



Event Transcript

Project:	East Midlands Gateway Phase 2
Event:	Issue Specific Hearing 1 (ISH1) – Part 1
Date:	11 March 2026

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Issue Specific Hearing - 11_3_26 BU

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SUMMARY KEYWORDS

East Midlands Gateway 2, issue specific hearing, substantial completion, material change order, environmental statement, planning permission, commercial development, highway works, section 104, section 105, policy statement, regulatory position, associated development, planning commission, industrial action, action points.

SPEAKERS

Speaker 4, Speaker 6, Speaker 8, Speaker 7, Speaker 9, Speaker 11, Speaker 13, Speaker 3, Speaker 10, Speaker 2, Speaker 5, Speaker 12, Speaker 1

 00:00

I Good morning, everybody. It's now 10 o'clock. I have this time for this hearing to begin. I would like to welcome you all to this issue specific. Hearing, amazing to the East Midlands. Gateway two project. Can

 01:12

I confirm it clearly? I can also confirm

 01:16

the case theme that the live stream the recording domains has also commenced.

 01:20

I can confirm that the live stream on the recording has commenced.

 01:25

Thank you. My name is Robert Jackson, and I've been appointed by the Secretary of State for the Dean member of the panel to examine this application. I'm now going to ask my other fellow members to introduce themselves.

 01:38

My name is Liam page, and I've also been appointed by the Secretary of State to be a member of the panel to examine these applications.

 01:44

Good morning. My name is Gaurav rushi. I have been appointed by the Secretary of State to be a member of this panel to examine these applications. I'm also going to be keeping a list of action points, similar to yesterday, and we can run through this at the end of the DR together. We constitute the examining panel for these applications. I'll now deal with a few housekeeping matters of those attending in person, some of you may have already heard yesterday, but those joining us today for the first time, I'll briefly recap. Can everyone please set all electronic devices, watches and phones, on silent. Place. There was only one fire alarm scheduled yesterday, which was the only one for the week. So if the alarm goes off from now, we should treat it as a real thing, and acting through the sign fire exit, follow the signage of the hotel fire point, which is located directly opposite to the main or the anthems. If you need to use the toilet, these are to be found in the corridor, on this side, my left and on your right. Whosoever is sitting facing us at the table. Can I also say that in order to manage the fatigue and to allow the comfort breaks, we will have a short breaks every hour or so with lunch around 1pm for about an hour, and then short breaks in the afternoon, before we finish at 5pm this meeting will follow the agenda published On the national infrastructure planning website on 10th, February, 2026, examination, library, reference, PD, 010, it would be helpful if you had a copy of this in front of you for the benefit of all parties. The applicants team will share the agenda on screen at relevant points during the proceedings. The agenda is for guidance only, and we may add other considerations or issues. As we progress, we will conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. But if the discussions cannot be concluded, then it may be necessary for us to prioritise the matters and defer other matters to the written questions. Likewise, if you cannot answer the questions being asked or required time to get the information requested, then can you please indicate that you need to respond in writing to let everybody know today's hearing is being undertaken in a blended way, meaning some of us are present with us at the hearing menu, and some of you are joining us virtually, using Microsoft Teams. We will make sure that however you have decided to attend today, you will be given a fair opportunity to participate a recording of today's hearing will be made available on the relevant project pages of the national infrastructure planning website as soon as practicable after the hearing has finished, a transcript will also be made available, which will utilise the AI technology. With this in mind, please ensure that you speak clearly into a microphone, stating your name, who you are representing each time before you speak. For those with the microphone, you need to press the button to work. The red light indicates that the microphone is live. And if you are not at a table with the microphone, there is a roaming microphone, so please wait for one of these to be brought to you before you speak. A link to the planning inspectorates privacy notice was provided in our rule six letter. We assume that everybody here today has familiarised themselves with this

document which establishes how the personal data of our customer is handled in accordance with the principal setups in data protection laws. Please speak to our one of the case team member if you have any questions on this, as was explained at the preliminary meeting and in yesterday's afternoon hearing, the majority of planning inspectors are members of Prospect union and are currently participating in a period of industrial action short strike. This essentially means that we are not working over and above our contracted hours. This has been accounted for in our timetable for this week, and we thanks for your understanding on this next I'll move on to the attendance. I'm going to ask those of you who are presenting in today's meeting to introduce yourselves. I appreciate that several of you introduced yesterday, but for the benefit of today's recording and to keep the record clear, could I ask to briefly introduce yourself again. Can I state your organisation name? Could you please introduce yourself, stating your name, who you represent and which agenda item you wish to speak on, if you are not representing an organisation, please confirm your name, summarise your interest in the application and confirm the agenda item upon which you wish to speak. Could you also state the title by which would like to be addressed and to start with, can I ask the applicant and their advisors first Good morning, sir.

