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Date 16 February 2021
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Dear Sir/Madam

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**

Response by First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on the ExA's Further Written Questions at Deadline 4

Set out below are BPC's responses to the Examining Authority's Further written questions and requests for information.

Question ExQ2 Cl.2.3

What would the alternative arrangements for transport of freight be on the occasions when the existing freight railway line would be closed to enable construction works?

The possible alternative arrangements, outlined below, are only workable if the Applicant is obliged to agree formally with BPC sufficiently in advance (whether during construction or subsequent outages for maintenance) on each and every occasion that any closure of the freight railway line is proposed. This is a matter between BPC, as a statutory undertaker, and the Applicant, as promoter. It is not concerned with Network Rail's powers under the Railways Act 1993 which BPC is not seeking to restrict through the inclusion of protections in the DCO.

It is unreasonable for the Applicant to seek what seems to be an unfettered right unilaterally to close the freight railway line and BPC therefore repeats its earlier objections.

Specifically, it is wholly impracticable for the Applicant to assert that work can be carried out without BPC's agreement and, therefore, that any work can ignore the operation of the Port, the carriage of freight for import or export and the proper performance by BPC of its statutory functions.

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This is not a novel point and BPC therefore fails to understand why the Applicant is being so dogmatic in refusing to accept that the DCO needs to enshrine appropriate and proportionate protections. The Applicant's position is all the more inexplicable because:

- the Applicant's own statement of reasons acknowledges that the railway between Parson Street Junction and Royal Portbury Dock is a Core Trunk Route within the Strategic Freight Network and that work to construct the scheme will have to be timed to minimise disruption to freight traffic on the existing railway;
- the Applicant's comments at ExA Q1 GC.1.12 appear to recognise that the issue exists and there is a need to address it;
- Network Rail's construction strategy (document 5.4) acknowledges that the rail works will be disruptive and that advance agreement will be needed with the "Port Authorities" (sic) in relation to any works;
- the Applicant's own Environmental Statement (document 6.7) also states that the timing of works affecting the track currently used by the freight service will need the agreement of BPC regarding freight movements and possessions (see paras 4.5.247 and 4.5.248); and
- clause 5.2.3 (c) of the RPD connection agreement (dated 20 October 2008 entered into between Network Rail Infrastructure Limited and BPC) imposes a consultation obligation on NR not less than 12 weeks before any relevant works to the railway line can take place.

The possible alternative arrangements are described below. The adoption of any alternative arrangement would inevitably add significantly to shipping and stevedoring (cargo handling) timetables and costs and, indirectly, increase inland distribution and other supply chain costs (resulting from, for example, construction/manufacturing delays and extended periods of warehousing and storage).

Re-scheduling: It might be possible to re-schedule the arrival of cargo at the Port in order to avoid periods when the Applicant and BPC have agreed that the freight railway line can be closed. This may not always be possible and it depends upon a customer's arrangements for shipping the relevant cargo, including the availability of vessels and any specialist cargo-handling equipment, as well as the type of cargo and its intended purpose. For example, the arrival of cargo required for use as part of a large construction project and its onward delivery to site may be subject to significant time sensitivity and any delay could be extremely expensive, causing construction programme delays and disrupting other inter-dependent supply chains for the relevant project. Any re-scheduling would also only be possible as long as it would not cause delays to the Port's future vessel handling schedules, by creating artificial demand peaks and restricting berth capacity.

Diversion to Avonmouth: Some cargo could potentially be handled at Avonmouth Docks, but this would depend upon cargo type, applicable vessel size (Avonmouth's lock is much smaller than the RPD equivalent) and, for cargo carried by rail to/from the Port, the availability of train paths. Also, as with RPD, Avonmouth does not have infinite transit storage capacity which would be a further limitation on BPC's ability to accommodate different arrangements. Inevitably, any shift to Avonmouth would cause supply chain disruption and add time and cost.

Transit storage: Short term storage for import cargo in transit might be available at the Port. However, the availability of suitable storage would depend upon the nature and volume of the cargo concerned. For example, the Port does not have an infinite supply of covered storage to handle sensitive, including weather vulnerable, cargo. Similarly, the Port already has insufficient land available for the transit storage of motor vehicles so it could not accommodate increased demand for vehicle storage caused by closure of the railway line at peak times. Export cargo could be delivered to the Port in advance of its due date for shipment but it would be subject to similar considerations to import cargo.

