

# TRANSCRIPTION\_A66\_CAH2\_2\_010323

Wed, Mar 01, 2023 5:14PM • 1:11:37

00:53

is now close to 12. And the hearing is resumed. We had just completed Mr. Michael Walton before the break. So Mr. Tim Parsons, please. Sorry, Mr. Owen to respond. Thank you for pointing that out yet Mr. Owens to respond. Right. Okay.

01:11

Thank you. So Rubio in for the applicant. It was very helpful to hear from Mr. Watson on those issues. And as with the previous speaker, Caroline Horn, we would like to respond in detail in our post hearing submission. There were, however, some general points that Mr. Wilson started off by making in terms of maturity of compulsory acquisition, and inadequate consultation. And the whole issue of the project being only designed to an outline level of detail at this stage. We also really accept that proposition is the last resort. And we've been very much proceeding on that on that basis and be working hard to conduct negotiations and engagement with all landowners, as you heard from us before, it might help though, to just reiterate, by way of reminder, what I said at the first compulsory acquisition hearing in December of last year, under item 2.3, in that the project involves more than a single stage process when it comes to compulsory acquisition or indeed, temporary possession. Because as we've heard, currently, the project is that the outline or preliminary design stage contractors have now been appointed to to work on and produce a detailed design. And the way in which the compulsory acquisition process works does reflect that. And the detailed design work is ongoing now, and will be included some, some tight time after a decision on whether the DCR should be approved or not. And at this stage, we quite accept that national highways needs to demonstrate that the extent of land over which compulsory acquisition powers and indeed hampered possession powers are proposed is necessary, justified and proportionate, and there is a compelling case in the public interest for that land, all of that taking into account the stage that the project has reached. And there's there's nothing unusual about that, in terms of how national highways highway projects are progressed. First to an outlined design and the DCO and then to a detailed design later on this project is no no different to that and that has been recognized by the Secretary State on countless occasions as being as being appropriate. But crucially, the terms of the draft developing consent order before you do recognize that in that the DCR imposes a second stage in the power of compulsory acquisition under Articles 19 and 22, which I referred to at the beginning of this hearing, those powers of compulsory acquisition only apply to so much of the auto land that is actually required for the authorized development. So, therefore, required by the detailed design once that is available, and the same is so in relation to temporary possession powers under Article 29. In that land, identify for temporal possession in the DCO in the event that it is made, can only be used if it is actually then required for the construction of the scheme. So there are safeguards that have been included in the developed consent order based on established practice that impose that second stage to to the overall tests that we say are appropriate and would recognize that at the moment, we only have an outline or preliminary design so So I want to just to reiterate that that applies to what Mr. Walton was saying but applies, of course, across the whole

the whole project, in terms of recognizing where we've got to and the detailed design work that is still to be carried out

05:14

in Australia. And yes, those principles, indeed, as far as we can see, to apply Ross, the project. You mentioned that and you've mentioned before that this is not unusual in terms of national highways schemes. And I've taken from that, indeed, other DCO applications. I'm wondering if you can give us anything as to previous examples where this has been used in terms of the fixing, if you like, because it effectively is a fixing of the order limits. And the you've called it elsewhere, the rollback of compulsory acquisition and temporary possession powers, examples of where that has happened previously, and the Secretary of State at the time, found that to be acceptable in terms of a dcl.

06:07

So thank you, we can certainly do that. And we'll do so predominantly in our post hearing note, I mean, just just responding. Now, though, to what you've said, from my own knowledge, I can say immediately, the a 14 improvement scheme in Cambridgeshire, which you will also recall, is a good example of that, I believe, aware that this approach was highlighted to the examining authority and was accepted by the Secretary of State. But that is one of probably a dozen examples we could give you which I think would be a comfort and demonstrates that this approach is tried and tested and has been seen to be acceptable. So we will do that in the post hearing notes. And keep in relation to the matters of detail that Mr. Walton raised. I think, as I say, most of these are best responded to in our post hearing note, because we obviously reflect on what's being said today, some of that is new, and we will take this into account. Dr. Leeming himself also queried the methodology for the ecological ecological mitigation plan for plot that he for that, oh, 102 Dash 01 Dash 34. That is something that we had noted is on the agenda for tomorrow's issue specific hearing number three, under item 3.2. And we were planning to deal with it there on the basis that we will have the technical experts available tomorrow for that purpose. So that will be acceptable.

07:56

If you just give me a moment to bistro in place.

08:16

Australian having

08:16

briefly conferred the the agenda item tomorrow effectively had I think it was 11 lots that we wished to see through. And two of those which we were decided the hearing tomorrow will be ones that we wish to discuss at the hearing. And the remainder provided in a post hearing note, we may well add this on as a third because it's come up as a subject in its own right, if you like. And so therefore, there might be three of those listed plots on the agenda that we would wish to work through in the hearing.

08:48

Thank you. So that's, that's helpful. And we will be ready to deal with first the need for the mitigation plot, how the location of the plot was decided, and how the size of the plot was decided, because these

things have been, as you would think and hope, considered very carefully. And we'd be very happy to obviously take the hearing tomorrow through the detail they're

09:13

showing stowing. Thank you before you before you continue, if you wish to Mr. Walton. That then would be followed through because it exists on our agenda at the moment for tomorrow. Off the top of my head, I can't see I don't know whether you going to be here tomorrow or not. But you will get the opportunity to view the post hearing note. That would be a summary of the oral oral submissions made at the hearing tomorrow. And you can also either attend or view online if you wish. There is just taking instructions of course.

