



PORT OF
TILBURY
LONDON

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

PROPOSED PORT TERMINAL AT
FORMER TILBURY POWER STATION
TILBURY2

TRO30003

WRITTEN SUBMISSION OF CASE AT CAH2 ON 27TH JUNE

DOCUMENT REF: PoTLL/T2/EX/134





Pinsent Masons

PORT OF TILBURY LONDON LIMITED – TILBURY2 – DEVELOPMENT CONSENT ORDER APPLICATION

COMPULSORY ACQUISITION HEARING

27 JUNE 2018

SUMMARY OF APPLICANT'S SUBMISSIONS

1. INTRODUCTION

- 1.1 This note summarises the submissions made by and on behalf of Port of Tilbury London Limited ("PoTLL") ("the Applicant") at the Compulsory Acquisition Hearing held on 27 June 2018 ("the hearing") in relation to PoTLL's application for development consent for a Proposed Port Terminal at the Former Tilbury Power Station known as "Tilbury2" ("the Scheme").
- 1.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ("the ExA") on 19 June 2018 ("the agenda").
- 1.3 In setting out PoTLL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which PoTLL made oral submissions. Where the ExA requested a written response to an agenda item, the Applicant has also responded as appropriate in the note below.
- 1.4 PoTLL's substantive oral submissions commenced at item 3 of the agenda, therefore this note does not cover item 1 on the agenda which was procedural and administrative in nature, or item 2, as the issues were covered in full in item 3.

PINS' ISH Agenda Item/ Issue	Proposed Response	Relevant document references
<p>3.3.1 What is the position concerning the formal objections to the use of compulsory acquisition (CA) powers by:</p> <ul style="list-style-type: none"> • CGL? • Cole family? • Mr Gothard? • NGET? • NR? • PLA? 	<ul style="list-style-type: none"> • Robbie Owen on behalf of PoTLL clarified that the Cole family has not submitted a formal objection to the Examination. Whilst a submission was made pre-Examination by the Conservators of West Tilbury Common, this should be considered to be made on behalf of those parties who hold rights in common affected by Tilbury2. The Cole family have not submitted a representation with regard to their land ownership. • The Applicant noted that Mr Gothard had not submitted a written submission to the Examination but that his agent did make oral representations at the first Compulsory Acquisition Hearing so can be considered to have made a formal objection. • Mr Owen confirmed that, in response to a query from the ExA, an updated Land Negotiations Tracker would be submitted at Deadline 5, indicating those parties that the Applicant believes have submitted formal objections to the proposed compulsory acquisition powers. • Mr. Owen then went on to confirm the position in respect of the identified parties, with assistance from John Speakman, of PoTLL, as matters stood at the hearing. • However, as matters have moved on from this position, this is not recorded here. The latest position with each party as at Deadline 5, capturing updates since the hearing, can be found in the updated Land Negotiations Tracker submitted at Deadline 5. • At the Hearing, the Panel queried whether, following agreements reached with landowners prior to the end of Examination, the land documentation for the Scheme should be amended to remove from the Order limits the plots in which the landowners concerned held an interest. • Mr Owen on behalf of the Applicant confirmed that the Applicant would not be proposing to amend the documentation in this way. He explained that this was because, whilst agreements could be reached with certain parties, this would not necessarily mean that all parties in each plot would be accounted 	<p>Updated Land Negotiations Tracker (PoTLL/T2/EX/146)</p>

