

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

Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on the need for a surveys and repairs of the Marsh Lane track dated 15 March 2021

1. This note is provided in response to action point 26 arising from Issue Specific Hearing 5 on 4 March 2021. BPC is requested to provide comments on whether a requirement is necessary for a pre-condition survey and repair of the unsealed section of the perimeter track on BPC land leading from Marsh Lane during works/on completion.
2. This note also contains BPC's comments on, and clarifications to, certain statements made on behalf of the Applicant relating to the track and its use at Issue Specific Hearing 5.
3. BPC refers to its previous representations made in relation to the Applicant's proposed use of the track (particularly in REP2-064, REP3-046, REP4-058, REP4-059, REP5-049). The comments in this note are in addition to those representations.

Road construction

4. BPC's concerns as to the current condition of the Marsh Lane track in the context of the Applicant's proposed use of it relate not only to its surfacing but also, separately, to its sub-structure.
5. Standard highway design for road pavements involves an assessment of the ground conditions and the Average Annual Daily Flows (AADF) of commercial vehicles. A road essentially comprises two parts – a foundation layer, the bottom or lower part, and a structural layer, the upper part, including the surface that vehicles drive on. The road's foundation is usually a graded stone known as sub-base. This is a load-bearing layer of aggregate laid on the sub-grade layer below and is the main load-carrying layer of roads and pavements. Since the sub base distributes weight over a wide area, it provides a very stable layer which reduces sinking and settling of the highway surface. Sub-bases usually comprise graded stones from large to dust, the particles form an interlocking mesh with few air spaces in between, providing a very robust structure. Sub-base is often constructed with Type 1 SHW Clause 803 (Specification for Highway Works), often just known as MOT Type 1. The structural layer of the road provides further load distribution with the upper layer being in direct contact with the traffic load and providing a sealed (waterproof) smooth surface to improve traction and reduce skidding as well as being tough enough to prevent distortion from traffic.
6. In respect of the foundation layer, underlying ground conditions determine what will be required for the road in the relevant area. Weak ground will require both a substantial depth of sub-base (unbound aggregate) and, possibly, a "capping layer" that might need reinforcement with proprietary material.
7. The structural layer is that part of the pavement above the sub-base, which provides the principal load spreading function of the pavement. It must be of adequate strength (stiffness) to perform this function and be, of itself, deformation and crack resistant.

8. The depth of the layers comprising roadbase, basecourse and then wearing course (the top, exposed layer or surfacing) and the total depth of these is determined by the AADF. The greater the amount of traffic anticipated, the greater the depth of construction required.

Sub-structure of the Marsh Lane track

9. BPC has no record of the method of construction of the Marsh Lane track beneath its surface. It is not known what, if any, foundation layer or structural layer may exist. If there are such layers, neither the depth of construction nor the type of materials used is known.
10. It is therefore impossible to know whether the track could, structurally, support even the levels of HGV traffic currently estimated by the Applicant. Currently, vehicular use of the track is sporadic, the vast majority of traffic over it being light vehicles. BPC is not aware that there has ever been regular use of the track by HGVs and BPC has no recollection of any suggestion that the current track is suitable for regular use by HGVs. Any occasional HGV use of the track that has occurred cannot be used as an indicator of how the track would respond to more frequent, construction traffic.
11. Historic records and contemporary site investigation show that the ground beneath the dock estate generally has a poor capacity to accommodate loads. Buildings in the Port, electricity pylons and the M5 overbridge are all on piled foundations that transfer the weight of the above ground structures, via long concrete columns, to the underlying bedrock that lies 10 to 30 metres below the ground level. Evidence from the Port's Archive's that include the construction drawings for Royal Portbury Dock show that clay material from the excavation of the dock basin was tipped as far as the boundary adjacent to the M5 and beneath the area now occupied by the Marsh Lane track.
12. In the absence of any evidence presented by the Applicant, BPC's concern is that the underlying ground conditions, unknown form of track construction (depth and type of construction layers) and anticipated use by construction vehicles will lead to the rapid deterioration of the existing track. That deterioration will lead to disruption to the Port and others who need access to the track and is likely to result in dust and mud that are also significant worries for the Port and others. Deterioration of the track will clearly also cause significant inconvenience and disruption in terms of the delivery of the DCO scheme itself.

Surfacing of the Marsh Lane track

13. To the extent that parts of the track today have some kind of surfacing beyond the compacted stone initially used for the creation of the bridleway, this additional surfacing will only been created on an ad hoc basis utilising, when available, spare material from the development of the adjacent vehicle transit storage sites. It will not have been designed or intended to enable the track to accommodate greater traffic flows or heavier vehicles and cannot be seen as equivalent to the wearing course normally required for a road which will be subject to HGV use.
14. Without an adequate wearing course over the whole of the track, not only will the road deteriorate as greater use is made of it, but as previously explained, dust will be generated by the use of the track which will damage the imported vehicles in the adjacent transit storage compound.

Proposed use and works required

15. The Marsh Lane track is proposed to be used for construction access to the large Lodway Farm compound, to the compound under the M5 overbridge and for the construction of the railway alongside (including the works to the cattle creep underbridge and the Easton-in-Gordano culvert). Vehicles using the track will include HGVs carrying ballast and other

construction materials, but are likely also to include vehicles carrying other construction materials, vehicles carrying RRVs together with the personal vehicles of contractors and light goods vehicles.

