Immingham Green Energy Terminal

9.56 Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 7 (ISH7)

Infrastructure Planning (Examination Procedure) Rules 2010

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Introduction

Overview

1.1 This document has been prepared to accompany an application made to the Secretary of State for Transport (the Application") under section 37 of the Planning Act 2008 ("PA 2008") for a development consent order ("DCO") to authorise the construction and operation of the proposed Immingham Green Energy Terminal ("the Project").

1.2 The Application is submitted by Associated British Ports ("the Applicant"). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. **The Funding Statement [APP-010]** provides further information.

1.3 The Project as proposed by the Applicant falls within the definition of a Nationally Significant Infrastructure Project ("NSIP") as set out in Sections 14(1)(j), 24(2) and 24(3)(c) of the PA 2008.

The Project

1.4 The Applicant is seeking to construct, operate and maintain the Immingham Green Energy Terminal, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the "Port").

1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited ("Air Products"). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the UK's net zero agenda by helping to decarbonise the United Kingdom's (UK) industrial activities and in particular the heavy transport sector.

1.6 A detailed description of the Project is included in **Chapter 2: The Project** of the **Environmental Statement ("ES") [APP-044]**.

Purpose of this Document

1.7 This document provides the Applicant's response to the actions arising from Issue Specific Hearing 7 (ISH7) held on 18 April 2024, which were collated in the Examining Authority's **Action Points from Issue Specific Hearing 7 [EV10-006]**, issued April 24 2024.

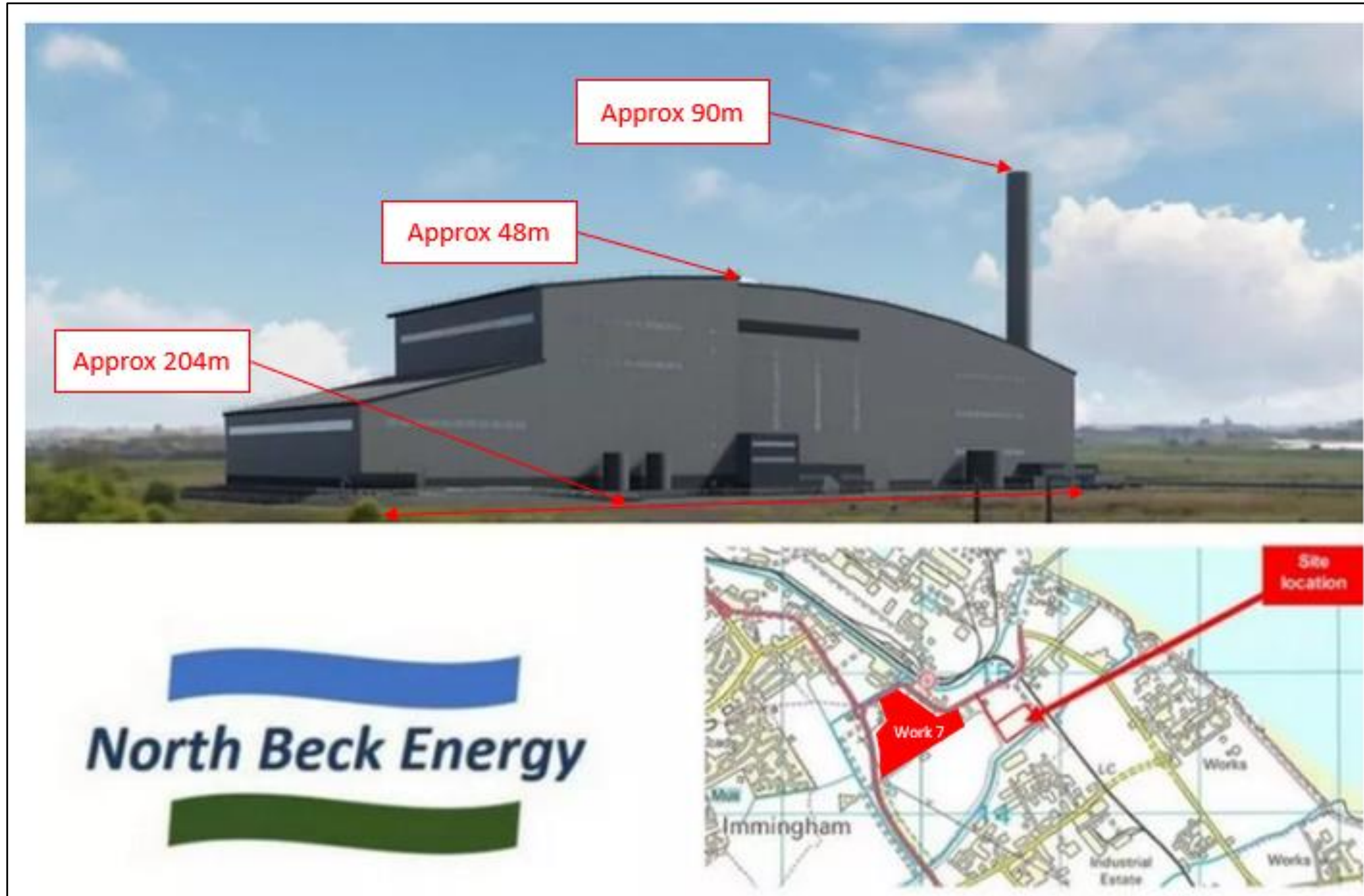
ABP ASSOCIATED BRITISH PORTS AIR PRODUCTS

1. Issue Specific Hearing 7 (ISH7) Action Points

Action Point 2
Agenda Item 3 (Navigation and Operational Safety)
Provide relevant sections of the case law Gateshead Metropolitan Borough Council vs Secretary of State for the Environment 1995 ELR37.
The relevant sections are provided as **Appendix 1** of this document.
Action Point 3
Agenda Item 3 (Navigation and Operational Safety)
Provide extract from Humber Bylaws 1990, in particular section 14 (3) that related to the general speed limit for any vessel when passing jetties.
The extract is provided as **Appendix 2** of this document.
Action Point 5
Agenda Item 3 (Navigation and Operational Safety)
Clarify the extent of operational land that would be created by the Order and whether this land would benefit from permitted development rights.
This action has been addressed in the response to Action Point 6 in the **Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 6 (ISH6) [TR030008/EXAM/9.55]**, submitted at Deadline 3.

Action Point 6
Following on from ASI on 17 April
Confirmation of heights of nearby existing and proposed developments adjacent to the site, in particular the west side. (See also Action Point 4, ISH5).
The Knauf building on Kings Road, opposite the site entrance to Work No. 7, has a main building height of approximately 32m and a stack height of approximately 35m. The landfill site at the Eastern edge of Work 7 has an elevation in the region of 20m (visual estimation).

Extant Planning approval DM/0026/18/FUL, for an energy plant located to the North East of Work No. 7 indicates a stack height of 90m and a main building height of approximately 48m.



2. Appendices

Appendix 1: Gateshead Metropolitan Borough Council vs Secretary of State for the Environment 1995 ELR37

GATESHEAD METROPOLITAN BOROUGH COUNCIL v. SECRETARY OF STATE FOR THE ENVIRONMENT

COURT OF APPEAL

(Glidewell, Hoffman, and Hobhouse L.JJ.): May 12, 1994

Clinical waste incinerator—overlap between the functions of the local planning authority and HMIP—information on air quality not available to Secretary of State in reaching decision on a planning appeal—evaluating this issue properly within the competence of HMIP—HMIP would be justified in refusing an authorisation notwithstanding grant of planning permission if criteria not met

The Northumbrian Water Group plc ("NWG") wanted to construct and operate an incinerator for the disposal of clinical waste on a disused sewage treatment works at Wardley in Gateshead. Under the Town and Country Planning Act 1990 planning permission is necessary for the construction and use of the incinerator. Incineration is a prescribed process within section 2 of the Environmental Protection Act 1990 and Schedule 1 to the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 as amended. An authorisation to carry on the process of incineration is required by section 6 of the Environmental Protection Act. The enforcing authority responsible for granting an authorisation is HM Inspectorate of Pollution ("HMIP").

