



Paul Irving
Winckworth Sherwood
Minerva House
5 Montague Close
London
SE1 9BB

Our reference: PCP 04/06/03

5 November 2014

Dear Paul,

Harbours Act 1964

The Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for The Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014 (“the Order”) for which you applied to the Department for Transport (“the DfT”), on behalf of Associated British Ports (“the Applicant”) under Section 14 of the Harbours Act 1964 (“the Act”) on 16 Jan 2008.

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications which it considers necessary and appropriate.
3. The Order authorises a project and is one which falls within Annex II of Council Directive 85/337/EEC which is codified by Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment but it was determined in accordance with paragraph 4 of Schedule 3 to the Act that it was not a relevant project requiring an environmental statement.

Context

4. The Applicant is the statutory harbour authority for King’s Lynn.
5. The Fisher Fleet quay is a 125m mooring and catch landing facility within the harbour of King’s Lynn and has been made available to the local fishing industry since the late 19th century. The quay was originally constructed of timber materials and then converted to a concrete suspended quay.
6. It is proposed to extend and upgrade the quay. The current quay was constructed in the 1950s, and whilst it has been maintained, the size and scope of the facility has been outgrown by the demands of the modern fishing industry.



7. The new modern facility will provide for the ongoing requirements of the local fishing industry for many years to come.
8. The Order as applied for would also allow for the transfer of the existing quay and the proposed works to a body representative of the fisherman who use it. Such a power would facilitate arrangements under which responsibility and control of the quay could pass to those who have a direct interest in its use.
9. The Order is sought to achieve the objects specified in paragraphs 4 and 9 of Schedule 2 to the Act:

'Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above'

Paragraph 3 of that Schedule states:

Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—

- (a) improving, maintaining or managing the harbour;*
- (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or*
- (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.*

'empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes'

10. Specifically, the Order sought would authorise the extension and upgrading of the Fisher Fleet Quay and its subsequent transfer to a body representative of the fishermen.
11. In summary, it is the case for the Applicant that the Order will provide a better facility for the ongoing requirements for the local fishing industry.

Application procedure

12. On 16 January 2008 an application for the Order was submitted on behalf of the Applicant to the DfT.
13. Notice of the application for the Order was advertised in the London Gazette on 16 January 2008 and in the Eastern Daily Press on 16 and 23 January 2008.
14. In addition, the DfT directed the Applicant to serve the application and supporting documentation under paragraph 14 of Schedule 3 to the Act. Those served include:
 - Marine & Fisheries Agency
 - Environment Agency
 - Maritime and Coastguard Agency

- English Heritage
- Trinity House
- Highways Agency
- Natural England
- The Crown Estate
- Network Rail
- King's Lynn Conservancy Board
- Norfolk County Council
- Borough Council of King's Lynn & West Norfolk

15. A number of objections and representations were received during the statutory 42 day period provided for in Schedule 3 to the Act.
16. On 1 April 2010 responsibility for consideration of the application was passed to the MMO by virtue of The Harbours Act 1964 (Delegation of Functions) Order 2010.
17. On 25 July 2011 the MMO wrote to the applicant to express a preliminary view in respect of the application and seek comments. Specifically the view related to section 14 of the proposed Order which sought to authorise the transfer of the Fisher Fleet Quay to a body representative of fishermen using the Quay.
18. The MMO indicated that what was sought appeared to go beyond what was permitted by paragraph 9 of Schedule 2 to the Act in that that the Order was not one which sought to dispose of harbour property that was superfluous to harbour requirements, rather, it was an order which sought to transfer works and the existing quay with responsibilities so that they may be managed for harbour purposes by another body.
19. The Applicant responded on 17 February 2012 to advise they wished to wait until the legal position as to the interpretation of Schedule 2 was clarified by the courts in a judicial review in another matter.
20. On 22 October 2013 the Applicant wrote to the MMO to request that article 14 of the proposed order be deleted and the application considered on that basis.
21. The MMO decided that due to the significant period of time since the original consultation it was necessary and appropriate re-consult with selected consultees to enable them to review and update their advice in the context of the current legislative framework.
22. Representations received during the statutory period for objections provided for by the Act and those received during the second consultation are summarised as follows:

Highways Agency

23. The Highways Agency (HA) were concerned that without the inclusion of a full Transport Assessment (TA) the impact of the development onto the trunk road network was unknown.

