

# AUDIO\_LUTON\_CAH2\_SESSION1\_28112023

00:04

Good morning, everybody. Before we begin, can I confirm that I can be seen and heard clearly?

00:11

Can I also confer with Mr. Burney that the live streaming of this event has commenced.

00:17

There's no fire test plan for today should an alarm sound then it's a real emergency and we'll need to evacuate the building. Emergency exits are located to the left hand side of the examining authorities are down that wall and you can also exit through the main doors at the back that you entered through. In the event of a fire you will need to make your way to the fire assembly point which is at the front of the hotel. If anyone needs assistance in the event of needing to evacuate the building, can you please let the team know?

00:47

The time is now 10 o'clock and this is the second compulsory acquisition hearing in relation to the application made by London Luton Airport limited for the proposed London Luton Airport Expansion.

01:00

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 of inspectors to examine this application. And they asked my colleague to introduce yourself.

01:14

Thank you. My name is Joe Downing. I'm a planning inspector and a charter town planner and I've been appointed by the Secretary of State to be the lead member of the panel and I believe in the discussions in today's event.

01:26

Together with Richard Hunt, Sarah Holmes and Andrew Robinson, we formed the examining authority. I can confirm that all members of the examining authority have made a formal declaration of interests and that there are no known conflicts of interest with regard to examining this application.

01:42

There are other colleagues here from the planning inspector today. Those of you online will have spoken to Jennifer Savage in the adjoining conference. I'd also like to introduce Romeo Burnie the case officer for this project. And Gina shoreland, who was sat at the back of the room and together with Sean Evans. They make up the case team for the project. If you have any questions regarding the application

process in general, can I ask that you please speak or email the Keith case team we'll be happy to help.

02:13

Before we consider the items on the agenda today, we need to deal with a few housekeeping matters. I'll try and get through these as quickly as possible. Can everyone attending please make sure that your phone is switched off or turn to silent.

02:26

toilet facilities including disabled facilities can be found in the lobby. If you've driven here today and parked in hotel car park, you need to have registered your number plate on the portal system that's found at the main reception desk. We've been informed that any vehicle not registered with the hotel may be subjected to a charge of 100 pounds.

02:45

As far as I'm aware, there are no requests for any special measures or arrangements to help enable participation in the hearing. But if anyone does need help to participate, please can you speak to or email the case team.

02:59

For the purpose of identification, and for the benefit of those listening to the digital recording after the event, I'd ask that whenever you speak, you give your name and if you're representing an organisation or another individual who it is that you represent.

03:12

For those attending virtually Can I repeat the request to make sure all your audible notifications are turned off, that you stay muted. And with your camera turned off unless you're speaking because this is a blended event. It's been structured in such a way that questions or points that you may wish to raise can be done so at the relevant point in the proceedings. When we get to those points, I'd ask that if you want to speak you switch your camera on and either use the raise of hand function in teams or asked to speak at the appropriate time. Please be aware that there may sometimes be a delay before we can acknowledge this. But the your patience while waiting to be heard is appreciated. Can I also remind people that the chat function on teams won't work. So please don't try to use this to ask any questions or post any comments. Were able to join for a short period if there are any more significant connection problems.

04:03

Do we have any members of the press in attendance?

04:10

Doesn't appear to be we'll adjourn for a short break at a convenient point in the agenda. Ideally no more than every 90 minutes or so. If for medical or any other reasons anybody requires a break at a specific time earlier than that. Could you please let the take case team know and we will if possible

adjust the programme to suit your needs. Are there any comments or questions regarding the general management today's event?

04:38

Thank you.

04:40

There's a digital recording being made of this hearing. This will be made available on the project page of the national infrastructure website. If you take part in the hearing, it's important that you understand that your comments will be recorded and that the digital recording will be published and retained usually for a period of five years from the Secretary of State's decision.

05:00

With subject to the general data protection regulations, it's extremely unlikely that the examining authority will ask you to put sensitive personal information such as email addresses or economic, financial, cultural or health related matters into the public domain. And in fact, we'd actively encourage you not to do that. However, if for some reason you feel that it is necessary for you to refer to sensitive personal information, we'd encourage you to speak to our case team in the first instance, they can then explore with you whether the information can be provided in a written format, which could then be appropriately redacted before being published.

05:35

Please note that the only official record of the proceedings is the digital recording that will be placed on the project page of the website, tweets, blogs and similar communications arising out of the meeting will not be accepted as evidence into the examination.

05:50

Today's compulsory acquisition hearing is being held at the request of the examining authority you wish to explore a number of matters already in respect of compulsory acquisition and temporary possession.

05:59

The agenda for today's hearing was placed on the project page of the website on Monday the 20th of November 2023, and could be found in the examination library at reference ev 13 001.

06:12

I'd like to remind everyone that the examination is a predominantly written process. In addition to days here in today's hearing, you will have seen from the examination timetable that there is a further opportunity for us to ask written questions.

06:27

The purpose of this examination is for us to examine the information submitted by the applicant and also by the affected persons. As a result, I'd like to reassure you that we're familiar with the documents that you've sent in. So when answering your questions, you don't need to repeat at length, something that's already been submitted. If you want to refer to the information already submitted, we'd be very

grateful if you could please use the appropriate examination Library Reference. Can I also ask that the first time you use an abbreviation or an acronym that you give the full title as there'll be people here today or listening to the digital recording that may not be as familiar with the application or the documents as you are?

07:02

Once we accept that the majority of the discussions will be entertained by those parties that are registered to speak. This is a public examination and therefore, if there's a point that you want to make, please feel free to raise your hand and switch on your camera at the relevant time that you wish to contribute.

07:18

The hearing today will be a structured discussion, which was darling and myself will lead based on the agenda. The purpose of this discussion is for us to ask questions and to seek clarification on matters related to compulsory acquisition and temporary possession.

07:33

I'd like to take this opportunity to reassure you that whilst we may not be asking a specific question that you were expecting, it is not necessarily that we view this matter as satisfactory, it merely indicates that we consider that we have all the information that we need on this and that we're proposing to examine it at a later hearing or through further written questions.

07:54

Finally, I'd like to remind everyone that this is not an inquiry and therefore unless we've specifically requested or agreed to it, there'll be no formal presentation of cases or cross examination.

08:04

Any such questions that you may have for the parties need to be asked through us.

08:09

Will 14th To have the examination procedure rules requires that the start of the hearing examination authority shall identify matters to be considered at the hearing. These are set out in the agenda for this hearing, which is Evie 13 001. For the sake of expediency, I don't post read out all of these agenda items. Now.

08:28

The agenda is just for guidance, we may choose to move items around on the agenda or add other issues for consideration as we progressed.

08:37

If we need to take any short breaks, then you can stay logged into teams through the break, but please make sure that you've got your camera off and your microphone on mute. If you do lose your connection, use the same length that you used to log on this morning and the case team will endeavour to reconnect you as soon as possible. If you're watching on the live stream, when we break, we'll have

to stop the live stream to give us clear recording files. As a result when we restart the meeting and the live stream you'll need to refresh your browser page.

09:08

Finally, it's important that we get the right answers to the question that we're going to ask. I reiterate that this is a predominantly written process. Therefore, if you can't answer the questions that are being asked or require time to get the information requested, then rather than giving a restricted or potentially incorrect answer, can you please indicate that you need to respond in writing. We can then defer the response either to an action point to be submitted at deadline six, which is the eighth of December 2023 Or to the written questions.

09:40

So before we move on, are there any questions at this stage about the procedural side of today's hearing all the agenda

09:53

case team have provided me with a list of those affected persons interested and other parties who have expressed a wish

10:00

To be heard today, those persons or people representing the following organisations, the applicants, Luton Borough Council,

10:11

national highways, and friends of Wigmore Valley Park.

10:15

Before he asked people to introduce themselves, can I check I haven't inadvertently missed anyone off this list of participants.

10:26

I'm now going to ask those of you who are participating in today's hearing to introduce yourselves to us and the people who are watching the livestream of this event. When I say your name, please introduce yourself and if you're representing someone who it is that you represent. If you're attending virtually then please switch on your camera and microphone when I call your name.

