

# AUDIO\_LUTON\_ISH10\_SESSION1\_0112202

## 3

00:06

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

00:15

And also, can I confirm Mr. Bernier that live streaming of this event has commenced?

00:20

Thanks. The time is 9:30am. And this issue specific hearing in relation to the London Luton Airport Expansion Project is now open. This issue specific hearing is about the draft development consent order. My name is Sarah Holmes, and I'm a planning inspector and a chartered engineer. 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 manage the event during introductions and one of my colleagues will be taking notes of any actions and asked my colleagues to introduce themselves to us on my right.

00:53

Good morning. My name is Beth Davis. I'm a planning inspector and a chartered geologist.

00:58

Good morning. My name is Joe Downing. I'm a planning inspected and a chartered town planner and I've been appointed by the Secretary of State to be the lead member of the panel. I will also be Leading today's discussions.

01:11

Good morning. My name is Andrew Robinson. I'm a planning inspector and a charter town planner.

01:17

Good morning. My name is Dr. Richard Hunter. I'm a planning inspection this chart here just environmentalist.

01:23

The fibres is make up the panel which is called the examiners thority. I can confirm that all of us have made formal declarations of interest, and there are no known conflicts of interest with regard to as examining this application.

01:35

There were other colleagues from the planning Inspectorate with us today. Those of you online we've spoken to Jennifer Savage in the dining conference. I would also like to introduce for Mr. Burney, the case officer for this project, who is supported today by Gina Sharland. Together with Sharon Evans,

they make up the case team for this project. If you have any questions regarding the application process in general, please can use email or speak to the case team he'll be happy to help.

02:01

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 attend in please make sure your phone is switched off or turn to silent.

02:13

A five alarm test is planned for today at 11am however, shouldn't allow sound at any other time it is an emergency and we need to vacate the building. The emergency exits are located to the left of me and a further emergency exit is through the door which you entered. Please make your way through to the carpark to the fire assembly point which is at the front of the hotel. If anyone needs assistance, please can you let the case team no

02:37

toilet facilities including disabled facilities can be found the lobby if you've driven here today and parked in the hotel carpark, you need to have registered your number plates on the portal system found at the main reception desk. We've been informed that for any vehicle not registered, the hotel may be subject or charged with 100 pounds.

02:55

As far as I'm aware, no request had been made for the special measures or arrangements to enable participation in this hearing. If anybody needs to help with participation, please please speak to the case team at the back of the room.

03:07

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. For those attending virtually Can I repeat the request to make sure all audible notifications are turned off, and that you stay muted with your camera turned off unless you are speaking as 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 points in proceedings. When we get to those points, I would ask that if you want to speak you switch your camera on and either use the raise hand function in MS teams or speak at the appropriate time. Please be aware that there may sometimes be a delay before we can acknowledge this. But your patience while waiting will be appreciated. And I also remind people the chat function on teams will not work. So please do not try and use this to ask any questions or post any comments. We're able to adjourn for a short period if there are any significant connection problems.

04:07

Do we have any members of the press in attendance?

04:12

We will 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 other reasons. Anybody requires a break at a specific time. Please could you let the case team know and if we can, we'll adjust the programme to meet your needs. Are there any other comments or questions regarding the general management of today's event is an event

04:33  
online?

04:36  
Thank you.

04:38  
There is a digital Call 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 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. As such, the planning inspector is subject to the General Data Protection Regulation. It is

05:00  
very unlikely that the examining authority will actually to put sensitive personal information, such as email addresses and economic, financial, cultural or health related matters into the public domain. Indeed, we would actually actively encourage you not to do that. If you feel it's necessary for you to refer to 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 written format, which could then be redacted before being published. Please note that the only official recording of these proceedings is a digital recording on the project webpage at this website, tweets blogs and similar communications coming out of this meeting will not be accepted as evidence.

05:40  
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 parts of the Secretary of State will be using the latest version of the draft development consent order as submitted by the applicant a deadline five, which is examined eye examination Library Reference rep five double O three. The agenda was placed on a spreadsheet website on Monday the 28th of November 2023, and can be found in the examination library at reference ev 17. Double oh one. Today's hearing will be a structured discussion which Mr. Allen 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 NSA to ask further written questions if they're needed. I'd like to reassure you that while we may not ask a question on the topic, it doesn't necessarily mean that we believe this matter has been fully addressed. It could be it has been covered in an earlier hearing, or we propose to exploit for some questions. We're familiar with all documents that have been submitted. So when answering the question, you don't need to repeat it lends something that you've already

written about. If you want to refer to information that you've already submitted, it would help us if you could use the examination library reference for that document.

07:00

We're expecting that most of today's contributions will be from parties that have already requested to speak. But this is a public exhibition examination though, and if there's a point you want to raise, please do switch on your camera if you need to, and raise your hand so that we can hear from you. Finally, finally, I'd like to remind everyone that this is not an inquiry, and unless we specifically request it, there will be no formal presentation of cases or cross examination. This means that any questions that you have other parties need to be asked to the examining authority.

07:28

Tentative the agenda for the hearing.

07:31

We consider the main items for discussion to be articles and schedules of the draft development, consent order, requirements and conditions. documents to be certified consents licences and other agreements including any transparency matters. Please note that schedule eight which deals with the protective provisions was discussed at the compulsory acquisition hearing on Tuesday morning. 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 prioritise matters and defer some matters to further written questions. Finally, it is important that we get the right answers to the questions that Miss Dowling is going to ask. Please remember that the examinations are predominantly written process. If you cannot answer the question being answered right now or require more time, we'd rather you tell us that you need to respond in writing than give an incomplete or incorrect answer. We can defend we can then defer the response either to an action point to be submitted at deadline six on the eighth of December or to our next meeting questions. Are there any questions at this stage about the procedural side of today's hearing?

08:40

The case team has provided me with a list of those interested and other parties who have expected expressed a wish to be heard today. I'm now going to ask those of you who participate in the hearing to introduce yourselves to the examining authority and to the people who are watching the livestream of this event. When I say your name your organisation please introduce yourself including how you'd like to be referred to for example, Dr. Mrs. Miss, and if you're representing someone who is you represent. If you're attending virtually then please switch on your camera and microphone when I call your name. So starting with the applicant

09:14

Thank you, Madam Good morning. My name is Tom Henderson. Mr. Tom Henderson. I am a solicitor and partner at law firm the BDB Pitman's alongside me are those who I think may be called upon to contribute this morning so I'll allow them to introduce yourself. Three

09:34

violins Anthony Aldridge. I am the lead for the DCO with the applicant rising.

09:43

Good morning. My name is Mustafa Latif AirMesh. I'm also a partner and solicitor at BDB Pitmans.

09:52

And good morning, my name is Mark de and I'm an associate in Europe city's planning and design team.

10:00

Thank you very much. And now at Luton Borough Council please.

10:08

Good morning. My name is David Gertler. I'm from Luton Borough Council and we will be represented by the person on my left who will introduce himself.

10:18

Good morning. My name is Robin. I'm a partner and sister at Pinsent Masons. And I'm here today representing Luton Borough Council, as you've heard, but also the four other posts local authorities Hertfordshire county council, North Hertfordshire District Council, the quorum Borough Council and central Bedfordshire Council. Thank you.

10:40

Thank you very much. And is there anyone that else that would like to introduce themselves from the giant house authorities?