09:54

So we will be in attendance tomorrow. Thank you very much. Thank Keep up the old

10:02

Thank you. Could I just ask Mr. Walton you said the existing 24 inch pipe had an easement of the land is that correct?

10:12

Yes sir is it 24 inch pipe was installed on my title correct me if I'm wrong here, but it was installed at the time that the M six was built and drains the road as it as it stands at the moment and the Department of Transport or Secretary of State for Transport who would be at that time would be granted an easement for that pipe at the time that the CPL for the for the MSX took place.

10:39

Thank you. Can I ask Mr. Wen? Why? As I understand it, this is compulsory acquisition for permanent rights within the drainage outfall, the new drain is outfall. Why? And a similar easement couldn't be done for the new pipe.

11:11

Robbie over the African circuit, we took a query away. I personally I don't know the answer.

11:16

Okay. That's fine.

11:23

Australian, was there anything else that you wish to add in response to Mr. Walton?

11:26

But no, thank you, sir.

11:29

Mr. Walton was anything else you wish to say on this particular item? Or no, we

11:32

have nothing further to say at this point.

11:34

Thank you. So now, Mr. Jim Parsons, please. could just say first how long you think you're likely to be five minutes. Thank you.

11:43

Thank you, sir. Morning, just so I'm Tim Parsons with h&h London state representing collectively the four trustees of the window or settled estate who in this statement, I'll call the representatives. You have our written representation. So you're familiar with our case and our objections, I'm just going to pull out various points that have come out, following sort of answers to written representations and then some items out of your questions that you've asked. As you know, the applicants are seeking to compulsory acquire and take compulsory purchase powers over about 246 acres of land of my clients under the DCO. The representatives rely on the government guidance and compulsory purchase process and the critical down rules of July 9 2019, particularly paragraphs 12 and 13. Where essentially there must be a compelling case in the public interest to acquire land compulsorily. For the reasons that follow the applicants have not made in the represent tours opinion, a compelling case. First in respect of the applicants response to written representations which is referenced reps to dash 15. In response to paragraph 90 of the represent tours written representations reference rep one dash one to nine, where the representative said that there was sorry that there is no statutory obligation to provide a net biodiversity gain the applicant states, however, opportunities to maximize biodiversity enhancements have been sought where possible. The applicant also states in its responses to the examining authorities written questions reference rep for dash zero 11 The response to question ca 1.2 That one of the project objectives is to seek to achieve no net loss as a minimum and look to deliver net gains. Where such opportunities exist, these represent these responses are ambiguous as to whether or not biodiversity net gain is being sought. That adversely affects the land of the representatives and goes beyond the present statutory requirements applicable to the applicants proposals. There can be no compelling case to acquire land for such biodiversity gain in any search land should be removed from the land to be compulsorily acquired. Second, the applicants response to written representations, again, rep to dash 15 In response to paragraphs 15 to 19 of our written representations, states that the primary policy document in recognition of the best and most versatile agricultural land is the national policy statement for national networks, and not the National Planning Policy Framework. NPPF. The former document, however, replicates at paragraph 5.168. The NPPF wording representers therefore contend that the location and compulsory acquisition of particularly environmental mitigation land at windfall house being mainly grade two land is not in line with either policy. As such, there is no compelling reason for compulsory acquisition in this area. Third, if some of the land of the estate is required for environmental mitigation, the 80 acres of Adrian's wood which you inspected yesterday, which was planted in direct anticipation the scheme should be used for the purpose. The representatives believe that the environmental mitigation calculations ignore this newly planted wood, which should be accounted for. This would remove the need for any proposed environmental mitigation elsewhere on the estate and particularly the blocks of mitigation and planting and management proposed on windfall house farm. Forth in their representations, rep one dash 129 and paragraphs 85 to 88. The represent or stated that permanent acquisition of land for the environmental mitigation is

unnecessary as the representers will offer rights and enter into restrictive and enforceable positive covenants to plant and manage these areas in an agreed manner. The applicant is seeking to acquire rights in article 22 of the DCO as was highlighted earlier, these powers can be used and therefore its requirements can be protected. Rights for these purposes are very common, such as in relation to HS two. But to date, there has been no proposals from the applicant on the use of such rights in respect of these mitigation plots. Fifth, the applicant has suggested in their response to written representations rep to dash 15 on page 10, that the loss of land for environmental mitigation can be addressed by compensation. The possible payment of compensation does not justify compulsory acquisition where the acquisition is unnecessary in the first place, either because excessive areas are being sought, or where the applicants interest can be protected by taking rights only over the relevant land. Six, the DCO documentation still shows the majority of land has been permanently acquired. The represented tools now know that some of the areas are only required for temporary purposes such as compounds, were unlike the situations set out in the applicant by the applicant in their answers to the X A's question ca 1.1. There is no underlying essential environmental mitigation once the temporary use ceases. Examples of these plots are 03 Dash 02 Dash 01 where the majority of the land we understand is required for the diversion of a major gas main plot 03 Dash 02 Dash 18 A compound plot 03 Dash 03 Dash 06 compound borrow pit and reprofiling plot 0303 32 temporary diversion and plot 030 to 33 a compound. All these plots are shown on the environmental mitigation maps in document a PP zero 41. As agricultural seeded grassland with intention for potential return to landowner by agreement does not therefore essential mitigation land and as such the representatives object to the extent of the proposed permanent acquisition, which should be reduced to a minimum and not be permanently acquired. In summary, and to the extent that the above matters demonstrate the excessive unnecessary areas of land are being sought to be compulsorily acquired. The applicant we consider has no compelling case for the use of compulsory purchase powers. Thank you.

