



Immingham Green Energy Terminal

9.63 Summary of Compulsory Acquisition Hearing 1 (CAH1)

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Immingham Green Energy Terminal

Written Summary of Applicant's Oral Submissions to Compulsory Acquisition Hearing

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1 ABOUT THIS DOCUMENT

1.1 Introduction

1.1.1 This document summarises the case put by Associated British Ports (the Applicant), at the Compulsory Acquisition Hearing 1 on 11 April 2024 for the Immingham Green Energy Terminal project (referred to as the project).

1.1.2 The hearing opened at 10:00 and closed at 12:02 on 11 April 2024. The agenda for the hearing [\[EV8-001\]](#) was published on the Planning Inspectorate's website on 3 April 2024.

1.1.3 In what follows, the Applicant's submissions on the points raised broadly follow the items set out in the Examining Authority's agenda.

1.2 Attendees on behalf of the Applicant

1.2.1 Hereward Phillpot KC, Counsel instructed jointly by Bryan Cave Leighton Paisner LLP (BCLP) and Charles Russell Speechlys (CRS), appeared on behalf of Associated British Ports, the Applicant.

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2 APPLICANT'S SUMMARY OF CASE ON ITEM 3: APPLICANT'S STRATEGIC CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

2.1 Item 3 (Applicant's Strategic Case for Compulsory Acquisition and Temporary Possession)

Table 3.1 – Item 3 (Applicant's Strategic Case for Compulsory Acquisition and Temporary Possession)

Issue Discussed	Summary Of Oral Case
<p>Purposes for which the Compulsory Acquisition and Temporary Possession powers are sought, in line with s122(2) of the Planning Act 2008</p>	<p>The Applicant notes section 122(2) of the Planning Act 2008 (the purposes for which powers are sought) establishes that the condition for including Compulsory Acquisition (CA) powers in the DCO requires the land to be (a) required for the development to which the development consent relates, (b) required to facilitate or is incidental to that development, or (c) is replacement land which is to be given in exchange for the Order land. In this case, the Applicant notes that only the first elements are relevant as no replacement land is required. As explained in section 6 of the Statement of Reasons (SOR) [AS-008], "required" in this context means "necessary in circumstances of the case" (paragraph 6.4) and the land sought should be no more than is reasonably required (paragraph 6.7).</p> <p>The SOR identifies why each element of the land proposed to be subject to CA is required and set this out in the SOR:</p> <ul style="list-style-type: none"> • Sections 2 and 3 identify the various components of the Project and the use of the land within the Order Limits by reference to the works areas, Land Plans [APP-015] and Book of Reference [APP-008]. • Section 4 of the SOR confirms the scope and extent of powers and rationale for inclusion within the DCO. • Appendix 1 sets out the particular use proposed for each plot of land that is proposed to be compulsorily acquired (including acquisition of rights and temporary possession). <p>The Applicant noted that in most cases, the land is needed to accommodate a physical aspect of the development, save for in respect of the Queens Road residential properties. As explained in paragraphs 4.23-4.26 of the SOR (with reference to paragraphs 22.3.4-22.3.9 of Chapter 22 (Major Accidents and Disasters) of the Environmental Statement [APP-064]) the acquisition of those properties is required to facilitate the operation of the development because the current residential use is an impediment to the grant of the necessary hazardous substance consent to Air Products.</p> <p>In respect of the Queens Road residential properties, the Applicant has provided further information in response to written questions (in particular ExQ1.12.1.12 and ExQ1.12.2.2). These responses refer to a further study undertaken by Gexcon, a leading firm of fire and explosion safety consultants, and that</p>

