

AUDIO_LUTON_ISH1_SESSION1_26092023

Tue, Sep 26, 2023 2:40PM • 1:49:11

00:05

I want to check that everyone can see and hear me clearly. If you can't please can you raise your hands on teams now?

00:15

I just need to confirm with Miss Evans that the live streaming a recording of this event is commend.

00:21

Thank you.

00:23

The time is 930. And this first issue specific hearing relation to the London Luton Airport Expansion Project is now open. This issues specific hearing is about the draft development consent order. My name is Beth Davis. I'm a planning inspector and a chartered geologist. I've been appointed by the Secretary of State to be a member of the panel examining this application. I'll be running through how we will manage the event and doing introductions and one of my colleagues will be taking notes of any actions. And I asked my colleagues to introduce themselves.

00:57

Good morning. Good morning. I am Andrew Robinson. I am a planning inspector and a chartered town planner.

01:09

And I have been appointed by the Secretary of State to be the lead member of the panel and I will be leading the discussion of today's event.

01:18

Good morning. My name is Dr. Richard Hunt. I'm a planning inspector and a chartered environmentalist.

01:26

Good morning. My name is Deborah homes. I'm a planning inspector and a chartered civil engineer.

01:32

The five of us make up the panel which is called the examining authority. I can confirm that all of us have made a formal declaration of interests and there are no known conflicts of interest with regard to us examining this application.

01:45

We have other colleagues from the planning Inspectorate with us today, you're all spoken to Sean Evans, the case manager for this project in the adjoining conference. And I'd also like to introduce Remiel Burnie our case officer. In addition, there are technicians from production 78 in the room who are here to manage the recording and the live streaming. If you have any questions regarding the application process in general, please can you email the case team who will be happy to help?

02:11

Turning to management at the event and some housekeeping matters? Firstly, can I check the all loud notifications for electronic devices are switched off. I'd also be grateful if you could make sure your microphones are switched to mute unless you're speaking to help reduce the background noise.

02:27

I'm not aware that any requests have been made for special arrangements to assist people participating in this hearing. I just like to check that this is still the case.

02:38

Every time you speak, please can you switch on your camera and give your name? If you're representing an organization? Can you also say who it is that you represent?

02:47

If at any point in the meeting, you can't hear us or you want to speak Can I ask that you turn your camera on and use the raised hand function in teams. And we'll try and sorted out as quickly as possible

03:00

was Adams will have explained what to do if you lose your connection. And we can always adjourn for a short period of it, there are a significant connection problems. The chat function in teams is not being used today. So don't send any messages via chat because it's not being monitored.

03:15

We'll adjourn for half well for for a short break and a convenient point, usually about every hour and a half. If anyone requires a break at a specific time for medical or any other reasons, then let the case team know and we can hopefully adjust the program for you.

03:30

You can stay logged into teams during a break, please make sure you switch your cameras off and move to microphone. If you lose your connection, use the same link that you use to log on this morning and the case team will try to reconnect you as soon as possible.

03:45

Do we have any members of the press in attendance?

03:52

And does anybody have any questions or concerns about the technology or the general management of today's events?

04:00

Thank you.

04:01

This is there's no digital recording be made of this hearing which will be available on the National Infrastructure website. If you speak in the hearing, it's important that you understand your comments will be recorded and a digital recording will be published and retained usually for a period of five years from the Secretary of State's decision. We're subject to the general data protection regulations, it's extremely unlikely that we need to be to give a sense to personal information to put into the public domain. And in fact, we'd actively encourage you not to give us sensitive personal information, such as addresses and economic, financial, cultural or health related matters that could be put into the public domain.

04:40

If you do feel that it's necessary for you to refer to such sensitive personal information, we'd encourage you to speak to our case team in the first instance. We can then explore with you whether the information can be provided in a written format which could then be redacted before being published.

04:57

Please note that the only official record of these

05:00

seedings is the digital recording on the project page of the website, tweets, blogs and similar communications coming out of this meeting will not be accepted as evidence.

05:10

Moving on to the purpose of today's hearing, today's issue specific hearing is being held at our request because we want to explore and discuss a number of matters relating to the draft development consent order. This is to ensure that we have all the information we need to make our report to the Secretary of State.

05:27

We'll be using the latest version of the draft development consent order as submitted by the applicant at deadline to which is examination Library Reference rep 2003.

05:38

The agenda for this hearing was placed on the inspectorate website on Tuesday the 19th of September and can be found in the examination library at reference ev 6001.

05:48

Today's hearing will be a structured discussion, which was Dowling will lead based on the published agenda. I'd like to remind everyone that the examination is a predominantly written process. You'll see in the examination timetable that there are opportunities for the examining authority to ask written questions, and we can also hold more hearings if they're needed.

06:09

I'd like to reassure you that while we might not ask a question on a topic, it doesn't necessarily mean that we believe this matter has been fully addressed. It could be that we'll be examining it at a later hearing or through written questions.

06:22

We're familiar with all the documents that you've submitted. So when answering your question, you don't need to repeat at length something that you've already written about. If you want to refer to information that you've already submitted, it would be helpful to us if you could use the examination library reference for that document.

06:39

We're expecting that most of today's contributions will be from parties that have already requested to speak. This is a public examination though, and if there's a point that you want to make, please do raise your hand and switch on your camera so that we can hear from you.

06:53

Finally, I'd like to remind everyone that this is not an inquiry and unless we specifically request it, there'll be no formal presentation of cases or cross examination. This means that any questions that you have for other parties need to be asked through the examining authority.

07:10

Turning to the agenda for the hearing, we consider that the main items for discussion this morning to be articles and schedules of the draft development, consent order, requirements and conditions, documents to be certified and consents licenses and other agreements including any trans boundary matters.

07:31

Please note that articles in relation to compulsory acquisition and schedule eight which deal with protective provisions will be discussed in the compulsory acquisition hearing this afternoon. Today's agenda is for guidance only and we may add other issues as we progress. Should this take longer than anticipated, it may be necessary to prioritize matters and defer some matters to further written questions.

07:56

Finally, it's important that we get the right answers to the questions that was darling is going to ask. Please do bear in mind that the examination is a predominantly written process. If you can't answer the questions being asked right now or require some more time, then we'd rather you tell us that you need to respond in writing, then give an incomplete or an incorrect answer. We can then defer the response

either to an action point to be submitted at deadline three, which is on the fifth of October or two later written questions or another hearing. Are there any questions at this stage about the procedural side of today's hearing?

08:38

I'll move on to introduce the participants then the case team have provided me with a list of interested and other parties who have asked to be heard today.

08:48

The people that we've got representing organizations, or the organizations are the applicant, Luton Borough Council, the joint host authorities which are decorum Hartfordshire, North Hartfordshire and central Bedfordshire councils, Buckinghamshire Council, national highways ladder Ken and the Hopkinton society.

09:14

Before I ask people to introduce themselves, can I check that I haven't missed any organizations off the list

09:25

I'm going to ask those of you participating in today's hearing to introduce yourselves now. When I say your name, please introduce yourself including your title and if you're representing someone who it is that you represent. And don't forget to switch on your camera and microphone when I call your name. So starting with the applicant, Mr. Tom Henderson

09:47

Good morning, ma'am. Thank you. Can I just check you can hear and see us okay. Yeah, we can hear and see you.

09:54

My name is Tom Henderson. I'm a solicitor and partner at the law firm

10:00

NPDB Pitmans were legal advisors to loosen writing the applicant.

10:06

I'll be leading

10:08

this hearing today for us in tandem with my colleague, Mr. And stability very much who I'll invite to introduce himself now. My name is Mr. ability for our mesh, also, from BB Pitmans, representing the Applicant.

10:23

Madam we have

10:25

as you can see on the screen, there are a number of other members of the team in the room today.

10:31

They're available if later questioning touched upon their specialist areas. We don't anticipate needing to call them up but if we do, we would propose to introduce them at that point.

10:44

Yeah, that's fine. Thank you, Mr. Henderson. Was there anybody else that you wanted to introduce?

10:50

Oh, that's it for now. Thank you.

10:54

Next on my list, I have Luton Borough Council and Mr. Michael Frye.

11:02

Good morning, madam Can you see and hear me? Michael bride Council believed in Borough Council it looks like

11:10

yeah, we can hear you go.

11:14

Good morning. There are other people in the room with me but I don't anticipate they will be addressing you today if they need to. I'll introduce them at the time madam of that suits. I should also flag up that for the purposes of this hearing. Luton Borough Council Council is one of the host authorities in the sense that the submissions will be the same and will be represented by Mr. Owen intimations.

11:36

Thank you, Mr. Frey.

11:41

Moving on to the joint host authorities. Mr. Owens, Mr. Wilson.

11:50

Good morning, madam. My name is Robbie Cohen. I'm a solicitor and a partner at the law firm Pinsent Masons. And alongside my colleague, Mr. George Wilson, who will introduce himself in a moment, we are representing all five of the host authorities so that is Luton Borough Council,

12:10

central Bedfordshire Council

12:12

Hartfordshire County Council,

12:15

the quorum Borough Council and North hearts Council. Thank you.