Two applications were made to Gateshead Metropolitan Borough Council ("the Council") for planning permission. The appeal was only concerned with the second, which was an outline application submitted on October 26, 1991. This application was refused by the Council on February 4, 1991. NWG appealed against the refusal to the Secretary of State. An inquiry into the appeal was heard. The Inspector recommended that permission be refused, but the Secretary of State, disagreed with the Inspector's recommendation, allowed the appeal and granted outline permission subject to conditions.

The Council applied to the High Court under section 288 of the Town and Country Planning Act 1990 for an order that the Secretary of State's decision be quashed. On September 19, 1993 the High Court dismissed the application. The Council appealed.

The relevant provisions of the Town and Country Planning Act comprise sections 54A, 72(2) and 79(4) whereby the Secretary of State was

required to decide in accordance with the provisions of the Development Plan unless material considerations indicated otherwise. The Inspector, having considered the advice of his assessor and having set out the evidence and submissions concluded that save for the effect of discharges from the plant on air quality and thus on the environment generally, all the other criteria in the Structure Plan Policy and all other possible objections were met. However, he dismissed the appeal given his concern that "the impact on air quality and agriculture in this semi-rural location is insufficiently defined, despite the efforts of the main parties at the inquiry, and public disquiet regarding fears as to environmental pollution and in particular dioxin emissions cannot be sufficiently allayed to make the proposed development of a clinical waste incinerator on this site acceptable."

The Secretary of State disagreed with this finding and at paragraph 36 to his decision letter said "the Secretary of State is satisfied that, in the event of planning permission being granted, these concerns could and would be addressed by HMIP in the pollution control authorisation process. While noting the Inspector's view that emission standards set by HMIP would be more stringent that those in document NW9, the Secretary of State considers that the standards in document NW9 simply represent the likely starting point for the HMIP authorisation process, and do not in any way fetter their discretion to determine an application for an authorisation in accordance with the legal requirements under the Environmental Protection Act 1990."

The Council argued:

(1) the Secretary of State did not give proper or adequate reasons for rejecting the Inspector's recommendation and the reasoning which led the Inspector to his recommendation. This was a failure to comply with "relevant requirements" set out in the Town and Country Planning Inquiry Procedure Rules 1992, rule 17.1. Thus, this is a ground upon which, provided prejudice be shown to the Council, action can be taken to quash the Secretary of State's decision under section 288(1)(b);

(2) once planning permission had been granted, there was in practice no prospect of HMIP using their powers to refuse to authorise the operation of the plant. Thus, whatever the impact of the emissions on the locality will be, HMIP were likely to do no more than ensure that the best available techniques not entailing excessive costs be used, which may leave the amounts of deleterious substances released at an unacceptable level. This could be prevented by refusing planning permission, which would then leave it to NWG, if they were able to do so, to seek additional evidence to support a new application which would overcome the Inspector's concerns. The Secretary of State was wrong to say at paragraph 20 of his decision that the controls under the Environmental Pollution Act are

adequate to deal with the emissions and the risk to human health. By so concluding, the Secretary of State:

(a) misunderstood the powers and the functions of HMIP;
(b) contravened the precautionary principle, and/or
(c) reached an irrational conclusion.

Held, dismissing the appeal:

(1) It is a commonplace that a decision-maker, including both a Local Planning Authority when refusing permission and particularly the Secretary of State when dealing with an appeal, must give reasons for the decision. The rules so provide. The courts have held that those reasons must be "proper, adequate and intelligible" (*per* Lord Scarman in *Westminster City Council v. Great Portland Estate* [1985] A.C. 661 at 683). In this decision letter, the Secretary of State says, in effect, "I note that the Inspector says that the impact of some of the maximum emission limits indicated in document NW9 would not be acceptable in a semi-rural area. But HMIP will not be obliged, if they grant an authorization, to adopt those limits. On the contrary, they have already indicated that the limits they would adopt would be lower. Thus, HMIP will be able to determine what limits will be necessary in order to render the impact of the emissions acceptable, and impose those limits." This was sufficiently coherent and clear reasoning to fulfil the test.

(2) The decision made on the appeal to the Secretary of State lay in the area in which the regimes of control under the Town and Country Planning Act and the Environmental Protection Act overlapped. If it had become clear at the inquiry that some of the discharges were bound to be unacceptable so that a refusal by HMIP to grant an authorisation would be the only proper course, the Secretary of State following his own express policy should have refused planning permission. This was not the case here as at the end of the inquiry there was no clear evidence about the quality of the air in the vicinity of the site. These issues were clearly within the competence and jurisdiction of HMIP once information about air quality had been obtained. If in the end the Inspectorate concluded that the best available techniques, etc., would not achieve the results required by section 7(2) and 7(4) of the Environmental Protection Act, the proper course would be for them to refuse an authorisation.

Case cited:

Westminster City Council v. Great Portland Estate [1985] A.C. 661 at 683.

Mr D. Mole and *Mr T. Hill* on behalf of the applicant.
Mr S. Richards and *Mr R. Drabble* on behalf of the first respondent.
Mr W. Hicks and *Mr R. Harris* on behalf of the second respondent.

GLIDEWELL L.J.: This appeal relates to an activity which, in general terms, is subject to planning control under the Town and Country Planning Act, and to control as a prescribed process under Part I of the Environmental Protection Act 1990. The main issue in the appeal is, what is the proper approach for the Secretary of State for the Environment to adopt where these two statutory regimes apply and, to an extent, overlap?

The Northumbrian Water Group Plc ("NWG") wish to construct and operate an incinerator for the disposal of clinical waste on a site some nine acres in extent, comprising about half of the area of the disused Felling Sewage Treatment Works at Wardley in the Metropolitan Borough of Gateshead. Under the Town and Country Planning Act planning permission is necessary for the construction of the incinerator and for the commencement of its use thereafter. The proposed incineration is a prescribed process within section 2 of the Environmental Protection Act 1990 and Schedule 1 of the Environmental Protection (Prescribed Processes, etc.) Regulations 1991 as amended. An authorisation to carry on the process of incineration is therefore required by section 6 of the Environmental Protection Act. In this case, the enforcing authority which is responsible for granting such an authorisation is HM Inspectorate of Pollution ("HMIP").

Two applications were made to Gateshead, the Local Planning Authority, for planning permission for the construction of the incinerator. This appeal is only concerned with the second, which was an outline application submitted on October 26, 1991. The application was refused by Gateshead by a notice dated February 4, 1991 for six reasons which I summarise as follows. The proposal is contrary to the provisions of the approved Development Plan, both the Local Plan and the County Structure Plan; the use of the land for waste disposal purposes conflicts with the allocation of neighbouring land for industrial and/or warehousing purposes and could prejudice the development of that land; since there was no national or regional planning framework which identified the volume of clinical waste which was likely to arise, the proposal was premature; the applicants have failed to supply sufficient information that the plant could be operated without causing a nuisance to the locality; the applicants have failed to demonstrate that the overall effects on the environment, particularly in relation to health risk, have been fully investigated and taken account of. Then there was finally a ground relating to the reclamation and development of the site stating that no proposals have been submitted demonstrating how contamination arising from its previous use could be treated. That point does not arise in this appeal.

