

# CAH1 1

0:03

Well, good evening everybody. It is now

0:07

at 6:00. So compulsory acquisition hearing one is opening. Can everybody hear me

0:16

good?

0:18

It's looking like most of the participants in this session have.

0:23

I've been at least one, if not more hearings. So we're going to try and keep the openings as brief as possible. But there are still, I'm afraid, some that we we have to do and

0:42

a case team has the live stream and recording stuff. Yeah,

0:48

I'd like to welcome everybody to this compulsory acquisition hearing concerning the application made by Associated British Ports for an order granting development consent for the proposed Immingham Eastern Rd terminal.

1:02

My name is Graham Gould. I'm a chartered town planner appointed by the Secretary of State as the panel lead for the examining authority,

1:11

Mr Bradley, could you just briefly introduce yourself? Stephen Bradley, examining inspector also appointed by the Secretary of State Service Member of The \*\*. This XA

1:24

Mr Harshman.

1:25

Good evening. Mark Harrison, chartered town planner and examining inspector appointed to this XA panel.

1:38

We're also supported here this evening by

1:42

Miss Robbins, who is Case Manager and Miss Wetherby, whose case officer. In addition that there are also the audio visual technicians from Spark

1:53

who are assisting with the live streaming et cetera,

1:58

and I presume everybody's got their devices to silence.

2:04

I think you will not be aware where the toilets are. If for any reason an alarm sounds, it will require a certificate and then await the instructions

2:17

of the hotel staff as to when we can

2:21

come back into the building and we gather outside in the car park area.

2:32

Ken Case team, have we got anybody online for this hearing? No.

2:40

2:59

As is normal, at each time a representative from the applicants team

3:07

beats, could you please give your name and who you're representing? Although that should in this instance be fairly obvious.

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But again, if you just keep to the normal etiquette for doing that,

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I don't think I need to spend any real time going through the General Data Protection Regulations. I think everybody's aware of what's been said

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once or even twice in the last couple of days

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in terms of introduction from our team.

3:55

Mr Strong, can you indicate who you think is likely to be participating in this session?

4:02

So good afternoon, James drawn for the applicant.

4:06

So yes, I I'm instructed by Brian Greenwood of Clyde and Cos you know who's ohh who was to my left. But beyond him, I have Greg Lacey, who's the head of property, Humber of the applicant

4:21

then pulled Durant, who's the property manager, Humber.

4:27

And beyond him, Dan Keyes, who is a partner at Clyde and Co in Property and they're all here to assist the examination as necessary.

4:45

Thank you.

5:04

Turning to the purpose of the hearing, it will follow the the agenda that we previously published.

5:11

5:14

Could the applicant arrange for the agenda to be displayed on screen please?

5:35

The purpose of the hearing is to hear the applicants case concerning compulsory acquisition powers

5:42

with particular regard to the legislative, the legislative, legislative and policy tests relating to the need and proportionality.

5:51

Umm,

5:52

for the powers that have been sought,

6:05

I should think that is probably all that I need to say in opening. So turning to what is agenda item 3, where we've asked the applicant to summarise

6:19

your case. Now, were you intending to do one summary going through each of the

6:25

eight points, or are you gonna go point by point

6:30

entirely in your hands?

6:33

So if it's convenient, I thought that I could probably cover in one go a gender items

6:42

A to F

6:46

relatively briefly by reference to some documents.

6:51

Item G is where those who are sitting to my left may be able to assist you

6:57

and I. Similarly, item H probably a matter for Mr Greenwood, but

7:03

that is one way of doing it if you're happy with me for me to take it in that way.

7:11

So, so, so far as items A to F or on the on the agenda are concerned, the principal document to which I refer the examining authority is APP-017,

7:30

which is the applicant statement of reasons accompanying the proposal for compulsory acquisition

7:40

within a P017.

