

Gravesham Borough Council’s comments on the Examining Authority’s Response to the Applicant’s Draft Development Consent Order (dDCO) Revision 4 (DEADLINE 6 – 03/08/2018)

Item No.	Part of DCO	Directed to	Comments, Question, Expectations
5.8.19	Schedule 2: Requirements R10 Noise monitoring and mitigation	Applicant, Thurrock Council (TC), Gravesham Borough Council (GBC)	<p>ExA notes GBC’s submission at deadline 5 [REP5-063] in which GBC states that it continues to maintain its view that noise limit levels should be set in requirement 10 of the dDCO. GBC includes references for where GBC asserts that noise levels have been used elsewhere, and proposals for how noise levels might be included for Tilbury2.</p> <p>ExA acknowledges the amendments made in dDCO revision 4 - adding a clause for providing re-assessment results to GBC and the planning authority, and providing further definition of noise levels to trigger mitigation measures.</p> <p>Having reviewed the arguments submitted, ExA is of the view that noise limits should also be set once further monitoring has been undertaken. It is recommended therefore that the sub-section of Requirement 10 entitled ‘Ongoing noise monitoring and mitigation scheme’ should make reference to noise limits being agreed at monitoring locations.</p> <p>Would the Applicant and GBC state their positions on ExA’s proposal above.</p>

Gravesham Borough Council (GBC) appreciates that, having reviewed the arguments submitted, the ExA is of the view that noise limits should be set once further monitoring has been undertaken.

This is obviously the position that GBC hopes that the ExA would take following the detailed submissions and examples that GBC has submitted to the ExA at deadline 5 and in its previous submissions.

Since the ExA published response to the Applicant’s Draft Development Consent Order (dDCO) Revision 4, we have been in touch with the Port of Tilbury (PoTLL)

who advised that they wanted to meet. Our email of the 20 July contained the following:

Dear Peter and Martin,

From our reading of the Examining Authority's Response to Revision 4 of the draft Development Consent Order 13 July 2018 statements on R10 Noise Monitoring and Mitigation, the ExA is minded to agree with GBC that noise limit levels should be set in the DCO. In our deadline 5 response, we suggested 2 options and the ExA is looking at the second option, namely that the DCO should be explicit that noise limits will be set once further modelling has been undertaken. Our suggested wording was:

- No development shall commence until a detailed noise monitoring scheme has been agreed with the relevant planning Authority and Gravesham Borough Council.
- The scheme shall include details of noise monitoring locations, noise limits at those locations, the method and frequency of noise monitoring and provisions for keeping records of noise monitoring and supplying these to the relevant planning Authority and Gravesham Borough Council.
- Any scheme that is approved shall be implemented in full for the duration of the development.
- Noise levels shall not exceed those specified in the approved scheme.

The ExA concludes this section by asking that, for deadline 6, would the Applicant and GBC state their positions on ExA's proposal above.

I have just spoken to Allan and we aren't sure that a meeting is needed:

1. If you are now minded to accept that ExA's changes to R10, some wording could hopefully be agreed via email exchange
2. If you are not minded to accept that ExA's changes to R10, the ExA expects you to explain why in your deadline 6 response. We, of course, will be supporting the ExA's proposed revisions.

In response, we were advised that they still wanted to meet. Our email of the 30 July contained the following:

I notice that you haven't advised if you are or are not now minded to accept that ExA's changes to R10.

On the basis that you are minded to accept the ExA's changes, we would be happy to propose the following:

- The ExA has advised that noise limits should also be set once further monitoring has been undertaken. GBC recognises the advantage of setting levels in this way as all parties will have the advantage of knowing what the CMAT operations and equipment will be thereby allowing the noise model to be more accurate. Noise levels cannot be defined now – apart from potential L_{Amax}
- The detailed noise monitoring scheme will cover:
 - the supply, installation and maintenance of a monitoring system at the specified noise monitoring locations – in the first instance we would anticipate these being the same short-term and long-term locations as set in the ES. We assume that this will include locations identified for the measurement of background noise for a period of not less than six months ending not later than the time when construction at the site commences

- noise limits at those locations – we would expect these to be set for day, evening and night with agreement on what time periods these relate to. Our suggestion would be that used for ports elsewhere in the UK in respect to time periods as indicated below

Table 1 Limits for Operating Noise

<i>(1) Period</i>	<i>(2) Time</i>	<i>(3) Noise Limit</i>	
Daytime: Monday—Friday Saturday	0700–1900 0900–1900	53 dB LAeq (1 hour)	
Evening: Monday—Saturday Daytime: Sunday and bank holidays	1900–2300 0900–1900	46 dB LAeq (1 hour)	
Night-time: Monday—Friday Friday—Sunday Sunday—Monday	2300–0700 2300–0900 1900–0700	44 dB LAeq (1 hour)	48 dB LAmax

- the method and frequency of noise monitoring – ideally monitoring should be continuous and available in a location that GBC, Thurrock and the PoTLL can view at any point if it isn't going to be publicly accessible. In respect to the method, our suggestion would be that as used for ports elsewhere in the UK i.e. LAeq (1 hour) / LAmax. This will also cover issues such as wind speed.
- Once approved, the scheme shall be implemented in accordance with its terms
- Recognise that might require additional caveats such as:
In the event that noise levels at the specified locations exceed the limits in Table Y, subject to the provisos in Table Y on wind speed and background noise, the Port of Tilbury Limited shall undertake further measurements to investigate and such further measures as may be necessary to identify the cause, and insofar as the source of the noise is under their control, take remedial action to reduce noise emission from the site to within the limits in Table Y and take all reasonable action to prevent any repetition of a breach of the limits.

Is this the type of discussion you were anticipating?