 07:14

I think the new microphone is working. My name is Alexander booth kings Council, and I'm here on behalf of the applicants in this land. Applicants in this matter. I anticipate that we will be speaking to all items on the agenda, or that is to say items three and following on the agenda in terms of how matters are conducted. Today, I'm going to be assisted as our investigator by Mr. Richard Irving of gown to my left, and also my left, and also Mr. Tony Westman of Gowling to my right. In addition, the applicant will also rely upon evidence from other members of the team. Now, I can introduce them all now and their staff running to my right, or I can introduce them as and when the relevant item falls in the agenda, I think

 08:01

it will be appropriate. I as and when.

 08:11

Thank you. Can we move on to the organisations and individuals that have given notice of their intention to speak? The first on my list is North westchestershire District Council, to introduce yourself.

 08:23

Please Good morning. I'm Jessica Allen, instructed

 08:28

on behalf of the district council. I am joined today again by Chris Elliston, to my left, who's the head of Planning and Infrastructure Council, and to my right shoulder, legal assisted, and we have been asked to the exciting before to answer

 08:48

any questions and authorities as appropriate. Thank you. Thank you. Next Leicestershire county council, please,

 09:08

missed next Could I ask the national Highhams to introduce yourself who I believe joining us online.

 09:25

Thank you, sir. My name is Rahul hack. I am a solicitor at TLT, and we are solicitors for national highways. We are proposing to comment Item six and seven. Although we have no specific submissions, we may want to comment in response to the applicant submissions, and we also have to assist you in questions you may have for us. I'm joined by two others national highway, so I can introduce them now, or I've allowed them to introduce themselves.

 09:55

Yes, please. No. First

 09:59

is Mrs. Fiona Ahmed of Jacobs for national highways. And second is Mr. Jeremy blue, British national highways. Thank you. Good morning. Fiona Ahmed from Jacobs representing national highways this morning.

 10:18

Morning. Jeremy bloom representing national highways this morning as well. Thank you.

 10:26

Thank you. We are going to note at this point that we have a representations from the locking town Tom Hammonton Paris Council and long Watson and Diceworth Paris Council, who have indicated that they wish to observe. I won't ask them to introduce themselves now, but should they wish to speak later? Please put your hands up and we will ask you to introduce yourself at that moment. Now to other interested parties, we have two groups of organisations, Prologis UK, limited and Prologis UK, one to one. Limited. Can I ask Prologis to introduce yourself?

 11:22

Please? Companies. Discussion

 11:34

goes. We intend to speak to items, 346, and seven.

 11:37

I'm intended as Miss AV,

 11:39

many times to

 11:43

ask Thank you, Mr. People,

 11:46

next Can I request East Midland International Airport limited and East Midland airport property investment limited? To introduce yourself, please,

 11:56

Good morning, sir. My name is Mark Westman Smith, Kings Council, and I appear face Midlands Airport. I'm instructed by John Riley, who's a Partner in Princeton masons, and sits to my left, and I'm sitting to my right as Alistair Andrew, who's the strategic planning director at Manchester Airport Group, the owner of East Midlands Airport. And later on, today, we'll be joined by Simon Pratt, who's the managing director in relation to transport at SCP transport planning, we intend, with your leave, to speak to items, 346, and seven. Mr. Pratt will join us, principally for seven, possibly four six as well, and I pretend to be referred to as Mr. Thank you.

 12:50

Thank you. We also have the East Midland free boat and members of the public who are here to observe the hearing. I'll not get you to introduce yourself unless you wish to speak on the agenda item for today. So now, could I ask if there is anyone else in the room today who would like to speak? Please let me know now. Yes, please. Yes. My name is

 13:16

Joyce, yes. Yeah, hello. My name is John Marriott. I'm appearing here on behalf of CPRE and protect Diceworth, mainly to talk about traffic and transportation matters.

 13:34

Could you also state how would like to be a Chris as a title? Please? Mr. Sky. Thank you.