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	<p>further work confirms the position articulated to date by the Applicant. The Applicant committed to providing at Deadline a summary of the Gexcon report to the ExA which would, summarise their conclusions on (1) the residential use at Queens Road and the likely advice from HSE; and (2) the non-residential use in the vicinity. The Applicant noted that the latter is not relevant to the issue of CA/Temporary Possession (TP) powers, but will be relevant to issues to be considered at ISH7 relating to major accidents and disasters. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Compulsory Acquisition Hearing (CAH) [TR30008/EXAM/9.58].</p> <p>The Applicant reiterated the explanation in section 6 of the SOR at paragraphs 6.17-6.22 that in each case, where CA is proposed;</p> <ul style="list-style-type: none">• the land is either required for the development to which the development consent relates or is required to facilitate or is incidental to that development;• no more land is included than is reasonably necessary; and• without all of the land included the Project cannot be constructed and operated.
Consideration given to all reasonable alternatives to Compulsory Acquisition and Temporary Possession	<p>The Applicant confirmed that the SOR addresses this question at section 6 in paragraphs 6.23 – 6.29, drawing on detailed analysis of the consideration of alternatives in Chapter 3 (Need and Alternatives) of the ES [APP-045] and the Without Prejudice HRA Derogation Report [REP1-008].</p> <p>Paragraph 6.26 of the SOR summarises the sequential approach to consideration of alternatives, including:</p> <ul style="list-style-type: none">• Step 1 – broad options for the Project [do nothing, development outside the Humber, alternative technologies for hydrogen production].• Step 2 – other port locations around the Humber estuary.• Step 3 – appropriate location within the Port of Immingham.• Step 4 – design and refinement.• Consideration of the sequential test. <p>Against that background, SOR paragraph 6.28 then identifies the reasonable alternatives to CA explored by the Applicant:</p> <ul style="list-style-type: none">• Layout of the Hydrogen Production Facility and relationship to impacts on the residential properties on Queens Rd.• Refinements of the Order Limits in response to feedback during consultation to limit impacts on neighbouring businesses.• Attempts to acquire by negotiated agreement – with considerable degree of success• Possible alternative locations for HPF

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	<p>The Applicant submitted that on the above basis, it is clear all reasonable alternatives to CA have been explored.</p>
<p>Summary of reasons why the Compulsory Acquisition and Temporary Possession rights to be acquired, are necessary and proportionate</p>	<p>The Applicant noted this is addressed in the SOR at section 6, paragraphs 6.31 to 6.37, although there is substantial overlap with other parts of the SOR including those which deal with how the land would be used, alternatives to CA which have been considered, and the compelling case in the public interest. In brief, these show:</p> <ul style="list-style-type: none"> • All of the land within the Order Limits is needed to achieve the identified purpose of delivering the Project and is no more than is needed for that purpose. • 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. • The powers go no further than is needed for that purpose and steps have been taken to mitigate the impact on those affected. • Compensation is payable for the CA of land and for loss or damage caused by the exercise of any power of temporary use
<p>Having regard to section 122(3) of the Planning Act 2008, whether there is a compelling case in the public interest for the Compulsory Acquisition in relation to:</p> <p>a. the need in the public interest for the project to be carried out; and</p> <p>b. the private loss to those affected by compulsory acquisition.</p>	<p>The Applicant emphasised that the approach to determining whether there is a compelling case embraces more than the two limbs set out in s122(3). It is, in effect, a question which embraces all of those matters which go into the balance in deciding if the proposed use of such powers is justified (e.g. alternatives considered, use of the land proposed to be acquired, attempts to negotiate acquisition etc). Importantly, this is consistent with the recognition by the courts that the s122(3) test mirrors and encapsulates the considerations to be satisfied under the European Convention on Human Rights (ECHR) in relation to proportionality. The relevant cases, R (Hall) v. First Secretary of State [2008] JPL 63 at [15] and R (Clays Lane Housing Cooperative Ltd.) v. Housing Corporation [2005] 1 WLR 2229 at 2236), were referred to in the Applicant's response to ExQ1.17.5.1 and copies submitted at Deadline 1 [AS-023]. This approach is reflected in the SOR and the Government's Guidance on Compulsory Acquisition; the Applicant referred in particular to paragraph 6.12 of the SOR which set out the relevant paragraphs of the CA Guidance together with paragraphs 6.23 - 6.49 of the SOR which summarise the case on that more comprehensive basis.</p> <p><u>The need in the public interest for the project to be carried out:</u></p> <p>In relation to this limb of the question, the Applicant confirmed this is set out in more detail in the Planning Statement [APP-226], the Without Prejudice HRA Derogation Report and the SOR. In short, the Project will deliver substantial public interest benefits in meeting a compelling need for additional port capacity to serve the energy sector. The key benefits that are expected include the following:</p> <ul style="list-style-type: none"> • Substantial new port capacity on the Humber, well-located to support the energy sector, provide resilience and promote competition.

