agreement for permanent rights in  
17 circumstances where the applicant was prepared to observe that those rights are  
18 only necessary in relation to accessing the existing alignments in broadly the  
19 same way as the existing undertakers do, unless the applicant can point to us  
20 how they need to physically reconfigure those alignments and can prove that  
21 they do need that additional access.

22 MR DEWEY: James Dewey on behalf of Tarmac. As I understand it, the works that  
23 they require, because that was one of the questions you raised earlier, are  
24 contained in work OH4, and it's to do with earthing works on the existing  
25 pylons. So, as I understand them, they're fairly minor works that are required,  
26 so it's not clear why there is a need for permanent rights across the whole of the  
27 blue land. Combine that with the fact that the rights that the applicant is seeking  
28 through the DCO are only on a temporary basis, the conclusion is they must have  
29 to use and implement the existing UKPN and National Grid rights to access that  
30 blue land in any event, so why remove the status quo when such rights are going  
31 to be needed across the site on a permanent basis for the permanent future  
32 maintenance of the pylons and the earthing works that are undertaken? So I'm  
33 not sure there is a position whereby, as you suggest, whereby there is a need for  
34 those permanent rights to be implemented on Tarmac through the DCO process.

1 MR SMITH: Okay, well, we'll hear from the applicant on that point because I'm sure  
2 they'll have a response to it, and then I'll return to you for your concluded  
3 position in relation to that. I'll just check there with my colleagues. Are there  
4 any further questions?

5 MR PRATT: Yes, please. Ken Pratt, panel member. Can you just confirm for my  
6 colleagues and myself, when you've quoted that there's health and safety risks,  
7 what do you actually mean by health and safety in this particular aspect?

8 MR DEWEY: It's quite difficult to determine that at this stage because we don't know  
9 what vehicles and equipment the applicant is proposing to take on the site, but  
10 Tarmac have got extremely heavy machinery moving around their site, moving  
11 concrete blocks, moving the raw materials for the production of blocks, and  
12 there's quite a lot of scope for there to be collisions between vehicles on blind  
13 corners, especially around PAB19, which is a narrow corridor at the back end of  
14 the factory where product comes out of.

15 MR PRATT: Thank you for that. I just felt that some clarity was required. That was all.  
16 Thank you.

17 MR DEWEY: No problem.

18 MR SMITH: Okay, well, unless anybody amongst my colleagues has further questions,  
19 I think the best thing to do now is to ask who will be leading and it'll be Ms  
20 Tafur for the applicant. Okay, so let's hear the applicant's response. Thank you  
21 very much, Ms Tafur.

22 MS TAFUR: Thank you, sir. Isabella Tafur for the applicant. So I'll try to deal with the  
23 points in the same order that they were raised. So the first is a suggestion that  
24 there's no clear justification for the acquisition of new rights for the utility  
25 works, and that seemed, to me, to fall into two parts. One was the suggestion  
26 that there have been negotiations and they haven't yet failed, I think was the way  
27 it was put, and on that basis, compulsory acquisition of rights can't be justified,  
28 that the applicant doesn't recognise that as being the correct test. Plainly, we  
29 are continuing to engage to seek voluntary agreements. We will continue to  
30 engage even if and when a DCO is made. We'll always seek to acquire by  
31 agreement rather than exercise powers of compulsory acquisition where  
32 possible, and so we are actively engaged in negotiations with Tarmac. We have  
33 been for some considerable time.

1           The fact that they haven't yet reached a stalemate or failed doesn't mean  
2           that there is no justification for compulsory acquisition. Indeed, since the initial  
3           introduction of the utility land requirements in 2020 over the Tarmac site, the  
4           applicant has listened to the concerns raised by Tarmac and has engaged closely  
5           with UKPN and National Grid to refine the land requirements and seek to  
6           minimise impacts on Tarmac's operations, and since that land was originally  
7           introduced in those works, that has resulted in the reduction of some 12 hectares  
8           of land affected by compulsory acquisition/temporary possession on the Tarmac  
9           site.

10           As to the need for the rights in light of the existing wayleaves that pertain,  
11           we have explained in some detail in our response to Tarmac's relevant  
12           representation that National Highways has no power to divert utilities and it  
13           needs to seek such powers because they form a social aspect of the scheme.  
14           Their inclusion in the DCO means that the environmental impact of carrying out  
15           those utility works are properly assessed and taken into account as part of the  
16           project. The existing wayleaves date, I think, from 1958 and '60. They do not,  
17           in our view, provide sufficient rights to carry out the works that need to be  
18           carried out to the utilities in this location. So works OH4 and OH5, for example,  
19           include the installation of conductors, insulators and fittings between certain  
20           pylons.

21           Now, we'll set this out in further detail in writing, but the existing  
22           agreements in both cases define the electric line to which the powers relate, and  
23           in both cases the powers include the power to retain, use, maintain, repair, renew,  
24           inspect and remove, but not to replace or alter the electric line as defined, and in  
25           our view, those wayleaves wouldn't therefore cover the powers that are required  
26           to be undertaken to the utilities infrastructure here. Both UKPN and National  
27           Grid in their Statements of Common Ground, have confirmed their position that  
28           the power to carry out the works and the land and rights must be secured through  
29           the DCO, and I'll just give you the statement of Common Ground References.

30           For National Grid it's REP1-201 and for UKPN it's REP1-082. So their  
31           position is aligned with that that's been adopted through this DCO, and which  
32           indeed is consistent over numerous other DCOs, where utility works to divert,  
33           utilities are included and relevant powers and land rights are secured through the  
34           DCO. Just in terms of the maintenance or the inspection regime, obviously that

1 is likely to be a matter for UKPN and NGET, but our understanding is that for  
2 pylons and overhead lines there are requirements for annual inspections, one  
3 inspection per year.

4 In terms then of the access routes through the site, there have been a  
5 number of discussions about access arrangements, there has been heads of terms  
6 for an access agreement – have been issued and are now on their third iteration.  
7 Tarmac made certain suggestions and we responded earlier this month,  
8 accommodating many of their suggestions as to the arrangements for access  
9 within the site, and we are waiting for their response on that, and we're hopeful  
10 that heads of terms as access arrangements can be reached with Tarmac by the  
11 end of the examination. Their third point, I believe, related to the permitting  
12 issue, and again –

13 MR SMITH: The landfill.

14 MS TAFUR: The landfill and the EA permitting issue, and so we have provided, again,  
15 a response to Tarmac's relevant representation in which we proposed a SACR[?]  
16 commitment, which was to ensure that the relevant borehole was protected,  
17 remains in operation and remains accessible by Tarmac at all times, and that  
18 National Highways will engage with Tarmac prior to commencement of the  
19 work over the relevant plots to discuss and inform them of the measures to  
20 ensure the continued utilisation and accessibility of the boreholes. Article 68 of  
21 the DCO also covers this permitting issue, and it's right that that was updated, I  
22 think it was at deadline 4, albeit the provisions that it contained were already in  
23 the DCO, but in a different place.

24 Effectively, they were in the protective provisions for the benefit of the  
25 EA and they've now been moved to article 68 and they effectively provide that  
26 in the event of an inconsistency between the exercise of the powers in the order  
27 and any existing permit requirements, any such inconsistency or conflict is to be  
28 disregarded, and in article 68.2, that effectively any breach of the permit is to be  
29 disregarded if it's caused by the execution of the works authorised under the  
30 order and it lists a number of permits in the table which follows, and that includes  
31 Tarmac's permit.

32 MR SMITH: So your proposition there is that to the extent that Tarmac are discomfited  
33 by the prospect of being 'driven into breach' by activities carried out by National  
34 Highways, that is more than covered. That is resolved as you see it.

1 MS TAFUR: That's right. That's right. That's more than covered, and we've, in addition  
2 to this, offered them a SACR commitment and we have also committed to  
3 discuss with them if they have any different or additional wording for a SACR  
4 commitment or indeed a side agreement to offer them additional comfort, we're  
5 very happy to engage with them on those matters. Now, we appreciate that  
6 article 68 is relatively new to them. We have offered them a fees[?] agreement  
7 to go away and consider that and we're happy to engage with them on that in the  
8 event that there's some further drafting suggestions that they may have. Fourth  
9 point then, I think, was in relation to restoration conditions on their existing  
10 planning permission, and again, we say that that is covered by article 56 of the  
11 DCO, which effectively makes the same provision to that which I've just  
12 described in respect to the permitting. If the effect of the order is to lead to a  
13 breach of a planning condition, then no enforcement action is to be taken, insofar  
14 as that breach is caused by the execution of the DCO works.

15 MR SMITH: There is, to a possible extent, missing parties around this table, which are  
16 the regulatory beneficiaries of the licence and the planning permission, the local  
17 planning authority and the Environment Agency. Now, just remind me where  
18 they sit on this. I'm just trying to recall whether we have them content with that  
19 form of drafting or whether they have outstanding concerns about it.

20 MS TAFUR: Isabella Tafur for the applicant. Thurrock Council are content with article  
21 56 in relation to the planning permission. Discussions are ongoing with the  
22 Environment Agency as to article 68. They haven't yet signed up to that.

23 MR SMITH: Yeah, because again, one of the matters that we will have to give very  
24 careful consideration to is the practical environmental impact point which is that  
25 if breaches occur – as a matter of the commerciality of this, you may argue that  
26 you've relieved the burden from Tarmac, but if we've got an unhappy regulator  
27 still pursuing somebody, it might well be you, but if you've got an unhappy  
28 regulator and an enduring environmental effect, we need to have careful regard  
29 to the wisdom of switching off those provisions because we don't want to leave  
30 ourselves in a situation where a harm due to not what would have been a non-  
31 compliance endures, simply because you've just switched off the provision that  
32 would have led to it being addressed.

33 MS TAFUR: Isabella Tafur for the applicant. Yes, I understand that position and I feel  
34 certain that Thurrock would also have considered that in considering the benefits

1 or otherwise of the draft in which they signed up to. So that's, I'm sure, a fact  
2 they would have taken into account. What I'm not able to assist you on at this  
3 precise moment is the realism, from our view, of anything that we're doing on  
4 the site preventing Tarmac from complying with their restoration requirements.  
5 That's perhaps something I could come back to you on in writing.

6 MR SMITH: Yes, that would be much appreciated, at deadline 6, which, in turn, at  
7 deadline 7, would give Tarmac an opportunity to respond to that, because yes,  
8 to put this into a nutshell, we need to be clear that, as I've already indicated,  
9 there's a commercial driver here, which is lifting the burden of potentially  
10 uncertain liability from Tarmac as an operator, but then there's a much broader  
11 public purpose test, which is, why were those conditions imposed on the licence  
12 and the planning permission, respectively, and is there any realistic possibility  
13 of going into actual breach as a result of the works that National Highways  
14 would do? And if so, what's the effect of the removal and what's then being  
15 done? So if you can come back to us in writing on those at deadline 6, that'd be  
16 very, very helpful.

17 MS TAFUR: Isabella Tafur for the applicant. We will come back to you in writing. So  
18 plainly, any impacts that are caused by our scheme have been assessed.

19 MR SMITH: Already assessed.

20 MS TAFUR: Yes, have already been assessed. So if there are specific works in a  
21 particular area, for example, if there were particular works in the landfill area  
22 that we are causing, then those works will have been assessed and will already  
23 be included in the information for you.

24 MR SMITH: Yeah, I think we're looking at probably a considerably more bounded view  
25 of this than the broad question of EIA. We're looking at the very practical,  
26 enforceability point, which is, is there an enduring effect? You may have  
27 assessed it, but if there is an enduring effect and you've removed the control that  
28 would have allowed that to be enforced against and capped off, where do we  
29 then go? In some ways, it's a very bounded point, but it's one that – where there  
30 is a piece of thread that doesn't have a knot in it, as I see it, at the moment.

31 MS TAFUR: Understood, sir.

32 MR SMITH: Okay, please, I diverted you, so you might...

33 MS TAFUR: Sir, I think I had covered in broad scope the points I wanted to make in  
34 response.

1 MR SMITH: Okay, there were a couple of items that I intervened in Tarmac's primary  
2 submissions there that I put to them that I am going to put back to you, and the  
3 first is the spaghetti point, and that is that it's been put to us for Tarmac that  
4 there is quite a complex range of access being sought over their land, which is  
5 operational, and they are concerned about the harms to their operational land.  
6 As a consequence of that, questions I explored with them was, to the extent that  
7 we already have NGET and UKPN assets on that site, was there any reason why  
8 the existing pathways for access that currently take those undertakers to the  
9 relevant pylons, the relevant structures, couldn't be also equally provided for in  
10 this access agreement? Now, it seems to be Tarmac's submission that what  
11 you're showing at the moment in terms of the path of access arrangements is  
12 complicated and they find it difficult to live with. Is there any way of  
13 simplifying it in the interests of improving the operability of their undertaking?

14 MS TAFUR: Isabella Tafur for the applicant. Well, the spaghetti arrangement, as it's  
15 been described, I think, is an arrangement which seeks to use existing roads  
16 within the site rather than creating new routes, and if existing, the risk is through  
17 the blue land where access is currently taken. If further rights had to be provided  
18 along that, that would be likely to result in vegetation clearance and other such  
19 environmental impacts. So, in fact, it looks a bit like a spaghetti arrangement,  
20 perhaps, but that was really just seeking to use existing roads within the site so  
21 as to minimise disruption, but as I've said, there is an access agreement that is  
22 under discussion and is on its third iteration, and we think we've accommodated  
23 a number of requests that Tarmac have made in respect of access arrangements.  
24 So hopefully that will certainly narrow, if not resolve, the dispute.

25 MR SMITH: Okay, so if as a consequence of those conversations you ended up resolving  
26 – that you didn't need to acquire rights over quite as much of an extent of the  
27 internal roadways as it appeared to be shown on this plan, could it be that by  
28 moving towards the end of this examination that the extent of the rights that you  
29 might need could have been refined downwards?