Alternative transport modes: Cargo could be moved by road during periods when the railway line was closed, but this would significantly increase traffic volumes on the road network and create adverse environmental impacts. For example, around 60 HGVs would be required to transport bulk cargo and 20 road transporters would be needed to carry cars, in each case as normally carried by one freight train. The Port also handles imports of new rail rolling stock including locomotives, passenger carriages and multiple-units, which are delivered by rail to their service centres. If they could not be moved by rail, each unit

would need to be transported by road on a (wide and heavy) specialist low loader. Any proposed use of any form of road transport would require at least six months' advance notice.

Question ExQ2 CA.2.9

The Bristol Port Company (BPC) provided a number of documents at Deadline 4 which the ExA expects the Applicant to respond to at Deadline 5. In particular can you advise:

- 1. Why the CA of plots 05/101, 102, 130, 131, 135 and 136 is needed (the Applicant) and what the alternative to these plots is (the BPC).**

According to the Statement of Reasons (document 4.1) ("SoR") the Applicant seeks the compulsory acquisition of these plots for the purpose of construction of the new bridleway to be comprised in Work No. 18. The SoR specifies this as the only purpose for the acquisition.

The acquisition of the entirety of plots 05/101, 102, 130, 131, 135 & 136 would not be necessary for the construction of the new bridleway proposed. The extent of the land to be acquired as shown on the Land Plan (sheet 5) is considerably greater than the extent of land required for the specified purpose. The Works Plan (sheet 5) shows the permitted extent of work in relation to Work No. 18 and this is therefore the limit of the land over which compulsory acquisition could be justified. The Applicant has not explained why additional land is required or should be the subject of compulsory acquisition.

However, as stated at Issue Specific Hearing 2, BPC does not accept that any of its land should be acquired in order to provide rights of way since it would potentially inhibit BPC's use of that land as part of its statutory undertaking. A public right of way would adequately be created by dedication in the usual way. This is the basis on which, in co-operation with North Somerset Council as local highway authority, all the other footpaths and bridleways on the dock estate were created by BPC and are used today. No acquisition by the Applicant is necessary.

As indicated at Issue Specific Hearing 2, BPC would be prepared in principle to accommodate the carrying out of Work No. 18 on its land, and to enter into a dedication agreement designating the new bridleway as a public right of way, on condition that:

- (a) the bridleway is constructed in the position and in accordance with the details shown on the relevant Works Plan and other drawings, the works for and related to its construction being confined within the extent of work for Work No 18;
- (b) the works will be carried out with the prior approval of BPC (not to be unreasonably withheld or delayed); and
- (c) North Somerset Council (NSC), as local highway authority, will be responsible for the maintenance of the path created, including associated landscaping.

Given this alternative, no compulsory acquisition of the plots referred to above can be justified.

- 2. Provide further detail as to why you consider the right, as currently sought, for plot 05/75 is to wide (BPC) and (the Applicant) why you are needing the rights as currently sought?**

The reason for the compulsory acquisition of rights over this plot according to the SoR is "*improvement to existing access, access to ecological mitigation land and construction access and haul road*" and "*[a]ccess to the Easton in Gordano Stream culvert*". However, the right over the plot sought in Schedule 10 to the DCO is couched in very general terms, including the right to remain upon the land with plant and machinery for all purposes in connection with (undefined) neighbouring land. Based on this, BPC found it difficult to establish the specific purposes for which rights over its land were being sought: for example what 'neighbouring land' was to enjoy the benefit of the access, for what particular purposes and what kind of vehicles and frequency of use was anticipated?

Subsequent comments by the Applicant have indicated that rights over the plot were needed to allow for maintenance access to the nearby cattle creep underbridge. A further purpose was stated as being

access for the construction of Work Nos. 16C and 16D (which BPC assumes was intended to be a reference to Works 16B and 16D).

Work No. 16D has now been removed from the DCO, and BPC is aware that the Applicant has submitted a request similarly to remove Work No. 16B. No rights over plot 05/75 can therefore now be required in connection with those works. Therefore, as far as BPC is aware, the only access requirement that the Applicant could still seek to rely on to justify powers of compulsory acquisition in respect of plot 05/75 is that strictly necessary for maintenance of the cattle creep underbridge.

The plot forms part of land held by BPC for the purpose of its statutory undertaking. Rights over the plot on the terms currently proposed in Schedule 10 to the DCO go much further than is necessary or can be justified and would necessarily cause serious detriment to BPC's undertaking. As a minimum, the drafting of the rights in Schedule 10 to the DCO must be amended to reflect the more limited purpose of their exercise (that is, maintenance access to the cattle creep), and to specify the required extent of use (frequency and the nature of vehicles using the access rights), all such amendments to be agreed with BPC. Further, as the access will be used solely by the party with maintenance obligations in respect of the cattle creep it is appropriate and necessary that such party is also responsible for the maintenance of the path itself.