7:44

Turning to UM,

7:47

the issue of the purpose for which the compulsory acquisition powers are sought and whether that will comply with Section 122 of the

7:56

Planning Act, the the purpose for which they're sought is clearly set out in the

8:05

document that I just referred you to, the statement of reasons, there's a description obviously

8:10

of the scheme itself, which you're very familiar with and the order land in Section 3. And I won't unless you ask me to take you through that because I know you'll be very familiar with it. But turning specifically to

8:23

section 122, subsection 2 of the Planning Act 2008,

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that is principally dealt with in Section 5 of the statement of reasons

8:35

and within that statement of reasons, the test set out in section 122, subsection 2

8:44

is dealt with a paragraph 5, point 2.2,

8:51

where the three options for where compulsory acquisition may be sought. The conditions for that

9:00

and in the subsequent paragraphs 5.3

9:07

of the Statement of Reasons, the meaning of required for the development is considered in the context of relevant case law

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and guidance,

9:18

and that follows through to section 5.5.

9:23

And in summary, so the compulsory acquisition powers are sought to enable the construction of the proposed development

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which falls within

9:38

the scope of the project. And sorry, the proposed fell into the the order for the proposed development

9:48

and

9:51

slightly out of turn, but item D on the agenda whether there's a compelling case in the public interest for the compulsory acquisition

10:03

and whether any public benefit would outweigh the private loss. That issue of what constitutes compelling case in the public interest is dealt with in Section 5.5 of the same document and then reference to the Department of Communities and Local Government guidance. Notes relevant to compulsory acquisition is at 5.6

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and then turning to the application of those tests to this particular scheme.

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I've referred the examining authority to section 5.7, which deals with the justification for the exercise of compulsory purchase powers.

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The basic position so far as the applicant concerned is the land over which powers have sought is required for the development of the proposed development, that of, of the facility the I at

11:00

or is required to facilitate or it's incidental to it.

11:06

And so I can go through that in more detail, but you'll see that set out in some detail in the statement of reasons

11:15

and

11:16

the compelling case in the public interest is dealt with at 5.7 point 6.

11:22

But in that in of course hinges on the case made for the construction of this railroad freight facility in the Humber Estuary and matters about which the examiner authorities already heard in meeting the policy aspirations of the

11:42

National Policy Statement for Ports in relation to providing an effective, efficient, competitive and resilient UK railroad Freight sector.

11:54

And there is consideration of the policy background in five point 7.9

12:02

and the way in which this facility would meet the various strands of government policy.

12:08

And I won't take you to the policy itself because I know we've already examined it, but there's clear support and for national infrastructure of this kind

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to be provided

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for

12:24

this sort of development.

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That of course is subject to satisfying various other

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requirements which have been considered at the examination without going over those, but the in in essence. So assuming those other matters are met, the the short and straightforward submission is there will be a compelling case

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for the project and the compelling case for the acquisition of the land required to deliver it.

12:56

And going back slightly in the agenda item, whether all reasonable alternatives to compulsory active acquisition have been considered in the same statement of reasons,

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you'll see that there is a an assessment in Section 7

13:15

of communications and negotiations with owners and occupiers with an interest in land or rights over land

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as to, for example,

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agreeing terms rather than use of compulsory acquisition powers. You'll hear a little bit more about that in a moment, because

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in in most respects we understand terms will be reached in any event.

13:41

And then agenda item C reasons why the power sought to necessary and proportionate.

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That overlaps with many of the matters I've dealt with in Section 5 of APP. 17

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But you can see that this ties in with the assessment of the policy support for the project that I've already referred to some references, but is set out in Section 6.

14:17

And that draws both on national policy,

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marine policy and of course, local policy in the various sections.

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And after the extensive consideration of

14:37

the individual negotiations. Turning to item

14:42

F of your agenda, sorry, I'm taking them slightly out of order, but I'm covering them at least.

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The question of assessment of the compulsory acquisition as against the European Convention on Human Rights is addressed in detail in Section 8 of the Statement of Reasons.

