

TRANSCRIPT_ISH1_SESSION1_A47LINKRO ADS_08022022

00:05

Sorry, examining authority currently on mute. So thank you. Apologies, everybody. Good morning. The time is now 10am. And this issue specific hearing on the development consent order, the 57 link Roots project is open. Thank you all for joining us today.

00:24

Please could a member of the case team team confirm that I can now be heard clearly, and that the live streaming and recording started?

00:32

Yeah, I can confirm the live stream and recording started and I can hear you clearly now. Thank you, I'd like you to avoid disrupting the hearing. Please Could everyone keep your microphone muted and camera off until we invite you to speak. Thank you.

00:49

My name is Stuart capital eight. And I'm the Lead member of the panel of examining inspectors appointed by the Secretary of State the application made by highways England for an order granting development consent for the 57 link road project.

01:03

Whilst the application was submitted under the name of highways England, the applicants name it has since changed to national highways.

01:12

Good morning. My name is Ian Dyer, and I'm the other member of the panel.

01:18

As the examining authority, we will hold an examination in this application, and then write your report to the Secretary of State with a recommendation on whether or not consent should be given.

01:32

A case team works alongside us throughout the process. With us today is Edwin mortally, who is the case manager, the case offices, Harpreet car, and Max Baldwin.

01:46

I will now run through some housekeeping matters. And we'll repeat a couple of things that were covered in the arrangements conference, but those that are watching the live stream or the recording.

01:57

As I have already mentioned, this event is being both live streamed and recorded. As explained in our letter at the 16th of December 2021. The recordings will be returned and published.

02:11

These recordings will form a public record and can contain personal information for which the general data protection regulations apply.

02:22

The Premier and spectrum practice is to retain and publish recordings for a period of five years from the Secretary of State's decision on the development consent order. Therefore, if you participate in today's hearing, it is important that you understand that you will be recorded in the event for consent to the retention and publication the digital recording.

02:47

We will only ever ask for information to be placed on the public record that is important and relevant to the planning decision.

02:56

It will only be in the rarest of circumstances that we might ask you to provide personal information and the type that most of us would prefer to keep private or confidential. Therefore, to avoid the need to read it recordings. What I would ask is that you try your best not to add information to the public records that you would wish to keep private or that is confidential.

03:22

Please could anybody joining the team in teams minimise any background noise. This includes switching off or muting your mobile mobile phone if you're not using it to join the hearing.

03:36

Please also remember that the chat function on teams will not be enabled or in use. So please don't try to use that for questions or comments.

03:47

We will only use the raise a hand function in Microsoft teams at specific points in the agenda. When we invite general comments, we will invite people who do not have that feature.

04:02

So who do not have that feature an opportunity to come into the development time.

04:07

If you're watching the live stream, then please be aware that the live stream will be stopped when we adjourn the meeting. So during the hearing, you will need to refresh your browser page to view the restarted hearing.

04:22

We will remind you again when we adjourn.

04:25

You will find it useful to have our letter in the 16th of December 2021. And the agenda that was published on the 31st of January 2020 to attend relevant parts of those documents will be displayed on the screen genes hearings. For those who are watching.

04:44

We will highlight which parts of the documents we are referring telling for anyone that is not watching.

04:51

I will now ascertain policies. So I'll now ask certain parties to introduce themselves. Please unmute your microphone and you

05:00

feel comfortable to switch on your camera when I invite you to speak.

05:05

Please switch them off again, when I move to the next speaker,

05:10

if you are not, if there are a number of people representing the party, then please all join the screen with cameras on together and introduce yourselves, one

05:24

who is representing and will speak for the applicant please.

05:31

Good morning, sir. My name is Mrs. Vicki Fowler, and I'm from Gowling WL G. And I'm the legal representative national highways. And I'm joined by several of the team today, including my colleague, Richard furling. If I asked all of the team to put their cameras on please and introduce themselves individually.

05:55

Thank you, Mrs. Fowler is Mrs. follows just alluded to says I'm returning also from gowning and I'm a legal adviser to the applicant.

06:06

Matthew, you'd like to go next. Yep. Good morning, sir. Matthew Robinson, from Balfour Beatty Atkins, the design project manager on behalf of National Highways the applicant

06:17

is Andy Dawson. Good morning, sir. My name is Sandy Dawson. I work for national highways as a senior project manager on the scheme. And then we have John Barker.

06:28

Good morning, sir.

06:30

The BBA DCO manager.

06:34

And then Chris Kennedy.

06:38

Yeah, morning, oh, Chris Kennedy, senior engineering manager for our suite.

06:43

And then finally, we have Nathan showing.

06:48

Monitor. My name is Nathan Chung. I'm a BB a dc of support.

06:54

Thank you. And that's all the representatives from national highways. Thank you. Thank you. I will now invite the other attendees to introduce themselves. Do you think I'll roll the name of the organisation to true recent representing? Thank you.

07:10

Could I hear first from 10 side Metropolitan District Council?

07:21

Morning Mike Reid, head of major programme from paid by NBC

07:29

also joined by colleagues from our legal services who will introduce themselves.

07:38

Good morning. My name is Esther young. And I'm supposed to like in in house parties. I much prefer counsel Herman Harris elec Websense.

07:53

Thank you could I hear from darbishire County Council?

08:00

Good morning, sir. I'm Steve puffery. I'm a team leader in planning policy and monitoring at Derby County Council. I'm joined by my colleague this morning, Jeff Blissett, who introduced himself now.

08:12

Oh, good morning, sir. My name is Jeff Blissett. I'm a transport planner for Derbyshire County Council. Thank you.

08:20

Can I hear from high peak Borough Council?

08:28

Good morning. My name is Mark James. I'm a principal planning officer and I'm joined by Dan McCrory.

08:34

Good morning sir. My name is Dan McLaury. I'm the senior pollution officer for hyper account.

08:40

Okay.

08:45

Can I hear from share first our journey to school

08:52

Hello, I'm Carol Hallam and represent a volunteer community group called scheffers Fidelity school

09:09

apologies have been received from CPR repeat district consult your objects John Bower and Anthony Ray. Thank you all for attending today

09:22

I think is Mr. Bauer with Mr. Warner Bala with us today please My apologies.

09:29

Mr. Warner Bella

09:40

so sorry. I wonder if they have for this afternoon session, sir for the compulsory acquisition hearing. I think Mr. Boehner those attending this morning as well.

09:53

He had a point in relation to Article Five one

09:58

could the case to clarify mr.

10:00

are joined to the arrangements conference, please. Yeah, Mr. Bhalla is present. He's just turned this camera. Thank.

10:08

Good morning. Mr. Bell is on moments.

10:12

You may need to unmute yourself, Mr. Bauer.

10:16

You might find maybe muted Mr. Barr.

10:31

Let me still can't hear you.

10:38

I may suggest, Mr. Bow if you'd like to rejoin the hearing that may solve the issue.

10:46

Thank you.

10:49

Could the kit could the case team possibly call Mr. Bower

10:54

to help him with connecting using the microphone if possible?

11:01

Yeah, I'll do that enough. Thank you. Thank you. Please bear with us. Mr. Barr. Thank you

11:13

like to carry on, if we're if

11:17

we'll come back. We'll come back and introduce Mr. Barra when he's able to join us.

11:32

Right, right, thank you all for attending today. apologies to Mr. Barr. Hopefully we can enable you to participate properly and very soon I'm proposing to carry on.

11:44

The purpose of this issue specific hearing today is for the examining authority to examine the draft development consent order, invite parties to make or respect representations about it. This hearing is held in accordance with section 51 of the Planning Act 2008 and is subject to our powers of control or its conduct.

12:05

The development consent order or DCO. As will generally referred to it is the order which the Secretary of State would make if they decide to grant consent for the application. It is a critical document. If consent is given the DCO will govern how the development takes place and will be controlled.

