

From: Simon Tucker <Simon.Tucker@canalrivertrust.org.uk>

Sent: 06 February 2020 09:05

To: West Burton C <WestBurtonC@planninginspectorate.gov.uk>

Cc: Scott Lo <Scott.Lo@canalrivertrust.org.uk>; Debbie Fifer
<Debbie.Fifer@canalrivertrust.org.uk>

Subject: Comments from the Canal & River Trust following the Issue Specific Hearing (22nd January 2020)

Dear Sir

I refer to your email of 16 December concerning events to be held week commencing 20 Jan (including ISH 1) and asking if we intended to attend the hearings. The Trust took the view that, on the basis of information available to us at that time, we were content to rely on our written submission and that it would not be necessary for us to attend the hearing. Unfortunately, due to an error on our part concerning deadlines we failed to communicate this to you by 7 January 2019 for which I apologise.

It has since come to our attention that the published agenda for the ISH 1 provided further detail on the items for discussion and indicated that it would be useful for a representative of the Trust to attend the hearing. Please extend my sincerest apologies to the ExA for failing to respond to the agenda and attend the ISH1.

For your information, the applicant has since approached the Trust (email 29 January 2020) to discuss the Development Consent Order. The Trust has reviewed the audio recording of the ISH 1 (2:37.41 onwards). As the Trust was unable to provide direct submissions on the day, we wish to clarify that since the submission of representations for Deadline 2: we have received no direct communication from the applicant (until their latest email of 29 Jan).

We have yet to receive any substantive reassurance from the applicant that they are willing to work with the Trust to mitigate our concerns over the potential damage to the waterways or substantive alternative proposal or form of provision for our consideration. Much of the discussion thus far has revolved around the applicant's refusal to consider the inclusion of the protective provisions and, to date, the applicant has yet to engage with alleviating the risk of development from the perspective of the Trust.

The protective provisions form part of the Trusts established practice of ensuring that any harm to the waterway's infrastructure are correctly mitigated by the applicant, rather than the burden falling upon the Trust as Statutory Undertaker and charity. The protective provisions have already been amended by the Trust to match the circumstances of this project. The Trust has yet to receive any indication of any substantive risk to the applicant, which would warrant their refusal to agree to the inclusion of these protective provisions.

Through representations at ISH 1, we understand that the applicant has taken issue with the inclusion of an "unlimited" indemnity. However, it is not clear to the Trust why it should be expected to bear the

potential risk of having to mitigate any impacts arising as a consequence of the proposed development or otherwise engage in lengthy litigation to recover the cost involved in so doing (rather than the applicant).

If the applicant considers it necessary to limit the indemnity to a capped amount, the Trust would be willing to review such a proposal, subject to the submission of accompanying technical evidence which establishes the financial limits of any possible damage and any proposed "cap".

I can confirm receipt of your email of 5 February requesting further information from the Trust and the Applicant. Accordingly, we will be contacting the Applicant shortly to discuss the Points 1 and 4. We will also respond regarding Point 2 as soon as we are able to do so. We will of course update the Examining Authority (ExA) at future Deadline Phases in respect of the outcome of any discussions.

I hope the above is of use.

Kind Regards

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Area Planner North East, Canal and River Trust

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