

DEANMOOR_ISH1_SESSION2_111125

Tue, Nov 11, 2025 1:27PM • 1:43:39

00:06

Okay, we will make a start. Now it's 1110, can I check Miss Graham and Mr. Marsh are have returned to their office.

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Thank you.

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Thank you.

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So before we adjourned, I did ask a question in relation to Article Two

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and links to the explanatory memorandum. Ms, Graham, have you had a chance to think about the question?

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Yes, going for the applicant?

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Yes, sir, we we understand the question

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in the paragraph of the EM you cited. Obviously, we've given examples of other DCOs that have included this provision, but we understand the point is to sort of make out the specific need for it in the case of the project, and if it's okay, we'd like to come back on that point in writing. We're happy to take that as a as a hearing action point, and give you a sort of full written response on that.

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That's fine. Thank you. So I'll make, I'm making note of that as an action point. So that's question 1b

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the article, 213, point.

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Yeah, okay, thank you. I'll move on now to the to the next question, which potentially will involve more discussion and debate. So if we go to the agenda again, we're question number 1c

01:42

and it's in regard to Article Three. And again, I understand the applicant you have made written submissions on broadly similar questions that have been asked earlier in the examination.

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But I would like to refocus again on the principal powers conferred by Part Two, Article Three, one and two of the order. So those are the articles on page seven

02:12

of the draft DCO.

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And if we look at the

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principal powers, ie the development consent, etc, granted by this order as it's entitled,

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I do have some comments, or really potential concerns about the wording of this,

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this power.

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Firstly, he uses the words adjacent to the order limits,

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and I'm not really sure. Well, I'd like you to tell me what that means, or what you think that means. And if I give a hypothetical scenario. So

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for example, if there is a plot of land, I don't know, maybe 200 hectares that is adjacent to the site, or to the order limits

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is the furthest extent of that plot adjacent. I'm just not sure what it means, and I'd like you to explain how I'm supposed to interpret

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it. Jess Graham for for the applicant,

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I think take taking the meaning of the word and in this article, and looking at sub paragraph two,

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you know, with the ordinary meaning of the word adjacent would be sort of next to or adjoining. We haven't further defined that word to be explicit in terms of sort of distance or anything like that. But the point of

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sub paragraph two any any enactment applying to land within or adjacent to the order limits has effect subject to the provisions of this order

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is trying to capture the fact that

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you know, that there might be enactments that apply across the order limits. It might not, you know, not necessarily been enactment that is fits neatly within our order limits, but there might be things that apply that are falling within or next to or close to, and

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this might be part of the of the bigger discussion on this article in terms of

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whether or not. Sub paragraph one should refer to the fact that

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it author development consent is granted within the order limits. And I know that's something that you've raised previously. We've responded on that, but it's sort of a similar point, because there are a small number of powers in the DCO that are.

05:00

Apply

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slightly outside of the order limits. And so the the applicant might may be doing things under those limited powers slightly outside of the order limits, as is, as is permitted under the order but in that case that it's it's right that sub paragraph two also applies to land, not just within the order limits, but adjacent to near to close to,

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yeah, I don't know if

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that's helpful. If I come back on that point, I think the In essence, what this power is seeking is,

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I appreciate that the powers that you are seeking, according to you are fairly limited. And I think, for example, articles 21 and 42 are two examples. I think there is another as well,

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where those activities potentially would take place outside the order limits. So I think what you're saying is it would only apply to those particular articles or powers. One of them is regarding surveying and the like, and I think the other is felling, lopping of trees. And then I think there's another one in relation to

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any damage to buildings. I think that's the other one that's potentially outside the order limits. But please correct me if I'm wrong, but just following that through logically. So what I then did is I've gone through article 42 as an example,

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because that's one of the examples. I can see where the I would call them the extended powers. So the power you're seeking beyond the order limits article 42 will potentially apply,

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but I don't think you actually use the word adjacent under Article 42 so for example, in article 42 you use the word near,

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and I don't feel that that's consistent, because I don't know what near means, unless, again, you can provide elaborate on that, but it's a different term altogether, so it leads me to be confused about

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what that actually means. And then going back to the original point,

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it's whether or not adjacent

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what does it what does it mean?

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Are the powers you're seeking in relation to felling of trees, lopping felling or lopping of trees, surveying

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and potential damage to buildings. Are they actually adjacent? Are those are the remedial works that you'd be undertaken in that regard, is it on adjacent land, or is it actually wider than that? And I'm just

trying to understand what adjacent means for the purposes of this part of the order. And then secondly, the second point was there, isn't there, then consistency in article 42

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and I don't actually think within article 21 which is in relation to surveying. Again, correct me if I'm wrong, but I'm not sure there's any reference to adjacent within the article.

08:07

So sorry. I know I've kind of thrown a few points there, aren't you, but if you could come back on on those points, Jess going for the applicant, I think it might help, actually, if I just explain a bit about what Article Three sub paragraph two is doing. So

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obviously, the sub paragraph one is explaining that under this order, development consent is being granted for the authorized development. Sub paragraph two is a slightly different point and where it says any enactment applying to land within or adjacent to the limits has effect subject to the provisions of this order. What that is saying is, if there are, if there is any

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legislation or enactment in force that applies to the order limits or adjacent to the order limits,

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that that is now subject to the powers of this order, and this relates to a later provision. So we have a check the article numbering, but an article that disapplies Certain legislative provisions, including local enactments and

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a sort of local legislation search was carried out

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on the land, within the ornaments, but also land proximate, close to the order limits, to identify

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local enactments that would be in conflict with the powers granted, or potentially in conflict with the powers granted on the DCO. So we have sought to identify and disapply those. And in fact, there's a schedule that lists those local enactments that are going to be disapplied. What sub paragraph two is doing is a sort of for that position, because obviously we've carried out a sort of proportional search of local legislation to land in sort of reasonable.

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A reasonable proximity to the order limits. But you know, no search like that could sort of be exhaustive, and that there's a sort of residual risk that there might be some piece of

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enactment, historic enactment, that is still in force, that would be in conflict with powers that the applicants now are being granted. So understood. So, yeah, that's interesting, because you I did ask a question about that, and you did come back to me on, I'm not sure whether it's

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find it for me now,

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it's Article Nine that deals with disapplication, modification of legislative provisions, and there is a schedule, which is

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schedule three lists the local enactments that we've identified that should be disapplied, and that's that they're just applied, just so in far As they would be inconsistent with the powers that the applicants exercising under this order.

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So just to take it back to sort of your original point about the use of the word adjacent within this paragraph. Okay,

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the point here is it's quite difficult. You know those enactments sometimes have

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not the clearest of geographical scope. So they they might impact land that is, is near to the

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order limits, adjacent to the order limits, but you know the order,

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it's still right that

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the order now sort of takes precedence once it's made,

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and

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the fact that it's outside of the order, and it's sort of consistent with the three

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powers that you mentioned In articles 2021 and 42 that just kind of emphasizes that there might be scenarios in which the applicant is

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undertaking activities under the powers of the order limits, outside of the under the powers of the order outside of the order limits. And so it's still right that any enactment that might apply there should also be now subject to the terms of the order,

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in terms of you guys, sorry, sorry. MS, gray, I do understand, I understand the point that's been made in relation to two, and so that that's in relation to Article Nine, which is about this application and modification of legislative provision. So I can almost ignore that, but for the purposes of my question, really it's the first part of three, that's the most important one. Yes. And I think, just as you've alluded to that, I go back to the original point. I think, which is what I made, the point I made before the adjournment. There isn't any limit. Therefore, in three, one at all, it doesn't refer to the order limits, either adjacent or otherwise. So it seems to me that you're relying, therefore, on schedule two requirements and any other of the any other provisions within the articles which provide clarity, and I've alluded to again, a couple of couple of those, one being 40 article 42 the other being 21 where within those articles you there are various words used, one is adjacent and the other one is near,

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so But I go back to the original point is,

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what do those terms mean? What are those terms mean for the purposes of the order, what does adjacent what does it really mean?

