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Hearing Transcript

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00:05
Okay, that's the blind sorted. It's now 1130, so we'll resume the hearing and reiterate four, which is alternatives and design flexibility. We've actually covered a very large part of that issue, so I was going to ask about alternatives and design flexibility in respect of the main site, the biodiversity enhancements, the works at M40 Junction 10, and works at the 843 B4100 junctions. So I would like to ask the applicants if there's anything they wish to add in respect of those particular sub-items, if you like.

00:53
So I'm going to turn to my right in a moment and check if there are any particular observations that the team would like to make in relation to those particular facets of the development. I suppose the one overarching point that I would wish to make, which I know is not lost on you, sir, but in terms of for others participating in this context, you, the XA, are rightly questioning the position in terms of alternatives and design flexibility, in the context of compulsory acquisition, that is to say, what have we, the applicants, countenanced in terms of alternatives with a view to potentially minimum? Sorry,

01:37
I'm really asked if you could speak closer to the mic. Yeah, thank you very much.

01:40
Apologies, sir. Just to make this overarching point that you're rightly questioning the position of the applicant as regards alternatives and design flexibility within the context of compulsory acquisition. That is to say, what alternatives and flexibility have we considered, and flexibility have we shown in order to minimise the need for CA powers, I mean the reason I I flag that is because certainly in the context of other DC examinations, I have had experience of the third parties effectively eliding consideration of alternatives in the context of compulsory acquisition, with alternatives more broadly, for example, as considered in the context of environmental assessment. And I know, sir, that's not where your question goes. Your question goes to alternatives in the context of CA, and in terms of the need for CA powers, such as they are, I don't know if mr. Hilditch or others have any particular observations that they want to make in relation to alternatives and flexibility as regards the CA powers sought in these particular areas.

02:58
Simon Hildish, for the applicant, if I may, just make a couple of very brief points with regards to the highway works. Generally, for the Junction 10 highway works, the highways design approach document, document 5.5C examination library reference AS-051 covers a considerable number of alternatives in the broader sense of alternatives that have been considered for the scheme. I think the over 28 options considered in terms of how that came together. So I think that's perhaps the best place to look at the overall picture, regards to very specifics of compulsory purchase and the area. I think you mentioned the A43, B4, 100, Maynard's Green Junction. You may well have noticed in the application there's an either-or scenario with the highway works at that junction, which is which then has an effect on the potential plots that are needed for compulsory purchase, and that's covered in shown on the. So there's works 16 and 17 and works 16A. They are shown on the highway general arrangement plans

2.7A, which is AWP043, and the alternative AWP 065. And the reason for the alternative is because there's an ongoing inquiry into development around that junction, and depending on the status of what they do as part of their scheme, there's an alternative, and we've allowed therefore the flexibility to work with them if they get consent, and if they don't get consent for their scheme, we will be working on our own. Yes,

04:26
I'm just to clarify, Alexander Booth for the applicant. Just to clarify, when mr. Hilditch talks about other development which may come forward at that junction, that is development. Do you want to summarise very briefly the position as regards the Albion and Tritax inquiry that's currently proceeding.

04:43
If perhaps pass over to mr. Harley in terms of planning point of view, because he's probably got more to date information than I have.

04:49
Thank you, sir. Steve Harley, the applicant. I mean, it's a brief point, sir. I mean, there's a there's a live planning appeal following refusal of planning permission that's sitting at the moment, and the process is ongoing. So we. We await the outcome from that. So they have currently no status, but they have live proposals before inspectors in that context. And

05:08
so, so the position is that if development goes ahead, i.e. is consented by inspectors in the context of that inquiry, then some works will be undertaken in the context of that development, and that will impact on what we need to do or don't need to do in the context of this development, hence we we're retaining that flexibility and we're looking at those alternative scenarios, allowing for whatever outcome of the Section 78 inquiry that's currently ongoing. Is that

05:37
fair? If I may also add, Laura Bethphone, for the applicants, the the the reference. in the DCO for where that is dealt with are Article 26, which deals with the compulsory acquisition point, and Requirement 8.4, which deals with the scenario as to whether the sequencing of highway works as to what needs to be delivered.

06:01
So really, you've in a position where you have covered the bases as things currently exist, and if the floor moves underneath your feet, you've got a way of dealing with that.

06:14
That's absolutely right, sir.

06:16
Thanks very much. Is there anything else anyone wants to say from APs or the applicants on this? Thank you very much. In which case, item five is the compulsory acquisition and related provisions as presented within the draft DCO and on the land plan, so we're referring to the draft GCO, the explanatory memorandum, and the land plan on this item, and I'd like to ask the applicant to speak to each of the following aspects of this item. If I can just recite them, and then we can work through them again. But a, which articles engage compulsory acquisition and temporary possession powers, and b, the need for the DCO powers generally, and in particular that after taking temporary possession, you only require acquire land all rights compulsory in respect of that part of the order land actually required.

How the DCO will operate in the context of other nearby projects, of which there appear to be myriad, including any other projects involving improvements at A43, B4100, in the various possible programme situations, I'm thinking about the construction side as well as the whether it goes ahead or not, whether the DCO excludes the application of a compensation provision or modifies it beyond what is necessary to enable that provision to be applied, whether protective provisions are in a satisfactory form, and very quickly on Article 56 and Schedule 15, in respect of the Neighbourhood Planning Act, just to put nail that once and for all, I think, and also in terms of Articles 35 and 36, whether the draft GCO provides clarity for landowners in the preliminary works, construction, and maintenance scenarios, and where the project is delivered in phases or into different programmes. So, those are the headings I've got. Now, firstly, I've got a question for Oxfordshire County Council here. I understand that in respect of Article 28, which is the incorporation of the Mineral Code, you're considering the impact of this provision, and I wondered if you could briefly tell us what outstanding concerns you have.

09:20
Thank you, sir. Rahul Chah, Roger Lopez for Oxford County Council. I think we might have to take that to Richard reps to give you a full response on that. If that's

09:29
okay, that's absolutely fine. I was just what I was laughed at was just a position statement, effectively as to where you are with that that aspect. Thank you. Probably easy if I pass to my colleague George Gooney. Okay, right.