18:12

Mr. Parsons. Thank you. Mr. And Mrs. Slater. Was there anything that the applicant wish to say in response?

18:23

Robbie, only for the applicant? Thank you, sir. I think in relation to most of what Mr. PARSONS has said, we're aware of a lot of this, if not most of it, in fact, and discussions have been taking place with Mr. PARSONS for some time. We're very happy to respond to some of the detail that you've just heard, again, in the post hearing note. I think in relation to the whole issue of environmental mitigation land, we are clear, but again, we'll clarify this, to the extent required in our post hearing note that that we are not we're not seeking biodiversity net gain for its own sake, but we are under no obligation because of what the national networks national policy statement says, to look for opportunities for improvements in relation to biodiversity and that is what we have been doing. So I think it'd be helpful. In the posterior note, if we just again reiterate our overall approach to environmental mitigation. I know this will come up tomorrow as well given the agenda item concerned, but we are clear that we are not seeking compulsory acquisition powers over any land purely for biodiversity net gain purposes and we can make that very clear. In relation to Adrian's wood out and and those issues we have produced The technical notes that Mr. PARSONS has seen, which sets out our our approach here. I can certainly summarize that now, if that'd be helpful.

20:15

Yes, please. Mr. Oh, and I just just at the moment, in my mind, I'm just having difficulty placing that in terms of the examination, the technical note.

20:26

I don't believe it has been submitted to the examination.

20:29

That's why I'm having difficulty placing it that would explain so yeah, thank you. Is that that is a note then that was provided by the applicant to Mr. Parsons.

20:39

Yes, the applicant has has shared with the winter wealth Estate, a detailed technical note explaining the rationale behind the ornamental design at this location and why the the woodland that you've heard referred to is not felt to be appropriate in this case. And we can, I will take instructions, but I don't see any reason why we can't certainly, in our post hearing notes, provide the detail that that technical note contains or indeed, to provide the notes itself.

21:14

Thank you for that. provided those instructions can be given, of course, in terms of Adrian's would then just trying to recall the agenda for tomorrow and the actual plot numbers that are under that particular agenda item. I believe that one of the plots not actually on Adrian's wood, of course, but to the south of the 66. Within that general area is one of the list of plots.

21:48

So I think it might be Oh, 30201.

21:54

Thank you. Sorry, I'm sorry. Can

21:56

I just interject there, I think the blocks you reviewed yesterday to the safeties Oh, 30404.

22:07

Right. Thank you. Thank you. Miss Parsons,

22:10

Mr. Owen mentioned is on Windows, the state but it's further to the west.

22:14

Right? Yeah. Right. Yes, I can see now. Oh, 30404. And I 304 14. Right. Okay. The technical note, and I'm just trying to get the context of the technical note in terms of what we're going to be discussing tomorrow. Excuse me, it could be that the technical note might duplicate some of the aspects which are

being dealt with under that particular agenda item. But obviously, I mean, we can't have that before. Tomorrow. But if we continue with the agenda item, and, and the knowledge that or the thought that technical note might follow in that area. Yeah. Thank you. Thank you.

22:57

Thank you, sir. I think that really concludes what I can usefully cover today, as opposed to tomorrow or indeed in the post hearing notes. Thank you. Thank you.

23:15

Mr. Parsons. Was there anything that you else you wish to say? In this particular note? Thank you, sir. Thank you.

23:28

Right, the next party I had on my list was Penrith properties limited. And Mr. David Vanderlande. I believe that you're online, and cube. You've heard I think you're on mute. Possibly.

23:45

Not at my

23:46

I can write I can hear you now. Sorry. I thought you weren't you were possibly started off by by saying something and I couldn't hear it. Sorry. Right. Okay. And you've you've seen it seen and heard how we're doing this particular section of the agenda. And of course, you've heard me ask before how long you think it will be? If I can ask a similar question, please.

24:03

No more than 15 minutes? I'd hope so.

24:05

Thank you. If you'd like to continue.

24:09

There are a number of points I'd like to make. So forgive me, sir. Just trying to kill that noise.