12:26

The draft DCO is currently the applicants document and the version that we'll be referring to during this hearing is the version submitted at deadline three. This was published to our website and the link is provided in the agenda.

12:39

The timetable provides for the applicant to submit further update that deadline five. And its final version that deadline six may examine the applicants final version in appearing during one of the dates reserved in early April compared that is likely to be the case.

12:56

We may issue a schedule of changes to the applicant strategies here for comment before finalising the version that we will send to the Secretary of State with our recommendation report. After the examination has concluded.

13:09

We structured the hearing today. So that you may explain certain points when we invite you to speak at the relevant point on the agenda. Please keep your microphone muted and camera off until we invite you to speak each time that you speak please give your name and if appropriate organisation for the full record. Let me just break the Mr. Bar. Good morning.

13:30

Good morning. We can now be Thank you would you like to introduce yourself, please? Yes, all of our current house farm holding with the road will be coming through a big part of our farm. Thank you Mr. Bowers, and thanks for bearing with us if you would switch off your camera and microphone now. And then hopefully you can switch them back on when we invite you to speak later. Thank you.

13:52

So please direct all comments and questions through us rather than directly to any third party, any other party.

14:02

We will come to the point in the agenda that was published on the 31st of January 2022. And please could remember the case to now share a copy of the agenda on the screen

14:19

swipe left to come through.

14:23

If could you possibly zoom in a little to that.

14:28

Thank you. And if you can, if you could scroll down please to item one.

14:36

So thank you. So we're just completing item one now which is the introductions and housekeeping etc.

14:43

And we will progressively work through the agenda and new logic given there.

14:52

One final point into this first agenda item for everyone's comfort. We'll be taking at least one break

15:00

Normally, any session will be no more than an hour to an hour and a half long, the session, the sessions can be quite taxing for everybody. And it is good practice to have breaks.

15:12

The break that we take will be relatively short, probably 10 or 15 minutes, we'll shortly go into the main part of the hearing, which will start at item two.

15:22

We're aiming to cover all items by 1pm. And then to have lunch at that time, which will allow an hour for lunch ahead of the arrangements conference for this afternoon as separate hearing. However, all that is subject to change depending on progress. And we may need to move some items to Friday.

15:44

We'll give you updates on the timescale. So as we go along this morning,

15:48

we are likely for expediency to ask for responses to some of the questions from the agenda to be provided in writing, rather than during the hearing.

15:59

As I say that is likely to be the case because of the time timescales that we're looking to follow and

16:06

a request to the applicant, please. And I think this appears at the end of the agenda with the applicant be happy to provide a written summary of all its responses today. For deadline for on Wednesday, the 16th of February, please.

16:28

The applicant respond to that, please. So he said Mrs. Vicki Fowler on behalf of the applicant? Yes, of course. Thank you. Are there any questions about the agenda or about how this hearing will be conducted today, please?

16:45

Okay, thank you. So let's move on to agenda item two.

16:52

We do have

16:54

some quite detailed questions that we'll be focusing on.

16:58

Now, as we consider it necessary, we will be focused on those questions. And we will invite responses to those by the named parties in the agenda, which are involved.

17:11

Time permitting, we will take further contributions. And we may have followed follow on questions, of course, and the applicant will generally be given an opportunity to reply to responses made by others.

17:25

Again, just to remind you, please to keep your microphone muted camera off until we vote to speak each time that we invite you to speak. Please give your name and on whose behalf you are speaking so that that is captured by the record. Thank you. So item to

17:45

the overall structure of the DCO. So as noted in the agenda, please could the applicant take up to 10 minutes just to provide to provide an overview of its overall approach for the DCO a brief description of its structure and schedules, brief explanation of why sections required. And if you would just set out to build the explanatory memorandum over to you.

18:12

This is Mrs. Vicki Fowler on behalf of the applicant national highways and so I will be leading on this particular item. In terms of the overall approach the core basis of the applicants approach has of course been precedent. The applicant has ensured the draft DCO is based on well established precedent largely other Highways Agency and national highways D CEOs that have been made

18:40

where the substance of a provision is accepted as being necessary. The correct approach is for the promoter to adopt relevant and recent precedents, with the focus then being on justifying drafting changes, which sets us apart from those precedents. And that approach is consistent with the advice in advice note 15 drafting a development consent order.

19:06

And there's good public policy reasons for falling for following precedents. So in particular, in relation to the consenting process. The applicant is a public body seeking to make best use of resources. And there is a public benefits in reliance on precedent since it allows the promoter to promote GCOS without the need to revisit particular provisions.

19:33

So you'll also be aware that the applicant is bringing forward a series of DCO schemes as part of the road investment strategy raise and has worked towards a standardised set of provisions in sdcos. And again, that's basically ensuring good good practice. Having divergent approaches in each DCO would potentially impose significant public cost and time to deliver very similar schemes.

20:03

I think also, Precedent is important in that, obviously, where DC orders have been implemented, then national highways has the benefit of seeing how those provisions have worked in practice.

20:18

There's also a statutory instrument drafting conventions, which all Statutory Instruments are required to follow. And so those items have also been taken into account. So that completes the summary of the overall approach. And I can now take you through the draft DCO itself, unless there's any questions on that, on that part.

20:40

If I might just make an observation.

20:44

And I understand the importance of precedent, of course, and the point that I made. What I would also say is that each project needs to be considered on its own merits. So it project is unique. So

20:58

on that basis, there may need to be provisions that are particular to this project for those reasons, but still know what what the applicant has heard about Precedent Of course, thank you, sir. So in terms of the order itself, it split into seven parts. And my intention is just is to is to take very high level, just to go through the parts and the provisions. The provisions as you as you're aware, as are known as articles. So part one of the DCO draft DCO is preliminary, which basically sets out the name of the order and we'll also quote, when the order comes into effect, should the draft DCO be made.

21:38

Part Two contains the principal powers. So it's asked core three, that actually grants the development consent by giving national highways the power to construct the authorised developments, and that authorised development is described in sheduled. One through a series of works, work numbers and unlettered works.

22:00

And that grant of development consent is subject to the provisions in the order, and that includes sheduled. Two, which sets out the requirements and those requirements, so you'll be aware of kin to planning conditions on an ordinary planning permission.

22:17

Article four empowers national highways to maintain you authorise developments. And Article Five clarifies who's responsible for maintenance of drainage works.

22:27

Article Article Six deals with if planning permission was granted for any works within the DCO boundary. That article acknowledges that those words could go ahead, even though they may be a breach of the DCO.

22:43

Article Seven is an important

22:47

important provision, and that deals with limits of deviation. So that's the ability of the scheme to move from the centre line

22:57

upwards or downwards. And we've we've got some questions and discussions on that today.

23:03

Articulate prescribes that the benefit of the orders for national highways safe where the order will self evidently benefit others. So in so for example, statutory undertakers, and then Article Nine permits national highways to transfer the benefit of the order,

23:20

in certain circumstances, and, and with with the Secretary of State's consent in certain circumstances.

23:28

Part three relates to street powers, and these are standard provisions that prescribe how the order interacts with the street regime. So streetworks in article 10, and the new roads and streetworks at in article 11.

23:44

Article 12 deals with the construction and maintenance of new altered or diverted streets and make specific provisions regarding maintenance.

23:53

Article 13 deals with the classification of roads so so water to be special roads, trunk, roads,

24:00

and local roads. And that's some reference to tables in sheduled. Three

24:06

article 14 allows for temporary alteration, diversion, and restriction of streets and article 15 allows for highway streets and private means of access to be stopped up. And that cross refers to schedule for parts one and two.

24:22

Article Six allows work work accesses to public highways to be created.

24:27

Article 17 is clear ways so that makes it unlawful for road users to stop on the existing M 67 roundabout approach or the proposed a 5070 dual carriageway save in certain circumstances.

24:42

Article A team deals with gifts powers to make traffic regulation orders and then we come on to part four and that contains supplementary provisions, articles 1921 in relations discharge of water, right to undertake works to protect buildings

25:00

The power to enter land for surveying and investigate started investigating.

