

**APPLICATION BY PORT OF TILBURY LONDON LIMITED FOR AN ORDER GRANTING  
DEVELOPMENT CONSENT FOR A PROPOSED PORT TERMINAL AT THE FORMER TILBURY  
POWER STATION ('TILBURY2')**

**DCO REFERENCE: TR030003**

**MATTER ARISING FROM ISSUE SPECIFIC HEARINGS**

**Representation on behalf of The English Heritage Trust**

**April 2018**



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## 1.0 INTRODUCTION

- 1.1 The English Heritage Trust is licensed to manage Tilbury Fort as part of the National Heritage Collection by the Historic Monuments & Buildings Commission for England.
- 1.2 Carter Jonas LLP acts on behalf of the English Heritage Trust (English Heritage).
- 1.3 During the hearing sessions English Heritage made oral representations which expanded upon the written comments submitted at deadline one. English Heritage was involved in debate about the scale and nature of the impacts of the proposal. These were also considered during the site visit on Monday 16 April.
- 1.4 This submission considers matters arising from those hearing sessions. English Heritage is seeking to clarify matters regarding the need to balance the impacts of the proposal against the stated public benefit. It wishes to remind the Examination that the impact upon the setting of Tilbury Fort is not just about the very real need to protect and enhance the setting of the Fort in an abstract way for the intrinsic heritage value it holds as a Scheduled Monument; it is also about ensuring that this important heritage asset continues to function as a sustainable commercial operation. A commercial operation that directly manages, preserves and enhances the heritage assets but also relies upon those heritage assets and their setting to garner an income.
- 1.5 English Heritage has openly recognised that the setting of the Fort has become somewhat industrial. However, It maintains the view that mitigation is necessary to preserve and enhance the setting of the Fort. While some mitigation is 'embedded' in the proposals, this does not go far enough; nor does it fully negate the impacts of the development. Since there is a remaining or 'residual' impact predicted by the development it also reasonable to seek compensation in addition to mitigation. The effect on the setting of the Fort, is an effect on:
- Its heritage significance;
  - people's understanding of the site;
  - its tourist value;
  - the amenity of its residents; and
  - the value of the site as a filming location.

Each of these elements needs, therefore, to be considered for mitigation and compensation. English Heritage is a registered charity and it does not seek to make profit for profit's sake - money raised at Tilbury Fort is directly invested in the maintenance of the heritage asset and as such if money is lost from any of the mentioned activities that will directly affect its future viability.

- 1.4 English Heritage was also invited by the Inspectors to identify exactly what, from the submissions made to the First Written Questions (FWQ), was considered to be a mitigation measure and what was compensation. These matters are addressed below.

## 2.0 HISTORIC ENVIRONMENT AND SETTING

### Policy context

- 2.1 In its submissions to the Inspectors' FWQ English Heritage outlined what it saw as an omission in the submitted documentation from the applicant. This omission, pursuant to the National Planning Policy Framework (NPPF) paragraph 134, is a balancing exercise to weigh the adverse impact of the proposal against its public benefits. During the hearing sessions the applicant sought to argue that this exercise was unnecessary because there is not the provision for it in the National Policy Statement for Ports (NPSP). However, English Heritage maintains that this assertion is incorrect. The following excerpts from the NPSP support its position, first; that a balancing exercise has to take place:

*“1.2.5 The IPC must decide an application for ports infrastructure in accordance with this NPS unless it is satisfied that to do so would:*

*...*

- result in adverse impacts of the development outweighing its benefits;”*

Thus suggesting that impacts need to be assessed and the benefits clearly laid out in order to be sure that the former do not outweigh the latter.

2.2 Later in the NPSP the overall requirement to deliver sustainable development is summarised as follows:

*“3.3.3 In addition, in order to help meet the requirements of the Government’s policies on sustainable development, new port infrastructure should also;*

*...*

- ensure that access to and condition of heritage assets are maintained and improved where necessary;”*

This too, suggests that the impacts of the proposals need to be understood, then mitigated and compensated as necessary.

