

A46 Newark Bypass

TR010065

7.14 Applicant's Summary of the Compulsory Acquisition Hearing 1

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009)

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(Applications: Prescribed Forms and
Procedure) Regulations 2009**

A46 Newark Bypass

Development Consent Order 202[]

Applicant's Summary of the Compulsory Acquisition 1

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A46 NEWARK BYPASS DCO

Compulsory Acquisition Hearing 1 (CAH1): The Applicant's Strategic Case – 9 October 2024

Applicant's responses to Representations made at Compulsory Acquisition Hearing 1 (CAH1) held on Wednesday 9 October 2024 at 10:00

1.1 INTRODUCTION

The CAH1 for the A46 Newark Bypass Scheme (DCO) application was held at The Great Hall, The Renaissance at Kelham Hall, Main Street, Newark NG23 5QX on Wednesday 9 October 2024, commencing at 10:00. Participation was possible virtually on Microsoft Teams as well as by attendance in person.

This document summarises the responses made at CAH1 by the Applicant and addresses the representations made by Affected Parties, Interested Parties and other parties attending.

The Applicant has responded to the topics raised by each of the attending parties in the sequence that the ExA invited them to speak. It provides cross references to the relevant application or examination documents in the text below.

Whilst the ExA did not propose to issue a formal action list given the limited number of actions the following were noted by the Applicant

confirm the relevant version of the National Policy Statement on National Networks para 2.2; and

confirm the date of the Applicant's sifting report.

1.2 POST-HEARING SUBMISSIONS IN RESPONSES TO MATTERS RAISED AT CAH1

Item	Comment/Representation by:	Questions/Issues Raised at the CAH1	Applicant's summary written Response at CAH1
Agenda # 1 Welcome, introductions and arrangements for the Hearing			
1	Applicant	Introductions	<p>The Applicant was represented by the following individuals:</p> <ul style="list-style-type: none"> • Jonathan Bower - Partner at Womble Bond Dickinson (UK) LLP and legal advisor to the Applicant • Mark Sutton – Project Technical Director Skanska • Simon Peart – Chartered Surveyor from the Valuation Office Agency • John Bowes – Chartered Civil Engineer • Phil Boffey – National Highways
2	<p>Other appearances Raj Gupta – Partner at Town Legal on behalf of Newark and Sherwood District Council. Newark and Sherwood District Council (the Council). The Council own land which is subject to proposed compulsory acquisition provisions set out in the draft DCO.</p>		
3	<p>John Miller (JM), farmer in Kelham, introduced himself. JM owns land subject to permanent CA powers under the DCO.</p>		
4	<p>David Barthorpe (DB) on behalf of The Charity of Thomas Brewer DB introduced himself as a Trustee of The Charity of Thomas Brewer, who own agricultural land around the Winthorpe area. Such land will be impacted by the Applicant's compulsory acquisition powers sought under the DCO.</p>		
Agenda #2 Purpose of the CAH and ExA Opening remarks			
5	<p>The ExA explained that the objective of this CAH1 is to develop the ExA's understanding of the issues relating to CA and temporary possession (TP). CAH1 allows the ExA to hear the Applicant's strategic case in respect of CA and TP. Whether there is legal and technical case for CA and TP. If parties have specific representations, these can be made in writing. Compensation cannot be covered in this CAH1 as this is outside the scope of the ExA's recommendation.</p>		

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Item	Comment/Representation by:	Questions/Issues Raised at the CAH1	Applicant's summary written Response at CAH1
Agenda # 3 The Applicant's Case for the Compulsory Acquisition (CA) & Temporary Possession (TP) of Land and Rights			
6	ExA	<p>Preliminary</p> <p>The ExA requested the Applicant to outline the processes undertaken to test and refine the extent of the land take to ensure minimum land take is taken. The ExA asked whether the Applicant was through this process, continually seeking to subject itself to testing and refining the land and rights required in an attempt to reduce it.</p> <p>The ExA asked whether the statutory tests are satisfied in respect of all the land. There are a number of objections from Affected Parties (AP) that suggest the Applicant is taking land that is not strictly required. The ExA asked the Applicant whether and how it has considered reasonable alternatives to specific land as well as alternatives to CA itself, including the rationale for that. The ExA seeks an update of any agreements that may be used as an alternative and whether any are in discussion.</p> <p>In relation to the proposed mitigation for biodiversity and flood risks, the ExA asked the Applicant whether alternatives have been explored. Specifically the ExA wished to understand how the requirements for mitigation and/or compensation are so unique to prevent existing landowners being responsible for ongoing management.</p>	
7	ExA	<p>The ExA asked the Applicant to explain whether the statutory tests for compulsory acquisition are met on all land, specifically whether the purposes for which the CA powers are sought comply with Section 122(2) of the Planning Act 2008 (PA 2008); and</p>	<p>The Applicant is satisfied that the powers, as set out in Section 5.3 in Chapter 5 of the SoR [APP-025] are necessary, proportionate and justified. The Applicant has set out the justifications and the relevant tests in the SoR [APP-025] .</p> <p>The conditions set out in Section 122(2) PA 2008 provide that the land:</p> <ul style="list-style-type: none"> • is required for the development to which the development consent relates • is required to facilitate or is incidental to that development; or is replacement land which is to be given in exchange for the order land under Sections 131 and 132 of the PA 2008. <p>The Applicant is satisfied that the condition in Section 122(2) Planning Act 2008 is met.</p> <p>The Applicant considers that the land subject to CA is either needed for the development, is needed to facilitate the development, or is incidental to the development. There is no proposed replacement land required.</p> <p>The Applicant also referred to the Land Plans [AS-004] and BoR [AS-096] which sets out the extent to which the plots are required, how they will be used and the powers sought by the Applicant.</p> <p>The justifications for the powers sought by the Applicant are based on the Scheme Objectives, which are set out in Point 2.1.4 of the SoR [APP-025]. In summary these include:</p> <ul style="list-style-type: none"> • Safety – improving safety through scheme design to reduce collisions