25:06

Part Five is the powers of compulsory acquisition and possession. And the core provision is article 22 Which authorises the acquisition of land by compulsory purchase. Article 23 does with the mineral code. And article four sets the time limits for the use of compulsory purchase powers, which is five years standard five year period.

25:28

And article 25 allows for rights and land to be acquired, as well as the land itself and for new rights to be created, as well as rights distinguished and that article links to shedule five in terms of new rights.

25:43

Article 27 to 29 contain the standard provisions relating to the operation of various pieces of compulsory purchase legislation.

25:53

Article 30 allows national highways to acquire land below the surface or above the surface

26:01

rather than having to acquire all of the land itself.

26:05

Article 31 deals with

26:08

allows national highways to appropriate and use the land notwithstanding that there may be rights or easements in it.

26:18

Article 32 is a core provision and that links to shedule seven, and that deals with the land which national highways are allowed to occupy temporarily while the works are carried out and also for the maintenance period.

26:36

Article 33

26:39

permits national highways to take temporary position possession of land again for the purpose of maintaining

26:45

article 34 provides national highways be clear statutory authority to acquire rights over land owned by statutory undertakers. And article 35 governs what happens to statutory undertakers operators under streets that are stopped up. And article 26 deals with the recovery of costs should a new service have to be established.

27:07

parts Part Six is operations with

27:12

article 37, as does article 39, dealing with the felling and loping of trees. And then part seven is Miscellaneous in general.

27:23

So there's provisions regarding operational land for the purposes of the Town and Country Planning Act. So effectively the works becoming operational land. Article 41 deals with the protection from a statutory nuisance claim.

27:39

Article 42 protection of interests cross refers to schedule, nine and schedule nine sets out protective provisions in refer a number of third parties, including the electricity, gas, water and sewage Undertaker's the drainage authorities and the Environment Agency.

28:01

And then article 43, deals with a certification of plans and other documents so that there's clarity on what exactly has been approved.

28:11

And that links to schedule 10 In terms of those certified documents. And then finally, article 34 deals with service of notices. And article 45 is standard provision. So I've I've touched on the schedule as we've gone through the various articles, so I don't intend to go through those. But effectively, they set out the working detail for the provisions in the main order. So eg what traffic regulation orders are being sought, what roads or private rights of way, or accesses can be stopped up, diverted or altered.

28:45

So Is that sufficient for your purposes?

28:50

And then I think the final point was just the role of the explanatory memorandum. And effectively that explains the purpose and effect of each of those articles.

28:59

Say it's required by the infrastructure planning, applications, prescribed forms and procedure regulations 2009.

29:08

And, importantly, that sets out where

29:13

the way the provisions what precedent has been relied upon, and how the various articles and the drafting relates to the model provisions, etc.

29:23

So that completes the applicants introduction of an item two, unless you have any further questions or observations. So helpful. Thank you.

29:34

And thank you for keeping to the timescale broadly.

29:38

I don't think I have any further questions there. Were asking detailed questions on different aspects as you'll see from the agenda, I think I think it's probably worth just emphasising a little bit that schedule to

include the requirements. And there's some parties may want to think of those as the equivalent of conditions.

29:59

Requirement

30:00

is a term used under the Planning Act 2008. regime? So

30:07

that scenario that I imagine will be a certain amount of interest during these hearings.

30:14

But let's let's move on to rating three, please. So,

30:19

so

30:21

yes, sorry, please. My colleague, Richard sterling will deal with item three. So like if I could ask Richard to join sorry. Thank you. Thank you.

30:31

So we'll that will now take the agenda items, which will move through the different parts of the DCO. Starting, actually with some General Mattis.

30:43

So We're on Item three, and question A so each question is numbered. Just just for clarity, clarity, and before each numbered question is a little bit of context to the question in each case, which is hopefully helpful.

31:00

So item three, a. So firstly, the matter of other consents. So we're talking about the DCO today, but

31:09

there are other consensus agreements that the applicant will be seeking

31:14

for the delivery of the proposed development

31:17

and the applicant, and we're grateful to the applicant tax you provide for providing a consensus and agreements position statement,

31:26

which was provided it deadline, one that we didn't receive an update at deadline three. So I just wondered if the applicant could set out under question A its position in terms of updating that document during the examination, please.

31:41

Thank you, sir. Richard, turning the applicant to absolutely right, that that there wasn't an updated statement submitted to line three, as because there been no material updates, to position statement. And that was recorded in the covering, covering letter that accompanied the deadline, three submissions. But obviously, the applicant has noted the,

32:10

your request, the updated versions are submitted to deadlines, five, seven, and nine. And of course, it's happy to do that as directors. Thank you.

32:22

One of the reasons for asking for the update, obviously, is for us to have comfort on, on the progress being made. And and actually, as we'll come on to later, having a letter of no impediment from Natural England, for example, and require some progress to be made. So I think to emphasise that these are, there are some important matters in there for us to consider.

32:49

So this is not just a procedural update, for the sake of it. There's there's genuine reason behind it.

32:57

That's understood. And

33:00

we'll have data with the data and movement that has been achieved by those deadlines as requested. That's, that's helpful. Thank you. That brings us on to the second question letter of no impediment from Natural England, which I just mentioned.

33:15

Then it's deadline to submission Natural England said that before it could issue such a letter. And it needed to be up again to submit relevant European protected species licencing applications

33:32

in relation to ongoing survey work, additional bat survey work.

33:38

And other matters, I believe so could the applicant please provide an update on its discussions with Natural England and on progress on those specific applications, please?

33:52

Yes.

33:53

So just to clarify, because I left my camera and I wasn't going to introduce myself again on this next item,

33:59

as long as that's okay. Just to confirm to the applicant as agreed that protected species licence applications will be made for bats, which refer to and also for badgers.

34:12

And the updated bat surveys are programmed to be undertaken between May and September this year, because the work has been delayed and due to previous COVID restrictions. And the Badger monitoring survey work is undertaken at regular intervals. And therefore the applicant expects to submit the draft licence applications after the updated that survey results are available

34:41

and then expects to achieve the required letter of no impediment.

34:46

You mentioned that the surveys the back surveys may go into September, which is outside the examination.

34:55

Yes.

34:57

They definitely did provide responses to

35:00

To the first written questions

35:02

in question 12 Eight, which confirmed how it had taken a worst case approach to the surveys and agreed with Natural England that we would update based on previous results and take a worst case scenario. And therefore the mitigation that we're proposing is based on that worst case scenario to give certainty that the proposed development will result in the likely significant effects. And then also in agreement with Natural England, we've included an action as the the one six in the reaction. So we which commits the applicant to pre commencement surveys to ensure that the mitigation as proposed is sufficient, and that there will be no likely significant effects. Okay, thank you for clarifying that. He does he does the carrying out of surveys beyond the examination mean that we shouldn't expect to receive a letter of no impediment from Natural England during the examination? Are the two things.

36:06

That is my understanding that they are Yes. So we may not receive a letter of no impediment from Natural England during the examination. Yes. Thank you.

36:17

I think we need to consider that point, because the letter of no impediment is very useful. So I think in principle, we'd probably like to try and narrow the issues as much as possible. So although although Natural England may not be able to provide an overall Letran, no impediment, I think it'd be helpful to us to have a breakdown of any outstanding areas of concern as best we can, by the end of the examination, if that makes sense. It is my sister's matter, they could be recorded as it isn't ready within establish common ground. Okay. Yeah.

36:56

Thank you.

37:02

Um, I think at this point, I'd like to take as we're into general matters, like to take a point from share first. And sorry, share first my journey to school.

37:18

So

37:20

I think so.

37:24

Carol Holland, miss home, if you your cameras on. Thank you. We'd like like to take just one of your points this this meeting? I believe you're joining meetings tomorrow.