13:46

Or what does near mean? So just focusing on those articles, and the second point is, should that definition not be more specific, or that should that power not be more specific? Should three, one not say similar to 312,

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should it not provide some kind of containment in terms of

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the development consent that's been granted by the order? Should it not make reference to either the order limits or or the proximity to the order limits?

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Because ordinarily you would the order limits would be the focus of the development consent granted by the order.

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And

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I can reference other examples, but I won't do that because I've done that in writing. But there are other examples of DCOs development consent orders where order limits is specifically used in terms of defining the scope of the development consent granted by the order and the other powers that you're seeking under different articles. They're just left in the DCO, but they're dealt with in the DCO as requirements. So, for example, if you need to carry out survey work on.

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Land which is outside the order limits that's dealt with in the particular article. The way that I read the principal powers that you're seeking, it does seem it doesn't have any real containment other than relying on these other provisions.

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And so the two questions are, is that, is that a sound approach, is that justified? Secondly, is that precedent? Recently, I would have to check

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the stone street sale the DCO and appreciate the circumstances might well be different. But is that a precedent that's been followed through in other cases? And if it isn't, then I think you will need to strongly justify your position.

15:40

Sorry. Again, I've thrown quite a few things at you there, and you may not be able to respond to me verbally, but if there's anything you'd like to come back with at this stage.

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Best Graham for the applicant. Thank you, sir. I think we probably would like to take some time to sort of respond fully to this in writing, but there are probably a few points that I can just come back to you on now, if it's helpful. And just to point out that in terms of, you know, the power under Article Three, whether or not that's contained in some way,

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it is worth noting that there is a definition of authorized development which is used in Article Three, subparagraph one and when you look at the definition of authorized development in Article Two of the DCO that refers to it says means the development described in schedule one.

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Authorized development and schedule one is our description of our works with our reference to the works numbers, and those works can only be undertaken within the order limits because of their reference that they by their nature, their works that are within they're shown on the works plans. They are within the order limits. They can only be undertaken within the order limits. And then the second part of the definition of authorized Development

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says any other development authorized by this order, or any part of it which is development within, within the meaning of section 32 meaning of development of the 22,008 act and and so

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our view, our position, is that that's second part of of the definition, which is used in many other made DCOs. It's intended to capture,

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you know, other limited powers, like the sort of three we've been we've been referencing where those, by their nature, have to be carried out slightly outside of order the limits. And, you know, that might be because there are unforeseen emergency works that have to be undertaken under the under Article 20 of the protected works of buildings or a tree that's slightly outside of the order limits. So I just wanted to make that, that one general point. And in terms of sort of precedent, again, I think it would be appropriate for us to to come back in and writing in a sort of full away on this. But just to to to note that in terms of

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the the

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decision not to include within the order limits in Article Three, that was a position or an approach that was endorsed by the Secretary of State on the A 303,

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Amesbury to Berwick,

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Berwick down correction order. And I believe there are two DCOs that have been made since that decision, which have taken the same approach approach, and that's the

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London Luton Airport Expansion DCO and the lower Thames crossing DCO.

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Appreciating those aren't solar projects. But it probably this point is not really a sort of solar specific point, as

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I say. I think it's probably appropriate for us to come back in writing and on some of the more detailed questions you've asked about you know how,

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how clear the word near is, for example, that's used in in article 42 and again, I think there's precedent for that approach, and we can confirm that in writing. I think

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the point that I would just like to make is in terms of

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the the scope of those three articles. So article 20 which is protective works to buildings. Article 21 which is authority to survey and investigate the land and article 42 which is felling or lopping of trees and removal of hedgerows, there are, there are examples of made ecos where those powers extend slightly beyond the order limit. So we're not sort of seeking anything

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in addition in there, and by not including the words within the order limits in Article Three, we are just simply trying to make it consistent across the provisions of the DCO so that it's not unclear. You know if Article Three was to say it's only within the order limits, and then you come to the later, and.

20:00

In the later provisions that say that you can, in fact, do some limited activities outside of your limits. There's a slight inconsistency there.

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Okay, that's helpful. So if you could look at the consistency point, the point you've just raised about the examples, the precedent examples, I appreciate you responded in writing on those points, and my response was going to be as you've again addressed they're not comparable projects, and I've heard your response to that point, but again, if you could come back to me on the reasons why you think that those precedents examples are applicable to this scheme,

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and without trying to complicate things too much and well, firstly, could we? Could you remind me which articles I have referred to them, article 21 and 42 which is the other article? Where, again, I'll use the word works are potentially proposed outside the order limits.

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Jess Graham for the under which powers, sorry.

21:06

Jess green for the applicant. The the other one is article 20, which is protective works to buildings.

21:13

Yeah, okay. Article 4221 and 20. Could you check? Firstly, consistency on those points. But then secondly, and

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again, I've just kind of thought of this point as we've been discussing. So please do correct me if I'm wrong, and explain

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how I can kind of

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find a way through this potential confusion with with the terminology, but the definition of authorized development means, as you've pointed out on page five of the draft DCO, there is a definition there. I won't read it verbatim, but

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it refers to the meaning of development under the SEC under the 2008 act. So are the works proposed under those articles? Are they actually development? That's the question. I mean,

22:01

because I've had a look through what those powers are seeking, what you're seeking power for under those one of those articles,

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does it? Is it Dev? Is it actually, is it development at all?

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That's great for the applicant.

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I think on that, it would need to be considered on a case by case basis, whether or not the activities were classed as development.

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I guess I'm just trying to think of practical examples where there would be a situation

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where those powers that you're seeking would constitute development what, what situation could happen. For example, article 20 has been one example that's in relation to and it might be helpful just to quickly look at that point. I'm not going to go through each of the articles, but perhaps if we could just turn to article 20 so and deal with it in the hearing, and then you have a chance them to come back in writing,

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and if you manage to find that before I do, then please. I think that's page 17.

23:12

So is the protective works, and I'm just trying to understand, what

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would that be development? Or does it matter? I guess, is the other question. And

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if it doesn't matter, in relation to the scope of what you're seeking consent for, is a definition sufficiently robust to include

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the works you're seeking consent for under Article 20 and 21, and 40. And you

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may need to come back to me on this. I appreciate that, because it's a new question, and one which I've just kind of thought about as we've been discussing,

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just going for the applicant.

24:01

Yes, I think if it's okay, we'll take this one away.

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In terms of

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this article.

24:11

Specifically, I know that you did have a sort of agenda item asking about the types of works that the project might need to do under the three articles we've mentioned, so maybe I can sort of speak to that, and then yes on the development point. Yeah,

24:28

yeah, that's fine. Sorry, sorry for cutting you off there. This is the issue with virtual hearing as a as I said at the start. So apologies for that. Sorry if you'd like to continue. Yeah, if you happy for you to speak on those points.

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Jessica with the applicant. Thank you.

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In terms of article 20, it is quite difficult to say, because the purpose of this article is really to enable the applicant to undertake sort of emergency works that are unforeseen and might arise. But

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by way of an example.

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There might be something that occurs during construction. That means that, for example, if pieces of infrastructure are being moved around and something

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falls and lands on an area of land that's outside of the Ord limits on a sort of strict reading of

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Article Three, you might think that the applicant was then not able to remedy that situation. So it's really there for the benefit of

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nearby landowners, so that if there was something to occur that needed remedying, the applicant would be able to do that under the powers of the order and wouldn't have to go and seek some additional consent in order to

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deal with that damage.

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And I think, thank you. That's helpful. And on that point again, it goes back to the original point I was making regarding adjacency. So I note that in this article, you've used the word curtilage adjoining the order.

26:03

And again, I'm not entirely sure what that means.

