

Hearing Transcript

Project:	Five Estuaries Offshore Wind Farm
Hearing:	Compulsory Acquisition Hearing 3 (CAH3) - Part 2
Date:	23 January 2025

Please note: This document is intended to assist Interested Parties.

It is not a verbatim text of what was said at the above hearing. The content was produced using artificial intelligence voice to text software. It may, therefore, include errors and should be assumed to be unedited.

The video recording published on the Planning Inspectorate project page is the primary record of the hearing.

Five Estuaries_Colchester_CAH3_23 Jan_PT2

Created on: 2025-01-23 11:58:24

Project Length: 01:15:22

File Name: Five Estuaries_Colchester_CAH3_23 Jan_PT2

File Length: 01:15:22

FULL TRANSCRIPT (with timecode)

00:00:05:03 - 00:00:21:20

It's now just a little past 11:45 and the hearing is resuming. Uh, turning to the applicant. Have you had any further thoughts about the issue that we were discussing just before the adjournment in terms of how things might be progressed?

00:00:23:14 - 00:00:39:21

Adam Kendall, on behalf of the applicant. Yes, sir. I think the best route for us is to take that point away and discuss with North Falls at the earliest opportunity, and then we can come back to, uh, Mr. Foster, Mrs. Fairley and Mr. Gold.

00:00:41:09 - 00:00:53:29

In that context, does the this examining authority, in fact, in effect, need to set some sort of deadline, um, to assist that process of actually getting things moving.

00:01:03:25 - 00:01:37:27

And when I say dead, that's not a deadline for stuff being submitted, because bunches of not wanting to tinker too much with the examination timetable. Otherwise, Mr. Johanson might give me a hard time. Um, but more in terms of discussions outside of the examination process. So at least you can either feed into deadlines six, six, A or seven, whatever. Six eight ultimately turns out to be as a newly inserted deadline, so that at least we get some feedback from the parties as to where this matter may have progressed.

00:01:39:20 - 00:01:50:08

Uh, let me get you to that again. So we could only commit to providing an update and not necessarily an outcome. We're happy to do that. Along with the submission of the Land Rights Tracker, which is already an examination timetable, if that would suit.

00:01:51:13 - 00:02:10:28

Yeah. I'm just just wondering whether we might just need to be a little bit more forceful at this end of the room in terms of setting some kind of deadline, which kind of requires parties to get to have got around a table to try and move matters on.

00:02:13:28 - 00:02:23:04

On behalf of the applicant, I think it's worth saying that we we are still engaging all landowners. This is the hearings aren't the only time that we're talking to them. Um, and we are.

00:02:23:19 - 00:03:31:19

But this examination is now four and a bit months old. Some of these issues predate the commencement and the examination. Um, with there being about a three month gap before the examination commenced, after the acceptance of the application for negotiation, for examination. It does seem progress has been very slow. We are certainly hearing from the landowners present here today that for the most part, they think they can potentially agree matters with you on the applicant side, but it seems to be hitting the buffers for reasons, um, that we've heard some evidence about this morning, but it does seem that perhaps there needs to be more impetus to get things, um, either to the position where voluntary agreements can be entered into or clarity that they won't be entered into, because this examiner authority will need to know shortly which direction of travel it's going to be heading into.

00:03:31:21 - 00:03:33:00

Once we get to reporting.

00:03:45:19 - 00:04:02:08

Uh, Paul, let me give you for the applicant, we cannot commit to any more than we have, sir, because we cannot force other parties to come to meetings either. So it has to suit everybody's diaries as well as ours. We will absolutely do our best to try and hold those meetings as soon as we can, but we can't make any more commitment than that.

00:04:07:08 - 00:04:48:02

Thank you, Mr. Lee. I think the examining authority will have to take the matter away when we issue our post hearing actions. We will have to consider whether or not we fail through that process. We do set a deadline for discussion, and then that will then feed into a reporting timeline based upon, as I say, either existing deadlines within this examination or potentially six day. I suspect where we sit here this morning, if we require something to have happened by deadline six, which is 11th February, that would be too tight.

00:04:48:12 - 00:05:04:16

So I suspect we are looking at, um, something after that deadline, Um, to get things moving, because we've also need to be conscious that some parties will be engaging next week in the commencement of the North Falls examination.

00:05:10:11 - 00:05:28:15

So it would depend what you were seeking to achieve by the deadline. I mean, we the problem is we we could certainly speak to North Bowles and put out a proposal, but that doesn't mean that the parties would have had time to properly consider it and respond to us and have the discussions to reach agreement by that deadline. Those are completely separate issues, and we're only in control of one of them, so we.

00:05:29:04 - 00:05:43:27

Fully appreciate that. But if pressure is being put on one applicant, um, that might persuade the other applicant that perhaps this is something that they might also want to engage in. Uh, Mr..

00:05:48:23 - 00:05:49:21

Uh, can you. Sorry.

00:05:50:03 - 00:06:36:02

Uh, Hayden Foster, representing, uh, Henry Ferris Unlimited. Thank you very much. I just want to say that we will endeavor to engage on such matters. We've dealt with two issues this morning that have been presented to us through the process as red lines, one being the the representations here, the other being the 90 meter width, and not being able to separate the two. Because if one separates the two, you only need two much more narrow widths, so the 90m can narrow down very significantly at that point. And if you are encouraging them to talk to us about these red line issues, subject to reasonable costs being met as in accordance with the code, we will be delighted to engage and will feel that we've had a very successful day today in trying to progress things with the project towards towards agreeing some terms.

00:06:51:28 - 00:07:16:03

Nothing I've done done well. I've done two and a half days and I've not done it. Uh, I don't recall. Um. Yes. Sorry. Uh, this is not the forum, um, for the mechanics of that sort of negotiation. Now that the applicants heard what you just said. And when you do get round the table, that's the sort of thing that you'll be able to get to grips with. And perhaps progress matters.