37:37

Yes, yes. So So for the purposes of this meeting, I'd like to take the point about the DCR boundary.

37:45

So as I understand you do have other concerns about the effects of the proposed development in a residence, particular residential area. And you have raised some, some issues around a site visit. So we'd like to take those matters in tomorrow's hearings, because we're having discussions about transport and traffic in one of the sessions tomorrow. So we'd like to deal with those there. What I'd like to do now is take the particular point that you made about the DCO boundary. So I'll let me try and summarise if I may. And if I get it wrong, please correct me. So

38:25

as I understand that, you've, you're suggesting a revision of the DCO boundary, to include denting. And your reason for suggesting that is that you believe some mitigation of different effects of the development in that area are required. And for that mitigation to be carried out, they need to be within the order limits within within the boundary of the development. So without going into the specifics of the

effects or anything, that's that's your overall concern. Have I summarised that correctly? Yes, yes. Yes. Okay. Thank you. So what I'd like to do is just to ask the applicant, to we don't draw the boundary, it is for the applicant to submit a boundary to the development and to submit any mitigation measures that it's proposing. So I just like the applicant, if I may invite the applicant to comment on the point of whether the boundary should include the area that's proposed by share first my journey to school please.

39:30

Mrs. Vicky fell on behalf of the applicant, and so the the DCO boundaries obviously been drawn to match the specific scheme and and the preliminary design.

39:42

So

39:43

effectively as the applicants position is that the DCO boundary is is the correct one. We are aware and again, I think this will be a matter for tomorrow, that various parties have asked for additional mitigation

39:59

and

40:00

To the extent obviously that mitigation is on the highway, then there is scope to agree that mitigation outside of the DCO. So if for example,

40:10

there is a need for a for example of for the crossing, then the highway authorities could implement those

40:19

separately without outside of the DCO.

40:24

So, as I says, but it's probably more a matter that will, we'll pick up tomorrow, but certainly in terms of the boundary, the boundary has been drawn to effectively correlate with a scheme, which has been through preliminary design, and obviously, prior to that the option earring process. So

40:44

as Helen, I'll come back to you in a moment, if I may. So, so what the applicant is, if I can summarise again, that

40:53

currently, powers are not being sought through the DCO, to provide mitigation in those areas.

41:00

But there is the possibility of a side agreement of other powers being

41:09

required by other parties outside the DCO for mitigation in those areas. So there's a possibility of that that could be explored. So

41:20

so that does that does give some scope to introduce mitigation in those areas outside the DCO. If that were the case, obviously, we need to be satisfied. That mitigation is properly secured, and that we've got evidence of that being secured, as and when we come to that is that is that first summary applicant sets. So that's that is a fair, fair summary. And I think also, clearly, we would need to demonstrate that such mitigation is required. And again, I mean, obviously, to the extent, as we sit here today, in terms of the mitigation, the applicant satisfied that it has incorporated the mitigation that is actually required, but if there are other schemes, and there could be post DCO monitoring, which then could lead to the need for further mitigation. But it has said at the moment, we're satisfied with the mitigation we've put forward. But yes, that is a fair summary. Thank you, sir. Okay, so there's Helen, and I don't know if you could follow that. But in principle, although it's the areas you mentioned, are not within the DCO. That doesn't mean that we're not able to identify necessary mitigation though there's we can, we can still explore that. And there can be means to secure that mitigation through her the routes outside the DCO. So as we go through discussions tomorrow, will no doubt go through some of the concerns you have considered the mitigation that you're seeking. And

42:52

just because the degree to which that is necessary or not, we can go through all of that tomorrow. And there'll be a mechanism to secure mitigation, make sure it happens through other agreements. And we would want to see that those other if it is necessary, we'd want to see that those other agreements have been formed, and that it's properly secured. So that to me appears a reasonable way forward, workable way forward, but leave it to you to comment, if you would. No, I agree completely. I welcome the applicant's openness to

43:28

continued engagement with with our community group and the planning Inspectorate as well, so. So thank you.

43:35

And I have to commend the engagement that we've received so far, with with the applicants through this process. So so thank you for being open to further consideration of the items yet. Thank you. And it's always good to hear a good engagement, actually. So thank you. Thank you all for that. So we will have those discussions tomorrow. And

44:01

it'll be very much a case of demonstrating what mitigation has been support required for which reasons and

44:10

to reach a view on whether it is justified or not. To put it very bluntly, so we'll we'll pick up on that tomorrow. Thank you. Thank you. I don't know if you want to stay for the rest of the session.

44:25

Is Helen that's completely up to you. But you're welcome to stay that

44:31

right let's move on to item four.

44:37

So Article Two, one interpretation commenced. This is

44:43

an old favourite for DCO hearings, I'm afraid.

44:47

So

44:49

just to quickly summarise there are series of what have turned pre commencement activities, and those are activities that are excluded from the deck.

45:00

initiative commence. that's provided in the DCO. So there are certain activities,

45:06

which mitigation isn't secured for because that pre commencement.

45:13

This was raised in the first round questions. And if I may summarise the applicant

45:20

said that the pre commencement operations and minor and either de minimis or have minimal potential for adverse effects. So I'd like to, first of all, invite the local authorities to comment, I hope you've had the opportunity to look at

45:37

the activities that are excluded from commencement, and perhaps if we could get that section of the DCO

45:45

shared on the screen so that we can see the list. So it's the definition of commence, which is on

45:57

it's early in the DCR. Would you get that on the screen if possible, please.

46:02

So just keep

46:04

Yeah, more. That's it. Thank you. Oh,

46:09

a little bit, please.

46:11

Open it.

46:13

The Golden shot down a bit.

46:17

Stop. Thank you. I don't know if anyone can remember the golden shot, but maybe I'm a certain vintage. So it's a definition of commenced there. That lesson number of activities

46:32

which, so they include archaeological investigations, etc, etc, in the middle of screen. So I just like to if I may get comments from the local authorities as to whether those activities, they agree that their mind and would be de minimis or have minimal potential for adverse effects, and actually, whether the local authorities consider that any mitigation should be secured for those activities. So I wonder if

47:02

Tameside could start please.

47:10

Problem, time side and VC perspective.

47:15

We do agree that they are considered to be to be to be minor with minimal potential adverse effects. And so we're comfortable with that.

47:27

And and

47:30

just to understand that, there wouldn't be any mitigation secured for those activities by the dcl. And not your hockey team side. We'll be happy with that position. Yep, yep.

47:41

Okay, thank you. And I keep these

47:46

IP for council Sorry.

47:51

Hi, Tom McLaury. They seem pushy. Yeah. Similarly, we wouldn't have any particular issues with big announcements.

48:00

And no mitigation being required in your view. Now, it can be if required, it can be secured through other means anyway, it can be required sorry,

48:09

means

48:11

should we should we require it in terms of

48:15

a control? Section 1616 months.

48:19

Okay. Thank you. And deputy county council. Any comments, please?

48:25

Yes, sir, from the County Council's point of view. So I think most of the

48:30

sort of areas of work that are listed in Article Two definition or charity sort of a temporary nature and sort of a, you know, minimal impact, which I think I'd picked up that they're probably going to be considered in terms of the environment management planning, considered any mitigation work through there, which I think is appropriate.

48:48

People in the County Council's point of view, we particularly know that archaeological investigation and mitigation works are listed as being exempt from the commencement definition.

48:58

We'll see from local impact report that we submitted that, you know, very significant potential article archaeological remains to be present on the sort of the scheme sides. So I think it's important from the County Council's point of view that the archaeological investigations and mitigation works on particularly the need for the written scheme of investigation as secured either through the development consent order and or the environment management plan. And obviously, the county councils are consulted accordingly. I'll say I didn't I didn't notice in that respect that archaeological investigations and a written scheme and investigation are specifically included under requirement 10. And there is a requirement there for consultation with the planning authorities, which is fine. So I think but that's in the context of the world. commencer not pre commencement. So I think that the County Council's point of view is just a sort of an issue of clarity really about the archaeological investigation and the written scheme have been scheme of investigation when that will be submitted to the county council for comments. You know, will it be sort of the creek pre commencement

50:00

schedule, you know, prior to commencement, and have that secured, whether that's through the consent order, or through the environment management plan. Okay, thank you. Thank you. That's helpful. So if we could

50:12

focus on the archaeological matters and the written scheme, that investigation. And

50:22

I think if we can focus on that particular point, so excuse me.

