

AUDIO_DEANMOOR_CAH1_SESSION1_13.1 1.25

Thu, Nov 13, 2025 11:35AM • 1:27:57

00:06

Good morning, and the time is now, 10am and it's time for me to open this compulsory acquisition hearing into the Dean Moore solar farm project,

00:16

and I just confirm that people can hear me clearly, if the applicant could just turn on the camera or raise a hand.

00:27

Thank you, Mr. Barton, yes, thank you.

00:30

Can I also confirm with the case team ms Robins that the live streaming has commenced and recording has started?

00:39

Yes. Can confirm both have started. Hey, thank you.

00:43

So my name, my name is Matthew Woodward. I am a charter town planner, and I have been appointed by the Secretary of State as a single examining inspector to examine this application. You will hear it also hear me referred to and referenced as the examining authority.

01:00

So we are all working online today, virtually, using Microsoft Teams, just to reiterate that this is a virtual event, but it is treated in exactly the same way as an in person event for the purposes of examination.

01:15

A recording of today's hearing will also be made available on the Dean Moore solar farm section of the national infrastructure planning website as soon as possible after the hearing is finished. So with this in mind, it would help me if you could state your name each time you speak. And I understand this is rather repetitive, but it just means that your name will be captured on the written transcript, which will be published alongside the recording.

01:45

So a link to the planning Inspectorate privacy notice was provided in the notification letter for this hearing. So I am going to assume that everybody has read and understands

01:57

the letter and the contents. However, if there are any questions about the way that customers are handled by the planning inspector in relation to data protection laws, then please do speak to Miss Robbins or the case team at some point during the day.

02:13

So with this event being virtual, I am going to be taking a break after probably about an hour or so. That is, if one is needed, if anyone does wish to take a break before that or at any other time, then please just, just raise a hand and do let me know. And in terms of the technology, if there are any issues with connections, then I may adjourn the hearing. And if you're affected by a connection issue, then please try and leave the meeting and rejoin. And if the problems persist, then you may need to contact the case team separately and obviously outside the hearing forum. As I say, I will try and adjourn if that does happen.

02:56

I'm also appreciative that virtual working does present its own challenges, and not least, it is rather difficult to read read the room at times, and presentations can appear somewhat robotic. So I may be looking at different screens and different pieces of paper material, and I expect other participants may be doing the same. I just asked that we exercise some patience and respect when asking questions or waiting for for responses.

03:24

So in terms of the agenda today, I am going to be referring to the examination library. And so it would help the examination Library link is on the main page, the main project page of the planning Inspectorate website, and I am going to be using that quite often and using the reference numbers to guide participants to different documents.

03:48

Agenda for this meeting was published last week, and this can be found under examination library, number EV seven, double 01, it would probably help if, if that could be displayed on the screen while I do the the opening today.

04:05

Thank you. And if we could just scroll down to item number three.

04:12

So item number three is effectively the topics of potential discussion today. So as you can see there, I do hope to hear from the applicant on various different matters, and sorry unaffected persons.

04:26

I will also have a few questions of my own as we go through today, but you should be aware that what is not included on the agenda is on Tuesday, an issue specific hearing was held, and several items from that hearing were deferred to be discussed today, so I intend to deal with those probably towards the end of today's discussion.

04:53

And so, as you can see from the agenda, we will also be referring regularly to the draft development consent.

05:00

Order, I will give the reference actually later on in this opening. But just to make you aware, we will need a copy of that if people have paper copies, for example, just have have those to hand.

05:12

You should also be aware that, due to the cancelation of the first scheduled compulsory acquisition hearing, which was due to take place in in September, the applicant did provide a detailed written response to those scheduled agenda items. Those are contained in rep 3016,

05:31

and as such, I have tried to focus the agenda today on the outstanding matters, as well as covering the applicant's case for seeking compulsory acquisition and temporary possession powers within the draft development consent order.

05:45

So before I ask for people to participants to introduce themselves, I'll briefly just go through the purpose of today's hearing.

05:52

And so the application for the proposal or proposed development includes a request for an order granting development consent to authorize compulsory acquisition of land and compulsory acquisition of an interest in or rights over over different land. And so this hearing is to enable me, as the examining authority, to hear and probe the applicant strategic case in respect of the application. And as alluded to on the agenda, I will also hear from individual or individual, individual objections or concerns from affected persons, affected persons who they are interested parties with a legal interest in the land or rights over which the applicant is seeking, powers of compulsory acquisition or temporary possession. So this, again, this hearing will help me consider whether the relevant legal and policy tests applicable to compulsory acquisition and temporary possession have been met. Hence my questions will be geared towards trying to ascertain answers to those fundamental questions.

06:57

So before I move on to the agenda and one or two other points, I am now going to ask those participating today if you could introduce yourselves, and please do state your organization's name, and also if you could indicate how you wish to be referred to, whether that be Mr. Miss, Mrs. Etc. So could I start with the applicant initially? Please,

07:24

Hello, sir. My name is Rahul hack, and you can use Mr. As a title. I am of TLT solicitors appearing on behalf of the applicant. I am joined by members of the applicant team who I'm not proposing to introduce, but they are the other people on the call, other than 12 property. Fe,

07:44

okay, thank you. Thank you, Mr. Hack and welcome. Welcome to the hearing today. And yes, that's probably the most sensible way forward to introduce participants as we go along.

07:55

Thank you. And I understand we do have an effective person. Mr. Barton, you on the call today. Think, Hi, yes, I am Thompson of Keystone law on behalf of 12 property. You are the first one. You are on mute, and I'm sure you won't be the last today. Oh, I'm not showing us on mute at this end. You You are still on mute.

08:27

Rack. On behalf of the applicant, we can hear him.

08:32

I'm not showing on mute this end, I must say, Okay, I seems to me as though there are issues at my end.

08:42

So let me my mind at rest. Just pause. If we just pause there, I'm not going to adjourn. I'm just going to try and sort this out on I'll turn my camera off and I'll try and sort this out and come back online, if I can. Otherwise, I will have to adjourn. I

09:12

let me try. Could Mr. Hack or Mr. Barton, could you say something, and I'll see if I can hear that. Are you you hearing? Yes, okay, sorry. I'm accusing other people of having issues. It was me. It was my fault. I must have inadvertently pressed the mute button, whatever that is on the keyboard. So apologies,

09:31

Mr. Barton, could I? Could I ask you to introduce yourself again? Thank you, certainly. Tom Barton of Keystone law, acting on behalf of 12 property Fe Limited and Mr. Barton is fine,

09:45

okay, thank you, Mr. Barton.

09:50

I'm not sure on the on the attendance list. There is an indication that Cumberland Council are attending today, or certainly not the last time I looked, can I just confirm is anybody here from.

10:00

In Cumberland Council.

10:05

No, okay, thank you.

10:08

Are there any other affected persons, or anyone else who wishes to participate in today's event?

10:21

Okay? Thank you. I'll proceed on that basis. Then

10:29

I am going to be making a note of if there are any action points coming out of the discussion. I will be noting those down. I would ask if the applicant can do the same. And we will try and revisit, well, we will revisit the item at the end and just make sure that we've captured the action points that might be needed to submit various submissions for deadline five, if that's okay.

