



Department
for Environment
Food & Rural Affairs

Defra
Nobel House, 17 Smith
Square, Westminster,
London
SW1P 3JR

T: 03459 335577
ruth.ashton-ward@defra.gsi.gov.uk
www.gov.uk/defra

Bircham Dyson Bell LLP
50 Broadway
Westminster
London
SW1H 0BL

Your ref:
Our ref:
Date: 30 November 2017

Dear Sir/Madam

TRANSPORT AND WORKS ACT 1992 (“TWA”)

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR THE PROPOSED BOSTON BARRIER ORDER AND DEEMED PLANNING PERMISSION

1. I am directed by the Secretary of State for the Environment, Food and Rural Affairs to say that consideration has been given to the report of the Inspector, Mr Mike Robins, who held a public Inquiry between 19 April -10 May 2017 (Inquiry Closed 31 May 2017) into the applications made by the Environment Agency (EA):

(a) The Boston Barrier Order (“the Order”) to be made under sections 3(1)(b) and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13 and 15 to 17 of Schedule 1 to, the Transport and Works Act 1992 and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992; and

(b) a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990.

2. The Order and deemed planning permission would authorise the construction and operation of a new tidal barrier with a moveable gate across the River Witham (also known in this location as the Haven) in Boston, Lincolnshire. The Order would also authorise the construction of a new building to enable operation of the barrier, new flood defence walls on both banks of the Haven, a replacement gate across the entrance to the existing Wet Dock at the Port of Boston and to execute ancillary works, including dredging of the river. The Order would confer powers on the Environment Agency to acquire, compulsorily or by agreement, land and rights in land and to use land for the purposes of the works. It would

also confer other powers in connection with the construction, operation and maintenance of the works.

3. A copy of the Inspector's report is enclosed. His conclusions are set out in section 8 of his report, with his overall conclusions at section 10, and his recommendations are at section 11.

Summary of the Inspector's recommendations

4. The Inspector recommended that the Order as modified be made and that deemed planning permission be granted subject to conditions.

Summary of the Secretary of State's decisions

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order, with modifications, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1 to this letter.**

Linked applications and decisions

6. Concurrently with the Inquiry into the Order application, the Inspector held an Inquiry into the Promoters' applications for listed building consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 for works to the Maud Foster Sluice, listed as Grade II. In separate letters issued today the Secretary of State for Communities and Local Government ("SoS/CLG") has decided to give the consents applied for by the Promoters.

Secretary of State's consideration

7. Careful consideration has been given to all the arguments put forward by, or on behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs, with the relevant paragraph numbers of the report, denoted by 'IR' ('Inspectors Report') given in brackets for ease of cross-reference.

The aims of, and the need for, the proposed Boston Barrier and related works (IR 8.2-8.11)

8. The Secretary of State agrees with the Inspector that Boston needs enhanced protection from storm surge events, and this has long been recognised and is universally agreed by all public bodies in the area and by all of those involved in the Inquiry. Boston has been identified as a National Priority Project by the Environment Agency and the Association of British Insurers (ABI) place Boston as equal top of their national list of most homes at risk of flooding.

9. The Secretary of State also agrees with the Inspector that historic events and future predictions support that tidal flooding, rather than fluvial flooding, is the most significant risk in this location and that failure of the existing defences or overtopping in extreme events would represent a real threat and risks to life and businesses. He also agrees that the 'statement of aims' for the project are clearly established and widely supported.

The main alternative options considered and the reasons for choosing the proposals comprised in the scheme (IR 8.12-8.36)

10. The Secretary of State agrees with the Inspector that the Environment Agency (the applicant) has considered a sufficient number of alternatives and has satisfactorily demonstrated that the proposals in this application are the most suitable to achieve the stated aims. He notes that the Boston Combined Strategy (BCS) Study (2006 to 2008) identified 6 options to reduce flood risk alongside delivering navigation improvements, which were taken forward for further analysis and appraisal. In addition to these options a stand-alone flood risk management strategy with a tidal barrier was also assessed, with a more detailed assessment of 5 options for a barrier site being undertaken in 2014.

11. The Secretary of State notes that the Inspector has thoroughly examined the 5 presented options at the Inquiry, including impacts and constraints. He agrees with the Inspectors' consideration of the fact that the chosen option (B) would have the least impacts on key stakeholders, facilitated mitigation measures and would be the most cost effective solution. It also represents the preferred location for flood risk management and the preferred location to deliver Water Level Management (WLM) either concurrently or at a future date.

The justification for the particular proposals in the draft TWA Order, including the anticipated flood risk, environmental and socio-economic benefits of the scheme. (IR 8.37 – 8.41)

12. The Secretary of State agrees with the general notion that the need for a barrier to reduce the risk from tidal flooding is not in question, and agrees with the Inspector's consideration that the Environment Agency has justified that the scheme would achieve the design standard of protection needed through its lifetime.

