

BY EMAIL

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Date 27 August 2021
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Dear Sir

Application by North Somerset District Council ("the Applicant") for an Order granting Development Consent to construct a new railway on the trackbed of the former branch line from Bristol to Portishead including associated works ("the Proposed Development")

Request for comments from the Applicant and Bristol Port Company

1. We act for First Corporate Shipping Limited, trading as the Bristol Port Company ("BPC"). Thank you for your letter of 13 August 2021 asking if BPC was content with the revisions to Annex 2 to the Applicant's letter of 9 August 2021 and for confirmation as to whether the BPC protective provisions are now agreed between the Applicant and BPC.

Agreement as to form of protective provisions

2. Annex 2 to the Applicant's letter of 9 August 2021 substantially repeated the contents of enclosure 6 to the Applicant's letter to the Planning Inspectorate of 21 July 2021 (the "July letter"). In particular, Appendices 1 and 3 within Annex 2 containing, respectively, the forms of protective provisions proposed by the Applicant and those required by BPC, were unchanged. Since 9 August, no further agreement has been reached between BPC and the Applicant as to the inclusion of the additional protective provisions required by BPC contained in that Appendix 3, although discussions continue between BPC and the Applicant with a view to resolving the outstanding issues. BPC's position in relation to the form of protective provisions which it requires therefore remains as set out in its letter to the Planning Inspectorate of 22 July 2021, a copy of which was provided to the Secretary of State on 26 July 2021.

Revisions to Annex 2

3. Enclosure 6 of the Applicant's July letter included a table setting out the Applicant's views in respect of those protective provisions required by BPC which are not agreed by the Applicant. The version of this table submitted with the Applicant's letter of 9 August included additional commentary which had not been included in the earlier version, the additions being shown in blue text and relating to paragraphs 50(13), 51(3) and 51(4) of the form of protective provisions required by BPC. BPC does not agree with the Applicant's additional commentary for the following reasons.

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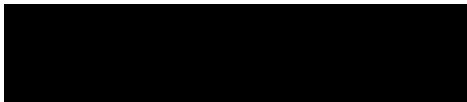
Paragraph 50(13)

4. The Applicant states that the site of Work No. 16 is "*inaccessible land*". This is incorrect. The land is readily accessible to BPC, being immediately adjacent to BPC's private, vehicular access track leading from the public highway at Marsh Lane and through the Royal Portbury Dock estate.
5. The Applicant refers to the presence of a "*large prickly Hawthorne bush*". This is not relevant: any existing vegetation could easily be removed to enable the land to be used for port uses and/or development, as discussed in paragraphs 15 to 17 of BPC's note in relation to compulsory acquisition matters submitted to the Examination at Deadline 7, a copy of which was provided as enclosure 2 to BPC's letter of 22 July 2021 (referred to below as "BPC's CA note").
6. The Applicant states that Work No. 16 is an "*integral part of the [DCO] project*", providing a diversion of part of NCN26. BPC disagrees and considers that it is not necessary to carry out Work No. 16 as part of the DCO project or at all. The current path which the Applicant seeks to divert is a permissive route only, and itself constitutes a short diversion from the main route of the NCN over the established PROW network: from west to east the diversion leaves public bridleway LA8/66/10, passes under Marsh Lane and alongside the railway to re-join public bridleway LA8/67/10 at a point east of the proposed location of Work No. 16. If the Proposed Development were to cause Network Rail to withdraw its permission for use of this short diversion, the existing public bridleways, connecting across Marsh Lane, provide an adequate alternative route which the Applicant's drawings show is already regarded as part of NCN26 (see drawing 467470.BQ.04.20-554 in DCO document 2.37).
7. Even if some diversion of the permissive route were necessary (which BPC does not accept), or desired BPC questions why the proposed realignment of the route of the path to the north under Marsh Lane to avoid the new track bed could not have been continued further eastwards so as to connect with the NCN on public bridleway LA8/67/10 at approximately the same place as that connection is made now. This would have avoided the division of BPC's land currently proposed by Work No. 16.
8. Despite its views above, BPC is willing to accommodate a path as proposed by Work No. 16, provided it is constructed in accordance with the current drawings and that the resulting path is a permissive route only. However, in the absence of any necessity for Work No. 16 either at all or on its proposed alignment, BPC considers it is not appropriate for the Order to contain powers of compulsory acquisition in respect of its proposed site (plot 5/27) affecting BPC's land which it uses and/or holds for the purposes of its statutory undertaking: see paragraphs 15 to 17 of BPC's CA note. Similarly, nothing in the Order should give the Applicant power to create Work No. 16 as a path open to the public without BPC's agreement through the creation of a permissive path in the agreed location.
9. The Applicant states that Work No. 18 is "*also an integral part of the [DCO] project*". Again, BPC disagrees. The section of the NCN under the M5 discussed by the Applicant is a route the use of which is currently only permitted or tolerated by Network Rail. While the Applicant may consider it desirable to create new public rights of way to supplement or replace such a route, the creation of such new rights is not a necessary part of the Proposed Development.
10. Despite this, BPC is also willing to accommodate the construction of a bridleway as proposed by Work No. 18, and to enter into a suitable dedication agreement. However, since the creation of the bridleway is not necessary, BPC considers it should not be permanently deprived, through compulsory acquisition, of any land it uses and/or holds for the purposes of its statutory undertaking in connection with it: see paragraphs 18 to 20 of BPC's CA note. It also requires control over the location of the bridleway so as to minimise its effect on BPC's land. Accordingly, nothing in the Order, including nothing in article 16, should give the Applicant power to create Work No. 18 as a path open to public use without BPC's agreement.

Paragraph 51(3) and (4)

11. The Applicant states that the only power of compulsory acquisition of freeholds it seeks in respect of BPC's land is that relating to the bridleway described as Work No. 18. This is incorrect. The powers of compulsory acquisition of freeholds sought in connection with Work No. 18 include not only the permitted extent of work for Work No. 18 but further land in the vicinity. In addition to the six parcels of land it seeks in connection with Work No. 18, the Applicant seeks powers of compulsory acquisition in respect of BPC's freehold interests in plots 4/53, 4/85, 5/50 and (as described above) 5/27. The Applicant seeks further powers in relation to the compulsory acquisition of rights not only in respect of BPC's railway (as stated in the Applicant's commentary), but also in respect of plots 3/78, 5/75, 5/103 and 5/112, together with plots 5/85 and 5/86 which have been acquired by BPC since the close of the Examination. Where applicable, BPC's CA note sets out its objections to each of these powers.

Yours faithfully



Wedlake Bell LLP