10:47

Morning Good Morning, Martin plumber, central Bedfordshire Council Council,

10:52

strategic Delivery Manager don't expect to and participate but as Robbie's just mentioned, he'll be representing central banks Council. Thank you.

11:01

Thank you and Buckinghamshire Council

11:05

Good morning Mark Westmoreland Smith, I'm a barrister and representing Buckinghamshire Council

11:14

anyone else from sent from Buckinghamshire council that has like to introduce themselves? Not today.

11:22

And then national highways I believe we have people virtually madam, it's morning. Jeremy blue. I'm a consultant representing national highways.

11:34

My colleagues as well will introduce themselves

11:42

Good morning madam. My name is Beth wood. I am a literary partner at the law firm DLA Piper lietaer on behalf of National harbour as long as blue

11:59

Hello, Mr. Levy

12:02

you're with the John house authorities I believe. Good morning. Yes, that's correct. Thank you madam

12:11

and then finally

12:13

I we did have a Mr. Thompson but I believe he's not joined us virtually Is that correct?

12:25

Do I think that's everyone I've I believe wishes to be heard today. Can I confirm if there's anyone else who wishes to participate in this morning's meeting? Mr. punter.

12:35

Good morning, madam jester puncher from Central Bedfordshire Council. I'm unlikely to need to speak to those matters being covered by by Mr. Robinson, Mr. Lyric, but I am here if there are any specific Horus, clarifications. Thank you.

12:50

Thank you. And is there anybody else in the room or online that hasn't spoken yet?

12:56

Thank you very much. You're all very welcome. Before we start today's agenda, the XA took an action last night relating to overflights, and I'll pass to Dr. Hunt to provide an update.

13:07

Thank you, Miss Holmes. Yesterday, we discussed the impact of overflights on the Children's National Landscape, and I made reference to doubling of overflight at ivinghoe Beacon, the Applicant requested confirmation of the relevant figures. And those figures are fifth figure 16.7, which shows the 2019 actuals overflights with 20 overflights per day at the Beacon and figure 16.69, which shows the 2043 predicted overflights with 50 overflights per day. Thank you.

13:44

Thank you, Dr. Hunt, I will now pass over to Miss Dalin to lead us through the rest of the items on the agenda.

13:52

Thank you. I'm just gonna start off by saying that 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 the drafting of the Development Consortium consent order is an example of a hearing where issues overlap. For example, mitigation or controls proposed to the DCO may or may not address concerns raised in relation to such matters as biodiversity design, flooding or construction management matters. However, the main discussions on such matters have taken place in the issue specific hearings, which had been held throughout this 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 with the DCO as drafted to deliver it. I therefore ask you to bear this in mind when answering the questions as it may be more appropriate that the points you may wish to make, or the questions that you're expecting to be asked should have been made as an issue specific hearing earlier in the week, when it could have been considered in more detail.

14:51

If this is the case, and you consider that the matters you wish to raise have not been considered. Then I'd ask that you submit them in writing at deadline six, which is the eighth of December 20.

15:00

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15:01

I'd also like to make it very clear that this is 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 to be able to use should they wish to grant consent. This discussion in no way indicates whether or not the application will be recommended for approval or consent. And equally, your three, this discussion in no way indicates whether or not the application will be recommended for approval or consent and equally or positive participation in discussions does not detract from comments you may have made with regards to concerns about the proposal. Is everyone clear on that?

15:46

Before we get on to the agenda proper, there are a number of key documents they're going to refer to throughout this morning's hearing and prevent things becoming repetitive and save time. I'm going to set these out in detail now, along with the relevant examination Library Reference, and how I refer to them in discussions. I therefore do not intend to keep repeating the exam Library Reference unless I'm referring to a different version of the document or introduce a new document.

16:10

The version of the draft development consent order I will use was that submitted at deadline five, which has the exam Library Reference rep 5003. going forwards I refer to this as the draft DCO can just confirm that everyone has access to this document as I'm not proposing to share it on screen. As when we have tested this the font size and density of the text means it's incredibly difficult to read.

16:34

Okay.

16:35

The version of the explanatory memorandum I will use is that which was also submitted at deadline five it can be found in the exam library at rep 5005. And going forward, I refer to this as the explanatory memorandum.

16:51

Before we get onto the agenda items yesterday, we received a written submission from the Environment Agency in lieu of attendance today. This has been published on our website and can be found in the examination library at reference, Evie, one seven dash 002. The main concerns related to the drafting of requirement 36, which is now requirements 35 applications made under requirements in the DCO that submitted at deadline five. And this deals with discharging requirements and the concern that the environmental agency have raised relates to paragraph three, where for discharging authority does not determine an application within an eight week period, it would benefit from deemed consent. I have asked written questions on this matter. And we did discuss it at the last issue specific hearing. And do note the environment agency's comments. And I was therefore not proposing to explore the matter already in any way this morning. And I'm assuming that the applicant will probably be providing a written response to it anyway, at the next deadline. However, I just want to check with anyone here wanting to raise anything with regards to the environment agency's submission now

17:58

just check online.

18:02

Nope. Okay. So we're going to move on to item two on the agenda, which is changes to the draft event consent order. So we're gonna start by asking the applicant to briefly set out the major changes. And by that, I mean, you're not obviously every little typo that had been made to the draft event consent order since the last issue specific or hearing on the DCA, which was held in September. With regards to part three of the requirements, which deals with green control growth. I'm happy to give you a high level, I'm happy for you to just briefly touch on it. But obviously we have got a section on it later on in the agenda, and where I have offered the opportunity for you to discuss that in a bit more detail. And so I wasn't proposing that you delved into that in a lot of detail now. So if I can hand over to the applicant.

18:48

Thank you, Madam Tom Henderson for the applicant. Those were helpful comments. And just to add to that, for everyone's benefit, we've been maintaining a schedule of changes to the draft DCO at each deadline where the DC has gone in. So that's where you find chapter and verse and all the small



changes, which as you say I wasn't proposing to, to talk about now. I think this summary can therefore be relatively brief.

19:12

As we move through the deadlines are starting with deadline. Three, the main changes there were in response to the discussion that was held at the first issue specific hearing.

19:23

We reconsidered and addressed the use of the terms in accordance with and substantially in accordance with and we believe we now have a clear logic and rationale for that. And I know that's one of your agenda items which we'll be coming back to.

19:36

We made some changes to the DCG process, but can we can come back to those later because that's on the agenda.

19:43

And a host of other amendments minor amendments which are in response to your supplementary questions for is h one and ch one. So that was deadline three.

19:53

Deadline for the main changes were that we added a

20:00

and provision to article 44, which confirmed that the section 106 agreement for the existing airport planning permission will be abrogated along with the

20:11

removal of the of the TCPA consent. And again, I think that's a matter for a later agenda item.

20:18

We substantially

20:22

addressed comments on the detailed design approval.

20:26

We consolidated requirements seven into requirement five and beef requirement five up and again, I know that's one of your agenda items for later. So we can we can come back to that we secured

20:38

the ground noise management plan, which was talked about earlier in the week, we made

20:44

a host of changes to the operational requirements at paragraphs 27 to 30 of

20:51

of sheduled. Two, and that was to confirm that those operational plans will be in place for the point article 44 notice was served. So just to clarify that there have been comments about the transition across and that was just to tighten that process up.