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			<ul style="list-style-type: none"> • Congestion – improve journey times • Connectivity – accommodate economic growth • Environment – deliver better environmental outcomes by achieving a net gain in biodiversity and improve noise levels • Customer – build an inclusive scheme which improves facilities for cyclists walkers and other vulnerable users. <p>To outline what the land is being used for, the Applicant referred to Annex A to the SoR [APP-025] which details plot by plot the purpose for which compulsory acquisition and temporary possession powers are sought.</p>
8	ExA	<p>The ExA asked the Applicant to explain whether the statutory tests for compulsory acquisition are met on all land, specifically whether the 'compelling case in the public interest' test under s122(3) PA 2008 is met on all land sought.</p>	<p>The Applicant referred to Section 5.4 of Chapter 5 of the SoR [APP-025] which details the Applicant's compelling case</p> <p>It is necessary to include compulsory acquisition powers in the dDCO so that the Applicant can acquire the land required for the construction and the operation of the Scheme that is not already in its possession.</p> <p>The SoR also explains why powers are necessary to enable the Applicant to use land temporarily for the purpose of construction, and acquire or extinguish rights over land in order to construct the Scheme in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising costs to the Applicant (and such the public purse) and mitigating the impact on land interests. This compelling case is evidenced further in the wider documentation that accompanies the DCO application. This includes the Case for the Scheme (CftS) [APP-190]</p> <p>The Applicant is satisfied that the condition set out in Section 122(3) PA 2008 is met and that there is a compelling case in the public interest for compulsory acquisition. The Applicant is satisfied that the public benefit outweighs the private loss suffered by those who have an interest in the land.</p>

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			<p>The Applicant also referred to Chapter 6 of CftS [APP-190], with specific regard to Paragraph 2.2 National Policy Statement for National Network (of the 2015 NNNPS which has effect for any applications for development consent accepted for examination prior to 24 May 2024 as is the case here) which identifies a critical need to improve national networks to address road congestion. Together they demonstrate that there is a compelling case in the public interest for the Scheme to be delivered.</p>
9	ExA	<p>The ExA asked the Applicant to demonstrate consideration of reasonable alternatives to compulsory acquisition.</p>	<p>The Applicant explained that initial work looked at alternatives to the scheme and this resulted in the Preferred Route Announcement (PRA) in 2022 and statutory consultation in 2022.</p> <p>In designing the Scheme and determining which land is to be subjected to compulsory acquisition and temporary possession powers, the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land-take. These alternatives and modifications were consulted on and the preferred route has been chosen based on a thorough consideration of relevant issues.</p> <p>The initial corridor sifting exercise identified a total of three potential areas (referred to as corridors) of interest. Corridor C, the most direct route, using the existing A46 corridor, scored highest for economic growth, movement, accessibility, journey time, resilience, customer groups. Corridor C was the best performing corridor in terms of user benefits, providing the greatest reductions in journey times, delays and incidents, and improvement in reliability. In addition, Corridor C performed better in environmental terms in achieving improvements in terms of carbon, noise and the local water environment. It was also more preferential in terms of impact on key environmental constraints. Further options were then evaluated to ensure mitigation of potential impacts.</p> <p>The Applicant has complied with Regulation 42 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 to demonstrate the consideration of reasonable alternatives.</p> <p>The Applicant referred to Chapter 3 of the Environment Statement: Assessment of Alternatives [APP-047] – Section 3.4 which sets out the justification for the chosen scheme design.</p> <p>Paragraph 2.6.3 of the SoR [APP-025] details changes made to the scheme which have had the effect of reducing the land take now subject to the application.</p> <p>Paragraph 4.4.4 and Annex B of the SoR [APP-025] details the engagement with landowners with regard to acquisition of land by agreement and negotiation. Discussions with affected persons are continuing with some discussions having taken place that morning with others scheduled after CAH1. A significant number of land interests are required and including CA powers in the application is necessary, albeit, it is the Applicant's intention to seek to acquire as many of those interests by agreement.</p>

