



PLANNING INSPECTORATE COMPULSORY ACQUISITION HEARING

on

21 NOVEMBER 2023

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

PRESENT

**PLANNING INSPECTORATE**

RYND SMITH  
JANINE LAVER  
KEN PRATT  
KEN TAYLOR  
DOMINIC YOUNG

**CASE TEAM**

MARTIN ALMOND  
SPENCER BARROWMAN  
RYAN SEDGMAN

**LOWER THAMES CROSSING**

ANDREW TAIT KC  
TOM HENDERSON  
TIM GLOSTER  
BARNEY FORREST  
MUSTAFA LATIF-ARAMESH  
KEITH HOWELL  
NICK CLARK  
RUSSELL CRYER  
SUKI COE  
RICHARD SAVILLE

**INTERESTED PARTIES**

DEREK STEBBING (Bellway Homes Ltd)  
MICHAEL BEDFORD KC (Kathryn Homes Ltd and Others)  
TOM ROWBERRY (St Modwen Developments Ltd)  
CHRISTIAAN ZWART (Stuart Mee and Family; S&J Padfield Estates LLP)  
KAREN HOWARD (Stuart Mee and Family; S&J Padfield Estates LLP)  
NICHOLAS PADFIELD (S&J Padfield Estates LLP)  
CHRISTOPHER PADFIELD (S&J Padfield Estates LLP)  
PETER COLE (Stuart Mee and Family)  
STUART MEE (Stuart Mee and Family)  
DANIEL SMYTH (St John's College, Cambridge)  
IAN GRAVES (High Speed 1 Ltd)  
MICHAEL BEDFORD KC (Whitecroft Care Home)

1 MR SMITH: Welcome to today's compulsory acquisition hearing 5 for the Lower  
2 Thames Crossing. Before we introduce ourselves, can I just check with the case  
3 team and the audio-visual team that we can be heard online and the recordings  
4 and the livestreams have now started? Yes, excellent, getting the right signals  
5 from the right people, so to introductions, ladies and gentlemen. My name is  
6 Rynd Smith; I am the lead member of a panel which is the Examining Authority  
7 for the Lower Thames Crossing application, and I am in the chair for today's  
8 hearing. You will see frequently asked questions linked to our rule 6 letter,  
9 almost six months ago now, but that includes a brief biography of myself and  
10 the purposes of the appointment, and it also includes biographies of my fellow  
11 panel members who will now introduce themselves, and I will start by moving  
12 to Mr Ken Taylor.

13 MR TAYLOR: Yes, good morning, everybody. Ken Taylor, panel member.

14 MR PRATT: Good morning, everybody, Ken Pratt here. I'm also a panel member, and  
15 I think today I'll be asking the – I'll not be asking many questions, but I will ask  
16 them if necessary.

17 MR YOUNG: Good morning, Dominic Young, panel member.

18 MS LAVER: Good morning, Janine Laver, panel member.

19 MR SMITH: Thank you very much, Ms Laver. Now, this is Rynd Smith, panel lead,  
20 speaking again, and having introduced the panel, I will also note the presence in  
21 the room today of Mr Guy Rigby, who's sitting on the back bench. Mr Rigby is  
22 a planning inspector; he is also a chartered engineer and non-practising barrister  
23 by professional background. He isn't a member of the Examining Authority,  
24 but as is common in larger cases, he's an inspector appointed to advise the  
25 Examining Authority and he is therefore just going to be sitting there quietly,  
26 listening to everything that's said. I'll introduce our planning inspectorate  
27 colleagues working with us on these hearings today. Martin Almond is the case  
28 manager leading the planning inspectorate case team today, and Spencer  
29 Barrowman, also a case manager in the venue with us, and Ryan Sedgman, case  
30 officer, leading the virtual event online.

31 So we're here to hold the fifth, and essentially final, compulsory  
32 acquisition hearing, and probably it's important to flag that in constructing the  
33 agenda for these matters, what we try to do is to review all of the requests to be  
34 heard that have been made, because in a compulsory acquisition hearing,

1 anybody who is an affected person, who has an outstanding objection to the  
2 application, has a right to be heard, to reach a view at the point where we publish  
3 the agenda about whether or not the relevant persons on that list of requests have  
4 been heard or not. So at this fifth hearing, we are providing the opportunity for  
5 those who, it appeared, a) had requested, and b) who hadn't clearly and evidently  
6 in writing withdrawn their objection or request to be heard, and to provide them  
7 with an opportunity to be heard.

8 But as is sometimes the case with compulsory acquisition hearings, we are  
9 very strongly conscious of the fact that what is going on evidently, visibly, in a  
10 hearing room is also accompanied by a whole range of conversations and  
11 negotiations between individual affected person objectors and the applicant, and  
12 so, to a degree, who actually arrives and speaks today is a little bit of a fine art.  
13 What we will need to do is to run through the introductions and just work out  
14 who we have in a state of readiness to present their client's case, and I will  
15 foreshadow that it won't necessarily be in the published agenda order, because  
16 we do understand that there are certain conversations still happening and that  
17 there are also certain affected persons, representatives, who want to speak in  
18 groups with others, and so have asked to be set back.

19 So what I'm going to do is I'm going to go through those who are here,  
20 ready and present to speak in the morning session first and see who we have.  
21 Then, I will introduce the applicant, and then we'll try and construct an order of  
22 business from that. Now, I know that sounds a little bit 'jugglish', but I'm afraid  
23 at this particular stage in the examination, that is where we have to be. So with  
24 no further ado, turning to the agenda papers, I will note that the first item of  
25 business this morning was due to be Veolia ES Landfill Ltd, who I understand  
26 are fully settled now with the applicant, and will not be speaking. Can I just  
27 check that that's the case? Now, sir, who do we have online here? Sir, I'm  
28 afraid we're not hearing from you. Is it Mr Stebbing?

29 MR STEBBING: Yeah, Mr Stebbing, sir, representing Bellway Homes, so I think I might  
30 be number two on your list.

31 MR SMITH: You are number two on the list. I just wanted to confirm with the applicant  
32 my understanding that Veolia are fully withdrawn. Can I just check with Mr  
33 Tait for the applicant?

1 MR TAIT: Sir, Andrew Tait for the applicant, I don't believe their objection has been  
2 withdrawn. However, there is an agreement which is at an advanced stage and  
3 that covers the two principal issues, so I can't say it's been withdrawn, but it is  
4 at an advanced stage of the discussion.

5 MR SMITH: And they're not – and their understanding, certainly, is they're no longer  
6 intending to speak today.

7 MR TAIT: That, certainly, I can – I do understand. It's a bit complicated.

8 MR SMITH: My one observation, then, in relation to Veolia, before we move on from  
9 them, is that we would therefore like them to set out in writing at deadline 8 all  
10 those matters that are agreed with yourselves, plus any reservations of matters  
11 that are not agreed, so that we are completely clear whether or not they have  
12 completely withdrawn, or whether there are balance matters that they wish us to  
13 consider in writing.

14 MR TAIT: Understood, sir.

15 MR SMITH: So that's Veolia resolved, and now we do have on our list, for Bellway  
16 Home, Mr Stebbing. Are you here and ready to go? Before I introduce you for  
17 the substance of your case, I do however, just want to carry on around the room  
18 and find out who else we have ready to speak in the morning session, but can I  
19 just check you're ready to go immediately we move into main session, Mr  
20 Stebbing?

21 MR STEBBING: I am, sir, and I have responses to the principal points raised by question  
22 number (iii) of your five fairly generic questions.

23 MR SMITH: Thank you very much. That's very good news indeed, so we will come to  
24 you as the first main item of business, but before I do that, can I just ask, is there  
25 anybody else in the physical or the virtual room remaining from this morning's  
26 – or indeed potentially here for this afternoon's – business? Can I just check, do  
27 we have anybody representing Mr Stuart Mee and family? We do; I have seen  
28 a yellow hand go up. Can I just ask – we've got Mr Michael Bedford, as well,  
29 available, representing Kathryn Homes and others. Mr Bedford, can I just ask  
30 you to speak briefly about your willingness to participate at any relevant time in  
31 these proceedings?

32 MR BEDFORD: Yes. Sorry, Michael Bedford for Kathryn Homes and related  
33 objections. Sir, what I liaised with the case team earlier, we are physically  
34 intending to be there in person later on this morning. We had previously planned

1 on the basis of arriving by midday, but speaking to your case team and to Mr  
2 Sedgman and realising that there were some dropouts, we're trying to reorganise  
3 to make sure that we're there by 11.00 a.m. It's what we will be shortly doing,  
4 and I will be shortly leaving central London to come down to Tooley Street and  
5 I'm hoping other members of my team will do likewise, so I'm hoping that will  
6 be convenient to your programming, if you've got, I think, two other people who  
7 are ahead of us in the queue, as it were.

8 MR SMITH: Indeed. That's how we understand matters at present, Mr Bedford, and  
9 extraordinarily grateful to you and your team for your flexible willingness to be  
10 with us by approximately 11.00, which will be round about the mid-morning  
11 break and we would aim to put you on directly after that. Okay, thank you very  
12 much.

13 MR BEDFORD: Thank you, sir.

14 MR SMITH: Can I just then check, do we have anybody here representing Mr Mee and  
15 family? Anybody in the room? Anybody online? In terms, then, of those  
16 available online, can I check do we have anybody then representing High  
17 Speed 1 Ltd? St John's College, Cambridge? St Modwen Developments and/or  
18 S&J Padfield Estates? Yes, sir.

19 MR ROWBERRY: Yes, sir. Tom Rowberry, solicitor at Pinsent Masons speaking on  
20 behalf of St Modwen Developments Ltd, and I understand that there should be  
21 Karen Howard of Gateley, and Christiaan Zwart speaking on behalf of S&J  
22 Padfield. My understanding is they should be in the room with you there. If  
23 they're not, then they shortly will be.

24 MR SMITH: I have seen no hands in the room, I'm afraid, Mr Rowberry, and our  
25 understanding from the case team is that you and they desire to be grouped  
26 together, which is entirely sensible given the matters that you both speak on, but  
27 we've had very limited contact with Gateley, I'm afraid, until this morning, so  
28 can I just check with the case team, do we have any update as to whether Gateley  
29 are even here, and when they might arrive?

30 MR TAIT: Sir, I don't know whether I can help because I've seen Ms Karen Howard  
31 from Gateley outside, so I know she's in the – well, has been in the building.

32 MR SMITH: Has been in the building, yes. This, of course, is why we have registration  
33 periods. Anyway, look, I – at risk of inconveniencing you, Mr Rowberry, what  
34 I'm going to suggest is that we will take a check on Ms Gateley. We will see

1 what happens when she appears. I think we will proceed without any further  
2 ado to hear Bellway Homes, who are here and ready to be heard. If at that point  
3 we've managed to locate Ms Gateley, we will then come back to you and we  
4 will try and schedule you a slot. In the meantime, if I could ask the case team if  
5 they would please also keep a weather eye for any of the representatives for HS1,  
6 or St John's College, Cambridge, noting that we could potentially accelerate  
7 their business. Excellent, we have you physically in the room. Sir, would you  
8 be horribly inconvenienced if, after we've heard Bellway, we moved onto your  
9 business? On that basis, we will do that. In which case, before I move on, is  
10 there anybody else who is here in either the physical or the virtual room  
11 expecting to speak, who I have not already name checked? Yes, sir.

12 MR ZWART: I'll try not to shout into this microphone. Good morning, sir. My name  
13 is Christiaan Zwart, Counsel. I'm acting for the Padfields and the Mees, and  
14 we're currently booked in to go right at the end and we're happy to stay at the  
15 end even if we come forward, because we're waiting for the clients who thought  
16 they would be at the end of the day.

17 MR SMITH: Okay, well again, I will keep a check on you, so we will go to Bellway.  
18 We will then go to St John's College, Cambridge. Then we will see where we  
19 are with Kathryn Homes and Mr Bedford KC, and then we will try and come to  
20 yourselves. Okay, so now I'm just going to formally ask the applicant to  
21 introduce their team, so when Mr Tait is ready.

22 MR TAIT: Thank you, sir. Sir, Andrew Tait KC, for the applicant. To my right, Tom  
23 Henderson, BDB Pitmans. To my left, Tim Gloster, who's the deputy land and  
24 property manager for LTC. To his left, Mr Barney Forrest, who's the  
25 environment lead, and to his left, Mr Mustafa Latif-Aramesh of BDB Pitmans.  
26 There are others who are in the second row, and I will – they will move forward  
27 into the first row when their time comes, if that's convenient. I can introduce  
28 them then.

29 MR SMITH: That's absolutely fine. Okay, before we then finally make a start, just also  
30 to flag that, as has been customary with compulsory acquisition hearings before,  
31 when we get to an individual representation, we do ask to have the relevant part  
32 of the land plan showing. Some individual representatives for objecting parties  
33 have prepared their own extracts, and I believe if you haven't already spoken to  
34 the case team, please do, about doing that, so that we can arrange for those to be

1 shown to us on screens, but unless there's anything else of an immediate  
2 preliminary nature that we need to deal with now – just bear with me, there are  
3 apparently one or two things. Yes, no, we still don't have HS1, so no, there's –  
4 we will proceed on the basis that I've outlined, so let's then move directly to  
5 Bellway Homes, so if I could ask the representative for Bellway Homes to come  
6 back onto screen, please.

7 MR STEBBING: Have you got me, sir, on screen?

8 MR SMITH: I do now, yes. That's perfect.

9 MR STEBBING: Great.

10 MR SMITH: Excellent, so Mr Stebbing, now, you've seen the general questions that  
11 we've asked and if you can outline your case in relation to those, and then we  
12 may have detailed matters that we need to ask of you as we move through and  
13 obviously we will then move to the applicant for a reply.

14 MR STEBBING: Yeah, quite understood, sir, and formally, again, good morning to you  
15 and your colleagues on the panel and thank you very much for the invitation to  
16 attend today, and that is very much appreciated. On the point you made a  
17 moment ago, I haven't prepared a site plan concerning the land in question,  
18 which is at South Ockendon. I don't know whether your team have a plan  
19 concerning this land, which has been attached to our previous written  
20 representation on this matter.

21 MR SMITH: Okay. Do you have an examination library reference for that one? Or it  
22 may just be quickest if the applicant pulls up the relevant – yeah, the applicant  
23 are nodding. They will get the plan onto screen for you in a second.

24 MR STEBBING: Well that's great, because I think one or two of the points I want to  
25 make, you'll want to study the plan.

26 MR SMITH: Yeah.

27 MR STEBBING: My points this morning are essentially all on question (iii) of your five  
28 – yes, here we go. Yeah, great plan, thank you.

29 MR SMITH: Can we just zoom in a little? That would be wonderful. Much better, thank  
30 you. Apologies, Mr Stebbing, please do continue.

31 MR STEBBING: No, that's absolutely fine. The land in question is essentially... I don't  
32 know. You probably can't see my cursor, no.

33 MR SMITH: No, I'm afraid not. You will need to – give us –



1 MR STEBBING: National Highways should be able to show it, though, with a cursor at  
2 their end.

3 MR SMITH: Yeah, so there we go.

4 MR STEBBING: Yeah, thank you very much. Shall I press on with five points to you,  
5 sir?

6 MR SMITH: Yeah.

7 MR STEBBING: Now, the first point I want to make concerns noise. This land, by the  
8 way, is under option to Bellway Homes from the Chelmsford Diocesan Board  
9 of Finance, who are the landowners. Both parties have made written  
10 representations to you but today I'm representing, obviously Bellway Homes,  
11 but you should be cognisant that the representations from the CDBF are equally  
12 applicable here.

13 MR SMITH: Okay.

14 MR STEBBING: Bellway continues, sir, to have concerns over the noise impacts from  
15 the Lower Thames Crossing upon the land that is under option to Bellway  
16 Homes. There have been, as you would expect – and you've alluded to it earlier  
17 this morning – conversations directly with National Highways and their  
18 consultants on this matter, but we are not yet satisfied, sir, that there is sufficient  
19 noise mitigation, effectively on the – obviously on the boundary of the Lower  
20 Thames Crossing highway works, to prejudice the potential residential – to  
21 safeguard the potential residential development of the land that is under option.

22 We had hoped on this point to be able to reach a statement of common  
23 ground with National Highways on the matter, but so far that hasn't been  
24 possible. Just to further that point, we are pursuing the allocation of this land in  
25 the emerging Thurrock local plan. You'll be aware of that and we believe there  
26 is a very good prospect of that being achieved, so we ask you to look at this land  
27 with the distinct possibility that it will be allocated for residential development,  
28 and therefore noise mitigation becomes a very key issue, so that's my first point,  
29 sir. Do you wish to invite anybody to respond on that? I have five points for  
30 you this morning.

31 MR SMITH: Yes, there was a simple question that I was going to put, had we had a  
32 representative of Thurrock in the room, which we don't, which was just to  
33 update us on the local plan position in relation to this land. I think what we will  
34 do in these circumstances, if we take this as an action and we ask Thurrock

1 Council to respond to us by deadline 8, unless the applicant is able to give us  
2 any – you are. Right, okay, so it's at call for site stage. Okay.

3 MR STEBBING: That is correct, sir.

4 MR SMITH: Excellent. Right, well that's that one resolved. What I'm going to ask you  
5 to do, Mr Stebbing, is to pass through your full case before I draw the applicant  
6 in, if that makes sense, so if you move onto your next point.

7 MR STEBBING: My next point is a continuing objection to the compulsory acquisition  
8 that is being sought, sir, which is an objection to the proposed permanent  
9 acquisition of some land to deliver a public right of way – and National  
10 Highways may well be able to point this out specifically to you on the plan –  
11 between the Lower Thames Crossing and the present northern edge of the  
12 settlement of South Ockendon. Quite simply, sir, we don't believe that this is  
13 necessary, but there's a further complication arising from it, which is – sorry,  
14 were you going to interject? No. That proposed public right of way then  
15 prejudices the construction of the new roundabout that is proposed to be  
16 constructed on North Road – I'm sure you're very familiar with North Road –  
17 to serve the residential development I've alluded to in my previous point.

18 MR SMITH: Yeah, we –

19 MR STEBBING: Sir, there is an objection there that goes beyond the simple public right  
20 of way point, but also into the potential impact on the future development of the  
21 site, and I'm sure you're aware of that. May I go on?

22 MR SMITH: Now, just briefly, Mr Stebbing, we've already had submissions on the  
23 principle of that question from another objector. Mr Mike Holland, representing  
24 a range of clients, has spoken extensively to us about the principle of the taking  
25 of land for the creation of frontage public rights of way as distinct from the  
26 dedication of that land into a public right of way. Now, the applicant – if I could  
27 ask in your response, Mr Tait, to essentially bring Mr Stebbing up to the same  
28 position that Mr Holland is in, in relation to that point.

29 MR STEBBING: I will continue, if I may.

30 MR SMITH: Yes, please do.

31 MR STEBBING: We've obviously had further conversations with National Highways  
32 on this point, and there has been the offer of a voluntary agreement. Quite what  
33 is meant by a 'voluntary' agreement, I'm not yet sure, but to ensure that these

1 future developments are not prejudiced, we want to see that secured by a more  
2 formal agreement through this process, please.

3 MR SMITH: Okay.

4 MR STEBBING: That's the substance of my point here.

5 MR SMITH: And in that respect, you're looking for a formally executed side agreement.

6 MR STEBBING: Yeah, at least in the form of a statement of common ground.

7 MR SMITH: Okay.

8 MR STEBBING That has not yet been secured.

9 MR SMITH: I mean, if I can ask the applicant in your response, please, Mr Tait, to take  
10 us to – because clearly to report on this particular objection we will need at least  
11 the equivalent of a principal areas of disagreement summary, and so some form  
12 of written exchange between yourselves and Bellway would seem to be highly  
13 desirable. Essentially, there, that seems to be satisfying the request that Mr  
14 Stebbing is making, so if you can touch on that point when we come back to  
15 you, so Mr Stebbing, please continue.

16 MR STEBBING: Well, that's the substance of my second point, sir, and I'm sure – I can  
17 tell from your comments that you've grasped the issues here, which is the impact  
18 – well, firstly whether the PRoW is actually necessary in the first instance, and  
19 secondly, it's the implications upon the proposed development of the land about  
20 which these representations are all concerned, so I'll move on, if I may, to the  
21 third point, which is the question of the drainage of the northern parcel of the  
22 land. You will have appreciated there are two parcels of land here, of course ,  
23 divided by North Road. The proposed Lower Thames Crossing will actually  
24 sever the existing watercourse drainage that serves that northern and parcel of  
25 land, and that currently drains via a number of ditches and drains in a southerly  
26 direction under the proposed Lower Thames Crossing road.

27 Therefore, to prevent the northern parcel being completely sterilised, we  
28 consider that suitable surface water and foul drainage must be provided by  
29 National Highways to ensure not only that its existing uses can continue, but  
30 again to allow for its future development, and furthermore, appropriate legal  
31 rights must be granted over any land that is going to be transferred to National  
32 Highways to facilitate this drainage and to ensure its long-term maintenance.  
33 Now, again, there have been conversations, sir, as you would expect, on this  
34 point with National Highways and they've since confirmed their intention that

1 the ditch alongside the Lower Thames Crossing to take surface water flows from  
2 this northern parcel of land, and that further engagement – so to take surface  
3 water flows from that land, but not, of course, foul drainage, and that further  
4 engagement is expected to continue. There hasn't been any further  
5 conversations yet, sir, for the record.

6 MR SMITH: Can I, at this stage, Mr Stebbing, just ask you whether, amongst other  
7 things, other possible technical solutions have been explored in relation to foul  
8 drainage of the land that prospectively would be north of the Lower Thames  
9 Crossing alignment if the alignment were to be constructed? Because I'm  
10 conscious here that there are potentially two ways that this could be dealt with.  
11 First is essentially prior provision of a foul drainage link from north to south, or  
12 alternatively another means of drainage for foul drainage, separately for the land  
13 to the south and the lands to the north.

14 MR STEBBING: The full answer for that question is no, but we do know that the  
15 drainage flows will need to flow southwards, in terms of both surface and foul,  
16 and therefore I think what is being sought is sufficient provision of conduits  
17 under the Lower Thames Crossing to cater for the potentially increased  
18 discharges of both surface water and foul drainage.

19 MR SMITH: Yeah, and there is –

20 MR STEBBING: So in other words, the infrastructure is in place to facilitate both  
21 drainage flows.

22 MR SMITH: And there is a levels issue here. Can I just ask the applicant to remind me?  
23 I think from memory the Lower Thames Crossing is below grade at this point,  
24 is in cut because it's beginning to approach the M25 intersection, so it is not an  
25 – in principle – easy technical solution to run conduit beneath it. Is that correct?

26 MR GLOSTER: Mr Gloster, for the applicant. Yes, it's around at grade or just below  
27 grade at North Road, and then it starts to go into cutting as it goes towards the  
28 M25.

29 MR SMITH: Okay, so the – and the North Road overbridge is a little bit above current  
30 grade, then. Yeah, that's okay. Fine, yeah, so moving on, then, Mr Stebbing,  
31 can you take us through your remaining plans?

32 MR STEBBING: Yeah. Well, just before I do that, I think that was Mr Gloster that  
33 replied to you on your question to National Highways. From this side of the  
34 fence, as it were, we haven't yet heard that there are any extreme technical

1 difficulties with what I put to you a few moments ago. Fourth point, sir, and I  
2 think you'll probably be familiar with this one, this is the existing gas pipeline  
3 that's under the control of Barking Power Ltd, and we understand that that  
4 pipeline is to be completely abandoned and it's – the site of it will be grout-filled  
5 sometime around about now, actually; summer 2023 is on my note. We  
6 understand that National Highways intend to cap that gas pipeline alignment at  
7 the locations where they need to do that, and ultimately to remove it. The point  
8 I'm making, sir, is could we have an update on this? Because it does – again, in  
9 terms of the consultation zones that run with that pipeline route – potentially  
10 affect the future development of the land, so that's more of a request for an  
11 update, sir. We do believe that the point I'm making is going to be fully  
12 resolved, but I would rather like to hear that this morning, sir.

13 MR SMITH: Okay. Now, are there any other points –

14 MR STEBBING: I have one more point, sir.

15 MR SMITH: – you wish to make, arising from our agenda item questions? Okay, so  
16 over to you and we will hear that now.

17 MR STEBBING: Access to the northern parcel of land. You've already heard me  
18 comment on the roundabout issue, sir. We've had verbal confirmation from  
19 National Highways – but only verbal – that the proposed future vehicular access  
20 to that northern parcel will not be compromised by their – what are known as  
21 multi-utility corridors in that area, so by that, I assume we're talking service pipe  
22 work underground and potentially some overground. We are grateful for a  
23 National Highway's verbal comment, but we do wish to see that as a written  
24 confirmation in some form, sir. Finally, if I may, we're very happy to submit  
25 these points that I've made to you this morning in writing as a full statement, if  
26 that assists you, but of course, they are essentially covered by the original  
27 representations.

28 MR SMITH: Yes. What does assist us are two things. I mean, we do ask for post-event  
29 confirmation of oral case in writing by deadline 8, noting that at this stage, all  
30 matters in relation to compulsory acquisition tend to be somewhat dynamic.  
31 What you might be in a position to submit at deadline 8 could be amended from  
32 the position that has been even raised in this room now, so what we would ask  
33 you to do is to provide us with the most, essentially, up to date position as you  
34 are aware of it at that particular point, and don't be afraid to add change of

1 circumstances if conversations with the applicant have moved on by that point,  
2 even if you were unable to raise them orally today, and finally, I am leaving on  
3 the table for Mr Tait to respond to the proposition that we would like to see  
4 something equivalent, at least, to a principal areas of disagreement statement  
5 between yourselves and the applicant, again for deadline 8, if that is at all  
6 achievable.

7 Okay. Can I just check with my colleagues whether there are any further  
8 questions? No, okay. Well, in which case, Mr Stebbing, are you content that I  
9 hand this over now to Mr Tait for the applicant who will respond, and then I will  
10 give you a very brief right of final reply? Mr Tait –

11 MR STEBBING: Very content with that, sir, and I've noted what you've just said there  
12 about the submission of a – perhaps dynamic was the right word – a dynamic  
13 statement of the state of affairs by deadline 8.

14 MR SMITH: Thank you very much. Mr Tait.

15 MR TAIT: Thank you, sir. Andrew Tait for the applicant. In relation to that last point,  
16 we will seek to have a document – whether it's in the form of a PADSS or  
17 otherwise – by deadline 8, which crystallizes the positions of the two parties, so  
18 we will aim for that sir.

19 MR SMITH: Thank you very much.

20 MR TAIT: Sir, in relation to noise – taking each point – each of the five points in turn,  
21 in relation to noise, I wonder if I could ask for a plan which is in the – is ES  
22 figure 12.6, page four of APP-314 to be put on the screen, because that shows  
23 what is proposed in relation to bunding in this area. Just zoom in.

24 MR SMITH: We might need to zoom in. Do you forgive us, folks, if we turn around at  
25 this point, because the rear screens are actually closer to us and larger than the  
26 front monitors.

27 MR TAIT: Sir, I wonder if the – on the cursor, we could just identify the earth bund up  
28 to eight metres that's shown to the south-west, essentially, marked there with  
29 the label. Moving to 32, just to the east, false cutting up to six metres above  
30 road alignment, to the east, and then on the – north, the false cutting up to  
31 five metres above the road alignment, which loops across that area, bearing in  
32 mind that the option agreement – which as I understand it is with both Mr Mee  
33 and Mr Padfield, who are separately represented, and the Chelmsford Diocesan  
34 Board – is largely to the south, but there's also a small part of Mr Mee's land to

1 the north, in a triangle. That is identified, so the position in relation to the bund  
2 and the screening is that the bund to the south was introduced in 2022 at the local  
3 refinement consultation stage, which would provide additional screening,  
4 reducing the predicted increase in noise compared to the previous proposals, and  
5 this is also an area where low noise road surfacing is proposed. Further  
6 mitigation was expressly considered in the form of acoustic barriers in the  
7 section of the new road. That's considered in the cost-benefit analysis at ES,  
8 appendix 12.10, which is APP-450, in particular options 16, 17, 18 and 19, but  
9 those were discounted due to landscape and visual and cultural heritage  
10 constraints, so the concept of further noise mitigation was expressly considered  
11 but not proceeded with.

12 There isn't, of course, any detailed information at all about the form and  
13 extent of any future development of this proposal if it proceeds, because as has  
14 been indicated, there's no allocation or – no planning application, but the  
15 applicant's position is that all feasible steps to mitigate the noise impacts of the  
16 new road in the section have been considered, and there isn't anything further  
17 that would be appropriate without adverse impacts.

18 MR SMITH: And noting the reg 18 stage in terms of local plan position of this land,  
19 your proposition would then be that the acoustic mitigation that you're  
20 proposing at present is enough to deal with existing circumstances and the – to  
21 characterise it, I hope, fairly – limited potential future hope value for residential  
22 development on that land, as you understand it at present. Is that...?

23 MR TAIT: We're simply unsighted about whether there is any prospect at all, but that  
24 which we put in in relation to the noise benefits for the existing environment  
25 will also have benefits for any potential development if that was to come  
26 forward, and so it's considered that gone as far as it reasonably can in relation  
27 to noise. The second point relates to the question of permanent acquisition for  
28 WCH routes. We've already set out why a WCH route in this location is  
29 necessary. That's at CAH3, and also in response to action point 19 under that,  
30 so I won't repeat that.

31 Sir, as you've indicated, there has been the offer of tripartite arrangements  
32 with landowners, where they have raised a concern that there might be prejudice  
33 to development prospects, specifically. That's the nature of the concern; there's  
34 a ransom strip or otherwise, so of course, in this case, Bellway have an option,

1 so they're not in a position to enter into that tripartite agreement, but insofar as  
2 the landowners have the power to dedicate, and the option is with those  
3 landowners, then they will benefit from those arrangements.

4 MR SMITH: Yeah, noted.

5 MR TAIT: That's a short point. The third point relates to drainage, and there is – for the  
6 northern parcel of that – can be described a new culvert that's proposed, which  
7 is work 9W, and the drainage plans – it's sheets 39 and 42 of REP4-080, and  
8 that will provide appropriate drainage, and further engagement with the  
9 landowner is ongoing, and that would be considered by the contractors in due  
10 course. In relation to the foul water pipeline, and there isn't one along this  
11 section of North Road, and so the future development would need to provide  
12 that, whatever link it was, to connect to a foul water network. So there are no  
13 provisions for foul water diversions, but the applicant's view is that its proposals  
14 will not preclude the installation of a suitable network to be developed and  
15 installed as part of any future development, and so if Bellway do design their  
16 foul and storm water networks, and notify the applicant in advance of the works  
17 proceeding, the projects could collaboratively work together to undertake those  
18 interfacing works, and we can record that in the document –

19 MR SMITH: In the document that you're going to produce.

20 MR TAIT: – which is going to emerge from this from notice.

21 MR SMITH: Okay, noted.

22 MR TAIT: Fourthly, in relation to the gas pipeline, I don't know whether one can show  
23 that on the land plan, just to identify where it is.