	<p>for, necessitating compulsory acquisition of those remaining interests. Furthermore, even where all parties were captured within one or more legal agreements, compulsory acquisition powers were still necessary to ensure that any unidentified/unknown interests could be cleansed from the title, enabling the Applicant to take the land cleanly and thus ensuring that no impediment would arise to delivery of the Scheme.</p> <ul style="list-style-type: none"> All of the land within the Order limits is required for delivery of the Scheme, and retaining the ability to acquire the land compulsorily ensures that it can be delivered 	
<p>3.3.2 What is the position concerning Crown Estate approval to proposed temporary use of plot 06/01 and compulsory acquisition of plot 06/02?</p>	<ul style="list-style-type: none"> Mr Owen confirmed that negotiations with the Crown Estate were on-going. It had previously been thought that the Crown Estate lease would mirror the PLA lease, but it is now considered that there will be differences between the two. Mr Owen also confirmed that PoTLL continues to work with the Crown Estate to obtain their section 135 consent. 	
<p>3.3.3 What is the position concerning negotiations over the Special Category Land, plots 03/08 and 03/11?</p>	<ul style="list-style-type: none"> Mr Owen confirmed that the relevant parties for the Special Category Land are the Coles and the common rights holders. In respect of the Coles, Mr Owen reported that good progress had been made, with legal option agreements expected to be signed imminently in respect of both the temporary and permanent Special Category Land. Further updates are contained in the Updated Land Negotiations Tracker. In respect of the Conservators of the common rights holders, Mr Speakman confirmed that PoTLL had been continuing to try and organise a final resolution meeting with the clerk. It is however considered that his concerns expressed in his submission of 4 January 2018 will be able to be met. Mr. Speakman also reported that progress had been made with Thurrock Council in respect of the Thurrock Land. Further updates are contained in the Updated Land Negotiations Tracker. Mr Owen also introduced the fact that PoTLL would be making a number of 	<p>Updated Land Negotiations Tracker (PoTLL/T2/EX/146)</p> <p>Land, Crown Land and Special Category Land Plans (PoTLL/T2/X127)</p> <p>Book of Reference (PoTLL/T2/EX/128)</p> <p>Statement of Reasons (PoTLL/T2/EX/130)</p>

	<p>submissions at Deadline 5 in relation to the land to be provided as replacement land for the Special Category Land. These submissions relate to the fact that it had come to PoTLL's attention that the proposed replacement land (Plot 03/04a) at 18,026m² was much bigger than the Special Category Land to be lost as a result of the Scheme (13,505m²).</p> <ul style="list-style-type: none"> • As such, at Deadline 5 revised Land, Crown Land and Special Category Land Plans, the Book of Reference and the Statement of Reasons have been submitted to reduce the amount of land within plot 03/04a to 13,509m². This reduction has involved simply moving the Order limits to the north; as such the change is not considered to affect the ability of the land to meet the statutory tests for its suitability as replacement land. • With regard to the Planning Inspectorate's Advice Note Sixteen: How to request a change which may be material, and the MHCLG Guidance on the examination of applications for development consent, the Applicant considers that this change to the Order limits is a non-material change to the Tilbury proposals capable of being accepted as such by the Examining Authority. This is because: <ul style="list-style-type: none"> ○ it does not involve the addition of any land to be compulsorily acquired or temporarily possessed, and in fact reduces the amount of compulsory acquisition; ○ there are no environmental impacts from the change, or a change to the environmental impacts of the Tilbury2 proposals as a whole; ○ there is no effect to the local community arising from the change; or likely public interest in the change, as it purely affects the land holdings of one landowner; and ○ these changes have been discussed with Thurrock Council (as current owners of the affected land) and the Cole family (who will have the benefit of the land by virtue of article 37 of the DCO); who are believed to be agreeable to the change. 	
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3.3.4 What is the Applicant's response to RWE's submission at Deadline 4 [REP4-004] concerning:

• the operation of Article 27 so as to permit the extinguishment of RWE's private rights reserved over such part of the Jetty (Plot 6/10) that is proposed to be compulsorily acquired?

• the operation of revised Article 27(3) so as to permit the suspension of, and render unenforceable, RWE's reserved rights over such part of the Jetty and the river bed that is proposed to be possessed temporarily?

• the operation of Article 28 so as to permit the interference with and/or breach of RWE's reserved rights over such part of the Jetty that is proposed to be compulsorily acquired?

• the absence of RWE's interests in plot 6/10 in the Book of Reference?

- Mr. Owen explained that the focus of discussions on RWE's interests in the marine environment had now moved to the Protective Provisions for the benefit of RWE, which would deal with the concerns raised in RWE's Deadline 4 submission.
- As explained in the Summary of Case of the DCO Hearing of 28 June, these protective provisions seek to ensure that RWE's contractual rights under its Jetty Asset Transfer Agreement with PoTLL continue to be protected and retained as Tilbury2 moves forward.
- Mr. Owen also explained PoTLL's position that RWE's rights with respect to the jetty are contractual not proprietary. This is because the transfer of the jetty from RWE to PoTLL was a transfer of a chattel (i.e. the jetty) rather than of land. As such, RWE's reserved rights under that transfer are also contractual. These rights do not therefore need to be listed in the Book of Reference.