10:50

And just to give you a steer as to the documents we're particularly going to be relying on, today, I have referred to the draft development consent order. That's rep 204,

11:01

and we will also be looking through the land plans, I imagine, which is as double 07

11:07

the book of reference, which is a double P 016

11:12

and the London rights negotiations tracker, the latest version, which I think is rep for double 03

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also, please do note that by deadline five, which is the 25th of November, updated versions of the following documents are required, the draft development consent order, the explanatory and explanatory memorandum, latest version, book of reference, funding, statement of reasons, an updated land rights and negotiations tracker and an updated guide to the application and obviously all the all those documents are requirements are published on the examination timetable, which you can find on the website. In addition, written summaries of the oral submissions today are required by the 25th Mr. Hack, you've got your hand up. Would you like to come in on that point?

12:04

Thank you. So Raul hack, on behalf of the applicant, sir, on the book of reference, funding statement and statement of reasons, there are no updates to the funding statement or statement of reason, so

we're not proposing to submit an updated version The Book of reference is currently under a final update, and that will be provided on the final deadline. Deadline, six.

12:27

Okay, thank you. I will be asking, actually, about the book of reference as we go along, in terms of the other two documents. That's fine, just to note we did have. And I'm sure you'll catch up with colleagues, and you may have watched the, I'm not

12:39

sure you were on the call on Tuesday, the issue specific hearing, and there was some discussion about the funding statement. So whether

12:47

there may be a requirement to update that, I'm not sure, but that's for you to review as before deadline five. Thank you. Okay, thank you, sir.

12:56

Okay, I'm not going to spend any longer on the introductions, and because I think we all understand how the hearing is going to proceed today, but are there any outstanding questions before we do move on to the agenda items?

13:11

Okay, thank you. That's great. Could we have,

13:15

in fact, no, we can leave the agenda on the screen that that's that's fine, because firstly, I'm just going to ask the applicant to go through, effectively, go through the bullet points that have been highlighted on the agendas under number three and subheading a

13:31

but I'm going to ask you to go through them in turn, so one by one, and so I'll introduce each of the bullet points, because I am probably going to elaborate on a couple of the bullet points. So I just want to make sure that you understand the question or what I'm asking for on those agenda items. So if we deal with the first bullet point, I would like you to outline where agreement has been reached with landowners, those with interests in inland and any and outline any ongoing discussions. But can you also, in particular, update me with regards to progress with Cumberland Council and the land interest relating to potato pot wind farm? Now, I understand Mr. Barton is well. He is on the call today dealing with his clients interests, whether you wish to deal with that briefly here or we will be discussing that matter later on anyway. So it's up to you how you how you address that. So if you could just cover those points first, and then I will see. I may have another question, but it depends on on the on the nature of your update on that point. So Mr. Hack, can I hand over to you first?

14:41

Yes, sir Rahul hack on behalf of the applicant. So just as a preliminary point, as you'll be aware, we did provide an update to you at deadline three in our document, applicants response to the CH agenda, I'm going to avoid repeating those updates where there are no further updates and you.

15:00

You're also in receipt of the latest land and rights negotiations. Tracker, that's rep four, Dash 003,

15:08

that will be updated at deadline five, with the updates that I'm going to report on today. So I would like to start by updating you on potato pot wind farm. The applicant and the owner of potato pot wind farm have now agreed a set of heads of terms that's subject to formalities, so signatures in a formal agreement, but the applicant now expects that the representation made by the owner of potato pot wind farm, and I've got the reference for you. That's rep 2061,

15:41

has been addressed, and this should hopefully be some sort of submission from that party confirming So

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the intention is to conclude

15:52

those heads of terms and have something before you, before the close of examination.

15:58

Okay, thank you. That's helpful.

16:01

Then I think it's probably best that I move on to Cumberland Council, because you've raised that

16:07

so just one moment.

16:12

So with Cumberland Council, as you will be aware, they own several plots in the highway. I think their only interests within the scheme are actually within the highway.

16:24

Their land is subject to temporary possession, as well as permanent rights, and the rights are for a cable crossing.

16:34

There is this matter has been discussed with the council, and they have been informed of the impact. They are aware of the works impacting their highway network. However, the council are still taking internal legal advice on the scope of powers within the order

16:54

and so that, I think may have been discussed at the previous hearing, but that is within the statement of common ground@cc.lm

17:00

dot one, and the statement of common ground is rep 4.015,

17:06

thank you.

17:07

And then I do have another update for you on United Utilities who are also further down your agenda. That's the final bullet point there, but I think I could probably just deal with them now. So United Utilities own apparatus in the highway, and that that part of the highway is subject to temporary possession. The applicant wrote to them several times, trying to engage with them on protected provisions. We heard back from them on protected provisions yesterday. It seems that they have minor comments on the protected provisions, and the applicant team are hopeful that an agreement can be reached Shortly, we will be providing you with a further update on United Utilities at deadline five.

17:49

Okay, thank you.

17:51

And

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I can give you an update on 12 property Fe Limited as well, if you would like, sir, or we can deal with it later on that agenda one. It's probably helpful just to so I have a flavor as to how things may or may not have progressed since the latest updates in your written submissions. Is there any other any has there been any advancement since? There have been so royal hack on behalf of the applicant, sir, there have been updates with troll property Fe they have been further discussions with their representatives. The applicant understands that 12 property Fe do not have specific details of the mines and minerals they claim ownership of. And the applicant also understands that 12 property FES continue to claim ownership of all interests directly beneath the

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surface of the land within those relevant plots, notwithstanding this, in the interests of reaching an agreement and in accordance with the relevant guidance, that's the Planning Act, 2008 guidance on compulsory acquisition, which states that applicants should seek to acquire land by negotiation, Wherever practicable, the applicant did make a formal offer to 12 property Fe Limited on the sixth of

November, no open response has been received. It is the applicant's view that the dispute between the parties is one of compensation, rather than an in principle objection to the scope of compulsory powers, we

19:21

will hopefully be able to provide you with a further update, sir at deadline five in the land tracker. Thank you. Thank you.

19:29

A couple of points there. Firstly, I will let Mr. Barton come back, but I intend to do that later in the agenda. So if Mr. Barton, you have heard the applicants, their view on what the latest position is if you could perhaps comment on that as we get to your item on the agenda. So I will park that there for the moment. In terms of Cumberland Council. Unfortunately, they're not here today, so I was going to ask them, Are there any holds, hold ups internally? I mean, all I can do is put on record that I do want this resolving.

20:00

Within the examination. So hopefully they will be obviously watching, maybe they're watching the live stream, but certainly, Mr. Hack, if your team could try and redouble efforts to make sure that that agreement is signed, if that's the direction it is going, I'm keen to try and wrap things up where possible during the examination, rather than leave residual matters for the Secretary of State, for example, and I'm sure you're aware of the reasons for that.

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Rahul Haq, on behalf of the applicant, thank you, sir, that's understood. We'll take that away and discuss further with Cumberland, in all likelihood

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that I think the direction things are going in. We're expecting to secure their agreement within the statement of common ground, and we're not expecting any formal agreement at this stage. Thank you. Okay, now, that's helpful. Thank you, Mr. Hack. I'll deal with one of the later points. Now, actually, is there any reason, in your view, why any of the outstanding matters won't be resolved or can't be resolved during the examination? Understand,

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tall, Fe, property, limited, we will discuss that later. But in terms of these other

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affected persons,

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I'm asking, effectively, is there any reason why this can't be sorted out during the examination.

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Rahul hack, on behalf of the applicant, sir, we don't expect any

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disagreements, or we have no no apparent blockers, effectively to these agreements so United Utilities, they are engaging with us on protected provisions, and we're hopeful we can get an agreement over the line with them, potato pot, wind farm, they've agreed heads of terms now, and we consider that hopefully will lead to withdrawal of the objection.