13. The Secretary of State is also satisfied and agrees with the Inspector that in terms of environmental effects, including biodiversity effects, effects on landscape and heritage assets and effects on local residents from traffic, noise, vibration or disturbance, the site has been properly assessed as providing the least impact.

14. The Secretary of State agrees with the Inspector that, notwithstanding the alternative options and the challenges to the justification for the preferred option put forward by objectors, the proposed location and design of the barrier has been justified in terms of its flood risk benefits, the minimisation of potential environmental effects, the effects on users and the balance between costs and benefits.

The extent to which the scheme would be consistent with relevant policies (IR 8.42-8.46)

15. The Secretary of State agrees with the Inspector's consideration that the proposal complies with a wide raft of policies from national through to local level. In particular, he found that the scheme would accord with government objectives for the framework in the National flood and coastal erosion risk management strategy, under which Boston is covered by the River Witham Catchment Flood Management Plan. More locally, the historic Boston Borough Local Plan and the emerging South East Lincolnshire Local Plan identify the need to take into account flood risk to guide the scale, distribution and nature of local development, noting that much of the land associated with existing local settlements is in flood risk areas. Similarly, at a regional level, the Greater Lincolnshire LEP Strategic Economic Plan, sets out proposals for economic growth and development and highlights the fact that the effective management of flood risk is a critical factor in enabling economic growth in the area.

The justification for the location, design and operation of the scheme.

The implications for navigation around the siting of the barrier (IR 8.47-8.50)

16. The Inspector noted that the Agency set out a range of locations and options in evidence, from the mouth of the Haven to a point upstream of London Road Quay. However in terms of navigational implications, a number of options needed to be considered that would have potentially positive or negative effects in comparison to the proposed Scheme and these were examined at length. The Secretary of State agrees with the Inspector being satisfied that while certain locations may represent improvements in relation to these matters, on balance, the disbenefits of this location in navigational terms can be fully mitigated and other matters, including cost, future implementation of WLM, environmental effects and impacts on existing users, weigh strongly in its favour.

Questions over the reinforcement and maintenance of 'earth banks' running from the site of the barrier downstream (IR 8.51 – 8.61)

17. The Secretary of State notes the Inspector's considerations that the local community is concerned after the recent failure of earth banks near Slippery Gowt during the storm surge in 2013, and that they are not included as part of the Order, leaving them at a lower standard of protection. There is concern that there may be additional risks arising from the introduction of the barrier; that a storm surge would move up the Haven to the physical blockage of a proposed barrier, potentially raising levels downstream. The Inspector however is satisfied by the Applicant's arguments that such an effect would not be experienced here.

18. The Inspector was also satisfied that the Applicant further confirmed that they had secured funding for the Haven Banks Scheme, which would involve a full survey of the banks, filling in any low spots and providing a sufficient crest level throughout their length to provide protection to local homes, business and heritage assets.

19. Accordingly, the Secretary of State agrees with the Inspector and is satisfied that there will be no increased risk to land downstream of the barrier as a result of its construction, and accepts that the Haven Banks currently provide a good standard of flood protection, with plans to ensure this is retained in the future. The proposed location is therefore justified in terms of the existing and long term management of the downstream earth banks.

The dismissal of a proposed 'sea lock' element of the scheme on environmental grounds (IR 8.62 – 8.71)

20. The Secretary of State agrees with the Inspector's considerations of the sea lock and barrage scheme (SLBS). This was initially assessed in 1994, and was the preferred option for a number of objectors, and indeed arguments put to the Inquiry included that it would provide benefits in terms of WLM, improved access for commercial, fishing and leisure vessels and that the reduction in need to maintain existing defences, or indeed fund mitigation, would make it overall of lower or equivalent cost to the Order Scheme.

21. The Inspector was satisfied by the Applicant's arguments that the reasons for not pursuing the barrage in 1994 hold good today, or indeed are even clearer today with the robust environmental regulatory controls in place now. Evidence was provided on the increased costs and complexity of constructing a very much larger structure in a more remote location and on less suitable ground, as well as further perceived disbenefits in relation to water quality and fluvial flood risk.

22. The Inspector noted that The Port of Boston conceded that they would not fund the SLBS, and whilst they support the scheme, have taken it no further or provided evidence in support of this approach.

23. The only way that such a barrage could therefore be funded would be for the flood risk management benefits it could provide. The Secretary of State agrees with the Inspector that the Order Scheme therefore represents an available alternative that could deliver the same outcome with materially less harm to the integrity of the designated sites, and is satisfied that the SLBS was properly evaluated by the Applicant in their appraisal of alternative options and justification for the Order Scheme.

