



PLANNING INSPECTORATE COMPULSORY ACQUISITION HEARING

on

18 OCTOBER 2023

PRESENT

**PLANNING INSPECTORATE**

RYND SMITH

KEN PRATT

KEN TAYLOR

**CASE TEAM**

TED BLACKMORE

SPENCER BARROWMAN

RYAN SEDGMAN

**LOWER THAMES CROSSING**

ISABELLA TAFUR

TOM HENDERSON

KEITH HOWELL

ANDREW TAIT KC

RUSSELL CRYER

RICHARD SAVILLE

ANDREW KAY

**INTERESTED PARTIES**

HAZEL ANDERSON (Northumbrian Water)

PAUL KELLY (Northumbrian Water)

ANDREW HIGHWOOD (Rochester Bridge Trust)

JACKIE THACKER

DEAN BRADBROOK

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1 MR SMITH: Good morning, everybody, and welcome to today's compulsory acquisition  
2 hearing 4 for the Lower Thames Crossing. Before we introduce ourselves, can  
3 I just check with the case team and the audio-visual staff that we can be heard  
4 online and that the recordings and the livestreams have now started? And I am  
5 seeing the right thumbs being raised from the right desks, so with thanks to our  
6 technical team, to introductions. My name is Rynd Smith; I am the lead member  
7 of a panel, which is the Examining Authority for the Lower Thames Crossing  
8 application, and I'm in the chair for this hearing. I'll draw your attention to our  
9 frequently asked questions, linked to our rule 6 letter published many months  
10 ago now, but available still on our website where you'll find brief biographies  
11 for all of the members of the Examining Authority, and an explanation for the  
12 purposes of the Examining Authority's appointment. My fellow panel members  
13 here will introduce themselves, so I'll start by moving to Mr Ken Taylor.

14 MR TAYLOR: Yes, good morning, everybody. My name's Ken Taylor, member of this  
15 panel. I may ask some questions today. Thank you.

16 MR PRATT: Good morning, everybody. Ken Pratt here, I'm a panel member and  
17 likewise, I'll be asking questions today as and when. Good morning.

18 MR SMITH: Thank you very much, Mr Pratt. This is Rynd Smith, panel lead speaking  
19 again. Having introduced the panel members sitting on the bench with me today,  
20 I will note that two of our members – two members of the Examining Authority  
21 – are not with us today. That's Ms Janine Laver and Mr Dominic Young, again,  
22 busily engaged on other work, and you will see them, however, later in this  
23 group of hearings. I will note the presence on the back bench today of Mr Guy  
24 Rigby, and Mr Rigby is an inspector. He's a chartered engineer and a  
25 non-practising barrister by professional background. He is not a member of the  
26 Examining Authority, but as is common on larger cases, the Planning  
27 Inspectorate has provided him to us in an advisory capacity, so he's advising us  
28 on compulsory acquisition, transport and highways matters and will be listening  
29 throughout today's hearing.

30 I will also briefly introduce our Planning Inspectorate colleagues who are  
31 supporting us in these examinations. Ted Blackmore is the case manager leading  
32 the case team today, and he is supported by Spencer Barrowman in the venue,  
33 and Ryan Sedgman who is running the virtual room. Now, in terms – moving  
34 on to agenda item 2 of why we're here today, we're here to hold what is our

1 fourth compulsory acquisition hearing, and of those, the first was a strategic  
2 hearing where we heard the applicant set out its broad case for compulsory  
3 acquisition, and this is the third of a group of hearings where we hear objections  
4 to compulsory acquisition and temporary possession requests that arise from  
5 individuals who are affected by those requests, what, in our terms, we refer to  
6 as affected persons.

7 Now, everybody in today's group of participants are affected persons, and  
8 they're people who have requested an oral hearing in front of us. Now, I think  
9 it's probably fair to say that today's participants divide into two groups. There  
10 are persons who are professionally represented, who will be setting out cases led  
11 by either legal representation or relevant technical specialists and professionals,  
12 but there are also attending today groups of individuals who are not formally  
13 professionally represented, but who are affected persons with specific concerns  
14 about the effect on their rights, the effect on their lands, of the property – of the  
15 proposal. Now, what I thought I would do is just briefly speak to the difference  
16 between this type of hearing – a compulsory acquisition hearing – and indeed  
17 the other types of hearing such as open floor hearings and issue-specific hearings  
18 we've held in this examination so far, so that those who are not formally  
19 represented actually gain a, hopefully, better sense of what this hearing is about,  
20 and why it is different from other types of hearings.

21 And the core to the difference around this hearing today is that this hearing  
22 is about you and your concern about your land, your property, your rights, and  
23 any particular requests that the applicant has made to acquire your land, your  
24 property, your rights by compulsion, either permanently – which is known as  
25 compulsory acquisition – or temporarily for a period of time, typically during  
26 the construction of the project, which is known as temporary possession. And  
27 the focus of today's discussion are about those requests by the applicant and the  
28 degree to which they have affected you in a personal capacity, in a business  
29 capacity, in relation, occasionally, to matters such as even your personal and  
30 family circumstances, your human rights or matters of equalities. Now, the  
31 reason why I raised those matters is because sometimes in these hearings, we do  
32 need to move into the very delicate matter of placing personal matters in front  
33 of what is still a public hearing and a public process.

1           Now, what I would say in relation to any such matters there is that we are  
2 always very careful and measured about the way that we bring forward such  
3 material, so if, as an individual, you want to talk about very particular personal  
4 circumstances that you believe are relevant to your case, before just starting to  
5 speak about them, introduce to us the fact that you might wish to bring such  
6 circumstances up. The reason I say that is because, of course, these hearings are  
7 all recorded and the recordings are published for very good reasons; this is a  
8 public hearing. However, what we can do – if you find yourself wishing to bring  
9 forward personal information that might be relevant and you’re not sure – is that  
10 we can find ways of enabling you to bring that into the examination, for example  
11 by asking you to deal with particular sets of circumstances in a written  
12 submission that you might make at the next deadline, deadline 6 on the 31<sup>st</sup> of  
13 the month, which we can take fully into account but would then be redacted and  
14 have relevant personal information removed from the face of it before it’s  
15 published. In other words, we can be sensitive.

16           That is, actually, much easier for us to do than to do the alternative, which  
17 is to hear detailed, complex, personal circumstances, oral submissions, today,  
18 which then actually have to be redacted from the face of the recording that is  
19 taken today. For very good reasons, we prefer not to take such an approach,  
20 because, actually, these recordings should always be a full and true record of  
21 everything that transpires in a hearing, and if we have to start clipping little bits  
22 out because people make references to personal and private and confidential  
23 matters, then we are opening ourselves to the possible accusation that we are no  
24 longer providing a full and accurate record, so I thought it was worth explaining  
25 a little bit about that approach to conducting these hearings.

26           What I will also say is if there’s anybody who is respectively about to  
27 speak, and who is thinking, ‘I don’t really know how to do this. I’d quite like a  
28 little bit of advice before I step into the water’, then we have got enough time  
29 today to provide that advice, so either speak privately to Mr Blackmore, the case  
30 manager, who I’m sure will be very happy to help, or Spencer or Ryan assisting  
31 him, or in open floor, ask us for a piece of advice about how to proceed before  
32 you proceed, and we will always entertain that request for advice carefully.

33           So one final remark about what we’re looking for today is that obviously  
34 examinations under the Planning Act of 2008 are, primarily, written processes.

1 There's an enormous amount of material exchanged between parties in writing  
2 now, and therefore it's important that orally we're using our time here to focus  
3 on the matters that still remain in dispute between anybody making  
4 representations and the applicant, and we're particularly interested in  
5 circumstances at this stage if it appears that there are matters where agreement  
6 will not be reached within the timescale of the examination. Now, this is not to  
7 place anybody under any undue pressure to settle matters that they would – they  
8 do not feel are capable of settlement, but it is to highlight that we're reaching a  
9 stage in the examination where if we need to report to the Secretary of State that  
10 certain matters have not been settled, and therefore we are recommending to the  
11 Secretary of State that X be done or Y be done in order to resolve the difference,  
12 that we need to know, so that's our very strong focus as well in terms of what  
13 we're asking participants to speak to us about today.

14 Now, in my opening remarks there, I did cover the fact that these hearings  
15 are being livestreamed and recorded. Before I move on any further, does  
16 anybody have any questions about that and that process, and how it works or  
17 why it's done? And I'm not seeing any yellow hands in the virtual room and  
18 nor am I seeing any hands in the physical room, so we will then move on, and  
19 we will now start the process of introductions. Now, before I do, I think, again,  
20 another observation that I will make about the nature of today's agenda is we  
21 have published an agenda paper. We intend to ask participants to participate in  
22 the order set out on the agenda paper, which means that we will have a focus in  
23 the early stage of the hearing, in the morning, on represented parties, to a degree,  
24 and then we will move on to the unrepresented parties.

25 Now, one of the observations I've already made to the case team in relation  
26 to unrepresented parties is if you don't want to sit around online or in the room  
27 listening to the first represented parties say their piece, we can make  
28 arrangements for the case team to then dial you up and have you brought back  
29 in at a relevant time so that you're back in the meeting and can participate, so  
30 everybody on the agenda from Mr Peter Trevor Foster onwards at item (d) –  
31 Francis Wilson, Jackie Thacker, Wayne Thacker, John Thacker and Dean  
32 Bradbrook – be conscious of the fact that we will deal with the three represented  
33 parties – or potentially two represented parties – now, first, and then case team

1 can dial you in, and we will attempt to make sure that we use your time as  
2 efficiently as we can.

3 So let's hear introductions, and we will go first to Northumbrian Water,  
4 trading here as Essex & Suffolk Water. Do we have Ms Anderson of  
5 Winckworth Sherwood representing that entity?

6 MS ANDERSON: Good morning, sir. Yes, you do, and if I may also introduce you to  
7 Mr Paul Kelly who is a senior solicitor at Northumbrian Water.

8 MR KELLY: Morning, sir. I'm on the call as well.

9 MR SMITH: Good morning, Mr Kelly. Thank you very much. Okay, I'm now then  
10 going to move on, because we have two representations through Savills. Now,  
11 the first, I understand, in relation to St John's College, Cambridge, but Mr Daniel  
12 Smyth is, I believe, not in attendance. Is that correct? Yes. Okay, so if we can  
13 then have Mr Andrew Highwood, I believe, for Rochester Bridge Trust.

14 MR HIGHWOOD: Yes, good morning, sir. Andrew Highwood for Rochester Bridge  
15 Trust.

16 MR SMITH: Excellent, so you are in the room. Okay, what I will remark in relation to  
17 the St John's College representation is that we understand that Mr Smyth is  
18 apparently on annual leave. In principle, opportunities to attend these hearings  
19 are offered on the basis that the hearing is set for a day and if an individual  
20 representing a party cannot be present, essentially as a professional it's their duty  
21 to acquire an equivalent professional and make sure that that party is actually  
22 represented. It just so happens, as a matter of luck, that in this case, we will have  
23 an additional set of compulsory acquisition hearings in November, and so we  
24 will endeavour to move St John's College to a November hearing.

25 However, I would like to place on record a measure of concern that there  
26 is, in principle, a – not to put too fine a point on it – waste of the Examining  
27 Authority's, and indeed other parties', time in circumstances where a hearing is  
28 offered and a professionally represented party does not attend for a reason as  
29 basic as, essentially, taking annual leave, because that is a matter that can  
30 normally be addressed in a large firm. So hopefully Mr Smyth is listening and  
31 is alive to the fact that it will be very important when a date is offered in  
32 November that he does attend and represent his client, and at that point there,  
33 essentially, will be no excuses.

1 MR HIGHWOOD: I'm very grateful to you, sir. I believe Mr Smyth did speak with the  
2 case officer and there's an understanding there, and I will certainly pass on your  
3 comments to him. Thank you.

4 MR SMITH: I'm very grateful. Thank you very much, but we're grateful for your  
5 presence here, Mr Highwood, speaking for Rochester Bridge Trust, so we'll be  
6 running in that order. We'll hear Northumbrian Water first, then Rochester  
7 Bridge Trust. Now, in the agenda, we then noted, provisionally, a break which  
8 we referred to as a lunch break, before moving on to hearing the individual  
9 unrepresented parties. Now, precisely the timing of that will depend upon the  
10 duration of the business that is necessary for Northumbrian Water –  
11 Essex & Suffolk Water – and Rochester Bridge Trust, so we will take this as we  
12 go. Can I, then, check – I understand that Mr Peter Trevor Foster has connected  
13 with the event but is currently not connected, and so if I can just check with the  
14 case team that that's the current status of Mr Foster, and the case team has an  
15 ongoing task to try and speak to Mr Foster, and see if he can actually be brought  
16 in by telephone, because I do gather he's struggling with the technology a little  
17 bit. Can I, then, move to Ms Jackie Thacker, Mr Wayne Thacker and Mr John  
18 Thacker, who I gather we do have present in the virtual rom? Ms Thacker, are  
19 you able to see and hear us? Excellent.

20 MS THACKER: I am. I'm here. I explained we've got health risk issues within the  
21 family, but I want to listen to as much as I can and obviously find out when  
22 we're on. I'm interested to hear all about it and as long as I can be around, I  
23 will, in the background.

24 MR SMITH: Okay, well what – we do obviously – because amongst other things, your  
25 family are affected persons, so we have a speaking slot saved for you. That slot  
26 is today. Now, there are two ways of dealing with this. The first will be to have  
27 the case team just message you maybe an hour or so before it appears likely that  
28 you'll be on, so that if you're going to make use of that opportunity, then you're  
29 alive to the fact and can do so. You can, of course, make written representations  
30 at deadline 6, so if the – if you find yourselves not in a position to fully speak  
31 today, for the reasons that you've outlined, then you can essentially replace what  
32 you might have said orally in writing at deadline 6, and that's perfectly  
33 acceptable. Can I just check, are we likely to see any other members of the  
34 Thacker family today, or will it just be yourself?

1 MS THACKER: John will be sharing this laptop and facility with me if that's okay.

2 MR SMITH: Okay, yes. No, that's fine.

3 MS THACKER: Wayne is work-dependent, so he's going to try and be around for this  
4 afternoon, but not quite sure that that would happen.

5 MR SMITH: Well, look, I think it's fair to say that our expectation is that the  
6 Northumbrian Water – Essex & Suffolk Water – and Rochester Bridge Trust  
7 matters might take a fair chunk of the morning, so it could well be by the  
8 afternoon when we might be hearing from you anyway. I will be asking the case  
9 team to stay closely in touch with you, and we'll make sure that we try and bring  
10 you in when we can.

11 MS THACKER: Okay, if they could just give us an hour's warning, perhaps, that – if  
12 the speaking time is on, then that would be – if they send it to me, I can deal  
13 with it and possibly Wayne, if necessary.

14 MR SMITH: No, that would be good, and let us also be clear that if, for some reason,  
15 the Northumbrian Water business moves more swiftly than we'd anticipated,  
16 then they will be in contact, and they'll be in contact maybe a little earlier, but –  
17 so keep an eye on your messages.

18 MS THACKER: That's brilliant, and if, as I say, we don't feel we need to speak at this  
19 time, we will put in writing any concerns.

20 MR SMITH: Yes. No, that's fine, and that's fully understood.

21 MS THACKER: That's lovely, thank you.

22 MR SMITH: Okay, and then finally, do we have Mr Dean Bradbrook? Excellent, in the  
23 room, Mr Bradbrook, thank you for coming in person today; that's much  
24 appreciated. In terms of your speaking arrangements, we have plenty of chairs,  
25 plenty of microphones. If you're happy, do please come up to the front table  
26 and make yourself comfortable. However, if you would rather sit where you  
27 are, observe proceedings, and when you're called, you can either come forward  
28 at that time or alternatively, we do have a roving microphone and one of the case  
29 team will come to you with a microphone if you call for it at any point.

30 Right, so that covers introductions from the parties anticipated as speaking  
31 today. Can I now turn to the applicant?

32 MS TAFUR: Sorry, sir. My name is Isabella Tafur, and I'm a barrister representing the  
33 applicant. On my right is Mr Tom Henderson, partner at BDB Pitmans. On my



1 left is Keith Howell, who's a utilities lead at LTC. On his left, Andrew Tait of  
2 King's Counsel, and on his left, Mr Russell Cryer who is the HRA lead at LTC.

3 MR SMITH: Okay. Now, I take it here that your team, and indeed the leadership of your  
4 team, is likely to shuffle.

5 MS TAFUR: That's right, sir.

6 MR SMITH: Depending on the individual business items, so the way you've introduced,  
7 I take it, runs for Northumbrian Water and Essex & Suffolk Water but may  
8 change.

9 MS TAFUR: Isabella Tafur for the applicant, in fact, sir, I've just introduced everyone  
10 who happened to be sitting at this table, but not all of them will deal with  
11 Northumbrian Water Ltd.

12 MR SMITH: Okay. Now, just before, then, we on to the main agenda and start speaking,  
13 can I just check with the tech team, there were a few issues there with the monitor  
14 screens; are they now resolved? No, we've just lost them again. Yeah, okay,  
15 well we may be – to be alive, then, for the room and indeed everybody online,  
16 we are running intermittently without monitor speakers in front of us. If that  
17 happens, you may see us turning our backs to you. It's not because we're not  
18 interested in everything you say; it's because we need to see the people in the  
19 virtual room. They're going off as well, are they? At risk of prolonging this,  
20 we know what we're doing. We have introduced ourselves. It would be very  
21 difficult to manage what will be a first session that is virtual without the virtual  
22 kit working properly, so if Northumbrian Water's representation can hear us,  
23 and I hope they can, we are going to call a 15-minute break. So if we try and be  
24 back in the room at 10.35, can I ask the tech team to just work over all the  
25 connections to make sure that we are able to see our virtual meeting? That would  
26 be very useful, so back in the room at 10.35, ladies and gentlemen. Apologies  
27 for that.

28

29 **(Meeting adjourned)**

30

31 MR SMITH: Good morning again, ladies and gentlemen. My name is Rynd Smith, the  
32 lead member of the Examining Authority for the Lower Thames Crossing, and  
33 welcome back to compulsory acquisition hearing 4, with apologies for that brief  
34 and unplanned intermission. Now, we gather that work has gone on in an

1 attempt to repair connectivity to the screens that enable us to see the virtual  
2 event. However, it is clearly apparent here and now that that work hasn't been  
3 fully successful. Now, the advice that I was given in the break was that the  
4 technical team, if there were ongoing problems, would require a reset of at least  
5 30 minutes in order to take down the relevant electronic components and rebuild  
6 the system, so what I'm proposing to do is just to check first with the technical  
7 team, are the recordings still live? Yes. Can we be seen and heard externally to  
8 the venue? Yes. It's literally just an internal, within-venue problem.

9 So I'm proposing – with apologies to Winckworth Sherwood for  
10 Northumbrian Water, because we literally cannot see you at present – to move  
11 in agenda order to Rochester Bridge Trust to do the physical business that we  
12 can do, and then to go to Mr Dean Bradbrook, who is also in the room, and hear  
13 him, so that we don't waste the time of those people physically present who are  
14 here, because we can hear you and we can record what is said. So can I just  
15 check, firstly, with My Highwood for Rochester Bridge Trust, are you content  
16 to proceed on that basis?

17 MR HIGHWOOD: Andrew Highwood, Rochester Bridge Trust. Yes, I am, sir, thank  
18 you.

19 MR SMITH: I'm very grateful, and can I just check with Mr Bradbrook, once Rochester  
20 Bridge Trust has finished, are you content to say your piece, given that you're  
21 here, and then you can leave if you wish? Excellent. Good, in which case, with  
22 apologies to Ms Anderson of Winckworth Sherwood for Northumbrian Water,  
23 we will try and get you back into the event as soon as humanely we can. That  
24 work will be going on behind the scenes, and we'll keep you advised about the  
25 time when you are likely to be heard, but I am going to move directly to Mr  
26 Andrew Highwood to introduce the case for Rochester Bridge Trust. Mr  
27 Highwood, you'll see on the face of the agenda the headline questions already  
28 written down that we are asking of you and the applicant, and so I'm going to  
29 pass over to you. Address us. Deal with those questions. We may have  
30 individual questions on matters of detail as we hear your client's case.

31 MR HIGHWOOD: Andrew Highwood, Rochester Bridge Trust. Thank you, sir. May I  
32 first just briefly offer apologies from Mr Cathcart? He's the chief estates officer  
33 from Rochester Bridge Trust. He was hoping to be here, but unfortunately other  
34 commitments have meant he's not able to be here. He has just asked me, though,

1 to make this particular point: ‘Can you make the point that the process has meant  
2 we have had to stop and change our own plans for the land, i.e. promoting for  
3 development, exploring alternative uses, including renewable energy,  
4 converting the farm buildings, etc? And it would be good if there is some  
5 acknowledgment that the time taken for the development assessment and  
6 construction – if this ever happens – of this scheme has implications for  
7 landowners, especially charities, who have a legal obligation to maximise use of  
8 their assets, and whose efforts in doing so are being disrupted.’ That was what  
9 Mr Cathcart asked me to say, and now onto dealing with your questions, sir.