00:07:19:23 - 00:07:26:09

Before we move on from this point, uh, Mrs. Fairlie, was there anything you wanted to say on behalf of your your client or client.

00:07:27:28 - 00:07:30:12

Tamsin Fairlie for Tea Valley and Sons? No, just.

00:07:30:14 - 00:07:45:29

That we're quite happy to carry on the the conversation. And obviously we are and the applicant knows we are being incentivised to sign by this deadline. Six so I think I can speak for quite a few people in saying that they would want to have that conversation before then so that they can actually make a decision.

00:07:48:22 - 00:07:56:01

Thank you, Mr. Gold. was there anything on this point that you wanted to raise? Before we move on to some other questions that I have?

00:07:57:21 - 00:08:08:29

Thank you sir. Thank you chairman. Now, the choice of Sir Nicholas Gold on behalf of Cobham is. No, no thank you. Chairman, I'm just awaiting the outcome so that we can be as productive as possible during my discussions with the applicant.

00:08:33:27 - 00:08:42:14

But the next question I had. We've already, in effect, partly addressed. Um.

00:08:48:06 - 00:09:18:24

But I am going to turn to the applicant on one point. And this, um, does relate to the the substation zone and primarily land plots 17 hyphen zero 24 and 17. Hyphen zero 25. Um, and it's a matter that we've variously dealt with either during hearings and or through, um, questions.

00:09:19:29 - 00:09:22:05

Um, and.

00:09:25:06 - 00:09:56:25

It really revolves around the situation we have where compulsory acquisition powers are being sought by five estuaries, um, for acquisition over the whole of, um, the substation sites for both North Falls and your own, uh, substation sites. Um, we asked during the course of compulsory acquisition hearing to prepare a note for legal note rep for hyphen zero 37, which we received.

00:09:57:28 - 00:10:02:17

Um, and really sort of building on from that.

00:10:04:23 - 00:10:05:24

I'm just seeking.

00:10:08:18 - 00:10:17:18

Clarification from the applicant side that having regard to the provisions of section one, two, two of the act.

00:10:21:24 - 00:10:25:16

And the um, compulsory acquisition guidance.

00:10:28:25 - 00:10:32:18

Would it be open to the Secretary of State to conclude?

00:10:41:19 - 00:10:58:25

That all the acquisition powers sought in relation to land plots 1724 and 1725 would not be necessary for the purposes of constructing and operating the five estuaries offshore wind farm.

00:11:01:15 - 00:11:04:02

Um.

00:11:06:16 - 00:11:26:26

And that therefore it would be open to the Secretary of State if he felt that there were issues, um, with the application of the legislation and the guidance to remove, um, some of the land from any powers that may be subject to compulsory acquisition powers within a mail order.

00:11:46:06 - 00:12:08:17

Oh, let me get you for the applicant, sir. I would like to respond with a written legal submission at D6 on this point. If that is the point you would like addressed in principle. It is always open to the Secretary of State if they feel the statutory tests are not met. Not to grant compulsory acquisition

powers on any plot, on any application, including parts of plots. That is always an option that is available to them.

00:13:01:25 - 00:13:11:09

Thank you, sir. Then there's an action arising out of this hearing. A, you're going to provide a fuller legal note and to address that point.

00:13:12:04 - 00:13:18:14

I'll give you that. Yes, sir. I think if I started going into all the caveats and nuances now, we'd still be here tomorrow. So I would rather do it in writing.

00:13:19:24 - 00:13:21:28

You might be here tomorrow, but some of us won't be.

00:13:23:22 - 00:13:56:11

Um, now, as as a follow up, um, point to that that last question, and I'm couching this, uh, on a without prejudice basis to the applicant. Um, will you submit, Um, alternative versions of sheets 17 and 18 of the land plans, showing the land that would only be necessary to accommodate an onshore substation for the proposed five estuaries.

00:13:56:13 - 00:14:30:08

Onshore wind farm. The reason for asking that question is if, um, the examining authority reaches a conclusion that we make a recommendation that only some of the powers sought in respect to the substation zone, um, should be granted. Uh, that would need, I think, to be shown on plan. And potentially, if the Secretary of State was similarly to agree that only some of the powers, um, were required.

00:14:30:10 - 00:14:52:02

If that's the, uh, a recommendation that we make, and that's ultimately the the decision that the Secretary of State needs, there would need to be some way of defining what was actually need. Needed under that scenario where there was just, uh, powers being granted, um, for,

00:14:53:26 - 00:14:56:03

um, five S3. Substation.

00:15:10:24 - 00:15:19:20

Again, this in part comes back to the plate spinning point we had yesterday where we were on another matter. We need to be able to cover all bases.

00:15:42:17 - 00:16:18:02

Uh. So this. This is actually quite a complex point, and we're going to have to take away. I'm afraid it's not as simple as simply turning an area of it gray, because we might, for example, need rights or temporary possession or going, going to do the work. So we'll need access, we'll need site leveling. We'll need to look at the drainage in the area. We'll need to do site investigation. We can't simply say there are areas that we we wouldn't touch. I'm not I need to go into construction on this point. I can't

give you an answer at the moment. I'm afraid about whether or not we're able to do those plans and whether or not we even on a without prejudice basis, think that we can produce them.

00:17:32:05 - 00:17:43:15

I mean, we. We could at least expect a deadline. Six. You'll have indicated. Yes, we think we can do it or no, we don't. And these are the reasons why we don't think we can do it.

00:17:45:20 - 00:17:48:07

And yes, sir, we can certainly give you an answer at deadline six.

00:17:56:25 - 00:17:57:19

This is fairly.

00:17:58:09 - 00:18:17:22

Tamsin. Fairly fairly. And sons. I'd just like to make the point that one of the previous meetings we had had with the applicant at Norman's farm, we were told that that was something that they would be able to provide, even if it was indicative. And that was several months ago now, and we still haven't had it. So we'd be grateful if there was a deadline so that we could get something.

