

00:00:05:04 - 00:00:31:04

Good afternoon. I confer with the case team that everybody can hear me clearly. And the live streaming of the event has commenced. Thank you. It is now 2:00, and I'd like to welcome you all to this third issue specific hearing into the application for development consent for the Norwich Tilbury project made by National Grid Electricity Transmission, who will refer to as the applicant.

00:00:32:20 - 00:00:51:15

My name is Susan Hunt. I'm a planning inspector and a chartered town planner. I've been appointed by the Secretary of State to be the lead member of the panel to examine this application. I now ask the other panel members to introduce themselves, who have also been appointed by the Secretary of State to examine this application. Thank you.

00:00:52:16 - 00:01:01:21

My name is Christopher Butler. I'm a planning inspector and a chartered town planner, and I'll be leading the discussion on the development consent order today. Thank you.

00:01:03:03 - 00:01:07:28

My name is Kim Stone and I'm a planning inspector and charter town planner.

00:01:10:24 - 00:01:40:27

Thank you. Um, as we've previously explained, not all Examining Authority Panel members will be present at every hearing this week. And the other panel members, Mr. Hockley and Mr. Simmons, are not appearing here today, but they will watch the proceedings online. I can confirm that we've all made formal declarations of interest. There are no known conflicts of interest with regard to us examining the application, and together we constitute the examining authority, and we are often referred to as the ex.

00:01:43:28 - 00:02:06:07

There are other colleagues from the Planning Inspectorate joining us here today. They're Shaun Evans and Harrison Harrison Coles in the room. And online we've got Louise Haraway supported by Jessica Dunlop. And it's them that you should contact. If you've got any issues regarding the application process or the, um, procedures today, including any online connection issues.

00:02:08:10 - 00:02:39:00

So today's hearing is being undertaken as a blended event. Some of you are here in present or present with us at the hearing venue, and some of us are joining us virtually on Microsoft Teams. And however you've decided to attend, you will be given a fair opportunity to participate. And you will also be aware that the meeting is being recorded. So just some housekeeping and preliminary matters. Can everyone remember to settle their devices to silent? And there is no fire.

00:02:39:02 - 00:02:51:10

There's no fire alarm test proposed today. So if it goes off that will be an emergency. So we would need to go out the doors that you came into, to the rear end, to the sides of the building and into the car park.

00:03:01:05 - 00:03:19:03

Okay. So just a reminder again, if you can't hear us or if there's anything you wish to raise, please put your hand up either virtually or in person. If you're in the audience seats in person, there will be a roving microphone that will come to you.

00:03:21:06 - 00:03:28:07

There will be a short break around 90 minutes into the hearing, and if any other breaks are required, please alert the case team.

00:03:31:15 - 00:03:58:17

Again, I have to tell you that because we retain and publish the digital recordings, they form a public record to which the General Data Protection Regulations apply, and the Planning Inspectorate does retain those recordings for a period of five years. That's from the Secretary of State's decision on the development consent order. So if you participate today, it's important you understand you'll be recorded, and that you consent to the retention and publication of the digital recording.

00:04:02:01 - 00:04:20:13

So and also to avoid the need to edit digital recordings. If there's anything you wish to say that's of a private or confidential nature, that should be done in writing, and then it can be redacted. Though things like address details, financial circumstances or details of medical conditions.

00:04:24:01 - 00:04:45:04

And just to reiterate what was said at the open floor hearing yesterday and at the compulsory acquisition hearing this morning, um, it's important to recognize that we do have a process to follow, as does the applicants, and we ask for respect to be shown to each other throughout the hearing as well as in subsequent written submissions.

00:04:46:27 - 00:05:10:18

And I'd also like to remind anyone today there should be no vexatious, frivolous or libellous comments, and if they are made, you'll be asked to stop speaking, and such comments may be redacted from the recording as they are from written submissions. So I'm about to go on to the purpose of the hearing, but has anyone got any questions about technology or general housekeeping matters before we move on?

00:05:13:15 - 00:05:14:00

No.

00:05:21:07 - 00:05:21:22

Okay.

00:05:23:06 - 00:06:03:00

Item number two on the agenda is the purpose of today's hearing. So it's the third issue specific hearing. And it's being held by us as the examining authority because we wish to orally explore and discuss a number of matters relating to the draft development consent order, and that will be abbreviated as DCO.

This follows on from the previous discussion on the DCO, and took place at previous hearings on the 28th and 29th of April. The hearing will be focused to those matters which we seek clarification on in order to further our understanding of the application and inform our recommendations to the Secretary of State.

00:06:03:18 - 00:06:28:09

The agenda is the same as we published on the 15th of June, so we won't display on screen. So have that in front of you and that the agenda is for guidance. We may add other issues as we've progressed. The version of the DCO that we are referring to is issue A, and that was published recently at deadline five Examination Library Reference rep 5060.

00:06:29:29 - 00:07:03:05

And we only have this afternoon. We've only got a single session to cover the development consent order. So just remind everyone to keep your responses as concise as possible. Keep to the advertised agenda and don't stray into other matters we've not sought to ask questions on and if any participant is affecting the efficient running of the events or taking up too much time in submissions, they may be invited to submit their comments in writing at the next deadline. And again, just to remind you, written comments have no less weight than those made verbally.

00:07:06:11 - 00:07:22:17

And also, if we've asked you a question, you can't answer it right now. You need to look up something or ask somebody else. And please tell us that you'd rather respond in writing rather than give us an incomplete answer. And that can be submitted at deadline six. That's Tuesday, the 7th of July.

00:07:24:25 - 00:07:58:15

Our questions will be largely to the applicant as well as to the local and county authorities who are here today. And, um, because they have significant involvement in in the development consent order it's given, it's primarily they who would discharge the relevant requirements should the DCO be consented by the Secretary of State. This is public examination now. So if any other interested parties present here today or online, they will be given an opportunity to make comments at the end of each item.

00:07:58:20 - 00:08:19:08

However, as you know, time is restricted as it is all week. And therefore, while we give all parties the opportunity to comment at appropriate points, these should be focused and should not repeat previous points made by themselves or by others in writing or at previous hearings, whether this week or in previous sessions.

00:08:22:26 - 00:08:35:19

So, and if we don't have time to hear from everyone and the aim is to finish by 5 p.m., uh, it's just that we'd ask you to submit your comments in writing. Again. Deadline six.

00:08:37:08 - 00:08:51:02

Finally, this is not a planning inquiry, so there will be no formal presentation of cases or cross-examination. So any questions that you have for other parties should be raised through ourselves as the examining authority only.

00:08:52:22 - 00:08:58:27

Are there any questions about what I've just run through, either in the room or online?

00:09:00:26 - 00:09:07:06

I don't see any hands. Okay, I'll pass to Mr. Stone. He'll take introductions. Thank you.

00:09:08:08 - 00:09:09:15

Thank you very much.

00:09:11:09 - 00:09:45:22

A recording of today's hearing will be made available on the Norwich to Tilbury project page of the National Infrastructure Planning website, as soon as practicable after the hearing has finished. Therefore, please ensure that you speak clearly into a microphone stating your name and, if relevant, the organisation or person you are representing each time before you speak. This is so that it can be accurately recorded who is making the submissions and makes searching in the transcript much easier for all. There is a roving microphone for those participants who are not seated around the front table.

00:09:45:24 - 00:10:01:08

So please raise your hand and wait for the microphone to come to you before saying anything. Those seated at the tables. You will need to press the button on the microphone so the light comes on, and remember to switch it off when you have finished speaking.