24:27

All right. There are a number of points I'd like to make. The first of which relates to, in a sense, the article, acumen articles for human rights in respect of the referencing exercise. These are not going to repeat everything that I've already said in the representations that have been made, both in the initial representations and subsequent responses on the 24th of January, all of which set out the detail. But the requirement is to make diligent inquiries in relation to ownerships of land. And I submit that Those diligent inquiries are not made to effectively ensure that Penrith properties was accurately referenced, and therefore served with the appropriate paperwork and notices in respect of the run up to the DCO hearings and examination. That's my initial point. Second point is in relation to various submissions that have been made in responses to the detail of what has been set out. The panels asked the applicant to



set out the extent of all the widths of the pavement and cycleways in relation to the land adjoining plot 010201 20 Penrice ownership and they've referenced a number of documents. And I'd submit that those references are incorrect. The section that's referenced is CH 9840. In the sectional drawings, which is not adjoining Emirates land and therefore it misrepresents the extent of land take the extent of the order lands in relation to the proposed highways shared cycleways and verge land that's required. The extent of land that's being sought, is massively in excess of what is required. And it's echoing a similar point that Mr. PARSONS made not long ago, which is that the extent to seek to mitigate the required land take has not been, has not been thought through or entered into, in terms of the submission. The reasons for the acquisition, therefore do not hold water in relation to the need to take the entire embankment at the back slope of the existing verge lands that are on the roundabout. And, as a consequence, they there's a consequence of having asked details of the a six to six team, what is required, we've been we've offered access to the site to carry out appropriate surveys. But these have not been taken up. And we are at a loss to understand the detail of the required land take the longitudinal sectional drawing for Section 01025. And 03

27:39

is the angle adjustment just before you just before you continue, I just wanted to in my mind, I'm trying to relate this back to I actually visited that area of land on Monday afternoon of this week, I passed his number of times previously, I looked at it, I actually walked the length of the foot way around the roundabout on that particular section and then looked at the offices above and the bank that's in that in question was I in the when you say the acquisition of the bank, that was the bank that I can see from the boundary of the roundabout, if you like back towards the development?

28:17

Yes, it is. It's the one behind the fence line, sir.

28:20

Yeah. Yeah. Okay. Thank you. Thank you. So

28:23

everything in front of the fence line, which represents the boundary of the Penrith land is already in national highways ownership as part of that, a part of that area. And we contend that what is required can be met within that existing ownership boundary, that there's no need to take any of the land that's identified as plot 010201 20.

28:46

And so the land that you're talking about effectively that's available to use that word is the flatland within which the footway the surface foot way exists.

28:56

Exactly. So so as long as the as well as the existing police patrol vehicle. Parking Area or or area as well.

29:08



That then is the police patrol vehicle area is the gravelled area within that lap land.

29:17

It's actually at the back of that land. So next to the fence line.

29:21

Right? I don't recall that particular piece of that land, right. Okay. Okay. Thank you.

29:26

But the point is that by not presenting longitudinal sectional drawings of 010 to three within the documentation or cross sectional drawings, across 010 to one B, it makes it impossible to determine or show the extent of the proposed land take and requirements against the road design at this stage. But the under Standing is from the team. And we've only had one initial meeting is that and this is backed up within the documentation, that the intention is not to try and take any of that land if possible. Now, there is no requirement to take the land for any environmental mitigation purpose. The any requirement is for visual screening, the existing land with its current vegetation and coverage provides existing screening. So there's no apparent reason for requiring that land in environmental or visual visual screening purposes. So the only possible requirement is in relation to propose changes in levels which are de minimis. And when I say de minimis, I'm talking about seven millimeters at the start point of section 010204. Which is the a click of me, I'm just gonna get my wrist and I'm surprised that the VA 259 A.

31:03

Let me just

31:04

check the just the road, which is the road going going up towards Penrith from that roundabout to the pipeline to forgive me. So the extent of land take is just far in excess of what is required to carry out the pose works is completely unnecessary. That really is the summary position.

31:45

And give us Is there anything else that you wish to add?

31:49

Now, other than say that Sarita in respect in relation to the response to the examination to the panel's question, I believe the answer is misleading, and the way in which is presented referencing 9840. In terms of the section,

32:08

thank you. Mr. Allen was Ole Miss Mrs. Slater? Was that you wish to say in response, Mr. Slater?

32:15

Thank you. So yes, please, highly Slater for the applicant. With regards to the referencing, if they raised that, Mr. Vanderlande, we have responded in detail to that, in our deadline for submission. Just

recently, the reference for THAT IS rep four. Oh, 15. And I think the page reference 25 to 26. In relation to the chainage reference, that, I think is probably the nearest reference was taken from the engineering section drawings, but we will take that away and double check that to make sure that it does correspond with the plot that you were talking about, which was, Oh, 10201 20. My understanding is that in terms of the cycle wave provision that's required here, the whole of the land is required at this stage of the design process. As such, we don't believe that the extent of land assault here is excessive, but includes a reasonable amount with limits of deviation to enable the detailed design process to take place. And obviously, the two stage process or the test that Mr. Owen referenced previously about looking to see at the point of acquisition, what land is actually required for the scheme, that test will be applied post data design, when the the full extent of the land required is known. But as currently proposed, it is required to accommodate the three meter wide cycleway and two meter wide footway with a 1.5 meter wide separation from the carriageway.

33:58

Okay, Mr. Mr. Vanderlande, was there anything that you wanted to come back on in terms of that?

34:03

Yes, sir. A sectional drawing through the land taken or the proposed land take. giving that information would be would resolve the issue in terms of the requirement of that land.

