



Meeting note

File reference	TR030003
Status	Final
Author	Steven Parker
Date	17 May 2017
Meeting with	Port of Tilbury London Ltd (PoTLL)
Venue	Teleconference
Attendees	The Planning Inspectorate Hannah Pratt (Senior EIA and Land Rights Advisor) Emma Cottam (EIA and Land Rights Advisor) Sarah George (Lawyer) Steven Parker (Assistant Case Officer) Port of Tilbury London Ltd Peter Ward (PoTLL) John Speakman (PoTLL) Pamela Smyth (Forth Ports) Martin Friend (Vincent + Corbing) Robbie Owen (Pinsent Masons) Francis Tyrrell (Pinsent Masons) Matthew Fox (Pinsent Masons) Connor Barron (Atkins) Daniel O'Kelly (Atkins)
Meeting objectives	For the developer to update the Planning Inspectorate on the progress of their project and to discuss matters raised within the Scoping Opinion
Circulation	All attendees

Summary of key points discussed and advice given:

Introduction

The Planning Inspectorate outlined its openness policy and ensured the developer understood that any issues discussed and advice given would be recorded and placed on the Planning Inspectorate's website under s.51 of the Planning Act 2008. Further to this, it was made clear that any advice given did not constitute legal advice upon which the developer (or others) can rely.

Project update

The developer updated the Planning Inspectorate on their progress on producing the Preliminary Environmental Information Report (PEIR) document, ahead of putting this out for consultation to statutory consultees in June; they also confirmed that work was continuing as planned with regard to holding consultation exhibitions in June.

The developer stated that, in general, engagement was progressing well with the host authorities and statutory consultees, noting that it intends to enter into a Planning Performance Agreement with Gravesham Borough Council as well as Thurrock Council. The developer raised concerns that Historic England (HE) had not to date been able to respond within the PoTLL's requested timeframes. The developer confirmed it is meeting with HE on 23 May 2017 where it will discuss engagement going forward, noting its intention to utilise HE's Enhanced Advisory Service.

The Planning Inspectorate advised the developer to keep a record of all correspondence with statutory consultees.

The developer noted that its Statement of Community Consultation was nearing completion.

PoTLL's response to the Scoping Opinion

The developer referred to its letter of 12 May 2017 setting out their response to the Secretary of State's scoping opinion (see attached). The developer and the Planning Inspectorate discussed the matters raised, as set out below.

i) Defining parameters and permitted development rights

The developer explained that it intends to use a masterplan approach to assess the works for which consent is sought. This approach will be explained within the ES and the PEIR.

The developer explained that they intend for the DCO to extend the jurisdiction of PoTLL as harbour authority to include Tilbury2, so as to subject Tilbury2 to the same harbour regime as the existing Port of Tilbury. The developer also intends to include provision in the DCO to ensure that permitted development rights under the Town and Country Planning (Permitted Development) Order (GDPO) will apply in the same way as they do for all harbour authority areas. This will be done by the inclusion of an article within the DCO to say that the development consent granted is to be treated as a specific planning permission for the purposes of section 264(3)(a) of the TCPA 1990. The developer explained that the masterplan approach in the ES will include consideration of permitted development rights applying and being exercised. The Planning Inspectorate advised the developer that it must ensure that the ES assesses all works for which consent is sought. It will be particularly important for an Examining Authority to understand what effects are related to the works authorised by the DCO, so that any necessary mitigation can be secured appropriately. It should be clear in the ES which works could be constructed as permitted development at a later date and how these would fall within the parameters of the assessed ES.

The Planning Inspectorate also advised that the need for an article on operational land should be explained and justified in the application documents and that an Examining

Authority may wish to explore the need for the application of permitted development rights during an examination if an application were accepted.

The Planning Inspectorate advised that the approach to operational land and permitted development rights and how this relates to the extended area of jurisdiction of the harbour should be explained clearly in both the PEIR and Environmental Statement (ES).

ii) Decommissioning

The developer explained that an assessment of the decommissioning of the proposed Tilbury 2 facilities within the ES would not be appropriate as there is no finite design life, as there would be for a power station, for example. Any decommissioning would likely need to fall under a formal instrument (such as a harbour revision order, made under the Harbours Act 1964) which would be needed to close the port before any decommissioning. Any such order could authorise any works of decommissioning and that this would be accompanied by an Environmental Impact Assessment (EIA) for that purpose. The developer stated that it would set out its position in this regard in the PEIR and the ES. The developer added that decommissioning of elements of the development would also be covered (and circumscribed) by the permitted development rights intended to apply to Tilbury2.