00:10:03:00 - 00:10:38:28

Please note that for virtual participants, we can't see your full name on the screen, so we may refer to you by your initials as displayed on the screen. Please remember to switch your camera and microphone on when we prompt you, and to switch them off when you have finished speaking. For those attending virtually that do not wish to be filmed, just to switch your microphone on when we prompt you and to switch it off again when you have finished speaking. So firstly on the applicant, introduce the members of the team who will be speaking today, whether in person or online.

00:10:39:14 - 00:10:41:23

Can I turn to the applicant, please.

00:10:41:25 - 00:11:13:04

Russell Harris KC for the applicant. I am assisted by Helen Heatherston who largely drafted the DCO, and Christine Christian Drage, who sits next to me from BCP. I have to say that one of the witnesses for today, one of the contributors for today, Sarah Jones, fell ill this morning. We're not seeking an adjournment or anything of that nature, but we may have to come back to you on some detail that she might have been able to provide in her place. We've got Emma MacDonnell, who's the head of onshore planning.

00:11:13:06 - 00:11:29:21

We've got Kate Burrows, who is dealing with EIA matters, and Kevin Rowton, who's planning and if necessary. We've got Graham Livings on engineering matters, so we've got a fairly full team, but apologies. Sarah Jones is unavailable.

00:11:31:16 - 00:11:51:16

Thank you very much. Now I can ask the local authorities and then the parish councils to introduce themselves. Can I ask the main speaker to introduce themselves and any participant who may contribute during the discussion? And I will just call you by the name of the authority. So firstly, Essex County Council.

00:12:02:09 - 00:12:15:27

Good morning sir. Ring of Council for Essex County Council. Um in the room as well for Essex. Um is Mr. Andy Higham principal planning officer and also Francesca Potter as well. So that's our team.

00:12:16:29 - 00:12:18:04

Thank you very much.

00:12:18:06 - 00:12:18:24

Thank you.

00:12:19:06 - 00:12:21:23

Could we now turn to Norfolk County Council?

00:12:28:15 - 00:12:39:23

Good morning, Sir Richie Parekh for instructed on behalf of Norfolk County Council. I have a few officers. I'm not intending to call on them today, but if I do, I'll introduce them at the appropriate time.

00:12:40:18 - 00:12:45:14

Thank you very much. And then moving to Suffolk County Council.

00:12:47:18 - 00:13:11:04

Good afternoon sir. Madam. Um, my name is Michael Bedford, King's counsel. Um, I am assisted online and you may hear from Mr. Emma Thomas, who is a partner with Sharpe Pritchard Solicitors. I do have Suffolk officers with me in the room, but I don't expect I need to call on them. Thank you.

00:13:12:03 - 00:13:19:24

Thank you very much. And I'm moving to the district councils, Babergh District Council and Mid Suffolk District Council.

00:13:21:21 - 00:13:32:27

Good afternoon sir. Thank you, Brian Curtis for the district council and Mid Suffolk District Council. I'm joined by colleagues from our environmental protection team who may ask to to speak later. Thank you.

00:13:34:15 - 00:13:50:26

You. Sounds a bit difficult. So if there's anything that you can do during the time to try and sort that out a little bit or speak a little bit clearer, that would be helpful for us and not sure online whether or not there's an issue. Well moving along. Um, Braintree District Council.

00:13:52:02 - 00:14:06:23

Good afternoon sir. Madam. Uh, Matthew Wilde, principal planner from Braintree District Council and online, I've got, uh, Neil Fletcher, who's a noise consultant, um, with reference to the item agenda about construction hours, if he's needed. Thank you. Sir.

00:14:07:28 - 00:14:12:06

Thank you very much. Uh, Chelmsford City Council.

00:14:13:08 - 00:14:16:22

Afternoon, sir. Madam member for Chelmsford City Council.

00:14:18:10 - 00:14:22:03

Thank you very much. And Colchester city Council.

00:14:25:06 - 00:14:28:11

Good afternoon, James Ryan for Colchester City Council.

00:14:29:26 - 00:14:38:27

Thank you very much. Um, continue to move along. Then we have the South Norfolk District Council. Oh, yes.

00:14:39:25 - 00:14:42:00

Curtis, South Norfolk district council.

00:14:48:16 - 00:14:49:09

Thank you.

00:14:52:04 - 00:14:53:23

Tendring district council.

00:14:56:15 - 00:14:59:27

Good afternoon, Sir Jacob Joshua for Tendring District Council.

00:15:01:07 - 00:15:02:11

Thank you very much.

00:15:04:16 - 00:15:07:29

In terms of the district councils finally Thurrock Council.

00:15:18:03 - 00:15:23:10

Okay. So moving along, I've got um parish councils. Ardley parish council.

00:15:33:22 - 00:15:37:03

Seeing any hands. Okay, so let's move along.

00:15:39:12 - 00:15:46:01

Moving on to the statutory parties, can I ask the statutory parties to introduce themselves again when I call them? Um,

00:15:47:18 - 00:15:54:07

we've been notified that ScottishPower renewables aren't here, but just give them a chance in case they've turned up late.

00:15:55:25 - 00:16:02:13

I'm seeing no hands. So moving along. Ministry of defence.

00:16:05:05 - 00:16:08:15

Good afternoon, John Wilson for the Ministry of Defence.

00:16:09:13 - 00:16:13:16

Thank you very much. Um. National highways?

00:16:15:21 - 00:16:25:19

Yes. Mrs. Vicky Fowler, I'm a partner at Gowling w CLG, representing National Highways, and I'm also supported by Jeremy Bloom, a consultant for National Highways. Thank you.

00:16:25:29 - 00:16:30:19

Thank you very much. And then Lower Thames Crossing project.

00:16:33:09 - 00:16:41:10

Yes. Thank you sir. My name is Monica Wagler from TLT legal firm. Um, on behalf of the Lower Thames Crossing project.

00:16:44:13 - 00:16:45:18

Thank you very much.

00:16:48:01 - 00:16:48:16

Um.

00:16:50:18 - 00:17:05:12

Do we have somebody from a or you Writtle, in terms of organisation? We had an indication that they may wish to speak, but I don't believe they're online. But I'll just give them a chance and guess they've turned up late. No.

00:17:09:13 - 00:17:13:21

So I will then now read out those individuals names who have indicated a wish to.

00:17:15:10 - 00:17:16:12

Yeah. Did I okay.

00:17:20:06 - 00:17:20:21

Yeah.

00:17:22:29 - 00:18:04:12

Sorry. Uh, those individuals who have indicated who wish to participate. Um, If during the hearing you wish to make a contribution, please introduce yourself at that time. Uh, when you want to speak. So the individuals I have William Petersen, Gene Marshall, Charles McNamee, Jenny Macklin, Diana Whitfield, Carlo and Charles Tritton, and Peter Nesbitt. I also have observing only Caroline Mason, Suzanne Davis and Norfolk Gliding Club, but I believe they're not here either.

00:18:08:15 - 00:18:17:26

Those are all the parties that I have who have indicated a wish to speak. Is there anybody else in the room who would wish to speak, or anybody else online who has not been mentioned?

00:18:20:20 - 00:18:34:08

Not seeing anything in the room. Not seeing any hands up. Okay. Thank you very much. Uh, in that case, I shall turn to my colleague for the next item. Item four. Mr..

00:18:34:10 - 00:18:41:17

Thank you very much. The next item is related to the change request as relevant to this.

00:18:41:19 - 00:18:42:14

Specific.

00:18:43:03 - 00:19:15:09

Issue. Specific hearing. Um, so in accordance with regulation 14, two of the Infrastructure Planning Compulsory Acquisition Regulations 2010, the examining authority would now give an opportunity to any additional interested party or additional affected parties that are impacted as a result of the accepted

change requests. Um, submitted by the applicant. Uh, that amended the Development Consent Order to make an oral representation on any matters previously discussed at issue specific one or issue specific hearing two.

