



Planning Inspectorate  
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## Event Transcript

<b>Project:</b>	The Keadby Next Generation Power Station Project
<b>Event:</b>	Issue Specific Hearing 1 (ISH1) – Part 4
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# TRANSCRIPT\_KEADBY-NEXT- GEN\_ISH1\_SESSION4\_2026-01-21

00:00

Good afternoon. Everybody back. It's now 1537, let's resume the hearing, and we'll move on to the final part of the agenda, which is the draft DCO. And I think here, my questions primarily are to the applicant. There may be some overlap with tomorrow's compulsory acquisition hearing in some of these items, but yes, and I'm also obviously the items I want to go through now I appreciate I haven't given you in advance, so you may want to take some of these away with you. So if I could start so obviously we'll need the DCO up for this. The latest version of the DCO, which is as double oh three. The first question I had for you, Mr. Latif Aramis, is the definition of, or rather the words of materially new or materially different environmental effects. Now I thought this might take a little bit of an explanation, but they're quite inconsistently used in this DCO, and I have to say this particular wording is one of my specialties in various DCOs that I've done over the over the years. So in Article Two, under the definition of maintain, it says, Do not give rise to materially new or materially different environmental effects than those assessed in the ES. And then in Article Two, paragraph 10, we say, in comparison with those reported in the ES. And then in article 40, we say, will not give rise to any materially new or materially different environmental effects. So rather than do not, we will not. And then in schedule eight, paragraph two, sub paragraph three, we will not give rise to any materially new or materially different environmental effects compared to those in the ES. And then couple more, schedule eight to four. A is we use different wording, again, is likely to give rise to environment effects and schedule 824, b2, will give rise so quite inconsistently used. And I would very much prefer a singular sentence that deals with this. And there's couple of things I wanted to to put your way, if I may. The standard wording is materially new and materially different, but I always feel that that doesn't allow an applicant to make a change to the scheme that's a betterment of it. And I have used, well, I have used and went on other schemes, materially new or materially worse, which allows the an applicant to make a change the scheme that was ultimately better. What are your views on that? I know this is the established wording. But I mean, if you want to leave it as it is, I'm quite fine with that, but it's, it's, it seems to me that materially new or materially worse gives you the flexibility to make a betterment of the scheme, as opposed to being materially new and different, which it might be, but you'd still not be allowed to do it, even though it was better.

03:43

Thank you, sir, Mr. Fuller teeth, aramesh, for the applicant like you, I have a great interest in the phrase materially new and materially different. What I would say on the first point about the consistency, we will definitely take that away and make sure that it's consistent across the order. So that's the first point, the second point on, should it be materially worse? And what I'd say is that if the regime was, you know, if the regime was starting from scratch, it would be better to use the phrase materially new or materially worse, because the intention of the EIA regulations is to ensure that you stay within your environmental envelope that you've carried out for your assessment. What I would say, though, is, if you look, you

refer to it yourself, sir, article 210 and What article 210 says is that when the phrase materially new or materially different is used, it should not be construed as preventing something which is the avoidance or removal of a likely significant effect, the effect, therefore, of Article Two. 10 is that it would permit environmentally better changes. Now you might ask, why on earth do we have the interpretive provision, if we could just use the phrase materially new or materially worse? And there's a bit of history to this, which, given, given your interest, you'll you might be familiar with, but just in short, the Secretary of State across a number of decisions where the phrase materially new or materially worse was used, has removed it and changed it to materially new or sorry, materially new or materially different, they explained in those decisions that this was to ensure that the assessment of effects did not go beyond the environmental assessment, and in several examinations, if the first of which was the 2018 a 19 testosterone order, we made the point that you've just made, which is that's not the intention, And we don't want it to prevent better environmental outcomes. We then, in myself, in a personal capacity, rather than the applicant in the in this application, made a request for a correction so that we use the phrase materially new or materially worse rather than materially new or materially different. Engage the justification, which is, we want to be able to do better things. The Secretary of State responded and said, This doesn't prevent you from doing environmentally better things. And so rather than conflict with what the Secretary of State's position is, within their position is materially new, materially different. Doesn't prevent environmentally better changes. What we've done instead is include an interpretive provision in this draft DCO, we have the same interpretive provision. So we think this is a happy place where we're not contradicting the Secretary of State's accepted practice, but we're still allowing environmentally better variations within the scope of the order.

