



The Planning Inspectorate

REPORT OF EXAMINING INSPECTOR APPOINTED ON 121 MAY 2012 TO DISCHARGE FUNCTIONS UNDER SECTION 127 PLANNING ACT 2008

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

Statutory Undertaker – Network Rail Infrastructure Ltd

Relevant Land – Plots 03028A, 04033A, 04034A, 04035A

Representations – RPP030, WRR010, CAI010-017, CAI021, CAI028, HEA102, HEA109, HEA113, ADD055

DETAILS

The land involved was acquired by Network Rail's predecessor bodies for the purpose of operating a railway, originally the Barton and Immingham Light Railway. Although the line is not in current use the fact that Network Rail holds an interest in the land for the purpose of operating a railway and no other is not in dispute.

At the time that it made the application the applicant believed that Network Rail was prepared to sell all the land constituting the Killingholme Branch northwards from the southern boundary of the proposed development to a point beyond the sites held by C.RO and C.GEN.

Network Rail stated in its Relevant Representation, however, -

Network Rail was in discussions with the Applicant regarding the sale of certain land, which is now subject to compulsory acquisition under the proposed DCO. The land comprises the track and track-bed for the Killingholme branch line which connects Humber Sea Terminal with the wider Network. This branch is part of the operational Network used for freight traffic. Network Rail is unable to commit to sell this land to the Applicant as it contains part of the Network that services third party land (Humber Sea Terminal) pursuant to an existing contract. Consent of those third parties is required in the event of the land being sold and any network change. In addition, closure of the Killingholme branch line is subject to the regulatory procedures in Part 4 of the Railways Act 2005. [RPP030]

Referring specifically to the s.127(3) test, that an order granting development consent cannot contain provision authorising compulsory acquisition of statutory undertakers' land unless the Secretary of State is

satisfied that 'the nature and situation of the land is such: -

that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or

that if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on thereof.'

- Network Rail has argued that this test cannot be satisfied in respect of the land subject to compulsory acquisition under the proposed DCO. This part of the network is fundamental for access by rail to Humber Sea Terminal. Network Rail is committed under the terms of an existing Connection Agreement with Humber Sea Terminal to provide access to the Network. The compulsory acquisition, were it to proceed, would cause serious detriment to Network Rail in placing it in breach of the terms of the contracts for the provision of rail services in the course of its undertaking. [RRP030]

During the course of the examination Network Rail placed increasing importance on the potential significance of the Killingholme Loop (KIL3) as a means of meeting growth in demand that might arise from the Port of Immingham. [CAI010]

Network Rail has opposed the four level crossings put forward by the applicant on safety grounds, offering instead an easement for a single crossing in exchange for the closure of the existing four crossings.

The ability to cross the railway line with the manufactures is essential. Without that the available site supporting the quay is reduced to approximately one-third of the whole.

The applicant's final case, made after the hearing in October, is for four easements for four level crossings on the plots shown. [ADD055] The Book of Reference has been amended by the applicant to show this.

The effect of this would be to leave the railway line within the operational network managed by Network Rail. Should C.RO wish to resume freight services now, or C.GEN in the future, that would be possible. The applicant would need to conform with the train services, which the applicant would hope to agree with C.RO and C.GEN [ADD055, para 157] and manage its own operations accordingly. The applicant regards KIL2 as speculative.

In my judgement Network Rail has placed undue emphasis on the safety case. If it was prepared to grant one easement then I do not understand why it was not prepared to grant four, all operating as part of a single signalling/control system in a low-speed environment for both road and rail vehicles.

The fact that it was prepared to grant one easement I take as an admission that easements for level crossings *per se* are not an obstacle to

the carrying on of the undertaking, as and when that recommences. This would still be the case in my view if KIL2 were in fact to eventuate.

I thus conclude that the granting of these four easements will not cause 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 (5) (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

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 new rights described in the schedule.
2. The land over which new rights are to be acquired was acquired by the statutory undertaker (Network Rail) 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 new rights described in the schedule can be acquired without serious detriment to the carrying on of the undertaking.

SCHEDULE

Plot No 03028A	A new easement 40 metres wide giving the undertaker and those authorised by it a right to cross the railway with [heavy and slow-moving vehicles/light traffic] across 631.82 square metres of disused railway, track bed and associated structures, trees, shrubbery, drain and bed thereof, premises and land, to the east of Station Road, South Killingholme, Immingham.
Plot No 04033A,	A new easement 40 metres wide giving the undertaker and those authorised by it a right to cross the railway with [heavy and slow-moving vehicles/light traffic] across 329.61 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises

	and land, to the east of Rosper Road, South Killingholme, Immingham.
Plot No 04034A	A new easement 20 metres wide giving the undertaker and those authorised by it a right to cross the railway with [heavy and slow-moving vehicles/light traffic] across 312.70 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises and land, to the east of Rosper Road, South Killingholme, Immingham.
Plot No 04035A	A new easement 20 metres wide giving the undertaker and those authorised by it a right to cross the railway with [heavy and slow-moving vehicles/light traffic] across 286.47 square metres of disused railway, track bed and associated structures, trees, shrubbery, drains and beds thereof, premises and land, 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 new rights described in the schedule.
2. The land over which new rights are to be acquired was acquired by the statutory undertaker (Network Rail) 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 new rights 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

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