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Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 (SECTION  
20)  
APPEALS BY HUTCHISON PORTS (UK) LTD  
LAND AT BATHSIDE BAY, HARWICH AND LITTLE OAKLEY, HAMFORD WATER  
APPLICATION NOS: 03/00600/FUL, 03/00601/FUL, 03/01200/FUL & 03/00602/LBC**

1. I am directed by the First Secretary of State to say that consideration has been given to the report of the Inspector, K G Smith BSc (Hons) MRTPI, who held an inquiry, which closed on 21 October 2004, into appeals made by Hutchison Ports (UK) Ltd against the failure to give notice within the prescribed period of a decision on applications for planning permission for:-
  - a) the reclamation of Bathside Bay and development to provide an operational container port, comprising:
    - engineering and reclamation works including construction of a cofferdam and 1,400 metre quay wall;
    - construction of a concrete block-paved container handling and stacking facility with 11 quayside cranes and 44 rubber tyre gantry cranes and associated workshop, customs control, border inspection post and mess buildings, substations, fuelling station and mast and crane mounted lighting;
    - development of a 6.13 ha rail terminal with 3 rail gantry cranes and heavy duty container transfer area linked to existing rail facilities;
    - associated office building, logistics facility, car and HGV parking and driver facilities;
    - site works, including additional hardstanding, structural landscape and mounding, wetland buffer, internal estate roads and perimeter fencing.
  - b) a small boat (sic) harbour, comprising: engineering and reclamation works, including construction of a cofferdam wall and breakwater; sheltered moorings for boats and wave wall; slipway and boat storage and tender compounds; public viewing and seating areas; Fishermen's store and fuel

facility; and site works including access road, car parking and lighting, fencing and landscape mounds

- c) the removal of vegetation, localised removal of topsoil, construction of a seawall, associated borrow dyke system and wave breaks and managed realignment of coastal flood defences by breaching the existing seawall to create estuarine and coastal habitat comprised of (sic) approximately 76ha of intertidal mudflat, approximately 19ha of intertidal mudflat/saltmarsh transition, approximately 10ha of saltmarsh, approximately 5 ha of sand and shingle and approximately 7ha of fresh/brackish water borrow dykes, together with associated engineering (including diversion of footpath), drainage and earthworks.

and an appeal against a failure to give notice within the prescribed period of a decision on an application for listed building consent for:-

- d) the partial demolition of the long berthing arm attached to the listed Train Ferry Gantry and associated remedial works.

2. The Inspector held concurrent public inquiries between 20 April and 21 October 2004 into the above appeals and into related applications under the Harbours Act 1964, the Coast Protection Act 1949 and the Parkeston Quay Act 1983 which fall to be decided by the Secretary of State for Transport and are the subject of a separate letter being issued today on his behalf.

#### **INSPECTOR'S RECOMMENDATION AND SUMMARY OF DECISION**

3. The Inspector, whose report is attached to this letter, recommended that the appeals be allowed and that planning permission and listed building consent be granted, subject to conditions. All references to paragraph numbers, unless otherwise stated, are to the Inspector's report (IR). For the reasons given below, the First Secretary of State is minded to agree with the Inspector's recommendation and grant planning permission and listed building consent, subject to the resolution of the issues identified at paragraphs 38 - 41 of this letter.

#### **PROCEDURAL MATTERS**

4. In considering the appeal, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the further information provided under Regulation 19.
5. A signed Agreement under Section 106 of the Town and Country Planning Act 1990, dated 15 October 2004, has been agreed between Harwich International Port Ltd, Tendring District Council and Essex County Council [IR1.9 - 1.13] [inquiry document CD 328]. However, for the reasons given below, the Secretary of State is not satisfied that the proposed HGV capping mechanism would be effective or enforceable. Signed Section 106 Agreements have also been submitted relating to the provision of compensatory inter-tidal habitats, mitigation measures to ameliorate the Environment Agency's concerns on water quality, flood defence and inter-tidal habitats [CD 327]. The issue of compensatory habitat provision is discussed at paragraphs 22 and 23 of this letter. A deed has also been submitted relating to mitigation, compensation and

monitoring measures to ensure compliance with the Conservation (Natural Habitats) Regulations 1994 [CD 329].