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Item	Comment/Representation by:	Questions/Issues Raised at the CAH1	Applicant's summary written Response at CAH1
			The Applicant added that whether alternative means to compulsory acquisition can be secured is also dependent on engagement and cooperation of landowners such as through a s.253 Highways Act 1980 process. If it is feasible where parties agree, and then alternative means may be secured, however it is not possible to impose this aspect on all landowners as part of the application for the DCO.
10	ExA	The ExA asked the Applicant to explain whether the Applicant sought to reduce the extent of land subjected to CA after it's 'Corridor sifting' exercise. The ExA sought to clarify whether the reduction of land take was based on objections, or whether it was based on other considerations.	<p>The Applicant referred to the PRA. After the PRA, one of the first activities undertaken was to review that and look at the footprint of the scheme. The Applicant's strategy was to look at the size of the footprint. The majority of the scheme was sitting within flood zone 3. The Applicant noted that any reduction of the embankment widening has a major impact on reducing the flood compensation that was required. A strategic view was to look at increasing the angle of the slopes from the road, The changes are indicated in the Assessment of Alternatives – Chapter 3 of the Environment Statement [APP-047]. Specific changes looked at reducing the footprint at the Winthorpe Roundabout from the PRA, the size of the embankment and the number of structures at the Brownhills Junction to the east of the A1. Along the main line of the A46, reducing the depths of the embankments by using steepening earthwork techniques or reinforced soil solutions were considered.</p> <p>The Applicant received 'fantastic' feedback during statutory consultation and it took account of views of local residents. The Applicant noted particularly positive feedback at Crees Lane at the southern end of the scheme at Farndon Roundabout.</p> <p>Works Number 5, as shown on Sheet 5 of the Works Plans [AS-005] includes the introduction of a short retaining wall along the side of the A46. A reduced construction access was implemented to reduce the impact on property along Crees Lane, Ivy Cottage, so that as much of the vegetation was retained as possible to continue to shield that property. This was initially within in the order limits, but that has now been significantly reduced.</p>
11	ExA	The ExA asked the Applicant whether it has adjusted the scheme to avoid the extent of land subjected to CA .	<p>The Applicant confirmed that it has adjusted the scheme to avoid the use of CA powers as much as possible. During statutory consultation, the Applicant looked at options where there were issues of encroachment on people's land.</p> <p>By introducing Works No 5, as detailed above, the Applicant actively reduced the footprint and the working area for bridge construction (Work Number 7).</p> <p>Additionally, the Applicant sought to replace the proposed compulsory acquisition of Ivy Cottage, for an area of TP (Work Number 10).</p>
12	ExA	The ExA asked whether the changes made were in response to objections?	The Applicant confirmed that this was the case wherever it was practically possible. The Applicant looked at alternatives to each specific objection and sought to reduce the overall footprint of the embankment.

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			<p>The strategy is high-level, There are a number of bridge structures and the Applicant is building parallel structures. The Applicant does not intend to deal with extending existing bridges. The Applicant worked closely to help minimise the footprint in that respect.</p> <p>In relation to engagement with landowners the status of engagement is set out in Annex B of the SoR [APP-025], the status of that engagement and negotiation represented the status from the Pre-Application stage, and developments have since been made. Updates to relevant documents will be made and submitted at the relevant deadlines.</p> <p>Annex B of the SoR [APP-025] outlines the extent of the compulsory acquisition powers sought.</p>
13	ExA	<p>In terms of looking at the alternative route corridors, the ExA asked the Applicant whether 'Option C', is the route with the minimum amount of land subject to CA powers.</p>	<p>The Applicant confirmed that Option C is the option that requires the Applicant to take the least amount of land.</p> <p>The Applicant reiterated that processes were undertaken to identify that Option C required minimum land take.</p> <p>In relation to issues raised by Affected Parties for land mitigation and flood compensation, the Applicant also covered where they sought to reduce the extent of that land.</p>
14	ExA		<p>The ExA asked the Applicant to explain the strategic way in which the Applicant considered alternatives to CA, such as land management, Section 253 Agreements under the Highways Act 1980 or Section 106 Agreement under the Town and Country Planning Act 1990, and allowing existing landowners to retain their land and manage it rather than pursuing CA.</p> <p>The ExA requires a response explaining the management and style as opposed to the physical aspect.</p>
15	ExA	<p>The ExA asked the Applicant to consider the wording in the Road Investment Strategy 2 ('RIS2'), with reference to Page 98 on the A46 Newark Bypass "<i>much of his road is already high quality dual carriageway and by filling in key sections it would be possible to create a coast-to coast highway without the need for major road-</i></p>	<p>The Applicant referred to Chapter 3 of the Environmental Statement [APP-047] which details the different corridor options, including Option C which follows the existing Newark relief road which was constructed in the 1980s. This was one of the earlier driving measures of selection rather than heading out into the open country to the north of the south. The Applicant also noted the flood zones which are a major constraint on the scheme. If the scheme were to be situated any further north, the construction of a dual carriageway would be required and there would be an increase in the amount of land that would be required for flood compensation together with the increase of environmental mitigation which would be associated with those works.</p> <p>The Applicant confirmed that the sifting exercise was conducted and determined before RIS2 wording was announced.</p>

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		<p><i>building across open countryside</i>".</p> <p>The ExA further asked the Applicant to explain on a strategic level, how much influence the wording within the RIS2 has impacted the Applicant's approach.</p> <p>The ExA wished to ensure that the consideration for alternatives was not approached as a 'box to tick' by the Applicant. The ExA wanted to ensure that the wording in the RIS2 has not unduly influenced the approach to the Applicant's Assessment of Alternatives.</p>	
16	ExA	<p>The ExA requested the Applicant to report back to the ExA in writing, providing evidence of the sifting report feeding into the RIS2 and to clarify the timings of such.</p>	<p>The initial sifting was undertaken in 2018/2019 and concluded in July 2019.</p> <p>The Department for Transport's (DfT) Road Investment Strategy (RIS) was published in March 2015. National Highways' Delivery Plan (DP) and DfT's RIS2 (2020-2025) contained the Option C preferred route.</p>
17	ExA	<p>The ExA requested the Applicant to summarise their oral representation on the aspect of compulsory acquisition.</p>	<p>The Applicant summarised its strategic approach, explaining that it is not possible to secure CA at the application stage without Agreements in place. The Applicant reiterated that the Applicant wishes to reach Agreement with as many affected persons as possible. In light of what is being said by Affected Parties, those conversations are open, and the Applicant will continue those discussions in order to seek to have agreements in place as an alternative means to compulsory acquisition.</p>