30 MS TAFUR: As I understand it – Isabella Tafur for the applicant, the spaghetti is  
31 temporary possession rights and there are discussions, as I say, but even in the  
32 event of an agreement, our position is likely to be that we need the compulsory  
33 acquisition powers in the event of any breach or dispute to ensure that the works  
34 can be constructed and thereafter maintained.

1 MR SMITH: Okay, in terms of ‘thereafter maintained,’ once the temporary access for  
2 construction is gone, how will you be moving back to annual inspection and  
3 maintenance? Obviously, this will be in the hands very much of UKPN and  
4 NGET, but how would you actually be...? You’ve upgraded the pylons, you’ve  
5 re-conducted them, you’ve put some new insulators on. Now, how are you going  
6 to get to them in the post construction world, in the operational world?

7 MS TAFUR: I think on page 4 of Tarmac’s slides... I think it’s the one before that  
8 perhaps. Blue land is the permanent rights.

9 MR SMITH: Yeah, but if you needed to take a vehicle into there, or rather, NGET or  
10 UKPN did, then you would need, necessarily, to do some vegetation clearance  
11 to actually move a vehicle into that land.

12 MS TAFUR: I think that must be the case. What I’m not sure about is the likelihood of  
13 a vehicle coming in, and I think we’re just getting some help on that. Okay, so  
14 for example, at the boundary between the pink and the blue, where you see that  
15 sort of dog leg, that’s where they would come in from, and there would have to  
16 be some removal of vegetation there, as I understand it. If they had to get in  
17 with a vehicle, I think it would require some removal of vegetation.

18 MR SMITH: And that’s addressed in the environmental impact assessment in the ES?

19 MS TAFUR: I can’t give you an answer off the cuff to that question, sir, but I will  
20 certainly come back to you in writing.

21 MR SMITH: You can come back to us in writing on deadline 6. My reason for pursuing  
22 this is, of course, just to try and get a balance in the mind of the examining  
23 authority between the justification, the need for the temporary rights sought,  
24 because there are particular construction works going ahead in order to  
25 reconfigure these two assets, but then the fact that – two things are true, that  
26 you’ve then reconfigured them, but they’re still operational.

27 They then need to go back into the standard operational annual inspection  
28 regime for the two operators, and if the temporary rights at that point have gone,  
29 is it sufficient then that those operators are falling back on their existing  
30 wayleaves, or are we seeing something else going on within the blue land, within  
31 the permanent rights? And if so, what’s the nature of that and has it been  
32 assessed? [Inaudible]. Well, indeed, I mean, the existing wayleaves presumably  
33 endure. You’re not seeking to extinguish them in any way.



1 MS TAFUR: Isabella Tafur for the applicant. We don't have a positive proposal to  
2 extinguish them, albeit they could be extinguished under article 37.

3 MR SMITH: Indeed they could be.

4 MS TAFUR: But the difficulty, as I understand it, is that the definition of that which can  
5 be maintained, renewed, inspected, is what's already there, and we are proposing  
6 to change that, and so we need new rights to allow the maintenance, repair, etc.,  
7 of what we're providing.

8 MR SMITH: So, in other words, this has to create a layer on top of the agreements that  
9 are present in the wayleave to provide for additional maintenance of additional,  
10 what will then be new, physical kit that's been installed.

11 MS TAFUR: Yes.

12 MR SMITH: Right, okay. Gosh, it's a certain measure of complexity there. You can  
13 see from the tenor of our questioning that we still have some reservations about  
14 the rationale for – extent of the temporary access provision in circumstances  
15 where you've still then got an asset on site that will need to be accessed, will  
16 need to be inspected, will need to be maintained, and we're still not completely  
17 clear, that the permanent rights that you're seeking actually deliver that for you  
18 in a way that is clear, simple and straightforward and also has been assessed in  
19 the ES. So I think probably at this juncture, we need to step back from that,  
20 make sure we know what – your ground is clear.

21 You take the view that either that has been assessed or it hasn't, or  
22 alternatively, we then have the conversation about the pattern of rights and  
23 access, because at the moment, it does seem to be not quite as clear as it could  
24 be, but that in turn feeds back into our deliberations over the effect of the  
25 complexity of the temporary on the operation of Tarmac, and it also feeds back  
26 into our consideration of how sensibly you can then resolve a permanent  
27 situation, taking into account both Tarmac's submissions and indeed yours,  
28 which we have no firm view on as yet, because we have got to consider the  
29 merits of both of those sets of submissions. Okay, is there anything else?

30 MR PRATT: Just one thing. Ken Pratt, panel member. I asked the question of Tarmac  
31 about health and safety. When you come back with your deliberations on access  
32 and all the rest of it, if there's a concern about health and safety, you better  
33 address it as well.

1 MR SMITH: Yeah, that would be much appreciated. Right, Ms Tafur, anything else you  
2 need to say before I hand back briefly to Tarmac for a response in which I will  
3 indicate that this clearly is still a moving feast, but I'm going to focus both of  
4 you again, as I have with other speakers today, on the proposition that whilst  
5 deadline 6 may be a stretch because the applicant is going to respond to certain  
6 matters at deadline 6 that you won't have seen until that point, deadline 7 does  
7 become quite important, and again, we need to focus very strongly here on there  
8 being clarity and agreement about as much as can be made clear and agreed,  
9 which is not to pressurise you to agree to things that you are not proposing to  
10 agree to for good reasons.

11 But if there are good reasons, those need to be set out too, because if there  
12 is, as seems likely in this case, a set of matters that we then have to take away  
13 and adjudicate on in a recommendation to the Secretary of State, we need to  
14 know with absolute clarity what those issues are. So let's keep deadline 7 in  
15 focus for your ability to respond to the position that the applicant will set out at  
16 deadline 6. Okay, do you want to give us your...?

17 MR DEWEY: James Dewey on behalf of Tarmac. Absolutely, we're on board with that  
18 and happy to work with the applicant to resolve as many issues as possible, and  
19 we'll certainly encourage that. Just in response on a couple of points that I  
20 mentioned. I'll keep it brief. As you say, there are a number of details in there.  
21 In respect of the rights to do works to the pylons and the electricity cables, the  
22 applicant set out that they didn't feel the existing wayleaves enabled them to, I  
23 think they said, alter and replace where the issue was. I don't know how much  
24 altering and replacing they're actually doing in respect of the cables here.

25 As I understand it, the works are quite minimal, but if there is a concern  
26 about what rights might be in that wayleave, then Tarmac are happy to enter into  
27 discussions to agree the temporary rights that will enable the applicant to do all  
28 they need to do to those pylons on a temporary basis. I think I'd also just state  
29 that if the wayleave is okay for access in the future, which seems to be the  
30 position that was being set out, then I don't understand why it's not okay for the  
31 future maintenance of the network.

32 And then the third point, just in respect of the permit and the planning, and  
33 I think it's probably more of a planning point but may cross over to the permit  
34 point, is the applicant's obviously set out the articles within the DCO that give

1 protection to Tarmac, and as set out, we are trying to understand that in more  
2 detail at the moment, but where there is another area of concern is the permits  
3 and the planning actually relate to land outside of the DCO boundary. So what  
4 happens to those permits and planning applications in respect to land outside of  
5 the DCO boundary? Is that covered by those articles? and that is a big question  
6 at the moment as well.

7 MR SMITH: Ms Tafur, I have to allow you to come back on that one.

8 MS TAFUR: Isabella Tafur for the applicant. Just on that one, the drafting provisions  
9 extends to land outside of the order limits.

10 MR SMITH: Okay, well, we will deliberate on that one. Thank you. You can see what  
11 the applicant is saying they intend to do, but we have to give it, amongst other  
12 things, careful consideration, because one of the things that we will be looking  
13 at very closely is the degree to which there are powers being sought in the order  
14 that have effect outside the order limits as currently defined and described. Now,  
15 that's not to say it's impossible because it has been done in certain previous very  
16 clear and well justified circumstances, but it's certainly an area where examining  
17 authorities tend to view with very great care what is appropriate, because  
18 probably, as is obvious, if you start to acquire powers in an order to do things on  
19 land, outwith the land understood to be subject to the order, then you need to be  
20 very clear that you understand who is being affected and what is being affected  
21 and then what, in aggregate, the environmental effects of all those things are.

22 MR DEWEY: James Dewey on behalf of Tarmac. Yeah, absolutely, and Tarmac take  
23 those obligations very seriously themselves and obviously don't want to find  
24 themselves in a difficult position where they're in breach of some permitting or  
25 planning issue. They have other sites with the local authority as well, so their  
26 adherence to those obligations is very important to them.

27 MR SMITH: Okay, I think we've probably taken this as far as we can now, but we can  
28 see at least an element of a roadmap towards some further discussion and we  
29 can also see a process leading this examining authority to receive the information  
30 that it needs to adjudicate on matters that might be outstanding. So unless  
31 you've got anything further to add, I will thank you very much for your  
32 contribution.

33 MR DEWEY: Thank you.

1 MR SMITH: Now then, Mr Holland, the rest of the afternoon is yours. What I will flag,  
2 and again, I'll be guided by you on this. This is earlier than we'd normally take  
3 a partway break in the mid-afternoon. However, you may not want to be  
4 disrupted by getting into your stride and then being told 'we're going to break  
5 for 15 minutes.' So if you would like us to stop now for 15 minutes and then  
6 literally have a clean run, I'm very happy to do that as well.

7 MR HOLLAND: Sir, if everyone can bear with us, what I'd like to do is deal with E and  
8 K Benton first and then allow Tom to disappear off and do some farming before  
9 the weather turns tomorrow and then if we could have a break after Benton and  
10 we'll do the rest before we depart.

11 MR SMITH: That sounds absolutely fine. Let's do that. Thank you very much.

12 MR HOLLAND: At the risk of everyone fearing death by PowerPoint, the slides that  
13 hopefully the case team will put up – if we could go to the slide before point 42,  
14 please. Thank you. What I propose to do, if it's okay with everyone, is I'll deal  
15 with each landed client first with some summing up points right at the end of the  
16 afternoon if I may, if we've got time, but these slides are designed to tell a story.  
17 E and K Benton, and I refer you to REP4-204, which is our deadline for  
18 submission on the draft statement of common ground between the applicant and  
19 my client. The ownership of Benton's South Ockendon is shown edge red on  
20 the plan.

21 The area of land that's comprised within that red edging is about 505 acres.  
22 The extent of land take, by which I mean permanent temporary possession and  
23 temporary possession with permanent rights, is overlaid as shaded yellow. So  
24 you'll see land at the frontage of South Ockendon Hall where there are only one  
25 or two parts which are shaded yellow but the majority of affected land is  
26 obviously towards the Mardyke[?] in the north. In addition, overlaid onto that  
27 – and this is all just for context, is the permitted Medebridge Solar Farm which  
28 is hatched black, which is all on my client's land and which seeks to find its way  
29 around the applicant's alignment.

30 Broadly speaking, I think both projects have somehow managed that. If  
31 we can go to the next plate please. It's relevant in the context of Medebridge  
32 Road particularly and also the North Road WCH, but this plate just gives you  
33 the overview from 2018 of my clients' development partners EA Strategic Land  
34 and Bellway which is the master plan developing for the South Ockendon

1 sustainable urban extension. As you'll see, it touches, in relation to land,  
2 towards the north of the alignment but also in relation to the North Road WCH  
3 and that land is also comprised in Schatzmann[?] family, who are also an  
4 affected party in relation to the moat around South Ockendon Hall.

5 The next few plates, just in case we need to refer to them, just simply pick  
6 up the latest version hopefully of the land plans and you can whizz through these  
7 plates 44, 45, 46 and 48. They're there for us to refer back to if we need be. If  
8 we just pause there on 46, please. That's the main swathe of land as it comes  
9 through the Benton land over the top of the Ockendon landfill in Veolia's  
10 ownership, the majority of which, frankly, is alignment, but which also is  
11 consisted of the permanent acquisition proposed for environmental mitigation.  
12 What I suggest, if we can, is go to plate 49. Thank you.

13 Dealing with the ecological mitigation that's proposed, we've got a mix  
14 of three habitats. Open mosaic habitat, which is the southern section along the  
15 Mardyke hatched black. To the north of that, in either side of the alignment, is  
16 the flood compensation land that's proposed and then just to the south of the  
17 alignment between there and the balancing pond and the FP136 overbridge is an  
18 area of crafts and planting. Referring back to the draft statements of common  
19 ground between the applicant and E and K Benton, in the applicant's response  
20 under compensation land (generally), which is 2.1.4 of the draft SOCG, the  
21 applicant refers to its preference to engage 'competent authority' e.g. a local  
22 authority or similar body who has an established track record of maintaining  
23 such habitats.

24 It further states that this assists with compliance risks. E and K Benton  
25 have managed this land for the past 27 years. They have the labour and  
26 machinery and skill set to manage land for a variety of uses, and are also engaged  
27 in managing land under the countryside stewardship scheme across their holding  
28 at Arden Hall, at Horndon on the Hill. In our view, to consider a local authority  
29 or similar body as the only competent authority to manage land for ecology  
30 purposes is short sighted and it fails to recognise the value that existing  
31 landowners who understand this land bring to that arrangement.

32 In terms of compliance risk, we would also argue that in all likelihood  
33 local authorities will subcontract this work to others with no 'buy-in' as to how  
34 it fits with adjoining land management and the issues that arise in this area,

1 including, might I add, unauthorised access and consequent management, a  
2 theme that we may well come back to in other areas at issue.

3 Further, it is an arguable point as to whether a single local authority or  
4 similar body is able to deal with such a large land area in addition to the areas  
5 that are already under their control, and therefore it is submitted that the current  
6 landowners can provide a suitable risk management tool for the applicant in  
7 spreading risk across the landowners hosting mitigation land.

8 It is a case of the right person leading to the correct management and we  
9 consider that we are fit to manage land. In the case of species rich grassland,  
10 open mosaic habitat and flood compensation land, particularly where that flood  
11 land is to be managed as wet dry grassland, or even arable land that acts as a  
12 flood compensation area. The mechanism for ensuring landowners are obliged  
13 to meet mitigation objectives where that landowner wishes to retain the freehold  
14 and is willing to enter into such arrangements can be achieved either through a  
15 section 253 agreement or conservation covenants or similar agreement legally  
16 binding on all parties.