## **POLICY CONSIDERATIONS**

6. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises Regional Planning Guidance for the South East (RPG9), the Essex and Southend on Sea Replacement Structure Plan (ESRSP) and the Tendring District Local Plan 1998 (TDLP). Draft RPG14 will eventually supersede RPGs 6 and 9 and will provide a coherent strategy for the East of England, but it does not presently form part of the development plan [IR 18.21].

### **Compliance with the Development Plan**

7. For the reasons given in paragraphs 18.411 - 18.415, the Secretary of State agrees with the Inspector that, overall, the proposals as proposed to be mitigated and compensated, would accord with the broad thrust of development plan policies, particularly in respect of the ESRSP aim to develop Bathside Bay for improved port facilities, the RPG aim to secure the sustainable development of seaports and the policies for the enhancement of the socio-economic and economic interests of the sub-region [IR 18.426].
8. At the time of the inquiry, Bathside Bay was a *proposed* Special Protection Area (SPA) and the Inspector concluded that, as such, the proposal should be subject to the Habitats Regulations as a matter of policy. Since the adoption of the TDLP and the close of the inquiry, Bathside Bay has been designated as an SPA, a proposed extension to the Stour and Orwell estuaries Ramsar site, and is included within the Stour Estuary Site of Special Scientific Interest (SSSI). The Secretary of State does not consider that this alters in any way the consideration of the proposals as at the inquiry and he agrees with the Inspector that the proposals should be determined in accordance with the Habitats Regulations [IR 18.22].

## **Habitats Regulations**

### **General approach**

9. Regulation 48 of the Habitats Regulations requires, when considering a proposal likely to have a significant effect on a European site, that an appropriate assessment be made of the implications for the site in view of its conservation objectives. If it is established that the proposal will have an adverse impact on the integrity of the European site, Regulation 49 requires an assessment of whether there are any alternative solutions and, if not, whether the proposal must be carried out for Imperative Reasons of Overriding Public Interest (IROPI). If it is found that there are no alternative solutions, and that there are imperative reasons of overriding public interest, Regulation 53 states that any necessary compensatory measures must be secured to ensure that the overall coherence of Natura 2000 is protected.
10. The Secretary of State agrees with the Inspector that, in this case, an essential element of IROPI is, in broad terms, the need for terminal capacity and that, without a need for the development being established, there is no need to look at alternative solutions. He also agrees, for the reasons given in paragraph 18.27, that it is necessary

to know the extent of any need before considering the feasibility of any alternative solutions. The Secretary of State has therefore proceeded to consider the extent of need for the proposal.

### Need

11. For the reasons given in paragraphs 18.60 - 18.77, the Secretary of State agrees with the Inspector that an appropriate assessment period for examining need is to at least 2030 and that it is advantageous to concentrate business at major hub ports [IR 18.43]. He also agrees with the views of RSPB that the South East quadrant of the UK is the correct location for new container port capacity to meet the needs of the container port industry [IR 18.43]. Furthermore, he agrees with the Inspector, for the reasons given in paragraphs 18.78 - 18.88, that the developer's utilization rate of 85% is a reasonable compromise which serves to demonstrate the point at which capacity would be stretched too far [IR 18.111]. The Secretary of State also agrees with the Inspector that, if there were sufficient capacity and efficient operations, there is no reason why the loss of transshipment trade to foreign ports should not be reversed. For the reasons given in paragraphs 18.95 - 18.97, the Secretary of State agrees with the Inspector that a new terminal at Bathside Bay should achieve at least the same level of productivity as the Trinity part of the Port of Felixstowe, giving a capacity of 2.1 million TEUs [IR 18.113].
12. For the reasons given in paragraphs 18.100 - 18.110, the Secretary of State agrees with the Inspector that Bathside Bay would be required to be in place well before 2020 and that, even with Bathside Bay fully operational, it is likely that more capacity would be needed between 2020 and 2030 [IR 18.113]. There was some discussion at the inquiry concerning the level of productivity improvements on a port by port basis up to 2010. Although it is not possible to be specific about productivity gains after that date, there was no dispute that they would continue [IR 18.113]. Nevertheless, the Secretary of State agrees with the Inspector that productivity improvements by themselves could not deliver a modern competitive ports industry and that therefore productivity improvements at other locations would not obviate the need for a container terminal at Bathside Bay [IR 18.114]. Overall, the Secretary of State agrees with the Inspector that a container port at Bathside Bay would help to meet the national need for container terminal capacity as part of a modern competitive ports industry [IR 18.115].
13. Having concluded that there is a need for the additional container capacity provided by a terminal at Bathside Bay, the Secretary of State has considered whether there are any alternative solutions which could meet the need in other ways.

