



# The Planning Inspectorate

## REPORT OF EXAMINING INSPECTOR APPOINTED ON 12 JANUARY 2012 TO DISCHARGE FUNCTIONS UNDER SECTION 127 PLANNING ACT 2008

### DETAILS

**Development Consent Order** – The Able Marine Energy Park  
Development Consent Order 2013

**Date of Section 127 application** – 10 October 2012

**Statutory Undertaker** – Associated British Ports (ABP)

**Relevant Land** – 3020, 03021, 03022, 03023

**Representations** – APP036, CAI018, CAI021, CAI030, REP045, ADD034, ADD055, ADD056

ABP state that the relevant land was the land was acquired in 1967 by the British Transport Docks Board (ABP's predecessor) for the purposes of port development and has not been used for any other purpose. ABP claim possessory title (unopposed) over Plots 03222 and 03023.

ABP propose to meet future demand for biomass by redeveloping the existing Immingham Gas Jetty. During the course of the examination (in October 2012) ABP completed its Port of Immingham Masterplan in which it sets out its intentions for the further development of Immingham [ADD034]. In this plan the relevant land is shown as the landward location of the proposed Western Deepwater Jetty (WDJ).

ABP's objection to the acquisition of the relevant land rests on its own plans for the use of this land. ABP argues that –

1. the proposed WDJ is a crucial development for the Port of Immingham, that this is the only remaining undeveloped site in the portfolio with river frontage and that it is ideally located in relation to pipelines and caverns. As such its loss would represent serious detriment to the statutory undertaker;
2. there is no other land owned by or available to ABP that could replace this site for the WDJ. [see, e.g., ADD056, paras 75 *et seq*]

At the hearing on 17 and 17 October 2012 the applicant argued that there was no urgent need for WDJ as part of the Humber International Terminal because there were alternatives, including ABP's own port at Hull; that in any event the growth in biomass cargoes was very uncertain [CAI021, para 67 *et seq*]; that the Port Masterplan had been rushed through to give ABP a case to resist the acquisition of this land [ibid, paras 75 *et seq*];

and that the plan is in any case too premature or deficient to constitute a valid basis for claiming detriment [para 88 *et seq*].

ABP maintained that its plans were genuine and long-standing; that the applicant had failed to identify an alternative site for WDJ; that the status of the triangle site was not in dispute; and that therefore there could be no dispute that the acquisition of this site would be a serious detriment to ABP's undertaking. [CA1018]

In my judgement, despite ABP's representations, the production of the Port Masterplan and the draft Harbour Revision Order, the Port Masterplan and all its prospective elements are clearly still at an early stage of project development. It is not certain that any of it will proceed, nor that the WDJ must occupy this location

The WDJ may be desirable in the further development of the undertaking, but I am unable to conclude that the acquisition of the relevant land at this time would cause serious detriment to the carrying on of the undertaking. The detriment is potential but not in any way certain: it will not arise if the demand does not arise; it may not arise if other sites for the WDJ within the ABP estate can be used or re-used.

## **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 03020	All interests in 47886.48 square metres of land comprising trees, shrubbery, hedgerows, grassland (Killingholme Marshes), drains, and beds thereof , Killingholme Marshes, South Killingholme
Plot No 03021	All interests in 1441.97 square metres of land comprising private access road (Station Road), verges and hardstanding, to the south of Killingholme Marshes, South Killingholme, Immingham
Plot No 03022	All interests in 1495.09 square metres of land comprising grassland to the west east of Killingholme Marshes, South Killingholme, and Immingham
Plot No 03023	All interests in 4200.45 square metres of land comprising public footpath (FP 50), sloping masonry and river wall, private road (Station Road), hardstanding, drain and bed thereof, to the east of Killingholme Marshes, 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 purchased 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.

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