

Proposed Bridlington Marina and Harbour

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Dear Sirs,

TRANSPORT AND WORKS ACT 1992 TOWN AND COUNTRY PLANNING ACT 1990 HARBOURS ACT 1964

PROPOSED BRIDLINGTON MARINA AND HARBOUR

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Mr Michael Ellison MA (Oxon), concerning the applications made by your client, the East Riding of Yorkshire Council ("the Council"), for:-

- the Yorkshire Marina (Bridlington) (Works) Order ("the Works Order"), to be made under sections 3 and 5 of the Transport and Works Act 1992 ("the TWA");
- a direction as to deemed planning permission ("the planning direction") for development provided for in the Works Order, to be given under section 90(2A) of the Town and Country Planning Act 1990;
- the Bridlington Harbour Revision Order ("the Revision Order"), to be made under section 14 of the Harbours Act 1964; and
- the Yorkshire Marina (Bridlington) Harbour Empowerment Order ("the Empowerment Order"), to be made under section 16 of the Harbours Act 1964.

2. The Inspector held concurrent public inquiries into these applications between 2 October 2001 and 4 October 2002. Concurrently with these inquiries, he also held public inquiries into:-

- the Council's two applications for listed building consent in connection with the proposals in the Works Order (which applications fall to be determined by the First Secretary of State); and
- the application by the Bridlington Piers and Harbour Commissioners for the Bridlington Harbour (Constitution) Revision Order ("the Commissioners' Order").

3. The Works Order, if made, would authorise the Council to create a marina adjoining the existing fishery harbour at Bridlington for up to 500 vessels with a minimum impounded water area of 72,000 square metres. It would also authorise the reclamation of land below the mean high water mark, by the creation of a platform. This was to provide a potentially developable area of approximately 147,000 square metres for future mixed-use development (which development was not provided for in the Works Order and would be the subject of a future application for planning permission).
4. The Revision Order, if made, would vest the undertaking of the Bridlington Piers and Harbour Commissioners in the Council as part of the Council's harbour undertaking and would dissolve the Commissioners.
5. The Empowerment Order, if made, would establish the Yorkshire Harbour and Marina Authority and provide for that Authority to have comprehensive powers and duties relating to the maintenance, regulation and operation of both the new marina and the existing harbour.
6. The Inspector's report of all the concurrent inquiries is enclosed. Attached to that report are the reports of the two assessors who sat with the Inspector, Professor Tom Pritchard PhD, BSc, FRSA and Dr Lynn Moseley PhD, BArch, RIBA. They were appointed by the Secretary of State to advise, respectively, on environmental issues and listed building matters.
7. In parallel with this letter, the Office of the Deputy Prime Minister is today issuing, on behalf of the First Secretary of State, a decision letter about the Council's two listed building consent applications; and this Department is today issuing, on behalf of the Secretary of State, a separate decision letter about the Commissioners' Order.

Summary of Inspector's recommendations

8. The Inspector recommended in section 12 of his report that the Works Order, the Revision Order and the Empowerment Order **be not made** and that the planning direction **be refused**. He recommended also that the Council's two listed building consent applications be refused; and that the Commissioners' Order be made with modifications.

Summary of the Secretary of State's decisions

9. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendations on the Works Order, the Revision Order, the Empowerment Order and the planning direction. **He has, therefore, decided not to make those Orders and not to give the requested planning direction.**
10. In the two separate decision letters referred to at paragraph 7 above, the First Secretary of State has decided to refuse the Council's two listed building consent applications; and the Secretary of State has decided to make with modifications the Commissioners' Order.