 13:45

Is there anyone else? Thank you, sir, Mr. Ray Sutton, resident representing

 13:54

Kegworth parish council today, also which I'm a member, a member of North West an active member of North West Council, but not representing them today. Thank

 14:14

you. Is there anyone online among virtual attendees who would like to speak today? I I don't see any hands on the hammer schemes. So finally, is there anyone else in the room would like to speak? No, I don't see any hands. Thank you. That concludes the first item on the agenda, and I'm going to hand over to Mr. Page to deal with the purpose of the hearing.

 14:46

Thank you, Dr Joshi, so the purpose of the hearing is to consider the issues on the detailed agenda, which was published on the second of March 2026, and can be found on the examination library under reference EV two, Dash 001, firstly, we want to have a discussion about the legal basis on which the Secretary of State will be required to determine the applications. Secondly, we want to move on to a discussion about the interoperability between the Town and Country Planning Act 1990 and the Planning Act eight. Thirdly, we want to look at the relationship between the two applications on the ground and discuss the implications of any overlap. Fourthly, we wish to discuss the issue of need and alternatives. And finally, the issue of traffic and transport given the nature of the issues being discussed today, we may stray into discussing the draft development consent order and the draft material change order and potential amendments. We will try to keep the principal focus of this hearing on the issues in the agenda, because we do have a second issue specific hearing tomorrow to discuss the draft rules in detail, as set out in our rule six letter, we have allowed for further issue specific hearings later in the examination which we will use to hear Oral evidence to clarify issues that cannot be understood from written submissions alone. In this respect, we would reiterate that the examination is predominantly a written process, and that all matters, both written and oral, are given the same weight. I hope that is clear. But are there any comments about the purpose of today's hearing. Don't

 16:46

see any hands so on.

 16:50

So we're going to keep a list of action points, as we did yesterday, which we will go through at the end and publish as soon as possible. Can I also ask that you keep your own lists so that we can check we will have the same understanding when running through them at the end. In general terms, we would like responses to action points of deadline, one which in the draft contamination timetable, is the seventh of April 2026 that said specific actions might not be achievable by deadline, one for very good reasons. If that is the case, then please indicate this. We can have a short discussion and agree when the action point should be responded to. We do have a substantial amount to get through today, so if it looks like we are going to run out of time, then we will stop hearing a natural break before 5pm and move whatever is left into written questions. As you know, we're able to get our first written questions out next week with the relate letter. If following the answers to those written questions we feel there is still a need for formal examination. We will pick up the things we cannot cover today at subsequent issue specific hearings in due course, if we do struggle for time today, but also considering the possibility of adjourning this hearing at 5pm and reconvene tomorrow afternoon, after the end of issue specific period two, and we will discuss the possibility of this later, if the leader arises. So that concludes this item on the agenda. I will hand back to Mr. Jackson to deal with Agenda Item three, on the legal basis of determination of the applications.

 18:44

Thank you. Thank you. We're going to deal first with the MCO application, because hopefully it is the simple of the two, as partners will be aware, an MCO application can be considered where the original development was not substantially complete more than five years ago, the Advocate has indicated its view that the EMG one application substantially completes in October 2024 Can I ask a bit more further why it holds that view? We're also aware of the case law left to individual buildings and also the recent hillside case, but what we are interested in is how substantial completion as a concept may relate to a multi phase development. Is each building substantially completed that occurs the overall wasn't until the end. How does that work in the specific scenario we have here, whether the completion of the authorised lower gantry cranes on the EMG one development isn't substantially complete because it hasn't happened anyway, or whether that is such a minor item that it would not affect it for substantial completion, either way.

 19:58

So Alexander booth, for the applicants,

 20:02

not a very encouraging start, but I think so what I may need to do is come back to you in writing on that matter, insofar as it's not a precise point about anticipated from the agenda. That issue has just substantial completion of PMG one, I will need to take instruction. I would park it and come back to it later on this morning when I take an instruction, or

 20:24

we come back to United. So it will be a deadline, one of the latest just forget before Russell says, I wouldn't expect with data, that that's not anybody else would want to make a comment at this point, but it does anybody else wish to make a comment on that particular question. No, fine. Thank you. Right. As we set out in Alex beat the rule six letter, there are two different routes for decision making depending on whether there's a policy statement. In effect, both applications is whether the end national networks of national policy statement, abbreviations of triple A, NPS is in effect. So within NCO application under the changes regulations, determination must, must have regard to a, any NPS which has effect in relation to the subject matter, permission or DCM B, any prescribed matters which received the cessation regulations effectively. C, any other matters which the Secretary of State thinks are most important, both important and relevant to the Secretary of State's decision for the original developed consent order as strategic rail, freight interchange, relevant NPS, does anybody have a different view on that which is a good answer? Obviously, the original DCO determined against the march 20, march 2012 version of the electrical MPs. But we now have a refined version dated mark may 2024, does anybody have a contrary view to the version we should be using? Prior report is the May 2024 version about the same shaking heads, which is good and all that are no reaction at all, machine called

