

IN PARLIAMENT
HOUSE OF LORDS
SESSION 2013-14

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014

PETITION

for Amendment

TO THE HOUSE OF LORDS

THE PETITION OF ASSOCIATED BRITISH PORTS

DECLARES THAT:

1. Your Petitioner is Associated British Ports. It is a statutory corporation created under the Transport Act 1981 on the privatisation of the British Transport Docks Board as the statutory successor to that board. It owns and operates 21 ports in England, Wales and Scotland, including the Port of Immingham and the Port of Grimsby.
2. The Port of Immingham is the UK's largest port by tonnage, handling over 52 million tonnes of cargo in 2013, including around 30 million tonnes of coal and petroleum products. The Port can accommodate partly-laden vessels of up to 290,000 deadweight tonnes, amongst the largest vessels in service today. The Port's modern rail infrastructure handles more than 250 rail freight movements a week and approximately 25% of the UK's rail freight originates from the Port. In summary, the Port of Immingham is a critical part of the UK's economic infrastructure.
3. In addition to being the statutory harbour authority for the Ports of Immingham and Grimsby, Associated British Ports is in a separate statutory capacity the conservancy and navigation authority for the River Humber by virtue of the Humber Conservancy Acts 1852 – 1907, the Humber Harbour Regeneration Scheme 1966 and the Confirmation Order 1967. In its capacity as Humber Conservancy Authority it holds a long lease of the bed of the river from the Crown.
4. It is in its capacity as the statutory harbour authority and port operator of Immingham and Grimsby that Associated British Ports lodges this Petition.

5. The Able Marine Energy Park Development Consent Order (“the Order”) was made on 13 January 2014 by the Secretary of State under sections 114, 115 and 120 of the Planning Act 2008. The Order was in accordance with the Statutory Orders (Special Procedures) Act 1945 laid before Parliament by the Secretary of State on 10 February 2014. The Order grants Able Humber Ports Limited (“Able”) development consent for a marine energy park on the south bank of the Humber Estuary at North Killingholme. This includes the construction of a new quay of 1,279 metres in length within the river Humber and the construction of facilities on land behind the quay for the handling of traffic and materials for offshore renewable energy infrastructure.
6. Part of the proposal includes provision for the siting of a surface water drainage pumping station and associated drainage channel and landscaping together with “overspill low-level storage” on your Petitioner’s operational land which lies to the west of and forms part of the Port of Immingham estate. To support the construction of these works, the Order provides for the compulsory acquisition of this land comprising:
 - (a) a triangular shaped piece of land,¹ with two narrow strips of land abutting it,² and an immediately advance access route,³ all in the freehold ownership of your Petitioner in its capacity as port operator and forming part of its operational land (together “the Triangle”) in which the surface water drainage pumping station and associated works are to be located. This land enjoys riparian rights of access to the adjoining estuary;
 - (b) a strip of land over which your Petitioner has the benefit of a right of way for the purposes of providing access to the Triangle (“the ROW Land”);⁴ and
 - (c) an area of foreshore and bed of the estuary which lies adjacent to the Triangle (“the Foreshore”) for the purpose of the new quay, which is leased to Associated British Ports in its capacity as the conservancy and navigation authority for 999 years with 855 years still to run.⁵
7. Your Petitioner objects to the compulsory acquisition of its land and land over which it enjoys rights and to the compulsory acquisition of (and construction of works on) the foreshore.

¹ Book of Reference, Plot 03020.

² Book of Reference, Plots 03022 and 03023.

³ Book of Reference, Plot 03021.

⁴ Plots 03009, 03014 and 03016, Book of Reference.

⁵ Area lies within Plot 09001, Book of Reference.

8. Your Petitioner is also concerned by the implications of Able's interference with the Killingholme Branch railway (part of the national rail network which runs across the proposed marine energy park) and by the threat to the construction of a railway loop.
9. In addition, while the Order contains protective provisions for your Petitioner's benefit, they fail to safeguard the statutory undertaking and accordingly require supplement.

