

# AUDIO\_DEANMOOR\_CAH1\_SESSION2\_13.1 1.25

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## SUMMARY KEYWORDS

DCO negotiations, development consent order, private rights, temporary possession, compulsory acquisition, United Utilities, Cumberland Council, land interests, statutory consultation, action points, written submissions, landscape strategy, mineral code process, surveys, compensation calculation.

## SPEAKERS

Speaker 2, Speaker 3, Speaker 1

00:04

Okay, we will make a start now. It's 1140

00:11

Could I just check the applicant, Mr. Hack, are you? Are you online? Royal

00:19

hack, on behalf of the applicant, yes, I am,

00:22

sir. Okay, thank you.

00:29

So could we please display the agenda on the screen? Please?

00:43

Okay, thank you. And the last, the last point I was going to raise, and I think the answer, Mr. Hack has given an answer in previous responses, the implications of further negotiations on the draft DCO, and this is more ensuring that any changes to the DCO as a result of today are properly articulated, are properly understood, so that the timetable can be addressed effectively, and none of the issues are outstanding. Mr. Hack, any any comments on on this at this stage, I know we've got some further discussion to have in the next few minutes.

01:22

Rahul hack on behalf of the applicant, so we are not expecting any further negotiations to impact the DCO program. I did update you earlier on about United Utilities, and we will provide you with an update on them and their protected provisions at deadline

01:37

five. Okay. Thank you.

01:45

So if we could now move on, before the break, I did indicate that we will be discussing some other matters which were partly discussed in the issue specific hearing on Tuesday, and just as a reminder set out in the respective agenda for that hearing under EV six, double 01, so I'd like to discuss it was item 1k in the table of topics relating to that hearing. I don't necessarily think we need that on the screen, unless it is easily available. Okay, that is, that is probably helpful, actually. So k is in relation to articles 26 and 27 of the draft development consent order, which I think is pages 20 and 21 I

02:47

so the applicant provided a written response to a question on this and that was that's contained in question. 11, 0.17, of the applicants response to the examining authority's first written questions in rep, 2010, and so having regard to this, can the applicant explain to me the extent to which there is overlap between the articles and any inconsistencies or potential ambiguity between them? And hopefully I'm going to now going to explain with by virtue of an example, so that, again, just to give you a steer as to what I'm after. So if we look at article 26 the effects of article 26 are that private rights are to be extinguished or suspended upon acquisition or possession. However, article 27 assumes those rights still exists, but then authorizes interference with them. So this means, as far as I can interpret, that if a right is extinguished under Article 26 then the overriding element in article 27 becomes redundant. And consequently, I'm curious to understand whether that causes any issues in relation to how compensation should be calculated under either article. Whether there's issues here in terms of which article takes precedence. I should add that I do recognize that article 49 does provide a safeguard in relation to dual compensation or double recovery. But Mr. Hack, are you able to elaborate on the question I've just asked or the points I've just made?

04:30

Royal hack on behalf of the applicant, sir, I think the key distinction between the articles is that article 27 applies to all of the order land. So if you read through 26 and 27 article 26 is based upon extinguishing or suspending rights, whereas article 27 involves an interference with those rights, if, for example, we were to enter land under. Article 21 for surveys, we may impact existing private rights. The article 27 permits that interference, if we were to exercise compulsory powers over a plot article 26 would extinguish or permanently set aside those rights. Or if we were seeking rights, it would set aside contradictory rights. Or if we were seeking temporary possession, article 26 would suspend those rights, so that that is the difference between those two articles.

05:43

So would, would article 26 override article 27 to the extent that it becomes redundant in those circumstances?

05:53

So I think rahak on behalf of the applicant, so I think it goes back to article 27 applying to all of the order land. Okay, so article 26 wouldn't override necessarily article 27 article 27 could be used to override or interfere with existing easements up until a point when the applicant seeks compulsory powers under Article 26

06:21

Okay, understood article 26 Thank you. I

06:30

do have another point on the article. I think Raha, I can part the applicant, so I think this is probably already within our written submissions. But the point I would make is that this is heavily precedented, so I've got a long list of solar DCOs here. That's tilbridge, byersgill, Oaklands, East Yorkshire, heckington, Fen, westburton, cotton gate, Burton, Seneca, Mallard pass and longfield, which include both of those powers, and the Secretary of State has endorsed that on those schemes.

06:57

That's helpful. Thank you. It was also just so I understand what the articles are seeking to do in within the DCO. Thank you. If you could also, as you, as you have to do anyway, provide a response in writing. Thank you. Thank you. So I'm happy now to move on to article 32 which is on page 25 again, there has been a written question on this, and I did ask the question in the hearing on Tuesday, as you're aware. So, in summary, I think this article is seeking to allow the use of subsoil or airspace associated with streets without acquiring the streets themselves and so and this goes back to appointments to hack made earlier. Could the applicant explain to me whether and if so, where those with an interest in the land affected by this article are in the book of reference. And I think you have answered this earlier, or certainly alluded to the point.

08:15

Rahul hack, on behalf of the applicant, sir, all of the highway within the order limits is on unregistered land. So that's the point I made earlier. We have a list of all of the plots for you, which we can share with you, but this power would effectively apply to the streets that are highway. So you could search in the book of reference for public highway to identify those as well, but we'll provide you with a list of all of those plots. Okay, thank you.

08:49

That's fine. I have no further questions on that. I think that would that would suffice, if you can provide that response in writing.

09:02

So can we move on to articles 33 and 34 and this is item 1m on the agenda in particular.