21:51

If I could just intervene. Am I likely? Are you likely? I'm not going to hold you to this necessarily, given the examination timetable, but by deadline five are you likely to be in a position where these matters are resolved?

22:05

Which is the 20th of November? Just as a reminder,

22:10

Rahul hack, on behalf of the applicant, sir, I can't confirm that they'll be resolved by the 20th of November, but all of these matters are already in a position where they are moving towards being resolved. Very shortly, we will be trying, however, to resolve these matters by that deadline. We will provide you with an update in the lecture, if you could provide me with an update. And the reason I'm highlighting that is because that's deadline number five. There is only one deadline after that, and obviously

22:39

I don't want that. That's the backstop, effectively, deadline number six. So if you could try and aim for deadline five, and then it does give you some flexibility to make sure that things are resolved within the examination timetable. Okay, thanks. I will leave that one there, and the next item on the agenda, if that's okay, unless there was anything else, Mr. Hack, nope,

23:02

there's nothing else. Okay, thank you. Sorry. There

23:12

is actually there is one more item I was going to raise this later, but it probably does fit quite neatly with the discussion we've just had. And so

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could you also identify, maybe you might be able to do this within the hearing

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which plots in the book of reference include landowners or those with an interest in the land, where those landowners are unknown.

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And so I asked this because you did provide me with a response to a similar question, which was provided in question number 12 point 0.1,

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in response to the X A's first written questions. And just to help that's document rep to 010,

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so in Q 12, dot 0.1.

23:58

You did provide me with an update on that. If you need time just to formulate a response, I can ask the same question at the end, but I do. I'd like to try and address that question if possible.

24:10

Thank you, Sarah. I'll hack on behalf of the applicant. Sorry, did I cut across you? No, no, it's fine. I was just going to say the short question is, can I have an update on 12? Dot 0.1, if that's if that's if that's an easier way of understanding what I'm asking,

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rather on behalf of the applicant. So we'll try to get you an answer to that later on in this hearing.

24:30

Initial thoughts from me are that all public highway within the order limits is unregistered land, and as such, there will be an unknown interest as part of that within the book of reference. So for example, and this is a plot that I was going to refer to for another point, but you can look at plot 171 of the book of reference that is a part of the highway that we're crossing for a cable

24:55

the surface of the highway is registered to the Highway Authority, the

24:59

sub.

25:00

All is unregistered, and so there's an unknown interest, and there's a presumption as to the owners, that we can provide you with a list of all. That's helpful, because that's kind of linked into a question. And you correct in saying, I think you were going to reference that in a later question, but I am going to be asking so I fully understand the nature of these particular unknown interests, and it's linked to another question, which was a hangover from the issue specific hearings on Tuesday. So I'll leave that there for the moment, and it might be a good might be worth coming back to that point when we discuss one of the articles in the draft development consent order.

25:40

Okay, okay, thank you. So could I ask? The second bullet point is asking, obviously, the applicant, just to outline the details of the proposed works within plot numbers, 126133135,

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and 138, as detailed on the agenda.

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And I may return to this point again later, but again, just so you can, you just explain to me, in relation to the parameters of the proposed development, exactly what's proposed within these plots, and where I can find that information. And it might help, actually, to

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could we

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detail those plots on the screen? Thank you.

26:26

You may need to zoom in. Yeah, thank you. That's great. Thank you. And

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then it's over to you when you're ready. Mr. Hack,

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Rahul hack, on behalf of the applicant, so just briefly, the relevant plots are 1261

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33 135

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and 138 so they should all run alongside, yeah, 138 is the large plot there that you can see on the screen. And then the other plots are just above it are running alongside the boundary of the scheme.

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We did provide a response on the works that occur within this plot in a as part of a previous response. So that was at rep 1001,

27:08

as well as our response to written questions

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as for the works that occur within these plots.

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Plots, 126133,

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and 135, are subject to work number six. And so you can show that on the works plan, actually, yeah, that's quite useful work. Number six is that green land. And so that is works to create, enhance or maintain green infrastructure.

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And I know you did mention parameters. So all of the parameters, the design parameters, for the scheme, are set out in a document called the design parameters document. That's a PP, 028,

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and so I'll actually talk about the parameters for the next work, rather than these ones, because these are fake. You can look at schedule one to the DCO to see what work number six comprises. But effectively it is green infrastructure. So maintenance. If you could help me on the question I'm going to ask on that is, to what extent are you going to be doing works below Well, subsoil, subsoil work. So anything below ground? Could you explain to me

28:24

what the proposal is in relation to maximum parameters? I mean, I've asked about cabling, details and depth, but actually it's about more about the works in their entirety. How will they affect the land interest or the affected person in relation to their specific concerns? It might be worthwhile you just setting out your position now, before I ask Mr. Barton later on,

28:47

Rahul hack on behalf of the applicant, that's Understood, sir, I'm just going to open up on my side schedule one to the DCO so I can explain to you the works.

28:57

Thank you. Do

29:17

Rahul hack, on behalf of the applicant, sir work number six, that's the green land that you can see on on the works plan comprises landscape and biodiversity mitigation, enhancement, habitat creation, watercourse enhancement, maintenance of existing accesses, as well as fencing, gates and boundary treatments.

29:37

I understand that there's a concern that some of these works could go into the subsoil.

29:44

Our understanding of the land required the land ownership is that 12 property Fe claim ownership of all interest directly below the surface, in which case, if we were to, for example, place a fence on the.

30:00

Land or even plant something, it would still require us to go beneath the surface. And so work number six, then would therefore involve some sort of work within the subsoil, even though

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that may not be the direct intention. It's not the same as laying a cable.

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And then, the second point is that. So the bigger plot is the one below. That's 138,

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and that is subject to work number one. And work number one is the actual solar panels,

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as well as work number three, which is electric cables,

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as well as related works to electric cables

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and work number six, which I've just discussed. So the design parameters document is quite useful, actually, in this respect, because if you look at the design parameters document, it will say at table 2.1

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the maximum depth of work number one. And so that's

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quite useful. It's going up on screen now. So if you go to table 2.1

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There we go. So

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it is at

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mounting structures. So 123, third row, and then the bottom, on scale, the maximum depth of piles will be four meters as part of placing solar panel, sir there, there will be a need for mounting structures. The maximum depth in this design parameters document is four meters. That is likely the deepest of any of our works, and so you can take that as effectively the

31:44

worst case impact on the subsoil interest. As I said before, the interest from 12 property Fe is apparently all interest directly below the surface. We dispute that, but until we have a better understanding of which interest they own,

32:01

we can't rule out the possibility that there will be an impact on their interests. So our view, our understanding, is that 12 property Fe would be arguing that if we were to dig four meters below to place piles,

32:17

there would be an impact on their subsoil. Okay, thank you. And as I've said a few times, I will let Mr. Barton come back on this point in due course. Could you, Mr. Hat, could you just ask answer me a question I've just kind of thought of as we've been discussing this, does the landscape

32:37

management plan, which I forget? The document reference number. There is an outlying landscape strategy for the site. I think you might be the landscape strategy plan is, might be the correct name of the plan, but does that help me at all in trying to understand the type of work so I understand the maximum parameters are set out in the schedule, which you've highlighted helpfully, but I'm just trying to understand what is in the landscape strategy in relation to those plots, notwithstanding the plot to the south which you've just discussed for works number one and three, but in relation to work number six, Does, does that plan help me at all in trying to understand what the extent of works below ground?