Inspector's conclusions on the Works Order and Planning Direction

11. The Inspector's conclusions on the main issues relating to the Works Order and the planning direction (as referred to in the Secretaries of State's statement of matters for the inquiries) are set out in paragraphs 11.62 to 11.178 of his report. Paragraphs 11.179 to 11.191 of that report provide a summary of his conclusions and his overall balancing of those conclusions. References below to paragraph numbers are to paragraphs in the Inspector's report, unless otherwise stated.
12. In favour of the Council's proposals, the Inspector said that he attached due weight to the impressive level of representative support for them (11.180). He considered that a marina development, with associated investment in additional landside facilities, including in particular the refurbishment of Bridlington Spa and the building of a substantial hotel, would achieve the objective and the benefits which the Bridlington Regeneration Partnership and the Council had set for the

proposed Yorkshire Marina (11.181). He considered that the proposals would be reasonably capable of attracting the funding which would be needed to carry out the proposed works (11.184). He saw no unacceptably adverse impacts of the scheme on either navigation or customary rights, and he considered that the proposals were consistent with the policies contained in Planning Policy Guidance (PPG) 16 on archaeology and planning (11.188). The Inspector also recognised that, without a major boost from a scheme such as the marina proposal, the evidence given to the inquiries was to the effect that the future for Bridlington was one of continuing slow decline. He considered that none of the alternative schemes canvassed at the inquiry would have the same positive economic effect (11.189).

13. Against this, the Inspector found that although the scale, location and design of the proposed works were in principle satisfactory, he did not consider that a case had been made out for the inclusion of shops, offices and commercial or leisure facilities on the reclaimed land. Consequently, he was not convinced that the size of the reclaimed area that the Council sought to create was justified and he could not say that the Council needed to acquire all the land for which compulsory purchase powers were sought (11.182). He considered that the Council's proposals were not entirely consistent with the Development Plan and the Regional Planning Guidance (11.183). Furthermore, the loss of a significant area of beach was of substantial significance and could not be mitigated (11.185).

14. The Inspector was also concerned at the prospect of the Council carrying out works under the Works Order without having in place an approved landside scheme and a chosen developer. He noted, on the contrary, that the Council had prepared a fallback position of a list of what they regarded as acceptable interim uses for the reclaimed land (11.186). He also considered that the proposed works to the listed piers were unacceptable. In his view, the proposals would destroy the essential nature of the South Pier and irreparably harm the setting of the two listed buildings (11.188).

15. Balancing all these conclusions, the Inspector's overall view was that the lack of clear justification for the size of the reclaimed area, the conflicts with planning guidance, the environmental impact of the loss of a large and particularly important area of beach, and the damage which would be caused to the listed piers - allied to the uncertainty of the timescale within which eventual development of the reclaimed land would be achieved and the possible impact on tourism in the meantime - outweighed the economic benefits which could be anticipated from the Council's proposals for both the marina and the subsequent landside development. He did not consider that the present lack of an alternative capable of delivering the same level of economic benefit as the Council's scheme was an argument strong enough to make such an unacceptable scheme acceptable (11.190). The Inspector therefore concluded that the Works Order should not be made and that the planning direction and listed building consent applications should be refused (11.191).

Secretary of State's consideration of the Works Order and Planning Direction

16. Subject to the qualifications set out below, the Secretary of State agrees with the Inspector's conclusions and accepts his recommendations. The following qualifications do not, however, affect the decision on the Works Order and Planning Direction as they serve to reinforce rather than to weaken the arguments against allowing the Council's proposals.

17. Overall, the Secretary of State agrees with the Inspector that the disbenefits of the scheme, as summarised at paragraph 15 above, outweigh the benefits that could flow from the proposed marina and the indicative future 'topside' development on the proposed platform. He takes the view, however, that in some respects the Inspector's summary conclusions tend to understate the environmental disbenefits of the proposals whilst overplaying the potential benefits.

