

TRANSCRIPT_ISH2_SESSION1_M5JUNCTIO N10_06062024

Thu, Jun 06, 2024 12:34PM • 1:27:30

00:06

Good morning, everybody. And welcome. It's now time for me to open this issue specific hearing, which is being held in connection with the application made by Gloucestershire county council. For an order for development consent for the M five junction 10 project. As we said yesterday, it's obviously a scheme for in three paths, all movements junction at M five junction 10, New West Cheltenham link road, and the widening of the A 4019. Before I go any further, can I just confirm that everybody can hear me clearly? And also for those virtual can they see and hear me clearly, he can just notify with the thumbs up online, that would be appreciated. Thank you. And the live streams commenced. Thank you very much. For anyone watching on the live stream, just remind you that should we take a break, you'll need to refresh your browser page when we rejoin. And I'll try and remember to remind you of that. When we do so. Just introduce myself for those of you who have not been here before. My name is Edwin Monde. I'm a chartered town planner, and a planning inspector. I've been appointed by the Secretary of State as the lead member of the panel of examining inspectors that together comprise the examining authority for this application. I'll now ask the other member of the panel to introduce himself to you.

01:43

Good morning all. My name is Luke Regan. I'm a charter transport planner and a planning inspector and I have been appointed by the Secretary of State to examine this application. I will now hand back to Mr. Maan.

01:58

Thank you. Again as before we were assisted at this hearing. By the case manager Spencer Berman, and Jessica were to be here in person and may have on Evans who is supporting us remotely. If you have any questions or queries about the examination or the technology we're using, they should be your first point of contact. Contact details can be found at the top of any letter that you've received from us. And they're also on the project page of the national infrastructure website. I just asked Mr. Reagan to highlight a few housekeeping matters for us this morning.

02:39

Thank you, as explained in the examining authorities rule six letter at Annex II. The issues specific hearings will be live streamed and recorded. The recordings will be published on the project page of the national infrastructure planning websites as soon as possible after each hearing closes. To assist viewers and the listeners. Anyone speaking should introduce themselves each time they speak. As the recordings are retained and published, they form a public record that can contain personal information to which the general data protection Protection Regulation applies. The rule six letter includes a link to

the planning inspector of privacy notice which provides further information on this topic. If there is a need to refer to information that participants would otherwise wish to be kept private and confidential. It should be in written form which can then be redacted before being published. Also, if you prefer prefer not to have your image recorded, you can switch your camera off. I will repeat the requests made in the arrangements conference that in order to minimise background noise. Please ensure that your microphone or telephone is muted and that you stay muted unless you are speaking. In order to avoid fatigue. It is our intention to take a 15 minute break at about 90 minutes intervals and a longer break over the lunchtime period. I will now hand back to Mr. monde who will outline the purpose and conduct of this issue specific hearing.

04:16

This hearing provides an opportunity for issue raised by raised by interested parties and particularly the differences between them. And we're obviously exploring this morning particularly the draft development consent order. purpose as is set out the purpose of issue specific hearings is set out in Section 91 of the Planning Act. And it is held if the examining authority decides it's necessary for the examination to hear oral representations to enable adequate examination of the issue or to ensure an interested party has a fair chance to put their case. As indicated in the agenda questioning at hearing will be led by a member of the panel supported by the other panel member and it is for us the examining authority to determine how hearings are to be conducted, including the amount of time to be allowed at the hearing for making other persons representations. Now, we have identified quite a long list of issues that are set out in the agenda that we wish to go through today. And we will aim to go through those as efficiently as we can. Participants are reminded that written summaries of oral submissions should be provided to the planning Inspectorate by deadline one, which is Tuesday, the 18th of June. Now, this point, I'll come to the parties who are listed in the detailed agenda and ask them to introduce themselves. So I'll start with the applicant.

05:51

Morning, sir, Gary Solomon. They're just sannan San solicitors for the applicant. And on my left for this session, Douglas Haycock, also of Burgess salmon, and on my right column, Cartwright, who is the environmental lead of Atkins realice.

06:12

I know Mr. Solomon, you have a colleague online, do they wish to introduce themselves at this point? I'll ask them directly.

06:26

Polygon line is taking a note of the meeting.

06:29

Now fair enough. Thank you. Then I'll come to the joint councils please.

06:37

Good morning, sir. John Webster partner at DDF instructed by Gloucestershire County Council, as county planning authority, Highway Authority and streets authority. Alongside me is Mr. Andrew pattern

of Atkins re honest, who is also instructed by Gloucestershire county council. And online today is Mr. Nick Bryant, Associate Director of Planning at Tewkesbury Borough Council. He can't be with us in person today, but can participate virtually if required. We are here to make some agreed submissions on behalf of the joint councils. Be in Gloucestershire county Castle Tewksbury Castle children Borough Council as the statutory consultees and host authorities for this DCO Thank you.

07:18

Thank you can come then to national highways.

07:23

Thank you, sir. Sophie Stewart from DLA Piper solicitors instructed on behalf of National Highways and running down the table to my left I have Andrew Alcon programme director, Robert Ranger, senior DCA manager, and tansy Galvin in house counsel. Thank you.

07:39

Thank you. I think we also today have Mr Hopkinson who's joining us virtually.

07:48

Morning says, Yes, my name is Arthur Hopkinson from Osborne Clarke, we are acting as the legal advisors for National Grid, electricity distribution, West Midlands PLC and respect to the scheme.

08:02

Thank you. Thank you very much. And I just then come to Mr. Hadden. Badly apologise, yeah.

08:15

I'm an affected party. With scheme. Thank you.

08:29

I don't believe there's anyone else in attendance today who I've not already come to. But if I have missed anyone, I won't ask you to introduce yourselves just now. But should you come to speak, which you're more than welcome to do please introduce yourselves at that time, giving your name and the name or names of the organisation or people that you represent?