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- A significant contribution to meeting net zero 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 hydrogen providing access nationally to a low carbon fuel and contributing to national energy security, meeting up to 3% of the Government's national 2030 hydrogen production capacity target.
- Benefits from fuel switching in industry and heavy transport.
- Contribution to the regional and local economy, with an average of 627 net jobs during the construction period (peaking at 1,012 jobs during Phase 1) and 207 during operation.

These benefits will only be realised if the powers sought are granted. Their scale is very substantial and significant at a national as well as regional and local level.

Private loss to those affected:

In respect of the owners and occupiers of the Queens Road properties, impacts are identified in the SOR at paragraph 6.34 and 6.35 which explains how the Applicant has taken those into account.

Since submission of the Application, the Applicant has made significant progress on reaching agreements with affected parties to avoid the use of CA powers. Where agreements have not been reached negotiations continue with a view to reaching agreements, where possible, before the close of Examination. Accordingly, if the SOS confirms the Order with the CA powers as sought, the private loss to those affected is already significantly mitigated by the voluntary deals already entered into.

The third party land requirements to deliver the Scheme can be split broadly into three categories:

1. Permanent Acquisition
2. Acquisition/creation of rights (in land and/or subsoil) and imposition of restrictive covenants (specified plots only)
3. Temporary Possession

In terms of the permanent acquisition land, the Applicant noted:

- Seven of the 10 Queens Road residential properties have been acquired by agreement. Two of the remaining residential properties (3 and 5 Queens Rd) have agreed heads of terms and are with solicitors. The approach of the Applicant in negotiations, has been to not only consider compensation payable under the compensation code (market value, disturbance,