2.3 Turning to the guidance in the NPSP that relates directly to the historic environment; paragraphs 5.12.12, 5.12.13 and 5.12.14 are of most relevance to understanding the need to balance the impacts of the proposal against the public benefits:

*“5.12.12 The decision-maker should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality...*

*“5.12.13 There should be a presumption in favour of the conservation of designated heritage assets and, the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced, and their loss has a cultural, environmental, economic and social impact...”*

And finally

*“5.12.14 Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development...”*

2.4 It should also be noted, as was made clear at the hearings, that the NPPF post-dates the NPSP and is of course of material weight, as the applicant confirmed in its submissions. It is also relevant to note that the NPSP cross refers to national planning policy – specifically at footnotes 66, 71 and 74. These references are to the now superseded PPS5, and in the first two cases the reference is to PPS5 or “any successor.”

2.5 Notwithstanding the provisions of the various footnotes, comparing the text of the NPSP paragraphs above and that of the NPPF 134 reveals very little difference:

*“134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”*

2.6 English Heritage accepts that at paragraph 5.12.16 of the NPSP it states that “the decision-maker should weigh any negative effects against the wider benefits of the application.” And that this is a detail not included in the NPPF. English Heritage contends, however, that the onus is on the applicant to provide sufficient information to enable this balancing exercise to take place.

- 2.7 In its submissions – both written and oral – to the FWQ, English Heritage sought to provide the Inspectors with information pertaining to the adverse impacts (that mirrored and expanded upon the concerns of Historic England), as provided for by paragraph 4.2.4 of the NPSP. English Heritage also presented what it considered to be reasonable mitigation and compensation measures that are not only necessary to minimise the effects of the proposal, but since adverse impact cannot be fully ruled out, are also reasonable compensation. In considering the reasonable nature of English Heritage’s proposals a key sentence from the end of NPSP paragraph 5.12.16 will need to be borne in mind:

*“The greater the negative impact on the significance of the asset, the greater the benefits that will be needed to justify approval.”*

### **The baseline position**

- 2.8 Through both its written and oral submissions the applicant has made several references to the previous and current “industrialised setting” of Tilbury Fort and during the hearing sessions, on Wednesday 18 April, the Inspectors were asked by the applicant to consider Appendix D of English Heritage’s submission: The draft Conservation Plan produced by Alan Baxter.

- 2.9 In particular, the Inspectors were taken to section 3.6.2 - Page 60:

*“The Fort’s historic sense of openness, isolation and primacy in the area has been lost. Development now virtually surrounds the Fort and its setting now feel distinctly urban and industrial.”*

- 2.10 However, such selective quoting risks giving a misleading impression of the document. If read as whole it does not suggest that the situation should be allowed to deteriorate still further. Indeed, quite the opposite: this application presents an opportunity to reconsider setting of a heritage asset, to preserve what can be preserved and to consider whether there is the opportunity to enhance its setting. There are particular elements of the setting that the Conservation Plan identifies as worthy of attention (that were viewed during the site visit on Monday 16 April), and it is these that are put at risk by the Tilbury2 proposals:

- 2.11 Section 3.6.3 – Page 60, including our underlining for emphasis:

*“Tilbury Fort’s setting contributes fundamentally to its overall significance. Today this contribution manifests itself largely as part of the Fort’s historic and aesthetic interest.*

*“When first built the setting was perhaps the most significant contributor to the Fort’s significance. This was due to a combination of:*

- *its location at the point where the Thames begins to narrow on its way to London;*
- *its topography which offered long views both up and down the river;*
- *its geology of low-lying marshy alluvium which provided an extra layer of defence, and;*
- *its proximity and close relationship with Gravesend.*