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			<p>Freehold acquisition has been sought as part of the project, however, where it is possible through alternative means, whereby the landowner is able to retain the freehold and the land managed in another way, the applicant is discussing this with affected landowners.</p> <p>Where an Agreement is not in place, or not secured, the Applicant will adopt the least impactful approach consequent with ensuring that the Applicant can secure the necessary mitigation.</p>
18	ExA	<p>The ExA acknowledged that a number of representations from Affected Parties raise the same issue. Affected Parties have queried why their land is being compulsorily acquired. Landowners contend that they can continue to manage the land to provide BNG and manage flood mitigation subject to compensation and temporary possession, as an alternative to CA.</p> <p>The ExA further asked whether the Applicant decided to compulsorily acquire land because they could, or have they considered the least possible impact on the affected parties by adopting temporary possession and any other related works necessary to facilitate the development.</p>	<p>The Applicant explained that the starting point is to acquire the freehold land where necessary. However, the Applicant is willing to explore the possibility of alternative arrangements where it is possible to agree management by landowner with TP powers, where it is possible to do so.</p> <p>The Applicant explained that negotiations are underway and updates will be provided in the tracker so the ExA can be informed and updated. The position has progressed since the production of the SoR which sets out the position at the application stage. The Applicant is in discussions with landowners to explore alternatives to CA such as licences and is progressing relevant Heads of Terms. Subject to finalising issues on compensation, discussions are positive and updates can be provided at subsequent CA hearings.</p> <p>The Applicant acknowledged the need to seek to secure agreements before the end of the examination.</p>

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19	ExA	<p>The ExA explained that the Applicant needs to be in a position by the end of examination where the Applicant has secured commitments with land owners whether that is through a Section 235 Agreement, Section 106 Agreement or compulsory acquisition, the ExA needs to understand how the Applicant is adopting that process and how the Applicant anticipates the conclusion being. If the Applicant wishes to pursue the approach whereby the landowner retains management of the land, then an Agreement will be in place before the conclusion of the examination period.</p>	<p>The Applicant raised two points in relation to the strategy. The Applicant confirmed</p> <ol style="list-style-type: none"> 1) The active negotiation of a Section 253 agreement is underway; and 2) In terms of status of negotiations, this will advance throughout examination. There is provision for a tracker to be provided. The status of negotiations in the SoR represents the position from the application stage of the Project, and matters have progressed since then. The Applicant will provide that update by the next appropriate deadline so that the ExA can see how progress has been made. <p>With regards to the Applicant's approach to acquiring interests by way of Agreement, the Applicant sought to look at alternatives to compulsory acquisition. For instance, Applicant sought to take the flood compensation areas at Kelham, and the Applicant is currently in discussion with the landowner's agent and are progressing Heads of Terms. An Agreement and Licence to undertake the works without taking permanent acquisition are being discussed. This discussion is well progressed. The Applicant has had a number of meetings with the agents and landowners, subject to compensation being agreed. The Applicant reaffirmed that those discussions are positive and the Applicant anticipates to provide an update on the Heads of Terms in the next set of hearings.</p> <p>Equally, in areas where there is potential to enter into Section 253 Agreements with landowners to meet their obligations, those Agreements can be put into place with landowners to avoid compulsory acquisition, and the tracker will be updated as matters progress. The Applicant will provide substantive updates.</p>
20	ExA	<p>The Applicant is to ensure negotiations are progressing as quickly as possible due to the strict timelines imposed by the Examination timetable. The ExA encouraged the Applicant to ensure Agreements are secured</p>	<p>The Applicant confirmed that it will aim to secure agreements/alternative arrangements before the conclusion of the Examination. The Applicant will provide the ExA with substantive updates by the next set of hearings.</p>

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		prior to the conclusion of the examination.	
21	ExA	The ExA invited the Affected Parties present at the hearing to make any comments they wish to present.	
22	John Miller	JM stated that the Flood Compensation Area in Kelham has moved to temporary possession with management rights. JM asked the Applicant why the Flood Compensation Area in Farndon would be treated any different	The Applicant confirmed that it had undertaken discussions with JM's agents. The Applicant will propose compensation and also explore the option of taking lesser rights to undertake works, with landowners managing the land afterwards. The Applicant noted that there are difficulties with quantifying compensation at this stage but as the ExA acknowledged compensation is not a matter for the ExA.
23	John Miller	JM asked the Applicant to confirm how long the management Agreement will last?	The Applicant confirmed that this would be determined by National Highways' obligations for that particular area of land. It is not something that the Applicant can directly answer.
24	Raj Gupta on behalf of Newark and Sherwood District Council (the 'Council')	<p>The Council's land affected by the A4 scheme is the following:</p> <ul style="list-style-type: none"> the lorry park, which is of strategic importance to the freight industry; and the entrance to the Council's main office is subject to temporary possession, which can require exclusive possession for the Applicant <p>The Council referred to references made in the SoR and the Applicant's desire to reach agreement with affected parties. The Council is ready and willing to enter into negotiations with the Applicant and is keen to believe that the land can be leased or licensed to the Applicant to avoid for the use of any statutory powers. The Council has had one meeting with the Applicant in relation to land holding, in August 2024, after the submission of the application. The Council explained that it has provided an outline Agreement to the Applicant on the 27 September 2024. The Council is yet to receive a response from the Applicant. The Council noted that this will not be a straightforward Licence or Lease, as the Applicant requires re-configuration of the lorry park and detailed design and various property arrangements. The Council's intention is to seek Agreement by the end of the examination period, and on that basis, the Council and the Applicant needs to progress the discussions as soon as possible.</p>	
25			The Applicant distinguished the difference between: alternatives to the acquisition of the land, and alternative land.