33:20

Thank you. So just a moment I might have to take some instructions. So apologies. I don't have an answer to that immediately, but it's something I could come back to you in writing on. If that's okay.

33:33

Yes, it would help. Because the question I am going to be asking of Mr. Barton as well is, I'm trying to understand what the what the interest in the land specifically, is and as you'll appreciate, I do have a balance in exercise to do on in the event that agreement's not reached, I will have to determine whether there is a public interest case, but I also have to take into account private interest. So I'm just trying to understand, based on all the evidence before me, specifically how the works might affect that land interest. Hence my question, if you're not able to answer that today, that that's okay, or you may be able to answer it later on in the hearing, failing that in writing would be fine,

34:09

right? On behalf of the applicant, thank you, sir. I think we might have to take that away in writing, but I will see if we can try to get something earlier.

34:18

Thank you,

34:23

okay, thank you. Can we go back to the I'll leave that point for the moment. Then can we go back to the agenda? Please?

34:33

Thank you,

34:36

Mr. Hack. I think the next question you've made written submissions on this, are you? Are you able to just give me a very brief summary as to how the application demonstrates that all reasonable alternatives to compulsory acquisition, you may reference the plots we've just been discussing as well, if you wish,

34:53

have been explored, and that includes any modifications to the scheme. So.

35:00

Rahul hack on behalf of the applicant, thank you, sir.

35:03

We Yes, as you just said, we did provide some written responses on this already. As for a brief summary, the applicant has explored all reasonable alternatives to compulsory acquisition as part of building its scheme. The

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statement of reasons at a PP 014,

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at section 621,

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sets out those alternatives, but those alternatives are also set out within Chapter Four of the ES that's as dash 035,

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that document sets out the criteria used to select the site, including nearby point of connection and land availability.

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So there are alternatives that we have selected within the scheme that's before you at the moment. And so to give you some examples, we are not seeking interests, rights or possession over certain plot. So that's plot 123 and 124 as well as plots 139 141 and 144 those are potato pot, wind farm. We've excluded them from the scope of compulsory powers because we can work around them effectively.

36:15

That land is shaded yellow on the land plans.

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And secondly, sir, the applicant is only seeking to acquire new rights over land

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which form part of their existing access track. So that's the blue land you can see there. Instead of taking compulsory power, permanent powers, over their access track and cutting them off,

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our alternative is to find a way for both of us to be able to access both sites. Thank you,

36:43

sir. Unless you have any further questions on this, I think I'll stop there. No, no. That's helpful. It links. I am going to just make one comment, and it links back to the previous comment I made in relation to the landscape strategy plan.

36:57

And as I understand, negotiations are ongoing with Mr. Barton's client.

37:04

But I would ask that in response, you consider whether reasonable alternatives have been considered in relation to those plots as well, particularly where works six so the landscaping area, and I think your response earlier was that anything, any element below ground, including planting and fence posts, for example, would potentially, even though there is some dispute about the extent of

37:32

of that particular client's interest, but potentially that could impinge on on their rights. Is that correct? But go Mr. Hack. Rahal hack, on behalf of the applicant. So that is correct. So our understanding is that to our property, Fe claim ownership of all interest directly beneath the surface of the land. That effectively means that even driving a tractor across the land and breaking up the surface would be a trespass, because the surface would be open. That's not a position that the applicant considers reasonable. And so that is why, effectively, we have, first we tried to negotiate, but that's also where we're seeking compulsory powers. There's one alternative, which I know Mr. Barton at 12 property Fe did engage with us on yesterday, and that's at that's the possibility of a no dig scenario. So a no dig scenario would effectively mean

38:29

us not digging into the land or placing piles or

38:35

excavating for

38:38

cable cables.

38:40

That is a matter for detailed design. So while the scheme includes alternatives, it the alternative option of doing work

38:52

in no dig. It does not.

38:56

It's not something that we can say with any certainty at this stage. And so

39:01

it's a decent design issue, and as well as an issue around us having

39:07

access to what detail design access to information, so the ground conditions, we don't only find out once we're at that detailed design stage, as well as the interest is apparently all, all interest beneath the surface.

39:24

Okay, thank you, Mr. So in your response to reasonable alternatives, could you address the points you just raised in writing as well? Because, again, that's helpful just for me to understand.

39:36

Raoul, how can perhaps the applicant? Yes, we can do that in writing. That's fine.

39:43

Okay, thank you.

39:49

So the next, again, the next bullet point is self explanatory, but there is a slight elaboration on this, and I you have provided this in writing, but I'd like you just to explain it, just so I'm going.

40:00

Completely, completely understand the position.

40:03

It seems to me that powers so I'm going to ask you where compulsory acquisition and temporary powers, temporary possession powers are being sought, how they meet the tests of the Planning Act 2008

40:14

but I'd also like you to set out why powers are being sought for compulsory acquisition, even where agreements have been reached with various landowners. And I, as I say, I understand you have provided a written response on this, but if you could just explain it to me and the precedent examples as well that this is, I think your view is, this is a precedent that have been applied to recent DCOs or DCOs for some time. But could you just set it, set out your position as applicant, Mr. Hack, please.

40:45

Rahul hack, on behalf of the applicant, sir, I'll very briefly take you over the tests, and then I will set our position on why we include compulsory powers even where an agreement has been reached.

40:56

The relevant tests are set out in Section 122, of the Planning Act 2008

41:02

and they are that the land must be required for the development to which development consent relates, or the land is required to facilitate or incidental to that development. There's another alternative, which is land is replacement land, but there's no replacement or special category land on the scheme.

41:18

The first test, the first condition within section one to two is met by virtue of all land within the order limits being required for the project. And so you can see that on the works plans,

41:31

all of the land within the within the order limits is subject to works and it is effectively required for the proposed development. And then the second condition, the second part of the test, as you will be aware, sir, in Section 1223,

41:46

is, is there a compelling case in the public interest? And so

41:51

that is set out in detail in the statement of reasons that section 10.8

41:56

but very briefly, a compelling case is based upon

42:03

the

42:05

benefits from compulsory acquisition outweighing the private loss. And so that may be something you want to come on to later, sir. But as part of our application documents, we have been providing various evidence of the compelling how the compelling case is met, and generally that's through policy support. There's very strong policy support, including in the overarching national policy statement for energy,

42:30

in support of renewable, large scale renewable energy infrastructure such as this,

42:36

as for your specific question about why powers are still included even when agreement has been reached. There are several reasons for that. So the first reason is that agreements may fall away or become defective, and so the only way to implement the scheme would be to use

42:54

compulsory powers. And so that's why we include them as a backstop, as a backup. And the second reason is that the only way to compulsory, acquire, to set aside unknown or third party interest is through compulsory powers. So the applicant wouldn't want to

43:11

spend lots and lots of money building its scheme to then find that

43:16

a third party has an unknown third party at this stage, somebody that it couldn't engage with has a right to disrupt the scheme, and so effectively, it stops impediments to the implementation of the scheme.

43:27

And then I think there's a final point in that the use of compulsory powers can sort of simplify

43:34

the land situation. So while the applicant may take a lease off is effectively it hasn't has an agreement with the landowners to take an option over the main site. There may be third party rights that could interfere with that lease, and so the compulsory powers would effectively be able to set this aside. Parties impacted by compulsory powers are entitled to compensation, sir, so that is that is already dealt with. And,

44:01

sorry, just one more point.