In advance of us submitting this deadline 6 response, the PoTLL have been upfront in let us know that they continue to object in the strongest terms to an additional requirement being imposed.

In response, we would like to draw the ExA's attention to two specific statutory instruments:

- The Associated British Ports (Hull) Harbour Revision Order 2006
http://www.legislation.gov.uk/uksi/2006/1135/pdfs/uksi_20061135_en.pdf
contains the following noise limit condition:

Operational restrictions

3. The port operational use of the works shall be restricted to the handling of load-on load-off container traffic, and any use which is incidental or ancillary to the handling of such traffic.

4. Container stacks shall not exceed a maximum height of 13 metres above the level of Work No. 1.

5. No shore cranes shall exceed, with booms raised, a height of 80 metres above the level of Work No. 1.

6. No lighting columns shall exceed a height of 30 metres above the level of Work No. 1.

7.—(1) Before the commencement of operations at the site, and for so long as such operations continue, A.B. Ports shall provide and maintain the noise barrier authorised by article 5(2) at a height of 5 metres above the level of Work No. 1.

(2) In sub-paragraph (1), “the site” has the meaning given by paragraph 8(4) below.

8.—(1) Operational noise emitted from the site (excluding noise arising from construction activities), shall be monitored in accordance with sub-paragraph (2) below and, to the extent that such noise is under the control of A.B. Ports, it shall be controlled so as not to exceed the limits stated in Table 1 measured at the specified location.

Table 1 Limits for Operating Noise

(1) Period	(2) Time	(3) Noise Limit	
Daytime: Monday—Friday Saturday	0700–1900 0900–1900	53 dB L _{Aeq} (1 hour)	
Evening: Monday—Saturday Daytime: Sunday and bank holidays	1900–2300 0900–1900	46 dB L _{Aeq} (1 hour)	
Night-time: Monday—Friday Friday—Sunday Sunday—Monday	2300–0700 2300–0900 1900–0700	44 dB L _{Aeq} (1 hour)	48 dB L _{Amax}

(a) 1990 c. 8.

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Note 1: L_{Aeq}(1 hour) shall be the highest recorded value over the time period.

Note 2: Measurements shall be disregarded if the wind speed measured at the location where the noise level is measured exceeds 5 metres per second.

Note 3: Measurements shall be disregarded if the level of background noise determined using the same units in accordance with sub-paragraph (2)(a) below is within 3 dB of the levels stated in Table 1.

Note 4: “Bank holiday” means a day specified as a bank holiday in or under the Banking and Financial Dealings Act 1971(a).

(2) Before the commencement of operations at the site, a scheme for monitoring noise arising from those operations at the site shall have been submitted to and approved in writing by Kingston upon Hull City Council (“HCC”). The scheme shall provide for—

- (a) the supply, installation and maintenance of a monitoring system at the specified location, and at a location determined by calculation or measurement as suitable (by virtue of additional distance from the works, such that site-related noise is at least 7 dB lower than at the specified location) for measurement of background noise for a period of not less than six months ending not later than the time when operations at the site commence;
- (b) the monitoring system to be capable of inspection and interrogation by HCC and A.B. Ports at any time; and
- (c) continuous measurement and recording of wind speed either at the specified location or at a location from which the wind speed at the specified location can be inferred;

and once approved, the scheme shall be implemented in accordance with its terms.

(3) (a) In the event that noise levels at the specified location exceed the limits in Table 1, subject to the provisos of Note 2 and Note 3, A.B. Ports shall undertake further measurements to investigate and such further measures as may be necessary to identify the cause, and insofar as the source of the noise is under their control, take remedial action to reduce noise emission from the site to within the limits in Table 1 and take all reasonable action to prevent any repetition of a breach of the limits.

(b) In the event that A.B. Ports is unable to identify the cause of increased noise levels, HCC may, by itself or through its duly authorised agent and at the expense of A.B. Ports, undertake such reasonable measurements and investigations as it deems necessary to identify the cause; and, in the further event that the cause is established by HCC, and that the source is under A.B. Ports’ control, shall submit a programme of reasonable remedial action to reduce noise emission and prevent repetition and A.B. Ports shall promptly undertake, at its own expense, the action specified.

(4) In sub-paragraphs (1) to (3)—

“the site” means the area of Work No. 1 as constructed and any area dredged under article 9;

“the specified location” means a free-field location 4m above local ground level near and to the south of 27 Corinthian Way.

- We consider that there is much in this order which could work for the Tilbury2 dDCO and you can see we made reference to its contents, when we responded to the PoTLL on 30 July.
- The London Gateway Port Harbour Empowerment Order 2008 http://www.legislation.gov.uk/uksi/2008/1261/pdfs/uksi_20081261_en.pdf
Whilst not setting out a noise limit per se, page 50-51 of this order, sets out that the Harbour Authority has to agree measures that would limit night time noise at certain locations. This is a port which is just slightly further down the estuary than Tilbury2.

We understand that, despite their opposition to the imposition of such a requirement, the PoTLL, in acknowledgement of the ExA's currently-stated position, are pragmatically submitting a draft additional requirement so that the ExA has their preferred wording, if the ExA and Secretary of State still considered that a noise limit requirement was necessary.

As it has only come through this afternoon, we can't comment at this stage but would want to go back to the PoTLL in advance of deadline 7 as they have requested. We do appreciate that this has been produced. Our understanding from the hearing session on the 27 June 2018, was that this was what the ExA wanted when it was suggested to GBC that GBC suggest a noise limit condition for discussion with the PoTLL and Thurrock Council. As the ExA remembers this was rejected in principle by the PoTLL.

Apart from problems result from key officers taking leave in this period to deadline 7, we are optimistic that wording can be agreed with the PoTLL for the dDCO's noise requirements.