15:04

But in essence, the relevant legal tests for acquiring property rights

15:12

are, under the article, one of the first protocol of the Convention are addressed.



15:17

Is it in accordance with the law, which of course it would be under the order? Is it necessary in terms of interests? And that coincides with the policy case that I've already spoken to you about. And is it proportionate? And that deals with the question of whether the land is required, what efforts have been made to acquire it without compulsory acquisition and of course, the ability to claim compensation for rights that are compulsory acquired.

15:46

And so in short, we say that the full consideration has been given and if the order is made with the compulsory acquisition rights, it would be entirely compliant with the European Convention.

15:58

And that leaves over, I think item E of the agenda, the availability of funding. And there is separately A funding statement that's been provided to the examining authority dealing with the availability of funding to meet the compulsory acquisition

16:18

that's being that's proposed. I've temporarily lost the reference to that in the

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documents, but I may be able to provide that shortly, and so unless unless you would like me any more detail of any of that, there's there's much more detail and student reasons. In the absence of any specific representations on any of those points,

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I was going to leave it there

16:46

and then turn to agenda item G to give you any broad update on specific site negotiations. But you may have some questions.

16:58

Thank you. Mr Drawn

17:00

the only real question I think I've got at this stage is

17:05

there is in in terms of funding,

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there is reference within the statement of reasons that the deals will sorry the the funding statement side of things. But that is based upon I think accounts that go back to 2021. If I'm a more rightly,

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it might be helpful if we could have an update of where the company is with this is accounts and the funds at the moment

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just because there is a year that has passed since

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the the funding information

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was crystallised when the application was made. I presume the 2222 account, 2022 accounts

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have been finalised and therefore that can be a reiteration. Can be the funding situation has not changed, Yes, so we can, we can arrange that I, I, I it may be and I don't. It depends on the timing that because of updates in relation to the compulsory acquisition and the extent of which compulsory acquisition rights are still required that the need for funding, what's left is much less. In any event, we can provide an update on that as well coincidentally

18:27

with what you've requested.

18:30

Yeah. And sorry we don't, yeah, just the most up-to-date cause because I don't know what the the company's financial year is because they don't all necessarily run to end of March, beginning of April. If there are an end of year then it we might be able to sink. But yes, and APP-018 is the funding statement. Sorry, it was sequential, but I've had lost the reference.

18:55

But yes, I will do that for you

19:07

and subject to that I would

19:10

look to my left to give you any help that you want on by way of an update on site specific negotiations.

19:19

Yes, thank you. I think really

19:22

the the update needs to focus upon any particular issues there are with parties rather than where you've reached agreement

19:32

fire recall correctly you've at deadline two or three, whichever one it was you provided an update at

that point. There were a few I think parties where there were still matters to be resolved. So I think if we can focus on those cases where there is still outstanding, what the particular issues might be and what the sort of time frame is in terms of trying to conclude those negotiations.

19:57

Thank you, Sir. Good evening. Brian Greenwood for ABP. And so you're you're quite correct, we have given you updates and you you will recall that I SH one I did give you a a positive and optimistic indication as to how I hoped matters will be proceeding and you will be happy to hear that I was correct in that optimism. You've you've assisted me in no end, Sir, because I can shorten proceedings, because in fact there are only three particular.

20:31

Property interest that I, today, this evening, need to draw to your attention. All of the others have fallen away by way of agreement. I should emphasise, Sir, that this is a unique CPO provision or requirement in that everyone, all of the bodies concerned are tenants of ABP, So we are not actually seeking compulsory acquisition powers for external parties and third parties. If I may just go through the three

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and let me start with one myself, and then I will ask those to the left of me to speak. We do need to secure consent from the Crown State

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with regard to both

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payments. With regard to dredgings, which don't really concern concern this matter, this is a standard negotiation that AVP as leaseholder has with the Crown Estate as the freeholder, the bed of the river.