00:19:15:23 - 00:19:27:08

Are there any additional interested parties or additional affected persons present who wish to make an oral representation in regard to those two previous issues. Specific hearings.

00:19:30:13 - 00:19:43:14

No indication in the room and there's no indication online. So I'm going to move on to agenda item five, which is the main topic for today, which is the development consent order.

00:19:47:19 - 00:20:23:22

Clearly, there's a number of interested parties in the room here today. And they've seen the um, the agenda items, uh, active participation by interested parties is at the discretion of the examining authority, as Mrs. Hunt's already said, and subject to time constraints and the the examiners authority's ability to control the hearing. Um, that said, whilst we're focusing on any specific matters, only focusing on specific matters identified in the published agenda, uh, I'm proposing to bring, um, interested parties in at the relevant matter under discussion at the end of each of those matters.

00:20:24:07 - 00:20:55:19

Um, we've got a number of questions to cover. They may appear to overlap. And in which case, if we've adequately covered a later question in an earlier part of the agenda, then we'll not cover it again. Um, as Mrs. Hunt already said, we're endeavouring to cover the topics by 5 p.m.. Uh, however, um, if there's still items on the agenda, we may decide to put those into a, uh, rule 17 request for further information. Um, and that's under the examination procedure rules.

00:20:55:21 - 00:21:30:09

Or we may choose to to run over slightly depending on how we're getting through the agenda. Um, we anticipate items 5.1 and 5.2 relating to article schedules, including schedule three requirements and schedule for discharge of requirements for the draft DCO to take the substantial part of the time today. Um, we have and expect the remainder of the agenda to take no more than about 30 minutes. So just so people are aware, um, the fact that we're discussing the development consent order doesn't indicate we've formed a view on it.

00:21:30:11 - 00:22:07:28

It's just good practice. Uh, and it is a requirement when we submit the recommendation report that a version of the consent order is attached to that recommendation report. Um, regardless of what our recommendation may or may not be. Uh, right. So moving on to agenda 5.1 and the term unreasonably withheld or delayed. Um, the examining authority has raised this matter a number of times before, including in first written questions at question DCO 1.81 and in issue specific hearing two under Agenda Item six.

00:22:08:12 - 00:22:46:07

However, we remain unsatisfied with the justification provided to date, especially in the light of the Draft Development Consent Order containing provisions related to deemed consent where a determining relevant local authority fails to provide a decision within the specific period of time. The examining authority would like to provide the applicant with a final opportunity to justify their position in regard to the retention of this term. Unreasonably withheld or delayed within articles 11, two, 14, four, 162 and 165 B 171, B 23.

00:22:46:20 - 00:23:23:28

That's two zero brackets 320 brackets for a 225 a 225, B 492 and 551. The only exception to the above is in relation to article 15 to A and B, related to the permanent stopping up the streets and public rights of way, where there is no deemed consent specified within those provisions. Uh, the other exception to this is protective provisions in schedule 16, where they would have previously been agreed with the relevant statutory undertaker or interested party.

00:23:24:06 - 00:23:28:14

Would the applicant like to respond, please? Russell Harris KC. We note how you.

00:23:28:22 - 00:23:36:23

Put the question, and thank you for giving us the opportunity to have another go. Um, Miss Heatherton will have that as a go. Okay.

00:23:38:08 - 00:24:11:18

Helen Heatherton, on behalf of the applicant. Um, the underlying purpose of both mechanisms is to ensure the timely delivery of this critical national priority project. The deemed consent element provides a clear time frame for the decision to be made, with scope to extend the subject to to extend subject to agreement, for example, for more complex applications. The unreasonably withheld and delayed wording is to ensure that where matters are quick and easy to resolve, uh, then they don't need the full time for a time period for a determination.

00:24:11:22 - 00:24:47:22

Decision makers do not wait until the last minute to make that Determination or rely on the expiry of the deemed consent period. Um, we note that a number of authorities have mentioned, um, that their duty to act reasonably. Um, a number of the provisions to which the drafting applies are equivalent to provisions that would be contained in hi res agreements or sewerage agreements. Um, and, and reflect those um consents. It would be common for not unreasonably, unreasonably, to be unreasonably withheld or delayed wording to be included in such agreements.

00:24:47:27 - 00:25:26:28

Um, and so in our view, that means the wording should not be contentious even when coupled with deemed consents. There are examples in other precedents of the deemed consents approvals being combined with this unreasonably withheld or delayed wording. Um, those include the National Grid Yorkshire Green project. There are elements in the Lower Thames Crossing DCO. Um and also in the

North Shropshire electricity Distribution Network Order 2020, which contained both deemed consent and not to be unreasonably withheld wording in their article 37, which was the procedure regarding certain approvals.

00:25:29:21 - 00:26:09:23

National. Harris. Casey. Um, just to put it in layman's terms, if if a local authority can reasonably determine something more quickly on a project which is of massive public interest and urgency, then we see nothing wrong with making that obligation, uh, placing that obligation on them. And a concrete example, if there are lots of discharges which are very, very similar, and there are in this case and the local authority is used to dealing with them, then it's not unreasonable to expect them to deal with that quicker than the deemed timetable.

00:26:09:25 - 00:26:21:00

So if they have lots of if it's a really tick box exercise that can be dealt with quicker, then we see no reason why it shouldn't. It's as simple as that, really. So.

00:26:28:21 - 00:26:46:01

Okay. Thank you, Mr. Harris, and thank you for the contribution as well. Um, I'd like to open it up to, um, local authorities to respond, if they wish to at all. Please. Um, so should we start with Essex County Council or any of the other county councils, whoever can get there quickest.

00:26:51:23 - 00:27:30:04

So, um, since I'm in the room, maybe I am able to get the most quickly. Um, Michael Bedford, Suffolk County Council, uh, so briefly, um, it's not a justified provision in our view. We've already set out detailed representations in rep for 336. Item 6.1. Following on from issue two where this provision was discussed. We don't repeat those points, but we think it is worth noting by way of emphasis that the same point was debated at the C link examination, and that examining authority found that the provision was not justified.

00:27:30:06 - 00:28:22:16

And we've given you the references in those earlier representations that. But can I just add an additional point, which I don't think we have aired before, which is that by putting this into the terms of the development consent order itself, then it actually has the consequence that in terms of section 161, subsection one B one of the offence creating provisions of the 2008 act, Obviously the main offence creating provision is if you do works which are contrary to the order, but it also in subsection one B is if any person does anything contrary to the terms of a developed consent order.

00:28:22:18 - 00:28:44:18

And so it's conceivable that somebody could say, well, if you the local authority, subject to this provision as currently drafted, act unreasonably in withholding or delaying your actions, you are committing a criminal offence.

00:28:46:18 - 00:29:20:17

And that is a very good reason why one should not be introducing this provision. Uh, unless you found it absolutely persuasive that there needed to be that additional, as it were, criminal sanction to regulate local authority behavior, we would say that local authorities are not dilatory in discharging requirements or applications for consent in relation to development consent orders.

00:29:20:27 - 00:29:56:02

They understand there is a public interest in expeditious decision making, and one can rely on their good sense and understanding. One doesn't need this provision. And it also throws up another practical point, which is realistically, obviously you've got one. You've got this shadow of potential criminal liability, but also the enforcing authorities for breaches of a development consent order of primarily the local authorities themselves.

00:29:56:18 - 00:29:59:15

And so you're creating, again, a sort of a

00:30:01:07 - 00:30:26:14

very convoluted situation of either authorities having to prosecute themselves or prosecute another local authority for the way that it's gone about discharging consents and requirements. I say we just think it's an unnecessary provision, and the deemed consent provision, combined with the appeal provisions, are entirely adequate and therefore we consider it's not required.