26:08

Obviously, I did ask a question on the definition of curtilage, and I certainly don't have enough time to have a discussion about how to define curtilage, so we don't need to go there. But is there a definition that's

26:21

more precise. So for example, immediately adjoining the order limits, or something that gives some indication that the building in question isn't going to be completely divorced from the order limits.

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Or does it matter? I guess is the second part of that, part of that question. Sorry, Miss green,

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just grain for the applicant. Well, we'll take that away, and we'll think about the wording. I think we, we made an amendment to that, that wording in response to one of your earlier questions. And what we

were attempting to do was actually to to be more definite. You know, in the land that could be caught because there are

27:04

a small number of buildings that are adjoining the cartridges, adjoining or near to the Ord limits. We were trying to be a bit more

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specific about

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where this power might apply, but I appreciate

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maybe it's, it's not as clearly as expressed as it could be. So we will take that away. I mean, the overall point is that

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we only want to have the ability to remedy something. If that was to occur, we should be, we should be able to deal with that under the powers of the order.

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We'll think about that the exact way that we worked out. Okay, thank you.

27:46

And would you like to speak on the other articles as well?

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Sorry, this is the first time I've had to say this, but you're on mute, just going for the applicant, what's going to happen at some point, if

28:04

it's helpful I just briefly mentioned so article 21 is the authority to survey and investigate the land.

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And the reason that

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this hour extends beyond the order limits is that there, there may be a need for the applicant to carry out surveys outside of the order limits, because, for example, there are ecological features or assets that slightly traverse the order limits, and it would be useful to investigate those as part of the sort of pre Construction surveys to get a full picture.

28:42

So that's the reasoning for that one. And then in terms of article 42 which is felling or lopping of trees and removal of hedgerows.

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Here, it's really just that there could be trees or hedgerows which are technically outside the order limits, but are encroaching or overhanging or very close to the order limits which which needs to be cut back by necessity to ensure that the proposed development can be implemented.

29:11

Thank you. And on that again without I will repeat myself, actually, but in using the word near again, if you could provide some clarity on that term, or whether it's appropriate, and maybe review that article as well.

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Jess Graham, for the applicant, yes, we'll, we'll have a look at that.

29:34

Okay, thank you.

29:38

That might be, it might be worth actually, just on this one, if we can. Ms, Graham, I'm not sure have you been making notes? Whether we could just summarize the action points, because we have discussed various different things. I just wanted to be clear, you understand

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what you need to do for deadline. Number five.

30:00

I'm just going for the applicant. Yes, that would be helpful. Would you like me to summarize what I think the action points are on that? Yeah, so I think it's to consider

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whether or not it's appropriate that we don't have the words within the order limits in Article Three. One,

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I think, I think we've dealt with the point in Article Three Two. Correct me if I'm wrong, but I think it's more to do with the then the language in articles 2021, and 42 whether or not those references to

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joining or near are sufficiently clear, and whether or not there should be some consistency across those three or possibly a

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new definition that deals with those points that's correct, and then the authorized development definition as well, just making sure that that properly encompasses what you're seeking consent for under the order

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in relation to The conversation or discussion I've just had regarding development or not development, and then finally justifying your approach with regard to precedent and how specifically it applies to this scheme. So why? Why? Why is this approach warranted in this particular instance, and what is that? What are the similarities between the other schemes you refer to, bearing in mind that they are not on the face of it, similar solar schemes or similar in scale.

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So those are my points. In addition to yours, I

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just Graham for the applicant. Thank you for for setting those out for us.

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Okay, I'm happy then to move on to item D, 1d,

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which is Article Five.

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I don't think this will take too long, and it may be again you come back in writing on this,

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in relation to the exceptions contained within Article Five, which is on just to help us. I think on page seven of the draft order

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in relation to the definition of maintenance.

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Sorry, I'm just turning to the correct page.

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So there's reference there to some exceptions, and you provided me

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in your response to the first written questions under question 11, dot 0.4,

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of rep two, zero, 10. So in essence, you've responded to that in writing already, and you provided a list or reference to some exceptions. My question really is, is that a definitive list, or are there others

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within the order

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Jess Graham for the applicant?

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That wasn't intended to be a sort of definitive list. It was just kind of by way of example. It

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might help to sort of explain the wording of Article Five

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is fairly standard. In fact, very standard. It's the wording that was in the original sort of model articles for this provision. And

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I think the intention here is where it says The Undertaker may at any time maintain the authorized development except to the extent that this order or an agreement made under this order provides otherwise, is trying to

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identify that there are other specific powers in the order that the applicant may be

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exercising and relating to maintenance, and though there may well be additional restrictions or limitations with to those specific powers. And so this isn't a sort of blanket, you know, you you have to read those specific powers and the restrictions that are contained within them,

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not just this order. And likewise, for any agreement that might may be made around maintenance. And I think the example we gave in the

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written question was that there might be an agreement reached with, for example, a utility Undertaker around maintenance.

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We were just discussing the felling of trees article.

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You know, the within the article, the applicant has the power to fell trees in relation to the maintenance of proposed development, but there are specific restrictions within that article that limit that power.

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For example, I think it's

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sub paragraph three. If.

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Says that the applicant can't do any sort of unnecessary damage to a tree. So that that's quite a specific example there. But the point I'm trying to make is that's what this article is, is doing. It's not a sort

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of is trying to highlight the fact that there are limitations on that power in other places in the order, are you able to set out where they are in relation to the other places in the order in your written response?

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Yeah, we would be happy to do that. Sorry, just Jessica, and for the applicant, we'd be happy to put a list together.

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It could just go in the explanatory memorandum, if that's easier

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just going for the applicant, that's a good suggestion. Why don't we take an action to add a paragraph to the to the EM that

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explains this? It could be difficult to come up with a sort of complete, definitive list, because obviously part of the wording here refers to the fact that an agreement might be made under the order, so that element is unknown, if you like. But in terms of the provisions of the order itself, we can add some more to the EM to explain that, yeah, understood about the limitations in relation to schedule 14, I think you referred to as well. So, but if you could provide the list as best as you can, obviously this is not it is to help me, but also just so I can communicate. Or the Secretary of State has potential answers to questions in relation to these articles as well.

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So an action point there is in so question 1d

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potentially well to update the explanatory memorandum, to

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provide further clarity in relation to the list.

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Okay, so happy then to move on to 1e

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sorry, make one comment on that

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we've explained where that provision is preceded in other DCOs, and I don't believe those DCOs also set out a list in their explanatory memorandum in relation to the relevant parts of the of the DCO where it's relevant. So I would suggest, but have to be shut down, that it's included in a written submission rather than in the EM. No, I think that's a fair point. Mr. Marsh,

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ahead of myself there. I think if it's in the written submission, that's probably the most appropriate way of dealing with that point. So happy with that. So deadline, five response.

37:56

Thank you, sir. Thank you.

38:01

So moving on to E, which we're going to be looking at article seven and eight, and they're on page eight

38:08

of the draft order.

38:19

Yeah, rather than I'm not going to read my question out in detail, because, put simply, I just want to understand. I want you to explain to me specifically and in relation to this project, why it's necessary. So why these provisions, and that's benefits of the order and consent to transfer benefit of the order.

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Now, whether you whether it's best just to do that in writing or miss Graham, if you've got a particular response you'd like to make to me now,

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just Graham for the applicant. I'm

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happy to confirm this in writing. I just want to check that we've got the correct point to come back on. Is it um, specifically justification for

39:03

article

39:06

eight, I should have explained, yes, sorry. Let me go back and rewind slightly, because I thought we could probably make this slightly shorter. But I appreciate there is a context to the question. It's not just in the articles in general. In general, it's about the exceptions, whereby the Secretary of State consent would not be needed for certain works. And I think you were just about to tell me that they're set out in 383,

39:32

and there are a list of exceptions, A, B and C. So that's the question, effectively,

39:40

just going for the applicant that's that's understood,

39:44

and we will come back in writing. I mean, I think just to sort of give you a flavor of how I think we'll respond,

39:54

A and C. I think what C in particular is fairly standard. Obviously here there is.