NWG appealed against the refusal to the Secretary of State. An inquiry into the appeal was heard by an Inspector of the Department of the

Environment, Mr C. A. Jennings BSc CEng, with the assistance of Dr Waring, a Chemical Assessor, between April 9 and May 1, 1991. The Inspector and the assessor reported to the Secretary of State on August 3, 1992. The Inspector recommended that permission be refused. The Secretary of State by letter dated May 24, 1993 allowed the appeal and granted outline permission subject to conditions. Gateshead applied to the High Court under section 288 of the Town and Country Planning Act 1990 for an order that the Secretary of State's decision be quashed. On September 29, 1993 Mr Jeremy Sullivan Q.C. sitting as Deputy High Court Judge dismissed the application. Gateshead now appeal to this Court. The relevant provision of the Town and Country Planning Act comprises sections 54A, 72(2) and 79(4). The effect of those sections is that, in determining the appeal the Secretary of State was required to decide in accordance with the provisions of the Development Plan unless material considerations indicated otherwise, and to decide in accordance with other material considerations.

In the Environmental Protection Act 1990, section 2(1) provides:

> "The Secretary of State may, by regulations, prescribe any description of process as a process for the carrying on of which after a prescribed date an authorisation is required under section 6 below."

It is agreed that the operation of the incinerator is such a process. By section 6(1)

> "No person shall carry on a prescribed process after the date prescribed or determined for that description of process by . . ."

relevant regulations,

> "except under an authorisation granted by the enforcing authority and in accordance with the conditions to which it is subject."

The enforcing authority in this case means, strictly, the Chief Inspector, but in practice HMIP. Section 6(2) provides:

> "An application for any authorisation shall be made to the enforcing authority in accordance with Part I of Schedule 1 of the Act . . ."

Section 6 continues:

> (3) "Where an application is duly made to the enforcing authority, the authority shall either grant the authorisation subject to the conditions required, authorisation to be imposed by section 7 below or refuse the application."
>
> (4) "An application shall not be granted unless the enforcing authority considers that the applicant will be able to carry on the process so as to comply with the conditions which would be included in the authorisation."

Section 7(1) deals with conditions which are required to be attached to any authorisation. By 7(1)(a)

> "There shall be included in an authorisation—such specific conditions as the enforcing authority considers are appropriate ... for achieving the objectives specified in subsection (2) below."

Those objectives are:

> "(a) ensuring that, in carrying on a prescribed process, the best available techniques not entailing excessive cost will be used—
>
> (i) for preventing the release of substances prescribed for any environmental medium into that medium or, where that is not practicable by such means, for reducing the release of such substances to a minimum and rendering harmless any such substances which are so released; and
>
> (ii) for rendering harmless any other substances which might cause harm if released into any environmental medium."

Finally by subsection (4)

> "Subject to subsections (5) and (6) below, there is implied in every authorisation a general condition that, in carrying on the process to which the authorisation applies, the person carrying it on use make the best available techniques not entailing excessive cost for ..."

precisely the same purposes as those set out in subsection (2). When the inquiry was held an application had been made to HM Inspectorate for an authorisation, but that had not yet been determined.

The Development Plan consisted of the approved Tyne and Wear Structure Plan, together with a Local Plan for the area. In the structure plan the relevant policy is numbered EN16. It reads:

> "Planning applications for development with potentially noxious or hazardous consequences should only be approved if the following criteria can be satisfied:—
>
> (a) adequate separation from other development to ensure both safety and amenity;
>
> (b) the availability of transport routes to national networks which avoid densely built-up areas and provide for a safe passage of hazardous materials;
>
> (c) acceptable consequences in terms of environmental impact."

It was agreed at the inquiry, and is agreed before us, that criteria (a) and (b) are met. The issue revolves around criterion (c), whether the development will have "acceptable consequences in terms of environmental impact".

I comment first about the relationship between control under the Town and Country Planning Act and the Environmental Protection Act. In very broad terms the former Act is concerned with control of the use of land, and the Environmental Protection Act with control (at least in the present

respect) of the damaging effect on the environment for process which causes pollution. Clearly these control regimes overlap.

Government policy overall is set out in a White Paper called "This Common Inheritance, Britain's Environmental Strategy", which is Cm. 1200. The main part of this to which reference was made during the hearing of the appeal and before the Learned Deputy Judge is paragraph 6.39 which reads:

> "Planning control is primarily concerned with the type and location of new development and changes of use. Once broad land uses have been sanctioned by the planning process it is the job of the pollution control to limit the adverse effects the operations may have on the environment. But in practice there is common ground. In considering whether to grant planning permission for a particular development a local authority must consider all the effects including potential pollution; permission should not be granted if that might expose people to danger."

There is also an earlier passage which is relevant in paragraph numbered 1.18 headed precautionary action. The latter part of that paragraph reads:

> "Where there are significant risks of the damage to environment, the Government will be prepared to take precautionary action to limit the use of potentially dangerous materials or the spread of potentially dangerous pollutants, even where scientific knowledge is not conclusive, if the balance of likely costs and benefits justifies it. This precautionary principle applies particularly where there are good grounds for judging either that action taken promptly at comparatively low cost may avoid more costly damage later, or that irreversible effects may follow if action is delayed."

More specific guidance relating to the application of Planning Control under the Planning Act is to be given in a Planning Policy Guidance Note. That was in draft at the time of the inquiry. The Draft of Consultation was issued in June 1992 and, as I understand it, is still in that state. However, reference was made to it during the inquiry and Mr Mole, for Gateshead, has referred us to two paragraphs in particular. These are:

> 125. "It is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions). Planning controls are not an appropriate means of regulating the detailed characteristics of industrial processes. Nor should planning authorities substitute their own judgment on pollution control issues for that of the bodies with the relevant expertise and the responsibility for statutory control over those matters.
>
> 126. While pollution controls seek to protect health in the environment, planning controls are concerned with the impact of development on the use of land and the appropriate use of land. Where the potential for harm to man and the environment affects the use of land (e.g. by precluding the use of neighbouring land for a particular purpose or by making use of that land

inappropriate because of, say, the risk to an underlying aquifer) then planning and pollution controls may overlap. It is important to provide safeguards against loss of amenity which may be caused by pollution. The dividing line between planning and pollution control considerations is therefore not always clear-cut. In such cases close consultation between planning and pollution control authorities will be important at all stages, in particular because it would not be sensible to grant planning permission for a development for which a necessary pollution control authorisation is unlikely to be forthcoming."

Neither the passages which I have read from the White Paper nor those from the draft Planning Policy Guidance are statements of law. Nevertheless, it seems to me they are sound statements of common sense. Mr Mole submits, and I agree, that the extent to which discharges from a proposed plan will necessarily or probably pollute the atmosphere and/or create an unacceptable risk of harm to human beings, animals or other organisms, is a material consideration to be taken into account when deciding to grant planning permission. The Deputy Judge accepted that submission also. But the Deputy Judge said at page 17 of his judgment, and in this respect I also agree with him,

"Just as the environmental impact of such emissions is a material planning consideration, so also is the existence of a stringent regime under the EPA for preventing or mitigating that impact for rendering any emissions harmless. It is too simplistic to say, 'The Secretary of State cannot leave the question of pollution to the EPA'."

The Inspector, having considered the advice of his assessor and having set out the evidence and submissions made to him in very considerable detail in his report, concluded that save for the effect of discharges from the plant on air quality and thus on the environment generally, all the other criteria in the Structure Plan Policy and all other possible objections were met.

In particular, summarising, first all the responsible authorities agreed that incineration was the proper solution to the problem of the disposal of clinical waste. It followed also that one or more incinerators for that purpose were needed to be constructed in the area generally. Secondly, this site was at an acceptable distance from a built-up area and the road access to it is satisfactory. Thirdly, the Inspector found that the construction of this plant on the site might inhibit some other industrial processes, particularly for food processing, from being established nearby. But it certainly would not inhibit many other industrial processes. Therefore that was not sufficient to justify a refusal. Fourthly, he and the assessor considered in some detail the possible malfunction of the plant. Indeed, we are told that this occupied a major part of the time of the inquiry. In conclusion, the Inspector said in paragraph 488 of his report:

> "I am therefore satisfied that an appropriate plant could be designed with sufficient safeguards included, such that a reliability factor, within usual engineering tolerances, could be achieved."