21:06

You mentioned what is now paragraph 35 of sheduled. Two, we in response, particularly to comments from Buckinghamshire council but from others to

21:18

added a provision that allows the relevant planning authority that's that's responsible for discharging requirement, a discretionary consultation process. So in other words,

21:31

there a able to consult with identified bodies in the shedule in relation to functions that they may have were relevant to the matter being discharged. So we added that in, we added a register of requirements provision to ensure that public members of the public local authorities and others were clear about the applications that have been made into requirements and decisions that have been made in response to those applications. And as you mentioned, we added

22:01

protective provisions for cadent gas and national highways, the cadent gas data provisions which are agreed, and as we discussed earlier in the week, national highways reflect our preferred version of those, and we continue to discuss those. And finally at deadline for we amended the

22:17

schedule nine, the list of certified documents in response to your comments. And again, I believe that's a matter of discussion later. And then finally, deadline five,

22:27

the main change what two main changes there? Firstly,

22:32

as was discussed in the GCG, hearing, we made some changes to reduce the transition period,

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which I think we had a long discussion on yesterday, but happy to talk about the drafting points later in the agenda when we come to that. And we added further protected revisions for local highway authorities and local drainage authorities.

22:53

And I think that gives you the main points that we we've made through the recent deadlines.

23:00

Thank you. And thank you very much for the alterations and changes that you have made. And that's very useful, I'm assuming you will do it automatically anyway. But if I could ask that you could provide a copy of what you've just set out as part of your post hearing note, that'd be very helpful.

23:16

As you've highlighted quite a lot of these things are actually individual on the agenda to talk about today. And we've also had quite a lot of discussions about some of them during that other hearings that we've held this week. But I'd just like to now offer the joint host authorities and other interested parties to provide any comments on what's just been outlined, except for anything that will be covered by other items on the agenda, in which case, I'd ask that you make the point at the relevant time. So I'm just going to come to Mr. Owen, who I believe is representing Mr. Garner as well. So the joint host authorities, do you have any comments?

23:54

Thank you, madam.

23:57

Looking at the deadline five, version, the DCO, to which we've yet to submit written comments, the main changes of significance were in relation to the green control growth provisions in part three of schedule two. So we will no doubt be coming back to those and we certainly the the joint hosts, local authorities welcomed the changes. We don't think they go quite far enough and we can come back to deal with those later.

24:24

We also noted that the applicant at deadline five added to

24:30

sheduled, eight, two additional sets of protective provisions which are particularly relevant to the local authorities. There's a new part six protective provisions for local highway authorities and a new part seven

24:45

protective provisions for drainage authorities and those are both being considered. I don't know whether you want me to

24:55

give further details of that now.

24:59

Yes, that we will

25:00

and helpful, I think in relation to the new part six of shedule eight, the protective regions for local housing authorities.

25:10

Really, we've only just seen these and they will need to be subject to further discussion and negotiation. But in headline terms, we feel that the provisions are too weighted in favour of the applicant and that they do not include a number of provisions that you would expect to secure in a conventional context were the applicant proceeding under the tiny Country Planning Act 1990.

25:40

Under Ohio's act 1980 agreement and the kind of matters that

25:46

we think need to be added deal with issues such as submission of road safety audits.

25:54

Submission of detailed design for the approval of a local authority, I stress for the approval of provisions dealing with liabilities, for example, indemnities, local higher authority, reasonable costs, bonding and bonds and guarantees, provisions dealing with the booking of road space, appropriate controls around the issue of certificates and for the works to be maintained by the undertaker during a maintenance period, and commuted sums for the future maintenance of the work. So those are the kind of things we think are missing. And this is important because the draughty CEO, as you will be aware, includes

26:37

wide powers, for example, in relation to modifying the application of the new roads and street Works Act, which provides important protection for the local highway authorities and provisions of data, a modified and disappled and therefore it is important that protected versions, in effect, provide something comparable in terms of protection. So

26:58

I think possibly part of the reason for

27:02

the protected version is being in the form they are is given precedents from various I think many national highway DCO is where I think they've been drawn from so that the headline terms

27:16

are our comments at this stage on the draft protective divisions in Part six or schedule eight in terms of Part Seven.

27:25

That division is for drainage authorities, the host, those are the host local authorities that are lead local flood authorities. We note that

27:37

in the ordinary course consents given under Section 23 of the land drainage act 1991, are prescribed consents for the purposes of section 150 of the Planning Act of 2008. By virtue of the infrastructure planning, interested parties and miscellaneous prescribed provisions, regulations of 2015. And the relevant relevance of that, for the benefit of all concerned listening is that a developing consent order cannot dis apply the requirement for Section 23 consent unless the relevant consenting body that is the lead local flood authorities agrees to the DIS application and the normal approach, but don't consent orders for protective visions to effectively replace the consent requirements. And so the provision of part seven or schedule eight is very much very welcome in principle. But the lead local flood authorities will need clearly to satisfy themselves that the protective provisions are adequate before they will be in position to give consent under Section 150. So

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that is where we are with the draft PPS or drainage authority. So that that in summary covers the revised draft it deadline five.

28:51

So far as the deadline for revised draft is concerned, that made

28:57

I think it's fair to say more significant changes. And the host local authorities did comment on those in some detail in

29:07

rep five dash 068. So I wasn't planning to go through those again, because I imagine you have a chance to look at that. So I think that's all I would wish to say need to say at this stage. In terms of our

29:24

response to what Mr. Anderson said and our thoughts on the changes made to the draft DCO.

29:30

Thank you very much, Mr. Jones.

29:33

As the agendas were quite clear, protective provisions were a matter. We actually discussed the compulsory acquisition hearing, it's a pity you weren't able to join us for that those discussions.

29:42

I just want to ask if there's anything that the applicant wants to come back on at this point. Obviously, we're expecting your comments on the deadline five draft at deadline six. So I look forward to receiving those but Mr. Henderson is there

30:00

If you want to come back on an appointment Mr. Owens raised.

30:03

Thank you, Madam. Yes, please. Tom Henderson, the applicant Just in brief comments in response velocity. Welcome to the comments when we received them from the local authorities and, and further discussion can flow from that.

30:15

I just wanted to make a couple of points, or really requested the postal authorities in responding in that.

30:22

When commenting on those protective provisions, we would simply ask that the comments reflect the provisions across the order as a whole, as I'm sure they will. But Mr. Owen mentioned detailed design approval. Well, of course, that's, that's already covered by requirement five. So what we wouldn't want is for the protective provisions to duplicate provisions that are already made in the DCA. So it's just a first point on that. And the second point being that we we have included in those protective provisions, a mechanism for the parties to agree alternative arrangements, because we still do anticipate entering into,

30:57

for example, section 278 agreements were required. So really, those protective provisions stand as a backstop to satisfy you that there are sufficient controls at this stage. But we're not certainly not ruling out the need for and value of agreements with highway authorities in the future.

31:14

On Part Seven, again, we'll wait comments and welcome discussion on those we would simply ask that in commenting back to us, if the lead local flood authorities can actually highlight the specific watercourses that they say, you know, they are concerned about what they consider the provisions touched upon. Because obviously, that that's relevant to the, to the nature of the protective provisions and the controls that sit within them.

31:38

So that was the only two points to make. Thank you.