09:45
Sorry, George Gourney, Oxfordshire County Council. Just we don't have the correct officer in the room today to be able to address that point, so we'll have to come back in writing if that's okay.

09:53
Okay, thanks. Is there anything the applicant wants to say to that item,

09:59
Laura? For the applicant, no, subject to understanding the county council's concerns. Of course, it's it's it's based on precedent, and there's no number drafting.

10:11
Thank you. So, oh yes. Secondly, to the applicant, I note that in its relevant representation, which is RRO four two, the Environment Agency refers to various discrepancies in the order limits, and that in your response at procedural deadline A, you acknowledge some figures in the environmental statement being out of date, but go on to refer to activities carried out under existing permits and say that no substantive development engineering works, all ground disturbances are proposed across the majority of these areas. So, if you could confirm that the order limits shown on the land plan are correct, and that any discrepancies refer to out-of-date figures in the environmental statement.

11:20
Laura Bethelton, for the applicant, that's correct. The land plan odd limits are correct. Thank you.

11:27
And could you also explain which areas may nevertheless be subject to some substantive development, engineering works, or ground disturbance, and confirm that you have the necessary powers.

11:45
Laura Beth Hutton for the applicant, all of the land within the order. You'll note from the DCO, there's definitions of order limits, which is the the red line on on the on all certified lands. The order land, which is the land subject to powers of compulsory acquisition or temporary possession, is all shown on on the land plans. So any any land that's required for ground disturbance or physical works is within within that. Yes.

12:17
Thank you. So, firstly, to the applicant, if, in respect of the original application, if you could confirm which articles engage compulsory acquisition and temporary possession powers.

12:39
Laura Beth Heston For the applicant, the articles, as explained in the explanatory memorandum, sir, document 3.2 app 140, the articles which engage the relevant powers are Article 26, compulsory acquisition of land. As you noted yourself earlier, sir. That is subject to Article 27, as are all of the powers within Part 5 of the order, which is the time limit for exercise of those powers. Article 28 is the incorporation of the Mineral Code, as we as we discussed moments ago, and then Article 29 deals with the compulsory acquisition of rights and the imposition of restrictive covenants. Article 30 would allow the undertaker to exercise or acquire private rights over land, and then Article 31, the power to override easements or other rights. The temporary possession articles are, as you referred to earlier, sir, Articles 35 and 36. 35 being powers for temporary use of land for carrying out the authorised development, and then Article 36, the temporary use of land for maintaining the authorised development.

14:13
Thank you. And next is the need for powers generally, and in particular, that after taking temporary possession, you only require land or rights compulsively in respect of that part of the order and required. I think we've covered part of this already. Is anything you want to add in respects of your strategy in that respect?

14:40
Thank you, Sir Laura Beth Hutton, for the applicant. As you say, I think mr. Booth covered most of this earlier, and indeed explained the applicant's strategy and approach to land assembly and the land acquisition powers sought in the application. I think only to add, just for clarity, that the power. The different powers are shown are described in the in the book of reference and and the statement of reasons, which are documents 4.3 app 145 and statement of reasons document 4.1 app 143, and they are shown with different shading. The different powers are showing different shading on the land plans To help assist for clarity as to the powers that are being sorted and respected for each plot, so land shown coloured pink on the land plans would be subject to Article 26, which is the compulsory acquisition of land. Land shown tinted blue on the land plans would be subject to the acquisition and/or the creation of new rights, or the imposition of restrictive covenants, and land, which is Article 29, and land shown tinted green on the land plans would be subject to the acquisition of existing rights, which would show Articles 30 and 31, as I just mentioned, and then the temporary possession plots are shown shaded yellow for assistance.

16:14
Thank you. So, item C, I've got a sort of sub-item under this this item, how the DCO will operate in the context of other nearby projects, including any other projects involving improvements to the A43B4100 junction in the various scenarios. I think we've pretty well covered that one already. So perhaps you could say which projects are included in your cumulative impact assessment. Presuming it's consistency between the two.

17:01
Thank you, Sir Lara Beth Hudson, for the applicant. That is correct. I am going to pass over to mr. Harley to assist with that.

17:09
Thank you, Sir Steve Harley, for the applicant. The process for cumulative assessment obviously has a number of facets to it. If I answer or try and answer your question, you can come back if I slightly missed your point, sir. But in the concept, if I start with the TA transport impact work, it's a very considerable list, and that process, as you'll appreciate, is inherently cumulative in its nature. So the very, very long list of consented allocated developments that have been taken into account. There was agreed through the transport working group, and we can point you to where the details of what was considered and what's taking it on board there, if necessary, as part of the TA. More generally, throughout the ES, looking beyond transport, we agreed again, partly through scoping and through iterative dialogue with the local authorities, a number of key sites and either consented commitments in the to use the sort of parlance, as well as other schemes that were considered of relevance with a lesser status than commitment, but but considered to be potentially foreseeable. We agreed that with the local authorities, and you'll find through RAS reference to, for example, the Newtown, as it's known, proposals at Dorchester, adjacent the 9,000 home proposal, which is live under undetermined, as well as the Puy de Foo, and my French pronunciation may have let me down there, sir. But the leisure proposals you'll be you'll be familiar with on the eastern side of the M40, neither of those two have a planning status. They're subject to live planning applications, as are the commercial schemes around Junction 10, Baynard Green that we've discussed. All all of those have been taken into account cumulatively with regard to the the in a proportionate way, including the TA, but not exclusive to the TA, and that's in addition to all the other consented schemes, including things like the Great Wolf, which is another leisure scheme which was approved at appeal some years ago and has not yet come to fruition. So there's a long list of those schemes covered in the ESSA Chapter 16. I think is cumulative.

19:23
So, if I may add, in respect specifically in relation to compulsory acquisition, as we discussed earlier, Article 26 does include some drafting to deal with those alternative scenarios, specifically the Baynard Green A43 junction, which is the subject of the appeals we've mentioned, and also the the two plots which will will be subject to the change application, which means that of course that drafting can be removed from Article 26, and that will be done with the with the change application. That. The article refers to, as I mentioned earlier, requirement eight, paragraph four, which deals with those alternative scenarios and that sequencing of which development comes first. I think it's fair to say, article sorry, apologies. Requirement eight also deals and refers to highway works being undertaken by by Dorchester Living at the Chilgrove Drive Camp Road Junction, which overlaps with the applicant's work number 13B. That scenario is not yet dealt with in in Article 26, and that is something that we are considering, and we'll update the XA on that in due course.