40:00

A specific reference to transfers to electricity Northwest limited in respect of works numbers two and two a so we can

40:10

give some further explanation of why we think that transfer without the Secretary of State is appropriate.

40:19

And I can do the same for the others, but I guess that's the one that is,

40:23

perhaps requires more justification. Yeah,

40:27

that's correct, because that's very specific to the works that you're proposing. So that's that's fine, if you can come back on those points in writing. So

40:41

again, that will be an actual action point.

40:52

1f

40:55

again, I'll try and be proportionate with the amount of time we spend on some of the points. Because

41:02

I think in the grand scheme of things, this is perhaps one of the lesser

41:07

potential issues. It's really about the

41:11

so article eight, which is, again, we're on page number eight. So looking at the same article,

41:19

there is a notification period of I think you did it. You have altered it to

41:26

let me get this correct. I think originally may have been five days correct me if I'm wrong.

41:32

Now it's been altered to 10 days. And my observation here was not withstanding your submissions on the definition or potential confusion regarding business days that stone street solar development consent order, which is a recently made DCO, does require 14 business days notification period. And I think I understand your response is going to be

42:01

that the business days are perhaps getting confused with with other, with with normal,

42:08

normal days, you know, non working days and working days combined. But nevertheless, you're proposing 10 days notification. If it was going to be more in line with stone street it would, you would therefore be proposing closer to three weeks as opposed to two, and I don't want to spend too long on this, but I don't know if you've got any observations to make on that. And my my question is going to be, can you have a look at Stone street solar

42:35

and review your DCO to to make sure that you've provided the most appropriate notification period, having regard to precedence, yes.

42:46

Graham, for the applicant, yes, sir, we will do that just to confirm you are correct. So we originally had five

42:53

business days, and we've increased that to 10. I think actually there is quite a lot of inconsistency across main DCOs on this point in terms of reference to 1014, days, business days, working days, it seems quite inconsistent, but I think when we looked at this, actually, the majority

43:12

of the made solar DCOs did, in fact, have a period of 10 business or 10 working days. Stone street might not be one of them, and I will check that, but I think

43:22

tilbridge was the last one to be made before stone street Does, does have 10 business days, the same as ours.

43:30

And as you say, it just come, comes back to the point of 14 business days. Seems to be slightly odd period, because ends up being not quite three weeks.

43:41

Yes, understood on that. I think was tilbridge the last or was it buyers Gill,

43:49

I believe? Anyways, yeah, it's fine. I'll leave you to have a look at the most recent cases. Anyway,

43:58

I just going for the applicant. I will check this. But I think

44:02

tilbridge has 10 business days, and I believe buyers guild does also. And I think if I'm not wrong in recollecting that might have been an amended the Secretary of State made when granting the order, but I will, I will double check that point, and we'll confirm in writing. Okay, thank you. Thank

44:29

so 1g

44:31

again, I may be able to make this slightly shorter, because I've reviewed the evidence again. So I did ask in the agenda for the applicant to set out the implications and power sought in relation to Article 10. I then gone on to ask if Cumberland council would like to make any comments. Firstly, if we could just turn to article 10.

44:54

I don't have the page number, but it can't be too far from where we are at the moment.

45:00

So it's on page 10, and this is defense to proceedings in respect of statutory nuisance. Again, there has been a written submission, or written submissions on this particular point. And having reviewed the evidence, I don't need you to set out your position again on this. But I would like to understand if Cumberland Council, because, as I understand it, Cumberland Council are effectively the enforcing authority when it comes to statutory nuisance, whether they had or were aware of this provision, or if they had any particular comments to make on it. And obviously, Miss Graham, I will let you come in as well,

45:40

but I'll let the council come in first.

45:43

So that's a question really to Cumberland

45:48

Council. Nick hayhorst, Cumberland Council, we don't have the EHR with us today, but I can confirm that discussions have taken place with the applicants on this matter, and it's subject to an agreed matter in the draft statement of common ground, rep four or one six,

46:10

at cch or dot 16. So I think the seeing some of the council's satisfied with the provision has set out

46:19

that's helpful. So that's already been that's in the draft statement of common ground as an agreed point.

46:25

Thank you.

46:29

Miss Graham. Would you like to come make any contributions on this point?

46:35

Yes, Graham, for the applicant. No. Thank you.

46:38

Thank you. I

46:54

Okay, moving on to H

46:58

so article 12, which is on page 11, thank you.

47:06

I think this one I will require more input from the applicant.

47:16

So general comments here again, this has been a written question, and submissions have been made in writing by the applicant, and I have referred to those some of those responses in the agenda.

47:30

So that's rep two, zero, 10, question 11, 010,

47:35

and question 1b of rep 3015,

47:41

um, the

47:43

examples that have been provided, and this is in relation to the new roads and street Works Act 1991

47:51

examples where the provisions of that act relative to the scheme have been of those schemes have been disapplied. None of those appear to be similar. I none of them appear to be solar schemes. So I don't know. Miss Graham, if you could come back on that point initially. I mean, maybe I should just thinking if I asked a follow up question as well, and you can just respond in one but I'd like to explain, because I've had submissions on this, I just like to explain what the implications would be in circumstances where this power or this provision was not sought. So in circumstance, if you were to not seek to disapply the new roads and street Works Act 1991

48:36

what would the implications be for the scheme? That's the bit I'm trying to understand, because I'm not aware that this is a precedent for similar solar schemes.

48:49

Jessica,

48:51

to touch on the first point, first in terms of

48:56

precedent for this provision, and

48:59

there not currently being any solar precedent, although I think a version of this article appears in the buyers guild order, but not the disapplications. I believe, I

49:11

think what it comes down to is this article is obviously very specific to the nature of the street works being carried out under the order. So it's not necessarily

49:25

relevant the type of project, whether or not it's a sort of highways or an energy scheme, because those projects can still include, and many do include, street

49:37

powers, street works.

49:41

And the reason why we have included it here is,

49:47

although the proposed street works under the order are pretty limited, and in fact, quite minor, the way that

49:57

then new roads and street Works Act works.

50:00

Works is that there are works that are described as major highways, works within that act. And one example of that work. Those works includes tunneling under our highway, and there is a small section of road within the proposed development where there will need to be a cable laid under the road. And so

50:26

by that definition, that work may be caught by that act. And so the risk in not including the disapplications is that

50:41

it might then mean that there are powers under the new roads and street Works Act for

50:49

the council to sort of frustrate the works that are being undertaken. So I think we gave some examples in our earlier written responses. But by way of example, section 58 and 58 A of the new roads and street works. Act would give the power to the council to effectively pause, put a pause on the works, which could lead to a delay to the project. And the reason why you have this article is to sort of seek to regulate the position between the new roads and street Works Act and the powers that are granted in

this order, so that it's clear which provisions from the new roads and street Works Act apply and which don't apply.

51:34

And

51:36

it's right that we should disapply some of those provisions because

51:42

the works are being undertaken by the specific consent of this order and is subject to the

51:49

restrictions and the controls of the order

51:53

in the street works articles, and also in some of the management plans where those are relevant.

52:00

So I think there I've maybe answered both of your questions, hopefully in terms of there not being a direct

52:11

comparison scheme. So solar scheme, that includes these justifications currently,

52:18

although everybody, there might be some going through examination at the moment that have similar provisions, again, we could confirm that in writing, if that would be helpful.

52:28

And then terms of the second part of your question about the implications of not including

52:34

this article,

52:38

it we would still be able to undertake the necessary street works is just trying to give some

52:45

clarity to the interaction with the new roads the street Works Act regime, which is the regime under which of street works like these might normally be undertaken under?