12:22

Thank you, Mr. Whelan.

12:26

Morning, Madam Yes. My name is George Wilson sister at Pinsent masons and representing the host authorities, Mr. Owners already set out thank you. Thank you, Mr. Wilson.

12:40

Buckinghamshire Council.

12:44

Good morning. My name is Mark Western Smith. I'm a barrister and I appear on behalf of Buckingham church council. on the call today I also have Daniel GIK, who's the team leader and development management, planning, growth and sustainability at the council. And Tim Pierce, who's an associate director planning environmental consenting and communities at Atkins rayless. I suspect it will only be myself that speaks today but I will introduce Mr. Pierson Mr. Gig if they also called on

13:21

Thank you National Highways

13:29

Act

13:33

so I press the morning. My name is Jeremy blue. I'm an independent consultant and former planning director of highways seconded to the to the organization's lead on behalf of this particular project, as we've noted over on the password,

13:53

legal advisor myself

13:58

Good morning madam My name is Howard bassford. I am a solicitor and a partner at the law firm DLA Piper, UK LLP and I appear on behalf of National Highway supported by Mr. Watts courser who will introduce himself now.

14:13

Good morning. I'm Ross courser, also strict DLA Piper accident path national highways.

14:21

Thank you, Mr. Cosa. Mr. Blue, you're quite hard to hear. We can make you out. Okay, actual try and tidier if you can. Try and reset it all and see if that makes a difference. That'd be appreciated. Thank you. Okay.

14:40

Was there anyone else representing organizations that I've missed off the list before I move on to the interested persons

14:50

so interested persons the first person on my list is Mr. Andrew Lambo and representing ladder calm.

14:57

Morning, Madam I'm Andrew Lambo mature

15:00

Aaron's ladder can communicate.

15:06

Thank you,

15:08

Mr. Phillips Mr. Jeff Phillips from the Harpenden society. Good morning, madam. Sadly my camera hasn't hasn't connected with with Microsoft Teams. I'm afraid I'm a disembodied individual. My role is I'm chair of the Harpenden society, civil society representing the Heartland Community instead of Mr. Carr Wingfield, whom he has presented in the past

15:33

we can hear you clearly Mr. Phillips.

15:37

Mr. O'Neill

15:42

Hi, I'm Tim O'Neill and I'm a local resident

15:48

thanks mr. O'Neill and Mr. David Shipley.

15:54

Hello, I'm David Shipley. I'm speaking as an individual

15:59

resident of Heartland

16:02

Thanks, Mr. Shipley.

16:04

That's everyone that I've got on my list. Are there any other individuals who want to speak today?

16:16

Thank you, everyone. I'll now pass over to Miss Dowling to lead us.

16:22

Oh, we've got someone additional. There's a hand up apologies. I missed it. I can't see who the hand belongs to unfortunately. Although we are Mr. Jethro punter.

16:32

Good morning. My name is Jeff Fairbanks from Highway Development Team Leader at Central Bedfordshire Council. I was registered to speak if required with regards to highways matters related to the draft the DCO. Boss, it's unlikely that we'll need to, I did want to reference the fact that registers speak if required. Thank you. Thanks for letting us know Mr. Pinto. Can I just check which council that was I missed what you said.

16:56

Central Bedfordshire Council.

16:59

Thank you.

17:03

Any other hands up that I've missed?

17:07

out, I'll now pass over to Miss Dowling to lead us through the rest of the items on the agenda.

17:14

Thank you very much. And just before I start, I just want to take the opportunity to manage people's expectations about what will be happening today. I'm aware there was a recent planning inquiry held consider the proposal to increase the passenger cap from 18 to 19 million passengers per annum. And many people who presented evidence to that inquiry have also made submissions to this examination. However, that was held under the rules and procedures for such applications are the Town and Country Planning Act 1990. And unlike a planning inquiry, where a lot of evidence is presented orally, and is subject to cross examination, the National Infrastructure regime is a predominantly written process with most of the evidence and questions given in writing or asked in writing. So the purpose of these hearings this week, as Miss Davis has said, are to enable us to ask the questions to gather the

evidence that we need to enable us to make a report to the Secretary of State. As a result at these hearings, you will not be asked to present evidence, nor is there an opportunity to already asked questions or cross examine other parties about their evidence. It's about us asking the questions based on the evidence submitted so far. It is also important to emphasize that the examination is a six month process. And as a result, not all of the evidence will have been submitted, nor will all the questions have been asked or answered. So Furthermore, the issues that need to be examined as part of an application for development consent, often need to be considered in multiple different ways and issues overlap. So for example, mitigation or controls proposed through the development controller, development control order, may or may not be addressed. concerns regarding matters such as noise, biodiversity, design, flooding or construction management matters, but may be considered as an another hearing where we're dealing with those topics specifically, the main discussions on such matters, as I say, will take place in issue specific hearings, which are scheduled for later in the week. What we are focusing on today is not what mitigation may be required, but if it is required, how it is being secured, and what the development consent order, as drafted, deliver it.

19:33

I would therefore ask you to bear this in mind when answering the questions, as it may be more appropriate that points you may wish to make all the questions that you're expecting to be asked should be made at the issue specific hearings later in the week, when they can be considered in more detail. So hopefully, that helps you understand the process and provides the context for this morning's meeting. So before I proceed, and in light of what I've just said, I just want to have a brief conversation with a number of the interested parties.

20:00

He's registered to speak to confirm whether this is the right hearing for them to attend. So if I can first of all start with national highways, I note that in your request to attend this issue specific hearing, you wanted to talk specifically about protective provisions. But I just want to highlight that this will be at this afternoon's compulsory acquisition hearing. And you will see it as item four on the agenda, which is Evie 501. Can I just check? Is there something specifically wanting to raise with regards to the DCO? Or is it just about protective provisions that you're involved with this morning?

20:35

Mr. bassford, I believe you can provide response

20:39

is Good morning, madam. How about for DLA Piper.

20:44

Indeed, we are aware that we need to pick up protective provisions this afternoon. To the extent that the specific questions in your expanded agenda touch on those we will merely flag the interrelation rather than rather than expand on the full protection provisions this morning.

21:03

Okay, you're more than welcome to stay. But as I say, I just want people to use their time efficiently. I realize you've got a whole long week of hearings. And if you don't need to attend a specific hearing, then obviously, feel free not to thank you if you have asked us some specific questions as well, though, so we're ready to address those. So

21:23

if I can then turn to Mr. Phillips from the Harpenden society. The items that you've highlighted in the representations that you submitted at deadline one, in the main relate compulsory acquisition Article, Article 26. One, which is regarding the time limit for the exercise of compulsory acquisition, I've noted your view that it should be the standard five years, and I'm aware of the reasons that the applicant are requesting for 10. I was therefore not proposing to ask any questions on this matter this morning. The community first fund will be discussed at issue specific hearing to which is ev 7001 the agenda on our exam library, and it's item three on that agenda. And it will only briefly be touched on this morning Under Item seven on the agenda in relation to the progress being made with regards to Section 106 agreements. I am aware of the concerns that you've raised regarding article eight and the consent to transfer the benefit of the order to the point you raised. But the point that you raised as a technical one, The Guardian concerns over suitability of potential future operators of the airport, and whether they should be appointed by the Secretary of State. Having reviewed your submission, it is one I think best for the applicant to respond to in writing if they haven't already done so. And I would, however, just like to take this opportunity to reassure you that most development consent orders do contain such an article to enable and the flexibility to pass the benefit of the order on. So having listened to what I've just said, Mr. Phillips, I'm more than happy for you to continue to join this meeting. But I just want to make sure that I've managed your expectations about what we are doing with regards to the topics you raise.

23:04

Thank you. Thank you very much for that clarification. I'm satisfied that our issues have been taken care of Thank you very much. That's no problem.

23:12

If I can enter into Mr. Neal, you haven't actually provided a reason with why you're wanting to attend this meeting. So can I just ask what it was that you're wanting to raise to make sure that you're coming to the right meeting?

23:27

Mr. O'Neill

23:32

maybe we'll come back to Mr. O'Neill. So, Mr. Shipley, I've looked at your relevant representation. And I note that you wish to talk about the relationship between loot and rising and loosen Borough Council. And you also have concerns with regards to funding of the scheme. As I've just mentioned with Mr. Phillips, we are talking about the community first fund at issue specific hearing two, which is Evie 7001. That's item three on the agenda. They're

24:02

looking at my agenda notes this morning. It's not a matter I was proposing to discuss, albeit that it may be touched upon at certain points. So I just want you to manage your expectation about what was happening at this morning's hearing. With regards to the concerns that you raised. Again, you're more than welcome to continue to join. But if you think it might be better that you attend issue specific hearing to where we are going to talk about the community first fund, then please feel free to leave this hearing and attend that one.

24:33

Thank you, madam. David Shipley.