20:50
And would you expect to maybe give us an update with your submissions at the next deadline?

20:56
Yes, very happy to do so, sir.

20:57

Thanks. Next is number D, which is whether the DCO excludes the application of a compensation provision or modifies it beyond what's necessary to enable that provision to be applied. So really, that's if you could speak to your To schedule 12, and your your your thinking behind schedule 12.

21:40
It's bad maybe we want to find it, sir. Thank you, Laura Beth Hutton, for the applicants. The compensation provisions within the DCO, the articles themselves, and Schedule 12 are very much based on precedent. There is no no novel drafting contained in those, save to specifically refer to to this DCO by the modification, and that is explained in the explanatory memorandum. If I just find the reference for you, sir. It's paragraph 5.249 of the expansion memorandum, which simply explains that it, as I say, follows precedent and modifies that legislation to ensure that by bringing in to the DCO of the compulsory acquisition legislation compensation legislation, it applies to any compensation payable under the under the order.

22:56
Thank you. Next 1e, briefly is whether you consider the protected provisions are in a satisfactory form, and that one is agreed, and it's been agreed with development parties, and to the extent to which you've managed to achieve that.

23:20
Thank you, Sir Laura Beth Hutton, for the applicant. I'm going to pass over to my colleague, mrs. Kate Radford, in a second. I think just to explain, as I'm sure you will expect, some months on from the submission of the application, we have continued to engage with all of those statutory bodies, and progress is being made.

23:42
Good morning, Sir Kate Redford. For the applicant, thought it might be helpful just to give you an overview of the approach that we've taken in relation to the protected provisions. So I'm going to refer to the guidance, which is the guidance published by MHCLG earlier this year, in July 2026, and that's guidance on preparing an application, Part Three, contents of a draft DCO, and that's what we've used to inform our approach to the protected provisions. So our starting point with the protected provisions has been to use the statutory undertakers template protected provisions, which they have provided to us, and then we've adapted them to be project specific, which is in line with the guidance, and also drawing on precedent from other made DCOs, not just SRFIs, but the DCOs made as recently as the last couple of years, as Laura Beth said, we have made good progress with those statutory undertakers, and I think in the next turn of the DCO that's submitted at deadline one, you will see some quite substantial changes to the protective provisions, with an explanation for those changes. In the DCO tracker, I would say that the sticking point with the statutory undertakers is the same as it always is in these in DCOs is ensuring that we have agreement in relation to the use of their land, because as is standard, statutory undertakers want wording in the protected provisions, which provide that we will not exercise compulsory acquisition powers, temporary possession powers, etc. without their consent, which clearly would be an impediment to the delivery of the development. So, what we are trying to do in relation to that is reach some land agreements. Do tend to find that negotiation of protective provisions and the land agreements go sort of hand in hand, and the more that we progress the protective provisions, we do find statutory undertakers are more willing to engage in relation to the the land agreements. But overall, I you know happy to say they made very good progress quite recently. We have set out in the projected provisions quite a novel approach to the drafting for national highways in Part Two, that relates to their land interests, which I'd be happy to take you through now, or can save that for when we get to statutory undertakers in in particular.

26:20
Thank you. I note that Network Rail has submitted a relevant representation, which we accepted as AS 087, which documents their land interests and states what it requires in order to withdraw its objection. I won't rehearse the list, but you know that are familiar with what I'm speaking about. And also, there's a submission by you of a signed statement of common ground between you and between you, the applicant, and Neil, which is in as ASO nine two, so I wondered if you could comment and advise when we may expect confirmation from Network Rail that it has withdrawn its objection.

27:15
Yes, sir. What I would say in relation to Network Rail is they are waiting for internal clearances, or they're seeking the internal clearances needed to enter into land agreements with us. So the protective provisions have we have made good progress in relation to those, and I think that will now facilitate the negotiation of the land agreements. But they are seeking clearances to enter into those with us. There is work to be done in agreeing the terms of those agreements. So I wouldn't be able to put a date on. I'll be cautious of putting a date or a reference to a deadline at the moment. But just to say that it is very proactive with Network Rail. We last sent a draft to them just two or three weeks ago, I believe. I'm just waiting for comments from them on that.

28:08
Thanks very much. So basically, from your end, you've done everything, and you've got the SSCG, and it's just going through some internal stuff at their end.

28:17
Yeah, Kate Radforsaw. I think so. We have a good relationship with them, and obviously they spoke very positively about the application yesterday. And as you refer to the statement of common ground as well.

28:29
Anything you wanted to add? No, thank you. So if I go on to number F on my list under this item, Article 56 and Schedule 15, which is the application of legislative provisions, whether to include elements of the approach to temporary possession set out in the Neighbourhood Planning Act 2017. Now we note that Schedule 15, Section 13 of the draft GCO would disapply the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession of land under Articles 35 and 36, and that this is justified in Appendix One to the explanatory memorandum, and is an argument put which is normally put that the provisions are not in force. Now we also note that development consent orders are now excluded from the Naval Planning Act in respect of temporary possession powers. So, two quick questions, really. Firstly, what's your understanding of the current position in respect of temporary possession powers, and is this DCO provision Still necessary.

29:44
Thank you, Sir Laura Bethleton, for the applicant. As you say, very strangely, sort of nine years on from the making of the Act, the temporary possession powers were not yet in force, which is. The reason that many DCOs seek to disapply them for certainty in the event that they might come into force and there be some confusion as to what which provisions apply to the DCM, but you're quite right, sir. I think we need to perhaps reconsider whether the the disapplication, certainly in the form that it's in, remains appropriate, and we will certainly do that, and make any necessary amendments to the DCO at deadline one, or indeed beyond during the examination, if necessary.