 22:17

Good. Similarly this, the

 22:19

original DCA was determined against the standards applicable at that time in many areas, things have moved on, particularly

 22:27

the environmental standards and air drone safety standards, which is mentioned

 22:33

in revenue representation. The courts have indicated that for normal planning applications, determinations are based on the legislative legislative policy in the context applicable at the point of determination. Don't think I read anything explicit, but can I just confirm that the applicant's review that the dissemination of the material change order application should be against current standards, and that could have a consequence of needing to update something on the original DCM, which would be affected by change proposals related to the change here proposed,

 23:08

Alexander booth, the applicant, sir, and to confirm the applicant's position is that the determination must take place by reference to current standards and policy and legislation across The board.

 23:20

So it's possible there might be something that needs to be outside the terms of the MCO. If you have specifically described I'm thinking here particularly is the

 23:32

obvious one is the air drain standard.

 23:35

Those standards have moved on since 2016

 23:40

but the draft MCO as submitted to us doesn't changing any protection provisions within that border. I'm just checking to make sure that you are considered that might have to be a consequence of any material change. I know, Mr. Westman, first

 23:59

matter of principle that may be right. I don't, I can't at this point speak to whether there is, in fact, any necessity to make such amendment. But again, so we'll take that away and confirm the position. Mr. Westman Smith,

 24:15

thanks so Mark Westman Smith, for East Midlands Airport, I think we're agreed on the principle that we need to look to the latest regulatory position, as you've identified, sir, there has been movement, and our position is that that needs to be reflected in the protective provisions on both orders. And so we will be seeking to that with the applicant outside of this room, and hopefully present to you agree protective provisions that effectively update EMG one provisions to reflect current positions,

 24:59

sir, my understanding is that we haven't yet seen anything from the airport in terms of protective provisions, so we're not really in a position to comment substantively. But of course, we're keen to engage with the airport.

 25:12

So can I ask that the two of you get together? We'll put that as an action point of view to the A's, with a view to updating insofar as it's necessary, is necessary, because things have moved because of that list of standards, energy, it changes the perspective solutions. I'm making that as a that was an example, because it was an obvious one, which was well known about it's just there may be some other standards that's equally well in other changing. Again, it may be a bit messy because of whether they, for example, the EMG two might supersede one, which,

 25:51

which we're going to come to in a

 25:54

minute, the problems we've got Over DC over DC medicine potential overlaps.

 26:02

So the further observation, sorry, Alexander booth, for the applicant, the further observation I would make is that the environmental statement sets out at the end of chapter one, how the updated EIA regulations have been used for assessment, just to post that for then we

 26:24

can now move on to the DCO application, which is the more complicated,

 26:28

which, as we set out in rule six letter, is in three parts, commercial and business development on the land south of the 8453, Westman roundabout details set out in part One of schedule 1% order alterations to the existing highway, predominantly around chapter 24 of the one, the details been set up in part two of schedule one of the order and associated development to the above the details being set out in part three of schedule, one of the DCM. What we're trying to understand here is whether it should be considered as a section 104 case, or section 105 case, or whether this should be split one part, and we'll come to power that should be defined later, being considered A 104 case and one section 105 case,

 27:22

some of its we had a bit of this yesterday. It's the justification of the highway elements, and the interconnection with that, with those in the business commercial I suspect the theme throughout today we're trying to understand are the works in part two, necessary as a consequence of the works of art in part one procedure. One, their own right, due to existing and or future traffic conditions of the area, absent proposed development in part one, any forth upcoming planning, any planning commissions, forth company in the light of the application of Northern icon site, relation of any other forthcoming developments in combination holding part with any of the above or for any other reason to us, it's not clear from the applicants documentation statement where they stand on this while requirement six requires that the completion of the highway works prior to the occupation of any of the buildings on the main EMG to site. That is a caveat that the data can be altered by agreement. The reason I'm asking this announcement to try to understand what the main driver for highway works is we sell may then have some charities, whether it should be this is number one and four or our physic or philosophically associated development to the business commercial development. And that's section 105, I'm going to ask the applicant for its go around the hand since, as it