50:28

Excuse me, sorry, if we could focus on that particular point.

50:32

So written scheme of investigation has been mentioned.

50:39

And it does seem that there are some quite important matters around the archaeological and mitigation.

50:50

It would seem sensible for those to be secured, given the potential for those words, pre commencement.

50:57

And I believe those are outside the EMP currently environmental management plan. There's actually a specific article

51:06

that we'll come to later that

51:09

suggests that mitigation, nothing in the DCO would stop the carrying out of those words. We'll come to that later. But could the applicants comment on the specifics of securing the archaeological related mitigation measures, please, and whether it agrees that they're important measures there? And if so, how those might be secured.

51:33

Mrs. Vicki Fowler on behalf of the applicant? And yes, so I think we would acknowledge that the mitigation is not currently secured, because those words are pre commencement.

51:44

And we thought that there would be scope to bring in the archaeological works. And then the ground works into requirement 10,

51:51

which effectively states no part of the authorised development is to commence. And so for that part, a written scheme for the investigation of areas of archaeological interests, etc, has been submitted to and approved in writing by the Secretary of State fall in consultation with the relevant planning authority, and we've discussed other parties being added to that condition. And what I what I would propose is that part would make it clear that part would also include any archaeological works, or Groundworks. Notwithstanding that they're, they're outside the comments definition.

52:25

So I should also add the work on the return scheme, investigation is taking place. And indeed, I think that written schemes actually been agreed. So in terms of the reality of the situation, though, that is being discussed with the relevant authorities. So if I understand correctly, the proposal is to amend requirement tend to include pre commencement activities. Yes, that's correct. So certainly, in terms of the the archaeological works themselves, and to the extent of any groundwork, so for example, the laying of services, etc.

53:02

So So what would the applicant be able to suggest some wording for that in the next update of the DCO? Please? Yes, I will do that.

53:14

And I think there's another article that we'll come to that might need to be amended as well. But let's let's take that as we as we go through.

53:23

darvish, the county council, you content with that principle, subject to the wording?

53:30

Yes, thanks very much for that. So yes, I'm happy with that approach as the applicant is suggested. So yes, I agree. That's, that's fine, sir. Thank you and parts, if there could be discussion offline to agree the wording that might be helpful.

53:46

Okay.

53:48

Thank you. And that was requirements. Was that requirement attended? Reset? Yes.

53:55

Thank you.

53:57

Okay, moving on. So that that is in fact,

54:01

Item four A and B.

54:05

I think we can leave C to one side given the discussion that we've had and given the parties or content overall so I think it appears appropriate to concentrate on the archaeological mitigation and and the other matter which the applicant so the broader approach taken on a 38 directions doesn't seem to be relevant here now.

54:32

So let's move on to question D. This is quite a technical point but the definition of cycle track there's reference to the highway 1980 But the highways up 1980 isn't clear.

54:49

It's isn't claimed that a right away foot is required. It says with or without, with reference to right away and foot so it appears necessary to clarify

55:00

In the DCO, that a right of way on foot will be provided just Is that Is that clear? Does the applicant agree with that point?

55:10

So Richard sailing on behalf of the applicant, say, we understand the point and agree entirely that the definition of cycletrack within the Highways Act, because as you say, right away with or, or without a roadway on foot, and insofar as its cycle track is actually only used in relation to existing facilities, and in fact, it's referred to see later on items A and D and schedule one relating to further works which allow the applicant to do work, if necessary, or required to an existing cycle track. So it's in that context that that cycle track is used.

55:53

There is also the definition you can see on screen there's also a cycleway just underneath it. And that cycleway definition is essentially a broadened Highways Act definition and includes the right of way on the foot and any new rights of way that have been proposed as part of the the order and the scheme are actually identified as cycleways. So. So the African believes point is actually addressed in that way. So, okay, well, we'll look at that more carefully. So

56:28

the way that cycletrack is used within the DCR currently, you don't believe that there's a conflict and unnecessary necessary, it's necessary to clarify that matter. So we'll go back and look at that more closely than you

56:43

think. Right. So Article Two, three.

56:48

So this is rites of the land.

56:52

So again, to summarise

56:57

Article Two, three goes further than Article Two to the applicants explanation that is that that's required in relation to rights granted to statue Undertaker's.

57:09

So, there'll be a similar question later, but

57:14

always keen to try and have precision and to narrow powers to what's necessary.

57:23

It's

57:25

given the explanation about the relevance to statutory undertakers. Are those powers relevant to other parties? If not, can they be narrowed to statutory undertakers

57:40

said and image telling them how about account

57:44

in relation to Article Two, three, it is my those powers competing to comply to the parties, such as a third party and providing something maybe, for example, my private means of access. And it's to allow the benefit of that right to vest in the affected persons land. And so it definitely has considered that the point made by the examining authority, but concern as it is right, that article 23 Just go that step further and allows matters such as I've just explained to be secured, as well as statutory undertakers. And that's done at Article Two, three, a for third parties and be statutory on the takers. Okay. Thank you. Thank you. Article Three, three.

58:39

This goes back to the point about the pre commencement activities.

58:46

So just bear with me.

58:56

Yeah, so I think, given the discussion we had earlier about pre commencement

59:02

and the adjustment to retirement 10 in relation to archaeological mitigation, etc.

59:09

On that basis, would Article Three, three require amendment because that would currently allow archaeological investigations pre commencement without mitigation.

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Could you comment on that, please?

59:28

So should the question is should Article Three, three be required to be amended, so that it's consistent with the amendments being proposed for requirement and

59:40

Vicki Fowler on behalf of the applicant? Yes, yes, we can update that in the next version of the DCO. Yep. Thank you.

1:00:00

Okay.

1:00:03

So point G if we think we therefore covered in jeans and Q,

1:00:10

maintenance of drainage works Article Five lawn, so if I can introduce this

1:00:18

and we'd like to take a submission from Warner Bauer on this point.

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And I'll invite you at the appropriate times to bar if I may.

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So the way that this article would currently work is that

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while the applicant takes temporary possession of land,

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the article establishes that responsibility for the maintenance of drainage would still lie with the landowner. And the concern that we have is

1:00:57

how that how the landowner would have the facility to see that there are drainage issues when it when it's under the applicants temporary possession,

1:01:11

whether they would have the power to carry out maintenance works, and I think

1:01:16

it's helpful to focus on Mr. Bowers land, because that is an area a relatively low lying area. And from our site visit, they do there does seem to be the potential for drainage issues in that area.

1:01:30

So I think

1:01:33

I'd like to invite the applicant to respond first and then come to Mr. bar, and then we can have further discussion on Mr. Bauer's point. So could the applicant comment on that general position? And that general concern about the necessity for the landowner to be able to carry out maintenance works, while the applicant has temporary possession? And does it see the difficulties that are currently established by Article Five, one applicant, please? Thank you, sir. Richard, burning on behalf the applicant.

1:02:09

Thank you for the opportunity to clarify. So the applicants position is that temporary possession doesn't automatically necessarily result in exclusive possession of land. And that will depend on the nature of the works being undertaken on that parcel of land.

1:02:29

However, picking up on the point that the examining authority has raised concern about the applicant understands that where access is restricted for a particular work, then it would make sense that the applicant will be responsible for maintaining drainage in that scenario.