10:45

So for the applicant? Yes. Good morning. My name is Miss Rebecca Clutton. I'm counsel for the applicant Luton and rising. I'm instructed by Mr. Tom Henderson partner at PDB Pitmans, who sat to my right. And this morning I'll also be assisted by Mr. Steven Walker, who's a chartered surveyor and our property and compensation lead. And also Mr. Jonathan Turton, who's a financial advisor and our funding statement lead.

11:18

Thank you,

11:20

Lichtenberger. Counsel.

11:24

Good morning. Excuse me. Sorry. Good morning. My name is David Gertler, and my colleague, I'm a planner, and the representative for Luton dealing with the DC hub. My colleague is Mark Davey, and he's head head of asset management at Luton Borough Council. So he's here to help on any questions that might get referred back to us. Thank you. Thank you, Mr. Gertler.

11:52

National Highways.

11:54

Good morning. I'm Jeremy Blum. I'm a transport consultant representing national highways. I'm joined online by Ross courser, who is a solicitor with DLA Piper seam on screen.

12:14

Good morning. My name is Ross coarser And as my colleague Jeremy said, stressing on behalf of national highways.

12:23

Thank you Mr. Blue. Mr. Cole, sir.

12:26

Friends of Waco Valley Park.

12:30

Excuse me, Pete white, Luton resident one of the few in the room friends of Whitmore Park and Jeff Morgan, also a Friends of Whitmore Park. Thank you.

12:41

Thank you very much, then interested parties.

12:46

My understanding is that the people that are registered are not with us, I'm just going to check with the case team if they've come online since.

12:59

Is there anybody else that's registered to speak that I haven't read out their name

13:07

and anybody else who is not registered speak that would like to be recorded on our list.

13:15

Thank you.

13:17

I'm now going to pass over to Miss Dowling to lead on the first item main items at the agenda.

13:23

Thank you. There are a number of key documents which are going to be referred to throughout this morning's hearing and to prevent things becoming repetitive. And to save time, I'm going to just set those out in detail now, along with irrelevant examination library references and how I'll refer to them in discussions. I then do not intend to keep repeating 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 consent order I will use was that that was submitted at deadline five which has the exam Library Reference rep 5003. going forwards I propose to refer to this as the draft DCO.

14:03

The version of explanatory memorandum I will use is that again which was submitted at deadline 5am which is dated November 2023. It can be found in exam library at rep 5005 Going forward I refer to this as explanatory memorandum.

14:19

The book of reference is the version that was submitted again at deadline five and which can be found in exam library at REC 5007. Going forward, I will refer to this as the book of reference.

14:32

At deadline three, the applicant at deadline to AV applicant provided a document called status and negotiations compulsory acquisition schedule which sets out how negotiations in relation to compulsory acquisition matters are progressing. This was updated at deadline three and can be found in the exam library at rep 3041. And I'll refer to this document as the CA schedule as agreed at the last compulsory acquisition hearing the applicants

15:00

Message a new funding statement at deadline five. And this can be found in the exam library at rep 5009. Going forward, I refer to this as the funding statement. Finally, while I will try to use to minimise the use of abbreviations, I may occasionally lapse and so when I say CA I mean compulsory acquisition, and TP means temporary profession, temporary possession.

15:25

Before I deal with the next item on the agenda for the benefit of everyone attending and in the interests of openness and transparency, I want to let everyone know that the applicant contacted the case team on Friday with a number of queries and clarifications regarding matters to be discussed at this week's hearings. This included a question as to where the compensation measures were to be discussed as per the published agenda agenda at issue specific hearing nine on green control growth, which is on

Thursday, or whether it should be in fact considered at this morning's hearing. Given that they were previously considered at the compulsory acquisition hearing in September,

16:00

I can confirm that substantive matters in relation to compensation will be considered at issue specific hearing nine on Thursday. And whilst it may be touched upon at this morning's hearing, it will purely be in the context of understanding the implications for the funding of the proposed development. The previous more detailed consideration of this matter at the compulsory acquisition hearing in September was necessary as to understand the funding implications for the proposed development. And the ESA needed more and more detailed understanding of proposed compensation measures to be able to understand the implications for funding.

16:32

Finally, as compulsory acquisition is quite a technical topic, having reviewed some of the questions that were prepared for this hearing, we have decided that these should be asked in writing to enable a more detailed response or to enable the answer to be researched. We therefore propose to include these in our further written questions, which are due to be published on 15th of December 2023. So if anyone doesn't have questions with regards to that before I move on, so I'm going to move to item two on the agenda, which is section 122 and 123 of the Planning Act 2008. So just to clarify, the purpose of today is not to hear detailed discussions on individual plots. As at this stage, we would expect the applicant to be attempting to resolve any differences outside of the examination. Where we have not received representation, we are assuming that there is no objection to compulsory acquisition or temporary possession, examining authority are aware from the relevant representations and submissions at subsequent deadlines that there are a number of statistics to specific plots. So I haven't gotten anything this morning.

17:34

Where there are outstanding concerns. And the compulsory acquisition schedule submitted at deadline three set out status and negotiations in October. And a further update on negotiations with a number of specific objections have been

17:50

who have had been invited but had not attended the earlier compulsory acquisition hearing, were provided at the app by the applicant a deadline for in rep for a 56. So I'm just going to ask the applicant to start by providing an update with regards to the current status of negotiations. And I'm asking you to exclude those which are to be dealt with by means of protective provision, which will obviously be considered an agenda item for and if you can particularly indicate the likelihood of whether a voluntary agreement will be reached and the timeline for the submission of these agreements and or the withdrawal of objection into the examination. Thank you. Thank you. Well, good morning Rebecca Clanton for the applicant. I'm going to hand over to Mr. Walker to deal with the substance of this. But just to indicate now, we do have a revised compulsory acquisition schedule that we're proposing to submit at deadline six. So that will tie in to exactly that will follow. But I'll hand over now to Mr. Walker.

18:50

Thank you. Good morning, Steven Walker, on behalf of the applicant.

18:58

I'm going to provide a an individual case by case update for you. But I just wanted to make the point. Before I do that, that the CA shedule includes a fairly long list of,

19:13

of interests. A lot of them are minor acquisitions. So they would be

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road widening requirements or junction improvements.

19:25

With if I can possibly help you compress your list. As I mentioned in the opening, we're only interested in those where we've received an objection I realised when the CA schedule there's a lot of people on there who have not actually participated by submitting anything. And from our perspective, from a CA perspective, we therefore assume that there's no objection to ca. So we want to focus on those where there is an objection. So would it be easier for you if I may be going through the list of people I have here and

20:00

then you can say whether or not where you are with regard to those negotiations. So it's really focusing on those that we talked about at the last compulsory acquisition hearing. So I don't know if that would be helpful how you'd like to take that forward. Yes, madam. That'd be very helpful. Thank you. Okay, so the first one that we had was Bartholomew played or Bouvier.

20:23

And I note that what we have is the that you've the update, in our response to our first written questions was that the applicants agent has continued the dialogue with interested parties agent, and a solution to the concerns raised has

20:41

been identified

20:44

and is emerging, and that the this require the engagement and agreement of neighbouring landowner, which will need to be documented before agreement with the interested party can be concluded, and that you're hoping to get that before the close examination. So do you have any update on where you are with regards to those plots?

21:02

The position remains very much as it was, although we have now got the permission of the adjoining landowner to make the changes that

21:13

being asked for by Mr. Play del Bouverie. And can I just clarify from a compulsory acquisition perspective? Does that have any implications in terms of the CA regs? Or is that land already part of CA? It's already part of so it's included? It's just a question of whether where the hedgerow was planted, and whether it was on one side or the other of a boundary. Okay, both both parcels of land either side of the boundary are included in the CA. Okay. And so

21:43

is the aspiration that that voluntary agreement could be completed before the close of examination? It is Yes. And would you be asking us to play it or Bouvier to remove his objection? At that point, we are going to ask him to do that. Thank you very much. Okay. So thank you for that update. The next one is the Eldridge family. The compulsory actress acquisition scheduled at deadline three shows that there was contact between the applicants and the elders family. But this seems to be prior to the previous compulsory acquisition hearing. And obviously, they came along, and we had quite long discussion at the last

22:17

hearing with regards to their concerns, can you just update on what's happened since then?