Given the limited purposes of any access that may still be required, the extent of land within plot 05/75 over which the Applicant seeks to acquire rights cannot be justified. The width of the strip of access land, and in particular the large section of land at the southern tip of the plot, are disproportionately large for maintenance traffic for a small cattle creep. The Applicant should review and justify its requirement in the light of the changed circumstances.

3. BPC you advise that you have concerns [REP4-058] about some other parcels of land that are not owned by you but that you have rights over which you will need to retain. Can you provide the plot numbers and details of what the rights are and why you would need to retain them?

We believe this question relates to BPC's concerns about proposals for compulsory acquisition of land over which BPC requires continued access in connection with its adjacent land. BPC requires that its access rights in respect of these plots are preserved. The plots to which this relates are plots 5/30, 5/61, 5/62, 5/65 and 5/70, all in the vicinity of Marsh Lane. The compulsory acquisition of the land in these plots, or of rights over the land, risks the extinguishment of BPC's existing rights. BPC would suffer serious detriment to its statutory undertaking if its means of access to, or ability to operate from, parts of its land are lost.

BPC's written representation (paragraphs 7.3.5(a) and 7.3.6(b)) set out in detail why BPC is concerned about the acquisition of these plots. In assessing the potential impact of the proposed acquisitions, BPC has been hampered by inconsistencies in the available information about the current extent of the public highway in the relevant areas, particularly by discrepancies between highways plans previously provided by the Applicant to BPC, statements in the Book of Reference and statements set out in the SoR. In its written representation (paragraph 7.3.7) BPC suggested it would assist the resolution of all these highway related issues if NSC, as local highway authority, could produce up-to-date and detailed plans of the extent of the public highway in the areas concerned. This has not happened. Therefore, unless and until these issues are resolved to BPC's satisfaction it will require protective provisions so as to enable matters to be regularised and BPC's access rights preserved.

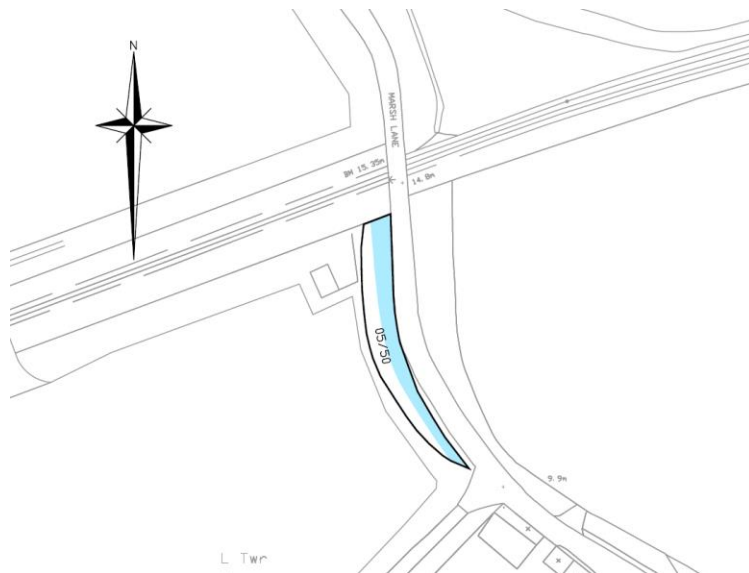
In addition, as set out at paragraph 6.2.2 of its written representation, BPC requires that its existing rights over the plots specified in that paragraph must not be extinguished. BPC does not believe that these plots are the subject of the ExA's question. However, the ExA should be aware that the rights held by BPC over these plots relate to the maintenance and operation of BPC's railway as part of its statutory undertaking. Were those rights to be extinguished as a result of the DCO, this would clearly cause serious detriment to the operation of BPC's undertaking.

4. The BPC indicate that the Applicant has advised that they would be willing to remove part of plot 05/50 for freehold acquisition. Both parties provide further detail of how this plot would be affected and whether any other rights would be needed

BPC had objected to the proposed compulsory acquisition of plot 05/50 because this land is required by BPC to provide access for an existing electronic communication operator to its adjacent mast.

The Applicant has now indicated that it is willing to remove part of plot 05/50 from the Order land subject to acquisition, subject to securing rights of access over the remaining part to maintain the part acquired. The drawing below shows by the blue colouring the maximum extent of the land that BPC considers should be subject to compulsory acquisition.

However, as set out in paragraph 4.16 of BPC's written representation, the Applicant has not demonstrated satisfactorily that outright acquisition of the land is necessary and, to the extent it can be shown that the Applicant needs to acquire any further interest in the land, why this could not be achieved by dedication and adoption.



Yours faithfully

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