31:42

So if I can actually put that as an action point that the leads lead local flood authority at the request of the applicant, that the lead local flood authorities look at what what courses, they're concerned about all that it touches upon, in particular, and then that can obviously be taken away.

31:58

Just on the point of protection provisions from the perspective of the joint use to 30s. Do you consider that they will be

32:08

cleared before the end of the examination?

32:13

Robin for the joint hosts local authorities, I would certainly hope so madam. Yes, I don't see any reason why that can't be achieved. What I would just like to say by way of response to Miss Anderson is, of course, requirement five is a planning approval. It's entirely normal for local higher authorities, on a more technical level, if I can put it that way, under protective provisions to approve more technical details, not in a sort of planning context, but in a highway context. So I would just draw that distinction. And I think we're going to want to discuss with you whether indeed, requirement five is the suitable forum for approval are those sort of highway details.

32:53

Thank you. Thank you.

32:56

Again, I just want to bring up something that was discussed at the compulsory acquisition hearing, so that you're pretty finished with it in terms of those protective provisions. What we advised was that if towards the end of the examination process, it's clear that you're not going to achieve agreement on the protective provisions, then you will need to provide an alternative form of drafting so that we can take that into consideration when we put our recommended DCO towards city state. So if you could just remember that bear that in mind and take that away as an action point if necessary.

33:28

So

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the deadline for the lead local flood authority, if you could come back with that with your comments on the DCO that you're going to provide deadline six and incorporate it in that that will be helpful.

33:43

If I can then come to Buckinghamshire Council, have you got any comments in general on items that are not covered by the agenda that you'd like to raise in relation to the draft etc. At this point in time, Mark Westman and Smith for Buckinghamshire Council, no.

33:59

Any points that we need to raise fit into the agenda. So I don't need to say anything at the moment, I would just record that we are happy to see and grateful for the introduction of the concept of discretionary consultation, the discharging off requirements.

34:17

And then if I can just come to Mr. bassford, who's here on behalf of the national highways or Mr. Bloom on behalf of National Highways, is there anything you want to raise in terms of the general points with regards to the DCO rather than the agenda items?

34:35

Thank you, Madam, I think we are reflecting in light of the helpful exchanges that have taken place during the course of the week in relation to the trimmer and green control growth. It may well be we need to make written submissions at the next the next deadline. And I think that is probably the best way to take that forward rather than take your time now. Thank you. Thank you. I'm just going to leave my microphone on because it's a

35:00

I have to keep moving my laptop every time I want to talk. So I do apologise, but it shouldn't affect you being able to speak, but hopefully that'll work a bit better. So we're going to just want to check that no one else wants to raise anything with regards to the general points about the amendments and changes to the draft DCA. Before we sort of dive into more detail.

35:21

Let's see if we can then move on to Item three and agenda which is article 44. So I'd like to just start by asking the applicant to explain how the recent grant of consent to increase the passenger cap to 19 million passengers per annum might affect this article.

35:40

Thank you, Madam Tom Henderson to the applicant. And I think firstly, on a sort of pure technical point, you would have noted that we made amendments in Article Two to the definition of both the local planning permission as we call it, then the Luton Airport operations limited.

35:57

planning permission and law

36:00

section 106 agreement to account for an either or scenario. The P 19. Permission, although granted is not yet signed to standard been implemented. And therefore, at this stage, it's necessary for the draft development consent order to

36:16

apply to either

36:19

of those permissions. And so what you'll find the combination of of Article Two, and article 44, is that notwithstanding the granting of that permission, it doesn't affect the way in which we've drafted the transition from Town and Country Planning regime to the to the DCO regime. So I don't think there's a need for change on that point. We've mentioned that we've been added in the abrogation of the section 106 agreement. Points. So that's dealt with.

36:45

I think, on a on a more general points, although these these issues don't actually touch on on that technical issue. There are two points to mention. Firstly, as was mentioned, initially specific hearings, eight and I think nine as well.



37:02

We are proposing to carry across a number of measures from the P 19. Noise management plan. But that's not a drafting matter for article 44. I can maybe come on to that, because I think this is the main nub of my question around. Yeah, article 44. So it's a matter of clarification, really. And it's, as you mentioned, I think we have touched upon it at various points throughout this week's hearings. Article 44. Two would effectively mean that once the notice is served under Article 44. One, the airport would cease to operate under the law planning permission in place at the time, whether that's the P 19. One or the current one, including any conditions and or public obligations under it. Several of the requirements add worded as worded to ensure details are submitted and discharged prior to serving a notice, which I think is what you've touched on, touched upon. And several requirements would be in play from the moment the DCO would be implemented. The only being controlled growth requirement that would appear to kick in would be the requirement to monitor noise from the date that the notice is served. I'm just wondering, and I think it's something we did explore last time around, but I just obviously need to make it clear in my own head. So I'd be appreciative of your help with this matter. Is there therefore the potential for certain elements of the operation of the airport, such as noise levels, to be uncontrolled in this gap, before the controls delivered through green control growth would bite? And I realised that following yesterday's discussions would mean control. This may now not be the case, but would appreciate clarification in the context of this DCO hearing.

38:36

Thank you, Madam Tom Henderson to the applicant? I think the short answer is no. We don't think there is a period of time where existing controls fall away. And there's there's nothing.

38:46

You know, there's there's an uncontrolled element of the airport. And that goes to the point that

38:52

substantive point that green control growth is a step up in regulation compared to what you see now. So we talked about noise control, obviously kicking in at the point of that transition, the other matters.

39:07

You know, the limits on greenhouse gases, air quality and the surface mode, surface transport, public transport no Cesari split my words out.

39:17

Yes, there might be a short lag

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between the services of article 44 And those things coming forward. But it's not the case in that short period that the limits that those

39:30

matters are intended to control can reasonably be expected to be breached because of the time it would take for an airport to expand. It's not our view

39:41

lightly at all that those those limits can be breached in that short period. And those are new mechanisms and not existing mechanisms, of course that sit within within Pee Wee's incurably more peanut scene. Thank you and just want to I'm not sure if it's Mr. Gertler or Mr. Owens who will want to respond on this. Just confirm that

40:00

In the local authority, the relevant local authority is contented that there wouldn't necessarily be a gap where elements of the airport could be unregulated as a result of this arc, Article

40:13

Robbia, and for the host local authorities, well that this is a key area focus for the local authorities, and we're not yet able to

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get that confirmation, you will have seen

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the document submitted by the applicant at deadline five rep. 5098. And that was the applicants response to

40:37

action points eight and 11. From the first issue specific hearing.

40:43

An early draft of that document was shared with the joint post local authorities we commented on it. But

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that early draft focused on section 106 agreement matters, and did not at that stage include the applicants proposals in relation to planning conditions. And so we are still considering our position in relation to that added aspect of the document because we

41:12

weren't able to do so before deadline five. And it's it's

41:18

that there are a number of issues that we are still working through when looking at whether and how pre existing conditions and obligations are to be

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carried over into the DCO. And the new section 106 agreement will obviously come back to the latter later on in the agenda for this hearing.