The omission of the 'water level management' (WLM) scheme from the proposed plan at this time and why this is justified (IR 8.72-8.81)

24. The Secretary of State noted the Inspector's considerations of the WLM element. Both he and the Inspector particularly noted the concerns of those contributing to the Inquiry in support of this element and who had been involved in discussions over a number of years with regards to this. The Inspector understands their concerns that they felt WLM had been 'taken away' and they could see no chance of it being included in the future. However, even at the Inquiry there was no clear consensus on what form future WLM should take.

25. The Inspector also noted that an 'Economic Benefits Analysis' (Richard Glen Associates, 2015) identified over 25 different WLM options, and identified some very significant benefits of achieving a stable water level in the town, and a number of objectors at the Inquiry identified what they considered to be valuable benefits.

26. The Inspector noted that Lincolnshire County Council (LCC) then concluded that on the basis of this analysis, the levels and duration over which WLM could be operated were critical to achieving the benefits, but there were significant implications for the fishing fleet as well as potential environmental and water quality concerns. They therefore decided to hold back funding until further investigations could be made and in order to not delay the delivery of the barrier for flood risk management purposes, WLM was taken out of the proposal.

27. The Secretary of State agrees with the Inspector's views that there is potential for significant benefits to accrue from WLM, but concurs that at this time the full implications are all matters that need resolution. LCC and the Applicant were therefore justified in

holding back partnership funding, concluding that seeking resolution to such matters could unacceptably delay the delivery of improved flood defences for the town. The option to continue with the flood risk management element of the scheme therefore is also justified in light of the very real risks to Boston, and the Secretary of State agrees with the Inspector in that he is satisfied that, while some level of additional cost may be involved, the Scheme does not preclude the subsequent introduction of WLM, and if required, the construction of a lock in the future.

The likely environmental impacts of constructing and operating the scheme and the compatibility of the scheme with future climate change scenarios (IR 8.82-8.89)

28. The Secretary of State agrees with the Inspector that the main environmental effects associated with the construction and operation of the barrier are stated below and that these have been adequately mitigated against.

29. The Inspector notes that the scheme could reduce the current extent of intertidal habitat; however, these areas have been subject to considerable levels of historic dredging and the Inspector concurs with the findings of the Habitats Regulation Assessment that the site is sufficiently removed from the designated sites further down the Haven to have any material impact on their integrity.

30. With regards to noise, the Inspector concurs that some impacts during the construction period may be felt, and agrees that this has been recognised in the proposed Construction Noise and Vibration Management Plan.

31. The Inspector notes that the construction of the barrier would be a large hard structure, but placed into the already relatively industrial setting of the Port, would be less visually intrusive. It however would still represent a significant change that would be perceived by users of local footpaths for instance. He however concurs with the ES that this impact would be moderate adverse.

32. The Inspector notes that the barrier is sufficiently removed from the listed structures of the Swing Bridge and the Conservation Areas of the main town to have no material impact. However, the downstream extent of works, particularly in relation to Maud Foster Sluice, and the additional walling to the right bank extending within sight of St Nicholas Church and the Skirbeck Conservation Area have been considered and the Inspector is satisfied that adequate mitigation has been put in place. The Secretary of State is in agreement with this.

33. The Secretary of State also agrees with the Inspector and is satisfied that other effects, including air quality, traffic management, contaminated land, site waste management and archaeology have been fully addressed in the Environmental Statement (ES), and were not central to objections to the Scheme.

34. The Secretary of State is in agreement with the Inspector in being satisfied that the Agency has assessed 'allowances' for climate change in accordance with the latest guidance. As set out in the Flood Risk Assessment in the ES, the barrier was considered to be water-compatible development. The Inspector has examined the concerns of the objectors, which are not the flood risk to the structure itself, but the risk that the structure might represent to fluvial flood risk elsewhere, and such allowances are to ensure that essential infrastructure is properly designed so as to remain operable in times of flooding. The Secretary of State and the Inspector are satisfied that the barrier has properly taken into account climate change impacts as they relate to sea level rise and storm surges, but do not consider it necessary to apply the higher allowance as is recommended for essential infrastructure.

The adequacy of the Environmental Statement (ES) (IR 8.90-8.93)

35. The Inspector is satisfied that the application included a comprehensive ES and that the Agency confirmed at the Inquiry that all statutory procedural requirements had been complied with. In the Inspector's judgement, the submitted ES provides a full response to the scoping exercise, and adequately addresses the environmental issues raised by the Order proposal. The document can be taken to comply with the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The Secretary of State is in agreement with this.