30:32

Thank you. Next to Articles 35 and 36, which relate to temporary use of land, and whether the draft DCO provides clarity for landowners in preliminary works, construction, maintenance, and maintenance. You're not doing decommissioning, so preliminary works, construction, and maintenance, and where the project is delivered in phases or to different programmes. So, Article 5 for 35 is temporary use of land for carrying out the authorised development. Article 36 is for maintaining the authorised development, and I wondered: is there a stakeholder communications plan or some other similar document secured in the DCO, which would, among other things, keep people informed about your plans and programme? I wondered if there was a community liaison group yet set up or anything of that nature. Wondered if you could comment, please.

31:51
Thank you, Sir Laura Beth Hutton, for the applicant. As I mentioned earlier, Articles 35 and 36 very heavily based in precedent, and I would add that the applicant has been in discussion with National Highways in particular about whether or not any particular amendments to these provisions might be needed in respect of any temporary possession plots which relate to the SRN or National Highways plots in particular. So there may well be further amendments to these, but I think we can probably deal with that at a later time or in writing after this hearing. And I think, in terms of notice for those affected by this by the plots, there are clearly notice provisions again based in precedent to make sure that the applicant is giving such notice. In terms of the community liaison group, you will have noted the very final requirement in Part One of Schedule Two, which is requirement 32, requires the applicant to to establish a community liaison group, and there are a number of bodies listed within within that requirement who will participate within that group. And we have indeed been in discussion with the local authorities about that list and whether whether others should be added. And so I anticipate that that would deal with any any such community community notices of works. I hope that addresses the question, Sam.

33:30
Thank you. Are there any matters that any APs in the room wish to raise in relation to this item before we close. The National Highways, yes. Thank you,

33:48
mrs. Vicky Fowler, on behalf of National Highways. Sorry, sir, get a bit closer. Just just starting off first on the on the temporary possession powers, and just giving a bit more flavour to what Miss Hudson's touched on. So, effectively, we have one plot which is in the ownership of national highways and subject to the moto services, which is the access to the motorway service area. So that's plot 331. So the discussions we've been having with the applicant is that plot is required, temporary possessions required effectively to tie in works 15A and 15B. But when you look at the the article in terms of the drafting of Article 35, obviously you have a list of very broad powers, including using the plots for working sites, for example. So what we are discussing is we we would expect temporary possession to be to be curtailed. There's other plots where temporary possession is being sought in relation to the stopping up of the bridleways and. Effectively, ecological fencing, and that's plot 370, sorry 3/7 5/31, 5/35, 5/36, and 5/37A. Now, national highways have rights to repair boundary features, and we would want to be very clear that any temporary possession doesn't prevent national highways from undertaking those boundary works. So, if a boundary fence came down, for example, then obviously to protect safety on the SRN and particularly the M40, national highways would need to go on and do those works, notwithstanding that the applicant may be on their may be in possession. And again, we'll deal with that hopefully through an agreement. On the PPS, so in the CPO context, no, they're not agreed, and Miss Hudson's correctly summarised the point in terms of we would want to see provisions that the compulsory purchase powers and rights of national highways are not extinguished without their consent, not to be unreasonably withheld or delayed. And again, the idea of the rights to maintain

boundary features are critical to national highways. But as Miss Hudson rightly says, we're working on agreements to hopefully get to that equivalent position where those those compulsory acquisition rights won't be exercised, and rights won't be extinguished. Thank you.

36:40
Thank you. Does any other AP wish to comment on this item? No. Thank you very much. In which case, we'll move on to item six, which is statutory conditions and general principles. Now, I think we've probably covered a lot of this in the opening item, where we had a comprehensive explanation. So, in terms of the statutory tests, the applicant can confirm that the application includes a request for compulsory reacquisition, in accordance with the 2008 Planning Act, yes.

37:27
Sir Alexander Booth, on behalf of the applicant, yes, sir, that's absolutely right.

37:32
Now, I think we may have covered most of this, but to set out whether the purposes for which the compulsory reacquisition powers are sought comply with Section 1222 of Planning Act 2008.

37:48
Yes, sir, Alexander Booth for the applicant again. That's right. So we say the purposes for to which each plot is going to be put is identified in Appendix One to the Statement of Reasons, and we say that these are all legitimate purposes. Either directly, they are directly involved in the delivery of the nationally significant infrastructure pursuant to Section 1221, or the land or interest are required for ancillary or related purposes, pursuant to subsection two.

38:24
Thank you. And next, whether consideration has been given to all reasonable alternatives to compulsory acquisition and temporary possession.

38:34
Yes, sir. I can confirm that's the position. And in essence, the alternatives issue breaks two ways. Firstly, consideration has been given to the alternative of reaching voluntary agreement with affected landowners, as opposed to reliance on compulsory purchase powers, and that is that has been the case and continues to be the case, sir, as I previously explained. And secondly, where possible, where appropriate, where there is the potential for an alternative arrangement which doesn't utilise either CA powers or such doesn't utilise such draconian CA powers, that alternative has been taken as in the context of the power land, which I addressed you about earlier on today, sir.

39:24
Thank you. And next, whether the rights to be acquired, including those for temporary possession, are necessary and proportionate. I think we've covered quite a bit of this. But if there's anything you'd like to add,

39:37
no, no, sir, nothing to add. Again, we do say they're necessary. We do say they're proportionate. They are the minimum powers necessary in order to deliver the scheme, and they're necessary as per the explanation in Appendix One to the Statement of Reasons.

39:51

Thank you. And finally, under this item, is the test in Section 1223. Whether there is a compelling case in the public interest for the compulsory acquisition proposed, both in relation to the need in the public interest for the project to be carried out, and in respect of the private loss to those affected.