### Alternative solutions

14. Having regard to the Inspector's conclusions in paragraphs 18.116 - 18.120, the Secretary of State has considered not only whether there are any alternative solutions to the Bathside Bay container terminal proposal but also whether another port proposal elsewhere could be an alternative solution. In considering these matters he has borne in mind his earlier conclusion in paragraph 11 that the South East quadrant of the UK is the correct location for new container port capacity to meet the needs of the container port industry.
15. For the reasons given in paragraphs 18.122 - 18.123, the Secretary of State agrees with the Inspector that there are no alternative solutions to the proposal at Bathside Bay. He also agrees with the Inspector, for the reasons given in paragraphs 18.124 -

18.129, that possible locations at Hunterston, Scapa Flow and further development of Thamesport do not represent an alternative solution to Bathside Bay. Whilst London Gateway could be an alternative solution, he agrees with the Inspector that there is a need for both of these schemes to help to meet the national need for container terminal capacity, and that meeting that need is of vital importance to the UK [IR 18.115]. He also agrees with the Inspector, for the reasons given in paragraph 18.130, that a "no development" option would not constitute an alternative solution.

16. Overall, the Secretary of State agrees with the Inspector that there is no alternative solution to the Bathside Bay container terminal [IR 18.131].

### Assessment of the Impact of the Project

#### *Appropriate Assessment*

17. Before granting consent for the project, the Secretary of State as a competent authority under the Habitats Regulations is required to make an Appropriate Assessment of the implications for the Stour and Orwell designated European site likely to be significantly affected by the project.

18. The Secretary of State considers it necessary first to consider the definition of the project to be assessed. He adopts a broad definition of the project and considers that it comprises the Bathside Bay Container Terminal proposal which was the subject of the eight applications and appeals considered at the public inquiry. He notes the agreement between HPUK, EN and RSPB recorded at IR 2.62 that the information necessary to inform an Appropriate Assessment is contained within the application, supported by material provided to the RSPB in letters of 26 March 2004 and 17 May 2004 (H205.5); there is agreement on the implications of the proposed container terminal and managed realignment on the designated sites within the respective estuarine systems; and EN has agreed the range of impacts identified on other biodiversity matters (for example, protected species) associated both with Bathside Bay Container Terminal and the realignment scheme at Little Oakley.

19. The Secretary of State has carried out an appropriate assessment of the impact of the proposals and, in doing so, has sought the views of English Nature, whose advice is attached to this letter. This assessment is under review, pending the comments of parties on the matters set out in paragraphs 23 and 38 of this letter. There is no dispute in this case that the proposal would adversely affect the integrity of a European site [IR 18.23]. The Habitats Regulations require an assessment of alternative solutions before looking at whether there are any imperative reasons of overriding public interest. For the reasons given in paragraphs 14 - 16 above, the Secretary of State concludes that there are no alternative solutions and he has therefore considered whether there are Imperative Reasons of Overriding Public Interest.

