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AH003/mh

24 February 2010

Mr P Coffey
Development Control
Suffolk Coastal District Council
Melton Hill
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IP12 1AU

Mr S Miller
Development Control
Ipswich Borough Council
Grafton House
15 - 17 Russell Road
Ipswich
IP1 2BX

Dear Sirs,

The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (“the Order”)

Deemed planning permission granted by the Secretary of State for Transport by letter dated 23 September 2008 (the “Planning Permission”)

Application for replacement planning permission subject to a new time limit

We refer to the above deemed planning permission and application and our recent discussions with you in respect of the duration of the deemed planning permission. This application should be understood in the context of the material change in world economic circumstances that has taken place since the original permission was granted in September 2008 and explained in this letter as well as the other accompanying documents.

Condition 1 of the Planning Permission states:

1. Time Limits

The development shall commence no later than the expiration of five years beginning with the date that the Order comes into force.

Reason: to ensure that the applicants have sufficient time to secure the necessary approvals from Network Rail and that the development is then commenced within a reasonable period of time.

The Order came into force on 14th October 2008. For the reasons stated below we are seeking the grant of a replacement planning permission subject to a new time limit in relation to the Planning Permission, so as to provide for the works to be commenced by 31 December 2018.

1. Supporting Documents

1.1 This letter is accompanied by the following supporting documents:

1. Application Form including Certificate in Form C under Article 7 of the Town and Country Planning (General Development Procedure) Order 1995;
2. Schedule of Plans and copy plans (1 set at A1, 3 sets at A3);
3. Planning Statement;
4. Supplementary Environmental Report;
5. Non-Technical Summary;
6. CD Rom containing copy ES and Addendum in respect of the Order;
7. Bundle of copy documents referred to in this letter:
 - 7.1 Planning Permission dated 23rd September 2008;
 - 7.2 Order;
 - 7.3 s106 Agreement dated 25 November 2004;
 - 7.4 s106 Deed of Variation dated 29 April 2008;
 - 7.5 HPUK Report dated 12 February 2010; and
 - 7.6 DfT Rail letter dated 11 February 2010.
8. Fee.

2. Background

2.1 In November 2003 Hutchison Ports UK Limited ("HPUK"), on behalf of its subsidiary company The Felixstowe Dock and Railway Company ("FDRC"), applied for planning permission and the other necessary consents to expand capacity of the Port at Felixstowe known as the Felixstowe South Reconfiguration ("FSR"). Following a public inquiry in 2004, the Secretary of State for Transport's decision letter dated 1 February 2006 confirmed his intention to make a Transport and Works Act Order and a Harbour Revision Order as well as granting other consents. He agreed with the Inspector's conclusion that there is a pressing and increasing need for additional deep-water container handling facilities in the UK to meet the national need for

additional container handling capacity, and that Felixstowe is well placed to meet that need.

- 2.2 The First Secretary of State's decision letter of the same date, granting planning permission, also concluded that FSR would make a contribution to meeting a recognised and urgent need, while achieving improved safety on the roads and increasing the share of goods carried by rail. Both Secretaries of State acknowledge the importance of maintaining and expanding the UK ports, given the dependence of the national economy on international trade. The expansion of the Port of Felixstowe through the implementation of FSR is thus not merely desirable, but already has express government approval.
- 2.3 In connection with the grant of planning permission for FSR, HPUK entered into a deed dated 25 November 2004 under section 106 of the 1990 Act with Suffolk County Council ("SCC") and Suffolk Coastal District Council ("SCDC"). The deed contains an obligation to undertake improvement works to rail infrastructure. These include the works the subject of the TWAO and the Planning Permission and other works located at more distant points on the rail network (together, the "Remote Railway Works"). The deed was subsequently varied by a Deed of Variation ("the Deed") dated 28 April 2008. (Copy provided at Annex 7.4).
- 2.4 Subsequently, a new planning permission was granted for FSR (C07/2350 dated 29 April 2008) granting planning permission subject to variation of conditions 1, 2, 3, 5, 21, 32, 37 and 38 of the original FSR planning permission C03/2000 dated 1 February 2006. In short, these varied conditions:
 - 2.4.1 recognised that FSR was to be a phased development;
 - 2.4.2 brought forward the delivery of the junction improvements at Copdock and Dock Spur roundabouts;
 - 2.4.3 removed the requirement for a binding legal agreement prior to implementing FSR between the applicant and Network Rail in respect of the Remote Railway Works; and
 - 2.4.4 removed the backstop date of 31 December 2009 for delivery of those works.
- 2.5 The Deed, at paragraph 7 to Schedule 1, provides that no part of phase 2A or phase 2B of FSR shall be operated unless a Binding Legal Agreement has been concluded with Network Rail for the provision of the Remote Railway Works and in any event that those works should be provided by 31 December 2014. It was provided that the binding legal agreement could provide such other date as Network Rail and DfT Rail may agree.
- 2.6 On 13 December 2005 FDRC applied for the Felixstowe Branch Line and Ipswich Yard Improvement Order ("the Order") under the Transport and Works Act 1992 and for a deemed planning permission