44:04

The final point I would mention is that compulsory powers are a power of last resort. They even after being granted, the applicant would only be exercising those powers if they were still necessary.

44:17

Thank

44:20

you, sir. Okay. Thank you, Mr. Hack. I have no questions on on that particular point. Thank you.

44:28

Just moving on. The next point is for you to explain the time period of relevant land for which temporary possession is sought.

44:38

In addition, just to elaborate on this question

44:44

in response for

44:47

a of the applicant's response to the previous compulsory acquisition hearing agenda, which is rep, 3016,

44:57

there is a paragraph in there.

45:00

So we'll give you some time to open the document.

45:09

So under Article 33 so the sentence article 33 below that, there is a further paragraph that explains to me, or seems to explain to me, that

45:21

temporary possession may

45:25

so effectively, I think that the implication so the question is about the time period, but also about how that would work in practice. So I think the implication here is that you will be able to take temporary possession of land more than once, effectively. Is that correct? Could you just explain the paragraph? Is really what I'm asking. So where the paragraph starts the article? If you could just explain that to me in detail, so that I fully understand what it means. Thank you.

45:55

Thank you, sir Rahat. On behalf of the applicant,

45:59

this paragraph, I think, is setting out that part of article 33 allows

46:06

the applicant to take temporary possession again. So the way this would work in practice is that the applicant may need access to a part of the highway to do its table crossing. It will then potentially give up that possession and then later on, find that it that the works need extra steps, or potentially this there

are further works related to it, so then it effectively allows the applicant to exercise temporary possession again, and that effectively allows land to be given back to landowners when the applicant doesn't need it, so it's a way of minimizing the impact on affected partisan landowners. I've used the highway as an example. But if we presumed that the applicant was taking temporary possession off some of the main site for temporary compound, it could do that, and then once the compound is no longer necessary, it could hand that land back. And then, if the land is needed again, it could take that land again. And it's effectively designed,

47:08

and is effectively designed to minimize the impact on land as we wouldn't take temporary possession for the full duration of the full duration of five years, which is the amount of time we have to take

47:23

exercise powers either? Thank you. Well, you've answered the first part of the question anyway, so I don't need to ask about that. But I'm particularly interested to understand then, as a practical example, would that have to be within the five year period, so you temporary possession could be taken, the land, handed back, and then you would potentially

47:43

take temporary possession again, but it would be within five years. Is that correct? Rather, on behalf of the applicant, that's correct. Sorry, so that's what I was trying to explain before. But yes, so the time limit to exercise compulsory powers still applies. So even if we take temporary possession again, we have to exercise that power within the five years. Okay, no, that's that's fine. That's answered the question. Thank you.

48:08

Okay, I have no more questions on that point. We go back to the agenda.

48:16

Thank you.

48:20

And yes, so the next question is really just for you to tell me, and again, it's been submitted in writing, but how compulsory acquisition, temporary possession powers sought are compatible with the Human Rights tests

48:41

Rahul hack on behalf of the applicant,

48:43

sir, I will just briefly summarize the submission we made in writing, if that's okay. But if you have any specific questions, please do let me know. There are three relevant provisions of the European Convention of Human Rights relevant to compulsory acquisition. The first is Article One of the first protocol, which protects the right of everyone to peaceful enjoyment of their possessions. The second

is Article eight, which protects the right of the individual to respect for his private and family life, his home and correspondence.

49:15

And then, well, actually, perhaps I'll deal with these first so these two rights are both qualified so they can be set aside due to proportional interference.

49:28

That interference would have to strike a fair balance between the general interests of the public and the individual's rights.

49:37

The applicant considers that the tests within article one and Article A are met

49:43

by the compelling case in support of the scheme.

49:47

There's significant policy support in favor of the proposed development. No residential properties are subject to compulsory acquisition or temporary possession, and any person who is affected by the ex.

50:00

Size of compulsory powers, or temporary possession powers, is entitled to make a claim for compensation.

50:05

Article Six is the other relevant part of the human rights test, and that allows those affected by compulsory powers to a fair and proper public hearing that, in effect, is a process that we are in now, this compulsory acquisition hearing, and so the applicant considers that test is also being met. Thank you, sir.

50:29

Thank you once again, Mr. Hack.

50:35

So the final, the final question in this section of the agenda is, and you've alluded to this already, and maybe you've answered the question,

50:44

could you just outline any protected provisions, but including any further negotiations? Is there anything that's left to agree?

50:53

And again, you have provided a written response to this

50:58

in the response to the first

51:02

canceled hearing, as well as more recent updates as well.

51:06

So if you'd like to just very briefly tell me the what the

51:12

protective provisions are contained within the order, but then anything that's still outstanding in terms of agreement, I

51:24

Rahul hack on behalf of the applicant, I'm just going to open up the development consent order again, just so I can take you through the existing protected provisions within the auditor.

51:36

Thank you.

51:39

Week. PAGE 20 is that as well. I have a paper copy as well, so I will be using

51:47

sir rahak on behalf the applicant. Schedule 14 to the draft development consent order contains protected provisions. There are three sets of protected provisions within the order there for the protection of electricity, gas, water and sewage undertakers protect protection of operators of the electronic communications code and protection of drainage authorities.

52:12

The only set of protected provisions that are under current comments are the water protected provisions at part one and so United Utilities, is the update I gave you earlier. They have come back to us and made some minor comments on those protected provisions originally. So you may recall from our updates in the land tracker that they had shared a copy of protected provisions they had to take obtained at another DCO.

52:41

But this scheme, our view is that the impact on them from this scheme was much, much less. And so we now have a response, and then with much more limited comments on the protected provisions.

52:54

And so I'm not going to go over all the detail, but effectively we're waiting for we will be responding to United utility shortly, and we'll provide you with an update. You with an update at deadline five. Yes,

okay, thank you. I have, I've read through that correspondence as well, so I don't think, I don't think I need to know the detail at this at this stage.

53:13

Okay, thank you. So, Mr. Hack, is that the that the extent of the outstanding matters in regards to protective provisions, wrong hack on behalf of the applicant, yes, sir, that is yes. Okay. Thank you.

53:32

So I have nothing else on this section.

53:37

Mr. Barton,

53:39

would you like a break or we can continue. I'm fairly relaxed. Either way. I'm very happy to continue. If you are, sir, that's fine. Mr. Barton, so if we go back to the agenda, thank you. It's on the screen so you've heard, obviously, you've heard the applicant's position or case various comments, but could you just set out your client's interest in the land in particular, and then maybe an update on the negotiations and how things you feel are progressing in engagement with the applicant in particular.

54:12

Thank you. Certainly. Tom Barton, on behalf of 12 property Fe Limited, as I believe you're aware, my clients, relevant interest is the freehold mines and minerals and minerals substances in or under work plots. 126 133 135 and 138 I think

54:32

it would be fair to say that there is some distance between the parties with regards to the negotiations, and I do have some further submissions to make on the kind of adequacy of the information provided, and also the extent to which alternative solutions have been properly considered on at least part of those those relevant interests. If you'd like me to go into that, I'm happy to alternatively. It seemed that you had some questions for.