53:00

Thank you. I'm just wondering whether there's anything because it's not a provision or it's not an act I'm particularly familiar with so I'm trying to understand and hence, why the question is also directed at Cumberland Council. Is this an agreed position? Maybe if Cumberland Council could come in on this point, is this? Are you happy with this provision or

53:25

the removal of these certain powers in relation to the development?

53:31

Have you got any comments to make? Are you happy with what's been included in the order under Article 12? Is

53:38

this an agreed position in the statement of common ground? For example?

53:44

So if I pay us Common Council, if I just give you a general comment, and then I may defer to my highway colleagues, but I think in the statement of common ground, it's still a matter of under discussion.

53:59

So we are currently seeking legal advice internally within the council. So at the moment, we're still considering the matter. If I just add something to the point and again, MS, gra you'll be able to come back on this. But for example, I don't know the provision or the process involved in, say, for example, enacting section 5658 58 a, I'm not sure whether that's an application that has to be consulted on with residents or people that may be affected by these provisions, and by

54:32

allowing the DCO whether those provisions or that consultation or that process is removing something to the detriment of people's ability to be able to comment, for example, and feed into the process. So again, just trying to understand the the the act itself, and what it involves. So maybe if, if Cumberland Council as highway authority could come in on that point as well.

55:05

Thank you, sir. Peter Barna for Cumberland highways, my specialism is not in the licensing department. I'm afraid to say, if it is acceptable to you, I'll come back in writing on this point. Yeah, okay, if you can come back in writing, I think either agree or disagree the position with the the applicant, it doesn't sound like it's necessarily a disagreed position. It's something that's still being discussed. And understand that. So if you can come back and in the statement of common ground and also respond to the points I've just raised and Miss Graham, would you like to come back on, really, on the prevent, on what the mechanism is if the order wasn't, if this provision wasn't in the order. I'm just curious to understand what it actually involves seeking a permit, or how that, how that process works through the system, and if people are engaged in that process, for example, and whether that's unfairly affecting people's ability to be able to comment on these provisions or works that you're proposing.

56:10

So you can come back to me in writing, but if you'd like to come back to me verbally as well, that would help

56:17

just, just Graham, for the applicant,

56:21

I don't think I'll get into the sort of detail of the visions now we can look into that and come back into that writing. If that's helpful, I think I would just make the point about

56:32

consultation and people's ability to be consulted and sort of comment on this works that obviously these are works that form part of this DCO application, and so there has been formal statutory consultation, and the application is currently being examined, so people have the opportunity to participate and comment on the proposals. In that sense

56:59

that that's the point that I wanted to make, really but we are happy to pick this up and discuss it with the highways officers at the Council.

57:12

Thank you. And it's more in relation to things that maybe I'm not suggesting hidden purposefully in the submission at all. But so, for example, you've talked about the tunneling works under the road as one example. I'm not I'm not sure what other works would necessarily require a permit. So I'm unclear, therefore, whether those works have been properly included and consulted on in the application. And I appreciate you suggest that they have. So can you just point me in the direction as to where that consultation is taking place, specifically what that involved, and also agree with the council or disagree with the council, but come to some common ground on on this point in the upcoming statement of common ground, Jess

57:59

Graham, for the applicant, just to clarify, in relation to my reference to the consultation, I sort of reference, you know, these

58:07

works to streets are part of the part of the broader DCO application, so they have been consulted on as part of the proposal that's been put forward. So when the statutory consultation was undertaken. You know, it's not a sort of additional permit that we're seeking and consenting on its works that form part of this DCO application. And so there has been the opportunity for comment on on this application, including those works, as there is still now during this examination. Okay, that's fine, if you could, if

58:45

you could respond and effectively tell me where how that consultation has been carried out, without going into too much detail, but in specific relation to the works that you're seeking

58:59

consent for under Article 12,

59:04

that would really help me just to understand, as I say, I'm not particularly I'm not familiar with the permitting process, and it may be that there isn't a consultation exercise involved at all.

59:14

Again, I'm not sure. So you'd have to obviously agree that point with the council, but it's to save me having to come back in writing. I'm just trying to get the information I need. So respond as thoroughly as you can on this particular point in your next submission. There is a hand raised there. It's PB. I'm not sure who, who that is. If he could just come on camera.

59:37

Thank you, sir. Peter Barnard Cumberland, it's not a consultation for licensing. It's a they inform residents that there will be street works. So it's not a consultation in in the planning sense of the word. You don't go out and ask, Is it okay if, if we work, you tell them we are going to work. It will start from a day to a date. You.

1:00:00

Tell them the alternative route, so you show what, what impact it'll have. But it's not a consultation in in the sense that I would normally, in the planning process deal with the matter. It's it is slightly different. Sorry, to interject. Sorry, no, that's really helpful. And actually, again, thinking about this in terms of the control documents,

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I've not had chance to read this construction management plan, for example, to know specifically whether these works are included, but it might be something you could visit. And if there are things that could be included in the CMP,

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for example, that haven't been in relation to Article 12, that might be an avenue to explore. Ms, Graham.

1:00:43

Just Graham for the the applicant. I was actually just going to raise that a lot of this is is dealt with in the outline construction traffic management plan. And I believe that document is a sort of agreed document with the council, and they're sort of happy with the contents. And this deals with a lot of those matters in there as well the sort of final version of that plan. I also just wanted to sort of clarify that article 12 itself isn't

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giving the powers to undertake these works. Is sort of dealing with the way that the new roads and street Works Act

1:01:21

deals with the works. But the the works themselves are contained in other articles in this part. So we have a, for example, street works article, which is article 11 before this one.

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And also schedule one of the order deals with some of the you know, gives, gives the permission to undertake works to streets. So it's a slightly different point. With this article, it's not

1:01:50

granting consent for the works of structure as such, it's dealing with the regimes that will apply to the works when they're carried out.

1:01:59

Thank you. That's helpful.

1:02:03

Okay, I'll leave that there, because I think you can be back in writing anyway, and you can point me to the relevant documents and also

1:02:12

the statement of common ground. It's

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probably some work to do there to get to an agreed position.

1:02:22

Can Okay, so can we move on to

1:02:33

so over the page on articles 13.

1:02:37

Article 13 is at the bottom. Page 12 continues on to page 13 and article 50, sorry, 15 is on page 14.

1:02:51

Again, similar to the other

1:02:54

points that I have previously made that has already been written submissions from the applicant on on similar questions that I've previously asked

1:03:06

in terms of this particular point.

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It seems to me that

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this provision, article 13 is seeking powers to alter the layout, amongst other things, of streets and article 15 seeks temporary closure of or restriction of streets.

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I just want to understand again, Cumberland Council. Do you understand what this

1:03:33

what these articles are seeking, and how that affects you? Do you understand the consequences of what's been sought through the development consent order in terms of these articles, and if so, do you have any particular comments? Is it an agreed position?

1:03:48

And so that's to Cumberland Council as Highway Authority.

1:03:56

Thank you, sir. Peter barn, Cumberland highways, yes, we do understand. It did form part of our initial discussions with the applicant, so we are well aware of them. Thank you.

1:04:08

Did we have an agreed position in the same common ground if there isn't one already? Ms, Graham,

1:04:17

that's Graham for the applicant. Yes, sir, I will check if there's already they may already be an entry that deals with this specific point. I don't know that it references the articles themselves, so maybe we can add in reference to the articles and the relevant schedules, and that might help bring some clarity. But I think general agreement to the street works that are proposed is an agreed matter with the council within the socg, okay, thank you. I don't think I need to spend any more time on this. However, actually, I do have another note, and it's not related to the question I've just asked, but in article 15,

1:04:57

and I assume there are reasons for this, and I think.

1:05:00

The answer is going to be the date will be inserted when the order is made. But there is a date missing from 15 seven,

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which is effectively

1:05:15

in relation to public rights of way.