18. With regard first to the disbenefits of the scheme, the Secretary of State notes that the Inspector, in his summary and overall balancing of conclusions, has said at 11.185 that "as regards the impact on local people and the environment, the only area of concern is the effect of the loss of a significant area of beach." However, in the Secretary of State's view, this comment sits uncomfortably with other parts of the Inspector's conclusions and does not fairly reflect the range of adverse impacts of the

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proposed works that the Inspector acknowledges elsewhere in his report. The Secretary of State notes in particular that, at 11.149, the Inspector has said that "for the reasons given in his report, I share Professor Pritchard's views and conclusions on the likely impacts of the proposed works on nature conservation, the marine environment and visual effects set out in paragraphs 11.144 to 11.148 above." In this respect, the concerns of the environmental assessor which the Inspector endorses in his report clearly extend beyond the loss of a very important stretch of beach - which the Secretary of State agrees is a major adverse impact in its own right. The environmental assessor was also particularly concerned that the proposed scheme would have a major adverse impact in terms of the potential destruction of ecological features under its footprint, as well as having adverse visual impacts.

19. The Secretary of State agrees with the conclusion of the environmental assessor, as endorsed by the Inspector at 11.149, that the obliteration of the beach and the near shore environment, which is of high ecological and visual quality, would be an impact at a major adverse level of significance which would be seriously damaging to the natural heritage of Bridlington. Furthermore, as regards the alteration in the character of the landscape, the Secretary of State shares the concerns of the environmental assessor and the Inspector at the impact of the size of the area affected in relation to the size of the present harbour at Bridlington and the central area of the town around it. Having regard also to the damage which would be caused to the listed piers - in respect of which the Inspector has endorsed the views of the listed building assessor that the proposals would destroy the essential nature of the South Pier and would irreparably harm the setting of the two listed structures - the Secretary of State considers that the proposed works would have a range of serious adverse effects on both the natural and man-made environment of Bridlington which together present a powerful case against allowing the proposed works.

20. Against those very strong disbenefits, the Secretary of State accepts, like the Inspector, that the proposed marina and landside development scheme, including the use of reclaimed land, has the potential to provide a significant boost to the economy of the area. The level of support locally for the scheme, both from the public and private sectors, is impressive. At the same time, the Secretary of State is mindful that no planning application has been made for any future development scheme on the proposed reclaimed land; that the Works Order makes no provision for any such development; and that it is uncertain when such an application might come forward. Hence, whilst he accepts that it is appropriate for him in coming to a decision to have regard to the potential economic benefits of a future scheme for developing on top of the land to be reclaimed, he considers that the degree of weight he can attach to such potential benefits is limited by the fact that the extent and make-up of a future development scheme has yet to be defined other than in an illustrative, indicative fashion, which in turn means that its environmental effects and its full range of likely impacts have yet to be properly assessed. Therefore, in terms of the overall balancing of the arguments for and against the proposals before him for determination, it appears to the Secretary of State that whereas on the one hand the adverse effects of the proposals the subject of the Works Order are clear, and present a very compelling case against allowing those proposals, the potential benefits of any future topside development are, inevitably in this situation, more speculative in nature.

21. The Secretary of State also shares the Inspector's concerns that the creation of a large reclaimed area which then took years to develop would be a disaster for Bridlington (11.157). The Inspector took the view that reclamation works should not commence until a developer was in place for the landside development, and he supported a modification to the Works Order proposed by the Commissioners which would mean that the Order would not come into force until the Council had received detailed planning permission for development on the reclaimed land (11.197). However, the Secretary of State considers that such a modification would be unacceptable as it would make the coming into force of the Order (which would be secondary legislation) contingent on the actions and decisions of third parties and it could result in the indefinite deferral of those powers, with unacceptable blighting consequences. The fact that he does not consider that he can appropriately make such provision - which the Inspector has identified a need for - serves to reinforce the case against making the Works Order, as it leaves open the possibility of a long time lag between the

exercise of the powers sought in the Works Order and the subsequent implementation of a future development scheme.