40:17
And, sir, I did address this point in my initial presentation. I don't propose to rehearse that again, but yes, emphatically we say that the compelling case, as required by policy and case law, has been made out, and in that regard, we point chiefly to the national networks NPS and the compelling need identified for developments such as ours in that document. We point also to the statement of reasons and, in particular, paragraphs 3.8 and following. We point also to the assessment of need in the planning statement, paragraph 5.6 and following. We point also to the market report. Sorry, sir. I think I might be having trouble with my microphone. Apologies if it's not quite working. We point to the market report, and we point also to the GB rail freight supporting statement, and we rely upon all of those documents in making out our compelling case. And we say, sir, that in so far as there is interference with land and property rights, in particular Article One of the First Protocol rights, we say that that interference is proportionate and reasonable, and that the benefits, as delivered by our development, manifestly outweigh the interference to private property rights, and so in that context, again, I point to the lack of participation in this hearing and the very low number of parties that have objected to the inclusion of compulsory acquisition powers in their relevant representations. So we do say that the case is made out in terms of both the positive benefits of our scheme and the relatively limited disbenefits. Noting, as we do, of course, that there is necessarily some degree of disbenefit insofar as there is ever a compulsory acquisition necessitated in delivery of a project. Thank you, sir.

42:24
Thank you. Are there any further comments from any affected persons? Not seeing any. Do my panel colleagues have any questions they want to put at this point? No, thank you. In which case, we'll move on to item seven, which is review of the Land of Rights Negotiation Tracker, and we'll refer to the Land of Rights Negotiation and Tracker version two, which is its PDA 003, and quite a bit of this we've already covered. But if there's anything else you want to say to the applicant on outstanding objections, really to summarise outstanding objections and progress, and also secondly, whether you anticipate any further changes to the order land that might be required or envisaged at this point.

43:23
Thank you, sir. I think we're able to answer questions in such detail as you wish, but in the first instance, I think we look to take this as a relatively high level because, as you say, sir, we have provided a recent update in the form of version two of document 4.4, as provided under cover of our letter of procedural deadline A. So, so that that represents, in a very real sense, the update. I'm going to turn to Hutton in a moment, just for her to provide such limited further developments as there have been since that point. Thank you, sir.

44:00
Thank you, mr. Booth. I've had the very pleasant job of being able to update you on some progress, which we're pleased to report. So, as you've said, we submitted the updated negotiation tracker at procedural deadline A. That document does reflect the latest position with a majority of the affected parties, but there are some further updates since then, which I'll outline now. And to the extent that the examining authority would like to discuss any detailed negotiations, then of course can pass pass to others at the applicant's table. So very briefly, then the updates since procedural deadline A are in respect of plot number 214, which is the Adams family. We've reported in the tracker that we understood there was only one remaining point. That is now still the case. We believe we're waiting for confirmation on the fact that that final point has. Now being agreed, following which engrossments can

be circulated for signature, and in line with the statement of reasons, the intention is very much to reduce the acquisition sought, and therefore you will see plots changing from pink to green on the land plans. In that respect, once that agreement has been concluded, that doesn't change the order limits; it just changes the extent of powers being being sought, we've spoken at length over this the last few days in respect of the Merrick Jones parcels. So I won't I won't update further on that. The plots seven sorry apologies 617 618-720-1722. 81, 82, and 817, which are freehold plots, and 83, which which is subject at the moment to the compulsory acquisition of rights, which is which are all owned by Henry David Teer. We have agreed terms with mr. Tea, and we are waiting for confirmation that solicitors are instructed to begin the detailed legal drafting for agreement in respect of those plots, and that is the area of land which is required for ecological mitigation and also some of the Middletonstoni relief road. We have spoken again at length about the Dorchester Living plots in respect of well, we've spoken in respect of the Dorchester position on our application. In respect of the land negotiations, the examining authority will note that in the the tracker submitted at procedural deadline A, the applicant did supplement that tracker with the extensive detail on the negotiation that that has taken place, and and the reason for that was that the applicant's approach at application submission was to be a little bit more holistic in terms of the explanation of negotiations, but having seen the relevant representation submitted by or on behalf of Dorchester to live in took the decision that it was appropriate to ensure the examining authority was aware of the extensive attempts at negotiation in respect of the land position that have been undertaken over the last number of years, since the tracker was submitted on the 15th of September, we did receive a response from from Dorchester and their land agent on the 16th of September, and on the 18th of September we we have suggested dates for a further meeting to discuss those land those land positions. The applicant itself has received no no response on that meeting, but understands from an exchange with with Dorchester's land agent yesterday that they do remain willing to engage, which clearly we're very pleased to hear. But they are, at the moment, we understand prioritising their traffic modelling review and master plan for their own scheme. We will, of course, continue to seek agreement with them in respect of plots 732A, which is a freehold plot, 732B, which is a temporary possession plot, and 732C, which is a plot subject to rights at the moment, all owned by Cherwell District Council. We have, as you will see from the tracker, been seeking for a number of months now with the council the appropriate relevant contact to make progress with the land land discussions, and we have now received details of who we can do that with. So, very pleased to say that that will hopefully now start moving a little more. Thank

48:51
you. I was going to ask whether you made some progress there. Thank you. Yes. Carry on.

48:54
Very pleased to say we have. And then the final two entries really relate to what we term the Brown Trust, and also Jane Brown, Peter Brown, and Rebecca Haines. And these relate to plots six three, which is temporary possession, six four, which is freehold, six four A, which is temporary possession, and six 4b and six 4c, which are for rights. These plots are all unregistered land, and there appears to be some confusion in respect to the title position. We had, through our land referencing and due diligence exercise, and also engagement with owners and adjacent owners, suggested the ownership as is set out in the in the book of reference, but now we've managed to engage in more detail with the landowners. That appears to contradict what is in the in the book of reference. So I think it's a matter of who is listed and in respect of which plot we are endeavouring to get to to the bottom. Of that, it is unregistered land, and until we see evidence of title, of course, we we need to to ensure that we've got the appropriate powers to deliver what what is necessary on those plots. And at the moment, we've got unknown, as is appropriate for for land referencing, along with reputed owners. So we will update that position as as we can, and and continue to keep the examining authority updated. And of course, as you've already heard today, we've had positive discussions with national highways in respect of the

relevant interests that need to be captured with them. And I think we may come onto that in more detail under statutory undertakers, but we can do that now if that will be helpful.

50:40
Thank you. Unless I missed it, I was wondering whether you would hope to get agreement soon with Vivid or about the rights in relation to their interests.

50:56
Thank you, Sir Laura Beth Hutton, for the applicant. That's absolutely correct. I think it's fair to say the position remains as per the tracker submitted a couple of weeks ago. Now the discussions are ongoing, and I believe agreements are in circulation, but not not quite yet concluded.