00:30:26:16 - 00:30:30:03

Thank you. Any other county councils?

00:30:32:06 - 00:30:36:07

Yes. Got a hand up? I can't see your initials. I'm afraid so.

00:30:36:12 - 00:31:11:02

So, Adam emerging for Essex County Council. Um, thank you sir. Um, we'd endorse everything that Mr. Bedford's just said there. Um, in terms of the need for this, just like to add that there's obviously things like planning performance agreements that are in place. There's good partnership working going on. There are emerging proposals that have been circulated by the applicant for how the discharge process will be managed. Um, and we think that with all of that, um, of the context, there's not really any risk of unreasonable delay or withholding of refusals.

00:31:11:04 - 00:31:49:00

And the second point, in addition to the kind of criminal consequences point that Mr. Bentham made, is obviously you have that appeal procedure that's, um, provided for and scheduled for. Um, and where there's a, a withholding or refusal of consent, then there's obviously an appeal, um, process that's set out for that. But there isn't anything, um, for cases of delay or unreasonable delay. Um, probably because there are the deemed consent provisions in almost all cases. So that general requirement for there not to be unreasonable delay in terms of the DCO and the way it's drafted doesn't really, really go anywhere.

00:31:49:02 - 00:31:59:15

There's no kind of, um, procedure that's then triggered as a result of that. So that's a further reason why we think that's not necessary. Thank you.

00:31:59:18 - 00:32:06:03

Thank you very much, Mr. Davis. Um, do any other county authorities wish to add anything that hasn't already been said?

00:32:08:21 - 00:32:14:19

So open it to local authorities that wish to say something that hasn't already been said.

00:32:17:18 - 00:32:26:02

Getting no indication. Uh, so are there any interested parties that wish to mention anything or say anything with regard to the use of this term?

00:32:29:04 - 00:32:32:16

No indication online. Oh, I've got one hand up. Sorry. VRF.

00:32:33:28 - 00:32:54:26

Yes. Mrs.. Uh, Vicki Fowler, um, partner, on behalf of, uh, National Highways. So I know you mentioned, um, that you weren't asking the applicant to respond to protective provisions, but just for the for your notes, the protective provisions on the face of the order for National Highways are not agreed. And and others. Yeah, yeah. Thank you.

00:32:55:02 - 00:33:05:18

Yeah. I saw this morning's hearing. Uh, I watched the live streaming. Uh, and I'm aware of National highways position and also lower Thames crossings position with regard to these matters.

00:33:06:12 - 00:33:16:13

So forgive me, but I don't think we actually dealt with protective provisions per se per se this morning. But but certainly the deemed consent and the not to be on roads we withheld. Yeah. Wordings not agreed. Thank you.

00:33:16:22 - 00:33:48:24

Just just to clarify on that point, um, the the national highways didn't talk about protective provisions but Lower Thames Crossing did. And they indicated that they would be submitting their own version at deadline. Six. Um in to to compete with if you want to use those words, the version that has been provided with them to date against the applicant's version. Um, right. Okay. So no other interested parties have indicated either the National Highways.

00:33:49:01 - 00:33:53:16

Mr. Harris, would you like to come back on any of those points or any of your colleagues? No.

00:33:53:18 - 00:34:35:01

Very, very quickly. Um, we don't agree on the creation of a criminal offense as a matter of law. We'll put that in writing and explain. We also think as a matter of practice, it would be fanciful that any local planning authority would choose to prosecute itself or one of its neighboring authorities. We don't think that should weigh very heavily with you at all. The question is, is it reasonable for the order to ask the local authority to do its best to do things before the end of the period when it can? And we don't think that's unreasonable at all, particularly in the circumstance of multiple applications raising exactly the same issues which could be dealt with quicker.

00:34:35:10 - 00:34:51:01

It's as simple as that. So really what I'm saying is don't don't fall from a learned friend's legal trap in terms of prosecution. That's fanciful. Um, ask the question which we've asked and and answer it. And, and, you know, we'll take the answer as it comes.

00:34:51:12 - 00:35:32:03

I'll look forward to your written response. And I've heard what you've said. So thank you. Right. So I'm going to move on to the next question that is on the agenda item, which is in relation to article ten planning permissions and other consents. Um, just just to I think I've answered this question myself this morning reviewing my notes. But, um, uh, in terms of article ten, which is planning permissions and other consents within the article, what differentiates the DCO itself from, um, other dsos that could be subject to this, um, this section and my answer to that, just so you're aware, is that, uh, it's in the title, it's other planning permissions and concerns.

00:35:32:10 - 00:36:08:04

Um, and, um, in addition to that, uh, does there need to be an additional subparagraph requiring it to be made clear that nothing in the article prevents any enforcement action under the Town and Country Planning Act 1990, or the Planning Act 2008 from being taken in relation to any breach, that permission or consent, where that breach is not inconsistent with the purposes of article ten two. Um. The reason I'm asking this is I've noted from the C link, um, DCO that they have included such an article, um, at um, at number four of, of the same provision.

00:36:08:06 - 00:36:20:29

I can't remember whether or not the, the article number is the same, but it's the same provision. Um, and, uh, that's actually been included by the applicant. So I was wondering why the same provision isn't being provided in this.

00:36:22:21 - 00:36:38:24

Russell Harris case. I think you've answered the first part of the question, and we agree with you. There's also the reference to this order, uh, that I'm going to ask, uh, Miss Heatherton to, to deal with in the minute and to deal with the balance of your question. Okay. Thank you.

00:36:40:23 - 00:37:16:20

Ellen Heatherton, on behalf of the applicant, um, as Mr. Harris has just said, the Norwich to Tilbury order in article ten is referred to as this order. Um, this is how it's referred to throughout the draft order. So the consistency is carried through. Um, other CEOs are referred to by more general reference to development consent granted under the 2008 act. And in respect of your question about the additional subparagraph, um, the applicants are happy with the principle of the proposed additional paragraph, uh, recognizing your comment about the C link wording and will include that deadline six.

00:37:16:26 - 00:37:37:15

Thank you very much for that. It was more of a matter of consistency, really understanding and making sure that, um, the same provision was applied for applicable effectively. So. Right. Okay. So does any county or local authority wish to say anything with regard to article ten? Mr. Bedford.

00:37:37:17 - 00:38:14:29

Sir Michael Bedford Suffolk County Council, sir, the only point to make and we appreciate the applicant's, um, response that it will bring, uh, article ten into line with the Sealink one on this particular element, the only point to note which is a slight difference in the ceiling. One that because the ceiling application came into the Planning Act regime via section 35 direction, it uses slightly different wording to describe the project, but I'm sure the applicant is aware of that, and we don't think there's a need to do the same for that thing in relation to this one.

00:38:15:01 - 00:38:19:28

But the the point that you've raised for we agree consistency would be appropriate.

00:38:20:19 - 00:38:24:25

Okay. Thank you Mr. Beaufort. Any other county or local authority please.

00:38:27:27 - 00:38:32:25

No indication. So I'm going to open it up to any other interested party in relation to article ten.

00:38:34:15 - 00:38:40:13

Getting no indication. Mr. Harris, would you like to come back on anything you've heard from Mr. Bedford?

00:38:40:16 - 00:38:41:01

No.

00:38:41:03 - 00:39:12:13

Thank you. Okay. Thank you. Right. I wanted to move on to part five acquisition and possession of land and article 24 through to 46. This is a general question related to that block or that part within the DCO works, plans and book of reference include land classifications as class eight, which is land not subject to powers of acquisition nor temporary possession. Should the power within part five of the Development Consent Order Relating to Acquisition and Possession of Land.