The measures proposed by The Environment Agency for mitigating any adverse impacts of the scheme

The proposed Code of Construction Practice (IR 8.94-8.95)

36. The Inspector noted that the Applicant confirmed that they would not produce a separate document, but instead set a code out in the main report to the ES, and include an Environmental Action Plan setting out general construction principles to minimise environmental impacts. It also contains specific environmental mitigation responding to the findings in the EIA. The Inspector noted that no evidence or objection had been put to him challenging this approach and he and the Secretary of State are therefore satisfied that it provides a robust plan against which to deliver mitigation.

Adverse environmental impacts of the scheme; including those remaining after proposed mitigation (IR 8.96-8.107)

37. The Secretary of State has noted that the Inspector's findings on potential adverse impacts have been summarised earlier in this letter (paragraphs 28-33). The Secretary of State agrees with the Inspector that the construction impacts and the residual impacts of the Scheme represent adverse consequences, which must be weighed against the overall benefits. However he is satisfied that the approaches and mitigations set out would address the environmental impacts of construction of the Scheme.

The conditions proposed to be attached to the deemed planning permission for the scheme (IR 8.108-8.113)

38. The Secretary of State agrees with the Inspector in considering that the conditions as modified would be necessary, relevant to the development proposed in the Order, precise, enforceable and reasonable in all respects. The Secretary of State accepts the recommendation that they be attached to the grant of planning permission. A list of recommended conditions in relation to the deemed planning permission is attached at Appendix C of the Inspector's Report (which corresponds to **Annex 1** of this letter).

39. The application for deemed planning permission included a list of proposed conditions, drawn in part from recommendations from the Boston Borough Council (the Council) committee report. Two further conditions were proposed during the Inquiry, specifically in relation to the Navigation Management Plan and to the siting and design of the grain conveyor. The Inspector discussed the further conditions at the Inquiry with representatives of the Council, the Applicant and the objectors and has considered those further conditions in light of the tests set out in the PPG and paragraph 206 of the National Planning Policy Framework (the Framework).

40. Reasons are set out against each individual condition in IR Appendix C/Letter Annex 1, and have been discussed within evidence and the Inspector's reasoning. The Inspector is satisfied that a time limit of five years is reasonable for a Scheme of such scale. He is also

satisfied that the final condition, 11, is necessary to provide certainty on implementation. The Secretary of State is in agreement with this.

Compulsory Purchase Powers with regard to DCLG Guidance and the Crichel Down Rules for the disposal of surplus land acquired by, or under that threat of, compulsion (IR 8.114-8.121; 8.124)

41. The Inspector notes that the Order Plans have set out the extent and description of land for acquisition as well as freehold and long lease or tenancy interests. He notes that there have been no objections from any owner or occupiers to the proposed acquisition or use of land, and has no evidence to suggest that the land referencing exercise and the serving of notices has been deficient in any way. He has examined the Order Plans compared to the scheme requirements and is satisfied that where necessary the rights sought are temporary rather than permanent. Consequently, the Secretary of State is in agreement with the Inspector and is satisfied and considers that the proposed powers sought over land and rights to land are those necessary to implement the Scheme and that all requirements in terms of notice, advertisement and document availability have been complied with.

42. The DCLG Guidance and Rules also indicate that an acquiring authority should be sure that the purposes for which it is making a Compulsory Purchase Order sufficiently justifies interfering with the human rights as defined in the Human Rights Act 1998. The Secretary of State agrees with the Inspector that in his view, and having regard to compensation that will be payable, the interference with rights under Article 1 of the First Protocol in the grant of the compulsory powers sought is proportionate in so far as the public benefit of the scheme will outweigh the private losses that may be incurred.

Funding Matters (IR 8.122-8.123)

43. The Scheme has been subject to full review and costings, and an Estimate of Costs has been submitted with the TWAO application. The number of homes that would receive enhanced protection and the economic benefits arising have resulted in a very high cost benefit ratio. It was confirmed that full funding will be made available from central Government through Defra Grant in Aid (identified in the Agency's investment programme) and as a result, no partnership funding need be sought. The Secretary of State agrees with the Inspector that accordingly they can see no impediment to the exercise of these powers.

The adequacy of the current flow calculations, modelling and engineering proposals (IR 8.125-8.133)

44. The Secretary of State agrees with the Inspector in noting that considerable concern remained with a number of objectors that the construction of the barrier would result in increased upstream flood risk, in particular that it would lead to overtopping of banks immediately above Grand Sluice and flooding of Boston. There were also significant concerns from other parties with regard to flow velocity changes and potential effects on use of the river. The Applicant's own assessment of such effects did consider the impact, and in response to concerns that extreme scenarios had not been fully modelled, they provided further model runs to the Inquiry.

