



## Hearing Transcript

<b>Project:</b>	M5 Junction 10 Improvements Scheme
<b>Hearing:</b>	Compulsory Acquisition Hearing 1 (CAH1) – Session 3
<b>Date:</b>	15 August 2024

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# M5J10\_CAH1\_SESSION3\_15082024

Thu, Aug 15, 2024 4:07PM • 1:15:22

00:05

Okay, it's two o'clock. It's time to resume this part of the hearing again. Can I confirm that the teams and live stream is up and running again?

00:14

Thank you very much.

00:19

Applause. So I think with passing over the individual questions we had originally prepared for individual application sites,

00:40

I think we then are going to commence this afternoon on from agenda item four. The purpose is the proposed compulsory acquisition and whether they're legitimate and would justify interfering with the human rights of those with interest in the land affected. So can I just seek clarification from the applicant in the first instance, about their case in respect of in the first instance, regard to be paid to articles eight and six of the European Convention on Human Rights and Article One of the first protocol.

01:19

Thank you, sir. Andrew Tate for the applicant. This is set out in the statement of reasons at 6.3,

01:26

specifically in relation to articles one and eight and Article

01:31

Six, Article One or the first protocol rather and

01:37

article eight

01:40

involve the engagement of the compelling case test and some of the matters we referred to earlier, about minimizing the land

01:52

necessary and the balance as To proportionality and

01:58

justification. And then Article Six

02:01

relates to the procedures and the opportunity through this process to comment on the proposals

02:12

and to make representations

02:18

in respect of the DCO, and also to challenge the DCO in due course,

02:26

by judicial review if there are grounds. So doing so that's set out in six three, and that is the over

02:35

the overview and regard has been had to that, as expressed in the statement of reasons, and as also put before the cabinet in december 2023, prior to the

02:49

submission of the DCO.

02:59

So did that cabinet consideration specifically address the human rights question? It did

03:07

specifically each of those articles,

03:13

eight, six, and Article One of the first protocol expressly, thank you. So is that a public report that's been shared with us so far?

03:25

I don't know if it's been shared, but it is a public

03:28

I believe it's a public report, and so we can certainly,

03:33

nobody's shaking their head that it isn't public, but we will provide, we will evidence that in at Duncan. Thank you.

03:46

Just to assist from part of the conversation we had earlier this morning about the tension between the number of properties you said were affected, the statement of reasons, I believe, currently refers to 22 properties. So that's part of the

04:04

confusion in terms of exact numbers, and I'm pretty sure the DCO refers to 33 but

04:11

hopefully that will help in the clarification, clarification, clarification of that point. Thank you. Can I then just turn to any affected parties to see whether you have any points you would wish to make with regard to human rights.

04:32

No, Mr.

04:34

Hadley, is there anything you would wish to raise you're

04:38

not obliged to, but I obviously have an opportunity, if you wish.

04:43

I don't think so. But going back to the fact about

04:50

lack of cooperation

04:52

from the applicant, that is ultimately, I suppose, affected my human rights. But.

05:00

We'll wait and see whether that's going to be put right in the near future.

05:08

Thank you.

05:10

Is there anyone online who would wish to make any comment about human rights at this stage?

05:19

Okay, thank you. I'll move on then.

05:28

It's a similar point, I think, to one we raised earlier about

05:34

private rights versus public interest test. But again, there's a slightly distinct test for human rights in understanding the degree of importance that the applicants attributed to the existing uses of the land proposed to be acquired.

05:53

So how has that been undertaken by the applicant in addressing that issue? And is there a particular document that you can refer us to,

06:04

so we don't have the

06:09

population human health chapter author with us, as I think we previously indicated. So we would like to come back to you, because it's tied up with the matter already coming back to you on

06:23

but

06:25

in for example, the population, chapter 13 at table, 13 four,

06:33

there is a

06:36

an ascription of a particular type of impact, which includes loss of property, or, ie, the resource itself, or the quality

06:48

of that as a major impact,

06:52

and

06:54

so that that is then taken through in relation to

06:59

a number of different properties. But we would prefer, I think, if that's possible, to to set that out more fully when we have the

07:08

greater with us. No, that's helpful. Thank you.

07:13

So is that again, anticipated a deadline for Thank you. Applause.

07:26

So in terms of the degree of importance being attributed to the existing uses of the land proposed to be acquired,

07:34

again, is that something that the same

07:39

author would be best responding to,

07:45

yes, it would. I think, okay, thank you.

07:55

I think it ties into one of the relevant representation responses from,

08:02

forgive me, if I get the title wrong, the UK health agency,

08:06

they've changed their name so I may, but

08:12

they questioned whether the significance of effect on private homes had been given

08:20

sufficient weight in the assessment. So just, can I just ask that as part of the response, you make specific reference to that representation and how

08:33

it's dealt with?

08:35

Thank you. Applause.

09:13

So then, in terms of

09:18

any infringement of those rights, and weighing those against the potential public benefits

09:26

if the DCO were to be made again, is that

09:32

the same author who's going to be needing to respond to that?

09:39

So although that also cast back to the first point one a in so far as the statement of reasons does and the preceding report does, does undertake that exercise, having regard to the impact on individuals, expressly, okay. Thank you. Applause.