00:39:12:15 - 00:39:41:12

To be clear that the land shown in class eight of the works plans or in the book of reference, cannot be subject to powers of acquisition nor temporary possession. Um, I think that's even more relevant after listening to today's development consent order. Sorry, a compulsory acquisition hearing this morning where you appear to be increasing the number of white amount of white land effectively. So it's even more pertinent. So thank you.

00:39:42:10 - 00:39:46:13

Russell Harris Casey, I'm going to ask Miss Henderson to deal with that one straight away.

00:39:48:25 - 00:40:28:00

Helen Harrison on behalf of the applicant. As you'll note, the class eight land on the works plans is increasing as the the interests and the land is being is being narrowed where possible. Um, in our view, the the the the way that the draft order is, um, is prepared. It's very clear what the order limits are and what the order land is. And then that is, um, through the definition of order land, coupled with the wording in table 2.1 of the book of reference. Um, in our view, that's sufficiently clear so as not to need the removal of the class eight white of land, class eight white land from the works and land plans.

00:40:31:07 - 00:40:41:06

Okay. Thank you for your position on that. Uh, opening that question, I'll open it up for responses from, um, county or local authorities, please.

00:40:43:17 - 00:40:44:11

Mr. Bickford.

00:40:44:24 - 00:41:16:03

Sir Michael Bedford, Suffolk County Council. So we provided a response on the point in when you raised it in Q1 in DCO one A7, and we provided that in rep 3086. And essentially whilst we haven't, um, got identical views to the applicant, we again think it's, um, sufficiently clear that the the white line lies outside of the powers that we're content.

00:41:16:05 - 00:41:47:23

That said, we had noticed, or at least Mr. Thomas has diligently noticed a number of different approaches in recent energy development consent orders to this, um, issue. And I think rather than because I say we are content rather than us introducing that to you as a matter that you need to adjudicate, or I think what I'll do is I'll get Mr. Thomas to share that work with the applicant direct outside of the examination so they can consider it.

00:41:47:25 - 00:42:05:20

Because it seems to me that if there is a precedent or a change of practice as to how these things have been dealt with, then it would be sensible to follow what is the best practice. But I say it's not an issue that we're pressing. So therefore I think we'll just share that work with the applicant informally.

00:42:05:25 - 00:42:26:03

I think that would be helpful if you would do that, Mr. Bedford, because we've noticed inconsistencies between various theses as well. Um, and obviously trying to find a path where you know which one's correct is, is more confused as a result. Um, any other county or local authority that have anything else to add that hasn't been said by Mr. Bedford, please.

00:42:31:05 - 00:42:36:24

Get no indication. So I'm going to open it up to any other interested party with regard to to this matter.

00:42:38:13 - 00:42:45:07

And I've got no indication in the room or online. So, Mr. Harris, would you like to respond to any of what you've heard?

00:42:45:09 - 00:43:33:01

Russell Harris for the applicant. Um, I'm grateful to my own friend that the principle is accepted. Uh, we know what you say about, uh, consistency of approach. Um, our line on that is that there doesn't always need to be consistency. The fact that there are inconsistent positions doesn't mean that one is right and one is correct or incorrect. This is the longest, largest linear DCO that we're aware of. As I said on day one and one, um, the growing number of plots that find their way into class eight in the circumstances of this case will reflect and result from the negotiation process with um, IPS, and that's in line with, uh, compulsory purchase advice.

00:43:33:09 - 00:43:59:11

Uh, there are practicalities involved in the circumstances of this case because, um, removing class eight land in the circumstances of such a large linear project would require alteration of many, many plans and cost tens of thousands of pounds. And if the principle is acceptable between the parties and yourselves and the Secretary of State, we would not wish to go down that route unless we could help it.

00:43:59:13 - 00:44:26:11

Yeah. We're not suggesting that the plans need amending. It's whether or not there needed to be a line within that part of the development consent order, specifically excluding class eight land. Yes. Um, that was that was all we were asking about. We're not suggesting that whole whole, um, wholesale, um, revision of plans was necessary as a result to remove class eight from the definition shown within the planning documents themselves.

00:44:26:13 - 00:44:30:15

That's really helpful. Um, Russell Harris Casey QC, on behalf of Casey.

00:44:32:09 - 00:44:44:25

It's very hot in here. Um, I'm on behalf of the applicant. We will take that away and look at the examples that Mr. Thomas is going to send to us, I think. And we'll get back to you by the next deadline.

00:44:44:27 - 00:45:18:12

That's fine. Thank you very much. Right. Okay. So I'm going to move on to my next item on the agenda, which is article 48 defense to proceedings in respect of statutory nuisance. Um, we've noted the explanation related to article 48, uh, as set out in the explanatory memorandum, the most recent version of which is rep 5062. Uh, and it appears to examine authority. The article 8481 A provides a defense in specific circumstances in relation to noise arising from construction and maintenance activities.

00:45:18:14 - 00:45:31:27

Whilst article 481 B provides a defense in specific circumstances in relation to noise arising from operational activities, uh, can that can the applicant can just confirm that's my understanding is correct in that regard.

00:45:31:29 - 00:45:34:27

First uh Russell Harris KC for the applicant.

00:45:34:29 - 00:45:36:21

It is. Right Okay.

00:45:39:16 - 00:46:10:15

All right. So in that case, um, can the applicant take. If so, can the applicant take account within the relevant parts of article 48, i.e. 481 B to to schedule three, requirement 14 should. Should. Sorry, I phrase this really badly and I'll try and rephrase it. So should article 48 uh within article 481 be uh have any reference in it to the requirements within schedule three, requirement 14 and needing to comply with that.

00:46:10:25 - 00:46:18:12

Short answer personal. Harris. Casey. Applicant. Short answer to that is yes. And I'll get Miss Harrington to explain why.

00:46:18:22 - 00:46:20:22

Sorry about the explanation.

00:46:21:02 - 00:46:22:26

We got it. We got it straight away.

00:46:24:24 - 00:46:48:03

Helen Heatherton, on behalf of the applicant. Yes. We agree that this should also apply to requirement 14. Um, and any proposed alternative additional noise requirements should they should they come forward. And the drafting as we see it would need to be applied to articles 41, 481, B 482 and 483 and the applicant will update this in the draft order at deadline six.

00:46:53:12 - 00:47:01:08

Thank you very much for that. Just opening that question up to any county or local authorities that feel that they need to add anything in regard to this question.

00:47:03:03 - 00:47:34:10

No indication online or in the room. Any interested party want to add anything with regard to this, this article? And again, no indication. So I'm going to move on to my next point, which is article 50 felling and lopping of trees in article 51. Trees subject to tree Preservation orders in the light of the ancient woodland technical note which is Rep 3058 to rep 3062. Should a subparagraph be inserted within these articles.

00:47:34:12 - 00:47:54:22

Specifying paragraph one does not apply to any ancient. So any tree identified as an ancient or veteran tree, unless they have previously been agreed to be removed by the relevant planning authority or are agreed to be dead, dying or dangerous by the relevant planning authority, and there is no alternative to their removal.

00:47:55:17 - 00:48:18:20

Mr. Harris Russell Harris KC for the applicant. Yes, we agree with the principle and we agree there ought to be a subparagraph. Would you allow us to make 1 or 2 changes to the, uh, the draft that you've helpfully supplied for us? We agree with the the mischief it's aimed at, and we'll provide you with wording by, um, deadline six.

00:48:18:22 - 00:48:28:26

Yes. I'm more than happy with that, Mr. Harris. Um, do any local authorities or county authorities wish to say anything with regard to article 50 or 51?