09:00

And now really, I think we come to the specifics of the agenda. Now we've got the welcomes and introductions, but just before I do that, I'll just ask the applicant to confirm that they're going to be able to display the development consent order, what as we go through it, I think that would be helpful. And we'll be looking to use the latest additional submission, which is examination library reference as 003, which is the clean version rather than the track version.

09:31

Councilman? Yeah, yes, sir.

09:32

Thank you. I think whilst on the agenda, we did list a number of other application documents. I think the main one that is likely to be referenced as well as the DCO itself is the explanatory memorandum, which is exam library reference a pp 032.

09:56

Okay

09:59

so if we We can start then I'll come to the applicant and ask for sort of an explanation of the approach they've taken to the DCO. And a brief overview of the particular articles. Thank you.

10:13

Thank you, sir Gary Solomon. So the DCO takes the form of a statutory instrument, which if made authorises a nationally significant infrastructure project and then CIP pursuant to the Planning Act 2008. It's a legal requirement that we're a project is an end CIP, it needs development consent, and the M five junction 10 improvement scheme is an NSAID which requires which comprises of three elements which you outlined in your introductory comments, and which were discussed yesterday at issue specific hearing one, and they're outlined in the various application documents. The draft DCO essentially is the planning permission for the scheme and includes a wide range of controls to ensure that the project is carried out within clear parameters. However, it's more detailed than a planning permission. And the draft DCO contains a number of powers and consents ensuring the project is able to be built, operated and maintained and it also includes powers to acquire land and rights common to other DC owes this date this draft DCO follows a conventional format is based on the model order contained in the now repealed infrastructure planning model provision statutory instrument, as well as a number of other development consent orders, which have been made. And as you've pointed out, so the current draft E series that dated March 2020, for the front end of the draft DCO contains a number of articles which effectively authorise the development and grant the powers necessary to deliver it and set the parameters for the development. And in the draft DCO in front of you, there are 47 articles split into seven parts unconscious, we're gonna cover the detail and many of the arguments in in the question. So you've, you've raised but in terms of a brief overview, part one contains the definitions and interpretation, including the DIS application of certain statutory provisions. Part Two contains the principal powers. So Article Five grants development consent for the authorised development. The authorised development is contained in schedule one and that lists the works and there are 35 separate elements of works that are listed, which are needed to build the three elements of the scheme subject to the order. Article eight contains limits of deviation in respect to the project, so that stay the maximum extent of the boundaries of the project. Articles nine and 10 confirm that the powers granted under under the DCO are for the benefit of Gloucestershire county council as the Undertaker, except where consent is granted for the Express benefit of others. For example, there are a number of permanent rights being acquired for the Express benefit of statutory utilities who will take the benefit of the order. There's also the ability for the undertaker to transfer the benefit of the order to others with the consent of the Secretary of State, save in relation to a number of specified works, where Secretary State consent is not required. So that's the current drafting of the order. Part three deals with streets. So articles 11 to 17. Article 11 gives powers to allow the undertaker to enter into streets and execute works. Article 13 essentially requires the streets constructed under the order the become public

highways and are maintained by the Highway Authority. Articles 15 and 16 allow for the stopping up or diversion of streets either temporarily or permanently for the author in order for the authorised development to be carried out, and the permanent permanent stopping up and diversions and listed in sheduled for an article 16 also covers the stopping up of private means of access and the provision of replacement access. Part four contains a number of supplemental powers. Part Five contains powers of acquisition. So articles 21 to 35 allow Gloucestershire county council was undertaken to compulsorily acquire land permanently, or acquire rights over land or create new rights or take temporary possession of land in order to deliver the project. And the different powers of acquisition are shown in different colours on the land plans, with land permanently being acquired, shown in pink, land a subject of acquisition of permanent rights and temporary possession being shown in blue to underline the subject of temporary possession only being shown in green, and so there's no special category land contained within this order. Article 23 provides that any acquisition pursuant to the DCO must be undertaken within five years of making the order. Part six deals with operations which are permitted. Articles 36 and 37 relate to the management of trees and hedgerows, and life of cutting back or removal insofar as that's necessary to carry out the works, and the trees that the pallets relate to outlined in sheduled eight. Part Seven contains a number of miscellaneous and general provisions. For instance, article 41 is a standard article which provides a defence where the statutory nuisance arises as a result of the authorised development, which cannot be reasonably avoided. Article 46 provides for any differences under the developed consent order to be resolved by way of arbitration. And article 47, which is a new article in the current draft DCO deals with inconsistent planning permissions, and we'll cover that separately under the specific question raised. There are a number of schedules to the draft DCO, which are the back end of the draft DCO. As mentioned shedule, one describes the authorised development by listing and describing the proposed works which under the order will be authorised to be carried out under the development. And so I'm conscious that the agenda includes a request to explain the extent of the authorised development and how that's defined and meets the guidance for associated development. What forms part of the N sip and what become what is associated development unconscious was discussed yesterday as a topic. And we are we were requested to deal with this as a written submission. So, for clarity, we are we are going to provide that obviously that submission. We haven't divided the works up for them in terms of the drafting of the DCO. They are generally DCF, don't for highway work, don't do that. So for the purpose of today, it's enough to assume that the proposal is then set the combined end CIP and associated development for the purposes of the drafting or wasn't proposed to go into any more detail than that.

17:26

I think that's fine, because obviously, we did cover that yesterday. But when we get onto the particular elements of the agenda, I think I will open it up to others, because I know it's an issue that's been raised Yes, by national highways, I think. But obviously, I'll come to them in due course. And I may say a little bit more than as well to hopefully assist in making sure we get clear explanation in your written submission in due course.