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			The Applicant confirmed that discussions have been ongoing with the Council for several months. The Council has provided the Applicant with the outline structure of an Agreement which is to be taken forward.
26	ExA	The ExA added that if there are potential alternatives that were being discussed, how does that sit with the proposition that the Applicant's need for the land is necessary?	<i>Refer to Applicant's response above at Items 9 and 17-19.</i>
27	ExA	<p>The ExA asked the Applicant whether the ExA should be concerned about the Applicant's discussions regarding Agreement with the Council. Do these discussions indicate that there is not an alternative to the position the Applicant is proposing. This may raise the issue of necessity.</p> <p>The ExA flagged a general point of concern in relation to the case the Applicant put forward; that the Applicant may not require compulsory acquisition of land because engagement has taken place after submission.</p> <p>The ExA warned that these issues need to be</p>	<p>The Applicant confirmed that they have met with the Council before, during and after the statutory consultation, discussing the development of the design in relation to the lorry park, and the reduction in parking spaces to keep it viable.</p> <p>The Applicant reduced the widening of the embankment and reduced the permanent rights acquired and have temporary rights around the embankment to conduct maintenance works, and also removed permanent land take which means the lorries can remain within. The Applicant confirmed that this is unlikely to be acquired compulsorily.</p> <p>The Applicant confirmed that the land set out in the Applicant is definitely required and that no alternatives have been discussed in terms of land itself, however the Applicant is undertaking discussions in terms alternatives to permanent land take.</p> <p>The Applicant is committed to trying to seek agreement with those parties. The Applicant proposed a discussion with the Council to take place after the conclusion of this CAH1.</p>

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		addressed as quickly as possible and discussed in the Issue Specific Hearing.	
28	Raj Gupta on behalf of Newark and Sharwood District Council (the 'Council')	The Council stated that there will need to be discussions in relation to entering into a Land and Works Agreement which will regulate how the lorry park would be reconfigured following works, or in advance of the scheme to minimise the impact on the users and the Council and to also minimise the land take and the use of temporary possession powers following detailed design,	The Applicant agreed to advance discussions with the Council in relation to the proposed Land and Works Agreement.
29	ExA	The ExA requested the Applicant to make their final statement on CA and the Applicant's compelling case.	The Applicant confirmed that the extent of the land interest is set out in the application documentation and it is in the Applicant's interest to reach agreement with the landowners whether that be by freehold purchase or lesser means. Agreement requires contribution and agreement from the landowner, which is crucial, but not one that can be provided for in the provisions of the draft DCO.
30	ExA	The ExA asked the Applicant to explain the extent of land sought to be subject to TP.	<p>The Applicant prefaced their representation on the TP aspect of Agenda Item 3 by outlining that there is a fair degree of interchangeability between CA and TP.</p> <p>The main aspects of the TP powers sought are set out in Chapter 5 of the SoR [APP-025]. The reason for seeking TP is for construction and maintenance purposes.</p> <p>The principal documents detailing the extent of land sought to be subject to temporary possession are:</p> <ul style="list-style-type: none"> • Statement of Reasons (SoR) [APP-025] • Book of Reference (BoR) – Version 2 [AS-096] • Draft DCO (dDCO) [APP-021] • Land Plans [AS-004]

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			<ul style="list-style-type: none"> • Crown Land Plans [AS-017] • Special Category Land Plans [AS-018] <p>The Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the dDCO [APP-021] are necessary, proportionate and justified.</p>
31	ExA	The ExA asked the Applicant to explain the justification for land sought to be subject to TP.	<p>The Applicant referred to Chapter 5 of the SoR [APP-025]</p> <p>The powers are also required to take TP of land for construction and maintenance purposes. Without these rights over the land, the Scheme cannot be delivered.</p> <p>The Applicant is accordingly satisfied that the land to be taken is reasonable and proportionate.</p>
32	ExA	The ExA asked the Applicant to explain whether there is a compelling case in the public interest for the compulsory acquisition and temporary possession provisions overall.	<p>Refer to SoR [APP-025] – benefits set out in Section 2.3 SoR and summary of benefits in Case for the Scheme [APP-190]. The Human Right analysis is also relevant.</p> <p>The Applicant has considered the human rights of the individuals affected by the proposed compulsory acquisition and temporary possession powers. The Applicant is satisfied that there is a compelling public interest case for compulsory acquisition and that the significant public benefits arising from the Scheme will outweigh the harm to those individuals.</p> <p>Without the grant of compulsory acquisition and temporary possession powers the Applicant considers that it will not be possible to construct the Scheme or realise the public benefits arising from it.</p> <p>The Applicant submits that there is a compelling case for those powers to be included within the order, if the Secretary of State is minded to make the order.</p>
AGENDA #4 – Statutory Undertakers (SUs)			
33	ExA	EXA explained that it is most interested in outstanding matters.	The Applicant explained that four SUs have made representations, those being Canal & River Trust (CRT), national Grid (NG), Network Rail (NR) and RWE Generation UK PLC. RWE Generation UK PLC have no land interests identified but have submitted a relevant representation regarding the operation of the power station.
34	ExA	The Applicant was asked to list and briefly set out the current position in relation to any representations made under s127 of the PA 2008 and not withdrawn.	<p>The Applicant summarised the progress and current position of SU relevant representations as follows.</p> <p>The following SUs have made representations</p> <p>RR-009 Canal and River Trust</p> <p>Discussions on going on impact on the River Trent. The Applicant is in the process of reviewing draft PPs as provided by CRT. A meeting has been set up for the week commencing 14 October 2024 to work through the practical implications of the works being carried out. This will then be reflected in the PPs. It is the current expectation that agreed PPs will be included in the draft Order in due course.</p>