00:48:32:20 - 00:49:13:05

Michael Bedford, Suffolk County Council, just briefly. Obviously, we welcome what the applicant has said there because we did. Again, we agree with your points there and we think it needed addressing. We will obviously make any comments on the actual precise wording when we see what the applicant puts forward. The only other point I would add, and it doesn't relate to the veteran trees issue, but it does relate to those articles that we have made previous comments in rep four, three, three, six and in rep 4335 on article 50, which we're still not persuaded by the applicant's response, but they relate more to hedgerow issues than trees.

00:49:15:09 - 00:49:24:16

Understood. Mr. Bedford, I'm sure if the applicant hasn't already responded in their rep. Five responses and I'd need to go back and double check. I have read them, but can't.

00:49:25:00 - 00:49:28:29

They have provided a response in rep 5192 and we'll comment on that as necessary.

00:49:29:01 - 00:49:40:10

So? So I'll look forward to the ongoing dialogue. So thank you. Any other county or local authority wishing to add anything that Mr. Bedford hasn't already said? Please.

00:49:42:05 - 00:49:48:02

With no indication any interested party in the room or online, please.

00:49:50:11 - 00:49:53:20

And Mr. Harris, back to you for a response if you would like to.

00:49:53:22 - 00:50:17:00

Um, it's not a response, but it's a looking forward to tomorrow. Russell Harris, Casey for the applicant. And just for information, those in the room, the significant number of veteran trees has already been affected has already been reduced to four veteran trees. I think we'll be in a position under the heading of veteran trees tomorrow to, um, explain and to give you the good news that it's now down to one.

00:50:18:24 - 00:50:20:22

This is in regard to loss, is it?

00:50:20:24 - 00:50:27:19

Uh, not necessarily loss, but it's impact. It could go to loss in relation to one. But we'll explain that tomorrow.

00:50:28:03 - 00:51:09:11

Okay. That's understood. Thank you very much. I'm going to move on to my next article or my next item on the agenda, which was article 56 safeguarding. Um, there's been quite a lot in the planning press in the recent months regarding safeguarding and large linear projects. Um, can the applicant advise whether or not there's been any discussion with the Department of Energy Security on net zero, um, or indeed any other government department concerning safeguarding, uh, including whether or not the Secretary of State has been asked to consider or is considering safeguarding a safeguarding direction in relation to your proposed development.

00:51:09:13 - 00:51:47:25

Before answering that, I would confirm that we've noted the explanation provided in the explanatory memorandum, which is rep 5062 related to this article, especially your arguments concerning section 123 and 125, the Planning Act 2008, which advised that safeguarding provisions is a provision related to, or a matter ancillary to, the development for which consent is granted by the order that section 123, and is also necessary or expedient for giving full effect to the other provisions of the order, which is section 125 C um.

00:51:47:27 - 00:52:04:07

However, the examining authority is equally aware that requirements which seek to duplicate other regulatory controls are unlikely to meet the necessary the test of necessity. So I was wondering if the applicant could comment on the juxtaposition between the two positions that we've got there.

00:52:05:17 - 00:52:53:07

Russell Harris KC for the applicant, our position would be that there's there's no duplication because the DCO is the first and primary place where such a safeguarding article should appear. Um, it's the equivalent in effect, of an Act of Parliament, and if anything, is as at least as secure as a formal safeguarding issued by the Secretary of State. The underlying ethos for the 2008 act was, to use the awful parliamentary jargon of the time, to be a one stop shop, and we would suggest that the primary way in which safeguarding should be undertaken would be through the one stop shop, rather than requiring us to go separately to Desnos or to some other government department.

00:52:53:09 - 00:53:19:03

And we think they take the same view. So if we had gone to Desnos, they probably would have said, put it in the order that that's really where we are. And we have noted in various of our answers that it is a standard article for Ducos in circumstances such as this, um, because of the statutory nature of the DCO, we think it's the safest, the best and the most proportionate way.

00:53:23:01 - 00:53:24:18

Thank you very much for that.

00:53:29:19 - 00:53:31:02

I just finished my notes.

00:53:32:19 - 00:53:50:12

Okay. Um, so opening that up to any county or local authority to comment, please get no indication in the room. No indication online. Any interested party wanting to say anything with regard to safeguarding or safeguarding directions?

00:53:52:17 - 00:53:58:14

Okay. Nothing in the room in that case, unless you have anything to add. Mr. Harris, I'm going to move on to.

00:54:00:29 - 00:54:36:21

Uh, protective provisions under schedule 16. I wanted to talk about next. Um, we were intending to ask for an update from from you with regard to your progression with parties in relation to protective provisions, uh, included within the draft development consent order. However, we've noted the, um, statutory undertaker tracker, which is rep five 203. Um, so we don't intend to pursue this further here other than, um, to say we note that some statutory undertakers and interested parties have been removed from the list and some have been added.

00:54:37:06 - 00:55:08:00

Um, we've noted that the inclusion of some protective provisions within the draft DCO have slipped in terms of their intention, intended inclusion within the draft DCO. Uh, and in the light of some of the inclusions of of those protection provisions slipping, uh, we wanted to make it quite clear that we don't

want to see any further slippage. Uh, and we'd ask for all protective provisions where the negotiation has been completed or not, to be incorporated into the draft version of the development consent order at the next deadline, please.

00:55:08:07 - 00:55:40:08

Um, we we want to see them basically, uh, whether they're finished or not. You can you can heavily mark them and, you know, draft or whatever you want to want to do with it. but we would like to see their inclusion so that we can at least see what you're saying, um, and where you've got to with them. Um, and also for other parties to, um, to see them. I think I counted up this morning. Um, there's 17 bespoke protective provisions being negotiated or under discussion.

00:55:40:11 - 00:55:54:17

Uh, something in that order, in any way. And yet there's only eight in total, including the five standard protective provisions that go in. So. So we're getting a little bit concerned that we've got a vacuum of information basically.

00:55:56:13 - 00:56:00:23

Russell Harris KC message understood. Yes eight I counted eight as well.

00:56:03:00 - 00:56:33:01

Sir. Um, Christian Drage, can I totally understand that vacuum point? I think it's also. We'll have to I think we'll help try and help and explain to you where we are in relation to some of the vacuum for ourselves, because we we invite potato visions sometimes from third parties, and we are ourselves waiting. So we have to make a judgment call. Do we? Do we effectively put our own forward? And when do we do that equally? We do recognize that some parties prefer some protections to go in the separate legal agreement. So there is a bit of a judgment call.

00:56:33:14 - 00:56:43:15

I'm saying that to try and explain that we are recognizing you need to see it, but we also like to take the time with the third parties and reach the point where we think we do or do not need them.

00:56:43:28 - 00:57:14:28

As we said this morning, it's your development consent order draft, and so you include within it what you think is appropriate to include within it. The concern that we've got is that, as I say, I've counted up. I think it's 17. So we've got Affinity Water, Anglian Water Services Limited, uh, British pipeline agency, Cadent Gas Limited, which I see I think has gone in this time. Um, we've got uh where are we. Equinor UK limited still down. Bespoke provisions.

00:57:15:00 - 00:57:48:09

We've got excellent pipeline systems limited and as I say, the list goes on as. Which ones are bespoke provisions. But we've got a vacuum of information as to. To what that consists of. By this point in the the process, I'd have expected that that that vacuum in the DCO document had been filled, at least with your

view of what you were looking for, so that the other party can comment on it and inform the examining authority of their concerns related to the drafting that has been put into the development consent order.

00:57:48:12 - 00:57:49:15

Is that clearer?

00:57:49:18 - 00:58:03:12

Yes, Chris Hipkins, it's very clear. And we'll also try and help by identifying where drafts have been swapped. Um, but but as you say, not yet found the way in. But they will be finding the way in by deadline six. Yes. That's very helpful. Thank you sir. Okay.