00:18:59:17 - 00:19:16:07

Okay, I'd like then to turn to, um. For want of a better way of describing it, the additional loop, um, Hall Road, which affects land plot 17, hyphen 006,

00:19:17:27 - 00:19:26:01

um, which the applicant has explained, you require um, in effect, to avoid obstacle.

00:19:27:18 - 00:19:49:09

00X hyphen 31 um, which relates to potential low lying low lying meadow habitat, which is yet to be determined as to whether it is that habitat type. With North Falls. Um having pursued the matter in a slightly different way.

00:19:52:20 - 00:20:11:16

Well, let me give you that concert. We we don't agree that it's potential. We our services that it is in our expert ecology advice is that it is. And the historic record keeping is that it is. We know that North Falls have taken a different view, but can I be very clear? Our position is that at the moment, as surveyed, that is lowland meadow within the classification type.

00:20:55:07 - 00:21:28:22

Okay, but the two projects have taken a different approach. Um, you have got the loop road. North falls has not got the the loop road. So North will presumably believe that they can get access to and from, um, the substation zone and allow for National Grid to do what they need to do during the construction period without that loop. Um, so if the test, um, or the conditions under the act are applied.

00:21:31:05 - 00:21:35:26

Could Five estuaries. Proceed without that loop road.

00:21:38:13 - 00:21:43:18

If powers were not to be granted over plot 17 006.

00:22:14:01 - 00:22:32:17

Up on GitHub. And so we would like to check our references before we give you an answer on that. Um, the pre-construction service would go out and recheck this classification. So it is possible that we have allowed for going through it in the years. But we would like to check what we've said before. We give you an answer so I could come back in writing, please.

00:22:48:26 - 00:22:50:22

That response will be at deadline six.

00:22:51:02 - 00:22:51:20

Yes, sir.

00:23:32:25 - 00:24:12:27

My next question relates to the, um, restrictive covenant point, which we discussed during the farming session, um, earlier in the week. Um, and that's the restrictive covenant in schedule seven of the draft order, uh, where um, limitation, um, what the, the covenant is seeking, uh, that the, the landowners provide notice to, um, the undertaker if they wish to take works or that would be below a depth of 0.6m.

00:24:14:00 - 00:24:58:14

Um, other than, um, for some fairly straightforward farming type activity. Now, really, the question here in terms of that covenant is more one of practicality in terms of how it might operate. Um. We were given an example earlier in the week where potentially, um, during harvesting, a tractor gets bogged down in a wet field. Um, how might that covenant actually operate in practice to deal with the recovery of a tractor that potentially needs digging out? Uh, that happens to have coincided with, uh, getting stuck literally above the cable ducting,

00:25:00:11 - 00:25:08:05

because that's not a plowing activity. Plowing activities are not covered. I think if I remember, I believe from what the the covenant says.

00:25:20:14 - 00:25:30:28

Um, or slightly confused. Sorry or slightly confused. Sorry. We don't think the covenant would stop that. Um.

00:25:32:04 - 00:25:41:23

The issue was, though, that once anything happens below 0.6m, there's a requirement to contact the the undertaker

00:25:43:22 - 00:25:59:19

and the applicant. The Undertaker then got to consider that, um, incident and potentially indicate to the farmers, the landowners, whether or not they can proceed or what would then need to happen before they could proceed.

00:26:04:00 - 00:26:40:08

Uh, I'll make a deal of that. Okay. Um, so I think this process is being somewhat overblown. We're literally talking a phone call or an email. We we would want to know that people were working near our cables and we would, you know, potentially want to know what those works were. But this idea that there's a whole, especially in a case like that where it's essentially, you know, an unforeseeable incident that needs to be resolved at short notice, the idea that there is a whole complex process to go through. We don't accept there is a whole body of case law and restrictive covenants about things like consent not to be unreasonably withheld or delayed means we are happy to put that sort of wording in, and there is a whole body of case law about what that means.

00:26:40:12 - 00:26:47:27

But but as the covenant is written, if it's abided by, something happens, I don't know, 7:00 at night

00:26:49:18 - 00:26:55:24

at the end of summer, because that's when the harvest. What does the, the, the farmer or the contractor do on the ground?

00:27:01:20 - 00:27:07:04

Uh, just before we answer, perhaps Mr. Foster's indicated he's going to give a practical example, maybe or.

00:27:08:00 - 00:27:25:09

So Hayden Foster, um, representing Henry fairly and sun limited. Um, I just want to correct me if I'm wrong, but I believe you won't be the ultimate owners of the transmission cable. The transmission cable will be sold to a third party off tow. Um, I don't wish to get accused.

00:27:25:11 - 00:27:25:26

Of.

00:27:25:28 - 00:27:55:23

Talking about stories again, but in reality, that means that whatever process, it is important that the legal wording of what is required is correct. It has to be there. I fully accept that it needs. There needs to be a methodology to resolve such issues, but once it's sold, you'll be dealing with an entirely different body and entirely different agents. Um, and the speed of that is important. Personally, I think 0.6 of a meter is a bit too shallow if we're going to have continuing discussions.

00:27:55:28 - 00:28:30:01

I'm happy to talk about whether that can be a bit deeper than a bit deeper than that, because 0.6 of a meter does preclude normal, um, mole ploughing activities, which it would not be normal to have to get consent for across a scheme such as this. That would be abnormal, but in reality, um, an emergency such if that does, does cause a problem. And I think some wording around whether you actually need to, uh, undertake digging as opposed to just pulling it out would help in that situation.

00:28:30:03 - 00:28:35:26

But again, maybe that's something that can be discussed as part of ongoing discussions. Thank you.

00:28:47:24 - 00:29:21:08

Um, let me give you an there's a couple of points in there, sir. First of all, pulling it out and digging it out or separate things. The covenant is works in the ground. These are high voltage cables in the ground. For their own safety. I would want the farmers to be checking with us where and how deep those cables are before they started doing serious digging. And and secondly, this sort of protection and these restrictions are common across all utilities. This is not something that's bespoke or special. And it's you will find it in all discos with buried cables, for example, that there is a protection in there to protect those cables.

