

TRANSCRIPT_ISH2_M5JUNCTION10_SESSION3_06062024

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00:06

Okay, it's two o'clock, everybody, it's time to resume this issue specific hearing. Just Can I confirm that live stream and the link through to teams is working. Thank you very much.

00:19

Bye pass over now to Mr. Reagan to start taking you through protective provisions. Thank you.

00:27

Thank you, Mr. Bond. Firstly, please merge us check who there is online that was to contribute to this particular section of the agenda. I can see Mr Hopkinson, your your online.

00:40

Yes, please. I thank you. I'll come to you after I've invited the applicant to speak first, if I may. Thank you. Is there anybody else online who wishes to contribute to the

00:52

the section of the agenda and the protective provisions?

00:56

Not seeing any hands. Okay. Thank you for that confirmation. And so firstly, then turning to the applicant,

01:03

as was set out in the agenda really good. I asked that you provide an update with regards to where you are with respect to protective provisions and if there are any live issues regarding differences between the parties that will be appropriate to be shared at the stage please.

01:18

Thank you, sir Gary Solomon for the applicant.

01:22

So there are a number of protecting provisions and discussions being had with

01:31

Undertaker's so taking each in turn national highways.

01:37

Current position is that national highways have raised a number of issues in their relevant representation. We're in active discussions with them at the moment to agree a set of protective provisions and a potentially delivered through a side agreement.

02:00

Those discussions are ongoing.

02:09

national grid electricity distribution there are there are two parties we have down. We've got national grid, electricity distribution, and then electric national grid electricity distribution wealth where our West Midlands PLC I understand Mr. Hopkinson is represented the West Midlands arm.

02:33

In both cases, we've provided template we've provided

02:39

a template set of PPS and Asset Protection Agreement has sorry has been provided to us. And we have provided comments back and I think Mr. Hopkinson has for

02:54

West Midlands PLC. I'm not sure whether it's for both parties, but certainly for West Midlands PLC has provided quite recently provided comments back on those. So in the terms of the tune and froing. We there with us to consider. We think we're we're very close on the asset protection agreement. And there are a few matters on the protective provisions they want to see. So again, we're we're in active discussions looking to conclude those.

03:22

And then wells and West utilities.

03:26

They provided us with some with a set of PPS bread protecting provisions. And we've gone back on those and again we continue to discuss those ordered seek agreement.

03:42

Thank you very much that was that was helpful.

03:46

Can I reach out to National Grid?

03:51

West Midlands please Mr. Mr. Hopkins? Hi. Yes, thank you, sir. Arthur Hopton on behalf of National Grid Electress electricity distribution West Midlands, as just Burton's can get West Midlands just because it's a bit of a mouthful

04:09

by way of some clarity as to their being two entities reflected on the agenda I think this has arisen as a result of an agent on behalf of N Get West Midlands submitting a relevant rep separately, which reflects

04:28

and good West Midlands simply as national grid electricity distribution, just to clarify and good West Midlands is the distribution network operator to the electricity distribution network for the parts of the country in which this scheme falls and what should own should be the sole and get entity which is relevant from a consulting perspective to this scheme. national grid electricity distribution PLC won't be irrelevant because it is the West Middle

05:00

UN's regional entity which is responsible. So I hope that's helpful clarification. Yes, thank you.

05:08

In terms of the comments made by Mr. Solomon, that's, that's absolutely correct. If I may just provide and elaborate on the position for and give Whisman West Midlands a little bit more further to our relevant rep, reference our zero to five, that might be helpful. So in terms of the matters set out in that relevant rep, and get West Midlands requires a statutory form a satisfactory form of specific protective provisions to be appended to the face of the DCO. And the entry into an asset protection agreement by the applicant in order for those matters to be satisfied. As Mr. Sablan indicates, we know that the current draft TCO only contains general protective provisions. So I'll just repeat my my previous comment that we will, we're looking for a specific set of PPS to be agreed and appended to that final form DCO.