34:20

Thank you. And just in terms of the applicant, was there anything else

34:27

that it stated for the applicant just say that we will look into that section touring. Thank you. Thank you.

34:40

Thank you very much, Mr. Vanderlaan. Was that all you wish to say? Thank you, sir. Thank you. The next on my list is Mr. Salvin, who I believe is online.

34:57

Yes, good morning. When I'm solving representing multiple mistakes, hopefully you can both hear me and see me.

35:05

I can Yes, both here and see you the standard question, how long do you think you'll be?

35:14

Five minutes. Thank you. Thanks. A lot of what I'm going to say has been said, both by me before, but also by other contributors this morning. There is a pattern emerging, which hopefully the examining authority are seeing from the views expressed, so I won't duplicate other representations that have been made. But we'll just comment on Mr. Owens, test that he applies for the compulsory acquisition, that it should be necessary, justified, proportionate, and it is more than state's view that the plots that are to be permanently acquired at Rugby, are none of those three points, they're not necessary, they're

not justified, and they're certainly not proportionate. To give you an example, I calculate the carriage way, improvements for the Asics to six will require approximately 2025 acres. And yet the proposal from the acquiring authority is to permanently acquire 113 acres of the three and a half 1000 acres of straight. And in terms of the evidence, burden, that is placed upon the acquiring authority that shows that is necessary, Justice justified and proportionate. We haven't actually seen the evidence. We haven't seen the impact assessments on the farm businesses concerned. Karen horn earlier referred to Peter moss and Stuart Harrison and their respective farms on the stage. I'm not aware that there has been any impact assessment undertaken by the acquiring of authority as to what the consequences of the proposal will have on those businesses and indeed on the adjacent holdings businesses and the the the estate as a whole, because obviously, by the nature of land tenure, occupancy is transient, and whose an occupation today may not be the same 510 years. And that needs to be factored into this process to to pass the evidential test that the legislation requires. The old perennial that I always go back to whenever I have the opportunity is, of course, the blue option and the black option, and the effect on the registered park and garden. And you heard yesterday during your accompanied visit from Historic England that they supported the black option, because it was the one of the two options that did not sever with church word being part of the registered park and garden. Now we dispute that would sever the registers of park and garden because it's a proposal for an underpass, which would then be planted on top. But nonetheless, they point to that as justification, but have not actually carried out any assessment of the Heritage importance and the heritage impacts of either the blue option or the black option on the RPG to demonstrate the degree of harm that either proposal would cause. They conceded at the last preliminary hearing that in their view, neither option would cause substantial harm, but it is our view that the black option will cause substantial harm to the setting of the great to St Mary's Church. But again, in the absence of an impact assessment, or a statement of significance. We can't say that with any any authority to prove it one way or the other. And it's frustrating that an impact assessment has been carried out on the unlisted old rectory that the national highways have subsequently acquired but not the designated heritage assets. And I have received no explanation as to why the assessment in the DCO documentation seems to be uniform across all the designated assets with Add any distinction made between the higher grade assets close proximity to the 66. And let it is further away. My last point you'll be pleased to hear is that, again, the issue of the rights and the land to be acquired permanently, rather than on a temporary basis. It's been alluded to by previous speakers, I think you're aware now that there is some unease about allowing the permanent rights being acquired, on the basis that they may not be required. Ultimately, once the final design is complete, I'm not aware that we will have another opportunity to challenge the acquiring authority if they get if they get their DCO consent, we will basically be left hanging and at the mercy of the acquiring authority, and frankly, from my dealings with them on this scheme to date, I have no faith or confidence in my dealings, and so rely on the examining authority to actually enable the application to be a panel be beaten into into shape so that the T's are crossed and the I's are dotted, I give you two examples, prod 080317, which I've raised before, it's the block within the park wall, that is to be permanently acquired by national highways to enable Openreach to reroute a telephone cable. Now, there's been no impact assessment on those permanent REITs and the loss of that land to the ring fence of the park or similar church belt 080308. You saw yesterday that it was repainted by the estate three years ago, and is yet still shown on the DCO as to be permanently acquired, there is a further block to the west of the church 080305 That we understand is to be planted up. But again, there has been no impact assessment and new liaison with the estate as to the consequences of that plan on the

setting of the grade two star St. Mary's Church, its gateway presence within the design park and garden. And we have not been asked for our views on the mitigating planting, both there. And indeed, elsewhere, there are other opportunities on more marginal land where the environmental net gain would be greater. But in the absence of active engagement with national highways, it has not been possible to to express or pursue that that alternative. So in summary, I go back to the the tests of necessary justified and proportionate, and and again, would emphasize that has currently matters stand. It is out of proportion. It's unjustified and it's unnecessary to take 113 acres on a permanent basis for an A 66. carriageway improvement which we welcome that will only require between 20 and 25 acres. And we would like to see an amendment to the DCO to both reflect that, but also to provide an agreed basis as to why the blue option or the black option shouldn't be preferred because at the moment the applicant is saying black and the the estate are saying and we need an expert report to be able to inform the parties so that a decision one way or the other can be made. Thank you.

