

CAH1 Pt1

0:03

Good morning, everybody.

0:05

It's now 10:00 and it's time for this hearing to begin. So I'd just like to welcome you all to this compulsory acquisition hearing, the application made by Associated British Ports for an order granting development consent for Immingham Green Energy Terminal. I will ask if everybody can hear me, but I think that's fairly obviously you can all hear me and I think online hopefully you can you can hear me as well. But can I just confirm with the live stream and the recording of the event as as commenced

0:30

speed and recording of events commenced. Thank you. Thank you very much. My name is Adrian Hunter and I've been appointed by the Secretary of State to the lead member of the panel to examine this application just before I run through some housekeeping matters and some prominent issues that you've heard before. I apologise but I'll I'll do those in a bit. But I'd just like to ask other members of the panel to introduce themselves and as you can see we've got four of us here. But Mr Mr Sheikh is joining us online as well. But if I could pass over to it to Missus Taylor to introduce herself.

1:00

Good morning, everyone. I'm Karen Taylor, and I have also been appointed by the Secretary of State as a member of this examining authority.

1:11

Good morning. My name's Catherine Metcalfe, and I've also been appointed by the Secretary of State as the member of this examining authority.

1:20

Good morning. My name is Liam Page and I've also been appointed by the Secretary of State as a member of this examining authority.

1:28

Good morning. My name is Mika Sheikh and I have also been appointed by the Secretary of State as a member of this examining authority.

1:37

Thank you. So together we constitute the examining authority for this application. And just a few housekeeping matters for those in in the room. If I could just please make sure phones and all devices are set to silent would be helpful. And I'm not aware that there's a fire drill today. Anything alarm does go out. The meeting point is is on the lawn and we go out by the the doors that are clearly marked

1:59

and

2:00

just like to ask those who are present for previous hearings. Just bear with me for a few minutes while

I just run through a few introductory matters for those who may well be watching online or or via the live stream or either recording. So this meeting will follow the agenda published on the National Infrastructure Planning website on the 2nd of April. The reference number for that is EV8001 and it would be helpful if you have a copy of this in front of you as we progress. And this gender is only for guidance and we may have other considerations or issues as we progress.

2:33

And we will conclude the hearing as soon as all relevant contributions have been made and all questions asked responded to.

2:39

It's our intention to take a number of breaks throughout the day. We'll aim for mid morning break about 11:30 and have a break for lunch about 1:00 PM and if needed we'll also have a mid afternoon break as well.

2:50

Final point on the agenda relates to post hearing action notes and and and issues that arise during the hearing. We will be noting these and prior to the close of the meeting we intend to go through the entire list of hearing actions which will issue as soon as practical after the close of today's hearing.

3:07

Today's hearing has been undertaken in a hybrid way, meaning some of you are present with us at the hearing venue and some of us are joining us using Microsoft Teams including as you've seen one of the members of the XA there. And for those people watching the live stream can I also advise that when we do have a break in proceedings, we'll have to stop the live stream in order to give us a clear recording files. As a result, the point which we do recommence and restart the live stream, you may well need to refresh your browser to view the restarted stream.

3:35

And just for the purpose of identification on the recording and ease of reference, could I just ask that every point in which you speak you please give your name and who you represent?

3:44

Does anybody have any questions on on what I've I've just run through?

3:49

OK, excellent, thank you. Just a few words now in relation to data protection and just like to make you aware that this event is being both live streamed and recorded. The digital recordings that we make are retained and published and they form a public record that can contain your personal information. And as such the the General Data Protection Regulations applies. The Planning Inspectors practise is to retain and publish recordings for a period of five years from the Secretary of State's decision on the Development Consent Order.

4:18

Consequently, if you participate in today's hearing, it's important that you understand that you'll be recorded and you therefore consent to the retention and its publication.

4:26

It's very unlikely the examining authority will ask you to put personal sensitive information into the public domain. Indeed, we would encourage you that you do not. However, if for some reason you feel that it is necessary for you to refer to sensitive personal information, we would encourage you to speak to the case team in the first instance and we can then explore what the information could be provided in a written format, which can then be redacted before it is published.

4:50

Guessing nobody has any questions on on the GDPR procedures and things, no excellent. And finally, I just want to sort of before moving on to introductions, just sort of briefly explain what the purpose of today's compulsory acquisition hearing is

5:04

As the application of the prose develops, includes your request for an order granted development consent to authorise compulsory acquisition of land, dot compulsory acquisition of an interest in land rights or sorry of of an interest in or right over land. There is therefore 2 purposes for today's hearing. The 1st is to hear and prove the applicants strategic case in regard of the application and the 2nd is to hear for any individual objections from affected persons who are also interested parties with a legal interest in the land or right over which the applicant is seeking powers of compulsory acquisition and or temporary possession.

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Overall, this hearing will help us to consider whether relevant legal and policy tests applicable to compulsory acquisition and temporary possession proposals have been met.

5:46

Just before I move on to introductions, can I just check if anybody has any comments on on the general sort of purpose of of what we're here for today?

5:56

Yep.

5:57

OK, Now I'd just like to ask the the parties here to to introduce themselves and if I could probably start with the applicant if I could.

6:05

Good morning, Sir. My name is Hereward Phillpott KC. I'm instructed jointly by Bryan Cave, Leighton Paisner on behalf of the applicant Associated British Ports and Charles Russell speechly is on behalf of Air Products. For the purpose of today's hearing, I'll be calling on one additional speaker and Mr. James Dewey who sat immediately to my right. Mr Dewey is a Director and Head of Compulsory Purchase and Compensation at Gateley Hammer and this is his first appearance before a hearing and therefore

6:37

we will add his credentials to the updated list of credentials we put in at deadline three. I don't at the moment anticipate calling on further speakers, but if I do, I'll introduce them as and when they come along. That's excellent. Thank you very much.

6:55

And I think that's it. I don't think we have anybody joining us online and there's nobody at the back of the room that I can see. And so I think that's probably it.

7:05

My next step would be to say this is a public hearing, so if anybody does want to contribute you can seem pointless, but I will just say just in case somebody does join.

7:14

I think that probably brings to the end item deals with items one and two on the agenda and I'll pass over to Missus Taylor for taking us to the item 3.

7:26

Thank you Mr. Hunter. So item 3 relates to the applicant strategic case for compulsory acquisition, temporary possession and this item is split into four subsections as shown on the agenda. For the benefit of anyone who might be listening in and not have a copy of the agenda, I'll just run through them very quickly. So, firstly, the purposes for which compulsory acquisition and temporary possession powers are sought in line with Section 122

7:56

of the Planning Act 2008. Secondly, the consideration given to all reasonable alternatives to compulsory acquisition and temporary possession. Thirdly, summary of reasons why the compulsory acquisition and temporary possession rights to be acquired are necessary and proportionate.