17:56

Thanks. Gary Solomon, also said that issue does come up in relation to the discharge of requirements. And so I think we'll be discussing it in that context. In any event, the requirements are contained in schedule two, this is in two parts, part one contains the requirements themselves which regulate how

the development must be carried out, there similar to conditions on a planning commission. Part Two contains the mechanism for how those requirements are discharged. So just briefly drawing out the main requirements, requirement to deal for time limits, but a five year implementation deadline on the authorised development, the development must commence within five years of the order coming into force. Requirement three is relates to the environmental management plan. And that requires that environmental management plan second iteration, a second version is prepared, which is to align with the first iteration I the first version that was contained within the application documents, and is to incorporate the measures and commitments from the environmental statement and the register of environmental actions and commitments also known as the Riak. And he needs to include another a number of other specified management plans and has other constraints in there. And they will be certified as part of the application. And the requirement is that the second interim iteration must be prepared in consultation with the local planning authorities and national highways, as currently drafted needs approval of the county planning authority. And the development must be constructed in accordance with the EMP second iteration. And once it's completed, there's a third iteration that must be prepared and approved and the authorised developer must be operated and maintained in relation to that third version third iteration. Requirements five to 10 deal with effectively regulate the development. For example, articles five and six require landscaping works to be approved, implemented and maintained. and articles eight and eight and 10 deal with protection against contamination and protected species respectively. Requirements 11 is concerned with the detailed design and it provides that the detailed design of the authorised development must follow the works plans. The general arrangement plans the environmental master plan, and the engineering section drawings and is currently drafted any departure can only be agreed with the county planning authority in consultation with the local planning authority, national highways were related to the strategic road network and only where there won't be any materially new or materially worse environmental effects to those already assisted Yes, as currently drafted. And then requirements 17 deals with the procedure for discharging the requirements and how the discharging authority currently specified to be the county planning authority should deal with the application matters in relation to speed limits traffic regulation, stopping up of highways and public rights of way, or in sheduled. Three and Four shedule is five and six identify the land over which new rights are to be acquired, and the reasons for such acquisition as well as the land over which temporary possession may be taken. sheduled nine contains protected provisions which are designed to protect various Undertaker's in relation to the proposed work. So part one of schedule nine deals with protected provisions in relation to electricity, gas, water and sewerage undertakers part two of sheduled nine deals with protective provisions in relation to electronic code system operators. And part three of sheduled nine deals with the protective provisions in relation to national highways. So that's a brief summary of the DCF.

21:48

On to you, I think that's very helpful. So just in terms of the structure, obviously, you're quite right, that was referenced yesterday, but just having revisited it last night, just do. I think it would be helpful as part of the written submission. If there's it includes explanation in terms of perhaps the discrepancy between how it is structured and the advice note 13 from the planning Inspectorate. Because I think that says a draft DCO should include a full precise and complete description of each element of any necessary associated development, which I think links back to Section 115 of the Planning Act. And it should be clearly identified in the shedule to the draft DCO. So that's really where I'm coming from to try

and understand, as we've referenced yesterday, the Secretary of State having clarity of the distinction between the end zip element and the associated department.

23:06

So thank you, we will provide that clarification.

23:10

Thank you. Now, I'll just come to national highway because I think in your relevant representation, you made some reference to this. But if I'm mistaken, by all means, just bought me right. And that's fine.

23:31

In relation to in relation to the distinction between associated development if it's not something I'm I'm misremembering something No,

23:40

we didn't say we did make a general point around the interaction between the local Raiden network and the strategic road network on hand back post completion hand back that No, we didn't raise a point around associated development. That's

23:55

fine, then. I think the other point, though, that you did make reference to in Appendix B of the submission was the distinction or the lack of clarity between work numbers and the statement of reasons. And I think, be helpful to understand your concern there, because he's obviously talking about the structure of the DCO rather than a particular element.

24:21

Certainly, sir. And would you prefer that we addressed that today or come back and writing because obviously, we're also required to submit a pads for deadline one?

24:31

Thank you very helpful to hear at least a summary of the concerns this morning. And obviously, we'll get that written submission in due course, but yeah, if we can do that.

24:45

So certainly, if I can be helpful on this point, the concerns have been raised in relation I think, to work numbers have been taken away, and we are proposing to address those in our next iteration of the draft DCO

25:04

Sell them wait for the written explanation from both parties as to what progress has been made and clarify is that likely to mean then that we're going to get slightly different work plans? Or just how are you anticipating resolving it? Or is that not yet known

25:29

Garrison it's been resolved principally by the descriptions within the DCO and cross referencing the right work numbers rather than changing the plans.

25:44

Okay, thank you

25:55

okay, then if we can have the DCO display that'd be helpful and will then start to go through the specifics of the different articles and if we start at part one and Article Two, which I think is page five of the dot the actual article itself

26:21

I think the first point I would wish to raise is the section which begins authorised development which is towards the top of that page and the second part of the the paragraph where it reads and any other development authorised by this order which is development within the meaning of section 32. Now, first question is that necessary and sort of the supplementary to that is what development is not described in sheduled one that it would appear to be seeking to allow

27:26

sorry, movie madness?

28:42

Sir, I think he's just covering uncertain potential ancillary works, but and we think it's a standard provision, but we will come back on that.

28:56

Think we will need some clarification because he does seem to be adding an extra element to what I think would be a standard provision. And that may be fine, but we need to understand the justification for it. So, if we have that as an action point in the first instance, that there won't be any.

29:29

So, we then carry on within the interpretation section. I just wonder obviously, under the commence whether the definition goes too far in adding the section after a temporary means of enclosure, were included setup works associated with construction compounds, such as soil stripping, stockpiling, and provision of access points. So is that justified in this case?