17 Those agreements will need to recognise the management cost of  
18 undertaking work and compensation for a change in land use and its effect on  
19 value, but as a matter of principle, the proposal to acquire the freehold is objected  
20 to where landowners are willing to enter such agreements. If we just move on  
21 to plate 52, coming to the next point under Benton, which is the Medebridge  
22 Road. Plate 52 shows that an indicative route through – apologies for the quality  
23 of the plan, of the Medebridge Road as it feeds into the back of South Ockendon  
24 Hall.

25 As I've referred to before, the areas of edge red are the Benton's  
26 ownership, coloured yellow is where the applicant scheme affects that land  
27 holding, hatched black, is the solar farm of Medebridge Solar and then shaded  
28 green is the area of the South Ockendon urban extension master plan from 2018.  
29 The next few slides, and these were all for context, show the Medebridge Road,  
30 plate 53, 54 and 55 running from the north, which is the moat area at South  
31 Ockendon Hall on plate 53, coloured blue all the way down to the Stifford  
32 Interchange onto the A13.

33 And then lastly, plate 56 shows, broadly speaking, where the Medebridge  
34 Road, as an access route into the development that's proposed for South

1 Ockendon, would feed into that master plan. It is quite crucial, as has been  
2 explained to the applicant on a number of occasions, that the rights that the  
3 Bentons have as freehold owners of land and a right – unrestricted right, I should  
4 say, over Veolia’s ownership of Medebridge Road, not only is an important right  
5 to preserve and yes, I acknowledge in the draft DCO, those rights of existing  
6 units are to be preserved, but there’s a challenge around the use of the  
7 Medebridge road by multiple passes during construction.

8 Also acknowledging that, if I understand the applicant’s documents  
9 correctly, that use of the Medebridge Road is for a limited period of time and  
10 not necessarily for the full construction period. They’ll no doubt confirm or  
11 otherwise if that understanding is correct. Also, notwithstanding that clearly  
12 those development proposals are still subject to a local plan and still subject to  
13 a planning application, but particularly with the ministerial statement delaying  
14 the start of this project, you can well see, as the local plan of Thurrock comes  
15 forward, these projects starting, or at least being under construction at the same  
16 time, given the extent and the length of time that the LTC project may last for.

17 If nothing else, the development of South Ockendon, as it’s shown on that  
18 plan, we consider is probably a 10 to 15-year build out phase. So our submission  
19 in relation to the Medebridge Road is that we do consider that the landowner and  
20 EA Strategic Land should be represented on the traffic management forum that  
21 the applicant has in place, not only for existing use, but also to recognise future  
22 development plans. We also consider that a technical working group of those  
23 development partners, other users and the applicant’s design and build  
24 contractors should be in place to agree a methodology and a timetable for works  
25 that understands how these two construction projects will fit together.

26 Thirdly, ensure that suitable mitigation is in place to address any adverse  
27 effects of the Project on future development at South Ockendon, and lastly, on  
28 this point, to agree the works that are required and how those would be  
29 implemented to the Medebridge Road during the applicant’s use and what the  
30 condition of that road will be post their use, acknowledging that there are  
31 multiple users, that the applicant’s use will put further pressure on the condition  
32 of that road over its full length. We come next to plate 57. Plate 57 is the  
33 applicant’s overall plan of the public rights of ways. They exist through this

1 section of the project and as the examining authority are aware, WCH routes  
2 have been an area of great concern to landowners across the scheme.

3 Plate 58 is the applicant's proposed WCH route network and in particular,  
4 circled there, but not circled on this plan, but I'll refer to it on the next slide, the  
5 maintenance track south of the alignment, highlighted with a blue circle which  
6 is also proposed to serve as an additional right of way in addition to that that's  
7 already being provided off the Mardyke way to the north of the alignment. The  
8 next slide, 59 – you see, I promised we'd get through them quickly, circles the  
9 area of the North Road proposal coming off the North Road overbridge into the  
10 top of South Ockendon, just for context.

11 Onto the next slide, 60, in relation to the general arrangement plans, and then  
12 61, 62 and 63 show the North Road route as an aerial photograph compared to  
13 the existing footpath on the west side of North Road, and then looking north and  
14 looking south, the footpath as it exists at the moment, and I would draw your  
15 attention in particular to the location of the 30/40 mile an hour zone. If I just set  
16 out some broad issues – I'm afraid this may take a little while, then I'll hand  
17 over to Mr Tom Benton who can just talk on WCH routes from his perspective  
18 practically, and I suspect he may say a few things that would chime with other  
19 landowners along the route who are not here today to say their piece.

20 Referring to the applicant's project design report, part E, 'Design for  
21 walkers, cyclists and horse riders,' which is document APP-512. 2.1.4 of that  
22 document, 'Recognises a latent demand to walk and cycle in the Tilbury area –  
23 was theorised.' Now, that refers to Tilbury but it also refers to other sections of  
24 the route. The project design documents reference design anticipating future  
25 development, but there has been no formal engagement as far as we are aware  
26 with landowners or their development partners as to how they see those plans  
27 and how public rights of way would fit, and in fact we'll go as far as to say that  
28 at one point in the project the WCH routes proposed came as somewhat of a  
29 surprise.

30 Referring to 7.4, which is the project design report part D, and general  
31 design north of the river, north of the A13 junction to the M25, which is  
32 document APP-510. Paragraph 4.6.8 states that, 'The design is in line with the  
33 aspirations of other green infrastructure projects in this area. Recreational access  
34 has been enhanced for improvements to the local public right of way network,



1 especially along the existing Mardyke Trail.’ However, this turns to a wider  
2 point of need versus want. Does the project need to provide these additional  
3 routes and/or upgrades to cycleways or bridleways?

4 It appears to us to go beyond what the project is and strays into wider  
5 wishes of other stakeholders where those would normally fall within, say, other  
6 development master plans or as a separate discussion on specific routes outwith  
7 of the project or future development. For example, 4.1.2, which I think is in  
8 project design report part D, references that there is a real drive to encourage  
9 more walking and cycling and the promotion and aspiration of such by local  
10 authorities, but is that really a task that is required of the project and the applicant  
11 in front of us?

12 Of all the WCH routes proposed, only one has been amended to address  
13 landowner comments and that was the FP136 that is proposed to be a bridleway  
14 north of the alignment at Mardyke Way on Benton land. I’d also draw your  
15 attention, whilst we’re on the project design – it talks a lot about open farmland,  
16 open fenland in this area. What the project design documents, and I have double  
17 checked a number of times, which are dated back to October 2022, they don’t  
18 reference the future development of the Medebridge Solar Farm, which is to start  
19 construction in quarter 1, 2024, and which was permitted in May ‘22.

20 And also, other than a general reference to a solar farm, I think east of  
21 North Road, it doesn’t refer specifically to the Ockendon Solar Farm which was  
22 permitted in January 2016, or indeed the Bulphan Fen Solar Farm which was  
23 permitted in October 2021, all of which are a continuous line of solar from the  
24 Ockendon landfill through the Medebridge Solar Park through to Bulphan Fen.

25 MR SMITH: Just to intervene very briefly there, Mr Holland, those two that you’ve just  
26 most recently referred to are the ones that have also been physically constructed  
27 that we observed on the site inspection.

28 MR HOLLAND: That’s correct.

29 MR SMITH: Yeah.

30 MR HOLLAND: If I may, just at this point, I’ll just hand over to Tom Benton to set out  
31 some of his points.

32 MR SMITH: Indeed, yes. Mr Benton.

33 MR BENTON: Thank you for letting me come and speak to you all today. I really  
34 wanted to be here to talk to you about the proposed WCH routes and explain

1 why the plans will create so much trouble for me, my family, my business and  
2 the local community. I farm at South Ockendon, where the LCC cuts our farm  
3 in half. When the project was first discussed, we were initially against it, but  
4 were getting used to the idea of the road bisecting the farm. However, a few  
5 years later, out of the blue came these WCH routes and footpath upgrades with  
6 no prior consultation. They are something that we object to much more strongly  
7 than the actual road.

8 We have a number of footpaths that already cross the farm and on the  
9 whole these are respected and used responsibly. However, we have one  
10 bridleway that neighbours our land called the Mardyke Way and this causes no  
11 end of problems. Unfortunately, by opening up land to horses, bridleways also  
12 open up the land to anyone, and this means we get offroad motorbikes and quad  
13 bikes roaring up and down the bridleway on a daily occasion. Thurrock has  
14 become a magnet for off-roading and vans are known to come from London and  
15 Kent loaded up with their motorbikes.

16 The vehicles also drive all over the fields with crops growing in them with  
17 complete disregard to our livelihood and others' enjoyment of the countryside.  
18 The worst incident we had was one sunny day, when we had 27 offroad vehicles  
19 come off the bridleway, driving all over the farm and around my house for three  
20 hours. The noise they made and the damage they caused was terrible. My  
21 children were too scared to go out in the garden for weeks afterwards and we  
22 have had to spend thousands of pounds on security by blocking gaps where they  
23 can get off the bridleway and onto our land.

24 The financial cost is nothing compared to the psychological one that it has  
25 caused and our weekends are not a time to relax and enjoy the outside, but  
26 instead I'm constantly listening out for that familiar noise and wondering  
27 whether it's our land I can hear them on. This, in turn, has made the Mardyke  
28 Way a no-go area for horse riders, as many who I've spoken to say it's too  
29 dangerous. We have farmed the land at South Ockendon since 1995, and I've  
30 only ever seen horse riders use a bridleway a handful of times. Likewise, it puts  
31 off walkers, especially those with dogs. I walked it on Easter Sunday and  
32 Boxing Day last year, two days when you would expect to see a lot of people  
33 out. On both days, I had two motorbikes roaring past me, and only on the Boxing  
34 Day did I actually see another walker. Bridleways have had the exact opposite

1 effect of what they were designed for in the first place, and are now putting  
2 people off the area. I regularly engage with the council and the police about  
3 these problems, but there are no solutions, and ultimately it is left for the  
4 landowner to defend their property.

5 This is not a problem I've been facing alone, as I've heard the same from  
6 many other farmers in the area, some of whom have been physically assaulted  
7 when challenging the vehicles. I would strongly argue that any existing public  
8 rights of way stay as footpaths, or at most designated footpaths and cycle paths.  
9 The same goes for any of the proposed new rights of way. As landowners, the  
10 ownership must stay in our possession and not transfer to a local authority. We  
11 must be able to put access restrictions in place such as stiles and gates, to protect  
12 our land, which we can do with current footpaths and would need to be able to  
13 do for cycle paths as well. Unfortunately, there is nothing on the market, or that  
14 can be made, that can allow access for a horse that does not allow access for  
15 these motorised off-road vehicles. We have tried them all, but with no success.

16 I cannot stress how much trouble bridleways bring, and they would have  
17 a far greater negative impact on the countryside and rights of way than any  
18 positives. Thank you.

19 MR SMITH: Thank you very much. Just before we move on then, I note the submission  
20 that you've made, that you've given very careful regard and had a range of  
21 conversations with relevant authorities about how to practically prevent or  
22 enforce against motorised use of the bridleways. Is it fair to say that if that  
23 problem were capable of control, and I know it's your main submission that it's  
24 not, but if that problem were somehow capable of control that the level of  
25 concern that you have about the proposed WCH network would be different  
26 from the level of concern that you're expressing here?

27 MR BENTON: I haven't seen or heard of any measures that there are though to allow  
28 access to a horse that doesn't allow this access to the vehicles. So I'd like to say  
29 I could, but I just know that the council will say, 'Oh, we can put this in place,'  
30 and then...

31 MR SMITH: It would be circumvented –

32 MR BENTON: Yeah, they can easily – a bridleway stile is so low off the ground that a  
33 motorbike can easily get over it, and the same with a quad bike. I've spoken to

1 farmers, obviously to the NFU nationwide, and no one has been able to solve  
2 this problem.

3 MR SMITH: Okay. So stepping back from that. We understand that that's a strong in  
4 principle submission of yours that there isn't a technical solution, then the  
5 solution is around not providing bridleway rights in your view.

6 MR BENTON: Yes. We have – so the footpaths across the farm, we regularly get  
7 cyclists who are not supposed to cycle on the footpath. We mentioned the stiles,  
8 the gates we put up, they've been able to – they get their bikes through easily  
9 and they're fine. They treat the farm respectfully and responsibly, and it means  
10 they can get out and enjoy the countryside. Most people have a bike, so that  
11 gives them access to the countryside. Not everyone has a horse, and it just seems  
12 you're opening up the countryside to everyone and causing so many problems  
13 just for a very few amount of people that have horses. Regrettably for them,  
14 because I'm sure horse riders act responsibly, but it's what it opens it up to  
15 elsewhere that's the problem.

16 MR SMITH: Okay. Look, I wanted to explore those issues for two reasons. Firstly,  
17 because I'm very conscious that there's a relationship between those concerns  
18 and your underlying concern in terms of compulsory acquisition. This is a  
19 compulsory acquisition hearing, so what we're going to then do is focus on the  
20 compulsory acquisition dimension of that, but I did just want to also flag, as I'm  
21 sure Mr Holland is aware, that we do have an agenda on Tuesday of next week  
22 that we very deliberately made provision for a discussion about non-motorised  
23 users, WCH, whatever acronym you prefer to use.

24 Now, I don't know, Mr Holland, whether you've requested to appear at  
25 that, but if we find ourselves pressed for time this afternoon, there's a separate  
26 conversation about the principle of use and use-types that could occur in that  
27 hearing, allowing you then to focus the rest of your discussion this afternoon on  
28 compulsory acquisition, if that makes sense.

29 MR HOLLAND: It does, sir. My next reference was back to the procedural deadline C  
30 submissions which myself made, and also my esteemed colleague, Mr French,  
31 on behalf of other landowners would have been made as well. So we're very  
32 happy to come back next week and deal with the broader issues, and we can just  
33 deal with the final few points that relate to compulsory acquisition.