8:14

And then, fourthly, having regard to Section 1223 of the Planning Act 2008, whether there is a compelling case in the public interest for the compulsory acquisition in relation to, firstly, the need in the public interest for the project to be carried out and secondly, the private loss to those affected by compulsory acquisition. But I'm going to invite the applicant to respond to all four in terms of summarising your general approach

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please. Thank you.

8:50

Thank you, Madam Harewood, Philpott Kings Council on behalf of the applicant. What I propose to do, Madam, in light of that invitation, is to go through each in turn. I might pause briefly at the end of each one, just in case there are any questions. If not, I'll proceed on to the next.

9:10

So starting with Section 1222 and the purposes for which the powers are sought

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just by way of introduction. The condition that is set by Section 1222 on including powers of compulsory acquisition, acquisition in a DCO is that the land is required for the development to which the development consent relates. It's required to facilitate or is incidental to that development or its

replacement land to be given in exchange for the order land under Sections 131 or 132 of the Act. In this case, it's the first two elements that are relevant,

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as there's no replacement land required.

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Section 6 of the Statement of reasons, which is a S008, explains that required in this context means necessary in the circumstances of the case, and that's explained in paragraph 6.4. And that the land should be no more than is reasonably required for the purposes of the development, And that's explained in paragraph 6.7

10:23

and in the statement of reasons. The applicant has identified why each element of the land proposed to be subject to compulsory acquisition is required.

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Sections 2 and three of the Statement of Reasons identify the various components of the project and the use of the land within the order limits by reference to the works areas, the land plans, and the Book of Reference.

10:47

Section 4 confirms the scope and extent of the powers and the rationale for their inclusion within the Development Consent Order. And Appendix One to the Statement of Reasons sets out the particular use proposed for each plot of land that is proposed to be compulsively acquired, including where it is acquisition of rights

11:11

and temporary possession.

11:13

And as you'll have seen, Madam, in most cases the land is needed to accommodate some physical aspect of the proposed development. But in respect of the Queen's Road residential properties, the case for compulsory acquisition is different

11:29

as paragraphs 423 to 436 of the Statement of Reasons explained, including by reference to Chapter 22 of the Environmental Statement, which is the Major Accidents and Disasters chapter. That's APO 64, paragraphs 22, point 3.4 to 22 point 3.9.

11:55

Those properties are required to facilitate the operation of the proposed development because their continued residential use is considered to be an impediment to Air Products being granted the necessary hazardous substances consent.

12:11

We have provided further explanation

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on that matter in response to written question 1.12.1.2

12:23

that Rep 1033

12:27

including as you have seen reference there to further further study which has been undertaken by Gex XCOM. GEX ECON are a leading firm of fire and explosion safety consultants and their further work has confirmed that the position is set out in the application material.

12:52

And if I can just add there that the

12:57

conclusion of the Dexcom study is set out in the response to that written question.

13:03

But what we're proposing to do to supplement that at deadline three is to provide you with a summary version of their report which will not contain those parts which would not appropriately be put into the public domain. You'll appreciate there is some matters in there which are sensitive and not normally made public,

13:25

but it will give and it will introduce them. It will provide an explanation of how they go about their work and it will also set out their conclusions on 2 matters. First of all, the residential use and the likely advice from the HSE and that's obviously directly relevant to today's issues and the compulsory acquisition of the Queens Road properties.

13:50

But secondly, it will also set out their conclusions in relation to the non residential land uses. And although that's not relevant to compulsory acquisition, temporary possession, it will be relevant to issues that we're considering next week and generally in the examination. So it'll deal with both of those points.

14:10

Now I'm

14:12

returning to the statement of reasons as Section 6 explains in paragraph 617 to 622, in each case where compulsory acquisition is proposed, the land is either required for the development to which the development consent relates, or its required to facilitate or is incidental to that development. No more land has been included for those purposes and is reasonably necessary. And without all of the land included, the project couldn't be constructed and operated.

14:44

So that's what I was proposing to say by way of the first sub item, section 1222. And I'll just pause there and see if you want me to go straight on into the next matter.

14:59

I have no questions at this stage, so please carry on. I'm grateful, Madam. So secondly, consideration of alternatives. The Statement of Reasons addresses this in section 6, paragraph 623 to 629, and it draws on the detail, the analysis of the consideration of alternatives

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that's found in particular in two documents, chapter three of the Environmental Statement That's needed and Alternatives, which is a PPO45 and the without prejudice HR, a derogation report which is at Rep 1008,

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paragraph 626 of the Statement of Reasons. It summarises the sequential approach that's been taken to the consideration of alternatives,

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which broadly speaking the first step is to look at broad options for the project, including do nothing developing outside the Humber alternative technologies for hydrogen production matters of that sort. The second step is to look at other port locations around the Humber Estuary. The third step is to look at appropriate locations within the port of iminium and the 4th step is a design and refinement and the consideration of the sequential test.

16:18

And against that background, paragraph 628 then identifies the reasonable alternatives

16:25

to compulsory acquisition that have been explored by the applicant and that includes the layout of the hydrogen production facility and the relationship between that and the impacts on the residential properties on Queens Rd.

16:39

The refinement of the order limits in response to feedback that's been received to consultation so as to limit the impacts on neighbouring businesses and also attempt to acquire by negotiated agreement, which as we'll hear more about in due course, there's been a considerable degree of success for that. And then also looking at possible alternative locations of the hydrogen production facility.

17:07

And it's clear when you read all of those matters. I would suggest that all reasonable alternatives to compulsory acquisition have been explored and indeed are continuing to be explored by way of ongoing negotiations. And that's what I was supposed to say an item 2,

17:26

please continue. Thank you. So I then move on to item 3, summarising why the compulsory acquisition and temporary possession power sought and necessary and proportionate. This is addressed in the statement of reasons that Section 6, paragraph 631 to 637. Although there is of

course substantial overlap with other parts of the statement of reasons, including those which deal with how the land would be used, alternatives, compulsory acquisition which have been considered and the compelling case in the public interest

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and and matters of that sort. But in brief, these show the following points. All of the land that has been included is needed

18:06

to achieve the identified purpose of delivering the project, and his name more than is needed for that purpose.

18:12

The applicant has and continues to make reasonable attempts to acquire by agreement, but this is not likely to be achieved without the use of compulsory powers.

18:22

Those powers go no further than is needed for that purpose, and steps have been taken to mitigate the impact on those affected. Compensation, finally is payable for the compulsory acquisition of land and temporary possession, and for loss or damage caused by the exercise of any such power. So that was all I supposed to say, an item 3,

18:47

no, please continue with 84. So item 4 is the compelling case in the public interest in relation to the need in the public interest of the project to be carried out and the private loss to those affected by the compulsory acquisition. I I would emphasise at the outset that conceptually the approach to determining whether there is a compelling case embraces more than those two things, although they're obviously a central importance to it. It is in effect

19:19

the question which embraces all of those matters which go into the balance in deciding if the proposed use of such powers has been justified. And so, for example, it will consider alternatives. The use of the land proposed to be acquired attempts to negotiate by acquisition and matters of that sort, and that is consistent with the recognition by the courts that the compelling case test mirrors

19:47

and encapsulates the considerations that need to be satisfied pursuant to the European Convention on Human Rights, including matters of proportionality.

