



The Planning Inspectorate

Compulsory Acquisition Hearing (CAH1)

Tuesday 26 September 2023

Supplementary Agenda Additional Questions

As set out in the Examination Timetable the Examining Authority (ExA) has decided to substitute the normal practice of early written questions with Hearings as the ExA believe that the Hearings and responses received to Deadlines 1, 1A, 2 and 2A will reduce the need for the ExA to ask a significant number of written questions.

Nevertheless, in preparation for this Hearing, the ExA has a number of questions which it considers require relatively straightforward responses, clarification and/ or the submission of additional information/ evidence. Rather than use the time at the Hearing to get this information the ExA has listed these questions in the table below and would ask that responses be submitted at **Deadline 3, Thursday 5 October 2023**. If anyone considers that the ExA need to explore these matters orally then, as detailed on the agenda, there will be the opportunity at the start of the Hearing to raise this with the ExA.

The questions below are based on the draft Development Consent Order (DCO) version 2.01 dated September 2023 [REP2-003]. Please note that the ExA is required to submit a draft Development Consent Order with its report to the Secretary of State regardless of its recommendation. Therefore, the questions and comments below are made on a without prejudice basis.

Number	Subject	Response by	Question/ Clarification
ARTICLES			
CAH.A.01	Clarification	Applicant	Article 25 (a) Explain why it is necessary to not incorporate paragraph 8(3).
CAH.A.02	Drafting	Applicant	Article 26 (1) (a) For precision should the words in bold be added to the drafting: (a) No notice to treat is to be served under Part 1 (compulsory purchase under the acquisition of Land Act 1981) of the 1965 Act
CAH.A.03	Drafting	Applicant	Article 27 (1)

Number	Subject	Response by	Question/ Clarification
			For precision should the wording in bold be added? 'Subject to paragraph (2) and (4), the undertaker may acquire such rights over the Order land, or impose such restrictive covenants affecting the Order land...'
CAH.A.04	Drafting	Applicant	Article 28 (1) For precision should the drafting be amended as follows: 'Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under Article 24 are extinguished –'
CAH.A.05	Drafting	Applicant	Article 28 (1) (a) Does the drafting need to be expanded to include agreement through the grant of a lease of the land ie: 'As from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement ; or
CAH.A.06	Drafting	Applicant	Article 28 (3) and (4) Does the drafting need to be expanded to include restrictions as well as private rights?
CAH.A.07	Drafting	Applicant and Affected Persons	Article 28 (3) Does this need to be expanded to include land that is vested in or acquired by the undertaker? And should it include a requirement for the undertaker to serve notice regarding extinguishment? 'Subject to the provisions of this article , all private rights over land owned by, vested in or acquired by the undertaker that are within the Order land are extinguished at the start of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment. '
CAH.A.08	Drafting	Applicant and Affected Persons	Article 28 (4) As currently drafted all private rights would be extinguished for as long as the undertaker remains in lawful possession of the land during temporary possession is this reasonable and necessary? Could this be addressed by the insertion of the drafting in bold: 'Subject to the provisions of this article, all private rights over land for which the undertaker takes temporary possession under this Order are suspended and unenforceable , in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken , for as long as the undertaker remains in lawful possession of the land.'
CAH.A.09	Drafting	Applicant	Article 28 (7) and (8) For precision should:

Number	Subject	Response by	Question/ Clarification
			<ol style="list-style-type: none"> 1. The word 'it' be replaced with 'land' in (a) (ii), (iii) and (iv). 2. 'and' be replaced with 'or' at the end of (a). 3. 'it' be replaced with 'the agreement' in the sentence at the end of (8) (b).
CAH.A.10	Drafting	Applicant	<p>Article 29 (1) For precision should the title of Part 1 of the Act be quoted in full eg (1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act</p>
CAH.A.11	Drafting	Applicant	<p>Article 30 (8) (b) Please confirm whether the reference to section 4 should be a reference to section 5A and amend accordingly</p>
CAH.A.12	Drafting	Applicant	<p>Article 31 (1) Please confirm whether a reference to article 27 (compulsory acquisition of rights and imposition of restrictive covenants) should also be included in the drafting. Please amend accordingly</p>
CAH.A.13	Drafting	Applicant	<p>Article 33 (1) Please review the list and ensure that all activities that would need the temporary possession of land are included eg mitigation works</p>
CAH.A.14	Drafting	Applicant	<p>Article 35 (4) The definition for special category land does not refer to common land, should it and if so please amend accordingly.</p>
CAH.A.15	Drafting	Applicant	<p>Article 36 (1) Is it necessary to include a reference to article 27 or is a reference to Schedule 8 sufficient? In (c) for precision does the wording in bold need to be inserted? 'extinguish or suspend the rights of, or restrictions for the benefit of, or remove, relocate or reposition apparatus belonging to statutory undertakers over or within the Order land.</p>
CAH.A.16	Drafting	Applicant	<p>Article 38 (3) For precision should the title of Part 3 of the Act be quoted in full eg Part 3 (street works in England and Wales) of the 1991 Act applies.</p>
CAH.A.17	Drafting	Applicant and the Crown Commissioner	<p>Article 39 (1) Does lessee need to be referenced: 'Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the</p>

Number	Subject	Response by	Question/ Clarification
			undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description'
Schedule 6			
CAH.S6.01	Drafting	Applicant	<p>2 (2) For precision should the title of Section 7 be quoted in full eg section 7 (measure of compensation in case of severance) of the 1965 Act applies. And For precision should the wording in bold be inserted: (a) For "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"</p>
CAH.S6.02	Drafting and clarification	Applicant	<p>3(2) (a)and (b) For precision should Section 11(1) be quoted in full and does the end of the sentence need to refer to modification by paragraph 7 of Schedule 7? '(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11 (1) (powers of entry) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the London Luton Airport Expansion Project Development Consent Order 202[])</p> <p>Clarify if (b) should refer to paragraph 12 of Schedule 2A of the 1965 Act rather than paragraph 13.</p>
CAH.S6.03	Drafting	Applicant	For precision should the title above paragraph 4 read 'Application of Part 1 of the 1965 Act'.
CAH.S6.04	Drafting	Applicant	<p>Schedule 2a (1) For precision does this drafting need to include a reference to the Order? Eg '....as applied by article 30 (application of the 1981 Act and modification of the 2017 Regulations) of the London Luton Airport Expansion Project Development Consent Order 202[] in respect of the land to which the notice relates</p>