24:37

Yeah.

24:39

My funding issue probably doesn't really relate to the community service funding, but I am aware from other representations made by other parties

24:51

that the overall issue of funding is is very much on the table.

24:59

So if I can just

25:00

Got Kakashi that I've missed that one is centralized. And we are talking about funding of the scheme this afternoon with regards to in the compulsory acquisition, hearing waste to my aid on the agenda. So there is another hearing where we are actually going to talk about funding and how the scheme has been funded, because that relates to the compulsory acquisition of land. So again, maybe this afternoon's session is more appropriately. It sounds like I've registered for the wrong session for which is not a problem. It often happens. And I just as I say, I didn't wait to sit through three hours of me talking about develop consent order, and not realizing that it's the wrong session for you to attend. You're more than welcome to continue to to attend. But I think possibly this afternoon is maybe when you want to come along, and that's when we will obviously be touching on funding. And as I say also the community first fund on CI on Wednesday.

25:50

Okay, well, that's that's most helpful and thoughtful as

25:55

well. I need to be sent a link for this afternoon. And

26:01

that's, I'm just looking at the case de moda. Yes. If you could just email the case team, and they'll send you the resident.

26:07

Great. Thank you very much. Well, I'll step aside and get on something else. Thank you. No problem at all. If I can just come back to Mr. O'Neill.

26:23

O'Neill

26:28

Okay.

26:30

Well, I will continue them with the rest of the agenda.

26:34

I'd also just like to start the whole of the hearing by explaining and making it very clear that this is a without prejudice conversation for all parties involved. The examining authority is required regardless of whether we recommend the application for approval or refusal to provide a draft development consent order with our report to the Secretary of State, so that they should so should they wish to grant consent they are able to do so. This discussion in no way indicates whether or not the application will be recommended for approval or consent. And equally, your positive participation in the discussions does not detract from any comments you may have made with regard to concerns about the proposal. Is everyone clear on that?

27:20

Before we get on to the agenda proper, there are a number of key documents which are going to be referred to throughout this morning's hearing. So to prevent things becoming repetitive, and to save time, I'm just going to set those out in detail now, along with the relevant examination Library Reference and how I will refer to them in discussions. I then do not intend to keep repeating the exam library references unless I'm referring to a different version of the document or introducing new documents. So the version of the draft Development Consortium consent order I will be using was that that was submitted at deadline two, which has an exam Library Reference Number of rep 2003. going forwards I refer to this as the draft DCO. Can I just confirm that everyone has access to this document, as I was not proposing to share it on screen as when we have tested this the font size and density the texts mean it's incredibly difficult to read.

28:18

version of explanatory memorandum I will use is that which was accepted by the examining authority as an additional submission and is dated June 2023, version 2.02. It can be found in examination library at reference a S dash 069. Going forward, I refer to this as the explanatory memorandum.

28:39

Finally, just for the benefit of those who are possibly not familiar with the development consent order process, as some of us here in the room or on the call, I just want to provide context for what we are considering this morning, when we reviewed the drafting of the DCO we are not only looking at what would be secured, but how it will be secured and whether it needs to drafting tests. Namely, is it necessary, relevant to planning relevant to the development to be permitted, enforceable, precise, and reasonable in all other aspects.

29:13

These may appear appear familiar tests as they are the same tests that are used for planning conditions are set out in paragraph 58 of the national planning policy framework. So I'm now going to move on to item two of the supplementary which deals with supplementary agenda. Does anyone have any questions about any points I've just made?

29:35

No.

29:36

So item two, having reviewed the draft event consent or that the examining authority highlighted a number of questions which we considered required relatively straightforward responses, verifications, and all the submission of additional information evidence. So rather than use the time at this hearing to get this information, we've published a supplemental agenda which is available on our website at evey 6002

30:00

By detailing these queries and requests and asking that we provide a written response at deadline three. However, as set out in that agenda, I just want to take the opportunity ask now when anyone considers that any of this question is requests need to be explored orally at today's hearing? So I'm just gonna start with the applicant and just check if there's anything that they want to raise with regards to the supplemental agenda.

30:27

Tom Henderson's the applicant know nothing to raise from us. We are working through those and on track to submit them for deadline three. Thank you. Thank you very much. If I can then turn to Luton Borough Council

30:43

Michael, Luton Borough Council knows nothing additional.

30:47

Thank you. If I can join, turn to the joint host authorities.

30:52

Thank you, Madam Robbia. And for the joint host local authorities, nothing specific although some of the issues you raised will no doubt come up as we go through the DCO book. But in relation to the specific questions, we will answer those at deadline three. Thank you very much.

31:10

Does anyone else want to raise any questions with regards to the supplementary agenda that you think we should be discussing already this morning.

31:23

So I'm going to move on to Item three, which is articles and schedules of the draft DCO, excluding schedules 128 and nine. As per the agenda if I can start by asking the applicant to provide us with a brief walkthrough of each of the parts of the draft amendment consent order to provide us with an understanding of the power sought and the context for the decision to provide the context for the discussions today. Being controlled growth only needs to be touched upon in this opening as there is the opportunity for you to provide a more detailed overview of that item of that

31:56

opening control growth at the start of item five on the agenda. If you want to. You can also include a brief overview of the works detailed in schedule one now rather than doing it separately for the next item on the agenda. Also just to clarify for the benefit of everyone, articles and schedules in relation to compulsory acquisition and temporary possession, which can be found in part five of drafttees. DCO will be discussed this afternoon. I'm going to pass you pass over to now Mr. Henderson to provide that brief overview

32:32

of the Madden swamp Henderson for the applicants. So yes to provide an overview.

32:40

The draft DCO follows a heavily precedented structure and approach containing the front end of the order seven parts. And I'll just briefly say what those are. So part one covers preliminary matters, including in particular article two, which sets out the definitions of terms used throughout the DCN. I know you've got an agenda item on Article Two to come. Part two of the order contains the principle powers, including the powers to carry out and maintain the authorized development and the power to transfer the benefit the order.

33:16

Part three contains powers and provisions relating to highways including maintenance obligations and traffic regulation powers.

33:25

Part four includes supplemental powers such as discharge of water, protective works and surveying.

33:32

Part Five contains powers relating to compulsory acquisition of land and rights and temporary possession, which we note as a matter for this afternoon's hearing.

33:40

Part Six contains operational powers,

33:44

including powers to operate and regulate the use of the airport and part of that touches upon the GCG regime. So we can expand on that later in the agenda in the series. But then part seven of the front end of the order contains miscellaneous provisions, including supplication for legislation and interaction with the Town and Country Planning regime.

34:03

So that's the sort of front end of the order if you like, that is then supported

34:08

by a number of schedules, which are introduced by relevant articles, the layout and content, these are also heavily preceded and followed by established convention. So we have sheduled one, which sets out the authorized development comprising

34:26

a set of numbered works supported by ancillary lettered works, so we'll probably call those the numbered works on the left, it works as we move through this, this hearing sheduled to sets out the requirements, which secure the vast majority of the mitigation and other commitments contained in the DC application. And that's where

34:46

you'll find many of the provisions relating to green controlled growth and again, we'll come back to those later in the hearing.

34:53

of schedules three and four, containing information relating to the stopping up of public rights of way the designation of highways

35:00

schedules five to seven relate to compulsory acquisition and temporary possession.

35:06

sheduled eight deals with protective provisions. And finally sheds were mine details documents to be certified if the if the DCO were to be made. So that's the structure. Just some brief commentary on the approach to drafting of the order.

35:23

The applicants had a careful regard to planning and spectrums, advice notes, 13, and 15, as well as precedent set by DCS that have been made to date. And in that regard, we draw attention to advice note 15, paragraph 3.1,

35:39

which directs the applicants to consider the drafting conventions of May DCA is published by the same department who would who would consider this order. So in that case, that would be the demand for transport Secretary State for Transport, so careful regard in particular to, to those orders.

35:58

The explanatory memorandum, as you mentioned, sets out in detail, our our justification for inclusion of provisions, but

36:06

when we determined that a particular power or provision was necessary for this particular scheme, our approach has then been very much to draw on precedent, as reflecting the Secretary of State's preferred form of drafting for that particular provision.

36:21

The audit does, of course, can contain some display provisions that reflect the specific circumstances of this project. And obviously, we'll expect to have some discussion about those as we as we move through. So that concludes what I was proposing to say about the structure of the order. I can now go on to say a bit more about sheduled. One, probably take me a minute or two, and then we will have covered that part of the agenda as well, if you would.

36:47

If you think it would be helpful. Yes, yeah, let's do that. round it off.

36:54

So a bit more information on on the content of sheduled. One and the works.

37:00

Schedule One sets out the works which constitute the authorized development, and they are split into six packages. series one, covers sitewide works to enable the authorized development.

37:17

Series Two contains airfield works.