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In addition, we are also having to secure their consent for the works

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in the marine environment. Those negotiations are ongoing. They have not been completed, but the negotiations have reached the stage where we do not anticipate any difficulties and I'm hoping a

22:00

that in very short order we will be able to indicate that we have secured the necessary approvals.

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So that

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that then takes me to to the two other items. The first one, and I may ask Mr Durant or or Mr Keys to deal explain the current position concerns. Drury's PK Construction and Malcolm W

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You will have seen their buildings during the site inspection yesterday. So they are tenants and subtenants within the port carrying out works

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within the port for port users and do not wish to relocate and AP does not want to relocate them. The only reason that we have not been able to complete negotiations and I'm having to anticipate, yes Sir, is that one of the changes that I mentioned to you at I SH one regarding the realignment of the internal bridge will affect their leasehold title. And the only difficulty we have, and I shall ask Mr Darren to confirm,

23:23

is that until we know whether or not the change application will be accepted by yourselves, we cannot actually finalise the actual lease documentation. But my understanding that negotiations with all three are very positive. And Mr Durant, would you like to introduce yourself and just update the examining authority?

23:47

Thank you and good evening. Paul Durant, property manager for ABP.

23:53

As Mr Greenwood says, the negotiations with all three parties and they've been collective negotiations and discussions have been very positive to that end. We have draught leases in circulation as well. We just need to understand sequencing and programming and negotiate that agreement with the respective tenants that are there. But they are all on board and it's been a positive dialogue to date,

24:31

perhaps perhaps a difficult question because

24:38

potentially concluding that agreement is, as Mr Greenwood has explained, dependent upon submission of the change request, then acceptance into the examination of of the request. Do you have a feel for how long once those sort of chain of events have panned out, how long it might take to actually get an agreement finalised with the three parties?

25:06

Good evening Sir. Tank keys for the applicant

25:10

we as as Mr. Lawrence already mentioned, we already have a a lease in circulation with them. That's the slightly less controversial I guess element of it is pretty much settled. It's just agreeing the phasing of the works that go into the agreement for lease.

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Once we've got that phasing agreed, it shouldn't take more than

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I would say probably two months to get the agreement in an agreed form and then it would just be waiting to execute and complete once everything settled.

25:59

Just thinking in terms of where we are with the examination, sort of approaching halfway mark.

26:06

Umm

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to get all of those ducks in a row in the time available

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may be challenging.

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Are the the parties, the three parties potentially in a position where they might at least be able to in effect produce letters of comfort

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so that by the if if things haven't been concluded by the end of the examination.

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Um, at least the examining authority when it comes to write its report has a fairly good idea of the direction of travel in terms of of of what those parties views are.

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It sounds it's just possible that resolution, final resolution may not happen until just a bit beyond close examination, which means of course we don't get to see

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the resolution of of those matters. Yes. Brian Greenwood for ABP, I I'd rather anticipated that that question Sir. And certainly as I say these are positive negotiations and I am sure that we can get letters of comfort. I would hope that the process could be spared. I'm no expert property lawyer, but whether there is a way in fact that we can agree some formal documentation that gives a degree of flexibility to the tenants that may also be possible so that we can complete that

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write some prior to the close of the examination and that will certainly be our aspiration.

27:57

Thank you. Then

28:00

I think there's the one, one more. Yeah, yes, a one. One point I should say is that I believe it's my I I believe I'm correct in stating that only one party is actually objected to the compulsory purchase powers in the DC O and that one party is Volkswagen. Volkswagen occupy the western storage area, Sir, which will in fact be the last area of storage to be brought into use for the development for reasons you would have seen at the site inspection. It's the furthest

28:34

away from the marine infrastructure and I will briefly summarise, but then I will ask Mr Lacey just to give you the details. But essentially our understanding is that Volkswagen used the area for reserve car parking. Their main enterprise and storage area is at the port of Grimsby

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and they are currently negotiating with ABP with the view to securing a larger area at Grimsby, whereupon they will move entirely to Grimsby and the land at Immingham will be vacated. As Mr Lacey will explain. I think there are issues regarding making the Grimsby land available in that it is not quite surfaced and ready and negotiations are ongoing.