09:15

And if the applicant could explain to me in relation to these articles,

09:24

the relationship between temporary possession and compulsory acquisition. So Mr. Hack, if you could just outline that relationship first, and then I may have some questions

09:40

on behalf of the applicant, sir, in terms of relationship between a temporary and compulsory acquisition, I'll try to give you an answer, but I think you might give me some more guidance if I give you something that you're not looking for, yes. So the DC. Includes temporary powers as well as permanent powers. Some of those temporary some land within the DCO is only subject to temporary possession. That's the green land on the land plans, however, the drafting of the temporary possession article allows all other land within the order limits to also be subject to temporary possession. And the reason for that is that at implementation stage, applicants sometimes take temporary possession of land first to try to minimize the amount of land that they'll need to acquire permanently later on,

10:31

that's fine. I can probably stop you there, Mr. Hack, you may have finished anyway, and it was on that point that was my effectively going to be my question. But then following on from that, I'm just trying to understand whether statutory consultation was when the statutory consultation was carried out, and the outcome of that were those with an interest within the order limits. So the order land were those with interest made aware that temporary possession powers were also being sought in addition to compulsory acquisition.

11:00

Royal hack on behalf of the applicant, so I'll get you the date of the consultation, if that's what you're looking for, in terms of whether all parties were informed of the impact on them. Everybody within the order limits was updated on the extent of the scheme at section 42 stage, but also once the scheme was accepted, section 56 I think,

11:23

I think the questions is probably a little bit more direct than that, in terms of when people were informed or consulted on on the scheme in relation to their land interests, were they told or informed that it not. It didn't just include compulsory acquisition. It also included 10 included temporary possession. And if so, if not, then do you say that that makes any difference? Or does that matter to me when I come to making my make my recommendation to the Secretary of State,

11:55

rahack, on behalf of the applicant, sir, we have the applicant has been advising landowners on the worst case possibility. So if somebody was subject to permanent acquisition, they would know that, and a lesser case would be temporary possession, but we wouldn't directly be telling them about the temporary possession. Instead, negotiations and engagement is based on the worst case impact on them, and that's a reasonable approach that is precededented across other DCOs.

12:24

Okay, so your position is compulsory acquisition is for the purposes of this, a worst case scenario, and so you everyone was informed who was affected by potential compulsory acquisition powers, but you didn't directly inform those with an interest of the potential that you could exercise temporary possession of their land. Is that correct?

12:52

Sir, that's broadly correct. But what I will say is that all of those parties would have had a copy of the DCO and the land plans through the section 56 process. That's fine. Thank you.

13:14

Okay, thank you. So I think I've covered the outstanding issues from the hearing on Tuesday, unless the applicant is able to suggest otherwise, I think it was just items K, L and M,

13:35

Royal hatcomb, the applicant said, that's also my understanding. Thank you,

13:41

in which case? Well, are there any other articles that the applicant would wish to talk me through today, or any other matters in relation to compulsory acquisition? I don't have any further questions now, so I'm happy to close the hearing. But this is the final chance. Or even, Mr. Barton, if you you would like to come in at all, or any other points raised, then this is, this is the final call, final chance before I close the hearing.

14:06

Tom Barton, 12, property. Ft, nothing from me. Thank you. Thank you.

14:13

And Mr. Hack, I'll make this assumption that the same applies.

14:16

Rah hack, on behalf of the applicant, that's correct. So no further comments from us.

14:20

Okay, thank you. Finally, do we have a list? I mean, I have, I have made a extensive notes, but does the applicant have a list of actions from today that we could discuss or agree? I don't think the mainly self explanatory, because it involves submissions at deadline number five, the main actions for me were really that the applicant continues engagement with various effective persons, but in particular, Mr. Barts. Client, as well as United Utilities and Cumberland Council, and to try and resolve negotiations as well with those with an interest in relation to potato pot wind farm, I think they were the main options. But Mr. Hack, do you have a list or anything more precise?

15:19

Rahul hack, on behalf of the applicant? Yes, I do, and we can share this with you afterwards. So I'll just read out the list of actions that noted. Action one, update to Cumberland council sscg in relation to ca

matters. Action two, update on United Utilities protected provisions at deadline. Five. Action three, provide a list of all unknown owner plots. Action four, provide an update in relation to 12 property Fe negotiations. Action five, confirm the full extent of works within 12 property Fe plots, by reference to the landscape strategy plan. Action six, respond in writing, setting out the reasonable alternatives that have been explored to undertaking works within 12 property Fe land action seven, provide details in relation to the surveys that have taken place to date in respect to 12. Property Fe land action eight, confirm which surveys will need to take place in respect of 12 property FES plots at the point of detailed design. Action nine, confirm the details of the mineral code process, including which party would be responsible for undertaking surveys to demonstrate the location of mines and minerals impacted by the scheme. And action 10, provide a response in writing, in relations to articles 2627 and I think the other articles as well that we just discussed.

16:44

Thank you, Mr. Hack, that's that is most helpful. Those those points were scribbled down in my notebook, so it's very helpful to have that articulated. Mr. Barton, do you have any comments on those action points?

17:00

No comments from me. Thank you. Okay. Thank you.

17:06

Okay. Thank you. So the next the deadline for written summaries of today's responses is Tuesday, the 25th of November. So I am going to close shortly just to say thank you to all persons in hearing today for your assistance and attendance today, and thank you for displaying information on the screen as well. And I look forward to your written responses and submissions on the 25th of November, just to remind you, there is an open floor hearing two o'clock today, and registration commences at 130 so it's just coming up to 12 o'clock, and I'm now going to close this compulsory, compulsory acquisition hearing. Thank you.