Grounds for objecting to the compulsory acquisition of and the carrying out of works on the Triangle, the Foreshore and the ROW Land

10. The Triangle which Able wishes to acquire compulsorily comprises your Petitioner's port operational land and has been identified as such in both the North Lincolnshire Local Plan and your Petitioner's adopted Master Plan. The site was acquired for port operational use by the British Transport Docks Board on 12 March 1967, anticipating the likely future demand for riverside frontage for new port infrastructure and has been held as such as part of your Petitioner's necessary long-term strategy for port growth.
11. The compulsory acquisition of the Triangle and the ROW land and the construction of the Able quay on the Foreshore would have a twofold detrimental impact upon your Petitioner's ability to develop and expand the Port of Immingham. First, and in particular, the compulsory acquisition would frustrate your Petitioner's plans to construct the Immingham Western Deep Water Jetty ("IWDJ"). This project comprises a facility for the importation, storage and onward distribution of liquid bulk materials. It will incorporate a jetty head in the Humber Estuary linked to the Triangle via a finger pier, handling facilities on the shore and road and rail connections. Notification of and consultation on the project began in April 2010 when it was included in the draft Port of Immingham Master Plan. A request for a scoping opinion in relation to the environmental assessment was submitted to the Marine Management Organisation on 21 December 2012 and an application for a harbour revision order was submitted to the Marine Management Organisation on 21 November 2013. Unlike Able's proposal, your Petitioner's project will not lead to the destruction of protected mudflats on the Foreshore.
12. Secondly, the development of the IWDJ will enable your Petitioner to relocate liquid bulk import facilities currently operating within the Port of Immingham to the proposed new deepwater jetty. This relocation will in turn free what is already a congested river frontage within the Port for the development and extension of the Humber International Terminal as an additional biomass import facility serving regional power stations thereby playing a critical role in meeting the country's energy needs and the Government's energy policies.

13. Your Petitioner's IWDJ development proposals will meet both market demand and the need to secure and protect the UK's energy supplies. The Port of Immingham has consistently handled over 50 million tonnes of cargo since 2001, except during the recession when as happened to all ports, the tonnage handled dipped. Even in the years most affected by the recession (2009 – 2011), the tonnage handled always exceeded 45 million tonnes.
14. Immingham's position as the pre-eminent port facility in the Humber is due to its natural advantage of deep water, its first class port facilities consistently invested in over decades by your Petitioner and its easy access to the trade routes between the UK and Scandinavia, the Baltic States and mainland Europe. In order to accommodate ever-increasing vessel sizes, the Port must continue to invest in in-river facilities, thereby avoiding the size restrictions imposed on vessels using the Port's enclosed dock. Since the 1960s the Port of Immingham developed the following in-river facilities – Immingham Oil Terminal (1969), Immingham Bulk Terminal (1970), Immingham Gas Terminal (1985), Immingham Oil Terminal 3rd berth (1994), Humber International Terminal (2000), Humber International Terminal 2 (2006) and Immingham Outer Harbour (2006). The Triangle is the last remaining piece of undeveloped port operational land which has unrestricted deep water estuary frontage within your Petitioner's ownership. There is a pressing twofold need for the IWDJ development.
15. First, your Petitioner has been approached both by an existing liquid bulk customer requiring accommodation (in respect of which your Petitioner has entered into a Memorandum of Understanding to develop a facility for the customer's use) and by a number of other potential new customers. The customers recognise a number of the unique advantages that the Triangle offers. These include its proximity to the Government Pipeline and Storage System ("GPSS") and to underground gas storage caverns. The site is the closest undeveloped riverside location to both on the river Humber. Secondly, the IWDJ would allow the relocation and extension of existing liquid bulk operations from the Port of Immingham. This is required so as to allow the development of the Humber International Terminal at Immingham to service the importation of increased volumes of bio-mass in order to meet the Government's energy policies.
16. The IWDJ proposals would involve the development of the Triangle, the Foreshore and the ROW Land. Only if all three elements of land are available to your Petitioner will its development be capable of being realised. The jetty required to berth vessels will be constructed on the Foreshore (as defined in paragraph 6(c) to comprise both the foreshore itself and the estuary bed) and the Triangle will provide storage capacity for the

bulk liquids that the berthed vessels will discharge. The ROW Land will provide access from this new facility to the public highway.