for the development authorised by the Order. Following a public inquiry the Order was made and came into force on the 14th October 2008 and the Planning Permission was granted for works to dual approximately 7 kilometres of the Ipswich to Felixstowe branch railway line and to carry out improvements to the Ipswich Yard and Westerfield level crossing ("the Railway Works"). The Planning Permission was conferred by the decision letter, and is dated 23 September 2008.

- 2.7 There are 27 conditions attached to the Planning Permission. Of particular relevance is condition 1 which requires the implementation of the development within 5 years from the date on which the Order comes into force - i.e. by 14 October 2013. The Order authorises the Railway Works and also confers compulsory purchase powers to FDRC, which must be exercised before the end of the period of 5 years from the date on which the Order came into force.
- 2.8 The Railway Works are linked to FSR and are to be provided as part of the planning obligations relating to FSR. The section 106 agreement entered into in relation to the FSR scheme dated 25 November 2004 (as amended by the Deed) (the "Planning Agreement") prohibits the operation of Phase 2A or Phase 2B of FSR unless:
- 2.8.1 a binding legal agreement was concluded with Network Rail for the provision of the Remote Railway Works 42 months before the operation of Phase 2 and by 31 December 2014 any event;
- 2.8.2 the binding legal agreement must provide for the delivery of the Remote Railway Works by 31 December 2014; and
- 2.8.3 the Remote Railway Works and rail terminal works forming part of FSR have been completed and open for rail traffic.

3. Proposal

- 3.1 Following discussions between HPUK, DfT Rail and Network Rail it has been agreed that the Remote Railway Works should be deferred to be provided by 31 December 2018 (see letter at Annex 7.6). The basis for the agreement is two-fold: first, HPUK has requested the change due to considerations in respect of the global economic downturn; and secondly, HPUK has demonstrated that rail capacity can accommodate predicted volumes without impacting on the highway network until this date. These considerations are shown in HPUK report dated 12 February 2010 at Annex 7.5.
- 3.2 HPUK remains committed to the implementation of Phase 2 of the FSR development and the delivery of the Railway Works in the medium term. However, in the light of the continuing current, more

challenging economic situation HPUK has been reviewing the position generally.

- 3.3 HPUK believes that the current economic situation has a material effect upon its long term investment proposals. However, this situation can be ameliorated - for the benefit of the region - by allowing a 10-year implementation period for the Railway Works.
- 3.4 Market conditions and the economic climate since mid-2008 are of course important considerations for HPUK. Since permission was granted, a number of other schemes have received consent: notably, London Gateway at Shell Haven; expansion at the Royal Seaforth Container Terminal at the Port of Liverpool; and PD Ports' plans for the Northern Gateway Port at Teesport. Nevertheless, notwithstanding these additional permissions HPUK does not consider the projects to which they relate to be alternatives to its own proposals.
- 3.5 Hutchison Port Holdings ("HPH"), the parent company of HPUK, is proposing to develop FSR in a market that is extremely competitive, not only within the UK but also within northern Europe. It is key to the Port of Felixstowe's future development plans that capacity is brought online in a timely and cost effective manner to secure the future prosperity of the Port, its employees, associated industries and the local economy generally. At the same time HPUK is keen to ensure that Phase 1 of FSR is the first new capacity available in order to secure existing customers by providing the appropriate facilities at Felixstowe.
- 3.6 HPUK and HPH's view of the market is supported by the Government's Draft National Ports Policy Statement ("NPPS"). This confirms that the long term effect of the recession will delay, but ultimately will not reduce, the eventual levels of demand for port capacity¹. HPUK considers that construction of Phase 2 of FSR and the Railway Works may be deferred for the next few years, but it remains necessary to build out the facility to meet demand for port capacity as market conditions improve in line with Government predictions. HPUK is committed to delivering this capacity.
- 3.7 HPUK has been in negotiations with Network Rail and DfT Rail and they support the deferral of the delivery of the Remote Railway Works in the short/medium term. As the outcome of these negotiations it has been agreed that HPUK would need to enter into a binding legal agreement with Network Rail for the provision of the Remote Railway Works by 1 June 2013 and to provide the Remote Railway Works by 31 December 2018. Should HPUK need the scheme in advance of 31 Dec 2016 (i.e. Phase 2 FSR becomes operational prior to this date) DfT Rail and Network Rail would require 42 months advance notice.