06:13

The form of these preferred protective provisions are ones that have recently been agreed with other applicants. So a couple of examples are on Malpass solar farm development, consent order, which is awaiting decision gate, Burton energy Park DCO, which also weighed into decision. And the recently granted a four seven wansford. To Sutton development, consent order 2023.

06:40

In terms of progress to date on these negotiations, as Miss Solomon says, there's been a bit of back and forth. And again, from our perspective, I don't think there are any material issues between the parties at this stage, however, should any arise in future, particularly for deadline one, we can always make separate representations to you, sir.

07:07

I think that's everything I really wanted to cover the only the only other point, if I may, is just picking up on a couple of things that have been flagged today, particularly around article 47. I think, the scope of the powers granted under this article, we might have to pick up with the applicant,

07:24

by and large mean to try and understand what impact granting of that power would have on unrelated planning permissions, including statutory derive permitted development rights that and good West Midlands might want to exercise within the order limits, but which are unrelated to the scheme to ensure that its statutory position isn't isn't prejudiced by the granting of the order. Thank you.

07:55

Thank you for that, that was very helpful, just in terms of of keeping the discussions and our understanding of them on track, if you could provide a written update with regards to where you are with those discussions, and also, any any way you get with regards to agreements with regards to the scope of powers on Article 47, deadline, one that would be would be helpful. Thank you. Yes, sir. Thank you.

08:23

So just in terms of completing that, so that's the for utilities, which you invited to the today's you particularly wanted to hear from, there are a list of other Undertaker's which I can update you where we are with those who will be helpful. Yes, players, I'll pick up thank you so that there's gigaclear PLC.

08:47

They haven't made a relevant rep and the potential provisions in the order are acceptable to them.

08:57

Openreach again, no relevant representation, they were seeking some amendments to the protective provisions.

09:06

Our position is that they aren't relevant, and we've gone back to confirm to Openreach so that's the position we haven't yet received. Response

09:18

Zeo group UK Limited again, no relevant representation. They're not seeking any changes to the wording of the protective provisions

09:32

seven Trent water

09:35

again no relevant representation but we are engaged with them and we're looking to agree a set with with them

09:49

there then we've got a Virgin Media

09:53

limited.

09:56

Their apparatus isn't affected but for completing

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As

10:01

they weren't, they were identified in the book of reference. They haven't made a representation. The apparatus is not fated. And we've written to them confirming the same.

10:11

And the same with a number of other Undertaker's where we've written to them to say that we know we're standing there in the book of reference is not in relation to their apparatus.

10:22

And so therefore, they don't need protective provisions. They would benefit from the standard in any event, but none of those have come back to request any clarification or any particular protective provisions.

10:35

Thank you for that that was helpful.

10:38

In light of what you said, if I could perhaps ask that the update the provider deadline one also encapsulates the current position where those are the Istat Undertaker's please our be. Thank you.

10:52

For good now, invite national highways just to provide any any relevant points about anything that you've just heard, and any any live issues that you wish to for us. Thank you. Thank you, sir. Sophie Stewart for national highways. Mr. Solomon's correct, insofar as discussions are ongoing,

11:11

most matters of principle between us now I think her agreed the only outstanding one relates to national highways, requirements for security of funding.

11:23

And discussions are live and ongoing.

11:32

Thank you for that was helpful.

11:46

Don't think I have anything else to say on to the item other than really just you're here to continue to engage with each other and seek to get us to an agreed position? And obviously, ultimately, we need to know whether there are any differences which which remain and what the implications of those differences ultimately are. Thank you.

12:22

Mr Hopkinson, can I just ask for clarity? And

12:27

we've, as you made reference, you refer to two relevant representations that have come into us.