30:20

So yes, we that that there, that's a standard list appreciate that. It does vary slightly from DCO to DCO. But they're not unusual works. They're designed to be minor minor works that are unlikely to have any significant effect and therefore would not ordinarily be included.

30:46

On when the, and the provision of access points is written in there, is that just access points in association with construction compounds? Or is it intended to go beyond that?

31:14

Solid so yes, construction compounds, access points for construction combines.

31:27

I would just ask you to consider whether it would be clear if he actually said access points for construction compounds so that it's not inadvertently allowing a range of access points with it within the DCO boundary, which perhaps would be extending it even further. So if you can look at that as well, I think national highways also made a comment on this in their relevant representation. So I'll come to them next.

31:54

Thank you so yet, at the moment, it's not an objection in principle to its inclusion, but the pre construction, ecological mitigation works. We just have concerns or some concerns at the moment. We don't know what these works are. And they have the potential to possibly affect highway highway drainage. So it's really asking the applicant, could we have a breakdown of those works, and then we'll make any further submissions. Once that's received. Thank you.

32:25

Okay, got from the outcome. The outcomes referenced pre construction, ecological mitigation works as intended to capture works for a range of ecological measures, and that might include walkover surveys, limited vegetation clearance, and other works designed to be minor in nature. We're aware that national highways have raised the query regarding what that will what will be done within the SRN. And we understand I think, I screenshot stop sharing. That's principally aimed at protecting the integrity of the SRM and the site agreement, which is currently ongoing between the African National hires, we'll deal with those works in detail. Thank you.

33:12

Thank you, sir. And, yes, there is discussions ongoing with the with the site agreement. So we'll pick that up there. Thank you.

33:19

Thank you. Thank you.

33:29

I just wonder also, within interpretation, you've included definitions for the local highway authority, the relevant planning authority, the Secretary of State, Strategic Highway Authority, street authority, but not the county planning authority. So I wonder whether that should be added.

33:49

Don't make up for the outcome. The use of the term county planning authority only appears in schedule two being the requirements, and it's defined in paragraph one off sheduled to the applicant, since that's the most appropriate place to define it.

34:05

Thank you for that.

34:14

That's helpful clarification. If we then go to Article Three, which is the DIS application of legislative provisions, number of points on this. You're seeking this application of the land drainage act? Just couple of points there. Have you made progress in discussion with the drainage authorities? And if so, how's that going? Because you will need their authority I think to agree that this application, so just wondering what the progress is on that particular point.

34:53

Gary Solomon, we have asked for consent from the relevant local legal authority We are waiting for that consent.

35:04

Okay, I think it would be helpful to understand when you're anticipating getting an answer so that we can make sure it is resolved promptly as far as we can, because if it isn't, then we're going to be having to relook at this particular this application. Yes. Wiki. Yeah.

35:24

At the moment the way that we chased again yesterday and we are hoping to have a response by deadline one will update a deadline one,

35:34

thank you. Now, in the explanatory memorandum in dealing with this, it was first to internal drainage board and relative relevant drainage cause of paragraph 4.11 Are their internal drainage boards and other drainage boards in this area?

36:09

We are not aware of any, it's drafted in a in a sort of precautionary way to ensure that if it captures any, any body as any organisation, and again, it's a sort of standard standard drafting.

36:33

Okay, well, I'll come on to it later, because it's actually in with the DCO itself later on. So we'll come to that when when we get to that particular article. So who's the drainage authority you're actually in discussion with directly is

36:51

Gloucestershire county council as their as the lead local drainage authority,

36:58

but nobody else know that we

37:01

understand they are the the body, by our discussions with them, have confirmed that they are the body we need to secure consent for, for the test application section 23 of the lung drainage act.

37:22

Our minds were in because you're telling me on the one hand, you're doing a precautionary approach in listing things other than the lead local a flop flood authority. I don't want to be in a situation where there is uncertainty that is using only the county council as London drainage authority and the width. So Can there be clarity on that, so that we can be certain that you would have the consents if the county give that consent?

38:03

I think so, so yes. Thank you.

38:23

So can I just then ask the county then what their latest position is on on this matter?

38:34

John Webster, joint councils. So we spoke to the applicant sort of early this week, and we're seeking to expedite discussions as we can do in the county council to assist to help you get that clarity. So I think it's something which we'll be able to come back at deadline one

38:50

on. If we know that that is an action point for both parties, then there'll be helpful thank you.

39:06

I think the next article that I have on my list is Article Five. And it's really five to where use ad, land within or adjacent to the order. And it's really trying to get clarity as to whether saying adjacent is appropriate and justified. And when I look at the explanatory memorandum, whilst that cross refers to article 20, it doesn't actually give me an a clear explanation as to why you're wishing to have adjacent added. So hopefully, you'll give me a bit more clarity as to that.

39:58

Duck hiccup for the outcome and So in terms of the question around adjacent, is it principally around a turn adjacent? Or is it in request for some sort of numerical limit?

40:10

I don't know. I'm seeking advice from you really? Because adjacent may be capable of being interpreted in. Yeah. Where does it start? Where does it stop? So you've asked for it. So I'm hoping you, you know why you're asking for it. And that's what I'm seeking clarity for, because he's not explained clearly when you reference to article 20. I don't think article 20 self makes reference to a jacent. So it's just trying to understand the overall picture that the DCO would, is creating and the powers that you're seeking. And the reason why. Thanks.