10:14

If we can then move on then to the consideration of the duties under the equalities act 2010

10:21

can the applicant provide us an update in relation to compliance with any duties under section 149, of the equalities act, and

10:31

again explain how they have applicants had regard to its public sector equality duty in relation to the powers of compulsory acquisition sought and where this can be specifically identified within the environmental statement,

10:45

so you have the equality impact assessment as app 144

10:53

which went in in december 2023,

10:57

and of course, that's

11:00

not a solitary exercise. It was preceded by

11:05

equality impact screening in july 20 and an equality impact assessment in october 2022, during the design and consultation stage. Is

11:18

so that that has been a

11:21

a process that has permeated the

11:27

projects, considerations from from an early stage back in July 2020,

11:35

and the

11:38

assessment of

11:43

impacts on protected characteristic groups is set out in Section Five of app

11:51

144,

11:53

and

11:55

identifies the

11:59

whether there's a You know what the level of the impact is, the reasons for that and the evidence referred to and

12:08

anticipated pathways of securing

12:11

mitigation in the right hand column. So

12:16

that's been a it's clearly not. Doesn't dictate an outcome, but it is it influences

12:24

the pscd application is required to be carried out without necessarily leading to any particular outcome,

12:33

but it has led to

12:36



outcomes as reported in the right hand column

12:41

and

12:44

I appreciate you coming on to the Gypsy and Irish traveler

12:50

ethnic group as a later question, but there are a number of

12:54

steps identified

12:57

In relation to that final column.

13:01

Okay, Thank You. Thank

14:10

Sorry, what? Which table

14:13

is it that you're pointing to in the equality impact assessment? So it was, it's towards the it's section five,

14:23

so it's table Five, one on page 50 and following. Thank you. Applause.

14:51

Okay. Thank you. Applause.

15:00

That's really where you're setting out how you've had regard to individuals with specific protected characteristics. It's listing the particular protected characteristics by

15:13

category. That's their phraseology, yes, and then going through each of those characteristics and how you've addressed them. Yes, sir, yeah. Thank you.

15:26

So if we then move on to the specifics in respect of the occupiers of the traveler site,

15:35

can you just talk me through how

15:38

their equality and legal duties, the legal duties within the equality acts and the public sector, equality duty, how they have been met and how that's been addressed specifically.

15:55

Yes, sir. So turning to it's on page 56, of app 144, I four,

16:04

and it notes there's a negative impact specifically for the white, the white gypsy and Irish traveler ethnic group.

16:16

And

16:18

this is because the informal traveler. Informal traveler site would be directly impacted by the scheme.

16:28

It notes that

16:30

moving them off the land would have an adverse impact on their well being, education, finance and healthcare provisions. But that's not proposed.

16:41

There's a lack of certainty about who occupies the site.

16:45

And

16:47

there are other ethnicity factors,

16:53

considerations, not necessarily specific to that group, that are also dealt with. But I wasn't going to pick up those.

17:01

And then, so far as mitigation is concerned, there's the reference to

17:07

essentially

17:10

communication of changes,

17:13

red side signage, the Community Engagement Plan,

17:20

Public Liaison Officer,

17:27

various other in particular, temporary signalized crossing facilities, having regard to the previous column,

17:35

in relation to the potential for local social education, employment, healthcare connections. So in so far as those are in place, then

17:45

providing making sure that the linkages remain, access will be maintained

17:51

to the informal travel site through fields to the north of the a 409, for the duration of the construction phase. And in the operation, there's a new access track specifically

18:03

so

18:05

that's been The consideration in relation to

18:11

that particular

18:13

group.

18:15

And I

18:28

I think that's all I can say at this stage in relation to that specific group. Okay, thank you. One of the

18:37

areas of concern I had was that

18:41

there appeared to be limited engagement with this particular group of people, and

18:49

it appeared that

18:56

written material was sent to them. But I just trying to understand what efforts were made to engage with them to

19:07

ensure that they're aware of the scheme and so on.

19:13

James casimo, for the applicant, we have been in regular communication with the now registered owners of the site in question, raw meadow, there was a question mark over ownership throughout a long proportion of our consultation and engagement phase of the scheme. As soon as we had some clarity on on who the legal owners were, we have been in regular conversation with them, as well as written engagement, and have attended site to undertake an inspection as well.

19:45

So you're confident that they're well aware of the proposal and the consequential effects, either on the land that they're directly occupying, or the accesses to and from that site. James

19:58

casimo for the applicant, yes, we.

20:00

Are, we've made an offer to acquire the land needed for the scheme, voluntarily to them. They're well aware of what it is that will need to happen and the management that will be undertaken during construction.

20:13

And now that you are in contact with the owner, have has the owner given you any

20:23

feedback as to

20:26

the likelihood of a

20:28

constructive engagement leading to a resolution, or is it likely that

20:33

at this stage, compulsory acquisition powers are going to need to be

20:38

utilized? James

20:40

Caswell, for the applicant, it's obviously difficult to say with certainty the outcome. I think there is currently a disagreement in relation to value of the interest that you know, we're looking to acquire voluntarily. The conversations remain relatively constructive in their nature, though, and I would hope that, you know, as we continue through the process, there will be progress made.

21:06

So recognizing that we haven't had any written correspondence from the parties involved,

21:18

they're not showing, I don't think on the land tracker as an objector.

21:25

James casimo, the applicant, not an objector. No, we, as I say, in negotiation with them at this point. You know, the negotiations haven't broken down in inverted commas, and we are continuing to be constructive. An example will obviously be access for the accompanied site inspections tomorrow, which they have been willing to grant.