*“These aspects still contribute to the Fort’s historic interest today as they explain why the Fort is located where it is and also to some extent, what it looks like. For example, the marshland setting facilitated the inclusion of moats in the Fort’s design...”*

*“..However, there are still a few places which demonstrate the strategic location of the Fort, in particular in the view towards Gravesend from north of the Fort and the view north-east towards West Tilbury from the north-east bastion (fig ?). The comparable lack of development in these areas means that the original nature of the setting remains partially legible. Therefore these sites still contribute to the Fort’s overall significance.”*

### **The scale of effect**

- 2.12 Planning guidance that supports the NPPF (and NPSP) states how the understanding of impacts is best managed:

*“A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way.”*

Paragraph: 019 Reference ID: 18a-019-20140306

- 2.13 It is clear that there will be an impact on the setting of the Fort, and that there are differences of opinion about the scale of that impact. Both English Heritage and Historic England have already made detailed submissions about the magnitude of the adverse impacts of the proposals, and accordingly, those matters are not repeated here. However, what appears to have been misunderstood by the applicant, and therefore is not considered through mitigation, is that the impacts to the significance and setting of the Scheduled Monument are not simply to its heritage value in an abstract way, but also to the everyday running and viable maintenance of it. The ‘understanding’ and ‘setting’ of the Fort is vital to preserve for the enjoyment and education of generations of people today and in the future. It is also vital that the Fort, which is funded by paying visitors, leasing to residents and television and film companies using the site as a location, can be maintained. If any of these elements of funding is impacted, it directly effects the ability of English Heritage to maintain the Fort (a Scheduled Monument) in a viable way.

- 2.14 The impacts to the heritage assets and their setting, and their viable preservation, form the basis of the argument being advanced by English Heritage. However, there is also guidance in the NPSP outlining how commercial, tourism and access impacts should all be weighed by decision makers that form parts of our overall case and are described below.

- 2.15 Paragraph 4.4.1 in the NPSP states that:

*“The decision-maker may need to make judgements as to whether possible adverse impacts would arise from the impact of the development on other commercial operators.”*

This guidance demonstrates that the principle of a commercial impact is considered in the NPSP and, for the avoidance of doubt (and as set above), English Heritage is not charged with making profit for profit’s sake; its commercial activities are essential in terms of maintaining, preserving and enhancing the heritage assets. The commercial operation and the setting of the Fort are not mutually exclusive, one cannot and should not take precedence over the other.

- 2.16 The commercial impacts guidance then goes on to explain, at paragraph 4.4.2, that the decision maker *“should consider the adequacy of the mitigation proposed”*, rather than necessarily the *“likelihood of the impact arising.”* It is the contention of English Heritage that the mitigation is not adequate and this, as explained at section 3, is why additional measures and compensation should be included in the Tilbury2 proposals.

- 2.17 Tourism impacts, as a separate matter, are recognised in the NPSP. At paragraph 4.6.2 it is stated that:

*“Port development may have an adverse impact on tourism, for example if it severs or diverts footpaths or bridleways, has a detrimental impact on the surrounding landscape or seascape”*

So, notwithstanding the heritage impacts, the tourism value of the landscape and seascape should be weighed in the balance of impacts and benefits.

- 2.18 Access and transport impacts are recognised as matters in need of consideration as part of the NPSP. It states at paragraph 5.4.25 that:

*“Where development would worsen accessibility, such impacts should be mitigated so far as reasonably possible.”*

- 2.19 As detailed below, English Heritage recognises that the Tilbury2 Active Travel Study considers, and includes some mitigation for, transport issues. Suffice to say, however, that the impacts of transport should be weighed in the balance against the public benefit. Some of the mitigation included in the Active Travel Study is in the public benefit. However, English Heritage is firmly of the view that this is not sufficient and that access to the Fort, in particular, is still compromised. The additional mitigation proposed by English Heritage would also weigh in the public benefit of the overall Tilbury2 proposals, if they are included.