1:02:51

And I know you're going to invite Mr. Bauer to come in, sir. But essentially,

1:02:59

if that was then something needs something authority wanted clarification on, when we can look to add some additional wording at the end of Article Five one, which could clarify that where the applicant is in exclusive possession of land taken temporarily, it would then take on the maintenance responsibilities, which otherwise were where a landowner still has access and the ability to maintain drainage works, that the rule would apply that they would continue to be responsible for those drainage maintenance activities. We go Thank you. Thank you for that. So Mr. Bauer, if I could invite you to,

1:03:45

I believe you wanted to make some comments on around the maintenance of drainage works.

1:03:51

The applicant

1:03:53

appears to be offering to look at what's in the DCO at the moment

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and to move towards a workable solution.

1:04:04

Which would

1:04:07

have them be responsible for

1:04:12

drainage where you wouldn't be able to access the land, because there would be safety concerns or, you know, the other operational matters would mean you couldn't access the land at certain time. So if that was the case, the applicant is proposing to take responsibility for maintaining drainage. It also the applicant also seems to be suggesting that there may be times where they would have possession of it, but they would not have exclusive possession and would allow you to enter the those grounds at the same time that they have possession so that you would be able to carry out drainage does that does that make sense? I've tried to summarise that. And is that helpful?

1:04:58

Comment on whether that's helpful.

1:05:00

Could you raise the points that you wanted to raise? Please? Yes, I mean, from my point of view,

1:05:06

if land is taken temporarily, it's got to be fenced off, so that my livestock cannot access that land and therefore gain access to the main working area and be injured or or cause damage. So I personally don't believe that we can ever have access to a temporary area once it's been taken, it's taken. And that's it from from a safety point of view.

1:05:35

And from a practical point of view, I don't think we can gain access, or would we necessarily want to do from a from a health and safety point of view? I don't think it's practical.

1:05:48

And that's, that's that summary of what I want to say right there. I just do not see it working from a practical point of view.

1:05:57

Thank you, Mr. Barr. I think I share your concern. So I think there's some very practical issues that need to be addressed here. That does that just seem to be a genuine need to address them because of the nature of the ground? Yes, that's correct. That we've seen. So

1:06:15

I suggest this just need to give them some priority. And can I suggest Mr. Bauer, if you're willing to, to have discussions with the applicant following this hearing? Yes, we will, through some practical measures it Yes. With the African light respond to that. Thank you, Mr. Bell with the applicant queue, please.

1:06:37

Thank you, sir. And we've noticed those comments, obviously, by Mr. Bauer and his

1:06:45

team will be

1:06:47

pleased to engage Mr. Bauer in relation to these particular requirements. All I would say, Sir, is in relation to the DCO. Obviously, it applies to temporary land on various parcels of land and done Mr. Bowers as well. And there is already wording in there that does allow for an alternative arrangement to be agreed with the person responsible for that, and in any event. And so I think with the additional clarification that were

1:07:15

loose of sort of, you know, access, recorded the tape,

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then that would clarify the matter, and perhaps is also a point that we can pick up when providing the written response after this hearing. So thank you. I think that's helpful. Thank you. I think that we're we're probably looking for some firm undertaking, not not for it to be optional, to

1:07:40

have an agreement for it to be necessary for these things to be agreed. And I I do wonder, we do have the specific case of Mr. Bauer's interests. I do think there are also general issues here. And that could apply in other areas in terms of the practicalities of maintaining drainage. I can understand why the and there is lots of precedent for this. The current provisions but it just feel uncomfortable that

1:08:13

the practicalities of parties being able to maintain drainage when the applicant has temporary possession. I do genuinely think there's an issue there. That's more general. So I guess, for the applicant to consider, particularly Mr. Bauer's case for that, to be firm undertakings for that particular case, but actually to consider the general wider point as well, if possible, dude.

1:08:37

Thank you may have the point, say and perhaps with when we can provide the additional clarification of word and maybe that will also assist. That's helpful. Thank you very much indeed.

1:08:49

I'm going to suggest we take the limits of deviation first point. So point, if we can take that in writing please.

1:08:58

Respond to that in writing. Is the applicant comfortable with that please?

1:09:03

Vicki fell on behalf of the applicant. Yes, we are. So thank you, okay, if we can take IQ if we can take item J though now. So.

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I think I think hopefully the point is clear. So,

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there are relatively few levels shown on the works plans and obviously there are quite significant changes in level of the carriage way.

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And

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although limited deviation is given,

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and it's not clear what the base point is for that deviation in all cases, because the levels are not currently defined and this will actually also arising term later, tomorrow when we start to consider visual and landscape impact for example, so to what degree are the heights and embankments and other things?

1:10:00

But important features defined. So so the general concern here really about the level of definition of the words in vertical level terms. So it would appear that the applicants reasonably confident about its levels within plus or minus half a metre that we have concerns about, from which point and whether the works are sufficiently defined at the moment and actually, whether rather more support types could be added to the to the work plans. Could the applicant respond to that please, Vicki Fowler on behalf of the applicant, and so my instructions are that spot heights are provided on the engineering drawings and section plans. There's a total of 10 perpendicular cross section locations throughout the scheme and spot levels for the carriageway, verges, earthworks and other features are provided on each at each of those locations. And in addition, there's a further three separate longitudinal sections, each of which provides for carriageway spot levels.

1:11:10

So on average carriageway spot levels are provided at intervals of approximately 180 metres. I think there's 160 sorry, forgive me throughout the scheme. But But so, if that is considered to be insufficient to adequate to find the works, then obviously additional cross sections can be provided. And associated spot levels can be added to the engineering drawings on the section plans that deadline five. Okay, let me let me let me thank you. 160 metre spacing Yeah, suggested by that, could the kadaga County Council comment on that, please?

1:11:48

So we do we do have

1:11:52

quite significant slopes if you'd like to some of the courage ways.

1:11:59

Could dabish What would you normally expect to see?

1:12:06

I'm not sort of coming across this particular issue before I know, the DCO says some not really got much to sort of comment on but I think, you know, in terms of the heights, you know, certainly from consideration of landscape and visual impacts will be quite useful unless Mr. Blissett has got anything more to add? I've probably got nothing more to add on that, sir. Okay, thank you

1:12:26

know, so I've got nothing, nothing much to add to it. So it's perhaps outside of my level of exposure to his expertise.

1:12:36

My only observation I would make as regards

1:12:41

construction and construction impacts is that there's only a very, very short section of the actual highway scheme in the county.

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But of course, obviously, landscape landscape impacts extend beyond the beyond the county and I'm not sure I can really add much of any use to you. Thank you. Okay. Thank you, which would Tim Sykes comment, please?

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10.

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might read them. TNBC? No, nothing, nothing further to add from Template? I'm not, I'm not. Okay. Thank you. Thank you. Thank you.

1:13:25

Could it could I ask We'll reconsider 160 metres, that does seem to be scope for

1:13:32

quite a lot of variation between points 160 metres apart? We're looking at it again. But could the applicant look at it? Again, I think I think

1:13:42

the particular areas of concern are going to be in terms of the range of heights that are possible for cuttings and embankments. And the amount of flexibility that's allowed for those at the moment.

1:13:58

And I know this is going to come up tomorrow. It's It's an issue that's exercising us in particular around visual and landscape impact. So

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if we could if we could all go away and just look at that again, if possible.

1:14:15

If you fell, fell on behalf the applicant? Yes, of course, sir. Okay, thank you. And you understand the points that are making? Yeah, the certainty particularly over embankments, and cuttings, I think.

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Okay, thank you. So let's, let's move on from

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j, i,

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j, and k. In that case, and we'll go into article 10.

1:14:43

So streetworks

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in its deadline to response garbage, the county council referred to its permit scheme,

1:14:54

and requested three months notice of any works

1:15:00

The Advocate respond to that comments and clarifying whether the DCO would currently disapply, Derbyshire County Council under the permit schemes.