22:22

Yes, of course, Steven Walker for the applicant. So we've we've had a further meeting with the agent who represents the eldritch family.

22:32

We've discussed with him our requirements to take rights to secure the woodland, and have decided that will no longer pursue the taking of those rights. And our environmental colleagues have confirmed that without taking the rights, it has a minor impact on the overall bng calculation. So we're comfortable that we can remove that request, which only leaves the fuel pipeline and the routing of the fuel pipeline.

23:07

We've responded on on technical grounds,

23:13

about the need for the fuel pipeline to go in the corridor that's identified in the application. And we've not had any response or reaction to that from the Eldridge family. So I did make contact with the agent

23:31

last week ahead of the hearing, to see if we were going to get further engagement. I've not heard anything from them. Okay, thank you.

23:43

Would it be possible or have you already submitted that documents setting out why

23:51

the fuel pipeline technically needs to go where it needs to go? Because obviously, just thinking ahead, if the objection is not removed, then obviously, when we come to write the CA chapter, the report, we need to be able to explain to the secretary of state wide lands needed. So any evidence that can enable us to support that case would be helpful one way or the other. So I don't know if it has been submitted or if it can be submitted or if it's confidential. No, it is submitted it Steven Walker sorry, on behalf of the applicant. So it's,

24:23

it's document 8.107. Do you know what the exams are about? Rep four dash 102102. Brilliant. Thank you very much.

24:35

And you're awaiting a response on that. And do you feel that those negotiations will be able to be concluded before the end of the examination? Yes. Stephen Walker on behalf the applicant. I'm pushing to to to get the objection withdrawn off the back of our agreement to withdraw the woodland requirement. And obviously that fuel pipeline is

25:00

So here's the one last outstanding matter that we don't actually know whether they still have a have an objection, given what we've been able to tell them. And with regards to the rights for the woodland, will those plots be coming out? Or are they still retained because of other things? We'll do the plot is a single plot, okay, which includes the corridor for the earth pipe pipeline, so it needs to stay in, but we won't be seeking to exercise any rights to either improve or maintain the woodland. Okay, then the next one was the sort of collection of people. So it was to do with the law homes, areas. So I think that also included the trustees of the poor Tompkins will trust.

25:50

And I noticed that with regards to the CA schedule at deadline three, that again, there's been contact between law homes and the applicant, but that was obviously prior to the compulsory acquisition hearing last time. And that in response to the x q one, and again, sorry, I've just realised I've used an acronym, and I'll explain it one, as q1 is our first written questions. the interested parties there had optioned their land Tableau homes.

26:22

And they were that you were now aligning the requirements of law homes and the interested parties so that you could conclude an agreement.

26:29

So can you just give me an update with regards to those plots, because I realise there's a variety of different interests, but it's the same plots. Correct. So it's the it's the East east of Luton allocation. And the the parties who are landowners are Paul Tompkins, trustees, and the awfully Chase estates.

26:49

Law homes have the option. We met blow homes again last week.

26:56

I think it's fair to say we, we are now all on the same page, in terms of our understanding of what is required, in terms of whether it's hedgerow restoration, headrow renewal, or access rights over the various plots. And

27:18

we we have a solution that the parties are now working towards that will resolve the primary concern that I think I reported last time, which was the

27:30

the suggestion from the applicant that we took a lease to secure the the access and the maintenance of the hedgerows in the future, which was likely to complicate a section 106 agreement anticipated as part of the planning consent for the

27:48

for the residential development. Yeah. And there's also I think, a suggestion from law homes that certainly the works might not be required, because they're from a screening perspective, and their development would effectively sign a proposal as well wasn't there? That's right. And and that is already a commitment that we've given that if the planning consent is granted, before we've exercised any rights, then we will withdraw

28:13

the need for those rights on those grounds he did isn't all of the headrow now I realised that there was an element of a majority of it. And if I can just give me half the benefit of the counsellor here. Can I just check what the situation is with regards to that? Or no, it's not it's not with you is it's it's because the other extreme is joint house authorities. I do apologise, maybe can't get that update them. Okay, then. So and the aspiration is that will be concluded before the close of the examination, and that objection would be withdrawn. Steve, more on behalf of the applicant? Yes, it is, in terms of an update on the application, if it's helpful law did did say to us last week that they thought the consent would would be achieved by the middle of next year. That

29:00

timeline. So after the close of this exam, it will be after the close. No, it's fine as long as we know. Okay, then thank you. And then the next one was ATO holdings. The advice I have here is that the applicant agent has continued the dialogue with the interested parties, agents and negotiations will continue in an attempt to conclude an agreement prior to the close the examination. Have you got any update on that one?

29:26

Steven Walker on behalf of the applicant Yes, I've continued to have dialogue with the agent who's acting on behalf of ATO holdings.

29:34

We we have resolved all matters save for the very practical consideration of the the gap that he would like to achieve in the proposed new hedge row to ensure that agricultural this will get its combined get his combine through without taking the the cutting header off. So we've agreed to

30:00

Meet on site, first week of December. And I'm hoping that

30:07

we'll be able to resolve that issue and then get a withdrawal of the objection from ATO. Thank you.

30:19

Then the next one is again, it's combination of people then the book references, one, love, and then the book of references three, but there's sort of overlapping interests, which is John, Andrew and Jana, not Jason, which was also folc property Holdings Limited and Jason property limited. And you've advised that the three interests are all held in the same family. However, each interest holds different property interests included in the draft DCO.

30:46

You're in active negotiations with the agent acting for the three interested parties. And there's now an increased competence, that agreement will be in place prior to close the examination. So have you got any update on that one, Steven Walker on behalf of the applicant. So just to take each each party into it, because we agreed to split them out last time to avoid confusion. So Jason and Jason

31:11

own cancel house.

31:15

And we've got an agreement

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in place now that will secure the withdrawal of their objection to the scheme. And we're working on the paperwork to achieve that.

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And Jason Development Company Limited own Prospect House, which is the day nursery to occupied by the day nursery. Similarly, we have an agreement now, that will result in the withdrawal of that objection before the close the examination

31:52

and then the

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herd, sorry, just Follett property holdings. They own void your house, void your house isn't, isn't being taken in its entirety for the scheme but the current carpark avoid your house is included in compulsory acquisition. We've put together a scheme, which shows how

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replacement car parking can be provided permanently.

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Adjacent to void your house.

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The plans have been provided.

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And the indications are that the owner and when I say owner, he's the long lease holder

32:40

is is satisfied that that will resolve his concerns.

32:47

And we're working on an agreement that documents the applicants commitment to provide that parking permanently

32:56

when they when they take the car apart from the existing building.

33:03

Can I just clarify with this? Are there any planning implications from that? So is planning consent required for the new car park? Is it predicated on anything being obtained? Or is it easily achievable? Steven Walker on behalf of the applicant, my understanding is that all of the plans for the new road have been developed with the concept in mind of maintaining

33:28

all of the car parking that currently exists albeit in a reconfigured form. So the scheme as a whole deals with displacement of car parking, but it is maintaining the numbers. So it's addressed with a DCA rather than a like, that's fine. Thank you very much.

33:45

The next one is GKN aerospace limited. This ca schedule advises that the last contact was on the 26th of September and that this new personnel involved can you provide me with an update as to what's happening there, please. Steven Walker on behalf of the applicant.

34:00

We've We've I think got as far as we're going to get with the memorandum of understanding.

34:07

I I'm not sure that we'll secure the withdrawal of the objection before the end of the examination, but I will continue to work towards it. We can get there. Okay, thank you very much. And then

34:24

selling UK property trusts, which obviously last time around we're a bit confused about how this all worked out because obviously, they're under a different name in the book of reference, and you have confirmed that then this is the change name for kW industrial be limited.