### **Public benefits**

- 2.20 Section 3 of the NPSP explains the national and regional economic value of ports is a public benefit and English Heritage do not seek to dispute this. There are, however, other layers to public benefit that need to be taken into consideration and proven as part of the process.

- 2.21 This submission has already established that the NPPF is material to the considerations of the Tilbury2 proposals. The PPG also provide some very useful context. The Planning Practice Guidance states that:

*“Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (paragraph 7). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits.*

*“Public benefits may include heritage benefits, such as:*

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset*
- *securing the optimum viable use of a heritage asset in support of its long term conservation”*

Paragraph: 020 Reference ID: 18a-020-20140306

- 2.22 It is also therefore legitimate and reasonable to consider and expect preservation and enhancement of heritage assets as a public benefit within the proposals.

## **3.0 MITIGATION AND COMPENSATION**

- 3.1 English Heritage recognises and appreciates that the applicant has undertaken to design the proposals in a way to minimise impacts as far as it can. The design of the proposals include colours and materials that will reduce the impact of the development on the setting of the Fort. As outlined in previous written representations English Heritage and Historic England maintain concerns, particularly, about the potential impact of stacked containers.

- 3.2 The applicant’s Active Travel Study contains: the downgrading of Fort Road; access improvements to the Fort in terms of resurfacing the area around the World’s End pub and the footpaths around the Fort; and, way finding signage.

- 3.3 This embedded mitigation is necessary and will assist in maintaining visitor numbers and can be weighed in the public benefit. However, as demonstrated, tourism is but one source of income for the Fort. To sustain the viability of the Fort and in turn preserve and enhance the

heritage assets, English Heritage is seeking mitigation and compensation for the other aspects of the commercial operation of the Fort.

- 3.4 English Heritage and Historic England contend (as outlined in response to the FWQ) that there is still a significant residual impacts on the setting of the Fort. The further mitigation that is being suggested will help to reduce the residual impacts of the proposed development, but that impact cannot be entirely removed. English Heritage considers therefore that it is appropriate and necessary also to seek some compensation for the impacts to the various activities that go towards preserving and enhancing the setting of the Heritage Assets and their viable maintenance.
- 3.5 English Heritage has sought to provide the Inspectors with an objective appraisal and optioneering exercise in the form of the Conservation Plan. This document is not a decision making tool in its own right and is undertaken to enable English Heritage to prioritise projects to ensure the preservation of heritage assets and their continued viability. English Heritage is relying on those elements of the Conservation Plan that it considers to be appropriate, necessary and directly related to impacts identified and that can be also be weighed in the public benefit. This is not simply a 'wish list' of desirable improvements.
- 3.6 English Heritage recognises that the draft Heads of Terms for Section 106 obligations include a sum for heritage enhancements. English Heritage believes this to be necessary and considers the following measures could be included in the final version of this agreement, which should be made between the applicant, the Local Planning Authority and English Heritage.
- 3.7 As requested by the Inspectors, set out below is what English Heritage considers to be mitigation and compensation and briefly, how they are directly related to the impacts as they have been described. Each element is taken from paragraph 2.7 in the written submissions to the FWQ.
- 3.8 English Heritage considers that the following is mitigation for the loss of setting, the residual effects on setting and to better reveal the significance once it is lost. It will also aid in the understanding of visitors and can be understood as a public benefit.