#### *Imperative Reasons of Overriding Public Interest*

20. The Secretary of State has concluded above that there is a need for the Bathside Bay Container Terminal and he agrees with the Inspector that its development to help meet the national need for container terminal capacity as part of the development of a modern competitive ports industry is of vital importance to the UK. The Secretary of State agrees with the Inspector that these factors would constitute imperative reasons of overriding public interest [IR 18.135]. For the reasons given in paragraphs 18.137 - 18.141, the Secretary of State agrees with the Inspector that Bathside Bay Container

Terminal would also be able to significantly assist in enhancing the socio-economic and economic interests of the sub-region.

21. Overall, the Secretary of State agrees with the Inspector that the various elements of the need argument for Bathside Bay constitute imperative reasons of overriding public interest. He agrees that the very significant enhancement from Bathside Bay of the socio-economic and economic interests of the sub-region would not in itself comprise an imperative reason of overriding public interest but that it would be a substantial benefit from the scheme [IR 18.142].

### Compensatory measures

22. Regulation 53 of the Habitats Regulations seeks to secure that any necessary compensatory measures are taken to ensure that the overall coherence of Nature 2000 is protected. For the reasons given in paragraphs 18.146 - 18.165, the Secretary of State agrees with the Inspector, and the views of English Nature, the Environment Agency, Tendring District Council and Essex Wildlife Trust, that the managed realignment site would be a suitable and adequate compensatory habitat. He agrees with the Inspector that the proposals, including the mitigation, compensation and monitoring measures referred to in paragraph 5, would represent the necessary compensatory measures that would need to be taken to ensure protection of the overall coherence of Natura 2000, in accordance with Regulation 53 of the Habitats Regulations.
23. However, since the inquiry, PPG9 (Nature Conservation) has been replaced by PPS9 (Biodiversity and Geological Conservation) and Circular 06/05: Biodiversity and Geological Conservation. As stated in paragraph 17 above, the Secretary of State has carried out an appropriate assessment of the impact of the proposals in the light of the new PPS9 and, in doing so, has sought the advice of English Nature. However, as parties would not have had an opportunity to comment on this new policy in the context of the proposals, the Secretary of State will consider the views of all parties on this matter before reviewing the appropriate assessment and forming a final conclusion.

### Other environmental Impacts

#### Noise and Vibration

24. For the reasons given in paragraphs 18.245 - 18.273, the Secretary of State agrees with the Inspector that there are existing noise problems in the area and that operational and construction noise impacts from the proposed terminal would have a major adverse impact on the locality [IR 18.276]. The Secretary of State agrees with the Inspector that while the Sound Insulation Grant Scheme would be a very effective noise mitigation measure, it would not include all of the properties that would be significantly affected by noise from the Terminal. As such he invites the appellants to bring forward a revised Sound Insulation Grant scheme, having particular regard to the comments of the Inspector at IR 18.261-262. This revised scheme should be agreed with Tendring District Council.

#### Air Quality

25. For the reasons given in paragraphs 18.278 - 18.304, the Secretary of State agrees with the Inspector that there is no substantive evidence to suggest that the modelling or assumptions made to test air quality and impacts are anything but robust, with the

assessed impacts of the different pollutants being generally of either Negligible or Minor Adverse significance. Furthermore, he agrees with the Inspector that there is nothing to suggest that the proposal would result in unacceptable pollution levels that would be harmful to health or general amenity. The Secretary of State agrees with the Inspector therefore that the proposal would not conflict with regional or local planning guidance [IR 18.304].

### Landscape and visual impacts

26. For the reasons given in paragraphs 18.305 - 18.353, the Secretary of State agrees with the Inspector that, at operational and/or construction stages, there would be major adverse impacts on the settings of Harwich, Dovercourt, Bathside, Shotley Peninsular and Harwich Conservation Area. He also agrees with the Inspector that the port illumination, whilst well designed to reduce light spillage and glare, would have a moderate to major adverse effect in terms of its general visual impact [IR 18.527].