1 MR SMITH: Yes, I think that would be very, very helpful, and I'm very conscious that  
2 that means you're coming back, but I think that would inform a much broader  
3 conversation than we can actually sensibly have here, because we've also got to  
4 get through your other clients' CA –

5 MR HOLLAND: I wouldn't want to ask Mr Benton to come back next week. He may  
6 have other things to do. I put those comments of his on the record for that next  
7 hearing as well.

8 MR SMITH: Excellent. Right. Thank you very much.

9 MR HOLLAND: So if I'll just finish off with some submissions in relation to routes and  
10 compulsory acquisition. We do object to the North Road WCH and the new  
11 footpath link south of the alignment of the Mardyke, as we've submitted  
12 previously. A suggestion that the North Road WCH can't be accommodated  
13 within the current highway, where that refers back to the issue of the 30-40mph  
14 zone, I would suggest a project of this size can deal with the movement of a 30  
15 or 40mph speed limit zone on a local highway as part of the project.

16 We've discussed bridleways, and we can come back to that general  
17 principle again but fundamentally, coming to the real issue in relation to WCH  
18 routes, which is the permanent acquisition of land to achieve those, if you go to  
19 plate 64, please. If you take the North Road, and there are other examples of  
20 this which we'll come to in a bit in relation to other clients, the North Road  
21 permanent acquisition proposal cuts right across the frontage of our clients' land  
22 onto the North Road, just at the point where the main junction for the  
23 development of land as part of the South Ockendon master plan would sit.

24 I really struggle with – we, frankly, struggle with the concept that  
25 permanent acquisition is required in all cases to deliver new public rights of way.  
26 There is a perfectly legitimate route to achieving that which is called dedication,  
27 and this has been a long running issue with the applicant, and I don't think it's  
28 too strong to put it that attempts to engage on this have not yielded much  
29 response.

30 There have been very limited detailed discussions as to how to deal with  
31 public rights of way and the acquisition of those rights and there is a solution,  
32 but it needs to be formally put by the applicant that a route of dedication is  
33 something that we are open to discussing without losing the freehold of land,  
34 which causes other issues because it severs access from one part to another in

1 some cases, and that will have consequences for not only specific use of land as  
2 it exists today, but if the project design documents talk to trying to recognise the  
3 future aspiration for development, this doesn't seem to me to be something that  
4 is consistent with that project objective.

5 One last point on WCH routes, page 80 of the project design report part E,  
6 paragraph 6.1.12, states that this strategy has been developed through extensive  
7 dialogue with local user groups, local authorities and landowners. I couldn't  
8 disagree more with the reference to landowners, I'm afraid, and that is a shortfall  
9 of the project and its design to date. I would just remind everyone my file opened  
10 on this in 2014. It'll be ten years next year that we've been discussing the Lower  
11 Thames Crossing on behalf of landowners, and here we are, two months away  
12 from the end of an examination, still discussing issues.

13 If I might then just move down to FP136, the overbridge[?] and the  
14 Medebridge Solar Farm, the first plate, 66, shows the route and the general  
15 arrangement plans. The next plate, 67, shows the – in particular, I draw your  
16 attention to the permanent acquisition that seems to run for quite a length of our  
17 client's land along the existing Fen Lane farm track that is in our freehold  
18 ownership. Acknowledging that the actual bridge structure itself would need to  
19 move across to National Highways ownership, we do question how far the  
20 permanent rights need to extend along that track section, and then plate 68 shows  
21 the relationship to that zone to the solar farm of Medebridge Solar.

22 I will acknowledge that the applicant and the landowners are in  
23 discussions at the moment in relation to a deed of grant for the landowners'  
24 continued use, and anyone that's authorised by it to use that route, to recognise  
25 the existing use that they have. If the legals are agreed, that's fine. Our concern  
26 is what happens if that legal arrangement is not in place, and we need to secure  
27 not only the rights but also the design and maintenance responsibilities that come  
28 with it. There is an issue that's arisen in relation to a bridge on the A13 where  
29 just this maintenance issue has arisen as a consequence of a third party hitting  
30 the bridge and there is a discussion over who is responsible. I'm afraid, 'once  
31 bitten, twice shy'.

32 There is also an issue which was explained on the accompanied site visit  
33 on 13 September in relation to the width and weight capacity of the bridge. Now,  
34 we accept there is a point to which that bridge design can only cope with so

1 much, and I'm referring specifically to the requirements that Medebridge Solar  
2 have to access their substation south of the alignment from Fen Lane. That issue,  
3 for those that weren't present at the site visit, relates to receiving plant into the  
4 substation, and particularly the transformer, which itself is 120 tonnes in weight,  
5 and the crane that is required to lift it is 144 tonnes.

6 No transformer, no substation, no electricity production, so it is absolutely  
7 crucial that the current permitted in-construction and to-be-in-construction sites  
8 that are prior to the construction of the project in the Lower Thames Crossing  
9 have that right secured firmly, whether that is in the stakeholder action and  
10 commitments register or somewhere that is legally binding. It is absolutely  
11 crucial to the funding of those projects that that commitment is legally  
12 watertight. Now, I understand, to be fair to the applicant, that there are  
13 discussions around access from a slip road junction on the Lower Thames  
14 Crossing at grade point after the Mardyke viaduct. Until that agreement is  
15 signed, I think it would be fair to say that landowners and Medebridge Solar  
16 Limited are keen to ensure that the DCO recognises that commitment and what  
17 is required. They are the final points that I wish to make for E & K Benton.

18 MR SMITH: Thank you very much, Mr Holland, and thank you, Mr Benton, for  
19 attending and delivering your component. What I'm going to suggest is, rather  
20 than having the applicant start work on that and then be kind of cut off at the  
21 pass, it is 3.45. Let us break for 15 minutes, then we'll come back and we'll  
22 have a look at the structure of your remaining submissions, Mr Holland, and  
23 then we'll look at how best to structure the applicant's response, whether to  
24 come in one global block in relation to all of Mr Holland's submissions, or  
25 alternatively to have into position where you finish Mr Benton, we hear the  
26 applicant, and then we move on.

27 MR HOLLAND: That's absolutely fine. If the applicant could give that indication  
28 during the break as to how they want to deal with it, then I can let Mr Benton  
29 disappear up the road.

30 MR SMITH: Yeah. Okay. Thank you very much. So, 3.45 – we'll resume on the hour.  
31 Thank you very much, ladies and gentlemen.

32  
33 **(Meeting adjourned)**  
34

1 MR SMITH: Good afternoon again, ladies and gentlemen, and welcome back to the late  
2 afternoon session of Compulsory Acquisition Hearing 3 in relation to the Lower  
3 Thames Crossing application. My name is Rynd Smith, lead member of the  
4 examining authority. Now, just before we get ourselves back underway again,  
5 did you manage to have a conversation in the break between the applicant and  
6 Mr Holland about the best way for the applicant to respond?

7 MR TAIT: Yes, sir, and I think unanimously we thought it was best if I briefly respond  
8 whilst Mr Benton is here, and then come back, subject to the overall timings, to  
9 hear Mr Holland on all the others, and then if there's time to get through all that,  
10 plus time for me to respond at the end.

11 MR SMITH: And I will also say as well, for Mr Holland's benefit, that we're very  
12 conscious of the fact that he still has a number of clients he needs to cover. We  
13 are very, very interested in making sure that we hear his full case, so we're not  
14 going to take the hammer to proceedings at 5.00 p.m. We are, with the  
15 indulgence of everybody else around the table, going to press on a little into the  
16 early evening if that's okay, because I think we need to settle these matters and  
17 hear Mr Holland's submissions properly and fairly. Okay, so we'll hear from  
18 Mr Tait, and then we'll go back to Mr Holland. Everything okay from your  
19 side?

20 MR HOLLAND: Absolutely fine, sir.

21 MR SMITH: Okay, good.

22 MR TAIT: Sorry, could I just mention – when we come to the remainder of Mr Holland's  
23 case, particularly the Motts[?], on behalf of the Motts, Mr Nick Clark, who's the  
24 lead ecologist, I was intending for him to respond on certain matters. I know he  
25 has got an absolute deadline at 5.30, but I would hope that I can bring him on at  
26 the beginning in response to the points. I can reshuffle whatever order we want,  
27 so –

28 MR SMITH: We will do our best, and Mr Holland may need to allow some flexibility in  
29 terms of the way he manages his case as well, to make sure we cover that matter  
30 before he has to leave. Mr Tait.

31 MR TAIT: Thank you, sir. So in relation to Mr Holland's points on behalf of the  
32 Bentons, I've got seven points which are inevitably, and suitably for this time of  
33 day, at a relatively high level, bearing in mind that we will follow up in writing.

34 MR SMITH: In detail in writing, yes.



1 MR TAIT: Sir, the first point relates to the provision for compulsory acquisition in  
2 relation to certain ecological areas and flood mitigation areas, rather than  
3 agreements by way of section 253 or otherwise. I wasn't going to spend time  
4 on that because I pressed you on that at CAH 1, as to the importance of a high  
5 quality of management, and the experience of NH where they have gone down  
6 section 253 routes in the past and failures have arisen. So although there are  
7 exceptions with KCC, Shorne Woods, where that high degree of experience is  
8 appropriate, in general this is a route that is not followed except, for example,  
9 for bat boxes, where there isn't that degree of management. That's point one.

10 So point two relates to Medebridge Road and the right of way to access  
11 CA13 and the interaction with the existing access provisions. The applicant says  
12 that will be appropriately governed by the traffic management plan for  
13 construction, and it is anticipated that these landowners will be invited to the  
14 traffic management forum. So consideration has been given as to whether  
15 there's any further commitment we can give at this stage to give comfort in that  
16 regard. So that's the second point. The third point relates to the general need to  
17 provide for the WCH proposals, in particular the bridleway that's been  
18 mentioned. Again, sir, I was going to suggest that is deferred to next Tuesday  
19 when that will be coming up generally, and we've explained our position in  
20 relation to the MPS more widely, and the specific strategy that underpins that.

21 MR SMITH: Agreed, but subject to – Mr Holland, you are going to be there, I take it.

22 MR HOLLAND: Yes, sir.

23 MR SMITH: Okay.

24 MR TAIT: I should just though indicate that so far as any suggestion relating to plate 62  
25 and 63 are concerned, which showed a narrow curb[?] centrally, that is not  
26 considered to be an appropriate alternative, and again we will explain that in  
27 writing. The fourth point relates to the solar farm provisions. There is an  
28 agreement with Ockendon Solar Farm in place, and that provides for the  
29 relocation of the consented but unbuilt location of the substation away from the  
30 main alignment, and it provides for an enhanced specification of the substation  
31 cable under the Lower Thames Crossing.

32 In relation to the other solar farm, the Medebridge Solar Farm, there is an  
33 agreement that is being progressed with Medebridge Solar Limited, as well as  
34 with the owners of the joint substation, who are Fen Lane Grid Company. The

1 agreement in draft with MSL covers the construction interface, installation of  
2 electric wiring, and the permanent access rights over LTC via [work 8C?], and  
3 that is intended to be secured by a deed of grant with the vendors, which is how  
4 they fit in, and the agreement with Fen Lane covers the provision for access in  
5 from the main line, but only in exceptional circumstances, if the transformer  
6 needs to be removed or replaced. So it's anticipated both those agreements are  
7 to be signed prior to the end of the examination. So that's the position in relation  
8 to that item.

9 Fifthly, there was reference to absence of consultation on WCH matters,  
10 but the routes were expressly consulted on in the 2020 supplementary  
11 consultation, and also in the design refinements consultation in 2022. And I  
12 should add both the solar farms have been included in the cumulative  
13 assessments. Sixthly, there is the question of enforcement in relation to  
14 bridleway, which is obviously open to cyclists, and a concern about unauthorised  
15 use in that context. There is a design principle PE006, which requires robust  
16 measures to, amongst other things, deter anti-social and unauthorised use, but I  
17 know that what Mr Benton would like to hear is what those might be.

18 MR SMITH: What are they? I mean, that's the real nub of it. I'm not asking you to  
19 answer that right now, but...

20 MR TAIT: I'm not going to give my own personal evidence on that.

21 MR SMITH: No, but that is a living question in our minds still – what are they?

22 MR TAIT: Yes. So we will flesh that out in our answer. That's the mechanism, but we  
23 need to give some colour to that.

24 MR SMITH: Thank you.

25 MR TAIT: And then finally in relation to dedication, we have sent a copy of a draft  
26 agreement with another landowner to Mr Holland, which sets out the format and  
27 terms of a tripartite agreement – i.e. landowner, applicant and the highway  
28 authority, in this case Thurrock – and that would allow circumstances for the top  
29 two spits to be dedicated as highway by the landowner, and if an agreement is  
30 reached on that basis, then that might address some of the concerns that are being  
31 raised. We will be referring to that in relation to other landowners. The rights  
32 – there would still need to be a right in relation to the land over which the  
33 highway would pass, but that would address the question of the need for  
34 permanent acquisition in the event such an agreement was –

1 MR SMITH: So just to be clear here, that would move circumstances from a permanent  
2 acquisition of land to a permanent acquisition of the relevant rights –

3 MR TAIT: Of the right in association with –

4 MR SMITH: In association with entry into a tripartite agreement.

5 MR TAIT: Yes, sir.

6 MR SMITH: Okay. Noted.

7 MR TAIT: And that applies – we’ve brought that to the attention of Mr Holland in this  
8 context, and that is open to the Bentons, whom he represents. So those were my  
9 seven points.

10 MR SMITH: Thank you very much. So I will return briefly to Mr Holland and ask if  
11 there are matters that can’t be addressed in writing that you just need to pick up  
12 in closing out the Benton’s case.

13 MR HOLLAND: Thank you, sir. So just to be clear on the last point. So I understand  
14 the dedication point to apply to all proposed WCH routes where permanent  
15 acquisition is required across certainly all of my clients. Is that correct?

16 MR TAIT: Those sitting around me all say the same thing, yes.

17 MR SMITH: Thank you. So again, just to be clear for us, that there is then the potential  
18 for a modest – within the scale of the overall proposed permanent acquisition of  
19 land for the project as a whole – but nevertheless a highly-relevant reduction in  
20 the permanent acquisition of land in favour of the permanent acquisition of rights  
21 in circumstances where such agreements could be entered into.