34:40

The interested parties agent has now confirmed the terms on which the interest party would prefer to transact with the applicant, which will be an outright acquisition of the property rather interest rather than part as is identified in the draft TCO negotiations are continuing an attempt to conclude an agreement prior to close examination. Can you provide me with an update on that?

35:00

As Steven Walker on behalf of the applicant,

35:05

preservation houses the property. Just for clarification, the the CA includes the service yard to the building, which would render the building unusable Jewry as a result of that, CA.

35:24

So the discussion has been whether the owner wanted to retain the site, albeit demolish the building and start again, or sell the entirety of the site had to the applicant, and an agreement has been reached, for the entire property to be acquired. And we were discussing the timing of that acquisition.

35:53

So you what you want to know is whether the objection will be withdrawn before the end of the examination? I think so. Hopefully,

36:02

that's lovely. And I'm assuming that obviously, the updated ca schedule that is currently referred to which is coming in at deadline six will provide all of these updates. Yes, that was going to be the first point on why I'm sorry, I really have not arranged on your presentation channels. I just wanted to talk to you as long as you're happy. That's why I'm. So I'm going to come on to two other APS where

36:30

we hadn't received an objection, but were highlighted by the applicant in their submissions as parties that they were actively engaged with. And one of those that you've touched on is Prospect House Day Nursery, where we asked a question in our first written questions, and you provide said that you would provide an update at the compulsory acquisition hearing, which is I'm assuming we've just heard that you're in discussions over there is that right?

36:58

Steven Walker for the applicant. So the the prospect Day Nursery is the the occupying business of Prospect House. So I've just talked to Prospect House investment owner, the day nursery is, is owned and operated by an organisation that runs 600 nurseries across the UK.

37:19

They have a they have a lease of Prospect House through to 2028.

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And

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through our negotiations with them, we've identified what they've agreed is a suitable replacement property that's already under control of the applicant.

37:44

We've agreed that

37:46

that property will be made available

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for the nursery to move into from as early as the end of the current lease in 2028. And later, if they prefer to extend their occupation of Prospect House pending acquisition for the airport access road. So we've given them an assurance that the replacement property will be available. We've talked to them about the timing and how we can ensure that there's no disruption to their ability to provide services

38:28

as a result of the relocation, which has resulted in us

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giving a commitment to provide at least 12 months notice of our intention to seek compulsory acquisition of Prospect House.

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They've accepted, and it's documented in an agreement which they've signed.

38:52

I I think that agreement says that they withdraw there. I don't think

38:59

I did say that or objective. So so that's that's where we are with with that party. But but obviously stop short of

39:08

a commitment to re provide the nursery because it's a it's a it's a private organisation that will make decisions. Thank you. I may need to also bring this up under Agenda Item eight, because obviously children are one of the protected under the equalities and diversity act, but actually, in you may have actually answered the questions that I needed to but I'm just saying it may also come up under under Agenda Item eight. There's the other one that again, was highlighted by yourselves

39:40

was a sandwich bar. We asked a question in our first written questions, and you responded, you provide an update at the compulsory acquisition hearing, so I'm just asking for that update.

39:51

Steven Walker on behalf of the applicant, I'm afraid I don't have an update on that situation. So can we make an action point then I'll

40:00

Through that, thank you. I just want to

40:04

seek a clarification on this. So there seems to be some confusion because honestly, it's something that's highlighted by yourselves in your application documentation. And it was the impact of the loss of this facility. And the community assessment states that without mitigation, that loss would be a minor adverse effect, which is why you are proposing to re provide. But the response that you provided to our first written question, which was h ac 1.2, has said that because of other facilities in the area, it would not resulted in a significant community impact. I'm just trying to understand which it actually is. And if it is actually needed to be re provided.

40:48

Rebecca climb for the applicant, madam, I think that's a point that probably will need to address tomorrow with our health and communities witnessed if that's okay, that's fine. If we can really save a willful rora. That'd be great. So thank you. Thank you. So those were all the people that I'd highlighted that I needed an update on. I just wanted to ask Mr. Walker, if there's anyone else that he wants to raise in the list that he prepared.

41:15

I think that covered everyone that we've had objections from. Now, that's that's everybody

41:21

that I was going to talk to.

41:25

So it just remains for me to remind the applicant that obviously, you are going to submit an updated compulsory acquisition schedule at deadlines six, which is it's December 2023. And if the points have

been made this morning can be incorporated into that would be very helpful. So I'm now going to move to Item three, which is section 122 and 131 of Planning Act 2008, with reference, particularly to Wigmore Valley Park, which is going to be dealt with by my colleague, Miss Davis.

41:57

Thank you.

42:01

So it's a question for both the applicant and Luton Borough Council, but we'll start with the applicant. They'll move on to Luton and please can I get an update on the negotiations for purchasing or leasing of wood raw Valley Park?

42:15

Yes, Rebecca Clutton for the applicant, madam. Luton Borough Council's executive has in principle agreed to the disposal of the park. And I think we've indicated previously the parties have been in active negotiations to secure a long lease of the park to lot and rising

42:34

negotiations in relation to the heads of terms are now at an advanced stage.

42:41

The disposal will be subjected to Luton Borough Council's compliance with both the best consideration tests from the 1972 Local Government Act and also compliance with the localism act in relation to dispose of assets of community value. But aside from the formalities that need to be under undergone in relation to both of those said, negotiations are well progressed between the parties.

43:12

Luton, would you like to respond to that and give your take on it? Just thank you, Mark Dobby for Luton Borough Council. That is an accurate summation. We have nothing to add. Thank you. Thank you. So

43:26

the decision has been to go for a long lease rather than to purchase the land. And why is that?

43:39

Rebecca Clayton for the applicant? I think, madam, that's something we'll have to just confirm with you in writing. I don't think we've got an immediate answer to that. We can do. Yes, we could come back in later in the hearing and pick back up on that. Thank you. I'm just trying to get a full picture of what's going on so that I can understand it. So when you talk about a long lease, what would be the anticipated time is that that's a standard term is it of something that's extremely long, Rebecca Clutton for the applicant? 250 years is what's under discussion at the moment. So it's an effective and effective freehold.

44:13

And at the moment, my understanding is that you've got it under licence if it's a lease, what does that mean in terms of you being able to develop on that land is that least likely to come with constraints on what can be done?

44:29

Because I went for Luton

44:31

marked Davey Fulton Borough Council, the heads of terms that are in circulation include permitted development in line with the schemes that are submitted and at least can also have a licenced all to dealt with later, which would give the applicant the power to build what they've asked for in either the lease or the subsequent licence.

44:54

So everything that's in the application at the moment would be allowed. And then are you saying that they'd also be

45:00

allowed to do other things in the future? Yes, either because it's dealt with via permitted development clause within the lease or by applying to the to the freehold or for licenced water at a later date. Right.

45:22

So deadline three, that's rep 3054. The applicant said that full acquisition of the existing park is necessary, as the applicant is intending to provide enhancements to the existing open space.

45:37

So something's changed since then. Or by full acquisition, can that mean long lease?

45:43

Rebecca, clap for the applicant, madam. Yes, I think that's right as to say that the effective the effective freehold that's conveyed by the long lease gives us the rights that we need in order to do the works that we're proposing.

46:08

Yes, record club for the applicant, Mr. Walker was just making a good point that obviously with a with a lease, the landlord does retain an element of control, which is obviously the points that Mr. Davies just mentioned, as well in terms of the potential for applications to the freehold or for licences to alter in in future years. Obviously, he said the term of the lease is a very long one. So, the terms of the lease need to accommodate future potentialities.

46:35

Is that all likely to be agreed by the end of the examination?

46:41

Rebecca and for the applicant?