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	<p>statutory loss, fees) but also the specific circumstances of the occupier to ensure the agreement mitigates any private loss for example taking account of:</p> <ul style="list-style-type: none">○ any adaptations made to properties to accommodate specific requirements;○ specific needs of occupants to be located in certain areas or close to certain facilities or support networks. <ul style="list-style-type: none">• These considerations have been factored into deals to ensure the affected party is able to purchase a similarly adapted property, or a property able to be adapted as necessary, in an appropriate location to accommodate any specific needs.• In order to assist the residential property owners the Applicant has also undertaken to pay costs in relation to the landowners obtaining professional advice (for both land agents and solicitors).• For completeness, where agreement is reached and the land acquired voluntarily, CA powers will not be exercised over the relevant property.• Only one residential property (4 Queens Rd) has not reached an agreement. Negotiations continue with the last residential property and the Applicant currently awaits a response to the latest offer made (which, as above, is made taking account of any considerations as above).• Highway land (verges) proposed to be stopped up is also proposed to be acquired. The ownership of these plots is not registered and has therefore been assumed to be in the ownership of adjoining land owners under the Ad Medium Filum rule (which, in the majority of cases, is the Applicant). One plot of land has been identified as possibly forming part of the Brocklesby Estate's land holding. The Applicant's land agents are working with the Estate to determine ownership. Negotiations with the Brocklesby Estate are at an advanced stage and should the land be confirmed as theirs, it is agreed, subject to appropriate commercial terms, that the land can be acquired by the Applicant.• Two Plots on the East Site (4/6 and 4/10) form a commercial premise currently used by a tenant of the Applicant. CA powers were sought over this land on a precautionary basis in the event vacant possession could not be obtained under the lease (see paragraph 4.21.3 of the Statement of Reasons [AS-008]). Since submission, following expiry of the lease on 31 December 2023, a new lease has been entered into with the tenant, the terms of which include the ability for Applicant to obtain possession through a termination clause requiring a month's prior notice. It is therefore not anticipated that CA powers will need to be exercised in respect of this land. <p>In respect of acquisition of rights the Applicant noted:</p> <ul style="list-style-type: none">• The majority of Plots over which these CA powers are sought relate to commercial properties and users and will not, in the view of the Applicant, interfere with the current use of the land. The Applicant is in negotiations with all landowners where rights are required
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	<p>(as set out in the Land Rights Tracker: Individual Landowners Compulsory Acquisition Schedule [REP1-040]). Protective Provisions are being negotiated to ensure Statutory Undertakers' interests are adequately protected.</p> <ul style="list-style-type: none"> • Rights are also sought over public highway subsoil for the installation of utilities. Works to the highway will be carried out pursuant to the relevant powers in the DCO. <p>In respect of powers to temporarily use and possess land, the Applicant confirmed that negotiations with the landowners for the temporary occupation of the land are in advanced stages. The land is occupied by a farm tenant however the landowner has the ability to obtain vacant possession and therefore discussions have progressed on the basis vacant possession will be obtained.</p> <p>Accordingly, the Applicant has taken substantial steps to mitigate any private loss that might result should an Order including CA powers be confirmed. Should agreement be reached with the final Queens Rd residential property owner prior to the close of Examination, then any remaining loss arising out of use of CA powers over other land can be adequately dealt with by way of compensation.</p> <p>The Applicant confirmed that 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 affected, it is plain that these public interest benefits clearly and decisively outweigh the adverse effects. This provides a compelling case in the public interest justifying the powers sought.</p>
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3 APPLICANT'S SUMMARY OF CASE ON ITEM 4: DRAFT DEVELOPMENT CONSENT ORDER

3.1 Item 4 (Draft Development Consent Order)

Table 4.1 – Item 5 (Draft Development Consent Order)

Issue Discussed	Summary Of Oral Case
The Applicant to set out briefly which draft DCO Articles engage CA and TP powers.	<p>The Applicant provided an overview of the relevant provisions confirming that section 4 of the SOR provides a comprehensive account of the dDCO Articles which engage CA and TP powers.</p> <p>In order to enable the construction and delivery of the Project, the dDCO provides powers to:</p> <ul style="list-style-type: none"> • Acquire compulsorily land and rights over land;

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- Article 22 (power to acquire land compulsorily)
- Article 25 (acquisition of subsoil or airspace only)
- Override or extinguish existing rights and interests in or over land;
 - Article 26 (private rights) – extinguishes or suspends private rights and restrictive covenants over land subject to CA
 - Article 27 (power to override easements and other rights) – any authorised activity can be carried out within OL even if it interferes with such a right)
- Create new rights in or over land and impose restrictive covenants;
 - Article 24 (compulsory acquisition of rights) – right to enter and install and maintain utilities. The Applicant noted that the intention is to first take possession of the relevant land using powers of TP (being Article 31 for construction and Article 32 for maintenance) to install the relevant apparatus and then exercise powers to take land/rights on a permanent basis once the precise extent of land actually required is known. This minimises the scope of permanent rights and is therefore and inherently less interfering approach. The Applicant emphasised that this approach can be taken anywhere where powers of permanent acquisition are proposed.
 - Where a restrictive covenant is to be taken, in each case the aim of the restrictive covenant involved is to protect apparatus.
- Take possession of and use land temporarily.
 - Article 31 (in relation to construction of the authorised project)
 - Article 32 (in relation to construction of the authorised project)
 - The Applicant noted that some land may only be subject to TP powers, but TP powers also apply to any Order Land in respect of which powers of permanent acquisition of land or rights is proposed but no notice of entry or vesting declaration has yet been made.

