



BOSTON BOROUGH COUNCIL

REPORT TO:	Planning Committee
DATE:	13 September 2016
SUBJECT:	Boston Barrier
PORTFOLIO HOLDER:	Councillor Peter Bedford
REPORT AUTHOR:	Senior Planning Officer
EXEMPT REPORT:	No

SUMMARY

The purpose of this report is to advise members of the Transport and Works Act Order (TWAO) that has now been submitted to the Secretary of State for the Boston Barrier project.

The report summarises the overall process of the TWAO, the role that Boston Borough Council, who are a statutory consultee only, have in this process and the officers recommendation and consideration of the scheme from a planning perspective which, if endorsed by the committee, will be conveyed to the Secretary of State.

RECOMMENDATION

The Committee is asked to lend its full support to the scheme as proposed and to make clear that it raises **NO OBJECTIONS** and seeks delegated authority to the Development Control Manager to amend and finalise the suggested list of conditions contained at the rear of this report in order to ensure that they meet the tests of being necessary, relevant to planning and the development proposed, enforceable, precise and reasonable in all other respects.

1.0 INTRODUCTION

- 1.1 The Environment Agency (the applicants for the project) have submitted a Transport and Works Act Order (TWAO) to the Secretary of State to construct and operate a new tidal barrier with a moveable gate across the Haven, together with 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 and to execute ancillary works, including dredging of the river to facilitate the construction of the barrier.

- 1.2 This report provides a brief overview of the proposal, the process and Boston Borough Council's role in this process with a final recommendation made on behalf of the Planning Department. The full schedule of works is as follows;
- (a) A barrier structure to be constructed within the Haven, approximately 100m downstream of Black Sluice. This would comprise a 25m wide u-shaped structure, 35m in length, to house a rising sector gate approximately 10m high, spanning the channel;
 - (b) A control building, for the tidal barrier, to be constructed on the left bank of The Haven directly adjacent to the proposed barrier. To be located on the current site of the Port of Boston's buoy shed;
 - (c) The widening of the wet dock entrance from 15m to 18m. A replacement gate to be installed within the location of the entrance, comprising of vertically moving or rotating gate(s) approximately 10m high and 12m in radius;
 - (d) A control building for the replacement gate to be constructed within the entrance to the wet dock, directly adjacent to the structure;
 - (e) Sheet piling construction to take place on the right bank of The Haven to provide a flood protection level of 7.55mAOD. Sheet piling would tie-in to the barrier and continue along the right embankment to connect with the flood protection provided by the WPD substation. This distance is approximately 540m;
 - (f) Construction will take place on the left bank of The Haven to create two distinct elements. The first is to construct a new sheet piled quay wall (approximately 315m), which will stabilise the existing PoB quayside and provide anchorage for element two. Element two is a concrete flood wall (approximately 515m), 1.5 to 2.4m above ground level commencing at the barrier and terminating at Maud Foster Sluice (totalling approximately 830m). This flood wall would incorporate flood gates which would be double leafed, each 3m to 5m wide (giving a 6-10m total gate width) within the Port of Boston estate;
 - (g) On the right bank the demolition of the disused wooden quay to facilitate the right bank sheet piling (element (e));
 - (h) Demolition of grain conveyors on left bank of The Haven to facilitate construction (element (f)). A new grain conveyor to be constructed once the left bank works in the vicinity have been completed;
 - (i) The demolition of buoy shed (as described in element (b)) to facilitate the construction of the barrier control building;
 - (j) Extension of loading platform at the Port of Boston, in line with the requirement for quay wall stabilisation (element (e)) and additional space required for berthing vessels during closure of the wet dock;
 - (k) Capital dredging to facilitate the construction of the Project. Approximately 38,300m³ of material to be removed across four phases;

- (l) Works to upgrade an existing private access road within the Port of Boston. To include resurfacing of the road to ensure it is suitable for the volume of Heavy Duty Vehicles required for the Project;
- (m) Diversion of 3 11kv existing underground electricity cables to take place prior to the commencement of barrier construction. The cables are to be diverted from a location on the right embankment (adjacent to Wyberton Low Road), onto and along Wyberton Low Road (toward London Road) and then eventually back onto London Road to tie into existing services;
- (n) An area of permanent scour protection to be installed within the vicinity of the barrier structure. The approximate width, height and depth of the scour protection is to be determined through hydrological modelling (once the barrier has been constructed); and
- (o) Ancillary works and operations, including lighting and landscaping. Such as; reinstatement of the Boston Public Footpath No.14 (Macmillan Way), provision of addition of seating areas, occasional low shrub plating and the introduction of safety and security lighting about the barrier structure and associated buildings.