He summarised his conclusions at paragraphs 505 and 506 of his report. In 505 he said:

> "... I have examined each of the subject areas that led to GMBC refusing the application and have come to the following main conclusions:
>
> (1) The maximum emission limits specified by the Appellants accord with the appropriate standards.
>
> (2) It would be possible to design a plant to perform within those limits in routine operation.
>
> (3) It would be possible to design sufficient fail-safe and stand-by systems such that the number of emergency releases could be reduced to a reasonable level.
>
> (4) While some visual detriment would occur from the presence of the stack and some industrialists might be deflected from the locality, neither effect would be sufficient to justify refusal of the proposal on those grounds alone.
>
> (5) The background air quality of the area is ill-defined and comparison with urban air standards for this semi-rural area gives an incomplete picture.
>
> (6) Discharges of chemicals such as cadmium, although within set limits, are unacceptable onto rural/agricultural areas.
>
> (7) In relation to public concern regarding dioxin emissions, the discharge data is only theoretical and insufficient practical experience is available for forecasts to be entirely credible.
>
> 506. I am therefore satisfied that while an appropriate plant would be built to meet the various standards, the impact on air quality and agriculture in this semi-rural location is insufficiently defined, despite the efforts of the main parties at the inquiry, and public disquiet regarding fears as to environmental pollution and in particular dioxin emissions cannot be sufficiently allayed to make the proposed development of a clinical waste incinerator on this site acceptable. I have reached this conclusion in spite of the expectation that all of the conditions suggested would be added to any permission and in spite of the suggestion that the valuable Section 106 agreement could be provided."

Therefore, in paragraph 507 he recommended that the appeal be dismissed.

In his decision letter, the Secretary of State considered environmental impact and the Inspector's conclusions in the passage leading up to the paragraphs to which I have just referred, in paragraphs 19, 20 and 21. In paragraph 19 he said that "the other principal environmental impact would be that of emissions to the atmosphere from the plant". He noted that NWG, for the purposes of assessing the impact, indicated that the

maximum emission limits for normal operation to which they were prepared to tie themselves were set out in a document numbered NW9, and that that became part of the description of the plant, the subject of the application permission. The Inspector

> "... also notes the view of the assessor that these limits were in keeping with current United Kingdom prescriptive standards and that HMIP accepted these limits were a valid starting point for their authorisation procedures under Part I of the Environmental Protection Act 1990. He further notes the Inspector's statement that any emission standards set by HMIP in a pollution control authorisation for the plant would be lower than those indicated in document NW9. The Secretary of State accepts it will not be possible for him to predict the emission limits which will be imposed by HMIP but he is aware of the requirements for conditions which must be included in an authorisation under section 7 of the Environmental Protection Act 1990.
>
> 20. The Inspector's conclusion that the impact of some of the maximum emission limits indicated in document NW9 are not acceptable in a semi-rural area is noted. While this would weigh against your clients' proposals, the Secretary of State considers that this conclusion needs to be considered in the context of the Inspector's related conclusions. Should planning permission be granted the emission controls for the proposed incinerator will be determined by HMIP. Draft Planning Policy Guidance on 'Planning and Pollution Controls' was issued by the Department of the Environment for consultation in June 1992. It deals with the relationship between the two systems of control and takes account of many of the issues which concerned the Inspector. While the planning system alone must determine the location of facilities of this kind, taking account of the provisions of the development plan and all other material considerations, the Secretary of State considers that it is not the role of the planning system to duplicate controls under the Environmental Protection Act 1990. Whilst it is necessary to take account of the impact of potential emissions on neighbouring land uses when considering whether or not to grant planning permission, control of those emissions should be regulated by HMIP under the Environmental Protection Act 1990. The controls available under Part I of the Environmental Protection Act 1990 are adequate to deal with emissions from the proposed plan and the risk of harm to human health.
>
> 21. An application for a pollution control authorisation had been made when the inquiry began, but HMIP had not determined it. However, in view of the stringent requirements relating to such an authorisation under Part I of the Environment Protection Act 1990, the Secretary of State is confident that the emission controls available under the Environmental Protection Act 1990 for this proposal are such that there would be no unacceptable impact on the adjacent land. He therefore concludes that the proposed incinerator satisfies the criteria in Policy EN16 and is in accordance with the development plan. This is a key point in favour of the proposal."

His overall conclusions are set out in paragraphs 36, 37 and 38 of the decision letter.

> "36. The Secretary of State agrees that it would be possible to design and operate a plant of the type proposed to meet the standards which would be likely to be required by HMIP if a pollution control authorisation were to be granted. It is clear that the predicted maximum emission levels set out in document NW9 which your clients were prepared to observe raised some concerns with respect to their impact on a semi-rural area. However the Secretary of State is satisfied that, in the event of planning permission being granted, these concerns could and would be addressed by HMIP in the pollution control authorisation process. While noting the Inspector's view that emission standards set by HMIP would be more stringent than those in document NW9, the Secretary of State considers that the standards in document NW9 simply represent the likely starting point for the HMIP authorisation process, and do not in any way fetter their discretion to determine an application for an authorisation in accordance with the legal requirements under the Environmental Protection Act 1990.
> 37. Those issues being capable of being satisfactorily addressed, the remaining issue on which the decision turns is whether the appeal site is an appropriate location for a special industrial use, taking into account the provisions of the development plan. The proposal does not conflict with the development plan and it is clear that its impact in visual and environmental terms on the surrounding land would not be adverse. Its impact on the development potential of the surrounding land is more difficult to assess but, while the Secretary of State accepts the view that an incinerator may deter some types of industry, he also accepts that the overall impact would not be clear-cut and possible deterrence to certain industries is not sufficient to justify dismissing the appeal.
> 38. The Secretary of State therefore does not accept the Inspector's recommendation and for these reasons has decided to allow your clients' appeal."

He therefore granted permission subject to a substantial list of conditions.

Mr Mole's argument on behalf of Gateshead on this appeal falls under two heads. First, the Secretary of State did not give proper or adequate reasons for rejecting the Inspector's recommendation and the reasoning which led the Inspector to that recommendation. This, submits Mr Mole, is a failure to comply with "relevant requirements". The requirements are to be found set out in the Town and Country Planning Inquiry Procedure Rules 1992, rule 17.1. Thus, this is a ground upon which, provided prejudice be shown to Gateshead (and Mr Mole submits it is) action can be taken to quash the Secretary of State's decision under section 288(1)(b).

It is a commonplace that a decision-maker, including both a Local Planning Authority when refusing permission and particularly the Secretary of State when dealing with an appeal, must give reasons for the

decision. The rules so provide. The courts have held that those reasons must be "proper, adequate and intelligible". The quotation is from the speech of Lord Scarman in *Westminster City Council v. Great Portland Estate* [1985] A.C. 661 at 683. While of course accepting that it is necessary to look and see whether the Secretary of State's reasons are proper, adequate and intelligible, I do not accept Mr Mole's argument that they are not. In the paragraphs of his decision letter to which I have referred, the Secretary of State says, in effect, "I note that the Inspector says that the impact of some of the maximum emission limits indicated in document NW9 would not be acceptable in a semi-rural area. But HMIP will not be obliged, if they grant an authorisation, to adopt those limits. On the contrary, they have already indicated that the limits they would adopt would be lower. Thus, HMIP will be able to determine what limits will be necessary in order to render the impact of the emissions acceptable, and impose those limits." That seems to me to be coherent and clear reasoning. It depends upon the proposition which I accept, and I understand Mr Mole to have accepted in argument, that in deciding what limits to impose HMIP are entitled, indeed are required, to take into account the nature of the area in which the plant is to be situated and the area which will be affected by the maximum deposit of chemicals from the stack.