### The marine environment

27. For the reasons given in paragraph 18.354 - 18.373, the Secretary of State agrees with the Inspector that the proposal would have a direct impact on local fishing by removing part of the local fishing grounds although, in part, this would be offset by the Little Oakley realignment proposals [IR 18.528]. He also agrees that monitoring and safeguarding measures would be in place to provide a high degree of protection for the marine environment of the estuary and for minimising the risk of any increased erosion.

## **TRANSPORT IMPACTS**

### Draft Travel Plan

28. For the reasons given in paragraph 18.216 - 18.217, the Secretary of State agrees with the Inspector that, although there are doubts as to the feasibility of all the measures, such as securing all of the cycling and pedestrian improvements, the Plan would be effective overall in promoting car sharing and alternative means of transport.

### Rail transport

29. The Secretary of State agrees with the Inspector that the proposed rail freight terminal would be sufficient to provide for the maximum rail freight to be achieved and that there is every indication that this would be well used [IR 18.218]. In addition, Section 106 Agreements have been submitted by the developer which would prevent the implementation of the Bathside Bay Container Terminal until the owner had concluded a binding agreement with Network Rail and/or the SRA for the provision of and payment for remote rail works. The Agreement includes the use by HPUK of reasonable endeavours to achieve, maintain and increase the percentage of hinterland container traffic travelling by rail above and beyond the rail mode share of 22.5%. The Secretary of State notes the Highways Agency's concerns with the Section 106 Agreement, particularly in relation to the W10 gauge clearance [IR 18.184]. However, for the reasons given in paragraph 18.184, the Secretary of State agrees with the Inspector that necessary remote rail works would be constructed to secure sufficient capacity on the network, albeit that further studies would be needed. He agrees that there is policy support for the movement of freight by rail and that rail improvements would be secured that have been seen as desirable for a number of years [IR 18.218].

## Road traffic impacts

30. A Traffic Impact Assessment (TIA) was carried out in May 2004 which contained detailed assessments of the off-site traffic impacts of the proposals. In the base case TIA, the proposal, when fully developed, would introduce 3000 extra 2 way HGV movements a day onto the A120(T) (3,645 in the sensitivity test). The Secretary of State notes the Inspector's comment that, if the capacity at Bathside Bay was to achieve 2.1 million TEUs/year, this would generate between 3,825 and 4000 HGVs per day [IR 18.194], but acknowledges that, unlike the base and sensitivity tests, this scenario has not been modelled.
31. The Secretary of State agrees with the Inspector that the additional traffic generated by the proposal in the base and sensitivity test TIAs could be accommodated within the calculated capacity of that section of the A120 (T) between Ramsey Bridge and Parkeston roundabouts without the need for improvement on capacity grounds. He also agrees with the Inspector that additional traffic could also be accommodated within the capacity of the A120 links between Parkeston roundabout and the A120/Ingestre Street roundabout without the need for improvements to link capacity, although the link between Parkeston and Safeway roundabouts would need to be improved to accommodate the capacity requirements of the Parkeston roundabout [IR 18.198].
32. However, the volume of traffic on those sections of the A120(T) between Hare Green and the A120(T)/Little Bentley/Bentley Road junction, and between the Horsley Cross and Ramsey Bridge roundabouts, would exceed the Congestion Reference Flow by about 2010/11. The Inspector concludes that these sections of the A120 (T) would need to be improved to at least wide single 2 lane carriageway (WS2) standard if they were to accommodate the level of traffic generated by the proposal [IR 18.196]. In addition, he concludes that alterations would be needed to the A12 (T)/A120(T)/A1232 Ardleigh Crown Interchange, the A120(T) Harwich Road, Wix Junction, the A120(T)/Church Hill/Main Road Ramsey Bridge roundabout and the Parkeston Roundabout [IR 18.199]. The Secretary of State considers that the range of improvements suggested by the Inspector provide some indication of what might be required based on the theoretical base case and sensitivity tests. However, he considers that, to gain a more accurate view as to what detailed improvement works are required, it will be necessary to await the outcome of the Stage 1 Study (S1S).
33. Overall, for the reasons given in IR 18.194 - 18.199 the Secretary of State agrees with the Inspector that the proposals would make the A120 (T) unsafe, the single carriageway sections between Hare Green and Horsley Cross would be over capacity and the operation of the Ardleigh Crown Interchange and the Parkeston roundabout would be worsened [IR 18.199].