The Planning Inspectorate acknowledged the developer's comments and explained that the Scoping Opinion had advised consideration of decommissioning as this is advocated within the Ports National Policy Statement. It also noted the potential for the development to evolve during the operational phase and therefore advised that design could be considered with regard to any structures decommissioned during operation. However, the Planning Inspectorate also noted that the Secretary of State's Scoping Opinion is not binding and therefore it is for the developer to determine the scope of their assessment. Nevertheless, it was advised that if the developer does not assess decommissioning, that this approach is justified within the ES.

iii) Lower Thames Crossing

The developer explained that it does not intend to include the Lower Thames Crossing (LTC) within its assessment of cumulative effects within the ES. This is due to a number of factors, including advice set out in the Planning Inspectorate's Advice Notes 9 & 17 in relation to cumulative assessment; a lack of detail on the proposed route and that the LTC proposal is not due to undertake statutory consultation until at least early 2019.

The Planning Inspectorate advised that there may be a level of public interest regarding interactions of the LTC project with Tilbury2. The Planning Inspectorate acknowledged that information on the LTC may be limited, however advised that the LTC is not ignored and that the ES should explain the reasons why a detailed assessment is not possible. The Planning Inspectorate also advised the developer to keep its cumulative assessment approach under review and that an Examining Authority may have questions should more information on the LTC come to light during the Tilbury2 examination.

The developer acknowledged these points and confirmed that it would explain the independent nature of the two proposed developments within the PEIR and the ES.

The Planning Inspectorate's Liaison Programme

The Planning Inspectorate raised concerns that the developer's programme may include some unrealistic deadlines for comments from statutory consultees, such as for comments on draft ES chapters, particularly given that the proposed two week timeframe is during the summer holidays.

The developer explained that it has adopted a flexible approach to accommodate statutory bodies needs and that all consultees would have seen several iterations of these documents throughout their consultations.

The Planning Inspectorate advised that it would be helpful to highlight to statutory consultees the changes to these documents from previous versions, to aid consultees in formulating their comments to these documents. The Planning Inspectorate also advised the developer to make consultees aware of these proposed timescales as soon as possible. The developer noted that in most if not all cases this had already been done.

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12 May 2017

Dear Hannah,

TILBURY2 – RESPONSE TO SCOPING OPINION

Further to the issue by PINS of its Scoping Opinion for the Tilbury2 project on 5 May, I am writing to you to clarify a few matters that have arisen from it, and to set out Port of Tilbury London Limited's ('PoTLL') position on those issues as we move forward with producing the project's preliminary environmental information ('PEI') for statutory consultation starting in mid-June.

It is hoped that the points made in this letter can be used as a starting point for our telephone conversation on 17 May with you and your colleagues.

Decommissioning

Paragraph 2.73 of the Scoping Opinion, having noted that decommissioning is not referenced in PoTLL's Scoping Report, sets out the Secretary of State's views that: *'...the purpose of such a long term assessment is to enable the decommissioning of the works to be taken into account in the design and use of materials such that structures can be taken down with the minimum of disruption. The process and methods of decommissioning should be considered and options presented in the ES. The SoS encourages consideration of such matters in the ES.'*

In response to this, it is PoTLL's position that it would not be appropriate for decommissioning to be assessed as part of the ES. The existing Port of Tilbury has been in existence for 130 years, and there are no plans for it to be decommissioned whilst it remains a going concern. It is PoTLL's intention that this would also be the case for Tilbury2 once it is operational.

Unlike, for example, a power station, there is no 'end point' or final 'design life' for a port – it will continue to operate (with maintenance) for as long as it is commercially viable, and thus there would be no 'decommissioning' that would take place.

Furthermore, because of the expected perpetual life of the port, the choices that are made as to the design and use of materials in the construction of the port facilities would not need to consider later decommissioning, and the environmental considerations that flow from that process, as it would not be expected that they would be decommissioned.

Given the 'open access' obligation on ports under s.33 of the Harbours, Docks and Piers Clauses Act 1847 (as such provision is ordinarily incorporated into the founding legislation of the port) it is likely that a formal instrument (such as a harbour revision order made under the Harbours Act 1964) would be needed to 'close' the port before decommissioning. Such an order could authorise any works of decommissioning that might be required and would be accompanied by an EIA for that purpose.

As such, PoTLL anticipates that its PEI and the Environmental Statement ('ES') will scope out decommissioning, with an explanation given similar to the one set out above.



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Lower Thames Crossing

At paragraph 3.26 of the Scoping Opinion, it is stated that '*The SoS notes the LTC preferred route announced on 12 April 2017 will be in close proximity to the Tilbury2 port and considers that potential cumulative effects of the two projects should be assessed. The SoS notes that this view is shared by Thurrock Borough Council.*

In response to this, PoTLL re-states its position that it is not appropriate for the Lower Thames Crossing ('LTC') to be included within the ES, having regard to both Advice Note 9 and Advice Note 17 (and its Annexes). Having been in further discussions with Highways England, PoTLL can expand on the reasons for its non-inclusion in the ES as below:

First, the project does not fall within any of the 'tiers' of developments that should be included for inclusion in a cumulative impact assessment, as set out in both advice notes. We note in particular that the LTC is not yet on PINS' Programme of Projects.

Secondly, in relation to the temporal scope of the LTC as compared to Tilbury2, we are aware that the statutory consultation for LTC will not take place until early 2019, with a DCO application currently scheduled for mid 2019. Furthermore, even if a DCO is made for the LTC, it has been indicated that construction would not commence until the beginning of 2021.