37:21

Series Three covers the terminal associated terminal works. series four covers the airports port facilities, series five covers, landscaping and mitigation. And series six covers the proposed airport access road and off site highway works. And the works grouped together in work types with an alpha numeric reference corresponding to this specific work on the works plans. And you'll see that some works have been further subdivided and categorized with references 010203. And that's been done to

identify works which relate to the same physical location and are supposed to be delivered at different stages of the project. So in other words, in certain locations, we need to come back in the future and amend work or create a new work in the same location. And that that also informs why we've separated the worksite into the packages, because if you try to overlay the six series of works on on one plant, it's it's very difficult to

38:25

sort of sort of disaggregate that. So that informs the approach that we've taken.

38:30

Our position generally is that the works are described to an appropriate level of detail given the nature of the developments, the outline form of the consenting sorts, and when we benchmarked that approach against other similar ends IPs.

38:46

sheduled. One also contains, as I say, a number of ancillary lettered works described from the letters A to N. And these are works that can be undertaken in connection with the numbered works. And those works therefore remain

39:00

subject to all of the controls, which the applicants referred to in shedule. Two of the draft DCO various plans and control documents.

39:09

And the outcomes view on those ancillary works is that they provide an appropriate and proportionate degree of flexibility to deliver the numbered works whilst operating within the framework of the extensive controls that the DCO could eyesore. So that concludes what we were about to say on the content of schedule one.

39:29

Thank you very much. I found that very useful, and hopefully others did too. So, um, as you will have seen from the supplemental agenda, the examining authority have asked a significant number of questions already. So as a result, you'll be relieved to know that I have limited questions with regards to

39:46

the items on the agenda. So I'm just going to go through these at pace. So Article Two interpretation. I specifically wanted to have a discussion with regards to maintain and how it has been done.

40:00

Hind is currently defined as in relation to the authorized development includes to inspect, repair, adjust, alter, remove, refurbish, replace, improve or reconstruct, provided that such works do not give rise to any materially new or materially difference environmental effects in comparison to those reported and environmental statement, and any derivative of maintain is to be construed accordingly, I'm going to deal with the tailpiece with regarding materially new or materially different later on, when we get to

discussions on requirement to so I know people have concerns with regards to that wording, so but I just like people to park that for now. But I just want to focus now on the first part of the drafting.

40:48

It's not unusual

40:51

to have a definition of maintain. However, what you have proposed is quite a long list. And in particular, I have concerns with improve or reconstruct, and what it could potentially give scope to you to do in the future that's potentially quite wide ranging works. I noticed in the explanatory memorandum, you have stated precedents for using this drafting. But why are all of the

41:21

things in relation to maintain needed, particularly the improve and refurbish in relation specifically to this application. So if I can ask the applicant first to respond on that.

41:37

Thank you, Tom Henderson, the applicant, as you pointed out, will probably sound like a bit of a broken record increasingly on this one, we have had close regard to precedent on this issue. We know from previous examinations, it's often a matter that is interrogated, we feel that the list

41:57

is appropriate proportionate to a project of this type, particularly noting that

42:03

it's a development that's proposed to be built out over a very long period of time to two decades plus, and therefore it's appropriate to have the requisite maintenance powers to enable the applicant to

42:16

to maintain the authorized development as it as it moves through that period.

42:22

And as you've noted, and I think this is now the convention,

42:26

we have controlled those powers with reference to the

42:30

envelope of effects assessed in the environmental statements. So that provides, in our view, the certainty that those powers would not be used in a way which extends beyond the envelope effects assessed in the application. So on that basis, we feel that it provides

42:49

a proportion of fair and controlled set of maintenance powers for the duration of the implementation of the authorized development.

42:56

If I could just press you particularly on the use of improve and refurbish those are quite unusual things to ask for in regards to a maintenance drafting. Because it's quite a different thing from just general maintenance. So I'm just and as you pointed out, you know, this is a long lived project potentially.

43:17

So refurbishment in 1015 years time could result in something that is not something that we considered now.

43:25

Albeit, obviously, we're still there is the tail piece in there, but I'm just wanting to know why you feel the need to have improved and refurbish included in that definition of maintain.

43:40

And I think on those twos, we if we take those points away in writing, and then we'll reflect on what you've said and reflect on Preston, etc. and provide you a response in our deadline, three submissions. That's perfectly fine. Thank you very much. Now, I'm just going to ask if either Luton Borough Council or the host authorities, first of all, have any comments with regards to what we've just discussed.

44:11

Mr. Chairman,

44:13

madam, thank you, Robin, for the five hosts look authorities just to confirm that we don't have anything to say at this moment in time on that particular point, I understand exactly the discussion. We're I think we will wait to see what the applicant says in response in writing and deadline three, and then reflect on that. Thank you. No problem. Does anyone else want to raise anything with regards to how maintain has been interpreted in the DCO?

44:47

Nope. Then I'm going to move on to the next interpretation that I wanted to just have a brief discussion about. I note that relevant highway and relevant planning authority have now been amended

45:00

To reflect that parts of the development that fall within different authorities,

45:06

can I just confirm with the relevant counsels that they are happy with this? So if I can go to the joint host authorities first

45:20

Robbie owns with the joint host local authorities, are you referring are you to the change to the definition of relevant Highway Authority I can see in the marked up draft DCO. So in the version of the DCA that I have in front of me, which is the one that was submitted at deadline to relevant Highway Authority has been

45:41

tweaked. And it now says, in any given provision of this order, the highway authority for the highway to which that provision relates and relevant planning authority has been tweaked. Similarly, it's now the planning authority for the area to which the provision relates I think there was a concern early on, that the way it was defined was not clear and possibly didn't encompass that, that that elements of the scheme fall within different authorities.

46:06

Thank you, madam. That is not an issue that has been specifically drawn to my attention by those instructing me. I'm not aware, it is a concern. I mean, just looking at the drafting, that appears to me to be fairly standard for different consent orders and how these things are typically worded. But,

46:27

again, if we can leave this on the basis that if after this hearing, I am told that there is still a point on this, then we will obviously put it in our post hearing submission.

46:38

Thank you very much, if you could take that away. And let me know if there's any problems. So does anyone else want to raise anything with regard to the interpretations? Mr. Bass, would you put your hand up?

46:54

On the very point to which you have just made reference, madam, the definition says the local highway authority for the aerator, which provision lights now national highways is the Highway Authority.

47:09

But not local highway authority, we're taking this away to look at it, but it may be that it should read Highway Authority rather than from local highway authority. It doesn't actually say local, it's draft, it says relevant highway authority means in any given provision of this order, the highway authority for the highway to which the provision relates. So with that, give me maybe the time I'm looking.

47:34

It may be the time looking at the previous version. But I think that was the original version, but it was tweaked in response to Deadline one comments, in which case our opposition on that is that we need to have a look at that, because this is what I said about telegraphing some points on protective provisions, we'll need to check that that'll operate appropriately given the the provisions that we're proposing for the potential strategic road network. Thank you. Okay, so does anyone else have anything with regards to interpretations, which is Article Two.

48:14

Now, then, I'm going to move on to Article Six, which is limits of work. Article Six, paragraph two would allow the airport access rate to vary up or down by two meters, ie there will be a total overall leeway of four meters, and the tunneling for the Dart to move up by naught point five meters or down by one meter, which will give a total overall leeway of 1.5 meters.

48:42

Whilst I understand the potential need, particularly with regards to tunneling for some variants, the amount detailed here seems quite specific and quite significant, and could potentially lead quite significantly different different different impacts, for example, visually in terms of the road, if it moves up to meters, or down to meters, or the amount of soil generated from tunneling. Whilst I note paragraph three of the article, you have specifically set out that these various limiters must be done so on the basis that there is a reasonable pause. So I start again, whilst I note paragraph three of the article, given you have specifically set out these variants of limits, you must have done so on the basis that there is a reasonable possibility that the works will need to shift given this, can I ask whether this has been assessed? And if so, what reassurance you can give me now that this would not result in a material new or materially different environmental effect to those reported in environmental statement, given this is included in the drafting? So if I asked the applicant

49:48

about a Tom Henderson for the applicant, I think, just to answer your question in two stages, I think that might help reach the answer on this one. So in respect of Article

50:00

Six two, as you've noted, that sets the vertical limits of deviation for both the airport access road and

50:09

for the Dart.

50:12

We consider those limits of deviation, not to be disproportionate, and to be reasonable in the context of the works

50:21

that are entailed. But in respect of those limits or deviations, the answer is yes, those have been assessed first, for the purposes of the

50:31

environmental statement that's before you. So that's the first point and understand where you're coming from on the on the degree of flexibility. But opposition there is that the limits of deviation that we are seeking, or have been assessed, then turning to Article Six, three, that's a supplementary provision that provides a degree of flexibility beyond those limits of deviation. So in other words, what's the Article Six ways permitting, is scope to extend beyond those limited, limited deviation sorry, but only in those circumstances, if the local planning rather than local planning authority is satisfied that extending

beyond the two meters, for instance, in relation to the airport access road, would not give rise to materially new and materially different effects. So that's an additional layer of flexibility, but with a control, as I say, relating to the envelope effects and the local planning authorities consent, and that Article Six three provision is not novel. That is a provision that has been included in consented orders made by the Secretary of State.