2.0 BACKGROUND

- 2.1 According the background information submitted by the Environment Agency the proposal constitutes a key component of the Boston Combined Strategy (BCS), a 100 year Flood Risk Management and Waterways Strategy for Boston, Lincolnshire which was approved in March 2008. Evidence of flood risk is derived from historical events and predictive modelling of future conditions. A number of historical flood events have affected Boston, including major events in 1953, 1976, 1978, 2001 and most recently, in December 2013. Existing flood defences in Boston provide a standard of protection of a 1 in 50 chance (or a 2% probability) of flooding in any given year and accordingly Boston was identified as a regional priority for flood risk management.
- 2.2 The BCS set a central strategic objective, namely to reduce the risk from flooding whilst enabling opportunities for regeneration in Boston. It considered how best to address the tidal flooding risk within Boston, alongside opportunities to improve navigation of the wider waterways network which surrounds Boston. It identified five separate stages of work as being required as follows:
- **Stage 1:** a new navigation link between the Haven and the South Forty Foot Drain at Black Sluice;
 - **Stage 2:** refurbishment of the Haven river walls upstream of the proposed Barrier;
 - **Stage 3:** the provision of a new multi-functional barrier;
 - **Stage 4:** waterways facility improvements; and
 - **Stage 5:** raising of the embankments downstream of the proposed new barrier.
- 2.3 Stage 1 of the BCS was completed in March 2009 whilst Stage 2 was completed in 2014. Stage 3 of the BCS provided for the delivery of a multi-functional barrier within a defined length of the Haven, together with associated works to tie the barrier into higher defences downstream of the town of Boston.

- 2.4 The BCS established four specific project objectives for the proposed new barrier. These were:
- **Navigation:** to provide a safe and attractive navigation link between the River Witham and South Forty Foot Drain
 - **Flood Risk Management:** to reduce the risk to people and the developed and natural environment from flooding
 - **Economics:** to maximise amenity, social and economic opportunities
 - **Environment:** to minimise the adverse impacts on the natural and built environment of the area and to maximise opportunities for environmental enhancement.
- 2.5 Following approval of the BCS, these objectives informed further project development. Options appraisal and consultation was undertaken and a preferred single solution, namely, a multi-functional tidal barrier to be located upstream of the Port of Boston, was identified.
- 2.6 The barrier was described as ‘multi-functional’ as it was proposed to be utilised for both flood risk management and water level management purposes. ‘Water level management’ refers to the operation of the barrier to regulate water levels, thereby giving rise to navigational benefits within those areas through which navigation is currently difficult due to the tidal range of the Haven.
- 2.7 In January 2015, following a review of the findings of a LCC waterways economic study on the possible economic benefits of water level management, which was primarily funded by LCC with additional funding from BBC, a decision was taken by LCC to defer funding the delivery of water level management until further consideration of potential options for implementing water level management could take place.
- 2.8 In view of the urgent need to deliver improved flood risk management, particularly in light of the major flood event which occurred in Boston in December 2013, during which over 800 homes and businesses suffered flooding, the decision was taken to separate the delivery of navigation and flood risk management benefits and to continue to progress the proposed barrier as a flood risk management proposal.
- 2.9 The barrier will have a large moveable flood gate which when not in use would lie flat on the river bed. It would be raised when required to prevent flooding in Boston during tidal surges and for maintenance and inspection purposes.
- 2.10 Whilst the operation of the barrier for water level management purposes no longer forms part of the current proposal, the Environment Agency, Lincolnshire County Council and Boston Borough Council remain committed to the delivery of water level management in the future.
- 2.11 The design of the proposal would not preclude future measures to achieve this. However, further works, which would not include alterations to the barrier itself, would be necessary before the proposed barrier could be operated for water level management purposes and additional consents would be required.

3.0 Aims of the TWAO (Current Proposal)

3.1 Following deferral of the delivery of water level management, the objectives of the proposed barrier, as established within the BCS, were revisited. Accordingly, the objectives of the proposal are as follows:

- **Flood Risk Management:** to reduce the risk to people, the developed area and the natural environment from flooding
- **Economics:** to maximise amenity, social and economic opportunities
- **Environment:** to minimise the adverse impacts on the natural and built environment of the area and to maximise opportunities for environmental enhancement.