17. Your Petitioner's IWDJ development proposal for the Triangle reflects and will further the objectives of the National Policy Statement for Ports and will assist in meeting the Government's strategic need to maintain and protect liquid bulk fuel supplies to the UK. The Triangle has been held for port operational use since its acquisition in 1967. Moreover, it has been designated for ABP port use in the North Lincolnshire Local Plan, adopted in May 2003. It is consistent with the Port of Immingham Master Plan published in draft in April 2010 and adopted in October 2012 following extensive public consultation.
18. There is no suitable alternative location for the proposed IWDJ facility.
19. It is your Petitioner's case that Able has:
 - (a) failed to demonstrate that the Triangle is required for the purpose of the works identified in the Order;
 - (b) failed to demonstrate that there is a need for a 1,279 metre long new quay to be constructed across the Foreshore (although your Petitioner does not object to the principle of a renewable energy manufacturing facility at the site);
 - (c) failed to demonstrate that there is a "compelling case in the public interest for the land (i.e. the Triangle, the Foreshore and the ROW land) to be acquired compulsorily"⁶.
20. In giving evidence to the Examining Authority⁷ on 17th October 2012 Able accepted that there are two viable alternative sites for the location of the surface water pumping station which do not require the compulsory acquisition of your Petitioner's land. Able discounted these options solely on the grounds of cost.
21. As regards Able's proposal to construct a new quay on the Foreshore, your Petitioner submits that this quay could be shortened from its current proposed 1,279 metres in length to around 1,000 metres without affecting the commercial objectives of Able's proposals so as to leave the Triangle with access to the water for the development of IWDJ. Able has failed to explain how its quay is to be operated and why a quay of its proposed length is required. Shortening the quay would allow the IWDJ to be developed alongside Able's proposed quay without any serious detriment to delivering the objectives

⁶ Section 122(3), Planning Act 2008.

⁷ The Examining Authority was appointed under powers in the Planning Act to consider Able's application and to make a recommendation on it to the Secretary of State.

of Able's proposals and without any material reduction in Able's land available to service offshore wind customers. Consequently there is no reason why it should have any material impact on the number of jobs Able suggest the marine energy park will create nor will its reduction carry with it any significant environmental implications.

22. ABP, as a responsible port operator and good neighbour has sought meaningful discussion with Able with a view to seeking to identify whether a compromise can be agreed that would allow both the IWDJ and the marine energy park to proceed side-by-side, thereby maximising the combined benefits to the UK of both developments. In this regard ABP has already placed before Able a number of compromise proposals– but all of these have been rejected without any convincing explanation. Able has, instead, simply offered to replace the Triangle and ROW Land and the Petitioner's riparian rights with a piece of land in their ownership. Whilst the precise location of the land in question has not been supplied to your Petitioner, given its general location, it is likely to be wholly unsuited to meeting the pressing needs which will be served by the IWDJ on the grounds that it is remote from deep water river access, the GPSS and the gas caverns. In the light of the unwillingness of Able to seek a meaningful compromise – and the common thread to all of the offered proposals to Able is the removal from the Order of the right to acquire compulsorily your Petitioner's statutory landholding and its riparian rights – ABP has concluded that it has no option but to petition Parliament on this matter.
23. The case for acquiring the land for a use which Able has acknowledged could be located elsewhere to build a 1,279 metre long quay cannot in your Petitioner's view outweigh the serious detriment caused to their own statutory undertaking, and the public interest in promoting the construction of the IWDJ proposal together with the ability to enhance its existing facilities at the Humber International Terminal.
24. As an experienced operator of ports, your Petitioner is at a loss to comprehend how efficiently managed port facilities would require anything like the 1,279 metres of quay length that Able has indicated is essential. It is your Petitioner's understanding that Able's proposals are not supported by customer demand. The decision by Able to construct a quay of 1,279 metres in length was based on a claimed need to provide facilities for six customers. The detail necessary to support that claim has not been forthcoming. To date, Able has only identified one customer. The acquisition of your Petitioner's land ought not to be authorised on the basis of a mere speculative need. Able cannot maintain a compelling case in the public interest for the exercise of compulsory acquisition powers to remove your Petitioner's access from the Triangle to the river.