51:39

Okay, I think, just for clarification, I think the point that I was trying to get at it wasn't the fact that Article Six, three was slight by the side of things. It's, obviously Article Six, paragraph two is very specific. So you must think there's a high it's highly likely that you will need to use those limits of variants. And what I was trying to check was that at this stage, given you think that it's highly likely that you would like to move up or down by two meters, or up and down by one and a half meters? Has that being assessed? I think the answer was yes. Was that correct? That's correct. Yes.

52:11

We can provide the references to that, in our written note about where that's contained.

52:16

I suppose the other point to add to that is that the

52:20

design work that's been undertaken at this stage is preliminary design. It's not a detailed design, therefore, that's why

52:27

that degree of flexibility so

52:30

okay.

52:32

I'm just going to ask whether the joint host authorities or Latin Americans will have any comments on with regards to this article.

52:41

typically start with Luton Borough Council, do you have any comments?

52:59

I think you're on mute.

53:04

Apologies, Madam Michel Friday can Baraka we all do.

53:08

That's wonderful.

53:11

Madam, no comments from Luton Borough Council. But my just mentioned and asked that perhaps for future questions, we go to the host authorities first as the joint most authorities. And as we set out in a deadline to covering letter and if there is divergence, which is unlikely on these points, then I will pop up and mentioned where Luton differs, but in general, we will we will be in accordance with what we throw in says for the host authorities. Thank you very much. And thank you. If I can go to Mr.

53:43

Thank you, Mr. Frey, Robin for the joint host local authorities. Madam, we don't have anything specific to say in response to this discussion. That's just taking place. All I would say though, is that as stated in, for example, the Hartfordshire local authorities local impact report at reference 9.1 point nine, the limits overall remain under review. And the council's will engage with the applicant were concerns identified. But on the specific issue. You were questioning Mr. Henderson on we don't have any to say at this moment in time. Thank you.

54:22

Thank you. Does anyone else want to raise anything with regards to Article Six?

54:29

Let's see any hands up so I'm going to move on to articles 10 1314 and 15.

54:37

Articles 10 1314 and 15 allow the undertaker to carry out a number of works and activities to streets which are within the order limits in the cases of articles 10 and 15 or any street in the case of article 13 It is usual for precision to have the expected streets or even public rights of way in the case of article 14 listed in separate schedule

55:00

When, within a development consent order, can I just ask why this approach has not been taken here? So if I can go to the applicant first?

55:11

Let me listen to the applicant. Thank you, Madam, the answer to that question is that

55:17

as I mentioned at the outset, we're seeking an outline form of consent, and the level of detail to determine which specific streets might need to be closed and when has not yet been undertaken. And so what we've done is adopted, if you like, the second half of the usual provision, which is, you know, frequently is, as you say, specific streets to be to be

55:41

very stopped up, and then a general power to to stop other streets with the consent of the streets authority. So we've adopted the second half of that provision, which again,

55:50

I don't think is entirely novel, but I can think of one or two other different consent orders that have taken that approach. And importantly, the power can only be exercised by consent of the relevant streets authority.

56:04

Thank you. If I can go to Mr. Owens first from the joint the host authorities. Do you have any comments on this?

56:12

That Robbie owns the joint postal authorities not on that particular point? No, madam.

56:17

Thank you.

56:19

Does anyone else have any comments? Mr. Bassett? Maybe on behalf of national highways?

56:26

Not especially Thank you, madam.

56:29

Okay.

56:31

So if I can then move on to article 44 and article 45. I'm just going to start off with some simple clarifications on this first of all, so can I just start by asking under the definition of Article Two for the London Luton Airport operations limited, which I'm going to try and use the abbreviation of LlaO. O L. So planning permission.

57:01

If the secretary of state were to grant consent for the current application that's before them for the 90 million passengers per annum Planning Commission. Would this be covered by this definition? Basically, I'm just trying to sort of clarify whether services service of the notice will be at the 18 or the 19 million passengers per annum cap because the explanatory memorandum only seems to refer to the 18 million passenger per annum cap. So if I can go to the applicant, firstly, is

57:33

that among these two articles 4445 We'll invite Mr. Latif AirMesh to address you. Thanks.

57:41

Thank you, Mr. Henderson. Mr. Cozzi AirMesh. For the applicant? The short answer is yes, it covers in the event of the Secretary of State grants

57:50

permission, the definition would carry over to 90 million passengers, Brian. Okay. Thank you very much for clarifying that.

57:57

Paragraph two would have the effect of wiping out the planning commission that the airport currently operates under, and therefore any conditions attached to that planning commission. And any variations of that planning commission that have conditions attached to it would no longer apply. Before we actually explore further whether this can be done under these articles can I just check and it is with Luton Borough Council this time that they are aware of this. And if they are satisfied that none of the conditions attached the current planning permission, and subsequent variations of it need to be included in the draft development consent order.

58:36

Michael Breidenbach Hello, Council, I'm going to hand you over to my colleague David Gertler, who's a planner from Luton Borough Council to respond to this question, this girl.

58:45

Thank you, madam.

58:47

We, I think, you know, relevant reps. And definitely in our local impact report, we indicated that there were certain conditions from the 18 million planning permission. So that's an application reference 12 01400 slash f ul,

59:07

we did want some of those conditions carried forward at the 19 million planning inquiry. There was a lot of discussion on conditions.

59:19

And if the Secretary of State come the 30th of October, does grant planning permission for the 19 million we would want some of those conditions carried forward. In particular, our concerns relate to noise, which are and I'm sure the other host authorities share a similar view that there are current restrictions not just on the noise envelope, which is what the applicant is proposing, purely to us. There are current conditions, what are called quote accounts. So if that is giving a quota to an aircraft on how noisy it is, that's not just in relation to the stomach period, which is, is the noise contour condition.

1:00:00

And there's also a condition which covers the early morning shoulder period. So there are there are a number of conditions

1:00:07

that that would need to be carried forward, we would want to talk to the applicant as well about other conditions that were subject to discussion at the 90 million application. So there are still outstanding conditions on the 18 million planning commission that the developer hasn't, hasn't fulfilled yet as an as an discharge.

1:00:30

Okay, so.

1:00:39

Okay, so I guess I can hit my

1:00:44

know, how you set out anywhere in the nation that's been submitted, whether or not were those conditions that you're carrying over on? I mean, obviously, we have been sent a copy of the decisions, but with relation to the 18 million passenger per annum cap, we don't have access to any of the conditions that may have been suggested at the planning inquiry. And obviously, that decision hasn't been issued. So again, we can't even look at the decision for that to see what conditions may be attached to it, should it be granted. So have you actually, in any documentation you submitted to date set out anywhere where the conditions that you're wanting to carry overall?

1:01:26

This one, we didn't set them out in detail, we said in our local impact report, that, for instance, they're offering to carry forward the 9650. Overall, the nighttime cap,

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we did reference, I believe the 3500 quote accounts, in our submission for deadline to we can set those out clearly, as you say, on the 90 million

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ourselves and the applicant for that application, which most of us who work with the airport, just pronounce it as long as your L L. A, O L, we tend so when this label would speak to you, I'll probably just refer to long as well. So we there is not much point I think at this stage us highlighting the conditions there because we don't know if the inspectors might have varied what was discussed, and whether the Secretary of State granted anyway. But I can deadline three,

1:02:26

we can provide you with the conditions that are still extend and need further information for discharge, as well as the ones we want to see carry forward. I think it would be very helpful, because obviously, I think it referred to the fact this is a six month process. So if we are, first of all, I need to know what it is that you would want carried over subject to these aren't you know, given that this article would effectively wipe out the constant current consents, and be on the face of this DCO. And then what we would need to look at is whether or not what you're requesting is covered by suggested requirements or whether it's suggested requirements could be tweaked to incorporate what you're wanting carried over.

This is only the start of a discussion, I don't think we need to, at this stage, get into the detail about what it is that you think should be carried over and why and whether that's appropriate. So we just need the information to start that discussion going forward. So having highlighted that, obviously, the effect of these articles is to wipe the planning permission, what I now need from you, as you've just suggested at deadlines, and you can take that board as an action point, if you can then set out the conditions that are on the original consent for the airport and the variances of those consents.

1:03:40

Then we can start that looking at that process as to how they can be incorporated in the DCO. Should we want to should the secretary state decide to make the order. So I'm happy to leave it at that with regards Luton Borough Council. So that's all right. Yes, like very much. If I can then just turn to the host authorities because obviously the conditions on the current planning commission and potentially the 90 million passenger per annum cap should it be allowed will also affect your authorities.

1:04:10

Are you aware of this article? And are there any conditions on the current consent? Should we accept this article underneath this article that you'd want to see on the face of the order given it has the effect of wiping the bank mission?