46:43

Yes, the way the agreement is between the parties will have is understood likely to have been reached between the between the parties like to have been reached by the end of the examination. The actual acquisition itself will not have been made by the end of the application examination for the reasons that I mentioned in terms of the need for the council to go through the formal formal disposal process in terms of its obligations under both the 1972 Local Government Act and also the localism act in terms of advertising. The sale of the assets community value and the potential for other bids to be made in relation to that. My understanding and Mr. Davey will confirm is that the, what's called the moratorium period for the asset of community value disposal is likely to commence early next year. So no disposal can be completed until that process has been gone through.

47:38

So where does that leave you by the end of the examination in terms of needing to compulsory acquire the land. So that Rebecca clutton for the applicant? That's that's an important point, madam, because I think in the previous our response to your previous written questions at ca one point 11, which was in rep 4056, we had indicated that there might be the potential for US no longer to need compulsory acquisition powers in the order in relation to this land. Having reflected on that, we do think we'll need to retain the compulsory acquisition powers really, for for two reasons. Firstly, to what what I've termed a belt and braces approach, we need to ensure that if anything happens with the agreement, that if the agreement fails for any reason that we have still retained the powers that we need in order to acquire the land. And also because Secondly, there may be residual interest in the land that needs to be extinguished in accordance with the statutory procedures set out in the in the 2008 Act. So we will be retaining the powers within the act. Come Come What May and obviously, as I say, because the acquisition won't actually have been affected, at that point, it will still be necessary. Thank you.

48:56

Just in case, this agreement doesn't take place, for whatever reason on the long lease, and bearing in mind that you are going to try and see the land anyway.

49:07

Part of the reason for needing to do it

49:11

was that now we find the wording.

49:18

It was needed to provide enhancements to the existing open space, as you've already got a licence.

49:26

Assuming the agreement didn't go forward for some reason. Why couldn't those enhancements be done under the licence that the applicant already has?

49:57

Rebecca clutton for the applicant um

50:00

My understanding is that the licence is a relatively short term one. And it's also relatively short in terms of its content. And that we are not satisfied that under the licence, we would have sufficient powers and a sufficient duration to enable us to undertake the work that we need to to.

50:18

Thank you.

50:20

Mr. Davey, did you want to respond to anything you've heard the

50:25

Thank you, Mark, Mark Dobby for Luton Borough Council just to agree with the licence point in its current form, it wouldn't allow the alterations that are proposed.

50:34

And it is a standard short form licence to occupy.

50:39

That's helpful. Thank you. And in terms of the lease and the timescales on that, any comments that you wanted to give us? Mark Davies really didn't work out. So yes, the the moratorium process for the asset of community value nomination is split into two parts. The initial moratorium is six weeks, from the point at which we are informed by ourselves of our intention to dispose of the land. If a qualifying organisation indicates they wish to peered it then becomes the six month moratorium. So that's the only clarification I would offer.

51:13

Do you have any indication that anybody is likely to bid?

51:18

I don't know this time though.

51:23

And if they do, what's the process, then you've got six months. It's six months, we publicly advertise the fact that the disposal is planned, we invite bids from from anybody who is a qualifying organisation so that CICS charities, but it must be a constituted group, it can't be an incorporated community group. Those bids will then be reported back to the council's executive committee to be considered along with the bid from the applicant. And they would have the final decision as to which bid to accept.

51:57

Thank you.

52:03

Adam, Rebecca Clark with the applicant, just before we move on just two points in relation to that, if I may, firstly, I understand that there was a previous in

52:13

notification in relation to asset of community value sale and that no indications were previously received in relation to that seeking to bid for the land. Obviously, that doesn't mean that it won't happen again. But that was what happened on a prior occasion. And the second point just for the avoidance of any doubt, in terms of retaining this compulsory acquisition powers within the order, you'll be familiar that that is quite a standard procedure, even if you do have an agreement in place to retain the powers just in order to both to clear the title as I mentioned, but also just in case anything happens with with the agreement or someone becomes incapacitated, such that they can no longer affect the agreement. Gap. That's understood. Thank you, Mr. Little.

53:04

Mr. White, was there anything that you wanted to add to this discussion? Someone with an interest in the park?

53:11

We have

53:13

got comments on all the points, would you like me to cover them as each point you cover or one at a time? We'll do them one at a time if that's okay, so for now, it's specifically about the acquisition of the park and the potential for it being advertised

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as an asset of community value timescales for that. So did you have any comments on that question? Pete white friends with more Park.

53:43

We believe that the application of the applicant has an unfair advantage over the other parties interested in leasing or purchasing with more Valley Park. Loomer counsel will not entertain any other applications for the park. There are two current assets of community values in from King's Walden and awfully parish councils. We know that because we arranged with them to put in their assets to community value interest.

54:09

They won't be granted because Luke Borough Council needs airport expansion to happen to stay solvent. The applicant says that it will pay market value for the land and how it how it funds it is also an unfair advantage for the parish councils to bid they would have to raise the money from public donations and commercial loans at market rates. The applicant would raise the funds from the 199 million pounds solvency funds advanced them from Luton Borough Council, which they borrowed from

the Public Works loans board. Therefore it is the UK taxpayer who is funding this purchase, not the applicant. Let us not forget that the applicant is currently not paying a dividend to LBC service budgets from its concession income as it has to redirect those funds to service its debts interest payments to LBC. How is that a fair playing field for the local parish councils with a CV

55:00

interests

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for further clarification. While these facts may not have relevance within the strict structure of this examination, they are of crucial importance when looking at this project as they clearly show that finance plans for the applicant are of such risks that they would place the public ownership at the airport by the residents at Luton at risk, but the actual financial viability of the counsellor is two. In both cases, a huge financial burden on the residents saloon. As we will be asked to pay more to cover financial mismanagement is also worth recording at this point. But the fact that since 2018 19 Lunenburg Council accounts have not been signed off by the external auditors affairs raised questions how the applicant and LBC have recorded the funding of this whole application. Both auditors, Ernst and Young, both Lunenburg counsel and Luton rising auditors, Ernst and Young a PricewaterhouseCoopers have resigned as auditors over this issue and the valuation of the airport and the acquisition counts, but in doubt, how can purchase in the scheme that you've heard now be deemed sustainable and viable under some circumstances? Appreciate that may have gone off topic, but I will submit this in writing, but it needs to be in Context. Thank you. Thank you, Mr. White, as a couple of points I'd like to pick up on there. I'm just going to consult with my colleague

56:24

Mr. White, I'm sure you're aware there is an item on funding later on in the agenda. It's not necessarily covering the points that you've made there. But obviously, funding is one of the matters that we are considering. I think you've advised you'll be submitting those comments in writing. So again, there'll be before the examining authority when they're considering that matter.

56:44

Thank you.

56:46

So I've got a question for Mr. Davy. In terms of understanding the process of disposing of this land.

56:55

Well, actually, rather the bidding of the land where if it if it is put up?

57:03

Is it just a matter of financing or other criteria taking into account

57:11

the count Mark Davey for Luton Borough Council, as I understand the asset community value legislation, we are free to consider all matters in the round, providing we comply with our tests under the 72 Act in terms of best value. And we are free to decide at the end of the moratorium period to dispose of the land, whoever we wish, providing those tests are met. So we can consider bids in the round is the short answer to your question. Thank you. And then, in terms of recording of that decision? Is it a matter of public record how the decisions come to be made by our executive committee, I cannot say whether that would be heard in public or in private.

57:52

The decision to dispose in February 22 was made in public.

57:58

Thank you.

58:11

Mr. White,

58:13

just for your information. Can I add to that, if you follow any of the council meetings that involve finance to do with loot and rising near the airport, they are all done in private under the 1972 Act of something or other. So actual public interests in public

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inspection of the finances of any arrangement are incredibly hard to find. Thank you. Thank you, Mr. White.

58:48

That moving on to management of the proposed replacement, open space.

58:55

I know that you said that. Ultimately, it's your desire to have it managed via Community Trust alongside other land belonging to the applicant.