25. It is also relevant that Able has never demonstrated satisfactorily that it is able to fund its proposals. The funding statements did not properly identify (as they are required to do) how Able intends to fund the compulsory acquisition of land and the construction of the project.
26. In this regard, it emerged at the Planning Inspectorate hearing convened to consider the Able application that five companies in the Elba Group, including Able, would be responsible for funding the development, but that no accounts for any of these companies, all of which are registered in Jersey, have been published. Able's senior management has not been prepared to identify the shareholders in these companies. Your Petitioner believes that the Examining Authority (on whose judgment the Secretary of State relied in resolving to make the Order) would appear to have taken it on trust that Able has the financial standing to deliver a c.£450 million project.
27. Inadequate testing of Able's funding arrangements was only one unsatisfactory characteristic of the Examining Authority's conduct of the compulsory acquisition hearings. The 1½ days set aside for the hearings was not sufficient and the attitude of the Panel towards your Petitioner's case is apparent from its letter of 4 October 2012 which set a limit of 15 minutes for cross-examination of Able's evidence on funding and the need for compulsory acquisition of your Petitioner's land.
28. Section 127(3) of the Planning Act also stipulates that the compulsory acquisition of a statutory undertaker's land can only take place if the Secretary of State has certified that:–
 - (a) the land can be purchased and not replaced without serious detriment to the carrying on by the statutory undertaker of its undertaking; or
 - (b) that the land to be taken could be replaced by other land belonging to, or available for acquisition by the undertaker without causing serious detriment to the carrying on of its undertaking.
29. Although a certificate has been granted by the Secretary of State, your Petitioner does not accept that the conditions prescribed in section 127(3) have been met. In the light of your Petitioner's development proposals for the Triangle, its compulsory acquisition by Able would result in serious detriment to your Petitioner's statutory port operations. There being no other location to which the IWDJ development could be relocated given its riverside location and proximity to the GPSS and to underground gas storage caverns, the Triangle cannot be replaced by other land available to your Petitioner.
30. Your Petitioner therefore requests that the following amendments be made to the Order–

In article 5 (development consent etc. granted by the Order), insert–

“(3) This article does not authorise the construction of the authorised development in parcels 03009, 03014, 03016, 03020, 03021, 03022, 03023 or in that part of parcel 09001 as is situated to the south-east of a line drawn between co-ordinates 53° 39.073N, 00° 13.294W and 53° 39.183N, 00° 12.989W.”.

In article 30 (compulsory acquisition of land), after paragraph (4), insert–

“(5) This article does not apply to parcels 03020, 03021, 03022 and 03023 or to Associated British Ports’ interest in so much of parcel 09001 as is situated to the south-east of a line drawn between co-ordinates 53° 39.073N, 00° 13.294W and 53° 39.353N, 00° 12.516W.”.

In article 34 (compulsory acquisition of rights), after paragraph (7), insert–

“(8) This article does not apply to any right which was on the date the Order was made in the ownership of Associated British Ports in plots numbers 03009, 03014 and 03016.”.

Killingholme Branch Railway

31. Your Petitioner is also concerned about the potential detrimental impact of Able’s proposals on its ability to use the Killingholme Branch Railway, which crosses through the middle of the proposed marine energy park. Whilst currently largely out of use, this line still forms part of the national rail network and has the potential to transform both the capacity and resilience of the south Humberside rail network (around 25% of the UK’s rail freight originates from the Port of Immingham).
32. In addition, there is a proposal, being promoted by C.Gen Killingholme Limited, which is currently before the Planning Inspectorate, to construct a new power station at Killingholme that will require the Killingholme Branch Railway line to transport feedstock for the power station. Also, in the medium term, there are plans being developed to modify the Killingholme Branch Railway so as to become the “Killingholme Loop Line”, which will eliminate the current “single-feed” access to/from the Ports of Immingham and South Killingholme, so as to dramatically increase rail freight capacity in the area as well as markedly improving the operational resilience of the railway system on the south bank of the Humber.
33. Your Petitioner regards the Killingholme Loop Line as vital to securing the future of the Port of Immingham in that it will ensure freight access capable of meeting future demand.

It would also greatly improve freight access to the Port of Immingham and would address significant concerns as to the resilience of fuel supplies to seven of the UK's largest power stations by providing an alternative means of rail access to and from the Port in the event of an accident or terrorist attack on the single-feed railway line in its vicinity. Indeed the strategic importance of the Killingholme Loop Line has also been recognised, for example, by North Lincolnshire Council which has stated that it "...will continue to support this scheme in negotiation with South Humber Bank industrial users and Network Rail."⁸