19:58

And we've given the references to the court, the court cases that decide that in a SO23, page 23.

20:11

That is the library reference for the responses to the first written questions on compulsory acquisition and temporary possession,

20:22

and that is reflected in the way the issue has been approached in the statement of reasons. And I draw

attention to paragraph 6.12 and the paragraphs of the compulsory acquisition guidance to which it refers, and paragraph 623 to 649, which summarised the case on that more comprehensive basis. But for the purposes of these submissions, I won't repeat what I've said on those other elements. But I'll focus instead on the two matters that are identified in the agenda item and which are the focus of the relevant paragraphs of the government's guidance.

20:55

So first of all, the need in the public interest for the project to be carried out. That set out in more detail in the planning statement that without prejudice derogation report and the statement of reasons. In short, the project will deliver substantial public interest benefits in meeting a compelling need for additional port capacity to serve the energy sector.

21:18

The key benefits that are expected include the following. Substantial New Port capacity on the Humber well located to support the energy sector, provide resilience and promote competition. A significant contribution to meeting net 0 by 2050 by providing bespoke infrastructure to support decarbonisation of the Humber Industrial Cluster and the opportunity to import carbon dioxide by ship for onward capture and storage. A reliable supply of green

21:50

hydrogen, providing access nationally to a low carbon fuel and contributing to national energy security. Meeting up to 3% of the government's national 20-30 hydrogen production capacity target. Benefits from fuel switching and industry and heavy transport associated with that. And a contribution to the regional and local economy, with an average of 627 net jobs during the construction. Peaking at 1012 jobs during phase one

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and 207 jobs during operation

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and those benefits will only be realised if the powers sought are granted. Their scale is very substantial and significant at a national as well as a regional and local level. I then move on to the private loss to those affected and first of all the owners and occupiers of the Queens Road. Properties at these impacts are identified in the Statement of Reasons at paragraph 634 and 635 explains how the applicant has taken them into

22:58

account. But for the purposes of today's hearing, I can update the position first in relation to those properties, and then I'll go on to consider the private loss to others who would be affected by the powers.

23:20

So, since submission of the application, the applicant has made significant progress on reaching agreements with affected parties in order to avoid and limit the use of compulsory acquisition powers.

23:32

Where agreements have not yet been reached, negotiations continue and where possible, we will seek to reach agreements before the close of the examination. And accordingly, if the order is confirmed with the powers of compulsory acquisition and temporary possession is sought, the private loss to

those affected is already significantly mitigated by the voluntary deals that have already been entered into. And I'm going to deal with impacts on third parties

24:06

by looking at them into in three broad categories. First, those affected by permanent acquisition

24:14

of the the land. Secondly, those affected by the acquisition or creation of rights inland and the imposition of restrictive covenants. And thirdly, those affected by temporary possession,

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so dealing first with the permanent acquisition land and the Queen's Road properties. Seven of the 10 Queens Road residential properties have been acquired by agreement.

24:42

Of the remaining 3,

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two of those, that's number three and #5. Queens Road, have agreed heads of terms and those matters are now with solicitors.

24:58

I'd like to emphasise that the approach that the applicant has taken in negotiations with the with those with an interest in those properties has been to not only consider the compensation that's payable under the compensation code, which embraces not only market value but also disturbance, statutory loss and fees, but also the specific circumstances of the occupiers, in order to ensure the agreements mitigate any private loss. For example. That takes account of

25:29

any adaptations that have been made to properties to accommodate specific requirements and the specific needs of occupants to be located in certain areas or close to certain facilities or support networks.

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And these considerations have been factored into the agreements that have been negotiated to ensure the affected party is able, for example, to purchase a similarly adapted property or a property that's able to be adapted as necessary and that's in an appropriate location to accommodate any specific needs.

26:06

In order to assist the residential property owners, the applicants also undertaken to pay the costs in relation to their obtaining professional advice for both land agents and solicitors

26:19

and where agreement has been reached and the land is acquired voluntarily. It's also been agreed that compulsory acquisition powers will not be exercised over that property

26:36

and there's only one residential property left. That's number Four Queens Road where agreement has not yet been reached. Negotiations continue with that property and the applicant currently is awaiting a response to the latest offer at that has been made. And that offer includes taking account of the sort of considerations I've just outlined.

27:01

So that's the

27:02

Queens Road properties under the permanent acquisition category. Also under that category, the highways land verges where those are proposed to be stopped up, that's also land that would be acquired. The ownership of these plots is not registered and therefore the assumption has been that it's in the ownership of the adjoining land owners under the ad medium filium rule. In the majority of cases, that is in fact the applicant.

27:33

There is one plot of land that's been identified as possibly forming part of the Brocklesby Estate Lands holding, and the applicants agents are working with the estate to determine the ownership. Negotiations with the brothel spear state are at an advanced stage, and if the land is confirmed as theirs, it's already agreed, subject to appropriate commercial terms, that the land can be acquired by the applicant.

28:01

Then there are two plots on the east side, plots 4/6 and 4:10,

28:08

that form part of a commercial premise that's currently used by a tenant of the applicant. Compulsory powers were sought over this land on a precautionary basis, precautionary basis in the event that vacant possession could not be obtained under the lease. And that's explained at paragraph 4.21.3, the statement of reasons. But since submission of the application, the lease expired on the 31st of December 2023, a new lease

28:39

was entered into with the tenant, the terms of which include the ability for the applicant to obtain possession through a termination clause requiring a month prior notice. It's not therefore anticipated that the compulsory acquisition powers will need to be exercised in respect of that land. But of course, if they are, the fact that the tenant has been willing to agree a new lease on that basis indicates that the impacts of compulsory acquisition will be limited if it does have to be used.

29:12

That's the first category. And then briefly in respect of the second two categories, first, the acquisition of rights. The majority of the plots over which these powers of compulsory acquisition are sought relate to commercial properties and users and the applicant considers that that won't interfere with the current use of that land.

29:33

The applicant is in negotiations with all land owners where rights are required. That's set out in the

Land Rights tracker, Individual land owners, compulsory acquisition schedule, that's Rep 1040 and where statutory undertakers are involved, and we'll come to this later in the agenda. Protective provisions are being negotiated to ensure their interests are adequately protected, and rights have also been sought over public highway subsoil for the installation of utilities And the worst of the high wall

30:06

were carried out pursuant to the relevant powers in the Development Consent Order, with all of the attendant safeguards and protections that apply there too.