24 MR SMITH: Yes, let's see if we can get a cursor onto it. Perhaps whilst the time is being  
25 taken moving that plan onto screen, I will just very briefly explore a matter with  
26 you in relation to the local plan position, which is that my colleague, Ms Laver,  
27 has very helpfully extracted the deadline 7 Thurrock submissions, which set out  
28 the precise timings – or as precise as they could be deemed to be at present –  
29 which is that from 28 November 2023, then the Regulation 18 position papers  
30 should be available on the council's website, so literally in a week. On 6  
31 December, there is due to be a full council meeting where elected members  
32 would potentially approve the initial proposals document for public  
33 consultation, and then the consultation is proposed, at present, to proceed from  
34 12 December 2023 to 16 February 2024, which will obviously cross from being



1 within the time of this examination to after our closure. But essentially, what it  
2 does appear likely to do is to put beyond doubt the question of whether this is a  
3 site that is being consulted upon, and so if the statement between yourselves and  
4 Bellway can also touch that point and be clear to us that either it has been  
5 included and consulted upon or it hasn't been, that would be very helpful.

6 MR TAIT: We will deal with that, sir.

7 MR SMITH: Thank you very much. Okay, so we now have the ability to see the gas.

8 MR TAIT: So the Barking Power Ltd gas pipeline – I wonder if that could just be –  
9 east-west –

10 MR SMITH: Okay, so G9.

11 MR TAIT: G9, yes.

12 MR SMITH: Yeah.

13 MR TAIT: So work G9 involves capping and removal of the section of the pipeline  
14 where it overlaps with the project works, and where it does not interface with  
15 the project permanent works that would remain in situ so far as the project is  
16 concerned. There is an SCG – statement of common ground – between National  
17 Highways and the Health and Safety Executive, which is REP1-070, which  
18 explains that it's the applicant's understanding, as Mr Stebbing indicated, that  
19 BPL intended to decommission and grout-fill the pipeline themselves in the  
20 summer of 2003, and that statement of common ground also explains at 2.1.4  
21 why the applicant is seeking the permanent rights over the pipeline to cap and  
22 decommission it. What has happened, as I understand, is that works have been  
23 carried out this summer by BPL, but it hasn't yet been formally  
24 decommissioned, so the position is that the applicant needs to retain that power  
25 until that process is concluded. The position will be different if it has concluded  
26 at some future date that we need to exercise that power, but that's the position  
27 there. Again, we can record that, because I think Mr Stebbing wanted an update,  
28 which is all that was.

29 MR SMITH: Yes. No, that's fine.

30 MR TAIT: And then fifthly, there's the question of the extent to which multi-utility  
31 corridors have an effect on access to the northern parcel of land, and if it's  
32 convenient, I can ask Mr Keith Howell, who's the utilities lead, just to explain  
33 the position there, and he's coming forward.

34 MR SMITH: Thank you very much.

1 MR HOWELL: Good morning, sir. Good morning, all. Keith Howell for the applicant.

2 As shown on the works plans volume C, REP5-020, at sheet 39, there are  
3 multiple multi-utility works proposed in the region, namely work numbers  
4 MU67 through to MU71 in the region of the Bellway development. Paragraph  
5 2.3.172(d) of the environment statement, chapter 2, project description – which  
6 is application document APP-140 – describes the work proposed in the region  
7 as the ‘installation of multi-utility corridors of assets including UK Power  
8 Networks electricity networks, Essex and Suffolk water mains, Cadent gas  
9 pipelines, Openreach and other utility companies’ strategic telecommunication  
10 cable routes.’ Now, the applicant wishes to clarify that work MU71, which is  
11 on the western side there, is the diversion of multiple gas pipelines of medium  
12 and intermediate pressure classification, which are not subject to the HSE  
13 consultation zones in the same manner that a high-pressure gas – sorry, a  
14 high-pressure classified pipeline would be, such as work G9.

15 The impediment to Bellway’s proposed development associated with all  
16 of the multi-utility works within the region can largely be mitigated by a  
17 collaborative plan, ensuring that the proposed diversions are aligned such that  
18 they are compliant with the requirements of the relevant industry and asset  
19 owner and are located so that the associated easements and protected covenants  
20 reduce the interface, or are sympathetic to Bellway’s proposed development.

21 MR SMITH: Thank you very much.

22 MR TAIT: So that’s the fifth point, and I think more widely there was a comment – I  
23 think under point 2 about prejudicing a new roundabout on North Road. That  
24 was in connection with a WCH, but just in relation to that, the area isn’t an area  
25 which has got any, for example, ecological mitigation planting which would  
26 have the effect of precluding a prospect of a future junction, and it’s a relatively  
27 clear area, so in some documentation it’s described as passive provisions. It’s  
28 very passive insofar as that there are no specific obstacles that are placed there  
29 as part of the project which would necessarily preclude that prospect.

30 MR SMITH: Okay, and so getting back to the combination of the issues that drove  
31 Bellway Homes’ concern there, we’re partly in the land that was raised by Mr  
32 Holland in the previous compulsory acquisition hearing around, essentially, the  
33 need to formally acquire land in relation to the WCH provision, plus the  
34 additional landscape works, and, I mean, potentially those two matters are both

1 matters that, for the reasons you've explained, are being separately negotiated  
2 upon with the landowners and may potentially resolve themselves as you not  
3 needing to acquire that land to support the WCH work.

4 MR TAIT: Yes, sir. If there's a tripartite agreement, obviously with the local authority,  
5 then that is a different way forward.

6 MR SMITH: And then you're amenable to discussion on the landscape work, so there is  
7 a negotiable, in other words.

8 MR TAIT: Yes, sir.

9 MR SMITH: Okay. Right, is there anything else that you need to –

10 MR TAIT: No, sir. Thank you.

11 MR SMITH: – bring in front of us? Okay, very briefly for Bellway Homes, then, Mr  
12 Stebbing, are there any final concluding remarks that you want to put to us?

13 MR STEBBING: Yes, one point in particular, and it's on my second point, and I stand  
14 to be corrected but I've heard Mr Tait say that a tripartite agreement is being  
15 discussed and negotiated with the relevant landowners concerning WCH. This  
16 is my public right of way point. Putting my other hat on, can or should the  
17 Chelmsford Diocesan Board of Finance be part of said agreement, please?

18 MR SMITH: Apologies, you would be seeking to be formally included in that agreement.

19 MR STEBBING: Well, clearly Bellway can't be as they're not land owners. I'm not  
20 familiar with CAH3, action point 19 yet, sir, but I shall have a look at it  
21 immediately after this, but it does seem to me that the CDBF should be a party  
22 to that agreement and that would very largely resolve Bellway's issue.

23 MR SMITH: Okay. Well, Mr Mike Holland was representing a group of affected persons  
24 in relation to that matter and it may well be something that is taken forward  
25 offline between yourselves and representatives to the landowners, because it  
26 certainly feels to us as though the land owner's position is one that they've  
27 advanced with the applicant. The applicant's expressed a willingness to move  
28 in the direction of the landowner's position and so there seems to be an emerging  
29 agreement there that would address one of your principal concerns.

30 MR STEBBING: Yes, there does indeed. Well, I will explore action point 19, sir, from  
31 your CAH.

32 MR TAIT: If it helps, sir – Andrew Tait for the applicant – we don't understand that  
33 WCH does affect the land of the Chelmsford Diocesan Board of Finance. It does  
34 on the other side, and we heard about that at the earlier CAH hearing, but...

1 MR SMITH: Yeah, okay.

2 MR TAIT: With that point in mind, the principle applies, but only where it affects the  
3 land –

4 MR SMITH: Only where there's that frontage strip that – yeah. Okay. Apologies, I was  
5 forgetting which side of the road they were on. Okay.

6 MR STEBBING: Well, they were obviously on the south side, sir.

7 MR SMITH: Yeah.

8 MR STEBBING: Yeah.

9 MR SMITH: Okay, anything further that you need to add, then, before we –

10 MR STEBBING: No. I mean, I'm grateful to Mr Tait for all of your – his comments.  
11 Particularly I noted an element of the potential cooperation on drainage issues  
12 which are welcome, and I hope that his statement by deadline 8 reflects what he  
13 said this morning. Thank you.

14 MR SMITH: Okay. Thank you very much, so moving on, then, I think we will try and  
15 hear one other affected person objector before we break for the mid-morning.  
16 Now, I did indicate, given that we had them in the room, that opportunistically  
17 we would then probably go to St John's College, Cambridge, so is that possible?

18 [Sotto voce discussion]

19 MR SMITH: Okay, so Mr Smyth, when you are ready. The questions are on the paper,  
20 and again, if I can ask the applicant's team to be ready to put up the extract of  
21 the land plan, that would be very helpful. Perhaps just zoom in a little. Okay,  
22 the floor is yours.

23 MR SMYTH: Thank you, sir. I'm Daniel Smyth of Savills, representing the master,  
24 fellows and scholars of the College of St John the Evangelist in the University  
25 of Cambridge. I'll try and refer to it as St John's College, and St John's College  
26 is the owner and has category 1 interests in the plots shown. I won't read them  
27 all out. That's outlined in the land plans in the book of reference, which the  
28 Lower Thames Crossing is seeking to acquire by compulsory purchase, so in  
29 response to the Examining Authority's questions (iv) and (v), there are no issues  
30 of hardship or requests for non-statutory relief and neither the Human Rights  
31 Act rights nor the public sector equalities duty are engaged. In opening, sir, I  
32 would say Savills advises landowners on the best use of land, including many of  
33 the great estates nationally, and we advise on the securement of – the retention  
34 of best and most versatile land, and the use of marginal land for biodiversity net-

1 gain and rewilding. So when we see best and most versatile land being promoted  
2 for these types of purposes, it's bound to raise a question in our minds. And in  
3 doing that sort of work, in providing that sort of advice, we're looking for the  
4 most efficient use of the land that we can make. So I will turn to outlining the  
5 current scope of St John's College's objection.

6 St John's College considers only limited engagement has taken place  
7 between the applicant and SJC, and none at all between 27 September 2023 and  
8 15 November. St John's College believes the applicant has not meaningfully  
9 considered the suggestions made by St John's College that alternative sites may  
10 be available to acquire or secure by private treaty, and which would not result in  
11 the loss of best and most versatile farmland. Whereas engagement between the  
12 applicant and SJC commenced in September 2019, this has been sporadic and  
13 unstructured. At examination deadline 4, there were nine matters set out in the  
14 draft statement of common ground, which St John's College had instigated,  
15 which you may have seen, sir. Yes. Eight those were under discussion; one was  
16 not agreed at the time.

17 There's been no further dialogue and no further progress made on any of  
18 these matters since deadline 4.

19 MR SMITH: Right.

20 MR SMYTH: So St John's College objects to powers of compulsory purchase of land  
21 for nitrogen deposition compensation, on the basis that it's not been shown that:  
22 1) no alternative exists; 2) that the need is compelling; 3) that the land is  
23 appropriate for the purpose sought; and 4) that each of the statutory tests has  
24 been met. And it objects to powers of compulsory purchase of land for ancient  
25 woodland compensation on a similar basis. St John's College does not object to  
26 the powers of temporary possession, on the assumption that it will be possible  
27 to show, to St John's satisfaction, that the land has been returned in favourable  
28 condition and subject to proper compensation for loss of the use of the land.

29 St John's College consider the methodology employed in the project air  
30 quality action plan, which is appendix 8.14 of the environmental statement, is  
31 not sufficiently robust to justify the compulsory acquisition of its land, and we  
32 have the following specific concerns. Table 3.1 of the project air quality action  
33 plan identifies a total of 184.73 hectares of designated ecological sites, including  
34 82 hectares of ancient woodland and 82 hectares of SSSI, where the Lower

1 Thames Crossing has a significant adverse effect due to nitrogen deposition.  
2 Table 6.5 indicates that this would be reduced to approximately 176 hectares  
3 after mitigation measures have been implemented, and that's a reduction of eight  
4 hectares, which is 4% of the area.

5 53.9 hectares, which is 27% of Shorne and Ashenbank Wood SSSI, and  
6 11.2 hectares, or 17% of Shorne and Brewers Wood ancient woodland, would  
7 be significantly affected by nitrogen deposition on a permanent basis, extending  
8 to nearly the full extent of the applicant's study area, comprising a swathe of  
9 land 200 metres wide, from both sides of the motorway, as shown on figure 2 of  
10 part 2 of appendix 8.14 of the ES, which is APP-404. And perhaps we could  
11 pull those figures up and I will try and explain what I understand that those  
12 figures are showing.

13 MR SMITH: Yes, and that's being worked on as you speak, Mr Smyth, I think. Can we  
14 just repeat the reference, please.

15 MR SMYTH: Yes. It's figure 2 of part 2 of appendix 8.14. And if we go to page 32, it's  
16 APP-404.

17 MR SMITH: APP-404. It may take a few seconds.

18 MR SMYTH: Yeah, page 32. Page 33, actually, is probably the better one. In the key;  
19 it might be different in the PDF – of 89, so it's about halfway through. That one,  
20 thank you.

21 MR SMITH: Okay.

22 MR SMYTH: I think it's been said previously, this is quite a busy figure. There's a lot  
23 going on here. In the key, we can see that the blue dotted line is the operation  
24 and construction affected route network, the 200-metre buffer. It's the second  
25 item in the key on the bottom left. You can probably just see the blue dotted  
26 line at the extent of the pink shaded area. Can you see that okay? Yeah, okay.  
27 So the pink shaded area is the nitrogen-affected area. That's the area where  
28 nitrogen deposition increases by more than 0.4 kilograms of nitrogen per hectare  
29 per year. And you can see that to the west of Halfpence Lane, the area to the  
30 north and south of the route is approximately half a kilometre wide. The purple  
31 solid line, I think, designates the area where physical work is taking place, causes  
32 physical disturbance.

33 I note that to the south of the route, to the west of Halfpence Lane, the area  
34 appears to include the railway, and I just question whether it should. There are

1 some areas that are excluded – so there’s a four-sided area in that part that is  
2 excluded – but the railway’s not excluded. And I’d just like to also confirm  
3 whether or not the area that has been physically impacted is also included in the  
4 calculation of the area affected for nitrogen deposition. I’m just concerned that  
5 that’s not been double counted.

6 MR SMITH: Yes. I mean this is an integrity of the maths question and, I mean, it would  
7 certainly assist us if either we can have a clear answer to that today or,  
8 alternatively, it can follow up at deadline 8. And again, to be clear, that washing  
9 of the pink hatch over the rail corridor is your first concern, Mr Smyth.

10 MR SMYTH: I’m just concerned that that area’s not been included for the purposes of  
11 calculating what the compensation area should be.

12 MR SMITH: Yes, indeed, because it shouldn’t be, in your proposition.

13 MR SMYTH: In my proposition, it shouldn’t be. And the same for the area that’s  
14 physically affected; in my proposition, that shouldn’t be either.

15 MR SMITH: Yeah, okay. I think Mr Tait has grabbed a note of those two. So please,  
16 do proceed.

17 MR SMYTH: I’m also concerned about the area immediately to the west of Halfpence  
18 Lane, that area that extends to the south. And I would like to understand both  
19 what’s causing the change along that corridor, which would appear to indicate  
20 the substantial increase of traffic along that part of the route, and also the  
21 absolute value of nitrogen deposition there, because I’m questioning, in my own  
22 mind, why there is an increase along that part of the highway network.

23 MR SMITH: Okay.

24 MR SMYTH: I think – just the only other thing I’d point out, on this plan, is that it  
25 doesn’t actually show the gradient of effect away from the highway. So it only  
26 tells you what area is impacted by greater than a change of 0.4 kilograms of  
27 nitrogen per hectare per year, which is partial information. I think it would be  
28 helpful to understand a bit more about what’s happening as you move away from  
29 the edge of the road, to understand how this area has been calculated. So I think  
30 – I’m happy to be corrected on my interpretation of what that’s showing – but  
31 that’s hopefully my explanation of what –

32 MR SMITH: That’s a clear explanation. Certainly – I’ll just check with my colleagues,  
33 but that is, for my purposes, a clear explanation of where you currently stand.

1 So it's a space from which the applicant can at least launch off and hopefully  
2 explain their position to us.

3 MR SMYTH: Yeah, I mean, I've got a number of other things to say. So these effects  
4 are not reduced by mitigation, as the applicant does not propose to mitigate these  
5 effects at this location. And St John's College are concerned by 1) the scale of  
6 the harm caused to nationally designated ecological sites comprising  
7 irreplaceable ancient woodland and SSSIs; and 2) that the applicant does not  
8 propose to mitigate these. And I should emphasise here that mitigation is  
9 different to the compensation proposed on SJC land, and that mitigation comes  
10 first in the hierarchy of measures. This concern relates particularly, but not  
11 exclusively, to Shorne and Ashenbank Woods' SSSI and Shorne Brewers Wood  
12 ancient woodland because, of course, that's the largest area affected.

13 In table 6.1 of the project air quality application plan, which is APP-350,  
14 the applicant sets out potential mitigation that it's considered, to varying  
15 degrees, based upon its own guidance, which it's rejected at this location.  
16 Physical barriers, speed limit reductions and speed enforcement management  
17 were considered on a site-by-site basis and rejected here, as in most other cases.  
18 The applicant claims it does not have the powers to designate clean air zones or  
19 low emission zones on its network, or to implement changes to management of  
20 roads on the local network. As this is a DCO application, it would be helpful if  
21 the applicant could explain, in its response, why it was unable to implement any  
22 such powers through the order – or is unable to.

23 And St John's College notes it's common for traffic regulation orders to  
24 form part of DCOs, that TROs can be used to impose speed restrictions among  
25 other measures, and that certain TROs are included in the LTC draft DCO, albeit,  
26 not to mitigate nitrogen deposition. We note National Highways guidance on  
27 nine-metre-high physical barriers, but question to what practical extent it's used  
28 these for this purpose elsewhere, and to what extent National Highways  
29 considered cut and cover through the Shorne Woods section of the route. Table  
30 8.1 of the project air quality action plan, which is on page 92-93, sets out that  
31 speed control along this stretch of the project was not deliverable. Speed control  
32 would normally be considered to be a primary measure to reduce emissions.

33 We found table 8.1 to be impenetrable and we request an explanation, in  
34 plain English, as to why National Highways is unable to enact speed control on



1 this part of the route or confer the powers to do so through the DCO, and if they  
2 say this causes traffic to reroute, why traffic would reroute from the new  
3 crossing, presumably via Dartford. In table 6.1, LTC discounts a range of  
4 measures that it states would be regarded as compensatory rather than  
5 mitigation, including planting of trees, or a shelter belt, site management to  
6 prevent or reduce other nitrogen inputs, such as dog faeces, or to manage the  
7 underlying total nitrogen deposition, which is up to approximately 100 times  
8 greater than the inputs from the project, through measures such as removal of  
9 biomass, or to improve resilience to nitrogen deposition by reducing other  
10 threats to the habitat.

11 Page 112 of part one of appendix 8.1, it's noted that Natural England  
12 described Shorne Woods' SSSI as being in favourable condition. And LTC's  
13 survey, on page 113, noted that no vegetation gradient was observed, and that  
14 suggests that nitrogen deposition is not having an effect. So if there were a  
15 vegetation gradient, species that were sensitive to nitrogen would not be present  
16 and the gradient would be shown. Notes on the active management indicate the  
17 only visible management is path maintenance, and that required or beneficial  
18 management include the control of erosion close to the road by signage,  
19 temporary fencing, and planting, and also invasive rhododendrons and laurels  
20 should be removed and controlled, and bramble could also be controlled. Those  
21 are measures that the surveyor was recommending should be undertaken, and  
22 those measures are not part of the proposal.

23 Nitrogen-sensitive species were recorded in Shorne and Ashenbank  
24 Woods SSSI, including wood anemone, primrose, southern woodrush, common  
25 dog-violet, wild strawberry and early purple orchid. And that's shown on page  
26 436 of part one of appendix 8.14. The survey goes on to note that Shorne and  
27 Ashenbank Woods' SSSI and ancient woodland is well-used by members of the  
28 public and school groups and will have associated pressures including  
29 disturbance to wildlife and habitats, littering and dogs, and pressures include  
30 erosion, rhododendron, buddleia, and laurel growth, with bramble incursion, all  
31 matters that can be readily managed to improve the resilience of the ancient  
32 woodland and SSSI to threats associated with nitrogen deposition. The surveyor  
33 recommended that such measures are required because of these threats, found

1 no direct evidence of an effect from nitrogen deposition now, which is expected  
2 to be higher than nitrogen deposition in the future, according to the assessment.

3 And I note here that the assessment compares the future without scheme  
4 with the future with scheme but does not appear to examine the trend in nitrogen  
5 deposition from the existing to the future, which is an improvement even with  
6 the scheme. And I note, even at this point, it's convenient for Lower Thames  
7 Crossing to describe the measures I've just discussed as compensation rather  
8 than mitigation because, in doing so, these measures fall down their hierarchy.  
9 I do not agree with their definition of mitigation. It seems to me that such  
10 measures would be mitigation of the effects of nitrogen deposition and not  
11 compensation for these. And this is because the measures either reduce nitrogen  
12 emissions at source, speed control, or seek to reduce the consequent deposition  
13 or its effect. I'd be interested in your view on my interpretation of that point.

14 MR SMITH: Can I just check that our understanding of your client's position is  
15 completely correct here because, as I see it, you're running two potentially  
16 different arguments that may run in the alternative to one another, both of which  
17 may be applicable? The first, essentially, being that there are a range of  
18 additional mitigating actions that the applicant could have taken in project  
19 design, including but by no means limited to, speed control, cut and cover –  
20 design measures that would, in your view, have reduced the nitrogen exposure  
21 on the immediate corridor of the existing alignment and, therefore, would reduce  
22 the need for nitrogen deposition compensation land and, in those circumstances,  
23 your client's land you view as, essentially, no longer being a valid acquisition  
24 target by the applicant.

25 So that feels to me as though that's the broad thrust of argument one. But  
26 then there is the alternative, possibly alternative, argument two, but which can  
27 also compile into your first argument, which is, in relation to the survey of the  
28 physical condition of the SSSI, it is your view that the degradation that you  
29 would expect to see, evidenced, for example, by reduction in or loss of nitrogen-  
30 sensitive species, is not present and that, subject to a range of normal  
31 management actions being taken, that the site could be in good condition. And  
32 that in those circumstances, the level of nitrogen response which the applicant  
33 is proposing to bring forward, again, is not, in your view, made out because this  
34 is a site that has been exposed to nitrogen deposition but yet you are not seeing

1 – or, it appears on the evidence, that there is not the degradation that might be  
2 expected. And then you're going to the future and saying, 'and with potential  
3 nitrogen exposure levels dropping, therefore, what is the justification for taking  
4 your client's land?' Am I fairly summarising your case? This is our  
5 understanding of it.

6 MR SMYTH: That's a good summary on both points. And just on the second point, I  
7 don't see that the evidence has been presented in the application.

8 MR SMITH: Okay. I mean, do you need to put further points of detail to us in relation  
9 to any of that other than that's apparent on the face of the written material?  
10 Because if our understanding is clear, which I think it is now, I think we can,  
11 probably, without too much further ado, put that to the applicant. I will just,  
12 briefly, though, add to your specifics as I put that back to the applicant because  
13 I think it's fair to observe also that there are some site-specific concerns  
14 embedded in that, but there are also some generic methodological concerns  
15 embedded in that submission. And if the generic methodological concerns  
16 appear well founded, there are then some prospective fold-on implications for  
17 land requirements affecting other affected persons and for the nitrogen  
18 compensation process, at a larger scale than just this particular individual  
19 affected person's land. Okay. So, Mr Tait.

20 MR TAIT: Thank you, sir. I'm going to ask Mr Russell Cryer to speak predominantly.  
21 He's the HRA lead for the LTC. And to his left is Mr Nick Clark, who's the  
22 ecology lead. And so, I think if I can ask Mr Cryer to look, first of all, at process,  
23 question of a) impacts; b) mitigation or compensation, including picking up the  
24 points about the railway land and the order limits, what that signifies on the plan  
25 we looked at; and then come to the specifics in relation to this site and its role in  
26 the NDEP compensation strategy. So I don't know if I can turn to Mr Cryer,  
27 first of all, please.

28 MR CRYER: Russell Cryer, for the applicant. So the significant effects from nitrogen  
29 deposition are established in the environmental statement, chapter 8, terrestrial  
30 biodiversity. That's APP-146. And the compensation proposed to respond to  
31 those significant effects is within the project air quality action plan, which is  
32 APP-350. So the assessment of significant impacts is presented in the chapter  
33 and the appendix 8.14, designated sites air quality assessment, which is  
34 APP-403, 404, 405 and 406. That goes through individual sites to identify what

1 those impacts actually are, and which are significant. So that methodology for  
2 doing that assessment and identifying the need for any response follows National  
3 Highways guidance, but also Natural England guidance, and Natural England  
4 have shown strong support for the approach we've had to the nitrogen  
5 deposition.

6 So within the project air quality action plan, in consultation with Natural  
7 England, we set dual objectives for the compensation. And the project air  
8 quality action plan also has a section in it of the mitigation hierarchy. So we go  
9 through, specifically, what possible mitigation options are there, go through each  
10 individual one, and propose them where they're possible. The issue with  
11 mitigation, and why there's very few mitigation proposals and none in this area,  
12 is that it's very difficult to mitigate these effects. So to mitigate the effects, you  
13 have to reduce or remove the impact. If you're doing anything else in response  
14 to a significant effect, you are compensating for it. So as I say, the project air  
15 quality action plan goes through, specifically, there is a section on the mitigation  
16 hierarchy.

17 MR SMITH: And the proposition from Mr Smyth, on behalf of his client, was that you  
18 might be considering, amongst other things, speed limit on this section of the  
19 A2-M2 corridor, and/or cut and cover, and/or side barriers. And moving to an  
20 understanding of the non-applicability of those, considering the submissions that  
21 have just been made, would be very, very helpful, to understand your view as  
22 to, I guess, the soundness of the conclusions that you've drawn, as to why you  
23 are not able to apply particular mitigating measures in this location.

24 MR CRYER: Russell Cryer, on behalf of the applicant. So these are all set out in the  
25 project air quality action plan. So for instance, speed limit, or more control on  
26 the existing speed limit, reduces the speed, which reduces the emissions and  
27 therefore the nitrogen deposition. So that is a mitigation measure; it's a potential  
28 mitigation measure. But certain conditions need to be in place for that to be  
29 effective. The reduction of speed only significantly reduces emissions in certain  
30 speed bands; you have to bring it down from 70 to 60, for example. If the traffic  
31 is already only travelling at 60, then there's effective mitigation there if you  
32 bring it down from 60 to 50. You don't get a significant reduction in emissions.  
33 So the graph is not a linear graph between speed and emissions. So there's a

1 much faster increase in emissions as you go past 60 miles an hour. Yeah,  
2 exactly.

3 So if the speed of the road at the moment is already below 60, then it's not  
4 an effective measure. The project air quality action plan goes through each –

5 MR SMITH: Indeed. Now, can I just explore, specifically, some of the potential  
6 mitigation options that Mr Smyth put in front of us, because if we look at  
7 APP-350, cut and cover wasn't included in that. No. Is that because deemed  
8 irrelevant? Why was that not included? I mean, Mr Smyth is suggesting it might  
9 have been a relevant mitigation. It would be very helpful for us to understand –  
10 I know it wasn't covered, but just to be clear why it wasn't covered.

11 MR CRYER: Russell Cryer, for the applicant. It's not in the guidance to consider that,  
12 and it was also not brought up, during consultation, by Natural England or  
13 anybody else that I'm aware of to suggest that we did. So all of the options that  
14 are identified in the project air quality action plan were either from the guidance  
15 – National Highways' own guidance – and we also looked at other potential  
16 measures that were suggested as other possible things by the likes of Natural  
17 England. So we've gone through all of those, whether they're in the guidance  
18 or not, but nobody suggested that. But a cut and cover would effectively be a  
19 similar measure to putting barriers up. It's a physical measure to reduce the  
20 effects.

21 MR SMITH: Yeah, and I was just going to go on to the barriers point because I don't  
22 think, from memory, that side barriers, substantial side barriers, are mentioned  
23 in APP-350 either. So, again, same answer?

24 MR CRYER: Sorry, could you repeat that?

25 MR SMITH: I don't believe that side barriers were measured in the air quality action  
26 plan, in APP-350, either. So again, the reason for their non-inclusion as a  
27 mitigation measure is –

28 MR CRYER: Russell Cryer, for the applicant. Physical barriers were assessed in there.  
29 That's one of the options that we have looked at. It's in the DMRB to consider  
30 physical barriers that are nine metres high. We looked at the entire network,  
31 whether within 300 metres, and identified were there any opportunities to do  
32 that, and they were discounted in all sites on a number of bases, a lot in terms of  
33 unacceptability for landscape. Obviously, building nine-metre barriers within

1 and close to an AOB would be unacceptable, or there's simply not room to fit  
2 them in. So there considered across the whole effective network and discounted.

3 MR SMITH: Noted. Okay. Sorry to drop into you with those specific points, but I think  
4 we did need to try and get this as clear as we could. So do feel free to continue.

5 MR CRYER: Sorry, too many people whispering. Could you repeat that again, please.

6 MR SMITH: Yeah, no, I was just apologising for diverting your flow and asking those  
7 very particular points but do feel free to continue your general point.

8 MR CRYER: So the project air quality action plan goes through that mitigation  
9 hierarchy. It doesn't identify any mitigation options within this area. So it then  
10 moves on, through the consideration, into compensation. And, therefore, a lot  
11 of other potential compensatory approaches are considered. Now if you look at  
12 something like removing biomass or managing the site itself, managing other  
13 effects that are potentially affecting the site, those sorts of measures were looked  
14 at both as potential mitigation options and then reconsidered again as potential  
15 compensation options. So they were first considered as potential mitigation, but  
16 they aren't mitigatory in essence. They are not reducing the impacts; they are  
17 responding to an impact by trying to do some other impact. So that is a  
18 compensation measure, rather than a mitigation.