10 The first, ‘Outline of the current scope of objections, taking account of any  
11 progress in negotiations with the applicant’, RBT’s property is land and  
12 buildings forming part of Great Clayne Farm. Gravesend has registered at  
13 HM Land Registry under title numbers K794941 and TT26967, shown on  
14 sheets 13 and 14 of the general arrangements plans (volume B), consists of the  
15 following two sites: site 1 is land on the north side of Lower Higham Road,  
16 Shorne, Gravesend and site 2 is land and buildings south of 226 Rochester Road.  
17 Starting with site 1, the project requires site 1 for the following purposes:

18 One, Ramsar mitigation: the temporary land possession for the creation of  
19 a temporary habitat for birds as part of measures to reduce the construction  
20 period’s environmental impact on the Thames Estuary and Marshes special  
21 protection area and Ramsar.

22 The second point is the drainage scheme: the temporary land possession  
23 for the discharge of treated water from a construction compound, together with  
24 permanent land acquisition of subsoil and rights to the drainage discharge pipe.

25 Thirdly, the southern tunnel works: the permanent land acquisition of  
26 subsoil and rights, and temporary land possession for the proposed southern  
27 tunnel.

28 RBT objects to the Ramsar mitigation and the drainage scheme. It does  
29 not object to the southern tunnel works. It has been agreed in principle with the  
30 applicant, subject to contract, that it will not permanently acquire the subsoil and  
31 rights for the drainage discharge pipe for the drainage scheme. The discharge  
32 pipe will be left in a condition agreed between the parties, with the land deemed  
33 restored at the end of the temporary possession.

34 Returning to site 2, the project requires site 2 for the following purposes:

1           One, the southern entrance compound and the storage: the temporary land  
2 possession for the southern entrance tunnel's compound and soil storage.

3           Two, the proposed the Chalk Park scheme: the permanent land acquisition  
4 for the creation of a new open space site to be known as Chalk Park.

5           And three, public footpath works: the permanent or temporary land  
6 acquisition for improvement, realignment and upgrading of public footpath NG7  
7 to bridleway connecting to other newly created public routes for Chalk Park.

8           RBT objects to the southern entrance compound and storage, and the  
9 Chalk Park scheme. The applicant has confirmed that public footpath NG7 will  
10 remain a footpath and will not be upgraded to a bridleway, and that only  
11 temporary possession is required. The applicant has also confirmed that the  
12 footpath will remain unsurfaced. On the basis that the footpath is unsurfaced  
13 and there is no permanent land acquisition, RBT no longer objects to the public  
14 footpath works.

15           And so your second question, 'Whether CA and/or TP powers, or both,  
16 are objected to and with reference to the statutory tests and applicable guidance,  
17 why?' Ramsar mitigation for site 1 – I'm not sure whether it is possible with  
18 the screens to bring up, now, the plan that shows site 1, just simply to give you  
19 a bit of context.

20 **MR SMITH:** It would, of course, assist us if that could be done. Although that being  
21 said, we do have our own microscreens, so we can – it's not as though we're  
22 completely blind at this point, so we can actually bring the site up ourselves but  
23 in the intervening time, noting that we do have apparently live screens – brilliant.  
24 Done. Thank you very much.

25 **MR HIGHWOOD:** That's very helpful. Thank you, and you'll see the Ramsar site is  
26 edged red and stippled, so you can see that's the pink area. The Ramsar  
27 mitigation is based on the applicant's criteria that the mitigation land must be  
28 functionally linked to the Thames Estuary and Marshes special protection area  
29 and Ramsar. Functionally linked land is a term used to described areas of land  
30 or sea occurring outside the designated site, which is considered to be critical to  
31 or necessary for the ecological or behavioural functions in a relevant season of  
32 a qualifying feature for which a special area of the conservation, or special  
33 protection area, or Ramsar site has been designated. These habitats are

1 frequently used by SPA species, and supports the functionality and integrity of  
2 the designated sites for these features.

3 There is legal requirement to consider the importance of functionally  
4 linked habitats and habitat regulation assessments when assessing new plans or  
5 projects to ensure the conservation objectives for the site can be delivered. RBT  
6 objects on the following grounds: that one, no formal site selection or  
7 consideration of alternatives. In a response statement dated February '23, the  
8 applicant stated no formal site selection process was completed before the DCO  
9 application. However, the proposed site is the only alternative that fulfils the  
10 necessary criteria to be suitable for the mitigation, that is, available during  
11 construction within the functionally linked land, and not existing designated  
12 habitat, is in close proximity to the affected areas, and is capable of being  
13 enhanced for functionality.

14 The applicant's position is contradictory. If no selection process was  
15 completed, then it cannot demonstrate the proposed site is the only alternative,  
16 and thus reasonably necessary and proportionate for the project. The point here,  
17 I believe, is that the applicant's been focused on their works, and they consider  
18 this area needs to be close to their works, whereas I think they need to stand back  
19 and look at the Ramsar site entirely, and look at the other end. Look at the  
20 eastern area where there are areas of land that are available. In fact, in particular,  
21 there's one area of arable land that was purchased by RSPB some time ago, and  
22 over the years, they've been converting that land from arable to pasture and  
23 there's an area of land that's still available. It's still arable, but I'm sure that  
24 RSPB will have long-term plans to convert that as well, and to bring those plans  
25 forwards to make available that land for this project, to cover their temporary  
26 obligations, to my mind is a far better approach.

27 Site 1 is not functionally linked land, but if it is, then temporary land  
28 possession is unnecessary. The applicant contends in the response statement  
29 that the proposed site is already functionally linked land, with the Thames  
30 Estuary and Marshes special protection area and Ramsar. RBT contends that  
31 the applicant has produced insufficient evidence of any existing functional link  
32 with any part of site 1. The applicant's position is again contradictory. If the  
33 land is already functionally linked land, i.e. crucial and necessary for the  
34 ecological and behavioural functions of the special protection area and Ramsar,

1 with a development subject to an HR, then it already serves such purpose, and  
2 temporary land possession is unnecessary.

3 Likewise, if it needs to be enhanced by temporary land possession to  
4 mitigate, then it cannot already be functionally linked land, and my final point  
5 in relation to this is enhancement measures cannot be temporary, and may  
6 unreasonably and disproportionately impact other neighbouring lands. The  
7 applicant has failed to demonstrate how enhancement measures to alleged  
8 existing functionally linked land can be temporary and will not impact nor create  
9 a functionally linked land with neighbouring sites. RBT contends for the above  
10 reasons that the use of site 1 for the Ramsar mitigation does not satisfy the  
11 conditions in section 122 of the Planning Act of 2008.

12 Now, turning to the drainage scheme for site 1, and on the plan you'll see  
13 that there is a corridor with an access from the south, and a larger area at the east  
14 end of that corridor, which is the site that will receive the thrust boring which  
15 will go from that point, exactly there, and then out at 4.00, heading towards the  
16 site of the Lower Thames Crossing itself. The drainage scheme requires  
17 temporary land possession for the discharge of treated water from a construction  
18 compound. RBT objects on the following grounds: RBT's agricultural lands  
19 outside the order limits are severed. You'll see that the white land below the  
20 Ramsar site and the corridor, and the white land below – south of the corridor  
21 and the residential area are – well, essentially there are three small areas of land  
22 that historically – well, currently the whole area is being used for arable and  
23 realistically, it's no longer capable of use.

24 So site 1 is tenanted agricultural land. The project will sever site 1 into  
25 two remaining irregular shaped plots outside of the order limits, with no access,  
26 the resultant impact being that such plots will be unable to commercially sustain  
27 farming activities. Such impact within the context of the proposed order limit,  
28 and coupled with the adverse impacts set out above, are unreasonable and  
29 disproportionate.

30 My second point is there is no flood management protecting land outside  
31 the order limits. The applicant has provided insufficient evidence, nor any  
32 assurance or undertakings as to the volume of water and how it will be managed  
33 on part of site 1, requiring temporary possession for the field drainage. In  
34 particular, how would this impact the use of RBT's adjoining land of site 1

1 outside the order limits? Such as will water be discharged and/or cause flooding  
2 to the adjoining land? Have flood assessments been carried out? It appears the  
3 whole of the fields will need to take water from the temporary field drainage.  
4 It's considered unreasonable and disproportionate for any part of the RBT's land  
5 at site 1 to be taken temporary, given such impact to the remainder of the land.

6 My third point, condition of the land upon return to RBT. The applicant  
7 has provided no evidence, nor any assurances or undertakings as to the condition  
8 of the land upon its return to RBT after the temporary possession, in particular  
9 in relation to contamination and future flood management after temporary  
10 possession. It is unreasonable and disproportionate that the land be temporarily  
11 acquired where the alleged purpose of the...

12 MR SMITH: Apologies, we did seem to have a brief oral interjection there via one of  
13 the remote channels. Can I just check that all microphones in the virtual meeting  
14 are switched off, please? Apologies, please resume.

15 MR HIGHWOOD: I'm grateful, sir. Andrew Highwood for the Rochester Bridge Trust.  
16 My third point, condition of the land upon return to RBT. The applicant has  
17 provided no evidence, nor any assurances or undertakings as to the condition of  
18 the land upon its return to RBT after the temporary possession, in particular in  
19 relation to contamination and future flood management after temporary  
20 possession. It is unreasonable and disproportionate that the land be temporarily  
21 acquired where the alleged purpose and the condition of the land created will  
22 extend wholly or partly beyond the period of temporary possession. Therefore,  
23 without further information and assurances as to the condition of the land upon  
24 its return to RBT after the temporary possession, RBT contends for the above  
25 reasons that the use of site 1 for the Ramsar mitigation does not satisfy the  
26 conditions in section 122 of the Planning Act of 2008.

27 MR SMITH: Normally, I would ask the applicant to scroll down to the plan below, but  
28 I believe to get to the plan below, you need to select the plan above.

29 MR HIGHWOOD: I don't know, sir, whether you've found that layout confusing. I  
30 certainly have.

31 MR SMITH: If we're talking about the south to north orientation of the plan set, it's been  
32 –

33 MR HIGHWOOD: It catches me out every time.

34 MR SMITH: – with us since the beginning of the project; however, such is life.

1 MR HIGHWOOD: It is what it is. Sir, I wonder whether we might have the plan above  
2 or below, or however you want to describe it, but the one that colours the  
3 property below. Thank you. Yes, helpful, thank you. Southern entrance  
4 compound and storage for site 2. RBT objects to the southern entrance  
5 compound and storage for site 2 on the following grounds: insufficient evidence  
6 on alternatives considered and the reasonable necessity and proportionality of  
7 the extent of the compound and soil storage. There is insufficient evidence as  
8 to why it is reasonably necessary for temporary possession, and what alternative  
9 sites have been considered by the applicant. It appears from the application  
10 documents that less land is needed for soil storage than proposed for temporary  
11 possession. Likewise, there is no evidence that soil storage has been considered  
12 on other parts of the southern entrance compound. By example, that part of the  
13 compound that is required for permanent land acquisition will later become  
14 Chalk Park, and repurpose part of the excavation material.

15 Condition of the land upon return to RBT. There is insufficient  
16 information and detail as to the condition of the land to be returned to the RBT  
17 after the temporary possession, in particular in relation to contamination and  
18 restrictions on land use, including potential residential developments.  
19 Therefore, without further information and assurances as to the condition of the  
20 land upon its return to the RBT, the temporary possession is unreasonable and  
21 disproportionate. RBT contends for the above reasons that the use of site 2 for  
22 the southern entrance compound and storage does not satisfy the conditions in  
23 section 122 of the Planning Act 2008.

24 Chalk Park scheme for site 2. The Chalk Park scheme concerns the  
25 permanent land acquisition for the creation of a new open space. RBT objects  
26 on the following grounds: the new open space is not part of the NSIP and not  
27 reasonably required, nor incidental to the NSIP project. The Chalk Park scheme  
28 is proposed to be new public open space; it is not replacement public open space.  
29 There is no requirement for the purposes of the NSIP highway project for  
30 additional public open space. Section 31 of the Planning Act of 2008 states that  
31 a DCO may be granted only to the extent that the development is, or forms part  
32 of, an NSIP project. The first condition of section 122 provides that any DCO  
33 granting the acquisition of land must be either a) required for the development  
34 to which the land – to which the development consent relates, or b) required to



1 facilitate, or is incidental to, that development, or c) replacement land which is  
2 to be given in exchange for the order land under section 131 or 132.

3 While there will be landscape mitigation upon the land, that is not the  
4 reason for the park and its extent and scale. Certainly, landscape mitigation  
5 could be achieved by alternative means, similar to other areas of the scheme. No  
6 evidence or justification of the necessity for the size of the new open space and  
7 resultant regular shaped boundary, and you'll see that with the – I mean it's  
8 artistic rather than practical in terms of use, the borders of the land.

9 Impact on neighbouring RBT land. There is no evidence as to what  
10 environmental and development impact the proposed creation of the Chalk Park  
11 scheme and the acquisition of part of site 2 will have on RBT's farming activities  
12 and future development upon reversion of the remaining part of site 2, following  
13 the temporary possession of the compound and soil storage. Without such  
14 information and appropriate assurances, it is considered that such impact will be  
15 unreasonable and disproportionate when coupled with its unnecessary extent and  
16 scale. RBT contends for the above reasons the use of site 2 for the Chalk Park  
17 scheme does not satisfy the conditions in section 122 of the Planning Act of 2008.

18 Turn to your third question, 'What relief is sought?' RBT concludes that  
19 the applicant has failed to provide evidence of a compelling case in the public  
20 interest for the land to be acquired compulsorily and requests the following  
21 relief:

22 One, the Ramsar mitigation: temporary land possession is not granted for  
23 the – to the applicant for the Ramsar mitigation of site 1.

24 Two, drainage scheme: any temporary land possession granted to the  
25 applicant for the drainage scheme must be relocated north to prevent severing of  
26 the unaffected agricultural land for site 1, subject to a flood management scheme  
27 approved by the local authority in consultation with RBT, which includes  
28 provisions for preventing contamination, and future flood management after  
29 temporary land possession.

30 And three, southern entrance and compound: temporary land possession  
31 is not granted to the applicant for the soil storage on site 2.

32 Four, this was a Freudian slip which I think Mr Bedford had yesterday;  
33 I've written down here 'Chalk Farm scheme', but this is the Chalk Park scheme.

1 Permanent acquisition is not granted to the applicant for the Chalk Park scheme  
2 on site 2.

3 Your next questions, ‘Whether there are any issues of hardship or requests  
4 for non-statutory relief’, and the answer is none. Your final question, sir, ‘Where  
5 relevant, whether the Human Rights Act rights and/or the Public Sector  
6 Equalities Duty are engaged, and what considerations emerge from this?’ As  
7 relevant and reflected in the statutes and guidance, article 1 of the first protocol  
8 of the Human Rights Act 1988 (protection of property), and that concludes my  
9 submission, sir. Thank you.

10 MR SMITH: I’m very grateful, and particularly grateful for the clear and systematic  
11 breakdown of the individual questions that we posed, which means that I don’t  
12 have any immediate follow-up questions. I’ll just check with my colleagues.

13 MR PRATT: I do have one question, Mr Smyth, and it was just a comment you made  
14 on –

15 MR SMITH: It’s Mr Highwood. Mr Smyth is for St John’s College.

16 MR PRATT: Sorry. Well, you’re Mr Smith as well.

17 MR SMITH: Sorry, too many Smiths.

18 MR PRATT: Mr Highwood, you made a comment near the beginning about the drainage  
19 scheme and that the applicant had not considered the flood risk. I’ve just spent  
20 a little bit of – having a look at the flood risk map that the Environment Agency  
21 publish on behalf of the government at the site, and it looks fairly blue from what  
22 I’ve seen. I was just going to ask have you done any independent review of that  
23 scenario, to just make that comment a bit more substantial, if you like, on that  
24 topic?

25 MR HIGHWOOD: Andrew Highwood for the Rochester Bridge Trust. As I was  
26 explaining, the land there is farmed by a tenant and has been farmed by that  
27 tenant for some time. There’s been a continual dialogue with Network Rail as  
28 to the maintenance of a culvert north of this land so that the water that drains  
29 from this land can run through and eventually out to sea. As others may have  
30 also experienced, having a dialogue with Network Rail doesn’t always end up  
31 with action, and both our client and their tenant are very frustrated and  
32 concerned, and therefore just another drop of water is of concern. I think the  
33 way it’s been described to me, it’s a bit like a bath, where you leave the plug out  
34 and you have both taps running full bull and the bath will go up, and up, and up,

1 and if you're sensible enough to turn the taps off before it overflows, you can  
2 then wait for the bath to drain and then you can play the same game all over.  
3 The trouble is, it's when the lord above decides to rain two days running that  
4 pressures amount and, as we say, we expect that this project will want to be  
5 pumping water at about the same time that we are most challenged in trying to  
6 get rid of our own. And we just don't – we've not seen anything from the  
7 applicant to help us even come to the conclusion they've looked at that point.

8 MR PRATT: So if I may paraphrase, sir – it's Ken Pratt, the panel member – so if I may  
9 paraphrase, you're in an area of difficult drainage that's probably at capacity  
10 now, and any issue will make an existing difficult situation worse. Is that a fair  
11 point?

12 MR HIGHWOOD: Andrew Highwood for the Rochester Bridge Trust. I think  
13 absolutely, perhaps it's the last straw you're referring to that breaks the camel's  
14 back. Thank you.

15 MR PRATT: Thank you.

16 MR SMITH: Thank you very much. So can I turn to the applicant and see who will be  
17 leading on the response for this matter? Is it Mr Tait?

18 MR TAIT: Yes, sir, Andrew Tait, for the applicant, and I may call upon Mr Russell  
19 Cryer, who is the HRA lead, and Mr Andrew Kay, who is the lead landscape  
20 designer, who's on my far left, and Mr Cryer on my left and Mr Kay is Mr  
21 Richard Saville, who's a senior surveyor with the land and property team.

22 So dealing, if I may, with the points in turn, starting with site 1, where  
23 there are three distinct matters that are relevant. First of all, there's the HRA  
24 mitigation land, which requires the land to be in winter stubble between October  
25 and March, during the construction period, so it's a temporary effect. And I'll  
26 ask Mr Cryer to explain, which he has explained previously to Mr Highwood, I  
27 think at a meeting in July, that first of all, this is essential. Secondly, it is the  
28 only reasonable place upon which for this to occur. Thirdly, as part of that point,  
29 the land needs to be functionally linked land already.

30 So there appears to be a misunderstanding by Mr Highwood about that; it  
31 has to be functionally linked land already, and the issue is the extent to which  
32 this is able to enhance that which is already functionally linked land. And so I  
33 would just ask Mr Cryer to comment on those matters briefly, just looking at

1 this part of site 1. So Mr Cryer, essential location and dealing also, associating  
2 that with functionally linked land, please.

3 MR CRYER: Good morning. Russell Cryer, for the applicant. So the evidence for the  
4 need for the mitigation is outlined in the habitats regulations assessment, which  
5 is at 487. I'll give you the detailed paragraphs in our written response. It's  
6 required to avoid the adverse effects on integrity from habitat loss and  
7 disturbance during the construction period only. You'll note that [Pool House  
8 Port?] on the north side is a permanent acquisition because there are permanent  
9 effects on the north side of the river, but not on the south side, which is why it's  
10 temporary. To be suitable for that, it needs to be available during the  
11 construction period. However, it needs to be functionally linked land already.  
12 It needs to not be a designated habitat because that cannot be enhanced. It needs  
13 to be in close proximity to the affected area because the birds need to be able to  
14 move from the affected area to the enhanced area. And it needs to be capable of  
15 being enhanced.

16 So not all functionally linked land is of equal quality or equal  
17 functionality. So an arable field, for example, would support less birds than a  
18 grassland or a stubble field, which are more attractive because they have more  
19 invertebrates in them etc. So the site proposed is the only site that fulfils all of  
20 the criteria to be suitable within the area. So all of the other sites that we looked  
21 at were either too far away, or they were designated sites, or they were already  
22 high quality, functionally linked land, which means they couldn't be enhanced.  
23 So we looked at the landscape and where would be suitable and proposed this as  
24 the only alternative that we had.

25 So the extent of functionally linked land was defined after a long  
26 consultation with Natural England, and it's shown in figure two of the habitats  
27 regulations assessment, which shows the extent of functionally linked land. And  
28 the proposed area lies within that functionally linked land, so it is functionally  
29 linked land that was agreed with Natural England, and it's of a quality of  
30 functionality, if you like, that can be enhanced. It is virtually adjacent to both  
31 of the areas that are temporarily impacted during construction. So it is suitable  
32 to carry out the function that it will need to do.