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	<ul style="list-style-type: none"> In addition, and for completeness, the Applicant noted that the dDCO also confers other rights and powers on the undertaker which would allow interference with property rights and private interests in land which are listed in the SOR at paragraph 4.57 (pp. 29-31). <p>In response to detailed questions from the Panel, the Applicant committed to submitting at Deadline 3 a note clarifying who has the benefit of the CA powers under Article 46 of the dDCO. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Compulsory Acquisition Hearing (CAH) [TR30008/EXAM/9.58].</p> <p>In respect of the Change Application (to be submitted to the ExA on or about Deadline 3), the Applicant confirmed that this does not affect the powers sought but does include extending the Order Limits to include an additional parcel land over which powers of TP for construction is proposed. The Applicant noted that negotiations are advanced for securing those rights by agreement and the landowner has consented to the inclusion of that land for temporary possession at any rate. This, coupled with the fact that no affected persons attended the CAH1 is reflective of the Applicant's progress in negotiations and commensurate with its optimism that those negotiations will continue to bear fruit throughout the Examination process.</p>
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4 APPLICANT'S SUMMARY OF CASE ON ITEM 5: HUMAN RIGHTS

4.1 Item 5 (Human Right)

Table 5.1 – Item 5 (Human Rights)

Issue Discussed	Summary Of Oral Case
<p>Regard given to Articles 8 and 6 of the European Convention on Human Rights and Article 1 of the First Protocol, highlighting any specific cases where interference of Human Rights needs to be brought to Examining Authority's attention</p>	<p>The Applicant noted, by way of preliminary point, that as set out in its response to ExQ1.17.5.1 (and as mentioned earlier), the Courts have accepted that the section 122(3) compelling case tests fairly reflects the necessary balance required by the ECHR and, accordingly, there is no separate or different justification required to justify the proposed interference with rights under the ECHR and Human Rights Act 1998. The SOR nevertheless addresses the consideration and application of relevant provisions of ECHR in section 8.</p> <p>As paragraph 8.3 SOR explains, ABP and Air Products have carefully considered the balance to be struck between individual rights and wider public interest:</p> <ul style="list-style-type: none"> Article 1 of the First Protocol is addressed in paragraphs 8.4 and 8.5 SOR;

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	<ul style="list-style-type: none">• Article 8 is addressed in paragraphs 8.10 and 8.12 SOR; and• Article 6 is addressed in paragraphs 8.6-8.9 SOR. So far as the rights embraced in Article 6 are concerned with process in considering whether a request for powers of CA is justified, the process under the Planning Act 2008 allows a fair opportunity for those who would be affected by exercise of such powers to challenge and test the cases put forward, and thereafter the opportunity for judicial review of any decision to grant such powers. Accordingly, this ensures that those parts of ECHR dealing with lawfulness of exercise of such powers and right to have fair hearing to test lawfulness are fully satisfied. <p>Therefore, for reasons set out in those in the SOR, the inclusion of relevant CA powers in the dDCO would not constitute an unlawful interference with Convention Rights and related provisions of UK law and is therefore appropriate and proportionate to grant the Order including grant of powers of CA.</p>
<p>The weighing of any potential infringement of European Convention on Human Rights against the potential public benefits if the Order is made</p>	<p>The Applicant reiterated its position that the weighing of any potential infringement of the ECHR is embraced within compelling case test and therefore did not propose to repeat the matters set out earlier.</p> <p>The Panel raised queries relating to the Applicant's response to WQ1.17.2.1 and how an assessment of market value is undertaken if only external inspections are carried out. The Applicant clarified that the starting point for assessing compensation, formulated as part of the negotiation strategy, is to first look at the interest on a line by line desktop basis with reference to the compensation code which includes market value, disturbance, and fees (among others). As engagement with owners/occupants increases, the Applicant/its land agent gains further information relating to potential impacts and loss arising from the scheme or relocation, which informs the narrative and negotiations going forward. Information provided by the owners/occupants/land agents relating to adaptations and other needs is reviewed and assessed as part of those ongoing negotiations.</p> <p>The ExA raised questions relating to the Applicant's CA strategy noting that "only some of dwellings on Queens Road are proposed for CA, and other current or former are now excluded, some of these are now vacant, best described as derelict. Why are not all of these properties along QR and adjacent to development included"? In response to this question, the Applicant clarified that the key distinction in terms of the CA powers lies in the land use of the relevant properties. The location of the residential land uses to the proposed hydrogen production facility (and, in particular, their proximity to a potential adverse impact of a major accident or disaster) means the HSE would likely advise against grant of hazardous substance consent. This is the impediment justifying acquisition. The Applicant clarified that where properties are in a land use not resulting in 'advise against' response from HSE which is broadly due to a different level of risk associated with that use (e.g. in terms of amount of time people are in</p>