07:00

That's very helpful. Thank you very much indeed. That's fine. Then could I press upon that when you do look to tighten this wording up and certainly make it consistent throughout that you use, I would suggest the art the wording, as in Article Two under definition, to maintain that it do not, do not give rise, or does not give rise to materially new or material different amount of sex than those assessed in the ES. I think that's my personal preference. Rather than using compared to or things like that compared to those, I personally think that's not tight enough, so I will leave that with you, but as you've used it for Article Two, I have on the definition maintain, I would ask you to apply that consistently throughout. Thank you very much indeed. If I could now turn to article 12, one, please, I just wanted to get your view on the temporary restriction of use of streets and this power of the undertaker during and for the purposes carrying out the authorized development. May temporarily close all to divert any street. Now, article 10, which is the which was the which is the street works, has a schedule which defines which streets that they're working towards, but article 12 here doesn't it allows you to temporarily close any street. What's your view on that? And is that? Is that power too wide?

08:57

Mr. Phillip aramesh, for the applicant, the distinction between article 10 and article 12 reflects the nature of the powers that are actually sought. So as you note, we have certainty, and there are certain permanent effects associated with article 10, which is not the case for article 12, which relates to a temporary power, what we would say is that appropriate controls for the use and exercise of that power are provided through the need to produce a construction traffic management plan, which and you'll be aware that we have An outline construction traffic management plan that addresses particular controls

at the point that we know that they will arise. So again, this is, this is a point about the stage of development, but the temporary restrictions that are required will be subject to controls. We can't specify them in the same way as we can for article 10 of this. Age, and in our written summary, we can include precedents that support that, though I acknowledge we, you know, we are making a case that it's necessary in the case of the proposed development. But I think the submission there is that we have the same level of certainty and need as other precedents. And there's, there's a good case for including those powers in this application.

10:28

Thank you so so your response is in summaries that the the traffic management plan will set out those roads that need to have temporary works to the more temporary closures or alterations or diversions, such that this gives you the overall power, but that you will actually specify in the track in the traffic management plan, which roads they're going to be referring to when you get to that point.

10:58

Must fill the teeth on behalf of the applicant that that, in summary, is the position.

11:03

Yes, yeah, okay, that's helpful. Thank you very much. Now I think I've dealt with the next question, which was to do with article 19, and this was to do with canal river trusts concern that the article would give powers in front of the key, be lock and close the waterway, and that these powers exceeded what was in the key be three order, and to which they found that unacceptable, I think that they've already touched on this in the earlier item, and I think your response was that this is all sort of tied up with the protected provisions which you're negotiating with them. Is that? Is that correct, if I sum that correctly, and do I that's already been sort of dealt with in an earlier item? Is that correct,

11:56

stability, parametric for the applicant? Yes, I think that's our position. We think we can resolve the concerns on Article 19 through the ongoing discussions that we're having with the canal and rivers trust.

12:08

Thank you. Does the canal river trust want to say anything further on that I noted that you did raise this a bit earlier. Mr. Tucker, on, on, on your concerns over this power, but the applicant obviously suggesting that that the this is tied up with your protected provisions and providing we've got those right. Then, similarly to the conversation we were just having about article 12 and the temporary use of streets, you have a power, a general power, and then it is more tightly controlled elsewhere, is it? Do you want to add anything to what you just heard? Thanks.

12:53

Not really. I mean, I mean, obviously the main difference is the order limits have gone further south. But obviously we can, we can look at, yeah, it will be part of the negotiation on protected provisions, but also the context of any other commercial agreements as well. I mean, under key be three, there were a number of side agreements or agree commercial agreements that we also took into account which

don't apply yet on this case. So we just have to take account of all them as in addition to protected provisions. But as we're progressing with the applicants in good faith on the issue, and we're relatively confident we'll get to an agreed position on that. Thank you, Mr.