59:03

Can you tell us a bit more about how that would work? And then the progress you're making on that where it secured the scope of any agreement? Rebecca, and for the applicant, madam to in terms of the community trust that matter is subject to negotiations in the context of the section 106 agreement at the moment, discussions are underway, but they're not yet sufficiently fleshed out that I'm able to give you the details that you are looking for. I'd hope that we'd be able to provide that. Possibly not deadlines, six, but I think it didn't if I could provide you with an update on that in writing it deadline seven, we'll be able to do that those those discussions are just very much on foot at the moment.

59:43

And would you anticipate getting those discussions completed and signed off before the end of the examination, Rebecca Clutton for the applicant? Yes, I mean, we are obviously looking to GRI the section 106 as a bilateral agreement to the extent that that's not possible. It would be able to take

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The form of unilateral undertaking, but one way or the other, those matters will be secured by the close of the examination for your consideration. Thank you.

1:00:16

So I'd like to revisit the discussion about the need to see a the replacement land, because you already, the applicant already owns plots, 513 and 620, which make up the land.

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Section 12 120 of the statement of reasons says that it's necessary to acquire this land so that the land may be designated as open space. And if required transform transferred to the former owner of the open space land in accordance with the act.

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Given that you already own the land, I want to understand how acquiring this land gives you the power to do it compared to the powers that are currently available to you as landowners.

1:01:15

Rebecca Clapping for the applicant, Madam Yes, it goes back to the point that I made earlier as well about the need to ensure that the title is cleared. So I think that perhaps that statement and statement reasons isn't as full as it could be there in order to ensure that the provisions of the 2008 act effectively relate to the clearing of title are engaged, that land has to have to vest in us, particular time. And that's really what that Yep.

1:01:42

I do understand that. But in in this section, it's saying that it needs to be seen so that it can be designated as open space. And I want to be clear whether or not it could be designated as open space without seeing it given that the applicant already owns it.

1:02:10

Rebecca Clayton for the applicant, yes, I said Mr. Henderson of just just discussing we that it would we think be possible to actually transfer the land to Luton Borough Council as the original

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as the original party. But the risk would be that the title wasn't clear. So and therefore that would present problems potentially in relation to the designation of that as open space. So it does all go back to that point again about clearing of title.

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Thank you.

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Does anybody else have any comment that they wanted to make on that question? Or both of the management of the replacement land and

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whether or not it needs to be ca for the purpose of it being declared open land Mr. White did you just put your hand up Pete white friends at windmill Park to review the need to acquire the park and the replacement land under phase one.

1:03:06

Firstly, the sole use of with mulberry Park is for airport car parking there was a spurious hotel. But there are already permitted developments for hotel extensions and even a brand new hotel on the airport site. And with regards to car parking, the main road through the airport is personal way and to the north side of this road from province way to prospect way. The land near consists of a few industrial units the vast majority unused various small non passenger use car parks and unused derelict space. That land would be ideal under phase one for the development of a multi storey carpark complex. It's already within the airport footprint so no purchase is required. No change of licence is required. No other thing is required. It's already a business so and I believe but that may have expired. So the land is there but the car parking requirements under phase one, it can be derelict with no intrusion into current airport operations. And more importantly, there's no intrusion into the communities along the Green Road and with more line it in those areas. Which any development of the park for car parking would

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would obviously assume

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when that space for in within the airport is already on the access road for passengers going to the long term car park in a in the airport. So

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the actual need to approve and combine the choir with more parking or replacement land would not be required under phase one if the current derelict land within the airport site was already developed. So therefore it would only need to be acquired should phase two actually be funded and deemed necessary. And we think that's a relevant point that

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obviously, closing the nine we want to protect our park for as long as possible. And that we feel is an alternative within phase one of that plan.

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Thank you.

1:05:02

Thanks, Mr.

1:05:09

So just to clarify for the benefit of Mr. White, when we're looking at compulsory acquisition is cost the whole

1:05:17

life of the project here, so it's not looking at it in phases. So we're looking at compulsory acquisition that may be needed in 2035, or 2042, or whatever. So

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whilst I understand the point that you're making that it may be not necessary to acquire it initially. And there are other options to it, in terms of compulsory acquisition, and what we're looking at today, we're just looking at the need to acquire it and looking at the application in its totality, there will be a need to acquire it in order to enable what's in front of us to happen

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as a whole, whether phase two or two a gets built out. That's a different question altogether. But if we're looking at it as a completed development, then there will be the need, which is why, from today's perspective, we're looking at with regards to the phasing and whether phasing other phases actually happen, that may well be picked up at other issue specific specific hearings throughout the week. So just to sort of clarify what it is we're looking at today.

1:06:12

Thank you, for that matter.

1:06:14

Our concern in the round is, as was stated at previous meetings, this will become our park will become permitted development land, we could end up with anything there. And

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to lose our park for

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a few industrial warehouses. We don't seem as possible. So thank you for clarifying that. But we thought we needed to make the point that

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short term destruction of a park before you actually get to something might never be built, we felt had to be raised at this point. But thank you for clarifying that. Thank you.

1:06:51

Mr. Davey, just to finish off this section about future management of the replacement, open space. Was there anything that the council wanted to contribute to discussions on that?

1:07:03

Yes, Mark, Dobie Felice and Borough Council. I'm afraid that's not my area. But we could certainly submit something in writing to you unless Mr. Gorilla has something.

1:07:12

Sorry. David goes well, Luton Borough Council. Yes. As Mr. gladden said, we are meeting with the applicant. All five host authorities are meeting with the applicants relating to the section one to six, and the management of the park and the community trustees is part of that discussion. We've had a couple of meetings with them. And I think the latest action is on me to provide a response by Wednesday.

1:07:36

So are you also hopeful that these methods will be resolved by the end of the examination? Yes, we we would like them to be resolved. We realise it's it's quite a task. And we're aware that the applicant has indicated that if it can't be achieved, they will seek a unilateral undertaking. But we'd much prefer to get agreement between the five host authorities. And there are other parties like the airport operating will be a party to it as well. Thank you,

1:08:04

Rebecca club for the applicant, Madam just to reinforce that we are obviously very much committed to getting bilateral agreement with with Luton and with the other relevant authorities. But we obviously have to have a fallback just in case that's not achieved. But that's very much our aim and objective as well.

1:08:20

So just to clarify, obviously, the section one is exclusive agreement is an item on the agenda on Friday, which is issue specific hearing 10 and the DCO. Again, it's one of the things that we were proposing to have a look at in some detail at that meeting.

1:08:38

So moving on to the scale of the replacement land that you're seeking to acquire. And thank you for your previous clarification on the numbers. And what it is that you will be trying to acquire. It doesn't appear to be in dispute that the replacement land to BC aid is larger than the open space that's being lost. And what I'm still not clear about is the reason why this needs to be bigger, and therefore the justification for the extent of the compulsory acquisition.

1:09:11

But in light of all that, can you explain why the replacement land needs to be larger for the purposes of justifying the CA?

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Rebecca clutton for the applicant, madam. This really boils down I think, to the point that we've articulated previously which is the fact that when we

1:09:49

tell you about the scale of the replacement Park as completed, it includes around 11 hectares of land that

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We haven't acquired as replacement land but which is already in the existing Wigmore Valley Park, and which, therefore, we've treated as open space to be replaced. And therefore we, when we've done our calculations, the replacement space actually required we've had to take that into account. But because that then gets added on,

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we are in.

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We are then is in a situation where it appears that the scale of the replacement land is much larger. But in actual fact, I don't think it is materially larger than the land that's being acquired. If you take account of that 11 hectares.

1:10:43

I'll have another look at that, then. And I might follow this up with a written question. Because it's not clear to me at the moment, but I take what you're saying, I'll have another look, and then try and get a clearer question to you perhaps Yeah, I think our position is that it's not, it's not materially larger, obviously, we are only required to replace what is being lost. But because part of what is being lost, we can't, we haven't treated as replacement land, the 11 hectares that gets added on top. I know, that's not not very clear, either. But it's just just like wrinkled. But we're happy if you want to take that point away and come back. And we'll in the next round of written questions, we can think in a second. Does anybody else want to make any comments about the scale of what's being

1:11:27

posed for acquisition for replacement.