This means that: a) the detail of the LTC proposals will not be known until after the DCO process for Tilbury2 is due to be completed, and b) construction would not take place until after Tilbury2 is already in operation. In the absence of any detail until early 2019 as to what the construction methodology of the LTC could be, it will therefore be incumbent on the LTC to assess the impacts of that methodology against Tilbury2 in operation, rather than the other way round.

Thirdly, despite the Secretary of State's preferred route announcement, there is still a comprehensive lack of detail as to the scale and nature of the development in terms of how it interacts with the zone of influence for Tilbury2. This is because there is no certainty as to whether a junction might be proposed as part of the LTC scheme that would create an eastern access into Tilbury2 and what any such junction would mean for access from the main Port area and Tilbury2 to the strategic motorway network. There is an indication in the LTC's announcements that further work will be undertaken to determine whether a new junction will be provided at Tilbury - this decision would fundamentally alter the operation and flows on the network. However, it is impossible to determine the effects of this at this stage; or until a decision on this is made by Highways England and consulted upon as part of its statutory consultation.

Furthermore, even if PoTLL were to proceed on the basis that no such junction and eastern access would be provided as part of the LTC scheme, it would not be possible to carry out an effective cumulative impact assessment of the scale and nature of the impacts of the LTC scheme purely on the basis of the Preferred Route Announcement. This is because the information that accompanied that announcement was primarily concerned with comparing the different options for the LTC scheme, rather than fully appraising the preferred route itself. As such, the currently published drawings that accompanied that announcement are purely illustrative and are at a preliminary stage. Further, the published traffic and environmental appraisals give some initial assessment of predicted traffic on the chosen route but the analysis is at a 'headline' level and is used only for comparative purposes.

Moreover, there are still a number of outstanding decisions for the LTC Scheme to make above and beyond an eastern access, such as how many lanes each carriageway will hold; whether it will be a motorway; and what, if any, mitigation measures will need to be taken (even in headline terms). There is therefore insufficient information for any kind of cumulative impact assessment to be undertaken.

Finally, we would also note that we consider that Thurrock Borough Council has not explicitly stated that the cumulative impacts of LTC should be considered by a Tilbury2 ES; the Council has rather said that 'a view will need to be taken as to whether the LTC is a reasonably foreseeable project which should be included within the assessment of cumulative effects'. For all the reasons set out above, our view is that it is not a project that should be included within such an assessment.

As PINS will be aware, the LTC is a highly controversial scheme in the local area, and concerns have been raised in our non-statutory consultation as to the interaction between that scheme and Tilbury2.

We would therefore welcome the opportunity for a discussion on this point on 17 May, such that the results of the discussion, alongside this letter, can be included within the section 51 advice for Tilbury2 on the PINS website. This will enable consultees to see that this matter has been fully considered.

Permitted Development Rights

PoTLL can confirm that the PEI and ES will deal fully with the concerns expressed by PINS in terms of describing and assessing the 'masterplan' approach, including how this defines the parameters of the Tilbury2 scheme, and how this can be 'flexed' by reference to sensitivity testing.

In respect of the use of permitted development (PD) rights within that approach, we note paragraph 2.61, which states that *'if the DCO applied for by the Applicant in effect enables the application of permitted development rights, which would not otherwise apply by virtue of the GPDO, these must be assessed and reported within the ES'*.

It is PoTLL's intention that the DCO will extend the jurisdiction of PoTLL as harbour authority to include Tilbury2 so as to subject Tilbury2 to the same harbour regime as the existing Port of Tilbury. Automatically, by virtue of the GPDO, certain PD rights will then apply, as they do for all harbour authority areas. Express reference may be made to permitted development rights in the DCO only to clarify any doubt that might arise as to the extent of those permitted development rights - for example to define what would be 'the operational area' for the purposes of the GPDO. The DCO could not apply or create PD rights 'which would not otherwise apply by virtue of the GPDO'.

As set out above, the environmental assessment of the masterplan for Tilbury2 will define the parameters of development, and the ES will show, in a light touch way, how port activities could be 'flexed' from the activities set out in the masterplan, such as through the use of PD rights but still fall within those parameters.

However, nothing could in any event be permitted under PD rights that has an effect beyond that of the 'envelope' of the masterplan. This is because such proposals would create new significant environmental effects not already assessed within the parameters of the application masterplan. They would therefore fail to meet the test of article 3(10) of the GPDO, which states that development which is EIA development cannot be permitted development unless, at the very least, a negative screening opinion from the local planning authority has been received.

PoTLL therefore does not propose to undertake a specific or separate assessment of parameters in relation to the use of PD rights, as it is considered that anything outwith the envelope for the masterplan that creates new significant environmental effects will not in itself be permitted development.

We look forward to discussing these matters on 17 May to ensure that PoTLL can take a fully informed position at the PEI and ES stages.

Yours sincerely

A solid black rectangular box used to redact the signature of Peter Ward.

Peter Ward
Commercial Director