22 MR TAIT: Sir, it may be the appropriate way forward is that one would keep in the  
23 compulsory acquisition powers, but just agree not to exercise them. That’s a  
24 more straightforward and well-traversed route.

25 MR SMITH: Yes, and what would amount to what some have referred to as a falling-  
26 away provision as well, where you have a power, but you make it conditional  
27 that in circumstances where something else is also true, you annotate[?] that the  
28 order removes the exercise of the power from you.

29 MR TAIT: So can I come back to you on the precise mechanism, because there are one  
30 or two nuances around exactly how one frames that, but that’s the broad  
31 direction of travel.

32 MR SMITH: Yeah, noted.

33 MR HOLLAND: Thank you. So I suppose just thinking it through, thank you for  
34 agreeing to come back on bridleways. I think that feels to me – there may be a

1 point around extent as well, which can flow over to the broader issues under ISH  
2 10, but I suspect the general objection to upgrade to bridleways is a point for  
3 that hearing as well, which seems to me to be still an outstanding issue. And I  
4 see particularly the management of mitigation land as being an issue which will  
5 be causing continual discomfort to landowners, particularly the Benton's, as it  
6 goes hand in hand with the loss of quite an extensive area of freehold land, so I  
7 would welcome the applicant's commitment to re-looking at that, bearing in  
8 mind the deadlines that you've been setting out to others during the course of  
9 today's hearing.

10 MR SMITH: And I think at the end of the afternoon we'll need to have a discussion  
11 about timings, but let's wait until we've heard the rest of the cases that you wish  
12 to put forward.

13 MR HOLLAND: Thank you. Yeah.

14 MR SMITH: Okay. So that leads you to the end of the E & K Benton Ltd submission.  
15 Thank you very much, and thanks once again, Mr Benton. Right, Mr Holland,  
16 onwards.

17 MR HOLLAND: Thank you. Onwards we go. I suggest, given where we are in the day,  
18 rather than leaving the Motts until last, if we deal with the Mott family now, if  
19 that's okay. There are a number of points and, again, as I did with the Benton's,  
20 an overview first, leading into mitigation land, northern portal access track at  
21 the RBP[?] location, Linford borehole and water pipeline, [inaudible] land and  
22 River Thames jetty and wharf access, access to land south of Station Road,  
23 special category land and WCH routes, where we can just home in on some  
24 specifics, given that the comments will equally apply to Motts, as we've just  
25 been through.

26 Moving on, point one, again similar colouring. So the extent of land  
27 within the Mott family ownership is etched red in East Tilbury and which, as  
28 will be familiar to everybody now, forms effectively the northern portal section  
29 before it gets almost to the Tilbury Loop Line. The area etched red is  
30 approximately 630 acres within the Mott family ownership. The area shaded  
31 yellow is all that land which is affected by either permanent, temporary, or  
32 temporary with permanent rights, which is 75% of the Mott family ownership at  
33 East Tilbury, 477-odd acres or thereabouts.

1           The area hatched black is the current area of the of the Ingrebourne Valley  
2 land restoration activities, which were seen on the accompanied site visit on 13  
3 September. Broadly speaking, that covers an area of about 245 acres, 87 of  
4 which is the ashfields where FA extraction is occurring in landfill, and also  
5 includes 50 acres to the river frontage, which is hatched black but without any  
6 yellow colouring, which is the 50 acres within the Free Port zone currently, with  
7 the area almost a circle-ish area to the north of that which is 28 acres of section  
8 106 land, outside the order limits but associated with the current land restoration  
9 operations of Ingrebourne.

10           If we go onto plate 2, as part of what is now quite a long running promotion  
11 of land for development at East Tilbury and Linford generally – and that  
12 promotion of land for particularly residential use goes back to 2003, in the days  
13 of a promoter called Lansbury[?], which then moved into Colonnade[?], which  
14 then moved into Cogent[?], which now rests with Mulberry Strategic Land, who  
15 are also an affected party, which we’ll come to under the Linford Land Group.  
16 The capacity study that’s in front of you is to recognise Thurrock Council’s  
17 continuing identification of East Tilbury as a sustainable urban extension within  
18 their local plan and, as we understand it, will continue to be so in the next  
19 iteration of that plan. That capacity study shows the extent of land that would  
20 be capable of providing 1,400 homes and over half a million square feet of  
21 promotional use in broad terms.

22           I will just draw your attention specifically to the areas as they are  
23 numbered. You might want to zoom in a little bit for everyone’s eyes. So 1A  
24 is 43 acres, which is the purple south of Station Road, which is outside the order  
25 limits, other than a proposed WCH route which runs through the middle of it.  
26 Area 1B, which is the green area to the south of there, is 54 acres and is the  
27 proposed area of permanent acquisition for ecological mitigation purposes by  
28 the applicant. Area 2, which is the light orange area, is about 19 acres or so  
29 where there is temporary possession, and a part of which is also permanent  
30 acquisition for the replacement of common land at the old drove[?].

31           And then lastly 3A, B, C and D, which is the pink area to the north of  
32 Station Road, is compound CA5 as part of the applicant’s project, which we  
33 understand will essentially be used for the duration of the project, however long  
34 that would be, and which, as the examining power and those present on the site

1 visit will recall, sits right opposite one of the farmhouses of the Mott family, Mr  
2 Mott Senior, which is the area of white right in the middle of all of that.

3 MR SMITH: And just to be clear there, that was adjacent to the tyre business that we  
4 met at.

5 MR HOLLAND: That's correct, yes.

6 MR SMITH: Okay. Thanks.

7 MR HOLLAND: And again, for reference purposes, plates 3, 4, 5, 6 and 7 detail the  
8 areas within the land plans of the applicant that are relevant to the Mott family.  
9 I hope you'll all appreciate that I won't necessarily refer to plot numbers when  
10 it comes to some of these landowners. I think we might be here for some time  
11 if we did.

12 MR SMITH: We might be here for a very long time indeed. No, I mean, if we feel that  
13 our understanding of the geography of this is slipping, we'll come to you. But  
14 at the moment, we're content.

15 MR HOLLAND: You're all in the right place, thank you. If we move on to plates 8 and  
16 9. As I pointed out particularly in the context of the land capacity study – not  
17 least because it helps orientate people quicker – the area hatched black which is  
18 just to the foot of this plan, and if you then slip on to the next plate, the top area  
19 of hatched land is the open mosaic habitat proposed under the area of what we  
20 call 1B. And then the area to the south of that, Coalhouse Point, which is  
21 proposed to be the wetland habitat. And then plates 10, 11 and 12, which show  
22 the general arrangement plans, again show the area of, broadly speaking, Tilbury  
23 Fields, which obviously takes up quite a chunk of land as well.

24 The same points if I may this afternoon that were made in relation to the  
25 Benton land would apply to the Mott family land, except we do recognise that  
26 the management of a wetland habitat on plate 11, being Coalhouse Point – no,  
27 sorry, plate 10. No, plate 9. Thank you.

28 MR SMITH: We were talking about losing our geographical bearings.

29 MR HOLLAND: Oh, indeed. Here I go. I'm losing bearings in my own PowerPoint. I  
30 mean, we do recognise that there will be mitigation land, if the applicant receives  
31 its consent, that will be less easy for a landowner to manage. However, whilst  
32 we acknowledge that in the case of Coalhouse Point – and I'll come to a more  
33 general point about that in a moment – where there are areas of open mosaic  
34 habitat, broadly speaking those areas are quite consistent with parts of land that

1 we would manage now, and that point applies to all landowners, so I will  
2 continue to come back to this. It is an area of disagreement with the applicant,  
3 I think, that if they feel that the only competent means of managing that is to let  
4 it rest with another authority, I would dearly like to invite them back in five or  
5 10 years after the project has completed to see how that management is  
6 progressing.

7 Not only that, it's not just about management, it's also about policing land,  
8 and these areas become wastelands. The same point might also apply to Tilbury  
9 Fields, which in itself has wider issues in the context of the amount of spoil  
10 material that's proposed to be deposited on Tilbury Fields. It may be less a CA  
11 point, but I think there remains an air of disquiet within the Mott family  
12 ownership and our lessees to the sheer extent of spoil that is designed to be  
13 deposited on Tilbury Fields, given our knowledge of that land. From the Mott  
14 family's perspective, records go back to the late 1800s through to where we are  
15 now, and Ingrebourne Valley have been managing the land now since the late  
16 1990s, so we've got a feel for what it does and what it doesn't do.

17 There are areas of Tilbury Fields that could be managed quite easily by  
18 the landowner, and there are areas that we would be quite happy and willing to  
19 sit down with the applicant and discuss in more detail as to how that management  
20 might be brought forward, but again it goes back to the same point. The  
21 permanent acquisition of certain land areas for mitigation, unless they are then  
22 properly policed and managed long-term – because once this is changed, it's  
23 changed – that requires a significant level of thought that I think at the moment  
24 we feel unsatisfied that that has been given that thought, and we haven't had  
25 comfort from the applicant that we won't end up with land adjacent to retained  
26 land that not only are we policing our own land, but we end up policing  
27 somebody else's as well. Land which, of course, used to be ours.

28 If we move on to plates 13 and 14, 15, thank you to the applicant for giving  
29 us some consideration here in discussions over the last month or so, but if you –  
30 we are keen to try and find a resolution to the loss of land that would otherwise  
31 be a) farmed, and secondly would also contribute long-term to the development  
32 plan of East Tilbury should that be part of the local plan, which we envisage it  
33 will.

1           There is arable land, which is shaded blue, to the foot of the ecological  
2 mitigation area, the open mosaic habitat above it, and to the north of the  
3 Coalhouse Point wetland habitat, which if managed in exactly the same way as  
4 the land they've identified for mitigation – there's no difference, it's arable land  
5 that is managed as arable land – and therefore we see certainly an opportunity to  
6 amend the mitigation land boundaries to reflect what may be land that we can  
7 give for mitigation purposes, but which would have to come with an amendment  
8 to the boundaries to the north in an area which is capable of doing other things  
9 for our benefit, rather than just the project.

10           I will add that we certainly would have gone further in the land area, but  
11 trying to seek compromise, we've looked for a one-to-one solution in terms of  
12 acreage in order to see if that could be achieved. So we would like a commitment  
13 fairly early now from the applicant as to whether that is acceptable or not,  
14 because that remains an area of objection for the reasons that are obvious. We  
15 can provide them with additional, alternative land to achieve the same purpose.  
16 The only caveat to that is that we would require a drainage route or the provision  
17 for drainage from the land orange, yellow, across the land blue, simply because  
18 that's the natural topography of that land as it sits.

19           If we can then go to – we'll come off from mitigation now and on to the  
20 northern portal access track. Plate 16, which shows the emergency vehicle track  
21 in relation to the general arrangement plans – so as it comes down from the  
22 junction and then turns east into the northern portal building area, with the RVP  
23 current location, which is that grey square, adjoining the access track.

24           If you go to plate 17, the area for that track is proposed, and the RV point  
25 is proposed as permanent acquisition. We did set out – and I won't repeat them  
26 here in detail, but we did set out in REP1-320, section 4, our objection to the  
27 acquisition of that route of the freehold. There is a concern that the project –  
28 and there's been much talk about the Tilbury link road in the context of other  
29 hearings throughout the examination. There is a general concern that the project,  
30 in acquiring the freehold, creates a situation where a future Tilbury link road  
31 would piggy-back off the fact that that land is owned by the National Highways,  
32 or the local authority, and whilst it may be a compensation point, or otherwise,  
33 to be discussed, the fact that the freehold is then acquired as part of this project,



1 being blunt, runs the risk of my client being deprived of a value, which would  
2 be associated with access into a port facility.

3 Now, others may or may not disagree with that particular point, but just  
4 cutting to the chase, that's the issue we're getting at here. It's that one project  
5 effectively lands the means for another project to achieve its aims. Accepting,  
6 so the applicant is clear and acknowledging that this project is not delivering a  
7 Tilbury link road, but another RIS[?] National Highways project might. So our  
8 submission, as was put in the deadline 1 – and to be clear on this – is that we  
9 consider that those rights for the emergency vehicle route into the northern  
10 portal, and accepting that the applicant has given us a right of use under SACR  
11 for access to our section 106 land, that can be achieved without the freehold  
12 acquisition of land, in our view.

13 If the freehold acquisition of land has to take place in order to achieve that,  
14 like any other private arrangement for the sale of freehold land, I think we would  
15 be looking for a firm, legally binding commitment that any other use is  
16 prevented, without there being further reference to the original freeholder, i.e.  
17 the Mott family. One way or another, given that we will be a joint user of that  
18 route, there does need to be some means to agree the construction of that route,  
19 which we don't understand the full detail of. That will no doubt come in the  
20 design and build phase of the project, but again, we want to have that dialogue  
21 with the applicant and its contractor at the appropriate time.

22 Moving on to the RVP location, we proposed – and forgive me. I haven't  
23 made a note of where we proposed it, but we have proposed it. Plate 20 is  
24 probably the best one. Thank you. We have proposed an alternative location.  
25 Bearing in mind that this area of land within the track is land that is to be returned  
26 to us where it is only temporary possession, we have suggested an alternative  
27 RVP, which is north of the ditch towards the junction layout, simply because it  
28 would then be a smaller part of land which is less usable than the land parcel  
29 that is coming back to us to the south of that location.

30 We've offered, in our statement of common ground, to have discussions  
31 with the applicant and the emergency services and safety partner steering group  
32 to agree that location. I'm quite happy to be corrected on this point, but I was  
33 given to understand that the steering group were also questioning the location of  
34 the RVP point, and whether it was actually too close to the northern portal as a

1 means of stationing emergency vehicles where there is a portal incident. But  
2 again, I'm happy to be corrected on that point.