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So moving on to the informal use, or not of the replacement land and the recent signage that's gone up. We've reviewed the information that was provided by the applicant at D four, which is rep 4071, regarding the signage that's been put up across Wigmore Valley Park and the replacement land since our last hearings, and the responses of the IPs to this, and we observed some of the signs around the area yesterday, I must admit, I was a bit confused by some of the submissions, and whether or not signs are still up or have been changed or what's going on. So it'd be good to get a better understanding of that. My understanding is that the signs initially informed the public that the replacement land was private, but then I get the impression from the friends of Wigmore parks submission at rep 5069 that some of this land has since been declared open. So applicant, would you like to start us off and explaining what's happened with the signage? Yes. Oh, and if it helps, we've got the documents, hopefully to hand with photos and plans on them as well, if that will be helpful, Rebecca Clutton for the applicant? I can indeed I don't think we need to go to those immediately. I think what's

happened is is relatively straightforward. As you're aware, at the last hearing, the issue of informal use of the

1:12:56

desire lines around the field was raised. We explained the point and we maintain the point that in fact, that is private land, not open for public use, other than of course, the formal public rights of way that exist around some of the land on which are set out on the rights of way and access plans that the examination already has before it. And so in order to address the issue of trespass, signs were erected by Luton rising, that sought to make clear that any use of that informal network was not accepted, and that it was indeed a trespass. That is in that activity is not authorised by the applicant. And to the extent that at any time prior to the applicants ownership, there was any permissive use of that that permissive use is withdrawn and those signs were intended to make that clear. Unfortunately, those signs have since been defaced by third parties. The applicant has at no time erected signs saying that when you open space recreational area, I think is what it says on signs that we've got in the, in the photographs, those who have been covered with stickers.

1:14:14

So we are now in a process whereby we're having to go make regular visits back out to try and address the defacement of the signs and replace them with the only signs that have ever been erected by looting rising which is ones that say land is private and that access is a trespass so at no point have leaked rising put up signs saying it's open land No, no those were stick if you actually look at the photos, you can just about see on there that they are stickers that have been stuck over.

1:14:46

I see. Thank you

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so Mr. White for the friends of Wigmore Park, I can

1:15:00

See that you've raised concerns about this signage at D five, deadline five. Would you like to talk us through those now, and again, we've got your submission if you wanted to put anything up on the screen.

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Pete white friends with my POC, know,

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what we'd like to say is that that park, as we've shown has been in use that sorry that those fields have been in use for the public for decades. And those are the pictures that we've sent in Shoebat. And Mr. I've actually got quite a lot of questions for you on that coming up. So for now, can we just stick to the signs and your understanding of what's happened? And confirmation that they appeared in October? Yeah, no, it wasn't anything there before? No, there was nothing there before. They only appeared

they'd we were confused, because they appeared with one thing on one minute. And then the other thing on the next.

1:15:54

We're a community group, we don't have the money to go to the thing of doing something like that. So certainly wasn't asked that did it. I mean, they were expensive things, stickers that were made. The only thing we'd like to point out is that the signs appeared at the start of October, the applicant has owned the land since 2015. So in eight years, they've had no interest of people doing anything in that land, but all of a sudden, it's now there. And that's the only comment with my comment at the moment. Thank you.

1:16:20

Thank you.

1:16:23

Jeff Morgan fencer Wigmore Park, it's also worth pointing out the signage to say the land was restricted. It's also been put up within Wigmore Park, and well away from the border with the field next door. We have no understanding why the signs were put up inside Wigmore Park and on the county wildlife side.

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Thank you. Thank you, Mr. Morgan.

1:16:56

So Mr. White, Mr. Morgan, in your submission,

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I wasn't clear if you're suggesting.

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My impression from your submission was that you thought that the applicant had put up the sign saying that the land was now open.

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And that that was said that it

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couldn't because it couldn't stop people using the land. That was the sentence that you put in? Can you explain a bit more about what you mean by that, because I'm not very clear.

1:17:28

People, I'm friends with my park, you visited the site. You just walked through the hedgerow off the cinder path and you're in that land. We appreciate the can't put a fence around everything.

1:17:41

But as I say, historically, the locals and the people that use it, have used it. So we

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we can't really understand why the signs needed to go to go up. I mean,

1:17:54

it's always been like that. Nothing's been up in the last eight years that they've owned the land. And we were just confused to why they needed to go out now. And like Jeff said,

1:18:05

within the county wildlife site, there are marker boards for the footpath that ran across the actual park itself. And the signs appeared in those and that's public land. That's a public park. So it was just confusing. We didn't know whether to start with it was a prank,

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by persons or persons unknown, but as I say, it's a very expensive prank, if you want to do that. And that's what confused that's basically we couldn't just couldn't understand it. Thank you. Thank you.

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Can

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someone on behalf of the applicant could we get the rep from friends of Wigmore Park which is rep 5069 Put up because there was some aerial photographs in there that were referred to and I couldn't quite follow what it was you were trying to show us if we could have a look through that now. That'd be very helpful. It was Page Six was the first one I wanted to look at.

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Was very efficient, thank you

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it's, it should be the signs that have got to the two images 2009 and 12. Showing

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some arable fields, it's our aerial photographs of the fields.

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Rebecca climb for the applicant, whilst that's going up with perhaps a boat too soon as they go fishing. I wonder if it just helped to give an indication about the signs that were placed within the Wigmore Park

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There were two signs that were placed within the Wigmore Park. They were not placed in the locations that had been instructed within a few days that came to our attention and their removal from within the park was instructed and has since been affected. But that was just an accident on behalf of the

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country contractor who put the signage up. Thanks for that clarification.

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Mr. White, Mr. Morgan, did you want to talk us through what you're trying to demonstrate? It sure is 2009 satellite view. And as you can see, if you look at the borders of the fields, there's established paths. This isn't public footpaths, this is paths that have been used over the years by members of the public, including the crossing point, fact is to crossing points you can see on that land, neither of them are public rights away. So historically, members of the public have been using this land for 3040 years. And these three photographs or these three satellite views demonstrate this by the fact that you can see it physically see the paths that members of the public are using.

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It's like when did you want to respond to that Rebecca Clutton for the applicant, obviously, Madam these aren't footpaths that are marked on the definitive map, no applications were made to have those dedicated at any time. They to the extent of obviously this predates the applicants ownership. Both of these images predate the applicants ownership, to the extent that they were used permissively. The applicant is entitled as landowner to revoke that permission and indeed,

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the applicant itself was never authorised the informal use of that network, but I said for the avoidance of any doubt. Now, it is made clear that any such use is unauthorised and that is within our gift as landowner to do that.

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Understand that, so at the last compulsory acquisition hearing,

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I think it was Mr. Rogers said something along the lines of we'd be managing

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this area for a number of years for biodiversity net gain in anticipation of it becoming a park in the future. So it's quite possible that people have been using it. We haven't sought to fence them off. But it's quite possible that people that have been using it informally with dogs have been using it for the last three or four years, the years, but it's part of the plan. It's effectively early preparation. Apologies. That's from the transcript. So it's all a bit.

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Yeah. So

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how does that fit in with what you're telling us that actually, people didn't have permission to walk over this land since your ownership of it and he says my 15, Rebecca clutton for the applicant? Yes. That was Mr. Aldridge at the last compulsory acquisition hearing. I recall those comments at the fact. I mean, he indicated that there may have been some informal use, but that didn't mean that that was authorised by Luton rising. And to the extent that there was any implied authorization as that authorization is withdrawn. And that is exactly the point that that we've sought to make clear subsequently with with the signs

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without signage up, and with this informal use,

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it might not have been used by right, but it potentially was use as of right. Do you want to give us your opinion on whether either of those are applicable here, if there was informal use and nothing up to say that it couldn't be used?

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People might argue that they had.