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Sorry, I'm just reading through the provision, actually, Undertaker, there is a

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date missing, but I'm just trying to understand what, what that's seeking anyway, he does say the undertaker for the purposes carrying out the authorized development. May temporary close, prohibit the use of or authorize the use of, restrict the use of, alter or divert any public right of way within the order limits. But there aren't any public rights of way within the order limits. So

1:05:56

that's just something I've spotted, whether I've misread that because I've not read it in context, but there was a date missing. That was my general point,

1:06:04

which is in number seven, as it's been helpfully displayed on the screen.

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Yes, Graham, for the applicant, just

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to

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clarify. I mean, we can again, we can confirm this in writing, but this provision is intended to deal with

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any public rights of way that might, as you say, there are currently no public rights of way within the audit limits, but it's to deal with the

1:06:30

scenario where a public right away might be added to the definitive map in this time, at which point it would need to be dealt with. So in terms of, you're quite right that there is no date there at the moment, and

1:06:45

that date should be, we can give some thought to it, but probably would be the the end of the examination date being the earliest date, which is why it hasn't been hasn't been included yet, because obviously that we're Not quite yet there yet. But we will consider what the appropriate date is, and when

the appropriate moment to put it in there is, it may well be the next version of the DCO that we've promised to get you. We include it at that point. That's right, as long as that's on your radar in terms of inserting a date, which I'm sure you would do anyway, but it was just to highlight that and thank you for the clarity. Thank you for the clarity on it's about future potential public rights of way added to the definitive map. So that's helpful. Thanks.

1:07:37

Can we move on to Jay?

1:07:42

This is you've answered this question already, but I'm going to ask it again.

1:07:46

And you, I'd like you to explain the private roads, which private roads could be affected by article 17, and could they not be included in a schedule or in some form, so that I understand and the Secretary of State understands which of which roads you you're kind of referring to in the surrounding area.

1:08:11

I'm sorry. That's article, sorry. That's article 17, page 15

1:08:16

of the DCO,

1:08:19

just going for the applicant.

1:08:22

So, yes, this, this article deals with private roads, and it's the only those private roads within the order limits. Obviously it's it's a comparatively small site, but there are a small number of sort of private access tracks across the site which could be considered private roads.

1:08:41

For example, there's an access track off of Brant three edge road

1:08:48

farm buildings near there. There's also an access track down to the wind farm site and turbines.

1:08:58

So they are sort of informal access tracks. It's quite difficult. They don't know that they're necessarily named in some way. I mean, the point of this article, really is to

1:09:11

enable the applicant to

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make use of those

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roads temporarily without having to

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acquire some sort of right in the road. So it's there as an opportunity to

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take less use less

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of your sort of compulsory acquisition powers, if you like, because it enables you to be there temporarily, and it also enables you to use those roads

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alongside other permitted users, so without excluding them from also using them.

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It's typically included sort of allow that opportunity, if it's appropriate at the time,

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in terms of further identify.

1:10:00

Buying the tracks. So

1:10:04

these aren't at the moment, these aren't necessarily definitively plotted on a map or on any of the plans that have been submitted. There are some plans which obviously show the access routes into the site and through the site, but I think your implication there is there may be others that have not been picked up at this stage, or that the status of them is unclear, that you would be seeking to use without seeking compulsory acquisition. Is that correct?

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Jess Graham for the applicant,

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I guess I think my point was that it's quite difficult to

1:10:43

identify them in any sort of schedule by naming them

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in terms of marking them up on a map.

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We could think about doing that.

1:10:54

Don't know that it's required in connection with the DCO, because I don't think that the usual approach is to

1:11:03

is to reference a schedule or a plan. I think what would be appropriate is if we check if there is already an existing plan which shows these tracks in some way.

1:11:15

For example, I think maybe on the back of some of the in the background, you can actually see where these tracks run across the site.

1:11:26

So maybe the best way to deal with this actually, is that if we see, we review what we have currently in the application documents, and if there's a way to sort of highlight those to you by the existing plans, we could do that just so there's a bit more clarity on them. Okay, yes, that would be helpful. Thank you.

1:11:43

So that again, that's an action point. I did forget to spell out the action point for the previous questions, but I think I've been noting them down as well. I'm sure you have as well. Ms,

1:12:01

Graham, a So moving on, if that's okay, please do

1:12:10

just, just come in. Yep, Richard Marsh, for the applicant, just one more point point on that.

1:12:17

It is an article that's preceded in other sort of DCO. So I think in addition to

1:12:24

providing the

1:12:27

elaboration that Miss Graves just referred to, we could always we could also explain whether there's additional clarity of those preceded DCO such as stone Street, tilbridge, East Yorkshire, westburton Cotton, in relation to identifying the relevant private roads. Thank you. If you, yeah, if you can include that as part of the action point as well, then that'd be really helpful. Thank you.

1:12:59

So Miss Graham, let me know when you're ready to move on.

1:13:08

Just going to the applicant. Yes, I'm ready. Okay, thank you. So we are supposed to be now moving on to article 26 and 27

1:13:17

after looking through while looking at the question, I'm I do think it may be better to deal with this in the compulsory acquisition hearing.

1:13:26

I'm not sure if there is any objection to that approach, or if anyone in the room would have any objections to it. I just think it fits better with the discussions we're probably going to have on Thursday.

1:13:40

Yes, Graham, for the applicant, we have no objection with that. Happy to deal with it at the compulsory acquisition hearing,

1:13:47

okay? And unless anybody tells me otherwise, I'll assume that other people are happy with that approach.

1:13:55

Okay, thank you.

1:14:00

So moving on to 11

1:14:06

which is article 32

1:14:11

let me just find the page number, thank you

1:14:15

on the screen. So that is on page 25

1:14:27

Yes. Ms

1:14:30

Graham, I would like you to explain I'm struggling to understand this provision actually, so I'm asking you to talk me through it in I know you've provided written submissions on this, but can you just explain to me

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what type of works would

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be enacted by this provision under Article 32

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and what the what the purpose of this provision is,

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for example, I think it's in the exponent.

1:15:00

Memorandum, or possibly the the written response to one of my questions.

1:15:06

Can you explain to me if it's not the Highway Authority who owns the land?

1:15:27

There's going for the applicant, yes. So

1:15:31

article 3032, deals with rights under or over streets. And what this article does is it

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allows the applicant to use the land above or below a street without actually having to acquire an interest in that land or interfere with the ownership and often with highways. The Highway Authority interest in the land is separate to the ownership of the land underneath, if you like. And so what this article means is that the example that I can give is one that I mentioned earlier, where you might be laying a cable in the street. It allows the applicant to be there and do those works and interfere

1:16:20

with the highway in that way, without having to acquire right at that stage.

1:16:28

Understood, so,

1:16:30

the the subsoil, so, for example, under the highway that so your, your inference there is that the Highway Authority wouldn't always own the land, meaning that someone else would, would that be the

council typically, or would that be some, a different landowner, or is it? Does it vary, depending on circumstances and how and in relation to this project, particularly, are those investigations been undertaken

1:16:58

just Graham, for the applicant? Yeah, the ownership of that land can vary

1:17:04

in terms of this, the ownership of the land within the order limits. Investigation has been undertaken by the applicant, and in the book of reference, you can see plot by plot, who is a landowner or has an interest in that land. So you can use the land plans and the book of reference, and I can get the document reference for the book reference, if that helps. So you can see, for each plot within the order limits,

1:17:34

who has an interest in that land and the nature of that interest.

1:17:39

That's helpful. So I understand that obviously I could look at the book of reference which, and we'll focus on this on Thursday, I'm sure. However, in the book of reference, it's going to tell me whether there is a difference between the highway authority or the landowner of the carriageway, which maybe the council would be, would be the Council, and the land underneath that there will be it will be clear to me reading the book of reference,

1:18:04

where those differences are

1:18:12

just going for the applicant. Is it okay if I suggest that perhaps this matters dealt with at the compulsory acquisition hearing as well.