21:48

Okay, I'm just thinking further down line in terms of the examination, so that when we get towards the end, we have

21:56

a clear list of the parties that have either formally objected, and those objections are not been resolved, or where there is

22:06

perhaps not the receipt for formal objection, but negotiations haven't been resolved. So can I ask you to make sure that the land right tracker

22:15

picks up those distinctions so that we have clarity at the End? Yes, we'll make sure that's clear. Thank you. Thank

22:50

so moving then on to Roman four Under Item five,

22:58

are you

23:00

going to just point me to the same table with regard to the individual occupiers of individual private homes that are subject to acquisition in terms of how the legal duties of the equalities Act and the public sector equality duty have been have been met.

23:20

Thank you, sir. So

23:24

land ownership isn't itself a protected

23:28

characteristic, but there may be some landowners who fall into that group. And at 313, 12 of at 144,

23:42

the text notes that a small proportion of the local population are landowners whose land may be impacted by the scheme, who could also fall into PCGS, identifying whether any of the landowners would be identified as being within a PCG could not be used explicitly to ensure their data is protected, therefore specific landowner demographic status not being collected. Nonetheless, landowners have been consulted with, and the landowner liaison for the scheme is continuous, so that although there's a sensitivity about identifying any particular individual,

24:23

who is also a

24:26

landowner,

24:28

there is awareness of those who might fall into those

24:34

categories.

24:36

And I don't know whether I could ask Mr. Catton well to confirm,

24:41

confirm that please.

24:44

James casmo, for the applicant, we have a number of successful acquisitions on the scheme state where there have been

24:52

occupiers of properties with protected characteristics. We've had regard for this through the negotiation and given consideration to the impact.

25:00

This should have on any onward purchase, specifically in relation to reason about a reasonable adaptations that may need to be made to the property, which, obviously we will be funding through the compensation mechanism.

25:14

Okay, thank you.

25:16

Cases the protector characteristics, edge

25:21

and disability, yes, okay, again, before I move on to the next agenda item, I'll just clarify whether there's any party who would wish to make any point on those previous agenda items,

25:35

or anyone, virtually

25:40

no. Okay, fine. So we'll move on, then to Agenda Item number six,

25:49

dealing then firstly with Section 127,

25:53

and the acquisition of statutory statutory undertakers land and the extinguishment of rights and removal of apparatus of statutory undertakers.

26:04

Can you bring me up to date with the position and the negotiations with relative to the different statutory undertakers? Please.

26:13

Doug Haycock, thank

26:17

you, sir. Doug Haycock, for the applicant,

26:22

I've got the list of statutory undertakers which the applicant has engaged with. The applicant has engaged with each of the statutory undertakers in respect of which it proposes to exercise compulsory acquisition powers to remove or divert apparatus.

26:37

The position in respect of each of the statutory undertakers largely remains, as reported within the lands rights tracker, as submitted at deadline three, but I'll summarize it as per below. So in relation to giga clear PLC,

26:53

giga clear confirmed in February 2023 that protected provisions included in part two, schedule nine of the DCR are acceptable.

27:02

Okay, so when the land right tracker says yes,

27:06

that's, that's what that's meaning, that you've got the agreement in place. Yes, okay, thank you.

27:13

In relation to the zero group, UK Limited

27:17

again, zero group confirmed in September 2023, that protected provisions included in part two of schedule nine are acceptable

27:28

in relation to open reach,

27:31

there was initial discussions in May 2023 around the potential for including a bespoke protected provisions with open reach, on the basis that there was concern

27:42

that any installation of new HVDC apparatus by the applicant would incur

27:48

an interference with that apparatus.

27:52



It was discussed with open reach that the applicant is not installing HVDC apparatus, and on that basis, a bespoke agreement wouldn't be necessary.

28:04

Since that that that position was communicated to open reach in August 2023 and the applicant hasn't received any further engagement from open reach from that date, and understands that open reach haven't submitted representation since the examination, is suppressing a desire to have further bespoke protects provisions included in the face of the order.

28:29

It's something I've asked at previous examinations. Is it

28:34

worth writing to them in the negative in as far as to say we've not heard from you since such and such a date. If we don't hear from you by such and such a date, we will assume you have no objection,

28:49

because at the moment, the land right tracker says not required.

28:54

And it just seems to me that an absence of a response, whilst it's not particularly helpful, you you the scheme might have

29:06

greater surety if you send such a letter, it puts them on notice, then that they do need to actually respond if they have a concern.

29:17

Thanks, sir. So open reach would have received all the relevant statutory notices that the applicants required to send. So applicants satisfied it satisfied that minimum level of engagement, I'd need to take instructions as to what engagements going forward from the applicant's point of

29:36

view, its provisions contained in schedule nine are sufficient to pass the tests of 127,

29:42

no, well, that's fine. It's not for me to give instructions. It's just a thought that always crosses my mind. Thank you.

29:51

Carrying on. So then, in relation to national grid electricity distribution, PRC

29:57

engagement is ongoing, to agree brisk.

30:00

Boat provisions,

30:04

and the applicant fully expects these to be resolved within the examination.

30:09

And a similar update can be given for both seven Trent water limited and Wales and rest utilities limited. Since we discussed this an issue specific too. So I can confirm that revisions have been bounced between the two parties, and that the issues are narrowing.

30:26

Okay, are you able to give any information at the moment as to which issues remain outstanding?

30:34

If you can't at the moment, and that's fine, but I'm just conscious that when we come to reporting again, understanding the

30:44

precisely the difference between parties is important and and why there's that difference if it remains. Thank you, sir. I understand, for purpose of your reporting, we will need to submit in relation to any elements of disagreement where we believe that our set of provisions that we are advancing meet the section 127, test at this stage, I'd like to sort of keep the elements of disagreement between the two parties. Okay, thank you. Applause.

