

SUMMARY OF

**Written representation by
First Corporate Shipping Limited
trading as The Bristol Port Company**

23 November 2020

**Application by North Somerset Council for an order granting development
consent for the Portishead branch line - MetroWest phase 1**

**Planning Inspectorate reference TR040011
Interested party reference PORT-S57657**

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1. INTRODUCTION

- 1.1 First Corporate Shipping Limited, trading as The Bristol Port Company (**BPC**), is the statutory undertaker (harbour and competent harbour authority) for Bristol and the owner and operator of the commercial port of Bristol (**Port**).
- 1.2 BPC recognises the ambitions of North Somerset Council (**NSC** or **Applicant**) for the DCO scheme, but is concerned about the significant and disproportionate impacts that the scheme will have on its undertaking, which will also involve the permanent loss of land in BPC's ownership held for the purpose of its statutory undertaking.
- 1.3 BPC seeks material amendments to the draft DCO, including appropriately worded protective provisions.

2. CURRENT ASSESSMENT OF ISSUES

- 2.1 The proposed development will have significant adverse impacts on BPC's land and the conduct of its commercial port activities now and in the future. BPC's objections include:
- 2.1.1 the damaging effects on its business and statutory undertaking, including on the availability of rail paths; and the effects of future access rights sought;
 - 2.1.2 the loss of BPC's private crossing between its transit cargo storage areas on either side of the proposed railway;
 - 2.1.3 the lack of any adequate consideration of alternatives which would minimise the impacts on the Port;
 - 2.1.4 the effect of construction on the operation of the Port and the other port-dependent businesses on the Royal Portbury Dock estate (**RPD Estate**);
 - 2.1.5 the loss of land safeguarded for port development;
 - 2.1.6 the Applicant's failure to demonstrate any compelling case in the public interest for the compulsory acquisition of rights over BPC's land;
 - 2.1.7 the serious detriment which BPC, as a statutory undertaker, would suffer if compulsory acquisition were to be authorised;
 - 2.1.8 port security issues caused by the Applicant's activities on or adjacent to BPC's land; and
 - 2.1.9 ecological effects.

3. PORT OPERATIONS AND SECURITY

- 3.1 The Port is a major deep water commercial facility and one of the largest in the UK. Its strategic importance is recognised at regional, national and European levels. BPC's land - the dock estate - comprises 980 hectares (2,419 acres) divided by the River Avon and is served by two lock systems, providing access to Royal Portbury Dock (**RPD**) and the Avonmouth and Royal Edward Docks (together **Avonmouth**) respectively.
- 3.2 The Port benefits from excellent hinterland links, with both RPD and Avonmouth having direct motorway access and connections directly to the UK national rail network, with sufficient capacity for rail paths to key destinations.

- 3.3 The Port is recognised as nationally significant infrastructure and a key gateway for UK trade. It and its tenants are important employers and together supported an estimated £1.4bn overall contribution to UK GDP in 2019.
- 3.4 The motor vehicle import trade is a significant part of the Port's business, using large areas of land as secure transit storage compounds. It is exceptionally sensitive to the impact of the proposed development.
- 3.5 Security at the Port is a major consideration, for HMRC, BPC and its customers. The Port maintains an outer, fenced security perimeter with access only permitted through specific checkpoints and has its own non-Home Office force of uniformed, warranted constables.

4. **SERIOUS DETRIMENT**

Statutory undertaker's land

- 4.1 BPC's land has been acquired by BPC as a statutory undertaker for the purposes of its undertaking. The land is used for the purposes of carrying on BPC's statutory undertaking, or the land is held for those purposes.
- 4.2 BPC's land is therefore land to which section 127(1) of the Planning Act 2008 applies. The Secretary of State could not be satisfied that serious detriment to the carrying on of BPC's statutory undertaking would not occur in consequence of the proposed acquisition of rights over BPC's land sought by the Applicant in the DCO.
- 4.3 Land lost to the Applicant's proposed development could not be replaced. Even if it could, significant planning and other constraints would deny BPC the ability to utilise it for operational port purposes.
- 4.4 So far as they affect BPC's land, the compulsory acquisition powers sought by the Applicant include those of outright purchase, of the imposition of rights and of restrictive covenants, of the extinguishment and overriding of rights and other interests and of possession during construction. All land affected by these compulsory acquisition powers forms part of BPC's operational land held by it for the purpose of its statutory undertaking. Therefore the Examining Authority will need to be satisfied that all the powers sought may be exercised without any serious detriment to BPC's statutory undertaking. On the basis of the draft DCO, BPC considers this condition cannot be met.

Temporary and permanent rights

- 4.5 BPC has found it difficult to establish the purposes for which rights over its land are being sought. This includes the right of way sought over plot 05/75 and the extensive rights sought in relation to the busy track which leads from Marsh Lane around the perimeter of the Port towards the M5. Rights sought to run trains over BPC's private rail link are expressed in Schedule 10 to the draft DCO in terms that do not limit the nature of the trains or allow for any constraints whatsoever on the frequency and timings of use.
- 4.6 BPC cannot operate its statutory undertaking unless it can adequately control the use of parts of it by a third party.