00:29:21:10 - 00:29:22:22

Yes. Absolutely. standard.

00:29:22:24 - 00:30:16:28

Yeah I think. I don't think Mr. Foster has helpfully indicated that there's no issue with the need for a covenant. It's how the covenant is worded. And whether, in the case of the farming practices that are conducted here, whether 0.6 of a meter as the trigger for alerting the, um, undertaker or the owner of the asset, um, is suitable, whether in fact what that if you set the trigger at one point at 0.6 and or you don't elaborate more on what the what triggers the notification, then potentially, um, the asset owner or the undertaker could be bombarded by a series of notifications, not least as as we dealt with earlier, if, if, um,

00:30:18:23 - 00:31:03:20

issues arise, you know, at strange times in terms of people working in an office environment who might be discharging the covenant on behalf of the undertaker or the asset owner. They don't necessarily work at the same time that farmers do, particularly in the middle of a harvest. It just does seem that the wording in that covenant at the moment is perhaps a bit too bold, and that perhaps is potentially also why, certainly on the compulsory acquisition side of things, the landowners have got concerns that once construction were completed, there are practicality difficulties for them to carry on their farming businesses.

00:31:10:21 - 00:31:16:03

But it's to foster Aoda help in terms of 0.6. Is that a depth that you.

00:31:16:09 - 00:31:16:24

So.

00:31:17:07 - 00:31:18:25

Have encountered before on other.

00:31:19:06 - 00:31:51:05

Most kind of you. Most kind of, you ask Hayden Foster. Representing Henry fairly and sun limited. Um, that is a depth that has been asked for before, but I have evidence of other schemes where the

total depth has been agreed slightly lower, and that depth has been agreed lower. It is a point for discussion. I'm sure it's one that we should acting reasonably be able to agree. I wholeheartedly agree that I do not want my client digging holes over those tables randomly.

00:31:51:07 - 00:32:03:26

I wholeheartedly agree with what the applicant is saying in that regard. I believe that there are better solutions that have been achieved elsewhere than are currently proposed here, but that's probably not for this forum.

00:32:06:14 - 00:32:15:24

It might not necessarily be for the compulsory acquisition hearing. Are you intending to partake in this afternoon's DCO hearing?

00:32:16:28 - 00:32:17:28

I'm happy to do so.

00:32:18:27 - 00:32:41:09

I mean, it might be a matter that we can return to during the course of that hearing or as opposed to hearing written submission. Um, perhaps if you have got other examples of wording that you think might be suitable, uh, you could identify, uh, those other forms of wording. Um, because I'm not

00:32:42:28 - 00:32:49:21

I think everybody accepts there needs to be a covenant. It's what the wording is and it's practicality

00:32:51:06 - 00:32:56:12

and that it's not unduly onerous, but it serves its purpose.

00:32:58:17 - 00:33:30:00

Thank you very much. Mr. Gould, just to follow up on that. Again, it is much easier for the landowners to deal with such matters and know of what they need to do. If and I know we're talking about one scheme here, but if the two schemes are as close together as possible at a practical level and a restricted land level and whether they go through the middle of a field, those practical things that we still wish to discuss in the hope that we can sign a voluntary agreement. Uh, this contributes significantly to that as well.

00:33:30:02 - 00:33:30:26

But thank you.

00:33:32:03 - 00:33:39:09

I'm very sorry to interrupt. I'm wondering if we can we just check that live stream is working? My colleagues and the other room in this building are seeing they're having some difficulty.

00:33:43:12 - 00:33:45:06

I didn't want everybody to have to repeat themselves.

00:33:50:18 - 00:33:53:15

Do we have any indication when the live stream might have dropped?

00:33:59:14 - 00:34:01:16

I assume it's just my colleagues. Then please continue.

00:34:02:06 - 00:34:32:17

It might be the same issue that we as an authority have been having over the last day or so, that from time to time our internet connections have been dropping. I think on Tuesday afternoon after 4:00, I didn't have an internet connection. Um. Yeah. Um, Mrs. Webb, apparently. So it might be that that's the problem. I have certainly found if, um, a little bit of persistence of trying to go back in and, uh, giving it several goes does eventually seem to get you reconnected.

00:34:34:10 - 00:34:35:01

Thank you, sir.

00:34:37:09 - 00:34:38:03

Perhaps we could.

00:34:40:10 - 00:34:55:22

Review that and see whether, um, as we progress further in this hearing, there is a wider issue that presumably, um, the IT team can keep a watch for that yet we're getting an indication. Thank you.

00:35:11:10 - 00:35:20:02

Wait, does the applicant have any observations as to whether or not some tweaking of that covenant could be made?

00:35:22:03 - 00:35:24:00

Perhaps make it clearer what was.

00:35:26:07 - 00:35:31:19

Excluded from a notification versus what would have to be subject to a notification?

00:35:32:09 - 00:35:53:21

Well, let me give you that. We are certainly happy to revisit the wording and have examples of other wording which is more acceptable to the landowners can be provided. We are happy to consider those. I would note, sir, that we have been seeking to agree this wording with North Wales so that both the schools were seeking similar covenants, so I would have to have a conversation with them as well. But as five estuaries, we're very happy to take that away and look at it.

00:36:12:01 - 00:36:47:22

I think then there's an action arising out of this hearing. Um, if Mr. Foster, you can submit any examples that you've got and or any suggestions for wording, um, that might address your client's concern. And perhaps if Mrs. Foley, you could perhaps also have a look at the wording, um, from your client's perspective and see whether or not, um, there's anything that you think might assist, um, so that the applicant can then review that after deadline six and potentially respond at deadline seven.