 28:54

were, so I'm grateful Alexander booth for the applicant. There's obviously quite a lot to pick up in that question or series of questions, and it may lead that further to the explanation I provide. Now, it's appropriate for us to set maths out in writing in terms of some sort of note, please, as

 29:13

a general comment, we do ask for people to put their submission in writing to us that

 29:20

we've got so whether as part of our sub written summary of today's submissions, or as part of a discrete note to set out formal legal position, taking matters in stages. So point one is that, of course, as I'm sure the panel is aware, the courts have decided, Mr. Justice Dove in the UK, that one can have a DCM, which has the effect of consenting multiple exits, one of which or more of which may be considered on a section 104 basis, and others considered on a section 105 basis. So the principle of a split assessment, if you will, is well established in terms of the various elements of this DCO, we have, as you say, three parts in schedule one. Part one is the commercial, commercial and business development. And our position is that project, those works, should be considered by reference to Section 105 insofar as there is no national policy statement which takes effect,

 30:30

so far jumping now so to part three.

 30:36

Part three is concerned with associated development,

 30:41

save for work 16,

 30:46

all of those works which comprise associated development are associated development for the purposes of the Commercial and Business Development in part one. So they will fall to be considered pursuant to section one and five.

 31:11

Work 16

 31:14

is associated development for the purposes of part two. Part two

 31:23

is effectively the strategic highways works.

 31:28

Now, so far as those strategic highway works are concerned, they comprise an answer in and of themselves, because they clear the threshold in Section 22 of the 2000 minutes act and serve for the examination to reference the calculations and analysis is set out in appendix to to the PCO guide at document 1.3 and as I as

 32:00

I as I understand, there's no suggestion,

 32:04

no party contests that principle and that calculation. The further point that you raise, so, however, is, well, is this a free standing answer, or is this, in fact, associated development? Now, the position of the applicant is that these art works, which are necessitated by reason of the business and commercial development in part one and were they not to clear the threshold in Section 22 that they would comprise associated development for that purpose. That is to say they would be ad for the purposes of the business and commercial development. However, in circumstances where those works, notwithstanding they are necessitated by the business and commercial development,

 33:09

in circumstances where they clear the statutory threshold

 33:12

we consider as a primary position

 33:17

that they fall for legal purposes to be disabled by reference to Section 104 however, sir, you will be aware that this is not the first application for a DCA where there has been some material doubt as to which is the appropriate legal position. And indeed, I know then affirms to Philpot is very familiar with

 33:42

next. Net Zero, key side

 33:45

position that being one where examining authority and the Secretary of State made findings in the alternative. That is to say, analysis was carried out by reference to Section 104 and by reference to Section One in five, and a determination given on alternative basis. So at the moment, subject to the panel's views, we consider it may be appropriate that you conduct analysis in the alternative. But our primary position is that, given we clear a threshold in the statute,

 34:20

it's a section 104, case for part two, and

 34:24

the ad commitment on that, which is

 34:28

worth 16 and part three. Thank you. We'll go, I'm gonna ask how other people else has a view on this. At this

 34:36

point, can I leave you? You may need to have other thoughts about that, or I can't. When we come further down, does

 34:44

anybody else here wish to make a comment on the section 104105 point there is the greatest question of, does it make a difference? Which is also a fundamental point. Mr. See all the dodgy mics so far as the stacks.

 35:30

Without the reverb panel, I think again we will All hold horses for a minute so the relationship and

 36:20

I can we confirm there's Anything coming through? Yeah, all good. I

 37:05

some hesitation, I'm going to try again. Yes, please kings Council on behalf of

 37:17

Prologis, so yes. So far as Mr. Queen's analysis

 37:20

of the position in terms of section 104 section 105

 37:35

application to the commercial business. So far as the position in relation to the highway works,

 37:40

I don't think you particularly take issue with the analysis

 37:44

and suggestion that

 37:47

you should deal with on both bases, because as so you

 37:54

clearly put it, the driving force Behind the

 37:58

part two works is the commercial development works. We do say that that ought to make

 38:04

a difference in terms of the approach to decision making, because it would be very

 38:07

odd if the presumption in favour of highway works to

 38:13

come forward interest in their

 38:19

own right, as envisaged, goes forward towards his only justification comes as a result of

 38:29

mitigating the

 38:31

impacts of development which doesn't benefit from the statutory and policy presumptions In favour that

 38:40

fled from the NPS. So that's all. Want to sell.

 38:45

Could you just assist the examination? Is precisely what happened. HTT, essentially, was it the examining authority essentially reported in the alternatives, if it's a one in four cases?