Temporary possession

- 4.7 BPC has not been able fully to understand the purposes for which powers of temporary possession of its land are being sought. In some cases, the extent of the areas over which possession is sought seem excessive.

- 4.8 BPC needs certainty as to what its land is needed for and for how long and to be sure that its operational land will be returned in the same state as when possession was taken.

Permanent deprivation

- 4.9 The extent of compulsory land acquisition powers sought over land which is part of or adjacent to Marsh Lane and Royal Portbury Dock Road is excessive.
- 4.10 BPC specifically objects to the proposed acquisition of plot 05/50 since part of this land is required to provide access for the electronic communication operator to its adjacent mast.

5. OTHER SPECIFIC CONCERNS

Loss of safeguarded and operational land

- 5.1 The DCO includes compulsory acquisition powers in respect of an area of land in connection with Work Nos. 16B and 16D. This land is specifically safeguarded for port development within NSC's adopted planning policy. No provision is made for alternative land to be made available for development at the Port, so BPC objects to all of this safeguarded land (plot 05/85) being taken and used.
- 5.2 BPC also objects to the proposed permanent right of access from Marsh Lane over BPC's adjacent land which will further reduce BPC's operational land.

Marsh Lane perimeter track

- 5.3 The proposals to create:
- 5.3.1 a permanent road-rail access point where the Port perimeter track meets BPC's privately-owned railway within the RPD Estate;
 - 5.3.2 permanent rights over the track and other land to bring road and rail vehicles to the access point; and
 - 5.3.3 further permanent rights for Network Rail's works trains to pass over BPC's private railway

will adversely interfere with BPC's use of the track and its private rail link.

- 5.4 The proposed use of the perimeter track conflicts with other regular vehicular use of the track by BPC and others and is a significant concern for the security of the RPD Estate.

Rail crossing

- 5.5 The draft DCO would permit closure of BPC's private crossing that connects operational land to the north and south of the disused railway. This will constitute an unacceptable interference with BPC's operations and statutory undertaking.

Rail access

- 5.6 The draft DCO does not adequately protect BPC's rail paths or prevent interference with rail access for freight traffic to and from the Port during construction.
- 5.7 The proposed location of a construction compound on BPC land beneath the M5 overbridge will interfere with the need for access and impair the security integrity of the RPD Estate.

Network Rail

- 5.8 Network Rail has not participated in any meaningful discussions with BPC about the construction and operation of the new branch line, so BPC cannot assess the effects of various arrangements proposed for Network Rail's benefit.
- 5.9 BPC requires:
- 5.9.1 controls over all works affecting its rail link; and
 - 5.9.2 legally binding commitments from Network Rail as to availability of future train paths for trains departing from and arriving at RPD.

PROWs

- 5.10 BPC does not accept that a need for the works proposed affecting public bridleways/cycleways in and around the RPD Estate has been demonstrated or that the works proposed constitute associated development.
- 5.11 It is inappropriate that BPC should be deprived of land to provide public rights of way in substitution for routes which are currently only permissive and for which there is already an alternative.

6. PROTECTIVE PROVISIONS IN DCO

The protective provisions in the draft DCO must be amended. In particular (but without limitation), provisions are required to:

- 6.1 prevent the exercise of powers of compulsory acquisition except with its consent;
- 6.2 ensure nothing in the DCO affecting BPC's right to use the Court House Farm at grade crossing;
- 6.3 prevent any powers of temporary possession being exercised over certain areas on the dock estate, prevent BPC's property being used for construction access under the DCO powers, and require that otherwise temporary possession powers are exercised only in accordance with conditions agreed by BPC and an agreed works programme and construction protocol;
- 6.4 require the undertaker to give up possession of the areas used by defined deadlines and define the condition in which land must be returned to BPC;
- 6.5 limit the purposes for which land of which temporary possession is taken may be used and the extent of works that may be carried out;
- 6.6 ensure the undertaker must minimise the impact of its activities on the operation of the Port, including controlling train loading/unloading at the Lodway Farm compound;
- 6.7 restrict works, proposed closures and traffic regulation measures affecting BPC's private roads and public roads on the dock estate;
- 6.8 suspend BPC's responsibility for maintenance of PROWs during construction and extinguish that liability in respect of land acquired by the undertaker;
- 6.9 control the undertaker's powers to survey;
- 6.10 control the lateral and vertical deviation of works and the permitted extent of works ancillary to the principal works; and

6.11 provide for BPC's prior approval of all parts of the authorised development which are on or within 5 metres of, or may adversely affect, BPC's property or any public road on the dock estate.

7. **LAND PLANS AND THE BOOK OF REFERENCE**

BPC has various comments on these documents, comprising:

- 7.1 correcting information concerning interests held by BPC, and identifying a additional lessee of part of BPC's property;
- 7.2 querying and correcting boundaries between plots as shown on the Land Plans; and
- 7.3 querying the extent of highway boundaries in connection with the land in the vicinity of Royal Portbury Dock Road and Marsh Lane.