33 MR SMITH: Can I just intervene very briefly there because there is a question of mine  
34 that I didn't put to Mr Highwood because, in principle, it's not for him to answer,

1 it's actually on the applicant's side, and that relates to the degree to which this  
2 will provide, essentially, temporary ecosystem service as an undesignated site to  
3 support the values of the designated land. And as part of that process, if this  
4 temporary possession proceeds, there will be a phase during which the  
5 biodiversity value of this land will rise, and the species present upon it can be  
6 expected to be features of the protected site. But this is temporary and there may  
7 then be a question about the degree to which what is done during the temporary  
8 possession period might lead to probably what I can best describe as an  
9 inadvertent, enduring biodiversity enhancement, and the degree then to which,  
10 though notionally, temporary possession ceases, you hand the land back to the  
11 applicant. But at that point, you potentially hand the land back to the applicant  
12 subject to biodiversity value that was not there when you took possession of it.

13 Now, one of the possible consequences of that is that what was not  
14 designatable at the point of time when you took possession is, at this point, now  
15 designatable. Now that is of interest to the examining authority because, if that  
16 transpires, and I know there are a lot of 'ifs' there, but if that transpires, then  
17 there is an element of the temporariness of temporary possession that is  
18 potentially no longer fully entrained because, essentially, if you hand back  
19 temporary possession land with its characteristics altered, such that there are  
20 new obligations, new requirements, new regulatory provision, that then, as they  
21 would see it, burdens the freeholder or the occupier, then, although the  
22 possession was temporary, the effect is potentially enduring, which leads me to  
23 the underlying questions about how temporary is temporary possession? So I'd  
24 like to hear a little bit more about that.

25 MR CRYER: Mr Cryer, for the applicant. In answer to the last question, temporary is  
26 entirely temporary.

27 MR SMITH: Well I know it is in law, but the dilemma is, if you transform the  
28 characteristics of the land –

29 MR CRYER: I understand the question.

30 MR SMITH: And then you burden the freeholder or the occupier with new duties that  
31 they might not otherwise have had –

32 MR CRYER: So there would be no lasting change to the existing situation, in terms of  
33 its existing functionality and, therefore, the potential to be designated as a  
34 designated site. So the temporary measures would be merely to exchange one

1 agricultural practice from the existing one. So it's under arable production; that  
2 would be changed to either grassland or spring sown crops or winter stubbles.  
3 They're agricultural practices; when the temporary possession is over and it's  
4 handed back, it's entirely in the gift of the landowner to go and plant a winter  
5 cereal crop, which would put it back exactly in the same state as it is now. So  
6 there would be no lasting issue on the land.

7 MR SMITH: Unless the site were to be surveyed in the intervening period and possibly  
8 then made subject to a designation for and in recognition of the biodiversity  
9 value that it now contains.

10 MR CRYER: Well if that designation process were to go ahead during the period of  
11 construction, there's theoretically a possibility of that. I'm not aware of any  
12 intention from Natural England, intending to do such a thing.

13 MR SMITH: No, I'm not suggesting there is an intention.

14 MR CRYER: And within the area of functionally linked land, which is approximately  
15 two kilometres from the entire site, there is a vast area of functionally linked  
16 land out there, a lot of which would be much more functional than even when  
17 we had control of it in temporary possession and then converted it to grassland  
18 or stubbles. So the reason being, there are other areas that would be much more  
19 attractive, if you like, for designation within functionally linked land than this  
20 site, even when it's been enhanced for that temporary period.

21 MR SMITH: So it's your advice to me that we shouldn't be troubling ourselves  
22 substantially about the nature of the enhancement and any possible overhang or  
23 enduring effect of the enhancement, and the possibility that might affect the  
24 freeholder and/or occupier's ability to manage the land, broadly agriculturally  
25 as they saw fit, moving forward once the temporary possession period had  
26 ended.

27 MR CRYER: Mr Cryer, for the applicant. I think there is inconsequential risk of that  
28 happening.

29 MR SMITH: Okay. Right, sorry for that intervention, Mr Tait. Please continue.

30 MR TAIT: Thank you, sir. That's all I was going to say or ask others to say anything  
31 about the HRA mitigation land itself. The second area under site 1 is the cut and  
32 cover, which is for a six-inch pipe to be temporarily placed to allow drainage  
33 across to plot 14-03. That is, of course, governed by article 35 and the  
34 requirements to restore the land to the reasonable satisfaction of the landowner.

1 So far as the route that has been identified there, again I can perhaps ask Mr  
2 Cryer to supplement this if required, but it is the most direct route and if it moved  
3 further north, it wouldn't directly, at least, be draining into the land which is  
4 south of the Ramsar. So there is a logic to the selection and I don't know whether  
5 Mr Cryer wants to add anything to that explanation.

6 MR CRYER: Mr Cryer, for the applicant. The outfall from the drainage system is very  
7 precisely positioned where it is in the proposals to be outside the Ramsar  
8 designation. So there's a lot of consultation with Natural England and the  
9 Environment Agency about the most appropriate site for the outfall because the  
10 outfall will need a concrete construction which is land take. So it would be an  
11 adverse effect on integrity if you did that within the Ramsar. So we had to find  
12 a drainage route that would go to a ditch that was outside of the Ramsar, and  
13 where it's located is outside of the Ramsar, even though that ditch then flows  
14 north from that point and immediately north of there, that ditch is actually in  
15 Ramsar. So the location is precise and cannot be changed, otherwise it would  
16 have an effect on the Ramsar, an unacceptable effect on the Ramsar. The  
17 positioning of the pipes to get to that are then the most efficient way to get that  
18 water to that outfall.

19 MR SMITH: Okay.

20 MR TAIT: There is addition of the flooding matter. The Environment Agency has agreed  
21 to permit the discharge as proposed. That's in the statement of common ground  
22 with them, REP5-34 at 2.1.15. And in addition, for the benefit of Natural  
23 England, there's a REAC commitment, which is RDWE-33, and Natural  
24 England welcome that provision. That's in REP2-009 at 2.1.53. And that REAC  
25 commitment relates to the standard specified by the Environment Agency  
26 released at greenfield runoff rates, runoff collection measurement system,  
27 operated until full reinstatement of the compound is complete, and also deals  
28 with water quality standards. So the applicants are alive to that and it has been  
29 subject to our detailed discussion and agreement with those bodies.

30 MR SMITH: And in a brief supplementary question arising from Mr Highwood's  
31 submissions, then it's your submission to us that questions about both volume  
32 of discharge and timing, and indeed any water quality or contamination issues,  
33 are therefore addressed.

34 MR TAIT: Yes, sir.

1 MR SMITH: Okay.

2 MR TAIT: The third matter in relation to site 1, I think Mr Highwood indicated that that  
3 appears to be a matter which is on its way to agreement, relates to the permanent  
4 subsoil rights in relation to plots 14-04 and 14-05. That is, on the plan, the  
5 diagonal stretch before coming into the cut and cover. That needs to be  
6 permanent as it goes across the Ramsar site and it's important not to then – it'll  
7 be drilled from the west – and it's important not to then have to remove it and  
8 then, potentially, undo the benefit of drilling in the first place.

9 MR SMITH: Right. So although the utilisation of the drain itself will be temporary,  
10 because of the Ramsar implications, you will essentially then just cut it off and  
11 leave it in the land.

12 MR TAIT: Yes, sir. That's why it needs to be permanent. But as Mr Highwood  
13 indicated, there is discussion about an agreement to see whether that can be dealt  
14 with in a different way because, if it can be dealt with by agreement, then what  
15 otherwise would be trespass in the absence of the taking permanent rights can  
16 then be resolved. That's my understanding of the position. So those are the  
17 points in relation to site 1, and site 2 – I'm so sorry.

18 MR TAYLOR: Yes, Ken Taylor, panel member. Before you move on to site 2, I just  
19 had a query on site 1. Mr Highwood did also raise concerns about, essentially,  
20 that this could mean the land parcelled up into small sections that could then  
21 become unviable to farm, and I wonder if we could just have the applicant's  
22 response on that particular issue, please.

23 MR TAIT: So I think that's a matter for Mr Saville, from the land and property team.

24 MR SAVILLE: Richard Saville, for the applicant. The cut and cover section through  
25 there will be a temporary drainage pipe, six inches wide approximately, that will  
26 be underground. It will be cut and cover; it will be put in the ground. That very  
27 small, slit trench will then be reinstated and the land will then be available once  
28 more to agriculture and back to the applicant. The only rights that the applicant  
29 would seek would be those of maintenance and inspection over the period in  
30 which that particular drainage pipe would be needed.

31 MR TAYLOR: Ken Taylor, panel member. So just to be clear, your view is that the  
32 disruption is limited in time, presumably both putting it in and then removing it,  
33 so the two periods of disruption, with some kind of monitoring and maintenance.



1 MR SAVILLE: That's correct, sir. So in between time, it would be available back to the  
2 applicant for agriculture.

3 MR TAYLOR: Okay, thank you.

4 MR TAIT: Andrew Tait, for the applicant. Turning to site 2, where there are two issues,  
5 essentially. One is the location of the compound on the temporary basis, and the  
6 other is the permanent requirements for Chalk Park. And I wonder if I could ask  
7 Mr Andrew Kay, who's the lead landscape designer, first of all, just to deal  
8 briefly with the location of the compound, and then I'll ask him to deal with  
9 Chalk Park. So, Mr Kay.

10 MR KAY: Andrew Kay, on behalf of the applicant. In terms of the location of the  
11 compound, I believe what the intention was trying to only handle the material  
12 once. So this was fed in by the location of Chalk Park and mitigation provided.  
13 So providing it to the west of the portal location, and in formation of Chalk Park,  
14 that would be ideally handling material only once, reduce the number of lorry  
15 movements and movements of material around. So that was leading into the  
16 overall design, Chalk Park. If I may, I might just briefly summarise the overall  
17 design location of Chalk Park itself, as that might try to explain the location,  
18 size, and extent of the build mitigation provided. So firstly, I'd just like to point  
19 out that Chalk Park isn't just an open space. It does provide embedded  
20 mitigation for the project, to mitigate impacts of the project, as well as integrate  
21 the portal and the alignment into the surrounding landscape. This provides  
22 multi-functional benefits for utilising the surrounding landscape character and  
23 available material from the cutting to provide landscape and visual mitigation,  
24 habitat creation, and then connectivity and recreational opportunities, which I'll  
25 go through briefly. And it does also provide an element of place-making for the  
26 project and nearby communities.

27 The initial drivers for Chalk Park, when we initially came up with the  
28 concept, were initial discussions with the Department for Environment, Food,  
29 and Rural Affairs, or the Defra families. They did identify objectives for calls  
30 for woodland creation, habitat buffering, and the creation of a multi-functional,  
31 accessible space to the east of Gravesend in, broadly, this location. And also,  
32 the NPSNN requires, in paragraph 4.31, a good design, so the project has been  
33 developed to try to be landscape-led, to support the recovery of nature, and to  
34 avoid and minimise significant impacts on the environment. So these were

1 broad drivers for the initial creation of Chalk Park. If I may just outline the  
2 primary benefits and designs of Chalk Park, I've characterised these into four  
3 broad themes.

4 The first theme is around the creation of the earthworks. This provides  
5 landscape and visual mitigation for the project. We are providing a new  
6 alignment and portal infrastructure within this area, and this is very sensitive  
7 landscape for which we need to provide integration, and landscape, and visual  
8 screening. So the new earthworks provided have been utilising the excavated  
9 material from the chalk cuttings and have been designed to integrate the portal  
10 by trying to reflect the character of the surrounding context. Found throughout  
11 the wider context is developments or villages that are found on the lower slopes  
12 of wooded hilltops. So we felt this was an appropriate landscape context to try  
13 and locate the portal structure in, utilising the amount of excavate material in  
14 this area to try and locate the new portal structure on these lower slopes, a new  
15 wooded hilltop that we are creating.

16 We are also trying to provide habitat creation in this area, which again  
17 reflects one of the Defra objectives that I initially outlined, and aiming to create  
18 a green buffer between the edge of Gravesend and a habitat corridor that  
19 connects from the woodland compensation already provided to the south from  
20 around the A2 junction, and to create a wildlife corridor from north to south,  
21 between the project route and the edge of Gravesend. Again by utilising the  
22 excavated material generated from the cutting, it lends itself to the creation of  
23 wildflower chalk grassland habitat. By raising the soil profiles and gradients,  
24 we found that we could try to recreate this chalk wildflower grassland habitat by  
25 steepening slopes. Steepened slopes lends itself to the creation of much thinner  
26 soils, which then creates ideal habitats for chalk grassland and doesn't create  
27 competitive species.

28 So that's formed the formation of why we're trying to create, again, these  
29 wooded hilltops. It also forms part of our wider regional landscape strategy,  
30 which is outlined in the project design report, part D, south of the river, which  
31 is application document 509. And on page 12 of that document there is the  
32 regional strategy diagram that shows how Chalk Park forms part of that much  
33 wider regional strategy of creating recreational loops and providing connections  
34 between open spaces. So Chalk Park forms part of that much wider regional

1 strategy. And lastly, Chalk Park then has an opportunity to provide a new  
2 recreational landscape for residents on the edge of Gravesend. It's within  
3 walking distances for those users and receptors, and would provide 35 hectares  
4 of public open space, using all the mitigation land that I've previously identified.

5 There are secondary benefits to the design of Chalk Park as well. The  
6 beneficial reuse of the material was widely supported by the Environment  
7 Agency scoping opinion, and Kent responses at statutory consultation, to seek  
8 additional benefits of beneficial reuse. So by reusing the material in this location  
9 – as mentioned, it's located adjacently, the cutting itself – we would avoid  
10 project waste requiring to go to other landfill areas around the wider area, which  
11 would, if there was to be located off to these wider landfill, that would require  
12 an additional 300,000 truck movements on the road network, which we're trying  
13 to avoid. This reduction in truck movements will also avoid carbon emissions  
14 by about 10,000 tonnes, which is the equivalent of powering 10,500 homes per  
15 year. So a secondary benefit is the carbon and waste benefits for creating this  
16 holistic design with Chalk Park.

17 If I may just move on to the – just to respond to the irregular shape, or the  
18 artistic boundary approaches. Again, this was designed to reflect the character  
19 of the area. Again, if you look at the north of Shorne Woods country park, or  
20 Shorne Ifield Road, this does follow an undulating curvature pattern, and this  
21 reflects the topography of the area. The area is characterised by this whole series  
22 of dry valleys, or dry chalkland valleys and ridges, that run from north to south.  
23 So the design of chalk park was looking to replicate that, which is why we've  
24 got this bulge that sticks out because that's one of the chalk ridges that have been  
25 formed to the north. So we're trying to replicate that and that pattern is found  
26 elsewhere around the wider context. We tried to achieve the balance of only  
27 taking the land necessary for permanent acquisition to provide habitat creation,  
28 so we've only taken the land where we've had to steepen the land sufficiently  
29 that it can't be returned back to agriculture.

30 So we had sought to achieve a balance of land required for mitigation but  
31 trying to hand as much land back as possible. So the land to the north of Chalk  
32 Park, we have slightly adjusted the profile of them, but they're still to the same  
33 gradients and topography of the area so it can be handed back. As I've outlined  
34 earlier, where we've raised the slopes to achieve a woodland creation, the

1 integration of the portal, or the habitat creation of the wildflower chalkland,  
2 that's the land that we're looking to permanently acquire. So we have tried to  
3 achieve that balance. So in summary, Chalk Park does provide multi-functional  
4 benefits that go way beyond just providing the open space and feed into the much  
5 wider context that we've been looking at.

6 MR SMITH: Thank you very much. Okay, Mr Tait.

7 MR TAIT: So that concludes our response, unless there are any other matters.

8 MR SMITH: I'll just check with my colleagues – no. In which case, Mr Highwood, I'll  
9 just return to you, as it is, essentially, your submission. You've heard what they  
10 say. A brief opportunity to put key, final, concluding remarks to us. Do bear in  
11 mind, of course, that you can put more substantially finessed material with the  
12 benefit of thought to us in writing at the next deadline.

13 MR HIGHWOOD: Andrew Highwood, Rochester Bridge Trust, I'm grateful to you, sir.  
14 Just very briefly, on the functionally linked and the location of the mitigation  
15 land for the Ramsar, I think the difference of approach is that we look at the  
16 Ramsar as a whole and we accept that part of it is injured. We haven't seen any  
17 evidence as to the extent of it, but we just accept that a project of this size being  
18 even near the Ramsar is not what the Ramsar would enjoy. But it would appear  
19 that the applicant feels that they've got to find some land really close to their  
20 portal. And I'm not here as an expert in dealing with environmental matters, but  
21 I am the son of a farmer; I was brought up in the countryside; I live for the  
22 countryside; as a layperson I know a bit about the countryside. And if the  
23 wildlife could speak, I think they would say, 'Do you know, we'd rather move  
24 a bit further east,' and, to my mind, the best place to put that mitigation land is  
25 where they want to go, not where they're running from. So that's my point on  
26 that.

27 The drainage – this point about the drainage outfall and its relation to the  
28 Ramsar came very late to us and I'm not sure that I quite understand or can see  
29 that it is quite as fixed as that. And also, about the temporary, the very short  
30 period of time that the pipeline will be laid and such, and so, I think if the  
31 applicant could give us just a bit more comfort over that, we might see it as not  
32 necessarily the problem we had first seen. And my only other comments, I really  
33 just want to talk about Chalk Park. Andrew Key is clearly very proud, and he

1 sees what he has put together as a great offering, and no doubt it is, if indeed we  
2 needed one.

3 And I think, actually, this falls into the category of others who have spoken  
4 to you before about the difference between need and want. What I haven't  
5 actually seen properly is an explanation as to why – if all of the tunnel arising is  
6 going north, why can't the last little bit, which, in terms of volume, is probably  
7 in the single figure of percentages, why can't that go north as well, or at least  
8 some of it? Why can't the spoil that's being put across Rochester Bridge Trust  
9 land be graded in such a way that we can have more of the land back? I think  
10 this has been designed with, let's do something which is going to be really  
11 impressive that we can distract everybody from what we're really doing and  
12 have this champion, and everybody say how wonderful it is. And I'm slightly  
13 struggling, myself, knowing the area quite well, to really accept that this  
14 pyramid, whatever it's going to be, this 17-metre-high thing, I think it's – I mean,  
15 what a wonderful thing to discuss in the same year as Disney celebrates their  
16 hundred years. Sorry. I'm grateful to you sir. That's it.

17 MR SMITH: I've heard you on that point. We've heard you on that point. And  
18 obviously, we're going to have to – we note that there is – as we have made, in  
19 various remarks, where matters appear not to be settleable, on the fundamental  
20 basis, between an affected person and the applicant, we're going to have to take  
21 those away, review the applicant's case with very great care alongside yours,  
22 and try to make a recommendation, an adjudicatory recommendation, to the  
23 Secretary of State that deals with the point. And I suspect that's where this  
24 particular issue is going to rest because I suspect you will not move closer to the  
25 applicant nor, indeed, do I suspect the applicant, for reasons that they have  
26 outlined, will be prepared to move closer to you. So I suspect, as I say, this rests  
27 in the basket of adjudications.

28 MR HIGHWOOD: Andrew Highwood, Rochester Bridge Trust. I'm most grateful to  
29 you sir. And also I will make sure that Mr Smyth makes himself available to  
30 you on whatever day you say in November.

31 MR SMITH: I am very grateful. Thank you very much. Yes, no, a very useful reminder  
32 from my colleague, Mr Taylor. Just looking at timings, clearly what we have  
33 asked for is a reduction to writing of submissions that were made today by  
34 deadline 6. In terms of matters of ongoing negotiation, where there are things

1 that potentially can be settled, viz. the drainage point, if that's possible by  
2 deadline 6, maybe, but we note that deadline 6 is also very close. So what we've  
3 been saying routinely to people is, however, that it would be very, very useful  
4 to us to have final positions set out in writing by deadline 7 because if they arise  
5 later than deadline 7, we are into the last three deadlines of the examination, that  
6 we loosely refer to as the bounce down, the point at which everybody states their  
7 final position in case, everybody cross responds, and then the applicant gets its  
8 final say at the final deadline. Now typically, once you're in that bounce down  
9 process, it's a little bit too late for new ideas. Things that are capable of  
10 settlement, at that point, sometimes cease to be even discussed because  
11 everybody's too focused on articulating their final positions. So deadline 7,  
12 please, on both sides of the table, if there are negotiable matters that need to be  
13 put in as resolved.

14 Okay, thank you very much for those submissions, and because you're  
15 probably not interested in any of the other matters that arise in the remainder of  
16 this hearing, do feel free to leave at any point, if you so wish. What I'm then  
17 just going to do is to go briefly into procedural mode because I do just want to  
18 check with the audio-visual team what the status of our screens is because, of  
19 course, we went through a phase of them disappearing and coming back again,  
20 but for the last hour and a bit they've been completely stable. Okay. So what  
21 we're going to do, because I have promised that we would hear from Mr  
22 Bradbrook, and he's sitting patiently here, and I think it would be very wrong of  
23 me to take away his opportunity to speak, having offered it to him. Mr  
24 Bradbrook, would you wish to speak?