3.2 The principal aim of the proposal is to reduce the risk of flooding to approximately 900 commercial properties and 14,256 residential properties in Boston. Following construction of the proposed barrier, this risk would be reduced over the next 100 years to a 1 in 300 chance (or a 0.33% probability) of flooding in any given year.

3.3 The proposal is fundamental to delivery of Phase 3 of the BCS and achieving the flood risk management objectives set by that strategy. Furthermore, the Proposal has been designed in a manner which would not preclude achievement of the navigation objective identified by the BCS, through the future delivery of water level management proposals.

4.0 The Submission of the TWAO and the process

4.1 The application for the TWAO and the planning application have been submitted to the SoS who will make the final decision on the application. The process has to comply with the legislation set out in the Transport and Works Act 1992 and the procedures set out in The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

4.2 The submission to the SoS effectively means that the Council is a statutory consultee only. This means that the Council will provide a response to the SoS who will then consider the Council's response along with all other statutory consultee responses and third party representations. The SoS will then make a decision or announce whether a public inquiry is required.

4.3 The procedures do set out timescales for the process and for the purposes of this TWAO these are set out as follows:

- **17 August** – Notices in Boston Target and Boston Standard
- **23 August** – TWAO application made available for public inspection
- **24 August** – Notices in London Gazette and Lloyds List
- **24 August** – Notices in Boston Target and Boston Standard
- **5 October** – Last day of TWAO public inspection
- **5 October** – Deadline for public representations or objections to the Secretary of State
- **10 October** – Receipt of and analysis of objections received to identify prospects of (a) resolving any objections and (b) a public inquiry being fixed to consider the application

- **2 November** – Likely ‘relevant date’ for Secretary of State to announce whether a public inquiry should be fixed. This date falls 4 weeks after the date on which the deadline for objections occurs
 - **14 December** – likely deadline for production of statement of case and supporting documents
 - **8 March** – Likely deadline for proof of evidence
 - **4 April** – Last possible public inquiry start date.
- 4.4 It is important to note that the above timetable (up to 5th October 2016) is not flexible and as such the response to the SoS from the Planning Department must be made by 5th October 2016. The other dates may fluctuate slightly but that would be controlled under the powers of the SoS and not BBC.
- 4.5 It should also be noted that Planning Department’s response to the proposed TWAO does not include the application for Listed Building Consent (LBC); this follows later in this committee agenda. Although the application for LBC is being handled directly by Planning Department the TWA regulations modify the way that the LPA handle such applications.
- 4.6 Where a ‘standard’ application is made to the Planning Department for LBC there is an obligation to publicise the application and this is set out in Regulation 5 of the Regulations. For the LPA this means a 42 day consultation period is required to be given. Once all responses to the consultations have been considered the Planning Department will make a recommendation. This recommendation must be referred to the SoS. Thus it will be the SoS rather than the LPA that makes the final decision on the LBC application.
- 4.7 Although the application for LBC is discussed as a separate item on this agenda it is important to note that as the LBC proposal has been made in connection with the TWAO the timetable referred to in para’ 4.3 of this report needs to be followed in respect of the LBC.

5.0 Submitted Information for the TWAO

- 5.1 As part of the TWAO the applicant has submitted the following information to the SoS and a copy of this has been provided to BBC. It includes;
- The Order Plans
 - Environmental Statement
 - Cultural Heritage, Landscape and Visual Impact Assessment
 - Land Use Report
 - Noise and Vibration Report
 - Ecology and Nature Conservation Report
 - Surface Water and Flood Risk Report
 - Flood Risk Assessment
 - Ground Investigation Report
 - Report on Estuarine and Geomorphology
 - Contaminated Land Report
 - Navigational Impact Assessment
 - Traffic and Transport Assessment
 - Air Quality Report
 - Outline Site Waste Management Plan

5.2 The level of information the applicants need to provide as part of the TWAO is obviously extensive. The above technical reports, their content and their conclusions all appear to follow a sound methodology and matters relating to neighbour's amenity, ecology, landscaping, visual appearance and the impact of the proposal on nearby areas of historic interest all appear to have been fully considered and the officer raises no concerns regarding these issues. It is clear that relevant bodies have assisted in informing the level of information that has been included. According to the applicant ongoing consultation has informed the design of the project with liaison taking place with the following interested parties;