31:36

So that concludes, then the status of the negotiations and discussions on protective provisions with all those statutory undertakers. Then,

31:47

yes, it does. So okay, thank you.

31:55

Now, as far as aware, we don't actually have any statutory undertakers present, but just in case we have,

32:05

is there anyone present who would wish to make a comment?

32:10

No, okay. Thank you.

32:19

So then go on to then the Crown land interests.

32:29

Are we now down to two plots rather than three? Or is it still three plots? Because the land tracker makes reference to two plots,

32:40

so I'll just see clarification on that point in the first instance, and then perhaps you give me an update as to what the state of play is.

32:49

James. Cast him off the applicant. There are three plots for the Crown land that would cover Defra delac and the Crown Estate commissioners themselves.

33:01

At this point, engagement is either continuing to be attempted or ongoing with all the parties. With negotiations progressing with some. We have requested consent under Section 135 of the Planning Act from all three parties, but that has yet to be provided. Defra have not responded to any of the correspondence with Chase letters being sent on the 18th of october 20 2318 March, 24 and 19th of May. 24

33:29

we have had a response from from D luck, and continue to engage with them as to the reason why we're engaging and the need for their engagement in the process the negotiations in relation to acquisition with the Crown Estate commissioners have progressed since the last round of the lands right track that was submitted, we have made an offer to acquire the required freehold of the site. At this point, there is a ongoing negotiation around the status of the land other occupiers and whether vacant possession can be provided.

34:02

So

34:09

okay, so again,

34:13

in the event that there isn't a positive resolution, we're going to need a written explanation from you in setting out the reasoning with regard to Section 135

34:25

if it comes to that.

34:29

James gasmorph, the applicant, understood and noted.

34:33

Thank you.

34:42

Okay. Then I think that concludes part one. So if we can move on, then to part two, the continuation. So in representations from individual, affected parties,

34:55

affected persons, I should say I.

35:00

Can I come then first to national highways, so can I understand what your latest position is with regard to your position on compulsory acquisition.

35:12

Thank you, sir. Sophie Stewart for national highways, we registered to speak in this section of the agenda purely on a protective basis in case there were matters that weren't picked up

35:23

in the earlier parts of the hearing. Our current position is, as we have already discussed, we are expecting some changes to some of the categories of land that national highways has an interest in to be acquired and subject to those coming forward. We take no issue with with the proposed compulsory acquisition

35:49

powers and obviously subject to putting in place protective provisions. But as I said earlier, in respect of the exercise of of compulsory acquisition powers and the the taking of land and the creation of rights that's largely agreed between national highways and the applicant.

36:06

Okay, thank you.

36:08

Mr. Wakefield has not returned this afternoon. I take it

36:13

Okay.

36:15

Mr. Hadley, is anything further you would wish to add with regard to your position?

36:21

Yes, sir.

36:23

The question I wanted to pose was,

36:28

excuse me,

36:30

why, approximately half an acre

36:33

land take is proposed on plot 16, over nine a by land, and it seems to be just for possible traffic lights or signage.

36:51

James Catamof, the applicant,

36:54

we have received through the relevant representations and written representations questions on the need for the land, and have tried to provide some reassurance as to the use what it is required for. Craig Jones is going to provide a little bit more detail as to the works that are being undertaken, that are being undertaken. And I wonder whether it would be helpful to have the general arrangement or works drawing on the screen for that purpose.

37:19

But I think it would be. Thank you.

37:27

Greg Jones, for the applicant within the vicinity of Mr. Hadley's land. The proposed scheme looks to realign, or slight realignment and widening of the b4, 634,

37:43

can you? Can you just pause until the plan is

37:48

behaved himself?

37:58

So as I was saying, yeah, there's the slight realignment of the b4, 634, to the south of its existing, existing route. And there's also the widening

38:13

of the carriageway in order to facilitate two lanes in the eastbound direction at the proposed signalized junction, and two lanes at the proposed signalized junction in the in the westbound direction, at the both stop lines.

38:34

There's also slight widening of the verge along the along the north of the road, and this, this also incorporates a proposed shared use path

38:47

beyond, beyond the carriageway edge, across Mr. Hadley's land, there's a proposed ditch, fence line ditch which connects, connects into some of the culvert units, which we, which we discussed on Tuesday, the replacement box culvert units.

39:09

There's also this, this space for for maintaining all of these assets and connecting, connecting these features, these features, into the ditch, into the culvert. And there's also a replacement hedge along along the the highway side of the highway boundary.

39:34

I think it might be helpful for us and Mr. Hadley, if you were able to provide that an overlay of the works onto the land plots, because that would, I think, assist in understanding the extent of land that's being sought and the specific elements of what is required for for that land. So I.

40:00

That may help in moving things forward. It certainly help our understanding anyway.

40:05

Okay. And said, do that?

40:11

Is there anything further you would wish to add at this stage? Mr. Hadley, no, that's it. Thank you. Thank

40:18

you. Well, we look forward to receiving that plan, and then hopefully that will encourage or at least assist understanding if, even if it doesn't fully resolve your concerns. Thank you.

40:35

And so I'll move on next to any representative from the EI group. You It's colic from gated Hamer.

40:49

Is this the part where you would like me to go through my oral evidence?

40:55

It would Yes, please. I mean, what we want to understand is your concerns with respect to the compulsory acquisition affecting your land, so you can set that out for us. Okay, helpful. It's primarily to do with the level of the state of negotiations or lack thereof.