That brings me to Mr Mole's main argument. I summarise this as follows. Once planning permission has been granted, there is in practice almost no prospect of HMIP using their powers to refuse to authorise the operation of the plant. Thus, whatever the impact of the emissions on the locality will be, HMIP are likely to do no more than ensure that the best available techniques not entailing excessive costs be used, which may leave the amounts of deleterious substances released at an unacceptable level.

This, submits Mr Mole, could be prevented by refusing planning permission, which would then presumably leave it to NWG, if they were able to do so, to seek additional evidence to support a new application which would overcome the Inspector's concerns. The Secretary of State was thus wrong to say at paragraph 20 of his decision that the controls under the Environmental Pollution Act are adequate to deal with the emissions and the risk to human health. By so concluding, the Secretary of State,

(1) misunderstood the powers and the functions of HMIP;
(2) contravened the precautionary principle, and/or
(3) reached an irrational conclusion.

I comment first that the matters about which the Inspector and his assessor expressed concern were three. First, the lack of clear information about the existing quality of the air in the vicinity of the site, which was a necessary starting point for deciding what impact the emission of any polluting

substances from the stack would have. It was established that such substances would include dioxins, furans and cadmium. Secondly, in relation to cadmium though not in relation to the other chemicals, any increase in the quantity of cadmium in the air in a rural area is contrary to the recommendations of the World Health Organisation. This, however, would not be the case in an urban area. In other words, an increase would not of itself contravene World Health Organisation recommendations relating to an urban area. Thirdly, there is much public concern about any increase in the emission of these substances, especially dioxin, from the proposed plant. In the absence of either practical experience of the operation of a similar plant or clear information about the existing air quality, those concerns cannot be met. It was because of those concerns that the Inspector recommended refusal. I express my views as follows. Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial development—indeed very little development of any kind—would ever be permitted.

The central issue is whether the Secretary of State is correct in saying that the controls under the Environmental Pollution Act are adequate to deal with the concerns of the Inspector and the assessor. The decision which was to be made on the appeal to the Secretary of State lay in the area in which the regimes of control under the Planning Act and the Environmental Pollution Act overlapped. If it had become clear at the inquiry that some of the discharges were bound to be unacceptable so that a refusal by HMIP to grant an authorisation would be the only proper course, the Secretary of State following his own express policy should have refused planning permission.

But that was not the situation. At the conclusion of the inquiry, there was no clear evidence about the quality of the air in the vicinity of the site. Moreover, for the purposes of deciding what standards or recommendations as to emissions to apply. The Inspector described the site itself as "semi-rural", whilst the area of maximum impact to the east he described as "distinctly rural".

Once the information about air quality at both those locations was obtained, it was a matter for informed judgment (i) what, if any, increases in polluting discharges of various elements into the air were acceptable, and (ii) whether the best available techniques etc. would ensure that those discharges were kept within acceptable limits.

Those issues are clearly within the competence and jurisdiction of HMIP. If in the end the Inspectorate conclude that the best available techniques etc. would not achieve the results required by section 7(2) and 7(4), it may well be that the proper course would be for them to refuse an

authorisation. Certainly, in my view, since the issue has been expressly referred to them by the Secretary of State, they should not consider that the grant of planning permission inhibits them from refusing authorisation if they decide in their discretion that this is the proper course.

Thus, in my judgment, this was not a case in which it was apparent that a refusal of authorisation will, or will probably be, the only proper decision for HMIP to make. The Secretary of State was therefore justified in concluding that the areas of concern which led to the Inspector and the assessor recommending refusal were matters which could properly be decided by HMIP, and that their powers were adequate to deal with those concerns.

The Secretary of State was therefore also justified in concluding that the proposed plant met, or could by conditions on an authorisation be required to meet, the third criterion in policy EN16 in the Structure Plan, and thus accorded with that plan.

For those reasons, I conclude that the Secretary of State did not err in law, nor did he reach a decision which was irrational or in any other way outside his statutory powers.

I have not in terms referred to much of the judgment given by the Deputy Judge. This is mainly because the matter was somewhat differently argued before us. Nevertheless, I agree with the conclusions he reached in his careful and admirable judgment. So agreeing and for the reasons I have sought to set out, I would dismiss this appeal.

Solicitors—Sharp Pritchard on behalf of the appellant; Treasury Solicitors on behalf of the first respondent; McKenna & Co. for the second respondent.

COMMENTARY

Here the Court of Appeal upheld the first instance decision of Mr J. Sullivan Q.C. reported at [1994] Env.L.R. 11. The case again emphasises the difficulty of drawing a line between "planning" and "pollution" controls. Understandably, the Council questioned the basis upon which the Secretary of State was able to overrule his Inspector when the Inspector had formed a view on the facts that the "impact on air quality was sufficiently defined" and that "fears as to environmental pollution and in particular dioxin emissions" could not "be sufficiently allayed ...".

From the judgments—here and in the High Court—it appears that there was insufficient information before the Inspector to enable him to reach a fully informed decision on this point. It seems that left with a perceived risk to amenity he recommended refusing permission on the basis that it was an unacceptable risk to take. If so, this was a qualitative

planning decision based on the premise that a clinical waste incinerator (perhaps otherwise acceptable in technical terms to HMIP) was unacceptable on this particular site in planning terms.

Whilst air quality and the application of the BPEO and BATNEEC criteria are properly within the ambit of HMIP (as this case makes it clear) what is less clear is whether HMIP can (or should) assess as part of its determination procedure whether an incinerator, otherwise acceptable to HMIP in technical terms, can be unacceptable in a particular location. Current government guidance in PPG 23 "Planning and Pollution Control" suggests that it is not for HMIP to take that qualitative decision. So it becomes possible (as the Council submitted in this case) for information not available to a local planning authority (which would otherwise justify a refusal of planning permission) to come to light at the HMIP authorisation stage when it's too late to do anything about it.

This case emphasises the importance of extensive and thorough consultation on the part of the local planning authorities when dealing with potentially polluting development. If authorities are to successfully resist development, otherwise acceptable in pollution control terms, then they will need to substantiate the nature of the risk, particularly the social, economic and environmental factors embodied within it, that make the development unacceptable in planning terms. In practice this will mean comprehensive consultations with HMIP and the maximum use of powers available to ensure that the applicant discloses sufficient information to enable the authority to reach an informed decision.

Appendix 2: Humber Bylaws 199 – Extract of Byelaw 14(3)

Associated British Ports

THE HUMBER NAVIGATION BYELAWS 1990

REPRINTED AUGUST 2002

(The following note does not form part of the Byelaws)

NOTE

Attention is drawn to the footnotes to Byelaws 4(1), 9(2) and 31 regarding changes which have been made to the numbers of light buoys, VHF radio channels, and the VTS HUMBER telephone, facsimile machine, and telex machine. Notice of these changes was given in a Humber Notice to Mariners
ref: H77/1997
dated: 2nd September 1997

By virtue of Byelaw 4(3) the relevant references to numbers are deemed to have been amended accordingly.

ASSOCIATED BRITISH PORTS

The Humber Navigation Byelaws 1990

Associated British Ports, in exercise of the powers conferred on it by Section 12(2) of the Associated British Ports Act 1987 and of all other powers it enabling, hereby makes the following Byelaws.

PART I **PRELIMINARY**

Citation, operations and revocation of existing Rules and Byelaws

1. (1) These Byelaws may be cited as the Humber Navigation Byelaws 1990 and shall come into operation on the expiration of 28 days after the date of their confirmation by the Secretary of Sate.