25 Okay, whilst you're coming forward, there are two other people that I  
26 briefly want to check with. Now we do, I believe, have Mr Francis Wilson in  
27 the room. Yes. Now, Mr Wilson, apologies for not introducing you in the  
28 morning introduction. You were a late addition to the agenda because you made  
29 a late request to be heard. What I'm going to suggest we do with you, at risk of  
30 troubling you to sit around for a little bit longer, I'm just going to ask the case  
31 team to just check with the applicant that the applicant is alive to your specific  
32 land interest in the book of reference, so that, by the time you're ready to speak  
33 and proceed, they know what you're talking about because I think that's  
34 necessary from a fairness point. So that means I don't think you will be 'on'

1 before the lunch break, if that's not too troublesome. Then, finally, I do note  
2 that we have got Mr Peter Trevor Foster in the virtual room now. Now Mr Foster  
3 wasn't here for introductions. Again, to flag to Mr Foster that we intend to call  
4 individual persons objecting to compulsory acquisition or temporary possession  
5 after the lunch break in this agenda. So I just thought I needed to make that clear  
6 to Mr Foster as well.

7 So what we're going to do, because we're going to move to Mr Wilson.  
8 As soon as we've heard Mr Wilson, hopefully we'll then get back to agenda  
9 order and, Ms Anderson, we will try then and move directly through the  
10 Northumbrian Water material, and we hope that we have no more digital  
11 glitches. Sorry, not Mr Wilson, why did I say Mr Wilson – Mr Bradbrook.  
12 Apologies, Mr Bradbrook. One of these days we'll get this all right. Yes, if you  
13 press your button, you'll see a red light and you're then being recorded.

14 MR BRADBROOK: Okay. I am a resident of North Road in South Ockendon. I will  
15 be affected a lot by not only – well, the things that's been raised to me is that  
16 there's going to be the M25 compound, which is going to be built just by my  
17 properties. I don't know if we have the map to show for it.

18 MR SMITH: It's possible for the applicant just to draw up the relevant elements of land  
19 permits. There's a little bit of –

20 MR BRADBROOK: Yeah, no, that's fine.

21 MR SMITH: Excellent.

22 MR BRADBROOK: Now I'm guessing that none of you are aware of where my  
23 properties are. Yeah, so the cursor is being highlighted on them now. After the  
24 first DCO was cancelled, the second one, and the [inaudible], this M25  
25 compound was never going to be there at the time. That was added afterwards.  
26 Now, as you can see, the access to the compound is going to come in right near  
27 our properties. I have had dealings with Highways England, speaking to them,  
28 and we have been informed that the initial works were going to be somewhere  
29 between one year and 12-24 months of HGV lorries up and down the side of our  
30 properties, and then for the construction of this compound. I feel that the impact  
31 this will have on not only my life but my neighbours as well, during the actual  
32 building of it – I believe that there's going to be some utility works done up and  
33 down the field to reach to the compound, and then I've since been reading as  
34 well about the works that will begin up and down North Road for the B186

1 bridge, which will be going over the actual Lower Thames Crossing itself. I  
2 believe that there will be some works going on B186 for water management and  
3 waste management, which will then be leading up to the compound. So all I  
4 really want to do in being here is just raise my concerns for me, myself, my  
5 family, how this will affect our lives. It's very difficult because, yeah –

6 MR SMITH: I know this is hard and appreciate the difficulty of setting out your position,  
7 and it's important, though, that you are able to do so, and that we take into  
8 account effect on your property. But also, I think one of the important things  
9 about this is that we're not going to make an artificial cutline between what we  
10 do in this hearing around, essentially, the taking of land or rights, and  
11 consideration of the broader planning merits matters, the effects on you and the  
12 surrounding environment. So look, if there are any other matters that you want  
13 to put to us, given that you're here, please feel free to do so. And then leave it  
14 to the applicant to respond to them, and leave it to us to sort out how, in the legal  
15 and policy mechanics of all of this, they're then dealt with, in terms of whether  
16 they're compulsory acquisition matters or planning merits matters, or both.

17 MR BRADBROOK: Well what I'd like to know is, really, I feel that there's maybe, have  
18 all the ideas of how to construct their compound really been assessed? Do they  
19 have to go literally right next to our properties? Do we have to put up with that  
20 access being used for the construction of that? There is – yeah, I'm maybe a  
21 little bit out of my depth. Sorry.

22 MR SMITH: Don't worry about it at all.

23 MR BRADBROOK: I just feel that there's maybe some other areas around there that  
24 could be used, not only during the construction of the compound – I believe that  
25 most of B186 North Road, where we live on, that is going to be affected, I was  
26 reading earlier on, with roadworks going on there, the bridge. If you go just  
27 further on from North Road, I mean you don't have to access the map, but as we  
28 go into Ockendon Road, Havering Council have put in some road traffic  
29 management there, which, even when that's – even in most days, where we are  
30 now, traffic can build up to our properties. So we are then talking about more  
31 and more roadworks going on down there, how much that's going to affect us  
32 as well. Road closures for the bridge; I mean, I don't know but there are people  
33 that use the bus stop just outside our properties for access to the stations. How  
34 is that going to be affected by road closures and traffic works down there? So



1           there's that as well. And just really, I just want to put – I just feel that that traffic  
2           compound there, where it is and how it's affecting our lives for six months, 12  
3           months, one year, however it may be, I just feel that it's going to be difficult for  
4           us.

5   MR SMITH: Yes. There are difficulties for you, and it is a very substantial change to  
6           your local circumstances and your environment.

7   MR BRADBROOK: Indeed.

8   MR SMITH: No, those are clearly made points. Is there anything else in principle you  
9           want to draw our attention to, before I go to the applicant and ask them to  
10          respond?

11   MR BRADBROOK: Just, a) why is that compound, why was it added into there  
12          afterwards; b) I notice, the field next to us, if you look at that, above our  
13          properties, to the right of the compound, there's a lot of land there. I believe  
14          Havering Council have said that part of it they're designating as an area of  
15          wildlife. I mean, I've never known, the whole 20 years that I've lived there, I've  
16          never known that to be true the whole time we've been there. As far as I'm  
17          concerned, it's an ex-landfill site. So you just take on a little bit further on there,  
18          I think there's maybe access that could be used, which isn't affecting properties  
19          right on their doorstep, that could maybe be used. I also read, earlier on, that the  
20          entrance to the compound from what we're looking at, the north, Church Lane,  
21          Church Lane has been – I saw there is an outline traffic management plan for  
22          construction version [inaudible]. That road has had an HGV ban put on it. Why  
23          has that road been – to me, that would be – I'm not just passing on to somebody  
24          else, but why does that particular road have an HGV ban on it?

25   MR SMITH: Church Lane running southwards through North Ockendon.

26   MR BRADBROOK: Yes. So I'd like to maybe have answers to why that has been given  
27          an HGV ban, and why is the access to that said compound right on our doorstep.

28   MR SMITH: Okay. Thank you very much. Stay put, the applicant will respond. Ms  
29          Tafur, are you leading on this?

30   MS TAFUR: I am.

31   MR SMITH: Thank you.

32   MS TAFUR: Isabella Tafur, for the applicant. So just in terms of the division between  
33          compulsory acquisition offers, I'm going to address them both, but in terms of

1 compulsory acquisition, the applicant proposes to acquire a half-width of  
2 unregistered road outside Mr Bradbrook's property to deliver utilities work.

3 MR SMITH: So at [inaudible] –

4 MS TAFUR: Yeah, that's the nature of the compulsory acquisition. We understand that  
5 Mr Bradbrook has wider concerns about construction and traffic impacts. He  
6 has met, I believe, with Mo Halli, who's the construction lead from the project,  
7 who has sought to explain the rationale for the location of the compound and the  
8 HGV routes. Originally, there was – well, originally, there has always been a  
9 compound at the M25, but it was originally intended to be located in those fields  
10 that Mr Bradbrook was identifying a moment ago, but that had to be moved  
11 further away because of the wildlife designation. But that does also have the  
12 effect of moving the compound further away from Mr Bradbrook's property.

13 As to the construction traffic impact, HGVs will route past Mr  
14 Bradbrook's property. The original expectation was that that would be for 12 to  
15 24 months, until the Hall Road is built, and then access can be taken directly  
16 from the M25. In light of concerns that have been raised, further discussions  
17 have been had with Balfour Beatty, and there has now been a commitment, in  
18 the outline traffic management plan for construction at deadline five, to ensure  
19 that the temporary access will be between six to 12 months, so it's been reduced  
20 from 12 to 24. So that's an example of a step that has been taken. And there are  
21 various REAC commitments to minimise the impacts from construction  
22 compounds, which will plainly be in play here.

23 MR SMITH: Okay, and just so that we're clear, that's as a consequence of bringing  
24 forward the Hall Road in programme, so you got it earlier and are able to use it  
25 earlier than you'd previously thought.

26 MS TAFUR: Yes, that's right, and that – it's in REP 5056, that's the outline construction  
27 traffic plan – but that was, I believe, also communicated to Mr Bradbrook, I  
28 think it was a couple of weeks ago, 12 October. So we do understand his  
29 concerns. We have met with him and sought to explain. I appreciate he may  
30 still be dissatisfied, but steps have been taken to seek to minimise both impacts  
31 insofar as is reasonably possible at this stage.

32 MR SMITH: Okay, thank you very much. Is there anything else that you need to say?  
33 Before I come back to you, Mr Bradbrook, I trust – as Ms Tafur says, you may  
34 not be happy. I'll be fully clear that you've got outstanding concerns and we

1 will give those very careful consideration, but I trust it's also to a degree evident  
2 that some of the matters that you've raised are matters that are being given  
3 careful consideration already by the applicant, irrespective of any  
4 recommendation we might make. So they're starting to work on trying to  
5 resolve some of the matters that you've raised.

6 MR BRADBROOK: That would be correct, yes.

7 MR SMITH: Yeah, okay. I've got one consequential question that only fits very loosely  
8 also within the framework of a compulsory acquisition hearing but given that  
9 we have stepped across the boundary a little into planning merits matters, I am  
10 also going to raise. Now I don't expect a detailed answer because you won't  
11 necessarily be prepared for it, but it would be something that I'd appreciate if it  
12 was addressed in writing. And that relates to security around potential enduring  
13 uses in a construction compound. Now I know it's the normal intention of a  
14 temporary construction compound to be exactly what it says on the tin, and to  
15 be temporary.

16 The reason, however, I raise this concern is to flag a matter that we will  
17 surface when we next have an issue specific hearing on the development consent  
18 order, which is that onsite inspections, during accompanied site inspections one  
19 to three, certain sites that we inspected that the landowners or agents for which  
20 were seeking additional measures now, in relation to LTC, were apparently sites  
21 that had formed construction compounds for the M25 construction, had then  
22 ended up with a pattern of possibly unlawful continuing uses, followed by  
23 certificates of lawfulness, and had transformed themselves, in a way, into almost  
24 mini industrial parks.

25 Now this is not to suggest that there is any inevitability about that  
26 happening. In fact, it's quite important, and the reason I'm raising it in relation  
27 to, particularly, effects on the access that is at issue here, and also, effects more  
28 broadly for residents around any temporary compound, is that we will need to  
29 look very carefully at the whole question of end-of-life provisions and close-  
30 down provisions and controls for any temporary compound, with a view to  
31 making sure that there is a clarity that temporary means what it says on the tin.

32 So irrespective of the broad questions of whether the project proceeds or  
33 not, if we're then into the secondary position of, it proceeds on the following  
34 basis, yes, that is an issue that we're going to be thinking about. So I thought it

1 was only fair to just pop that on the table now. We will be coming to it in later  
2 hearings. But I thought it was relevant to your position, sir. Okay, is there  
3 anything final that you want to say before we bring your submissions to an end?  
4 MR BRADBROOK: No, I don't think so. I think I've put the concerns that I have with  
5 it to you in person on that.  
6 MR SMITH: Well, thank you once again for taking the time to come and put your  
7 concerns in person as well. I appreciate it.  
8 MR BRADBROOK: Thank you.  
9 MR SMITH: Okay. Let's now move back to the agenda. We still have one or two issues  
10 with the immediate monitor screens in front of the examining authority. So  
11 again, if we are looking backwards, that's because we are looking at different  
12 screens. Oh no, we've lost them as well. Ah, okay. Ms Anderson, we're going  
13 to have one more try on a technical fix. It is now nearly midday, which is earlier  
14 than we would normally call a lunch, but I would dearly like to enable the  
15 Northumbrian Water, Essex and Sussex Water position to be put in front of us,  
16 seeing you, also seeing any material such as shared plans, that will assist us to  
17 appreciate your case. So what I'm going to suggest we do is that we break now  
18 for lunch. Let's count it as midday, even though it's not quite there yet. Will a  
19 one-hour recess be long enough for the tech team to actually get through  
20 everything? It should be. Well look, why don't we say one hour –  
21 MS TAFUR: Sir, Isabella Tafur, for the applicant. Sir, I know you kindly offered us the  
22 opportunity to take some time in respect of Mr Wilson's concerns. We were  
23 aware that Mr Wilson was coming today.  
24 MR SMITH: Well we could proceed with him.  
25 MS TAFUR: We could proceed with him if that would be –  
26 MR SMITH: Absolutely. No, that's a very, very good idea. Mr Wilson, are you content  
27 with that? You come forward. Okay, so dealing, then, with the slightly difficult  
28 position of misbehaving tech, we'll hear Mr Wilson, then we will break for  
29 lunch. Let's say that we'll give it an hour and 15 minutes, so that there's a really  
30 good chance that they will actually solve the issues that we've been  
31 experiencing. And then when we come back after lunch, Ms Anderson, we trust  
32 that we will be able to go directly to you and run through your material with no  
33 break of further concerns. So Mr Wilson, would you like to come forward? Any  
34 of the microphones. When the microphone is red, you are live.

1 MR PRATT: It's a white-grey button just underneath the microphone itself, on the base.

2 MR WILSON: Ah, good, okay.

3 MR SMITH: So you're now live.

4 MR WILSON: Yeah, okay. Shall I just start?

5 MR SMITH: Yes.

6 MR WILSON: Well my objection is about a high-pressure gas mains, really. This  
7 nationally significant infrastructure problem is vast, but in my little, tiny corner  
8 of England, where I live, it results in a high-pressure mains gas line being laid  
9 across the middle of my land. The works that will be required are bad enough,  
10 which you can imagine, to put that in the land itself, will rain lots of debris down  
11 onto my very beautiful corner of England. But at least the works are temporary,  
12 you might say. Okay, they are temporary, but the main objection is that although  
13 the works are temporary, the gas pipeline is permanent, and having a gas pipeline  
14 right across your land means that you are disallowed from doing anything to the  
15 land.

16 So my ambition to do a housing development there is out the window, it's  
17 gone. So you can't do many things at all. You can't build a shed; can't lay a  
18 road; you can't move trees; you can't plant trees; you can't make hedges; you  
19 can't do moulding even. So it's very restrictive and it's permanent, and the  
20 utilities company often have to come back to have a look at it, make sure it's  
21 alright. So this is a material change in my circumstances. I'm objecting to the  
22 gas pipeline because it causes a material change to my circumstances.

23 However, since I first objected to this, time has moved on because it has  
24 taken a long time to get here and have an oral objection. Things have moved on  
25 a bit and because I have issued a blight notice to Highways England that requires  
26 them to buy my property, that has been accepted. We are now moving to the  
27 stage of talking terms, negotiations, so the prospect is that there's light at the end  
28 of the tunnel, and probably this issue will, with me, go away. I have to up sticks  
29 and move, which is no simple thing. If anybody's moved, you'll know what I  
30 mean, but it looks like it might well be resolved.

31 Thank you for giving me the opportunity to register this objection, because  
32 many things may still happen, I guess, and the objection is that this project  
33 requires this gas mains right across my land. That's it.

1 MR SMITH: Very clear, very succinct, very simple. I'm going to turn, now, Ms Tafur,  
2 you're leading this.

3 MS TAFUR: Isabella Tafur for the applicant. Thank you, sir, and we heard and  
4 understood Mr Wilson's concerns which you raised at open floor hearing 2, in  
5 particular in relation to the pipeline as well as other matters, and we have  
6 provided a written response about the liaison with Cadent and Mr Wilson to seek  
7 to minimise the impact of the gas pipeline and the design of the gas pipeline  
8 which is going to be a thick wall which minimises sterilisation of the land. So  
9 we've set that out in our response following open floor hearing 2. That's REP1-  
10 85. I don't think it's useful for us to go over that material given it's already in  
11 and given, as Mr Wilson recognises, a blight notice has now been accepted by  
12 National Highways who sought advice from the Valuation Office Agency, and  
13 the VOA has now been instructed to carry out surveys and engage in  
14 negotiations with Mr Wilson for the purchase of his property.

15 MR SMITH: In which case the matter, as you say, Mr Wilson, may resolve, and, you  
16 know, we clearly do appreciate the difficulty. If it does in that way, it's still a  
17 substantial imposition on you and your personal circumstances and everybody  
18 involved in this – I know the applicant does, we certainly do – recognises the  
19 nature of the disturbance to you and your life that that may cause.

20 I think all we can sensibly say is everything that is in the papers already is  
21 in the papers already and therefore will receive our best and most careful  
22 consideration when we're writing our final report to the Secretary of State, but  
23 of course clearly a final document of position as it is known between you –  
24 between you and the applicant – needs to come in so that we can make the most  
25 accurate reflection of your circumstances that we possibly can in the report and  
26 consider. If there's been progress in negotiations with the Valuation Office  
27 Agency and the blight notice procedure is continuing, and that's where it stops  
28 at the point when the examination ends, just tell us that is the case so that we  
29 know what's going on. But if your objection is in any way still sustained, we  
30 will take that into account and we will reason on it.

31 MR WILSON: Thank you.

32 MR SMITH: Thank you very, very much for attending. Okay, ladies and gentlemen.  
33 We have heard everybody physically present in the room who has requested to  
34 be heard. We still have a number of interested parties, not least Northumbrian

1 Water and Essex and Suffolk Water and the Thacker family who are online. Let  
2 us now break. It is 12.05. Let us resume at 1.20, ladies and gentlemen. 1.20 –  
3 a slightly longer lunch than we would normally have, but that hopefully gives  
4 the audio-visual team the time necessary to work over all the cables and try and  
5 find out why we cannot see the plans, images and people that we need to see on  
6 the screens in the room for a virtual meeting to proceed seamlessly. So we very  
7 much hope that work can be done in the break.

8 Can I just ask, before we break, that if there are technical issues that need  
9 a little longer to sort than that break that we've just allowed, if you can get a  
10 message to us during the lunch, we will, if need be, extend the lunch by 10 or 15  
11 minutes to enable that work to be completed and tested because I'd much rather  
12 start at 1.30 knowing that we are safe for the rest of the afternoon's business,  
13 than start at 1.15 and be back in the land that we're in now.

14 Ladies and gentlemen, we're now breaking until 1.20. Thank you.

15  
16 **(Meeting adjourned)**  
17

18 MR SMITH: Good afternoon, ladies and gentlemen. Welcome back to compulsory  
19 acquisition hearing 4 for the Lower Thames Crossing. My name is Rynd Smith,  
20 lead member of the examining authority. We are now going – as I indicated  
21 before the break – to move to initially hear Northumbrian Water, trading as  
22 Essex and Suffolk Water. So if, Ms Anderson, you can be ready to introduce  
23 your case and team. Once we've heard from Northumbrian Water, we will then  
24 move to hear Mr Peter Trevor Foster and then, Ms Thacker, if you're ready at  
25 that point and able to participate we'll move on to yourself and such other  
26 members of your family as may wish to speak at that point. So if we move and  
27 start, then, with Northumbrian Water. Do we have Ms Anderson ready online?

28 MS ANDERSON: You do, sir. Good afternoon.

29 MR SMITH: And apologies for the wait. We do appreciate that you weren't able to  
30 proceed at the time that you were ready to proceed and are very grateful for your  
31 forbearance because sometimes there are technical issues with virtual events that  
32 are just quite hard to resolve. So, apologies.

33 MS ANDERSON: Indeed, and I do hope our patience today will be rewarded. So, sir, I  
34 am Hazel Anderson of Winckworth Sherwood representing Northumbrian

1 Water, which I think, as you said, operates as Essex and Suffolk Water in the  
2 area of the Lower Thames Crossing scheme. I'll refer to them as Essex and  
3 Suffolk or ESW throughout. You may recall from this morning that we have  
4 Paul Kelly also in attendance from Northumbrian Water, but I'm expecting to  
5 deal with the matters raised and I hope we won't need to call on Mr Kelly's oral  
6 intervention. Without further ado, I will move on to answering the questions  
7 that you've posed for us.