41:13

Okay,

41:15

so I'm here to speak on behalf of the EI group, the three hold owners of the house and the tree public house. But I've also been asked to represent the occupier surface, except, recently been asked to represent the occupier surface, except, I'll make a few comments from them too. There's a common theme, and also with what Mr. Hadley and Mr. Wakefield have said

41:36

to deliver this scheme, the applicant is wishing to permanently acquire a strip of land to the corner of the pub site, plot 16 over five A, Roman one, and also to temporary occupy land in the pub car park and beer garden. Plot 16 over 5e and 16 over 5b

41:53

to date, e, i, group have submitted both relevant and written representations against the applicant's draft development consent order and the compulsory acquisition and temporary possession powers contained in it as the acquisitions and possessions could be disruptive and financially damaging to both the I group and the occupied businesses if they are carried if they are not carried out in a well managed manner, the

42:17

principal grounds for objecting to the Proposed compulsory acquisition and temporary possession powers is that the applicant has not satisfied all the usual compulsory acquisition tests, specifically the last resort test. And as such, I do not believe compulsory purchase powers should be confirmed until negotiations have been exhausted and failed to provide an acceptable solution.

42:40

We believe an agreement can be reached, but it has not happened yet. Firstly, because the applicant has not committed to meaningful and timely, voluntary negotiations. Secondly, the applicant has not presented an offer that is capable of acceptance. And thirdly, the applicant, in the case of the occupier, has not put forward an offer at all,

43:01

to demonstrate the point that engagement from the applicant has been inadequate,

43:06

so as to realistically expect a voluntary agreement to have been concluded, and also to show that negotiations remain live and ongoing. And as such, it is premature to confirm compulsory acquisition

powers. I would like to set out a summary timeline of key events so the examining authority can form their own opinion.

43:28

In August, 2020 ei became aware of the scheme, and ever since, have repeatedly invited the applicant to set out what land and rights are needed and generally encourage engagement with a view to agreeing a voluntary agreement, a full breakdown of exchanges can be provided, if needed.

43:47

On the 22nd of March. 2022 a joint site visit was held between the applicant, EI and the occupier in November. 2023

43:57

plan

43:59

requirements, providing provided with a statement saying heads of terms would be issued in the next few weeks,

44:07

19th of December, 23 the DCO application was submitted before heads of terms were issued.

44:15

22nd of March, 2024 still no heads of terms offered by the applicant. So relevant representation submitted, highlighting the applicant's lack of meaningful attempts to negotiate a voluntary agreement. Eighth of May 2024,

44:31

ei group received incomplete and defective heads of terms from the applicant six months after being promised, and no financial offer was made and or a copy of the proposed License Agreement was provided for consideration

44:45

on 30th of May, 2024 a meeting was held between representatives to discuss the heads of terms on the 18th of June, 2024

44:57

without an offer capable of being accepted, being.

45:00

On the table, no IE, no financial consideration offered. Ei group felt they had needed to submit written representations highlighting ongoing deficiencies with the applicant's heads of terms and the continued lack of meaningful attempts to engage on the 24th of July, 2024 ei group received an updated income, still incomplete heads of terms from the applicant. A financial offer has now been made, but the



proposal is still missing all the details concerning the temporary license agreement, and the proposal is also inconsistent with the compensation code, meaning ei group would be better off. Would be better served, not agreeing them and instead waiting for a statutory notice and submitting a compensation claim in the future on the 30th of July 2024 a response to the proposed heads of a response to the proposed heads of terms with requested amendments were sent to the applicant, and we're still awaiting a response.

45:57

Yesterday, I was invited to join a meeting between the applicant and the occupier, in which some progress was made on deciding how best to take matters forward, and the applicant now appears to have accepted the approach that I have been advocating since September 2023

46:14

based on this summary, ei group do not feel the applicant has properly engaged, let alone exhausted negotiations. And as such, we request the examining authority refrain from confirming compulsory powers until such time as it is safe to say negotiations have run their course. For the avoidance of doubt, ei group and the Occupy remain willing and able to engage with the applicant with a view to finding an acceptable negotiated solution to all sides in terms of reliefs, the applicant appears to be highly focused on the promotion of the development consent order. This is at the expense of private, private treaty negotiations, which are lagging behind rather than being conducted before seeking powers. And this is to the disadvantage of Ei group and the occupier, from a cost perspective, to move things forward and hopefully avoid the need for compulsory acquisition powers. Ei group and the Occupy would like the following to happen. First, we would like the applicant to commit to meaningful and timely negotiations with a view to concluding a voluntary agreement expediently. Amongst other things, this should include a provision of the proposed draft license agreement the applicant would like EI and the occupier to agree, as nothing has been provided for consideration. B provision of full details concerning the utility diversion works which necessitate temporary possession of the pub beer garden and the expected length of time to undertake these works. So the information, particularly the timescales, can be factored into the voluntary agreement. Because, as it stands, the applicant is looking for three years occupation, which is to be which is considered to be far in excess of what is needed simply to disconnect and reconnect a private electrical supply to the pub,

48:01

see it's currently proposed that ei group provide vacant possession of the permanent acquisition and temporary possession plots, and this places the onus on ei group to negotiate and potentially compensate the occupier, which is completely unreasonable. The applicant therefore needs to commit to separate negotiations with the occupier as to date. As To date, no offer has been made.