   (2) On the coming into operation of these Byelaws the following Rules and Byelaws are hereby revoked:-

   (a) The Lower Ouse Rules 1910.

   (b) The Lower Ouse Byelaws 1912.

   (c) The Humber and Lower Trent Navigation Byelaws 1956.

Division into parts

2. These Byelaws are divided into parts as follows:-

   Part I PRELIMINARY

   Part II GENERAL DUTIES OF MASTERS OF VESSELS

   Part III LIGHTS AND SIGNALS

   Part IV MOORING AND MANAGEMENT OF VESSELS

Part V CONDUCT OF PERSONS

Part VI PENALTY FOR CONTRAVENTION OF BYELAWS RESPONSIBILITY AND DEFENCE

Application of Byelaws

3. These Byelaws shall apply in relation to all parts of the Humber as defined in Byelaw 4 hereof.

Interpretation

4. (1) In these Byelaws, unless the context otherwise requires, the following words or expressions have the meanings hereby respectively assigned to them:-

"ABP" means Associated British Ports,

"the Humber" means:-

(i) so much of the River Ouse as is within the limits of improvement as defined by Section 3 of the Ouse (Lower) Improvement Act 1884;

(ii) the River Trent below the south side of the stone bridge at Gainsborough;

(iii) the River Humber and the estuary thereof from the confluence of the Rivers Ouse and Trent to the seaward limits bounded by:-

(a) a straight line drawn from Easington Church (Latitude 53°39'N, Longitude 00°07'E) in a direction 136° true until it intersects the line mentioned below; and

(b) a straight line drawn from the site of the former Donna Nook beacon (Latitude 53°28'.38N, Longitude 00°09'.33E) in a direction 029° true;

(iv) all navigable havens and creeks of the River Trent below the south side of the said stone bridge and of the River Humber or of the estuary thereof wherein

the tide flows and reflows;

including, where the context so admits, any land adjoining the Humber but not including any part of the old harbour or haven at Hull (being part of the River Hull and within the jurisdiction of the Kingston Upon Hull City Council as navigation authority), the marina as defined in Section 4 (Interpretation of Part II) of the Kingston Upon Hull Act 1984 or any enclosed dock; **AND**, for the purpose of identification only, the limits of "the Humber" are delineated by red lines on the plan annexed to these Byelaws.

"the Collision Regulations" means regulations made under Section 21 of the Merchant Shipping Act 1979.

"fairway" means a navigable channel which is a regular course of shipping and includes a navigable channel marked by ABP.

"Harbour Master" means the Harbour Master, Humber appointed by ABP under Section 5 (Appointment of Harbour Master) of the British Transport Docks Act 1972 and includes his authorised deputies and assistants.

"Humber Notice to Mariners" means a notice to mariners published by the Harbour Master.

"jetty" means any jetty, quay, pier, wharf or landing place.

"master" in relation to a vessel means the master or other person for the time being having or taking charge or command of the vessel.

"river craft" means a vessel used in navigating the Humber and not passing from the Humber to sea.

"small vessel" means a vessel of less than 12 metres in length.

[1]"Sunk Dredged Channel" means the dredged channel in the Humber marked at the eastern entrance by light buoys Nos. 55 and 56 and at the western entrance by light buoy No. 63 (which light buoys are shown on Admiralty Chart No. 109).

[2]"VTS HUMBER" means Vessel Traffic Services, Humber (radio call-sign "VTS HUMBER"; operating frequency channel 12 VHF; telephone 01482-701787; telex 597656; facsimile 01482-795221).

(2) Insofar as they are not inconsistent with the definitions contained in paragraph (1) of this Byelaw, words and expressions contained in these Byelaws shall have the meanings respectively assigned to them in the Collision Regulations.

(3) In these Byelaws references to the numbers of Admiralty Charts, light buoys, VHF radio channels, telephones, telex and facsimile machines shall be deemed to have been amended by any alteration of which notice has been given in a Humber Notice to Mariners.

Saving for Dock Masters etc.

5. Nothing in these Byelaws shall be deemed to take away or affect any statutory rights of Dock Masters, Pier Masters, Harbour Masters, Marina Masters or Lockkeepers within the prescribed areas in which they exercise their respective statutory jurisdictions.

Saving for Collision Regulations

6. Nothing in these Byelaws shall affect the operation of the Collision Regulations or the duty upon the master of a vessel to comply therewith.

(The following notes do not form part of the Byelaws.)

[1] **Byelaw 4(1):** "Sunk Dredged Channel" : The light buoy numbers referred to in this definition have changed. Light Buoy Nos. 55 and 56 are now numbered P5 and S5 respectively and light buoy No. 63 is now known as Sunk Spit Light Buoy.

[2] **Byelaw 4(1):** "VTS HUMBER" : The operating frequencies and numbers referred to in this definition have changed as follows: The operating frequencies are now Channels 12 and 14 VHF; the telephone number is 01482 212191; the facsimile number is 01482 218773, and the telex number is 597222.

PART II GENERAL DUTIES OF MASTERS OF VESSELS

Vessel movements

7. (1) The master of a vessel, other than a river craft or a small vessel, shall give prior notice to VTS HUMBER of the vessel's arrival at, departure from or movement within the Humber.

(2) The master of such a vessel shall report to VTS HUMBER when passing Reporting Points published in a Humber Notice to Mariners.

Master or other competent person to remain on bridge

8. The master of a power-driven vessel underway shall ensure that either himself or a member of the crew who is capable of taking command of the vessel and, when a pilot is on board, is capable of understanding the pilot's directions, is on the bridge or navigational control position of the vessel at all times.

VHF watch to be maintained

9. (1) In this Byelaw references to Areas (i), (ii) and (iii) are references to the areas respectively described in sub-paragraphs (i), (ii) and (iii) of the definition of "the Humber" in Byelaw 4(1) hereof.

(2) [3]Subject to the provisions of paragraph (3) of this Byelaw, the master of a power-driven vessel underway shall maintain a continuous listening watch on the appropriate VHF channel for the area in which he is navigating as specified below:-

Area (i)		- Channel 14
Area (ii)	(downstream of Keadby Bridge)	- Channel 8
Area (ii)	(upstream of Keadby Bridge)	- Channel 6

Area (iii)	- Channel 12

(3) The master of a power-driven vessel who is using an operational radio channel for berthing purposes need not comply with the provisions of paragraph (2) of this Byelaw but shall maintain a dual listening watch on VHF Channel 16 (International Distress Frequency).

Drink, drugs or ill health

10. The master of a vessel shall not navigate the vessel when unfit by reason of drink or drugs or ill health to do so.

(The following notes do not form part of the Byelaws.)

[3] **Byelaw 9(2):** The VHF channels referred to in this paragraph have changed. The channels are now as follows:

Area		Channel
Area (i)		- Channel 12
Area (ii)	(Upstream and downstream of of Keadby Bridge)	- Channel 12
Area (iii)	(Upstream of the meridian of longitude which passes through the No 4A (Clee Ness) Light Float in the Lower Humber	- Channel 12
Area (iii)	(Downstream of the meridian of longitude which passes through the No 4A) (Clee Ness) Light Float in the Lower Humber	- Channel 14

Manning of vessels

11. (1) Subject to the provisions of paragraph (2) of this Byelaw, the master of a vessel underway, other than a small vessel, shall have on board at least one other person to assist in the navigation thereof.

(2) This paragraph applies to a river craft which is propelled by another vessel to which it is connected;

(a) where one or more such river craft are so connected to the propelling vessel by means of one or more direct couplings, the said propelling vessel and river craft connected thereto shall be deemed to be a single vessel for the purpose of paragraph (1) above;

(b) where one or more such river craft are so connected to the propelling vessel by any means other than one or more direct couplings, each such river craft shall have on board at least one person to assist in the navigation thereof.