8 So on question one – outline of the scope of objections and where we are  
9 with negotiations – the current position, sir, on Essex and Suffolk's objections  
10 is the fundamental point of concern raised in our written reps, which I think is  
11 REP1-265. They remain; that is, that we've not yet managed to reach agreement  
12 in relation to removal of plot 24-133 – which is the Linford wellsite – from the  
13 order, so as not to interfere with ESW statutory undertaking, and particularly its  
14 abstraction licence obligations and commitments relating to future water supply  
15 in its latest water resources management plan and its related concerns about  
16 water quality from contamination of the source attributable to the Lower Thames  
17 Crossing project.

18 We indicated, I think, back in Issue Specific Hearing five in September,  
19 that there had been a meeting on 22 August which we thought at the time was  
20 reasonably productive. Since then, there have been three exchanges of a draft  
21 side agreement which deals with matters arising from the order and the  
22 protective provisions, and indeed the most recent comments on that were  
23 received by Essex and Suffolk from the applicant yesterday. We're obviously  
24 still taking instructions and considering the comments made on that document  
25 with a view to meeting, hopefully, before the end of October or very early in  
26 November.

27 The applicant's latest comments, as far as ESW understands them, and the  
28 position between the parties, could be summarised in the following way: that  
29 because there is both the side agreement to deal with matters relating to the order  
30 powers and protective provisions, and then further commercial agreement to  
31 deal with terms for works and water supply from the well in plot 24-133, the  
32 parties still need to sort out arrangements giving sufficient comfort to the other,  
33 so that the powers over the plot are given up with certainty on connection of the  
34 supply pipe connecting over the plot to the well.



1                   Specifically, in relation to compulsory acquisition over ESW's plot  
2 24-133, the applicant has not yet provided wording of sufficient comfort to ESW  
3 and therefore these submissions proceed on the basis that there is no agreement  
4 and in the absence of an agreement ESW is seeking removal of plot 24-133 from  
5 the order.

6                   Whether compulsory acquisition or temporary possession powers are  
7 objected to, and why, question two, ESW is continuing to object, therefore, to  
8 inclusion of plot 24-133 for both acquisition of rights under schedule 8 and for  
9 temporary possession purposes under schedule 11. The reasons for the objection  
10 were set out in ESW's written reps, as I say, representation number 1265, in  
11 paragraphs five-one to six-five, but I'll enlarge on where the issues seem to be,  
12 and I think it may be helpful first of all to make a few contextual points.

13                   First of all, ESW is a statutory undertaker relating to public water supply  
14 and has statutory duties and obligations under the Water Industry Act and Water  
15 Resources Act 1991. These include domestic supply duties and statutory  
16 obligations to produce five-yearly water resource management plans to plan for  
17 how such public water supplies will be secured in the next 25 years. It's not a  
18 sewerage undertaker. I think it's also helpful to explain that the applicant put  
19 Linford Well plot 24-133 within the order limits for acquisition of rights and  
20 temporary occupation, but this was not discussed between the parties in  
21 negotiations before the application was made. In order terms it's important to  
22 note that the applicant has not included any powers itself to abstract water to  
23 supply its tunnel boring machines needed for the tunnels. It's wholly reliant on  
24 securing an existing commercial supply which is acknowledged by the applicant  
25 in its REAC, and I think that is appendix 2 of document AP336 and it's tied up  
26 with commitment RDWE-003.

27                   There are, therefore, commercial negotiations with Essex and Suffolk  
28 Water over supply of water from the existing wellsite and that takes the form of  
29 a works and supply agreement. In its deadline 2 submissions, the applicant has  
30 made comments in relation to that plot. I think that document reference, sir, is  
31 document 9-53 which is, 'Comments on Written Reps', appendix B, 'Statutory  
32 Undertakers', page 7.

33                   So extracts of those comments are that, first of all, the applicant doesn't  
34 intend to use the compulsory acquisition powers to ensure access to a water

1 supply, but it does intend to utilise them in the absence of an alternative  
2 agreement between the parties to ensure the rights and restrictive covenants to  
3 construct, protect, operate, access and maintain the pipeline associated with the  
4 distribution of water from the Linford borehole to the TBM site, promoted as  
5 work number MUT6 within schedule 1 of the draft DCO, can be obtained in a  
6 lawful manner. Secondly –

7 MR SMITH: Ms Anderson, can I just stop you there because what I just briefly want to  
8 do is to ask a couple of questions in relation to that which are essentially more  
9 directed to the applicant, but just to make sure that the applicant picks those up  
10 and deals with them in its response to you.

11 MS ANDERSON: Of course, sir.

12 MR SMITH: And essentially, what I wanted to check with the applicant was whether it  
13 had ever been considered – in terms of the drafting of the DCO – that there might  
14 be an alternative approach, and the alternative approach might be one in which  
15 the order itself provides a direct power to abstract water? And I'm going to ask  
16 then the question which is, if you travel down that road, one, is it viewed – and  
17 I'm very interested in your view, Ms Anderson, as well – whether such a power  
18 would be in principle *intra vires* the act, whether it would be lawful. And if it  
19 is, then the following question which is if you need the water and you say you  
20 can justify that, is there any particular reason why you're pursuing the route that  
21 you're currently pursuing as opposed to that?

22 Now, I know, Ms Anderson, that's a set of questions that are to a  
23 substantial degree quite adverse to your client's position, and I'm not asking  
24 them out of any sense of indicating that that is what we might expect the  
25 applicant to do – rather the reverse. But I think what we need to know is what  
26 means lawfully there might be of the applicant achieving the objective that it  
27 seems to have set out, and to actually have the complete picture on the table in  
28 front of us rather than at the moment what feels a little bit like part of the picture,  
29 if that makes sense.

30 MS ANDERSON: Thank you, sir. Do you wish me to respond to that now?

31 MR SMITH: You can pick that up now, but the reason I wanted to lay it on the table now  
32 was so that we would definitely get a response to that from the applicant as well.  
33 So yes, do by all means respond to that now, and then move on to the rest of  
34 your case.

1 MS ANDERSON: Certainly, sir. Far be it from me to advise the applicant, sir, because  
2 clearly, they have their own advisors, but one would have thought that it may  
3 have been appropriate to include powers to abstract water within a DCO, and I  
4 believe that that is a power that it's possible to do. It's certainly possible in other  
5 similar consenting regimes and certainly I can't answer for why the applicant  
6 did not take such powers. The point is that having not taken such powers, as I  
7 said, it is in the position that it needs to rely on securing water from a licensed  
8 abstraction and at the moment that licensed abstraction is the licence abstraction  
9 of Essex and Suffolk Water at the Linford well. I'm not sure that I could say  
10 more than that at this stage.

11 MR SMITH: Indeed. And look, we'll hear from the applicant on it. There may be a  
12 perfectly good reason why in their view it's either not possible, or it is possible,  
13 but they've chosen not to do it. But I do think, in the circumstances that you've  
14 outlined, we need to understand whether that was – or ever could be – a means  
15 of addressing the issue at hand. And obviously then we need to – again, asking  
16 the applicant this rather than yourself – to look at schedule 5 to the 2008 Act and  
17 look at the matters that, essentially, an order may provide for. So, Ms Anderson,  
18 please carry on.

19 MS ANDERSON: Thank you, sir. So I was explaining that the applicant had made  
20 submissions at deadline 2 and it had said it didn't intend to use the compulsory  
21 acquisition powers to ensure access to a water supply, but it did want to have  
22 them to ensure rights and restricted covenants in relation to work MUT6 which  
23 is the pipe from the Linford site to the TBM site. The further point that they  
24 made in that submission, sir, was to negate the fact that ESW cannot lay pipes  
25 and risk of a successful delivery to the project associated with a non-function  
26 TBM, they've sought adequate rights via powers in the DCO.

27 And thirdly, that it's not the applicant's intent to impede ESW in their  
28 undertakings at the Linford borehole site, nor replace ESW as the controller of  
29 the site.

30 So they are – that's the background context that I think is useful for you  
31 to bear in mind, sir. Essex and Suffolk considers that the use of compulsory  
32 powers in the order to acquire rights over the plot linked to the supply of water  
33 for the TBMs is not necessary and it's ESW's view that the applicant does not

1 in fact have a compelling case in the public interest to include such powers  
2 consistent with section 122(3) of the Planning Act 2008.

3 There appears to be a misconception by the applicant that it must acquire  
4 rights over the site to take its supply pipe – that’s work MUT6 – to make  
5 connection directly with the well, because ESW doesn’t have powers to lay the  
6 pipe. ESW itself does not have statutory powers to lay a brand new service pipe  
7 in third party land for a single customer, which is what is required here for work  
8 MUT6. But ESW does have the necessary powers within plot 24-133 – which  
9 is its own operational land – to take a supply pipe from the Linford well water  
10 supply to the site boundary, and that can connect to the applicant’s proposed  
11 work MUT6.

12 In ESW’s view, connection to MUT6, and ultimately to the well, can  
13 therefore be done from the boundary of the plot and done by agreement, and  
14 indeed that is being discussed within the separate works and supply agreement  
15 which ESW is willing to enter into on reasonable commercial terms. There’s  
16 therefore no reason for the applicant, by compulsion, to temporarily acquire the  
17 site or to seek powers over it.

18 MR SMITH: Can I just explore that to make sure that we as an examining authority are  
19 completely clear about the thrust of your submissions on that, and that in  
20 summary, it is striking me that your proposition is that by acquiring the site of  
21 the well compulsorily, the applicant is not acquiring a right to abstract.

22 MS ANDERSON: That’s correct.

23 MR SMITH: So the compulsion fails to guarantee a water supply to the applicant. So if  
24 that’s what it’s intended for, it’s not achieving the objective that the applicant  
25 might seek, and your proposition, therefore, is that to the extent that the water  
26 supply dimension is not secured by that means, you can see no other – given that  
27 you are able to essentially lay out an access point – a stub pipe that could connect  
28 to a piece of infrastructure that they could bring to your operational boundary –  
29 you can’t see any other rationale for the compulsory acquisition of your  
30 operational land.

31 MS ANDERSON: Sir, that’s partly it.

32 MR SMITH: Well that’s my reason for asking the question.

33 MS ANDERSON: That’s partly it. There’s first of all the point that in legal terms – and  
34 again, coming back to your earlier question about powers of abstraction – the

1 applicant doesn't have powers of abstraction so it itself cannot abstract water. It  
2 must be reliant, therefore, on an existing abstraction licence which it's currently  
3 relying on the form of ESW's abstraction licence at the Linford well. It can't,  
4 by compulsory acquisition, secure that abstraction. One can't use – this is  
5 becoming rather legal, I'm afraid – but one can't in legal terms acquire the water  
6 itself under the land because the water under the land is not said to attach to the  
7 land, and therefore, in compulsory acquisition terms, if they acquire the land, it  
8 doesn't mean they acquire the water supply itself.

9 MR SMITH: And the water – the abstraction itself is a separate licensable thing.

10 MS ANDERSON: Indeed.

11 MR SMITH: And it requires, therefore – unless they have an agreement with somebody  
12 who already holds an abstraction licence, it requires an application for an  
13 abstraction licence.

14 MS ANDERSON: It would indeed, sir. That's correct. And I'm not sure whether  
15 technically one can take over an existing abstraction licence either, and indeed,  
16 sir, I don't believe that is the applicant's intention. Again, I think in the REAC  
17 there – I don't have the reference to hand – but I believe there is a recognition  
18 that they would be seeking to make use of ESW's abstraction at the Linford well,  
19 but there's no suggestion that they would want to be taking that over, and indeed  
20 as we say there are not powers to do that.

21 Coming back to your question about whether the point here is whether  
22 they could simply acquire the wellsite and the point is that they couldn't obtain  
23 access to the supply, that the further point is – from Essex and Suffolk's point  
24 of view – the further point that we were in contention with is that the actual  
25 supply pipe within plot 24-133, if you like, from the well itself across the site to  
26 the site boundary, our contention is that that piece of pipe, and therefore any  
27 powers over plot 24-133, are not necessary because ESW has the necessary  
28 means to lay that piece of pipe, because it's within its own operational land.

29 The applicant seems to be under the misconception, we think, that ESW  
30 can't lay the pipe completely, whereas it's that ESW can't lay the pipe in third  
31 party land. It doesn't have the necessary powers, but clearly it can lay the pipe  
32 within its own operational boundary. So ESW is also concerned that it's not  
33 necessary to take powers to lay the pipe right up to the well. And indeed, sir, in

1 my continuing submissions, I can explain to you why that doesn't make sense  
2 and why those powers, we argue, are not necessary.

3 MR SMITH: Well, let's have you make those continuing submissions then.

4 MS ANDERSON: Thank you very much, sir. So I think we were explaining that ESW's  
5 connection – ESW's view is that the connection to MUT6 – sorry, I've got the  
6 wrong teeth in – and ultimately to the well can be done from the boundary of the  
7 plot and done by agreement as is being discussed. There's therefore no reason  
8 to temporarily occupy or take rights over the plot to make that connection to the  
9 well, and I think this is perhaps the most crucial point.

10 Furthermore, under the terms of paragraph six of the protective provisions  
11 in schedule 14 to the draft order, the applicant can only acquire ESW apparatus  
12 by agreement. Therefore, if the applicant were to make out a compelling case  
13 for acquisition of a right over the plot – which obviously ESW doesn't think it  
14 can – the applicant still cannot itself make a connection directly to the well  
15 except with ESW's agreement. The order is predicated on the applicant reaching  
16 agreement with ESW for the connection to the well to secure the supply of water,  
17 which ESW is willing to do on reasonable commercial terms. So the actual  
18 supply of water is dependent on agreement. The applicant can't use its  
19 compulsory powers for supply as it's not possible – as I just explained in legal  
20 terms – to compulsorily acquire water under the land.

21 The key point, therefore, is that as the connection to the well itself is –  
22 under the terms of the order – reliant on agreement, ESW can see no compelling  
23 reason why the applicant needs to secure compulsory powers over ESW's  
24 operational land for the final piece of pipe across ESW's site up to the well. That  
25 seems neither necessary nor proportionate.

26 Turning to the tests and guidance more generally, in ESW's view the  
27 applicant has not demonstrated that all reasonable alternatives to compulsory  
28 acquisition have been explored, and that the interest sought is for a legitimate  
29 purpose, necessary and proportionate. The inclusion of powers should only be  
30 used as a last resort and here exercise of those powers will not fully address what  
31 the applicant ultimately needs, which is to obtain water supply for the TBMs.

32 Therefore, we don't think that the applicant has made out a compelling  
33 case in the public interest in relation to plot 24-133. Furthermore, the balance  
34 in ESW's view between the public benefit of acquiring rights over the wellsite

1 for the construction of a transport scheme is not here to be weighed against a  
2 private loss to ESW. The balance is between the public interest of enabling  
3 construction of an NSIP road scheme, and the public interest of a statutory  
4 undertaker in being able to meet its statutory obligations, including a public  
5 water supply need under supply obligations required by the Secretary of State  
6 for Environment, Food and Rural Affairs, reflected in its latest water resources  
7 management plan, and I can expand on this point shortly.

8 For any compulsory powers extended over plot 24-133, in terms of section  
9 127(5) of the planning act, these have the potential to cause serious detriment  
10 for the carrying on of ESW's undertaking. Such powers, if exercised, will put  
11 doubt over ESW's control of or ability to occupy the site, so as to fulfil its  
12 statutory obligations, including ongoing monitoring and maintenance of the well  
13 and future public water supply obligations, and indeed in relation to water  
14 quality issue arising from contamination of the site or the source attributable to  
15 the LTC works.

16 So just unpacking those slightly, the acquisition and exercise of rights over  
17 the plot has potential to affect ESW's existing controls over the wellsite  
18 including monitoring and running to waste arrangements to prevent local  
19 flooding. They are in the written reps which I think I gave you the reference for  
20 earlier, and that's paragraphs seven-seventeen and seven-seventeen-eighteen.

21 In relations to obligations relating to the water resources management plan  
22 and associated works required under that plan to bring the well back into public  
23 water supply use, if the powers currently in the order over plot 24-133 are  
24 exercised, there will be detriment to the carrying on of ESW's undertaking  
25 which cannot be made good by use of other land. There's no guarantee until  
26 boreholes are drilled and tested that other sites will actually yield the water  
27 supply envisaged. ESW therefore needs to retain uninterrupted control of the  
28 well land which is required for public water supply and to agree terms on which  
29 it will supply water to the applicant.

30 And finally, sir, I touched on water quality issues arising from  
31 contamination, and although they are not strictly related to the compulsory  
32 acquisition in one sense, they are a further potential risk if the applicant were to  
33 be in control of the Linford wellsite.

1 MR SMITH: On that final point, can I just check something, because I guess in terms of  
2 the approach taken in provisions that are drafted up in the consent order, there  
3 may be an argument that that is a separable matter, and I just wanted to float –  
4 and again, the applicant might respond to this as well when they respond to Ms  
5 Anderson generally – the possibility that you, all other things being equal – and  
6 I know they're not at present – but all other things being equal, you might be  
7 prepared to accept some provision, probably in a protective provision, that  
8 would frame and secure a regime of testing around water quality and an  
9 obligation – a duty – on the applicant to carry that out and maintain water to  
10 relevant standards at relevant points in time.

11 Because if that was something that might work, setting other aspects of  
12 this aside, and I know we've gone out with, now, strictly compulsory  
13 acquisition, but it might take one element of this disagreement and provide a  
14 route forward on it. So I'd be very happy to hear your in principle submissions  
15 on the feasibility or otherwise of that before we hear the applicant's response to  
16 the whole of your case.

17 MS ANDERSON: Indeed, sir, and I had a couple of minor further points to make, but  
18 on your latest question, I think that – certainly in relation to water quality – that  
19 is something that we've detailed in Essex and Suffolk's written reps and we  
20 certainly would require some mechanism to deal with monitoring of, if not  
21 ESW's existing monitoring being able to continue, monitoring at wellsite and  
22 for arrangements – and indeed indemnities, if necessary – for any contamination  
23 or pollution which arises from something attributable to the Lower Thames  
24 Crossing scheme.

25 That – quite where that would sit in the order, sir, I think is possibly up  
26 for grabs and I can see that it could be something – it's not something that's  
27 currently within existing requirements but there is some element of it that could  
28 be included in requirements, but I had wondered whether the most appropriate  
29 way to deal with this is possibly – and I think we had indicated this before – to  
30 have a dedicated article in the order that deals with the Linford wellsite and  
31 Essex and Suffolk's concerns there, which could cover compulsory acquisition  
32 issues and indeed mechanisms to deal with the water quality issues, and that may  
33 be – it may be helpful for you to indicate whether you would find it helpful to  
34 consider them all in one package, if you like, in a single article, or whether you



1 would want to see these as matters that are found in various parts of the order,  
2 including possibly requirements and in protective provisions, or whether –  
3 certainly on compulsory acquisition we will be expecting that to be either a  
4 provision that removes plot 24-133 or it would have to have qualifications on  
5 the exercise of powers. So it's partly one for you to suggest how you would like  
6 to see it, but certainly there are those various places where it could – where  
7 elements of ESW's concerns could sit as amendments to the order.

8 MR SMITH: Indeed. And look, an indication that I would give at this juncture is that  
9 my experience of probably the simplest and clearest way of dealing with  
10 multi-factor elements that include a measure of protection – so they are capable  
11 of falling within the broad scope of protective provisions – are, in many cases,  
12 best dealt with in protective provisions because protective provisions make clear  
13 that the provisions bears on the specific party who is the beneficiary and in this  
14 case there would be one party that would be the beneficiary. It would be ESW.

15 And then running to the question of, well, what can you include in  
16 protective provisions? Well sensibly you can include in protective provisions –  
17 if they are particular to the beneficiary – anything that is more broadly intra vires  
18 an order.

19 And if you're looking for some precedents, you can look at things like  
20 protective provisions benefitting Eni UK Limited in the made East Anglia  
21 THREE order, or indeed, thinking back in history, the Wilton Chemical Site  
22 protective provisions in what was originally, at the point it was made, Dogger  
23 Bank Teesside A and B made order. Now that scheme has subsequently  
24 subdivided itself into Dogger Bank Sofia and Dogger Bank A. However, in the  
25 order as made, there were extensive protective provisions dealing with highly  
26 technical multi-beneficiary issues around the operation of an advance integrated  
27 chemical plant, as against physical works necessary to deliver the NSIP.

28 The reason I'm raising those two as immediate examples is because they  
29 are examples that I'm immediately aware of, of mechanisms whereby protective  
30 provisions ended up being the best place to do really quite complex multi-factor  
31 jobs that entailed a measure of protection – that also did other things – but that  
32 the Secretary of State was persuaded of the value of making the order in that  
33 form. So with fairly complex protective provisions that were deemed necessary,

1 they were recommended by the relevant examining authorities in those cases  
2 and supported by the Secretary of State in decision matters.