44:19

Mr. Savage, thank you just before I pass across to the applicant, if they wish to respond to that. You listed a number of plots sort of in the vicinity of the screen that we looked at yesterday and also the church that we visited yesterday in that general area and locality. We talked about in terms of pointing things out the interrelationship between these various points, if you like, and it was suggested also that we should look to the west of the church and the effective agricultural parkland, if I could call it that, if you like stretching out to the West and the woodland blocks or clumps as they were referred to at one stage in terms of compulsory acquisition, and you talked about the the 113 acres for 2025 acres, and you talked about the acquisition of land for environmental mitigation, were the areas that you were talking about in terms of out to the west of the church, areas around plots await the 125. And oh, 801 16, which are basically around prints such Princess Charlotte wood. Because when we actually passed on the way back from the site visit, we said that we would look at those on our return journey, and we did from the highway. And the only areas that we could see that were potentially acquired for acquisition, or environmental mitigation. Were those effectively it's a horseshoe of land around Princess Charlotte wood, which I think is proposed as woodland Is that what you were talking about when you were saying that the interrelationship between the church and the surrounding area would be harmed to the west.

46:26

It extends as far and beyond cross lanes. Yes, obviously, the designated designed landscape is concentrated in the immediate environs of the park itself. But the historic estate continues along the 66 Roman road corridor and is funneled and framed by the woodland blocks to the south and north. And you will have noticed in your return West, how you get to the foot of galley bank just beyond cross lanes, and start to climb the hill westbound towards bows how the landscape very quickly changes from a sort of enclosed arable intensively farmed area to less intensive grassland with dry stone walls. And all of the woodland planting is located and designed to take the traveler through that process from the Arcadian dream. That is the part to the wild Willie West, that opens up as you climb the hill, the proposal put forward by the applicant in plots, O H, O 116. And oh 801 22 And O H O 119. To plant up would create a far larger block of woodland that would fit in with that that character that I've tried to convey to you, it would also sterilized an identified mineral resource within the Durham local plan.

There were also impacts in terms of the commercial pheasant shoot in terms of locating blocks of timber that could have an adverse effect upon that activity. And

48:33

you just said I didn't quite catch it. You just said that the creation of this additional woodland around Princess Charlotte wood would fit in with the character. No, it wouldn't. It wouldn't. It wouldn't fit it wouldn't.

48:48

It wouldn't.

48:49

Thank you

48:50

because the blocks of woodland are discrete small linear blocks.

48:56

I understand the point that you're making. Yeah, that just just to return them to Princess Charlotte wood are there and I use that as an example. Do you have any similar examples between Princess Charlotte wood and the church itself?

49:11

Well, you got the woodlands. to either side.

49:18

I was thinking of particularly to the north side of the A 60 sec.

49:22

Well, you've got a plot at 080209 at streetside farm, which has already been planted and various other bits and bobs. But other than that, I don't think that there is any particularly large planting proposed

49:43

right so we did actually see 02080209 on the journey, I believe it was where some think had been tipped in the locality of that at the present time. And then you also referred then to To woodland blocks, which would be acquired or areas areas that would be required, acquired to create woodland planting, which would affect the woodland blocks to the south of the 66. In that location. Are there any examples that you can give me that and here, I'm not talking about the acquisitions required for works, I'm talking about the acquisitions required for mitigation be in relation to the points that you've made on it.

50:31

That there is a large block of woodland shown at cross lanes, which is within plot 080 to 20, I believe. And again, it's difficult because the current plans differ from the consultation plans that contained a lovely aerial flythrough showing lots of blocks of timber, some of which have made it through to the

general arrangement drawings and some that haven't. But that that is as good as an example as I can identify.

51:19

Right, so so. Okay, so 0802 20 That is a strip alongside the existing a 66 if you like. Yeah, right. Okay. Okay. Thank you if you just give me a moment, okay.

52:13

Right, thank you, Mr. Salvin. There wasn't anything more from us at this particular stage. I'll now pass to the applicant to see if there's anything that the applicant wants to comment on at this stage. Mr. Cohen?

52:26

Thank you. So Robin, for the applicant. I think as with previous speakers, we will clearly respond in writing in detail to what Mr. Salvin has said that there are a few issues I can just pick up on briefly though, if I may. In relation to the General Test of necessity, justification and proportionality, we clearly don't agree with the state's position there. And we'll carry on producing additional evidence to support our position. And in terms of the acquisition of whether it's 113 acres or or only 25, as Mr. Solving believes, is needed. Again, I go back to the two stage process I was referring to earlier. And at this stage, we consider that we have got it right in terms of the amount of land that needs to be covered by the DCO. At this first stage of outline design. Mr. Sovereign referred to the fact that there was no no no sort of check, if you like on national highways at stage two, and that he will be at the mercy of the acquiring authority as he called national highways at that second stage in terms of deciding how much land was actually needed to be compulsorily acquired within the overall parameters of the DCO. That is not actually the case. There are plenty of established ways of calling national highways into account, particularly the fact that it will be obliged clearly to exercise the provisions of the DCO lawfully and particularly through judicial review. That is the accepted way that public bodies, like national highways can be called to account if landowners or anyone else for that matter feels that they are not complying with obligations in the DCO and of course, the DCO. It's also it's also a criminal offence not to comply with the DCO as well. So there are there are a number of recourses available to landowners, including the more than states in relation to the extent of compulsory acquisition that I would suggest are procedures that the panel examining authority and also the central state can rely on in due course. So I wanted to make that point. In terms of mitigation planting, a number of the plots that Mr. Salvin has mentioned are clearly on the agenda for tomorrow. I think three in particular Hello, I've noticed Oh 801 1608 Oh 209 and Oh 80201 Sorry, oh 80301. And we can deal obviously tomorrow with mitigation planting relation to those plots. And and the overall approach that has been followed. The final point I wanted to make was in relation to impact of the scheme on the heritage assets at Rugby. And Mr. Salvin mentioned, again, the lack of a statement of significance. That, of course, was considered in some detail at the first issue specific hearing last year, and I refer to the post hearing submission that national highways made a deadline one, when we set out why we didn't believe that a statement of significance was necessary, in this case, or would add anything to the wide variety of material before you through the under the auspices of the environmental statement, dealing with the assessment of the impact of the scheme on the heritage assets in the area. So we certainly don't believe that. Further