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And then finally, in respect to powers to temporarily use and possess land negotiations with the land owners for the temporary occupation of the Lander. In advanced stages,

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land is occupied by a farm tenant, but the land owner has the ability to obtain vacant possession and therefore discussions have progressed on the basis that vacant possession will be obtained.

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And then in conclusion, the applicant has therefore taken substantial steps to mitigate any private loss that might result. If an order, including compulsory acquisition powers, is confirmed and any remaining loss arising out of the use of compulsory acquisition powers over the land can be adequately dealt with by means of compensation.

31:01

And so when the very substantial national, regional and local public benefits that would arise if the project is delivered are weighed against the private loss of the limited number of individuals who would be affected, it is plain that these public interest benefits clearly and decisively outweigh the adverse effects and that provides A compelling case in the public interest justifying the powers sought. So that was what I was proposing to say on the last item.

31:33

Thank you, Mr Philpott. I don't have any questions on your strategic case. I will have questions later on in relation to the Queens Road properties, but I'll come on to those in due course. I would at this point normally ask any other IP's or the local authority or AP's if they have any questions, but we don't appear to have any present. So

31:54

unless any of my panel colleagues have any questions at this point, I'll hand back to Mr. Hunter at this stage to go through the next item on the agenda relating to the draught DCO.

32:07

Thank you for that, Mrs. Taylor. Yeah. Moving on to to item 4, which is said just explained is that the draught Development consent order.

32:15

I think in terms of I don't there's no specific questions as you can see in the agenda and what we're looking for at this instance was for you to take us through how the drama consent order works in

respect of compulsory acquisition and temporary possession. But just to sort of give it a little bit of context, what would be helpful for us is to understand who has those powers in terms of we've got our products and we've got MP's who gets to exercise those powers and how that is then sort of controlled and delivered through the

32:43

the relevance of articles within development consent order

32:48

Hereward Phillpott, Casey on behalf of the applicant. So what I in looking at this part of the agenda I had prepared to summarise and which DCO articles engaged compulsory acquisition and temporary possession powers. I hadn't prepared text in relation to the operation of those provisions in the Development consent order to deal with the transfer of

33:16

the powers including compulsory acquisition powers. What I would suggest if it's convenient to you is that rather than deal with that aspect now if I can have the mid morning break just to check my understanding of that position and then I can deal with that after the break. If that's acceptable, that's fine. Or if it's easier in writing that that's fine As long as we have that understanding that that's I'm happy. So in in that case, rather than taking unnecessary time in the hearing, our will, if I may take that invitation to deal with this in writing.

33:49

And it's simply that I think rather than attempting A briefly composed exposition, it would probably be more helpful to you to have it set out chapter and verse. You would Yeah, that that's fine. So we can deal with that in in that way. Thank you. So I'm providing a a brief overview then Section 4 of the Statement of Reasons provides A comprehensive account of the draught of a Consent order articles which engage compulsory acquisition and temporary possession powers in order to enable the construction and delivery of the project. The Draught Development Consent

34:22

Order provides powers to

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deal with four matters are just briefly outline the headings and then I'll come back to which provisions arise under which heading. So the first heading is powers to acquire compulsorily land and rights over land, the 2nd is to override or extinguish existing rights and interests in or over land, the third is to create new rights in or overland and impose restrictive covenants. And then the 4th is to take possession of and use land

34:57

temporarily, so dealing with the first of those the power to acquire compulsorily land and rights over land. So Article 22 is the power to acquire land compulsorily, and Article 25 is the power to acquire subsoil or airspace only

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then under the second heading

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and the overriding or extinguishment of existing rights and interests in or over land. Article 26 Private Rights provides for the extinguishment or suspension of private rights and restrictive covenants over land that's subject to compulsory acquisition.

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Article 27 is the power to override easements and other rights and that allows any authorised activity to be carried out within the order limits, even if it interferes with such a right

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and under the third heading, the creation of new rights in or over land and the imposition of restrictive covenants.

36:04

Article 24, The compulsory acquisition of rights, provides a right to enter and install and maintain utilities.

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And it's also worth noting that the intention is to first take possession of relevant land using powers of temporary possessions. So that's Article 31 for construction,

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Article 32 for maintenance, to install the relevant apparatus and then to exercise powers to take the land and rights on a permanent basis once the precise extent of the land that is actually required is known

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and and that minimises the scope of permanent rights. So you you'll have

37:00

picked up that there is some land

37:04

the design identified as only being subject to powers of temporary possession.

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But the the power of temporary possession also applies to any order land in respect of which powers of permanent acquisition of land or rights is proposed.

37:22

But no notice of entry or vesting declaration has been made. And what that allows an undertaker to do is to take possession of the land using those temporary powers which are inherently less interfering with the landowner's rights than permanent acquisition,

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install the apparatus, know exactly therefore where it is and how much land and which land needs to be acquired permanently, and then to exercise the powers of permanent acquisition.

37:57

That is inherently a more proportionate approach because taking those steps means that you have to. You don't have to be as precautionary in identifying the area of land that you're requiring when you acquire it, because you don't have to deal with the possible variations

38:13

that may arise when you come to construct an install the apparatus. So it's worth just understanding that that is also something that can be done and where powers of permanent acquisition are proposed

38:27

and where a restrictive covenant is to be taken. In each case, the aim of the restrictive covenant involved is to protect the apparatus. And then the 4th category, the Taking, possession of, and use of land temporarily is covered by Articles 31, Construction and Article 32 Maintenance.

38:50

And in addition, and for completeness and the Draught Development Consent Order also confers other rights and powers on the undertaker, which would allow interference with property rights and private interests in land. And those are listed. And it's a fairly extensive list, so I won't simply read it out for the benefit of reading it out in The Statement of Reasons at paragraph 457 over pages 29 through 231.

39:21

So we've identified those for completeness, although they are not

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compulsory acquisition powers per se.

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And we'll come back to you with a note which explains the position in respect of

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the opportunities for transfer of compulsory acquisition powers and how that is managed through Article 46 and otherwise.

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Thank you. Yeah, that that would be helpful.

39:52

We sort of briefly touched on this at one of other hearings in terms of the change request

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and apologies if you if you went over them, but are there any changes to those articles that you've been through that will need to be made as a result of the change request or is everything all sort of?

40:06

Will remain as is, and so far as the powers are concerned, the change request will not affect the powers. But it does include extending the order limits, and I'll just check whether that also embraces powers of temporary possession for the land that is needed for the purposes of construction. I assume

40:38

yes, as I, as I'd understood where that additional land is, is going to be included within the red line boundary for the purposes of installing the pipes. As I explained in the first week of hearings, powers of temporary possession would extend over that land as well. Although as has been emphasised to me, as I mentioned earlier at negotiations are advanced for securing those rights by agreement and and

41:06

the fact that there has been agreement by the landowner to the inclusion of that land. And that, as you've commented, there are no affected persons who have felt necessary to turn up today is reflective of the progress that has been made with those negotiations and commensurate with our optimism that they will bear further fruit as the examination continues.