3 So those are just two examples. There are many more, but yes – protective  
4 provisions do have the virtue of being able to do that job. If you don't do that  
5 job in protective provisions, you will still need protective provisions, but yet  
6 there will be other elements of provision in the order that are then found either  
7 in the articles themselves, in requirements, or in a freestanding schedule, that  
8 also bear upon, potentially, the operation of ESW's undertaking. And I guess  
9 merely as an observation, having been dealing with draft orders for a long time,  
10 my observation would be better to have such things in one place than in three.

11 So if protective provisions – if there's no vires argument why protective  
12 provisions ought not do it, then protective provisions is probably the best  
13 because it can do all of it, if that all makes sense.

14 MS ANDERSON: It does, sir. That's helpful. We'll certainly bear in mind what you've  
15 said and thank you for the helpful examples. We will also obviously consider  
16 the vires point and we can consider what is the most appropriate mechanism  
17 there.

18 MR SMITH: Okay. Now you did indicate that you still have some embroidery of the  
19 tapestry that needed to go on.

20 MS ANDERSON: Yeah. It was – I'm nearly there, you'll be glad to know. So we  
21 touched on water quality issues. I think just further points I wanted to make are  
22 that the applicant, as I indicated earlier, have said in its – I think deadline 2 or  
23 deadline three submissions – that it doesn't intend to prevent access to or control  
24 the Linford wellsite, but from Essex and Suffolk's point of view, mere intention  
25 without a legally binding commitment doesn't really provide any comfort at all  
26 to ESW to ensure that its statutory undertaking doesn't suffer serious detriment.  
27 And temporary occupation powers, we – although one can argue that temporary  
28 occupation powers are not the same as outright compulsory acquisition or  
29 acquisition of rights – in ESW's view the same concerns arise whether it's  
30 temporary occupation or acquisition of rights over the plot.

31 So in conclusion, the applicant only needs to make a supply connection.  
32 ESW can and is willing to lay the necessary length of pipe within its own  
33 operational land for that. The order requires the actual connection with the well  
34 only to be made with ESW's agreement. As it's accepted that an agreement is

1 needed for the actual connection, there appears no reason for the rest of the pipe  
2 on ESW's plot not to be dealt with in the same way. ESW has the necessary  
3 powers to lay that section of pipe on its own operational land. The applicant  
4 therefore doesn't need to take powers to do so, and it cannot make out a  
5 compelling case in the public interest. The public interest balance must consider  
6 the potential loss or effect in relation to future public water supply and in section  
7 127(3) terms, such powers, if granted and exercised, will cause ESW the serious  
8 detriment as we've explained in our submissions.

9 As to what relief is sought, we've probably dealt with that, sir, but as we  
10 said, if agreement cannot be reached, ESW is looking for removal of all powers  
11 over the Linford wellsite, so removal of plot 24-133 from schedule 8, schedule  
12 11 to the order, and from sheet 24 of the land plans. If we need to consider also  
13 consequences of damage or pollution to the water source, we will certainly give  
14 consideration to whether it's through the protective provisions or in a more  
15 specific order or requirement – sorry, article or requirement in the order – and  
16 we'll certainly give consideration to the best way to address those.

17 I think, sir, unless I can help you with anything else, that is the end of our  
18 submissions.

19 MR SMITH: Okay. Well I'll just check with my colleagues whether there are any follow  
20 up questions from either of them, and I'm seeing the indication no. Before I  
21 pass this case across to the applicant – again, I know I've already laid various  
22 items on the applicant's table to be picked up, but I think there is an overarching  
23 strategic point which again isn't particularly of a CA nature, but it runs to the  
24 justification of the CA, so I think it is important that we try and nail this one –  
25 which is the proposition that to operate a TBM a substantial and reliable water  
26 supply is required. If you can't get the water from this borehole, is there a plan  
27 B? Do you – is it your view that the powers that you are currently seeking,  
28 including the CA powers over this plot, do essentially provide a security for a  
29 sufficient water supply, and if the answer to that last question is a no, then what  
30 else – that begs a plan B, be it water from somewhere else, or be it some form  
31 of commercial agreement with ESW, or whatever. What is the mechanism that  
32 ends up delivering the necessary water supply to the TBM? Now, that's on top  
33 of the CA stuff, and, as you'll appreciate, to understand the degree to which the

1 CA tests are made out. We need to understand that. Okay. Who's leading on  
2 this? It will be you, Ms Tafur.

3 MS TAFUR: Isabella Tafur for the applicant, and I may introduce Keith Howell, who's  
4 the utility lead for Lower Thames Crossing. He sits to my left. First, a general  
5 overview. We have been in discussion with Northumbrian Water for some time  
6 now. We have, at various written stages, responded to representations that  
7 they've made. I'll just give you the references for the record. We responded to  
8 their written REP2-047. There was discussion about water at issue-specific  
9 hearing 5, which is summarised in our post-event submission at REP4-181, and  
10 we responded to questions from the panel in respect of sections 1271 and 138 at  
11 REP4-173 and REP4-174, and they both address Northumbrian Water  
12 specifically.

13 Aside from that, as you heard a moment ago, we have been engaged in  
14 discussions with Northumbrian Water to seek to reach an agreement. Most  
15 recently, iterations of the agreement have been exchanged – well, received from  
16 Winckworth Sherwood on 10 October, returned by us on 17 October, and I  
17 understand another meeting has been scheduled for 2 November. We are  
18 hopeful that that side agreement will resolve all of NWL's outstanding concerns.  
19 We appreciate it hasn't been finalised yet. We understand NWL reserving their  
20 position until such time as an agreement is concluded, but we're hopeful that  
21 will resolve their outstanding concerns.

22 So as to plot 24133, the applicant seeks temporary possession and rights  
23 over that plot to enable the installation of the water pipeline connecting the  
24 Linford Well to the north tunnel entrance to provide raw water for the TBM, and  
25 that's work MUT6. Now, a moment ago, Ms Anderson was outlining NWL's  
26 position that that wasn't necessary because they have the rights to lay the pipe  
27 up to their own boundary, and that would be sufficient, so there's no requirement  
28 for us to obtain the rights over their land. In the statement of common ground  
29 with Northumbrian Water, and that's APP-107, at item 2.1.1 –

30 MR SMITH: Excuse me. Apologies.

31 MS TAFUR: – at item 2.1.1, I'll just read to you from the entries by Essex and Suffolk  
32 Water or Northumbrian Water. This is their entry: 'Essex and Suffolk Water  
33 Limited wish all their works to be within the order limits boundary going  
34 forward,' and item 2.1.2 – again this is their entry – 'the Linford borehole site is

1           meant to provide raw but chemically clean water, therefore not potable water  
2           under the Water Industry Act, as it's untreated for the tunnel boring machine  
3           use. As this is raw water and not potable, Essex and Suffolk Water Limited  
4           cannot lay the pipes for that TBM use under the provisions of the Water Industry  
5           Act.' So that was the position as the applicant.

6   MR SMITH: So to the extent that a view has been formed about the powers that you  
7           have deemed to be necessary, your submission is that that arose from  
8           representations that you received from ESW on a technical basis.

9   MS TAFUR: Isabella Tafur for the applicant. My understanding is – and I'll have to  
10           confirm this with others – is that that was the applicant's understanding in  
11           discussions with Essex and Suffolk Water. So I don't know if it was their idea  
12           first, or our idea first, but that seems to have been the joint understanding.

13   MR SMITH: And yet we are now where we are.

14   MS TAFUR: We are.

15   MR SMITH: And part, then, of the value of this process is noting that there may have  
16           been some history, but noting that there is an immediate set of concerns and  
17           either a need for a resolution between parties or an adjudication on contested  
18           matters. We need to have enough information in front of us to be able to resolve  
19           if we can and/or adjudicate if we have to.

20   MS TAFUR: Isabella Tafur for the applicant. Well, certainly, sir, from our perspective,  
21           we are hopeful, as I say, that all of the outstanding concerns will be resolved  
22           through the agreement. In the event that that is not the case, plainly the parties  
23           will have to put their final positions to you.

24           To the extent that there is any doubt as to the ability for Northumbrian  
25           Water to lay the pipeline, plainly that's the very sort of circumstance which  
26           indicates why it's important to have a backup position, as it were, secured in the  
27           DCO. In the event that it turns out that there are any difficulties with laying that  
28           pipeline, we would like to have the powers secured in the DCO to put that  
29           beyond doubt, and as to your general question about the provision of water for  
30           the TBMs, there is an alternative available, but it is not the preference of the  
31           applicant to use that alternative.

32           I'll ask Mr Howell to address you on that. It's always been the applicant's  
33           preference to seek to reach agreement with Northumbrian Water, for them to

1 extract the water and to provide it to the compound. As to the alternative, I'll  
2 just ask Mr Howell to address you, if I may.

3 MR SMITH: Please, Mr Howard.

4 MS TAFUR: Howell.

5 MR SMITH: Howell. Apologies.

6 MR HOWELL: Good afternoon. Keith Howell for the applicant. The raw water and the  
7 use of it is a conscious decision by the applicant. The alternative would be  
8 provided by the route of work number MUT9. Now, MUT9 has a permanent  
9 purpose for the north portal building – northern tunnel serving building, sorry –  
10 insofar it will provide water for the operation of that building and fire  
11 suppression means. To undertake that requires a smaller ball pipe.

12 If we were unsuccessful in obtaining this agreement to provide the raw  
13 water via works number MUT6, we would install a larger pipe through the work  
14 number MUT9, or an additional pipe to provide that water supply. Now, the  
15 difference in the water supplies is that work number MUT9 connects to a potable  
16 water network, which is currently enjoyed and benefited by the residents to the  
17 west of compound CA 5. We believe that the demand then increases the risk  
18 profile of stresses on that pipeline, and therefore presents an unnecessary risk to  
19 that pipeline, which we believe is overcome by the provision of MUT6.

20 MR SMITH: And in respect of that secondary plan, the power to take water from that –  
21 I mean, yes, you've provided for yourself the power to run the pipeline, and  
22 there's the permanent need for it, and you could upscale it so you could serve  
23 the temporary need as well. In terms of who that water would be being obtained  
24 from, who the supplier would be, is that aspect of that also resolved as well?  
25 And forgive me if this ought to be patent and I ought to know it, but there's a lot  
26 of complexity here.

27 MR HOWELL: Keith Howell for the applicant. Simply, we'd apply as a customer to the  
28 operator of that network – we believe is Essex and Suffolk Water, and we would  
29 submit not using the powers of the DCO but as a customer via the existing  
30 means.

31 MR SMITH: Now, looking at respective levels of security, are they obligated to a)  
32 respond on demand, and b) respond within timescale, and they may have an  
33 answer to that question as well.

1 MS TAFUR: Isabella Tafur for the applicant. My understanding is that they would be  
2 required to respond to a request from a customer for additional water supply, but  
3 it may be that Ms Anderson is able to assist with their position on that.

4 MR SMITH: And it may well be that if that's a matter that can't be resolved here, it gets  
5 resolved in writing at deadline 6. Ms Anderson, would it be unfair if we asked  
6 that question of yourself? If they were to apply as a customer to take from the  
7 potable water supply, are you a) obligated to provide such supply in the volume  
8 that they require, and b) are there any limitations as to timescale that you are  
9 entitled to impose, or do you just have to deliver it when they ask for it?

10 MS ANDERSON: Thank you, sir. I'm now fearing that I may get this wrong and I may  
11 have to call on Mr Kelly, if he's there, but I'll –

12 MR SMITH: He's there. He's still online. And we see him. Mr Kelly, welcome.

13 MS ANDERSON: Are you able to answer that question, or would you prefer me to give  
14 it a go first?

15 MR KELLY: I think I probably can, yeah. As a normal – if we can use that phrase – I  
16 should have introduced myself. Paul Kelly for Northumbrian Water, Essex and  
17 Suffolk Water. In terms of normal supplies, if I can use that term, normal  
18 portable water supplies, then any customer is entitled to request a water supply.  
19 In a residential situation, that comes with no strings attached.

20 In a commercial request, as this one would be, a non-domestic supply, as  
21 it's referred to, there are caveats to the supply in that, under section 55 of the  
22 Water Industry Act. The water company's entitled to impose restrictions on the  
23 supply that govern the amount of water, for example. If that demand would  
24 place the company at risk of not being able to meet existing or future supplies to  
25 other customers, so the answer is, 'Yes, a supply could be made available via  
26 the portable supply system and the process for that, but it doesn't guarantee that  
27 the substantial quantities as I understand the TBMs require – wouldn't necessary  
28 be available by that route.' Does that answer your question, sir?

29 MR SMITH: It answers my question to a degree, and I suspect at least places on the table  
30 for the applicant the relativities of security of the two options. So, Ms Tafur, do  
31 you want to continue then in the light of that answer? This, I'm sure, may end  
32 up needing to be a point that is explored between you, and possibly referred back  
33 to us in writing, but at deadline 6 if at all humanly possible, please.

1 MS TAFUR: Isabella Tafur for the applicant. Yes, certainly, sir. We're happy to come  
2 back to you with more detail. My understanding is that there have been  
3 assessments carried out by the applicant as to capacity of potable water supply,  
4 and we think they'd be compatible with the scheme, but we will come back to  
5 you in writing on that.

6 So the intention then, in respect of the Linford Wells site, is to secure the  
7 powers to lay the pipeline, and to take temporary possession. The rights  
8 associated with the pipeline will subsequently be extinguished and the works  
9 removed pursuant to article 37, and it's true that we do require consent from  
10 Northumbrian Water in respect of works to their apparatus. That is consistent  
11 with the position with other statutory undertakers, but just because we need their  
12 consent for works at apparatus doesn't obviate any justification for compulsory  
13 acquisition powers. Otherwise, one would never be compulsory acquiring, or  
14 there would never be a reason for a compulsory acquisition power in respect of  
15 statutory undertaker, where you're seeking their consent for works to their  
16 apparatus.

17 So yes, they do have that additional control to authorise works to their  
18 apparatus, but that doesn't mean that compulsory acquisition can never be  
19 justified. So as I say, discussions ongoing, hopefully resolved, but our position  
20 remains at the present time that it is necessary to retain the powers to lay the  
21 pipeline over plot 24133.

22 In terms of water quality, there have been various discussions between  
23 parties again. The applicant recognises that the pond of concern to Northumbria  
24 Water – I think it's S10001 – lies in source protection zone 1, but does not  
25 consider there'll be any adverse impact on water quality at Linford Well, and  
26 this has been assessed and is reported in the operational service water drainage  
27 pollution risk assessment, APP-456, and we have explained in REP2-047 a  
28 number of controls that are secured for the benefit of Northumbrian Water.

29 There is included in the current iteration of the side agreement a protective  
30 provision which ensures that Northumbrian Water will retain access to its sites  
31 that is an access that is no less effective than prior to the exercise of temporary  
32 possession powers.

33 The protected provisions in the DCO already ensure that National  
34 Highways can't acquire any apparatus belonging to Northumbrian Water



1 without their prior consent. There are various REAC commitments which relate  
2 to water quality specifically. For example, there's a commitment that ensures  
3 that drainage systems will be maintained in accordance with DMRB  
4 specification to ensure they continue to operate to their design standard to  
5 safeguard surface and groundwater quality.

6 There's another commitment that secures survey and sampling of the flow  
7 regime and water quality of receiving water courses, and there's a further  
8 commitment that ensures that ponds at Chadwell St Mary will include permeable  
9 lining in order to prevent seepage or drainage discharges into the ground to  
10 safeguard potable groundwater quality.

11 So there are a number of controls already secured in the DCO.

12 MR SMITH: And can I just check: it's therefore your in-principle submission that there's  
13 no need to put anything further, in terms of controls, to underpin or guarantee  
14 possible concerns about contamination about the borehole or of groundwater on  
15 which it might draw?

16 MS TAFUR: Isabella Tafur for the applicant. Yes, it's our position that there are  
17 adequate controls in place already, which ensure that pollution risk control is  
18 adequate to environmental quality standards, and acute pollution risk tests, and  
19 there is no need for any further controls.

20 In respect of monitoring, our expectation is that Northumbrian Water  
21 would remain as the extraction licence holder and undertake any monitoring as  
22 required under their licence obligations. Albeit, this is a matter that is being  
23 discussed in the context of the side agreement as to whether Northumbrian Water  
24 carry out monitoring on our behalf which is then reimbursed. So that's a matter  
25 that we would expect them to do the monitoring as the extraction licence holder.

26 As to whether there's any cost recovery between us, that's a matter that's  
27 being discussed as part of the side agreement. As to the prospect of an  
28 indemnity, again, that's, as you would expect, been discussed, and there's no  
29 objection in principle from the applicant to an indemnity in favour of  
30 Northumbrian Water, and precise terms of that, again, are a matter of ongoing  
31 discussion.

32 MR SMITH: Okay. There did, however, appear at the core of ESW's submissions from  
33 Ms Anderson to be the underlying proposition that, because you are not the  
34 beneficiary of the extraction licence, that notwithstanding all of this – there was

1 the underlying sense from them that none of this would give you a specific right  
2 to directly, yourselves, extract water. So somewhere in either the side agreement  
3 or on the face of the order, there will, apparently, in their submission, need to be  
4 some form of security or guarantee for your ability to obtain that water, either  
5 immediately post-extraction, or alternatively, take a power to extract and extract  
6 it yourselves.

7 MS TAFUR: Isabella Tafur for the applicant. That's right. We haven't secured under  
8 the DCO a right to extract the water. It has always been our anticipation that  
9 that is something that would be agreed with Northumbrian Water. All  
10 indications are that that is going to be the case, and there is an alternative  
11 available, should it be necessary, but our position is that it is unlikely to be  
12 necessary because the agreement is likely to be concluded with Northumbrian  
13 Water.

14 MR SMITH: Yeah. Although, again, around the alternative and what I've been referring  
15 to is the relativities of security, subject to those written submissions at the next  
16 deadline, we've still got some measure of doubt about the degree to which you  
17 have what amounts to an absolute right to call for a consumer supply through an  
18 uprated potable water supply at the time of your choosing and the volume of  
19 your choosing.

20 MS TAFUR: Isabella Tafur for the applicant. Understood, sir, and we committed to get  
21 back to you in writing at deadline 6, and we will.

22 MR SMITH: Okay. Right, can I just check with my colleagues? I can see our resident  
23 water expert is sitting here with his finger on the button. Mr Pratt.

24 MR PRATT: Thank you, Mr Smith. Mr Pratt, panel member. I was going through some  
25 notes as you were speaking, and this matter has come up before us before at an  
26 earlier hearing, and I have a – I suppose it's a quote from the water company,  
27 where it says that the Linford Well is likely to be reinstated to the public water  
28 supply, and will require it to be returned no later than 31 December 2031.

29 I was just wondering how that particular date figures with any compulsory  
30 or acquisition or temporary or permanent within what we're talking about today,  
31 because at that time, you made the comment that alternative supplies were  
32 available. You've clarified that again today, but there seems to be this  
33 requirement or this expectation that the Linford Well is going to be available,

1 and there seems to be a time barrier in the future, and how is it intended to  
2 address that element?

3 MS TAFUR: Isabella Tafur for the applicant. I will ask Mr Howell, because I think that  
4 he thinks that we responded to a question on this, but I'm not sure I have it  
5 immediately to hand.

6 MR HOWELL: Mr Howell for the applicant. We made submissions regarding this  
7 response to examination question 1. Now, I cannot locate them now, so I will  
8 follow up with a response, but it's of our belief the use of water for the TBM,  
9 and as we will follow up in response to examination question 2, that the water  
10 supply for the TBM, raw water shall be concluded by 31 December 2031, and  
11 that is in all eventualities. So two TBMs without a delay, one TBM with a delay,  
12 and we will make that note.

13 MR PRATT: That's fine. I was just wondering how that was limited or not – your  
14 compulsory acquisition requirements of the land where the well is situated, etc,  
15 on that particular date. That was where I was coming from, rather than the use  
16 of the water, shall we say.

17 MS TAFUR: Isabella Tafur for the applicant. Sorry, sir. Is it whether there should be a  
18 restriction on the term in which compulsory acquisition can be exercised over  
19 that plot?

20 MR SMITH: Yes, in a simple answer, because if you moved to a point where there is a  
21 fixed date at which another use would be made of that resource, unless it's clear  
22 that the joint use is compatible, if that makes sense, then if at that point, if that  
23 was a hard commitment and you had to then default to your plan B supply at that  
24 point, then the basis for CA powers seems to kind of drift away.