45. The Secretary of State agrees that the Inspector has addressed the robustness of the modelling and in such circumstances, considers that it has captured all relevant scenarios and adequately quantified the flood risk. He is in agreement with the Inspector in emphasising that this does *not* mean that fluvial flooding will not occur on the River

Witham; such risks will remain. However, he is satisfied, as the Inspector is, that the contribution the barrier will make to such flooding has been properly quantified and can be considered to be of low significance. In current circumstances, a tidal surge could propagate through the Haven and overtop the sluice gates at Grand Sluice and contribute to flooding risks upstream; such events would be removed by the construction of the barrier and the risks of flooding upstream reduced.

The likely impacts of constructing and operating the barrier on navigational safety

Navigational mitigation to ensure safety of the fleet and fishermen (IR 8.134-8.190)

46. The Inspector noted that there is a long history of a port operating out of Boston, with craft both large (commercial shipping and fishing) and small (recreational yachts and inland waterway craft) utilising it. A right of navigation also exists along the Haven, being a tidal water.

47. The Inspector considered the main concerns at the Inquiry; that interference with that navigation was central to the concerns of many of the objectors to this proposal. The main concerns included the potential for complete closure for periods, for increased flow velocities and reduced sightlines when open, as well as hydrodynamic and wind effects on the transit of vessels. It was argued that all of these would potentially reduce the ability of vessels to transit the barrier safely and increase the risk of collision in-river.

48. The Inspector noted that the Applicant carried out a navigational impact assessment assessing risks with simulations during the construction and operational phases, as part of the ES and this evidence was presented to the Inquiry. The Inspector considered concerns from some fishermen that they were not involved sufficiently and questions over the specifications of the fishing vessel used in the simulations were raised, however he was satisfied that the fishing vessel simulated represented a reasonable match to that of the fishing fleet and that mariners of sufficient experience were involved to ensure that the simulations were fair.

49. The Inspector noted the Navigation Management Plan (NMP), which sets out measures and responsibilities for future management. These include a range of navigational aids throughout the Haven, as well as lighting and marking of the channel itself and confirmation of the existing requirement for all vessel to maintain adequate radio comms. The Inspector noted that the draft NMP was generally welcomed by objectors, although concerns were raised that it was produced, and may be finalised, without their input, and also that it may not be adopted.

50. The Inspector is satisfied that the Inquiry process itself has allowed for such engagement and input into the plan, with some changes already taken forward. In addition he is satisfied that there is clear commitment by both the Applicant and the Harbour Authority to adopt the plan.

51. Having reviewed all of the proposed features of the draft NMP, accepting that there may be some changes, principally to reflect roles and responsibilities as they develop, the Inspector is satisfied that it provides a suitable level of mitigation for the majority of vessels and users that would transit the river during the construction and operational phases, and indeed over time, when, for regular users, passage through the barrier should become routine.

Phasing of the works to accommodate a minimum level of operations to allow river and port operations to continue in safety (IR 8.191-8.194)

52. The Inspector notes that there will unavoidably be some disruption, and an increase in activity on the river during construction including dredging activities and possibly barges, jack-up vessels or other marine-based working platforms directly involved in the construction. Such activities are not unknown within the Haven and the Inspector is satisfied that they can be safely accommodated subject to the NMP, which includes permanent control of navigation during the construction period.

53. The Inspector also noted that a set of phasing proposals would allow for continued port operation, and he is satisfied that the phasing of works has been planned adequately to minimise disruption and to maintain safe operations within the port.

Adequacy of provisions relating to navigational risk within the ES (IR 8.195-8.196)

54. The Inspector has identified a number of additional studies, model calibration and model runs carried out in the run up to the Inquiry and while these represent additional works to that within the original ES, he is satisfied that the statement, in particular the Navigational Impact Assessment and the Flood Risk Assessment, properly quantify the navigational risks.

55. To this end, overall the Secretary of State agrees with the Inspector's conclusions for the reasons he gives on navigation. He is satisfied that the proposals would not compromise the safety of maritime users of The Haven and that any additional inconvenience for navigation would be outweighed by the wider public benefits of the scheme.

The likely impacts of constructing and operating the scheme on local business (IR 8.197-8.220)

56. The Inspector considered issues around the perceived increase in flow velocities, creating difficulty for the fishing fleet and pleasure craft to operate safely. He has identified that the barrier channel would result in some increase in flows and in such circumstances he has reviewed whether the NMP would provide sufficient mitigation to ensure safety of such users. He has considered all the users of the channel and has concluded and is satisfied that all risks have been sufficiently addressed. The Secretary of State is in agreement with him.

57. The Inspector noted that the matter concerning the relocation of the fishing fleet to operational quays downstream of the barrier (which are currently used by larger shipping) was the only objection remaining before the Inquiry from the fishermen. The Applicant is proposing to provide a length of approximately 300m of riverside quay within the Port of Boston (PoB) estate which would have facilities provided for unloading and mooring, as well as onshore facilities including parking with suitable access. The Secretary of State agrees with the Inspector and is satisfied that the agreement and leasing arrangements with the PoB mean that this quay wall would be solely for use by the fishing fleet during this temporary period, and there would be no competition with commercial shipping for access.