13:35

The TV iMesh, is it your understanding that there will be obviously, side agreements sit outside of what I need to consider and have regard to. But, but is it on your understanding that side agreements will need to be signed with, with the applicant? Oh, sorry with canal of trust,

14:00

Mr. Phillips Heath, are much for the applicant. So a lot of that depends on how the discussions around the protected provisions themselves go, because if we're able to reach a full and contented resolution on those that clearly reduces the need for further side agreements. So I'm not sure I can definitively answer your question at this stage. Okay.

14:24

Thank you very much. Now, if I could take you to article 31 paragraph 10, and this is another one of you'll be pleased to know Mr. Latifah, another one of my favorites for DCOs. This and tell me when you're there so I can, I'll just read it out. So the power is just to do with temporary possession and compulsory. Acquisition, temporary possession, The Undertaker may not compulsorily acquire, under this order, the land referred to in paragraph one, a one which is temporary possession powers, except that nothing in this article precludes the undertaker from creating or acquiring new rights, etc, etc. Why is it? Why is this necessary? Because you have an article that gives powers for new right, for compulsory acquisition, the freehold and compulsory acquisition of new rights. So why do you why? Why? Why is this necessary to to Yeah, I certainly agree with paragraph 10 that the temporary possession land should not be subject to. Ca, but why do you then need to say, well, we can acquire new rights over land identified in article 25 it's just a repetition, isn't

15:56

it? Phility faramesh, for the applicant. The reason for this provision, sir, is in some DCAs, you have plots of land which are mentioned in both a temporary possession schedule and a schedule which contains the rights and restrictive covenants to be acquired and what it's trying to the remedy or the mischief that it's trying to ensure doesn't occur is that just because you have the restriction on quote the land referred to in one, a Roman numeral one, is that it doesn't prevent the exercise of the ability to acquire new rights over that same plot. So just just to clarify, you have plots which might be in both the temporary possession schedule and the permanent right schedule. And that's why that provision is necessary, so that the restriction doesn't bite on what you're seeking. Powers to acquire. What we need to go away and to do and check is to see if there is any overlap, which I can't immediately answer right now. If there's no overlap, then I would agree with you that that provision is is not necessary.

17:09

There is overlap, and I'll tell you what they are, because I've already done that exercise for you. So it's as far as I understand. It's four plots, 284-290-3120, and 127 that sit both within schedule five and schedule seven. And it would seem to me, and again, I'll perhaps leave this with you, is whether those

plots should be carved out specifically in this article, because that seems to me to be very, very wide. And I have had orders in the past where the applicant did actually specifically carve out the plot. I mean, I will question why, if a plot is needed for riots as in as in schedule five, why they're then in the temporary possession powers anyway, because you need the rights over them anyway. So really, as I would see it, and perhaps chat, I would challenge you, is they don't need to be in schedule seven. You're getting the rights over them for different reasons, for because of the different works that you need over them. Perhaps I can leave that with you, provide me with a written response on that, please, because I just don't see the need for it when you're seeking rights over them anyway. This reads as you could change your minds actually, I want to get I know you don't think of it that way, but it could where you have you could, as an applicant, decide that a land identified for temporary possession, you decide you want to get new rights for it, and I don't think that that that power should be allowed to do that. So I'm happy to leave that with you to have a think about. But I don't see the need for it personally, given that the plots in question are needed for Schedule five effort for new rights anyway.