19 And then, once it was reassessed through compensation, because this is a  
20 nationally designated site – or most of them are – they have management plans  
21 that are already in place. And therefore, it's not appropriate to be offering, as  
22 compensation, to undertake measures that should be happening anyway because  
23 there is a government plan to undertake those measures anyway and put those  
24 sites into positive conservation management. So it's the additionality issue, and  
25 Natural England are strongly of the view, and support us in the fact that you  
26 cannot propose compensation that is not additional to what is already planned in  
27 the management plans for designated sites. So if there is an existing impact on  
28 the site, that should be dealt with anyway. So you have to find something that's  
29 additional to what is already planned for it to be an acceptable compensation  
30 measure.

31 MR TAIT: Could you then pick up the point about HS1 and the order limits?

32 MR CRYER: So the identification of the significantly affected land is identified from  
33 the area within the area within the designated sites that are assessed that are  
34 above the screening thresholds of nitrogen deposition. So it's not what land

1 there is within the order limits; it is what land within the designated sites is above  
2 that threshold. And that is the affected area. Now, when that area is identified  
3 to be a significant effect in the environmental statement, it is that area, only that  
4 area within the designated site, that goes into the calculation of how much  
5 significantly affected habitat there is. So anything else that happens to be in the  
6 order limits, that is not the assessment. The assessment is the habitat within  
7 designated sites, within 200 metres of the affected road network, not the order  
8 limits, and are exceeding the screening thresholds of deposition.

9 MR SMITH: I'm not 100% sure I'm following you there because, obviously, the  
10 proposition from Mr Smyth was that there had been included an extent of land  
11 which is now, essentially, rail track bed for HS1. Mr Smyth, can I just check  
12 that I'm following you correctly there?

13 MR SMYTH: Yes, you are. And I think we need to see it demonstrated. It's not clear  
14 from the figure, and that's why I asked the question.

15 MR SMITH: And the proposition, therefore, is, has – in square metre terms – land that  
16 is now aggregate railbed track etc, been included in the calculation of the  
17 impacted site?

18 MR CRYER: Russell Cryer, for the applicant. If it is designated, then it is included.

19 MR SMITH: Even though its current condition is as High Speed 1 track bed.

20 MR CRYER: Correct, if it's designated. It's not my job to designate –

21 MR SMITH: No, no, no, I'm just – I think what we're trying to cut to here is a  
22 methodology and maths point, so that we know what's in and what's out and  
23 why. So in other words, if the SSSI washes over that HS1 track bed, then your  
24 proposition is that is the designated land and, therefore, it is all equally amenable  
25 to effect, if it's within the set back from highway corridor necessary to receive  
26 additional nitrogen deposition.

27 MR CRYER: Russell Cryer, for the applicant. That's correct. So the methodology that's  
28 both set out in the DMRB and Natural England's guidance, NEA001, requires  
29 you to assess the effects on designated sites. And designated sites is published  
30 government data. So if the exceedance of screening thresholds of the deposition  
31 over an area of a designated site, that is what is then assessed. So one of the  
32 things that is taken into account in the ecological assessment of that, to see if it's  
33 significant or not, is the habitats that are present there, the duration of the impact,  
34 a whole range of considerations that are all set out in the assessment in the

1 environmental statement. So the quality of the habitat in there is one of the  
2 issues. So some of it might not be what you might imagine the most ecologically  
3 diverse habitat, a railway line. But that's true of a lot of designated sites, that  
4 they have what I call site fabric within them, but they are fundamental to the site  
5 often.

6 MR SMITH: So to address Mr Smyth's double counting point – and I apologise for  
7 labouring this, but there's some intricacy to this and we do want to make sure  
8 that we understand it correctly – you are saying that, yes, the SSSI designation  
9 washes over the track bed. So in area terms, the track bed has been included.  
10 But it has also been subject to survey, and that the ecological significance of, or  
11 in that case, lack of significance of the specific area of the track bed has been  
12 taken into account, in terms of looking at the effect that nitrogen deposition will  
13 have. And that, therefore, Mr Smyth's client can 'rest assured' that although  
14 you've included the land area, because you've then, essentially, taken into  
15 account the limited nature of effects in relation to part of the land that has a  
16 railway on it, that they should not be concerned that there is an over acquisition.  
17 Is that what you're telling me?

18 MR CRYER: Russell Cryer, for the applicant. I think that is what I'm telling you, yes.  
19 So there may be some trackway within that site, but there's also a much larger  
20 area of, for example, ancient woodland within that site. And the significant  
21 effect may be occurring on that element, within that nitrogen shadow, if you  
22 might call it that.

23 MR SMITH: And then, in terms of calculating the extent of the compensation that you'd  
24 need, it's that balance that you've considered in terms of the ecological function  
25 of the entire designated site, including the fact that a chunk of it has got a railway  
26 running across it.

27 MR CRYER: So the area that is identified as significantly affected is the area of the  
28 designated site, and there is a judgment within the environmental statement to  
29 see whether that area on that site is a significant effect on that site. And if it is,  
30 then that whole area is the appropriate area to consider in comparability for your,  
31 compensatory measures.

32 MR SMITH: Okay. You may disagree, Mr Smyth, but hopefully that's been a helpful –

33 MR SMYTH: I do disagree, and I'm extremely unclear on the answer that's been given,  
34 with respect. I believe that what Mr Cryer has said is that the area which



1           comprises HS1 – and he hasn't dealt with the other area – has been included in  
2           the calculation of area for compensation.

3 MR SMITH: Yes. Taking into account that that area includes two sets of, essentially,  
4           values – one being the track bed of HS1, in which nitrogen deposition arguably  
5           makes no difference, or very limited difference at all, as against the balance of  
6           the rest of the site, where, clearly, a judgment has been taken that it does.

7 MR SMYTH: I'm not clear on the answer.

8 MR SMITH: Well, indeed. Checking with my colleagues – no. There's a general  
9           puzzlement, I'm afraid.

10 MR CRYER: Russell Cryer, for the applicant. We will submit something at deadline 8,  
11           in writing, to try and explain this.

12 MR SMITH: Okay. In which case, Mr Smyth, it's a technical and an important point,  
13           so if you can stand ready to review that at the deadline, and then respond to it at  
14           deadline 9.

15 MR SMYTH: Yeah, and so we are in a dialogue. So there are a number of matters that  
16           we are discussing, and I'm happy to continue that dialogue.

17 MR SMITH: Okay.

18 MR SMYTH: There are one or two other points I just want to pick up on. Obviously, I  
19           don't agree with the interpretation on mitigation. I've read –

20 MR SMITH: Can I just arrest you for a second because Mr Tait is part way through his  
21           response to a range of points that you had made. And before I return to you for  
22           your final observations, I do, in fairness, need to allow him to finish his case.

23 MR SMYTH: Sir, I do have some points on compensation, in addition to the points I've  
24           made to on mitigation. So to be fair to Mr Tait, I'm happy to deal with those  
25           before he finishes his response.

26 MR TAIT: My points were going to be focused on the site in question, and if Mr Smyth  
27           is going to add something on that, then I will hold back.

28 MR SMITH: I think so. So let's have you wait, have him finish, and then you can wrap  
29           everything. And then Mr Smyth will come back to you at the very end. So, Mr  
30           Smyth.

31 MR SMYTH: A couple of other points, just in response on that part. I haven't seen the  
32           graph that Mr Cryer refers to, and I would like to see that graph, on the emissions  
33           curve. So if that could be provided, that would be helpful. I'm not aware of the  
34           use of physical barriers employed by National Highways for this purpose

1 anywhere, and if there are examples, that would be helpful to be referred to as  
2 well. And in terms of the measures that remove nitrogen from the soil,  
3 specifically, I don't understand why that's not mitigation of the effect of nitrogen  
4 deposition. I understand some of the other management measures correctly  
5 referred to as compensatory, or compensation, but it seems to me that removal  
6 of biomass or the use of a protective buffer, planting species that preferentially  
7 remove nitrogen from the soil, or use of mulch in removing that, to remove  
8 nitrogen from the system, my interpretation of that is that that would be  
9 mitigation.

10 So turning, then – yes, just in summary, no mitigation is considered  
11 feasible by LTC, using their definition, other than some speed enforcement  
12 managements between junctions three and four of the M2, and that's to enforce  
13 the national speed limit. So I'm not clear how that goes beyond their existing  
14 responsibilities. Nothing, in terms of mitigation of emissions, is otherwise  
15 proposed. And they don't propose to mitigate the impact of the locations where  
16 the proposals have their greatest impact. So in terms of compensation,  
17 obviously, we don't accept that those are justified – that the proposed  
18 compensatory measures are justified in the absence of properly considered  
19 mitigation. But those measures are set out in section seven of the project air  
20 quality action plan.

21 Habitat management measures are discounted with what we consider to  
22 be weak reasoning and weak analysis. Little consideration or characterisation  
23 of other pressures on the affected sites is given, and the claim is made, at 7.3.13,  
24 that measures are available that would definitely build resilience for all sites. St  
25 John's College does not consider that case has been made, that the measures  
26 proposed have been shown to definitely build resilience for all sites in the way  
27 that LTC claims, or that it would be possible to conclude that what LTC proposes  
28 would fully compensate for the impact of unmitigated nitrogen deposition at the  
29 affected sites.

30 At 7.13 to 7.4 of project air quality action plan, LTC claims that  
31 management measures would not have sufficient precision to be regarded as  
32 both additional to existing practices and to only relate to the threat posed by  
33 additional nitrogen deposition. That seems at odds with the listing of the same  
34 management measures in the preceding section on mitigation, and the five points

1 listed under 7.3.10. LTC seems to argue, on the one hand, that management  
2 measures can be used to compensate for nitrogen deposition, but on the other  
3 hand, can never be additional and so cannot ever be employed. And in addition,  
4 they seem to argue that, for nationally designated sites, normal practices that are  
5 already required for maintaining and restoring site features would be ineffective,  
6 but nevertheless, that they already address the effects of the project which have  
7 not yet happened. Clearly, both things cannot be true; there's a circular  
8 argument there that I couldn't follow.

9 We've discussed the removal of biomass and the other methods that could  
10 be considered in terms of mitigation. There's one further point that LTC makes,  
11 that measures such as removing biomass or fencing to reduce disturbance would  
12 be one-off measures that could have long-term benefits but could not be  
13 considered as resilient and sustainable in perpetuity unless the measures were  
14 committed to on an ongoing basis. I'd be interested to understand why LTC  
15 does not consider that it should commit to measures on an ongoing basis and to  
16 rule this out, and to suggest it would be a one-off measure, is simply wrong if  
17 they were to commit to ongoing management.

18 St John's College is concerned that the precautioning approaches adopted  
19 by Lower Thames Crossing would lead to a higher quantity of land being  
20 assessed as affected than would happen in reality. And this is separate to the  
21 double counting point; this is following the precautionary assessment approach.  
22 And we consider that the absolute value of nitrogen deposition, as well as the  
23 change, should be considered. It seems to us that only the change has been  
24 considered. And I made the point about trends over time, which you've got. I  
25 think – just skipping over some points I've already made. So we believe that  
26 inadequate consideration has been given to the acquisition of third-party land by  
27 private treaty, which would avoid the need for compulsory acquisition. This  
28 includes St John's College land.

29 There has been a without prejudice discussion on the acquisition of a small  
30 parcel of land and the management of a wider parcel of land, which was  
31 appended to the statement of common ground. You saw our proposition. There  
32 was a further dialogue about that, where there was some sort of intermediate  
33 approach that would fundamentally achieve the objective of connectivity, which  
34 is one of the twin objectives that Lower Thames Crossing refers to. The other

1 objective of a quantum of land that's comparable in area to the land affected, we  
2 think, should be considered as a separate point. Our contention is that achieving  
3 the environmental outcome desired, of connectivity and resilience, can be done  
4 with less land, and that the approach that we were putting forward is more  
5 aligned with the sorts of practice that you would see, in terms of management of  
6 field margins, hedgerows and connectivity, which would achieve the objective  
7 put forwards by Lower Thames Crossing with less land, and would retain best  
8 and most versatile land in production, as I said earlier, with a more efficient  
9 approach to the use of land.

10 We requested a more refined plan that minimises the impact on the field  
11 adjacent to Shorne, so it could continue to be farmed, continue to provide access  
12 between fields and provide more detail on what Lower Thames Crossing would  
13 propose to do and why, in each field parcel, in order that we could consider that  
14 properly, [if there?] is a private treaty kind of an approach. On Wednesday last  
15 week, LTC advised us of their decision to withdraw from those discussions on  
16 the basis that that would ultimately compromise their stated objectives that have  
17 already been examined by the panel and other stakeholders. I think the  
18 connectivity proposition has been examined. I question whether the need for the  
19 quantity that they've requested has been fully examined.

20 MR SMITH: In that respect, I'll make a very simple remark, which is that the  
21 examination is not over until it closes, and we are capable of juggling multiple  
22 balls at once. And rest assured, we do it for a living, so nobody should be  
23 forming the view that any matter is 'fully examined' at this juncture. We will  
24 carry on thinking about things and asking the questions that we deem necessary  
25 to ask, in hearings or otherwise, until we close.

26 MR SMYTH: I don't doubt any of that, sir, and I thank you for that. We believe that  
27 inadequate weighting has been attributed to the loss of grade one and grade two  
28 agricultural land, at a time where food security is of increasing national  
29 importance. The applicant considers the impact on best and most versatile land  
30 in environmental statement chapter 10, geology and soils. But we consider that  
31 that's been given less weight than is warranted, not least because food security  
32 issues are becoming increasingly important due to international conflict and  
33 climate change because best and most versatile agricultural land is recognised  
34 as a finite, non-renewable, non-replaceable resource.

1           We believe that compensation specifically for nitrogen deposition is no  
2 part of the applicant's proposal. In other words, the removal of nitrogen or  
3 mitigation of the consequences of nitrogen deposition from soils along the ARN,  
4 compensation offered is on land that's further away and so there is no  
5 compensation for that impact where it's happening. Hopefully, that's clear.  
6 Thank you. While we understand that the project has been shown to have a  
7 negative effect on nitrogen deposition by calculation, on habitats in close  
8 proximity to the highway, it's not clear that the actual effect on target species  
9 has been established and, if so, what they are, where they are, sufficient to enable  
10 that to be assessed.

11 MR SMITH: Okay. Now, I am becoming somewhat conscious of the passage of time  
12 here, Mr Smyth. So are there overarching summary points that you want to draw  
13 to our attention? And I will just flag that what I would like, then, to do is to take  
14 a break for approximately 15 minutes, and then the applicant will have an  
15 opportunity to respond after that.

16 MR SMYTH: We invite you, sir, to require a response from Lower Thames Crossing to  
17 the points raised, including but not limited to: an explanation as to why TROs  
18 or speed limits have not been employed to control the effects of nitrogen  
19 deposition, particularly along the section adjacent to Shorne Woods; an  
20 explanation as to what it is that the quantum of land that they seek to acquire  
21 achieves, as distinct from the objective of connectivity; the explanation as to  
22 why the scheme encourages a significant increase in traffic along Halfpence  
23 Lane, which is not controlled or mitigated and leads to the need for compulsory  
24 acquisition of land elsewhere, together with clarification of the absolute level of  
25 nitrogen at that location; an active management plan for existing national and  
26 internationally-designated land that sits within the order limits, that seeks to  
27 mitigate or compensate for the activities that affect this.

28           That might include fencing to limit access to people, dogs and deer, and  
29 long-term monitoring of the effects so that we can see what's happening over  
30 the long term; a clause that makes the compulsory acquisition of land subject to  
31 further evidence that it is suitable for the purpose; a clause that makes  
32 compulsory acquisition, purchase of land for the compensation of these effects,  
33 subject to demonstrating that suitable active management of existing designated  
34 land is unsuccessful and that evidence of effects from nitrogen deposition can

1 be seen; and subject to that, an agreement to continue discussions with us on the  
2 voluntary acquisition of some, or part, of St John's College land that achieves  
3 the objective of connectivity, but not necessarily quantum, on a voluntary basis.

4 MR SMITH: Okay, clear. Questions from my colleagues, just before we move to the  
5 break. And as I say, we will ask the applicant to respond after the break.

6 MR PRATT: Mr Smith, I'll try not to be too long, keep everybody away from their  
7 coffee. It was just a comment that was made at the beginning of your recent  
8 response. You said that the guidance used for nitrogen used for nitrogen  
9 deposition was, in essence, DMRB guidance, or you took suggestions from  
10 Natural England, and they were all that you looked at at the time. Just something  
11 that came to mind at that point was, particularly things like the SSSI sites, or  
12 there may well be other sites, is that guidance the appropriate measure to use or  
13 is there other guidance that you should have used in those locations to determine  
14 the level of nitrogen deposition compensation that you have to provide, or feel  
15 you have to provide? Thank you, Mr Smith.

16 MR SMITH: I'll just check with colleagues – no. In which case, I think this is a very  
17 good time to take a break. Let us call it around midday. So let us return to this  
18 room at 12.15. At that point, we will proceed directly with the applicant's  
19 response on your points, Mr Smyth. Thank you very much.

20

21 **(Meeting adjourned)**

22

23 MR SMITH: Welcome back, ladies and gentlemen. We are now in the second session  
24 of compulsory acquisition hearing 5 in relation to the Lower Thames Crossing.  
25 My name is Rynd Smith, lead member of the Panel. And we will go directly to  
26 Mr Tait for the applicant in response to Savills' submissions for St John's  
27 College, Cambridge.

28 MR TAIT: Thank you, sir. If I can just respond to a couple of points first, before turning  
29 to Mr Cryer. First of all, I think Mr Smyth said that National Highways had  
30 withdrawn from discussions, which is not correct, but at the same time, he said,  
31 'Engagement is ongoing and will continue.' That is correct because there is  
32 dialogue which we anticipate should and will continue in relation to voluntary  
33 acquisition of the land in particular.

1           Secondly, he indicated that the agricultural impacts may have been  
2 understated. But that is not reflected in the environmental statement, chapter 10  
3 at 148, paragraph 10.6.20 to 10.6.25, in particular, which acknowledges, by the  
4 end of the construction phase, once land required temporarily has been  
5 reinstated, there's a very large adverse impact on BMV land which is significant  
6 and is permanent, but that is acknowledged.

7           Thirdly, in relation to the point Mr Smyth made about looking at sites  
8 which could be acquired by voluntary acquisition rather than compulsion for the  
9 purpose of NDEP compensation, the PAQAP expressly – PAQAP at 3.50 –  
10 expressly includes that as a factor, for example, on page 56, where it indicated  
11 not having to compulsory acquire land was a differentiator where equally  
12 suitable options were available on ecological and constraints basis. And it  
13 factors that in further in the analysis that follows from it.

14           Fourthly, I was going to ask Mr Cryer to just pick up the specific point  
15 raised by Mr Pratt about the guidance that is available and that was applied.

16 MR SMITH: And in that regard, it's probably worth directing ourselves to, I guess, an  
17 underlying question as well, which is, obviously being conscious of the standing  
18 of DMRB as guidance, but stepping back and looking at this in terms of the  
19 proposition that one mitigates first and then one compensates second and placing  
20 those two streams of thought beside each other and thinking about how one  
21 would go then to the task of where one concludes that mitigation is inappropriate  
22 as opposed to not inappropriate.

23 MR TAIT: We will summarise it further, but there is an extensive passage or passages  
24 in the PAQAP on the various mitigation options considered, including barriers,  
25 and at 6.2.5 to 6.2.33 on speed limits reduction and enforcement, and that's  
26 further carried out into annexe A. In relation to the guidance, I was going to ask  
27 Mr Cryer just to respond specifically to that point.

28 MR CRYER: Russell Cryer for the applicant. So the starting point of our assessment is  
29 the DMRB standards. And we then take that and talk to the likes of Natural  
30 England, in particular, about that assessment. We've also followed Natural  
31 England's guidance in EA-001 on the assessment of nitrogen deposition,  
32 consulted very closely with them and they are in full support of our approach to  
33 NDEP assessment.

1                   And then, as you get further in, when we were considering the  
2                   compensation measures as further guidance from Defra on how competent  
3                   authorities must decide a plan can go ahead – also talks about the comparability  
4                   of the compensation against the impact that you’re having – talks about  
5                   additionality and these sorts of issues that we have taken into account, so we  
6                   have followed all the various guidance. It’s not just National Highways own  
7                   DMRB guidance.

8                   MR TAIT: So, fifthly, and finally, I appreciate there are a lot of comments. I think we  
9                   will be responding to that by deadline 8, but there is one express point about the  
10                  site itself that I’m going to ask Mr Cryer to pick up. And it requires looking, if  
11                  we may, at plate 719 of the PAQAP, which is at 350 on page 80.

12                 MR SMITH: Excellent. We’re going to get this on screen, I trust.

13                 MR TAIT: And if we can zoom in towards the top right-hand side where the – there,  
14                  which is the site in question.

15                 MR SMITH: Indeed.

16                 MR TAIT: And, Mr Cryer, I wonder whether you could just deal with the additional  
17                  connectivity point that you state is achieved through the inclusion of this site.

18                 MR CRYER: Russell Cryer for the applicant. So you can see the bottom of what we can  
19                  see on the screen here. The orange area is the affected area that’s next to the  
20                  road. We can’t mitigate or compensate within that area because it is within the  
21                  site itself, and therefore, any management of that area would be not additional,  
22                  so we have to look at, in terms of comparability of the compensation, to the  
23                  significant effects.

24                         If you degrade a habitat, what you’re effectively doing is reducing its  
25                         resilience into the future. So the comparability of what our approach is, is about  
26                         building the resilience of that site as opposed to the particular area that’s affected  
27                         by it by increasing the resilience of that. So the point of a landscape approach  
28                         and connectivity is that, by connecting those affected sites to other sites, you  
29                         effectively make the ecological patch of habitat much larger, and you improve  
30                         the resilience of each individual element of that network by doing it.

31                         So, if you’ve got multiple sites within that network that are all affected,  
32                         by improving the resilience of the network as a whole, then you effectively  
33                         compensate for all of the sites within that network. So, if you try and just do  
34                         some compensation for each individual site, you may or may not be able to find



1 measures. But you can't be certain that every site would get equal amounts of  
2 compensatory resilience, so that's why, through the arguments in the PAQAP,  
3 you end up with a landscape scale approach.

4 And you can see in this picture – the arrows on this show the additional  
5 connectivity between sites that are currently severed in the landscape, that are  
6 achieved by the nitrogen deposition compensation areas. And the site in  
7 question here has sites to the north, south, east and west that this particular site  
8 connects together, so you're bringing together, within that network, multiple  
9 sites that are currently severed into one much larger ecological patch that will  
10 have higher resilience and therefore responds to the degradation and the  
11 lowering of resilience by your nitrogen deposition.

12 MR TAIT: So that's our response, again, at a reasonably high level, but we'll –

13 MR SMITH: Indeed –

14 MR TAIT: – follow it up.

15 MR SMITH: – and clearly additional material will emerge at the following deadline,  
16 deadline 8. And I will remind Mr Smyth of the virtue of overviewing that and  
17 then responding at deadline 9 for his client. Any very brief final concluding  
18 remarks, Mr Smyth?

19 MR SMYTH: Yes, just in response to what Mr Tait just said about the dialogue, that  
20 started again yesterday, so it's ongoing as of yesterday. It had stopped, as I said,  
21 when I – in what I said earlier. And just in conclusion, I'm simply saying that  
22 the matters that I've raised are after having read the application, not before, so  
23 referring me back to the application doesn't help me, and they're to be treated  
24 in the knowledge of its content, so the answers are not in the application. They  
25 need to be provided.

26 In addition, we have identified alternative sites that we think should have  
27 been considered that do not permanently lose best and most versatile land. And  
28 I'll submit those in my written summary of this evidence.

29 MR SMITH: And to be clear, for those, don't wait to hear from the applicant. Submit  
30 those at deadline 8, which in turn means that if the applicant needs to respond,  
31 then they have deadline 9 so to do. So, look, what we're trying to do is, by way  
32 of bounce down, to arrive at the end of the examination with everybody's  
33 position patent and clear to each other.

34 MR SMYTH: Understood.

1 MR SMITH: Okay, excellent. Mr Smyth, thank you very much for your time. Now, I'd  
2 like to just briefly hop back into business mode and just check who we have  
3 available to hear next. Now, can I just check who we have in the room? I did  
4 see Mr Bedford, but I'm also equally conscious that Mr Bedford was originally  
5 going to appear at the beginning of the afternoon session. Mr Bedford, would  
6 you be ready to appear, or would you prefer to stay in your original slot?

7 MR BEDFORD: Very happy to appear now. Thank you, sir.

8 MR SMITH: Okay, and in which case, if I'm then looking at the remaining agenda,  
9 everybody else are – now remaining – are people who were originally intended  
10 to appear in the afternoon and/or who have requested to go there. So I think, in  
11 fairness, given that you are here and ready, I'm going to ask you to come  
12 forward.

13 Now, I'm very, very grateful for your attendance on behalf of your clients,  
14 Mr Bedford, because we're in the slightly unusual circumstance of having a  
15 matter here that, *stricto sensu*, isn't quite the normal subject matter of a  
16 compulsory acquisition hearing, and equally, it is one on which we have already  
17 heard submissions orally.

18 Our purpose in inviting you back today is, hopefully, patent on the face of  
19 the circulated agenda, but putting all of that into a nutshell, we are observing the  
20 specific measures around delivery that the applicant is proposing for the  
21 environs of Whitecroft. And we are asking ourselves, essentially, whether there  
22 are adequate construction measures in place that will enable Whitecroft as a  
23 facility to be reasonably operable during the construction period, and if not, what  
24 the consequences of that would be.

25 Critically, also, however, we are conscious that, when we left you last, there  
26 was some conversations going on. And we are very conscious that those  
27 conversations might be fast-moving. Now, if you are saying to us that  
28 'Everything's patent on deadline 7,' and you will either already have got to it or  
29 you will get to it in due time, that's excellent. There's no need to repeat stuff  
30 that's coming in writing and isn't a matter of dispute.

31 However, what we would very much value hearing from you – and then  
32 providing the applicant with an opportunity to respond upon – is anything that  
33 is still dynamic, anything that is still moving in negotiation and discussion

1 between yourselves, such as it wouldn't have been clear on the papers in front  
2 of us. Does that provide you with a reasonably clear remit of action?

3 MR BEDFORD: Thank you, sir. Yes, Michael Bedford on behalf of Whitecroft, the  
4 collective objectors that we're using the word Whitecroft to describe. Sir, can I  
5 start by using your agenda items as the points, and so your first item is update  
6 on progress. And it's right that a meeting did take place on 23 October of this  
7 year, which was attended by representatives of both parties, including the  
8 technical specialist dealing with noise and vibration matters, but also involving  
9 other personnel.

10 And what we did in our submissions at deadline 6, that's REP-6209, is we  
11 summarised the outcome of that meeting at paragraphs 9 to 14. And the only  
12 point I just would like to highlight that we drew your attention to in  
13 paragraph 14, as well as there being technical discussion about vibration matters,  
14 where we provided as much information as we could, but we were then awaiting  
15 further comment from the applicant, at paragraph 14, we made the point that  
16 there was a wider discussion about the nature of the Whitecroft concerns. And  
17 it was indicated to us on that occasion that there would be a written proposal  
18 forthcoming from the applicant setting out what it envisaged being able to do.

19 But we're now over four weeks from that meeting, and there hasn't been  
20 such a written proposal received. And we did, again, chase the position last  
21 week to be told, 'Yes, something is coming,' but it hasn't. Now, I appreciate  
22 that, in the scheme of the Lower Thames Crossing, Whitecroft is only one entity,  
23 and I appreciate that there are a lot of other issues for the applicant team to be  
24 dealing with.

25 But it is disappointing that, having been intimated that there would be  
26 something forthcoming, I say, we are a month effectively on – well, as you and  
27 everybody is very well aware, we have a timetable for the examination, and so  
28 we are beginning to get to stages where it becomes more complicated to deal  
29 with matters. So, sir, that's the – in terms of update on the progress.

30 The other piece of information by way of update, not that it's a great  
31 moment today, is you'll recall that we had mentioned in earlier representations  
32 that the ownership – there was a transfer that was in train between Kathryn  
33 Homes and Runwood Homes for what is effectively the main Whitecroft site.  
34 That transfer has been now completed – I think it was 3 November.

1           It's in the process of – obviously, it goes off to the Land Registry for the  
2 title to be updated, but for those who are interested, the document known as TR1  
3 has been completed and, as I say, that is in the process, which simplifies matters  
4 simply because, effectively, it means that the operator, which is Runwood  
5 Homes, is now the owner of the site which contains the home.

6           Then, sir, moving on to item 2 and the issues in terms of construction  
7 effects, and obviously, you asked further questions in the second round of  
8 written questions, and particularly at 9.1.7. And you've indicated particularly  
9 information about the effectiveness of measures for the construction of the  
10 proposed bund and for the management of general construction noise affecting  
11 the bedrooms, particularly at night. The applicant did submit material in  
12 response to your request at deadline 6 – that's in REP-6-111.

13           We have responded to that in our deadline 7 response material, which you  
14 may well not yet have seen because it's certainly not electronically available.

15 MR SMITH: We are still in a world – I mean, we made a very conscious decision to  
16 screen between matters preceding in writing and matters preceding orally. And  
17 we are currently in this slightly interim world where we do not yet have a fully  
18 published deadline 7. It's been worked on incredibly hard behind the scenes,  
19 but I won't pretend to have read everything in it by a substantial measure.

20 MR BEDFORD: No, well, I appreciated that was probably the case. And again, I'm not  
21 at the moment sure to what extent the applicant may well have seen our –

22 MR SMITH: If we haven't seen it, they won't have seen it.

23 MR BEDFORD: So, I mean, if I say – and I will just say this in summary terms, there  
24 are two elements to it. There is a written representation, and then there is a  
25 further technical report from our acoustic consultant commenting on the  
26 material.

27           But in short, we don't consider that the material that the applicant has put  
28 forward to you at deadline 6 in any way is sufficient to address the construction  
29 impacts on Whitecroft, and in particular, that hasn't, we say, adequately  
30 grappled with the very specific and detailed concerns that we've raised about  
31 the measurements of noise impacts, the appropriate criteria that one should use  
32 for setting any benchmark for the assessment of noise impacts where one is  
33 dealing with a vulnerable community. And we've rehearsed all of that in earlier  
34 representations.

1 We set out in our representations in response to your earlier questions,  
2 where you asked us on a without prejudice basis, to outline to you alternative  
3 criteria that could be used. We set those out. Those have not been addressed or  
4 applied by the applicant in their deadline 6 material.

5 And in short, what the applicant has done is to maintain its previous  
6 methodology, and which, in terms of therefore measuring noise – and I’m  
7 slightly oversimplifying, but just so you can see the, in a sense, the breadth to  
8 which we are apart – what the applicant has done is to maintain its previous  
9 methodology.