25 MS TAFUR: Isabella Tafur for the applicant. Understood, sir, albeit it doesn't appear  
26 that we would be in a position to know those things at the time that any DCO  
27 was made, so as to limit the rights now – whether –

28 MR SMITH: It could be limited conditional on facts, rather than conditional on a specific  
29 date, if that –

30 MS TAFUR: It could be conditional on facts. It could potentially be conditional on facts.

31 MR SMITH: So if you had not, as a matter of fact, taken a defined volume of water from  
32 the borehole for a period of months, for example, that at that point the formal  
33 rights fall away, because – and you are, as a matter of fact, acquiring water from  
34 somewhere else. Just thinking about how one might draft it.

1                    Basically, it's a precaution against – and this is a general principle in  
2 relation to CA and TP provisions in made orders – a precaution against the  
3 maintenance of powers that are no longer necessary, and there have been a  
4 number of made orders where conditional powers or sunseting powers have  
5 been incorporated precisely to deal with circumstances where a power is  
6 anticipated as being necessary but it ceases to be needed, and the argument then  
7 is, 'Well, it should no longer burden the party who it otherwise burdens if no use  
8 is being made of the power.'

9 MS TAFUR: Isabella Tafur for the applicant. I understand the question, and we will  
10 give some consideration to whether any drafting would be appropriate to provide  
11 that conditionality.

12 MR PRATT: If I may – Ken Pratt, panel member – my question is based on the  
13 assumption of the potential agreement between you, the applicant, and the water  
14 company and what they've said is their shutdown clause. I would suggest, Mr  
15 Smith, in particular, that any agreement and sunset clause has got to be agreed  
16 between those two bodies as well as within the DCO.

17 MR SMITH: It certainly would need to be based on evidence, and so there wouldn't –  
18 what we're not talking about is some sort of irresponsible fiat, but it is about  
19 understanding the concrete nature of that piece of information that has emerged  
20 about a transfer of that borehole to treated water is used for potable supply,  
21 whether or not there's a cut-off date.

22                    Now, those are the first things to bed down, and if those questions are not  
23 sure, not clear, unknown, then you're in a very different position to if there's a  
24 clear commitment to extract and process water for potable purposes from that  
25 borehole on a given date, and if that's secured somewhere, if it's in the water  
26 resources management plan, if it's contractual, wherever it might be, if it is  
27 formally secured then actually, at that point, we then need to look at – well, 'Are  
28 you still able to take the volume of water that you require from the ate after that  
29 comes into effect?', and if you're not, we then need to look at how it is provided  
30 that the burden of the powers that you're currently seeking is removed in  
31 circumstances where you would clearly no longer be using those powers, but if  
32 you need to use those powers on an ongoing basis, or it's uncertain because it's  
33 just not clear yet, then obviously, we'll consider that story in those terms if that's  
34 what appeared to be the relevant facts from both ESW and yourselves.

1 MS TAFUR: Isabella Tafur for the applicant. We will certainly pick that up in our  
2 ongoing discussions with Northumbrian Water.

3 MR SMITH: Okay. In which case, are there further matters that you want to put to us,  
4 or is that your response? As has been the case before then, Ms Anderson, if  
5 there are final matters that you would like to respond to, I will go to you.

6 MS ANDERSON: Thank you, sir. There's just three relatively minor points I'd just like  
7 to come back on from what the applicant has said this afternoon, in response to  
8 our submissions. The first is just – and it's more housekeeping, I think, but I  
9 think they're indicating a meeting on 2 November, and we are yet to respond on  
10 that date, but I think that that is not going to be the date of the meeting, but we  
11 are hoping to come back with an alternative date as soon as possible.

12 The second point is that the applicant read out sections from the statement  
13 of common ground that it submitted as part of the application, making reference  
14 to the point about the lane or the pipe, and the powers around that, and sir, I'd  
15 just like to point out that in the relevant reps that Essex and Suffolk put in, we  
16 did comment – or possibly it was the PADS document, and I'll have to  
17 double-check that – that we had noted that statement common ground was drawn  
18 up before Essex and Suffolk actually had sight of the order, and therefore, we  
19 would stress that the comments made there were made before Essex and Suffolk  
20 actually saw that plot 24133 was included within the boundary within the order  
21 limit, and therefore, I think you can ignore what that statement refers to.

22 Thirdly, sir, just I think there was some discussion about necessary  
23 controls to groundwater, and the applicant suggesting that there were adequate  
24 controls for risk. The position from Essex and Suffolk's point of view, and  
25 again, stressed in our relevant reps, the difficulty with contamination of a public  
26 water supply is that – and the Secretary of State for Transport has indeed  
27 acknowledged this in other circumstances, as we set out – that a risk, however  
28 small, remains a risk, which will leave Essex and Suffolk Water with no real  
29 recourse if that risk eventualises, and therefore, we certainly welcome what the  
30 applicant has said this afternoon, that they are accepting the principle of an  
31 indemnity, and we look forward to discussing that with them further in our  
32 ongoing discussions.

33 MR SMITH: Okay, which does take me to a final point, which may be the one that Mr  
34 Pratt is hovering on. Well, no, I'll let you go first, Mr Pratt, because if yours is

1 mine, it's done, whereas is mine is not yours, yours isn't done, and mine is kind  
2 of at the end.

3 MR PRATT: Right. All I was going to ask the water company is to clarify the situation  
4 with that deadline date, and their discussions with the applicant in future, to let  
5 us know what the actual situation is, because we were talking about an element  
6 of unknown a couple of minutes ago. So I would ask that Northumbrian Water  
7 or Essex and Suffolk Water can please clarify that position with the applicant,  
8 and eventually, with ourselves.

9 MR SMITH: Yeah. The deadline date, of course, being the date at which you would  
10 propose to transfer that borehole back to the supply of the water you would treat  
11 and use as potable.

12 MS ANDERSON: Thank you, sir.

13 MR SMITH: Okay. Now, my final, final matter, which wasn't that but relates to that, is  
14 simply just as a reminder on timescales, which is to say that we've asked for a  
15 certain number of things to be done by deadline 6, but critically, for matters  
16 where there are outstanding negotiations and consideration around timing of  
17 meetings, looking at those meetings already happening after deadline 6 in early  
18 November, I just wish to flag that 17 November is deadline 7, and as I've said  
19 to a number of people in this set of hearings already, deadline 7, realistically, is  
20 the last sort of free deadline, for want of a better description. It's the last  
21 deadline at which we can receive positions from parties that we can then still  
22 take into account, just, and potentially pick up in hearings which are still to  
23 follow, or – we very much hope not to, but in rule 17, information requests,  
24 which might follow before the closure of the examination.

25 Critically, also, it's the last deadline before the beginning of what we refer  
26 to as the bouncdown, which is from deadline 8, where, essentially, the exchange  
27 of very broad, final positions starts to take place between the applicant and  
28 parties, that are the responded to at deadline 9, and then what amount to closing  
29 submissions, particularly by the applicant, are made at deadline 10. So  
30 realistically, deadline 7 is the last examination where things can still be fluid and  
31 subject to negotiation. So what we would very much like to focus both the  
32 applicant and ESW on the desirability on if there is going to be a common  
33 position on some of this stuff, getting it into us at the absolutely latest by  
34 deadline 7.

1                   Any other observations? Nope. In which case, Ms Anderson, thank you  
2                   very much for those submissions. We'll obviously take them very carefully into  
3                   account.

4   MS ANDERSON: Thank you very much, sir, for allowing us the opportunity.

5   MR SMITH: Thank you. Let us then move on. I gather that we do have Mr Trevor  
6                   Foster available now, and Mr Foster, you –

7   MR FOSTER: I'm here, sir. Thank you very much.

8   MR SMITH: Thank you. Now, as I understand it, you are speaking on your own behalf,  
9                   but I gather that you will make some general points on behalf of the Thacker  
10                  family as well. Is that correct?

11   MR FOSTER: Well, mildly so, sir. Mrs Thacker, Jackie Thacker, is also attending as a  
12                  virtual observer, and as part of the objection family, and what I propose, with  
13                  your permission, sir, is to make a statement so far as the Thacker objection in  
14                  general, and then call upon Mrs Thacker to explain in more detail, if that is  
15                  agreed as being the resident occupier of that property.

16   MR SMITH: Okay. Well, that seems fine as far as we're concerned, but just to be clear  
17                  so that we know the remit of your submissions, you are also speaking on your  
18                  own account, as we understand.

19   MR FOSTER: On my own – yeah. So far as my second objection is concerned, I'm  
20                  speaking on behalf of the objector [John White?] in relation to land at [Heath  
21                  Road?] in Orsett, which I would like to expand upon. Mr White, my client, is  
22                  not with us today, but I can expand on the detail of the objection when you feel  
23                  appropriate.

24   MR SMITH: Okay. Well, let's start then with your submissions in relation to the Thacker  
25                  family, then we'll move on and allow Mrs Thacker to speak. Are you able to  
26                  switch your camera on?

27   MR FOSTER: I thought it was on, sir.

28   MR SMITH: Not within our room, I'm afraid.

29   MR FOSTER: No.

30   MR SMITH: No. Don't worry if not, but if you can, it –

31   MR FOSTER: Oh, hang on. One second.

32   MR SMITH: We will just be able to see you.

33   MR FOSTER: There we are. Is that...?

34   MR SMITH: No.

1 MR FOSTER: I'm in a corner of my screen here at the moment. I think I may need to  
2 adjust the camera. Ah. Is that better? No. It keeps –

3 MR SMITH: No. Don't worry about it. I think you're seeing yourself, but the signal  
4 isn't carrying the image of you through. Let's just deal with this by voice  
5 connection.

6 MR FOSTER: By voice connection. Thank you very much.

7 MR SMITH: We will do our best.

8 MR FOSTER: Right, so far as the Thacker objection, if I can introduce myself: I'm Peter  
9 Trevor Foster. I'm a fellow of the Royal Institution of Chartered Surveyors and  
10 a member of the Institute of Rating and Valuation. On this objection, I represent  
11 my clients of Thacker family of Whitfields Farm, Stifford Clays Road, Orsett,  
12 who are the owners of the unencumbered freehold interest in numerous parcels  
13 of land surrounding their grade 2, listed farmhouse, which is situated at the  
14 junction of Fen Lane with Stifford Clays Road, in the parish of Orsett.

15 At this juncture, it might be appropriate to introduce a plan of the location  
16 there, and its relationship with both the proposed road and the compound that is  
17 going to be in close proximity to that. I don't know if you have that available to  
18 see it.

19 MR SMITH: We can certainly look at the land plans and just move ourselves to the right  
20 spot, and if the applicant is able to put up the relevant plan, just focusing on  
21 Baker Street and Stifford Clays Road –

22 MR FOSTER: The junction of the two. It's at the junction of the two.

23 MR SMITH: – corner, leading up as far as –

24 MR FOSTER: That's fine. That's perfect. Thank you very much, and the compound is  
25 to the top left of that plan, if it can go...

26 MR SMITH: Yeah. Can we just zoom out a little bit? No, out of a little bit.

27 MR FOSTER: The other way around. That's better. That's fine. Thank you very much.  
28 First of all, just to introduce the location and the description of my client's  
29 property holding, it comprises principally of a 17<sup>th</sup> century listed farmhouse. It  
30 occupies about 12 acres, which is marked, but it falls outside the red line, the  
31 relevant boundary, but it does venture north as far as a road called Green Lane,  
32 which I can't quite see on your plan, but it comes –

33 MR SMITH: It's a little bit further to the north.



1 MR FOSTER: Yeah, that's it. That's it. You've got it. Yeah, fine. Thank you. So they  
2 have a main frontage to Stifford Clays Road, and a return frontage for much of  
3 its length to Fen Lane, running down from the crossroads with Baker Street. As  
4 I say, their acreage is about 12 acres, and the farmhouse and the several  
5 substantial outbuildings are occupied by one family as a permanent UK sole  
6 residence for the Thacker family, and they have been, for the last 50 or more  
7 years. To the immediate south, there's the Kings Arms public house, also  
8 fronting Baker Street, with residential properties to the west thereof, including  
9 further –

10 MR SMITH: Mr Foster, we have visited both on an accompanied and an unaccompanied  
11 basis, once in the company of Mrs Thacker herself, but we've also walked all  
12 four legs of the junction at the heart of Baker Street.

13 MR FOSTER: I'm pleased to hear it.

14 MR SMITH: So we're very familiar, I hope.

15 MR FOSTER: With the location. I probably don't need to inform you, then, that the  
16 property itself, the farmhouse itself, enjoys undisturbed open views across the  
17 Orsett Fenn, with distant views of Brentwood beyond. I should add at this  
18 juncture I am a former local resident of the area, and I practised as a surveyor  
19 for more than 50 years involving properties throughout the areas of the proposed  
20 road. So the location benefits from very easy access to most amenities, including  
21 a bus service, local shops, schools, etc, and Grays town centre and mainline  
22 railway station within about 15 minutes' drive.

23 Now, as far as the history of the client's objection, I'm advised – I should  
24 add that I've only been recently instructed by the Thacker family to represent  
25 them in respect of this proposal – that when the LTC proposals were first  
26 announced some five or six years ago, they endeavoured to secure reassurances  
27 from National Highways regarding the size of buildings, plants, etc, that would  
28 be sited on the proposed compound, which lies within sighting distance of their  
29 property, and obviously, will be in full view for an interminable length of time,  
30 potentially devaluing that property and disturbing the relative peace and quiet of  
31 their surroundings.

32 It is accepted that assurances have been given that the scheme places no  
33 requirement for land to be taken from the property other than for subsoil rights  
34 in respect of both Fen Lane and Stifford Clays Road, which are the subject of

1 negotiations as we speak, but the client lacks information on the appearance and  
2 the hours of work that will apply with the compound and it is an issue of great  
3 concern to them. They have enjoyed peace and quiet for the past 50 years and  
4 it would be of significant benefit for National Highways to explain a number of  
5 matters which I will leave for Jackie Thacker to detail when she is called to give  
6 evidence.

7 I think their objection would be quite simply satisfied by a clear  
8 understanding being given by National Highways, by the applicant as to timing,  
9 the length that the compound will be in operation. The suggestion is being made  
10 that this could well last the lifetime of the actual full construction of the highway  
11 from beginning to end, which is not a particularly thrilling prospect, but clearly,  
12 the hours of work, the lighting, the size of buildings that are going to be erected,  
13 would be of major concern.

14 Another issue, and one can understand why this is raising concern, is that  
15 National Highways are seeking subsoil rights over Fen Lane, which, as you can  
16 see, and which I'm sure you have seen yourself, sir, is a pretty narrow country  
17 lane, and the fear is that that might, on a change of circumstance, be used as an  
18 access to get to the compound. I hope that doesn't come about.

19 MR SMITH: Mr Foster, I can't recall, actually, whether you were in the hearing and  
20 listening at the point earlier on today when we heard from a representative with  
21 a very similar concern, Mr Dean Bradbrook, where there was an issue about the  
22 degree to which access would be made on an existing farm track in his case, and  
23 some questions were then raised about whether a construction compound could  
24 then be served by a haul road along the alignment, how long it would take to get  
25 that haul road into place and therefore what, if any, medium to long term use  
26 there might be of the original lane access as opposed to haul road access along  
27 the alignment.

28 Now, it feels to me as though we're probably in a similar place here, that  
29 if the applicant was able to give you some reassurance about the nature of the  
30 use that would be made of Fen Lane, whether that is the primary access or not,  
31 or any limitations as to time scale that they might accept on that, then you might  
32 be a little happier. The Thacker family might be a little happier than they  
33 currently are.

1 MR FOSTER: I think they would be very – it’s really – conversely – to Mr Bradbrook’s  
2 objection in that, as I understand it, National Highways propose an access to the  
3 compound off Stifford Clays Road, which seems eminently sensible, but if that  
4 is the case, why do they need subsoil rights down Fen Lane? Perhaps the  
5 applicant could give an explanation for that. There are services going down Fen  
6 Lane which may perhaps be a reason, but I’ll wait to hear their confirmation.

7 MR SMITH: I think the best thing we can do on those questions is allow the applicant  
8 to say their piece, but before they do, you did speak about introducing Mrs  
9 Thacker. This is her home, amongst other things, and I think it would be a very  
10 good idea if Mrs Thacker speaks her own piece now, if she’s content to do so.  
11 Then the applicant can respond to everything.

12 MR FOSTER: I would welcome that. So Jackie, if you’re available.

13 MS THACKER: I am.

14 MR SMITH: And Ms Thacker, do, please, if you’re able to, pop your camera on and  
15 we’ll be able to see you as well.

16 MS THACKER: Hello there. This is Jackie Thacker. I’m resident at Whitfields  
17 Farmhouse, corner of Fen Lane, Baker Street area. Yes, regarding temporary  
18 acquisition of the subsoil rights along Fen Lane and Stifford Clays Road, I  
19 understand that they’re basically for utilities work, which I don’t know, haven’t  
20 anything enlarged upon on that. What concerns me is how, when these utilities  
21 works are carried out, the duration of the time that they will be carried out in,  
22 the nature and volume of the traffic using access to carry out the works, the  
23 duration, how long it would be, the extent of the traffic, the hours that they work  
24 and whether that is, in effect, now proposing to access the compound from Fen  
25 Lane, which I understood was not going to be in with the plans. As I understood  
26 it, the sub-road was being made from across the Mardyke, where we viewed on  
27 the site visit. They were building an inroad and the temporary access would be  
28 from Stifford Clays Road.

29 I just want reassurance that it’s not going to be the temporary access from  
30 Fen Lane. They say the compound is temporary, but it’s temporary in the fact  
31 that – I was given the impression it would be for the duration of the construction  
32 period. So ‘temporary’ could be about six years, which is a long piece of string  
33 for ‘temporary,’ but if that could be clarified, and also the working hours of the  
34 compound within that, the lighting and everything, what will be situated within

1 the compound. If we knew that, then at least we'd have something positive to  
2 work on. I think that's all I've got for my point on that. It is basically how long  
3 Fen Lane would be used by heavy goods vehicles and the number of movements  
4 expected by these vehicles during the course of the works that they've got to  
5 carry out. Thank you.

6 MR SMITH: Indeed. No, thank you very much, Ms Thacker, and if the applicant is able  
7 to speak on those points – obviously, there's the strictly directly connected  
8 points of subsoil rights over Fen Lane, but there is the slightly broader point of  
9 the purposes to which Fen Lane might be put, the duration of those, etc, and  
10 indeed, the broader question of the nature of activities in the construction  
11 compound and other means of access to it.

12 MS THACKER: Thank you.

13 MS TAFUR: Isabella Tafur, for the applicant. Thank you, sir. Now, plainly Mr Trevor  
14 Thacker and Ms Jackie Thacker have attended open floor hearings 1 and 2, and  
15 they've raised a number of these concerns, in particular in respect of the Stifford  
16 Clays Road compound east to which we have responded in writing in REP2-053.  
17 As Ms Thacker just explained, the acquisition of their rights relates, again, to  
18 [inaudible] and that's for utilities works and I understand Ms Thacker's concerns  
19 to understand a bit better what exactly is proposed and what's likely to be  
20 involved and I will ask Mr Howell in a moment to address you on those. There  
21 are then concerns about the Stifford Clays Road compound east, and again,  
22 members of the team have met with Ms Thacker and discussed these concerns.

23 In brief summary, the compound, it's approximately 6.7 hectares. It's  
24 going to have space for car parking, offices, welfare facilities and storage.  
25 Around half of the site is going to be set aside for earthwork stockpiling.  
26 Fencing will be put in place to provide noise and visual screening. Access is  
27 going to be for the first six to 12 months via the A13 and then Stifford Clays  
28 Road while an additional route is constructed, which will then take the traffic  
29 via Medebridge Road and into Stifford Clays Road. This is set out in REP5-056  
30 in table 4.2, and so my understanding is that the traffic won't be routing for the  
31 main works site – leaving aside the utilities for a moment, won't be routing past  
32 the Thacker's property, and I will just ask Mr Howell to cover utilities because  
33 I understand they are keen to have as much information as possible.

1 MR SMITH: No, that's fine, and just to be clear, so that's not just an issue of access, not  
2 using Fen Lane, but it is also access, apart from a very early initial stage, not  
3 using Stifford Clays Road either.

4 MS TAFUR: I think it still comes in through Stifford Clays Road even when the  
5 alternative is not A13. It's not A13 Stifford Clays Road, but I think it does still  
6 ultimately come in through Stifford Clays Road.

7 MR SMITH: Okay, but wouldn't pass the frontage of the Thacker's property. It wouldn't  
8 pass the frontage of the Thacker's property.

9 MS TAFUR: No.

10 MR SMITH: Because the entrance is further down.

11 MS TAFUR: Exactly that, in either of the scenarios.

12 MR SMITH: Yeah, okay, let's hear the detail then on Fen Lane.

13 MR HOWELL: Mr Howell, for the applicant. Keith Howell. Let's keep it informal. I  
14 will quote from schedule 1 of the draft DCO REP5-024 and the applicable work  
15 number is work number MUT-22, as shown on sheets 33 and 35 of the works  
16 plans and being the temporary installation of multi utilities to include the  
17 installation or diversion of underground utilities connections for the construction  
18 area work number CA-11 within a multi-corridor along Fen Lane for  
19 approximately 1,860 metres in length. Now, what that means in a real sense, is  
20 outside their property – is where the existing telecommunications network and  
21 the potable water ends. So we're going to connect from there and then continue  
22 them networks north to the location of CA-11 within the highway boundary.