48:27

The second relief is the EI group would like the examining authority to consider awarding costs for objecting to the applicant's DCO and the time incur taking part in the examination because subject to reasonable and compensation code compliant terms being offered. Ei group and the occupier would like to have concluded a voluntary agreement with the applicant before the start of the examination, but this simply hasn't been possible because the RE because a reasonable, workable proposal

48:56

hasn't been advanced.

48:59

That's it.

49:06

Thank you. Can I take it from what you've

49:10

set out there that there has still not been any formal consultation or negotiation with the occupier?

49:20

No, there has been some formal consultation with the occupier. Now, I think actually, to be fair, it's been going on a while, but what have been saying is that they haven't actually made them an offer.

49:32

Okay, all right, thank you. I'll turn then to the applicant to invite a response to the

49:39

number of points there that have been made.

49:43

James Casimo for the applicant, I think, first off, the point I want to raise is that obviously, negotiations are very much still ongoing, from our perspective, and the applicant has every intention of continuing with those on a committed basis, as has been requested. I think in.

50:00

Terms of the negotiations and engagement undertaken to date, there's been, it's fed, say, a bit of a challenge around providing the level of detail which is required to fully understand the impact of the scheme in relation to the temporary possession, specifically aspects such as the diversion and alteration to the existing utility services. This has been set out throughout that process, starting in 2022

50:24

and we had hoped that it would be possible to make more progress on the broader topic of the acquisition without having absolute certainty on that aspect, and find a solution for the agreement.

50:36

In terms of the approach in general, there's obviously a difference in the believed correct approach. I mean, from our perspective, we have been working on the basis of looking for the owner to provide vacant possession. It has become clear, though, in recent weeks, that that is not going to be viable, preferable, and are willing to enter into a tripart agreement, as has been set out

51:01

the financial offer put forward, obviously isn't on this basis, but will be revised, reflected in addition, and whilst there has been engagement with the occupiers directly, it's accepted that we had intended for, you know, vacant possession to be provided, but we'll reflect that in the revised offer that's made. So

51:23

in terms of the request for a copy of the draft license, we'll take that away. I can't see any reason it can't be provided. And if that's going to help understand the level of impact, then are happy to to look to provide that

51:37

the diversion work specifically, it will be difficult to give the level of certainty required at this point, there's obviously engagement via the statutory Undertaker required, as well as engaging with the design team, but we'll make our best endeavors to provide the clarity that's requested required, and in relation to vacant possession as set out, I believe we've already addressed that point and are willing to accept tripart agreement. Do

52:04

so in terms of a

52:07

setting out a timetable moving forward, are you able to give either us or the landowners any clarity of the timings that you would envisage building into your program or ongoing discussions,

52:24

James casmo, for the applicant, will be in a position to provide updated heads of terms next week or the week following, certainly after which, I think it would be very helpful to have a further meeting to discuss those before taking them back to respective clients.

52:39

And is it intended, then that the license agreement would also be provided at that stage,

52:47

subject to take instructions. Yes, correct.

52:50

Okay,

52:52

you've left us with a point to consider on the costs question. We will obviously have to take that away. But

53:02

is there anything further you would wish to raise at this stage, in light of what you've now heard back,

53:09

here's colicopter rei group. I would just say that I've been advocating this tripartite agreement since September 23 it's not something new that's just cropped up over the last couple of weeks. And this goes back to the being able to grant vacant possession. I don't think we've ever said that we could grant vacant possession. We've always been advocating this tripartite agreement. And as of the meeting I had with them yesterday, they finally decided that was probably quite a good idea. And please, could I start drafting some heads of terms on that basis, which is,

53:40

well, I'm very happy to but I have said to them before that I think the tripartite agreement's a good idea, and would they like me to put something together? But it's just been radio silence, and we end up at this position of having to come to the examination when, if we had had a sensible proposal put forward, or they'd asked me to put something to the applicant,

54:01

we might not need to be here.

54:07

No, okay,

54:10

fine. Well, I'll, I'll revert back to the applicant to see if there's any further point they would wish to make.

54:17

James casmoff, the applicant, nothing further to add.

54:21

Okay, well, I think,

54:23

I hope that you'll be able to have a constructive engagement from here on. And obviously it will be important for us to understand how things are progressing, and we look forward to seeing how that's set out within deadline for and if I can turn to you,

54:43

to you again, I look forward to receiving your written submission for deadline for so that we can make sure we're not missing anything in the concerns that you've expressed to us about the process of how it's been undertaken so far, and all those details that you've got.

55:00

Through with us so clearly. Thank you.

55:03

No problem. I take it there's nothing further from me and I can sort of sign out now.

55:09

I think that's right, yes, thank you. Thank you very much for your time. Thank you. Applause.

55:24

So if I then move on, then to I do we actually have anyone from Cheltenham borough Council's property and asset team?

55:38

So it goes from that for the joint councils, not to my knowledge.

55:42

Sorry, no, I'm just mindful that there's an outstanding

55:49

objection, as far as I understand, if as a landowner,

55:53

and so was the opportunity to understand in more detail that position, but in their absence, if I can come to the applicant, if you can, perhaps, from your side, update what the latest position is.

56:08

James casimo, the applicant. We met with the applicant. Met with Jotham borough Council's representative from the asset and in stage management team

56:18

in July 2024 as part of that, we understand that we have provided the additional level of detail required to allay any concerns they may have over the design of the current access arrangements that are proposed by the scheme as such, we would hope that they'd be willing to lift their objection in due course.

56:41

Okay, thank you.

