Transport and Works Act 1992

The Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006

Rule 10(6)

The Boston Barrier Order

REQUEST FOR DIRECTION UNDER SECTION 90(2A) OF THE TOWN AND COUNTRY PLANNING ACT 1990

To: The Secretary of State for the Environment, Food and Rural Affairs, c/o TWA Orders Unit, General Counsel's Office, Department for Transport, Zone 1/18, Great Minster House, 33 Horseferry Road, London SW1P 4DR

Pursuant to Rule 10(6)(a) of the Transport and Works (Applications and Objections Procedure (England and Wales) Rules 2006 ("the Application Rules"), the Environment Agency of Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, Cambridgeshire PE2 5ZR hereby requests that a direction be made under section 90(2A) of the Town and Country Planning Act 1990 that planning permission, so far as it is required, be deemed to be granted for the development proposed to be authorised by the Order now being applied for within the various limits provided for in the draft Order and the accompanying plans and sections.

The proposed development comprises the construction and operation of a tidal barrier with a moveable gate across the tidal River Witham (known in this location as 'the Haven') in Boston, Lincolnshire together with ancillary flood defence and associated mitigation works. The proposed development is located in Boston Borough. Further particulars of items currently identified as forming elements or possible elements of the proposed development are contained in **Appendix 1** to this request.

Notice on property owners and occupiers affected by the proposed development has been given by way of service of notices under Rule 15 of the Application Rules and other publicity required by those Rules.

The following aspects of the proposals contained in the draft Order are or may be development requiring planning permission under section 57(1) of the Town and Country Planning Act 1990 as follows:

Proposals	**Draft Order**
The scheduled works:	Article 4 and Schedule 1
Miscellaneous ancillary works:	Article 4
Highway alterations and improvements:	Article 4, 10 to 16 and Schedule 2

Changes of use:	Article 4, 39 and 40, Schedule 1 and Schedule 5

This direction seeks deemed planning permission to be granted for the whole development and each element of it. A statement of proposed planning conditions is included with this request, in accordance with Rule 10(6)(b) of the Application Rules. In response to rule 10(6)(c) of the Application Rules, some details in respect of scale, external appearance, siting and landscape are proposed to be reserved for subsequent approval by the Local Planning Authority to the extent and in the manner set out in conditions to the direction. Attached at **Appendix 2** to this request are draft conditions which the application wishes to propose.

There also accompanies this request for a planning direction:

a) a Planning Statement;

b) a Design and Access Statement;

c) an Environmental Statement; and

d) Planning Direction Drawings showing, amongst other things, the boundaries of the planning application.

The applicant has also applied for Listed Building Consent for elements of the proposed works, in accordance with the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992.

APPENDIX 1: ELEMENTS OF THE PROPOSED DEVELOPMENT

(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.

APPENDIX 2: CONDITIONS PROPOSED TO BE ATTACHED TO THE DIRECTION BEING SOUGHT FOR 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 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 hauls 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;

"**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; 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;

"**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;

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

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 hard 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 safety 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.*