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There is one particular sort of gap issue which we

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have

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come up against in our thinking on this. And it does

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assume that

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as per the applicant, noting this that the EU 19 Planning Commission is implemented before the DCO is implemented. And I'm going to invite my colleague, Mr. Larry, who's online just to explain to you

42:12

the particular concern on the gap that we've identified. So if I can hand over to Mr. Leary to do that, please, Madam Sorry, sorry, just to intervene. It's Tom hunt with the applicant. There was a second point to my submissions, which was actually on this very issue. And I wondered whether it might be helpful if I explained what we have in prospect, which might then help Mr. Leary. Mr. Owen, I'm happy to let them come in first, but it's directly on this point. So sound own How would you like to take that? I'm happy to hear Mr. Henderson first. Thank you.

42:43

Thank you very much. Appreciate that. Tom Henderson, the applicant. So yes, the second point is that following ongoing engagement with particularly Luton Borough Council, and the operator, we'd be looking into this very point of the delivery of the of the P 19. Works. curium works in conjunction with a potential timing of the service of article 41. Notice, and we have recognised that there is the potential for some works to still be in the course of completion. And so it's our intention to bring forward further drafting. To address this point, we haven't

43:17

drafted the specifics of that yet, but that's likely to

43:22

provide for certain limited elements. So taxiway golf and some some drainage improvement aspects are the ones that I'm particularly aware of. What we will need to do is draft into article 44, a mechanism to preserve the relevant conditions and authorization for the delivery of those work. So there's going to need to be more nuance to that transition than the clean break that as Mr. Owen had identified is currently drafted into article 44. So it's really to signal that that that work will be coming forward. We

don't anticipate being ready to put that in at deadline six because it requires discussion with both the operator and Luton Borough Council in fairness before we bring it into the order. So we're intending to bring that forward deadline seven. But I just wanted to say that we're aware of the point we accept it needs to be addressed. And it's it's working out. So yeah, I mean, having looked at the conditions, I think there was 17 of them altogether 19 of them altogether on the 90 million passenger per annum consent. I think actually, when I reviewed them, I think there's only about three that were actually bespoke to the actual increase in passenger. The rest were rolling over of conditions about lighting and drainage and management and construction that were from the project Korean planning commission that sits underneath the P 19. So it would be helpful to understand that going forward because obviously, you know, those inspectors felt it was necessary to include those on the face of their consent to manage those work. So if those works are still being carried out, then we wouldn't probably need to have if they hadn't been discharged those those conditions into

45:00

Some format or in some way controlled.

45:04

If you want to come to your colleague now,

45:07

thank you for

45:08

what Mr. Henderson said is very helpful. And we will look forward to seeing that drafting. The particular point I wanted to make an under judicial, my colleague, Mr. Leer in a moment is a specific example. And the applicant will hopefully be able to take this on board as part of that drafting exercise that was mentioned. And it relates to the fact that, as we know, the applicant is proceeding on the assumption that article 44 would only be triggered once the airport operates in excess of the P 19 limits.

45:42

But there's nothing in article 44 that would prevent the applicant serving notice while it is operating below that threshold. And this is a concern in relation to the draft compensation policies, measures and community first document that's rep for 43 and Mr. Leary if I can invite you now to talk us through that concern, please. Thank you.

46:09

Good morning, Jonathan Neary for postal authorities.

46:19

Think the particular example of where the issue that Mr. Owens just referred to in terms of thinking through a scenario where the applicant were to serve article 44. Notice prior to

46:33

exceeding the current

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limited to have the passenger numbers, whatever that may be, whether it's under the P 90 and all the earlier permission. It's really looking through things like the draft compensation policies, measures and community first document which is rep 443.

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For example, this tells us paragraph eight

47:02

point 1.7 to eight point 1.8 that the forthcoming section 106 scream of the DCO will contain a an obligation to pay one pound per passenger over the 19 million contribution.

47:19

So the concern being the diff, this is if article 44 notices given the existing 100,000 pounds per annum obligation would fall away.

47:32

And assuming the 106 is replaced by equivalent terms, it would go from 100,000 pounds per annum to zero pounds per annum until the 19 million passenger limit threshold is crossed. Now, this is just an example. And it's certainly the case that this could be readily addressed by appropriately drafted section 106 obligations to impose an equivalent floor on the obligations to cover that potential gap.

47:59

But it's just an illustration really are some of the issues that we'll be looking to work through in this regard. Thanks. So just to bring you up to speed Miss Lear, because I realise you haven't been at all of this week's hearings? We did. There was a question raised as to whether the existing fund would remain

48:16

was in addition to or the new fund wiped out the old community first fund. And we were reassured, I think initially specific hearing aid, maybe, Mr. Anderson, that they too, would continue together so that the 100,000 pound fund would continue. And then the new fund would start again. So that they would run in parallel, and one wouldn't wipe out the other. But if Mr. Henderson wants to maybe come back on that.

48:58

Madam, thank you, Tom Henderson to the applicant. Yes, I think the point that it was me that made I believe yesterday, is we it is correct. There isn't a

49:07

situation where there is going to be an absence of a fund. But I think we take away an action to just set out in writing to confirm the exact permissions we do need to liaise with

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it because it was a concern and the answers that can't seem to come back yesterday when I think document might have asked the question, the two would remain.

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But if you could set out how that was also being secured, are grateful. Thank you. Okay. I mean, Tom hen of the Applicant community first, as has been noted as a is an incremental fund that works as growth of the DCI kicks in. It's not the intention to to leave a period where there's there's no fund at all. But it but it is right to say that I should just say we have deliberately drafted the DCO so that

49:55

it's capable of exercising article 44 in advance of the existing cat being read

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Should we think that's unlikely, but it has been set up that way we have made changes to the operational requirements to ensure that

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the various controls are in place at the point relevant controls are in place at the point notices served. And we're negotiating currently the section 106 agreement, which we're going to come to to address these sorts of matters. I think the actual biggest concern, I think, this was drawn from the previous hearings is that by going with a 19 million passenger per annum application, effectively lose 1 million pounds off the Community First off the new community first fund, because the way that it was drafted was it was from the planning commission in place at the time that the article 44 is delivered. And so obviously, by increasing the cap by a million, you're actually reducing the amount that would be in the community firsthand by a million pounds.

50:50

Tremendous for the applicant. I'll need to take that point. I'm not instructed to comment on that specific place.

50:57

Okay. But that is I'm instructed that that is the that is the intention of the of the scheme. Yeah.

51:04

Mr. Gertler.

51:06

Sorry, can I David Gertler, Luton Borough Council. In the current drafting of this section 106, which we received on Wednesday, this week,

51:15

the community fund the 100,000 pound is included in the current drafting. So that would carry on, I have some reservations about the service of notice. And what happens with three of the planning

conditions that were imposed by the Secretary of State which are ongoing one specific to the 19 million, which are conditions 918 and 19 918, and 19. Okay, let me just check, it's nine as well.

51:43

So I've got conditions and potentially nine is noise level is reduction includes the noise reduction strategy.

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If we just take, say, condition 18, which is the updated channel plan. If you were to look at the Secretary of State's letter, the inspectors report, in paragraph, paragraph 15.125 of that report. They refer to the fact that the target at the moment

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in the travel plan that was submitted with the planning application is 47%, for sustainable travel. And obviously, the DCO has lower targets. And we are negotiating with law, the airport operator, the updated travel plan currently, and I've mentioned it before the inspector has talked about stretch targets. We are also negotiating with the airport operator, the CIS

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CRS carbon reduction strategy,

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which is awesome.

