



Lara Moore
Ashfords LLP
(email only)

Our reference:
HRO/2019/00009

9 February 2021

Dear Ms Lara Moore,

The Harbours Act 1964
The Dart Harbour and Navigation Harbour Revision Order 2021

1. The Marine Management Organisation (“MMO”) has considered your application for The Dart Harbour and Navigation Harbour Revision Order 2021 (“the Order”) which you applied for on behalf of Dart Harbour and Navigation Authority (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 16 October 2019.

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications not affecting the character of the Order which it considers necessary and appropriate.
3. The Order confers modernised powers on the applicant considered conducive to the efficient and economical operation, maintenance, management and improvement of Dart Harbour (“the Harbour”). In particular, the Order would confer modern powers on the applicant to give general directions to vessels, persons, and vehicles using the Harbour, together with powers exercisable by the harbour master appointed by the applicant to give special directions to vessels. These powers are required to support the effective management of Dart Harbour as recommended in the Port Marine Safety Code (“PMSC”).

Context

4. The applicant is the Dart Harbour and Navigation Authority, the statutory harbour authority governed by its own local legislation collectively known as the Dart Harbour and Navigation Act and Orders 1975 to 2021. The applicant is responsible for the administration, maintenance, and improvement of the Harbour. The applicant is also the Competent Harbour Authority under the Pilotage Act 1987.
5. The Harbour is classed by the Department for Transport (“DfT”) as a Trust Port.



INVESTORS
IN PEOPLE

Bronze



6. The Harbour is located on the River Dart and has pontoon berths for 20 commercial vessels and receives cruise ships, both within the river and offshore for anchorage. There are 140 pontoon berths and approximately 720 moorings. There are also over 1300 vessels registered in private moorings and marinas. The Harbour has approximately 11,800 visiting vessel nights and 20 acts of pilotage per annum. The applicant currently has jurisdiction over approximately 760 hectares of water.
7. As the harbour authority for the Harbour, the PMSC (November 2016) published by the DfT applies to the Harbour as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK.
8. The PMSC identifies a number of tasks which harbour authorities should undertake in order to comply with the PMSC. This includes reviewing and being aware of existing powers based on local and national legislation and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation. In particular, paragraph 2.5 of the PMSC states “... *harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already*”.
9. The applicant has modernised its powers of general direction, extending the powers of general direction to include vehicles, allowing them to issue general directions to cover speed limits and parking for the safe management of harbour operations ashore. This enables them to repeal their existing byelaws in due course and instead have a single set of general directions covering the harbour.
10. The Order is sought to achieve various objects specified in Schedule 2 of the Act, these are detailed within Annex II of this letter.

Application Procedure

11. On 16 October 2019 an application for the Order was submitted to the MMO by Ashfords LLP on behalf of the applicant.
12. Notice of the application for the Order was advertised in the London Gazette on 18 September 2020 and in the Western Morning News on 18 and 25 September 2020. A 42-day consultation ran from 18 September 2020 to 30 October 2020.

Consultation

13. The MMO consulted with the following bodies for a period of 42 days. The relevant representations, and MMO actions, are summarised in the table below:

Organisation	Response received
DfT	DfT confirmed they had no objection to the application.
Maritime and Coastguard Agency (“MCA”)	The MCA stated their support for the Order and confirmed that they have no issue with its content or application.
Trinity House	Trinity House note the saving made for them and confirm they have no objection to the Order.

Organisation	Response received
South Hams District Council (Local Planning Authority)	No response.
Royal Yachting Association (“RYA”)	The RYA confirmed that they have no objection to the Order.
UK Major Ports Group	No response.
British Ports Association (BPA)	The BPA stated their support for the Order.
Chamber of Shipping	The Chamber of Shipping responded stating their support for the Order.
Duchy of Cornwall	No response.

Public Representations

14. No public representations were received within the statutory 42-day period provided for in Schedule 3 to the Act.

MMO’s Consideration

15. The MMO discussed the provisions in the Order with the applicant, such as the amendments and repeal of existing local legislation, the procedure for giving, amending or revoking general directions and the application of general directions to vehicles and persons.
16. The premise of general directions applying to vehicles (for speed limits and car parking matters) was considered to be novel, as prior to the submission of this application, a general direction did not specifically cover vehicles. The MMO considered that this would require an update to the PMSC by DfT (as DfT remain responsible for ports policy in England).
17. The MMO consulted with DfT, who were able to confirm on Thursday 30 January 2020 that they were content with general directions being used to regulate vehicles in a harbour, they also confirmed that they intend to update accompanying guidance to the PMSC to clarify the application of general directions.
18. In relation to general directions, the MMO has inserted further safeguards to the procedure set out in the Order. The applicant is required to place notices around the harbour and on the harbour’s website to ensure that harbour users are aware of any changes relating to general directions.
19. The MMO has considered the application in relation to the South and South West Marine Plans and is content that the application is in accordance with those marine plans.
20. The MMO has reviewed the application in relation to the PMSC and concludes that the powers conferred by the Order aid the applicant to comply with their duties as set out by the PMSC.

21. Section 14(1) of the Act provides for an Order to be made under this section 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.
22. 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.
23. 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 Decision

24. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
25. The MMO is satisfied that there are no objections to the application for the Order.
26. 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 (and each provision of the Order) is desirable for the purposes of section 14(2)(a) and (b) of the Act and should be made.
27. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate but not substantially affecting the character of the Order.

Challenges to Decisions

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

Yours sincerely,



Daniel Jose
Marine Licensing Case Officer

D +44 (0)208 720 2232
M +44 (0)782 510 0716
E Daniel.Jose@marinemanagement.org.uk

Annex I

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.

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.

Annex II

Objects for whose achievement Harbour Revision Orders may be made within the Harbours Act 1964, Schedule 2

Paragraph 4: "Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above".

Paragraph 6: "Settling (either for all purposes or limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled".

Paragraph 16A: "Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features"

Paragraph 17: "Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."