00:37:36:09 - 00:37:56:23

My next series of questions relate to, um, the compensatory habitat at Orford Ness. But before we leave, um, Essex, for what better way of dealing describes things? Is there anything from, um, either Mr. Foster or

00:37:58:13 - 00:38:05:12

Mrs. Fairley that you want to raise in the compulsory acquisition context? Mr. foster.

00:38:05:27 - 00:38:41:10

If I may. And I'm sorry, I'm going back to the very, um, original response to, um, my comments just to, to reinforce, um, I believe I can provide evidence of where designs have been narrowed at this early stage in the proceedings. Um, the applicant said it wasn't possible, and the tripartite nature makes it more difficult. But there are examples similarly. Going back to the talk about the working together and trying to minimize disruption.

00:38:41:12 - 00:39:10:05

It's exceedingly difficult for a landowner to make a commercial decision over their land asset, a land asset which is a national asset as well, with the government recognizing that, um, it's very important to, uh, food sustainability and to climate change when you are using words such as trying to make a commercial decision upon. And I find that one of the challenges in this process. Thank you.

00:39:52:13 - 00:39:56:17

Thank you, Mr. Foster. This is fairly. Was there anything that you wish to raise?

00:39:56:27 - 00:40:16:08

Thames and Valley for tea. Fairley and sons. No. I think we've probably made our points very clear as to where our issues are. But I would just echo, um, Hayden's point that, you know, it is that difficult to make a commercial decision at this point, because there is still quite a lot of confusion about what we're actually making a decision on and what we're going to be left with at the end.

00:41:06:17 - 00:41:14:10

Thank you. Then, as I said, I'd like to move on to awkwardness and the compensatory habitat.

00:41:17:17 - 00:41:19:29

Um.

00:41:26:03 - 00:41:44:27

As was mentioned earlier, I think, by Mrs. Miss McGeady. You're working your way through, um. Cobra. Miss, uh, deadline five submissions. Um, and we'll we'll be providing something in full of detail in written form at deadline six.

00:41:48:07 - 00:42:07:00

Um, it seemed and this is ground that we've already covered in, um, part of the hearing earlier, that some of the issues that Cobra missed through Mr. Gould have relate to the rate at which negotiations are progressing.

00:42:08:16 - 00:42:49:06

Um, but there are also concerns that, um, we must consider that the powers sought potentially exceed what is necessary, um, to establish a compensatory habitat area, um, and to provide access to that on an ongoing basis. I mean, is the applicant able to assist us in terms of the review of comments that you've been able to do up to this point? Um, whether, um, perhaps what you're seeking at the moment exceeds what would actually be needed under these circumstances.

00:42:49:10 - 00:43:09:04

I mean, is it has the approach been that you're using, in effect, standard heads of terms that aren't necessarily well suited to dealing with, um, this particular site and its function and the construction works because they're not really construction works. They're primarily fencing works.

00:43:21:06 - 00:43:55:22

I'll make you pay for that, because I think there's two slightly different things going on here. So, um, we had understood that, um, Mr. Gold is here. Obviously, we had understood his objections to the wording to be about the compulsory acquisition wording, not the wording, which is obviously not before you. Um, we as I mentioned earlier, we completely take his point on one, especially on one plot where the land plot overlays part of the access and the habitat area, and it's we we completely take his point, and we are proposing to split that plot to make it clearer, which is the access and which is the habitat.

00:43:55:24 - 00:44:18:05

We do feel it's already clear on the works plans, but we agree it could be clearer on the lands plans. Um, we don't otherwise agree that the powers that are being sought are excessive. We do think that there are some points of detail that can be resolved, but as I have said, we are working through the various points in that letter to respond to because there is quite a lot of detail in there.

00:44:35:06 - 00:44:50:21

Um, we also think, sir, that um, there may be some references in that submission to plots that are no longer being sought following acceptance of the change request. So we would just like to clarify those points with Mr. Gould as well in preparing our response. So we are trying to work through it.

00:44:51:18 - 00:45:07:04

Um, just on that point, is it worth getting the land plans up on screen? Um, and then if nothing else, We can all be certain that Mr. Gold is looking at the most current set of land plans.

00:45:09:08 - 00:45:15:10

So could I ask that, um, land plan being brought up for Orford Ness?

00:45:16:09 - 00:45:19:05

Yes, sir. Can my team please pay up as 019?

00:47:08:29 - 00:47:14:21

Mr. go. Can I just check that you've got access, or you can see the land plan that's currently on screen.

00:47:16:03 - 00:47:24:17

I can see the land plan with an area of blue as another area to the left, that there's an area in question as well

00:47:26:11 - 00:47:29:18

down the bottom left, but that may be coming on another land plan.

00:47:39:06 - 00:47:53:27

Whether it be, I presume that's the landing stage area. Is it worth that we we start from, um, the water and and work our way northward, actually. So yeah, perhaps if we could get the other.

00:47:54:05 - 00:47:56:22

I'm happy starting this way. If you like. If you like. Yeah.

00:47:57:00 - 00:48:10:03

That's up So the plan, um, that's up on screen. Presumably that formed the basis of the written submissions that you made at deadline five. That was the plan that you you were working to. So it.

00:48:10:05 - 00:48:10:23

Does. Yes.

00:48:11:03 - 00:48:30:22

Hopefully that that resolved that. There's no confusion there. Um, in terms of of the plot or the the part of the plot that the applicant is looking to, um, make it clearer where there would only be access versus where there would be a conversation. Can we just

00:48:32:07 - 00:48:40:11

make that clear? Can somebody from the applicant team, um, indicate precisely where we're talking about? I presume it's at the southern end.

00:48:41:09 - 00:49:23:19

It is. Is it right at the bottom there? Um, the the blue area covers an area which blocks our access to the routes to Aldeburgh. And also, um, that's one point. The second point is there's a straight line area leading up from that point to the bottom, which effectively allows access to the aerial field, which can't be permitted. So we have to we can have that, have the route of that access route, but it would need a fence along the left hand side of that blue area, which would be in addition to the predatory predator proof fence, which would be on the right hand side.