 39:02

Yes, so what we what we did is we invited the example, authoritative report on home bases in order the Secretary of State,

 39:13

armed with recommendations

 39:15

on both those footings, could

 39:19

decide the application as they saw fit, depending on what view they took on. Where is that? Either side of the line. I have to refresh my memory as to precisely how the Secretary, say, dealt with it, but that is a fair reflection of how we approached in the examination. And it's not

 39:37

it's not unique. It's also taken

 39:41

another examination, but that's certainly

 39:44

a pragmatic approach

 39:48

to it. I was going to

 39:51

refer past recently to try to grapple with this issue

 39:58

a bit when we read that up, you need to read the examining authority's report and the minded to letter is more

 40:06

helpful on this issue than the decision letter. Does that make

 40:12

sense? So Alexander booth, the applicant, as

 40:16

for what it's worth in terms of net zero T side, the position, certainly, as I read it recently is that the Secretary of State themselves then made a final alternative further to report which known friends

 40:34

and your creative friend, given that one that some of the works of Edward childhood works, I was going to ask national highways if it had a view.

 40:49

Brad hack on behalf of National Highways, so I don't disagree with what the applicant has set set out works in part two at schedule, our highways works in different grade so the audience it wonderful, applies, but as the applicant has set out, there's a case that you can consider them in the alternative. Thank you. And the local highway 36 Council do have a view. You don't have to have a view,

 41:19

but you do have a view. I

 41:22

mark Westman Smith, food East Midlands Airport, I don't really need to trouble you can I just align myself with what Mr. Philpott has said. There appears to be a general agreement that the principal element of the development under Part one is a section 105, matter. Or do say that's of practical importance, because it is the driving force behind the reason for the part two highways works, and at the very least that's a relevant and important matter under Section 104 needs to be taken into account.

 42:17

Thank you. Anybody else wish to make a

 42:26

comment on this particular issue before we move on? And we'd like to have a look at the way, the way dcl application and environment savings have been structured. Could the applicant have I don't leave them up yet, but if you could get three documents ready. There'd be chapter three of the ES, which is as start on people, PDF, page three. I always give PDF and page notes. It's just easier.

 42:54

The draft development,

 42:57

consent order and the draft memorandum. I to

 43:09

start with some the associated with only essential business. If you look at the development consent order, some of the DCO has been not quite drafted the way that you've advised us in the section and making clear that decision between the associated development forces under 105 and 104 it is also a difference between the split between the deep how the DCO has been structured and the environmental statements have been structured. If we can display table three in chapter three of the ES at the ASO 25 page three, table, 3.1

 44:00

Thank you. The ES is structured away that conflates tape works six to 19 treats them as what's in the collection of highway works. But if we move on to the draft development consent order in this PDF page, 36 I instruction way that separates works eight to 12 into the highways in works 13 to 19 to the associated development as to whether, by regardless, as to whether they are to do with business, commercial development or alteration to the existing Highway. This means work. Six and seven are highway work, yes, but not in the DCO. And if we

 44:52

have that exponential rap, memorandum up and page four,

 44:57

video. Page four, you

 45:04

if we dichotomies, is in paragraph down the bottom, 110 one he sat in stated that those parts of the application consisting of works one to seven were made pursuant to the section 35 direction, however, the ES treats works one, six and seven as with other works as highway works. I think that shows the problem. So I don't

 45:29

think we need to show the drawings anymore. You can

 45:32

take them down easier for people to watch. Look at people, rather than documents on those blockchain online.

 45:44

So if we have the secretary of state required to consider the highway works at which are works six, eight to 12, under Section 104 how could it properly identify the environmental conclusions associated with those works to address the 104 section 104 decision making, if the conclusions were mixed in and not clear, discrete from the conclusions made about the other development work, six, seven and 13 to 19, that may or may find false be considered under Section Five. Our particular concern is that, if it's enormous, if the Secretary of State were to find the highway works acceptable, but this is a commercial unacceptable, or vice versa? Could that be achieved within the application, on the event that one element were to be unacceptable, the whole would have all similarly, if there were the case, would that if that were the case, the applications of the material change also have

 46:45

to form, to recap,

 46:49

given how the environmental statement has been set out, these projects are hard going back to 104 or 105 where's the way to draw The line, given how the environmental statements been constructed and

 47:04

what you've been talking about earlier.

 47:09

Alexander booth, on behalf of the applicant. First point to note is the applicant is grateful for drawing that point to our attention, and one can readily see the disparity between the one hand, and the way the order was set out on the other.