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occupation etc), then the case for CA would not be established because those land uses do not represent impediment to obtaining a hazardous substance consent.

In this regard, the Applicant also noted that while the CA strategy focused on residential properties, negotiations and discussions have taken place with other commercial properties on Queens Road by Air Products on open basis and not under the CA process. For instance, Air Products agreed the acquisition of the block of properties at 6 – 18 Queens Road, where only numbers 6 and 18 were in residential use (the remainder in commercial use), however the whole block was owned by a single landowner who negotiated an agreement in respect of all of the properties.

In respect of questions relating to the CA Guidance and potential future uses of the Queens Road residential properties, the Applicant confirmed:

- The CA Guidance is only guidance and must be applied in relation to facts of particular case.
- In this case, a key factor is ensuring the residential use comes to an end and the dDCO includes provisions to ensure that the hydrogen production facility could not operate with those properties in residential use;
- Accordingly, in applying the CA Guidance to this case, it must be read not as requiring a
- commitment to a particular use for the properties but rather to ensure the current use of those properties comes to an end.
- As discussed at earlier hearings, the approach taken to redevelopment of those properties is to liaise with the local authority in order to identify what future uses might be appropriate (thereby better aligning with the local public interest), rather than seeking to unilaterally propose future uses at this stage in circumstances where that alternative use is not in itself a necessary part of development.

The Applicant has committed to providing an update to the ExA at Deadline 3 as to discussions with NELC on the Queens Road properties.

In response to questions relating to engagement with the Kings Road property owners, the Applicant confirmed:

- Large abnormal loads bringing modular parts for the construction of the Hydrogen production facility will be brought to site through the Port of Immingham and down Kings Road.
- Along Kings Road there are a number of overhead cables which are understood to be BT Openreach cables that will likely need to be temporarily removed or lowered to allow the abnormal loads to pass. The cables will then reinstated.
- The cables pass from a pole on one side of road to the properties on the other. The temporary possession powers in relation to the Kings Road properties are required in the event access to the building side is required to complete the temporary lowering of the cables.

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	<ul style="list-style-type: none"> In terms of correspondence with property owners, Gateley Hamer has written to the relevant parties (landowners and occupiers) to inform them of works required and committed to keeping them updated throughout the process. Land agents have also met with number of individuals on site and distributed contact details in the event there are further queries to respond to. <p>So far as the King Road works involve interference with electronic communications networks, these would be subject to the protective provisions included in Part 8 of Schedule 14 of the dDCO, which would ensure that the relevant operator would be given appropriate notice and that appropriate system would be in place to protect their interests.</p>
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5 APPLICANT'S SUMMARY OF CASE ON ITEM 6: APPLICANT'S UPDATE ON THE LAND RIGHTS TRACKER

5.1 Item 6 (Applicant's Update on the Land Rights Tracker)

Table 6.1 – Item 6 (Applicant's Update on the Land Rights Tracker)