55:00

Me sorry for cutting you off there. Mr. Barton, yeah, I would like you to go through those. So I just want to hear from you, really, just so that I understand your client's particular concerns, and also any detail you have, or more detail in terms of what their actual interest is, and then obviously reconciling any potential differences between yourself and the applicant over the extent of the interest, which seems to be an area of potential disagreement as well at the moment. So maybe if you set out your client's position overall, and then if I have any questions, I can obviously follow, follow, follow up

55:38

Tom Barton on behalf of 12th property, Fe Limited, yep, certainly. So it's our submission that the need for CPO powers in relation to my clients interests has not been justified given the applicant's disclosure

of a potential no dig solution over at least part of the relevant site. There was also some discussion earlier on in this morning's hearing regarding

55:59

some of the areas on the edge of the development site, and whether there would actually be any need, you know, if it's landscaping works, etc. It's not immediately clear to me why CPO powers for rights in the subsoil are being sought. I think

56:16

it's also fair to say that not having carried out necessary investigative survey works to establish the efficacy of this. No, dig solution isn't sufficient to establish the need for CPO powers. There seems to be a fair amount which is being deferred back to detailed design, which I think strikes me as it being much more useful for the applicant to kick the can down the road rather than address these points head on.

56:42

Secondly, and this has obviously been something that we've covered a fair bit in this morning's hearing, is the applicant has repeatedly referred to shortcomings in my client's own evidence as to the mines and minerals present at the relevant areas. So for clarity, my client's freehold interest is expansive. I'd be very happy to share the title plan if you wish, but it is extremely large, certainly much larger than just

57:07

the site where it intersects with the proposed development.

57:13

They do not hold granular information for each specific area of the interest. Other than to say relevant deposits have been identified throughout it. And

57:23

I think that's quite, quite reasonable for if you are the owner of an expansive mines and minerals interest, you can't point to exactly what it is which is present at each relevant part of that

57:36

now, due to a lack of information from the applicant as to the depths of the proposed scheme, the need for exclusion zones, which I noticed something that wasn't, wasn't raised by Mr. Hat in the hearing, although certainly has been referred to in correspondence on which we have no details provided or the location of the soil removal that was referred to and it was referred to in rep one, Dash 002, my client's clearly unable to provide the more detailed information being requested of them. It should be noted that the applicant has carried out much more detailed ground surveys to the south of this site, but not to the north where my client's interests are. I think that's perhaps unhelpful. It's my client's position with the applicant has fallen well short of demonstrating that the use of CPO powers is a last resort with regards to their relevant interests. Rather, it's simply more convenient.

58:43

Okay, thank you, Mr. Barton, that's helpful, and you may have done this already, but is there anything so if agreement's not reached, I and the Secretary of State will need to determine where the balance of public interest lies. So we will need to consider the public benefits against any private loss. I

59:02

mean, is there anything you can tell me in the hearing today about what specifically, what the loss would be, what the private loss would be, how that would affect the land interest through the proposal? As it stands,

59:14

it's very difficult to do so, and sorry. Tom Barton, above 12 property. Fe, it's very difficult to do that. And I know that you've asked several questions over the course of the examination as a whole, for us to describe the impact of the proposed works on my clients interest. When we're unable to do that, when, when we seek clarity from the applicant, we're told that much of much of the impact is to be dealt with by way of of detailed design down the line, or that there's a potential for a no dig solution,

59:45

but, you know, they're not. They're still proposing to seek CPO powers. So it's very difficult for me to kind of quantify or go into any detail as to what the impact will be, given the fact that the applicant just doesn't seem to have done the work.

1:00:00

Necessary for me to properly weigh that up. Understood, that's fine. Mr. Spartan, I understand your position, and I will ask the applicant for an update shortly in we have, again, we've discussed alternatives. Does your client have any suggestions or

1:00:17

ideas as to how alternatives could be pursued that would not obviously affect the private interest that you've alluded to. I mean, we're not, we're not in an interest to we're not in a position, sorry, to revise on that other than say it was clear that, certainly with regards to some of the

1:00:36

landscaping type options, it's, it's not at all clear to me why CP, CPO powers are required for my clients interests in the subsoil. I don't think that we accept this idea that a tractor driving over the relevant land would break the surface and would therefore interfere with a mines and minerals interest. That's That's just not my understanding of how mines and minerals works. No understood, and you have a view. And again, it may not be for you to necessarily provide a response to this question. It may be for the applicant, but nevertheless, if you have a view on the extent to which tree planting or landscaping generally would potentially interfere with those interests. Well, my concern, my concern is that there is reference to the soil removal. There's a there's reference to exclusion zones, etc. So it's it. When we're talking about landscaping, it's very easy to think, well, that's, you know, only a very minor encroachment onto the subsoil. But of course, if that subsoil has been removed, or if there's need for exclusion zones, etc, etc, we can suddenly become, you know, you know, the depths involved can suddenly become considerably more, and therefore that the impact on my clients interest can be

considerably more. So I think it's somewhat disingenuous to say that it would only be the depth of the planting.

1:01:58

Okay, thank Thank you.

1:02:00

I'm going to come on to the mineral code show shortly, but could I just ask the applicant to come back on a couple of the points that have been raised by Mr. Barton, particularly the extent of survey work that's been carried out across the site, and particularly in relation to the plots that Mr. Barton has referred to.

1:02:18

And we did again, I did mention alternatives earlier, but the extent to which other alternatives have been considered beyond the no dig solution which has been suggested by Mr. Hack.

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Rahul hack on behalf of the applicant. Thank you, sir. I think I will come back to you in writing with a detailed response. First of all, but I can give you some initial thoughts.

1:02:46

The first point about the alternatives. So I've mentioned already to the no dig point.

1:02:54

The issue that we have is that there's no I think there's a fundamental disagreement between the parties on the extent of 12 property FES interest, we need to know the depth of their interest. If they claim mines and minerals, do they claim ownership of all subsoil, or do they claim ownership of mines and minerals which are further down? We have carried out surveys on the land. And you can actually see in ES chapter, I think it might be 10 on geology. So there is some information within the application documents already on what is currently there

1:03:34

is for it is for 12 property fe, to tell us whether they own interests directly beneath the surface or not. Our design parameters. Document sets out the depth of our works. So the information is within our scheme, and it's been available to our property. Fe, from the start,

1:03:55

in our view. I mean, I know you've just said you'd like to go into the mirror's code later on, if you're happy, I can go on to that now. I'll pull I will pause there. Mr. Okay, I understand it's directly relevant to the discussion we're having, but I've got some questions on that, and I realize Mr. Barton has raised his hand as well. So I'll let Mr. Barton come back on on the points you've raised. And it was a question I was going to ask anyway, Mr. Barton, and put simply, what is the extent of your interest, or your sorry, your client's interest sub soil, and has that information been made available? If not, then is there any reason why that can't be

1:04:31

shared with the applicant in order that they can

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address the concerns that you may have or your client may have?

1:04:39

Tom Barton, on behalf of 12 property Fe Limited, the fact is, is that we own all mines and minerals. My client owns all mines and minerals in the subsoil, but we would need to demonstrate that there are relevant mines and minerals present at the relevant areas. Okay, so just.

1:05:00

Part of my naivety on this point. So I think your position, therefore, is just because something is subsoil. It doesn't necessarily correlate that there is mine, mines and minerals interest. It would have to be some evidence of that particular interest. Is that correct? Yeah, correct. So, so mines and minerals interest doesn't mean that any development which breaches the soil within the relevant area is a trespass into our interest. My clients interest only arises when there are relevant mines and minerals present at that at that site. So, and I believe that is what the applicants, or the applicant solicitors submissions are, is that we haven't demonstrated that there are relevant mines and minerals present within the relevant areas. And my response to that is the only way that we could do that would be to carry out survey works, and they simply haven't provided us with the information on where these works will be carried out and to what depth, including Exclusion Zones, including soil removal, etc, for us to provide that, provide that information. So we're being we're having information withheld, which will prevent, is preventing us from being able to demonstrate our our case.