1:04:25

Thank you, Madam Robin for the five host local authorities in relation to this article. As set out for example, in the Hertfordshire local impact report, paragraph nine point 1.20. The council's do have

1:04:43

significant concerns with this provision. This article 44, including the fact that first that service of the notice triggering the LL AOL permission and ceasing to have an effect appears to be entirely at the discretion of the applicant.

1:05:02

Secondly, the effect of this provision, the effect this provision would have on the existing planning obligations 106 agreements and how any replacement obligations would be secured.

1:05:18

And thirdly, whilst it is understood that the ultimate aim of the applicant is for the GCG framework and other operational requirements to regulate operations at the airport through the DCO, including its capacity.

1:05:32

The council's do have a number of concerns in relation to this which need to be settled before we can confirm that we are content with the existing passenger count falling away.

1:05:44

And essentially, if the applicant wishes to proceed in this way, then the DCO should in our view contain a comprehensive set of controls, at least equivalent. In fact, to those conditions contained in the LOL

AOL permission and the associated planning obligations and certainly at deadline three, we will endeavor to respond to your specific question posed just now about particular conditions.

1:06:10

Another concern with article 44 is

1:06:15

how the GC G framework the green coat, the green controlled growth framework and other restrictions will will link to the airport operations as they are today.

1:06:28

Just stop you there. We are going to have a discussion about these articles. At this point, I was just trying to seek some clarifications before we got into the nitty gritty of the articles. So the question that I actually asked was, What did the host authorities want any conditions that on the current planning commission going forward onto the face of the order that are may not be there, currently. And so I think you've answered that question. You're going to come back to me deadline three, we may well do, Madam Yes, we may well, want.

1:06:56

There will be opportunity with regards to your other points in in a couple of weeks. Just bear with me. Yeah, that's fine. So, again, just talking about the

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clarifications, the next point is is a question for the applicant.

1:07:11

In terms of clarification, effectively, this requirement would revoke the LL A O L planning permission.

1:07:19

Can I just ask why this is being done under an article rather than through the process set out in sections 97 to 100 of the Town and Country Planning Act 1990, which allows the power to revoke or modify planning permission.

1:07:36

And he made a miscibility furnish for the applicant, that the short answer is that because the service of the Gnosis is integrally linked to the DCO taking over as the primary planning consent to control the operations of the airport, it is considered to be appropriate to use the DCO as the process by which to effectively

1:07:59

apply the existing planning permission. Again, I think you alluded to earlier, the question of can this be done? And the short answer again, there is, is yes, the Hinkley Point C nuclear power station or the 2013. Does applies and existing planning permission on the same basis? That is there is an integral

link between the works and controls under the order coming into effect and the exhibit and an existing Planning Commission ceasing to have effect?

1:08:30

Okay.

1:08:32

I think we'll come on to that discussion in a minute, in a bit more detail. But if I can just ask. I think it's been touched on by Mr. Owens. Obviously, what we talked about is conditions on current plan permissions, but there are also several section 106 agreements linked to current planning permissions.

1:08:54

And does this need to be addressed in the drafting and interpretations? So just a question there for the applicant.

1:09:04

Thank you, Madam, Mr. Quincy furnish for the applicant. On the question of conditions we we have just two submissions to make. First is the applicant has carried over appropriate conditions. I think you've heard the reference to requirements 27, which is the nighttime movements condition. So notwithstanding the effect of article 44, the DCO recreates a requirement, which is akin to that condition. I think the other substantive point, which we'll return to later in, in the agenda for this hearing is what green controlled growth means and our view is very strongly that that provides

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not just an appropriate control, or an equivalent control, but an enhanced level of control over the airport operations.

1:09:58

I know

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What's that noise is a subject for issue specific hearing three. So some of the detailed questions we might return to there. But I did just want to highlight rec 2032, which is the worked example, relating to the existing noise condition and how GCG would specifically work in in similar circumstances at appropriately controlling noise and I think that's probably

1:10:31

you frozen?

1:10:42

Unfortunately, the applicant got cut off mid flow there, so maybe we'll are sorry, I do apologize. You froze. So if you could go back about 30 seconds as to what you were saying.

1:11:02

quality's bad. I don't know if you can hear us, but we can't hear you at the moment.

1:11:09

We're frozen up alive.

1:11:13

Hear me?

1:11:16

It can't Thank you, Madam, we can hear you now. Can you hear us? I'm afraid you froze. So you got cut off mid flow. So if you'd like to go back potentially about 30 seconds, from the end of what you were saying that we are grateful.

1:11:33

Thank you, Madam miscibility furnish for the applicant. On this specific question of the conditions being carried over I had two submissions. The first was that the appropriate conditions have been carried over, for example, requirement 27, which is the nighttime movements

1:11:52

related condition. So notwithstanding the effect of article 44, appropriate conditions are in our view, carried over. The more substantive point is that green controlled growth, which is triggered following the notice under Article 44, provides an enhanced level of control. In terms of the operations at the airport, I wanted to draw specific attention to rep 2032, which is the worked example, relating to the noise condition that was breached under the existing Planning Commission, and exactly how that would be managed under GCG. You'll see the conclusion of that document, is that appropriate?

1:12:38

Or warning and management would be available under GCG, relating into the noise impacts. So our view is that green controlled growth, because it's triggered, following article 44 provides an enhanced level of control. And I know we're coming back to green control growth later. But also noise as a specific issue for issue specific hearing three, so I'll call in

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but if I could ask an actual question that I asked, which is what's happening with the section 106 agreements that are attached to the current Planning Commission's.

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Thank you, Madam apologies in the in the breakup of the

1:13:22

sound, I forgot that I was going to address both existing planning permission conditions under Section 106. So the section 106, there is a proposal to have a revised section 106 associated with this application. And it's considered that the interrelationships between the existing section 106 is and the

proposed one of six will be dealt with appropriately in that in documents, the section 106 is will continue to apply

1:13:56

in the absence of any country provision in the revised section 106.

1:14:02

Okay, but does there need to be some drafting potentially, maybe we'll come on to this when we deal with section 106 is at the end of this and other licenses and agreements, there's there needs to be some drafting in the

1:14:15

articles that wipe away again, those section 106 agreements that say they don't apply

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if we could get that point away and come back in our Coasteering submissions in writing.

1:14:29

Okay, and still just dealing with the clarifications with regards to Article four article 45 article 45. There's two aspects to this article. One deals with the relationship between the LL a. O L, and the green horizons Park patients and the DCO and the second deals with operational land and permitted development rights. I'm going to get us to the applicant to walk us through the relationship with the DCO with other permissions But firstly, very briefly wanted us to understand what's being sought by articles 45 one and five

1:15:00

eave article 45, one appears to effectively designate all the land within the order limits as operational land for the purposes of the Town and Country Planning Act 1990, which would then mean that the permitted development rights contained within part eight of the general permitted development order would apply. And that under Article 4445, five, this would be defined as planning permissions for the purposes of this article. Can I just confirm why it is that 45? One is necessary? i What is the differences, the purposes and operational airport land when consent is obtained through a DCO rather than through planning permission?

1:15:44

Thank you, Madam, I think the explanation for 45 one, in short, is that this is this this element of article 45 is quite heavily unprecedented. And it deals with the position of

1:16:00

particular utilities works.

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What I'd quite like to do is, if we could just expand that in writing.

1:16:10

The point there is not to deal with green horizon parks specifically, it's to deal with a more general point about the effect of the order and the interrelationship with the Town and Country Planning Act. It's quite the technical points.

1:16:24

And it's specifically there to deal with utility works rather than more general operations. Ultimately,

1:16:32

what what, what I was just trying to understand is that the fact as I understand it, a reading of article 45. One is that you are then saying this is operational land, the purposes of the Town and Country Planning general permitted development order. And all I'm trying to understand is, why is that article necessary? Because would if planning permission is granted for an airport, it becomes operational land, what is the difference between operational land being consented through the DCO? process? So I'm just it's just a point of clarification as to whether it's actually necessary, because is it not implicit that it is

1:17:13

operational land, because it is part of an airport? Why you specifically needing to state that on the face of the order, is what I'm trying to get at.

1:17:23

Thank you, Madam miscibility. Our image for the applicant, that the reason for mentioning is specifically not because of the operational elements of the airport is the operational land for the purposes of the utility works. So just just by way of explanation, under the Country Planning Act, operational land of a statutory Undertaker has a particular effect. And what this is seeking to do is deal with those utility works within the order limits. So that it is clear

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that for the purposes of those assets, is operational and not just for the purposes of an operational thoughts.

1:18:03

Okay.

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So potentially think that you've not answered the question that was asking. But if I can just go to anyone else, ask if anyone has any comments on this, that with on the specific points I've just raised before we actually get to discussion about articles 44 and 45. And what they seek to achieve. I've got Mr. Gertler with his hand up.

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Thank you, David Gertler, Luton Borough Council.

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In terms of operational land, for part eight of the gpdo are relevant planning permission, which I assume which DCO would count as gives the airport operator rights over all the land. So that would be everything within the red line site.