19:10

So thank you, sir, Mr. Phility, very much for the applicant. We we've heard you loud and clear, so we'll take it away and give you a response, but just two points so that you don't think we're unnecessarily seeking a kind of bombastic DCO power. The first point is on that on my reading, it only allows you to acquire rights where permitted to under Article 25 so it would be restricted to those plots in any event. And the second is on your question, why do you need to put it in the temporary possession schedule? I think that's that's the applicant trying to be a good neighbor in explaining clearly the purposes for which temporary possession could be taken. So let's imagine a world where those four plots are taken out of the. Temporary possession schedule, there would be the restrictions that apply under Article 31 on the purposes the compensation, etc, they wouldn't, they wouldn't bite. And I think from the practice that that the applicant has adopted, which many other promoters have, it's intended to be a good faith measure to provide clarity that, by the way, before we acquire rights, we're also taking temporary possession, and here is the purpose, and here are controls. But we've heard what you've said, and we'll I'm actually in writing.

20:31

Thank you. Yes, I think, as I say in it may be a clarification of carving out those four plots in question, but as I say, I'm very happy to leave that with you to consider. Thank you. Now just into the requirements, we start with requirement two. There is seems to be a propensity now for many DCOs to require seven years. So yeah, requirement two for commencement after seven years. The normal has always been five. What why? If you just set out why you need seven years instead of five, the normal five,

21:24

aramesh for the applicant. I think this is something that we can explain in greater detail in writing, but part of it is actually related to the discussions that we had earlier today about government policy and the point at which a decision is made to take forward, either key be three or the proposed development that's before you. And we can explain the details and why that seven year period is is justified. But you've you've rightly highlighted there is a an increased propensity to go for seven years, and it is just because some of the decisions around financial decision, financial investment decisions, government

policy and making sure we go through all the right processes has been completed before a decision is made. So that's it, in summary, but we can elaborate in my team following

22:22

that. Down as the as an action point. Thank you.

22:31

And,

22:38

right, okay, I had some questions around requirement six, but I think we've largely answered those during the course of today about the woodland planting and the land outside the order limits and biodiversity net gain again, I think this is an issue that Natural England were concerned, that the biodiversity net gain had to be in general accordance and wanted that to be strengthened. Is that I think you covered that earlier as part of your discussions with Natural England about their general information. So I don't think have any further questions there. Now again, you may have covered this earlier on, requirement eight, requirement 1112, and 37 where the Environment Agency have asked to be added as a consultee alongside the relevant planning authority, is that something that you would be prepared to amend the updated DCO.

23:59

Thank you, sir, Mr. Philosophy faramesh, for the applicant, I think I'll need to take instructions on that, but we'll provide an update at the next deadline on that, on that specific request.

24:10

Okay, it seems to me to be a reasonably quick win for you. I don't personally see any problem with that. And also with requirement 27 one on piling the applicant. Sorry, the Environment Agency has asked that this to be also include works number four, a and 4b in the first line, it says no part of the authorized development comprised of the works, 1235, 8b, or 9b they've also asked for it to include four A and 4b again, is that something that you want to take away or able to commit to?

24:57

Sir, apologies, Mr. Phility aramesh, for the. The applicant will will take that away, but what we'd endeavor to do is provide an update on whether we have any issue with including that as soon as possible. Thank you. Thank

25:23

now, if I could go to now schedule eight, please, which is the procedure for discharging of requirements, and the appeals procedure this. This isn't a particularly big matter. I've got two extra two matters to go. So you'll be pleased to hear so on this, I was just a little bit concerned about the timescales being. This is great. Credit appeals, paragraph two, again, I'll be so if we go to see the the relevant playing authority and the requirement quantity must submit written representations the appointed person in within 10 business days, it's generally, I have to say, it's generally not for orders to tell the secretary of state how to determine appeals and certainly put time scales like that on them. And



I would ask you to just reflect on those with potentially wording of in a timely manner, or as soon as practicable, or something like that. Because in that situation where the Secretary of State has appointed an inspector, let's say, to determine the appeal, it's normally up to the inspector, on behalf of the Secretary of State, to set time scales so those sorts of times are generally frowned upon in orders. So again, I don't if I could ask you to look at those where we were they you talking about 10 business days and things like that. Is generally up to the inspector on behalf of the Secretary of State to set such timescales. Of course, I know that in such circumstances, you'll want the Appeal determined as quickly as possible, as to not hold up the development. But generally speaking, I would ask you to look at that and potentially replace with as soon as practicable, or as soon as possible, or something like that. So I'm happy to leave that with you, Mr. Latifah Amish, and to have a think about