Item	Description of Mitigation	Estimated Cost
Signage and Interpretation Scheme	The installation of a re-designed signage and interpretation scheme would allow visitors to better understand the legibility of the monument in the new setting. Where key views have been impacted or entirely lost by the development, an innovative interpretation scheme would be vital to ensuring quality of visit.	£110,000 - £150,000

- 3.9 English Heritage recognises that the Active Travel Study includes 'way finding signage,' and acknowledges that this will improve access to the Fort. It also understands following discussions with the applicant that the area around the World's End pub is proposed to be resurfaced. However, these measures are indirect benefits to the Fort as they are not within the control of English Heritage. The measures in the Active Travel Study to downgrade Fort Road lack strong enforcement measures and English Heritage considers that further traffic calming is necessary to avoid exacerbating the parked HGV problem that restricts access to the Fort. Therefore the following additional mitigation for access is proposed:

Item	Description of Mitigation	Estimated Cost
Driveway	Re-surfacing of the existing driveway approach to the Water Gate to maintain the current approach to the Fort.	£75,000
Traffic Calming	Design and implementation of an agreed scheme of traffic calming measures along Fort Road. Currently the volume of HGVs parked along this narrow road approaching the Fort impacts on the sense of arrival and welcome to the monument and detracts from the	Scheme to be proposed by PoT

	visitor experience. EH anticipates this will only increase once the new access corridor is in place and traffic caused by the expansion of the Port increases.	
Original Car Park	Surfacing of the original car park to the North of the site would allow EH to realise a long-held ambition to re-orientate and provide better access to the site. This would need to be seen in conjunction with the bridge improvements below for the scheme to be possible.	£110,000

- 3.10 The original car park to the north of the Fort's moats – that is identified as a proposed access improvement – links directly to two access bridges. It follows therefore that to complete access to the Fort these bridges should also be improved. The bridges will also help to better reveal the significance of the heritage assets that will be compromised by the proposed development and can be weighed in the public benefit. Moreover, there is only limited mitigation that can be proposed for the long distance views from the Fort. There will be residual impacts after the embedded design mitigation and the inclusion of the signage proposed above. Therefore, preserving and enhancing the nearby setting of the Fort is a reasonable and necessary alternative. English Heritage considers the following to be mitigation for access and compensation for setting:

Item	Description of Mitigation and Compensatory Measure	Estimated Cost
Outer Bridge	Reconstruction of the bridge over the Outer Moat would allow access by visitors via the original approach to the Fort from the North. This would need to be seen in conjunction with the car park and inner bridge in order to be fully possible.	£206,000
Inner Bridge	Reconstruction of the bridge over the Inner Moat would allow access by visitors via the original approach to the Fort from the North. This would need to be seen in conjunction with items the car park and outer bridge in order to be fully possible.	£587,000

- 3.11 The long distance views to West Tilbury and out to sea will be compromised by the proposals. English Heritage has been told that there are good operational reasons for this, and notwithstanding its written responses submitted in response to the FWQ, it appears that there is little that can be done to reduce the residual impacts on these long distance views. Similarly, therefore, to proposed improvements to the bridges, as set out above, compensatory measures are sought to preserve and enhance the nearby setting of the Fort from the residual setting impacts:

Item	Description of Compensatory Measure	Estimated Cost
Outer Moat	Repairs to and dredging of the outer moat would represent a significant improvement to the setting of the Fort and would be seen as proportionate compensatory measure to offset the harm to the Fort's wider setting.	£3.6 million
Inner Moat	Repairs to and dredging of the inner moat would represent a significant improvement to the setting of the Fort and would be seen as proportionate compensatory measure to offset the harm to the Fort's wider setting.	£3.6 million

#### 4.0 OTHER MATTERS

- 4.1 English Heritage continues to discuss these matters with the applicant and is working in good faith to complete a Statement of Common Ground. English Heritage also looks forward to being involved in the ongoing discussions on the S106 Agreement at the appropriate time.

- 4.2 English Heritage is still in discussion with the applicant and its flood consultants about the increased tidal breach flood risk that had been identified at Tilbury Fort (to the north west at the outer moat). English heritage has been assured that the risk is limited and that the function of the moats is included in the analysis. English Heritage is not raising objections on this point. However, it reserves its position until the post hearing report is published from the applicant's flood consultants and the Environment Agency. English Heritage will respond in time for the next relevant deadline.