1:15:14

Thank you,

1:15:16

Richard earning for the he said I can clarify that works undertaken pursuant to the order are to be exempt from permit schemes. It's article 11, eight, which disciplines part three of the Traffic Management Act

1:15:32

and then operates to disapply, those schemes that the applicant

1:15:39

has, you know, considers that to be reasonable and proportionate to the delivery over a nationally significant infrastructure projects, which are this and consistent with with other orders, it's applied for that. That's the applicants position. So I would look at that for county council. I'd respond to that, please.

1:16:00

Yes, I think that was our understanding as well, actually, through experience of another developed consent order for highway scheme that, you know, the developer centre does sort of negate the County Council's street permit scheme. So I think the County Council's sort of main issue really, you know, ongoing communication and liaison with with the applicants on this. Obviously, you know, we'd like to

be aware of you know, when and where the works are kind of start to any any sort of streets in Dobbs mechanic councils administrative area, just for the sake of management, just in case, you know, we get our application through the permit scheme for any, any similar works in a similar location at the same time. So it's really a question of communication and management. I think so and having that dialogue with the applicant and notification, you know, as early as possible when when works are going to be carried out to one of the, you know, st in dervishes administrative area. Okay, thank you. So so the follow up question there is whether there are sufficient provisions currently, or dabish. County council would W county council like to see additional provisions to ensure that communication and near some coordination happens. So it's

1:17:13

I think that'd be very helpful. So if that could be incorporated somehow in the in the DCO? Specifically? Yeah. Could the applicant respond to that, please?

1:17:25

So yes, educating the applicant.

1:17:29

I think the point they would like to make is that the the applicant has enjoyed good dialogue with Dutchess County Council today. And, of course, Deputy county counsel will be consulted in terms of the working up the design of the actual scheme, you know, we come on to it later in the requirements. So,

1:17:51

leave that dialogue will, you know, is ongoing already, will continue. And I expect to be fully involved in the process.

1:18:03

Vicki Fowler on behalf of the applicants, if I could also add that in terms of the EMP, and that also includes a traffic management plan. And of course, that plan has to be agreed or rather agreed by the Secretary of State in consultation with the relevant authorities, including the highway authorities. So the reality is that none of the works or the plans that sit behind the works

1:18:30

have been developed in a vacuum. As Mr. furling has said, you know, there are the discussions going on. And there will be those discussions as those plans move forward into the various iterations. Do we have an outline? Excuse me for not knowing that? Do we have an outline traffic management plan at the moment?

1:18:50

I will take instruction. So I know, a series of plans have been outlined plans have been submitted.

1:18:58

I wonder if and I take the point about President for DCS as well. So I wonder if there might be way forward here to mention the measures that Darbyshire concerned about and to be more specific about the need for coordination consultation in regard to the permit scheme and parallel works if you like in those areas, whether it might be a way forward to include some specific measures in EMP or the traffic management.

1:19:29

Thank you foul on behalf the applicant, sir, I am instructed that there is a there is a draft TMP so perhaps ourselves and Darbyshire could take that away. So in terms of that plan being reviewed and what's currently in the outline plan, and maybe that's where

1:19:44

references as you suggest, could could be brought out if appropriate.

1:19:50

This dose can't cancel. Does that seem reasonable?

1:19:54

Yes, people feed off kind of counsel. So yes, that seems reasonable to me. So thanks very much for that to the applicant.

1:20:00

Okay, thank you.

1:20:07

Okay, thank you. That's helpful. Articles 13. Nine.

1:20:14

This article allows for, but potentially

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large should I say changes to the roots of public rights of way if agreed with the local authorities?

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It's quite, quite broad powers, essentially. So

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there is a concern here about wanting to be satisfied, if no materially new or worse effects that could come from

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those sorts of change. Could the applicant comment on that, please? Yes, sir. Vicki Fowler on behalf of the applicant, sir.

1:20:54

I mean, effectively, the the draft DCO does does need to be read as a whole and in conjunction with a number of other documents. And so I would refer to requirement three, which requires compliance with the preliminary design.

1:21:10

So effectively, that states that the authorised development must be designed in detail and carried out so that it is compatible with preliminary scheme design, shown on the works plans, and the engineering drawings and section plans, unless otherwise agreed in writing by the Secretary of State fall in consultation with relevant planning authority, and highway authorities.

1:21:32

And the Secretary of State needs to be satisfied that any amendments to the works plans and indeed, engineering drawings and section plans would not give rise to any materially new or materially worse environmental effects. So I would I would argue that it's covered, but I do I do. I do take your point that read in isolation, the provision looks like there's scope for wide change. As I said, I don't think that that sort of sits with the wider DCO and the requirements. But I appreciate it's the Secretary of State in requirement three been satisfied. As to that no materially worse,

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although obviously that week, that is with the other parties consultation. So thank you. Requirements, three, refers to work plans, engineering, engineering drawings and sections, I don't believe the public rights were shown on those

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is I will check so if if not, then then Yes. I agree that it would be appropriate to to change that.

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So the route may that has been suggested as perhaps to update requirements for instead.

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And if it's if those routes to loss on those plans, and then that then I suggest that we do updates, article 39 rather than bringing in the

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the rights of way plans into requirement three. Okay. So there is some standard wording about no materially new or worse effects that could be added to article 39. Yes, yeah.

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Thank you.

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Okay, let's continue. We're heading towards a break shortly hoping to have a break at 1130. And there are several

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articles that deal with a deemed consent.

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And I don't propose to go through the preamble to questions zero, that Oh, rather.

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But in broad terms, the applicant is seeking deemed consent consent to be deemed if there isn't a reply within 28 days. And

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there's a concern here actually, that

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the the fact that they will be deemed consent, although it's perhaps understood now, at the time that applications are made, perhaps

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it's not recorded with the same clarity should we say in the future,

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and

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it will generally appear helpful for

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consent to be considered carefully by the relevant authorities because we would expect useful input to be provided at that stage.

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The applicant appears to be resisting

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the addition of something in the Application for Consent that draws attention to it being deemed if there isn't a reply.

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I mean, said that the applicant hasn't provided a compelling reason why highlighting the guillotine would cause any difficulty it would only appear to be a helpful thing to add.

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So can I ask the

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applicant just to respond to that point first, please, on whether

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some we could we could add that provision of the title suggested to highlight the deemed consent.

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Yes, sir. Vicki Fowler on behalf of the applicant. And so I'll just go back to the obviously the broad proposition that, you know, clearly,

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there is setting out a programme of works. And national highways do need to advance these works without delay, because obviously, in terms of effective use of resources, but also importantly, the scheme is not being developed in a vacuum. So, requirement 12, for example, provides a clear procedure for the discharge of requirements, where any requirement requires details to be submitted to the Secretary of State fall in consultation with another party. And so the applicant has to, in a statement, explain how that consultation has been taken

1:26:02

on board and summarising the cons, you know, the consultation undertaking.

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So the reality is that the local authorities will be appraised of, for example, the transport management plan, which in turn will inform the temporary alteration, diversion prohibition and restriction of use of streets. So, so it's so in terms of this particular article, it's not the first time that the relevant Highway Authority will be aware of what's intended.

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And then if you look at article 18, which deals with traffic regulation, there's prescribed Consultation requirements ahead of seeking that consent.

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So article 18, five requires 12 weeks advance notice.

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So, yes, thank you. Thank you. I think

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the proposition isn't that

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deemed consent is removed at all. So I think I think the prospect of further delay, not quite sure of the relevance of that.

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Yes, it appears that there is a level of engagement that is established by the different requirements that are set out, but

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the clarity that there would be deemed consent after that 28 days, there doesn't seem to be, it feels slightly uncomfortable to me that there's something that could potentially slip through the net, that different parties don't,

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at the time in the future, appreciate that. If they don't respond within the 28 days, it will be deemed, as that consented it that doesn't seem to be necessarily captured anywhere else.

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And with the best in view, there'll be different parties involved at that stage in the discussions.