27:47

Thank you, sir, Mr. Latifah Ramesh, for the applicant, can I just seek a clarification? Yes, the paragraph that you read out, which refers to the 10 business days, falls on the relevant planning authority and the any particular consultee of that's mentioned in a particular requirement, I guess, I guess, just a couple of comments. So we're mindful of not imposing any timescales on the Secretary of State, given the consistent practice of the Secretary of State removing those to see, is not a timescale that relies on that is imposed on the Secretary of State or the appointed person. And there are two submissions to make there. The first is under sub paragraph three of that of paragraph five. So just over the page, it allows for a process to request further information and for the appointed person to specify a date which we think maintains an appropriate level of discretion. But the second point just to make is this, this schedule in these paragraphs, including, personally, the time scales are in the key be three. DCA, yeah, and so we can certainly take it away and see if there's anything we can do to make sure that we're not doing anything to unduly upset the Secretary of State. But I just wanted to make those two, two points, yeah.

29:19

I mean, I would just, I would just say that, that just because something is in a one order doesn't necessarily mean it should be there or that, you know, I'm sure you've had that, yeah, many times. So okay, and then what else did I pick up on, which is probably a legal issue, I picked up on the word his, which is probably, I can't remember. I've found that now I've put sub paragraph E,

29:50

sir, I can see it's in it's in 2e we will correct that.

29:55

Oh, that's right. First line, yes, yes. Okay. Thank you. Thank you very much. Okay, and then the only other thing I wanted to raise with you, I'm going to talk about protected provisions tomorrow at the compulsory acquisition hearing, and particularly, I'm going to ask for updates to where you are in that discussion, and potentially, like with the state, the statement of commonality of state and common ground. I'm wondering whether I should ask for an update position from you at the deadlines as to where we are with the protective provisions. But I'll give that to sort of overnight, to think about, and we'll have a discussion on that tomorrow, on that because it's sort of tied in with some of the CA plots and stuff, but I'm obviously very keen to get protected provisions, either agreed or in an agreed to



disagree position as early as possible, because they invariably hold up the examination and can be in quite a state at the end. So I'll talk to you about that tomorrow in a bit more detail, but I'll just leave you with a little taster for the moment. The only final point I wanted to raise with you was the certified documents in schedule 11. And I wondered whether this is a comprehensive list, and should include, and again, happy to leave it with you for the moment. Should it include the schedule of commitments, a PPO 90, given that they are set, given that they're setting out what you're planning to do? Should it include the climate change readiness assessment and the carbon capture readiness assessment, given how important they are to the process. Yeah, so I just wondered if those three documents, the very least, should be added to the certified plans. Again, I'm happy to leave that with you to have a think about and provide me with a response.

32:02

So Mr. Felicity, faramesh, for the applicant, just to explain, and then perhaps we can go away and have a think about it, but just to explain why we've done what we've done, we there is a there is a habit in some DCA of putting all of the documents in a certified document schedule. What we've sought to do is to include the documents which are secured under a particular provision of the order. And the reason for doing that is because in in years to come, those will be the documents that should be capable of inspection or will need to be verified as the true and final form other documents which are not secured, there is less of a need to certify them, not least because the planning Inspectorate has a policy where they will keep the relevant documents online for a period of time and so again, it's just an explanation of why We've done what we've done what we've done. It's to make sure that those documents which are secured are capable of inspection, rather than including documents which go very important and helpful, are not conflated with items that have some quote, unquote status under the terms of the order. Okay.