24. The HA subsequently wrote a second time to advise that they had engaged with the relevant local authorities and were now comfortable that the development would not increase traffic on the surrounding road network as the development at Fisher Fleet Quay was intended to consolidate the existing use of the port. The HA confirmed that they had no further comment to make in respect of the application.

MMO Response

25. The MMO notes the comments made and is satisfied for the reasons set out that a TA is not required.

Trinity House

26. Trinity House (TH) provided minor drafting comments and requested that the standard saving provision for Trinity House be included.

MMO Response

27. The MMO notes the Applicant has accepted the amendments proposed by TH and the modifications form part of the final order. The MMO is satisfied that the drafting in its current form is appropriate.

Environment Agency

28. The Environment Agency (EA) objected to the Order on the grounds that the works and operation could have a wide ranging impact upon the Agency's functions particularly flood defence and environmental management. They wished to be assured that the proposed works would not have an adverse effect on these structures nor compromise the operation of the flood gates. The EA entered into discussions with the Applicant in order to protect their assets.

29. The EA subsequently secured a legal agreement with the applicant and withdrew their objection.

30. During the second consultation the EA responded to say that they had reviewed the application in light on the current legislative framework and had no objection to the proposal subject to the legal agreement continuing to apply.

31. The EA also highlighted that they are currently undertaking the King's Lynn Defences Project. One of the significant elements of the project is the replacement of the flood gates around the Fisher Fleet immediately behind the quay. The EA stressed the importance of ensuring that there would be no conflict with the works proposed by the Applicant and recognised that they will need to liaise closely with ABP when considering gate design.

MMO Response

32. MMO note the withdrawal of the objection and the comments of the EA.

English Heritage

33. English Heritage (EH) requested that any approved Order be subject to a condition for an appropriate programme of archaeological assessment and mitigation. This is to assess the nature and extent of the historic environment within Fisher Fleet Quay and determine the level of impact upon this historic environment (and the resulting benefit, loss or harm to its significance) from the proposed development.

MMO Response

34. The Applicant considered the request of EH and modified the draft order to include the conditions requested. The MMO is satisfied the concerns of EH have been addressed and is content the drafting of the order in its current form is necessary and appropriate.

Natural England

35. Natural England (NE) advised that the works were unlikely to have a significant effect on any European sites or nearby SSSI's.

MMO Response

36. The MMO undertook a likely significant effect test and agrees with the conclusion of NE that the works are unlikely to have a significant effect on a designated site.

MMO consideration

37. Section 14(1) of the Act provides for an order to be made under this section ("a harbour revision order") in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects set out in schedule 2 to the Act.
38. By virtue of section 14(2)(a) a harbour revision order may not be made in relation to a harbour unless the MMO is satisfied that an appropriate written application has been made by the authority engaged in improving, maintaining or managing it or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest.
39. By virtue of section 14(2)(b) a harbour revision order shall not be made in relation to a harbour unless the MMO is satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

MMO's decision

40. The MMO is satisfied that the Order, as modified, meets the requirements of section 14(1) and 14(2)(a) of the Act.

41. The MMO is satisfied for the reasons set out by the Applicant in their statement of support and summarised above that the making of the Order is desirable for the purposes of section 14(2)(b) of the Act and should be made.

42. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate.

Challenge to decisions

43. Information on the right to challenge this decision is set out in the Annex to this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Kirby', written over a faint, light-colored signature line.

Mark Kirby
Inshore Licensing Team

D 0191 376 2563

E mark.kirby@marinemanagement.org.uk

Annex

Right to challenge decisions

Right to challenge orders made under sections 14 and 16 of the Harbours Act 1964

Any person who desires to question the making of the Order on the ground that there was no power to make the Order or that a requirement of the Harbours Act 1964 was not complied with in relation to the Order, may within 6 weeks from the date on which the Order becomes operative make an application for the purpose to the High Court or the Court of Session, as the case may be.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.