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			<p><u>RR-043 National Grid Distribution (East Midlands) plc</u> PPs are currently underway, and an Asset Protection Agreement (APA) has been drafted. The Applicant is currently awaiting comments and approval from NG on the PPs and the APA.</p> <p><u>RR-045 Network Rail Infrastructure Limited</u> The PPs are currently being negotiated between the parties. In addition to PPs, the Applicant is finalising a number of Basic Asset Protection Agreements (BAPA) with NR to govern the structures being built over the railway. The BAPA wording has been agreed between both parties. The Applicant has signed and returned the BAPA to NR in August 2024. The Applicant is awaiting (and chasing) NR's asset protection team to provide the signed return. The Applicant has been in discussions with the SUs since before statutory consultation. The PPs as set out in the dDCO also deal with other SUs in addition to these specific PPs.</p>
35	ExA	The ExA noted that it has not seen any PPs from the Environment Agency (EA)	<p>The Applicant explained that PPs are not sought from the EA as the scheme does not look to disapply any flood risk permits and other powers. The Applicant will liaise with the EA to finalise any PPs if they are required but the Applicant has not currently identified a need for them. The Applicant will update the ExA if this position changes.</p>
AGENDA #5 – Crown Land and Other Special Category land			
Crown Land			
36	ExA	The ExA asked for an update on the Applicant's position in relation to obtaining consent for the inclusion of the Crown land.	<p>The Application confirmed that there is an anomalous plot: (Plot 2/6a classified as Crown Land. This land is beneath an existing highway. The original freehold owner of the subsoil has gone into liquidation, and as a result, the land vests in the Crown as Bona Vacantia. The SoS is the beneficiary of a historical Agreement. This is related to a contract of land to the SoS, presumably from the point of the original construction of the A4. The freehold transfer never took effect which explains why the SoS is listed in the title. As the land has been occupied as a highway for several years, the Applicant is exploring the possibility of making an adverse possession claim in relation to land with Land Registry. The process is not as expedient as the Applicant would like, since the Land Registry is not under the same timescales as the Applicant undergoing this examination, however the process is nonetheless underway. The Applicant is seeking to resolve matters through the Bona Vacantia land route within the Government. The application is maintaining a precautionary approach to treat the land as Bona Vacantia Land, and therefore is may not necessarily be classified as Crown Land.</p>

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			<p>As the SoS is the beneficiary of the land (due to the historic agreement) it is not anticipated that Section 135 consent would be required, but nonetheless, the Applicant continues to explore all avenues to deal with this anomaly.</p> <p>The dDCO [APP-021] includes provision at Article 52 (Crown Rights) for the acquisition of those interests in Crown Land:</p> <table border="1" data-bbox="770 501 1223 730"> <thead> <tr> <th data-bbox="770 501 958 568">Interest</th> <th data-bbox="958 501 1128 568">Nature of Interest</th> <th data-bbox="1128 501 1223 568">Plot</th> </tr> </thead> <tbody> <tr> <td data-bbox="770 568 958 635">SoS for Transport</td> <td data-bbox="958 568 1128 635">Category 2</td> <td data-bbox="1128 568 1223 635">2/6a</td> </tr> <tr> <td data-bbox="770 635 958 730">Government Legal Dept. (BVD)</td> <td data-bbox="958 635 1128 730">Category 2</td> <td data-bbox="1128 635 1223 730">2/6a</td> </tr> </tbody> </table> <p>In accordance with section 135 of the 2008 Act, the consent of the Crown (in this case the Secretary of State) to the compulsory acquisition of these land interests is required. Following liquidation and dissolution of the existing registered owner, which was a limited company, it is presumed that the interest in land now vests in the Crown as bona vacantia land. Accordingly, this land is included within the Crown Land designation. The Secretary of State for Transport is included as it is the beneficiary of a historical agreement dated 16 April 1991 which is still subsisting on the title.</p>	Interest	Nature of Interest	Plot	SoS for Transport	Category 2	2/6a	Government Legal Dept. (BVD)	Category 2	2/6a
Interest	Nature of Interest	Plot										
SoS for Transport	Category 2	2/6a										
Government Legal Dept. (BVD)	Category 2	2/6a										
37	ExA	The ExA asked the Applicant to explain when a resolution would be expected.	The Applicant confirmed that it is twin-tracking this process and assures avenues are being progressed to reach a resolution as quickly as possible. The Applicant will keep the ExA updated at the relevant milestones.									
38	ExA	The ExA explained that, should the Applicant wish to not treat that land as Crown Land, it would be required to justify why this is the case. This should be detailed in their written response to this CAH1.	The Applicant confirmed that it will set out its position in its written response. This will justify the approach being taken in relation to Crown Land consent.									