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For us, I think that might be an issue because currently something like we move Valley Park is not operational land, the airport operator would then have considerable powers over over other areas, which would not airport operational, operational and operational land also is not the same as a Civil Aviation Authority license. And the planning the planning case law is quite clear that anything within a relevant planning permission, then gets the PD rights. So given that the DCO covers a large area with red line,

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I think I'd be somewhat concerned that gives them massive powers over with North Valley Park to do all sorts of things associated with an airport operating. And that includes being silly that would include being able to build them, hangar, those kinds of things are allowed under permitted development and provided they don't have significant EIA impacts.

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Yeah, so they could also give rise to the fact that some of the hetero works would be operational land.

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Yes. Thank you. Okay. Mr. Owen.

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and you've got your hand up.

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That um, thank you, Robin for the joint post local authorities. I think there are two issues with article 45. One.

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The the the first issue is the issue just been discussing Mr. Gertler, which is whether it's appropriate for some of the land within the order limits to be treated in the future as operational land. But you just give an example of hedgerows.

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I think that the second issue I wanted to make is an attempt to answer your question, which is, I think that the sole purpose of this provision, it is it is a standard provision

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is is required because development consent, a developed consent order is not a planning permission.

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It's a different thing. And this This provision is needed to allow the operational land provisions in the tanner Country Planning Act 1990, section 264, to work in relation to

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development consent given by DCO, just as they work in relation to planning permission given by a standard planning consent. So it's just a technical provision to make sure that those provisions in the TCPA work in the case of a DCO to make land covered by DCO operational under the future, but whether that's appropriate relation to all the land in the DCO. That is a very, very separate matter, of course, and the local authorities are still considering that, as Mr. Governor has said and can't confirm today that they are content with the effect of article 45. One, we're perfectly content with why it's there. In principle, it's very, it's a very standard provision, but it's really the effect it would have in this case.

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Does that help? It does help. Thank you very much for that. And yes, as you say, it is a standard position. But standard article appears in lots of DCs. But obviously, it's quite specific in relation to this. So having just sought those points of clarification, if I can just now go to the applicant, and ask us to walk us through these two articles as to what they're proposing to achieve.

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And in particular,

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why, given the La La AOL Planning Commission is wiped out by article 44, it still needs to be referred to in article 45.

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And

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why you are choosing to try and secure the green horizons, park planning commission and alterations and amendments to that planning commission through an article rather than through maybe securing variations through the normal route of applying for planning permission for local planning authority to vary consent. So if we can ask the applicant to walk us through these two articles, explain what it is that they're wanting to achieve with those specific comments in mind.

1:23:10

Thank you, Madam miscibility AirMesh for any applicant, in terms of your birth start school walking through the provisions to begin with article 44. This this, as you've noted, contains provisions to effectively deal with the interaction between the DCO and the existing planning permission held by law for the operations at the airport. It provides them the DCO will take over from the existing planning permission, where it is proposed that the airport will go over the existing passenger cab secured under the existing planning permission.

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The fundamental purpose is that aid certainty in ensuring the are not two separate permissions in place in respect of the operations at the airport. Paragraph one specifically provides the undertaking may not operate the airport above the passenger cap permitted by the existing law old planning permission until a notice has been served.

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lols existing planning permission contains a cap. And as I noted in response to one of your clarification questions, the definition works depending on which consent is in place at the time, so 18 million passengers per annum, if no consent is granted, or 90 million passengers per annum. If consent is granted, the effect of that notice is that the undertaker may no longer operate the airport under the existing planning permissions, and the conditions cease to have effect and will no longer be enforceable. The basis for that, as I mentioned is to ensure one permission applies and to provide certainty

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In terms of any enforcement action that could be

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provided.

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similar provisions have been included in in other DC OHS, as I noted, that include point C nuclear power station. I also commented in in the first part of my previous remarks as to how and why appropriate conditions have been carried over and how green controlled growth provides an enhanced level of control from the point that the notice is served.

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Before getting on to ask school 45 On the other specific question you asked, which is, why is the law Planning Commission referred to in both article 44 and 45. So, article 44 is intended to deal with

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ensuring that the requirements under New Order are complied with at the point that you go over the existing passenger capacity

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45 is dealing with other works that may be carried out prior to going over the existing passenger capacity secured under the existing planning, planning permission. So, there may be for example, conditions in the existing planning permission, which control the use of the site, but which do don't necessarily mean you're exceeding the passenger capacity. The requirements have been drafted to ensure controls, for example, in the case of GCG, so that they apply to the operations above the existing passenger capacity, but not necessarily other aspects. So what 45 is dealing with is a situation where prior to

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going over that Asante, there may be an inconsistency or conflict,

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then get to the substance of article 45. This clarifies the application of the Planning Commission's granted on the TCPA and the powers and rights exercised under the order with the exception of paragraph one, which is heavily precedented.

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the drafting of this article is bespoke to address the particular

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circumstances of the existing planning conditions which are relevant and address any uncertainty which may arise from the hillside parks Supreme Court case. Just before turning to those on the discussion around article 45. One, as Mr. Owen noted, it is a technical point seeking to apply the provisions of Section 264 of the Town and Country Planning Act. And what we can do is just consider your specific question you mentioned on the scope of that. And whether it requires any narrowing down and we'll we'll get back to you in our deadline, the forthcoming deadline submissions on subparagraphs. Two, which deals with both the existing law permission for the reasons I've explained and the grid in horizons Park permission that deals again with an overlap of the powers sought under the order and those existing planning permissions.

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I wasn't going to go into detail on the overlap with the green horizons park planning commission because

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pursuant to a procedural decision that you made in rep 1005, we provided a document explaining the interface between the order and the existing green horizons park planning permission along with a number of indicative plans which show the interrelationship on the again the specific question that you asked which was why are we not using the existing processes under the Town and Country Planning Act to give effect to any variation?

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The answer I gave previously, which is how integrally linked the works under the order are to any variation, it's considered appropriate to use the order to

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regulate the interrelationship between the green horizons park planning commission and the order. And just on that specific point about

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not using existing provisions of the Town and Country Planning Act by note that the Riverside energy park development consent order 2020 has an equivalent provision to article 45. Two, which seeks to

regulate the relationship between a DCO and an existing Planning Commission without having to go through the Town and Country Planning Act routes.

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Article 45. Three is intended as I mentioned to deal with the issue that arose in the Supreme Court case of hillside parks. That judgment relates to overlapping planning permissions.

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granted under the Town and Country Planning Act, and it holds that unless there is an express provision otherwise, where development has taken place under one permission, whether another permission may lawfully be implemented depends on whether it remains physically possible to carry out the development authorized by the subsequent permission. So,

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notwithstanding that hillside parks relates to, to planning conditions under the town Town and Country Planning Act, the applicant considers that it would extend to the circumstances. And what we're seeking to do is regulate two scenarios. The first is Planning Commission's which conflict with the DCO

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to interrupt it, and what we're seeking to do there is make sure that the project can proceed

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without the risk of enforcement action being taken, notwithstanding any incompatibility between the DCO and the existing permission. And then the second scenario we're seeking to deal with is planning permissions which conflict with the project.

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And which we do not want enforcement action to be taken against

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the developers who have the benefit of those permissions. So provisions are included, by reference to Section 120 sub paragraph three of the Planning Act. And, again, what we're seeking to do is make sure that no inadvertent enforcement action is taken because of activities which are authorized under the order. And then on the final point, I believe you raised in terms of your specific questions.

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And this, this goes to

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sort of paragraph

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one in part, but then the definition of planning permission, which extends to the permitted development rights, that seeking to preserve the position that currently exists under the general premise development order, in relation to activities that can be carried out on the airport.

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Okay, just to come back to you on one

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point that you've made, you're quite right, we did make a request, which is PD oh seven. And whilst none of the plans and some of the information has been very helpful, the actual plan that we wanted has not actually been submitted. What we actually wanted, and this is, sometimes where it's speaking to someone can make it a lot quicker than writing about it, is we actually would like to be able to understand the interrelationship with these two planning permissions, a plan showing the layout of the DCO application with a layout for the green horizons Park superimposed on it.

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And I think it's obviously going to have to probably come from the master plan, because obviously elements that are in horizon Park are an outline, there are certain elements that have been granted in the fall. But I think the elements, particularly around the area of Wigmore Valley Park, where the interrelationship comes into play

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or not, because what we are struggling to understand in the context of the hillside decision is just what is or what can be built under the green horizons consent, should the DCO be allowed because it's effectively we'll be building something else in that space under the DCO. So until we have that information, we probably can't make the next steps is to look at whether or not this drafting actually works, and whether it's actually the right way to achieve it.

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But as I say, if we can start off by asking, again, for that plan, that shows how the two would actually physically work on the ground, what elements of the green rise and park it is that you were wanting to build out

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what elements you could not build out because something from the DCO would effectively be on top of it. Obviously all subject and consent being granted.