52:44

Yes. So if the notice of intention was served, those would fall away. And they are likely to be more challenging than the current DCO commitments. And I think we dipped into this briefly yesterday with regards to green controlled growth. But it may be helpful if you could just set out in detail what it is, and how, what the difference between what's delivered by those conditions and what delivered by green control growth so that we can understand what the concern is.

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So that'd be, I think, a very useful document to have, because then can understand how it could potentially be woven together. If we need to do that.

53:25

Can you do that for deadline six? Thank you.

53:30

Mr. Henson. Thank you, Madam Tom Anderson to the applicant. Can I just invite Mr. Day at this point is to respond to a couple of the comments that Mr. Gertler made. Yep, it will assist. Thanks. Yes, Mark, say on behalf of the applicant, just briefly, I'm sorry to pick up on what might seem like a slightly semantic point. But it's the limits that are secured within GCG which are lower than the targets that were within the P 90 and travel plan. I think we talked yesterday and initial seven about the framework

travel plan that would be secured through the DCO, which itself would have targets that would need to be more ambitious than those limits. My understanding of the current DCO drafting is there's a requirement for that travel plan to be approved by Luton Borough Council prior to notice being served under Article 41. The same would go for the greenhouse gas management plan, which would act in the same way as the carbon reduction strategy that Mr. Gowda referenced. So would a potential way forward to manage this concern from both local authorities point of view that sees things are rolled over? Could the framework travel plan may be updated to reflect that freight the time travel plan that's consented under the 19 million per annum and show stretch targets? Would that be a way of addressing it? I think that's probably something we'd need to respond on in writing, if that's okay, we probably don't have the right people in the room in terms of that's fine. And I realised that again, you know, lots of things we've discussed. We were having these discussions yesterday, so it's fine.

54:53

Okay.

54:56

In a way that's almost covered the next question that I was going to raise which was about

55:00

Rolling over of conditions

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and whether or not there, article 44, as we said, it effectively wipes out those concepts and whether there were conditions on those consents that needed to be rolled over onto the face of the DCA or managed in some other way. And obviously, the inferences, you're still reviewing that situation. Mr. Owens. Thank you, Robert Bravo. And for the joint postal authorities, we are looking at that as part of considering the applicants rep 5098 documents. So specifically on conditions because we weren't able to give them

55:35

consideration before the document was submitted. Thank you. Thank you. So anything else that anyone wants to raise with regards to article 44?

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Then I'm happy to leave and move on to article 45. So I'm gonna start with article 45. One and then I'm going to ask you to do the presentation about how it all works with hillside because I think that more relates to article 45. Two. So article 45. One has the effect as currently drafted of designating all the land within the red line as operational land for the purposes of the 1990 Act. Can I just confirm that's correct. That was what was

56:11

Thank you, Madam mister ability Farah mesh for the applicant? That's not the intention, or are we? No, it's not the intention. But is that fit in practice? Correct. That's not our view, madam. Okay. So you want to explain to me why that's not your view. Of course. Mr. Fuller, see if our mesh for the applicant, the



provision in article 45, one has to be read alongside section 264 of the Town and Country Planning Act. The default position under the Town and Country Planning Act is that land is not operational land unless one of the exemptions apply. One of those exemptions is that there is a specific planning permission in place.

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The effect of article 45 One is to treat the grant of development consent as a specific planning permission for the purposes of section two six for Section 2643 B makes clear that the development which is the subject of a specific planning permission,

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it the effect of the extension of operational land applies to development which is required for the purposes of carrying on the statutory undertaking. When article 45 one is read together with section 264. Our view is that

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the definition of operational land would apply to the specific development which is required for the purpose of purposes of the statutory undertaking. Now, in practice and to very directly address address the point, madam, the effect of that means that for example, you wouldn't be able to exercise permitted development rights in respect of airport operational land over Wigmore Valley Park, for example, because the specific development that is given consent under the DCA only authorises airport activities over the operational airport. What we are intending to do in the next iteration of the draft development consent order is to add wording to make clear that it's specific development which would otherwise be caused by section 264.

58:28

Which which applies article 45. One just to provide comfort, but the intention and why it's so widely precedented is that it attaches to very specific development, which is granted a building consent. And then when you read that, together with subsection three B of 264, it makes clear that it attaches to only those works. So just for the benefit of everyone in the room. This relates to concerns in particular the thing raised at the open floor hearing and it's subsequent hearings, that because the red line boundary includes with what the replacement with more Valley Park that because of the draft it the way that article 45. One is drafted that could be at some point in the future considered to be operational land. And therefore, all of the issue. All of the sort of rights and regulations with regards to Town and Country Planning Act general permitted development order Part Eight, particularly Class F would apply. And so I think there was a concern, particularly by local residents that at some point in the future, regardless of what was said in the room about the intention that was you know, with more Valley Park in perpetuity going forward, there could be an opportunity that the airport may want to use it for some kind of operational purpose. I don't know if Mr. Owens wants to respond on behalf of the joint host authorities.

59:43

Thank you, Madam Robbie. Oh, and on behalf of the joint postal authorities

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think the only thing we need to say really is that we will look forward to seeing the further drafting that Mr. Petit AirMesh mentioned

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But I mean, as he said, article 45. One is itself well precedented. And I agree with the explanation of its effect that you've heard. It might, however, be helpful to deal with a concern you've mentioned, or some sort of verification tree slash explanatory wording to be added to it. We'll have to see what the applicant is able to come up with. And we will then comment on that. But we don't have any any major concerns about this. It is standard, but given what's been said to be more valid part, then it may be that that can be clarified a little bit. Thank you.

1:00:36

That regrets, I'm just going to tend to my college tech, we've covered everything I wanted on that 45 one we have. Yes, I just want to

1:00:46

clarify in terms of the reference to the permitted developed rates, it might be just worth me, stating what Class F and a party it states, the carrying out on operational land by relevant airport operator or his agent of development, including the erection alteration of Operation building, and that will be permitted in connection with the provision of services and facilities at a relevant airport.

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Would that be meriting you expanding upon

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clarifying what that would be and taking that into account in your drafting of what the provision of services and facilities would at an airport would be? And how that would be relevant to parts of the order limits such as the replacement area of open space? And why that

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is why that wouldn't be needed in that particular area.

1:01:39

Thank you so much for Latif RMS for the applicant will take that away and consider the point. But I would just re emphasise that

1:01:49

the facilities in question in class that would not extend to Wigmore Valley Park and again, we'd emphasise the need to read what is intent, what is what is secured under Article 45, one with the specific wording of section 264, subsection three B. And so Class F would not apply to Wigmore Valley Park, but we've certainly heard the point and in the wording that I mentioned that we'd be including will make sure that it's abundantly clear that that's not what is going to happen. Yeah, I think it might be worth given there. There is it's a significant concern for a number of interested parties. also expanding

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your explanation within the explanatory memorandum, which currently is two paragraphs on this matter. So I think, again, anything that can help provide a paper trail that will reassure those concerns would be gratefully accepted. Mr. Chairman, I noticed you have your hand up. Thank you, Madam Rubio and for the joint host local authorities.