00:58:03:19 - 00:58:19:20

It just allows other parties to respond as well so that we're aware of where the the disagreements may still lie. So, Um, there's any other, uh, county or local authority. You want to say anything with regard to protective provisions, Mr. Bedford, you're reaching.

00:58:19:22 - 00:58:50:06

So thank you, sir. Michael Bedford, uh, Suffolk County Council. Uh, sir, so far as the county council is concerned, it's, uh, part three, uh, drainage and flood authorities and part four, uh, highways authorities, which are the relevant ones, uh, in relation to the part four, the highway authority matters. There are also some parallel discussions on a framework highway, uh, agreement.

00:58:50:19 - 00:59:28:10

Um, I think that the authorities have been working between themselves on wording for the draft protective provisions, which I'm hoping are soon to be in a position to be shared with the applicant, because I think that ball is in our court in terms of providing that information to the applicant. and I'm hoping that that is happening soon, which will help. On that side of things, and to what extent the position remains that there are protective provisions, or the position is that there is a framework hire agreement so that there are a series of discussions ongoing.

00:59:28:15 - 01:00:23:18

So, so that is unfolding, but we are effectively on to that. So then can I turn to the drainage and flood authority matter? Not so much as far as the county council is concerned with the the detail of the protective provisions at this stage. But there is an underlying point. It's, um, partly raised, um, in relation to, uh, this part of the agenda and partly elsewhere. But it's the point about the ousting of control via section 23 of the Land Drainage Act 1991, which you will be aware, is only possible if the drainage authority consents, but this order at the moment is drafted on the basis that that is one of the provisions which is ousted by schedule 17.

01:00:23:20 - 01:00:58:00

But obviously section 150, subsection one, the 2008 act, together with schedule two of the Miscellaneous Prescribed Provisions Regulations 2015, entails that that can only happen if the drainage authorities

consent to that ousting as matters stand. That is not likely to be forthcoming in this examination. If what is offered by way of the protective provisions for the drainage authorities remains as currently drafted.

01:00:58:16 - 01:01:33:10

We as a county council have a particular concern about the time periods for decision, which the applicant is proposing a 28 day period, whereas under the Land Drainage Act there is effectively a 62 day period for approvals. We understand that other authorities have broader concerns, I think Norfolk in particular. And so what we would be urging is that the applicant modifies its approach so as to resolve what is otherwise going to be an impasse, because if the authorities don't consent to the ousting of section 23, it will not be ousted.

01:01:33:18 - 01:01:41:28

And so there needs to be some movement, we think, from the applicant in its approach to move this forward.

01:01:42:27 - 01:01:59:24

Okay. Um, thank you, Mr. Bedford. That's really helpful in actual fact. I understand the point you're making completely. Um, before I come back to the Mr. Harris, I'm going to open the conversation to any other local or county authority that wishes to add anything.

01:02:04:05 - 01:02:44:15

Yes. Thank you sir. Um, just to endorse what Mr. Bedford's sorry. Richie Barwick for Norfolk County Council and just to endorse what Mr. Bedford said. So, um, likewise, Norfolk County Council has, um, outstanding concerns in relation to parts three and part four on part four. Don't have anything to add to what Mr. Bedford has said in terms of part three. Mr. Bedford is right to identify that, um, Norfolk County Council has identified a few sticking points with the protective provisions as currently drafted. Um, and that was the basis for us, as well as a county council to indicate that at present we don't consent to the application of the land provision.

01:02:44:17 - 01:03:01:12

But, um, we are mindful that we can that, that that common ground could potentially be reached and therefore would be happy to have further discussions with the applicant. Um, and perhaps that could be done in advance of the next deadline.

01:03:02:25 - 01:03:11:23

Thank you very much for that. That message is understood, um, by me anyway. Um, in terms of any other county or local authority?

01:03:15:15 - 01:03:29:05

Nope. No indication of anybody else coming in at this point. Um, any other interested party or online or in the room I've got. Um, Rickie Fowler, is it? Fowler can't I can't see the thief.

01:03:29:13 - 01:04:00:28

I've got Rickie Fowler on behalf of National Highways. Yes. Yes, sir. Thank you. Um, sorry, I would I would just like to clarify, um, following, um, an earlier comment. So the lower Thames crossing, um, protected provisions will be separate to those for national highways that currently appear in part five of schedule 16. So they will be separate. Um, so while the DCR incorporates protective provisions for the benefit of National Highways, I think we we would want to put it on the record that there are fundamental provisions that are missing.

01:04:01:00 - 01:04:28:05

And you have our template protected provisions in next National highways. Relevant rep. Um, I think there is a real risk that we won't reach agreement. Um, and obviously we'll we'll need to make further representations in, in due course. But, um, I'm also conscious that obviously you're due to publish your schedule of, um, changes to the draft DCOM. So any assumption that those negotiations are necessarily going to resolve those issues may not be the case. So thank you.

01:04:28:22 - 01:04:57:23

That's understood. Thank you very much, Mrs. Fowler. Um, yes, I fully appreciate that. The protective provisions for Lower Thames Crossing are different from those that would relate to National Highways. So thank you. Um, and I have seen the previous drafts of, um, your, your, your preferred protective provisions submitted earlier. Deadlines. Um, right. Um, anybody else, uh, interested party in the rumour online?

01:04:59:22 - 01:05:03:08

Nope. No indication. Oh, I got to mw. Um.

01:05:06:25 - 01:05:30:15

Thank you sir. So it's Monica Wexler's on behalf of the Lower Thames Crossing project. Um, just a question, really, at this stage. Um, we have some submissions to make on article 59 of the DCO, and I just perhaps should have flagged that earlier, but it's not listed in the agenda. So I just wanted to make that clear now, just so that you're, you're aware and you can make a decision as to when when best to hear hear from us on those.

01:05:30:19 - 01:05:47:29

Um, if we have time, we'll come to it in any other matters. Um, if we don't have time, we'll ask you to put it in writing, please. So, um, that's our position with regard to things that are not on the agenda. Um, but we've got any other matters. Um, section at the end of the agenda, just in case. So.

01:05:48:01 - 01:05:49:17

Okay. Understood. Thank you. Sir.

01:05:49:19 - 01:05:59:27

Okay. Right. Okay. So I've asked twice now in terms of interested parties. So I'm going to go back to Mr. Harris. Um, For a response, please.

01:05:59:29 - 01:06:44:29

Very briefly. Russell Harris KC for the applicant. Um, it would help us greatly if Mr. Bedford, uh, could get the highway and drainage provisions, whether they be protected or, uh, in some other form, to us, as quickly as possible. That will allow us sufficiently to deal with your direction. So if I can make that plea through you to his team. Um, and again, it's really a question through you to him, which can be dealt with outside of the examination. But in relation to the ousting of, uh, section 63, he raised the issue of the days, um, if he could please tell us whether there were matters other than the days that we need to consider as soon as possible, then we will deal with that.

01:06:45:01 - 01:06:51:12

As to miss Fowler's position, that's noted and understood. Um, and I've got nothing else to say on that.

01:06:51:14 - 01:06:59:12

Okay. Thank you very much, Miss Harris. Uh, just by way of clarification, Mr. Bedford, was it section 63 or 23 is 23.

01:06:59:14 - 01:07:07:25

Thank you. I think there's probably a I don't know if the slip was mine or Mr. Harris's, but I used I think I referred to 62 days and section 23.

01:07:07:27 - 01:07:08:15

Right. Okay.

01:07:08:17 - 01:07:10:07

Seeing the hosting provisions.