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So you know, it would appear rather, given the good level of engagement, who would appear rather unfortunate to have a provision here? Which yes, we've had a lovely engagement, it's gone very well and positively. Oh, and by the way, the 28 days is now up and you're deemed to have contented it doesn't seem consistent with the good relations and the tension of the applicant to try to catch the parties out in that way. If I might be very blunt about it.

1:28:24

Could could I before you respond to this to the local authorities to to comment on

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this point, whether it be useful to have the Dean content highlighted in any application? Would would Tameside start with that one place?

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But it might contain five Metropolitan Borough Council?

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Yeah, this is a point we'd like to discuss further with the the applicant. And as we do have some central concerns about

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about this point, as it presently stands. We have a relationship with

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national highways in terms of

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ongoing discussions around statements of common ground, etc. And we would like to continue that discussion on this matter. Okay, thank you. And those accounts cancel.

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Yeah, thank you, sir. I think I think you probably raised the appropriate point in unfamiliar with develop consent orders. You know, we, I think those

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the articles are quite clear about the 28 day guillotine, but let's say further down the line when colleagues in the county council will be consulted on you know, all sort of, you know, dealing with applications for permits, they may not be aware of the 28 day guillotine. So, I think as you suggested, it would be

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quite beneficial, I think, to highlight that in any, any application for a permit scheme to the to the year the County Council. Thank you. And really, thank you and hoping for a council

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Please

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thank you. So yeah, and I echo what Steve said from the county council. It's Mark James IP Borough Council here, sorry.

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Yes, highlighting the D consents, I think would be beneficial. Taking your point that there could be different people that later on in the process who are considering this such making, the implications clear at the time would be would be useful. And also note that the articles in question are primarily matters for the county council rather than the board, but happy to, again be flagged for those issues at a later point. And I don't know if Daniel has any further to add on that particular matter.

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Thank you. Okay. Thank you very much.

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Would the applicant like to respond? I think it seems that it'd be helpful for the applicant to have further discussion with the local authorities to explore though, those concerns.

1:31:04

These provisions are held within four different articles. And it may be there's a slightly different approach for different articles.

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But there does seem to be a merit in further discussion that could the applicant comment, please. Vicki Fowler on behalf the applicant? And yes, yes. So we're very happy to happy to do to do so. Okay, thank you.

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Let's move on Article 15. To be which is question P and the following question cube, please correct responses to those in writing.

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And critically, I'm happy to provide the response in writing.

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Thank you. Thank you. Thank you very much.

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So if I, if I missed

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that point, and I believe according to my note, we skipped over a question relating to article 12. Five, which was a construction the maintenance of new, altered or diverted STS do simply with the examining authority like us to respond in writing to that question?

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Yes, apologies. I did miss that point. Thank you for highlighting that. Let's take that now. Actually, if we could.

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So

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Derbyshire county council have highlighted the need for further discussion about

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requirements for Darby county council to maintain

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highway works.

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Diversion county council Do you want to add to that at all? It seems it seems that there's a process ongoing that more work is needed to effect in Sunrise very crudely, Derbyshire county council do would like to add to that. Yeah, that's, that's absolutely fine. Sir. I think the thing that sort of prompted me to raise this says that

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this relates to question 1.17, that you asked about

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article 12. Five. And you specifically asked about local highway authorities content to maintain the listed works at their expense, in regard of the structure. And I think all I was seeking to do was was was to put down a little marker to say

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that it's not just a structure, it is the coverage where it is ongoing maintenance liabilities. It is in our case, maintenance of the signals, and I'm street lighting. And it's just basically seeking a vehicle for that to be followed up at some future point. I believe. So you you presided over the year 38, DC, or we had similar issues.

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And I believe that result was the result by means of the construction management plan. So

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it's not applied to difference. It's just really something I was wanting to flag up that so. Yes, well, thank you. Thank you. So So there may be some helpful precedent there in terms of what was captured in the environmental management plan on another case, and

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so

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applicants, are you willing to have further discussion with darbishire and perhaps recommend some

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changes to the EMP first iteration.

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Thank you, sir. Just Just to clarify that, I think this is referred to the construction environmental management plan. We'll come on to this point. A little bit later. When we look at requirement for that that'll be exactly the same process here. It's just that there's been a change to the naming structure and is now referred to as the second iteration environmental management plan. And of course, that is the one that Dougherty county council is consulted upon

1:35:00

and therefore it feeds into and we agree. So essentially that that would be the appropriate place to deal with matters of detail that have been referred to. Yeah, I think I think potential given the concerns, it's whether it'd be helpful to have something in the first iteration at this stage, otherwise, we have no visibility over what may or may not be in the second iteration. So it's I think the question is whether there needs to be more detail in the first iteration.

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So that that's a point that we can check.

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What I do now is that I think this is in line with a good communication we've had with damage Canada Council, and the principle has been agreed, and that was recorded in the statement of common ground between the applicant and Dalglish. County council.

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But if you're obviously happy to have further dialogue, and I think

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it would be helpful for us to have received from you the outcome of that discussion.

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If it weren't possible to submit something by the next deadline, deadline for that would be very helpful.

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Or deadline five, but the latest and then we can consider what we need to explore further through second questions, etc.

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May I just all I would say is if the clarification I received is that

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the matter is already in the first iteration emp, we can of course, clarify that by deadline for me rather mindful that deadline for is next Wednesday. If it was a case of then happy to have discussions, and maybe add to it, and it might be more appropriate or to measure the expectation that's more likely to be deadline five. That's understood. Thank you. That's helpful. And thank you for pointing out the skipping of that earlier. So we've taken P and Q in writing, so if we can come to our.

1:37:07

Okay, so

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this is point around temporary possession, the applicant as

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there was a question about the

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another act, and the applicant has pointed out that the act isn't in place within the powers. However, there is

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a concern that we have about the interference with rights around temporary possession.

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And

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whether or not and this is something we're trying to wrestle with at the moment.

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Whether or not the DCO currently secures reasonable timescales for temporary possession, and therefore

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reasonably constrains any human rights.

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Issues. Could the applicant just comment on that? Please?

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Say, Yes, I'm not I'm not aware of the approach that's been suggested has been adopted on any of your other highway D CEOs.

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Obviously, compensation is payable for any loss, whilst national highways is in possession. And national highways would not want to be in possession for any longer than it needs to be. And I would go back to the reality of the situation in terms of national highways delivering a number of these schemes and needing to get on with these words, it's expeditiously get off the land as quickly as possible. So with respect adding timescales would be bringing the provisions relating to temporary possession in the neighbourhood planning app through the back door. And so my concern would be what if what if there is an event such as force majeure event and national highways need longer than we've stipulated in the DCO, then effectively works would have to cease whilst we came back to get an amendment to the DCO, which would take time and further delay and would not be in the public interest. When the neighbourhood planning provisions come into effect, there will be the means to promote a separate CPOE notwithstanding you have a DCO scheme to seek compulsory purchase powers for temporary possession, those provisions and that ability does not currently apply. So if we got it wrong, then effectively, we would we would be back into making an amendment to the DCO which could have significant consequences on timescales.

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Yes, yes.

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I understand the President point again.

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I think we're wrestling with this

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and

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There are genuine concerns, I think about whether timescales should be more explicit because of the human rights issue. So I think I think perhaps, if we go ahead and think of it about this a little bit more, some of the concerns the applicant raises, I'm sure could be dealt with in a provision

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it more time when needed, because of certain circumstances, I'm sure that can be dealt with. But

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let's leave that to one side. For now. I think we may come back to it.

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Thank you. Right, the time is 1140. I'm proposing to take a short break.

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And then that completes the questions we have on the articles. When we come back, we'll go through the schedules. Starting with item five on the agenda, we're really slightly behind the time that we were aiming for that not much. So thank you for the good progress made so far. So will now adjourn, I suggest for 15 minutes and will reconvene nearly 15 minutes if recommence at 1155 Please thank you