51:13
Thank you. So hopefully that'll be in your post area submissions. I was going to say to suggest if there's any further movement of any significance anywhere, you might say since the hearing we've managed to achieve whatever. So we know what we've captured today, and also what might happen between now and deadline one.

51:36
We absolutely will do, sir. Thank you.

51:38
Thank you. Do any AAPs have any comments on this item? No. Let's move on to item eight. Sorry. Sorry, do apologise. Is it Oxford Accounts Council? Yeah. Go on.

52:12
We did note earlier on from mr. Booth that 70% of the CA land is currently in the applicant's ownership. Could the applicant confirm if the remaining parcels of land forming the 30% not currently in the applicant's ownership will indeed be prior to the completion of this examination?

52:43
Thank you, Sir Alexander Booth, on behalf of the applicant. I first just must correct the position, and I apologise if I've been sloppy in my language. It's not the case that 70% of the relevant land and land interests are within the applicant's ownership. The position is essentially that some 54% or thereabouts is within the applicant's direct control, insofar as options have been completed in relation to that land, and it is open to the applicant to secure ownership of that in the event that it seeks to do so. Once the well, if the DCO is granted, of course it will. So that's 54% The remaining 16 or so per cent, that is not within the applicant's control. But heads of terms have been agreed, and/or legal agreements are in circulation, such that, in relation to the 70% figure, we say that there is every reason to regard that as being all within the applicant's control, albeit I wouldn't use the term ownership. So I just flag that for correctness because I wouldn't want there to be any risk of the applicant misrepresenting the position. In terms of the remaining 30% I mean, standing back and looking at past experience, I have to say that I think it's extremely unlikely that all of that remaining 30% will be effectively brought within the control of the applicant during the course of the examination. I've never myself been involved with a case where absolutely every interest has been acquired. So I would anticipate there will be some degree of some degree of some extent of land or interest remaining outside the tent, so to speak, at the end of the examination. And I say that also because there are one or two instances where there is effectively no material prospect of agreement being reached, or there is a there is a a possibility that agreement will not be reached as between ourselves and a another party because there is entrenched opposition. So there's that one possibility. There are other scenarios as well. I mean, there are a number of

landowners who don't object to the scheme per se, but who are represented by an agent who is not currently engaging with the applicant and its team, notwithstanding the applicant team's best efforts to try and engage with that agent. And in circumstances where there is no engagement from the other side, that represents an obvious barrier to doing a deal. I mean, essentially, it takes two to tango. We can't conclude an agreement with ourselves, and so again, I can't tell the examining authority that there will be agreement with those parties because that depends on participation engagement by the other side in the debate. What I can say with absolute certainty is that the applicant and its agents will continue to engage in respect of all outstanding interests, and I would hope that there will be significant further progress during the course of the examination, I certainly expect that. But in mr. Ibadi, in relation to your particular query, I will it all be brought within the tent by the end of the examination. I have to sit here and be realistic and say no. I'm just going to pass Ms. Hutton to my right, just to provide a little more nuance, potentially, in terms of what I've said.

56:27
No, not at all. Thank you, mr. Booth. It was also, it was, it was just to add that, of course, the examining authority will see from the sort of red, amber, green rating in the in the negotiations tracker that is the applicant's understanding of the likelihood of being able to resolve those agreements by the end of the examination, and we will of course keep that under review and update that each time that tracker is submitted to give the examining authority as much clarity as we can.

56:56
Yes, thank you. The likelihood by indicating red, amber, or green is extremely useful. The question I like to ask them is: Has the applicant identified the most difficult or less difficult of the 30% Please.

57:18
Thank you, sir. In relation to, I'm not sure there's a league table as such in terms of who is the least likely to reach agreement with us and the most likely. What I would say is that, I mean, obviously the amber colouring within the tracker represents those interests where we anticipate a greater degree of progress, and the red delineation represents those where we think there is less prospect. But it's important to remember that the examination lasts for a considerable period. We have six months essentially, and during the course of that period, a lot can happen. And we will keep pressing on all fronts, and even those parties who are relatively entrenched in their opposition at present, we may make progress with them, and things can turn on sixpence. So, I don't say no in relation to any of the interests. I just, when I say it's unlikely that we'll have agreed terms with everybody, that's just looking at the position, in the generality, and at past experience. So there isn't actually a league table as such. The best we can do is point you to the document, the tracker at 4-4, and we'll keep that updated. And as I say, so what we'll look to do is keep the XA appraised not just at CAH2. We'll keep the XA appraised of progress throughout the remainder of the course of the examination.

58:45
Thank you.

58:48
Thank you. Let's move on to.

58:51
Sorry, I think OCC.

58:52
Yes. Yes. So we do have Oxford County Council. Yes. Thank you.

58:56
Thank you, sir. Rahul Chavaraja Lopez for Oxford County Council is just a brief point to note: Oxford County Council's interest in the land affected by the proposed DCO around the Ardley Woods quarry. From OC's perspective, the negotiations have appeared to be progressing positively. And just a quick point to note that we have provided some amended heads of terms. I believe on 28 July, no substantive response has been received from the applicant since then. But we are looking to agree those and get a voluntary agreement. Thank you very much.

59:37
Thank you for the update. Thanks very much. Are we down? Yep. Let's go on to item eight, which is funding. Just to say, the document there is the funding statement, which is APP 144. Now, I intend to. Deal with this item in this situation we're in by way of written questions, other than to ask whether the applicant has any updates to the funding statement. For instance, whether there is any significant change in its ability to fund the compulsory acquisition and the proposed development itself. Thank you.

1:00:23
Thank you, Sir Alexander Booth, on behalf of the applicant. In answer to your question, no, there is no significant update. The position was and remains that the applicant is an SPV, but is extremely well resourced in terms of the financial position of its various parent and ultimate parent, parent USAA, and we say on that basis there is no concern, and indeed we don't understand there to be any concern on the part of third parties having made relevant representations as to the ability to deliver the project. But so we'll be happy to address any specific queries you raise in writing, but no, sir, no update. We remain of the position and of the view that there are substantial funds available, and that on that basis, the policy test as regards reasonable expectation of funds is manifestly satisfied.