1:06:18

Okay, thank you, Mr. Mr. Barter, Mr. Howard. Can you come back on that point? And particularly you referred to survey work in the submission, but I'm not sure that that's necessarily an extensive minerals assessment of kind of mineral interest within that part of the site or the site in general. Or correct me if I'm wrong, could you essentially, could you respond to Mr. Barton's point about there is a requirement here to identify the extent of mineral interest, not just the subsoil in its entirety.

1:06:51

Thank you, sir. Rahul hack, on behalf of the applicant, before, when I referred to survey, survey work, the document I was referring to is appendix X agricultural land classification survey. You are correct. There's no detailed survey at this stage. That sort of survey, as in a geophysical survey, wouldn't be carried out until detailed design to assess ground conditions. I think it is best that I come back to you in

1:07:20

in writing, especially with it, with a document reference number for all of the the service that within the scheme. At the moment, I think

1:07:29

I do have to disagree with the point being raised, though, that our scheme does not contain the relevant information, so we have given depth. And so Mr. Barton is so that's the design parameters document. As for exclusion zones, it is reasonable for the applicant to require an exclusion around piles, for example, because if 12 property Fe Limited tried to

1:07:56

extract mines or minerals around piles, they could cause damage to them. So that would just be something that would be resolved at detailed design once we know how deep those piles end up. Because they might not be four meters. Four meters is the maximum.

1:08:11

I do think so probably is one for writing, but I would just like to put on the record we do disagree with some of the assertions being made. I think that might be the first time we've heard that 12 property Fe do not claim ownership of all subs or directly beneath the surface. Our understanding has always been that they've been claiming interests to everything beneath the surface. If that is the case, that they accept that they only own mines and actual mineral substances. Mines have a legal definition in the acquisition of land act 1981

1:08:42

they are references to coal mines within that so coal is excluded from their title.

1:08:47

Within some of the plots that are relevant here, they were historically mined for coal and then backfilled. And we do know the depth of the coal mining, which is about 18 meters. And given that it was backfilled. We are unsure whether there would be any mines or minerals of value there, but that information isn't available to us. And if a claim for compensation was to be made, it would be for the affected party to prove the extent of their interest. Thank you, sir. Thank you, Mr. Hack, Mr. Barton, again, your hands raised. I was going to ask you to respond to that anyway, but if you'd like to come

1:09:25

in, thank you. Yeah. Tom Barton, on behalf of 12 property fe, it just strikes me as unreasonable or an untenable position for the applicant to be stating that they haven't carried out the necessary survey works but they're contesting our interest and requiring us to provide surveys that's that's surely back to front.

1:09:54

Okay, I'm not going to ask any more questions specifically on this point, but I would, and I'm going to say this at the end.

1:10:00

And I know there's clearly there's some distance between the parties on this, but it does sound to me as though, Mr. Barton, you may have provided a bit more clarity today, which may or may not assist the applicant moving this forwards, but I'm going to suggest again that you do continue engagement with a view to trying to reach an agreement or get as far as possible before the end of the examination. And

I'm sure you'll be, you won't be averse to that suggestion. But I am now going to move on to just ask about the mineral code, so that I understand, Mr. Hack. You did refer to the 1981 act, and I think this is related directly to that, that that act in particular.

1:10:39

So can I just can we turn to part five of the DCO article 23

1:10:46

which is page 19. I think I

1:11:14

so article 23 tells me that the mineral

1:11:21

part two schedule, sorry, part schedule two of the minerals acquisition of land act 1981 being incorporated into the order, subject to

1:11:30

various modifications as set out in the article. I could the applicant just well explain to me why this provision has been inserted and what it actually does practically and depending on the response, will depend if I need to ask any further questions on it.

1:11:50

So that's Thank you. Rahul hack, on behalf of the applicant, sir, the mineral code is incorporated into the DCO to give effect to something known as the mineral code within part two and three of schedule two of the acquisition of land act. So

1:12:09

the effect of the mineral code is that as a starting point, when you look at the land plans and you look at the extent of compulsory acquisition,

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the starting point should be to exclude all mines and minerals from compulsory acquisition. So effectively,

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the applicant would not be seeking acquisition of any mines and minerals, except for those directly impacted by the scheme. So if the applicant was to insert piles to a depth of four meters

1:12:39

and soil, or effectively, we encroached on the demise of mines and minerals

1:12:46

that would be permitted, but the ownership of those mines and minerals would remain with the with the relevant party of the owner, and connected to that, the mines and minerals owner retains the ability, because they still own their mines and minerals, they also retain the ability to mine and extract those mines and minerals on notice. There's a process that's set out in the mineral code, and broadly speaking, that process operates on notices. So the mines and mineral owner would serve a notice on the applicant saying they would like to extract their mines and minerals, at which point the applicant can assess the depth and work out whether it will impact the applicant scheme. If the applicant disagrees with the applicant can

1:13:31

offer compensation to the mines and mineral owner for that interest. Any disputes on compensation would be settled by the upper tribunal. Thank you, sir.

1:13:42

Thank you, Miss Duncan. So, so I understand this

1:13:48

as kind of straightforwardly as and simply as possible. Is the code effectively, then you're not compulsorily acquiring

1:13:58

the minerals interest in that land that that that's not part of what they've been excluded by this provision within the order, effectively, is that, is that the is that, is that the applicant's position, rahak on behalf of the applicant, that's correct. So, so the mineral code expressly excludes mines and minerals from any conveyance. So if we exercise powers, mines and minerals would not be transferred to us unless we are directly removing them for our works or directly impacting them.

1:14:31

Okay? And do you say? How do you say that protects or does not protect

1:14:37

12 property? Fes, private interest. Do you have any comments to make on that royal hack on behalf of the applicant? So the benefit of the mineral code is that it means that to our property, if you remain in control of their assets, we no party, as far as I'm aware, is aware of the depth of those minerals. They

1:14:58

would continue to own those.

1:15:00

Minerals subject to any interference by the applicant. So that was the example I gave you before the pile. So if we dug into not Well, if we placed piles into the ground and they infringed within a mineral deposit area that would count as

1:15:17

land that can be acquired,

1:15:19

they are still entitled to compensation.

1:15:24

So how would

1:15:26

could you talk me through this in practical terms, if the consent order development, consent order was made,

1:15:32

and for example, you did determine that you needed to do works to a certain depth within those particular plots, would you be then required to provide the specific detail of those works through, not through the DCO, but through the mineral code? Is that correct? And then, would there be an opportunity, then for Mr. Barton's client to

1:15:55

provide a response to

1:15:57

your your proposal, effectively,

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is that, is that how it works? Is there some kind of pro really? Could you talk me through the process involved in that very briefly, just so I understand how it works and

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how it kind of works further down the line, after the DCO has been made,

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right on behalf of the applicant, yes, sir. So

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the DCO authorizes the works. So if you were to make the DCO and give compulsory powers, the DCO would authorize the works to place piles in land.

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The mineral code would protect 12 property, FeS minerals, and effectively say that if we exercise compulsory powers on that land, the mines and minerals are automatically excluded.