00:49:29:25 - 00:49:36:10

And there's a drawing of what we put in in our submission. Um, back a few weeks ago.

00:49:39:02 - 00:50:15:00

Adam Kendall for the applicant. Yes. I think, um, we can provide clarity on what number? 20 003.

Um, I think the suggestion from our side is to split that plot to separate the access rights and the mitigation plan so that we're very clear to to Mr. Golden Cobra missed exactly what rights are being sought in a rich area of land. Um, and secondly, on the point of, um, the existing installation, uh, we're quite happy to discuss with Mr.

00:50:15:02 - 00:50:28:16

Gold where any, um, uh, additional, um, fencing or requirements might be needed so that we're not straying into, um, any land that's already got existing operations on it. I hope that helps.

00:50:29:17 - 00:50:48:24

Uh, that makes abundance sense. I know the last response from yourselves. Um, sorry. Nicholas Golden from his last. Your last response saying you can cover the bottom of the area so that we can get through to Aldeburgh. Um, but you weren't clear what we were dealing with in terms of the parallel fencing.

00:50:51:13 - 00:50:53:02

But that should be Boom.

00:50:56:03 - 00:51:17:01

See, me. The way that would pan out in terms of the works plans is and the works that potentially, whichever the work number it is that there might need to be a breaking down into work A, B and C or whatever to differentiate between, um, what was access versus what was actually compensatory habitat.

00:51:18:15 - 00:51:34:21

Well, let me give you that. I need to come back to you on the works plans. Sorry, I definitely need to be a split on the land plans. And then the new plot would be moved in the DCO schedule from the LBB to the access rights for clarity, but I will need to. I need to come back to you on whether or not the works plans need updated to match. If they do, we'll do that as well.

00:51:36:07 - 00:51:52:23

Yeah, the works plan will be, you know, quite sort of need to be quite detailed because we don't want the works people, the contractors straying onto the aerial field that would be potentially dangerous and subject to matters, which I can't discuss here.

00:52:24:06 - 00:52:28:18

Is to go, from what you've heard this morning, it sounds like that. Certainly.

00:52:30:05 - 00:52:53:07

Um, what happens on the ground? Um, the the applicant is reviewing and that there is potential to address some of the concerns that you had or potentially all of the concerns you had in terms of the actual practicalities on the ground, is that a fair assessment of where we perhaps sit here this morning.

00:52:54:08 - 00:53:05:13

That is so. Chairman. Sorry. That is so. Chairman. Subject to this voluntary agreement point that was raised earlier. This continues to cause me concern.

00:53:05:26 - 00:53:33:20

Yeah, I understand that. But from our perspective, we just we need also clarity that there is a path through. Dealing with the practicalities of the works on the ground and how they're depicted. Um, and

that there would be no confusion, um, in that regard. And there might. Well, certainly the plans are going to be revised, and the works plans may also be revised to address the point.

00:53:35:08 - 00:53:35:24

Thank you.

00:53:36:05 - 00:53:37:17

Everything should be resolvable.

00:53:48:19 - 00:54:17:10

I'm sorry, chairman, one further point. My only plea is that the points are resolved early on. We've been dealing with the issues of this for over nine, 11 months now, and each state has sort of pushed down the road. Um, we have to deal with it because the previous nesting area, which is just adjacent to this one, everything was done and dusted from soup to nuts within three months. This has taken 11 months, and there's been no discussion on any detail, which is a source of great concern.

00:54:18:27 - 00:54:29:00

I mean, can the applicant assist on the negotiation side of things as to how you are looking to progress matters,

00:54:30:18 - 00:54:44:04

at least in this case, or this this, this part of the development? You're not affected by, um, potentially, um, North Falls. This is a five street alone matter.

00:54:44:22 - 00:54:47:18

Is it? I don't know. That's one of my questions. Well.

00:54:49:03 - 00:55:00:24

I'm getting not heard from the applicant that this is a five stories matter, which reduces the level of input and who has to do what and when, making it easy to set up meetings and discussions.

00:55:03:00 - 00:55:08:15

Is that good? Now we're about to get another. Yeah, we're about to get an answer.

00:55:09:18 - 00:55:19:15

Uh, I'm Adam Canning on behalf of the applicant. We do have a meeting with Mr. Gold on the 6th of February. Um, and we do look to address the points that he's raised and provide some updated plans, so.

00:55:35:09 - 00:55:58:20

Uh, for the applicant. So I think the confusion with North Falls is there is a slightly different discussion going on here, but this is not the tripartite arrangement that's being talked about in the in the rest of the project. And this is not anything where we're asking you for powers to acquire anything for the benefit of North Poles. The voluntary agreement is taking a slightly different format. So you're correct in that. This wording in the DCO is something that five estuaries can deal with.

00:56:01:12 - 00:56:13:13

So to ask a very simple question, our North Falls, if you deal with me and five estuaries, sign off with me. Is there going to be a need to be a separate discussion with North Falls? Forgive my ignorance.

00:56:22:12 - 00:56:30:12

Well, I might get you for that. Again, sorry I can't speak for North Wales. Our understanding is no, this is not in their application. But that would really be a question for them to answer.

00:56:33:07 - 00:56:34:10

Oh Lordy be.

00:56:49:00 - 00:57:28:00

Well, the fact that there is a scheduled meeting for 6th of February, actually, I think assists with my next question, which I don't feel I actually now need to ask because negotiations are ongoing and potentially with some changes the applicant is making to drawings and clarifications that are going on in the background at that meeting. That information will be presented, and Mr. Gold will have more clarity as to precisely what the applicant is intending at awkwardness, which may then address his concerns.

00:57:28:12 - 00:57:45:15

Um, there is then the other matter of whether or not, um, the voluntary agreement is how that progresses and whether that will ultimately be a voluntary agreement. But I think from my perspective, that's all I need to ask about awkwardness.