29:23

And

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I think it best if I leave Mr Lacey now to describe how those negotiations are proceeding and the time scale as well. This may be the one issue where we may have to retain our compulsory purchase powers, but albeit with an agreement in place, it just because of the uncertainty of time scale. But if I could ask Mr Lacey to explain

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and

29:55

hi, good evening. Greg Lacey had a property for the Humber on behalf of ABP, the applicant,

30:02

I think Mr Greenwood has set out the position quite well. I think to build on that. We have a robust and very positive relationship with Volkswagen Group, our largest automotive customer on the Humber and we're in regular dialogue with them around this matter. There is an absolute intention for them to cite all of their operations out of Grimsby. They use the Grimsby terminal for vessels and also the the in dock area.

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They have an ongoing lease renewal process at the moment and that is on best part of around 80 acres.

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So we will look to

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draw heads of terms and present that to VW next week.

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The VW quite complex organisations deal as you can imagine and this will all go through the German border approval process to which we imagine will take us through into the later half of of Q 1/20/24.

31:09

We the the requirement is for 120 acres in total at Grimsby and that requires the need to service land at ABP's land holdings known as Grimsby Automotive Terminal which is located off Moody Lane in Grimsby. So that that is in the business plan to service that land for Volkswagen once terms are agreed and that was contractually obliged. So we we only anticipate that Imagine is required in the short term before we prepare that land at Grimsby and then that will be a

31:43

the long term commitment from Volkswagen at Grimsby. Grimsby is very much

31:48

their logistical solution. All of their transporters exit the the Grimsby area for onward distribution throughout their network. So we're we're, we're quite confident in the position it's it's a timing issue effectively is why as Mr Greenwood quite rightly says, we still believe we need, we need the rights albeit it's very unlikely they will be acted upon.

32:15

Jumping in, if I may,

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do you envisage A2 stage process with an agreement for lease

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Greg Lacey on behalf of the applicant ABP?

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Yes, I think we anticipate a very straightforward renewal on the existing land under their existing Grimsby footprint and then an agreement for lease for the additional land area on Grimsby Automotive Terminal. So we'll have a short term extension on him in game and then an agreement for lease conditional on the completion of the landlord works at Grimsby Automotive Terminal.

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Do you happen to know whether the signing of the agreement for Lisa will be a matter for the German border or whether that is delegated to VW UK great legacy on part of the applicant ABP? Yes, we anticipate the agreement for lease will require German board approval as well.

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Will it be possible to at least get something from VW to indicate that,

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subject to matters being resolved in detail, that at least in principle,

33:45

Umm.

33:46

They they expect that a solution that meets their requirements can be achieved?

33:52

Umm

33:54

is is that going to be feasible

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correctly on behalf of the applicant ABP.

34:03

We only have one solution that we will be presenting them as part of the head to terms and and the agreement going forward and that is the existing land at

34:13

at Grimsby and the additional land at Grimsby automotive terminal that effectively solidifies the offer and the land

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we want know if they've got approval until early next year

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and

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I think we're fairly confident that that will be the defined route and and that's what satisfies VW through the conversations we've had over the course of the year. You know they're they're clear intention is is to operate out of that but they they still have to go through the formal approvals process. It may then be necessary for the examining authority as we get towards our final deadline to raise issues or questions of parties that we direct something to the table to ask them what they consider the situation is and to

35:06

because as you say they are the only object. Well, certainly, yeah. They have definitely couched their relevant in in in objecting terms and and we will need to know as we write up the report whether we have

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well we will have a live objection. I think that that sounds as if that will be the case, but whether it's a

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a a strongly held objection or whether it's one they think they will be able to move on in due course.