1:01:16
Thank you.

1:01:17
Thank you, sir.

1:01:19
Any comments from any affected persons on the funding of the project and of compulsory acquisition. No, in which case, item number nine is statutory undertakers. So here we want. I want to deal with the current position in respect of Section 127 and Section 138, including representations made and whether there are any remaining which have not been withdrawn, and any other outstanding matters. So, in terms of the current position in respect of section 137 and section 138, including representations made and whether there are any remaining not withdrawn, could the applicant please give a brief update on where we are with protected provisions?

1:02:23
Kate Radford for the applicant, sir. I think what we touched on quite a lot of this earlier, but in summary, we haven't reached concluded any land agreements with the statutory undertakers yet, save for Thames Water, which is plot 511. That's an agreement in relation to some non-operational land, but we are continuing the negotiation of protected provisions alongside land agreements with the sector undertakers. But at present, there aren't any concluded agreements in relation to operational land.

1:03:05

Thank you. I just have one other thing to ask. Bit of an overlap with the DCO side of things, but bearing in mind the different definitions of statutory undertaker in sections 127 and section 138 of the Planning Act, are you satisfied with the definition of statutory undertaker in Article 21,

1:03:40
Nora Beth Hutton? For the applicant. So yes, I think we are. It's again a definition used in many orders. We're happy to review if the suggestion is that that is necessary.

1:03:55
Thank you. Have you had any comments from any of the SUs about those definitions.

1:04:04
Laura Beth Hutton for the applicant. No, we haven't, sir.

1:04:07
That's fine. Thank you very much. Do you have any other matters you want to speak to on this item?

1:04:19
Laura Beth Hutton for the applicant. No, sir, I don't think we do. Thank you.

1:04:27
Before I move on, do any affected persons have anything they want to say? In that case, we'll rattle through the next few items very quickly, but it's really just for the record. Item 10, Crown land, for the applicant to confirm that there is no crown land affected, either by the application or the proposed changes to the application, and that consequently section 135 of the Planning Act is not engaged.

1:04:57
Yes, sir. I can confirm that is the position. No crown lantern. Thank you. Thank

1:05:01
you. And moving swiftly on to 11, please confirm there is no special category land affected either by the application or the proposed changes to the application, and that consequently sections 130, 131, and 132 of the Planning Act 2008 are not engaged. I think we covered this earlier, anyway. We

1:05:23
did, sir. But yes, I can confirm formally that is the position: no special category land, in particular, as per the agenda. No public open space.

1:05:30
Thank you. So we come on to the other purpose of this hearing relating to human rights and the public sector equality duty. We have on the agenda, the headline agenda, circumstances within which the provisions relating either to human rights or the public sector quality duty might be engaged, and how the applicant has taken into account the relevant provisions in the Human Rights Act and the Quality Act 2010, and we'll refer to the applicant's equality statement, AS086, and we will consider Article 1 of the first protocol to the European Convention on Human Rights, the ECHR, and Articles 6 and 8 of the ECHR, the degree of importance to be attributed to the existing uses of land which is to be acquired, and the weighing of any potential loss of ECHR rights against the public benefit, if either if if if the DCO is made, and obviously the public sector equality duty as well. Just bear with me a sec. So, by way of introduction, the Human Rights Act 1998 transposes the fundamental rights and freedoms of the European Convention on Human Rights into domestic British law. The first protocol is at Part Two of

Schedule One, and the articles are at Schedule One, Part One of the Human Rights Act 1998. We are particularly interested in Article One of the First Protocol and Articles Six and Eight. So, to the applicant first matter, could you please explain how the requirements of Article One of the first protocol are satisfied for this project.

1:07:50
Thank you, sir. I mean, as regards Article One of the first protocol, and addressing that specific provision in light of the way that you put the question, we recognise that private property rights are protected by human rights legislation, in particular rights to property pursuant to Article 1 of the First Protocol. However, those rights are not absolute and can be subject to compulsory acquisition powers where the interference is proportionate and justified. Further, also relevant in that context is Article 6 and the right to a fair hearing. And we say that this process, the examination process, is sufficient to provide for that fair hearing. The applicant has carefully considered those Article One First Protocol rights, which are the subject of interference by way of our seeking compulsory acquisition powers in the context of the scheme, it has identified those interests, all relevant interests, and those have been weighed in the context of considering the public benefits that would be delivered by the scheme, and we say, and indeed this is embedded in the compelling case which we say supports our case for compulsory acquisition, we say that the interference with those those Article One First Protocol rights is justified and is proportionate, such that there is a compelling case in the public interest. So, so whilst we note them, we have considered them, we have weighed them alongside benefits, and we say there is justification for the compulsory acquisition powers that we seek. Thank you.

1:09:37
Thank you. Have you covered all the three, or do you want to make further comments about Article Six?

1:09:45
Well, so

1:09:45
Article Eight.

1:09:46
I wouldn't propose to make any comment, further comment about Article Six. I'll touch briefly on Article Eight.

1:09:50
Yes,

1:09:51
Article Eight is, of course, concerned with protection of and respect for protection of and respect for the right to family life. Article eight is engaged in circumstances where there is compulsory acquisition, in particular, of private dwellings, or potentially the curtilage of private dwellings. So that is not this case. In overwhelmingly large part, the land and rights sought comprise effectively arable farmland, giving rise to considerably less chance of interference with Article 8 rights. There are two residential properties in the context of the site that need to be considered. That's numbers one and two, Ashgrove Cottages, But those two residential properties sit within their main ownership, and we, the applicant, have an option in respect of that property, including those two cottages. The cottages are currently occupied by lessees, and the option provides for the surrender of the interest to us on the basis of vacant possession. So we do not anticipate exercising any compulsory acquisition powers in relation to any

residential activity. And so, you will note, and to the best of our understanding, there is no objection to either the scheme, more generally, or the compulsory acquisition piece. There's no objection raised by either one of the occupants of those two residential properties. So we say that, in fact, Article 8 rights don't really bite here.

1:11:40
So you're not expecting to have to exercise any powers. It's just there as a kind of a fallback.

