

Gravesham Borough Council  
Written Representations  
March 2018 (20/3/2018)  
Proposed Tilbury2 Port Expansion  
Planning Inspectorate Reference: TR030003

## Contents

Introduction .....	2
Statutory nuisance .....	2
WATER RESOURCES AND FLOOD RISK .....	3
New Thames Barrier .....	3
NOISE AND VIBRATION .....	4
CUMULATIVE AND SYNERGISTIC IMPACTS .....	5
DRAFT DEVELOPMENT CONSENT ORDER .....	6

## Introduction

Gravesham Borough Council has already provided a summary of its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate in January 2018. During the Issue Specific hearing on the draft Development Consent Order on 21 February, Gravesham BC was asked to cover a couple of points in writing and these are included in this document as are points which are not suitable for inclusion in the Local Impact Report.

## Statutory nuisance

The explanatory memorandum for the draft DCO explains the inclusion of “Article 48 – Defence to proceedings in respect of statutory nuisance”

7.17 This article provides a defence to statutory nuisance proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. The defence is only available if:

7.17.1 the noise is created in the course of carrying out or maintenance of the works authorised by the Order in accordance with a notice given under section 60 or 61 of the Control of Pollution Act 1974; or

7.17.2 is a consequence of the construction, maintenance or use of the authorised development and that it cannot be reasonably be avoided.

7.18 Section 61(9) of the Control of Pollution Act 1974 does not apply if the consent relates to the use of premises by PoTLL for the purposes of or in connection with the construction or maintenance of the authorised development.

As part of its application, the PoTLL submitted in October 2017 a “Statement in respect of Statutory Nuisance” with the document reference 6.5. The statement advises that the provisions of section 79(1) of EPA that could potentially be engaged are:

- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and
- (h) any other matter declared by any enactment to be a statutory nuisance.

Each is then looked at in turn for both construction and operation

Paragraph 3.3 then explains that Section 79 of the EPA contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the proposals are:

- subsection 79(1)(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings (s.79(4));
- subsection 79(1)(fb) (artificial light emitted from premises) does not apply to artificial light emitted from...harbour premises (s.79(5B)), which the proposals would be during operation; and
- subsection (1)(ga) above does not apply to noise made...by traffic.

For lighting, the statement advises under paragraph 4.14, for construction, that the majority of construction work in relation to the authorised development will be undertaken during daylight hours as secured in the CEMP (compliance with which is secured by way of a DCO requirement). During those working hours there will be no need for artificial lighting of construction areas. Night time working will be kept to a minimum. Mitigation measures, designed to avoid or reduce the effects during construction of artificial lighting would be implemented in accordance with the CEMP. In respect to operation, it says in paragraph 4.16 that “as the proposals would constitute harbour premises, this 'head' of nuisance would not be engaged during operation”. Therefore once it is built, the development’s lighting operations will fall outside stat nuisance action and so it is essential that its design to meets best practice.

#### Justification

It appears to be the norm that NSIP projects request a defence to proceedings in respect of statutory nuisance.

However Gravesham BC notes that the National Policy Statement for National Networks includes this:

5.88 If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, then the defence should be disapplied, in whole or in part, through a provision in the Development Consent Order.

The PoTLL statement says “The construction activities that have the potential to create a nuisance will be controlled through the CEMP which accompanies the application and compliance with which would be secured by the DCO” and yet the PoTLL still requests the defence in the draft DCO.

## WATER RESOURCES AND FLOOD RISK

### New Thames Barrier

In Gravesham BC’s response to the PEIR, we mentioned the Thames Estuary 2100 (TE2100) project and the inclusion, within a range of options, of the potential for a new flood barrier in the longer term at either Long Reach, Dartford (the current preferred option) or at Gravesend/Tilbury.

We highlighted that there could be issue if Tilbury2 precluded the Gravesend/Tilbury option and Long Reach proved to be undeliverable. Therefore, we considered it important that the implications of this be explored as part of the examination process for Tilbury2.

Gravesham BC appreciates that the applicant’s ES covers this in paragraph 2.64 and advises that early feasibility work is being undertaken and whilst the preferred final location has not been identified, an option remains for a new barrier in the vicinity of Tilbury2. This paragraph goes on to explain that, whilst no decision is expected until 2050, the Environment Agency and PoTLL proposed to agree a

Memorandum of Understanding or similar in order to co-operate on this matter as the proposals are brought forward in future decades. The PoTLL confirms that this position has been agreed with the Environment Agency (EA).

## NOISE AND VIBRATION

Gravesham BC is in a difficult position with the Tilbury2 proposal. We recognise, as set out in the outline business case, that a “commercial case” has been made i.e. the proposal is attractive to the market place, can be procured, and is commercially viable and we have been advised that this requires for the CMAT to have 24-hour operation (albeit the submitted information accompanying the application sometimes shows more limited hours).

We have looked at London Gateway <http://www.londongateway.com/port/access-times> and the Shipside Opening Hours are 24 hours but Thames is wider at this point

As a Green Belt authority, our strategy (CS02) prioritises development in the urban area as a sustainable location for development.