56:45

I don't know whether we still have Mr. Garvey online as representing blow homes, and whether there's anything you would wish to be raising

56:56

on behalf of your clients with respect to any outstanding concerns on compulsory acquisition.

57:14

Mr. Garvey is appearing as a his initials on the screen, but we do, do we know whether he's still signed in.

57:37

Says, I am still

57:41

dutifully watching. Apologies.

57:45

Okay, thank you. I was just trying to understand whether there were any points that you wish to make with regard to the compulsory acquisition side on respect of your your client's land.

58:00

My most of the points we made were made on Tuesday. Says, so I don't wish to

58:08

repeat them, given the points I've made, the obvious point I would make is in terms of the test of whether there is a compelling case for the compulsory purchase. Obviously, if funding is not in place

58:26

for the scheme, then that would undermine the compelling case,

58:33

for the obvious reason that doesn't need spelling out. But I'll spell it out anyway, that obviously, if they if there isn't funding in place, there is the obvious

58:45

chance that my client's land will be purchased and then the scheme will not come to fruition. And we spelled out on Tuesday why we think there is a funding gap in so far as given, there is reliance on

59:03

section 106 agreements to make up the 81 million pound shortfall in the funding. We say that there can be no

59:12

guarantee that that money will come to fruition because our cases that we on the planning application that we don't need junction 10 in order for our scheme to

59:27

to be acceptable on highways terms. And the applicant says otherwise, and we say it's not for this arena ultimately to determine that question that will be for the decision maker, whoever that may be dealing with whether the section one six agreement is acceptable, but that would give rise to a 31 million pound shortfall

59:52

in the funding of the scheme. And if there is a funding shortfall, then the obvious consequence is that there is.

1:00:00

To compelling case for the CPO. I hope that's all clear. Says,

1:00:07

I think that position is understood. Thank you. Thank you very much.

1:00:13

Come to the applicant to see whether they wish to make any further response. I don't want to crawl over that ground on Tuesday, but just in connection with the words expression, funding needs to be in place, and there needs to be a guarantee that isn't the test, but I'm not going to repeat what the test is, and it's set out clearly in the guidance you

1:00:51

Okay, thank you both.

1:00:58

I don't think there are any other parties present, representing any affected person, but there's obviously a number of other parties who have outstanding objections. So I wonder if you can

1:01:14

just bring us up to date with the position and

1:01:20

list of people I have is

1:01:23

Andrew David Smith,

1:01:25

Benedict Williams,

1:01:27

Donna Louise, wooden

1:01:30

GW Bruton and sons.

1:01:33

And it may be that this is already covered popping in traditional pubs. Is that another part of the EI group,

1:01:44

or the land that's affected within those those parcels,

1:01:48

but that's the total number that I think I have.

1:01:54

James casmo for the applicant, correct? Yes, popping in pubs is the occupier of house in the Tree Pub. Thank you for that clarification

1:02:05

in relation to the other four parties you referenced, negotiations have progressed significantly with Andrew Smith in the last two months following the initial hearings, progress has been made following a change in an agent representing in addition to further evidence and information being provided, and we are making more headway than we were previously into agreeing principal terms to allow the voluntary acquisition in relation to Benedict Williams, owner of Sheldon nurseries, as referred to earlier on, yesterday and on Tuesday. We are now in a position where terms are agreed for the acquisition, and we expect the legals to proceed from here onwards as quickly as possible. Dana Wooten, obviously, is an occupier of one of the properties at Sheldon nurseries, and her interest is ongoing in terms of the impact the scheme will have on her, we are engaging through one the current landlord as the sort of right and proper person to have that engagement with her, to some extent, but also separately. And emails are being exchanged regularly, and we will be having further meetings with her as that acquisition progresses, with respect to JW Brewton as occupier of barn farm. And in addition to that, some of the safeguarded land north of the a 4019, I think a lot of the concerns in relation to the agricultural accesses that have been discussed over the course of the last few days are fairly pertinent, and obviously are not resolved at this stage. You know, we have additional information, as we discussed on Tuesday, and I'm more than happy to provide that in due course as to the current accesses and suitability of the future access that would be provided by the scheme in relation to barn farm further meetings need to be held to provide certainty clarity on the access that will be available from the south as part of The arrangements going forward with the works taking place. You

1:04:03

is that's very helpful. Thank you.

1:04:07

So

1:04:08

as far as I know, that's all affected parties who have an outstanding objection or an unresolved negotiation position, but again, I just want to make sure I've not missed anybody, either remotely or in the room that would wish to present anything to us today.



1:04:28

Mr. Garvey, you've come online. Is there something additional that you would wish to add? To make a very brief point, says, based on the questions you've asked and the nature of your inquiries, it's very obvious that you have read and understood my clients representations, and simply to extend my thanks on behalf my clients to yourselves, because it's very clear that you have understood and

1:04:55

digested fully my client's representation. So thank you very much for that.

1:05:01

Okay, thank you.

1:05:04

Possible, sir, to make one final update in relation to negotiations is a demonstrable expression of the intent by the applicant to continue these negotiations until successful, if reasonable terms can be agreed, 15 with the bridge gardens, specifically Mr. And Mrs. Webb, we have now agreed terms and exchanged on that property.

1:05:37

Thank you.

1:05:41

So I think then we can move on then to the statutory undertakers. I don't think we have any further discussion to be had. We've we've had the update from the applicant, and I don't believe there's any statutory undertakers in the room, either virtually or otherwise. So I think unless there is any other business that will take us towards the end of our agenda, so that will just then leave us with going through any action points that we've we've picked up. So if you just bear with me a moment, I have a chat with my colleague.