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They believe they had permissive rights to enter that land. Yes, as of right, Rebecca clutton for the applicant? I mean, it is possible that that may have been how people thought that they were using it, but that is what we've subsequently sought to make absolutely clear that there is no there is no authority to use that. As I say these are not dedicated, no application has never been made to dedicate them. And so

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we don't believe that that's a matter that can be taken into account by you now. Okay.

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Mr. Morgan, Jeff Morgan friends will make more Park on slide like to say that this replacement land isn't replacement land, because it's already been used. It's been used for a generation or more. My understanding is that it's supposed to be your replacement with more Park. As I say, we've already been using it, so it's not a replacement. Thank you. Thank you. I notice in your submission that you also suggest that there are 100 visits per day to the placement and on average, and I wonder what's that based on? It's just based on experience of using the land I've done three recent surveys bear in mind it's winter and winter. You get less users and it during the summer. I did I did

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To visit three weeks ago, bright sunshine, only about 1015 minutes only saw two people using that space. The following week, it's pouring rain I was there 20 minutes, I counted six people using that land, despite the rain. And then last week, I did a 14 minute visit and counted. It's either seven or eight

and what catches the same person twice. So I'm not sure because as I'm moving around, they're moving around.

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So is in the summertime, obviously, a lot more people use it. And as you can see in the pictures, these paths are well established, and they're wide. So even if I saw nobody using that park on a particular day, you can see in pictures, people are using it, and then paths are substantially wide. Thank you. Thank you.

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And

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in your latest submission, you also say that the land is owned by Luton rising for community benefits. Do you want to tell me a bit more about

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what that means? For the land is bought by Luton rising to be turned into a new a potential Wigmore Park, it has been used for community benefit for many, many years. And the fact they've used it and didn't put any restrictions on it just shows that it was community land that's been used.

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Are you aware that it's any official record that says there's no, I'm not aware of any official record, but it's just been the fact that hasn't been those signposts was put up saying people couldn't use it. And people have been using it for many generations before the loosened rising, bought the land.

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historical reasons there that people are using the park or using this land, when you say use for generations, and I saw some of that you said 40 years and two years, we've got any evidence of that.

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Then you go back to 2000. But talking to fellow committee members who've walked out land is established parks, and they've said we've used that land for 40 years. So I've certainly I've lived in Luton since 1987. I think I moved to Luton. I've been using that land all since since that particular date.

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So the people that you've been speaking to who remember using it for such a long time, do you think they could be persuaded to submit

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a written bit of evidence to that effect? We can ask but no in our members, they love a lot. Let's get other people to do the work. But we can ask we have a membership is 3159 people who basically they support what we're trying to do and want to keep the land as part of a park. But quite a few of them are inactive, should we say but they do support us and part of our member of our membership questions is

that you want to save the park. You can only join if you want to save the park. So we've got 3259 members who want to save the park. We are the largest environmental group in Luton, Bedfordshire and Bedfordshire. Thank you I can ask.

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I just like to get a fuller picture as possible of the previous use of the park.

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This clutton Did you want to comment on that? And in particular, this idea, the land is already for the informal use of the residents of Luton? Yes, Rebecca, and for the applicant? Yes, there are three points I think, Madam that I want to make in relation to that. Firstly, we have noted that not an inherent tension in some of the submissions that have been made, not necessarily just by friends of Wigmore Valley Park, but others who have referred to this replacement land, and in the early stages, and indeed, obviously, the representations will be before you as the examining authority.

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The point that's been made was that this land isn't suitable to be replacement land, because it's no good for public recreation, and it's too far away, etc. And then obviously, the submissions have shifted slightly. And now there's a suggestion that indeed, it is already being used. And when we said there is a tension between those two submissions that that we identify that you'll have to resolve. The second point is that in relation to the definition of open space that has a spatial element to it, it is land that is being used for the purposes of public recreation. It is absolutely clear from 2012 image that we were looking at that, at least at that time, and indeed, until three or four years ago, when it was started to be managed as grassland for the purposes of, you know, enabling the future works that looting rising is proposing that that land was being used as an agricultural field and you can see the tractor lines within that. And so we say that it is inconsistent with that agricultural use to suggest that that land was being widely used spatially for agricultural,

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excuse me for recreational activities, said to the extent that there was any

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permissive use at that stage of of the borders, that is a different point, and that's the kind of directional ATB

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If

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I attempt to use them as an informal footpath network, that is a slightly different point from open space in its spatial sense. And I say we then go back to the point that at no time has this been dedicated. At no time was an application been made to secure that. And say, at this point, we make absolutely clear

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that any use of that land is unauthorised. That's the third point that it brings me to, which is obviously we have considered whether or not it would be appropriate to fence that land prevent it from being used physically. And we feel that that would be a disproportionate approach to take and unnecessarily confrontational, I think, at this stage, and yes, very expensive. Mr. Henderson reminds me so we don't think it's appropriate. But that's

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that doesn't mean that anyone continuing to use that is not in fact, trespassing on that land.

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In relation to that, I noticed that your wording is that it hasn't been used by the public at large. And I wanted to explore with you whether or not

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you consider that there is a scale issue when it comes to defining informal use of land.

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Rebecca clutton for the applicant, Adam. Yes. I mean, I think our position is we just don't have beyond the submissions that have been made by the friends. There is no substantive evidence of widespread use of those areas by the public at large. And so I do think there is a there's but that's both a scale issue and not but also just an evidential issue. So in formal use, that's used in the guidance, you're suggesting that there is a scale component to that, that if it's just one or two people, then it's not a significant and informal use then if you've got 100 People walking over it in a day or more, Rebecca clapping for the applicant? Yes, madam that's, that is definitely a relevant factor. Okay. Thank you,

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Mr. White, Pete white friends Wigmore Park, just a couple of points on that.

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managed as grassland

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cup a couple of times a year a spectacular. You've got to say a spectacularly pretty array of weeds for the summer months, and then it's cut I wouldn't say it's managed as grassland its nature doing what nature does.

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And as of use of that land,

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Lunenburg Council regularly runs online surveys for the use of his parks, and how people rate his parks. With more valley with more Valley Park hasn't been on those surveys for a good few years now, since they've known what they want it to be useful. So you can't find records of public use because the park itself you haven't been able to register on the council's Park survey that the park is actually being

used. It was mentioned at the meetings last night, the field interest Award, which the park has won on a couple of occasions will be the thing. That was because we organise that as friends of Whitmore Park, we organise that campaign, the Wigmore Park, and you can include that area if you wish as well because it's next to it as well.

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Only got those awards because we put it forward. It wasn't a council initiative. And that to our shows the ulterior motive that you can't show the use of a park if the surveys for Park use in lieu and don't include the park you're in. But that's just general information. Thank you.

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Thank you, Mr. White. I'm not sure who'd be taking this from Luton Borough Council. But to finish off my questions around this. Do you have any comments to make about public use of the replacement potential protect replacement land?

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No, we don't have any comments on that. I would just say in terms of the preparation of the land for grassland for Parkland, it obviously was agricultural land before. Under the new century park planning permission which is in the green horizons planning permission.

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All refer to green horizon sorry, we as a council require, with more Valley Park replacement land to be in place before the park gets closed before development takes place on it. So following loot and rising acquiring the land.

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We recognise that they would be changing it from the agricultural land to more of a grassland to more of suitable parkland.

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in advance that there was nothing ever about opening it up in advance. It was physical preparation, so that some of the, obviously the

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county wildlife site which we wanted replaced,

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would have a habitat that it would be suitable to take over, as opposed to what was decent agricultural land. So

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I can't comment on whether the public had been using it. And I know nothing. I'm afraid about losing borough councillors, Parks surveys or anything like that. But you're not aware that there was any formal agreement that they could walk over that land. I'm not aware of any agreement.

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Thank you.

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Sorry, I thought there might be a question.

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Okay, I think we'll probably take a break there if that's all right. We've been going an hour and a half now. I'm afraid it's going to have to be a quick one because we've got a hearing this afternoon as well. It's 1136 now, so I suggest we come back at 11 for

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no, that's not enough. 1150 Yeah, everyone. So yeah, we'll adjourn now until 1150