### **4.2.26 The strategy prioritises development in the urban area as a sustainable location for development. This will be achieved by:**

- **Promoting regeneration by prioritising the redevelopment and recycling of underused, derelict and previously developed land in the urban area. This will be principally through redevelopment of former industrial sites in the Opportunity Areas of Northfleet Embankment and Swanscombe Peninsula East, and Gravesend Riverside East and North East Gravesend to create new residential neighbourhoods and employment areas;**
- **The continued development of a new sustainable mixed use community in the Ebbsfleet (Gravesham) Opportunity Area, which will include the provision of high quality employment floorspace;**
- **Revitalising the Gravesend Town Centre Opportunity Area as a focal point for retail, leisure, cultural and tourism facilities and small scale office provision to serve the needs of the Borough whilst preserving and enhancing its character as a riverside heritage town; and**

In the Core Strategy, the Canal Basin is expected to deliver 650 homes which is more than 10% of the total requirement and we need this to not be jeopardised by Tilbury2.

## CUMULATIVE AND SYNERGISTIC IMPACTS

### Permitted development rights

Gravesham BC has concerns about the permitted development rights that will be in place and the development that will be allowable beyond that covered by this project's DCO. Chapter 5 of the ES, explains that the Port is a statutory undertaker and benefits from Permitted Development rights under Part 8 Class B of the Town and Country Planning (Permitted Development) Order 2015. This allows development on operational land by the Port and its lessees in respect of dock, pier, harbour, water transport, required:

- (a) for the purposes of shipping, or
- (b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.

As part of the DCO, PoTLL seek to ensure that such rights will apply equally to Tilbury2 when that land becomes operational port land. The PoTLL explains that the exact nature of uses on the site may change over time, and it is through the usage of PD rights that the PoTLL expects to use that flexibility to change.

As Gravesham BC explained in its response to the PEIR, these permitted development rights are wide and it is likely that the need for EIA would only be triggered where a high threshold is met. This means that any subsequent requirement for EIA in connection with further development at the site would only be triggered where any such development in itself has a significant adverse effect on the environment (Schedule 2, 13(a) to the Regulations).

As such, there is potential for development to take place under permitted development rights that would not in itself require EIA but could have a greater impact than that considered by the EIA relevant to the current DCO process. This is a particular concern given the sensitivity of the Tilbury Fort site adjacent and the potential of further development or intensification in use to impact adversely on the southern shore.

The Rochdale Envelope allows the Applicant to set out the broad range of options under consideration and then carry out an ES based on the realistic worst-case scenario for each of those options. Gravesham BC's view is that Rochdale Envelope principles should apply to the grant of any DCO for this project, so that any subsequent development normally allowed under permitted development rights is constrained so as not to breach the worst-case scenario assessed within the ES. Following our submission in the PEIR, Gravesham BC has discussed this with the PoTLL and they are not willing to consider limitations being imposed on their permitted development rights.

Paragraph 5.27 of the "Explanatory Memorandum to Draft DCO" explains that Article 6(2) provides that any development carried out by PoTLL within the Order limits in accordance with a planning permission granted under the Town and Country Planning Act 1990, including under its permitted development rights, is not a breach of the Order.

Paragraph 5.28 then explains that, without this provision, the PoTLL would not be able to build out port-related development within the Order limits as a matter of course, except in accordance with the Order. The PoTLL then makes the point that, in their view, that this “could be overly constraining”.

## DRAFT DEVELOPMENT CONSENT ORDER

		Comments
Part 1 PRELIMINARY		
PART 2 WORKS PROVISIONS	7. Limits of deviation	<p>The examining authority has advised that in article 7e the maximum depth of dredging should be specified, and this is welcomed. The PoTLL had suggested that the depth of dredging was controlled by reference to the engineering sections and plans.</p> <p>From other DCO’s the following type of specifications are anticipated:</p> <p>(a) the current approach channel to a depth of 14.1 metres below Chart Datum (16.95 metres below Ordnance Datum); and</p> <p>(b) the berth pocket to a depth of 16 metres below Chart Datum (18.85 metres below Ordnance Datum)</p>
	19. Protective works to buildings	<p>From the accompanying memorandum it is explained that the purpose of this article is to allow PoTLL to undertake protective works, such as underpinning, to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.</p> <p>It is not anticipated that this will be needed for buildings in Gravesham. The PoTLL advised that potential building works for noise (and lighting?) mitigation is dealt with elsewhere in the DCO.</p>
PART 3 POWERS OF ACQUISITION AND POSSESSION OF LAND		
PART 4 OPERATIONAL PROVISIONS	41. Operation and maintenance of the authorised development	Paragraph 7.5 says “It should be noted that paragraph (3) does not allow any works to be undertaken under this article which would give rise to any significant adverse effects that have not been assessed in the environmental Statement” – “ <u>significant</u> adverse effects” is a high bar
	43. Power to dredge	This article states under (1) that the dredge activity will not exceed the depth specified in article 7(e), however, as noted