- Black Sluice IDB
- Boston and District Fisherman's Association
- Boston Borough Council
- Canal and Rivers Trust
- Crown Estate;
- Eastern Inshore Fisheries and Conservation Authority (EIFCA);
- Environment Agency;
- Frontier Agricultural;
- Harbour Master;
- Lincolnshire County Council;
- Lincolnshire Wildlife Trust;
- Marine Management Organisation;
- Natural England;
- Port of Boston;
- River Users (technical group), Boston Pirates Small Anglian Group and Boston Gateway Marina;
- Royal Society for the Protection of Birds;
- Trinity House; and
- Witham Fourth IDB

5.3 The Council has been heavily involved in this process providing consultations leading up to the submission of the TWAO. The Council has been supportive of what the Environment Agency is striving to achieve; that is gaining the relevant consents to allow the Boston barrier and other works to be developed in order to reduce the risk of flooding to approximately 900 commercial properties and 14,256 residential properties in Boston.

5.4 As part of this submission the applicant has also included a detailed summary of all statutory consultee responses along with a copy of a letter of support from the Chief Executive of BBC. I understand that a letter of support from the Leader of the Council has also been prepared.

6.0 CONCLUSION

6.1 The proposed tidal defence barrier (the Boston Barrier) along with the ancillary works will reduce the flooding risk to almost 15,000 homes and businesses. The EA examined numerous locations for the barrier with the final position being decided based on technical expertise and input and assistance from relevant stakeholders. The Council has been committed to the project from the outset and has continued to work with the Environment Agency and other stakeholders in a pro-active manner.

6.2 The submission of the TWAO submitted by the Environment Agency is sound and all necessary information has been submitted and all relevant bodies have been consulted with their responses helping to inform the content of the final submission.

6.3 The scheme will effectively manage flood risk and provide economic and environmental benefits to the area and is a scheme that we recommend be wholly supported by the Local Planning Authority. Not only will the barrier provide much needed flood defences for the area it will also provide substantial and exciting opportunities for future water level management and future regeneration schemes related to Boston water ways and the town centre.

7.0 RECOMMENDATION – (Final recommendation to the Secretary of State)

7.1 The proposals are wholly supported by the Planning Authority with **NO OBJECTIONS** raised subject to seeking delegated authority to allow amendments to the suggested list of conditions put forward by the Environment Agency in order to ensure that they meet the tests of being necessary, relevant to planning and the development proposed, enforceable, precise and reasonable in all other respects.

8.0 SUGGESTED LIST OF CONDITIONS

Time limit for commencement of development

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.

Detailed design approval

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 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 or any amendments to those details as may be approved by the Local Planning Authority.

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

Landscape works

3. No landscaping works relating to the development shall take place until a landscaping scheme has been submitted to and approved by the Local Planning Authority. The Development must be carried out in accordance with the approved landscaping scheme or any amendments to the approved landscaping scheme as may be approved by the Local Planning Authority.

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

Lighting

4. Prior to installation, a lighting scheme detailing any external lighting proposed to be installed as part of the development shall be submitted to and approved by the Local Planning Authority. The development must be carried out in accordance with the approved lighting scheme or any amendments to the approved lighting scheme as may be approved by the Local Planning Authority.

Reason: *In the interests of minimising light pollution.*

Heritage and Archaeology

5. No stage of the development shall commence until the implementation of a programme of archaeological and building recording works. The necessary investigations, mitigations, archiving and public dissemination of the results will be secured in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority. The development must be carried out in accordance with the approved written scheme of investigation or any amendments to the approved written scheme of investigation as may be approved by the Local Planning Authority.

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

Approval and implementation of construction mitigation plans

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 by the Local Planning Authority –
 - a) a Construction Method Statement;
 - b) a Construction Traffic Management Plan;
 - c) a 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 unless otherwise agreed with the Local Planning Authority.

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

Construction Working Hours

7. Construction work must take place only within core working hours (unless otherwise agreed with the Local Planning Authority) 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.

Land contamination

8. No stage of the development which may disturb land contamination with the potential likely to materially harm persons or pollute controlled waters or the environment shall commence until a scheme, for that stage, to deal with contamination has been submitted to and approved 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 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 by the Local Planning Authority. The development must 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.

Approval and implementation under these conditions

9. Where under any of these conditions the approval (which shall be taken to include any agreement or consent) of the Local Planning Authority is required to any matter, that approval shall be given in writing. Where under any of these conditions the Local Planning Authority may approve amendments to details submitted and approved, such approval must not be given except in relation to changes where it has been demonstrated to the Local Planning Authority that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

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

Paul Edwards
Development Control Manager

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