

**A66 Dualling - Preliminary hearings: 2nd December 2022
Compulsory Acquisition Hearing No 1 Transcript of Session No 3.**

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Extract from official AI transcript (Corrected verbatim record.)

Relevant Extracts in red.

30:46 **Inspector:** Item 6.3 then. Other matters relating to Crown land and interests. I just want to touch briefly on the Brough Hill Fair rights that we were talking about yesterday. It is MoD land at the moment, so obviously, I assume, presume that that would be included within the envelope, if you like, or the MoD land to be subject to consent. The rights that would be transferred in your proposal to the Fair community, if I can call them that? How would you see that actually happening, because that land is owned by the MO D in the same way as the existing site is owned by the MoD, **there are no book of reference or, or any, any idea of any registration of those rights at all, they are just sort of historical or custom and practice or whatever you might call them?** How briefly, would you intend to give those rights on the MOD Land?

31:49 **Robbie Owen for the applicant.** The mechanism for that, sir, in terms of the transfer of the bundle of rights, whatever they are, from the current Brough Hill Fair site to the proposed replacement site currently owned by the Ministry of Defence, the mechanism is that provision of the DCO we were discussing yesterday Article 36. (Thank you.) That is the mechanism which will effect that transfer.

Inspector: **But how, because the rights, because the rights aren't in existence in a known place, if I can put it like that, how would those rights be transferred and incorporated in the new site? They aren't in the Land Registry. They aren't, don't seem to be in title deeds, they go back the only thing that we were going to be offered really was the Royal Charter, translation of the Royal Charter and the Fair could be anywhere.**

Applicant: Well, sir, they **are mentioned in Title Deeds I mentioned yesterday we**

(Inspector: you did) Applicant: In a 1947 conveyance.

(Inspector : Right, yes) Applicant: it was it was something, some instrument. (Yes) that conveyed the land to the current owners, I think I'm correct in recalling, subject to those rights. So it was a conveyance subject to the rights that related to the to the fair, so...

Inspector: **But they have disappeared from the Land Registry - the office copies?**

33.14 Applicant: **Possibly so. I can't comment.** But I don't think it matters, because, as we said yesterday, we don't believe they are proprietary rights. But in any event, the transfer will be effected by operation of law, because of the DCO so providing.

Inspector: So how will you, and I haven't got the article in front of me at the moment. So the article would then proscribe those rights. **How would you know what those rights were?**

33:41 Applicant: I'm not sure you would. **Inspector:** Right. **So it's simply a transfer of what was written down in 1947?**

Applicant: **Well, possibly not even that.** **Inspector:** Right.

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Applicant: I think the formulation used in the draft Article 36 is **similar**, certainly similar to the wording used in 1947. But the difficulty is that we don't know quite what those rights are, **this DCO process isn't clearly appropriate to make a determination as to what the rights are**. Therefore, the formulation we arrived at was, as we discussed yesterday, what draft Article 36 provides for, and, therefore...and that's not completely without precedent, I think I'm right in saying, in legislation, you do see some provisions like that in legislation, I've come across before. I appreciate it's not entirely black and white, and therefore it's not completely ideal, but we are not sure how otherwise to deal with it. And it's also worth adding, sir, given the context of Crown land here, that discussions with the Ministry of Defence in relation to this issue, have progressed very well Mrs Corso Griffiths can, I'm sure, confirm that if you'd like to, **and the Ministry of Defence is content, I'm instructed, that the proposals for the replacement site are ones that it agrees to**. And therefore, it may be that we produce a separate Crown consent for that piece of land, separate from the land at Warcop for the training centre, which is obviously impacted to an extent as well.

35:27 Inspector: You've said to me one thing that you haven't said before, **I think I haven't seen evidence is the precedent of the transfer of rights like these**. I wonder if that would be useful to have a note on that. I mean, you've referred to it now. It would be unreasonable to ask for those now, because you've just referred to them, or you just refer to them. I'm just wondering if a short note, just to just to explain the current situation in the way that you've explained it at the moment. I know it was the subject of discussions in the hearing yesterday, **but just to bring it together in respect of the rights, that the rights and the land**, if you like, how that mechanism would actually take place and how, I mean, we can... the historical precedent has been provided, in terms of other evidence that we've got before us. It's just this thing about the actual, the transfer, if you like, and what actually happens, **what would be given to the fair, the fair community on the new site in terms of the rights?**

Applicant: I mean, so it's, **we can certainly, I would suggest, add to the note we were discussing, yes, in this respect, excuse me**, and in doing so we can try to give an indication of where that formulation has been used before. But I remind myself, it's no different really, to the standard article included in DCOs you'll be very familiar with about exchange land where the article concerned often refers to the bundle of rights applying to the open space land to be taken for the project concerned. (**Inspector:** any rights?) **Applicant:** transferring to the replacement site, and equally as we don't in article 36, it doesn't define quite what those rights are. So it's an approach that is often taken, **not I concede in relation to this rather unusual type of rights compared with public rights of open space**.

Inspector: Yes right. It would be useful if that that those particular points can be added to the note that was offered yesterday.

Applicant: We can do that, sir. (Thank you.) **And then if you want more than obviously, you can ask for more in written questions**. Thank you.

37:51 Inspector: Right. Okay. I didn't have any other matters relating to Crown land interests, just looking around the room to see if there are any, I don't see any hands raised.

Jump to 1:08:29 (Applicant's summary of proposed post-hearing note.)

"In relation to Brough Hill Fair, we were going to add to yesterday's action, more commentary about the transfer the rights mechanism and precedents for similar such things."