		by the Panel, this article does not specify a relevant depth to chart datum and needs to be amended as such.
	46. Operational land for purposes of the 1990 Act	Declares that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990 (see above PD rights comments).
	48. Defence to proceedings in respect of statutory nuisance	<p>As evidence for this, as part of its application, the PoTLL submitted a “statement in respect of Statutory Nuisance<sup>1</sup>”.</p> <p>The statement considers whether the proposed development engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act 1990 ("the EPA"), and if so, how PoTLL proposes to mitigate or limit such nuisances.</p> <p>Paragraph 4.20 of this statement advises that Chapter 17 (Noise and Vibration) of the ES describes the residual impacts from noise arising as a result of the operation of the proposals, which are assessed as being of major adverse effect at some residential properties but will not be significant with receptor mitigation applied to the properties.</p>
PART 5 MISCELLANEOUS AND GENERAL	57. Certification of documents	<p>A number documents to be certified are listed in the ES.</p> <p>As a result of this article, soon as practicable after the making of the DCO, the PoTLL must submit copies of each of the plans and documents set out in Schedule 11 to the Secretary of State for certification that they are true copies of those plans and documents.</p>
SCHEDULE 1 — AUTHORISED DEVELOPMENT		
SCHEDULE 2 — REQUIREMENTS	External appearance and height of the authorised development	<p>3.—(1) Construction of—</p> <p>(a) any silo facilities constructed as part of Work No. 8A(i);</p> <p>(b) any processing facilities constructed as part of Work No. 8C(iii); and</p> <p>(c) any fencing constructed as part of Work Nos. 9 or 12, must not commence until the details of the external materials to be used in the construction of those works has been submitted to and approved in writing by the relevant planning authority, in</p>

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030003/TR030003-000340-6.5%20Statement%20in%20Respect%20of%20Statutory%20Nuisance.pdf>

		<p>consultation with Historic England and <b>Gravesham Borough Council</b>.</p> <p>Table under 3(3) contains maximum height but not other dimensions – these are needed as a building’s bulk and volume can be as important as its height.</p> <p>(GBC has made comments in the LIR about the justification for one tall silo rather than 2 more modest in scale)</p> <p>Agree with Historic England that historic environment is sufficiently important that we should be involved to ensure design</p>
	<p>Construction environmental management plan</p>	
	<p>Noise monitoring and mitigation</p>	<p>10.—(1) Prior to the opening of any of Work Nos. 1 to 8 the Company must carry out a reassessment of the predicted noise impacts arising from the finalised detail design and operational procedures to be implemented for those works.</p> <p>(2) Following the assessment carried out under sub-paragraph (1), if a significant effect is predicted for any receptor, the Company must offer that receptor a scheme of mitigation that must include the installation of noise insulation or triple glazing at that receptor.</p> <p>(3) No part of Work Nos. 1 to 8 can be opened for public use until a noise monitoring and mitigation scheme for the operation of those works based on the results of the re-assessment carried out under sub-paragraph (1) is agreed with the relevant planning authority and <b>Gravesham Borough Council</b>.</p> <p>(4) A scheme under sub-paragraph (3) must include provision for the following matters—</p> <ul style="list-style-type: none"> <li>(a) the nature and temporal length of monitoring;</li> <li>(b) a trigger point at which the Company will be required to make an offer of mitigation to an affected receptor during such monitoring; and</li> <li>(c) that any mitigation offered to an affected receptor must include the offer of the installation of noise insulation or triple glazing at that receptor.</li> </ul> <p>So far as the Council can see, the term “affected receptor” is not defined. Clearly properties which are in occupation at</p>

		<p>the time the works becomes operational can be identified and noise insulation or triple glazing offered (NB. If the building is Listed or in a Conservation Area alternative options may be required)</p> <p>From the draft DCO hearing, GBC understands that “commencement of operational use” is now proposed</p> <p>We agree that the requirement should be explicit that the scheme of mitigation must negate the predicted significant affect and that it will be provided at the PoTLL cost</p>
	<p>Lighting Strategy</p>	<p>12.—(1) No part of the authorised development may be brought into operational use until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England, the MMO and <b>Gravesham Borough Council</b>.</p> <p>(2) The written scheme submitted under subparagraph (1) must be in general accordance with the preliminary lighting strategy and impact assessment.</p> <p>(3) The authorised development must be operated in accordance with the scheme approved under subparagraph (1).</p> <p>Care needed on 12(2) as the study has highlighted the potential for lighting within the CMAT to exceed post curfew luminaire intensity guidelines as a visual impact, however as there is no detailed scheme or operator for the CMAT Site at present it is not possible to determine their exact lighting requirements for inclusion within the calculations.</p>
	<p>Contaminated land (TO BE ADDED)</p>	<p>GBC supports the Environment Agency’s suggestion, in their relevant representation, that a requirement should be added to address the issues related to contaminated land. The EA suggested wording that:</p> <p>Following the grant of the DCO no development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Environment Agency.....</p>