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The other thing is that we need to understand that because obviously there's quite significant section 106 agreements attach to green horizons to park. And those are linked to phases. And again, we may come on to this in Section seven of this agenda when we're talking about section 106 agreements, because it may be that some of that stuff's being proposed to be carried over but for example, re-provision a sports pitches on Whitmore Valley Park are linked to phases as our highways works or site highways works. And so, again, I'm assuming if this is effectively allowing this, how would

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mitigation that was proposed to be delivered through a section 106 agreement which was an essential elements of the acceptability of the green horizons part proposal be delivered if those phases were not allowed to be built out? And what I want to try and ensure is that

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If this article is actually acceptable and appropriate, and remains on the face of the order, that the mitigations that development and that were envisaged when it was considered would actually occur.

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Thank you, Madam stability or mesh for the applicant. We've heard what you've said about the plan. And similarly, how it relates to the section 106 is in place. And

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having heard what you've said, We will, we will come back to you with that information.

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That's it.

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Thank you. If I can come to Mr. Owen. Now, do you have any comments you want to make an article 44? An article 45?

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Thank you, Madam. Yes, we do. So Rubio in all the guideposts local authorities, if I can deal with them together, as I think you just invited me to do that would be helpful. And I think the starting point is that these two articles are, are to a large extent, novel. I don't make a criticism that I just observed that and whilst there are some elements of them, as we've discussed, that are precedented, together, they are novel, and we understand what the applicant is seeking to achieve. We just need

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more opportunity to work through the effect of the provisions ourselves and with the applicant. And we, we know from the applicants,

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responses to the local impact reports that they're open to this, which of course, we would very much welcome. So that's the first point, which is, these are largely novel provisions and quite complex, as I think we're discovering, and the council's need to be certain of their effect, and that appropriate controls will be retained. The second point is, we will wish to consider further and discuss for the applicant. The fact that

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pursuant to paragraph one of article 44.

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This is all triggered by service of a notice

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by the applicant, and it appears to be entirely at the discretion of the applicant when to serve the notice. And I think we will need to consider how that links with other controls that the DCO

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contains and that there isn't some sort of gap here that that discretion to serve a notice would convey would would confer on the applicant.

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The third point is,

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as we discussed, really, which is the effect this provision, particularly article 44, would have an existing section 106 and any other plan obligations, there may be maybe under old section 52 agreements. I did hear what was said by the applicant just now, in the I think I understood them to say that the intention was for existing section 106 agreements and the light to remain

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in force.

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I think there must be some doubt about that, given the breadth of article 44 Two that says that

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the allow AOL planning permission and the conditions of that permission cease to have effect and therefore, I think this would turn on the actual drafting of the relevant section 106 agreements and that there may well be an argument that actually if the Planning Commission to which they relate falls away, then so does the agreement. So, if it is the intention of the applicant, that the existing section 106 agreements should remain, although to some extent, they might be varied by the proposed new one, then it may well be that some sort of Express saving is required to be included in article 44 to make sure that

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that is the effect that is achieved.

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The the next point, I think the fourth point is is that clearly, we need to

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be satisfied that all the relevant conditions are to present appropriate replicated in the DCO.

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I heard what Mr. Latika Ramesh said earlier about requirement 27, for example, being included.

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And I think that we are still in the process of considering whether

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the DCO in its requirements includes all of those provisions currently regulated by condition, which will need to be set out as requirements in the future

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as part of the arrangement to replace that permission with the DCO. So So planning conditions as well as planning obligations are clearly important.

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The The next point is

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really I think it may well be that it's

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Some of the applicants amendments to the various requirements in part four of schedule to begin to address this. But

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in essence, of course, this developed consent order is all to do with the proposed new development that is sought at the airports. And yet obviously, the current permission, regulates and and governs the existing operations. And we just need to be satisfied, there's no sort of gap between between the two and that

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you know, how we need to understand better than we currently do, how the green can control growth framework,

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and other restrictions proposed in the DCO linked to the operations as they are today, as well as linking to the commencement of the development that that I think, is the point where, again, we

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we want to make sure there is no sort of, sort of fundamental flaw here in and therefore a gap in in controls.

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In planning control.

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The I think the final point I wanted to make

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is is I mean, it's a similar point really related to relation to Article 45.

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Just needing to be satisfied that

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were inconsistent planning conditions are, do cease to have effect in according to Article 45, to see

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that there is no gap in planning control on the part of the local authorities as a result of that. So I think in
In summary, madam, those are our current concerns.

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They are issues that

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I would think should be capable of being dealt with by additions to the DCO changes the DCO, and
provisions in the intended new section 106 agreement, but there's, there's quite a lot to do in those
respects. I think, in order for us to get there. Thank you.

1:42:13

Thank you. I mean, as I explained, this is the start of the examination. And some of these things need
to be worked through before we can actually work out where we're going and whether we're heading in
the right direction. So I think it's clear that some additional information work has needed to be done by
the applicant just to provide the information that we've all highlighted that we think is needed to enable
us to understand the drafting with regards to these articles.

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Just want to ask the bar accounts, because obviously the green horizons park planning commission is
something they granted consent to do they have any concerns specific concerns with article 45.

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Michael Frydenberg. Counsel, we've got nothing further to add at this stage to what's been said by Mr.
Onan previously, but we will obviously look very carefully at what is said in writing and provide our
comments in due course. Thank you. Does anyone else want to raise any?

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Does anyone else want to raise any points? Mr. lamborn? madrichim.

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Yes, thank you, Madam.

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Just a couple of further points on, particularly article 44 to

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the current development permission also includes some works, physical works that haven't yet been completed. And as I understand it, there's an extension to a taxiway to meet the eastern end of the runway, which is still in progress. I may have missed it, but I don't remember hearing how that will be carried forward, or whether it'll be finished prior to a DCO being actioned to take over from the existing permissions. So that was just one small point to note. And the second is the past six months six has been mentioned in terms of publications, one of the obligations does relate to reporting. And this to some extent touches on the scope of the noise monitoring plan.

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Whether or not that's something for today's discussion on whether that's for the noise, issue specific hearing is up to you, obviously, but just to note that there are reporting obligations as well. And it might be helpful to have some indication as to how those tally with the obligations foreseen under the DCO.

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And that there's also another point in relation to schedule eight, to do with protections and I'm not sure if you're actually going to be covering schedule eight today. I wasn't clear from the agenda.

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But there's federal aid is protective provisions. And that's been dealt with this afternoon at the deposition hearing. Okay, well, I might submit that when you're writing them, but anyway, those are my two points for now. Thank you very much.

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Thank you.

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Cindy, has anyone wants to raise on these two articles?

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Does the applicant want to provide a brief and I stress brief response to what we've just heard.

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Thank you, Madam misperceived varnish will be extremely brief. Just on the issues that Mr. Owen raised around the service of the notice and why it's the applicant, just to emphasize the applicants position is that because the airport cannot increase its capacity.

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The relevant controls which apply are then triggered at the appropriate time notwithstanding, it would be the undertaking that will serve that notice. Many of the requirements are also drafted specifically to prevent commencement of the relevant works unless the relevant controls have been complied with.

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On section 106, just very briefly, the issue is alive part of the discussions, and we agree that it's capable of being resolved through some drafting in that agreement. On the issue of the conditions in the interface, as I mentioned, we've heard what you've said about the additional information that you find helpful. We've also noted that a number of the host authorities have said they will come back in writing on some of the specific conditions that they have concerns around. So we were going to suggest dealing with it in a combined

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submission in response to the next deadlines.

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Submissions by other interested parties add the following deadline if if if that is

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helpful, just on the final few points on enforcement at the point that the DCO effectively takes over local authorities have existing enforcement functions under part eight of the Planning Act. So we don't think there's a gap in the capability of taking enforcement action

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on the two issues raised by Mr. lamborn

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on the extension to the existing taxiway? Well, we'll have to take that away and come back in writing. And then on on the question of how does the how do the controls under the DCO deal with the noise situation? I think it might be helpful just to signpost to that document I mentioned earlier, which is rep 2032, which gives a detailed consideration of exactly that question.

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Thank you.

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I'm just having the review of the gentleman where we are in terms of time, and I'm fairly aware that probably everyone could probably do the quick comfort break. I've looked I had some questions on both article 47 and article 52, which I was going to ask. However, I am quite happy to roll these over to action points.

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Because I think actually reviewing them again, they are something that could be responded to quite quickly in writing. But I just wanted to double check because they do obviously appear on the agenda. Whether or not there was anything anyone wanted to verbally raise with regards to article 47 and article 32. Let's if not, I'll roll motor action points, and we can have a break.

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No,

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no objection to that. So I'm just going to hand you over to my colleague, Mr. Davis, who will deal with matters with regards to the Germans.

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The time now is 18 minutes past 11 I suggest we adjourn until half past 11 You can leave your cameras. You can leave you can remain online for that. If you switch off your cameras, your microphones to know and hear what you're saying and then just call back in about half past 11 When you're ready. Thank you Bye