12:34

One which links directly to the West Midlands, named but the other one doesn't have the is it your understanding that they both come from your organisation, and therefore we're dealing with one body

12:52

Thank you, sir. Arthur Hockessin for and good West Midlands, so that the two and I believe their their references are, are 024 and Rs 029, which are for national grid electricity distribution have come from a separate agent who acts for and good West Midlands regularly. But hasn't those two reps haven't come directly from our organisation? No. Going forward, we've requested that all further written representations from our client will come via Osborne, Clarke, and will be submitted by us.

13:34

Okay, and so in terms of the status of those two irrelevant representations, I'm just trying to get clear in my

13:42

mind, how we treat those

13:46

going forward.

13:50

If I, if I'm a satisfaction of the matters within the relevant rep,

13:58

referenced previously, if our zero to five would also satisfy zero to four, zero to nine on the basis that we would no longer have any ongoing objections to the project because we'd secured sufficient legal mechanisms to protect and get West Midlands position.

14:23

Okay, thank you. I think if in the written summary of today's if you can make it clear to us how it hangs together, it'd be very much appreciated. Thank you. Yes, thank you.

14:39

Okay, then we'll move on to the next item, which is consents licences and other agreements. Again, ask the applicant to provide an update of progress and timetables for completion.

14:52

I think also we need to understand

14:56

whether you have set out a full list of the environmental

15:00

permits and licences that you're seeking to achieve somewhere and if you can signpost that for us

15:15

thank you so Gary Solomon the applicant at so in terms of progress.

15:22

Engagement is ongoing with Natural England in relation to licences.

15:27

For badgers bats, dormice and great crested newts and draft licences were submitted, and the applicant has received letters of no impediment in relation to dormouse on the 28th of February, his share of bats on the fourth of March, and badgers on the 30th of March.

15:51

Great crested newts are being managed through a local level licencing agreement. I'm told

15:57

in Gloucestershire, it's managed by an organisation called Nature space, and discussions are ongoing with them.

16:10

Then there's the potential need for permits, licences from the Environmental Agency. For various various matters, these will be obtained as necessary. And there's ongoing engagement taking place with the environmental agency. In relation to this, the potential consents are listed in the consents and agreements, position statement, document, a PP. 033.

16:39

And then you've heard so that we are in discussions with GCC as the

16:47

lead local flood authority in relation to disappointing section 23 of the land drainage act. And we'll update you at line one as to where we are with that.

17:04

And there may be a variety of other consents and permits that, that the contractor will apply for, but all of those we're aware of are listed in the in the consensus agreements position statement.

17:18

So presumably, the

17:23

letter of use received from national England L. To date, they'll include be included in deadline one submission so that we have those on record. So we can provide those. Thank you. And

17:39

in terms of the

17:42

position with the Environment Agency, are you able to update as to

17:48

where you're up to with any permit applications? With them? Are they are waiting to be done? Subject to something else?

18:02

So Gary Solomon, yes, waiting to be done. It's too early at the moment.

18:08

Do you have a programme of then when you might think that would progress relative to the examination timetable? Or is it going to be much later in the event much later in the day?

18:21

We can provide we'll provide information on that.

18:25

Okay, because I think the the usual conundrum is what comes first. And then whether we need to have an interrelationship between the two

18:38

consents, and whether we have sufficient certainty for the one that's coming first, that is not leaving a gap

18:47

that causes a problem further down the line.

19:15

Just in terms of the

19:20

dealing with the flood risk element, I think there's reference to seeking to get appropriate.

19:29

And whether it's a permit or a licence from the Environment Agency on flood risk works, and trying to understand how that

19:39

links in with the DCO and our need to be able to explain to the Secretary of State how the scheme fits with the statutory tests we need to ensure that we have covered for sequential exception test and

19:56

that

19:58

there is no worst

20:00

The situation in terms of flood risks either going off site or, and so on. So

20:06

you're able to give us a bit more information as to how those two elements

20:12

were intended to work together

20:19

we'll provide the information as part of the

20:23

list of consents that you wanted, timetable and programming will provide that information.