58. The Inspector notes that in the run up to the Inquiry, agreement was reached with Frontier Agriculture Ltd over the provision and placement of a grain loader and conveyor. They therefore formally withdrew their objections by letter dated 21 March 2017. The Secretary of State and the Inspector are satisfied that provision of the new conveyor can be secured by condition.

The wider regeneration benefits to the Boston area (IR 8.218-8.220)

59. The Inspector has considered concerns from objectors that the level of defence offered to the Metsa Wood works and the Marsh Lane Industrial Estate was insufficient. However, he has examined the standard of defence provided by the existing earth banks and does not consider that the Scheme could in any way compromise this; the Secretary of State is in agreement. That protection from tidal storm surges is needed for Boston is strongly reinforced by the impacts of historic events, and the universal support for the principle of such protection to allow for regeneration of Boston, and support for its housing and economic aspirations is evident. The Secretary of State and the Inspector are therefore satisfied that there would be wider regeneration benefits to Boston from the Scheme.

Harbour Authority's management of Port of Boston and its statutory responsibilities in relation to the exercising of the powers of the Order (IR8.221-8.223)

60. The Inspector notes that the PoB is the Harbour Authority in the Haven. By letter dated 13 March 2017, they withdrew all objections to the Scheme and confirmed their full support. This included confirmation that they would continue to work with the Agency going forwards. Some changes were made to the Order, including in Schedule 8, Article 54, to reflect further discussions that led to this agreement. Whilst the Inspector accepts there would be some disruption requiring mitigation during construction, he is satisfied that the Order would not lead to severe disruption such that the Harbour Authority could not safely manage its statutory responsibilities, and that the NMP would mitigate the impact of the scheme on navigational safety. The Secretary of State accepts this view.

The impacts of the scheme on statutory utility providers (IR8.224-8.227)

61. The Inspector notes that there are three principal statutory utility providers are potentially affected by the Scheme, Western Power Distribution (WPD), Anglian Water Services Ltd (AWSL) and British Telecommunications PLC (BT). The Secretary of State notes that all objections from statutory utility providers were resolved and withdrawn and agrees with the Inspector that there would be no adverse effects on the operations of statutory undertakers.

Other matters (IR8.228-8.240)

62. At the Inquiry the Inspector considered and understood why local objectors view the introduction of the proposed barrier structure within the Haven as being potentially a problem. The Inspector noted that during the consultation process and the Inquiry, a number of alternative options were promoted by objectors, including the provision of a bypass channel. These were examined by the Inspector and he considered that a bypass channel would not be a necessary part of the proposed scheme for flood risk management. Accordingly, and in light of his acceptance that future installation of a lock for WLM would be possible, the Inspector considered that the absence of such a structure does not represent any form of impediment to supporting the Order. The Secretary of State agrees.

63. The Inspector also considers that none of the other issues raised by objectors (regarding mainly the costs of works to PoB and works required to the Wet Dock and Riverside Quays) affected consideration of the efficacy of the Order. He was satisfied that the necessary statutory requirements had been met, and the Secretary of State agrees with this.

The Inspector's overall conclusions and recommendations on the Proposed Transport and Works Act Order and Deemed Planning Permission (IR 10;11)

64. This would be a large construction with inevitable environmental impacts, but the Inspector considers that the mitigations that would be put in place, especially for navigation would provide suitable safe and viable constraints within the Haven for the majority of users, to inform and direct transits safely.

65. In view of the above findings, the Inspector concludes that the Order would be justified and there is a compelling case in the public interest to provide enhanced protection from storm surge events to the town of Boston. Whilst there would be socio-economic advantages to the town from the inclusion of water level management (WLM); in light of the pressing need for the barrier, the Inspector considers that it is appropriate that the Scheme has been brought forward on a flood risk management basis only as the WLM element needs considerable further investigation to resolve in the future. The Inspector therefore recommends that the Order as modified be made.

66. For any further adverse effects such as landscape and visual impacts or noise and vibration, mitigation, which can be secured by conditions, has been proposed and any residual effects have been minimised. The residual difficulties that the Inspector has identified and any residual environmental effects are clearly outweighed by the very substantial benefits that would arise in terms of the reduction in risk from storm surge tidal flood events. Subject to conditions, the Inspector therefore considers that the deemed planning permission should be granted for the works that would be authorised by the Order.