16. So far as the quantity of personal vehicles is concerned, the Applicant suggests in the Construction Traffic Management Plan (DCO document 8.13, APP-210) that mini-buses may be used to reduce individual car journeys to and from certain construction compounds, but currently BPC is unaware of any measures in the DCO which would secure and/or police compliance by workers with such a scheme or provide for the necessary associated arrangements for parking and security at the construction sites. BPC is therefore doubtful to what extent any scheme of this sort would be successful in controlling traffic flows on the perimeter track.
17. It is in any case clear that the Applicant considers the track would play a key role in the delivery of the DCO project. However, as matters stand, neither the Applicant nor BPC can be confident that its current condition is such as to enable it to fulfil that role.
18. BPC considers that the use of the track proposed by the Applicant would only be viable or acceptable if, as a part of the Applicant's scheme, works were first carried out to provide the track with an adequate load bearing capacity and an appropriate sealed wearing course. This would serve to protect BPC's assets and its customers' cargo from dust and debris; enable the continuous use of the route for all other users including BPC; and provide the appropriate assurances to the Applicant's contractors that they have a robust route to their works that should not require continual repair with the consequent cost and disruption to the construction programme and other users.
19. To inform the extent of the work required, a survey of the track would first need to be carried out at the Applicant's expense. For the reasons explained in 9 to 14 above it would not be adequate for this survey to be limited to the currently 'unsealed' portion of the track. A comprehensive assessment of the whole of the track is required, including the extent, if any, of its sub-structure. Appropriate works to the track would need to be designed and then approved by BPC. The works would need to take account of the amount and types of the Applicant's traffic which would be permitted to use the track and the need for the track to remain available at all times for use by BPC and others: it would not be acceptable for only limited initial works to be carried out so that throughout the construction period repairs were constantly required hindering or preventing others' access over the track. All damage, wear and tear caused by the Applicant's use of the track would have to be made good as soon as it occurs. At the end of the construction period, a further condition survey would need to be carried out and the track handed back in good condition, both as to its sub-structure and surfacing.

Protective provisions

20. Any provisions relating to the track must be secured in the DCO by way of protective provision, not by way of requirement.
21. Public rights of way over the track are limited to its use as a bridleway (LA8/67/10), which public rights are to be suspended during the DCO construction works by the temporary stopping up of the bridleway. So far as vehicular access is concerned, the Marsh Lane track is BPC's private road and it is the exercise of these private rights of vehicular access and use by BPC as statutory undertaker and operator of the Port (and by others authorised by it) which will be adversely affected by the Applicant's proposed use of the track. Similarly, it is BPC's interests as statutory undertaker and operator of the Port which will be adversely affected by the dust, security and other issues which would be caused by the use of the track. It is therefore appropriate that any measures relating to the track, including any specific mitigation

measures necessary to reduce and control adverse impacts of the Applicant's use, are contained in protective provisions for BPC's benefit and not in requirements under the control of the local planning authority.

22. BPC's position therefore remains that in order to ensure use of the track can properly be controlled and the necessary works carried out protective provisions are required as set out in paragraph 6.3.1 of BPC's written representation (REP2-064).

Comments made concerning the track at Issue Specific Hearing 5 on 4 March 2021

23. During Issue Specific Hearing 5 on 4 March 2021 a representative of the Applicant stated that:
- 23.1 BPC had previously told the Applicant the track is HGV load-bearing;
- 23.2 the section of the track that is unsealed measures about 60 to 70 metres and that the overall length of the track up to the M5 is in excess of a kilometre;
- 23.3 there is a further section of the track that goes underneath the M5 viaduct, such that in totality the track is probably approaching two kilometres in length; and
- 23.4 there had been discussions with BPC about the commercial terms on which the rail facilities at Royal Portbury Dock might be used for bringing in construction materials for the project but that the sums being requested by BPC are "*very, very substantial*".
24. By way of clarification, BPC can confirm that:
- 24.1 BPC has no recollection of having confirmed to the Applicant that the track is suitable for general HGV traffic and for the reasons given at 9 to 14 above BPC would not be in a position to give such an assurance;
- 24.2 the length of the track from its junction with Marsh Lane up to the point where it first meets the western edge of the M5 overbridge is recorded in the dedication agreement relating to bridleway LA8/67/10 as being 813 metres;
- 24.3 there is no continuation of the track on BPC's land under the M5 viaduct. From where the track meets the western edge of the M5 overbridge it then runs in a generally north eastern direction broadly parallel to the M5 to the level crossing on the Port's railway, a distance of about another 300 metres; and
- 24.4 there have not been any discussions between the Applicant and BPC concerning the commercial terms on which it might be possible for the Port and its railway to be used to bring in construction materials. BPC has not given, and has not been asked by the Applicant to provide, any quotations as to the prices that might apply were those services to be required and provided.
25. During Issue Specific Hearing 5 the Applicant also stated its opinion that it was not possible for the DCO to provide that resurfacing or other physical works must be carried out to the perimeter track because the Applicant was not seeking to acquire the freehold interest in it. BPC's position in relation to the protective provision needed in relation to the track remains as set out at 22 above but, based on the current drafting of the DCO, BPC disagrees with the Applicant's opinion in that respect. Article 33(1)(d) and (e) and article 33(4)(b) and (d) together authorise a wide range of permanent mitigation and other works to be carried out on land which is the subject only of temporary possession powers, including the further associated development listed in Schedule 1, such as works to improve or reconstruct streets.