10 And it has taken, therefore, a time period – which is either a daytime  
11 period or a nighttime period – it takes all of the noise arising in all of that period,  
12 and it’s into that in which it introduces the noise events of the construction  
13 activity, which obviously has the effect of averaging out the noise levels so that  
14 if you have a particular noisy event, if you take a nighttime period or a daytime  
15 period, we would say it masks the true impact because it averages out the  
16 position.

17 We suggested in our representations – I think at deadline 4 – our  
18 alternative criteria, which took shorter time periods for measuring that, both  
19 internally and externally. We did an LAeq one hour, and we also did an Lmax.

20 MR SMITH: Lmax is typically used in circumstances where you’re looking at the  
21 potential for disturbance of sleep, and particularly, in terms of picking up  
22 instances of, say, percussive noise that stand above the background.

23 MR BEDFORD: Yeah, so what we did is – and, as I say, we’ve set it all out in the written  
24 material – is we actually provide you with an LAeq, which is obviously a – does  
25 take an average over a time period, but we specified a shorter time period of  
26 one hour rather than, say, the seven-hour period that the applicant has used. And  
27 as you say, we also gave you our suggestions for an Lmax in addition, so we  
28 provided, in a sense, a twin approach.

29 The applicant has not engaged with that and, as I say, what they’ve done  
30 is they’ve provided information where they’ve tried to refine what they think  
31 their noise levels will be by reference to their time periods of construction works  
32 and the equipment that’s being used. We’ve expressed, in our further comments,  
33 criticisms of that in terms of the lack of detail.

1 But the more fundamental point is that, actually, the methodology, the  
2 approach, we say is wrong and not fit for purpose for this particular context. So  
3 although you're presented with new figures by the applicant, they haven't  
4 changed the methodology, so we don't accept that point.

5 MR SMITH: Yeah, so, in your proposition, you are no further advanced.

6 MR BEDFORD: No.

7 MR SMITH: The dispute is still essentially as wide as it was when we last met.

8 MR BEDFORD: That is right. And that is so on noise. Then, in relation to vibration,  
9 and that's a particular concern in relation not only to the construction of the  
10 bund, which obviously you appreciate, as also the whole road, which, as it were,  
11 circumnavigates around two-thirds of Whitecroft and construction traffic using  
12 that at levels of intensity of up to 150 movements per day – and we've again set  
13 out all of the detail of that in our representations.

14 The applicant has made it clear that they have not carried out any vibration  
15 assessment of those methods. The only vibration assessment that has been  
16 undertaken in the vicinity of Whitecroft relates to piling. And the applicant is  
17 not intending, as we understand it, to carry out any vibration assessment.

18 All that has been done is to propose, in the REAC, certain adjustments to  
19 the REAC measures for, if, in due course, there are activities, then there will be  
20 monitoring, then there will be the exercise of best practical means.

21 There is a particular point that we don't understand – if I can just draw  
22 attention to that in the REAC – in relation to vibration, where what is said – and,  
23 sorry, this is in REP-6039, and NV-017 has been revised.

24 And it says that 'Any construction works with potential to generate  
25 discernible levels of ground-borne vibration outside the site boundary, including  
26 piling and the use of vibratory compaction rollers, and located within 100 metres  
27 of any vibration-sensitive receptor, as defined under DMRB LA 111, may  
28 require further specific mitigation and control measures to reduce the level of  
29 vibration from construction activities within the specified distance beyond best  
30 practical means where significant vibration effects are identified. The  
31 contractor, as part of the noise vibration management plan, must set out  
32 measures to reduce those matters.'

33 However, as we see the position, it is quite clear that Whitecroft will be  
34 within the 100 metres for the construction of the bund. And it is also, as we see

1 it, quite clear that reliance on best practicable means, as proposed, doesn't  
2 actually bring any relief because what the applicant has been not prepared to  
3 commit to is that, if there is an event which causes a problem, all that does is  
4 trigger an investigation. It doesn't halt the activity.

5 And the nature of the investigation, when one looks through the way it's  
6 put in the REAC commitments, is potentially to include reference to the  
7 Secretary of State if there can't be agreement between the applicant and the  
8 relevant local authority about what should be done. So there is a substantial  
9 period of time, which may be measured in days, weeks or months, when  
10 whatever is the disturbing activity will not be addressed. So we say that is  
11 clearly not an acceptable approach.

12 Then, the other matter, on the REAC, which if I can draw to your attention,  
13 where we don't think that what is proposed is acceptable, and this relates to the  
14 – sorry, I'll just pause. I apologise to everyone. My notes are slightly confused.

15 MR SMITH: There's a lot of information passing in front of all of our minds, so take  
16 your time.

17 MR BEDFORD: Yes, sorry, it wasn't a reference to the REAC. There is a reference –  
18 this is in the applicant's comments; it is in REP-611 – where the applicant has  
19 indicated on page 11 of REP-611 – that's why I wasn't finding it, because I was  
20 in the wrong document – what the applicant has indicated is 'earthworks  
21 construction of the permanent bund to the west of the care home' – at the foot  
22 of page 11, it's indicated, 'As this activity is noted as earthworks, it would fall  
23 under the project commitment to undertake no earthworks activities within  
24 300 metres of any sensitive receptor during the evening or overnight periods, as  
25 set out in table 6.1 of the code of construction practice.' And so they then say  
26 that the activity would not occur outside of core daytime hours.

27 But it then goes on to say, at page 12, 'that of the BPM that could be  
28 implemented, one of those is commitment to undertake no earthworks within  
29 300 meters of any sensitive receptors during daytime and evening periods.'

30 Now, given that the bund is entirely to be constructed within 65 metres of  
31 the home, because that's where it is located, we just don't understand how that  
32 can be achieved at all. Obviously, that has implications for the feasibility of  
33 what's being proposed.

1 But, I say, it goes back to the more significant point that there's been no  
2 vibration assessment of those activities, and what is proposed in the REAC  
3 doesn't, in our submission, in any way engage with what is required because it  
4 doesn't bring about any prohibition of offending activities. That applies to both  
5 noise and to vibration. And we have also, I say, wider concerns about the air  
6 quality. It also relies on the same approach of 'We simply investigate and then  
7 propose further measures.' So, sir, that is item 3 on your agenda.

8 Then, so far as item 4, it's, broadly speaking, in a similar position, I'm  
9 afraid, which is to say that the residual effects, both in terms of construction and  
10 operation, are not acceptable. We have made a point – because, again, the  
11 applicant has sought to address one matter via the REAC in terms of low-noise  
12 road surfacing – and it's right to say that the applicant has indicated an intention  
13 to install low-noise road surfacing at the outset. There is now a commitment  
14 that when that comes to be replaced, it will be replaced with something with  
15 effectively no lesser qualities than it was as installed.

16 But there is no commitment to the cycle or period for replacement, that is  
17 to say, we know – and we've referred to in our representations – that low-noise  
18 road surfing degrades over time. But what the applicant is not doing is  
19 committing to monitoring its performance in terms of noise reduction over time  
20 or committing to replacing it at any particular points of time so that, if it were to  
21 be, as it were, as a surface for the carriage of vehicles – in construction terms, it  
22 remained capable of accommodating vehicles – the applicant wouldn't have to  
23 replace it. It's only that when the applicant does come to replace it, it will  
24 replace it with something which is of equivalent properties.

25 MR SMITH: And testing that, then, it your suggestion that, in acoustic performance  
26 terms, you could have a substantial buffer period between a point at which, in  
27 your view, there was an acoustic exceedance, but in their view, that they still  
28 had an operable road surface, and in that gap period, the noise exposures in the  
29 home would be, in your view, unacceptable and rising until the matter was  
30 addressed.

31 MR BEDFORD: Absolutely, sir. And you will see that, and I say, we've set it out in the  
32 representations where they rely on an up to 7.5 dB reduction achieved by the  
33 installation of low-noise road surfacing, so it's quite a significant scale of  
34 reduction to what would otherwise be the case. But that performance is there at



1 day one, but then there is no attempt to assess or measure performance over time,  
2 and it's simply that there is a commitment to replace. And I should say, this,  
3 I'm sure, could be tidied up.

4 At the moment, even that commitment is limited to only relating to  
5 replacement on the strategic road network, so that doesn't actually apply to  
6 replacement of low-noise road surfacing on Stanford Road, which obviously sits  
7 outside of the strategic road network, and we query whether it would apply to  
8 the slip roads that connect to the A1089, even if they're coming from either the  
9 A13 or the LTC because they wouldn't appear to us to be part of the strategic  
10 road network either. I say, that kind of micro point is probably capable of being  
11 addressed.

12 But the wider point about performance monitoring and a commitment to  
13 actually maintaining the performance of the low-noise road surfacing is lacking  
14 from the material.

15 MR SMITH: And if the acoustic performance is necessary to deliver what you view as  
16 being acceptable conditions/compliance, then if it's necessary at the start, it's of  
17 operation; it's necessary to endure during operation.

18 MR BEDFORD: Indeed, sir. So that's an operational concern, but I say, coming back  
19 to, in a sense, the heart of what we're concerned about is the accumulation of  
20 the construction impacts of the development. And you'll recall that we've made  
21 references before to the fact that the applicant's assessment has tended to present  
22 material in the silos of the different environmental disciplines, not brought  
23 things together and said, 'Well, look in human terms, what does this actually  
24 mean for the people, the residents of Whitecroft who will be experiencing all of  
25 these effects together?'

26 MR SMITH: Yeah, and I do have to say, in that regard – and I think it's important that  
27 you, and indeed Mr Tait, hear this equally and respond to it equally, and that is  
28 what we are trying to evaluate is, in the round, the question of the acceptable  
29 operability or not of that specific care facility in circumstances of construction  
30 and also in circumstances of operation.

31 Because there is an underlying observation, which I guess is obvious,  
32 which is that if it appears not to be acceptably operable under either of those two  
33 conditions, then is there a recommendation that will be made to the Secretary of  
34 State about either its temporary cessation of operation facilitated by the applicant

1 and/or its acquisition on an ongoing basis – because those become probably  
2 more practicable means of trying to address things that are otherwise proving to  
3 be very, very difficult, apparently, to address.

4 Now, I put it in those very stark terms because I think we have to describe  
5 what the end state of a worst-case scenario might look like. But I didn't want us  
6 to go past, at this point in the examination, without surfacing that and receiving  
7 your submissions on it, and indeed, providing the applicant with an opportunity  
8 to submit upon it – its desirability or otherwise on from both of your perspectives  
9 and how such an outcome, if necessary, might be achieved or whether it is not  
10 appropriate or possible for it to be achieved.

11 MR BEDFORD: Thank you, sir. Yes, so, well, we have already, in a sense, rehearsed a  
12 lot of that ground at compulsory acquisition hearing 2. And you'll recall that, in  
13 our post-hearing submissions from compulsory acquisition hearing 2, we  
14 expressed our views as to why, as it were, temporary, as it were, displacement  
15 doesn't work because of the nature of the care home residents and the time  
16 periods and the impacts on them.

17 We have also made it quite clear that we are not at all seeking to put  
18 obstacles in the applicant's way if the applicant were to recognise what we say  
19 is inevitable, which is the unacceptable juxtaposition of the LTC and the  
20 Whitecroft. We're not seeking to put obstacles in their way to an acquisition of  
21 Whitecroft, and we've made that, again, clear in our written representations and  
22 also to the applicant.

23 So if I just, I think, probably complete with item 4 on your agenda, which  
24 brings us back to the same point, which is putting our concerns, as it were, or at  
25 least viewing our concerns, through the lens of particular statutory  
26 responsibilities and human rights and public sector equality duty.

27 And we have made the point very clearly in our representations that we  
28 do see this as an instance where the public sector equality duty is not at the  
29 moment capable of being properly discharged by the Secretary of State because  
30 of the lack of adequate information which has been provided by the applicant to  
31 demonstrate that the persons with protected characteristics, the occupiers, are in  
32 fact being given due regard in the way that these scheme impacts on them and  
33 their particular vulnerabilities.

1           So, sir, I'm afraid that doesn't really end us on a message of cheer in terms  
2 of progress. But it is, obviously, absolutely important in terms of the  
3 examination that the applicant does rather more than hitherto seems to have been  
4 the case. And we are, I say, disappointed that, notwithstanding what we thought  
5 was a potentially helpful meeting over a month ago, that that hasn't translated  
6 into anything positive that we can move forward with.

7 MR SMITH: And be that as it may, I think it has been for us critically important that, if  
8 this is a matter that's going to go into the adjudicatory box – where we will have  
9 to try and resolve in a recommendation to the Secretary of State foundation  
10 standpoints of disagreement between yourselves and the applicant – that we  
11 understand, up to the minute, what it is that we're being asked to recommend  
12 upon.

13           And so, in that respect, having heard the story as it currently is, given that  
14 we do have time remaining in the examination, and essentially, now a full  
15 bounce down of deadlines which enable deadline 8 positions to be seen by  
16 yourselves and the applicant, at deadline 9 to be responded to between each other  
17 and then, for at deadline 10, both you and the applicant to put what amount to  
18 closing written submissions. There is a pathway still to a measure of agreement  
19 on matters that are currently un-agreed.

20           But what we're asking both you and the applicant to do is, if it's plain that  
21 matters are not going to be agreed, to be clear through that process so that we  
22 can deal with the necessary consideration of these matters and a  
23 recommendation to the Secretary of State in the light of what's been put in front  
24 of us. I mean, I'm sure all that's obvious, but it did seem we shouldn't go past  
25 today without having that conversation. So, is there anything else you need to  
26 put to us, Mr Bedford? In which case, I'm going to turn to Mr Tait. May I ask  
27 for a response?

28 MR TAIT: Thank you, sir. Dealing with each point as they arise, in relation to the  
29 question about progress in negotiations, you'll recall there was some delay in  
30 getting a meeting about the question of additional discussions about potential  
31 other solutions and that, in due course, led to a meeting on 23 October, as  
32 Mr Bedford has indicated, where the question of potential acquisition was  
33 discussed.

1           Mr Bedford didn't mention that, subsequent to that, there's been a  
2 telephone meeting, if I can call it that, this month, at which National Highways  
3 offered to acquire the care home by agreement with a view to its relocation.

4           And the next step that's been agreed in relation to that is that Mr Bedford's  
5 clients will formulate a claim for National Highways then to consider. So the  
6 position is that, having heard what has been said by the panel at CAH 2 –

7 MR SMITH: It seems a long time ago.

8 MR TAIT: – and having regard to the continuing nature of the PSED, of the PSE duty,  
9 which is not discharged just once, but it's always under review, that it is made  
10 that offer in that context.

11 MR SMITH: In that context.

12 MR TAIT: Now there is, obviously, that is, there's much to follow from that. But I think  
13 it is right to acknowledge that that step has been taken and that the next most  
14 appropriate route is for, essentially, that to be quantified, and then National  
15 Highways can consider that, so that's –

16 MR SMITH: Well, that's it in terms of National Highways position. And again, just  
17 being clear for our purposes, that flowing through the bounce down of the  
18 deadlines to deadline 10 to a clarified position, which is either that that is agreed  
19 or offered but not agreed for reasons, will be what we wish to see, so that – I  
20 mean, essentially, what we're trying to avoid here is a circumstance where we  
21 have to deliver to the Secretary of State essentially a problem of undischarged  
22 and enduring PSED duty, but with no evident solution. If, by the ingenuity of  
23 excellent minds in the room, we can get to a point where we can actually take  
24 something to the Secretary of State that is more positive than that.

25 MR TAIT: That's understood.

26 MR SMITH: Mr Bedford.

27 MR BEDFORD: Well, sir, part of what Mr Tait says is very welcome, and clearly, it  
28 isn't, I think, particularly fruitful to the examination to get into the whys and  
29 wherefores –

30 MR SMITH: No.

31 MR BEDFORD: – but I have to say that our understanding – and I have next to me  
32 Mr Cooper, who is the director from Ardent, who has been involved in the  
33 negotiations. He doesn't recognise the picture that has just been presented that,

1 yes, there was a meeting. There was no follow-up conversation by telephone  
2 inviting us to submit a claim.

3 And what, I say, we are very clear about, that at the meeting that took  
4 place on 23 October, all parties went away from that meeting on the clear  
5 understanding that National Highways was going to formulate its proposal to us.  
6 That's what we've been waiting for. But in a sense, for whatever reason, if there  
7 may have been crossed wires and things, I say, the positive from what Mr Tait  
8 has told us this – now afternoon, is that National Highways is offering to acquire  
9 by agreement, and on the basis that that is the National Highways position,  
10 clearly there is something positive that the parties can talk about, obviously  
11 outside of the examination hearing, but as I say, it's just slightly disappointing  
12 that something has obviously gone wrong in the communications that has led us  
13 to this situation.

14 MR SMITH: Indeed, but can I just say from the panel's perspective, before Mr Tait  
15 comes in and responds to that, that we are essentially unconcerned about the  
16 whys or wherefores, as you indicate? But what we are deeply concerned about  
17 is trying to resolve, by the end of the examination, a clarity. So it may well be  
18 that there's been some miscommunication. It may well be that things that were  
19 said on one side weren't understood on the other side or vice versa. However,  
20 we've got however many weeks, and that would be my suggestion of focus here,  
21 in terms of landing something. So –

22 MR TAIT: Yes, sir, I agree. I could ask Sarah Collins to give her view, but there's no  
23 point in doing that. I've made the position clear. We thought we had, but –

24 MR SMITH: Yeah. There is one question that I'm going to add as salt to the porridge  
25 on that point, and that is a public interest/public policy dimension to this that  
26 actually stands maybe above the propriety interests of the owners for the time  
27 being of Whitecroft, and that is, essentially, the aged care facility capacity  
28 broadly available within the Thurrock area, and if a care home business is being  
29 removed, what, if any, reasonable measures might it be appropriate to take to try  
30 and secure equivalent capacity broadly within the same catchment for the  
31 citizens of Thurrock?

32 MR TAIT: Can I just pause for a second?

33 MR SMITH: Yes, absolutely.

1 MR TAIT: First, the offer is very much with a view to facilitating relocation, but in  
2 relation to your specific point, I know Ms Suki Coe, who is the DCO and  
3 planning manager, has given thought to that matter and she's sitting at the end  
4 of the table and can contribute.

5 MR SMITH: Okay. Let's hear it.

6 MS COE: Hello. Good afternoon, sir. My name is Suki Coe. I'm acting for the  
7 applicant. Sir, the south Essex housing needs assessment has identified the need  
8 in the Thurrock area for an additional 160 extra care spaces for the period 2020-  
9 2040, so we are aware that there is an issue. The proposal is, of course, for a  
10 relocation and so therefore not for a loss, but it's also important to understand  
11 what else is happening within the care home provision for this area. Sir, there  
12 is a planning application. I can give you the reference, but I'm sure it will be  
13 preferable to have it in writing later.

14 MR SMITH: In writing, please, yes.

15 MS COE: Which proposes a 64-bed residential care home with dementia facilities on a  
16 nearby golf course, and that was approved on 21 September 2022. There's also  
17 a further application awaiting determination for a 77-bed care home, and we  
18 have looked at that, and we can provide you the reference for that. That would  
19 leave a shortfall of 43 spaces against the local plan target. There is a third  
20 application, also awaiting determination, for a further 66 beds. So therefore,  
21 there would be no shortfall, so in total, there are 207 beds in planning process,  
22 one approved and two further awaiting. So overall, we feel that this is a  
23 relocation. This is not a closure, but in the meantime, there isn't a shortfall.  
24 There may be a temporary lag between the delivery of those beds, but they're in  
25 the planning process. Does that help to answer the question?

26 MR SMITH: Hand over to Ms Laver.

27 MS LAVER: Thanks. Could I just clarify the south Essex housing needs assessment?  
28 You gave the figures of what's required. Is that new bed spaces? Because  
29 you're suggesting there wouldn't be a shortfall, but if Whitecroft closed, does  
30 that housing needs assessment include current bed spaces, or is that just what is  
31 required?

32 MS COE: That's what's required going forward for the planning period of 2020-2040.

33 MS LAVER: Okay. Thanks.

1 MR SMITH: Sorry. Just taking notes here. Right. If that concludes your material then,  
2 Ms Coe, I will return to Mr Tait.

3 MR TAIT: Thank you, sir. The second point relates to a critique of REP6-111. Of  
4 course, we haven't seen that critique at REP7, but REP6-111, which is the  
5 response to your specific questions at session 2, sets out that there is a difference  
6 in application of the – a difference in view as to the appropriate thresholds and  
7 National Highways has applied BS 5228, which is the appropriate threshold, but  
8 it's also looked at the position if one applied the thresholds that are suggested  
9 on behalf of the care home. In relation to – and that indicates also that the  
10 appropriate measures of LAeq, but I will ask Mr Barney Forrest, who's the  
11 environment lead, if he can pick up the points about one-hour data, and  
12 associated with that, Lmax.

13 MR FORREST: Hello. Barney Forrest for the applicant. So thanks for the comments  
14 on the approach and we look forward to digesting the critique at deadline 7, and  
15 obviously, we'll respond to it fully then. I think the point we would make is that  
16 the assessment that we've undertaken is appropriate for the current phase in the  
17 planning process with an understanding of the construction techniques that are  
18 going to be undertaken at the time, because as we get towards detailed design –  
19 the detail of what might cause different levels on a one-hourly basis will become  
20 clearer, and would be controlled through the REAC process that we've set out  
21 that includes the section 61 process.

22 It's not possible at this point or appropriate to use Lmax in reference to  
23 the guidance that has been suggested there, but obviously, we'll read what's been  
24 put properly and come back on that point.

25 MR SMITH: Yeah, no, it would be very, very useful to understand that, and from our  
26 perspective, to understand, essentially, what is an appropriate measure, in terms  
27 of, essentially, the protection of undisturbed sleep in the rooms most closely  
28 adjacent to works, because if we're trying to cut through all of the technical stuff  
29 here, that seems to be probably the issue that is potentially the most difficult to  
30 manage, so yeah, if we can understand where you are going there, that would be  
31 very, very helpful.

32 MR FORREST: Sir, on that point, we think that the application of BS 5228 for night-  
33 time is an appropriate measure for healthcare facilities, and that's why we've  
34 used it, and that sets out the thresholds that are set out in our REP6-111.

1 MR SMITH: Subject to what you read at deadline 7, and then we will see what comes  
2 out in the wash. No, all that's taken.

3 MR TAIT: Sir, in relation to controls, in addition to the REAC commitments that Mr  
4 Bedford mentioned, 15 and 17, there's also 2, 4, 7, 1, and 9, as well as, in the  
5 COCP itself, table 6.1, which is the one that refers to the 300-metre limitation  
6 on evening and night-time works, and that is a misprint that Mr Bedford has  
7 pointed out.

8 MR SMITH: Indeed, and I was going to just say that that patently, in these circumstances,  
9 if that is correct, cannot be met.

10 MR TAIT: For 'daytime,' read 'night-time,' in that. That's what I'm told. So we will –  
11 and the COCP is the correct version. It's simply that REP 6-111 on page 12 has  
12 that typo. I think related to that, about how problems are dealt with at the  
13 particular time, there is, of course, a noise and vibration management plan,  
14 which is going to govern, amongst other things, reporting, as REAC 15,  
15 addressing issues, as well as the section 61 process, which is referred to, in  
16 amongst other places, REAC, MV17, and so the NVMP will be addressing the  
17 question of responsiveness and monitoring the responsiveness and how one  
18 responds. So it's not intended to be a cumbersome process, and through the  
19 section 61 experience, nor should it be.

20 So that's all that I would respond to on that at the moment, and then I think  
21 finally on the question of low noise road surfacing, I don't have the expert with  
22 me on that question, but we will come back to you on that in writing. There is  
23 a commitment, as Mr Bedford mentioned, to ensure that when it's replaced, it  
24 has no worse attributes than on installation, but we will deal with the position  
25 about time lag and performance monitoring, and we will come back to you when  
26 I've got the relevant expert with me. So I think that's all I was attending to say  
27 by way of response.

28 MR SMITH: Okay. Thank you very much, Mr Tait. Now, Mr Bedford, any brief final  
29 concluding remarks on that, recognising that we still seem to be in a slightly  
30 more dynamic situation than any of us might have guessed at 9.00 this morning.

31 MR BEDFORD: Well, indeed, sir. No, sir. I think what you will probably be most  
32 helped by is we will see what the applicant says in response to our deadline 7  
33 comments on those technical issues, and obviously, we will take at deadline 8  
34 the opportunity to respond to that in writing when we've seen how the applicant



1 has responded. As I say, without going into the detail, we don't accept that what  
2 we have proposed is inappropriate for the purpose, but, as I say, rather than  
3 rehearsing that now, it's better to deal with that through the written exchanges  
4 on those technical matters. Thank you, sir.

5 MR SMITH: Indeed, and if I can leave you with the proposition that if there is an offer  
6 to acquire on the table, that is obviously a private matter for consideration by  
7 your client, but if it affects the matter in front of the Secretary of State, then it  
8 would obviously be very, very helpful for us to know either that it's on the table  
9 but not approved of for reasons, or alternatively, is on the table and is in process,  
10 or indeed on the table and deemed acceptable, if you felt yourselves able to put  
11 that in front of us before the closure of the examination.

12 MR BEDFORD: Thank you, sir.

13 MR SMITH: Okay. In which case, ladies and gentlemen, it is now creeping towards  
14 13.20, and I will just briefly go into business mode again before we close the  
15 morning session, just so that I can namecheck those who are present and  
16 hopefully wishing to and ready and able to speak in the afternoon session,  
17 because I would like to crystallise that if we possibly can. Now, I note that we  
18 have, I believe, now got present virtually a representative for HS1 Ltd in DLA  
19 Piper. Do we have somebody present?

20 MR GRAVES: We do, sir. Ian Graves of DLA Piper here, on behalf of HS1.

21 MR SMITH: Thank you very much. Now, in terms then of speaking directly after the  
22 lunch break, would you be available to do that?

23 MR GRAVES: Certainly would, yes.

24 MR SMITH: Okay. Well, consider yourself booked, and apologies for the measures of  
25 uncertainty around elements of the agenda today. So we'll go to HS1 directly  
26 after the lunchbreak. Then can I just check: do we have representatives for Mr  
27 Stuart Mee and family present? We do. Are you content that we proceed with  
28 yourselves immediately after we've heard from HS1? Yep, indeed, and there is  
29 – and I just wanted to clarify here, because we have the Padfield representation,  
30 the Mee representation, and the St Modwen representation, so who's going first?

31 MR ZWART: Our understanding was that St Modwen were going first, because they're  
32 speaking to the Brentwood Enterprise Park, and then Mr Padfield because he's  
33 the landowner, and then Mr Mee.

34 MR SMITH: At the end.

1 MR ZWART: Yeah, and I'm acting for Mr Padfield and Mr Mee.

2 MR SMITH: Okay, so for the order of play this afternoon then: we will go to HS1 first,  
3 then we will go to St Modwen, and finally, sir, we'll wrap your matters up, and  
4 that should cover everybody who has requested to be heard. So apologies for  
5 those of you who have been sitting here waiting for a while, but nevertheless,  
6 the issue of coordination around that final group of participants was important.  
7 Everybody is now assembled, so we will go ahead. Let's break now. It is just  
8 past 1.20. Can I suggest that we return at 2.30? Which is slightly longer than  
9 the customary hour, but I'm very conscious that certain people need to get in  
10 and out of this building in order to acquire a lunch, and that may not be as easy,  
11 in time terms, as you might think. So 2.30 for resumption. Thank you very  
12 much, ladies and gentlemen.

13  
14 **(Meeting adjourned)**

15  
16 MR SMITH: Good afternoon, everybody, and welcome back to the afternoon session of  
17 this compulsory acquisition hearing number 5 in relation to the Lower Thames  
18 Crossing. Rynd Smith is my name and I'm the lead member of the Examining  
19 Authority in the chair this afternoon. So as we indicated before the lunch break,  
20 we're going to structure this afternoon by hearing first submissions by DLA  
21 Piper for HS1 Ltd, and then having heard their matters, we'll go to the  
22 coordinated cases of the remaining parties, commencing with St Modwen. So  
23 with no further ado, are we ready to proceed with HS1? Which, I believe, is  
24 virtual.

25 MR GRAVES: We are, sir. Thank you very much. I'm grateful. Ian Graves of DLA  
26 Piper, on behalf of HS1 Ltd. If I could just, perhaps, in introduction give some  
27 information about HS1 Ltd which would be relevant to the submissions that I  
28 want to make later on. I don't think that this will take very long as it's a  
29 relatively short point that I need to make.

30 HS1 Ltd is the nominated undertaker designated under the Channel  
31 Tunnel Rail Link Act 1996, and in that role, it is empowered to construct and  
32 maintain and operate the High Speed 1 rail line, which runs between St Pancras  
33 station and the Channel Tunnel, and it does that under a 30-year concession  
34 agreement granted by the Secretary of State, and HS1 Ltd owns land for the

1 purposes of that undertaking under leases that are granted by the Secretary of  
2 State, and High Speed 1 is the country's first and currently only high speed rail  
3 line, and is a piece of nationally significant infrastructure in its own right, and  
4 HS1 is a statutory undertaker for the purposes of the Planning Act 2008, which  
5 I think is accepted by the applicant, and by the Examining Authority, and the  
6 important point to note here is that HS1 Ltd has the equivalent role in relation to  
7 the High Speed 1 line as Network Rail does in relation to most of the rest of the  
8 rail work – rail network, rather, in Britain, and I say that's important because, to  
9 put it simply, HS1's position is that it should receive the same protection in any  
10 DCO as Network Rail is routinely given in other granted DCOs, including those  
11 promoted by National Highways.

12 In terms of today's agenda, sir, so the Examining Authority's asked five  
13 questions of each of the objectors – questions (iv), which is about hardship and  
14 so on, and (v), which is about human rights, don't really apply to HS1 and so it  
15 has no submissions to make in relation to those, but taking the remaining  
16 questions in turn, (i) asks for an outline of the scope of objections and also any  
17 negotiations with the applicant and I should begin by saying that HS1 is  
18 generally supportive of the project in principle, but of course, clearly both its  
19 interests and the public interest in protecting the safety and operational integrity  
20 of the railway must be protected appropriately, and HS1 has been seeking to  
21 negotiate amendments to the face of order protected provisions that would allow  
22 it to withdraw its objection, and HS1 has been clear since the submission of its  
23 relevant representation that the applicant should not be able to exercise powers  
24 of compulsory acquisition or temporary possession over HS1 Ltd's operational  
25 land without HS1 Ltd's consent, and this is something that is a relatively  
26 standard provision of development consent orders for the benefit of Network  
27 Rail.