41:36

OK. Thank you that that that's helpful. And I've got no further questions on

41:43

why. I'm not sure any of my colleagues have anything or anybody online down. Nope, that's fine. I think that's that deals everything on #4. Self passed back to missus. Taylor to sort of pick up #5.

41:56

Thank you Mr. Hunter. So item 5 on the agenda relates to human rights. I am also going to be covering the public interest element under this item, but starting with human rights. Item five, one on the agenda, refers to Article one of the first protocol of the European Convention on Human Rights, namely the right to peaceful enjoyment of property and possessions, to Article 8 of the European Convention on Human Rights, which provides for the protection of private and

42:26

family life, home and correspondence, and Article 6, which relates to the right for a fair trial. Could the applicant please summarise how they have conformed to these requirements?

42:39

Hereward Phillipott, Casey on behalf of the applicant. Madam Yes, there there is a preliminary point which I touched on a moment ago, but which is very relevant here. And it's the point that we explained in response to written question 1.17.5.1, which is a SO23. And it was by reference to the two cases that we identify in response to that answer. As to the

43:11

relationship between the compelling case test and the balancing exercise that is necessary are pursuant to the ECHR when dealing with qualified rights such as Article 8 and Article One of the first protocol. And essentially, as we explain in in response to that written question, the courts have made clear that if you satisfy the compelling case test, then you have also satisfied the exercise that is required

43:43

in considering whether or not you have justified the any infringement of the Article 8 rights or Article One of the first protocol. And because the compelling case therefore reflects and embraces the necessary balance that's required under the ECHR, there is no separate or different justification that's required to justify proposed interference with those rights. And the statement of reasons nevertheless

44:16

addresses the consideration and application of the relevant provisions. And in the ECHR in Section 8. And as paragraph 8.3 explains, the applicants have carefully considered the balance to be struck between the individual rights and the wider public interest. And article one of the first protocol is specifically addressed in paragraphs 8.4 and 8.5, Article 8

44:48

in paragraphs 8.10 and 8.12. Article 6 is dealt with in 8.6 and 8.9 and as you'll have seen, and this will be familiar so far as the rights embraced in Article 6 are concerned. The process that is involved in and considering whether or not a a request for powers of compulsory acquisition is justified,

45:21

allows a fair opportunity for those who would be affected by the exercise of such powers to challenge and test the case that is being put forward. And thereafter. The opportunity for judicial review of the lawfulness of any decision to grant such powers ensures that those parts of the ECHR which are dealing with the lawfulness of the exercise of such powers and also the right to have a fair hearing to test the lawfulness,

45:54

are fully satisfied. And that is the case in this instance just as much as it is in any other application for powers of compulsory acquisition under the Planning Act 2008. And so, for the reasons that are set out in those paragraphs and in the statement of reasons as a whole, the inclusion of the relevant powers of compulsory acquisition and the Development Consent Order would not constitute an unlawful interference with Convention rights and related provisions of UK law.

46:26

It's therefore appropriate and proportionate to make the Development Consent Order, including the grant of powers of compulsory acquisition.

46:38

Thank you. That's helpful. Turning to item 52, did you have any further comments in relation to the waiting? Thank you. Harry would fill up on on behalf of the applicant, essentially because the waiting exercise that is required pursuant to the ECHR is embraced within the compelling case test. I don't propose to repeat those matters which I set out earlier under that separate heading because they all go directly into the same exercise.

47:10

And I've provided what I hope is a a proportionate update in terms of the impact on those affected and an overview of the benefits and why we say that the benefits outweigh the harms. And it's essentially, it would essentially be repeating the same submission. Thank you.

47:28

So I'd like to move on now to look at the Queens Road properties specifically.

47:36

And

47:38

you've already given a summary of the general approach to the proposed compulsory acquisition of the Queen's Road properties.

47:48

Is there anything further you'd like to add in terms of how the applicant has ensured that the human rights

47:57

or people with interests in these property of or people with interests in these properties have been safeguarded and that negotiations have been handled fairly?

48:14

And if I can perhaps add a little bit more detail which might help you, For example in relation to

48:22

written questions, Will Christian 117 point 2.1 in AS0231 understand the issues concerning commercial sensitivities around valuations. However, could you explain please how you went about making an assessment of market value in each case, given that you state that external inspections were carried out for, for example, word, no internal inspections carried out. I'm not asking for specific financial details, but just

48:53

the process that we went through. Howard Philpott, on behalf of the applicants. Thank you, Madam, that that's helpful in terms of of a particular narrow focus. And I'm going to ask Mr Dewey to respond to that.

49:10

Hello, James Dewey on behalf of the applicant. Yeah, the the, the approach to assessing

49:19

compensation which which sort of formulated part of our negotiation strategy was to was to look at each interest on the line by line basis. We we then assessed the market value but we also assess potential disturbance costs, fees that might be payable and statutory loss pace payments as well. There are all sort of set out under the the compensation code which is the the sort of collection of legislation and case law

49:51

that governs the assessment of compensation.

49:55

But then as we go through negotiations with the land owners we learn more. So the initial assessment is at a high level, you know from a, from a, from a, from a external inspection basis. But as we go through the negotiations, we tend to understand a little bit more about the occupants, what exactly losses or what impacts the scheme may have or relocation may have and that informs the the narrative as we then negotiate those agreements.

50:30

Thank you. I think that's answered my next question, which was about how you were able to assess the degree of special suitability or adaptability or the reasonable level of equivalent reinstatement.

50:44

So do you have anything more to add on that, how you assess that James Dewey on behalf of the applicant? No, as I say, it's really through the negotiation with the the land owners and their agents and then providing us with more detail and more information so we can then consider and assess that.

51:04

Thank you.

51:07

I'm going to move on to the public interest aspects now. And in yesterday's hearing we touched upon the future of Queens Road and the affected properties in terms of wider planning and mitigation in relation to proposed development. I'd like to explore this a little more at this point in terms of the proposed compulsory acquisition and from the point of view of public interest. So we note that only some of the dwellings in Queens Road are proposed for CA and are included within the Red Line, with other current or former residential properties

51:40

excluded, and we have observed that a number of these are now vacant, in some cases best described as derelict. Could the applicant please explain why not all of the properties along this section of Queens Road and adjacent to the proposed development are included?