1:11:46
That's absolutely right. So, and you will be familiar with a situation where DCOs are granted subject to a myriad rights, which are not are not anticipated to be relied upon, but they are there to copper bottom the position just in case strange or unusual situations develop. They're there to provide a backstop, but we don't anticipate exercising compulsory purchase powers in relation to any residential property, and therefore, and indeed, there's no opposition to the DCO on that basis, and we say Article 8 rights aren't engaged.

1:12:25
Thank you. So, just moving on to the degree of importance to be attributed to the existing uses of the land, which is to be acquired, so to assist us in establishing the economic balance of public benefits against private loss. Could you please explain the degree of importance you consider should be attributed to the existing uses of the land which is to be acquired,

1:12:55
sir? Thank you very much, Alexander Booth, on behalf of the applicant. I mean, the position here is one wherein, as I've already indicated, the bulk of the land to be acquired comprises agricultural farmland. Further, the bulk of that farmland is to be acquired on a voluntary basis, pursuant to the options already concluded. Insofar as voluntary agreements have been or are reached with landowners. We say that the regard appropriate to existing operations on the land has already been had regard to, and it's on that basis that the landowner and the applicant have effectively reached terms. In that context, it's appropriate to note that whilst there is some most versatile agricultural land, I mean, there is no significant. We say there's no significant quantum of land such that it gives rise to any wider considerations. We've heard from mr. Broad about the need for farmland more generally, and that is noted and acknowledged. But by the same token, what is also necessary to note is that there are comparatively vast swathes of farmland throughout the UK which can provide effectively service as in terms of food production, and in particular, there are vast ways of land of a superior quality to the land that's, by and large, going to be utilised in the present context. So there is that position, and that has to be set against the need for this development, the compelling need, as I keep saying, as expressly and unequivocally identified in the national networks NPS for development of this type, and again retreating to what I've said previously more than once, this type of development, which can only be located in a very few particular locations where one has that critical nexus, as we. Between the strategic road network and railway service, so we say that regard has been had to the use of land, regard has been had to existing operations, and the balance that we have struck in terms of identifying this site as being suitable for the development is an entirely appropriate one. Thank you, sir.

1:15:23
Thank you. And finally, before we get on to the PSED, the weighing of any potential loss of ECHR rights against the public benefit. Do you have anything to add to what you've already submitted in the context of establishing the individual, personal, human balance of public benefit against private loss.

1:15:48

I'm not really sure. I mean, you've heard a lot from me over the last three days. I'm not really sure there's anything that I I can add to what I've already said. We have undertaken that balance on the applicant side of the room. We state emphatically that the correct balance has been struck, and in noting that and reaching that conclusion, we do ask that the XA pay heed to firstly the national network's NPS and the compelling need identified therein. We then ask you to note what we say in the statement of reasons, in the planning statement, in the market report, and also in the GB rail freight supporting statement, all of which we say serve to come together to demonstrate conclusively that, insofar as there is interference with Article One First Protocol rights, as there is here, we say that that is relatively limited, as borne out by the very few objections in respect of compulsory acquisition, minimal, very minimal objections, and as regards on the basis of those minimal objections and the manifest benefit, we say that the interference with ECHR rights is appropriate.

1:16:53
Thank you very much. Thank

1:16:54
you, sir.

1:16:56
So, finally, on this item, we're looking at the public sector equality duty, which is a duty placed on the Secretary of State under Section 149 of the Equality Act 2010, and as part of its recommendation report to the Secretary of State, the XA will advise the Secretary of State whether or not this duty has been complied with in respect of this project, and we've obviously asked the applicant to assist us in this matter. So we thank you for submitting your equality impact statement back in May 2026. And could you please speak to that document and explain how it's going to assist the Secretary of State. Thank you.

1:17:43
Thank you very much. Yes, I mean I'll speak to that. I think relatively briefly, the Equalities Impact Assessment Document 7.4 that sets out what we say is a comprehensive assessment of the potential engagement with protected characteristics and should assist the Secretary of State in discharging the public sector equality duty. So the bullet points, which I note of this, that that report engages both with the construction phase and with the operational phase. In each of those instances, there are only very limited rights which are potentially engaged by this proposed development, and so I mean that is a direct consequence of this being a development undertaken largely on open agricultural fields, as opposed to say the regeneration of a housing estate in an urban centre, so it's it's it's not, if you like, a type or category of development which would one could expect significantly to engage the PSET. So impacts have been assessed in both construction and operational terms. You will have noted, sir, from the report that the impacts are very largely neutral or positive in terms of both those phases-constructional and construction and operational phases-and what you will also have noted is that there are some recommended measures to ensure that all effects are effectively neutral or positive, and those recommendations are identified at the close of the report. And those are all measures which the applicant proposes to adopt and which are secured through the order. Thank you, sir. Thank

1:19:35
you very much. Before I close this item, is there anything anyone else wishes, any AP wishes to say to this item? Yes, sir.

1:19:49

Sorry, George Kenny, Oxford County Council. Just to come back on that point about impacts, obviously we will be producing a local impact report at the next deadline, which might challenge some of those conclusions the applicant just outlined.

1:20:06
Thank you. Now the next item, 13, submissions from affected persons on the applicant's strategic case. So we've heard those as we progress through the agenda, But is there anything any affected person wants to add before we close this hearing? I'm not seeing any hands anywhere. Nope. Right. Thank you very much. In which case, That catch-all item is now finished. Thanks, everyone, for your contribution. It's been very useful for us. And item 14 is any other business. So, very quickly, does anyone have any other business relevant to this hearing?

1:21:01
No, sir.

1:21:02
Thank you very much. So next steps. I don't think we have anything to add here. This would normally be where we would refer to any actions that need to be taken. So I'm not seeing any of that. So finally, thanks everyone for your participation and contributions today. I'd like to assure you all that everything said today will be carefully considered. If necessary, we may pursue matters identified in written questions or in other hearings, but that just depends on how things pan out. I'd like to thank the case team for supporting these hearings, and please remember to submit your post-hearing submissions and anything else we may have asked for. I don't think we have actually in writing by deadline one, which is week after next, which is Tuesday, the 13th Of October 2026, so it's now 12:52. I make it, and this compulsory acquisition hearing one is now closed. Thank you.