40:52

So article 20, doesn't make reference to adjacent, it provides the power for the undertaker Undertaker to go on to land within the order limits and any other land match, which may be affected by the authorised development. So that's a wider a wider basis than the order limits themselves. The term adjacent has been used to try and communicate with that, within within that limit. It's not possible to define adjacent by any quantified measure, it's going to be used on a case by case basis, depending on the power it's communicating with. So in the case of article 20, you would need to justify your use of power through article 20. And then five to have communicated within that way. In turn, in terms of providing precedent, so it's, it's a way that it was an article five to wasn't included in the motor provisions, but has been included in a range of previous orders. Most recently in the three junction nine order 2024. And also locally, the eighth one seven missing link.

42:08

Yeah, I understand that various orders may well have included a bit, presumably they will have had specific justification in those particular circumstances. So is there a particular reason here? Why you do think is necessary? And would it be clearer to a third party if the wording in article 20 was the same in Article Five, so that there's a clear relationship between the development and the land that is affected, as opposed to just saying adjacent?

42:55

So take that away, and

42:58

okay, thank you. So there'll be another action point. I hope my colleagues keeping up.

43:15

Okay, Article Seven, then I'm just interested to understand the relationship between article seven and article 47, which was obviously the addition that was added at the latest iteration. The timings of the two articles appear to commence on different trigger points. So just want to make sure that's not going to cause a problem. So perhaps you can explain to me the different trigger points and where that leaves the overall picture for the DCF.

44:00

Thanks. So um, firstly, just to note that we are currently reviewing article 47. To assess against recent applications. It's not it's not an article that currently appears in any granted DCO it's been drafted to address hillside risk and there is current learning not least in the lower Thames crossing DCO and how the best way of drafting that is. So, I can certainly speak to what the articles are has drafted today, but we are currently reviewing how that operates.

44:33

That will be helpful. Thank you.

44:34

Okay. Thank you. So, so, turning to Article Seven. This article provides reassurance that any further permission under the 1990 Act, which is not in and of itself and then set and is not required to complete

or enable the use or operation of any part of the development authorised by this order can do so without breaching the terms of the order The article itself is just clarify category and serves only to provide an additional reassurance for any future development within the order limits. It's forward looking. And so it will apply to paying permissions within the order limits, following the coming into force of this order, looking between article seven and 47, the applicant does note that article set 47 Three does operate in the same way as article seven. And so it's proposing to at the very least strike article 47, three from its next iteration of the DCO. Article 47, subsection two and one and I just turned up quickly

45:58

it splits across a page, so I'll just show the start of it there. So it's essentially to try and cover hillside risk. hillside risk refers to the principles confirmed in Hillside parks and Snowdonia.

46:21

In which basically confirmed a general principle established in Pilkington versus Secretary of State for the environment, whereby a permission can no longer be relied upon where development pursuant to a later permission renders that original permission impossible to implement. The article is meant to protect third parties as well as the applicant to ensure that they are not risk of enforcement proceedings as a result of any inconsistency between the authorised development and any third party planning permissions where that inconsistency means that the Planning Commission is incapable of physical implementation, essentially introducing severability into those third party planning permissions in terms of how that is to operate in terms of triggers, article 47 one which is principal way of hillside risk is integration for third parties applies from the grant of the scheme well no it's not actually his commencement which is.

47:55

ASCO 47 one which applies to hillside risk applies from when the authorised development is commenced, and it will apply to pre existing planning permissions. Article 47 Two is a particular article that we are looking at and whether it continues to be appropriate it currently applies much in the same way as article seven being forward looking.

48:26

Thank you. I'm just thinking. So, you have you have a gap then between the when article article four to seven would bite and when article seven would bite is that right? Because Article Seven is getting in front of me CERAM.

49:02

Would would by following the coming into force of the order. So that's the date the order is granted and then 47 is on the commencement of the authorised development. So what happens to a planning permission that may have been granted in that intervening period is that that covered

49:39

mis misunderstanding This

49:42

is so under 47 One that will apply to the Planning Commission's but before commencement as well as post commencement. So they operate in different ways and they are looking at different things. So the protection 447. One is looking at those third party planning permissions. And going, if we, the reason why it's connected to commencement is because it's looking really at physical implementation. And the problems that physical implement implementation of our DCO might cause a third party claim permissions. So it's only when we start to implement our DCO, that we might impact that third party implement that permission. So it doesn't need to be it doesn't need to bind at grant of the order. Article Seven is not really to do with third parties. Planning Commission's it's more, it's more to do as a confirmation. That Well, it is but it's more to so where third party Planning Commission's come forward after we're granting this order, and they're not anything to do with our DCO. It's a confirmation that they can build their development, and it's not related to our DCO. And then they don't need to be drawn into the protections of the Planning Act.

51:12

Thank you. So Gary Solomon, we will be as so this Haycock. As mentioned, we will be amending the wording or at least taking part of that out. If it's helpful we when we submit that we can provide a written explanation of the provisions, both what they do and how they article seven and 47 relate to each other.

51:37

I think that would be helpful, thank you.

51:49

Then move on to Article eight. And there's quite a few elements to this. So if I come to national highways in the first instance, because you're relevant representation youth, I think asked for clarification with regard to the in respect of the strategic road network, so if I can come to you in the first instance.

52:16

Thank you, sir. Sophie Stewart for national highways, we did. Our concerns are set out in our relevant rap, which is our zero to six. It is an ongoing discussion between us and the applicant at the moment, the applicant has committed to us to provide further information on the Assessments carried out in reaching the limits of deviation as they apply to the strategic road network. And I'm reasonably confident that once we have that information, there is a solution through it through the protective provisions. And we'll decide we're just at the moment uncited on the information.

52:58

Okay, and is that a concern with regard to the current strategic road network limit? And and also the potential strategic road network? Should that change as a consequence of this DCO Is it both elements that you're looking for, for clarity on?

53:34

Safety straight national highways. It's just the the fast so said the limits of of deviation during construction of the development and as it applies to the existing SRF.