67. The listed building works required to deliver the Scheme are necessary and can be delivered with only less than substantial harm to the listed structure, with that harm minimised by good design. While addressing the special regard that must be had to the desirability of preserving the listed structure and its setting, the Inspector considers that the public benefits of the proposal would significantly outweigh this harm. Subject to conditions, the Inspector therefore considers that the listed building consent should be granted for the works.

Secretary of State's overall conclusions and decisions

68. For the reasons given in this letter, the Secretary of State agrees with the Inspector that the Order would be justified and there is a compelling case in the public interest to provide enhanced protection from storm surge events to the town of Boston. He is therefore satisfied that it would be in the public interest to make the TWA Order and to grant the deemed planning permission applied for. Accordingly, **the Secretary of State has decided to make the Order as recommended by the Inspector, but subject also to the modifications described below, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1.**

69. The modifications to the Order which the Secretary of State intends to make, (in addition to those proposed by the Environment Agency in inquiry documents as later revised / modified and submitted to the Inquiry) are miscellaneous minor drafting amendments which do not affect the substance of the Order.

The Secretary of State is of the opinion that these changes will not make a substantial change in the proposals.

70. The letter conveying the planning direction will issue shortly, at the same time as the Order is made, following publication of a notice of this determination in the London Gazette.

Notice under section 14 of the TWA

71. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your Clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decisions

72. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached at Annex 2 to this letter.

Distribution

73. Copies of this letter and the Inspector's conclusions and recommendations are being sent to those who appeared at the Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11(3) of the TWA but who did not appear.

Yours faithfully,

David Cooper

Deputy Director

Flood and Coastal Erosion Risk Management Team

Direct Line: 0208 026 2991

Email: david.cooper2@defra.gsi.gov.uk

Web: www.gov.uk/defra

ANNEX 1

CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DEEMED PLANNING PERMISSION

Definitions

In these conditions, unless the context otherwise requires:

“Commence” means the carrying out of a material operation, as defined in section 56(4) of the Town and Country Planning Act 1990, comprised in or carried out for the purposes of the Development, but does not include any engineering investigation, environmental (including archaeological) investigation and monitoring, site or soil survey, environmental mitigation measures, erection of fencing or demarcation fencing marking out site boundaries;

“Construction” includes all works associated with the construction of the Development including any specified enabling works;

“Construction Method Statement” means a statement setting out details relating to the working practices to be employed during construction of the Development, including measures relating to dust management, pollution control, emergency procedures and pollution response plans, community liaison and complaint procedures and details of temporary construction compound (including site layout arrangements and restoration arrangements);

“Construction Traffic Management Plan” means a plan setting out details of construction site boundaries, pedestrian and cycling routes and haul roads to be employed during construction and details of the proposed times during which construction materials or equipment may be delivered to the Development;

“Core Working Hours” means between 0730 and 1830 Mondays to Fridays (excluding public holidays);

“Development” means the works authorised by the Order;

“Ecological Management Plan” means a plan which provides details of measures to be taken in connection with the Development to protect wildlife and habitats;

“Environmental Statement” means the document of that title submitted with the application for the Order;

“Haven” means the tidal section of the River Witham, also known as the ‘Haven’ between Black Sluice Lock and downstream of Maud Foster Sluice;

“Landscaping Scheme” means a scheme for landscaping works associated with the Development which shall include details of existing vegetation to be retained and protected during the course of the works; details of the existing embankment/mudflats to be retained during the course of the works; proposals for soft landscape works above and below the new sheet piling to include stock species, size of planting and planting densities; proposals for hard works to include paving and surface treatments; boundary treatments, fencing and handrails details; street furniture details; floodwall details and finishes; and proposals for implementing the landscape scheme and for a 5 year maintenance programme for all elements of the soft landscape scheme;

“Lighting Scheme” means a scheme detailing any external lighting proposed to be installed permanently as part of the Development, including details of siting, uniformity, glare rating and illumination levels;

“Local Planning Authority” means Boston Borough Council;

“Navigational Management Plan” means a plan setting out the measures to be implemented during construction and operation of the Development to aid navigation.

“Construction Noise and Vibration Management Plan” means a plan setting out procedures for the management of noise and vibration arising from the construction of the Development, including working practices for protecting nearby residential dwellings (particularly in the case of any works planned to take place outside of Core Working Hours) and measures to control and monitor noise and vibration;

“Order” means the Boston Barrier Order 201[];

“Stage” means a defined part, section or stage of the Development, the extent of which has been submitted to, and approved by, the Local Planning Authority;

“Written Scheme of Archaeological Investigation” means a project design for delivering archaeological studies. The project design will set out the schedule of works in sufficient detail for the works to be quantified, implemented and monitored by the applicant and the planning authority. The result of investigations will identify the need for subsequent project designs which will identify how mitigation, including recording, archiving and publication, will be achieved;

Any references to numbered works are references to the works set out in Schedule 1 to the Order.

