

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 BPC's oral case made at Issue Specific Hearing 5 on 4 March 2021

1. This summarises the oral case made on behalf of The Bristol Port Company at Issue Specific Hearing 5 on 4 March 2021. This summary is in addition to other written evidence previously submitted to the Examining Authority.

Interaction of freight trains to and from Royal Portbury Dock and the proposed passenger services

2. Through its proposed protective provision in relation to this issue (at REP4-060), BPC seeks only to preserve the opportunity it currently enjoys for the 40 train movements per day (20 trains in each direction) permitted under its existing planning permission. Any change to that limit under the planning permission would be a matter for the local planning authority. It would be beneficial in terms of reducing the amount of freight transported by road for rail freight movements to and from the Port to be capable of increase, so BPC cannot rule out in the future an increase in the permitted level of use of the rail link under the planning permission becoming necessary, but as matters stand BPC believes that the existing permitted level should be sufficient for its current needs.
3. BPC's protective provision does not seek an allocation of train paths nor seek to interfere with the operation of the Network Code. The allocation of specific paths will be a matter for the freight operating companies (FOCs) and, in due course, the operator of the proposed passenger service. When North Somerset Council (NSC) imposed conditions on BPC's planning permission in respect of the rail link in relation to the number of train movements and times of operation, it was seeking to preserve the opportunity for the future use of the Portishead branch line infrastructure for passenger services; now BPC in just the same way seeks to preserve the opportunity that exists today for its customers to move their freight by train over the same branch line.
4. BPC is no more seeking an allocation of train paths by its protective provision than NSC was seeking such an allocation by imposing its planning conditions. If the Applicant were correct that BPC's protective provision is unnecessary or inappropriate, because all track access arrangements should be dealt with through the Network Code, then NSC's planning condition would have been equally unnecessary and inappropriate.
5. BPC's interests in relation to preserving the access for rail freight it currently enjoys are of a very different nature to the FOCs' interests in securing track access. BPC's interests are therefore not adequately protected by any rights of challenge that may be available to the FOCs under the Network Code.
6. The interests of the FOCs are only short term. Their interest lies in preserving the quantity of freight which they are able to carry in any particular period; they are less concerned as to the origin and destination of that freight.

7. The interests that BPC seeks to protect are those of its customers. Demand from BPC's customers for rail access comes in various forms. Many customers make significant investments in the Port and accordingly have long-term requirements for secure rail access, such as a major utility for which BPC handled coal for over 25 years. At the other end of the scale, other customers have requirements for rail access for spot shipments, such as the stone which is currently being transported from RPD by rail over the branch line. The consequences of there being insufficient rail access available to meet these customers' needs is significant. The prospective long term customer will not make its investment in the Port, with the consequent loss of the jobs and other benefits that would come with that investment; the spot-shipment customer will instead move its cargo by road.
8. Network Rail stated that the infrastructure which has been designed for the proposed scheme will have the capability to accommodate an hourly passenger service and an hourly freight service. Assuming the infrastructure is built in accordance with that design, in order to ensure that the capacity for an hourly freight service is preserved the infrastructure must not be changed so that it loses that capability and the manner of operation of the passenger service must be limited to accord with the limitations of the design. BPC's required protective provision is therefore specifically framed in terms controlling not the allocation of train paths but changes to the infrastructure of the railway development or to the operation of the passenger service – such as the introduction of a half-hourly service without changes to the physical infrastructure - which would mean that the infrastructure would no longer have the capability to accommodate the freight service for which Network Rail states it has been designed. The draft DCO does not currently restrict these matters. The issue BPC therefore seeks to address is the Port's ability to operate in the long term as it can now.

Use of, and condition of, the Marsh Lane perimeter track

9. It seems likely BPC's perimeter track leading from Marsh Lane may be used by a wide variety of construction-related traffic apart from the HGVs described by the Applicant carrying the ballast and track bed removed from the old railway and bringing in new ballast. This potentially includes vehicles carrying other construction materials, vehicles carrying RRVs which will be used during construction together with personnel vehicles and all light goods vehicles. The track would be used by these vehicles serving both the Lodway Farm construction compound and the compound underneath the M5.
10. BPC's concerns about the proposed use of the track in part relate to dust generation, in part to the frequency of use and in part the potential for that use to impede use of the track by others. Frequent and heavy use of the track will increase the potential for damage to be caused to it and for the overall condition of the track to deteriorate. This is not only a matter of damage to the surface - and so it is not merely a concern about dust - but also a matter of the load-bearing capacity of the track and damage to its subsurface elements. Damage to either the surface or the subsurface will impede the track's use by others.
11. The current state of the track is illustrated by the two photographs provided in REP4-058. The one (appendix 2) shows a section of the track clearly comprising only unbound material with patches. The other (appendix 1) shows how such surfacing as there is does not extend across the full carriageway. Moreover, BPC is not aware of the actual depth of the sub grade and sub base within the structure of the track.
12. Current use of the track for HGV traffic is extremely limited and infrequent.
13. To the extent it is proposed that BPC's concerns about the use of and damage to the track might be mitigated by any form of requirement relating to pre- and post-construction surveys, BPC considers that it should be BPC, not the local planning authority, which has control over

the assessment of the extent of any mitigation related to the track. Further, it would not be acceptable for work required to rectify damage caused to the track to be deferred to the end of the construction period. BPC considers that the issues it has raised in respect of the condition of the track must be addressed comprehensively at the start of the construction period. The Applicant's use of the track will not be exclusive. Unless the issues are addressed before construction starts, the constant remedial work to the track that will be needed during the construction period will disrupt and cause delay not only to the Applicant's contractors but also BPC and other users of the track.

14. To the extent it is suggested that the risk of dust generation caused by the proposed use of the track might be mitigated by the use of water, as well as questions as to the availability of water supplies in the vicinity of the track, BPC would be concerned using water would simply create mud and slurry which would be transferred around the track and on to other parts of the dock estate and the public highway.
15. The track is owned by BPC. The draft DCO seeks both temporary and permanent rights of access over it. The track currently hosts a public bridleway and cycleway which was created by dedication by BPC. Maintenance of the track is currently BPC's responsibility as its owner and specifically under the bridleway agreement insofar as the bridleway is concerned.

Closure of the Court House Farm at grade crossing

16. It has never been BPC's desire to impede the actual construction of the proposed DCO scheme. BPC's only issue is with the requirement that it should lose its current rights to use the at-grade crossing which it built over the railway at Court House Farm, and be obliged to incur the expenditure in building a bridge to replace that crossing, at a point when it is not certain that the proposed DCO scheme will go ahead.
17. BPC has planning permission for the construction of the bridge which is not time limited. There is not a simple answer to what the construction programme for the bridge would be. Currently BPC is looking to try to reduce the initial programme which required 15 months from the point that there was confidence that the DCO scheme was to go ahead until BPC would be able to finish work to allow access for Network Rail's works at the at-grade crossing to start, free from BPC's need for continued use of the crossing.
18. BPC is now engaged in constructive discussions with Network Rail with a view to seeking a solution which recognises each party's concerns.

Public and permissive rights of way at the Port

19. BPC has entered into dedication agreements in relation to other public bridleways at the Port, including one relating to current bridleway (LA8/67/10) to which the new bridleway to be created by Work No. 18 would connect. Assuming the Applicant will construct Work No. 18 to adoptable standards BPC sees no reason why a dedication agreement in a similar format could not be used in connection with Work No. 18.