1:18:22

Yeah, that's fine.

1:18:25

I will need to make a note, actually, if we can, when we come to the end of today's session, if we can just action that article 32 will be deferred for discussion at Thursday's

1:18:37

hearing, unless there are any objections to that from the Council,

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as I understand, the county council, are the Highway Authority. The highway officer from the council is online today. I'm not sure whether they're here on Thursday or not,

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or whether they would even need to contribute on this particular point, whether they have any comments to make. Otherwise, I prefer to defer this until Thursday. If you'd like to come in, there was a hand raised. Sorry, I don't have the full

1:19:12

Thank you. Sorry, sir. Peter Barnett, Cumberland highways, again,

1:19:17

I am available Thursday. However, input won't be incredibly helpful if I can just point out that highway rights is only for the two first bits, or as deep as a statutory Undertaker is. So if you go much deeper than that, you're in private land. Normally,

1:19:35

highway presumption is that the landowner will own up to halfway of half the carriage way. So if you've got two neighboring landowners, you'll have two different ownerships. And if you go quite deep, then you'll have to get their permission to do it. If it doesn't form part of this this year, that's Thank you. Yeah, I'm I'm not a legal expert. Go back years now, it's not my function. Sorry to go.

1:20:00

No, I think that clarity is helpful in terms of your input on Thursday as well. If

1:20:07

you weren't planning on coming on Thursday, you may not need to do so. I think this is probably more of a matter for the applicant to explain to me in terms of the book of reference and

1:20:16

investigations with potential landowners. Thank you, sir.

1:20:24

Okay,

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and I'm actually going to say for item M that we do the same, so I suggest that we again defer that to because it relates solely to

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temporary temporary possession powers and compulsory acquisition. So I would prefer to leave that to the

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hearing on Thursday, unless there are any objections that's

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going for the applicant. I was going to make the same suggestion, actually, so unless anyone else has an objection, I think that's appropriate. Okay, so that's items, one,

1:21:08

1k 1l and 1m I think I'm correct in saying we're going to discuss all three on Thursday. So

1:21:30

I am going to continue. It's half past 12, and I did indicate we may have lunch between half past 12 and one. I think we should continue, because there is a reasonable chance that we will finish before lunch on the draft DCO section.

1:21:46

Having said that, I do have some questions at the end. Does anyone have any objections to carry on until one o'clock at the latest?

1:21:58

Okay,

1:22:00

that's fine. I will proceed. And so we're on to 1n for November.

1:22:07

And again, this is a question I have asked before, but I'm going to try and articulate what I'm seeking from the applicant in relation to Article 44 zero, which is on

1:22:21

page number 28 I think possibly 29

1:22:29

Yes. Page Number 29 sorry.

1:22:35

So in response, so in one question, 1d of the applicant's response to issue specific hearing agenda items, which just to help IS rep, 3015,

1:22:47

I'll just open that myself.

1:22:56

Answer 1d of that particular document.

1:23:05

It explains to me that, in effect, the DCO would make all the land within the order limits operational land.

1:23:14

And I have kind of two parts to this question. I

1:23:19

wondered if the applicant can clarify whether the land that is not to be used for the purposes of solar, solar infrastructure. So for example, Area C, and I'm not sure whether we have access to the

1:23:34

works plans, I think the applicant may have access to those,

1:23:40

if not, not to worry too much. It's this most southern part of the site where, effectively, none of the solar infrastructure is proposed to be cited, or very limited areas of solar infrastructure. So the question is whether this area of land would or would not be operational land under the definition contained within the town of Country Planning Act,

1:24:08

Jessica, for the applicant.

1:24:11

The intention with this article is that it applies to the the entire order limits. So

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the order limits are the boundary, if you like, and the land within the order limits

1:24:25

becomes, or is treated as operational land.

1:24:29

Okay? I think the follow up to that point is it might involve a response in writing, understanding what the definition of operational land is, and section 264, of the Town and Country Planning Act 1990 and I think those principles were carried forward from the Town and Country Planning acts from the 1960s at least some of the principles, and it revolves around the definition of operational land. And I'm just trying to understand whether that excludes land that.

1:25:00

Has not been developed for the purposes of the undertaking. So for example, where there are areas of land that have not been developed, green fields, or, for want of a better phrase, whether that would be operational land or not for the purposes of this provision. And I'm not expecting you to necessarily be able to respond

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in in this hearing. The reason I asked the question is because I want to understand what the scope you're so you're seeking consent

1:25:36

under this provision. You're seeking to make the entire site operational land, and then trying to understand what the implications could be of exercising permitted development rights relative to the proposal.

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So that's why I'm asking about whether there are, on the face of it, and in relation to the Town and Country Planning Act and the definition of operational land, what that really means for the scheme, what type of works would be

1:26:03

potentially

1:26:06

permitted development, and what extent of land within the order limits would that apply to as it currently stands?

1:26:16

And it might help if I just move on to the second question, because it links to the first really,

1:26:24

because I want to understand to what extent have you considered the extent of permitted development rights relative to the proposal, and what I mean by this is in terms of whether such works are likelihood, whether they're reasonably foreseeable in future, and the extent to which they have, or should have been, or have even been, scoped out of the environmental statement.

1:26:50

So I think really what I'm after is in the planning statement, potentially, but somewhere in the submission, or even in the written response, explaining to me what permitted on rights potentially apply the extent to which they're foreseeable and reasonably foreseeable, and the extent to which they could lead to cumulative effects. I just want to be absolutely sure that in the environmental statement that you've properly considered the implications of permitted development rights in in the submission.

1:27:22

So that's, in essence, what I'm trying to understand.

1:27:27

And I think I understand your response based on

1:27:32

you suggested they're limited minor works, and they're subject to restrictions, and that's fine, and I understand that, but it would help me to understand what the works are and why you say that they're limited minor works, and therefore why you don't, I assume that this position will be that they're not going to have any meaningful effect on the totality of the works that you're seeking consent for, so it's not going to lead to significant environmental effects in combination with the remainder of the development that you're seeking consent for, if that makes any sense. Mr. Graham, I know that I've kind of done a very long question and explanation there.

1:28:11

Jess Graham, for the applicant, that's understood,

1:28:15

and particularly on the second part relating to the EIA considerations, we can come back in writing with this more fuller response on that

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in terms of the first part of your question,

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just to kind of clarify them in the drafting of this article, is saying that development consent granted by this order is treated As specific planning permission. So that is the

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development in its in its entirety, not just the solar infrastructure. Obviously there are, there are the things that we need to do

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within the site. There are areas that are

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included for environmental mitigation, etc. And so

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it is capturing everything within the order limits. It's just saying that everything within the order limits is to be treated in the same way that operational land is treated for the purposes of the 1990 act.

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So

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I don't know if that helps clarify

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the question, the first question on that point, and also to sort of just reiterate that this is a

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very standard article. It was one of the model provisions, and I believe I'm not wrong in saying it's included in all the made solar DCOs today, but can check and confirm that.

1:29:47

Thanks, Miss grim. I'm not I'm not disputing. I realize it is included in at least the DCOs that I've the recent ones I've seen as well. But I'm just trying to understand what the implications are for.

1:30:00

For future, potential future permitted development, and what that really means for the environmental effects. And just trying to bridge that that gap would just help my understanding as to how the two things

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relate to one another, and whether that's been properly considered, just

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going for the applicant that's understood, okay.

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And one, okay, so I'm happy to to move on from that point, unless anyone else would like to come in.

1:30:40

Article 41 which is the last point on this agenda item.

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Again, I have asked this question before, and if we go to page 29 and 30 of the draft, PCO,

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that's article 41 in its entirety. I'm not going to spend too long on this.