33:23

Well, I will, okay, well, if you could have it, particularly with the schedule of commitments, is something that I have generally sort of sought to be put down in the schedule of commitments, because I think that's quite an important document as part and part of documents that should be, as you say, kept on file, but I if you can take that away, yes, thank you. Yeah. Thank you very much. Thank you. So that's all the questions I had on the DCO. Is there any at this stage, anyway? Is there any party wants to raise anything in respect of the DCO. No, okay, no, hands up. So I just go through the action points on that item. I'll do this one because it's probably easier. You're going to update the materially new, materially different wording to make it consistent. You're going to have a look at article 3110 and potentially carve out the plots, or certainly look at that again, provide a justification on the seven years for construction requirements, 811, 12 and 37 to update the EA and then require as part of the consultee and requirement 27 one on adding the works numbers for A and B, you're going to look at the time scales on schedule eight to see if they need updating, and you'll look at the certified docs in schedule 11 and. That, and particularly whether to add the scheduled commitments to that. Yes, Mr. Latifash, your hands up.

35:12

Thank you, sir. John Arthur, for the applicant, just worth briefly mentioning as well that in addition to the various actual potential changes to the draft DCO that we've discussed today, we have identified some

other minor changes that we intend to make to the draft DCO, which we will include in the next submission version. The vast majority of those are just picking up on some typos that we've spotted to ensure we've got a correct formatting for the Statutory Instruments. There are one or two more material changes, not not some significant ones, but any that we haven't discussed today. So we will include an explanation.

35:53

When DCO, thank you. And when will you be providing an updated DCO? What's the deadline you're proposing to do that?

36:05

Well, John Arthur, for the applicant, will do that at deadline one. So deadline one.

36:13

Hey. Thank you very much indeed. That concludes all the questions I had at this stage of the of the examination, that at the very outset of the examination. So I'm now going to look to draw this hearing to a close. So is there any outstanding matters, any other matters the parties want to raise? As I say, before I look to draw this hearing to a close. Mr. Hewitt, I'm

36:49

trying to get my camera on. Sorry.

36:52

It doesn't matter if you can't.

36:57

James Hewitt, without affiliation, I should perhaps have mentioned it during the earlier session with Dr Boswell on climates and emissions. But I'd wonder to what extent it would be useful if the applicant were able to indicate about the carbon capture process which would be producing the blue hydrogen for a thermal power station, they might have a capture rate of about 60% and an energy penalty of about 30% and I know that a hydrogen facility would be different, and I wonder if there are any examples from which they could draw which would indicate how much of the methane, Obviously, the CO two embodied in the methane being burned would be captured.

37:46

Yes, Mr. You're quite right. We probably was better that you raised that earlier on in the in the day. I'm not going to go back to talking about climate effects now. What I suggest you do is, if you're going to be making written representations to me to substantiate your relevant reps, if I may perhaps advise you to do that and to pose that very question in your written representations, and then the applicant will then have an opportunity to respond to that in writing at the second deadline. Yeah, that's completely understand. Is that okay? I apologize, but I don't want to kind of go back over the agenda we've done. So thank you. Yes, if you make that in writing, and then we could get the applicant to respond to that, is there any other, any other business from from anyone? No, anything else from the applicant.

38:42

No, thank you, sir.

38:45

No. Okay. Thank you so mayor. I just to remind you all that the examination deadline requires that parties provide any post hearing documents on or before deadline, one which is the Wednesday, the fourth of February, which is the same date for all written representations and the council's local impact report. And then the applicant will respond to all of that deadline two on Wednesday the 25th of February, together with some of the action point documents that I've asked for as well. And on that Well, I will determine from those responses whether I need to ask written questions, and I'll make that decision at that time. Can I also remind you that the recording of this hearing will be placed on the inspectorates website as soon as practical after the meeting, I would like to thank the applicant and the local authorities, the statutory bodies and interested parties, for their participation. Today, we have covered a lot of ground, and from my point of view, cleared up a lot of clarification and questions that I had from this early early. Status of the examination. So thank you very much for the answers you've given. They've been extremely helpful to me, and I hope they've been helpful to other interested parties as you prepare your written representations to me. So I look forward to progress being made, particularly on those outstanding concerns, on conversations with the statutory bodies and others that I have outlined above. So thank you very much. Again, I'll consider your responses all carefully as I take this application forward. So the time so the time is now just gone, called a past four thanks once again for attending, and this hearing is now finished and closed. Thank you very much indeed. You.