experts reports are needed in that respect, and that you have what you need already in front of you in terms of judging the impact of the scheme on the heritage assets. Thank you so.

56:18

And Kim. Has there anything? Was there anything you wish to say further?

56:23

Yeah, I just sort of put Mr. Owens comments into into context. So to suggest that the recourse available to the estate is judicial review. There's a mismatch here isn't there between the resources available to those who are going to have their land compulsorily acquired, and the resources available to the acquiring authority? Well, as you well know, have to iPads have to pay for their own representation through this DCO process. And yet, we're faced with this comment that the acquiring authority do not believe that an impact assessment is required on the grade to star Church on the grade one hole or the grade two star parking garden that yet one has been obtained for the unlisted old rectory. It's just out of balance. And it would save an awful lot of argument and heartache if we had a definitive document that the parties could contribute to, to help guide and determine the matter. I showed this visitors yesterday the examining authority yesterday, during the site visit, visit the historical information that the ad the owner holds within rugby Hall. Nobody has asked for that material before it's been freely offered. We've we've been willing to engage but have been rebuffed at every turn,

58:04

just in terms of that particular point, Mr. Salvan, I should just say that on the site visit and this will be recorded in the future. And the applicant was also present at that visit. But just to confirm that when we were actually within the hall itself, there were documents available on the table that it was suggested we could take a look at. We didn't take a look at close look at those documents, what was suggested and I can see nods now from the applicant side. What was suggested was that the AP is dissolving, actually took photographs of those and was could submit them to the examination as evidence if he wished to now that opportunity obviously hasn't been available to him yet. But that was the suggestion that was put to him. When we actually were in the room where these documents were also in the room was dissolving, then, is that something that you have considered since I visit yesterday? Is that something that

59:00

if you want to photograph if you want me to photograph every page of Walter Scott's epic who am rugby I will happen if

59:06

I can, if I can just absolutely hold you there. Right? I wasn't asking you to photograph them. I was given you the opportunity to photograph anything that you might consider relevant to the examination, of course, but it's however you wish to take it really. Thank you. I do wish to do you wish to speak on anything else?

59:26

I don't.



59:27

Thank you very much opportunity tomorrow. Thank you very much. Mr. Owen, was there anything in response from the applicant?

59:37

So just to reiterate that we believe that through the environmental statements and all of the appended documents that you have in front of you, there is a full and detailed and expert assessment of the impact of the scheme on all heritage assets including rugby estate, that there is no need for anything. In addition, we clearly look At what Mr. Silva may send through following yesterday's, a company site inspection, and and consider that, of course, and this whole process is the opportunity as Mr. Sullivan is making use of to comment on these issues. So we don't accept that. There is there is anything lacking in terms of an assessment of the impact of the scheme. And we think we think there's nothing in this point about a statement of significance, which we don't think would add anything. Thank you.

1:00:37

Right, in terms of my list now, Mrs. Nicholson, I don't believe is online. I will just ask the question, just in case. Is Mrs. Nicholson online? No, I don't see any response. So the next on my list is Dr. Martin. Dr. Martin, it's similar question to everybody else. And I'm conscious that the lunch adjournment is 10 minutes away, but how long do you think you would wish to have

1:01:07

no more than five minutes?

1:01:09

Thank you. If you'd like to proceed,

1:01:12

thank you. Thank you to all the examiners. I'm Mary Claire Martin, I'm representing my parents Jeffrey Hewlett, and Mrs. Joy Thompson, who live at low broom rig near the proposed language junction. And it's section six of the Appleby Bruff stretch. And I'm here to argue and that the current DCO infringes human rights legislation. I've detailed some of this in my written, written representation. But I can provide further details in a post meeting note. This was in on grounds both of age and disability. Both my parents are in their 90s and have significant health problems. i We believe that this discrimination has been exacerbated by the consultation processes, and the project speed project, which has emphasized speed and also lack of alternative routes. So a very brief timeline. The proposal for spring 2020, the dual carriageway was to be aligned with the existing road. So there were no options offered. But this didn't seem to offer any urgency and the examiners who have seen the layout of the landscape. In April 2021, there was a visit to their house from national highways. And they were shown completely different plans, which showed there were roads or new roads all the way around the house. Since then, just to note that the some of the documentation produced by national highways claimed there was some consultation in the autumn of 2020. If there was it didn't reach my parents, and it didn't reach the national, the parish council, who were quite horrified the chair of Walker parish council was horrified when he heard of these plans, which were a complete shock to him as well as to other people.