3 Which brings us then to the Linford borehole and water pipeline – excuse  
4 me. Plates 23 and 24 show the route of the pipeline, coloured blue, which, as  
5 we're all familiar now, is a land with permanent rights. The applicant has  
6 responded to our comments the draft DCO at deadline 1 in deadline 2, and  
7 particularly paragraphs 5.7.3 of the applicant's response and 5.7.4, which I  
8 won't repeat, other than to say the last sentence of 5.7.4 says, 'Permanent rights  
9 are[?] required for the insulation operation of the temporary water pipeline,  
10 which will be removed following construction.'

11 I'm sorry to keep coming back to this point with the applicant. I am, as  
12 others are, struggling with this concept that the temporary water pipe requires  
13 permanent rights. I'm very happy to discuss that with Essex and Suffolk Water,  
14 but it seems counter intuitive that something that is temporary, and something  
15 which the applicant is committing to remove following construction, should  
16 carry permanent rights with it. The concern, and particularly in relation to this  
17 route over the land that's shown on plates 23/24, and we will come to in the  
18 relation to the Linford Land Group holdings, is the effect of those permanent  
19 rights on future use of land, even if the pipe isn't being used.

20 For example, if those permanent rights then sit with Essex and Suffolk  
21 water as a statutory undertaker, or Northumbrian water, if that's who it ends up  
22 being with, I refer back to other hearings where Northumbria have already stated  
23 their position that they may see the Linford borehole as being a facility that they  
24 will use for other purposes post the project. So our concern is what effect those  
25 continual permanent rights would have. Again, it comes back to the slight issue  
26 of a concern of piggy-backing off the project what the project needs to then find  
27 we end up with something else long-term as a consequence, again, well placed  
28 or misplaced. But the concern is still there.

29 So our submission on that is that there is no justification for permanent  
30 rights for a temporary water pipeline. What's required is temporary. In relation  
31 to the water pipe itself, once the final detail of the water pipe is known, given its  
32 bearing on all sorts of current and future land uses, particularly in the context of  
33 not only the landowners but their development partners as well, Mulberry  
34 Strategic Land, we do feel that there is a working group required on that

1 technical side of the water pipeline to understand how that bears on other issues,  
2 and we will come to that, specifically in relation to Mulberry Land, in a moment.

3 We then come to retained land and the river Thames jetties and wharf  
4 access. Sorry. I'm just going to have to move something. My neck's starting  
5 to crane a little. Plate 25 shows you the general location, or an aerial Google  
6 Earth image of the section 106 land – 28 acres which is associated with the  
7 current land restoration operations – and also the location of the wharf, which is  
8 under licence from the Port of London Authority, circled red, and our operational  
9 jetties, which are owned by Ingrebourne Valley and the marine operator, but  
10 which come on to land in the ownership of the Mott family, circled yellow.

11 Plate 26, if we can move on, please. Broadly speaking, our understanding  
12 is that the – in fact, actually, probably go on to the next plate, 27 – might be  
13 easier. Thank you. As I referenced earlier, the SACR does provide a  
14 commitment that the applicant is to provide us with access along the northern  
15 portal access track into our section 106, retained land on the west side of the  
16 alignment. Unfortunately, what it doesn't do specifically yet is recognise the  
17 presence of the wharf and the jetties. Plots – I said I wouldn't refer to plots.  
18 Well, I'm going to now. Plot 16-40, 16-41 and 16-44, which are the green –  
19 thank you. [Inaudible]. So 16-40 is the little green on the left, and then yellow  
20 is 16-41, and then blue is 16-44. That land actually sits within the ownership of  
21 the Mott family and, as you can see, is not shown as permanent acquisition.

22 The land – the white space to the west of the pink-coloured area is what  
23 we all commonly refer to as the 50 acres which is option to the Port of Tilbury  
24 London Limited, as part of the freeport, and without breaching commercial  
25 competencies, there are arrangements under the term of that option for the  
26 relocation and continued access to the jetties, 1) to fulfil our land restoration  
27 obligations on Goshems Farm and the ash fields, should the port require that  
28 land under option, and 2) to support a new wharf and jetty location along our  
29 river frontage, outwith of the applicant's scheme at some point.

30 The reason for that is that the wharf and jetty complex, however it is  
31 constructed at any one time, and whatever planning permissions it may or may  
32 not be subject to from Thurrock Council and permissions from the Port of  
33 London Authority, is a significant piece of infrastructure. For every tide, that  
34 current jetty complex is capable of accommodating six barges with inert

1 material, which is 1,500 tonnes of barge. That's approximately 9,000 tonnes in  
2 a 24-hour period, which is 310 lorries in a 24-hour period, which are not on the  
3 highway network river, but which are on the river instead.

4 The severance issues that are created if access to those jetties, which are  
5 well-established now and have been in use for some considerable time, was  
6 subject to time-limited planning permissions. There is no reason why they  
7 would not be granted again in the future. The severance of access to those is a  
8 considerable issue, not least for the highway network, but also, you'll all  
9 understand, potentially quite a significant compensation issue, looking at issues  
10 in perpetuity. So we feel that the SACR commitment needs to go further to  
11 commit to that.

12 What I would just point out is 7.4, the project design report, part D, which  
13 is the general design north of the river, Tilbury to A13, junction A, which is  
14 document APP-511. On page 13, it references, under the column of  
15 opportunities, land-filling operations and acknowledge that these will continue  
16 after the project is complete, so access will need to be maintained and project  
17 works designed for future loading. It goes further to say that landfills allow the  
18 project to retain as much spoil on site as reasonably practicable to limit number  
19 of vehicle movements. It then goes on to say, 'Integrates access, such as to  
20 existing jetties, into the landscape restoration works.' There's never been, other  
21 than once on an indicative plan, an access shown to the jetties in the context for  
22 the Tilbury Fields layout, and even with the SACR commitment from the north  
23 portal access track, there still is a lack of detail as to how that access will be  
24 provided over land which the applicant is proposing to permanently acquire for  
25 Tilbury Fields.

26 If we can go on to – coming off the northern portal and go across back to  
27 Station Road. If we can go to plate 31/32, please. 31 shows the west and  
28 northwestern edge of compound CA5 on the far right of the plan, which sits  
29 north of Station Road. Plate 32, which is the next plate, shows  
30 southeastern/south-southeastern part of CA5. The applicant, in conversations in  
31 relation to other parts of the scheme and the Linford Group area to the north of  
32 there, have given indications that a corridor would be provided from the north,  
33 broadly along the black arrow, to allow access into Station Road, which is  
34 outside the order limits – that land – where the arrow sits in the middle of.

1           The reason for that – and this is important – is that the effect of the project  
2           on the ability to bring land forward for other uses, or indeed existing use, but  
3           particularly for other future development uses, given that there is an overbridge  
4           facility in relation to the development of land at Linford to the north of the Mott  
5           family land – that overbridge across the Tilbury Loop line would also serve the  
6           Mulberry Strategic Land holdings to the south, and therefore without that access,  
7           even though the land that the arrow falls into is outside the order limits, by dint  
8           of the use of the land to the north, the project actually prevents that land coming  
9           forward for development within an earlier timescale, and therefore has possibly  
10          unforeseen, but certainly adverse, issues on the ability to develop that land in the  
11          timescale that is not affected by the project, as we’ve seen from the capacity  
12          study, which is the next slide.

13           Same arrows, marked yellow – probably in the same position. So without  
14          that provision – and in fact, the broad location of the overbridge route is shown  
15          on that plan as a gold line to the northeast of areas A, 3A and 4. You can see  
16          how that would link up to the overbridge line into area 1A, which is sitting  
17          outside the order limit. So, whilst the fence line of compound CA5 is shown to  
18          allow for a corridor, we would like a firm commitment from the applicant that  
19          that will be part of the design and build phase of the project, and if that has to sit  
20          in stakeholder and commitments register, then so be it. I think we need  
21          something firmer than to allow the design and build phase of the project to deal  
22          with that. We need that commitment now, please.

23           Moving on to –

24          MR SMITH: I’m just going to check where you’re sitting in relation to the remainder of  
25          submissions on the Motts interest, because I’m just looking at the remainder of  
26          the other matters we have to cover, pleasingly.

27          MR HOLLAND: I think you’ll be surprised at how quickly we can get through the rest.  
28          All I would is that I’ve just got one point. I’m afraid it is a point of principle,  
29          but I need to raise it, on special category land, which is next. The next part is  
30          WCH routes, a lot of which we have covered, but I can pick up on two specifics,  
31          and then we’re done on Motts and can move on to the Linford Land Group after  
32          that.

33          MR SMITH: Okay.

1 MR HOLLAND: Plates 34 and 35 show the existing route of common land at Old Drove,  
2 which really is a road to nowhere because it starts from Station Road and then  
3 lands right in the middle of the ash fields, with no further route beyond that. The  
4 common land is in the ownership of another freeholder, but the applicant is  
5 proposing the replacement of that common land on land that is within our Mott  
6 family freehold owner. As a point of principle, that's a matter of objection, and  
7 it sits very uncomfortably with the family that their own freehold is being  
8 imposed on in that manner. I'm afraid I don't see that as an area that family are  
9 likely to yield on, which brings us on to WCH routes.

10 So, in the interests of time, as I did earlier in the context of E & K Benton  
11 Limited, plates 36, 37 and 38 deal generally with the network of WCH routes  
12 which are proposed. All the general comments that I made in relation to the  
13 earlier submissions remain the case in the context of the Mott family, with the  
14 exception that there was a meeting with the applicant in March 2022 where a lot  
15 of these issues were set out and where there was a clear minute that both parties  
16 need to liaise carefully to ensure that impacts are minimised. I'm afraid that's  
17 as far as that commitment has gone, and the result is, if you look at plate 38, and  
18 in fact more particularly plate 39 – it's probably a better illustration.

19 The current permanent acquisition severs access across Station Road, into  
20 our land north of Station Road, and particularly in a development context, the  
21 permanent acquisition of that route would, in effect, create a ransom strip. Ditto  
22 with the land that's outside the order limits and the permanent acquisition of a  
23 route that runs north to south, which now then passes directly adjacent to  
24 Goshems Farm House, where there isn't an existing right of way present, and all  
25 the issues that come with managing that.

26 So they are two points in relation to the WCH routes, which need further  
27 consideration, particularly if the applicant was not minded to move their position  
28 on permanent acquisition. Although we understand from Mr Tait that that may  
29 not be the case. In other words, they're prepared to consider not the freehold  
30 acquisition of these routes, but some other form of delivering them. Although I  
31 think the –

32 MR SMITH: Mr Tait is looking puzzled. Obviously, you'll have your right of response  
33 here, but just to cut to the chase on this, I take it that we are referring to the  
34 whole issue of a dedication agreement.

1 MR HOLLAND: That's correct. Yes.

2 MR TAIT: On that basis, I don't need to look so puzzled.

3 MR SMITH: Indeed. Good. Excellent.

4 MR HOLLAND: Then lastly, if we can just go to plate 41, the route of the two WCH  
5 routes up from the south are overlaid onto the Mulberry Strategic Land land  
6 capacity study, and so you can see how they would bear on that development,  
7 should it occur in the future. You'll be please to know, that's where I get to the  
8 end in relation to the Mott family's submissions.

9 MR SMITH: Indeed. Now, in the interests of time here, is it possible then to move  
10 through the remaining submission for the remaining groups that are represented  
11 by you, and then applicant can essentially respond globally to all of them?

12 MR HOLLAND: Yes.

13 MR SMITH: Good.

14 MR HOLLAND: If we could move next to the Linford Land Group, which is the  
15 principal land owner at Linford in relation to land which is subject to an existing  
16 planning application and also temporary possession with permanent rights,  
17 proposed by the applicant. But it is also relevant to include Mulberry Street  
18 Strategic Land, who hold an option over all of the land within that family  
19 ownership. If we go to plate 69, again, the area of land within the Linford Land  
20 Group is edged red, and the area of land affected by the project is shaded yellow,  
21 which equates to approximately 101 acres.

22 If we then go to plate 70, approximately 23 acres is identified as permanent  
23 acquisition. The mitigation land, which is the area to the north of Muckingford  
24 Road – plot 24132, I think, it is – which is 13.70 acres, and then the area towards  
25 the alignment, which is proposed to be acquired permanently for the retention  
26 pond of another four acres, and then the Muckingford Road overbridge which is  
27 another five and a half acres.

28 However, the land holding north of Muckingford Road, which includes  
29 land to be temporarily occupied, shaded blue and green, equates to  
30 approximately 39 and a half acres, and in the context of development, the  
31 permanent acquisition of part[?], but the temporary of others, essentially renders  
32 the land north of the Muckingford Road incapable of viable development  
33 because of the placement of the mitigation land in the area that it currently exists.

1 Plate 72 shows the area under the control of Mulberry Strategic Land at  
2 Linford and East Tilbury, which includes land in the Linford Land Group and  
3 also, land in the ownership of the Mott family, as we've looked at previously.  
4 So Lynford Land Group – blue. Mott family – green. Others in yellow and  
5 beige. 73 and 74 are the land use and framework plans which we submitted at  
6 deadline 4 or 5, after the accompanied site visit. MR SMITH: 4, after the  
7 accompanied site inspection. Yes.

8 MR HOLLAND: So everyone should have those, and just to reiterate, the current  
9 planning application, which was originally validated in 2016, was updated in  
10 2023, on a with and without-Lower-Thames-Crossing scenario. The  
11 with-Lower Thames-Crossing scenario shows the area shaded pink to the north  
12 of the land use layout as not being developable, and results in a development of  
13 830 dwellings. Plate 75 and 76 show the land use and landscape framework for  
14 the full capacity of the development, which is up to 1000 dwellings, so a  
15 difference of 170 units on those current estimates.

16 The area of mitigation land, which goes to plate 77, is hatched black. The  
17 unused zone, which is shaded yellow, is within the utilities corridor, with the  
18 balancing pond to the west. As I had said previously, the mitigation land – the  
19 block of mitigation there – is approximately 13 and a half acres, and broadly  
20 speaking, there or thereabouts, the area of land shaded yellow in that  
21 approximate location is roughly about the same area, give or take. The project  
22 design documents do speak to connectivity, particularly in the case of the  
23 Chadwell link, which is the zone up from across the Tilbury Loop line, up  
24 through the Muckingford Bridge road and beyond, and I would refer you to  
25 paragraph 5.5.6 of APP-511, which is the project design report, part D, north to  
26 the A13 junction.