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		<p>The ExA confirmed that it has the information, however it needs the Applicant to confirm the desired position. The ExA appreciates that the Applicant may not be in a position to act on this until the Applicant has conducted all the necessary diligence.</p>	
<p>Commons (including town or village Greens), open space, or fuel or field garden allotments</p>			
39	ExA	<p>The ExA acknowledges that only Open Space is relevant for this scheme. The ExA does not expect any changes to this during the examination period. There are a number of plots which are identified as Open Space. The ExA will seek an update in respect of Sections 131, 132 and 139 of the PA 2008, later in this Hearing.</p>	<p>The Applicant confirmed that the only special category land applicable is open space land. There are three principal areas. The Applicant referred to Point 7.2 in Chapter 7 of the SoR [APP-025] which details the various areas of land and the justification why exemptions apply to relevant areas of open space. The Applicant is willing to run through those in detail, however in summary, suffice to say that there are some areas required for temporary possession required for the construction and widening of highway and drainage of highway which uses the exemption in Sections 131, 132, of the PA 2008. This means that ultimately there is no need for the Applicant to rely upon Special Parliamentary Procedure.</p>
40	ExA	<p>The ExA asked whether the Applicant is aware of any parties who may have an interest in those plots who will or are likely to raise objections and whether the Applicant has</p>	<p>The Applicant confirmed that, at present, it is not aware of any parties who may be interested in the open space land. The Applicant noted that CRT have an interest in the open space land, however this point is forming part of the Applicant's discussions with CRT, particularly in relation to the practicalities of the works.</p>

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		any concerns in relation to this	
41	ExA	The ExA sought to clarify whether the Applicant plans to pick this point up with CRT when pursuing discussions with them relating to the SoCG and PPs.	The Applicant confirmed that this point will be addressed during discussion with CRT in relation to SoCG and PPs.
42	The Applicant	Section 139	The Applicant confirmed and concluded that, with regards to Section 139 of the PA 2008, the section only applies to common land, which does not apply to the scheme.
AGENDA #6 Human Rights and Equalities			
43	ExA	The ExA sought a summary in respect of Article Rights under the European Convention on Human Rights (ECHR), including the circumstances in which the Applicant thinks they may be engaged, and what measures the Applicant sought to employ them. The ExA also sought a summary of any specific cases of which ought to be brought to the ExA's attention, including the Applicant's approach to address breaches.	
44	ExA	<p>In respect of both the Human Rights Act and the Public Sector Equality Duty (PSED), the Applicant was asked to set out the:</p> <ul style="list-style-type: none"> • circumstances within which these might be engaged; • whether there are any particular groups meriting specific analysis; and 	<p>The Applicant referred to Chapter 6 of the SoR [APP-025] which sets out the following Articles of the ECHR which are relevant to the Secretary of State decision as to whether the DCO should be made as to include powers of Compulsory Acquisition:</p> <p><u>Article 1</u></p> <p>This Article protects the rights of everyone to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.</p> <p>From the Applicant's perspective, the compelling case in the public interest for Compulsory Acquisition is demonstrated in Chapter 5 of the SoR [APP-025] (Case for Compulsory Acquisition), and also in the CftS [APP-190] where the Applicant has sought to acquire the minimum amount of land take to deliver the scheme.</p> <p>Additionally, with reference to the oral representation made by the Interested Party at the Open Floor Hearing on 8 October 2024, the Applicant referred to Point 6.1.1 of the SoR [APP-025] which confirms that no residential properties are to be acquired for the Scheme.</p> <p><u>Article 6</u></p>

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		<ul style="list-style-type: none"> measures undertaken and/or in process to address possible engagement. <p>This should include the Applicant briefly setting out: the consideration of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) in relation to the application; consideration of Article 6 of the ECHR; the consideration of Article 8 of the ECHR; and any duties under the Equality Act 2010 in relation to the application.</p>	<p>This Article entitles those affected by compulsory powers sought in the DCO to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision-making process;</p> <p>From the Applicant's perspective and with reference to Point 6.3.4 if the SoR [APP-025], the Applicant confirmed that throughout the development of the Scheme, the Applicant has given persons with an interest in the land a full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and the Applicant has endeavoured to engage with land interests. The Applicant has made amendments to the scheme in response to statutory consultation and therefore the Applicant has had regard to land interest feedback in both the initial design of the Scheme and in iterative design changes throughout the life of the Scheme.</p> <p>Examples of design changes are provided within Chapter 5 (section 5.7) of the Consultation Report [APP-28]. Annex N of the Consultation Report also evidences regard had to Consultation Responses [APP-044]. Point 6.3.5 of the SoR [APP-025] also explains that any individuals affected by the dDCO [APP-021] may submit representations by way of an objection to the application and they will have the opportunity to be heard on their specific issues when the next round of hearings are due to take place.</p> <p><u>Article 8</u></p> <p>This is the right to private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.</p> <p>The Applicant's case is set out in Chapter 5 of the SoR [APP-025] which sets out the compelling case in the public interest for CA, and is also demonstrated in the CftS [APP-190].</p> <p><u>Equality Act 2010</u></p> <p>The Applicant stated that whilst the duty lies with the SoS in their capacity as the decision maker, the Applicant outlined what this duty is and provided the Applicant's perspective on those protected characteristics.</p> <p>The duty under Section 149 of the Equality Act 2010 is the need to</p> <ol style="list-style-type: none"> i. Eliminate unlawful discrimination, harassment victimisation and other conduct prohibited by or under the Act, ii. Advance equality of persons who share protected characteristics and those who do not, iii. Foster good relations between persons who share a relevant protected characteristic and persons who do not <p>The Applicant has conducted an Equality Impact Assessment (EqIA) [APP-195] to consider how the Scheme may have direct and indirect impacts and contribute to equality. The mitigation measures</p>

