



BIRCHAM DYSON BELL

The Secretary of State for Transport
c/o Mike Harris
National Infrastructure Directorate
Planning Inspectorate
Temple Quay House
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Your Ref
TR030001
Our Ref
ADW/Y059258
Date
15 May 2012

Dear Mike

**Proposed Able Marine Energy Park
Application for s127 certificate for Network Rail land**

This letter is an application for a certificate under section 127(2) of the Planning Act 2008 relating to the compulsory purchase of land belonging to Network Rail Infrastructure Ltd for the purposes of the proposed Able Marine Energy Park (AMEP). The relevant parcels as shown on the land plans for the application are 02008, 03013, 03014, 03015, 04004, 04013, 04014, 04024, 04025, 05023, 05024, 05025, 05026, 05027, 05028, and 07001.

Able is proposing the compulsory acquisition of the track and track-bed of a rail siding that runs across the land it proposes to develop for its marine energy park. NR has made a representation objecting to this acquisition¹.

The line is a dead end at its north end: it passes through Able's AMEP site and a facility belonging to C.RO Ports (Killingholme) Ltd (CPK), formerly known as Humber Sea Terminal, and terminates at another site of Able's, its proposed logistics park facility, after which the track has been removed. The line is not used by passenger trains and has more or less fallen out of use for freight trains – it is understood that no train has used it since 2005 other than vehicles maintaining the track itself. Able submits that the land containing the line can be acquired without serious detriment to NR's undertaking, which is one of the alternative tests in the Planning Act for issuing a certificate.

CPK has a connection agreement with NR, which allows it to connect its private siding at its facility to the rail network. Able has requested but not had sight of this agreement, but it is likely to refer to a 'connection point' where this siding meets the railway that is the subject of the compulsory purchase.

¹ Network Rail's relevant representation can be found at

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/?ipcsection=relreps&relrep=35>

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The effect of Able's proposals would simply be to move this connection point southwards, to the southern point of the Order land, and Able intends to allow, and has offered, CPK to have the same rights of access of the track to be acquired as it currently enjoys. Able would be content to give a formal undertaking to do this.

NR's objection to the acquisition as it relates to a s127 certificate is expressed at paragraph 12.2 of its representation and is essentially that to deprive CPK of rail access to its facility would be of serious detriment to NR's undertaking and would place it (NR) in breach of its connection agreement with CPK.

It is difficult to see how such a situation could be characterised as serious detriment to NR's undertaking: this is by any measure a very minor element of NR's undertaking, and only involves the relocation of a connection point for a single customer of NR's who has not actually used the railway for many years. Indeed, by its own admission, NR would have voluntarily sold the land to Able, had this not been objected to by CPK, which obliged it to withdraw from negotiations.

By virtue of section 120(4) and Schedule 5 to the Planning Act 2008, Able can include provisions in its Development Consent Order:

- - abrogating or modifying agreements relating to land;
- - imposing or excluding obligations or liability in respect of acts or omissions (paragraph 11); and
- - relating to the operation and maintenance of a transport system (paragraph 24).

By a combination of these powers and the general power under s120(3), Able would be happy to include a provision in the DCO to exclude liability for NR for any breach of its connection agreement with CPK, or to modify the connection agreement to alter the description of the connection point to the new position, which is likely to be the only change necessary, or both.

Yours sincerely

Angus Walker

Partner

For and on behalf of Bircham Dyson Bell LLP

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