Vessels not to obstruct fairways

12. (1) The master of a vessel shall ensure that the vessel does not cross a fairway at such a time or in such a manner as to cause danger or inconvenience to vessels navigating that fairway.

(2) The master of a vessel which is not confined to a fairway by reason of its draught, shall not make use of that fairway in such a way as to impede the passage of any other vessel which is confined to that fairway by reason of its draught.

Notice to be given of incidents

13. (1) The master of a vessel which:-

(a) has been involved in a collision with any vessel, navigation mark, bridge, shore facility or other object or has been sunk or grounded (not being a vessel which

is berthed or moored) or become stranded; or

(b) by reason of accident, fire, defect or otherwise is in such a condition as to affect its safe navigation or to give rise to danger to other vessels or property; or

(c) in any manner constitutes or causes an obstruction to a fairway

shall forthwith report the occurrence to VTS HUMBER.

(2) Where the damage to such a vessel is such as to affect or be likely to affect the seaworthiness of the vessel, the master shall not move the vessel, except to clear the fairway or to moor or anchor in safety, otherwise than with the permission and in accordance with the directions of the Harbour Master.

(3) The master of a vessel which is connected to another vessel for the purpose of towing or manoeuvring the same shall give the notice required by paragraph (1) of this Byelaw in the event of such other vessel sinking or grounding or becoming stranded.

Navigation and speed of vessels

14. (1) The master of a vessel shall navigate the vessel with due care and caution and at a speed and in a manner which shall not endanger the safety of any person or any other vessel or cause damage thereto or to a floating navigational mark or mooring or other property.

(2) The master of a vessel shall reduce the speed of the vessel when passing any other vessel employed in dredging, diving, underwater work, removing a sunken vessel or other obstruction or working at any floating navigational mark or mooring.

(3) The master of a vessel shall ensure that the vessel does not exceed a speed of 5 knots when approaching and passing any jetty when any vessel is mooring, moored or unmooring at the jetty.

Vessels navigating against the tidal stream to give way.

15. (1) Subject to the provisions of paragraph (2) of this Byelaw, where a power-driven vessel is navigating against the tidal stream the master of the vessel shall, on approaching bends in the Humber or fairways or bridges, reduce speed or stop the vessel as necessary so as to allow any other vessel navigating with the tidal stream to pass clear of the vessel.

(2) The requirement contained in paragraph (1) of this Byelaw shall not apply to the master of a vessel which:-

(a) is restricted in her ability to manoeuvre and is displaying the signals required by the Collision Regulations for such a vessel, or

(b) is in a fairway and can safely navigate only within the fairway.

Humber Bridge

16. The master of a vessel with an air draught exceeding 30 metres shall not navigate under the Humber Bridge at Hessle without prior approval of the Harbour Master.

Hatches to be in place

17. The master of a vessel underway shall ensure that the hatches and covers of the vessel (if any) are in place and secured.

Sunk Dredged Channel reporting

18. (1) The master of a vessel entering the Humber from the sea and intending to navigate the vessel in the Sunk Dredged Channel shall, before passing Spurn Point, ascertain from VTS HUMBER that the said Channel is clear.

(2) The master of a vessel navigating in the opposite direction and intending to navigate the vessel in the Sunk

Dredged Channel shall, before passing No. 9A light buoy (shown on Admiralty Chart No. 109) ascertain from VTS HUMBER that the said Channel is clear.

Sunk Dredged Channel navigation

19. Except with the permission of the Harbour Master, the master of a vessel shall not navigate the vessel in the Sunk Dredged Channel in the opposite direction to a vessel already navigating the said Channel, or overtake any vessel navigating in the same direction.

Wire etc. not to be deposited

20. (1) The master of a vessel shall not throw or permit to be thrown or to fall into the Humber any unsecured wire or rope.

    (2) If any such wire or rope should fall into the Humber and not be recovered at the time, the master of the vessel from which such wire or rope has fallen shall at the earliest opportunity give notice thereof to VTS HUMBER and take such subsequent action as the Harbour Master may direct to remove such wire or rope from the Humber.

Names of certain vessels to be clearly marked

21. The master of a vessel which is not registered under the Merchant Shipping Acts 1894 to 1988 shall ensure that the name of the vessel is permanently marked upon the vessel so as to be clearly visible from outside the vessel.

PART III LIGHTS AND SIGNALS

Lights to be exhibited by moored vessels

22. The master of a vessel moored alongside any jetty where river traffic passes, and not ready to leave, shall carry by night on the off side two white lights, one forward and one aft where they can best be seen by vessels proceeding up or down river provided that a vessel of less than 50 metres in length may show a single white light amidships.

Whistle signal when leaving

23. The master of a vessel when lying afloat alongside any jetty or other vessel or in a lock connected to the Humber and about to leave shall, when casting off, sound a prolonged blast on the whistle.

Turning signal

24. (1) The master of a power-driven vessel underway (including a tug with a tow) when about to turn round shall signify the same by giving four short and rapid blasts on the whistle, followed by a short interval, then one short blast if turning to starboard or two short blasts if turning to port and whilst turning shall repeat such signal to any vessel approaching from any direction

    (2) The master of a vessel approaching a turning vessel from any direction shall take such action as may be necessary to avoid collision with the turning vessel.

PART IV MOORING AND MANAGEMENT OF VESSELS

Vessels to be securely moored

25. The master of vessel berthed or moored shall ensure that the vessel is securely made fast as close as is safe and practicable to the jetty.

Vessels breaking adrift

26. The master of a vessel which parts from its moorings shall as soon as practicable thereafter report the same to VTS HUMBER.

Vessels to be kept in moveable condition

27. (1) This Byelaw applies to vessels with the exception of river craft lying at a jetty under supervision from the shore and small vessels lying at recognised berths in havens or inlets.

    (2) The master of a vessel to which this Byelaw applies shall ensure that the vessel is at all times kept in a moveable condition (except when aground in a berth) and shall maintain sufficient power and have sufficient persons on board to carry out the directions of the Harbour Master with reasonable dispatch.

    (3) The master of such a vessel absenting himself from that vessel shall leave in charge a person competent to move the vessel and tend the moorings of the vessel as may be necessary or as the Harbour Master may direct.

Anchors

28. The master of a vessel, other than a small vessel, shall ensure that the vessel is equipped with one or more suitable anchors and that these are at all times available for immediate use, with the necessary means of retrieving the same in good working order.

Vessels not to be anchored in a fairway

29. (1) The master of a vessel shall not anchor the vessel in a fairway except in the case of an emergency.

    (2) The master of a vessel anchoring the vessel in the case of an emergency in a fairway shall as soon as practicable thereafter report the position of the vessel to VTS HUMBER and shall remove the vessel from the fairway as soon as it is practicable to do so.

Permission to anchor outside a designated anchorage area

30. The master of a vessel wishing to anchor the vessel for any reason outside an area designated by the Harbour Master as an anchorage area (notice of which designation is contained in a Humber Notice to Mariners) shall seek permission from VTS HUMBER, and when anchored with such permission shall as soon as practicable thereafter notify the position of the anchored vessel to VTS HUMBER and shall repeat such notification at hourly intervals.

Anchor and listening watch to be maintained

31. [4] The master of a vessel at anchor shall ensure that an anchor watch is maintained and in addition shall ensure that a listening watch is maintained on VHF Channel 12 (VTS HUMBER).

Loss on anchors, etc.

32 (1) The master of a vessel which has slipped, parted from or lost any anchor, chain, cable or propeller shall forthwith give to VTS HUMBER notice thereof and of the position of such anchor, chain, cable or propeller with such details thereof as the Harbour Master may require and if the Harbour Master so directs shall cause such anchor, chain, cable or propeller to be recovered as soon as practicable.

   (2) The master of a vessel which has slipped or parted from her anchor shall mark the position of such anchor by means of a buoy if practicable.