51:59

Hereward felt put on behalf of the applicant Madam, before I call on Mr Dewey to to add anything he he would like. The key distinction, as I understand it, in terms of the powers of compulsory acquisition lies in the land use of the relevant properties. Where a property has a residential land use and the effect of the operation of the proposed

52:30

development would be to bring that property within an

52:36

sufficient proximity to the the the the adverse impacts of the major accident or disaster within the hydrogen production facility that the HSE would advise against the grant of the relevant consent for that facility. That is the impediment that justifies acquisition. Where properties are in a land use that would not result in an advise against response from the HSE because of the different level

53:08

of risk that is associated in terms of the amount of time that people spend there and matters of that sort, then the case for compulsory acquisition would not be established in those circumstances. And because they would not represent an impediment to the grant of the necessary consent. I'll just see if Mr Dew has anything to add in terms of the approach that's been taken to the acquisition of those other properties

53:34

James Dewey on behalf of the applicant. No as set out by Mr Philpott it's it is very much on that basis that we've we've we've focused in terms of the compulsory acquisition on the on the residential properties. However negotiations and discussions have taken place with other commercial land properties on Queens Road by our products just on a on a on a sort of open basis and not under the the the compulsory acquisition process.

54:07

And for instance on Queens Rd, #6 to #18 to number six was a residential property and #18 was a residential property, but the whole block was owned by 1 landowner and and the negotiated agreement has been reached in respect of the the whole of the those those properties.

54:33

So I'd just like to refer to the Planning Act 2008 guidance in relation to Compulsory Acquisition. And in paragraph 9, under general considerations, the guidance states that the applicant must have a clear idea of how they intend to use the land for which which it is proposed to acquire. So

54:58

is the intention then to

55:02

retain the properties and convert them to commercial or some non residential use? I think we would like a bit more help from you in terms of what the applicants

55:13

intentions are to that section of Queens Road given the condition that it's

55:20

in at the moment and

55:24

may stay in, we don't know at Howard Philpott, Casey on behalf of the applicant. If I can deal with that matter in two stages. First, in terms of that particular part of the guidance, in this case, the the way that that guidance would apply, I would suggest is to consider the underlying purpose of the acquisition, which is not to ensure a particular use for those properties that are to be acquired, but is to ensure that a particular use

55:58

which is currently either taking place or is lawful comes to an end.

56:03

And so the guidance is just that guidance. It has to be applied in relation to the facts of a particular case. And in this instance the key factor is ensuring that the residential use comes to an end and is not resumed. And there are powers, as you'll have seen and restrictions within the development Draught development consent order which ensure that that would occur in the event that the development goes ahead. And indeed the hydrogen production facility could not operate

56:35

unless that happens. So that's what I would say in relation to the application of that part of the guidance. In terms of the second part, as was discussed earlier in the week, the approach that has been taken to the redevelopment of those properties is that rather than seeking to come up with a particular use now in circumstances where that alternative use is not in itself a necessary part of the development. And that it is more appropriate

57:07

in the public interest to, for us to liaise with the local planning authority, which has overall responsibility for the planning of its area in order to identify what the most appropriate uses might be. And we have undertaken to liaise with Nelk outside the examination and to provide an initial report of progress at deadline 3, and thereafter to maintain reporting and progress

57:39

in order to consider that specific matter further. Now, I don't have anything to report on that since that request was made, but as you might expect, so far as the applicant is concerned, merely holding an area of empty property is not a commercially attractive proposition. There is an obvious commercial incentive to find a productive use. It's simply that no specific use is necessary in order to make the proposed development acceptable,

58:11

but the bringing to an end of the existing lawful use of those properties is essential in order to allow this project to proceed. So that is something which has to be dealt with pursuant to the order, the second stage of the longer term future development of that property.

58:30

The applicant has put the application in on the basis that that would be dealt with in the usual way that the Town and Country Planning Act process deals with opportunities that arise for the redevelopment and change of use of land that becomes available. So I can't take that any further than that for the purposes of today. But that work on the question which has been raised is going to take place outside the examination.

59:02

We will keep you informed as to where we get to, but that's at least the base in which the application has been put in.

59:09

Thank you all. We'll look forward to reading your submission at deadline 3.

59:17

One practical

59:20

issue actually with the the the land map submitted This particular area of interest, the Queens Road, in true map fashion falls on the edge of three maps. It would be really helpful if a sort in local plan parlance and inset map could be provided of the Queens Road section at a larger scale so that we don't have to get our magnifying glasses out to read the property numbers. Could that be done please? Howard Philpott, on behalf of the applicant.

59:51

We we hear that entirely reasonable request and we will meet it.

59:57

Can I just add to that that can get numbers on as well. I think some of the numbers are on, but if giving me clear sort of what you refer to 6 to 18 as well, I think they're on there. But if you could make it clear where they are that would help us enormous there indeed. We'll make sure the numbers are on there and we'll we'll seek to ensure they're correct as well.

1:00:17

I just wanted to touch briefly on the Kings Rd properties and I would like the applicant to explain please, the nature of the temporary possession requested and enabling works required in relation to properties in Kings Road and how the applicant has communicated with people with an interest in those properties and how you intend to continue to communicate with them in terms of when the work would go ahead and what it would involve.

1:00:48

Madam Harry would feel put on behalf of the applicant. This is one of those more practical questions which I'm going to pass on to Mr Tymon Robson from Air Products who sat a few seats across to my right

1:01:05

Timon Robson Air Products speaking for the applicant.

1:01:10

The the method of construction of the facility is likely to involve a a large degree of modularization and so we expect that some fairly large abnormal loads will be brought in through the port of Immingham and transported to the site down Kings Rd.

1:01:33

Along Kings Rd there are a number of overhead cables which we believe are BT Openreach cables and it is likely that some of the abnormal loads will require those overhead cables to be temporarily removed or lowered to allow the abnormal loads to pass and then reinstate it that the cables

1:02:01

passed from a pole on one side of the road to properties on the other.

1:02:10

Uh, the the temporary possession is in place in the event that we need access to the building side in order to complete the temporarily temporary lowering of those overhead cables.

1:02:28

In terms of how the correspondence with the properties is concerned, I will pass that over.

1:02:36

I'll get to ask Mr Dewey to deal with that matter.

1:02:39

James Dewey on behalf of the applicant. Yes, we we've written to the parties in respect of Kings Rd, so both land owners and occupiers to inform them

1:02:51

as as has already been set out regarding what works required and the the nature of those works and informed them that we will keep them updated throughout the process. We've also actually met with a number of them on site as well and they have our details and and we respond to any queries should any arise at the time.

1:03:11

Thank you Harry Wood Philpott on behalf of the applicant. The final point I'd make is that insofar as those works involve any interference with the

1:03:21

the electronic communications code networks, they would of course be subject to the protective provisions that are included in Part 8 of Schedule 14 of the order, which would be, which would ensure that those the relevant operator would be given appropriate notice and indeed puts in place an appropriate system to protect their interests.

1:03:52

Thank you for that. That's helpful.