28 So for example, recent schemes that we at DLA Piper are aware of include  
29 the A1 Birtley to Coal House improvement scheme, and the A428 Black Cat to  
30 Caxton Gibbet Road improvement scheme, which are both National Highways  
31 schemes, but to date, the promoter has refused to accept any such restrictions,  
32 and as I've already noted, HS1 performs the same function as Network Rail in  
33 relation to the High Speed 1 railway. So again, the simple point being made is  
34 that HS1 Ltd should receive the same protection as Network Rail.

1 Turning now to (ii), which is in relation to the scope of the objections, so  
2 what is objected to and why. HS1 Ltd object both to the inclusion of compulsory  
3 acquisition and powers of temporary possession in the DCO without adequate  
4 safeguards. HS1, as I've said, is a statutory undertaker within the meaning of  
5 Planning Act 2008, and so the restriction on the grant of powers of compulsory  
6 acquisition within section 127 of the act is engaged, and all of HS1 Ltd's land is  
7 held and used for the carrying on of its undertaking, so without sufficient  
8 safeguards in place in the form of appropriate protected provisions, HS1's  
9 position is that serious detriment to its undertaking would result from the project,  
10 and finally, turning to (iii), what relief is sought.

11 HS1 Ltd is seeking a restriction in the protected provisions which would  
12 prevent the exercise of powers of compulsory acquisition and temporary  
13 possession by National Highways over HS1 land without HS1 Ltd's consent,  
14 and this is a well-precedented solution to the issue at hand, and one that we say  
15 should be applied in this case.

16 The parties are continuing to discuss both the form of the protected  
17 provisions and also a voluntary agreement on land and they are hopeful that this  
18 is going to resolve the outstanding matters, but HS1 Ltd clearly wants to see a  
19 resolution to the matter as soon as possible, and so our suggestion is that if the  
20 protected provisions can't be agreed in a suitable form by the time of deadline  
21 8, HS1 Ltd should make submissions setting out the form of protected provisions  
22 that it says are needed, and that would allow National Highways to respond at  
23 deadline 9, and for both parties to make any final submissions at deadline 10,  
24 and we think that this –

25 MR GRAVES: I'm sorry. I didn't quite catch that.

26 MR SMITH: Are you waiting for something from the hearing room or are you waiting  
27 for something from your team? Sorry. Mr Graves.

28 MR GRAVES: There was a voice at my end. I don't know if I'm getting some feedback.

29 MR SMITH: That wasn't from here. There was complete silence in the hearing room.

30 MR GRAVES: My apologies. I was just winding up anyway. So we think that that  
31 provides a roadmap, sir, to deal with this issue, or at least to put it into a form  
32 whereby any dispute can be determined by the Secretary of State if that were  
33 necessary. Thank you.

1 MR SMITH: Thank you very much. Very clear, very succinct submissions. Can I just  
2 ask us to turn up schedule 14, part 4 of the draft development consent order?  
3 Which contained protected provisions for the protection of railway interests, and  
4 I mean, essentially, they're looking at the form of those as they currently are,  
5 and particularly, interpretation in clause 30, that the beneficiary of those  
6 provisions at present are Network Rail or, as the case may be, HS1.

7 I'm taking from your submission then that where we are currently standing  
8 with that version of the protected provisions, which is version 8, received at  
9 deadline 6, are still not addressing your client's concerns.

10 MR GRAVES: Indeed, sir, and there have been – I think I was clear about that – there  
11 have been quite detailed negotiations in terms of the form of those protected  
12 provisions. That will continue, of course, until either we're in an agreed form  
13 or it's clear that there won't be agreement, so those negotiations have been going  
14 on between the parties throughout the course of the examination.

15 MR SMITH: I mean, what I think would help us – I mean, we'll hear what the applicant  
16 has to say in response in a second, but unless it becomes clear that there is a  
17 movement towards each other, what is going to help us at deadline 8 would be  
18 to receive from each of you – from HS1 but indeed also from the applicant – a  
19 marked-up version of the protected provision, and particularly, looking at your  
20 side of it, those items that you believe you have requested in negotiations and  
21 on which for reasons, no progress has been made.

22 So what are your outstanding asks, and then to a degree, if the applicant  
23 was able also to set out at deadline 8, the matters that it is aware of as having  
24 been requested by you, but that it resists for reasons, and then we could at least  
25 be clear about why the shape of the protected provisions is as they currently are,  
26 because correct me if I'm wrong, Mr Graves, but my understanding of this is  
27 that the core of your objection will be that if you get adequate protected  
28 provisions in place, your concerns will largely be addressed.

29 MR GRAVES: That's absolutely right, sir, yes. I mean, the objection from HS1 Ltd is  
30 to the order without appropriate protected provisions, so to the extent that  
31 protected provisions are acceptable to HS1 Ltd, then it would be in a position to  
32 withdraw its objection, yes.

33 MR SMITH: Okay, so that suggestion of an action at deadline 8 – we see something  
34 marked-up from yourselves, and possible see something from the applicant,

1 where if they are already alive to your requests but haven't succeeded to them,  
2 what the reasons are. That would be very, very helpful indeed. The reason why  
3 I'm suggesting that it proceeds from both sides of that deadline is that that gives  
4 you both the opportunity to understand your positions in time for deadline 9,  
5 which, in turn, means that if this is going to settle in some way with an agreed  
6 text, there is a reasonable hope of that happening at deadline 9, which in turn  
7 means that the applicant can make its final closing submissions to the effect that  
8 it has settled at deadline 10.

9 The dilemma about allowing it to go further where you come in and then  
10 the applicant responds at deadline 9 is that we could potentially arrive at deadline  
11 10 still with no agreement, even if one, on the face of it, was possible, which  
12 would be somewhat of a shame.

13 Okay. Mr Graves, unless you've got anything else you need to add, I'm  
14 going to hand over to Mr Tait for the applicant. We'll hear their side of the  
15 story, and then I'll briefly return to you for any final concluding remarks on  
16 behalf of HS1. So Mr Tait.

17 MR TAIT: Thank you, sir. Andrew Tait for the applicant. Sir, as Mr Graves indicated,  
18 there is a voluntary agreement, which is being progressed in parallel, and there  
19 have been several tripartite discussions with the DfT, in relation to land interests,  
20 and our understanding is that the mechanics of how National Highways through  
21 that agreement will have access to land on a temporary basis, temporary and  
22 permanent rights, and also permanent acquisition has been agreed in principle,  
23 and that is the subject of the draft agreement, and there was a meeting yesterday,  
24 for example, to bring that forward, accelerate that in the process.

25 So that's the background. In relation to the specific protected provision  
26 suggestion as to the consent provision, I'm going to ask Mr Latif-Aramesh on my  
27 right to deal with that specific point, please.

28 MR LATIF-ARAMESH: Thank you. Mr Latif-Aramesh for the applicant. I think the  
29 first point to make is that you'll be familiar that the Port of Tilbury raised a  
30 similar point in the context of the consent for the land acquisition powers, and  
31 we set out our position on why we did not think –

32 MR SMITH: And you're relying on the same.

33 MR LATIF-ARAMESH: We're relying on the same position, but I would make just two  
34 specific signposting comments. The first is at deadline 7 – I appreciate the

1 documents are not up, but just for Mr Graves' benefit, when they are up,  
2 paragraph 7.5.6 of our responses on the comments on the draft order, which is  
3 application document 9.180, contains our position on this. The positions there  
4 translates over for the same reasons. Paragraph 32 of schedule 14 to the draft  
5 order contains the same approval over the works, and for the reasons that we set  
6 out in our response, we don't consider it necessary to provide a consent over the  
7 land acquisition powers. As Mr Graves and Mr Tait have said, discussions are  
8 ongoing, but that is the position as it stands.

9 MR SMITH: Mr Latif-Aramesh, can I just hold you a second? Can I just check with the  
10 audio-visual team whether this section of the discussion is actually going to the  
11 recording adequately? Because we keep hearing a bit of cutting in and cutting  
12 out on Mr Latif-Aramesh's microphone, and I'm just not 100% sure that we're  
13 getting a good recording.

14 [Sotto voce discussion]

15 MR SMITH: We're good. Thank you very much, and apologies for that interruption,  
16 Mr Latif-Aramesh. Please continue.

17 MR LATIF-ARAMESH: That's okay. I think I've set out the broad contours. The only  
18 other point I would just briefly make is that in our response that I quoted from,  
19 we also highlight there are specific examples of the Secretary of State deciding  
20 that consent over the land powers is not necessary. The example that we draw  
21 in that response is the Hinkley Point C connection, but more recently, in the  
22 Hornsea 3 decision letter, the same position was held specifically in connection  
23 with a rail undertaker.

24 MR SMITH: So in a nutshell, this is a general and principled argument, as opposed to  
25 something specific about HS1, and you would like us to consider it in those  
26 terms, and particularly having regard to the approach you've taken to Port of  
27 Tilbury.

28 MR LATIF-ARAMESH: That's correct, with the slight nuance that the relevant  
29 protected provisions would be different.

30 MR SMITH: Yep, okay. Now, in relation to that question around the protected  
31 provisions, are there any other outstanding matters, other than the high level  
32 issue of prior consent of HS1, that you understand not to have been already  
33 wrapped into schedule 14, part 4, or as far as you're concerned, is the latest  
34 version of that it?

1 MR LATIF-ARAMESH: Mr Latif-Aramesh for the applicant. That's our understanding  
2 in terms of the protected provisions, yes.

3 MR SMITH: Okay. So in other words, to the extent that I asked for a two-way process,  
4 there's not a lot for you to say other than, 'Look at the draft DCO.' Okay, right.  
5 Anything further that you need to add to that, Mr Tait?

6 MR TAIT: No, thank you, sir.

7 MR SMITH: Right. That was brief. In which case, I am going to return to HS1 and ask  
8 for a brief response.

9 MR GRAVES: Thank you, sir. I mean, I'm not sure that I have to say in response. I've  
10 got those references to Port of Tilbury, Hinkley Point C, and Hornsea 3, which,  
11 obviously, we'll take away and consider, but I'm not sure that we have any  
12 specific response now. I think just in terms of the form of the protected  
13 provisions, the negotiations that have carried on have been in the context of a  
14 private agreement that would have, as Mr Tait, also include acquisition of land,  
15 and there are at least two other issues, I think, in terms of – certainly from HS1's  
16 perspective, in terms of what the protected provisions would say, so I think that  
17 there will be two or three issues, perhaps, that we would raise in terms of the  
18 form of protected provisions, but I mean, clearly, as you say, there's not going  
19 to be significant work for either of the parties, in terms of justifying acquisitions.

20 MR SMITH: Okay. Well, I think where we leave that then, flowing on from the  
21 conversation that we had earlier, is that we will have an action on yourselves to  
22 produce a marked-up ask based on the latest available text of part 4 of schedule  
23 14 for the protection of railway interests.

24 I think, having heard the applicant on this point, there is no point  
25 particularly in asking them to add anything else in writing at deadline 8, because  
26 they would merely say, 'See the above,' so my suggestion is, despite the fact  
27 that we were trying to shortcut things, we ask you, HS1, to put your material in,  
28 marked up, at deadline 8 and then the applicant will respond at deadline 9 and  
29 we will take it from there.

30 If there is outstanding disagreement, then this becomes another matter that  
31 goes into our consideration for adjudication, so all I would indicate there is,  
32 obviously, if you are asking for change to the draft order in any sense, obviously,  
33 set out both the drafting that you seek, but critically, also, the reason for the  
34 drafting that you seek, so that we're in a position to clearly understand the nature



1 of your request and the applicant is also, and the applicant can make closing  
2 submissions. Even if their response is that they resist them, they are able to put  
3 those reason submissions in front of us.

4 Okay. Is there anything else we need to cover?

5 MR GRAVES: Not from me. Thank you, sir.

6 MR SMITH: Thank you very much for attending, and thank you, Mr Tait.

7 MR TAIT: I'm grateful.

8 MR SMITH: In which case, ladies and gentlemen, we will now move on to the  
9 commencement of the hearing of the composite cases of the remaining affected  
10 persons, and so we did indicate that we would go first to St Modwen now. So  
11 can I just check that St Modwen are ready?

12 MR ROWBERRY: Yes, sir.

13 MR SMITH: And are agreeable to the order that we're going to you first. You're not  
14 too disconcerted by that.

15 MR ROWBERRY: No, quite, sir. I mean, just as a point of clarity, I think St Modwen's  
16 interests overlap with those of Mr Padfield but not with those of Mr Mee, so I  
17 think the intention is that we will do a St Modwen piece on the Brentwood  
18 Enterprise Park. Mr Zwart will then talk for Mr Padfield, in respect of the  
19 Brentwood Enterprise Park site and possibly a few other bits and pieces. That's  
20 then the end of St Modwen's interest, and then I think Mr Mee is a completely  
21 separate issue, just as a point of clarity.

22 MR SMITH: Yep, no, that makes sense. What I'm going to suggest as well, looking at  
23 the order of business this afternoon, is that if we hear from yourselves first, qua  
24 St Modwen, and we might take the afternoon break before we then move directly  
25 on to the later oral submissions, but everything will all be wrapped in together.  
26 It's just that we'll be taking a 15-minute comfort break in the gap. So over to  
27 you.

28 MR ROWBERRY: Thank you, sir. Tom Rowberry from Pinsent Masons, speaking on  
29 behalf of St Modwen Developments Ltd. St Modwen is the promoter of the  
30 Brentwood Enterprise Park, which is a proposed employment development  
31 immediately to the southeast of junction 29 of the M25. For ease of reference,  
32 I will refer to the enterprise park as 'BEP' – B-E-P. St Modwen entered into a  
33 regeneration agreement with the Padfields in 2015, which provides that St  
34 Modwen will promote development by seeking allocation in the Brentwood

1 local plan, and thereafter, submitting a planning application. St Modwen is also  
2 granted an option to acquire the freehold interest in the BEP site to enable it  
3 deliver the BEP in due course. Such planning has been granted.

4 I think it's fair to say that St Modwen is broadly supportive of the LTC  
5 project as a whole, but as has been explained in previous representations, the  
6 LTC proposals in relation to the BEP site specifically would have a very  
7 significant impact on St Modwen's ability to deliver BEP. St Modwen's  
8 concerns principally relate to the compulsory acquisition powers being sought  
9 by the applicant, and the impact of probably three main interfaces between BEP  
10 and LTC, as follows: first, the impact of the LTC works and proposed permanent  
11 land take on vehicular access to BEP from B186; second, the impact of the LTC  
12 works and proposed permanent land take on the northern vehicular access to  
13 BEP over the A127; third, the proposed temporary possession of Codham Hall  
14 Lane, and again, the impact on the vehicular access to BEP.

15 I will briefly address each of those points in more detail, but I think St  
16 Modwen's overarching position remains as set out in previous written  
17 representations, namely that without a legal agreement with the applicant, the  
18 DCO will likely sterilise the BEP development. Therefore, St Modwen must  
19 object unless and until such a legal agreement is put in place.

20 MR SMITH: Can I just briefly ask you there?

21 MR ROWBERRY: Yep.

22 MR SMITH: Until such an agreement is put in place, are you in, essentially, direct and  
23 productive dialogue with the applicant at present, or is this something where you  
24 have requested an agreement, there are heads of terms available but nothing  
25 more's been done?

26 MR ROWBERRY: Tom Rowberry for St Modwen. Yeah, so there has been ongoing  
27 dialogue for probably at least two or three years now, and we are, I dare say,  
28 pretty close, actually, to having agreement sorted. So there was some debate  
29 internally as to whether we were going to turn up today, but obviously, until the  
30 ink is on the piece of paper and you've got a date at the top, there can't be any  
31 certainties. So there have been pretty productive discussions, so this is really an  
32 appearance to protect our position in the event that everything goes wrong in the  
33 next month or so. So I'll come on to explain that in a bit more detail in a moment,  
34 sir.

1 MR SMITH: It might assist as well if I just briefly lay on the table the way that we  
2 manage such agreements, which is clearly that we do not lift the curtain into the  
3 content of what is still a private law agreement between yourselves and a  
4 developer of an NSIP project, but if you are relying on its existence to,  
5 essentially, protect your position in a way that would mean that without it, you  
6 would be objecting, then we do need, essentially, to have some surety that a) an  
7 agreement has been entered into and that b) it stands for something that you  
8 deem as sufficient value to modify or withdraw an objection. So what we'd be  
9 looking for there is obviously not sight of the content of the agreement, but we  
10 would be looking at some clear submission from yourselves in writing,  
11 evidencing that an agreement has been made to deal with matters to your client's  
12 satisfaction, and that therefore your objections are either modified or withdrawn.  
13 So that would be the bottom line that we'd be looking for.

14 MR ROWBERRY: Thank you, sir. That's exactly our intention and what is provided  
15 for in the draft agreement. So certainly once that has is concluded, we don't  
16 propose to provide a copy to the panel for consideration, but we will be writing  
17 to you to confirm the scope of the withdrawal of our objection.

18 MR SMITH: Okay. That's clear. Right.

19 MR ROWBERRY: Perfect. I don't propose to provide a detailed summary of the BEP  
20 or its planning history. We've already provided some of that at our deadline 1  
21 written representation.

22 MR SMITH: And note we have visited the site.

23 MR ROWBERRY: Thank you, sir, but if I briefly may make a few points that I think are  
24 particularly important, really, to set the scene for our objection. Sir, the BEP  
25 site was allocated for development in Brentwood Borough Council's local plan.  
26 It was adopted in March 2022. The BEP site is the only strategic employment  
27 site that's allocated in the local plan, and in particular, makes up more than 50%  
28 of the new employment land allocated by the local plan. Exceptional  
29 circumstances were found to justify the release of the BEP site from the green  
30 belt, and I think it's important to note that both Brentwood Borough Council,  
31 Essex County Council and the applicant were heavily involved in the local plan  
32 process.

33 Summarised at – I think it's paragraph 5 of our written representations –  
34 there are various passages in the local plan which emphasise the importance of

1 BEP, but if you'll forgive me for drawing your attention to a particular section,  
2 so paragraph 7.20 of the local plan in particular, which reads, 'The Lower  
3 Thames Crossing will open up opportunities for goods and services to flow more  
4 easily between Brentwood and the area of Kent and beyond across the Thames,  
5 strengthening links to a market area that is currently less accessible from the  
6 borough.' It then goes on to say, 'For the borough to take advantage of the  
7 distribution movements, it is likely that Brentwood Enterprise Park will need to  
8 be delivered to provide premises that are of the scale required by distributors.'

9 So what is the significance of all this? Well, to my mind, it demonstrates  
10 that BEP is not just another development site. It is of significant strategic  
11 importance to Brentwood borough. The borough is reliant on BEP to achieve  
12 the proper planning of the area and its sustainable economic growth. I mean,  
13 put simply, it is the principle means by which we would submit the borough  
14 seeks to take advantage of the opportunities that are going to be provided by  
15 LTC, and it's important to note that the importance of BEP were accepted by  
16 two experienced planning inspectors who found the local plan to be sound. I  
17 would suggest that it follows that the panel and Secretary of State should be very  
18 hesitant in accepting an LTC proposal that will jeopardise delivery of BEP.

19 Turning to the current planning status of BEP, as explained in our previous  
20 representations, a planning application was submitted in March 2022. Since  
21 then, there have been extensive discussions with Brentwood Borough Council,  
22 Essex County Council, and National Highways, and I understand there are no  
23 outstanding objections from National Highways in respect of the application.  
24 We're now expecting the application to be taken to Brentwood's planning  
25 committee in December, and as far as we're aware, officers will be  
26 recommending approval of the application.

27 I won't run through all of the public benefits of the proposed scheme, but  
28 if I could just dwell on two points in particular: the assessments supporting a  
29 planning application demonstrate that, first, BEP will create additional economic  
30 output of up to £230 million a year, which is equivalent to over 10% of the total  
31 gross value added in the transport and storage sector in Essex, and then second,  
32 BEP will create 2370 gross full-time equivalent jobs, which equates to a 76%  
33 uplift in total manufacturing and transport and storage jobs in Brentwood  
34 borough, and really, I make those points just again to emphasise this is not just

1 another development site. This is critical to the proper planning of Brentwood  
2 borough and its continued economic development over the coming years. If I  
3 can now turn to the three key areas where the DCO causes a significant issue for  
4 BEP, and if I can ask at this point for sheet 45 of the land plans to be put up on  
5 the screen. I think there was a version submitted at deadline five.

6 MR SMITH: I think we're almost there. If we can just zoom in a little.

7 MR ROWBERRY: Fantastic. I'll try to talk you around the plan the best I can. Now,  
8 as I believe will be explained by Mr Zwart on behalf of Padfield in more detail,  
9 the BEP site currently enjoys a direct vehicular access off the south-east  
10 quadrant of the junction 29 roundabout, which I've no doubt you will have seen,  
11 sir, when you went to your site visit. Now, the proposed LTC jet lane will sever  
12 that access, and it has therefore been necessary for some modelling to design an  
13 alternative access arrangement for BEP. Again, I won't repeat the written  
14 representation which explains the access arrangements in more detail, but suffice  
15 to say that there are two primary means of accessing the site in the BEP world.  
16 So first a new junction will be formed with the B186 in the locations shown on  
17 the land plans as plot 45-138, and if I can just ask if we can move the plan down  
18 to the bottom right.

19 MR SMITH: Yeah, we just need to move across, and then maybe a little down as well.

20 MR ROWBERRY: Exactly. So the sort of rectangular area of pink in the bottom right,  
21 so that's where the first of the two BEP accesses will be delivered. And then  
22 second, Codham Hall Lane, which is the road that forms most of plot 45-100 on  
23 the land plan. So that's just – if you scroll up slightly. Yeah, so that area of blue  
24 just off the north-east corner of the roundabout. So Codham Hall Lane will be  
25 upgraded, and then a new vehicular access bridge over the A127 will be  
26 constructed in a location where we have a cluster of pink land, centred around  
27 plots 45-124 etc. So hopefully it's clear the area that I'm talking about. It's the  
28 sort of bit a bit to the east of 45-100.

29 MR SMITH: Indeed, and this is broadly in the same location as the current overbridge.

30 MR ROWBERRY: Exactly, yes.

31 MR SMITH: Yes.

32 MR ROWBERRY: So these access arrangements have been carefully worked up over a  
33 number of years in close consultation with the applicant, Brentwood and Essex,  
34 but as will be apparent from the land plan, the applicant is seeking power to

1 compulsorily acquire the land that is required to deliver these two accesses. The  
2 applicant also seeks the power to take temporary possession of Codham Hall  
3 Lane. And just to briefly explain what we understand the applicant's  
4 justification for taking that land to be. In the case of the B186 access, LTC is  
5 proposing a new bellmouth junction immediately to the south of the proposed  
6 BEP access, with the intention that bellmouth will connect into a maintenance  
7 track that is then used as an access for an LTC site compound. Suffice to say,  
8 that bellmouth will conflict with the proposed BEP access.

9 And then in the case of the A127 bridge, LTC's proposing a new  
10 footbridge for walkers, cyclists and horse riders. Again, this footbridge would  
11 conflict with the location of the new BEP vehicular bridge. Now, as will  
12 probably be apparent, it's difficult to see how a developer could bring forward  
13 a scheme like BEP with the risk its two key accesses could be compulsorily  
14 acquired. Even if St Modwen was willing to take a view on the risks, the sort of  
15 logistics occupiers who are expected to take space in BEP are unlikely to be  
16 willing to take that risk, and so would no doubt look elsewhere when trying to  
17 fulfil their space requirements.

18 And without a legal agreement to govern how these compulsory  
19 acquisition powers are going to be exercised, or not exercised as the case may  
20 be, there is a real risk that the DCO will sterilise the BEP development, or at  
21 least delay it for a number of years until the compulsory acquisition powers have  
22 expired. Now, if I just come on to discussions around negotiations. As you  
23 alluded to, sir, there have been extensive negotiations over the past few years  
24 between St Modwen, Padfield and the applicant, and for its part St Modwen has  
25 deliberately designed the BEP access arrangements in such a way that they can  
26 accommodate the requirements of the LTC.

27 So in the case of the BEP B186 access, St Modwen has proposed a spur  
28 off the BEP access, which the applicant can then use to connect into its  
29 maintenance track, thereby avoiding the need for the conflicting LTC bellmouth.  
30 And then in the case of the A127 bridge, St Modwen has proposed that as part  
31 of BEP we will deliver a link for WCH from the A127 up to the existing  
32 accommodation bridge over the A127, to which you referred just now, and this  
33 will avoid the need for LTC to deliver a bridge performing the same function.  
34 Now, for its part, I think the applicant has clearly acknowledged that both of

1 those arrangements would meet its requirements, given that the revised design  
2 principles submitted at deadline six state that if the BEP B186 access is delivered  
3 then the applicant will design its access so as to avoid the bellmouth and instead  
4 connect into our access, and that's principle S14.19.

5 And then secondly, if the BEP A127 crossing is delivered, then the  
6 applicant commits not to delivering its bridge, and that's principle S14.22. So I  
7 think what this demonstrates is that there are clearly alternative means of  
8 achieving LTC's requirements without bringing forward works that materially  
9 and adversely impact the delivery of BEP. And I also recall that the applicant  
10 has, during the course of the examination, also adjusted the limits of deviation  
11 for the DCO to try and push its footbridge over the A127 as far east as it  
12 considers possible, again to try and reduce the impact on the BEP vehicular  
13 bridge. Although, that said, the initial design work has indicated this will still  
14 present significant challenges in the event that the LTC bridge is delivered  
15 before the BEP bridge.

16 Furthermore, whilst the revised design principles I'd say are an  
17 improvement on those originally submitted by the applicant, and which we  
18 criticised in our initial written representation, I would say they are by themselves  
19 insufficient to protect St Modwen's position for really four principal reasons.  
20 First, there are no timescales in which St Modwen will be given the opportunity  
21 to deliver its infrastructure. The applicant could in theory immediately start their  
22 works, once clearing relevant design requirements, thereby undermining any  
23 comfort that St Modwen could have drawn from the design principles. Second,  
24 there really needs to be a more detailed collaborative process between St  
25 Modwen and the applicant to ensure the infrastructure is designed to meet both  
26 parties' requirements, and is delivered in an orderly manner that reflects what I  
27 think is both parties' objectives to see both LTC and BEP delivered.

28 Third, whilst the design principles also contain some acknowledgement  
29 of what happens in the event that the LTC works are delivered first, this is I  
30 daresay very light touch and does not really provide St Modwen comfort that it  
31 will be able to bring forward the BEP scheme or something very similar at a  
32 later date. And then fourth, and perhaps most fundamentally for the purposes of  
33 this particular hearing, the design principles would not result in any of the

1 compulsory acquisition powers being switched off or managed in circumstances  
2 where the BEP infrastructure is delivered.

3 Now these are, we would submit, all matters which must be addressed  
4 through a legal agreement, in order to provide St Modwen with as much certainty  
5 as possible that it will still be able to deliver BEP, and as I mentioned earlier,  
6 that agreement is in advanced stages of negotiation and we remain hopeful that  
7 we will be able to sign it before the close of the examination. There are certain  
8 key points of principle still to be agreed, and probably the key one just to draw  
9 your attention to is that the window of time in which St Modwen will be given  
10 to bring forward its access works has still not been confirmed. So there have  
11 been some proposed dates floating around for well over a year, but we're still  
12 waiting a clear commitment from the applicant. Of course, if those dates are  
13 materially brought forward from what we've been expecting, that will obviously  
14 have a significant impact on the acceptability of the legal agreement.

15 But as I say, I don't propose to provide a detailed rundown of what the  
16 agreement contains, but suffice to say that St Modwen for its part will be using  
17 every effort to try and conclude the agreement as quickly as possible, and we  
18 would obviously welcome a similar commitment from the applicant. If I could  
19 make one final point, and really irrespective of what happens with the legal  
20 agreement, we have a query around why the applicant has sought to show plot  
21 45-138 as pink land. If we can just scroll down to the bottom right again. Yeah,  
22 that.

23 So I recall that this plot was included within the order limits relatively late  
24 in the day, and it was specifically to cater, as I understand it, for the fact that  
25 LTC might connect into the BEP B186 access, and indeed this land only really  
26 seems to be relevant to LTC in the event that the BEP B186 access is delivered.  
27 We're not aware of any other reason why this land is required for LTC. Now,  
28 if the BEP B186 access is not delivered, then the applicant will simply deliver  
29 its bellmouth junction which does not impact on plot 45-138, but if the BEP  
30 B186 access has been delivered, it's unclear why the applicant would need to  
31 permanently acquire plot 45-138. Even on the applicant's own case, it seems  
32 that at most they would need to take temporary possession of part of the plot in  
33 order to deliver their spur, and then potentially permanently acquire right of  
34 access over the plot.



1           So that being the case, in our submission there is clearly no compelling  
2 case for plot 45-138 to be a pink land plot. I think at most it should be a blue  
3 land plot. So just to sort of draw that together, our sincere hope is obviously that  
4 a legal agreement will be concluded in the coming weeks, and we'll be able to  
5 write to the panel or the Secretary of State to confirm the withdrawal of our  
6 outstanding objection in the way, sir, that you have requested.

7           However, if it is not possible to conclude this agreement, St Modwen's  
8 position is that the DCO will have a fundamentally unacceptable impact upon  
9 the BEP development, with the proposed compulsory acquisition effectively  
10 sterilising the BEP site. In that scenario, we would suggest that the panel will  
11 have to make its recommendation to the Secretary of State on the basis that LTC  
12 will essentially mean that all the public benefits associated with BEP, and  
13 recognised by the local plan process, will not be realised. Thank you, sir.

14 MR SMITH: Thank you very much. Now, I have a couple of questions arising from  
15 that. Firstly, fairly early on in your oral submission you did essentially utilise  
16 the term 'sterilise'. Now, I guess what I just wanted to explore with you is  
17 essentially the kind of specific meaning that you were placing on that term,  
18 because my understanding of the balance of the submissions is that we're dealing  
19 with essentially a matter where the devil of the detail rests in the specific timing  
20 of particular elements of delivery, and that critically what you're seeking to  
21 assure yourselves of, for your client, is that the National Highways will facilitate  
22 relevant access to the BEP site at relevant stages of the development, so that you  
23 don't find yourselves with essentially prospective tenants, prospective  
24 occupiers, developers etc going away.

25           That in terms of the medium to long term position it didn't feel quite like  
26 a sterilisation. It felt essentially like an enduring uncertainty due to the lack of  
27 clarity about access. Am I striking that correctly or not?

28 MR ROWBERRY: Tom Rowberry for Pinsent Masons for St Modwen. I think perhaps  
29 you have hit the nail on the head there in terms of what I was intending to convey  
30 with the sense of sterilisation. It is in the sense of St Modwen requiring the  
31 commercial certainty that it is able to bring forward its development in such a  
32 way as to not be at risk of National Highways coming along at a later date and  
33 effectively taking the land that we required for the accesses. So, yes, to an  
34 extent, if there is certainty and comfort that the land will not be taken and that

1 all of the infrastructure can be delivered in such a way that there is a harmony  
2 of coexistence between the two schemes, yes, that would remove the  
3 sterilisation.