27 The utility gap between the main alignment and the location of the Open  
28 Mosaic Habitat proposed north of the Muckingford Road does not seem to  
29 reflect that and is disconnected. If such a habitat is required, connectivity would  
30 suggest a mitigation area which is within the utility corridor immediately  
31 adjacent to the drainage retention pond, and then argue that is the better place  
32 for it. Cutting to the chase, the placement of mitigation in that zone, which is an  
33 area which is not developable by us in terms of actual built units, for the obvious  
34 reasons, is a utilities corridor, is already land that could be provided for that



1 purpose for the applicant, and would mitigate the quite considerable loss that we  
2 would suffer with a with-Lower-Thames-Crossing scenario in the context of that  
3 development.

4 This is something which we have continually submitted to the applicant  
5 during not only the course of this examination, but in the time that we've been  
6 engaged with them. If such an amendment was made, then it would be perfectly  
7 sensible for the applicant and Mulberry Strategic Land, and their respective  
8 contractors, to have a technical working group to deal with the timing of that  
9 mitigation land, delivery and the interaction with Mulberry Strategic Land's  
10 developments. In terms of timescales, we do expect the current planning  
11 application to go to committee in January 2024, and therefore delivery of the  
12 scheme at Linford, subject to consent being obtained, is a very real prospect, and  
13 one which could quite easily come before the applicant's project itself. Phasing  
14 plans have been submitted previously.

15 If I could also then take you to – plates 79 and 80 show the broad route of  
16 the Linford water pipe, but plate 81 is probably where we need to land. The  
17 same points arise in relation to the Linford, as they did in the context of the Mott  
18 family, but they're perhaps a little bit more acute in relation to the Linford Lang  
19 Group and Mulberry planning application. I'm afraid you'll just have to bear  
20 with me on this because it's important that I set it out.

21 The route of the pipeline broadly follows the spine road of the  
22 development, and we've had good engagement with the applicant to amend to  
23 the temporary possession area to the east of the spine road and the water pipeline  
24 to enable the development phase and to come forward in a timely manner, and  
25 for that we are grateful. However, there still remains an issue over the pipeline  
26 and I'll just set out the background. So you'll just have to bear with me, I'm  
27 afraid, on this point.

28 The area to the west of the spine road is multi-functional and is proposed  
29 to be made up of the following; it is the main body of open space on the  
30 development site, over 50% of all open spaces and is the largest single area  
31 within the development by some measure. It includes wetlands, swale and the  
32 attenuation outfall foul pump, [inaudible] and species-rich grassland, the  
33 multi-use games area, bridleway, orchard and the SANG land – suitable  
34 alternative natural green space. The orchard and MUGA – multi-use games area

1 – and foul pump are located here based on good design principles. If they had  
2 to be placed elsewhere, this would come at additional cost, and at the loss of  
3 development land.

4 The wetlands and swale and attenuation outfall can only be located in this  
5 area due to site topography and availability of the outfall to the ditch in the  
6 southwest corner of the development site, without losing significant  
7 development area, or resorting to a pumped surface water solution – obviously,  
8 considerable cost and risk, if the pump fails, which sequentially is not favoured  
9 by the Environment Agency. The southwest corner of the land is the only natural  
10 outfall for this development land area south of the Muckingford Road and north  
11 of the Loop line. It is also the only land area large enough to incorporate our  
12 SANG principles to mitigate the impacts in relation to the Thames Estuary and  
13 Marshes SPA and Ramsar site.

14 Documents detailing the framework, of course, have been submitted as  
15 part of the environmental statement to Thurrock Council, and they've recently  
16 been update as part of that application process, which, of course, is a public  
17 document and will be seen the applicant and others. In consultation with Natural  
18 England, the development incorporates large areas of open space where  
19 semi-natural areas, native woodland and wildflower grass have been designed  
20 as suitable for SANG. Without early access to this land, the remaining open  
21 space would not be considered to fulfil the role of SANG by Natural England,  
22 in our opinion. Based on the 830-dwelling, with-LTC scheme, around just under  
23 16 hectares is required for SANG. With the 1,000-dwelling scheme, it's roughly  
24 about 19 hectares.

25 The design and access statement sets out the phasing of development  
26 infrastructure and land uses. The first two phases of development with Lower  
27 Thames Crossing are north of the Loop line, and require all of the subject land  
28 for those spaces to be available within the first four years, and these are phasing  
29 plans that we submitted at REP1-356. However, as noted, the drainage solution  
30 specifically is required at the outset of development. So our submission:  
31 technically the northern part of the site cannot be drained through conventional  
32 means, without using this land. The absence of this land at the outset of  
33 development will render the balance of open spaces insufficient to fulfil those

1 SANG objectives, and, of course, it forms a key social amenity function for any  
2 new residents, as the schemes develops.

3 MR SMITH: At this juncture, Mr Holland, I'm conscious of time again, and one of the  
4 undertakings that we did give was that, to the extent that the applicant needed to  
5 refer to their ecological mitigation expert, we would endeavour for that to be  
6 able to occur by 5.30. It's 5.10 now.

7 MR HOLLAND: You've got one ore minute from me, and then Mr Clark can jump in.

8 MR SMITH: He can say his piece. Fine. Excellent – one minute.

9 MR HOLLAND: So it therefore falls not only to the temporary possession of land, which  
10 I'm sure is a workable solution with the applicant, but more particularly, going  
11 back to these permanent rights in relation to the water pipeline, if those private  
12 rights disturb the ability of us to bring forward that drainage solution and SANG,  
13 that renders a particular problem for our development project, which, I would  
14 have to say, the applicant, Mulberry Strategic Land and advisors have worked  
15 very hard to mitigate as much as possible to date, with the exception of the two  
16 points I raised this afternoon. That ends my submission for Linford Land Group.

17 MR SMITH: Thank you very much. Okay. Mr Tait, are you in a position where we can  
18 usefully hear from your expert?

19 MR TAIT: Yes, sir. It's Mr Nick Clark, who is the ecology lead, and there's one matter  
20 in relation to the Mott's land, and one matter in relation Mulberry and Linford.  
21 So, in relation to the Mott's land, it means going back to the sequence of plates,  
22 starting at plate 8, and moving on into the second sequence, I think, which is  
23 called the land swap – plate 13.

24 MR CLARK: Good afternoon, sir. Nick Clark for the applicant. If I may, could I ask  
25 that we put up figure 8.1, designated sites, which is at 626, because that probably  
26 gives a better – 262, sorry. Thank you – gives a better understanding of where  
27 we are. If you can see the parcel of land which is called Low Street Pit – we  
28 might need to zoom in a little bit.

29 MR SMITH: Low Street Pit – yep.

30 MR CLARK: So in terms of the proposal for a land swap, or an adjustment of the order  
31 limits in the mitigation strategy, proposed by Mr Holland, Low Street Pit is a  
32 key area of impact for the project. The project alignment isn't on this image,  
33 but if it was, it would cut straight through Low Street Pit. It's actually resulting  
34 the total loss of that local wildlife site. The local wildlife site also supports a

1 population of European protected species, in the form of great crested newts. IT  
2 holds a nationally important assemblage of terrestrial invertebrates, and has a  
3 key area for reptiles.

4 The plots that Mr Holland is proposing for redesign reconsideration for  
5 the mitigation strategy, which were plots – excuse me. I’ll have to come back  
6 to you on the exact plot numbers. Sorry.

7 MR SMITH: I’m happy to have those confirmed in writing.

8 MR CLARK: The key aspect for those is their proximity to the area of impact. The  
9 guidance that we follow as part of the assessment, which is the guidance  
10 published by the Chartered Institute of Ecology and Environmental  
11 Management, states that the mitigation/compensation should be as close to the  
12 location of the impact as possible. With the great crested newt impact, we’ve  
13 worked for two – maybe three – years with Natural England on developing a  
14 mitigation strategy for that species. We obviously have to submit the draft  
15 European protected species mitigation license for great crested newts to Natural  
16 England. One of the key proposals that we agree with Natural England for that  
17 was that each great crested newt meta-population would be mitigated or  
18 compensated for within 250 metres of the impact.

19 Now, in this instance, this is, I think, the only location on our project which  
20 we weren’t able to do that, given the road alignment. So the approach that we  
21 have agreed with Natural England is to use the areas of land that Mr Holland  
22 was referring to earlier to link up two existing meta-populations: the one at Low  
23 Street Pit, which will be impacted by the project, and the one that actually sits  
24 on that land plot. If you can just make out the small pint glass – there you go.  
25 That’s pretty much where the newts live. So what we’re looking to do is use  
26 that plot of land to link the two meta-populations, so it’s very important that our  
27 orientation of mitigation is as close as we can get to the point of impact.

28 Now, the proposals for rearranging the mitigation land that Mr Holland  
29 put forward are on a like-for-like basis, so we would retain the overall extent of  
30 mitigation in that area. The concern that we have with that is that it would move  
31 our mitigation further away from the point of impact by about 100m, and the  
32 additional provision of mitigation land to offset that loss is between 200m and  
33 800m away from that loss. So we would be moving further away from the point

1 of impact. If we were going to need to go down that route, we would also then  
2 need to reengage with Natural England over this mitigation strategy for newts.

3 It's worth pointing out that we've now received a letter no impediment  
4 from Natural England for that draft license. We have a statement of common  
5 ground item that. The statement of common ground reference is REP5-038 and  
6 the line item is 2.1.74. I'll also refer to another statement of common ground  
7 line item with Natural England – 2.1.50 – and that reflects their overall support  
8 for our mitigation strategy for terrestrial invertebrates, and again, Low Street Pit  
9 was an area which supported a nationally important assemblage of terrestrial  
10 invertebrates.

11 The change being proposed by Mr Holland, although it's on a like-for-like  
12 area basis, it would move that mitigation land further away from the point of  
13 impact, and therefore would involve more consultation and be a move away  
14 from some of the guidance that we've followed.

15 MR TAIT: So is that dealing with –

16 MR SMITH: So that deals with Mr Mott.

17 MR TAIT: – Mr Mott. Plate 13 – there is also a separate ecological mitigation suggestion  
18 on plate 77, I think, relating to Linford and Mulberry.

19 MR CLARK: Mr Clark for the applicant. So if we can see plate 77 – ah, yes. Thanks.  
20 So, as Mr Holland pointed out, the area of black hatch is the area of mitigation  
21 land that we're proposing. The yellow oblong is the utilities corridor  
22 immediately adjacent to it. Key to that, is that the utilities works would be  
23 occurring in years 1 and 2 of construction. So there would be a delay of at least  
24 two years before ecological mitigation could begin to be established in that area.  
25 We have a significant area of scrub habitat immediately west of the oblong,  
26 which would be lost as a result of the project.

27 Again, that supports nationally important assemblages of terrestrial  
28 invertebrates, key reptile sites and important bird assemblages. That will be lost  
29 early on in the programme. We needed to provide mitigation as early as we can  
30 in relation to that loss, so we have something in place, before or immediately at  
31 the same time as the loss of habitat. By putting the ecological mitigation where  
32 we proposed, in the black hatching, we are able to do that. It's fairly  
33 unincumbered by utilities works. If we push it in the yellow oblong, we would  
34 be waiting at least two years to create that land.

1 I'll pick up on one other point that Mr Holland raised in terms of the black  
2 hatch connectivity. The landscape design of the project links up through existing  
3 planting – existing retained habitat, which runs along that northern edge of the  
4 mitigation land and the utilities corridor, linking into the mitigation proposal.  
5 Beyond that mitigation proposal, further to the east is two local wildlife sites.  
6 Actually, sorry – one local wildlife site, and one local nature reserve, both called  
7 Linford Wood. So there are clear aspects of connectivity with the proposal, as  
8 it currently sits within the order limits.

9 MR TAIT: So that's all from Mr Clark. In what I think can be reasonably regarded as  
10 the no more than 10 minutes remaining, I can summarise seven further points in  
11 response to the Motts, and two points in relation Mulberry and Linford, if that's  
12 helpful.

13 MR SMITH: But just before we do, can I just seek the view from Mr Holland, because  
14 we still have outstanding EA Strategic Land, the Schatzmann Trust, the  
15 Ockenden family, E W Ballard Holdings and Cheale Group.

16 MR HOLLAND: What I would suggest is, whilst Mr Clark is here, can I just come back  
17 to him on two points? We'll then deal with Cheale, and then perhaps Mr Tait  
18 can sum up on everything else after that. Cheale will take about 10 minutes.

19 MR SMITH: Okay. Mr Tait –

20 MR HOLLAND: I'm not aware that we're going to finish at 5.30. It's only Mr Clark  
21 that's got to go at 5.30.

22 MR SMITH: Yes. Mr Clark does have to go, and that's why I wanted to make sure we  
23 didn't go past this point without dealing with the points that were relevant to Mr  
24 Clark's expertise, but I think we've done that, so if we can do a limited circle,  
25 where you can deal in response with the points that he's put, then we'll continue  
26 with the rest of your case, and then we'll come back to Mr Tait, who can  
27 response to the lot. Then we will finish.

28 MR HOLLAND: If Mr Tait's happy with that, and Mr Clark, then yeah. We'll do that.

29 MR SMITH: Apologies, Mr Tait, but I do think that's probably the best and fairest way  
30 of doing it. Okay.

31 MR HOLLAND: Could we then quickly go to plate 12 in relation to a comment from  
32 Mr Clark about connectivity? So I'm afraid this is my own mash-up of the  
33 environmental master plan. Plate – oh, sorry. Have I missed – go down one  
34 more. I've got two – plate 12. One more slide down, please. That's it. So that's

1 my mash-up of the environmental master plan extracts for the Mott land. If you  
2 run from Low Street Pit to the northwestern corner of that plan, adjacent to the  
3 alignment, then you run all the way back to Coalhouse Fort. There is a natural  
4 corridor all the way through that section.