20:30

Okay, thank you.

21:03

Okay, I think that's probably as far as I can go. At the moment, we'll wait to see how you what you set out in the submission that deadline one and I suspect we'll probably follow up with some written questions in due course. Thank you.

21:24

So, statements of common ground and just really an update on progress.

21:29

If you've managed to make any progress since,

21:33

you know, just to update is there and also on the principal area of disagreement summary statement with national highways.

21:41

So Gary Solomon, so in terms of each of the parties where we're discussing statements, common ground, the joint councils,

21:49

they're in receipt of a second iteration. I understand there's a meeting arranged for next week to progress the document and will provide an updated draft requested at deadline one.

22:01

National Highways. As we've heard, there's still a number of matters outstanding, but engagement is taking place

22:09

in relation to the matters raised in their relevant representation, or will provide a status update at deadline one on that.

22:19

The Environment Agency, a draft is advanced and very close to agreement

22:26

will provide an updated draft deadline when we may be able to provide a finalised version. So that's what we're trying to do.

22:34

Natural England, there's been regular meetings held a second version has been prepared and has been approved. I understand. So we're finalising but

22:49

and then Historic England.

22:51

Again, the drafting has been advanced, there's two matters which they've raised, which are being dealt with in in terms of the

23:01

the DCR I think we touched on one of them this morning in relation to their involvement in consultation with the county archaeologist. So we'll provide an updated draft on D one, so you can see where we are.

23:14

There's no apart from the initial drafts put forward. The application there's no draft statement of common grounds being advanced with the developers as yet but we noted your comments. Yesterday we have spoken to representatives of the developer with a view to progressing those.

23:47

Obviously, there was touching on the standards of common ground, is that equally applying to the

23:53

national highways? Not quite sure who's leading on the principal areas of disagreement summary Simon? Thank you. So yeah, Sophie supranational highways, we're currently holding the pen with that there is a draft going through our internal assurance process at the moment which will be shared with the applicant and submitted for deadline one.

24:12

Thank you

24:26

unless there's any other items on that topic from anyone, I think we move on then to review of issues and actions arising. So

24:37

you wish me to lead on that or are you content to Yeah, if you want to.

24:45

Thank you, Mr. Bond.

24:47

In the interest of simplicity, I've got

24:52

the grand total of 18 actions within the log that I've been preparing this morning and this afternoon. All

25:00

The deadlines for completion are identified for deadline one, so I won't be repeating that against every every item.

25:09

Please do let me know if anybody either in the room or online has a different recollection or something they wish to raise with regards to any particular action and we can discuss that as appropriate. So, as I

said, yet, I have 18 actions within the log. The first one then is aimed towards national highways. And it is to provide a written summary with regards to issues with respect to work numbers and work plans.

25:42

The second one is for the applicant. And it requires clarity of the definition of authorised development set out there within the article to interpretation.

25:57

The third action then is for the applicant and the joint authorities. And it's a request for confirmation of roles and approvals required regarding the drainage authority with respect to articles three and 18. And also relevant to Section 23 of the land drainage act and that being misapplied.

26:20

The fourth action again is for the applicants. And we appreciate confirmation of use and written justification

26:30

of applicants use of adjacent which is relevant to Article Five part two and 20 from my notes

26:40

the fifth action again for the applicant is a written explanation with regards to article seven and 47 and how they relate to each other including any implications with regards to trigger points biting with with those please.

27:07

Six point and then again as for the applicant,

27:12

written clarification of the approach taken with regards to article 11, including why it provides a blanket authorization for streets and not a schedule of specific streets.

27:31

Action seven again is relevant to a number of different parties. It's for the applicant national highways and the joint councils.

27:41

And we require a written update please with regards to the extent of the strategic road network and local road process that was discussed this morning.