 47:26

Initial response beings followed.

 47:30

I quite take the point that it's important that the panel and the Secretary of State have a clear understanding of the position, but we do say that the reality is that neither one nor the other element can or

 47:46

would come forward without

 47:49

the other. That is to say, it is to our mind inconceivable that the business and commercial development could be conservative and come forward without the high road works, because they are vital mitigation to ensure that the network, the already congested network, can accommodate the traffic generated similarly in circumstances where the business of commercial development would not have come forward and there would be no prospects of the high episode for highway two works coming forward, because those works comprise the mitigation for the business and commercial development. However, in the circumstances, we are going to have to take that away and come back to you in writing, I think, in terms of how it is the case is cut. And we say that all the relevant effects of both the business and commercial and the highways that simply AV or the highways and sips that sits alongside it, all relevant effects have been considered. They are all addressed in the EES, but in terms of how one aligns with one document, the draft DCO with the other will need to go and come up and imagine, and that may be pre drafting of one birth document.

 49:11

Yes, so we'll put that down as an action point

 49:18

for deadline one. Yes.

 49:27

It may be your laptops if you close the mic,

 49:32

given they're all pretty chosen. So just

 49:35

before in terms of deadline one and the relevant deadline, the deadline two is the deadline and the new draft DCA would fall towards submitted, and we think perhaps that might give a better date, and we could ensure to have a joined up position by Dan.

 49:51

That will be useful. I think it would be useful for deadline one day, to have a notice as to what, what the direction of travel is likely to be. Appreciate that that the redrafting documents might take longer for you'll know what the direction of travel is by d1

 50:07

so that's understood. Thank you very much. So a note by d1 and the redrafted DCO, if necessary, well, it will be done in any way, but if necessary, on that basis, by d2 and similarly, any

 50:18

changes in the environment we need.

 50:22

Need to be dealt with, understanding the issues that's associated with

 50:28

that, Mr. Philpott, you raised, which I just wasn't previously

 50:40

just called the answer to my understanding, from what's been said, is that the environmental statement takes all

 50:50

elements of the applications together, material change and the DCA together, and

 50:58

it's not and the DCA together, and it's not

 51:03

being presented as you could have

 51:06

one assess whether it would be one

 51:09

or the other, that they're assessed together.

 51:17

Just want to make sure I understood that booth applicant, on Alexander booth, on behalf the way the ES is constructed is effectively there are three elements to each section of analysis. So for example, to take his landscape, which is chapter 10, there is a set section of subsection on that section dealing purely with the DCO works. There's a subsection that deals with the AV SEO works, and there's a subsection that deals with the aggregate of the energy to works.

 51:48

So as I understand it, the position is presented that

 51:58

would be scale or decision only to consent material

 52:05

change works if

 52:11

the DC works were for whatever reason unsuccessful, that wouldn't completely change a positive decision on material change, the analysis for all elements allows for that decision, the

 52:24

impact the applicant is not in taking that as their point of view. Obviously, you have to see what that is that's transpired that's magic for some months away from now. Does anybody else wish to make a

 52:38

comment, whatever the drafting

 52:39

the ES in relation to the dcl? So I'll now

 52:48

move on the item four, which is

 52:52

interoperability, operability, apologist,

 53:00

between Planning Act 2008 and the Town Country Planning Act 1990 as we know, North Westchester District Council has granted the planning commission reporting to allow the raising of the height of the skies. This is important because that is the justification for the raising of the height gauge Craigs by the NCO allocation the application. I'm hoping that the detail on the agenda published last week sufficient to allow both North West Leicestershire District Council and the applicant to come to us today set out the respective positions on this. Since it's the council's plan commission, first, I'm going through the court a series of propositions, firstly, that the development consent order could only be amended According to section 153, Jessica in North West Leicestershire District

 54:00

Council, in summary, the council's position on that is no of dealing with the application that was made to the council. And the council obviously proceeded to determine the application under the time Country Planning Act, the original DCO, the interchange DCO

 54:16

did also within it include separate to

 54:19

the acts and statutory scheme

 54:27

also did specific provision in relation to subsequent grants, language and how can interact

 54:34

with the the consenting scheme. So in short, that

 54:38

that is the council's position reference in the engine.