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It occurs to me that there may be another solution here. There's always a danger in tinkering with a very well precedented provision, which I shall the applicants see. And therefore, given that

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the area of concern is not intended to be future operational land, is it not possible for the provisions of article 45. One to have a carve out to say that they do not apply in relation to the replacement when with any part because that there isn't intended to be operational land of the future. Therefore, it would seem to be perhaps a better approach just to have a carve out included in article 45. One rather than trying to include sort of explanatory wording as to what the impact, obviously is without a carve out. Yeah, I mean, the other option that we thought maybe a solution would be the provision of a plan that shows the operational land and excluded, like a blue line within the red line that says effectively anything when the blue line is operational land, anything outside of that is not operational land. And that could be referred to in the drafting. But if you could take these thoughts away,

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that would be it'll be grateful and then come back to us. I think that's the best option.

1:04:02

Okay, I'd like to move on to article 45. To Firstly, thank you very much for the plans provided a deadline for which is rep 4073, which overlay the green horizons Park and the DCO schemes to help us further understand the potential interrelationship between the two schemes, because this was the reason we couldn't really progress this discussion. At the last issue specific hearing was it was really unclear as to

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us as the examining authority as to how, what it was you're actually asking for and how it actually all worked. So thank you very much for providing that that does provide a clearer context in enabling us to understand how the two work together. So I'd just like to start by asking the applicant to provide a brief overview of the drafting of article 45 to including, obviously, because you've made very specific references to in the explanatory memorandum how the hillside parks decision applies. Thank you.

1:04:57

Thank you, Madam Tom Edison's the applicant and Mr LISI Tara Michigan

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In a comment on that specific point, but

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I think just for the avoidance of doubt, it may help just to confirm that

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there's a clear difference between article 44 and article 45. Article 44 is if you'd like extinguishing permission, article 45 is not seeking to modify or disapply the green horizons permission at all.

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It's to deal with the interface between those two permissions and Mr. Lucey farmers can comment more on the on the legal matters related to that

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Mr. Felicity Farrell mesh for the applicant on the specific point that you've asked us to present on in terms of the hillside judgement. Madam.

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As you noted, the relevant provision is article 45 subparagraph. Two and the judgement itself relates to planning permissions granted under the Town and Country Planning Act, and the effect of the judgement is that unless there is express provision otherwise, where development has taken place under one permission,

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whether another subsequent permission can be lawfully implemented depends on whether it is physically possible to carry out that development. In light of what has been done under the first permission.

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The applicant considers that there are two particular cases which give rise to the need to address it in the draft development consent order for the proposed development.

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The first is we're planning permissions conflict with the DCO.

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And the effect of the provision is to make sure that both developments can proceed without the risk of enforcement action being taken.

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The second is were planning permissions which conflict with the DCO are not intended to prevent the exercise of the powers under the order. And so, the effect of subparagraphs

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two and three together are to deal with one the situation where enforcement action may be taken in relation to the Town and Country Planning Act, and the other where enforcement action may be taken in respect of the draft and relevant consent order. Where there is a planning permission in place, which

is authorised particular activities, it's considered necessary for certainty and to avoid any further enforcement action that that can lawfully proceed,

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and that it's not subject to an unintended risk that it's

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subject to enforcement under the Town and Country Planning Act. So I do just also want to say that we acknowledge that hillside is a case about conflicting planning permissions under the Town and Country Planning Act. However, we think the risk arises here, notwithstanding that one of the developments is posed to be consented under the drug development consent order itself. And we'd note that it's now being addressed in other similar orders, Transport and Works Act orders have started to grapple with this hillside issue. And the one that which we can put in our written submissions, very specific submissions, but the Cambridge South Transport and Works Act Order addresses this very issue as well, where there were existing planning permissions for AstraZeneca and other research and development sites. And there was a concern that they would be subject to enforcement action under the terms of their permission, as well as conversely, that Network Rail may be subject to enforcement action because of the activities that they were carrying out under their permissions. So what this What article 45 is seeking to do is to provide certainty for all parties that were there is a planning permission in place. If the conflict arises as a result of works carried out, it's to be disregarded for the purposes of enforcement action, both Under the TCPA and the Planning Act.

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And I'll just make one concluding remark as well, on top of what Mr. litty foreign mission said it's tremendous and speaking for the applicant. And it's merely to say that the reason that we have included this provision, particularly in the case of green horizons Park, of course, is that

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at this stage, we are seeking permission for them a consent order we we recognise that that's a matter for the Secretary of State

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to decide and where it would be the case that the development consent order was not granted consent, then, Luton rising as the promoter of the green horizons, Park permission would clearly want the ability to take that permission forward. So we're looking to

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preserve the ability to implement both schemes potentially depending on what the future might hold. So that's why we've drafted a provision to to deal with this interface given the

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degree of future uncertainty over over what may actually come forward. So hopefully that

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It helps me explain why we've included this provision.

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If I can go to Mr. Owen on behalf of

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the joint host authorities, but obviously, particularly in borough councillors instance, certainly wants to say with regards to this matter.

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Robin for the joint posts, local authorities.

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We don't object to article 45. In principle, we understand why the applicant wishes to include it, given the hillside case. But again, we're concerned to make sure there are no unintended consequences or gaps in the in the resulting planning regime, specifically so far as enforcement is concerned. And

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I think that

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was less to

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do the the interface with the law Planning Commission given that's dealt with article 44. It's more concerned with other Planning Commission's and particularly green horizons Park, I think I'm going to ask my colleague Mr. Leary to come in to just explain

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where we think at the moment, the drafting isn't quite what it needs to be and we can't we'll see a gap arising which could

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present problems with enforcement, Mr. Leary.

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Thank you. Good morning, Jonathan Neary for the hostile authorities.

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I think the administration said we we understand the

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intention. But we're just concerned to ensure that there aren't any adverse consequences. It's quite a challenging scenario where potentially you've got one or the other of the existing permissions and green horizons and then the DCO sat on top of those.

1:12:01

I think

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the main point that is sort of causing us a little bit of concern is in relation to paragraph two c,

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where it states that any conditions on that planning permission that are inconsistent with this order, or the authorised development ceased to have effect

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from the dates that the authorised development is begun.

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The point of importance here is that the point at which the planning conditions become effectively unenforceable is not the point at which an inconsistency arises, whether that's through the construction of the authorised development or all the exercise of some of the function under it, that is at the point at which the authorised development is begun.

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This order doesn't, I think define begun in Article Two, one, which leads us to referring to Section

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155 of the 2008 Act, which tells us that

1:13:18

development begins on the day to which material operation is carried out. Material operation is a very broad concept. So, in essence, if a very relatively minor act of implementation of the authorised development is undertaken, it has the potential to render unenforceable conditions of a planning permission, whether or not they are in fact inconsistent, and then that sort of leaves in limbo,

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the status of that planning permission if there is any breach.

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So,

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I think we've all sort of made the point now, and we can certainly look to expand a little bit more in our

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written submissions after this hearing. But we'll just sort of invite the applicant to have a think about not just the space factor here, but the time is quite important.

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Okay, thank you very much. So, I think the problem concern I have it seems to be a very complicated way of trying to achieve something and there's a lot of opportunity particularly it's it's quite a powerful article.

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And there's a lot of opportunity for potentially non compliance with conditions that were considered to be very important when their green horizons Park consent was granted. I just want to check something with Mr. Gardner. I do apologise but you are our font of all knowledge and things Layton

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was the greenhouses Park application is subject to an EIA

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David Gertler falutin Borough Council, yes, it was ELA development. So you see, the concern I have is that some of those conditions could be very important to securing

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or mitigating something that was a significant effects in the environmental impact assessment. And therefore, you know, this article effectively would enable a developer to potentially not comply with those.