27:53

Also covering please the future maintenance of assets and approvals from national highways with respect to the strategic road network, which we discussed under the guise of article 11/8 Action Point was one relating to notice periods.

28:15

And it was requiring an explanation and justification of the 14 day notice period, which we were talking about in the context of land access under Article 20 Part Two.

28:32

Following on from that for the applicant, there was an explanation and justification of the 28 day notice period as included in article 32 Part Three.

28:46

Staying with article 32, we're moving on to subpart 12.

28:53

Please may we have an explanation and justification of the five year maintenance period.

29:00

And with respect to temporary use of land and any kind of explanation and justification you can provide about the differing lands found elsewhere within the Riak

29:12

etc

29:17

and 11 is sticking with the applicant. Please note we have an explanation and justification for the county planning authority or other appropriate bodies such as the DFT case team being the appropriate organisation responsible for the discharge of

29:36

requirements.

29:42

And moving on to action point 12 for the applicant

29:48

a explanation and justification with respect to the approach set out with regards to affected parties with respect to working our agreements

30:00

which we discussed under the context of requirement three F.

30:05

So clause eight

30:26

moving on to 13 again for the applicant and we discussed the differing terminology throughout the requirements this morning, such as must be based upon in accordance with compatible with reflecting etc. Again, if you could provide an explanation and justification for what's what's included within those different terminologies and obviously seek to simplify those and standardising so far as possible, please.

31:00

14 again for the applicant, we talked about redrafting and considering how requirements nine part six regarding archaeology could be made more precise and enforceable. So you have a redrafting and an explanation with respect to that place.

31:25

15 relates to requirement 14, and it's a thing was touched upon just before lunch, which is

31:32

would require an explanation from the applicant, please with regards to how noise mitigation is secured,

31:41

including the delivery and maintenance of it. With reference to the issue we talked touched upon with respect to any sorts of measures outside of the DCO boundary, please.

31:59

16 None relates to protective provisions. Again, for the applicant, please can we have a written update with respect to progress with all statutory undertakers and national highways? And within that, please could you also include the position you've reached with respect to the scope of powers touched upon by National Grid, West Midlands

32:24

and article 47. And any differences? Please,

32:30

in doing that, if you could also include a timetable for resolving any outstanding items at deadline one place.

32:42

And just two more 17.

32:46

Please, may we have from the applicants are written updates on the current position regarding consents licences and other agreements, including relating to letters of no impediment.

32:58

And again,

33:00

upon issuing that he's good. We also have a timetable for completion.

33:07

And the final one, which will still be fresh in our minds, right says statements of common grounds and progress on principle areas of disagreement with national highways, please from the applicant, can we have an update on those matters that deadline one.

33:23

And those are the only ones that I've recorded from this morning? So I don't know if there's anything that anybody around the table thinks I've missed? If so, please do do share those now. Just went online. Sorry, I just that final point. I think he's national highways for the update on the principal area of disagreement summary statement. Yeah.

33:50

Thank you.

33:58

And that that's the end of the list that I'll take a look at the calls to action points. Thank you for that

34:11

something you wish to

34:15

sorry. So not under Action Points, perhaps better under the next agenda item of any other matters?

34:24

Okay, well, I think we have concluded on that. So quite happy then for you to come in on. You know, any other business? So thank you, sir. Sophie Stewart for national highways. Sorry to take you further up the agenda. It was just there was an agenda item included around article 10. and transfer of benefits transfer of benefit of the order, which we didn't run through which national highways did raise in its relevant representation are 26 I don't think I've got anything more to say other than was in the relevant read

35:00

presentation and acquisition remains the same. But it was whether, sir, as you'd included it as a specific agenda item whether we could assist the panel with that. Thank you.