 54:40

Oh, sorry, Alexander, on behalf of the applicant, if it's Alan, yes, the relevant article is five. Article Five, sub power, two of that original EMG, one, DCA, that's what expressly makes a provision for, effectively, what are sometimes colloquially term, dropping permissions under the 19 months. Times globally, term,

 55:19

missions, if and whether that were not to be the case. I that the only way you can amend

 55:26

the DCO is to

 55:30

run an application under

 55:32

second one by three and in search of six. And given that the

 55:38

container behind did not afford to change the word of the DCM do was to restrict the parameters.

 55:50

You would end up with the inconsistent plan commission,

 55:54

inconsistent with the original grammar supply, and thus with the DCM, basically

 55:59

to amend it if

 56:02

secondary stage. Stake, would your

 56:09

decision move the applicant? So might you just run that password one more time? Slightly on stage, if the

 56:16

fundamental proposition is a can't have a DCO for a applicant.

 56:21

Planning Commission, you can only do

 56:29

it through changes. That's the fundamental proposition in

 56:35

multiple sense, in application, the

 56:39

planning commission, with great disrespect to the city councils and

 56:42

awful thing that is the case.

 56:55

The justification for

 56:58

material change went to change.

 57:14

So again, I think it's probably appropriate, given this is a matter of law that we come back to you in writing with nose. But first of all, addressing the proposition

 57:32

that planning permission issued by the District Council just in some way different,

 57:41

or we do say that that would be a departure from accepted practice rail freight interchanges, both strategic and otherwise up and down the country. Sorry, strategic rail freight interchanges, in the ordinary course, have historically utilised 1990 permission. I mean, I'm thinking of the Prologis development down tree dirt in that context, for example. So I'm not sure I accept the premise, but obviously for the purposes of the question, which posits that as being the correct

 58:19

premise, in terms of whether or not the justification for

 58:26

material change, whether

 58:29

or not that would fall away, I have to go

 58:34

back and confirm with the team the extent of the

 58:38

anticipated increase in freight volumes and so on, that would justify the increase in terms of the cran heights, because I don't say that it would necessarily follow that it would fall

 58:47

away in those circumstances. But I have to check that.

 58:51

And clearly, if you took the view actually in light of that, that was the position,

 58:57

obviously, early stages of the part of

 59:02

the examination. Stages of the examination.

 59:09

There's still opportunities to change,

 59:13

change the application,

 59:14

all the rest of the publicity, but there's coming to be the minute, which,

 59:20

again, because we're at an early stage. It's not like we're saying this is what we've got today.

 59:25

Determine yes or no, we've got six months in

 59:29

which there is opportunities

 59:31

for amendment, innovation and improvement. As you say, this is day one of the examinations in the last six months and were necessary to make changes, undertake further environmental assessments and consultants on

 1:00:00

those. Yeah, it's also, is

 1:00:04

anybody before we move on to that, is anybody else. I mean,

 1:00:07

the final point I suppose I should just make in that context is, I know the way that So Anna puts the point, which is to say that the only basis on which the adca can be amended is by way of section 153, and schedule six, the EMG one DCO, Article Five two doesn't provide for amendment

 1:00:34

of the DCO. What it

 1:00:40

stipulates is that works undertaken pursuant to the 1990 act permission to comprise a breach. So in my submission, that is a distinction which is potentially significant in that context. I

 1:01:00

A but equally well, what would be the effect, and this is this moving again in the future, is if there was, if you had an incompatible event, an incompatible

 1:01:17

planning commission. So I think this is where we're heading. So this is probably subject for discussion in the context of the hillside agenda item, which is one or two bullet points further down, but in so far. So as your point panels, point was that the North Westchester Planning Commission may be so much waste making because one cannot amend and

 1:01:40

I take that point. All I know today is that

 1:01:44

what the provision allows for is the grant permission. And we say North West Leicestershire are fully entitled to grant that permission. And what Article Five, two provides for is that that permission, the implementation you're building out of that permission, doesn't comprise a breach for the purposes of the enforcement for the section 163 160

 1:02:15

does anybody else wish To make a comment? District

 1:02:21

counts just kind of North West Leicestershire District Council. I suppose I should also clarify. I suppose my answer to issue was, No, it is not the only way to amend. But again, that was a slight clumsy language in that it was trying to draw that distinction that Fred has just mentioned in terms of amendment versus actually separately, whether the subsequent round itself in the implications that would have had,

 1:03:33

and whether that was permission separate to introduce anybody else want to make a comment, I know in short, but there are people online sense to have it, and we've just got to the end of item four. So rather than moving on to the you to the joys of discussing pit side, it would probably make sense to have an adjournment at this point shall we say until 20 past .