53:49

Okay, thank you. If I come next, then to

54:00

that article eight currently has a clause that would allow this application of the limit of deviation, where it can be demonstrated the deviation in excess would not give rise to any materially new or worse adverse environmental effects compared to that reported knee environmental statement. And I'll come separately onto that phrase materially new or worse adverse. But limited reference is made to this possibility within the IES itself so I'm just wondering whether you provide additional information on how that would be implemented in in practice.

54:55

Okay, make up for the outcome. Thank you. So I think it's sort of all of the one one in the same Saying that control over materially different or materially worse essentially seeks to control how far you can take the limits of deviation in relation to our environmental assessment. Appreciate, so you wanted to come on to materially worse adverse, if it helps African does appreciate that and most recent DCO Secretary of State has actually taken a view that the most appropriate wording there, given the function of the EIA regulations is materially different rather than materially worse adverse. And the applicant is proposing to make that change in its next iteration. And it's in that way that the any sort of flax past the limits of deviation is only going to be appropriate if it's not generating additional environmental effects. So would be within that assessment that we've already carried out.

56:03

Now, that's helpful clarification, because I was going to go on to look at your experiment, explanatory memorandum, where it appears to suggest that the wording where you're citing precedents of three other DTO cases, a four to eight, a 47, blofield, and M 25? Junction 28? I think it was, but they also materially different, not merely worse, adverse. So this, I just wonder whether the explanatory memorandum also needs to be revisited to ensure that clarity, because it doesn't appear to support the argument that was initially said, albeit, you're moving on anyway. So perhaps it doesn't matter.

56:54

Thanks, sir. And now I appreciate there's there's no requirement to update the expansion random in the drawing course of the application, but there is a requirement to update it for the end of the examination, we can introduce that change at the end of our house.

57:11

Thank you. Now, there's another element which seems to be slightly contradictory within the limited deviation because the environmental statement chapter two, section 2.5, and this is exam labour reference as zero 10. Now, that is consistent with the drafting of Article eight. But at paragraph 2.5, point one referencing work to the river chart bridge, and the with the bridge underpass, it appears to say within the environment state, environmental seven that would not have any permitted limited of deviation. So as drafted, Article eight doesn't reflect that. So again, it's just a question of seeking clarity from you or whether it needs to be adjusted accordingly.

58:12

Thank you, sir. Duck Aycock for the applicant, we have considered that in detail sir. Past the limits of deviation set out maximum which may be utilised in any given setting, there may be other design challenges, which would limit the extent to which you can rely on those limits of deviation. However, given the design restraints, as set out in paragraph 2.5, point one of the chapter two of the ETS, the applicant doesn't consider that these elements would be able to use any limits of deviation regardless, and would be content to introduce that clarification in this article. Thank you.

59:10

But come on, then to part three STS which is article 11. First question in respect to this, should there be a restoration clause? So I think that's a fairly simple question. But then going on from that. This provision departs from the model provision, in that it appears to give a blanket authorization rather than being limited to a shedule of STS. So just seek clarification from you on that, and again, linking back to the explanatory memorandum, paragraph 4.36. It explains what the article does, but it doesn't provided justification for for this scheme. So, several points wrapped in there, but before I come to you and no national high was also made a point on there. So, perhaps if if I can come to you first and then applicant can respond as a whole.

1:00:22

Certainly, sir, thank you and our position remains as per relevant representation, we still seek clarity as to the extent of the assets that will form the SRN post completion in particular, where the local rep road network will meet the strategic road network. And there may be some Interplay or overlap. And we just need to understand not only the assets that are coming back, but once that is clear the rights that will be required by national highways to maintain the new SRN post completion of development and that they're catered for. We also have a concern that any to the strategic raid network must be with our approval.

1:01:20

I'll come to you in a moment. But I also know the joint counsels had an issue on this particular article. So sorry, I didn't mention that before. Thank you.

1:01:28

John Webster joins us. Thank you. So Sona in our relevant representation, I think we picked up on the same point. That paragraph 4.36 of the does not explain why article 11 of draughty DPA has to depart from model provisions and then authorises interference with any street within the old limits rather than there's just specified and sheduled three and four, the draft DCA, so it's more for clarity and em on our side, sir.

1:01:55

Thank you, so if I can come to the applicant and to respond.

1:02:00

Thanks so So, I think there was four main points raised across the board. So firstly, in relation to the restoration, secondly, in relation to the drafting of article 11, and the emission of using a shedule. In that article, certainly, in relation to the extent of the SRN, the details to be agreed with national highways, and thirdly about the details around taking access off the SRM. So firstly, in terms of restoration, we can certainly look at that. So just know, once the outcome is, has devolved, it's it's always in terms of local highway authority, there is an extent to which those bodies are one in the same. And if it's carrying out works within highway it will be under its overall general duty of maintenance, and in relation to the SRM site agreement should be governing the relationship of that, but Notwithstanding that, we will take that away. And and look at that, in relation to the admission of a shedule in shedule. In Article 11, Sir we're aware, sir, that recent highways D CEOs do generally follow the form as set out in our our schedule, but to provide a sort of explanation of why that is. It's a position taken by the applicant and as a understands from national highways in their previous explanatory rent memorandums and written responses. In other examinations, that the concern is principally around how you define Street and how broad that definition is. So the DCO defines a street as being a street within the meaning of section 48 of the 1991 Act. Together with any land on the verge of a street, or between two carriageways, and includes part of a street, section 48 of the 1991 Act. Define Street as being the whole or any part of any of the following, so a highway road Lane footway alley or passage, any square or court and any land laid out as a way whether it is for the time being formed as a way or not. The position of the African is that definition is quite broad, and there's no register of streets, which outcome might be unable to list with any certainty to the extent that it needs to use or break open. It also also considers that the power generally reflects the powers of a local highway authority, which are contained in part five of the Highways Act 1980, being section 7576 and 77. And that the other powers that highway authority would generally have access to and in that way, it's not considered that this power goes demonstrably beyond that which a highway authority might have access to another circumstances are paused. So

1:05:09

you can see the wheels turning very slowly. I think then, if you can take away as as that action point, the clarification, which hopefully will help both us and the joint counsels in understanding the approach that you've taken. And obviously, it will also help national highways as well as you as you go on with your ongoing discussions with them.