Conditions

1. The Development must commence not later than five years from the date that the Order comes into force.

Reason: to ensure that the development is commenced within a reasonable period of time.

2. Works relating to the following aspects of the Development must not Commence until details of the siting, layout, scale and external appearance, including details of external materials, of the aspects of the Development concerned have been submitted to, and approved in writing by the local planning authority –

a) Work No. 2; and

b) the control structure comprised within Work No. 3A.

The Development must be carried out in accordance with the approved details.

Reason: to ensure satisfactory siting, scale and external appearance in the interests of visual amenity.

3. No landscaping works relating to the Development shall take place until a Landscaping Scheme has been submitted to and approved in writing by the local planning authority. The Development must be carried out in accordance with the approved Landscaping Scheme.

Reason: to provide a suitable setting for the Development in the interests of visual amenity and to enhance flora and fauna.

4. Prior to installation of any external lighting, a Lighting Scheme shall be submitted to and approved in writing by the local planning authority. The Development must be carried out in accordance with the approved Lighting Scheme.

Reason: in the interests of minimising light pollution.

5. No Stage of the Development shall commence until a programme of archaeological and building recording works relevant to that Stage has been implemented. The necessary investigations, mitigations, archiving and public dissemination of the results will be secured in accordance with a Written Scheme of Archaeological Investigation submitted to and approved in writing by the local planning authority. The programme must be implemented prior to each relevant Stage of the Development in accordance with the approved written scheme of investigation.

Reason: to ensure the dissemination of the results of the archaeological and building recording work and that these are archived for additional future research and made publically accessible.

6. No Stage of the Development shall commence until the following plans and method statements to minimise the impacts of construction works, relevant to that Stage, have been submitted to and approved in writing by the local planning authority –
 - a) a Construction Method Statement;
 - b) a Construction Traffic Management Plan;
 - c) a Construction Noise and Vibration Management Plan;
 - d) an Ecological Management Plan; and
 - e) a Site Waste Management Plan.

The construction works for each Stage of the Development must be carried out in accordance with the approved plans.

Reason: to protect the environment and amenity of the locality during construction of the Development.

7. Construction work must take place only within Core Working Hours subject to the following exceptions –
 - a) capital dredging works;
 - b) works to construct Work No. 3A and / or Work No 3B;
 - c) the completion of operations commenced during the Core Working Hours which cannot safely be stopped;
 - d) the completion of works delayed or held up by severe weather conditions which disrupted or interrupted normal construction activities;
 - e) any highway works which the local highway authority requests be undertaken on a Saturday or a Sunday or outside the Core Working Hours; and
 - f) works required to be undertaken in the case of an emergency (provided that the Local Planning Authority be notified in writing within 24 hours of such works taking place).

Reason: in the interests of the amenity of local residents during construction of the Development.

8. No Stage of the Development which may disturb land contamination with the potential to materially harm persons, pollute controlled waters or the environment shall commence until a scheme, relevant to that Stage, to deal with contamination has been submitted to and approved in writing by the local planning authority. The scheme shall include –
 - a) a description of the Stage concerned;

- b) the results of an investigation and assessment to identify the extent of contamination at that relevant site, including both onsite and offsite sources; and
- c) where required, details of the proposed remediation measures and how they will be undertaken.

Following completion of the measures identified in c) above, a verification report shall be submitted to and approved in writing by the local planning authority. The report shall provide evidence that all required remediation measures have been put into effect.

If in undertaking the construction of any Stage of the Development, contamination not previously identified is found to be present, no further work shall be undertaken on that part of the site until details as to how the contamination is to be dealt with have been submitted to and approved in writing by the local planning authority. That Stage of the Development must only proceed in accordance with the additional details approved.

Reason: to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9. Prior to any works being undertaken within the river area and the Wet Dock, as defined by the Order, a Navigational Management Plan shall be submitted to and approved in writing by the local planning authority. The Development must be carried out in accordance with the approved Navigational Management Plan.

Reason: to aid navigation during construction and operation of the Development.

10. Works relating to the construction of the replacement grain conveyor and associated supports and equipment must not commence until details of the external appearance, including details of external materials, have been submitted to, and approved in writing by the local planning authority. The Development must be carried out in accordance with the approved details.

Reason: In the interests of visual amenity.

11. Where, under any of these conditions, the approval of the local planning authority, which shall be taken to include any agreement or consent, is required on any matter, that approval shall be given in writing. The Development must be implemented in accordance with any such approval.

Reason: to provide for certainty in the approvals and implementation processes and in the interests of proper planning.

END

ANNEX 2

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that –

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

A person who thinks they may have grounds for challenging the decision to make the Order or the decision to give the direction as to deemed planning permission is advised to seek legal advice before taking any action.