Issue Discussed	Summary Of Oral Case
Progress on negotiations, highlighting outstanding objections.	<p>The Applicant provided a summary of updates to a number of land interests since submission of the Land Rights Tracker (Individual Owners) submitted to the Examination at Deadline 1. In particular, it was confirmed:</p> <ul style="list-style-type: none"> An offer has been made to the owners and the occupants of 3 Queens Road which has been agreed and is now with solicitors to progress. 4 Queens Road is the only residential property where agreement is outstanding. Gateley Hamer (land agent for the Applicant) continue to engage with the agent for 4 Queens Road and a revised offer has been made which it is hoped can bridge the gap between the parties. Agreement has been reached on 5 Queens Road and all the relevant documentation is final and agreed, however completion is pending the completion of the owner's onward purchase. The Brocklesby Estate has a number of rights over land within Order Limits as well as being the landowner of the new piece of land identified for temporary possession under the proposed Change Application which is to be submitted to the ExA. Through ongoing discussion with the

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	agent for Brocklesby Estate, agreement has been reached to acquire the required rights and also the temporary possession land proposed to be included in the change application.
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6 APPLICANT'S SUMMARY OF CASE ON ITEM 7: AFFECTED PERSONS' SITE-SPECIFIC REPRESENTATIONS

6.1 Item 7 (Affected Persons' Site-Specific Representations)

6.1.1 The Applicant made no submissions on this agenda items. It is noted that no Affected Persons attended the hearing, either in person or virtually.

7 APPLICANT'S SUMMARY OF CASE ON ITEM 8: CONSENT FOR THE INCLUSION OF THE CROWN LAND

7.1 Item 8 (Consent for the inclusion of the Crown Land)

Table 8.1 – Item 8 (Consent for the inclusion of the Crown Land)

Issue Discussed	Summary Of Oral Case
Update on getting consent for the inclusion of the Crown land	<p>The Applicant noted that background information on the Crown lease and necessary consents from the Crown was provided in the Applicant's response to Q1.17.3.1 (Leasehold interest over Crown land) within Responses to Q1.17. Compulsory Acquisition and Temporary Possession [AS-023].</p> <p>Two consents are needed from the Crown for the Project.</p> <ul style="list-style-type: none"> • The Lease provides that ABP must not execute any embankment or other work on the demised foreshore except with the consent of the Crown Estate in writing. Such consent was obtained by way of the Crown letter dated 20 February 2024 (appended to the Applicant's response to Responses to Q1.17. Compulsory Acquisition and Temporary Possession at Appendix 1 [AS-023]. • The Planning Act 2008 contains two provisions under section 135 which deal with consent: <ul style="list-style-type: none"> ○ Section 135(1) provides that an order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if the appropriate Crown authority consents to the acquisition and is not relevant to the dDCO on the basis that ABP has the benefit of the lease and does not need to seek to acquire any interests in Crown land.

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	<ul style="list-style-type: none"> ○ Section 135(2) provides that an order granting development consent may include any other provision (i.e. except seeking to acquire interests over Crown land) in relation to Crown land only if the appropriate Crown authority consents to the inclusion of the provision. This is the consent that the Applicant is yet to obtain. <p>In respect of the section 135(2) consent, the Applicant noted that it is already engaging with the Crown Estate solicitors and that engagement is taking place against a background where it has already obtained the consent for the development that is proposed on the Crown land pursuant to the lease. Therefore, there is no in principle difficulty anticipated with obtaining further section 135 consent, albeit expected a little later in the process.</p> <p>The Applicant noted, in response to queries from the ExA, that the reference to indemnities in the letter from the Crown Estate, reflects underlying lease terms and does not request further action, however the Applicant committed to providing a written response confirming this point at Deadline 3. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Compulsory Acquisition Hearing (CAH) [TR30008/EXAM/9.58].</p>
<p>Timetable identifying key milestones towards reaching agreement (in relation to the Examination timetable)</p>	<p>The Applicant confirmed that initial communication with Crown Estate notes the Applicant's early engagement, however suggested that consent will likely be provided much later in the process and in some instances after the close of Examination. The underlying rationale is that the Crown Estate will need to review the contents of the dDCO in order to give consent and where the dDCO is anticipated to evolve during the course of Examination, the preference is to issue their consent at the end of Examination once the dDCO is settled.</p> <p>In light of the Applicant's early engagement and the fact that consent has already been obtained under the lease, the Applicant is optimistic that the s135 consent will be given prior to the end of Examination, however, will keep the ExA update in this regard.</p>
<p>Likelihood and implications of agreement not reached before the close of the Examination</p>	<p>As above.</p>