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			<p>embedded into the Scheme, along with the ongoing actions in the EqlA should minimise any adverse impacts of the Scheme and provide benefits for a number of equality groups.</p> <p>The Applicant wanted to highlight two aspects in relation to engagement with landowners:</p> <ol style="list-style-type: none"> 1) F1.5.1 demonstrates how the Applicant adjusted the consultation due to the protected characteristics. In particular, engagement with the Gypsy Roma and Traveller (GRT) community and how the Applicant adjusted engagement in accordance with the Equality, Diversity and Inclusion Tool. 2) F.1.4.3 demonstrates how the Applicant advanced engagement with a specific community: community on Tomey Lane. <p>During Statutory Consultation, in Autumn 2022, representatives from the Bridge House Farm GRT site met the Applicant, who outlined the design plans and answered questions about access (both vehicular and non-motorised users) to the site during and following construction. Engagement was positive and the representatives advised they would share the information with others on the site.</p> <p>In collaboration with NSDC, the Applicant attended a NSDC event which invited members of the Tolney Lane GRT community to find out more about NSDC's flood reduction plans. The Applicant had a stand by the entrance and was reassured by the interactions which took place, as stakeholders from this community verbally confirmed they knew all about the scheme and didn't have any questions about the plan or design.</p> <p>As part of the delivery of the Section 56 letters, the Applicant received a number of return to sender postal items from addresses on Tolney Lane. Several were successfully re-sent and delivered but two were returned twice. Working with Nottinghamshire Police, the Applicant arranged for the local police liaison officer to hand deliver the letters, which they successfully did to one occupied site. However, the second site was abandoned and overgrown, therefore the officer was able to affix a Section 56 notice to the surrounding fence.</p> <p>The Assessment concluded that the mitigation measures embedded into the Scheme, in combination with the ongoing actions outlined in the EqlA should minimise any adverse impacts. No considerable impediment was identified to the scheme and monitoring will be ongoing.</p> <p>The Applicant stated that the EqlA will continue to be developed throughout the examination process and should there be a need to update the ExA on the EqlA, this will be done accordingly, however not at the moment.</p>
45	ExA	The ExA flagged that there is another Roma Gypsy and Traveller Site on Winthorpe Road, by the	The Applicant confirmed that their response, as above, applied to both affected communities.

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		Kennels. The ExA asked whether this site was also considered by the Applicant.	
46	ExA	The ExA asked the Applicant whether it has received any feedback in relation to their engagement with the Gypsy Roma Traveller communities.	The Applicant confirmed that no formal written feedback was provided, however adjustments as to how that engagement is to take place can be made in formal writing with them.
AGENDA #7 Funding			
47	ExA	The Applicant was asked to provide any further updates to the Funding Statement and whether adequate funding is likely to be available to enable the CA to proceed within the statutory period following the DCO being made, if it is made.	With regards to CA, the Applicant confirmed that funding that has already been approved and authorised. Funding is available to the scheme right now. With regards to wider government funding and to the new government's strategic review, the Applicant confirmed that National Highways forms part of the review. The Applicant will continue with the current approvals that are in place. Refer to Funding Statement [APP-026]
48	ExA	The ExA noted a change in Government and in particular, their statements about their position on some road schemes, announcing the halting of road developments which have received consent. The ExA asked if there any changes to commitments that the Applicant was aware of .	With regards to the Budget on 30 October 2024, the Applicant does not anticipate having any information about strategic review. It may inform the amount of funding available to the Applicant. A timeline has not been provided online at the moment.

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		<p>ExA added that this question encompasses the underlying question about RIS2 commitments and whether there are any implications to the Applicant's Funding Statement or any visibility on this.</p> <p>The ExA asked the Applicant what the timescales for the strategic review are.</p>	
49	ExA	The ExA requested the Applicant to keep the ExA updated on the matters in relation to funding and after the review conducted by the new government.	
50	ExA	Following government allocation, the ExA sought clarify as to whether the decision is a Government decision or a National Highways decision	The Applicant stated that the SoS is the sole stakeholder for National Highways. The Department for Transport (DfT) hold the licences and National Highways deliver the schemes and projects that the DfT ask National Highways to deliver.
Agenda #8 Any other matters			
51	ExA	<p>The ExA confirmed the action points that arose during the CAH1.</p> <p>The two action points arose:</p> <ol style="list-style-type: none"> 1) To check the reference to the NPSNN in the Case for the Scheme [APP-190] and to 	<p>The Applicant responded to the two points raised by the ExA:</p> <ol style="list-style-type: none"> 1) As the 2024 version of the NNPSN was published on the same day the A46 DCO Application was submitted, the CftS [APP-190] refers to the 2015 version of the NPSNN which relevant at the time of submission. The Applicant confirmed that an updated version of the documents submitted at later deadlines, will contain reference to the fact that it is the 2015 NPSNN that is referred to. 2) The Applicant confirmed they will share the details of the sifting report that informed the RIS2. <p>The Applicant also confirmed to the ExA that they will address the following points:</p> <ul style="list-style-type: none"> • Update the ExA on the position on Crown Land.

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		<p>make sure that the 2015 version of the NPSNN is the Policy that is referred to.</p> <p>2) The Applicant is to provide the ExA with details of the sifting report that informed the RIS2.</p>	<ul style="list-style-type: none"> • Pick up in relation to Open Space in relation to the SoCG and PPs underway with CRT. <p>The extent that there are any updates in relation to the funding arising during the examination period, that the Applicant will ensure to provide the ExA with updated accordingly.</p>
CAH1 concluded at 12:45			