¹ draft National Ports Policy Statement paragraph 1.11.4

- 3.8 Therefore, with regard to the proposed agreements in respect of the FSR scheme, HPUK now wish to secure a longer consent period for the Planning Permission. The operation of FSR Phase 2 is inextricably linked to the provision of the Remote Railway Works. However, conversely the Remote Railway Works and FBL in particular could be delivered in advance of FSR Phase 2, should HPUK require the capacity in advance.
- 3.9 Based upon HPUK's assessment of the market, it is anticipated that Phase 2 of FSR will be operational and the Remote Railway Works will be delivered by 31 December 2018.
- 3.10 In order to secure this change it is proposed that a suite of applications be made, namely:
- 3.10.1 application for a grant of a replacement permission subject to a new time limit for the Railway Works contained in the Planning Permission;
 - 3.10.2 a further variation of the section 106 agreement relating to FSR at Phase 2; and
 - 3.10.3 an application in due course for an order so as to extend time for acquisition of land.

4. Legal Matters

4.1 Planning Permission and EIA

- 4.1.1 In the first instance HPUK is making these applications to SCDC and IBC for replacement planning permissions in respect of the Planning Permission subject to a new time limit so as to enable the construction of the Railway Works in alignment with Phase 2 of the FSR.
- 4.1.2 While the Planning and Compulsory Purchase Act 2004 amended section 73 of the Town and Country Planning Act 1990 to prohibit the extension of time limit, the Government has introduced secondary legislation because of the impact of the recession. The Town and Country Planning (General Development Procedure) (Amendment No.3) (England) Order 2009 allows the extension of time for implementing planning permissions granted on or before 1 October 2009 where development has not yet begun. This is the grant of a replacement planning permission subject to a new time limit.
- 4.1.3 The application for a replacement permission subject to a new time limit is an application for a planning permission. As a result the application in respect of the Railway Works is susceptible to environmental impact assessment ("EIA"). This is because Schedule 1, paragraph 7 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales)

Regulations 1999, relates to construction of a line for long-distance railway traffic.

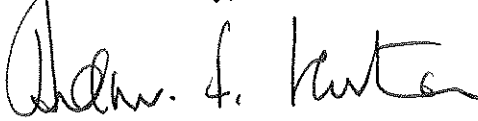
- 4.1.4 However, because the variation to the Planning Permission already granted does not have a material effect upon the environment or result in a change to the Railway Works, it is not caught by paragraph 21 of Schedule 1 to these regulations because the change itself (the extension of time) will not result in significant environmental effects. Similarly, the change does not fall within paragraph 13(a) to Schedule 2 of these Regulations. The application documents should provide assurance in this respect by updating effects that may have changed due to passage of time. This assurance may be found in the Supplementary Environmental Report.
- 4.1.5 HPUK is advised that in light of the conclusions of the work carried out on our behalf by ERM and set out in the Supplementary Environmental Report the change will not result in significant adverse effects on the environment. In summary, the changed development is no worse than or better than the existing, consented development.

4.2 FSR Planning Agreement

- 4.2.1 The relevant provisions of the Planning Agreement will also need to be amended in the light of the outcome of the negotiations between Network Rail and HPUK. The proposed deed of variation will secure the same obligations as apply under the Planning Agreement save for the updated Remote Railway Works commitments.
- 4.2.2 A variation is required because although the Planning Agreement allows a different time limit to be contained in a binding legal agreement, that agreement is not yet in existence. Therefore, to ensure that no technical breach of the terms of the Planning Agreement arises, a variation is proposed. This allows sufficient time to be taken in negotiating the binding legal agreement.

HPUK trusts that the above explanation is clear and looks forward to discussing it with you in greater detail.

Yours faithfully,



ANDREW HARSTON
Port Development Director

cc. Alan Newman - Suffolk County Council (Letter only)