4 But unless we have that – it won't surprise you to hear this is not a cheap  
5 scheme to build – really, before St Modwen can put its hand in its pocket and  
6 start paying the money to start doing that, it needs to have as much certainty as  
7 possible that it's not going to find the rug pulled out from under it at a later date  
8 by the applicant.

9 MR SMITH: That, I think, clarifies that point. Now then just very briefly, and this is a  
10 matter of detail, but it's a timing point in relation to involvement with Brentwood  
11 Borough Council themselves, just looking for their consideration of anything  
12 that needs to be considered in order to settle this position and get something in  
13 writing in front of us, when's their next relevant meeting, or are you instructed  
14 that you can proceed without needing something signed off by them?

15 MR ROWBERRY: Sir, apologies, can you clarify the...?

16 MR SMITH: Yeah. I mean, basically this is the question. In timing terms, if you are  
17 needing to agree your position with the applicant, with National Highways, is  
18 there anything outstanding that needs to be agreed with Brentwood Borough  
19 Council as you see it? And then looking at their committee timings, when the  
20 relevant pieces of the jigsaw from their perspective might fall into place.

21 MR ROWBERRY: Thank you for the clarification, sir. No, I don't believe there's  
22 anything further that we as St Modwen would require from Brentwood in order  
23 to withdraw our objection. I think our expectation is that if we are happy then  
24 Brentwood will be happy. I think that to date they have been looking to us to  
25 resolve and agree the way forward with the applicant, and so I'm not expecting  
26 to require a further committee meeting from Brentwood Council or Essex  
27 County Council to enable us to withdraw our objection.

28 MR SMITH: Okay. I'll just check with my panel colleagues to see if there are any  
29 remaining questions. Okay. Thank you very much. In which case, unless  
30 you've got anything else that you need to put to us, I'm going to turn this matter  
31 over to the applicant and Mr Tait, and then when we've heard from him we'll  
32 just come back to you for a brief reply. Mr Tait.

33 MR ROWBERRY: Thank you, sir.

1 MR TAIT: Thank you, sir. Andrew Tait for the applicant. Sir, as you've heard, the  
2 applicant has been engaging with St Modwen in connection with the proposed  
3 Brentwood Enterprise Park for several years, and a land and works agreement is  
4 being progressed between the applicant, St Modwen, and also Mr Padfield as  
5 landowner – a tripartite agreement – and is almost in final form, and the parties  
6 have been having regular meetings to finalise that, and the last one was on  
7 Friday. Secondly, the applicant's made several changes to the design of the  
8 project over the years to mitigate or remove impacts and interfaces with the BEP  
9 proposals.

10 Those are set out extensively on page 55 of REP-251, and the reason for  
11 that is because the applicant recognises this is an allocated site. It's ideally  
12 located to take advantage of the improved connectivity that the project will be  
13 providing, and it's recognised that this is – bearing in mind one of the project's  
14 main aims is to support economic growth, BEP as a key component of the local  
15 plan would assist in delivering that. So I won't specify those changes that have  
16 been made any further. They're in the document referred to. Thirdly, there are  
17 two design principles, sir – which you're well aware – set out in REP-646.  
18 They're S14.19, in relation to the B186 interface, and S14.22, in relation to the  
19 design interfaces between the WCH bridge that's proposed as part of the project,  
20 and the vehicular access bridge that's proposed as part of the BEP proposal.

21 And you'll also, I know, be aware of the – well, you may not have seen  
22 the update at DL7 to the works plans, which reflect EC03, which is the change  
23 which you have accepted to increase the limits of deviation in relation to the  
24 WCH structure.

25 MR SMITH: Okay.

26 MR TAIT: So that's the current architecture that is within the project control documents.

27 Coming back to the first point, the agreement, we wish also to provide as much  
28 certainty as possible, hence the proposal to enter into the land and works  
29 agreement. That in itself is not holding up the determination of the planning  
30 permission, which is on a separate stream, but we are working hard to finalise  
31 the document, which is almost in final form. There are two additional points  
32 that were raised. One relates to plot 45-138, whether that area should be pink –

33 MR SMITH: Yeah, or blue.

34 MR TAIT: Or blue –

1 MR SMITH: Or shaped as it is.

2 MR TAIT: Or shaped – and the other point relates to one matter that is in discussion still  
3 in relation to land and works agreement, which is that the window of time hasn't  
4 been confirmed, and on both those points, I can ask Mr Tim Gloster, who's the  
5 deputy land and property manager, just to explain the position.

6 MR SMITH: And on the window of time point, if I take one key submission away from  
7 the material that's been put to us orally on behalf of St Modwen, it seems to be  
8 that the window of time is the tipping point. It's the most critical component as  
9 they see it.

10 MR TAIT: That seems to be the only unresolved matter, because there have been plenty  
11 of other things that might have had that status but have now moved to a  
12 resolution, but I understand the point, of course. Mr Gloster.

13 MR GLOSTER: Hi, Tim Gloster for the applicant. Just picking up the point in relation  
14 to the plot 45-138 first. As Mr Tait and Mr Rowberry have mentioned, we've  
15 been discussing the Brentwood Enterprise Park proposals with Mr Padfield and  
16 St Modwen for several years, and following those discussions in 2020 we  
17 increased the order limits over the proposed area where the Brentwood  
18 Enterprise Park access is to be located, with the agreement with Mr Padfield and  
19 St Modwen, on the intentional understanding that at the time it was more likely  
20 that Brentwood Enterprise Park would come forward prior to Lower Thames  
21 Crossing, so the area was included within the order limits so as to allow our  
22 maintenance and access track to link into their B186 access that was to be  
23 constructed. Obviously at the time the design was uncertain, which is why it is  
24 shaped like it is.

25 Obviously that remains, and it is still the case that Brentwood Enterprise  
26 Park may be in place prior to the Lower Thames Crossing proceeding, and in  
27 which case we would link into that. So the reason why it is still permanent –  
28 and it was always the intention between the parties, and our understanding, that  
29 they would be done via agreement, which is what we've been discussing for the  
30 past few years – so those rights need to be in place to cover any unintended  
31 consequences or any unintended issues that might present themselves in relation  
32 to title, for example, may be needed to [inaudible] the title, which is why the  
33 plot remains permanent.

1                   And then the second point in relation to timing, we've been working with  
2                   our contractor, who's just been appointed, to understand several different dates  
3                   in the agreement that hang off various aspects of our interfaces, and we hope to  
4                   get those dates to St Modwen and Mr Padfield by the end of this week, to slot  
5                   into the agreement and proceed from there, so it can be signed as soon as  
6                   possible.

7 MR SMITH: Okay. So, Mr Tait.

8 MR TAIT: Sir, that concludes our response.

9 MR SMITH: Okay. In which case, are there any final concluding remarks that need to  
10                   be made on behalf of St Modwen? It feels as though this might be quite close,  
11                   but...

12 MR ROWBERRY: Thank you, sir. Tom Rowberry for St Modwen. I would just echo  
13                   that there has been a lot of engagement over the past few years. We certainly  
14                   wouldn't deny that. And again, we wouldn't deny the applicant has made a  
15                   number of positive changes to the scheme, which has removed various interface  
16                   issues that were previously causing significant concern. What I would say is  
17                   that our representation today and our objection is on the basis of the scheme as  
18                   it currently stands, so notwithstanding there have been previous changes that  
19                   have been helpful, they don't quite go far enough to enable us to remove our  
20                   objection altogether. In terms of the further changes at deadline seven, I haven't  
21                   seen those yet, so we will look out for those with some interest.

22                   Plot 45-138 – Mr Gloster's quite right; it was included within the order  
23                   limits for exactly the purpose of facilitating interface with the BEP development.  
24                   What I don't think that explains is why the land would permanently need to be  
25                   acquired by the applicant. I think Mr Gloster made references to dealing with  
26                   any unintended consequences, which seems to me to be a little bit on the vague  
27                   side, given the consequence of that land being taken from Padfield or St Modwen  
28                   in due course, so I would suggest that that falls a little bit short of being a  
29                   compelling case in the public interest for requiring the permanent acquisition of  
30                   that land. And then finally, just on the timescales, I welcome Mr Gloster's  
31                   suggestion that we'll be given those dates by the end of this week. Again, we  
32                   will look out for those with great interest, and endeavour to get them agreed with  
33                   Mr Gloster and the rest of the applicant team as quickly as possible.

34                   That concludes my submission, sir.

1 MR SMITH: Thank you very much. Now, what I'm going to do, as I indicated before,  
2 is that we will take a break. It is now 3.25. Can we resume at 3.40 please, and  
3 what I will indicate is that if Pinsent Masons are available to remain on the line,  
4 Mr Rowberry, we note your interest in the subsequent discussions, and it would  
5 be useful if you hear them. At this juncture, I'm not sure that we would have  
6 any further questions for you, but there may be matters that arise that cross over  
7 from Mr Padfield's submissions, so if you're content to join us after the break, I  
8 think that might be sensible.

9 MR ROWBERRY: Thank you, sir. I will be watching with interest.

10 MR SMITH: Thank you very much. Let us break, and 3.40 p.m. please.

11

12 **(Meeting adjourned)**

13

14 MR SMITH: Good afternoon, ladies and gentlemen, and welcome back to the final  
15 session of compulsory acquisition hearing 5, in relation to the Lower Thames  
16 Crossing. My name is Rynd Smith, and I'm the lead member of the Examining  
17 Authority. And so we move on in the agenda to those representing S&J Padfield  
18 Estates and then finally to Mr Stuart Mee and family. Can I just check who we  
19 have, and which order we're going to take these representations in.

20 MR ZWART: Sir, Christiaan Zwart, counsel on behalf of Mr Christopher Padfield,  
21 who's on my right, Mr Nicholas Padfield Junior on the right again, instructed by  
22 Karen Howard, on my left, of Gateley Legal, and I'm going to be acting on  
23 behalf of the Padfields first, and then we're going to be addressing the Mee's  
24 family representations after the Padfields', but with a gap no doubt between us,  
25 because the Padfields are in some ways interested in the St Modwen situation as  
26 well, and vice versa.

27 MR SMITH: Okay. And obviously we do still have St Modwen's representation online,  
28 and so to the degree that there might be some relationships that we need to  
29 explore, we can do that too. Okay, that makes sense, so Padfield first, and then  
30 Mr Mee.

31 MR ZWART: Thank you very much, Chair. Firstly, could we have sheet 45 up again on  
32 the screen, which we just had?

33 MR SMITH: That would be very helpful.

1 MR ZWART: Thank you. Sir, I'm going to take as read submissions we've made to  
2 date –

3 MR SMITH: Absolutely.

4 MR ZWART: I'm aware that we've got the opportunity to update our submissions for  
5 the next deadline, and this hearing is to enable us to give some edited highlights  
6 of the situation to enable your clarification of what we're saying.

7 MR SMITH: Indeed, and particularly to focus on immediate progress that might not be  
8 apparent to us and/or matters that it appears may be destined to be outstanding  
9 that we need to understand in terms of what we might have to adjudicate. I  
10 mean, those are our two prime focuses.

11 MR ZWART: Thank you. So to cut to the chase in relation to the comments that you  
12 made very astutely at the end of the last session, it's right that all the parties are  
13 involved in essentially a Mexican stand-off in terms of timing and design, and  
14 our simple submission is that to cut through the gordian knot of timing is simple,  
15 easy and provides certainty for all, and we are going to submit that you please  
16 impose a protected provision or a requirement – the measure doesn't really  
17 matter – with a prior provision to provide that National Highways/LTC provide  
18 the new means of access to the site via the bridge before it uses Mr Padfield's  
19 land for construction. That's the simple answer. That's where the parties are  
20 foundering at the moment.

21 We would submit that there should be no foundering, nor premise placed  
22 upon any uncertainty with future contractors, because as we well know, the  
23 National Highways project handbook prohibits letting of any contract by  
24 National Highways until after this stage four of the DCO process. And, in fact,  
25 the uncertainty that they pray in aid operates in reverse because if they have a  
26 requirement specifying the position, it provides certainty for all downstream of  
27 the construction process that can be then better managed. So that will unlock  
28 the current situation.

29 MR SMITH: Okay, can I just explore a kind of key fundamental underlining that  
30 submission, which is that you are proposing to us essentially that something  
31 appears on the face of the order, vis a requirement and/or a protected provision  
32 that deals with this point, whereas it was submissions on behalf of St Modwen  
33 via Pinsent Masons not so long ago that essentially these are matters capable of  
34 being wrapped up in a side agreement, the content of which and the satisfactory

1 nature to their client would be drawn to our attention before close, and that  
2 would be 'enough'. Now, the two positions aren't irreconcilable by any means,  
3 but they are different.

4 MR ZWART: They are, sir, but as you'll be aware there's many a slip between cup and  
5 lip, and until there's an agreement, there's no agreement, and ultimately it's now  
6 with the Secretary of State to decide what to impose on the face of the order.  
7 Between then and now, anything might happen. If there's an agreement between  
8 the parties, fine and dandy, objections can be withdrawn. If not, not.

9 MR SMITH: And in that respect, the obvious question that follows is, if a satisfactory  
10 position can be secured by agreement, on behalf of your clients as well as St  
11 Modwen, before the end of the examination, would you be equally content that  
12 that was enough?

13 MR ZWART: Subject to the terms of it, yes, sir. And my understanding at the moment  
14 is that the parties continue to founder on the timing, because as suggested,  
15 there's something of a Mexican stand-off as you'll anticipate obviously that  
16 there are three parties interested for different reasons in provision of an access  
17 and a bridge. One is the landowner, who owns the land and needs access to his  
18 site as one layer. Another layer is the developer, who wants access for their  
19 future development, and then the other is National Highways/LTC, who's  
20 thinking, 'Should I pay for this? Should I build this? When should I build this?'  
21 So that's why the gordian knot we're trying to cut through with a simple  
22 requirement or prior protective provision, which we think can be done.

23 MR SMITH: Okay.

24 MR ZWART: So with that in mind, sir, if I could just address very briefly your agenda  
25 items before I go into more detail. So in relation to your agenda items 1, 2, 3, 4  
26 and 5, firstly the objection remains on foot because it remains unresolved, and  
27 the current position is that there's no provision on the face of the order that  
28 ensures the means of access will be provided to Mr Padfield's land. The second  
29 is really relating to firstly item 5, which is the human rights position. You'll be  
30 familiar from our submissions, sir, that article 1 of the first protocol is for sure  
31 engaged, and that you'll also see from our submissions that the Bank Mellat case  
32 to the Supreme Court explains the approach to structured proportionality that  
33 you should be applying in this situation.



1           The reason, sir, for applying that approach is that unlike the cases you may  
2 have come across at Lock[?] or Clays Lane, this is not a position where planning  
3 permission has been granted. We're in a no-permission world, and you'll also  
4 have noted that the Bank Mellat case post-dates all of those previous cases, and  
5 I think it's at the paragraph I've given you in the reference in our submissions,  
6 the four elements of proportionality are there set out and the focus in view today,  
7 sir, will be item three, which is the requirement to ask yourselves whether the  
8 least-intrusive measure available results in unacceptable compromise to the  
9 objectives of the scheme. And we would submit, sir, that the imposing  
10 requirement with a prior provision as you indicate would not result in  
11 unacceptable compromise of the objectives of the scheme. It's as simple as that.

12           Whether the measure is a protected provision or requirement is by-the-by.  
13 Something on the face of the order will secure that position. In relation to your  
14 item two on the agenda, temporary possession or compulsory purchase, the  
15 difference from the St Modwen position in a nutshell is that the National  
16 Highways/LTC propose to shut the access to Mr Padfield's land, and then use  
17 part of his land for a construction site. So effectively that shuts the gate on his  
18 land in the meantime, which is not very helpful to say the least. In relation to  
19 hardship, that doesn't really apply in this situation as we understand it. So, sir,  
20 with those outline and general arguments in mind, if I can go into more detail in  
21 relation to each one of those.

22 MR SMITH: Indeed. Please do.

23 MR ZWART: It may be helpful, sir, to have in mind for your notes under the NPSNN,  
24 paragraph 5.165, which requires the applicant to identify existing and proposed  
25 land uses near the project, and proposed includes applications for planning  
26 permission, and we've heard from St Modwen earlier today. But the second  
27 limb to that same paragraph requires applicants to assess any effects precluding  
28 a new development or use proposed in the development plan, and that's where  
29 the landowner situation is engaged. There's also a related provision in paragraph  
30 173, which is where a project conflicts with a proposed development plan there's  
31 a requirement to look at the stage it's reached when determining the weight to  
32 be given to it. There's also a provision in 5.201, where one is looking at the  
33 impact of a scheme on wider transport networks and construction sites on the  
34 network whilst the scheme is being developed.

1           And you'll also be alive, sir, to the obligation in relation to mitigation at  
2 paragraphs 5.215 and 5.216, about where development would worsen  
3 accessibility – such as here, shutting the gate – such impacts should be mitigated  
4 so far as reasonably possible. Not practicable, possible. Now, sir, in relation to  
5 the temporary possession, we have to object to that for the reasons we've said,  
6 and we have to object to the compulsory purchase situation for the reasons that  
7 we've set out, but both of those objections are capable of being resolved and  
8 insured by particularised parameters within what is at heart an outline DCO.

9           But if you flip it on its head, whilst National Highways/LTC suggest that  
10 there are unknowns, there's flexibility and so forth if there's a problem, we  
11 invert that and say actually knowing detail now helps. And there is detail now,  
12 and you will have seen from our representations at the very end of the statutory  
13 declaration of Mr Padfield includes under tab 13 the detailed highway drawings,  
14 which are part and parcel of the current planning application, and we've said  
15 from the outset that those simply be embedded as the highways solutions for the  
16 access from the north-east quadrant of the junction 29 to the bridge, and over the  
17 bridge, which results to keep the gate open for Mr Padfield's land where  
18 National Highways wish to close it at the south-east, hence our complete answer  
19 is in front of everybody.

20           There are also, of course, others which do have to be borne in mind, and  
21 you'll have seen that from your site visit as well, sir, that there are tenants and  
22 occupiers on the land, and we know helpfully from their own site visits of the  
23 last few weeks that National Highways/LTC have themselves for the very first  
24 time visited the land, to apprehend that there are other people involved on the  
25 land. They aren't here yet, because they haven't yet been told to come and visit  
26 you and make their submissions to you. Of course, if one were to unlock the  
27 land in the way we've suggested, that seems to us to resolve any issues they  
28 might have with access. So there's another reason for having a requirement with  
29 a prior provision, and cutting through the gordian knot, sir.

30           Geography. Geography we have at the top, there. In relation to the  
31 solution, the measure and the means, we have suggested in our submissions that  
32 a protected provision could be included. We suggested that because it may be  
33 that the vehicle of a requirement is too simplistic to be a vehicle for plans and  
34 timing. There's no bar – as you recall under paragraph 10 of the Planning Act

1 2008, part one, schedule five – to who may benefit from protective provision.  
2 It's any person. There's no requirement that it be limited, as some may suggest,  
3 to the statutory undertaker, and we know from the Riverside Energy Park DCO  
4 of 2020 that there a private limited company benefitted from a protected  
5 provision, and that was a local business, and then after that there were also  
6 statutory undertakers.

7 So you may think it appropriate to use a protected provision as a vehicle  
8 for such a measure, and there's justification of it having been done before in that  
9 way if you saw fit. Alternatively I've noticed, sir, in the current draft of the  
10 DCO, there are requirements which are in some ways more particularised than  
11 the requirements I've seen myself before, and they could be the vehicle instead  
12 to attach certain plans to them instead, to like effect.

13 MR SMITH: Can I just test something, which is, given that the nub of this seems to run  
14 around the degree to which specific access might be temporarily or indeed  
15 permanently closed, altered, diverted or restricted, that one other possible  
16 solution that doesn't go into the potentially quite deep detail of indeed a  
17 requirement or a protected provision could be possibly either of schedules three  
18 or four.

19 It's an immediate possibility, and I just wanted to make sure that as broad  
20 a range of possibilities are considered here, because we do have provisions there  
21 regulating both the temporary and/or permanent closure, alteration, diversion or  
22 restriction of the use of streets and private means of access provided for in the  
23 order, that might deliver relief and certainty to your client in a way that wouldn't  
24 necessarily drive an argument for the detailed negotiation of something as  
25 substantial as a protected provision, or indeed necessarily even a requirement.  
26 The other question I was going to throw on the table – and at the risk of confusing  
27 matters even further, I'll throw it onto the table now that you may pick it up – is  
28 again whether a protected provision or requirement is necessary where possibly  
29 a design principle or something in one of the other control documents might also  
30 do the job. So multiple ways of skinning cats.

31 MR ZWART: Thank you, sir. Yes, sir, and I'll pick those up as I go along, as far as I  
32 can, sir. Sir, you're right to pick up in the current version of the DCO, page 163,  
33 under part four at the very bottom of the table, it's the private means of access  
34 from south-eastern quadrant of M25 junction 29 roundabout that's proposed to

1 be shut, and I'll come back to why that's a particularly important access shortly.  
2 Sir, I take on board your underlying thesis which is that there is a – as it were, a  
3 potential hierarchy of justification between a principle, a requirement, and a  
4 protected provision, and it may be after we've gone through the facts of the  
5 particular situation that the outcome of that may become clearer. So in relation  
6 to the legal framework, if I could just address you briefly on that.

7 You'll be familiar from the submissions we've made and your previous  
8 experience with the Prest case, and it's just worthwhile having to mind – without  
9 you returning to it, sir, but just having the case in mind – that that was a case  
10 which was seeking to ensure that compulsory purchase was used as a remedy of  
11 last resort, not first resort. And the way of evaluating whether it's last resort or  
12 some other resort is whether there is evidence of fact some other way of doing  
13 what is sought to be achieved by compulsory acquisition, and we put that in our  
14 submissions, sir, but that's very important, because if there's any doubt in your  
15 mind about whether or not what's been proposed ought to be relied on or not,  
16 the case explains that you're required to resolve that doubt in favour of the  
17 landowner, and against the land taker.

18 So let me give you an example. At the moment, we know that there is  
19 evidence in fact of a design principle whereby National Highways/LTC have put  
20 in evidence a design principle to put in some form of access as a design principle.  
21 That is itself evidence of an alternative means of access emerging. Secondly,  
22 sir, in relation to the Sainsbury's case, you'll recall also that when you're faced  
23 with interpreting statutes relating to compulsory purchase, at paragraph 11, and  
24 the statute is capable of more than one construction, the law requires you to  
25 choose the construction which interferes least with private property rights. It's  
26 a kind of public law contra proferentem rule against the acquiring authority, so  
27 that we rely on in relation to looking at any statutory provision or statutory  
28 instrument or otherwise.

29 Lastly, sir, in relation to the Bank Mellat case, which I'll just refer to  
30 briefly. It gives a very helpful recitation of proportionality which will cut across  
31 a lot of your other objections in this matter set out at paragraph 65 onwards, but  
32 very importantly, at paragraph 74, there the test is set out – and this addresses  
33 your agenda item 4, the HRA situation, which is you're required to recommend

1 whether the objective of the measure is sufficiently important to justify the  
2 limitation of a protected right. In this case, it's proposed to shut the gate.

3 Secondly, whether the measure is rationally connected to the objective i.e.  
4 there's evidence of it. Thirdly – and this is the core – whether a less intrusive  
5 measure could have been used without unexpectedly compromising  
6 achievement of the objective, and it's the less intrusive measure and whether it  
7 could have been used, that we're exploring in this debate this afternoon, sir, and  
8 then lastly, whether balancing the severity of the measure's effects on the rights  
9 of the person to whom it applies against the importance of the objective. To the  
10 extent the measure will contribute to its achievement, the former outweighs the  
11 latter. So that's what we call the structured proportionality test, sir.

12 Now, in relation to the facts, Mr Padfield has submitted a statutory  
13 declaration and attached to that are a number of documents and they will set the  
14 scene for you, and what we've done is we put in chronological order as best we  
15 can at tab 13 of those documents, from 13.1 onwards, the situation he finds  
16 himself in today because there is a sense of deja vu for him, because no less than  
17 50 years ago, in 1973, when there was an inquiry into the M25, junction 29, his  
18 father, Padfield Senior, was in the same position he is in today, 50 years on. So,  
19 sir, if you would have to mind exhibit CSP 13.1 of that statutory declaration,  
20 you will there see the farm as it was, which is bisected laterally by the A127  
21 with access straight across what is now the M25, and that was why debate  
22 originally was provoked in relation to access from the roundabout.

23 If you go further forward in that documentation, you'll see importantly  
24 that on 7 June 1976, at exhibit CSP 13.2, there was a recitation of the Minister  
25 of Transport who had agreed to provide access at three points onto the  
26 roundabout at junction 29. So, just as today, but in reverse, National  
27 Highways/LTC is seeking to prevent access. 50 years ago, the Minister for  
28 Transport was seeking to provide access. So Mr Padfield is trying to ensure that  
29 there's consistency over the 50-year period and that he has the means of access  
30 provided where today National Highways/LTC want to shut the gate on him.  
31 What the department agreed to provide were three accesses on the roundabout  
32 and they were to serve the severed land, one to the north-east, one to the south-  
33 east and one to the southwest, which you'll have seen on your site visit, sir. You  
34 probably entered the Padfield farm on the north-east axis.

1           Going further forward into that material, sir, you will have seen that there  
2 is a 1977 Codham Hall interchange and slip roads order statutory instrument,  
3 just as the DCO before you will be a statutory instrument, and you'll see there,  
4 there are also plans which show in black the establishment of the M25 cutting  
5 north/south across the land of the Padfields. What you then see is also a series  
6 of correspondence that relates to the bridge, and the bridge is of interest for this  
7 reason. Obviously, the interface between transport infrastructure and farms is  
8 problematic wherever it arises, and there's a need to have cattle and livestock  
9 and access across highways and this has to be resolved in some way.

10           What happened with the Codham Hall Farm was that the Department for  
11 Transport agreed to retain the accommodation bridge that they put in for  
12 earthworks, which you drove over to get to [the south land?] and keep that as a  
13 permanent bridge for use by Mr Padfield, in addition to the three access points  
14 off the roundabout. So the origin of the bridge is in fact as an accommodation  
15 bridge which can carry very heavy earth-moving vehicles. That happened at  
16 about the same time in 1978/79.

17           Now, what then happened was that there was a compulsory purchase  
18 process and at exhibit CSP 13.5, there was another statutory instrument grant  
19 made, just as the prospective DCO will be a statutory instrument, and this was  
20 the M25 motorway, A13 to A12 section, North Ockendon to Nags Head Lane,  
21 compulsory purchase order 1979, and that granted compulsory purchase powers,  
22 but is expressly subject to the provision of a number of items which at paragraph  
23 12(d), were the construction improvement of highways and provision of new  
24 means of access to premises, and that was the statutory authority under which  
25 these accesses are provided at junction 29 to Mr Padfield's land, and that remains  
26 the case today, importantly.

27           So at that time Mr Padfield Senior was a tenant, and you'll have seen from  
28 exhibit CSP 13.6, which is an aerial photograph, that that access was put in, was  
29 built, constructed, and you would have seen from the photograph at exhibit 5.2  
30 over the page, that it also shows the accommodation bridge and the link between  
31 the two, and you'll have driven along that on the site visit, sir.

32 MR SMITH: Yes, we have.

33 MR ZWART: And you'll have seen the photographs of the gates and so forth. Now, in  
34 establishing what the scope of that new means of access was onto the junction

1 29, there is a TR1, which looks like that, and the TR1 has inside it paragraph 3,  
2 and paragraph 3 describes the property and there's a continuation sheet, and the  
3 continuation sheet explains that the accesses onto the junction 29 are for full and  
4 free rights of access with or without vehicles and agricultural machinery. So  
5 importantly, the accesses on the junction 29 are not confined to agricultural  
6 machinery. They're full and free access and that remains the case today.

7 In addition, access is provided on the same basis over the accommodation  
8 bridge, and there's a map, sir, from the Essex County Council there with an  
9 extract behind it, which where you see in paragraph 3 references to numbers 2  
10 and 3 and letters F, G, H and E, we've blown that up, so you can see the numbers  
11 and where they're located. So it's crystal clear that the south-east quadrant  
12 access on junction 29 has today full and free rights of access to all traffic to and  
13 from Padfield land to the south, and it's under statutory instrument which is in  
14 the guise of the compulsory purchase order.

15 Now, as will be known to National Highways/LTC, come early 2000 to  
16 2004, they paid Mr Padfield for permission to cross that access. So they  
17 recognised that he has that entitlement under the statutory instrument. What  
18 happened after that and the situation that you saw on the ground, sir, was there  
19 is some form of roundabout, like a doughnut shape, and that arises out of  
20 National Highways itself, Highways England, as it was, or the Highways  
21 Agency, embanking the land for their temporary construction processes and then  
22 leaving it in place. That situation did not remove the prior entitlement to access  
23 and the physical means of access that remains embedded in the statutory  
24 instrument under the CPO.

25 Similarly, you'll also have seen traffic lights. The traffic lights were put  
26 in by agreement with the Highways Agency because they wanted to improve the  
27 safety of the situation they themselves created some years before, and they  
28 provided temporary traffic lights on the basis of a licence agreement where  
29 Mr Padfield pays £1,000 a year and there are traffic lights. So when you unpack  
30 the layers of the access at the moment and you move the lights and you remove  
31 the temporary construction embankments, the 1979 compulsory purchase order  
32 SI remains the legal basis for the entitlement to full and free right of access.

33 MR SMITH: In that respect, you may be coming to it, but can I throw a query of ours  
34 onto the table in relation to that? Is it therefore your proposition that if the

1 applicant wished to do anything that essentially suspends or extinguishes that  
2 access, that it needs, amongst other things, to amend that statutory instrument?

3 MR ZWART: You're reading my mind, sir, yes, and we put that in our very first  
4 objection, our written representations.

5 MR SMITH: Yeah, and therefore looking at our thought processes, how that might be  
6 given effective on the face of this order, if that were necessary.

7 MR ZWART: Correct. Correct.

8 MR SMITH: Okay.

9 MR ZWART: So just as his father was facilitative to access provision as a farmer faced  
10 with transport infrastructure, so too the new Mr Padfield Senior to my right is  
11 being as facilitative as he can as well. The situation that his father faced back in  
12 1979 was him requesting a tunnel or bridge to ensure access across the M25  
13 coming north/south. The minister is saying, 'You can't have it, but you can have  
14 three accesses for full and free access off of junction 29', and then 50 years later,  
15 the National Highway/LTC are trying to shut those down without providing  
16 anything else at all in return, which seems inconsistent.