00:57:55:13 - 00:58:03:03

Was there anything else you wish to say in respect of your interest, or have we aired everything as far as you're concerned this morning?

00:58:04:16 - 00:58:21:20

Um, chairman Nicholas Guild, on behalf of Cooper. Miss, you said we were going to look at the plans from one end to the other, and we started with the blue area on this map. Do we need to address the question? Any questions? And clarified clarified clarification relating to the other end of the I.

00:58:22:25 - 00:58:54:28

I don't think we possibly do. Being aware that you and, um, the applicant are due to have a discussion pretty soon. Um, uh, I'll phrase that slightly differently. Does the applicant understand all of Cobra breath issues. Um, working from the southern end of the interest all the way up to the northern bit. What do you need, Mr.

00:58:55:00 - 00:58:58:20

Gold, to elaborate, um, on that southern section.

00:59:10:03 - 00:59:37:11

Uh, I'll make you do that again. Yes, sir. We do think we are. We understand all the points that Mr. Gould made. Um, and we do think we can probably provide reassurance or drafting changes to address a lot of them. Just for the the panel's clarity. We are not seeking exclusive rights of access. If

that has not been clear enough, I'd like to make it clear now. We're not seeking to stop anybody else using the access. So that is one point that we'd like to pick up with Mr. Gould as how we give him comfort on that.

00:59:40:06 - 00:59:58:27

Um, if I can revert Very quickly. It's not a matter of providing accuracy, just providing its ability to provide access to others, etc.. I'm very concerned about the use of the pontoon area and if you are going to be there, it will present a major problems for us on a day to day basis.

01:00:05:05 - 01:00:20:26

Just just as the floating parts of the pontoon. There's no problems with either using or extending. There are other parts of the pontoon relating to our landing craft is, and also the area behind the pontoon where there would be major problems with anybody using it other than ourselves.

01:00:31:12 - 01:00:50:11

Just as a point of clarity. I think we have previously heard from the applicant that the works are offered. This are of a relatively short timescale. Can somebody from the applicant team remind the examiners how long those works are scheduled to take?

01:01:00:29 - 01:01:06:00

Uh, apologies. Sorry, I don't have the offshore consenting manager. I would need to double check that. Okay.

01:01:07:17 - 01:01:32:23

Chairman, maybe I can answer that question. I think the actual works on the ground to create the predator proof fencing, etc.. We're talking about six weeks. Um, it's the continuing rights to use the pontoon area that are causing the difficulty. And because those need to go on for 40 years, and if they were to park a, um, their own vessel there, it would really create excuse the French, bugger us up.

01:01:38:22 - 01:01:44:29

For that applicant. And I'm being told that our figure is three weeks, not six weeks. But I will confirm that in our oral submission.

01:01:47:27 - 01:01:54:03

It took six weeks last time because the wrong boats were brought to the site. They came up from Plymouth and were unusable.

01:02:07:14 - 01:02:19:02

And in terms of the ongoing maintenance side of things, are you able to give any sort of indication of how frequent that might be and what implications that would have for the use of the pontoon?

01:02:23:01 - 01:02:26:06

Sir, can we include that in the response in writing that we're already preparing?

01:02:26:27 - 01:02:27:12

Yeah.

01:02:29:19 - 01:02:30:08

Thank you.

01:02:30:10 - 01:02:35:11

If that information were available for the 6th of February, that might be something usefully discussed with Mr. Gold.

01:02:42:04 - 01:02:43:16

Does that exist, Mr. Gold?

01:02:46:08 - 01:03:02:20

Yes. Obviously, the devil is in detail at this point, and we await further and detailed discussions on the 6th of February. After that date, from the 17th, I will be away on either other business or abroad for the best part of a month or so.

01:03:05:20 - 01:03:07:18

Oh thank you.

01:03:26:13 - 01:03:28:00

But my next question was really.

01:03:30:12 - 01:03:35:19

Area of the agenda was, was, was to ask for an update from the applicant in terms of where negotiations

01:03:37:11 - 01:03:58:29

Are with other parties who have not attended this hearing. We've had had the tracker. Is there anything of any particular note that you can advise in terms of progress since the tracker was published or issued? Sorry. Or is. Are things pretty much as they were a few weeks ago?

01:04:15:24 - 01:04:27:25

Well, let me give you for that. Since the the last submission of the tracker, we have had one more set of heads signed and returned, and we have been progressing meetings with the other interests, but there are no substantive updates on that to give to you.

01:04:40:13 - 01:04:44:07

Thank you. That generally takes us to my final question, which.

01:04:46:24 - 01:04:49:10

Um.

01:04:52:08 - 01:04:55:00

Relates to obtaining consent from the Crown Estate.

01:04:56:18 - 01:05:17:02

Um, I think you've got some land interest of the Crown's, um, in and around Orford Ness. Um, and I've certainly seen, I think that you're seeking to progress matters with the Crown. Can you give any kind of update as to where matters are going?

01:05:18:19 - 01:05:49:07

We're only conscious that sometimes these, uh, getting the final consent from the Crown and can take time. Um, and if necessary. Because I've certainly done it in the past. If if things are taking time. We would potentially, um, issue a rule 17 directly to the Crown Estate, uh, to ask them about the position before we get to the close so that we've got something from them as we go into reporting.

01:05:49:09 - 01:05:49:24

But.

01:06:04:24 - 01:06:07:28

Yeah.

01:06:17:27 - 01:06:25:03

Uh, let me give you for the applicant, we have had discussions we haven't actually had, um, the documentation for section 135. We

01:06:26:28 - 01:06:39:29

appreciate your suggestion on the rule 17. We would ask that you waited until after deadline six to issue that because we are actually we are chasing it at the moment and we would like to try and push that a little bit further before deadline six, if we could.

01:06:45:24 - 01:06:46:12

Chairman.

01:06:47:03 - 01:06:49:24

So I just finish my note.