(The following notes do not form part of the Byelaws.)

[4] **Byelaw 31:** The VHF channel referred to in this byelaw has changed in relation to part of the Lower Humber. In the area of the Humber downstream of the meridian of longitude which passes through the No 4A (Clee Ness) Light Float in the Lower Humber, the VHF channel on which a listening watch is to be maintained under this byelaw is now Channel 14. In other parts of the Humber the relevant channel remains Channel 12.

PART V CONDUCT OF PERSONS

Facilities for inspection to be provided

33. (1) This Byelaw applies to vessels with the exception of Her Majesty's Warships and Royal Fleet Auxiliaries.

(2) The master of a vessel to which this Byelaw applies shall, so far as may be required by the Harbour Master in the exercise of his duties, afford the Harbour Master access to any part of the vessel and provide all reasonable facilities for its inspection and examination.

Persons not to obstruct Harbour Master

34. No person shall intentionally obstruct the Harbour Master or other servant or agent of ABP whilst in the execution of his duty.

Misuse of property

35. No person shall cover up, displace or remove any boundary stone, post, tideboard, tide gauge or other appliance lawfully set up by ABP.

Water ski-ing and aquaplaning

36. (1) A person shall not engage or take part in water ski-ing or aquaplaning, para-kiting or any similar airborne or waterborne activities in so much of the Rivers Ouse and Trent as is within the Humber without the written permission of the Harbour Master.

(2) A person shall not engage or take part in water ski-ing or aquaplaning, para-kiting or any similar airborne or waterborne activities in the Humber below the confluence of the Rivers Ouse and Trent within any fairway unless that fairway is not being used by other vessels.

Launching of vessels

37. Except where otherwise agreed by the Harbour Master, before a vessel is launched from any yard adjoining the

Humber, the builder of the vessel shall give the Harbour Master at least 48 hours notice in writing of the day and hour at which the launch is to take place, and the builder shall ensure that sufficient vessels are on hand to recover any launching ways of debris introduced into the Humber as a result of the launch.

Notice of boat races, etc.

38. (1) Except where otherwise agreed by the Harbour Master, the organiser of any boat race, regatta, public procession or any other occasion when more than one vessel is expected to assemble on the Humber shall give not less than seven days' notice thereof in writing to the Harbour Master.

(2) The master of a vessel navigating the vessel in or in connection with such an event shall comply with the directions of the Harbour Master.

Lights detrimental to navigation

39. A person placing or using on or near the Humber a light which is, in the opinion of the Harbour Master, calculated to mislead persons navigating on the Humber or to interfere with the safe navigation of vessels, shall comply with any written notice from the Harbour Master requiring him to screen, alter, extinguish or remove the light within a reasonable time specified in the notice.

PART VI **PENALTY FOR CONTRAVENTION OF BYELAWS, RESPONSIBILITY AND DEFENCE**

40. (1) Any person contravening any of these Byelaws shall be guilty of an offence and liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

(2) Where the commission by any person of an offence under these Byelaws is due to the act or default of some other person, that other person shall be guilty of an offence by virtue of this Byelaw whether or not proceedings are taken against any other person.

(3) In any proceedings for an offence under these Byelaws it shall be a defence for the person charged to prove:-

(a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence, or

(b) that he had a reasonable excuse for his act or failure to act.

(4) If in any case the defence provided by paragraph (3)(a) of this Byelaw involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that person as was then in his possession.

THE COMMON SEAL of ASSOCIATED BRITISH PORTS was hereunto affixed in the presence of:-

G.M. CARPENTER
Deputy Secretary

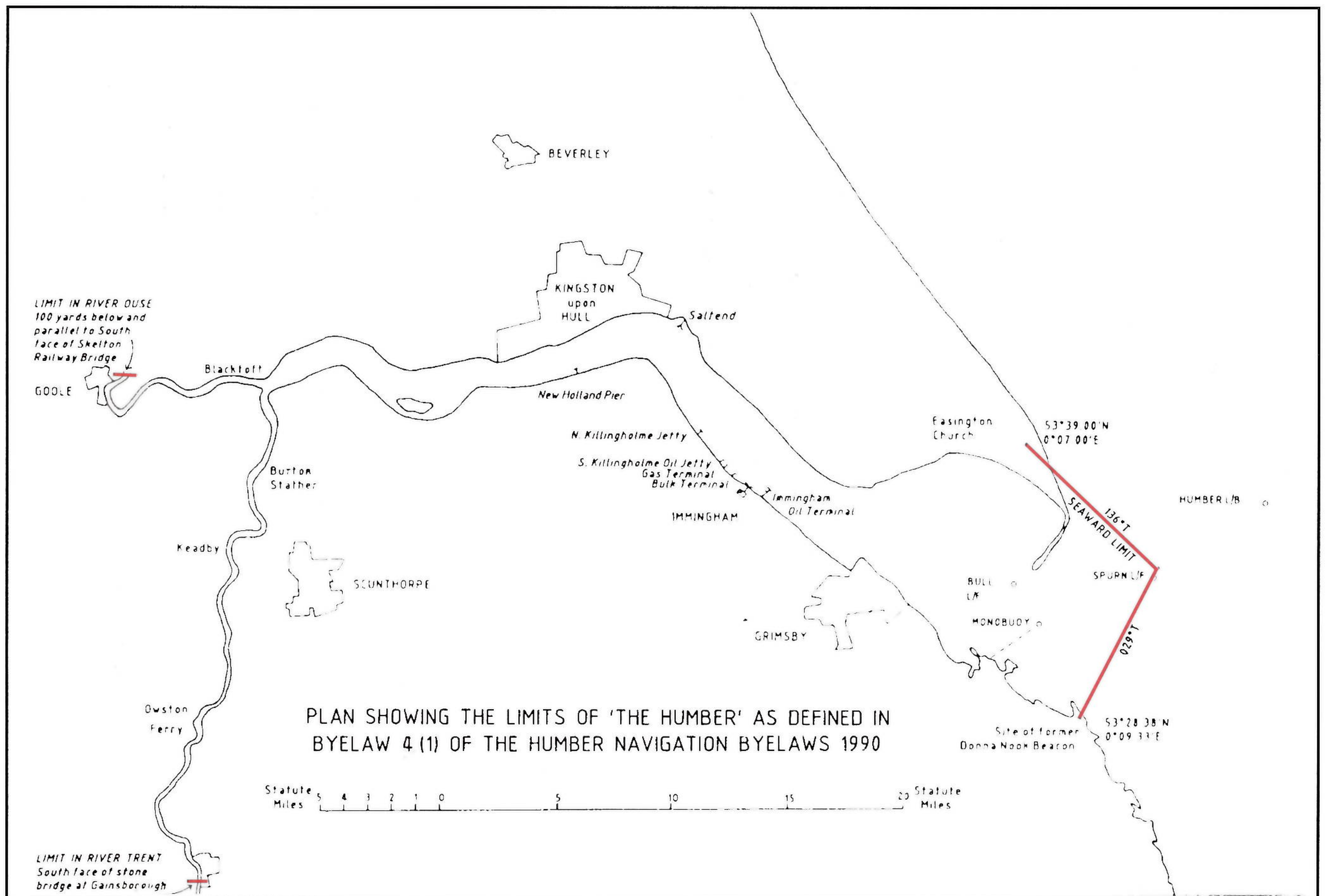
on the Eleventh day of May 1990

THE SECRETARY OF STATE hereby confirms the foregoing Byelaws. Signed by authority of the Secretary of State

M.W. JACKSON

An Assistant Secretary in the Department of Transport

on the Sixth day of July 1990



PLAN SHOWING THE LIMITS OF 'THE HUMBER' AS DEFINED IN
BYELAW 4 (1) OF THE HUMBER NAVIGATION BYELAWS 1990