22. The Secretary of State also wishes to qualify the Inspector's assessment of the extent to which the Council's proposals are consistent with regional and local planning policies. The Inspector commented at 11.116 that Policy E10 of the Humberside Structure Plan did not offer any support for the proposed works as it said that tourist developments within built up areas would normally be permitted, whereas this proposal was not within a built up area but largely sought to cover an area of open beach and an area of sea. The Secretary of State agrees that this proposal would be largely outside a built up area but he notes that policy E10 also covers tourist developments which cannot reasonably be located within built up areas and sets out circumstances in which such developments would be considered sympathetically. However, in view of the adverse environmental impacts of the proposed works referred to above, which means in his view that the tests for acceptability in policy E10 would not be met, the Secretary of State considers that not only does policy E10 not offer support for the proposed works but that it positively militates against them.

23. Having regard to all these factors, the Secretary of State's overall assessment is that the case for the Works Order and the planning direction is significantly outweighed by the compelling arguments against the proposals in the Order and direction. **In these circumstances, he has concluded that the powers sought in the Works Order cannot be justified as being in the public interest and he has decided not to make the Works Order or to give the planning direction.**

Inspector's conclusions on the Revision Order and Empowerment Order

24. The Inspector concluded that the proposals for the Revision Order and the Empowerment Order were dependent on the making of the Works Order. He accepted that if the Works Order were to be made the Council's arguments for their proposed arrangements - concerning the creation of a new body to unify ownership of the affected land with management of the harbour and marina - were sound, subject to certain modifications to the Revision and Empowerment Orders (11.203). However, the Inspector considered that the only justification for the replacement of the Commissioners by the Council's proposed arrangements would be if the Works Order were to be made and a marina constructed. Since the Inspector recommended that the Works Order be not made, it followed that he recommended that the Revision Order and the Empowerment Order also be not made (11.202).

Secretary of State's consideration of the Revision Order and Empowerment Order

25. The Secretary of State has taken into consideration the Inspector's report and the objections which were received to the Council's Revision and Empowerment Orders. He agrees with the Inspector that the Revision Order and the Empowerment Order are entirely connected with the Works Order and that consequently a decision concerning the first-mentioned Orders is dependent on a decision on the making of the Works Order. **Accordingly, having decided not to make the Works Order, the Secretary of State sees no reason to make, and has decided not to make, the Revision Order and the Empowerment Order.**

Legal submissions

26. The Inspector set out at 2.39 to 2.127 the details of a number of legal submissions made during the course of the inquiries and offered his views on them at 11.3 to 11.61. These submissions were made by objectors to the above-mentioned Orders and were concerned with alleged defects in the powers sought in the proposed Orders and the procedures that had been followed by the Council. However, in view of his decisions to reject these Orders on their merits, the Secretary of State considers that it is unnecessary for him to express an opinion on those legal matters for the purposes of determining the applications in question.

Conservation (Natural Habitats, &c.) Regulations 1994

27. Since the Secretary of State has decided not to authorise the proposals in the Works Order, it is unnecessary for him, for the purposes of the above Regulations, to assess the implications of those proposals for the candidate Special Area of Conservation at Flamborough Head.

Notice under section 14 of the TWA

28. Notice of the Secretary of State's determination not to make the Works Order is hereby given pursuant to section 14(1)(a) of the TWA. For the purposes of this notice, the Secretary of State confirms that that he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA about consideration of the environmental statement and of representations relating to it.

Right of challenge

29. There is no statutory right to challenge the Secretary of State's decision not to make a TWA Order, a Harbour Revision Order or a Harbour Empowerment Order, or not to give an associated direction as to deemed planning permission. However, any person who is aggrieved by the decisions on the Works Order, the Harbour Revision Order, the Harbour Empowerment Order or the planning direction may seek the permission of the High Court to challenge the decisions by judicial review.

Distribution

30. Copies of this letter and of the Inspector's conclusions and recommendations are being sent to all persons who appeared at the public inquiry.

Yours faithfully,

Peter Sanders

Head of Corporate Secretariat Division