



The Planning Inspectorate

REPORT OF EXAMINING INSPECTOR APPOINTED ON 15 OCTOBER 2012 TO DISCHARGE FUNCTIONS UNDER SECTION 127 PLANNING ACT 2008

DETAILS

Development Consent Order (DCO) – The Able Marine Energy Park Development Consent Order 2013

Date of Section 127 application – 10 October 2012

Statutory Undertaker –Harbour Master Humber

Relevant Land – Plots 08001, 09001

Representations – RRP041, CAI024, CAI024, HEA104, WRR006, REP007, REP025, ADD055

The Harbour Master Humber has land that will be occupied by the quay and pumping station.

The two plots in question are part of the foreshore, held by the Harbour Master Humber (the Humber Conservancy) on a 999 year lease from The Crown Estate. The land held as Conservancy Authority is vested in Associated British Ports, which is a statutory company with perpetual succession. This is a separate undertaking from ABP's role as a port operator itself.

The land forms part of the harbour for which the Harbour Master Humber has a general responsibility, and which would pass to the applicant as the new harbour authority for the development site. The Harbour Master Humber does not in any other sense use the land for the carrying on of the undertaking.

The land is sought by the applicant for the purposes of constructing the quay, which is the centrepiece of the project.

The applicant and the Harbour Master Humber have conducted negotiations over the granting of an under-lease. The applicant has said that it would be satisfied with an under-lease, and the Harbour Master Humber has said that in principle he is prepared to grant a lease; but is not able to proceed with the under-lease in front of the 'triangle site', owned by ABP as port operator, because this would compromise his impartiality among river users. [CAI024, paras 7, and 9 *et seq*; HEA104, paras 7 and 8]

For this and other reasons related to the terms in the draft that was subsequently produced, the negotiations had not led to agreement before the end of the examination. [ADD055, para 178 and Annex D]

In view of the fact that the Harbour Master has stated that he is prepared to grant an under-lease, a 'willing lessor' in the terms of HEA104, and has entered into negotiations for that under-lease (albeit not yet concluded), it follows that the land can be occupied by the applicant without hindering the undertaking. The Harbour Master Humber's concerns relating to the area in front of the triangle site are not in any direct sense related to his function as a statutory undertaker.

I consider that the relevant land may be acquired and not replaced without serious detriment to the carrying on of the undertaking.

RECOMMENDATION

I recommend that the Secretary of State issues a certificate in respect of the relevant land under section 127 (2) (b) in the form annexed and that a notice in the form annexed is published as required by Section 127 (7).

Robert Upton

Robert Upton
Section 127 examiner

The Able Marine Energy Park Development Consent Order 2013

The Planning Act 2008

Certificate under Section 127 (2) (b)

1. The Able Marine Energy Park Development Consent Order 2013 which has been submitted by Able Marine Energy Park to the Secretary of State includes the land described in the schedule.
2. The land was acquired by the statutory undertaker (Harbour Master Humber) for the purpose of their undertaking and the Secretary of State is satisfied that it is used for the purposes of the carrying out of their undertaking.
3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the land described in the schedule can be acquired without serious detriment to the carrying on of the undertaking.

SCHEDULE

Plot No 08001	All interests, excluding the freehold interests, in 298261.60 square metres of land comprising river (River Humber) and bed thereof, mud and shingle up to mean high water mark, to the east of Rosper Road, South Killingholme, Immingham.
09001	All interests, excluding the freehold interests, in 303223.30 square metres of land comprising river (River Humber) and bed thereof, mud and shingle up to mean high water mark, to the east of Rosper Road, South Killingholme, Immingham.

The Able Marine Energy Park Development Consent Order 2013

The Planning Act 2008

Notice under Section 127 (7)

1. The Able Marine Energy Park Development Consent Order 2013 which has been submitted by Able Marine Energy Park to the Secretary of State includes the land described in the schedule.
2. This land was acquired by the statutory undertaker (Harbour Master Humber) for the purpose of their undertaking and the Secretary of State is satisfied that it is used for the purposes of the carrying out of their undertaking.
3. Notice is hereby given that the Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 has certified that the land described in the schedule can be acquired without serious detriment to the carrying on of the undertaking.
4. Notice of authorisation of compulsory acquisition of the new rights will be made by the prospective purchaser (Able Marine Energy Park) in accordance with Section 134 of the Planning Act 2008.

SCHEDULE

Plot No 08001	All interests, excluding the freehold interests, in 298261.60 square metres of land comprising river (River Humber) and bed thereof, mud and shingle up to mean high water mark, to the east of Rosper Road, South Killingholme, Immingham.
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