1:03:55

If none of my colleagues have any questions, I'll move on to

1:04:00

agenda item 6, which is an update on the Land Rights Tracker. And I think, Mr Philpott, you've already touched on this earlier. I have another practical request here and thank you very much for the a three copies. I don't have an A3 printer I'm afraid, so that was very helpful. We, we, we, we do observe though that the print is still extremely tight, tiny, and I'm conscious that you're using a Planning Inspectorate template. But again, a practical request could the font size

1:04:34

possibly be increased in the cells on the Excel spreadsheet, which is incredibly difficult to read. Harry would focus on behalf of the applicant. I'll rather than saying yes it will because that's not my area of expertise. I I I said I hear the request and we will look into seeing if that can be done.

1:04:54

I was going to ask Mr Dewey to provide an update on the Land Rights Tracker, if that's convenient.

Going to go on to say are there any further updates in addition to what you've already mentioned? I was going to ask Mr Dewey to provide that. Thank you

1:05:12

James Dewey on behalf of the applicant. I think as you said Mr Philpott has already covered off a number of the number of the updates on that just in respect of #3 Queens Road which is Missus Elvin that also incorporates the occupants Mr. John Strachan and and Miss Laura Varley who align entries 46 and 40 and 49 on the tracker.

1:05:41

And as set out, an agreement has been reached with with a compensation package that deals with their concerns and that currently sits with the solicitors for completion

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#4 Queens Road, which which represents the only residential property where there is no agreement. We continue to engage with their appointed agent and have made a revised offer which seeks to bridge the commercial gap at the moment and we're we await a response on that. In respect of #5 Queens Road, that is currently all completed solicitors. Being through the solicitors, When I say completed, the documentation is all completed but it's awaiting

1:06:25

the owners onward purchase to complete. So it all sort of pieces of the jigsaw all fit together. So that's all, all set, ready to go.

1:06:34

And finally I thought it was worth just updating that on the Brocklesby estate, who have a number of rights over the land within the the red, the red line boundary, but also are the owners of the land subject to the temporary possession. Under the change request, negotiations have taken place with the agent acting for the estate and an agreement has been reached with regard to to the rights over the land, but also in relation to the acquisition of the land

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for which the change request impacts.

1:07:13

Thank you for that.

1:07:18

I'll move on now to, Well, I was going to move on to affected persons, but we have none in the room. So do any of my colleagues have any questions before I move on to

1:07:33

item 8?

1:07:37

Right. So in that case, we'll move on to item 8 on the agenda, which is consent for the inclusion of Crown land. Ohh. Actually, one thing I was going to ask in relation to the Land Rights tracker, will we be expecting an updated version at deadline 3?

1:07:52

But when are you proposing to submit an? We were.

1:07:57

I'll ask Mr Jay to deal with that. He's closest to it.

1:08:01

James Drury, on behalf of the applicant, yes, will provide an update and will continue to provide updates at end of every deadline. So you can see the progress of of those negotiations as we go through the examination process. That would be very helpful. Thank you. So going back to Crown Land, referring to the Land Rights Tracker for Crown Land Rent 1-042,

1:08:24

we're aware of the letter submitted by the applicant from the Crown Estate AS 023. Could you please update us in relation to any further consents or approval of details required from the Crown Estate and how you intend to indemnify the Crown Estate against all liabilities, actions, proceedings, costs, claims and demands arising from the exercise of the consent if given.

1:08:52

I can deal with the consent, so I might need to have further instructions on that. At last matter, Madam, can I just understand where that is springing from so those who are assisting me can assist with instructions on that sprung from the letter from the Crown Estate which was that it was their proviso. So it would just be helpful for us to to hear whether that's in hand if if I can just take a moment to take instruction from Mr

1:09:22

Sharon Trigger and our our deal with that as well

1:09:37

Madam before Harry would feel put on behalf of the applicant. What I understand is that that form of words in the letter is not a request for any further action on behalf of the applicants, but it reflects the nature of the underlying lease and its its terms. But we will check and confirm that and report that back to you in writing. But that's my understanding. Apologies that I was taking slightly by surprise by that, but that that's my understanding of the position. I hadn't understood that

1:10:06

there was anything further acquired in that respect. Well, if that could be clarified indeed. So, dealing with the the position of the Crown and I'll deal with all three elements of item 8 comprehensively, if I if I may. There are two forms of consent that are needed from the Crown for the project.

1:10:29

As you've just touched upon, Madam, there is a requirement for consent within the terms of the lease, as we've explained in response, I believe to question 11731. And that means that we may not execute any embankment or other work on the demised foreshore except with the consent of the Crown Estate in writing. And as you'll be aware, that was obtained by way of the Crown letter dated

1:11:01

the 20th of February 2024, which is now in the examination under ASO 2-3, and that that's the first type of consent and we have obtained it.

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The Act itself

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contains 2 provisions under section 135 and which deal with consent. The first section 1351, is related to compulsory acquisition of any interests in Crown land. And in short, an order may only include provision for such compulsory acquisition if the appropriate Crown authority consents to its acquisition. But that is not relevant

1:11:53

in this case because we have the benefit of a lease and we don't therefore seek or need to seek to acquire any interest in Crown land. So Section 1351 is not engaged on the facts of this case. However, section 1352 of the Act is engaged that, provided an order granting development consent, may include any other provision, IE other than seeking interests

1:12:25

over Crown land in relation to Crown land only if the appropriate Crown authority consents to the inclusion of that provision. And so that would embrace seeking development consent over Crown land. And so a, the second type of consent that is required in this case

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is consent pursuant to Section 1352

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and that is the outstanding

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consent that that that that is still to be obtained.

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And so by way of an update on that second consent, the applicant is already engaging with the Crown Estate Estate solicitors in respect of obtaining Section 1352 consent. But that of course takes place against a background where it is already obtained the consent for the development that is proposed on the Crown land pursuant to the lease. And so there's no in principle difficulty anticipated

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with this further consent that is required pursuant to statute. The initial response that we've had from the Crown Estates solicitors

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notes amongst other things that we have engaged with them in this case at an early stage

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and that matters such as this they say are more commonly concluded later in the process and

potentially even after the close of examination. And although that that their communication doesn't go on to expand on that. The underlying rationale is that because they need to review the contents of the Draught Development Consent Order in order to give their consent knowing what is proposed, if as as

1:14:22

likely to be the case here, as in other examinations, that document evolves during the course of the examination. Their preference is to issue their consent at the end of the examination. Once that is settled, and in some cases for practical reasons or because they've been engaged late, that might happen before the decision, but after the end of the examination. We don't anticipate that would be the case here because we've engaged early and because we've got there in principle and consent to the development pursuant to the lease.

1:14:54

And so we are optimistic that we will get that consent before the end of the examination and we don't perceive any obvious reason why that wouldn't be forthcoming. We'll keep you informed, but we anticipate it's likely to be at a later stage when the consent actually comes in.

1:15:16

I will, as I've said, we'll confirm in writing the position in relation to what stated in the letter of consent under the lease. Thank you.

1:15:26

So moving on to item 9 and the statutory undertakers.