34. Able's proposal to cross the Killingholme Branch Railway by means of level crossings:
- (a) is contrary to ORR policy which "does not tend towards agreeing the creation of new level crossings for normal road vehicle traffic if it is possible to find a grade separated solution⁹." The provision of a grade separated solution (i.e. bridges allowing normal road traffic to cross over the railway line) is feasible in this instance, the main impediment appearing to be the reluctance of Able to commit to the expenditure required;
 - (b) will introduce a series of physical impediments to the safe and efficient operation of the railway, given that four new crossings will be constructed across part of the national rail network over a short distance (around 1,000m).
35. In addition the operation of the loop is potentially compromised by Able's failure to make provision for railway sidings. This will mean that trains carrying Able's materials will have to spend idling time on the track at the expense of other freight users.
36. The powers of the Order enable four easements to be created – these could be used to construct level crossings. Your Petitioner considers, however, that in order to minimise disruption to rail traffic, only one level crossing should be authorised for abnormal loads. The other three easements should be restricted to the creation of bridge crossings.
37. Your Petitioner therefore requests that the following amendments be made to the Order–

In article 34 (Compulsory acquisition of rights), insert–

"(5) The undertaker may only exercise the powers of this article in parcel numbers 04033A, 04034A and 04035A to create a new easement giving a right to construct and use a bridge across the Killingholme Branch Railway."

⁸ North Lincolnshire Council, Able Marine Energy Park Local Impact Report (undated) but submitted to the Able Marine Energy Park Examination in June 2012

⁹ Letter from ORR to Able UK dated 24 September 2013.

In Part 14 of Schedule 9 (for the protection of Associated British Ports) insert–

In paragraph 111 after the definition of “AB Ports”–

““abnormal load vehicle” means a loaded vehicle having any one of the following characteristics:

- (i) a weight of more than 44,000 kilograms;*
- (ii) an axle load of more than 10,000 kilograms for a single non-driving axle and 11,500 kilograms for a single driving axle;*
- (iii) a width of more than 2.9 metres;*
- (iv) a length of more than 18.65 metres;”.*

After paragraph 113 insert–

“113A. The undertaker must not use any level crossing constructed under the powers of this Order on the Killingholme Branch Railway except for transportation by abnormal load vehicles in accordance with arrangements approved by the Office of Rail Regulation.

113B. The undertaker must construct a minimum of two rail lines and such additional rail lines as may be necessary to ensure that trains accessing Work No. 1 can be accommodated alongside the Killingholme Branch Railway to accommodate trains accessing Work No. 1 without causing material disruption to traffic using the Killingholme Branch Railway.”.

Protective Provisions

38. Your Petitioner has a number of concerns about the protective provisions which are included for its benefit in Part 14 of Schedule 9 to the Order. First, paragraph 117 makes provision for your Petitioner to require Able to remedy accumulations (i.e. siltation) or erosions attributable to the construction of their project. It is necessary for definitions of the relevant terms to be incorporated in the general definitions in paragraph 111.
39. Secondly, paragraph 115 qualifies the requirement on Able to create a new right of way for vehicular traffic on Station Road before extinguishing its current right of access by limiting the purpose of the access to the construction, operation and maintenance of a siding. Your Petitioner needs to retain unqualified as well as uninterrupted access to the Triangle.

40. Your Petitioner therefore requests that the following amendments be made to Part 14 of Schedule 9 to the Order–

In paragraph 111, after the definition of “AB Ports”, insert–

“accumulation” means any accumulation of silt or other material which impedes access to or berthing at any harbour work belonging to or occupied by AB Ports within the Ports of Immingham or Grimsby.”.

In paragraph 111, after the definition of “construction”, insert–

“erosion” means any erosion of the bed or banks of any structure of whatever nature owned or occupied by AB Ports within the Ports of Immingham or Grimsby.”.

For paragraph 115, substitute–

“115. Before extinguishing or interfering with any existing rights for AB Ports to pass along parcels 03009, 03014 and 03016 (Station Road), the undertaker shall, with the agreement of AB Ports, create a new right of way for vehicular traffic that is reasonably convenient for AB Ports, such agreement not to be unreasonably withheld or delayed.”.

THE PETITIONER THEREFORE

REQUESTS

that, should a joint committee consider this Order, it, or someone representing it in accordance with the rules and Standing Orders of the House, be given an opportunity to give evidence on all or some of the issues raised in the petition.

AND THE PETITIONER remains, etc



WINCKWORTH SHERWOOD

Agents for Associated British Ports

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AGAINST,
BY COUNSEL, &c

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