1:05:40

Thanks. So in relation to that particular point, I'm sure we can pick that up in a socg as a particular item in terms of the extent of the SRN, the DCO doesn't attempt to define with any precision, the exact apparatus, which is going to be adopted one way or the other. Article 13 provides enough flexibility for further agreement to be reached between the applicant and national highways, that agreement over structures will be dealt with in a separate side agreement.

1:06:27

Yeah, I mean, again, it was referenced yesterday. And I think it was accepted, there's a sort of a grey area at the moment as to where strategic road might start or finish relative to the local road. And I'm wondering whether it would be better if there was actually a clear plan defining that. But I'll come to national highway to seek their view. And then I'll come back to you because

1:07:03

Thank you. So Sophie Stewart, the national highways? And yes, I think we accept there has to be a degree of slight tolerance for engineering reasons. But our preference would be to have a plan as precise as possible. That shows the cutoff point. And I think that to an extent, would then help us with some of our other concerns around the draft DCO. Because of that uncertainty, at the moment, we're not able to say with with certainty in relation to in relation to some articles, yes, we're happy or no, we're not.

1:07:46

I can understand where you're coming from, I understand both parties positions. But whilst I've posed the question about whether a plan would actually be helpful, your answer actually says yes or no, because you're saying that there's going to need to be a degree of tolerance. And so having a line on a plan actually causes some tension there. So is there other examples of other schemes where we've had a similar scenario with the relationship between strategic and local road network to sort of guide us as to best practice?

1:08:27

Thanks, so. So ultimately, a line is just not going to be possible at this stage, the project is going to be subject to detailed design and the extent, wherever we draw that line will be subject to that. So in terms of providing that level of detail at this stage, I'm not sure either party is going to be in a position to agree that at this stage, but we can take that away, obviously, between the parties, in terms of my experience of that relationship. It reflects that in terms of that discussion, that discussion is something that's had privately between the two, it reflects the sort of negotiating positions over what the local highway authority and what the Strategic Highway Authority is ultimately happy to continue to maintain.

1:09:19

Gary Solomon, so the, I think what's needed and what we've, we've had some discussions outside of the sessions, too, and it comes down to the discharging the requirements as well, is what we need to agree, I think is a process for agreeing, what goes in the SRN and what what assets from part of that which, rather than my colleagues, right, I don't think that you can get a plan, but we can get a process, which could be agreed and then that could feed in when we come on later to who is the appropriate discharging authority that would then feed into that. So that's what we're aiming to. We've got Some meetings, I believe being set up shortly to try to see where we could get to with that.

1:10:07

Okay, that's helpful. And so that presumably will also lead into understanding of which theists which authority would be a maintenance authority as well.

1:10:17

Yes, sir.

1:10:22

Okay, so I think probably for all parties, it's it's a watching brief at this stage and to keep us informed as to the progress that is being made. So that we know as we go, where all the parties are heading. So I

think that's probably an action point for all parties so that we can all ensure that we're engaging with it as as things move forward.

1:11:03

I think with that in mind, it will probably be worth US adding into the examination timetable, an element so that we can include it to ensure that we're not missing it later on the day, and everyone else is kept aware as to progress. Thank you.

1:11:24

Sir, I believe the fourth item that national highways race was on access, we can cover that if you would like. Us. Thank you, sir. So access is through article 17. And I'll bring that up on screen.

1:11:47

At the bottom of the screen the.

1:11:58

Applicant Africans understanding from national highways relevant rep is that they'd like to include an exclusion of access from the SRM app can and will be engaging with national highways in that respect from the applicants position and exclusion doesn't work to the benefit of either party, and will be trying to get to a position where the consent processes agreed where access is suitable, but simply include an exclusion and the DCO just limits the options for both parties.

1:12:39

Thank you. So safety strip for national highways. discussions are ongoing in our relevant rep. We did provide suggested drafting this, we accept a blanket exclusion may not work, it may end up being without prior approval again, or it may be dealt with elsewhere. discussions are ongoing, but it does remain a concern for national highways that unfettered access to the SRN can't be allowed.

1:13:15

Well, okay, I think I think I understand the position from both parties. And obviously, you'll be responding to the relevant representation in due course. But also, again, it'll be helpful to understand how the negotiations are progressing, which hopefully we will cover by the previous action point. Thank you.

1:14:05

Okay, I think that takes us to article 12, then, the application of the 1991 Act. I'm just seeking again, clarifying the role of the highway authority and street authority, as explained in the explanatory memorandum at paragraph 4.42. And perhaps, again, I think national highways may have made reference to this, but can I just come to the applicant first just to understand what the explanatory memorandum is telling us in this respect?