So that left very limited time, so I won't be very limited time to actually do anything for one of the couple was already in their 90s. They both are now and the family have done everything we can could using all the processes available to represent our concerns to work with national highways. There were some improvement improvements. The DCO then became worse. The plans that were submitted, after the consultation had finished, had an additional spur only 11 meters from the house, which was new, and nobody none of us were informed about this. And I indicated this site on the site visit yesterday we've explored alternatives the only one is discretionary purchase before this would be before the road was constructed. My parents are really not in a condition to be putting their house on the market for six weeks. Just as an example and they basically say they do not wish to move and they're not really in a state to move for various health reasons which are confidential. So the works are due to start in July 2024. And as we've noted before, a sensible option will be for the route to go slightly just Very slightly north of the A 66. Caroline horn has done a good job of explaining the reasons. Just to highlight that at the moment. The routes already been amended. Something like 46% of the route between Appleby and Bruff has an incursion into the AONB. Were quite puzzled why this can't go a bit further, seems to be mainly because of opposition for the AONB. And, yes, this is why I want to stop, but I just want to make one more point about infringement on human rights, which is the dual carriageway itself will deny access to walking on the AONB. So there's been a great deal made to the AONB, and it is important, of course, but people are living very close will not actually be able to walk there, and these people who may not be able to drive in the immediate future. And I'm very, very concerned that the whole process takes no regard to the damage, health damage in terms of anxiety, possible heart problems to very vulnerable old people who have very little notice about this. Thank you very much for your attention.

1:06:11

Thank you very much. Dr. Martin. I should just say that, Dr. Martin, you you are appearing on behalf of this is Thompson. and Mrs. Thompson is actually an affected person in terms of her residential property in terms of certain acquisitions around that property. But also, we heard then about, excuse me potential section 10 type issues in terms of the property itself. Let's throw in was there anything that you wish to say in response?

1:06:39

Rubio and the applicant? Just Just briefly, sir.

1:06:48

The first point is that, as we discussed at the last hearing, national highways is considering a change to the application in this area that has since been consulted on as you'll be aware, and national highways is now considering the outcome of that consultation. And we'll be considering to what extent the change in this area as well as the other ones can be brought forward. And the hope is that that will be possible, and therefore the impact on Dr. Martin's parents can be certainly reduced, which is something that I think we would all wish to see. So far. It is possible. The issue of the OMB incursion, we've clearly covered at some length already, particularly in the in the first hearing, and our position remains. As you've heard before, we are strictly governed by the national networks national policy statement that is current national planning policy. It applies irrespective of what's going on in the past. And it also applies, I should say, irrespective of what may be happening on other projects governed by other policies. Caroline Hahn referred to HS two going through the children's AONB that is a wholly different

subject, governed by its own act of parliament and is not subject to the national networks MPs. So we believe that opposition on incursion into the area and be both both in terms of national highways proposals and why further incursion would not be appropriate, is clear. But again, we can deal with that further, if that would assist in terms of further written submissions. I think otherwise, we can just reflect on what Dr. Martin has said, if there's anything else that we wish to add to what I've said we will do that in the post hearing note.

1:08:43

As well, and thank you. That actually takes me to the end of the list I have of people who had said, affected persons who had said that they wish to speak and are actually present, but just to actually check. I've just got a couple of organizations and a couple of names to go through. Is there anybody in the room or online who wishes to speak on behalf of national grid electricity transmission PLC? Just looking around the room and just looking online? I can see no hands up. Same question for National Grid gas PLC, just looking around the room and online. See no hands up and Network Rail, looking around the room, and online. No hands raised. And then finally then, Mr. Simon Nixon from Addison's just looking around the room and looking online, no response. Right. I believe that then takes me to the end of agenda item 4.1. Agenda item four. I'm looking now to get to the start of agenda item five so that we can start that off at the start of this afternoon. But just before I do that, agenda item 4.2. Are there any other affected persons wishing to make oral representations? Just looking around the room, no hands raised. I'm looking online, no hands raised there either any section one or two interested parties or category, category three persons wishing to make representations looking around again, and looking online, no response. And then any interested parties wishing to make oral representations on temporary possession. Looking around the room, and looking online, no hands raised and no response. So I believe that gets me to the end of Agenda Item four effectively. Anything else? Anybody have to say on agenda item four? Again, looking around, no, thank you. So that takes us to the point where we're just about to start Agenda Item five, which is, we'll do this thing this afternoon. And just for the information for the affected persons present and others, that really is items that we wish to raise with the applicant in terms of matters relating to compulsory acquisition. Some of them are agendas, and there's some supplementaries that we'd wish to put in there as well, of course. So that takes me up to the lunchtime adjournment. It's just before one o'clock now anything from anybody else before we adjourn for lunch. Okay, so I intend to adjourn now for lunch and the time is effectively one o'clock and I'll adjourn the hearing to be resumed at two o'clock so hearing to be resumed at two o'clock. Thank you