5 That's where I see connectivity, and that's where the land that is proposed  
6 as the land swap fits in. You can see the two white spaces in that corridor as  
7 you come down towards the right-hand side of the plan, so I'm afraid I don't  
8 agree with connectivity points in relation to great crested newts, because it looks  
9 to me like there's a natural corridor all the way through there, which is not  
10 disturbed either by compound CA-5, or indeed land that's outside the order  
11 limits in the ownership of the Mott family.

12 In relation to the timing of works, given the delays of the project and the  
13 prospect of development by Mulberry starting on land north of the Muckingford  
14 Road, I'm still convinced there is a technical solution, delivering what's  
15 required. Otherwise, the Muckingford Road land looks completely in isolation  
16 to everything else, and has adverse effects on what is quite a considerable  
17 development project – live – and has been live since 2016, long before the  
18 applicant put their plans in place. I think that's me done on that point.

19 MR SMITH: Okay. In which case, that was a response then to that limited point. So  
20 can we then now move on finally to representations for parties from EA Strategic  
21 Land, Schatzmann, Ockenden family, Ballard and Cheale.

22 MR HOLLAND: Sir, I think we've tried to combine references to EA Strategic Land in  
23 the context of E & K Benton, and the same with Mulberry Strategic Land in the  
24 context of the Mott family, and Linford. Schatzmann is a relatively minor point  
25 in relation to the use of the moat for mitigation purposes, but I think we can deal  
26 with that in submissions, and that bears really on its relationship with the South  
27 Ockenden development master plans. So, just for five or 10 minutes, if we can  
28 go to plate – did I really do that many? Plate 83 and 84 – and that deals with  
29 Cheale Group and then I think we are finished.

30 So Cheale Group Ltd are also connected – same family as Cheale Meats  
31 Ltd, who run the abattoir business and have a number of land interests across  
32 this part of South Essex. It's a small but potentially larger point, but, I think,  
33 has a solution, which is that the applicant has identified a route into an area of  
34 utility works off land at Warley Street, south of the railway on Brentwood and

1           Havering's council boundary. That work is taking place in plots 44-68, 44-68  
2           and 44-92. The route that identified across the Cheale Group holding, which is  
3           about 40 acres in this location, is the route broadly identified as plot 44-112.

4           If I can take you to plate 84, please. This is a develop in conceptual master  
5           plan, nothing of any great complexity at this moment, but Mulberry Strategic  
6           Land have an option over this land for the development of a commercial  
7           development scheme. That would be not inconsistent with what is happening,  
8           to orientate all of you, north of the railway, which is the area of the Brentwood  
9           Enterprise Park, up to the A127 junction of the M25. What I would like to see  
10          from the applicant, recognising that utility statutory undertaker will require a  
11          route to their apparatus, is that that permanent rights route is not in a fixed  
12          location, and that we have some means to adjust that route through what might  
13          be a future development, in order to – effectively a lift and shift, or some other  
14          flexible provision that allows us to design in that permanent route of access for  
15          them, without it necessarily being fixed in that one location, which is shown  
16          broadly as a yellow line. That is my submission for Cheale Group Ltd.

17       MR SMITH: Thank you very much. In which case, does that bring you to the end of  
18          your representations across all of the represented parties?

19       MR HOLLAND: It does, sir. There are some general points, which I'll make in written  
20          submissions, but not for today.

21       MR SMITH: Yes. I think, given the pressure of time, I'm very grateful to do that.  
22          However, we do need to go back to Mr Tait. Will it be you leading this?

23       MR TAIT: Sir, again, it will be in summary form, but we will respond more fully in due  
24          course. In terms of the Motts, we've heard already about the difficulties with  
25          the land swap. So that's the first point. The second point relates to the north  
26          portal access track, which is work 5E, and that was prefaced by saying, it's  
27          probably a compensation point, and the position is that there are powers in the  
28          order for that to be a permanent road, as a private means of access, and insofar  
29          as there is an upgrading of that access, that will be governed by upgrade in the  
30          status of that road. That will be governed by other processes, so that if I think  
31          the indication was that there's a concern this may be used in relation to a future  
32          Tilbury link road, that will be subject to its own processes and we'll trigger  
33          compensation provisions in relation to those processes, so far as applicable.



1 MR SMITH: Indeed. I suspect though that Mr Holland's proposition is that, by that  
2 point, his client will have lost the freehold of it. It will be held elsewhere.

3 MR HOLLAND: That, sir, is precisely my point, and I'm afraid we can't get away from  
4 it because that route is precisely where a link road would go, so there's no point  
5 in hiding away from it.

6 MR SMITH: However, I equally – it doesn't feel to me as though, between the parties,  
7 you're likely to reach much more consensus on it. It feels as though it's going  
8 to remain an outstanding matter of disagreement; one that we're just going to  
9 have to carry away and push through the grey matter to resolve within the  
10 framework of existing law, policy and guidance.

11 MR TAIT: Understood, sir. We'll elaborate on that in due course as well in writing.

12 MR SMITH: Indeed.

13 MR TAIT: The third point relates to the rendezvous point and whether there's an  
14 alternative that's appropriate, shown on plate 20. I believe today the Emergency  
15 Services Group have been meeting with the applicant and others and so their  
16 thoughts are going to be relevant to this, but our understanding is that that  
17 alternative is not favoured either. But again, we'll report back on that.

18 The fourth point relates to the Linford borehole pipeline, and the short  
19 point there is that article 37(5), which includes the pipeline as MUT6, is  
20 essentially the ABC provision. So, although it's permanent, there's provision  
21 for it to be removed at the end of the relevant construction works.

22 The fifth point relates to the wharf and jetty. The jetties are not in the  
23 ownership of the Mott family. The wharf is, but has not been used since at least  
24 1960. There is a SACR provision – SACR 6 – about access to be retained to the  
25 land, and both before and after construction, and that is something that we will  
26 continue to discuss with Mr Holland insofar as he indicates he doesn't think that  
27 goes far enough. So we'll look to see whether that is possible to elaborate on  
28 that, or whether ultimately that falls again into the compensation box.

29 The next point relates to access to the site south of Station Road, and  
30 whether a firmer commitment can be given in advance of the design and build  
31 process taking place. We may well be able to provide a satisfactory response to  
32 that, but at this stage it's difficult to guarantee. But again, we're looking to see,  
33 with Mr Holland, whether we can express something that will give him a larger  
34 degree of comfort than at present.

1           The next point on SCL – Tilbury Green. I think that relates to with whom  
2 the land ends up, and clearly, the provisions of section 131 and what they provide  
3 in relation to vesting, doesn't provide any optionality there. So that has to just  
4 take its course in relation to vesting of the exchange land with the original land  
5 owner. More widely in relation to WCH, we've already addressed that in part,  
6 and we're going to come back to that. But just to clarify the point about the  
7 tripartite agreement, it's not the position that, though we envisage that they  
8 would need to be separate rights created, other than rights which flow from the  
9 dedication. It is also envisaged that the mechanism would be simply that the CP  
10 powers would not be exercised. So it is envisaged that it would be quite a  
11 straightforward tripartite agreement, assuming it's reached.

12 MR SMITH: Again, just to be clear that I understand your position, that you would assert  
13 the need to retain CP powers against the possibility that the tripartite agreement  
14 is not executed, or fails in some way.

15 MR TAIT: Yes, exactly.

16 MR SMITH: Right. Okay.

17 MR TAIT: That's in relation to Motts. I know it's very summary, and I've rattled  
18 through it.

19 MR SMITH: No, and again, I'm grateful and very conscious of the pressure of time on  
20 you, but we are a principally written process and we will be reading both of your  
21 written submissions on this material with great care, but it is actually very useful  
22 to have it unstacked for us, which I think we've done, within the limitations of  
23 this afternoon, well on both sides. So, Mr Tait.

24 MR TAIT: Mulberry and Linford – two points essentially. The first relates to the  
25 ecological mitigation land suggestion which Mr Clark has dealt with, and second  
26 – also relates to the Linford borehole pipeline point, which I have addressed to  
27 you earlier. It's the same point. Article 37(5) address that particular issue and  
28 this is in the context where that pipeline and the utility hub has already been  
29 moved to allow for further development. If that comes forward, I think it allows  
30 17 hectares more to come forward, bearing in mind of course that it's an  
31 application in the green belt, a number of constraints and whether it comes  
32 forward or not is not a matter that we're addressing you on.

33           Then finally, Cheale – the position there is that it's appropriate to have the  
34 provision at present where it is. That is the appropriate location, but we're open

1 to an agreement which allows for flexibility in circumstances where a  
2 development comes forward, and so indicate to Mr Holland that we are  
3 amenable to such a suggestion.

4 MR SMITH: Okay – which then takes me to the difficult question of timing because  
5 there's a lot of complexity packed up in all of that. We are clearly going to need  
6 to see both Mr Holland's and applicant's rendition of case to writing for deadline  
7 6, so consequent actions flowing out from the submission that have been made  
8 are unlikely at any stage before deadline 7, as I see it.

9 But to the extent that on Cheale, if we start at the back end of this, you  
10 have indicated a willingness in principle to discuss a means of securing a  
11 different approach that would deal with a development proposal that might come  
12 forward on that land. It would be very useful for it to be as clear as it can be by  
13 deadline 7 as to whether or not that is something that the applicant is able to  
14 support in a realisable form – something that can actually be given direct through  
15 a recommendation to the Secretary of State, or if not, therefore by deadline 7,  
16 what is outstanding. But at the moment, it's sounding as though there's  
17 movement there.

18 Similarly, in relation to the other main area of movement, where  
19 clarification feels very useful, and that relates to the dedication agreement  
20 approach – where it feels as though there are further conversations that need to  
21 take place between yourselves and various of Mr Holland's clients, so that there  
22 can be understanding about the way in which that might be given effect to in  
23 ways that would respectively limit the need for the permanent acquisition of  
24 freeholds. Although I do note the reservation that you have put, which is that it  
25 would be your submission that you want to retain an overarching acquisition of  
26 the whole, against the possibility that such agreements don't work. There are  
27 conversations to be had there, so it would be very useful to see what amounts to  
28 clear, final submissions on both of your sides at deadline 7.

29 Now, in relation to a range of other matters, we've heard what you've said.  
30 We've heard what Mr Holland has said, and there appears to be, in relative  
31 terms, less scope for movement towards each other. In relation to a broad range  
32 of the rest, taking into account, Mr Tait, everything that you've put on the table,  
33 but nevertheless, by deadline 7 – I think I would say two things. Firstly, while  
34 there is conversation, there is the prospect of some measure of compromise, and

1 so I would never wish to suggest that you don't continue to talk, if talking is still  
2 useful, but by deadline 7, we will need to start to see crystallising what appear to  
3 be final positions, and if those are final positions of dispute that we then have to  
4 adjudicate, then we will have to do that.

5 Okay. Is there anything else that anybody thinks we need to make some  
6 form of provision for? Mr Holland, are you content you've had your go?

7 MR HOLLAND: Yes, sir. Thank you very much indeed.

8 MR SMITH: Thank you very much for attending and representing your clients. Thank  
9 you, Mr Tait and Ms Tafur and your team, for being willing to stay on after a  
10 notional close at 5.00 p.m. It's only taken us an additional 40 minutes, but I  
11 think it's been a very useful 40 minutes because we've actually unstacked  
12 everything. So, moving on to the next steps, we have prepared an action list.  
13 I'm not going to waste anybody's time by reciting items upon it. We will issue  
14 it as soon as we can.

15 MR PRATT: I was getting ready just to go through it with everybody. Have you got  
16 another hour or so?

17 MR SMITH: Have we got two hours left? Thanks, Mr Pratt, but I think we will wait  
18 until it emerges and we'll do our best to make it emerge as quickly as we  
19 humanly can. So, just finally – a few reminders. Compulsory acquisition  
20 hearing number four here tomorrow, on very similar terms as today, but with  
21 different parties and different subject matter, apart, of course, from the applicant  
22 – issue-specific hearing number eight on construction-related matters, here, on  
23 Thursday.

24 I'll briefly remind people that we have an accompanied site inspection –  
25 number four – on Friday, to the Chiltern Tunnel south compound, operated by  
26 HS2. I only raise that because I just do need to remind people who might be  
27 watching this hearing that, although that is an accompanied site inspection, we  
28 will be attending on a very limited basis, with a representative of the applicant,  
29 and representatives each of the two local planning authorities with tunnelling  
30 interests, namely Gravesham and Thurrock. But it's not an open-access  
31 inspection because it is a controlled, active worksite.

32 So that is proceeding on Friday. Then we have issue-specific hearing  
33 number nine on biodiversity matters on Monday 23<sup>rd</sup>, and 10 on traffic and  
34 transportation matters, with a strong focus on WCH/NMU, on Tuesday 24<sup>th</sup>.

1                   Now, wrapping up then, all I need to do is then thank all of the speakers  
2 that we have heard from today for your contributions. Everything that has been  
3 said will of course be very carefully considered and, if necessary, we still have  
4 the possibility of raising written questions through what will be our third round  
5 of written questions in this examination, or indeed bringing matters back to  
6 hearings reserved in November, which, I foreshadow, absolutely will proceed.  
7 There's no likelihood of those being cancelled off. It's just a case of precisely  
8 what topics we will need to deal with orally.

9                   Now, bringing matters to a close, a big thank you our audio-visual team  
10 for keeping us on the road today, and to the case team, case manager and his  
11 colleagues for supporting these hearings throughout. So, unless there's anything  
12 else that anybody wants to raise, we will now say our goodbyes.

13 MR TAYLOR: Yes. Thank you, everyone, for today. I think it's been really useful. So  
14 goodbye from me.

15 MR PRATT: Thank you, everybody. It's been a very interesting day. Now, if you want  
16 me to go on for another hour – no. Take care, everybody. Good night.

17 MR SMITH: And with that threat, no, ladies and gentlemen – we are going to close now.  
18 So from me, Rynd Smith, panel lead, I will now wish you all goodbye and close  
19 compulsory acquisition hearing number three. Thank you very much.

20  
21                   **(Meeting concluded)**