17 Now, helpfully, we know from the design access principles most recent  
18 document that there is willingness by National Highway/LTC in relation to their  
19 current outline scheme to seek to accommodate a proposed development, which  
20 includes under the planning application detailed design drawings of a highway,  
21 and we've included those in Mr Padfield's statutory declaration at the end, and  
22 you don't need to go through them now, but essentially what they do is they  
23 provide an improved access from the north-east part of the junction 29, across  
24 to the bridge and then across the bridge in a form of drawing, which has got the  
25 levels, the radii and so forth all worked out in our details and could simply be  
26 imported into the DCO as it currently stands, lock, stock and barrel, as we  
27 understand it. So that's a measure and a fact that is in front of you that  
28 can be simply accommodated within the draft DCO.

29 Now, if you to ask yourself the question in the Bank Mellat case, item 3,  
30 would the inclusion of those detailed drawings unacceptably compromise the  
31 objectives of the scheme? It's really hard to see how it would, given that  
32 National Highway/LTC themselves are proposing in their draft design principles  
33 by express reference to the planning application from which these drawings  
34 derive to be consistent with that, hence chopping through the Gordian knot, sir.



1           So that, sir, I think is where we were at in terms of our approach and our  
2 proposal. We would submit that where there is a will, there is a way and we  
3 should be able to resolve this, and we would hope somehow soon. It may be the  
4 simplest way of resolving it, sir, is through some form of measure on the face of  
5 the DCO. We think that it can be done in circumstances where there does seem  
6 to be an issue at least, between a 1979 statutory instrument and a proposed  
7 statutory instrument and the current statutory instrument doesn't seek to modify  
8 the prior statutory instrument, and that may, to come back to answer your  
9 question on hierarchy, sir, be the rationale for why a requirement or even a  
10 protective provision may be justified.

11           It may be a requirement is enough because it could be a vehicle to specify  
12 certain drawings and there may be a quid pro quo as part of the requirement that  
13 could encompass, for example, that 1979 statutory instrument, but that's the  
14 drafting exercise that can be done, sir, but coming full circle, sir, to your point  
15 and picking up on the St Modwen point that you picked up at the end of the  
16 submission, you're right, there is a question of timing between the parties.  
17 They're all moving around the timing. They're all agreed essentially on the  
18 design, but there's a reticence to jump and Mr Padfield is left in the middle  
19 wanting to sort this out.

20 MR SMITH: Okay, just checking with my colleagues if there are any questions. That  
21 was a very clear submission. So if that takes you to the end of Mr Padfield's  
22 position, I think it would be sensible to receive the applicant's response to that  
23 before we move on to anything to do with Mr Mee. Okay, Mr Tait.

24 MR TAIT: Thank you, sir. Andrew Tait for the applicant. Sir, as I understand the  
25 proposition, it is that the scheme should incorporate the BEP vehicular bridge  
26 access and the applicant would resist that. First of all, the existing access to the  
27 current occupiers will be stopped up as part of BEP, and we understand that is  
28 not simply a function of the LTC project, but also because Brentwood Council  
29 have issues about any intensification of that access, and there's been an  
30 extensive planning history in relation to attempts to intensify the usage there so  
31 that the BEP vehicular bridge is necessary for the BEP rather than something  
32 that's imposed on it by the reason of the LTC project.

33           So in principle it is not considered to be proportionate or appropriate for  
34 that beneficial element of the BEP project to fall upon National Highways as

1 applicant in connection with its promotion of its project. So insofar as there is  
2 any gap between the BEP project starting and the closure of the existing access,  
3 that would be a matter for compensation assuming there is any loss at all bearing  
4 in mind that a new access is required in any event for the BEP project, and thus  
5 those parties would be displaced by reason of that.

6 MR SMITH: Can I just explore an underlying, possibly fundamental, point there, which  
7 is essentially taking the arguments that have been put in front of us by counsel  
8 for Mr Padfield as they rest. The existing BEP land benefits from a general and  
9 unconstrained right of access, secured in a statutory instrument that is broadly  
10 of equivalent nature to a DCO, and I guess his proposition seems to me to be  
11 that if you take that away and leave him with less than he has, that there is an,  
12 in principle, fairly substantial difficulty on his part that needs some form of  
13 remediation.

14 Now, I understand where you're coming from because you're talking  
15 about provision for a vehicular access to BEP that would amount to a betterment  
16 against the existing position and you are trying to safeguard yourselves against  
17 essentially the exposure to additional, amongst other things, financial costs  
18 associated with the provision of what would amount to a betterment, but you are  
19 potentially left in a world where he has, what it appears to have been argued to  
20 us, is a set of rights to use existing accesses that is so general and extensive that,  
21 effectively, if you take those rights away and leave him with something that is  
22 reduced or less, that you are essentially removing his ability to access his land  
23 in a manner that is going to leave him with very considerable difficulty and you  
24 with a potentially compensable position.

25 MR TAIT: Sir, that's right. Theoretically that would be a compensation issue assuming  
26 that BEP doesn't proceed, but that doesn't seem to be a reasonable starting point.  
27 A reasonable starting point appears to be there's planning permission is about to  
28 be granted we hear and a very strong emphasis as we heard from St Modwen on  
29 proceeding with that project, so it is only a theoretical. Depending on the timing  
30 and the gap, but it's only a theoretical compensation point insofar as those  
31 persons are potentially affected in any event, but can I come to the specific point  
32 about the status of the earlier statutory instruments –

33 MR SMITH: Please do.

1 MR TAIT: – because those earlier powers are subject to the subsequent DCO powers.  
2 So in terms of timing, those are trumped, and so far as that earlier provision is  
3 concerned, because it's a provision for private access, as I understand it, through  
4 the CPO, that has been used up, essentially. That's been provided. It can  
5 continue to be used, but it's not a fresh power that can be implemented from  
6 time to time. It can be maintained thereafter.

7 So in a sense that's been spent, that's happened, continuing right to use,  
8 albeit subject to whatever planning permission allows that to be used, and there's  
9 been a history in relation to that, but that power is then subject to a fresh power  
10 to implement new works which supersedes that, and if one sought to identify  
11 every CPO power, private means of access, it would be quite an extensive  
12 exercise, I would suggest. In circumstances where there is no particular benefit,  
13 it's unnecessary to identify all those and it would be disproportionate. All one  
14 needs to know is they've been exercised and there's another power coming  
15 along, the exercise of which would supersede that.

16 MR SMITH: Okay, so that explains from your perspective, why you are currently where  
17 you are, but what it doesn't then explain is where you think you might be relative  
18 to the dynamic situation around the BEP, the potential emergence of a planning  
19 permission, etc.

20 MR TAIT: But where we think we might be is where St Modwen put us, as it were, at  
21 the end of their submissions and at the beginning of our response, which is that  
22 we have a tripartite agreement that is almost in final form, as I indicated, and as  
23 was indicated by Mr Gloster, one of the sticking points have been slotting in the  
24 timings. That's expected by the end of this week, and once that is addressed,  
25 then there's no reason why the agreement should not be concluded. So that's  
26 the way forward as we see it, to give that additional comfort to all parties.

27 MR SMITH: So, in a nutshell, from your side, Mr Tait, the proposition that we start to  
28 investigate other provisions that might be included on the face of the draft order  
29 is unnecessary because you are confident that there will be an agreement that is  
30 entered into that resolves this matter between yourselves, St Modwen and Mr  
31 Padfield, and ergo everything then melts away in the fresh light of the dawn of  
32 that agreement.

33 MR TAIT: Yes, and if for some unknown reason that isn't the case, then there's the  
34 compensation issue. There's the matter of compensation as the fallback.

1 MR SMITH: And that was going to be my second question, which is, well, where do we  
2 go if that fails? And your proposition to us is, 'It's a compensable matter and  
3 that's all – Examining Authority – you reasonably need to know'?

4 MR TAIT: Yes, sir.

5 MR SMITH: Okay, do you have anything else that you wish to put?

6 MR TAIT: No, I don't propose to repeat the points I made in relation to St Modwen  
7 about the extent to which the BEP has been very carefully accounted for in the  
8 project.

9 MR SMITH: And I take it that all of those submissions, to the extent that we're needing  
10 to consider these submissions, are context. They're all in our brains. We've  
11 heard them this afternoon. So there's no need to repeat any of that, only possibly  
12 the need to qualify any of it that you might want to qualify, but if you don't,  
13 that's fine. Okay, a final response to what has been put. Mr Padfield.

14 MR ZWART: Thank you, sir. Just picking up on one or two matters. The first is it was  
15 asserted that there were proposals by the local authority to stop up the south-east  
16 quadrant access onto the Codham Park Farm. That's not correct. There are no  
17 proposals to stop up by the local authority. The only proposals to stop up the  
18 access are in the draft DCO. The second point was the asserted disagreement  
19 that the 1979 compulsory purchase order statutory instrument was somehow  
20 spent.

21 It's not, and that's the flaw, sadly, in the National Highways/LTC analysis,  
22 because true it is that the statutory instrument gives powers to construct an  
23 access to make improvements, but importantly, it also bestows rights, means of  
24 access, and those rights necessarily subsist at this time, and that may be the  
25 sticking point which is preventing the timing situation being resolved, and then  
26 lastly, in relation to the refrain potentially of National Highway/LTC, that these  
27 matters are simply compensatable, we would respectfully submit that paragraph  
28 5.165 says otherwise. There's a requirement to assess the effects and evaluate  
29 them, and the law is crystal clear. If they're capable of resolution by measure,  
30 that should be done because otherwise, compulsory purchase isn't a remedy of  
31 last resort, it's a remedy of first resort. Thank you, sir.

32 MR SMITH: Yeah, okay, well, what I'm going to say then in relation to what we have  
33 heard this afternoon is this. Clearly there is a disagreement still outstanding  
34 between yourselves and the applicant about the technical effect of the early

1 statutory instrument. Your submissions, we'll consider, and we'll also equally  
2 consider the applicant's. However, there is a consequence that flows from that,  
3 which is that if your submissions are right, then there is a subsisting provision  
4 with an active requirement for something to be maintained which needs to be  
5 taken into account, and if it is somehow being extinguished by the development  
6 consent order, then some sort of alternative provision needs to be made  
7 somehow.

8 Now, you've set forward a potential set of means of doing that which  
9 could be a requirement, could be a protected provision, and you've argued the  
10 importance of those upper tier hierarchy solutions over, for example, something  
11 that rests as a design principle or something in a control document or something  
12 that, for example, sits in a schedule dealing with provisions around temporary  
13 or permanent stopping up or alteration of accesses, because, in your words, there  
14 is this prior statutory instrument that still subsists and therefore requires to be  
15 dealt with. Now, if that remains your position and that's something that you  
16 need to rely on and you are disagreeing with the applicant about that, then what  
17 we're going to need from you before the closure of this examination is – and in  
18 terms, what are the words? What are you recommending to us that we  
19 recommend to the Secretary of State? However, that's a drafting task.

20 That's lawyers money and fees for your client, and what I would urge  
21 upon both sides of the room is that if it feels as though an agreement, a tripartite  
22 agreement that will place beyond concern that these matters have been settled  
23 and that therefore a satisfactory and enduring form of access to Mr Padfield's  
24 land will be provided for by agreement can emerge in the time between now and  
25 the end of this examination, then there would seem to be a considerable benefit  
26 in terms of Mr Padfield's exposure to legal fees, to say nothing of anything else,  
27 of actually resolving that rather than going into detailed technical drafting on  
28 potential means of amending a statutory instrument that you say binds and Mr  
29 Tait says doesn't, and we would therefore have to consider those matters with  
30 care and adjudicate.

31 MR ZWART: Sir, just to clarify, I hadn't anticipated that there would be any need to  
32 amend a statutory instrument, but rather that there are powers under Planning  
33 Act 2008 by –

1 MR SMITH: No, we would be looking at drawing into the DCO the necessary powers  
2 that would deal with that point.

3 MR ZWART: Currently, it doesn't. So National Highway/LTC are driven to try and  
4 reject the 1979 SI because they have no answer to it otherwise, because their  
5 DCO doesn't yet modify it, hence our proposal for a requirement.

6 MR SMITH: Yeah, we understand the basis for that argument very clearly. What is in  
7 dispute is your proposition that that change is needed to the drafting of the  
8 current DCO, whereas it's Mr Tait's submission to us that no, it's not, and we  
9 form no judgement on that until we see the concluded arguments between both  
10 of you, but what I am urging from both of you is that concluding those arguments  
11 will take brain power and time, and frankly, if you're in a world where there's  
12 the potential low-hanging fruit of an agreement to hand, it may be the best means  
13 forward is to grasp that, because that might be quicker and more beneficial to  
14 everybody involved, to actually have that grasped and in your hands before the  
15 end of this examination.

16 MR ZWART: We couldn't agree more, sir, and we hope that might be forthcoming.

17 MR SMITH: Okay.

18 MR TAIT: And, sir, just for reference, could I indicate where the power presently resides  
19 in the DCO for the stopping up and acquisition?

20 MR SMITH: Yeah.

21 MR TAIT: It's article 14 and part 4 of schedule 4 and the stopping up between points  
22 41(h), 41(k) and 41(j) on sheet 45, and article 25, which provides for the  
23 acquisition of the equivalent plots which form that access, which is plots  
24 45.101.104.6. So there's provision in the order at present for that.

25 MR SMITH: Okay, right, excellent. Does that bring us to the conclusion then of  
26 submissions for Mr Padfield? In which case, let us move on then, finally, to  
27 submissions for Mr Mee and family.

28 MR MEE: Thank you, sir. Could we have a five-minute break to switch over?

29 MR SMITH: Of course we can.

30 MR MEE: Thank you.

31 MR SMITH: Can I suggest that we might make it – at risk of taking a break this late on  
32 in the afternoon, but if we make it a 10-minute so then at least people who need  
33 to get in and out of the room, can do so. Well, let's call it 4.35. Let's be back  
34 by 4.45. Thank you very much.

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**(Meeting adjourned)**

MR SMITH: This is the final element of compulsory acquisition hearing number 5 in relation to the Lower Thames Crossing. My name is Rynd Smith, lead member of the Examining Authority and we have, finally, to be heard, representations on behalf of Mr Stuart Mee and family.

MR ZWART: Thank you very much, sir. Good afternoon. My name is Christiaan Zwart. I have to my right Stuart Mee, who's a farmer. I have to his right Peter Cole, who is a land surveyor, who will talk about access. I'm instructed by Karen Howard, on my left, of Gateley Legal. The outline submissions, sir, is that Mr Mee runs a farm that stands at the confluence of the current M25 and railway underneath which National Highway/LTC propose to dig a tunnel for a highway in a cutting and further intensify that confluence above which is Manor Farm, which is operated by Mr Mee and has been for a number of decades, and by his father before him, and much like Mr Padfield, Mr Mee's father had similar situations with the Highway Authority back in the day.

In relation to this objection, on your agenda items, there is an objection to temporary possession and an objection on compulsory purchase. The temporary powers objection arises because if you imagine Mr Mee's farm as a jigsaw of separate pieces each of which pieces are field, with the gaps between the jigsaw being means of access and highways, the effect to the current proposals in outline by National Highways/LTC is to shatter that jigsaw and fragment it, which has obvious consequences for the operability of the farm, and there seems, in our respectful submission, no reason why some form of requirement or protective provision in line with what we've just discussed can't be put in place to give particularised parameters to enable the co-operation of the farm to subsist with the construction of the tunnel and the cutting in the ground beneath it.

I'm going to address you, sir, on three aspects, which are access, irrigation and replacement land. I'm going to take as read the submissions we've already made and so you have our point on replacement land, and so therefore the submissions will focus on access and irrigation. In relation to irrigation, we have Mr Mark Andrews. However, today is the happy due date for a child and he's therefore currently unavailable and has been from 4.30 this afternoon, and we

1 can't get him back I think until gone 6.00, so we may not hear from him. He's  
2 the author of the sustainable water solutions reports in which he proposes an  
3 alternative solution to ensure irrigation is maintained in the longer term from the  
4 installation of the tunnel and the cutting which will result to sever the supply of  
5 water between springs and Mr Mee's reservoir on the farm.

6 In terms of geography, could I have someone pull up on the screen sheet  
7 42 of volume C of the land plans, and that helpfully and graphically illustrates,  
8 with an X marking the spot, as it were, the situation of the M25 coming in from  
9 the bottom left, going up diagonally north-east, the railway coming out at the  
10 top on the north-west, and the proposed curve on the right-hand side of the new  
11 tunnel coming in underneath the land, and you'll see also, if you were to go to  
12 sheet 43, which is directly above that to the north – that's it. You'll see to the  
13 west at the bottom of the page, there's an upside down triangle with a little  
14 curved shape taken out of it. That's the plot 43-04 that's the subject of the  
15 asserted replacement land situation. So if we go back to sheet 42 to remind  
16 ourselves where we are, that's the situation. So I'm going to ask Mr Cole to  
17 hand out a diagram he's put together that we'll upload in due course, but this  
18 will help better understand the access situation of the fragmented jigsaw pieces.

19 MR SMITH: Okay. I have to say, this is probably the first time in about 10 years we've  
20 had a physical document placed in front of us. We do normally deal with this  
21 digitally, but given that it's late in the day, I'm not going to be difficult about it.

22 MR ZWART: Thank you, sir.

23 MR SMITH: Can you speak to the case team and make sure that it's made available?

24 MR ZWART: Yes, sir. As I understand it, it went in, but I think they've gone in  
25 yesterday. The reason for that, sir, is that Mr Cole was in hospital last week and  
26 that's why we were delayed in putting up material about access and uploaded it  
27 on Friday, but this will follow in due course, but as an aide-mémoire at this point  
28 in time, it essentially shows the disposition of the farm current and as a result of  
29 the compulsory purchase proposal, which Mr Cole will speak to shortly, but, sir,  
30 before that, could I just ask Mr Mee to answer a short number of questions to  
31 help you in relation to your evaluation? If you'll just bear with me.

32 Sir, you might recall under the NPSNN that there are requirements to take  
33 into account best and most versatile land, but importantly, once it's been  
34 evaluated, there are also requirements to take into account economic and other



1 benefits arising from it. We've scoured the application documentation and can't  
2 find any material that supports that evaluation. There's an agricultural land  
3 assessment which establishes the land itself and the grades 1, 2, 3, which are  
4 categorised as BMV, but there isn't the follow-up analysis required by the  
5 NPSNN about the economic and other benefits that arise from that best and most  
6 versatile land. So I would like, please, Mr Mee, if you just explain what the  
7 practical effect of the pulling apart of the jigsaw of your fields would be in  
8 relation to your operation of the farm.

9 MR MEE: Right. Principally, it would affect the type of crops we are at present growing,  
10 and they would be restricted for sure. The economies of scale would be greatly  
11 reduced, smaller farm, planning for future machinery and employing staff, etc.,  
12 and knowing where we're going forward in the next 10 years, I would say, but  
13 principally the type of crops we grow on that type of soil without irrigation. We  
14 grow quite a wide variety from fresh produce.

15 MR SMITH: And I think it's probably worth observing so that we are clear that the  
16 Examining Authority's absorbed this, that we did come and spend a substantial  
17 amount of time on site on your farm, and so we've observed the nature of the  
18 crops. We've also observed the nature and current distribution of the irrigation  
19 system and the fact that that is cut in two by the proposal for the construction of  
20 the LTC. So rest assured, we do have a fairly clear appreciation, I trust, in our  
21 minds, of the impact of this proposal on the operation of your farm.

22 MR ZWART: Thank you, sir. If you'll note that the NPSNN paragraph references are  
23 4.168 and 5.176, which require you to take into account the economic and other  
24 benefits of best and most versatile agricultural land, and it's that evaluation that  
25 seems absent at the moment from the application documentation, and there's  
26 also, you'll recall, provision in relation to water resources in paragraph 5.219,  
27 which will be affected by the tunnel and the cutting. Mr Mee, National  
28 Highways appears to take the view, 'So what?' – they're going to interrupt your  
29 access of your farm. Could you put some flesh on the bones for the chair of the  
30 Examining Authority as to why the 'so what?' actually is very important?

31 MR MEE: Well, with this road going through it –

32 MR SMITH: And can I just ask that we have the microphone – sorry, done it.

33 MR MEE: During construction and following completion, there will be various areas of  
34 land that will be – certainly during construction – that will be very difficult to

1 access. Some will be impossible to access, which we will not be able to farm,  
2 which are outside the consent order. I think some of the plan does show that to  
3 some extent. Some of these fields are going to be subdivided – that will be very  
4 difficult to farm in their present size because their shape, their size, whatever,  
5 with the present machinery we've got, and certainly, as we alluded to earlier,  
6 without irrigation, certain crops are going to have to go, certain high-return crops  
7 are going to have to go.

8 MR ZWART: So there are two aspects there, Mr Mee. The first is in relation to the best  
9 and most versatile grade. For example, if we were to look at the field  
10 immediately south of the stream, which is coloured, I think, green and blue on  
11 the sheet on the screen, that's currently evaluated by National Highway/LTC as  
12 grade 1 and grade 2 and some grade 4, I think. You're currently growing on that  
13 field, what? Is it salad crops you can grow?

14 MR MEE: We are at present growing salad crops. Last year it was coriander. Not this  
15 year, but next year, will probably be parsley.

16 MR ZWART: And that's across the whole of that field?

17 MR MEE: Across the whole of that field.

18 MR ZWART: Regardless of its soil classification.

19 MR MEE: Regardless. It's the whole field, yes.

20 MR ZWART: Right, and that therefore will place you in grade 1, because that's where  
21 salad crops are kept on the government guidance.

22 MR MEE: We've always considered it as grade 1 soil. If you go to Natural England's  
23 website, that's what they would grade it as.

24 MR ZWART: And on the irrigation aspect, if irrigation were not re-provided to the same  
25 degree as it is today, what's the lowest grade of grade land that it would come  
26 down to, do you think, in your experience?

27 MR MEE: We would be able to grow combinable crops, cereals, rapeseed, but the fresh  
28 produce would have to go because they need to be established in June time when  
29 it's hot and dry, and it's in the surface, so they would always need that irrigation  
30 to establish the crop.

31 MR ZWART: So that will be, what, grade 3a, it would go down to?

32 MR MEE: It wouldn't go any lower than that.

33 MR ZWART: Right, so there'd be a reduction from grade 1 to grade 3a without the  
34 irrigation. Is that in essence where you think the position is?

1 MR MEE: As regards to growing crops? Yes, what crops that we are able to grow.

2 MR ZWART: And then the second aspect in relation to access is – could you just put  
3 some flesh on the bones for the panel in relation to why it is that access to operate  
4 a farm is in many ways weather-dependent and driven by weather conditions?

5 MR MEE: Why it is weather-dependent? At the moment, we are unable to drill, or have  
6 been unable to drill for the last three weeks, so timeliness of all crops is  
7 important, but it's critical to plant these crops on time, otherwise it's lower yields  
8 and possibly unable to grow the crops we want to grow, so establishing all crops  
9 is of the essence.

10 MR ZWART: So the present position, I think, is that we haven't seen any particularised  
11 provisions of any kind from National Highway/LTC that provide for you to  
12 maintain access to and from the fields as and when the weather dictates.

13 MR MEE: There are certain sites where we haven't been given full commitment of  
14 access and they haven't established a right or confirmed that we'll be able to  
15 access substantial areas of that farm, yes.

16 MR ZWART: Thank you. On that note, I'm going to ask Mr Cole to give some examples  
17 of accesses where there is proposed shared access, but with problems, where  
18 there's no access, which results in problems, and we anticipate amplifying that  
19 because we undertake an exercise where we've gone through every access for  
20 each jigsaw piece to try and put together where there are problems and what the  
21 solutions might be with a view to drafting some form of particular access, if I  
22 put it neutrally, provision which allows access to maintain current operation of  
23 the farm check by jowl with construction of the highway below. Mr Cole, over  
24 to you.

25 MR COLE: Thank you and good afternoon. Peter Cole on behalf of Mr Mee. So the  
26 handout that I've handed around to the applicant and yourselves, sir, is a  
27 presentation of – the splodges in purple are the fields that are not within the order  
28 limit, but are agricultural fields that will be affected by the proposed scheme  
29 where accesses are used to those fields. If you include those purple splodges as  
30 well as the land that is within the order limit, you can see that it takes up a very  
31 large proportion of the whole farm.

32 So with that, this is the underlying concern: that both during – particularly  
33 during the construction is this, Mr Mee's farming business, to remain viable as  
34 such? As Mr Zwart has alluded to and referred to, we are going to be using this

1 diagram as well as other written submissions to set out Mr Mee's current  
2 accesses which he takes into these fields that are outside the development  
3 boundary that are affected by the LTC.

4 We're also going to set out the applicant's proposed alternative accesses  
5 which are affected, the issues with these proposed alternatives put forward by  
6 the applicant, setting out specifically the needs of Mr Mee to be able to use these  
7 alternative accesses with his desired requirements, or even proposed better  
8 alternatives than the applicant, and finally requests to the applicant on the detail  
9 and commitment for these accesses to be continued, used during and post-  
10 construction.

11 MR ZWART: So just to be clear, Mr Cole, this is not a prohibition on National  
12 Highway/LTC constructing anything, but rather it's a proposal to have  
13 co-incident working.

14 MR COLE: Yeah.

15 MR ZWART: Thank you.

16 MR COLE: So that is referring to just a few examples, because I'm conscious of time,  
17 for one, and conscious also of the detail that needs to be going into that. Firstly,  
18 the applicant, like I mentioned, has provided new access points to allow  
19 continued use of the land that is outside of the development boundary, but  
20 unfortunately a lot of these alternative accesses aren't suitable for existing use  
21 for agricultural equipment, especially where they interact with existing LTC  
22 infrastructure such as maintenance tracks, WCH routes or during construction  
23 traffic.

24 So on our plan, if we're referring to Dennises Lane or Dennis Lane, which  
25 is the lane that runs under the M25 to the south, there is a WCH route that will  
26 run all the way, move all the way down to South Ockendon. On the plans that  
27 have been provided by the applicant, there is no detail in terms of Mr Mee's  
28 retained agricultural access into those fields. There's only one example on one  
29 of the fields there where there is an access point, but they're failing to provide a  
30 number of others.

31 And then moving to another example where the applicant has failed to  
32 provide an access at all, which is raising a large red flag. It's with regards to the  
33 pond which is known Hobbs Hole Pond, which I believe you inspected. And  
34 also there is a parcel of land which is on your plan in front of you just east of the

1 railway but south of the M25, where, at the moment, the applicant hasn't  
2 provided an access to that parcel of land, and in effect, as we currently stand  
3 today, it will be severed.

4 Although we do acknowledge that there are compensation measures in  
5 place for things like crop loss, we feel that the applicant is relying on general  
6 commitments to provide access to parcels of land, and there's no specific  
7 agreement with Mr Mee, or undertaking to cater for his specific access  
8 requirements. As Mr Mee, and particularly during the harvest seasons, where  
9 there will be lots of movements of tractors and combines, the timings of when  
10 these will happen will be massively driven by weather and crop maturity. So  
11 when Mr Mee needs to get in, he needs to get in, and the applicant needs to  
12 accommodate these requests, and we haven't really had an undertaking from  
13 them of that to date.

14 MR ZWART: Mr Cole, in practical terms, given that we know that the governing  
15 National Highway/LTC project framework precludes National Highways from  
16 letting or awarding any contract to construct the scheme until after stage 4 DCO  
17 has been granted, how would one have a practical arrangement that a future  
18 contractor could then take into account and work with? What would you  
19 envisage might happen on the ground when the sun came out?

20 MR COLE: Quite simply, a notification process, with Mr Mee notifying the contractor  
21 on the ground and then having a process to do that. Realistically it has to be  
22 short turnaround because weather doesn't always shine. So 24 hours', 48 hours'  
23 notice is what we'd be needing at the very least.

24 Coming to the question of 'So what?' basis on the crop loss element,  
25 which we acknowledge, there are, as Mr Mee has alluded to, and expanding on  
26 those other concerns, is the other business disruptions. And when this business  
27 will be disrupted for a number of years whilst the LTC is constructed, that's  
28 going to put a lot of financial stress and viability on that business, more around  
29 the requirement to lay off farm employees and re-employ new staff at a later  
30 date, which Mr Mee can confirm that, from recent experience, getting suitable  
31 and qualified agricultural employment is hard to come by.

32 And how, Mr Mee alluded to, is more importantly because of this one-in-  
33 a-generational change in the landscape of his farmland, is to have to invest in

1 different agricultural equipment, which is very expensive. And that's going to  
2 be a real challenge for Mr Mee, going forward.

3 What I would say broadly is in a time of huge agricultural change  
4 following the UK leaving the EU, and Defra is putting a lot of stress on farming  
5 businesses to adopt, to tackle issues around the biodiversity, carbon emissions  
6 and the farming businesses are being encouraged to farm in different ways. This  
7 is changing how farming businesses function, and the additional strain and stress  
8 of the LTC on what is already a business that is under pressure is a real concern.  
9 But trying to turn that on its head as a bit of a positive is what we're asking from  
10 the applicant, is to work with us to try and manage that stress and strain on what  
11 is a challenging time within the farming and agricultural sector.

12 MR ZWART: Sir, to give you an example of that, where there's a requirement under the  
13 NPSNN to take into account as decision-maker, Secretary of State in due course,  
14 economic and other benefits of the [inaudible] versus agricultural land, there is  
15 an opportunity here, with particularised access arrangements, to actually  
16 capitalise on that economic and other benefit rather than to destroy it. And we  
17 think capitalisation should be taken.

18 MR SMITH: Can I just ask a question at this point, which is essentially that the draft  
19 development consent order as we currently have it – I take from all of your  
20 submissions to date that it's your view that there isn't something that's  
21 immediately giving you the hat peg on which you would wish to hang the hat  
22 emblazoned with the message, 'How will we manage this land during the  
23 construction period?' And being particularly specialist in large agricultural  
24 holding, you're basically saying that you think it is unreasonable that there is no  
25 such hat peg, as you see it.

26 So we're going to get one of two answers from the applicant. Either they  
27 believe there is a hat peg or alternatively they're going to say, 'No, there isn't',  
28 but either they're amenable to there being, or alternatively they're not, for  
29 reasons. So that feels to me as though that's the territory we're in. Have you,  
30 in negotiations to date, got as far as any measure of agreement with them about  
31 whether there could be such a hat peg, or whether there is, and it's just not being  
32 used right at present? Where have the discussions got to?

33 MR ZWART: Yes sir. In practical terms there's also the third option, which we're  
34 learning is refrain of National Highways/LTC, which is 'Any adverse is

1 compensatable. Please go away'. That's what we're hearing. That's the  
2 message we're getting, which we'll come back to.