1:14:40

Thank you, sir. Okay, got for the outcome. So the paragraph 4.4 to the explanatory memorandum seeks only to clarify that article 13 is not determinative of the status of a of the street authority over that

road, and it's really in relation to Article 712 B. I'll bring At 712 be up at 12 7pm. So to repeat 712 Seven b This reads that nothing in this article in article 13 means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of part three of the 9091 Act. What this means is that when determining the street authority for street, one must not based it on a duty of maintenance provisions set out in article 13, which might point to the article being responsible for maintenance of a particular street, including private streets for a set amount of time, for example, a 12 month maintenance period, and look instead into the overall classification of that road, which is set out in article 14. The issue, sir, is around how you interpret the term street authority. So Street authority means under Section 49 of the new roads and street Works Act 1991. One of two options. So the first being you can either be a street thority with the street has maintainable highway, if you're the Highway Authority, so Highway Authority, or if the street is not a maintainable highway, the street managers and that can fall January to front ditches landowner owners that there's a longer definition server that's in summary, because one of the requirements of the definition of a street authority is that the street is maintainable highway, the article seeks to clarify that just because article 13 might say that the applicant is maintaining that street for a set period of time, it doesn't mean that it has since has become the street authority for that road.

1:17:02

Do you have any follow up to that at all?

1:17:05

So if he's doing national highways, so we didn't raise a point on Article 12. But no, we did on Article 13. And it's helpful to hear the the interplay between it so thank you.

1:17:16

And the joint

1:17:17

councils join us join councils, I think it may be simply updating the EM to make that slightly clearer. I think maybe one of the issues is when when you come to the first time is that the second sentence of 4.42 says the applicant is the highest authority for the local road network and under duty and or bullying source to the streets authority. It might make more sense to clarify that as Gloucestershire county council. And that tweet like made make might make it make a bit more sense.

1:17:51

Certainly, we can make that amendment into the explanatory memorandum. Thank you. Thank you.

1:18:27

Think then that takes me to article 14 and classification of roads. And this definitely does link into the points that national highways made because I'm just seeking clarification of what the consequences might be if protective provisions with national highways are not agreed. So if I can come to national highways in the first instance there.

1:18:53

Thank you so safety strict for national highways. In short, the consequences if we don't have our preferred protective provisions would be that national highways are in a position whereby an operation of the order they are required to become Highway Authority for assets that may or may not have been completed to their satisfaction as they as the article would take effect on the applicants certification of completion without reference back to national highways as to whether they are happy to take responsibility for those assets, which consequently then potentially has cost and time resource implications, if further works would be required to bring them to national highways operational standards.

1:19:53

So Gary Solomon, the applicant, I think the provisions need to be read in conjunction with articles 13 which does require that the the works have to be completed to the reasonable satisfaction of the Strategic Highway Authority. In any event, we are aware and have received national highways protective provisions and we are seeking to to agree those.

1:20:22

So if they are agreed, then it takes away any of the doubt that there might be with regard to article 14 and 13, then

1:20:33

safe straight nationalised? That's correct, sir. Yeah.

1:20:35

Okay. Thank you.

1:20:52

So, I think that then takes us to article 17 access to works. And, again, it's how the DCO is drafted and the explanation in the explanatory memorandum, which is at paragraph 4.68. Just wondering whether the wording in the DCO aligns with the explanation? And can you provide a justification for the extension of the powers as sought?

1:21:27

Dark Haycock for the outcome, thanks, sir. In terms of the alignment of the EM and the DCO. I think what's being referred to there is that the provides an example of the type of accesses to be taken out, which are temporary. Whereas the DCO itself doesn't limit the power to temporary access. The DCO is not intended to be limited to temporary access, it should be applied to temporary and permanent, where the applicant is proposing to do permanent access, it is setting that out in sheduled. One however, so the most just making clear that this does apply to temporary access as well. So it's intended to be clarification in that respect. The applicants position is aligns with many other highways GCOS, in terms of its intended use, in this respect, and it's considered to be appropriate as it will help ensure that the authorised will development will be able to be carried out expeditiously by allowing the applicant to create new accesses as and were required, particularly in response to landowners occupiers are other affected parties. They're sorry, sir, there are separate controls over the limit of that power clearly, in relation to the environmental statement and what has been assessed, particularly if you consider

impact to hedgerows, for example. In the restaurant environmental actions and commitments, there are a number of relevant entries, which you might like to read, which g 10. And then p h h 211 1213. And then equally LV, one and two. Those entries are bound into how the applicant is going to be able to deliver the authorised development through requirements three of the DCO. And in that way this power needs to be read across with those environmental constraints.

1:23:46

Thank you for that explanation. Again, national highways have indicated they think we should be an exclusion for the strategic road network. Again, I'm assuming that's something that your ongoing discussion?

1:24:02

Yes, that's correct. Okay, thank you.

1:24:24

For supplemental power that article 18, again, is something we touched on earlier, it's making reference to internal drainage board, joint planning board and Urban Development Corporation's it's expanded. So again, I wonder how relevant that is for this particular case.

1:24:46

Thanks as we refer to before, we'll take it away and consider in terms of joint planning board IDPs and UBCs. We don't consider that there are any within the org limits, however, the detail has been dropped. offered on a forward looking basis to cover watercourses equally. And so it's able to react to future circumstances in this respect, and will point to a four seven, which is local schemes. And that also has the same wording, we will look at the interplay between article 18 and the DIS application of legislative provisions and see if we can provide some narrative around how that works. Thank you.

1:25:53

The final part under Part Four, which is part of article 20, and 20, and then two in brackets is whether the 14 day notice period is appropriate, or whether it should be longer than that, bearing in mind the possible consequences of the landowner upon whom you'd be serving that notice. So just seek, seek your views on that. Thank you.

1:26:34

Thanks, sir, we'll review opposition against article 70.

1:26:40

Okay, thank you very much. So, again, another action point.

1:26:54

think we've been going a while now. And it's just approaching half 11. So it's probably a sensible time to, to take a pause before we start going into part five and the powers of acquisition. So if we can adjourn now and reconvene it, court. So thank you very much. In the meantime, I'll just remind those

anyone on the Livestream, you'll need to refresh your browser page when you return. So thank you very much, everybody.