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8 APPLICANT'S SUMMARY OF CASE ON ITEM 9: REPRESENTATIONS FROM STATUTORY UNDERTAKERS

8.1 Item 9 (Representations from Statutory Undertakers)

Table 9.1 – Item 9 (Representations from Statutory Undertakers)

Issue Discussed	Summary Of Oral Case
The Applicant to summarise progress on negotiations with Statutory Undertakers	<p>It is noted that no Statutory Undertakers attended the hearing, either in person or virtually and therefore no representations from Statutory Undertakers were made on this agenda item.</p> <p>The Applicant noted earlier submissions in ISH5 relating to the protective provisions which were note repeated. The Applicant has submitted at Deadline 3 a separate document summarising the position on protective provisions with Statutory Undertakers.</p> <p>By way of brief summary, the Applicant noted that the position relating to Statutory Undertakers is set out in the SOR at paragraph 7.8 to 7.18. While there is no proposals for the permanent acquisition of the land of Statutory Undertakers there is there is a proposal to acquire some rights in land owned by Anglian Water and Network Rail. In each case, the rights are relatively limited and related to the pipeline corridor and rights to install and maintain the pipeline. Additionally, Article 33 provides for the extinguishment of relevant rights or removal or repositioning of relevant apparatus belonging to Statutory Undertakers in connection with the delivery of the project.</p> <p>Relevant to Statutory Undertakers are the two tests set out section 127(5) and 138 of the Planning Act 2008. The Land Rights Tracker: Statutory Undertaker's Compulsory Acquisition Schedule includes a column setting out which of these tests are engaged. The Applicant identified that the relevant tracker submitted at Deadline 1 [REP1-041] contains some errors in this column and a revised and corrected tracker will be submitted at Deadline 3.</p> <p>In summarising these tests, the Applicant noted:</p> <ul style="list-style-type: none">• In relation to section 127(5), 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 section 127(6), those being 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. In respect of the acquisition of rights and the imposition

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	<p>of restrictive covenants that are required, the SOR at paragraph 4.41 explains why those are needed.</p> <ul style="list-style-type: none">• In relation to section 138(4), the Order may provide for the extinguishment of the relevant right or the removal of the relevant apparatus only if the Secretary of State is satisfied it is necessary for the purposes of carrying out the development to which the order relates. The Applicant has identified where that is required and why in the Utilities Statement and the associated plans [APP-239] which demonstrates that what is proposed is necessary for the purpose of carrying out the development to which the order relates. <p>The protective provisions that are included in the dDCO addresses any potential impact on all Statutory Undertakers affected by either power. The protective provisions ensure that no serious detriment would arise in those instances where section 127(5) is engaged and they also provide appropriate protection that is necessary in the public interest for those Statutory Undertakers where Article 33 will be used.</p> <p>The Applicant noted previous oral submissions made in ISH5 concerning the status of protective provisions and again confirmed there are good prospects of reaching agreement in terms of the necessary protections in each case.</p> <p>The Applicant noted that if, ultimately, there is a failure to reach agreement in terms of any remaining term of a protective provision, both parties will have the opportunity to put in their preferred form of protective provision, together with any submissions to justify their proposed version and to explain why they are not satisfied or do not wish to offer the protective provision term that is preferred by the opposite party for the ExA to make a recommendation based upon.</p> <p>The Applicant committed to submitting an update to the Examination at Deadline 3 summarising the position in respect of protective provisions. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Compulsory Acquisition Hearing (CAH) [TR30008/EXAM/9.58].</p>
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