23 MR SMITH: Okay, now the scope of that, as I would understand it in normal terms  
24 would be that you would be trenching along Fen Lane and inserting a water main  
25 and inserting some telecommunications cable, and that would be the sort of work  
26 that you might see on a country lane, in very general terms.

27 MR HOWELL: Keith Howell for the applicant. That's exactly what we foresee.

28 MR SMITH: And once that's done, the purpose of the subsoil acquisition is addressed.

29 MS TAFUR: Yes, that's right, sir. That's the reason that those rights are being acquired,  
30 is to carry out those utility works under the road.

31 MR SMITH: And for no other purpose.

32 MS TAFUR: No, no other purpose.

33 MR SMITH: Okay. Well, Mr Foster.

1 MR FOSTER: Mr Chairman, on a point of information, I happen to know the service  
2 routes quite well in this part of the world, and my daughter used to own a property  
3 in Fen Lane itself. As far as freshwater supply is concerned, the main water pipe  
4 runs across a field to the east of Fen Lane from the vicinity of Orsett Village. It  
5 does not go down to Fen Lane to the best of my knowledge, but there is also,  
6 regrettably – and it's another matter that I represent my clients on, there is a very  
7 major pumped foul water drain that runs from a pumping station adjacent to a  
8 property called Poplars Farm and runs diagonally across the backfield of Whitfields  
9 Farmhouse.

10 Now, we are in pretty advanced negotiation with Anglian Water Authority  
11 over this. Regrettably, it was the case of an easement having been granted many,  
12 many years ago, before my client's occupation and ownership, but it has been,  
13 regrettably, for the past 20 years, the subject of major breaches and disruption. The  
14 company now propose to divert that pumped rising main, which I believe is known  
15 to the applicant, so that it causes less damage to my client's property, so you can  
16 probably begin to understand why my clients are extremely nervous and concerned  
17 over both items of the foul water pumped main, and now of course the temporary  
18 compound, but I thought I'd just interrupt, if I could, at that stage – which it may  
19 be of some help to the applicant, if they didn't already know of that information.

20 MR SMITH: Okay, well, they may respond to that briefly, but I did see Ms Thacker's  
21 hand go up, and again, being very, very strongly conscious that it is Ms Thacker's  
22 home that we're talking about. So Ms Thacker, did you want to just come back?

23 MS THACKER: Yes, I just wanted to say thanks for making that clear that it is utilities  
24 and it will not be an access road for the compound. The services – obviously, it's  
25 going to need sewage control and that pumping station there, the pipe has burst so  
26 many times over the past years. Recently, it was February and then October last  
27 year, hence the rerouting of the sewer pipe, but from that pumping station, they  
28 don't think that will serve anymore. It's at its limit now. So have National  
29 Highways, the applicant, taken that into consideration and that's just an offshoot  
30 from there, and that's –

31 MR SMITH: Well, look, there is a practical individual question that they may be able to  
32 answer now, or if not, in writing by the deadline, as to whether they had any  
33 intention of using that foul sewer at all. There's a little bit of a conference going  
34 on. Ms Tafur.

1 MS TAFUR: Isabella Tafur for the applicant. The answer is not quite a yes or no, but it  
2 was not the part that they're concerned about, the pumping station. I think we're  
3 making a connection to the foul sewer at a different point which wouldn't engage  
4 the pumping station and we were aware of the pumping station issues and I believe  
5 we've provided a response in writing at one of the deadlines and we will give you  
6 the reference to that in the next deadline.

7 MR SMITH: Okay, fine, and apologies if we are going back over old ground but I do  
8 just want to make sure that we've teased out the bits of this that are CA-relevant  
9 and bits that are potentially solvable and the bits that are ongoing objections.

10 MS THACKER: Thank you for that.

11 MR SMITH: Ms Thacker, are you content with that?

12 MS THACKER: Yes, I'm fine. Thank you very much for the answers.

13 MR SMITH: And can I just check, on the original agenda we did also have Wayne  
14 Thacker and your husband John Thacker. I trust he's well, but you're speaking for  
15 the entire family.

16 MS THACKER: I am. John's had to been on babysitting duties, Wayne's had to work,  
17 so I'm on duty for the hearing, so thank you for that.

18 MR SMITH: Well, thank you for appearing. Okay, can I then go back to Mr Foster and  
19 to the question of your other client, Mr White? Now, what I would like to do before  
20 we start here is if you can clarify the location of Mr White's property and the plot  
21 number please, because I will be frank with you, we have been searching the book  
22 of reference and the land plans and at the moment struggling to locate.

23 MR FOSTER: Okay, well if you could put up a plan which shows – the most sensible  
24 landmark to go by is a public house called The Fox in Heath Road, Orsett.

25 MR SMITH: The Fox in Heath Road. Is that something that can be located by the  
26 applicant's team?

27 MR FOSTER: Right, yes, that's helpful. Right, if I can point you, sir, to the area coloured  
28 blue and it's got reference 29-242 in the centre of it.

29 MR SMITH: Yes.

30 MR FOSTER: Okay.

31 MR SMITH: Yes, and I'm with you now. We can locate the property. So we're off the  
32 eastern frontage of Heath Road where Heath Road travels south –

33 MR FOSTER: Correct.

34 MR SMITH: – of the A1013.

1 MR FOSTER: That's it, fine. I represent Mr John White of Heath Place Farm, Hornsby  
2 Lane, Orsett, who's quite close by to this subject land and who's the owner of the  
3 unencumbered freehold interest in this site, which was formerly known as  
4 Whittaker's Nurseries in Heath Road. Now it's currently vacant land, so I'm not  
5 sure if you've managed to carry out an inspection of this part of the –

6 MR SMITH: We absolutely have, yes.

7 MR FOSTER: Good, thank you.

8 MR SMITH: Unaccompanied, I have to say. This has not been in the company of the  
9 applicant or any of the owners, but we have viewed that area extensively.

10 MR FOSTER: Thank you. It's an almost impenetrable area of wooded area because the  
11 nursery use, which was more or less a garden centre in the modern sense of the  
12 word, ceased about eight or nine years ago, and it's lain vacant and unoccupied and  
13 unused all throughout that time, so it's covered with dense vegetation. It lies, as  
14 you can see, adjacent to The Fox public house, which is on its southern boundary  
15 and then a terrace of houses to the north. I think they're numbers 202 to 220 Heath  
16 Road, which is outside the development boundary. To the rear, you have open  
17 fields and Heath Road itself runs roughly north-south to the south of the A2013[?]  
18 and it links up to the south with the built-up area of Orsett Heath and Chadwell St  
19 Mary.

20 The location benefits are quite unusual for what is very much a semi-rural  
21 area. It has the benefit of all main services, including main drainage, in Heath Road.  
22 Again, it's a very accessible part of the countryside, being only a 10-minute drive  
23 from Grays town centre and the mainline railway station. Now, getting to the  
24 history of the site and its connection with the Lower Thames crossing proposals.  
25 This site was originally unaffected by the LTC proposals when the present route  
26 was finally chosen out of the three original routes. Now, the original route set for  
27 diversion of high voltage overhead power cables, was to be taken over the terrace  
28 of cottages that lies to the north, and which comprised not only that terrace of  
29 cottages, but also a very large modern detached house to the rear thereof.

30 Now, at that time, active steps were taken by many of the owners to  
31 exercise their rights to serve blight notices under the act, all of which were accepted  
32 by Highways England, as they were known then, and were unopposed by them, and  
33 who then proceeded to purchase. Now, within an uncomfortably short period of  
34 time, amendments were made to the utility diversions, as far as I could see, without



1 any public consultation, such that the overhead lines would now be taken across the  
2 subject site owned by my client, thus ruining the prospects of what are, in my  
3 opinion, quite immediate development prospects.

4 We are now faced with the situation that, of the 12 properties that were  
5 originally affected by the diversion of overhead cables, eight are now in the  
6 ownership of the applicant and in my opinion do not really face any realistic chance  
7 of being resold because of the proximity of both the new highway itself and, of  
8 course, the overhead cables passing across my client's land. I have put these  
9 representations before National Highways, with a request that they give urgent  
10 consideration to returning to the original route. Having acquired a vested interest  
11 in the majority of those cottages to the north, it made sense, I think, in the interests  
12 of protecting the public purse to go back to that route because the subject site is ripe  
13 for development in my opinion.

14 It has already attracted interest from residential developers. My client  
15 obtained the views of architects and planning consultants some time ago to assess  
16 the ability of development. There is a layout plan, which I hadn't tabled, but it  
17 provides for 24 detached houses on that land. The local authority, probably well  
18 known by you, sir – that the local authority are in some difficulties in many respects  
19 of their organisation. They have no local plan. They are faced with a target of new  
20 housing which they have consistently, year on year, failed to reach, and it is my  
21 view that the loss of this land to development would be a severe and regrettable loss  
22 to the area. Any development of this land would probably attract affordable  
23 housing – again, much needed and required in this location, and which the Secretary  
24 of State, of course, has consistently welcomed the addition of similar sites to  
25 provide such housing.

26 There would appear to be no alternative other than returning back to the  
27 original route of the power lines across the rooftops of the terrace of houses, but if  
28 it was possible to vary the current route of the power cables to a point where it  
29 passes over the public house to the south, or very close to it, then there might still  
30 be a possibility of retaining some development rights on part of my client's site. I  
31 have endeavoured to plead that argument with the applicant, but, to date, that does  
32 not appear to have been possible. I would urge the examining panel to consider a  
33 direction to the applicant to try and divert these cables away from this site or away

1 from the bulk of the site to enable a much needed development for housing. Thank  
2 you.

3 MR SMITH: Okay, thank you for those submissions, Mr Foster. Unless there's another  
4 issue of principle in support of your client's objection – if it turns on the matters  
5 that you've put before us, namely the proposed location of the cable diversion and  
6 the history in relation to the individual cottages fronting Heath Road that you  
7 suggest, pursuant to blight notices, most of which are now in the ownership of the  
8 applicant, I think we've got a very clear picture. Does anybody else need any  
9 further information? And obviously, we will take account of what you've said, but  
10 I think in fairness, we should allow the applicant to respond to the issues that you've  
11 raised. So unless there are any other different points about that land that we need  
12 to take into account that do bear on the compulsory acquisition/temporary  
13 possession position, then I'm proposing to move to the applicant. Is there anything  
14 else that you need to add?

15 MR FOSTER: No, I'm perfectly in agreement with that direction, yes.

16 MR SMITH: Okay, excellent. Right, Ms Tafur.

17 MS TAFUR: Isabella Tafur for the applicant. There was originally some consideration  
18 given to an alternative alignment for the overhead lines OH-6 and OH-7. The  
19 rationale for the current alignment is discussed in the ES alternatives chapter, APP-  
20 141, concluding at paragraph 3.28.24, which explains that there's been discussion  
21 with National Grid, Thurrock Council and Design Review, and the diversion route  
22 that is currently in the application was then included in the 2020 supplementary  
23 consultation and it has been in there ever since. Now, we understand that Mr White  
24 has some development aspirations for this site. However, he did buy the site, or the  
25 company, Whittaker's Nurseries Limited, of which he is a director, did buy the site  
26 in November 2021.

27 That was well after the supplementary consultation had shown the impact  
28 and the rights that will be required over those plots, which was again set out in the  
29 design refinement consultation later that year. Since that time, the plots on this site  
30 have always been required for the utility works of all stages. So the land was  
31 acquired in knowledge of the impacts of the scheme. National Grid have concerns  
32 about alignments of electric cables going over residential properties and that in part  
33 was the rationale for the current alignment which avoided those residential  
34 properties.

1 MR SMITH: Yes. Now, if I can just ask you a couple of questions on the proposition  
2 that the majority of those properties are now in your ownership pursuant to blight  
3 notices. Is that factually correct or not?

4 MS TAFUR: Isabella Tafur for the applicant. Some of them are, as I understand it. I  
5 don't know whether they could be described as 'most', but certainly it's not all.

6 MR SMITH: Right, is it possible for us to see a plan at deadline 6 that identifies the ones  
7 that are? So that's the factual question, but the second question is, and this is maybe  
8 a matter that I – Mr Foster, I normally return to a submitter after we've heard the  
9 applicant's response, and you can pick this up in your closing remark, but Ms Tafur,  
10 there was an implicit suggestion in the thrust of Mr Foster's submission, that  
11 because some of those properties were now owned by the applicant, that the passage  
12 of a utility alignment across their air would somehow no longer be a concern. Can  
13 I just ask you the question, to the extent that you even know, what would be the  
14 applicant's medium-term intentions about the property that it has acquired as a  
15 result of blind notices? And if it's to return it to residential use, then – is that the  
16 case? Is it proposed to sell that property and return it to residential use now the  
17 issue, as you see it, of the alignment position, is resolved?

18 MS TAFUR: Isabella Tafur for the applicant. So I've been helpfully informed that there  
19 are 12 residential properties on Heath Road Terrace. Five of those have been  
20 acquired or are currently in conveyancing, so that leaves – sorry, five have been  
21 acquired and one is in conveyancing, so that leaves six that have not been acquired.  
22 Of the ones that have been acquired by National Highways, I think the majority of  
23 them are currently let out for residential purposes, and generally the strategy at  
24 National Highways is to then sell those properties once the works for the project  
25 have been carried out. So it's not the intention to permanently take them out of  
26 residential use.

27 MR SMITH: Okay, so there should be no, in your submission, matter of assumption on  
28 anybody's part that somehow or other the fact that they happen to be in your  
29 ownership at the moment means anything about their future land use. Okay, that's  
30 clear on your part. Factually as well, I think, to assist us in consideration of this  
31 submission, the identification of the individual properties that have been acquired  
32 or are in the process of acquisition would be useful because there's a very different  
33 set of circumstances. If a whole block of them have been taken as against a  
34 distributed pattern where some neighbours have sold and others haven't, in which

1 case we are still looking at, again, what must be treated as a residential  
2 neighbourhood. Okay, Mr Foster, I'm going to give you an opportunity to respond  
3 briefly on the outstanding points as you see them, having heard Ms Tafur's  
4 response.

5 MR FOSTER: Thank you. Well, I'm not surprised at the applicant's response, but I  
6 would, however, question the accuracy of the information that they've given you  
7 regarding the cottages, because I happen to have acted for all of those cottages that  
8 have been purchased, as valuer, for the previous owner. I can't now accurately  
9 number the properties that have been purchased, but they do include a very modern  
10 house at the rear of that terrace, which I'm not sure you can see on your plan, but  
11 that, I think, is known as 224. So perhaps if you're asking the applicant to detail  
12 those property numbers, they would do well to also include that property at the rear  
13 of that terrace, as it does form an essential part of my submission.

14 I don't think I need to trouble you, sir, with any further representations. I  
15 would, and still maintain, a view that a re-sighting of the proposed routes of the  
16 overhead cables further south would enable some development of my client's site.  
17 I presume that these are all overhead cables because the road interferes with them  
18 being underground, unless of course, they were put underground and a pylon was  
19 put to the opposite side of the site of Heath Road. I don't know whether that is a  
20 practical proposition. I've not investigated it, but that's perhaps something else  
21 which the applicant might like to consider with National Grid. I think I'll leave my  
22 submission as stated, and if any further information comes to light which I would  
23 want to cross-question, then I will be happy to do so in writing by the deadline.

24 MR SMITH: There's possibly just one more question that you might want to take on  
25 notice, Mr Foster, and respond to us at deadline 6. Obviously, a substantial element  
26 of that submission rests on the in-principle likelihood of a development solution  
27 emerging on that land, and so it would interest us just to confirm the question about  
28 whether that land, amongst other things, is subject to any presumptive policies that  
29 would indicate against development, particularly a question of whether that land is  
30 or is not in the green belt.

31 MR FOSTER: It is in green belt, sir, as protected land, but in the absence of a local plan  
32 with the planning authority at the present time, there is clearly a presumption for  
33 development to take place with very special circumstances attending that proposal.  
34 I believe that there have been and there are special circumstances in the absence of

1 the LTC, and that has been tested in the very near vicinity and approved by the  
2 Secretary of State on appeal. So the principle of green belt has been challenged and  
3 has been rewarded with consent on a number of other sites nearby.

4 MR SMITH: Okay. Now, sensibly, that was a new issue that I threw onto the table there,  
5 so I must go back to Ms Tafur and just see if she briefly wants to address us on that  
6 at all.

7 MS TAFUR: Isabella Tafur. Nothing further from me on that, sir. One question. We  
8 do actually have the plan that shows those properties that have been acquired or are  
9 to be acquired, and I wondered if you would like to look at them on the screen now,  
10 while we're here.

11 MR SMITH: Excellent, as long as it's then put into the next [inaudible], so that we can  
12 have it in efficiently. Can you talk us through the different colourations?

13 MS TAFUR: Yes, blue is acquired by National Highways and orange is blight  
14 application approved.

15 MR SMITH: Okay, so it's very much in the disparate pattern model rather than the  
16 consistent whole model. Okay, Mr Foster, that may be new to you, so a right,  
17 finally, just to make a very, very brief observation on that.

18 MR FOSTER: Well, I can agree – and thank the applicant, for producing this very  
19 quickly for us. It does amount to, if you count the orange, which is the property in  
20 the process of conveyancing, it amounts to seven properties, plus the property at  
21 the rear, if my sums are right, which is the site of the very large modern house at  
22 the rear, which was also purchased under blight notice procedure.

23 MS TAFUR: Isabella Tafur for the applicant. It's not very clear on that plan, but there's  
24 the large plot to the rear, which then swings around, and beneath that, there are what  
25 seem to be two plots, but they're a single property.

26 MR SMITH: Right, so what's marked as two polygons is a single ownership.

27 MR FOSTER: Yeah.

28 MR SMITH: So we've got one, two, three, four, five, six.

29 MR FOSTER: Six individual plots, plus the large one at the back, seven.

30 MS TAFUR: I think it's six, including the large one.

31 MR SMITH: Yes, that was my count.

32 MR FOSTER: Plus the one that's in the course of conveyancing.

1 MR SMITH: We're all speculating now. Let us stop speculating and let us ask the  
2 applicant to submit this at deadline 6 with a note and then it will be clear. Okay,  
3 Mr Foster, thank you very much.

4 MR FOSTER: Thank you.

5 MR SMITH: I think that then brings us to the end of your submissions to us, which also  
6 then brings us to the end of today's agenda. So at that point, I'm going to move on  
7 just very briefly to talk about next steps. Tomorrow we will be back in a very  
8 different mode, no longer dealing with compulsory acquisition matters. We will be  
9 dealing with issue specific hearing number 8 in relation to construction-related  
10 matters, and my colleague Mr Taylor will be in the chair. Then on Friday, as I've  
11 indicated, we're conducting an accompanied site inspection to the south tunnel  
12 compound of the HS2 Chiltern Tunnel.

13 As I already indicated, that is an access controlled process, which means  
14 that whilst it is an accompanied site inspection, accompaniment is limited to the  
15 representatives of the applicant and the relevant local planning authorities, as well  
16 as the examining authority, so Gravesham and Thurrock will be in attendance and  
17 representing the public there. Then, on Monday 23 and Tuesday 24 October, we  
18 have issue-specific hearing 9, broadly on biodiversity matters, and 10, on traffic  
19 transportation and non-motorised user matters. We are in the process of finalising  
20 the details for the subject matters of hearings that we'll be holding in November.

21 So in our November hearing slot, very, very shortly, you'll see our formal  
22 notice of the matters to be dealt within those hearings. We do also have hearings  
23 reserved in December, but I will flag that those are reserved very specifically if  
24 required, only to hear those additional affected persons who make representations  
25 arising from the proposed changes to the application that invoke the compulsory  
26 acquisition regulations. We will hold those hearings if they are required, but  
27 obviously, if they're not, we will not hold them.

28 So unless there's anything that anybody else wishes to raise of a  
29 procedural nature, I only need then to take this opportunity to thank everybody  
30 who's spoken today for their contributions, and again, as is normal in these  
31 proceedings now, to assure you all that we will be taking everything that you said  
32 very carefully into consideration, and, again, I would very much like to support the  
33 audio-visual company and the case team for their continued support for these  
34 hearings. So, to my panel member colleagues.

1 MR PRATT: Good night, everybody. Ken Pratt.

2 MR TAYLOR: Ken Taylor, panel member. Thank you, everybody, for today. Good  
3 evening.

4 MR SMITH: And this is Rynd Smith, lead member of the examining authority. Thank  
5 you very much, and compulsory acquisition hearing 4 is now closed.

6

7

**(Meeting concluded)**