3 In relation to DCO provision, I've noted in the current draft DCO that  
4 there are, for example, requirements that require schemes to be submitted. And  
5 it seems to us that this kind of situation, there's no reason why a requirement  
6 could not make provision for a scheme for access to be submitted to have  
7 features in it which would likely serve the need that we've identified. It may not  
8 have to go so far as a protective provision, because I've seen that the  
9 requirements are being used in this particular DCO to introduce schemes.

10 In terms of the 'could' question, which you importantly identify – it's very  
11 important – as I understand it, National Highways/LTC have gone so far as to  
12 make general suggestions that access can be provided in some way, but at the  
13 moment it's a pick and mix approach. So there's movement in that direction  
14 which indicates it's possible, which is key. And then seizing on that fact, the  
15 possibility, it's about putting flesh on the bones. And we anticipate the next  
16 deadline therefore will arrive in some form of outline scheme which could be  
17 appended to a requirement.

18 MR SMITH: And again in that respect I'm going to ask the same broad question that I  
19 actually asked of your previous submissions here, which are in terms of the  
20 hierarchy of how one might do this. Are there things that could be provided for  
21 in any of the control documents that rest under requirements that would be of  
22 satisfaction? For example, the preliminary works environmental management  
23 plan pursuant to requirement 4 might start to talk about things that could include  
24 the facilitation of necessary access between parcels of land severed by early  
25 stage works. That's a very, very loose example.

26 MR ZWART: Yes. Yes. There's two aspects, sir. The first is that the challenge, as you  
27 might appreciate from your own experience, of farming is that it's not driven by  
28 a contractor's operational demands to build. It's driven by the weather.

29 MR SMITH: Yeah.

30 MR ZWART: And if the sun comes out you go and you harvest. You're not bothered  
31 whether there's a one-way sign in place; you need to go. And so that  
32 particularisation, that certainty, is what is needed for Mr Mee to operate the farm  
33 concurrently.

34 MR SMITH: Yeah.

1 MR ZWART: And secondly there's the issue of timing. And again, this appears to us,  
2 with respect to National Highways/LTC, to be their constant refrain, that they  
3 just can't say because they haven't let the contractors, and they can't. So  
4 therefore we have to invert that and say, 'Well, we give you certainly of  
5 particularisation now and then in the contract process it can come out in the  
6 logistics of how it's handled', and therefore we would submit that  
7 particularisation of access to provisions, or framework for access to provisions,  
8 is provided. Your third question was: are there any control documents which  
9 currently provide for that?

10 MR SMITH: Or even could.

11 MR ZWART: Or could. We will have to come back to you on that, but the key is the  
12 particularisation. Is that what gives a farmer the certainty they need when faced  
13 with the dynamism of the weather, which is general? You can't have general  
14 and general. You've got to have particular 'I've got to go, therefore go'.

15 MR SMITH: Yeah, that's clear.

16 MR ZWART: Mr Cole, is that your summary in terms of access so far?

17 MR COLE: Yes. One other thing I just want to add there is we – not taking anything  
18 away. We've just talked about the farming business. Something also to flag is  
19 the farm shop, which I understand you visited as well. And at the moment there  
20 is an issue where, over Ockendon Road, they are proposing – the applicant is  
21 proposing to close that for at least 10 months.

22 Because of the farm shop being client-facing, there is – from Mr Mee,  
23 there's a massive concern on the long term impact that it will have on that  
24 business, and again, it's the compensation provisions that we acknowledge are  
25 there, but there is a continued discussion to be had with the applicant around the  
26 routes of trade and supply of stock to that farm shop to allow it to continue to  
27 operate even with Ockendon Road being closed for a 10-month period. And I  
28 think that's –

29 MR SMITH: Drawing all of this together, the underlying principle appears to be that you  
30 are asking for a framework that can be set out with sufficient certainty of terms,  
31 agreed with the applicant, that enables Mr Mee to plan for the future use of the  
32 farm across the construction period in ways that seek to essentially minimise the  
33 compensable loss.

34 MR ZWART: That's a fair summary.



1 MR SMITH: Okay.

2 MR ZWART: And the struggle that National Highways have necessarily – because  
3 they're not allowed under their project framework to let a contract, so they  
4 cannot have a contractor in play today, otherwise they're in breach of mandatory  
5 stage gateways – is that they don't know timing and they don't know what the  
6 contractor might want. So therefore if we flip that alternative on its head, by  
7 providing certainty today that should help everybody, both Mr Mee operate the  
8 farm but also a future contractor to plan the logistics of their construction  
9 processes.

10 MR SMITH: I'm going to again pop this on the table. The applicant's view may be,  
11 'No, it won't and shouldn't and can't'.

12 MR ZWART: Yeah.

13 MR SMITH: But there is striking me a possibility that some approach to an appropriate  
14 iteration, probably a combination of preliminary works EMP and second  
15 iteration EMP could contain provision that essentially addresses these matters.

16 MR ZWART: Yes sir.

17 MR SMITH: And that is already – because that is already secured under requirement 4,  
18 then it oughtn't cause the applicant any in-principle pain or concern, there may  
19 be a need to think about requirement 4(3), and then the specific items that are  
20 required to be set out in terms of the EMP second iteration being written in  
21 accordance with the mitigation measures set out in the REAC, and must include  
22 measures or plans of the management of specific items, (a) through to (i).

23 So if particular security is being sought, they can be listed there, or  
24 alternatively, if they are matters of detail beneath that threshold, then they can  
25 be set out in the REAC and the performance to the REAC is secured. So you've  
26 got two potential routes.

27 MR ZWART: Thank you, sir. We will put pen to paper and come up with some proposals  
28 for National Highways/LTC to consider in relation to access.

29 MR SMITH: Before we do that, they may completely disagree.

30 MR ZWART: I have no doubt they will prefer to do compensation because that's their  
31 refrain and we'd welcome a different approach, but we'll see. Sir, turning to  
32 two other aspects now if I may – three other aspects. One is irrigation. If I could  
33 just ask Mr Mee to clarify. At the moment you'll have seen from the sustainable  
34 waters solutions reports that there is a dispute about whether the data

1 'Underlying water levels' is accurate or not. And the recording device for the  
2 data is apparently some kind of recording pad onto which water comes or passes.  
3 And that's the origin, it seems, of National Highways/LTC's reticence about  
4 agreeing some form of scheme, because they're not sure about the water  
5 quantity. But Mr Mee, can you just clarify what physical impediments the data  
6 collection is facing?

7 MR MEE: We've long since disputed the measurement. It was something that was  
8 – what we wanted, a weir system that accurately measured it, was not available  
9 so they put a pad system in the culvert after a lot of discussion. But frequently  
10 when you go down there it is covered in leaves. And so it's very hard, in my  
11 opinion it's very hard for it to get any sort of degree of accuracy.

12 MR ZWART: So the pad's covered in leaves?

13 MR MEE: It's – yes. I take pictures of it when I see it, yes.

14 MR ZWART: Right. So it's not been recording as fully as it perhaps might be.

15 MR MEE: I certainly don't believe it has been. I think there's a lot more water goes  
16 down there than they're recording on their measurement.

17 MR ZWART: Right. So there's a will, it seems, for National Highways/LTC, because  
18 they are putting in some measuring device for data, to ascertain the irrigation  
19 situation.

20 MR MEE: Mm-hmm.

21 MR ZWART: The current difficulty is that they are reticent because their data is coming  
22 in lower, which we now know why, we say. And the solution, we say, for  
23 irrigation longer term is set out in the water sustainable solutions figures we  
24 referred to in our updated submissions.

25 MR SMITH: Which does take me to another way into this. And that is that one can  
26 measure inputs, namely water flowing over a measuring device. But one can  
27 also observe outcomes, which are crops grown on land that require irrigation. I  
28 guess a challenge to both yourselves and the applicant would be that if you've  
29 got one data source that's hard to reconcile with the availability of a particular  
30 input volume of water, that maybe the way to solve the problem is to look at  
31 what's actually being grown on the land and form a view about the capability of  
32 the land without that irrigation.

33 MR ZWART: Yes. To put it another way, a crop growing would tell you whether it's  
34 irrigated to a relevant level.

1 MR SMITH: Absolutely.

2 MR ZWART: Yeah. And what's the current crop being grown?

3 MR MEE: This summer it's been principally coriander, a bit of chervil – sorry.

4 MR ZWART: Yes, thank you.

5 MR MEE: Principally coriander this year. It was a bit of chervil and dill, and we have  
6 now got some over-wintered parsley in the fields and harvesting some – still  
7 harvesting coriander. And next year it will probably be baby leaf spinach.

8 MR ZWART: And those are all salad crops and require quite a high level of water.

9 MR MEE: That's correct, yes.

10 MR ZWART: So that makes your point, sir.

11 MR MEE: Yeah.

12 MR ZWART: In relation, therefore, to some form of irrigation scheme, it may be that  
13 one of the control documents that you indicate could be the framework for that,  
14 but otherwise you would submit that your requirement requiring a scheme in  
15 line with the figure that we looked at be provided, because ultimately, as you're  
16 required to take into account the economic and other effects, the best and most  
17 versatile, you would submit that the word 'best' means rather than a project  
18 diminishing, 1 down to 3a, it'd actually go up and maintain, if it can, grade 1 at  
19 grade 1, which it can with a scheme, which we've shown can be done.

20 Sir, the next aspect is engagement. And you'll remember that as with Mr  
21 Padfield, that it's very important to remember that just because a public  
22 authority, or an authority, or an undertaker, decides to embark on compulsory  
23 acquisition doesn't mean that it follows that there's a compelling case of public  
24 interest or that compulsory purchase, compulsory acquisition is a remedy of last  
25 resort, as opposed to simply being a useful weapon to secure the outcome of a  
26 scheme. Mr Mee, there's been some engagement I think with National  
27 Highways/LTC, as I understand it. In relation to proposals that relate to  
28 purchase of the farm, have you had any form of discussion with someone called  
29 Sarah Collins?

30 MR MEE: Very little. No.

31 MR ZWART: Have you had meetings with her where she's suggested buying the farm  
32 at its compensation value?

1 MR MEE: She, on one occasion, definitely said, 'Would you consider selling the whole  
2 farm?' but that discussion is about another matter and issue. So not really any  
3 in-depth discussions, no.

4 MR ZWART: Nothing at all?

5 MR MEE: Nothing at all.

6 MR ZWART: And then was there discussion about some form of advance payment to  
7 purchase other land with?

8 MR MEE: Not with Sarah Collins. This was with another person. There was a  
9 discussion with another farm that was up for sale, that we might purchase it and  
10 they would compensate us accordingly for that land. In my opinion that land  
11 was not the same quality, was low quality. They claimed it was equivalent to  
12 grade one, but it has no irrigation licence or anything.

13 And I think it's – that particular parcel of land has been virtually sold a  
14 couple of time, but the buyers have reneged on it purely on the grounds that  
15 there's no irrigation available on that land. And so that parcel of land remains  
16 unsold as far as I'm aware at the moment.

17 MR ZWART: Was that situation also relating to using so-called advance payments  
18 purchase that with?

19 MR MEE: They would assist us in buying it, yes.

20 MR ZWART: Thank you. And then lastly, in relation to the part of your land which is  
21 described as 'replacement land', has National Highways/LTC ever made you an  
22 open offer or a proposal to purchase that land from you on terms?

23 MR MEE: No.

24 MR ZWART: No. Just bear with me. Thank you very much, sir.

25 MR SMITH: Thank you. One or two questions on matters of detail before I hand this  
26 over to Mr Tait. The water measuring device, there's clearly an outstanding  
27 disagreement between yourselves, Mr Mee, and the applicant about the accuracy  
28 of that. Can I just understand from your perspective, what is it doing? It's sitting  
29 in the culvert; is that correct?

30 MR MEE: It is sitting in the bottom of the culvert, and it comes up probably a third,  
31 halfway up outside the culvert.

32 MR SMITH: And what's it measuring? Is it measuring the volume of water flow through  
33 the culvert or the weight of the water passing above it? What's it actually  
34 measuring?

1 MR MEE: It measures the flow over it.

2 MR SMITH: Okay, right, and your proposition being that there are times when it gets  
3 covered with material and there is flow moving over the pad which is not being  
4 measured because there is material resting on the pad.

5 MR MEE: Certainly in my opinion, yes, because some of their measurements have been  
6 virtually zero, if not zero, when I know full well there's water flowing over it all  
7 those times.

8 MR SMITH: Okay, right. To the extent that this turns to a degree on that point in relation  
9 to resolving the irrigation point, the applicant may not have an obvious answer  
10 to the right now, but I'd really appreciate that being picked up and clarified in  
11 resting submissions. Okay, thank you very much. Mr Tait.

12 MR TAIT: Thank you, sir. Andrew Tait for the applicant. Just by way of preface, I  
13 believe on a couple of occasions it's suggested that letting a contract for the  
14 project is not lawful and I didn't quite follow that point. I'd be very grateful if  
15 Mr – it doesn't really bear on the submissions I'm going to make, but if  
16 Mr Zwart could let us know what he's got in mind, it'd be very helpful to know.

17 MR SMITH: Indeed. No, that would be helpful because I think to the degree that some  
18 of the solution on points of detail may rest in the hands of a contractor, if it's  
19 being put that a contractor cannot be appointed at this stage in the process, and  
20 that's their firm view, then we need to know that.

21 MR ZWART: Sir, just for summary if I could just spell out the position.

22 MR SMITH: Yeah.

23 MR ZWART: We've included, for both Mr Padfield and Mr Mee, National Highways'  
24 own project handbook framework, which has got within it specified staged  
25 gateways, which have mandatory provisions which tell National Highways they  
26 can't proceed to the next stage –

27 MR SMITH: Until.

28 MR ZWART: – until. And they're called 'mandatory'.

29 MR SMITH: So you've relied on those.

30 MR ZWART: So we rely on that to say it's in breach of their own handbook if they are,  
31 hence, we'd be surprised if they have, because there's even a provision at stage  
32 5 – I think it's figure 7, figure 8 of the handbook you would be familiar with, as  
33 should National Highways, that they're not allowed under their own framework,  
34 their own governance, to give a notice to proceed.

1 MR SMITH: Okay.

2 MR ZWART: There's even reference in the table to 'award the contract' in stage 5.  
3 We're at stage 4.

4 MR SMITH: Yeah. Mr Tait, is that understood?

5 MR TAIT: That's understood. We'll respond to it plainly.

6 MR SMITH: Okay.

7 MR TAIT: Thank you, sir. The first preliminary point relates to assessment of impact  
8 on agricultural holdings. So very briefly on that, chapter 13, which is at 151,  
9 does look at loss, and it also looks at severance and accessibility issues in  
10 relation to the residual areas that are – the land that is retained. And it looks at  
11 and assesses change, which incorporates access issues. Sir, that's just a  
12 preliminary point.

13 A second preliminary point is that there is a side legal agreement, which  
14 has been drafted between the Mee family and the applicant to give some  
15 additional comfort on a number of the – in fact, on all of the points that have  
16 been mentioned this afternoon. So I'll come back to that briefly in looking at  
17 the stage which that has reached.

18 MR SMITH: Indeed. Just let me ask right now, presumably unexecuted at present, not  
19 formalised.

20 MR TAIT: Not formalised, but it is at a reasonably advanced stage, by my book. I'll  
21 come back to that in due course.

22 In relation to the questions relating to irrigation, there are, in the REAC,  
23 which of course then transfers into the DCO through requirement 4, firm  
24 commitments, particularly RDWE-016 on page 94 of REP6-039, which requires  
25 a new supply route across the project road to be provided unless otherwise  
26 agreed with the landowner, with the achievement criterion of continued  
27 provision of irrigation water at this location, carried through via requirement  
28 4 into the EMP2.

29 And there's an associated REAC commitment, again which would find its  
30 way into EMP2 through requirement 4, which relates to measures to reduce  
31 ground water drawdown, and the achievement criterion there is no detriment to  
32 ground water supply in areas identified.

1 MR SMITH: If I can just be very, very clear here and that is to ask you the question:  
2 those are not 'generic commitments'; they are specific commitments that bind  
3 in relation to the particular circumstances of Mr Mee.

4 MR TAIT: Yes. They are very specific. The first relates to the existing ditch network,  
5 water main network, in North Ockendon and it refers expressly to where that is  
6 identified. And the second is very specific in its locations including Hall Farm,  
7 Hobbs Hole, Thames Chase Forest and St Cedd's Holy Well.

8 MR SMITH: So to that degree they extend outside land directly controlled by Mr Mee  
9 but relate to the issues that he is concerned by?

10 MR TAIT: They do. They do, sir.

11 MR SMITH: Right.

12 MR TAIT: And the draft agreement is intended to give further comfort in relation to  
13 those points, and the irrigation exercises that have been undertaken up to now is  
14 looking at the best solution to achieve that. But the principle of the outcome is  
15 firmly locked into the DCO via the route I've mentioned. That's the position in  
16 relation to irrigation.

17 In relation to access, there is, in the SACR, which is tied into the DCO  
18 again, directly through article 61, and the wording of article 61 is being – has  
19 been strengthened in deadline 7 so that it is no longer 'Recent endeavours, but a  
20 blank requirement.

21 And there is SACR-005 on page 9 of the REP6-051 version, which relates  
22 to farm access during construction. That's project-wide, but it applies to Mr  
23 Mee's fields. 'Where access to a significant area of the landowner's farmland  
24 is severed by a construction works, contractor should ensure that farmer is  
25 provided with controlled access to their retained land, and the contractor shall  
26 discuss with the landowner their reasonable access requirements and use  
27 reasonable endeavours to agree such access'.

28 In addition, there is the oTMP-C, if I can call it that, which has the traffic  
29 management forum and the measures, with the engagement that that involves in  
30 looking at construction. But again, this is a matter that is in the side agreement  
31 and is intended to – and thus is addressed additionally.

32 MR SMITH: In relation to the content of that side agreement, at risk of whipping away  
33 blankets covering things that we wouldn't normally see, but just to give me a  
34 sense of what that's doing, is it essentially making more particular the type of

1 delivery that those overarching commitments in the SACR and the REAC call  
2 for so that Mr Mee has a concrete assurance that they have a particular meaning  
3 on his land in relation to matters such as timing and accesses and –

4 MR TAIT: We need to be careful about descending too much into the detail only because  
5 of its status.

6 MR SMITH: Yes. I'm just trying to find out how much comfort it could usefully give  
7 him. That's all I need to know at this stage.

8 MR TAIT: It's certainly intended to give the comfort that he's seeking – that they are  
9 seeking. I'm not sure I can say more about it without descending into the  
10 detailed discussions which are currently being – are underway.

11 MR SMITH: Okay.

12 MR TAIT: But I ought to mention also, the access to the farm shop I believe was  
13 specifically mentioned.

14 MR SMITH: Yeah.

15 MR TAIT: There is a SACR-007, which deals with the limitation to 10 months, but also  
16 SACR-005, which – yes, which I mentioned earlier. So that's the same point.  
17 And the oTMP-C at plate 413 identifies one illustrative diversion route during  
18 that 10-month period, but there are others. That's plate 413 on page 67 of the  
19 oTMP-C in the D6 version. So there are – there has been expressed  
20 consideration to diversion, potential diversion routes. That is just one of them.

21 So far as engagement is concerned, it's annex (e) of the statement of  
22 reasons, which is in REP3-084. I'll ask Mr Saville briefly to deal with that.

23 But there have been a very large number of meetings over the past four to  
24 five years. It's in tiny print but it extends over three pages, so I haven't added  
25 them up, but there is quite a lot of engagement. Perhaps Mr Saville, who's on  
26 my left, who's a senior surveyor for the land and property team can give a  
27 flavour of that.

28 MR SAVILLE: Thank you. Richard Saville for the applicant. Over the last four years  
29 whilst I've been employed on the project, we have had regular contact with Mr  
30 Mee, predominantly with the agent for Mr Mee, Peter Cole, during that time. I  
31 would say it was probably on at least a weekly basis. It would vary from week  
32 to week and from month to month, but that's been very regular.

33 And just more recently, for example, we have had a number of meetings  
34 on the irrigation/water resources issue, which we're very aware of, we're very



1 conscious of, and we have had – the last meeting on that was on 7 November in  
2 person at Pilgrim’s Lane, which is the site office for the Lower Thames  
3 Crossing. And we have another meeting on that pencilled in for 30 November  
4 as an example.

5 MR SMITH: Okay. Can I just ask you in particular terms whether you recognise the  
6 concern that Mr Mee has surfaced about the accuracy of the measurement of  
7 water volumes for irrigation purposes passing through the site?

8 MR SAVILLE: I’m not a technical hydrologist or hydrogeologist. I was aware that there  
9 was a question mark over them. I will go back to my team, and I will ask them  
10 for that. It was – I would say that the commitment from Lower Thames Crossing  
11 is that we will provide a solution that’s equivalent to what’s there at the moment.

12 MR SMITH: And in terms of reaching equivalence – I guess what I’m trying to avoid  
13 accidentally doing here is ending up in a world where a monitoring device is not  
14 working as expected, for example, and you end up recommending a solution  
15 that, in volumetric terms, wouldn’t enable the reinstatement of the existing  
16 cropping, or equivalent cropping, to that which Mr Mee is currently achieving,  
17 and that if you went on site wearing an agronomist’s hat rather than a water  
18 engineer’s hat you’d look at the crop and you’d say, ‘Well that must have been  
19 irrigated so we know that a certain amount of water is passing onto that site’.

20 MR SAVILLE: Yeah. It’s an ongoing discussion. It’s an ongoing debate that we’re  
21 having. It’s a quite a technical issue.

22 MR SMITH: Yeah.

23 MR SAVILLE: It’s not easily resolved.

24 MR SMITH: No, I’m –

25 MR SAVILLE: We’ve been tackling it with Mr Mee, with his agent and consultants, for  
26 several years. We will perhaps not reach a conclusion by the end of examination  
27 with absolute detail of the design. But the commitment will be there to continue  
28 that after the end of examination.

29 MR SMITH: Right. Yes. No, thank you. I just thought it was important that we avoid  
30 the possibility of essentially some sort of error in the system –

31 MR SAVILLE: Okay.

32 MR SMITH: – becoming perpetuated in whatever provision is made in terms of  
33 irrigation, and that if you got maybe more than one way of looking at it – you’re  
34 looking at water volumes but you’re also looking at crop yields – then by

1 definition, if one of those inputs in data terms is wrong, the other one will  
2 illustrate the fact that it's wrong.

3 MR SAVILLE: Yeah. I will certainly take that back to our hydrogeology teams. We  
4 can discuss that in readiness for our next meeting on 30 November.

5 MS LAVER: Mr Smith, can I just come in there, please?

6 MR SMITH: Yes, by all means.

7 MS LAVER: You've not got my eyes so I'm sorry for trying to interrupt. I have the  
8 same concerns but there was a reference from Mr Tait about a REAC  
9 commitment. I've written it down as 'RDWE-016' but I might have written that  
10 down wrong, which was the commitment to re-provide water where it is  
11 disconnected. My concern is what Mr Smith is saying, that if you're getting no  
12 measurement, or insufficient measurement of water, that commitment is  
13 meaningless to Mr Mee because there won't be a commitment to reconnect his  
14 water if the readings are wrong.

15 MR SAVILLE: The approach that we've taken with the monitoring equipment is  
16 something that was presented by and proposed by Lower Thames Crossing. We  
17 think it was agreed by Mr Mee's hydrogeology consultant or hydrologist at the  
18 time. If that is proven not to be accurate then that's certainly something we can  
19 take away. And we will take that away now and we will look at it. I'll look at  
20 it with the hydrogeology team and come with you with a response by D8.

21 MS LAVER: Thank you.

22 MR SMITH: Okay, thank you.

23 MR TAIT: That concludes our response.

24 MR SMITH: Thank you very much. Okay, final observations in concluding  
25 submissions.

26 MR ZWART: Thank you, sir. I'll just respond on I think two or three points. One was  
27 in relation to the various provisions relied on by National Highways/LTC. These  
28 come back to the difference between Mr Mee and National Highways, where  
29 National Highways maintains a general approach, not a particular approach.  
30 And the core of the difficulty, analogous to your colleague's point about a  
31 commitment not being a commitment, is that whip hand is given ultimately to  
32 the contractor, not the weather, and for a farm, it's got to be the weather, not the  
33 contractor.

1 MR SMITH: But equally, at risk of labouring this point, if the commitment is  
2 appropriately drafted –

3 MR ZWART: Yes.

4 MR SMITH: – then an acknowledgement of the importance of taking into account  
5 weather-driven factors –

6 MR ZWART: Yes.

7 MR SMITH: – can be set out in it.

8 MR ZWART: Yes, exactly, yes.

9 MR SMITH: There's no in-principle barrier.

10 MR ZWART: Yeah. It's a matter of drafting. In relation to the measure of the water,  
11 you'll recall from the submissions and the evidence that the environmental  
12 agency has granted extraction licences to Mr Mee and the reservoir. If anything,  
13 they predate the situation and give, one would hope – I would anticipate – the  
14 correct volume of water so that the measuring is really, perhaps, by the by.

15 Then there's the practical problem, which, of course it's recognised that if  
16 you're putting a ruddy great piece of concrete in the ground with cuttings, there's  
17 going to be some kind of impediment to the passage of ground water. And then  
18 the challenge is how to organise some form of equivalence and how so.

19 And that's why – we'll trawl the documents again, but it may be that a  
20 requirement provides a scheme for an equivalent volume compared to extraction  
21 licences may be the simplest outcome, and then how it's achieved is a matter for  
22 the engineers to resolve. Thank you, sir.

23 MR SMITH: Thank you very much. Does that bring you to the end of your submissions  
24 on behalf of Mr Mee?

25 MR ZWART: I think so, sir. Can I just take instructions on one matter?

26 MR SMITH: Yes, by all means.

27 MR ZWART: We're done, thank you, sir, for today.

28 MR SMITH: Thank you very much. In which case, ladies and gentlemen, we will now  
29 move on in the agenda, having dealt with the oral submissions that we had to  
30 deal with, but we are going to move onto agenda item 4, 'Next steps'.

31 And I think the first item that I just wanted to really place the applicant on  
32 notice about, rather than ask for any substantive submissions in relation to  
33 matters arising from today, flows from Whitecroft Care Home. And that is,  
34 having heard the submissions that we've heard today, and subject to a whole

1 range of discussions that might also be ongoing between the applicant and the  
2 operator there, what we wanted to just flag is that this time next week, in the  
3 draft development consent order issue-specific hearing, we would like to look at  
4 the possibility of what I can only simply describe as a fallback power. Namely  
5 if there are circumstances in which, by defined thresholds, the care home  
6 becomes inoperable, is there a means of securing its compulsory acquisition is  
7 circumstances where an agreement to acquire fails for some reason?

8 There's a lot in that tin, and I'm not even going to suggest that we remotely  
9 start to unpack it now, but I just thought, in fairness, because it's a DCO matter,  
10 but it's also CA matter, we shouldn't leave this hearing without at least plopping  
11 it on the table. It gives you a week to think about it. It gives us a week to think  
12 about it, and we'll have the conversation in the DCO issue-specific hearing, if  
13 that makes sense, Mr Tait.

14 MR TAIT: Sir, thank you for that advance notice, and I can add that after the apparent  
15 miscommunication this morning, Mr Bedford and I and others have had a  
16 discussion offline, and I hope there won't be any further miscommunication and  
17 so it may be there's another picture we are able to present to you next week.

18 MR SMITH: And we will provide an opportunity in the DCO issue-specific hearing for  
19 that to come forward if that helps, so that we don't go away from these hearings  
20 unclear about how those matters might resolve. Okay.

21 MR TAIT: Sir, I wonder if I could just mention one other matter. On the programme, I  
22 know Malthurst South East Ltd Cobham Services were on it. And I can just  
23 update the panel that there is an agreement that's now been engrossed and sealed.  
24 And they didn't object to the scheme in the first instance, but that is going to  
25 address matters that are relevant to the compulsory acquisition of their property.

26 MR SMITH: And evidence that that has been done will appear at the deadline I presume?

27 MR TAIT: Yes, sir.

28 MR SMITH: Okay, excellent. Right, on that basis, are there any other matters arising  
29 that crop up? In which case, this has been compulsory acquisition hearing  
30 number 5. I will remind everybody, particularly those watching or listening  
31 online, of the following hearings in these examinations. Issue-specific hearing  
32 number 11 on environmental matters will be held here tomorrow; 12 on social,  
33 economic and land use matters, and on the draft control documents that we've  
34 been making quite a lot of reference to today, will be held here on Thursday.

1           Then on Friday we are conducting an accompanied site inspection to the  
2 Port of Tilbury and DP World London Gateway port on the Essex/Thames  
3 waterfront. Then the following week, issue-specific hearing 13 on Monday  
4 27 November, on traffic and transportation, and then finally the hearing that I  
5 just alluded to, issue-specific hearing 14 on the draft development consent order  
6 on Tuesday 28 November. And that is likely to be the last oral hearing in this  
7 examination.

8           I would like to take this opportunity to thank all of the speakers who have  
9 contributed today for your oral contributions, and we will obviously take  
10 everything that has been said away and consider it with very great care. Because  
11 of the stage in the examination that we are at, all matters now that are somehow  
12 outstanding need to find their way into that bandstand of deadlines, deadline 8  
13 through deadline 9 to the applicant's concluding written submissions at deadline  
14 10.

15           We will monitor circumstances and if we possibility need to issue a  
16 request for information under rule 17 of the examination procedure rules then  
17 we can do so, but I really do emphasise to everybody that that is not a general  
18 power that we all use scattered like confetti. It is a very particular, almost  
19 emergency power that we will use only if we find ourselves struggling for the  
20 information that we need to answer questions. So if everybody can really look  
21 to making the best possible use of the subsequent written deadlines that would  
22 be greatly appreciated.

23           So finally in closing then I will thank the case team and the audio-visual  
24 team for supporting these hearings, and early in the year though it may be, noting  
25 that there are some people in this room who we may not see again before the  
26 closure of the examination, then I would also like to extend the Examining  
27 Authority's best wishes for the festive season. Unless there is anything that  
28 anybody else wants to raise, that, I believe, is that and we will all now say our  
29 goodbyes.

30 MR PRATT: Goodbye everybody. Have a good trip home. See you tomorrow, or at  
31 least some of you tomorrow.

32 MR YOUNG: Good evening, everybody.

33 MR TAYLOR: Yes, good evening, everybody.

34 MS LAVER: Likewise. See you tomorrow.

1 MR SMITH: Indeed, good evening and compulsory acquisition hearing number 5 is now  
2 closed.

3

4

**(Meeting concluded)**