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And whilst I'm assuming that, obviously want everyone would want to operate on honest and aboveboard, but I mean, it could be that it could just choose to build out elements of the scheme, and not the element, not the mitigation that was necessary to comply with that, which is why I'm struggling with this. The other reason that I'm potentially struggling with it, I understand why, you know, you've already got consent for green horizons park, you want there is a marriage between the two, and they sit nicely together in terms of elements of it. But it would, given that Lucien rising is the applicant on green horizons park as well, to just apply to vary that consent, because as I understand it, even if this article goes ahead, there's still because going back to the fact that with the hillsides judgement, the DCO consent would build on bits of the green horizons Park, you're going to have to apply to vary that consent anyway. So for example, I believe you're moving, wanting to move a hotel that's consented under the green horizons part scheme, you're going to need to move carpark under the green horizon scheme and you're skewing the business units. So would it not be cleaner and neater just to apply for planning reapply for planning permission and get what you want in the to sit together?

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Sorry, David Gertler Felician Borough Council.



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Before Mr. Henderson speaks, the green horizons Park was a hybrid planning application. Yes, so there were full elements so the access road was full.

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Fat would disappear under the DCO because their access road is slightly different.

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The park was full. But then

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other than one major building, which is shown as the top blue building on their plan, it's a technical service building. For low the airport operator that was a full element that does get twisted in this scheme. In the DCO. As far as Luton Borough Council is concerned, there is another team now working on the green horizons park development, they are looking at section 96 A applications Lewton rising we'd like to provide early at the moment there are planning conditions pre commencement planning conditions that prevent the development being implemented until certain things are carried out one of which, and they could be considered onerous. But some of what loot and rising we'd like to do for instance, delivering the skatepark and the children's play area, they are on virgin territory. And to carry out the contamination testing which is a pre commencement condition before those are delivered is probably onerous. So they loot and rising will be applying to the Council for some section 96 as to various some things, they will also be looking at a section 73 I believe, and section 73 for members of the public is a variation of the planning permission. And then most of the business development or business part development was outline. So the offices which you've noted skew,

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that was outline that is required. It's phase one of the outline permission, it is required to have submitted outline, reserved matters for phase one before the 28th of June 2024. So we Luton Borough Council would expect if loosen rising wish to keep this permission alive.

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They need to have implemented it before that date the 28th of June, they also need to have submitted reserved matters for the first phase of the outline planning permission. So because the DCO obviously takes up a significant amount of my time, I'm no longer involved with green horizons Park and there is a different team working on there. So would it be possible to help aid our understanding to have what you've just set out? In submitted into the examination and maybe go away and coordinate with green horizons Park people so we can actually have an understanding of that flow chart and those timescales and how it all work? Because that would

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would be helpful. I don't know if the applicant wants to come back on any of the points just raised.

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Mr. Henderson Thank you, Madam and thank you to Mr. Gerda. He said in a lot more detail what I was attempting to say at a high level which is that were

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the parallel

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matters associated with green horizons are lying dormant as Mr. Gupta said there's there's work going on in parallel to address the sorts of matters that you've raised.

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We are not dealing with

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We are not modifying the application with with this DC application, as we said. So what we've drafted as Mr. Lucey fire images laid out is a mechanism to ensure legally

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that we don't find ourselves in, like hot water because of the conflict. But as Mr. Carroll has laid out, there's a separate parallel workstream going on to, to address the points that you're talking about. So

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we can look to help to contribute to the to the note that Mr. Gillis have been tasked with is really helpful because it's a safety concern. I have my colleague have looking at the drafting of this is obviously

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on the face of it, there's a lot in theory and practice. So what you're saying to me in practice is it's all gonna be fine, don't worry about it, in theory, could give quite a lot. And there could result in his problem, as I say that conditions that were required to mitigate stuff that was highlighted in the EAA are not enforceable because of the way that this is drafted.

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I'm just going to check my colleague if there's anything he wants to ask.

1:21:15

think one thing that we would really like to see the clarification on is we understand the implications and why this has been put on. But we really want to understand the necessity of it for the proposed development. So for example, the scheme layout plans that have been submitted actually have areas which will be implemented as part of the green horizons Park. So that's already set aside within the order limit. And also as well, the relationship you've mentioned, the experts provision, which is in paragraph 68, of the hillside judgement. But the beginning of that paragraph makes it clear that a failure or inability to complete a project or which planning permission has been granted does not meet development carried out pursuant to the permission unlawful. So there is a potential that you may just not be implementing certain aspects from one permission, such as the green horizons power, which

you could lawfully do. So why does that need to also be incorporated part of the hillside judgement and why that makes it physically impossible to develop an eight it's, it's we just need to understand the elements that's being proposed here as to how it could get to a situation where it would be physically impossible, which is the test. And that's really what we're wanting to seek the clarification why it's relevant for the proposed development.

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Mr. Owner, because he you have your hand up. Thank you, Madam Robertson, for the joint host local authorities,

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I can understand the concern in principle with the possible effects of article 45. Given that, as you mentioned, it's powerful. Its broad, and its its generic in its provision and effect. And

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it may be helpful to say just this for the applicant to consider, which is whether

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it could be qualified to include some sort of mechanism

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that would come into effect in the event of an inconsistency that is identified with the with the purpose of the mechanism, making sure that before

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conditions under to see were rendered

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ceasing to have effect,

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the local planning authority could certify that there was an effect alternative means of dealing with dealing with the impact in the environmental impact to take the sort of EIA concerns you have because at the moment, it's automatic, isn't it in its in its operation, with no safeguards to deal with any gaps. So it may be that the applicant could consider adding some procedural provisions that would allow a role for the relevant local planning authority to certify that the

1:24:08

matter concerned is can be dealt with in another way without losing any protection. Like put it that way. I think I suppose the purpose of what I'm saying is, this provides us with an opportunity to further explain what the concern was now understanding that context with the plan. I think if you could possibly just take it away and see how either through maybe a more detailed explanation or through tweaking the drafting those concerns can be addressed by what's been delivered with this article. I think that would probably be the appropriate way forward. And if we could also ask you

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the reason for that is in five minutes, we're going to have a fire alarm test. So just That's why my alarms just going off. So just remind everyone and so, given we're coming to a dream to close on Article 44.

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What we may do is just have a

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A break bit just before the fire alarm. But just before I can do that, could we have a copy of the order that you refer to? Which was the order for Cambridge, South transport works at all just came out. I'm just going to check with my colleague whether or not there's any other point you want to raise?

1:25:17

No. So I think that given there is gonna be fire alarm test, and we'll get disrupted anyway. Why don't we call it a 15 minute? Sorry. Oh, sorry, if I could just very quickly respond to Dr. Hans point that was carried over from the hearing yesterday on overflights. Just to confirm the figures you referenced 16.7 and 16.69 showed banded contours for the number of overflight. So they show ivinghoe Beacon moving from the 2250 contour into the 50 to 100. Comfortable that could, for example, be a change from 45 to 55. That will confirm the number of overflow. So that receptor and we'll include that in the summary note from yesterday's hearing.

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Thank you, that's helpful.

1:25:58

Okay, so the time is 1056. I suggest that we take a 15 minute break and we come back at 10 past 11 If that's all right. Okay.