1:31:03

I recognize you've set out your position as well. But notwithstanding the wind farm, so potato pot wind farm, which has been referred to in this article, I recognize you know, the Secretary of State decision at Stone Street, solar and some more recent examples as well, has struck out the recommended similar provision notwithstanding the wind farm

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and I'd like to know what's different about this scheme, and whether it's just the wind farm consent that's the issue, and whether the the article should just relate to the wind farm consent only.

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Whether the whether the article needs tightening or making more specific to the wind farm, or whether you still maintain that this should be

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retained in its current form, but also noting that stone street solar, the Secretary of State has specifically without a similar recommended provision.

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Jessica,

1:32:09

our position is that

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the provision in its entirety is necessary.

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Obviously you've identified

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that we have a this specific overlap with an existing planning permission in respect to potato pot,

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wind farm, and that is dealt with at sub paragraph two of this article. It might help just for me to set out the other paragraphs and then the sort of reasoning for why we say they should be included so

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sub paragraph one

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is, actually,

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I might do this backwards, and I don't know if that's a bit confusing, but the reason why we include sub paragraph two is as a result of the hillside parks Supreme Court case and and that case determined that where there there are overlapping planning permissions on a parcel of land, if one of the permissions is implemented such that it gives rise to a physical incompatibility with the other permission, then the other permission then can't be implemented. And so what we've done here with this provision, we've obviously, we know upfront, we've identified an existing planning permission that does overlap, which is paragraph two, and we've set that out with reference to the

1:33:32

potato pot wind farm. And then we also say that we need to have more general provisions on this point, and those are included at sub paragraphs three and four. So sub paragraph three is more general than sub paragraph two, and

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deals with the circumstances where

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works are carried out under the DCO and then there is an overlapping future planning permission. It's to ensure that the two could

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legally coexist, if that were to be appropriate, so it wouldn't prevent them from coexisting together, and it wouldn't.

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It wouldn't give rise to any enforcement action in respect of the second planning permission. And then paragraph

1:34:27

four deals with the converse situation and ensures that where works have been implemented under a planning permission that wouldn't cause the DCO to become the sort of invalidated permission, if you like.

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And then, separately to that sub paragraph one is a slightly different point, and I believe, has been in DCOs, predating that the hillside case, and it deals with the

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sort of unintended incompatibility between.

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For the DCO in any further future planning permissions that might be

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sought that relate to this proposed development. So whereas three and four are to do with other development, one is to do with future planning permissions that might relate directly to the proposed development and

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the provision in its entirety, is really

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ensuring that such scenarios could legally be permitted if that was if that was appropriate.

1:35:39

Okay, so do you have any comments on the point I made at the end, which is stone Street, solar,

1:35:47

the most recent solar, DCO. And obviously, we're not party to the examination and what was discussed. But on the face of it, that provision, or a similar provision, notwithstanding, the wind farm,

1:36:00

was recommended by the examining authority, and then, effectively, the Secretary of State decided not to include it in the final version or the final DCO

1:36:12

chess Graham for the applicant, yes, and I think in this, in the Secretary of State's decision letter, they said that it was removed because it wasn't considered necessary, necessary or create a potential ambiguity, but I think our position is that it is necessary for the reasons I've outlined, and in fact, actually, it would help avoid any ambiguity about the position if there were to be future planning permissions that come forward and overlap with the site. Okay?

1:36:42

Thank you. Well, you're well, your position on that, that's clear. So thank you.

1:36:47

I don't have anything else on that particular point. We have, we have come to the end of the agenda, and before we break one, there are maybe two or three small items I'd just like to ask a question on in relation to the DCO, and I was going to ask them later on, but I think it's better just to deal with them now. And so you are coming to you coming in on these questions fairly cold, because I haven't given you an indication, but I'm hopefully they're not too taxing.

1:37:16

Schedule 13 on page 64

1:37:19

just something I noticed

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in the DCO, in fact, there are only one there's only really one question I'm going to ask on this and related question as well. But if we go to the end of this, the DCO page 64

1:37:41

is, this, is this list complete?

1:37:46

Are these all the documents to be certified? Just on the face of it, it looks fairly a fairly short list, but having said that, I think it's because the environmental statement is included as a complete document.

1:38:00

I assume that includes all the figures and

1:38:05

associated other plans which are linked to the ES,

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anyway, sorry, you don't necessarily have to come back to me. It's just a point, if you could check that's all, but if you'd like to come back, by all means, do so,

1:38:21

just going for that, just very quickly to clarify that this is a complete list in terms of the documents that are referred to in this order and will be certified. What does need to happen before the end of examination is that where we have submitted later versions of this, of those documents, this schedule will be updated to refer to the latest version of the of the document. And as you've mentioned, we have the environmental statement here listed as as one single document. So we will need to think about where, if we've submitted later versions, how we deal with that in this schedule, different DCOs deal with it in a different way. But at the moment, yes, it should include all the figures and the plans, but I just wanted to note that there would be an update to this schedule, and in fact, we could make that update in the next version of the DCO, so you can see it at that point. But it's one of the sort of final things that has to be done, because it should reflect the final versions of any of these documents that have been submitted to the examination. So it's effectively just that version column that will change what we might might be required to split out the environmental statement to make clear which versions we're talking about.

1:39:33

Okay, that's helpful, as long as that's in hand and that you're going to check that that list is up to date, that's that's fine. And on a related point, because the explanatory note on page 74

1:39:46

he does refer to schedule 13, but that was not really my point. On this one, there isn't an address included. So this is where you're explaining that these documents are going to be able you're going to be able to view the documents through.

1:40:00

Of charge during normal working hours.

1:40:03

There isn't an address there, and I wasn't sure whether, as part of the engagement process, through pre application and through the submission of this application, whether there is an address actually that

you've already agreed where these documents are going to be stored or not, or whether you need to do some further engagement to decide the best place to make sure these documents are available.

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Just going for the for the document, it's generally

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an address the client, sorry, the applicant's address somewhere where they decide is appropriate for them to be stored and available. We will include an address, we'll establish the appropriate address, and that will be included before the end of the examination. So that wouldn't be apologies

1:40:51

for my naivety on this, but I assumed it might be a library, for example, or maybe the Council offices, or somewhere that's central to the site or within proximity of the site. I'm

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not sure whether that's preceded or not. It was just a thought I had.

1:41:09

Just great for the applicant. You may not know the answer anyway, but if you'd like to come back anyway,

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yes, we'll we'll come back and we'll confirm whether it

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needs to be somewhere that

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the applicant is comfortable with and the public can access it. But we'll establish that, and we'll include an address

1:41:32

that's fine, and just cross reference previous commitments you may have made in the consultation exercise through various documents. You may have mentioned in there that you intend to keep a copy at a certain place, for example, without reading back through. I'm not sure whether you have said that, but please, can you just check that as well?

1:41:51

Just going for the applicant, we will check and we'll confirm. I

1:42:06

Okay, thank you. I have nothing else on the draft. DCO after lunch, we will come. We will move on the agenda to the well, to general matters, but also the environmental matters.

1:42:17

In more detail, does anybody have any comments or questions I'd like to ask at this stage in relation to the draft development consent order.

1:42:28

Is it worth just going through the agreed action points in relation to this part of the hearing now? Or would you prefer to do that at the end?

1:42:38

Jess going for the applicant if, if it's okay with you, maybe I could use the lunch break to collate my notes and have a full set and then when we come back after the break, I could just confirm our understanding of the action points at that point.

1:42:53

That would be fine. Yes, that'd be helpful. Thank you.

1:42:58

Okay, so it's five to one.

1:43:01

Are people

1:43:03

comfortable coming back at quarter to one, which is 50 minutes as opposed to the full hour, or do people want the full hour open to suggestions

1:43:15

otherwise, I will go with 145. Reconvene.

1:43:21

Okay, we will come back at quarter to one. So that's 145

1:43:26

so I am now going to adjourn the hearing, and I will see you in about 50 minutes. Thank you.