35:11

Sorry, I've glossed over that with the thinking I'd picked up everything

35:24

I suppose at this stage is really if if the applicant has any thing to respond to in light of the relevant representation that national highways have made

35:36

next decade for the applicant, so, the Afghan stands at national highways, relevant rep is in relation to the number of specific work numbers in the SRN. So to be clear, in relation to gigaclear Limited, that's work number 10 Openreach limited work number 27. Seven trend water limited work number 14, wells and West work number 16. And for national grid electricity distribution, PLC, work number 20. And

36:08

outgun understands that national highways are looking to either disapply the transfer of the benefit for the purpose of the SRN or introduced Secretary of State consent for that transfer. So there is a process of Secretary of State transfer for the benefits under Article 10. But for those works, which are specifically set out in that article,

36:36

no sexual state is needed.

36:40

I think we're continuing to engage on this. From the from the Africans point of view, I think we would

36:48

question the purpose of applying an exception to the SRN. The purpose of the transfer is to allow the statutory Undertaker the benefits and rights on the order but also ensure that they're under the same restrictions, liabilities and obligations that would apply to the undertaker.

37:05

It's not the case that the applicant will without doubt deliver the diversions themselves. Often statue Undertaker's will insist on carrying out the works. For example, electricity distributors often insist on carrying out their own connections for safety works and for gas Undertaker's. It's often required to be handled by the statutory undertake themselves. Therefore the order has to allow for flexibility in relation to the transfer.

37:34

The suggestion around introducing a Secretary of State consent.

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Again, Atkins not clear on what purpose that would have because

37:46

essentially, that's it just introducing a stage consent napkin considers that the information is available to the secretary of state currently within the order.

37:55

As to you know, the order has set out exactly who the statue Undertaker is, who was proposed to take the benefit in relation to what works. Those Undertaker's are registered Sasha Undertaker's introducing a consent. It's not clear what that further consent would be considering in that circumstance.

38:17

You're able to clarify, yes, sorry, as Sophie strict for national highways. See the

38:24

Mr. Hague got quite right. Insofar as when benefit is transferred, the protective provisions appearing on the face of the order will apply to the undertaker stepping in to the role of the undertaker.

38:39

Concerns currently set around the fact that the will be an ancillary agreement with the current applicant, that if a third party steps in whilst the protections in the order will apply to them any protections that sit in the side agreement between ourselves and the current applicant will not.

39:03

And I suspect that there may be a way through that between the parties. And it's an area I think, I think we should discuss, but it but at the moment until that's bottomed out it does remain a concern for national highways.

39:17

So you thinking then that the solution is likely to be within the sign agreement rather than the DCO. So it sort of fills the gap that you're concerned about?

39:27

I suspect so, sir. Yes, because the the concern is, is not the protections that will bite on any incoming

39:38

party exercising the powers within the DCO its protections that set out with that. So I suspect there will be some or we may be able to agree some form of contractual mechanism whereby before the transfer of benefit takes place, any agreement also needs to be assigned. Likewise, would

40:00

would be my suggested solution at the moment, but it's a matter of discussion between the parties.

40:07

Okay, thank you for that. Does that give you clarity as to the position and a way forward? Yeah. So thank you, I agree, contractual position would probably be the neatest thing.

40:19

So in that respect, then assuming that that works his way through successfully,

40:24

would it leave the DCO as currently drafted with the specific work numbers listed for each Undertaker as it currently stands? It would, sir. Thank you.

40:41

Well, thank you for bringing that to our attention. So, Mr. Hopkinson, sorry. So if I may, just on Article 10, the entity name for the national grid electricity distribution

40:57

entity for for the purpose of that article, it should be the West Midlands entity as previously discussed, and which I'll clarify in a written submission, rather than the general and good PLC company.

41:11

So that's the element listed under item F. Is it? Yes, yes, sir. Okay, thank you. Thank you.

41:32

Okay, so just go around the room, and also for anyone on line. Are there any final points that anyone would wish to raise? Any other business

41:45

now, okay, well, I'll just like to thank everybody for their contributions.

41:50

And we will formally close this hearing. It's now 23. So thank you very much, everybody.