1:15:32

Umm,

1:15:34

the Land Rights tracker for statutory undertakers, Rep 1041. We don't have any representatives present, so again it's to the applicant. Please could you summarise progress on negotiations with statutory undertakers, including asset out on the agenda, detailed responses to specific matters raised by statutory bodies, any areas of disagreement and you're likely time scale for reaching agreement and the likelihood and implications of not reaching agreement

1:16:07

before the close of the examination.

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Thank you Madam Harewood Philpott on behalf of the applicant. I'll try and deal with this reasonably succinctly in the circumstances, not least because we dealt with the protective provisions

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earlier in the week, and I don't propose to repeat all of those matters unless it would assist.

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But the statement of Reasons deals with the position of statutory undertakers at paragraph 7.87, point

18. And it is worth noting that there is no permanent acquisition of the land of statutory undertakers proposed in this case.

1:16:53

But there is a proposal to acquire some rights in land owned by statutory undertakers and Anglian Water and Network Rail. And as you'll have seen from the documentation, the rights to be acquired in respect of the Network Rail Lander essentially relate to the pipeline corridor and rights to install and maintain the pipes there. And in relation to Anglian Water

1:17:25

where they're not dealing with the pipeline corridor, they are essentially dealing with the rights of drainage and access to the drainage in order to ensure that that is maintained. So relatively limited rights in both case, both cases. And then in addition to that, there is Article 33, which provides for the extinguishment of relevant rights or removal of of relevant apparatus belonging to statutory undertakers and

1:17:57

connection with the delivery of the project.

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So in the first of those cases, the acquisition of the rights section 1275IS engaged.

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In respect to the second category, Section 138 is engaged and dealing with those in turn. So far as Section 1275 is concerned,

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the Order may include provision authorising the compulsory acquisition of a right over statutory undertakers land by the creation of a new right over land only to the extent that Secretary of State is satisfied with the matter set out in subsection. 6

1:18:46

And those are that the right can be purchased without serious detriment to the carrying on of the undertaking, or that any detriment to the carrying on of the undertaking in consequence of the acquisition of the right can be made good by the undertakers by the use of other land belonging to or available for acquisition by them. So it's the serious detriment test that has to be complied with in those cases and in those cases where section 127 is not engaged but section 1/3

1:19:18

date is, and that's the extinguishment of rights and removal of apparatus. Statutory undertakers. And the order may include, pursuant to section 1384, provision for the extinguishment of the relevant right or the removal of the relevant apparatus only if the Secretary of State is satisfied the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates. And so it's important therefore understanding that there are those two separate tests

1:19:52

engaged to identify which statutory undertakers are affected by which test. Now at the moment, we've

picked up the fact that in the compulsory acquisition schedule for statutory undertakers, that's Rep 1041.

1:20:11

It seeks to identify which testers apply, but it does so incorrectly, which we apologise. And it it it, it incorrectly identifies a number of statutory undertakers as being subject to section 127 as well as 138, whereas in fact it's only Anglian Water and Network Rail where that is that that is the case. All the others are Section 138 only, and we will put in a corrected version at Deadline 3.

1:20:43

But I thought it might be worth just drawing that to your attention now so you understand the context in which this applies. And so far as the Section 138 cases are concerned,

1:21:01

this is the extinguishment of rights and removal of apparatus. We've identified where that is necessary and why. In the Utilities statement and the associated plans that APP 239, we've summarised the position in the statement of reasons that paragraph 714 and what that does. When you look at those documents together, it demonstrates that what is proposed is necessary for the purposes of carrying out the development to which the order

1:21:33

late and therefore section 1384 is satisfied.

1:21:39

And so far as the acquisition of rights and the imposition of restrictive covenants that are required. And that's explained in the statement of reasons at 4.41 that explains why those are needed. Now so far as then dealing with the impact, the potential impact on the statutory undertakers, the protective provisions that are included in the order mean that protective provisions would be provided for

1:22:11

all statutory undertakers that are affected by either power.

1:22:16

So Northern Power Grid, which is Section 138 only, Anglian Water, which is both Section 1275 and Section 138

1:22:30

Cadent Gas limited its role as gas undertaker that Section 138 Network Rail, which has both Section 1275 and Section 138 and the operators of Electronic Communications Code networks and that's Virgin Media Limited and BT Limited which is Section 138. And the protective provisions ensure that no serious detriment would arise in those instances where Section 1

1:23:02

275 is engaged. And they also provide appropriate protection that is necessary in the public interest for those statutory undertakers where Article 33 will be amused. So far as the current position with those statutory undertakers is concerned and I I went through in an earlier hearing the the position in terms of the

1:23:35

individual progress on protective provisions, which is the

1:23:44

that the key in respect of those matters and also where relevant. For example, in relation to Network Rail, I provided a a a summary of the key points of progress in terms of the acquisition of

1:24:03

a right by means of negotiation and there's no further update I've got

1:24:09

since. And since then we have responded in the

1:24:18

IT it to to those representations that have been made by the statutory undertakers. In the

1:24:28

responses that we put in so far, I can provide you with the references to where we have dealt with those matters, if it would assist or we can supply that in writing. But essentially I can summarise the position in the following way. We believe that we have got good prospects of reaching agreement in terms of the necessary protections in each case. And that of course, ultimately,

1:25:00

if there is a failure to reach agreement in terms of any remaining term of a protective provision, the opportunity will exist for both parties to put in their preferred form of protective provision, together with any submissions that they wish to make about any matters that are outstanding, and to justify their proposed version, and to explain why they are not satisfied or do not wish to offer, as the case may be, the protective provision term that is preferred by the opposite

1:25:32

party. As matters stand, and because of the optimism that exists in terms of reaching agreement on each one, I was not proposing to go into detail in terms of those matters which are being negotiated at the moment, and not least because the other parties aren't here to put their case. And I can do that if it's helpful. But I suspect that that might simply be overtaken by events and therefore unnecessary.

1:26:03

Yeah, I think that's right. I think it would be useful if you could submit I think you the summary you mentioned of where we can

1:26:11

sort of index if you like of where we can find the respective responses but indeed and and Harry would feel quite on behalf of the applicant that that was that was a document that I asked to be prepared for my purposes. I find it helpful and and and it's a useful sort of ready reckoner. And so we we can provide that a deadline 3.

1:26:31

Did you say deadline three or 433. Thank you.

1:26:37

I have no more questions on item 9, so I'll hand them back to Mr. Hunter.

1:26:45

Thank you very much, Miss Taylor. What I'm thinking is perhaps before we move on to 10, this might be a good time for for a break. I think

1:26:52

what I'm going to suggest suggest perhaps we take a slightly longer break that allows us both to to stretch our legs and refresh but also for us to go through the the action points as well. So perhaps if we can take sort of half an hour and come back at midday, come back at 12 and then we can we can deal with the final bits and do it that way. So this hearing is adjourned till till 12:00. Thank you very much.

1:27:13