01:07:24:26 - 01:07:40:05

Yeah. I mean, in the instance where we have used what I've used the rule 17 in the past, I think we were into about the last three weeks of the examination, so we're not that tight yet. So yeah, we will certainly hold off until deadline six.

01:07:41:23 - 01:08:09:00

And even if you haven't managed to sort things out with if you can update us at deadlines as to where you think, um, things are progressing at that point, because it might be we take the view. Okay. We'll hold off a little bit further, um, until we actually, uh, press that button and ask for directly the crown. But we did find it effective, uh, the last time it was used.

01:08:10:20 - 01:08:11:10

Mr. gold.

01:08:12:16 - 01:08:27:00

Sorry to interrupt. It's not my place to comment on legal legal matters, but having researched the legal position fairly carefully, relating to both the ness and the river in between it and the mainland, I suspect the Crown is not involved at all.

01:08:30:19 - 01:08:42:23

Some peculiar title matters relating to the river. And I think the crown only comes in when you hit the shore on the other side of the net.

01:08:57:04 - 01:08:58:04

Thank you, Mr. Gold.

01:09:05:20 - 01:09:09:29

But that, I think, then concludes agenda item three.

01:09:13:06 - 01:09:25:15

Um, in terms of agenda item four, which is any other business, is there anything that any party wishes to raise under that heading in this hearing?

01:09:27:07 - 01:09:32:27

Mr. gold, did you want to raise it or is this a legacy? Hand up. Um.

01:09:32:29 - 01:09:34:21

To teams. It's a legacy hand up.

01:09:34:26 - 01:09:35:16

Okay. Thank you.

01:09:37:11 - 01:09:45:27

Um, is there anything else that anybody wishes to raise before we move on to, um, action points?

01:09:47:26 - 01:09:49:15

Not seeing anything from anybody.

01:10:00:23 - 01:10:11:08

In terms of the action point, I'm going to hand over to Mr. Heron to lead on that, but we'll be looking at Mrs. McGee's list or whoever's been compiling, um, what, uh,

01:10:12:26 - 01:10:14:08

to assist Mr. Heron?

01:10:15:00 - 01:10:32:09

Thank you, Mr. Gold. I don't know if this was an action point or simply taken as a given, but Mr. Foster suggested that he would make written submissions, uh, dividing compulsory, compulsory

acquisition matters from other matters Actors, and also provide examples of when detailed design has been narrowed by the stage of an examination.

01:10:33:28 - 01:10:35:12

Be yourself, Mr. Foster,

01:10:37:00 - 01:10:38:13

while you write that down. Sorry.

01:10:43:23 - 01:11:00:16

To to provide examples of wording for a restrictive covenant that could be included in schedule seven of the draft DCO in relation to the need to obtain the Undertaker's written consent for ploughing below a depth of 0.6m and miss fairly. I believe that you were willing to consider the wording of this particular restrictive covenant as well.

01:11:07:05 - 01:11:10:18

Just simply by the next, uh, examination deadline for those.

01:11:13:25 - 01:11:21:23

The applicant. We've got a written response to clarifying the nature of the voluntary agreements with Cobra in relation to CCA powers sought. Maybe that was borne out or,

01:11:23:11 - 01:11:28:16

uh, removed, given the discussions we had Is that your understanding, miss McGarry?

01:11:29:01 - 01:11:46:28

No. Sorry, sir. That that wasn't my understanding of the action. My understanding of the action was, um. But we were to take away the non objection point and the heads of terms and pick up with North Falls and affected landowners and report to you on progress, not to report to you on the heads of terms themselves.

01:11:49:08 - 01:11:54:10

That makes sense. Just take me through what you've got down there. And I think the correspondence.

01:11:55:01 - 01:12:19:03

Certainly sought the, um, applicant to pick up on the point concerning a non objection clause in the heads of terms to discuss with North Falls, and the landowners seek to discuss alternative wording, which would not be a complete non objection clause, but would be more radiated. And to report to the examining authority on the progress of those discussions at deadline six.

01:12:23:15 - 01:12:26:21

Thank you, Miss Piggy. Take me through the rest of the action points that you've got there?

01:12:28:23 - 01:12:33:11

Certainly, sir. Um, the applicant to provide a legal note on the.

01:12:37:07 - 01:12:47:05

The ability of the Secretary of State to not grant or not include plots within the compulsory, um, acquisition powers when if granting a dco.

01:12:50:28 - 01:12:51:13

Be.

01:12:56:23 - 01:13:06:21

The applicant to provide a response on the request to provide without prejudice. Um versions of sheets 17 and 18 of the land plans which would show those land plans,

01:13:08:12 - 01:13:11:06

excluding the collaboration sought with North Falls.

01:13:13:28 - 01:13:25:08

The applicant to respond on the additional loop. Hall Road connecting to Ardley Road and the lowland middle obstacle, and whether or not the project will be delivered without that loop.

01:13:29:20 - 01:13:32:13

Uh. I.

01:13:34:18 - 01:13:43:14

Think that's the only ones that wouldn't already be covered by times in the timetable, sir. So, for example, the submission of the book of reference, the deadline seven that we discussed is already on examination timetable.

01:13:48:24 - 01:14:06:27

I've got, um, following on a point from raised by Miss Fairlie. The applicant stated that it would provide a written response clarifying the effect of agreeing an option agreement here on engagement with other offshore wind farms. And then for ourselves. Unusually, we would consider whether or not a deadline needs to be set for discussions on that particular point.

01:14:09:19 - 01:14:15:06

So I think that is the point that covered by the the the non non objection wording. Disappointed.

01:14:28:10 - 01:14:31:04

That that correlates to what I've got down here, Mr. Gold.

01:14:50:14 - 01:15:13:05

Take that then. That takes us to the close of this hearing. So I'd like to thank everybody for their participation. Um, and the hearing closes. Remind those parties who may be attending issue specific hearings seven this afternoon. Uh, that will convene at 3:00.