35:52



This is from all Mr. Green, there seems to be a little bit of dialogue changed. So we'll investigate as to whether they, they might be able to provide some information about that, whether it's a conditional objection subject to approval, their own approval process because that might provide you that these some context of the type that we've been explaining and we'll see if that's

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that we can take that away and see if they see if they're amenable to that.

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That's

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yeah, I'm told that's

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something we will explore before. You

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need to write you to yourself. Let's see if we can take a proactive step, though.

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So it is really just those three parties, Crown and the three existing tenants who have an issue in terms of their proximity to the bridge and resolving that and then VW just on the Crown point.

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37:37

In in terms of time scale to get resolution because there there is potentially A slight complication that has arisen literally overnight in terms of

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amendments to IoT jetty order limits potentially expanding the amount of land affected by the crown.

38:03

In terms of resolution,

38:07

how, how speedily do you expect that they will they will be able to issue their

38:13

and consent Brian Greenwood for AVP. So as far as the formal consent from the ground state as the freeholder, I would expect that to happen fairly quickly. I had actually hoped it would have happened some time ago and indeed pins guidance actually urges these sort of consents to have been dealt

with earlier. Unfortunately, despite Urgings, that has not been possible as far as the change is concerned and as you heard from Mr Strong

38:47

this afternoon or this morning rather, we may need to make a slight adjustment to the boundary at the way that works. As far as payment to the the landlord, it's dealt with by a unit price for the amount of material that's going to be taken out that will need to be assessed. But the way the negotiations will operate is that ABP will keep the Crown state fully informed. So they will know that an either or situation and then the unit is fairly standard and agreed and it's just

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the question of when we know where we are then that unit is charged.

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So that should be relatively straightforward, Sir.

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I think all we can then say to you at this stage is encourage you to seek to get agreement as quickly as possible. I know from other examinations

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sorting out kind of state consent can take time. It then does create issues and potentially, I suppose the Secretary of State for transport has then got to try in during the decision period to see whether or not he or she and can get some resolution, because it's a matter that needs to be.

40:09

Sorted out before an order is is made and and it it it. I think it. As I say in other instances, it has caused difficulty.

40:20

Yeah, Yes, Sir. Brian Greenwood for BP, if I could just say so that in fact ABP has a good relationship with the Crown Estate and in fact, meetings with the Crown Estate are relatively regular. So this is not something that's out of the norm as far as what we're trying to do.

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It's just that we're having to go through the ground, states, external lawyers and that's just taking a little time, but but we are getting positive assurances from their lawyers.

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41:22

Thank you. Well,

41:23

in giving your, your summary and then the explanation of the three outstanding matters you've addressed, the matters that we wanted to cover this evening

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that's been of assistance to us.

41:39

Is there anything that you wanna raise on compulsory acquisition type matters with us at this point

41:45

and otherwise we can move to a a close of the hearing? Thank you. No, thank you, Sir.

41:55

I think the the only real action that arises from this hearing is is in particular with.

42:05

Well, there there were two actions made for with respect to VW to see whether or not some sort of an agreement in principle can be secured and then documentary evidence be submitted. And hopefully

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that would then mean that VW would be able to write

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to the examining authority explaining its side of things. If that looks like that cannot be addressed quickly, then the examining authority will need to look potentially to light or communicate directly with VW to ask it whether it can assist.

42:41

And then in relation to

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juries, PKC construction and Malcolm W, again some sort of left letter of comfort. If there's going to be any significant delay because of the

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the slight jigsaw in terms of the way things have to pan out in terms of making the change request, getting agreement from us to acceptance of the change request before you can sort of start putting things on drawings and getting agreements finalised. But I think that were those were the actions.

43:20

Yeah just done that

43:23

update

43:24

accounts

43:25

Ohh yeah. And yeah, the update on the the, the funding position, yeah,

43:43

OK. Well, then I think that means we can

43:47

bring this hearing to a close. I'd like to thank you for your participation and

43:54

and the hearing is therefore closed. Thank you very much. Thank you very much

43:59

your stomach.