01:07:10:11 - 01:07:35:06

That's fine. I just wanted to get it straight in my head because I'd heard one thing, and then somebody said. You said something slightly different. I just wanted to make sure I was clear. Right. Okay, so that brings me to the end of item, um, 5.1. Um, does anybody else want to say anything with regard to articles or schedules? Uh, with the getting up schedule three or schedule four, which is our next topic item?

01:07:38:00 - 01:07:55:18

No indication. So I'm going to move on to item 5.2, which is schedules schedule three requirements and schedule for discharge of requirements. Um, so starting with requirement five archaeology. Um.

01:08:02:11 - 01:08:03:14

Just reading.

01:08:05:24 - 01:09:02:12

So. Essex County Council in rep 4328 and Suffolk County Council in rep 4335 both made further comments with regard to schedule three, requirement five on archaeology, to which the applicant

responded in its responses to comments on first written questions. Responses. Uh, which was rep 52201 um advising it had updated the requirements in the draft DCO. The current version, which is rep 5060 to provide an approval of written scheme of investigation for archaeological evaluation work for clarification, for consistency within the Outline Archaeological Mitigation Strategy and the outline written scheme of investigation that the Preservation in Situ Management plan would, if relevant, formed part of a detailed scheme of written investigation as opposed to being a separate one.

01:09:02:27 - 01:09:55:08

They also provided provide that evaluation works must be in accordance with the written scheme of investigation referred to in my first point above, and also set out the process for post a post excavation assessment, approval of an archaeological update, project design, post excavation, analysis, publication and archiving. Uh. The applicant advised it had retained its original wording regarding pre commencement operations being carried out in accordance with the Outline Archaeological Mitigation Strategy and the Outline Written Scheme of Investigation, because it remains concerned that a blanket prohibition on the intrusive site preparation works would prevent anything being done on site that would even to the smallest degree, break the surface of the ground.

01:09:55:10 - 01:10:27:07

It also considered that a blanket prohibition is disproportionate and unnecessary in regards to a project of critical national priority. Uh. They also said that measures set out in the updated outline uh Mitigation Strategy and outline written scheme of investigation, together with its identification of priority areas and the extensive trial trenching that has already been carried out to date, would ensure adequate protections of buried archaeological archaeology during pre commencement works.

01:10:27:12 - 01:11:03:27

Uh. It further outlined that the Outline, Archaeological Mitigation, Strategic Strategy and Written Scheme of Investigation has been updated to follow following two rounds of consultation with Historic England and the archaeological advisers to the local authorities. Since submission of the document to the Planning Inspectorate with the Development Consent Order application for this project and these documents provided suitable processes, measures and controls to ensure that appropriate completion of evaluation and undertaking of mitigation of the project, in line with the the applicant's responsibilities under NPS m one.

01:11:04:20 - 01:11:34:20

Um, so I'd like to ask the relevant county authorities primarily and any local authorities, if they want to add anything, um, should they wish to, to comment on these submissions that have been made by the applicant? Um, clearly, you might prefer to do that in writing, but, um, I'll open it up to local authorities. Sorry, county authorities. First, bearing in mind they have primarily the archaeological function. Um, does any county or county authority wish to respond, please, Mr. Bedford?

01:11:34:22 - 01:12:05:06

Thank you sir. So, as you rightly say, well, take the opportunity to set out more fully in our, um, post hearing submissions, the comments on, uh, the applicant's, um, deadline five, uh, Submissions. But the

key point in relation to the exclusion of pre commencement operations from the need for any archaeological evaluation or investigation. We set out a position in some detail in rep 4335.

01:12:05:09 - 01:12:35:17

I know the applicant has responded to that. It was in our table ten item 10.2. But what the applicant's response doesn't engage with, we consider is the same issue again was a matter that arose at the sealing examination. Not only did the Sealink examining authority consider that the equivalent um requirement, which is requirement 14 of the Sealink DCO.

01:12:36:15 - 01:12:43:10

Um, and it helps if you're using their examination library. That document is rep

01:12:45:02 - 01:14:05:24

Zero three is the final um, draft DCO. But not only did the examining authority recommend the inclusion of a pre commencement works in the equivalent article. The applicant in that case acceded to that recommendation. So the reference I've given you rep 7003 is the applicant final develop consent order. And obviously you'll be aware that the applicant is the same body as sits as the other side of the room, albeit that they are two different projects, but we don't see from a appropriate protection of the archaeological resource that there is any meaningful difference in terms of the below ground sensitivity of parts of Suffolk which would be impacted by the projects, and therefore we would suggest that the same degree of safeguarding is needed to ensure that the pre commencement works are the subject of some prior evaluation or investigation, in order to ensure that one doesn't, as it were, irretrievably damaged, something which ought not to be irretrievably damaged.

01:14:07:09 - 01:14:15:22

Thank you, Mr. Bedford. Um, does any other county authorities have anything that they wish to add to that? Mr. Bedford hasn't already said? Please.

01:14:20:06 - 01:14:23:15

No indication opening up to any other local authority.

01:14:29:02 - 01:14:41:20

No indication in the room or online. So opening it up to any interested party. Does any other interested party wish to say anything with regard to this matter related to the requirement of five archaeology?

01:14:44:25 - 01:14:49:12

And going back to Mr. Harris as a final right of reply, then please Mr. Harris.

01:14:51:00 - 01:15:22:19

Russell Harris KC for the applicant. The issue here is proportionality and reasonableness and avoiding blank blanket requirements where the risk does not exist at the minute as presently drafted. Any breaking of ground whatsoever, including putting a single fence post in for um, preliminary enclosure work, would be caught by this. We don't think that's proportional.

01:15:22:21 - 01:15:57:12

We don't think it's reasonable. We note that Historic England agrees with us. Um, but unfriend really just relies on Sealink as opposed to addressing the proportionality point. Sealink is different with specifically different archaeological profiles, in particular the shoreline, and matters to do with that that was referred to in those hearings, in those examinations. We have a very different on land below ground profile and length and timetable.

01:15:58:04 - 01:16:43:07

In short, it's a very different position that the National Grid team were faced with in the circumstances of that case. And we can put that all in writing. We're very happy to try and reach a more proportionate and reasonable position with just Maloney friends clients, because most others, it seems, looking down the list of responses are content with what we're doing. And we might suggest, for example, and I'm going to ask Miss Hetherington and perhaps Miss Bishop, to explain a system whereby works can only be undertaken under the supervision of an archaeologist who has the right and the ability to stop the works if anything is found on on any intrusive works.

01:16:43:09 - 01:17:14:23

But at the minute, and I don't mean to be facetious, but we wouldn't be able to take a thimble of land in a case of land, so long as it involved the breaking of ground without having gone through the process that learned friend outlines. Um, and we think that's not proportional. I'm going to ask Miss Hetherington to say whether there's anything to add, and perhaps to say something about potential alternatives, which we will engage with, um, positively and appropriately with friends teams.

01:17:16:06 - 01:17:34:10

Thank you, Mr. Harris. Uh, I don't propose going back to the floor with regard to that. Um, um, that matter. So I'm going to move on to, um, my next question regarding requirement five. Um,

01:17:36:05 - 01:17:48:23

revised wording in the draft DCO you've included in the word the the relevant land. Um, but do we need to have some form of definition of the term relevant land, please?

01:17:50:15 - 01:18:08:15

Miss Abington Helen Heatherton, on behalf of the applicant. Um, the intention of the words relevant land was to, um, specify the particular evaluation works to which the DWC would apply. Um, we'll take away an action for deadline six to update the drafting.

01:18:08:17 - 01:18:31:01

Okay. Thank you very much. That's fine. Um, the time currently is 3:18. Uh, we're going to take a 20 minute break because we think it's appropriate. Um, so we will be back at, um, 20 to 4, so. 1540, please. Uh. We're adjourning. Thank you.