1:06:17

So we leave Mr. Regan to go through those with with you.

1:06:26

Thank you. Mr. Mond,

1:06:28

from my notes today, I believe there are 16 main action points, which are all for the applicant and all due at deadline, four please.

1:06:42

So the first one is for the applicant to set out the current compulsory acquisition position. With respect to the National Highway plots we discussed, which was four 1c and four 1c I, along with any other relevant plots that have similar characteristics, really, with regards to the CA

1:07:05

land take on those.

1:07:08

The second action was confirmation if the compulsory acquisition tests at Planning Act 2008

1:07:16

Section 122, are met with respect to the extent of the land plots.

1:07:23

The extent of the land plots subject to compulsory acquisition, IE is that the minimum land necessary

1:07:31

the third action point applicant to confirm why they're acquiring all of the plots, which they are when there is no specific detail shown in some instances on work plans or environmental master plans. So again, that relates holistically, but just a sign post. A couple of the plots by way of example, 15, 3d

1:07:55

15 for a 13, 3r and obviously any others that feature similar instances.

1:08:06

Action point for the applicant to confirm, please, what the specific DCO proposals are which create the effect on and the need for plot 15, 5c

1:08:22

action point five is with respect to the Crown land plot, 13, six A

1:08:31

we just wanted some clarity, really, with regards to what the specific proposals and works are within that Crown land plot. And we discussed that being provided along with an overlay, please.

1:08:52

Action Point six was, again a general point please, where we asked if the applicant could signpost

1:08:59

that no more land than is than is reason is that is required reasonably has been acquired. Sorry, I'll start again examples where it can be demonstrated that no more land than than is reasonably necessary has been acquired.

1:09:16

Thank you.

1:09:20

Action Point seven, we had a discussion with regards to the total number of residential properties which were affected and subject to CA, I think we were concerned was perhaps some discrepancies with regards to the numbers cited in different locations. So if we could have clarity on the position with respect to the total number of residential properties, and what the current position is with regards any ongoing negotiations concerning those please

1:09:54

action point eight, and this relates to affected persons where.

1:10:00

Agreement has not yet been reached to acquire the land voluntarily. Please. Can the applicant provide the yes documents and paragraph reference which considers private loss relevant to that particular affected persons and how that has been assessed? Please.

1:10:22

Action Point nine

1:10:24

relates to the applicant providing information with regards to the form, form and timing of engagements and negotiations with affected persons where agreement has not yet been reached to acquire the land voluntarily. So chronological, chronology, please, of historic discussions and engagement,

1:10:48

Action Point 10, please, can the applicant explain how it has weighted the individual private loss of property versus the weight to be applied to any public benefits, and how the conclusion that the latter would demonstrably and overwhelmingly outweigh the format.

1:11:05

Thank you.

1:11:10

Action Point 11 was concerning the

1:11:15

whether a provision could be made within the DCO to secure a commitment to the delivery of the whole DCO project, rather than just parts thereof. And in the absence of that, could

1:11:28

we're posing a question, really, should an assessment of public benefit reflecting that scenario

1:11:37

be undertaken, and what implications would that have on compulsory acquisition and the balance against private loss public benefit?

1:11:50

Action Point 11, please, can the applicant provide evidence with respect to appropriate consideration of the human rights of those with interests in the land affected?

1:12:05

Action Point 13, again, with respect to human rights, please, can the applicant demonstrate how the existing uses of the land to be compulsory acquired and the impacts on private interests has been adequately considered?

1:12:22

And 14, again, with respect to human rights, please, can the applicant confirm the degree of importance that has been attributed to the existing uses of the land proposed to be acquired in assessing whether any interference would be justified?

1:12:40

Action Point 15, then was with respect to the discussion we've had with Mr. Hadley and plot 16, nine a, I think it would be helpful if we could have an overlay along with any other commentary or information, which can just give us clarity with regards to what the actual works are within that land plot, please.

1:13:02

And my final point is action point 16 was just really to sign post for an update with respect to the ongoing progress and discussions you having with regard with ei group, with respect to the house in the Tree Pub. So if could have that with respect to their plots, 16 five A, Roman I, 16 5e and 16 5b at d4, please, just so we can see what tractions have been made in that regard, please. And those are

1:13:38

the extent of the action points I've recorded today. Thank you.

1:13:45

Thank you. Does anyone have any concerns or observations or need any further clarity on those action points?

1:13:53

Mr. Hadley, yeah. Neil Hadley,

1:13:56

to save time. Can

1:14:00

the overlays be sent to my agent.

1:14:07

This, I think, was item 15.

1:14:12

Otherwise we won't know what we're talking about.

1:14:17

Yep, not a proper tool.

1:14:19

Thank you. Thank you, Mr. Hadley,

1:14:24

so I think then that draws us

1:14:26

national highways.

1:14:28

Thank you, sir. Sophie Stewart, national highways. I think I know the answer to this. But just for clarity, I noted down around the written details of the issues on the difference between the cost estimates. We took away action point from issue specific, hearing three, number 22 regarding this, but I just wanted to make sure there was nothing additional to add from today to that action point. Thank you for that. Now, by my records, it's a holistic response, as per the is h3 discussion. Thank you. Thank you. Applause.

1:15:00

Okay, well, I think I can safely bring this hearing to a close. Thank everybody for their contributions,

1:15:07

and look forward to seeing some of you tomorrow morning in readiness for the site inspection. So thank you very much, everyone. Thank.