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They will only not be excluded. They only be part of the only be within the scope of compulsory powers where they are directly impacted. So if we have to create an access way, and we remove soil, and that's well, that's not very deep, but if we have to place a cable in the ground, or if we have to

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insert the piles that that exercise would be outside of, their would be subject to powers effectively,

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and the land actually, one final point I would make, Actually, so

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historically, this site was mined, and our understanding is that the land itself has been backfilled. We don't have details of what exactly the backfilling includes, but we our expectation is that is not of value, but that's just a indicative expectation. We don't we don't have any evidence available to us. Thank you, sir. Okay, thank you, Mr. Barton. Well, could you respond generally on the questions I asked Mr. Hack, but in particular, do you have any comments the extent to which the mineral code protects your clients interests?

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If at all? Could you make some comments? I'm broadly aligned with Mr. Hacks, an explanation of how the mineral code operates. My understanding is that there were, should the DCA be granted and the powers be exercised, which mean that there's an interference with my clients rights, then notices would need to be served in the normal way in order to acquire those interests that would be compensated, but any interests not acquired further to the DCO would be would remain with my client, so they would retain ownership of any mines and minerals which hadn't been directly affected by the DCO, and then Should my client wish to exploit them in the future, then there would be this notice procedure which would then so it essentially carves it up into rather than it all, rather than all of the mines and minerals interest being acquired by the DCO, it carves it up into land or interest required for the delivery of The scheme which would be compensable, and then the opportunity for my client to serve notices further to the act in order to exploit those mines and minerals at some point in the in the future. But ownership wouldn't have passed, okay? And Mr. Barton, is it your understanding that, for example, if the DCO is made and this process is to be enacted through interference with your clients interests. Would it be, then for your client to demonstrate their mineral interest at that stage, or would it be for the applicant to provide that detail? I'm just trying to understand that we've been discussing about surveys and trying to ascertain the level of mineral interest. Yeah, the fact is, is that we're not in a position to we can't demonstrate our interest or prove the presence of the necessary materials at the site, for the same reason that the applicant says that they can't

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carry out proper survey work.

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Themselves, and it's because it's subject to detailed design. So we're being asked to prove something which just isn't possible on the amount of information which is available to us, it's, it's, it's not possible.

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So yes, I assume that we would, we would need to, once further detailed design work had been carried out, then there would be an arrangement made where somebody would carry out some some surveys,

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okay, but in terms of, and again, this may not be a question for you, but just trying to work this through logically, is this not kind of a chicken and egg situation whereby

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the because there are limited details in terms of the mineral interest, so the detailed design won't be able to take into account avoidance of mineral interests or otherwise until details and mineral interests are fully known well, not when, not when the applicants decided to exclude large swathes of the sites from the level of surveys that they've carried out to the south.

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Thank you. I'll ask Mr. Hype, because a detailed design stage, will you not need to know

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the mineral interest or more details about the

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subsoil makeup in order to determine detailed design? Do

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Rahul hack on behalf of the applicant. So I will come back to you in writing on that, but that, broadly speaking, is correct. There is a, there is a a, I think in one of the requirements, there's a geophysical or geo survey as part of detailed design. It's just not required yet, because it would be far too invasive and have too many environmental effects to do before the scheme.

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Okay, so how does I'm just trying to understand how that helps the current situation. Because if there is a an impasse on this,

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Mr. Hack, I think your your position is you have provided sufficient information and that you're asking the Secretary of State to make the order with compulsory acquisition powers relating to the these plots of land. So that's your position. And I think Mr. Barton's position is they

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can't provide any more detail on whether the like rights are going to be interfered until further survey works been undertaken for which they they're not responsible for providing that survey work, because it's not their proposal. And apologies if I'm kind of trying to oversimplify, in the position, but I think that broadly speaking, is the position that both parties are in,

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Mr. Barton. Tom Barton, on behalf of to a property fe, that's that's precisely the position as you've summarized it from my perspective. Okay, Mr. Hack,

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right? Hack, on behalf of the applicant. So again, this is something we're going to come back and writing on. I think fundamentally, there's a disagreement between the parties on the where that interest is, as to whose responsibility it is to prove that interest, the applicant has already assumed that there is an interest in favor of 12 property Fe Limited, that's where they are noted in the book of reference.

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As for the depth of their interest, that is unsettled, and so it may come out in the future as part of a survey. But as it stands, the applicant has no information available to it to confirm when or where it would interfere with their interest, and we will come back in writing so with something okay understood, Mr. Barton Tom Barton, 12, property, Fe Limited, it's just unclear to my client how, on one hand, the applicant can contest the nature of our interest, while also,

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to use Mr. Hacks words there, assume our interest listed in the listed in the order, etc, that that just doesn't, doesn't follow.

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Okay, thank you. I'm going to take a break shortly, not least just close the window, because, as you can see, I've got light shining on on my face. Um,

1:24:07

before I adjourn for 10 minutes,

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as I've said, there is some distance between the parties on this, I do have a glimmer of of hope that this can be resolved. I think there's been some additional information, as I suggested from Mr. Barton, but I'm going to ask that this conversation we've had during the hearing, I do think if both parties would sit in a room and try and come to some sort of agreement in terms of who's responsible, and try and move this forward with a view to trying to get a resolution before the examination that would benefit all parties, particularly

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so I'm going to ask you to commit to having further meetings and discussions to try and resolve the issues. Mr. Hack is I understand you suggesting you were going to do that anyway, but could you just confirm that that's going to be the case?

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Royal hack on behalf the applicant set.

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As I mentioned earlier on, the applicant actually made an offer to 12 property Fe Limited, and the applicant considers that the dispute between the parties is now one of compensation,

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and so

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compensation matters are obviously to be settled outside of this process as part by the upper tribunal. As it stands, the applicant has an open subject to contract offer out with 12 property fe, limited responses awaited. Obviously, we will try and meet them again, and we remain open to discussions and negotiation. We will obviously try to meet them if possible. Thank you, sir. Okay, Mr. Barton, any comments on did I was going to come back on this, and I did forget to ask the question.

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There has been an offer of some description from the applicant. I'm not sure whether the ball is completely in your court or not, and I don't want to rehearse, rehearse the discussion we've just had. Are you amenable to trying to negotiate and meet with the applicant, or your client is amenable to further discussions.

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Tom Barton, 12, property. Fe, yes, we do remain amenable to those discussions. But just said, the offer that was received from the applicant was rejected on the same day and a counter off and a counter offer made. So yeah, that's, that's where they sit from our perspective. Okay, well, I will leave that. I'm not going to discuss that, obviously, reasons in this meeting. But, um, thank you that that's helpful.

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Is there anything else on well, particularly from Mr. Barton, is there anything else you'd like to tell me in the meeting today? I think we've, we've had a you've had a fair hearing, and I understand your client position.

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Tom Barton's royal property. Fe, no, nothing further from us. Thank you. Okay, thank you, Mr. Hack, any anything else you'd like to mention on this topic?

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Rahul hack, on behalf of the applicant, no, sir, I have already said to you, though we will provide you with a written response on this agenda item. Yeah, okay, that's fine. I'm going to just take a 10 minute break. But

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when we come back, I'm not sure the next half or the next half of the hearing, I don't think it should take as long. I'm going to be discussing articles 26

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and 27 of the draft DCO. Article 32 and articles 33 and 34

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Mr. Hack, I can give you the references if necessary, but I think the question, some of the responses to questions on these topics are in rep 2010,

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there may be other documents we need as well, but if I leave it there and we come back at 20 to 12,

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okay, thank you. I'm going to adjourn now until 1140 Thank you. Bye.