## Mitigation measures

34. The Secretary of State agrees with the Inspector that major highways improvements would be required to the A120 (T) if the proposals were to proceed [IR 18.202]. The initial step in this process is a Stage 1 Study (S1S) to investigate feasible options to improve the A120 (T) which would lead to a Preferred Route announcement by the Secretary of State for Transport. For the reasons given above, the Secretary of State places great weight on the fact that the S1S will not be constrained only to the base case and sensitivity test, but will be able to consider other alternative scenarios. The developers have agreed to a condition which states that no part of the development

shall begin unless the Secretary of State for Transport has announced a preferred route for the A120 (T) and any consequential improvements; the local highway authority has announced proposals relating to the local highway network; and Section 278 Agreements have been submitted which secure the funding for the improvement works. However, no Preferred Route Announcement has been formally made by the Secretary of State for Transport and no details of improvements to the road network have been identified as no S1S has been carried out as yet [IR 18.203]. The Secretary of State notes that the developer is prepared to fund whatever works are required as a result of the S1S and, for the reasons given in paragraph 18.204, he agrees with the Inspector that there would be a reasonable prospect that all of the required highway improvements could be delivered [IR 18.204].

35. Proposed conditions 45 and 46 would limit the development to the first and second phases only, until identified improvement works are carried out and opened to the public [IR 18.206]. The Secretary of State notes the Highways Agency's position that there would be a reasonable prospect that a suitable highway scheme could be delivered within 7 years of work starting on a S1S if the resulting scheme were uncontroversial [IR 18.209]. The Secretary of State agrees with the Inspector that, given the lengthy period of time for the improvement works to be completed, and the fact that a large proportion of the development could be implemented before such works are completed, there would be risks that uncontrolled port operations would have an unacceptable impact on the highway system before the completion of the A120 (T) improvement works [IR 18.208]. Although a Section 106 Agreement has been developed for the implementation of a capping mechanism to control the movement of HGVs to and from the Terminal, which is intended to protect the trunk road network until the works on the A120 (T) have been completed, for the reasons given below, the Secretary of State has serious concerns with this approach.

#### Capping mechanism

36. For the reasons given in paragraph 18.214, the Secretary of State agrees with the Inspector that the proposed capping mechanism is not without flaws. He is concerned that it offers insufficient safeguards relating to the impact on the A120 during the construction of the Terminal. In particular, like the Inspector, he is not sufficiently clear as to what would happen to the HGVs that arrived after the daily 1800 limit had been reached, potentially being turned away and therefore doubling the traffic impact as they return along the A120. Furthermore, the stop gap period is estimated at 7 years by the HA, and could be longer if the proposed highways works proved controversial or were delayed in their statutory processes. Although the Secretary of State recognises that the capping arrangements would be a reasonable compromise and probably the best that could be achieved, he is concerned that it may lead to consequent adverse impacts on the A120 (T) during what is a very lengthy and uncertain 'stop gap period'. The Secretary of State therefore proposes to extend the requirements of the proposed condition 45 so that no development can begin until contracts for the construction of the highways improvement works are let. A proposed condition is set out at paragraph 40 below. Revised condition 45 in conjunction with condition 46 would, in the Secretary of State's opinion, negate the need for a capping mechanism. He therefore also considers that proposed condition 48 should be deleted. He recognises that the imposition of such a condition may impact practically and economically on the deliverability of the additional capacity and he welcomes parties' views on the implications of this condition.

## **OVERALL BALANCE OF CONSIDERATIONS**

37. The Secretary of State concludes that there is an overriding need for a container port at Bathside Bay to meet the national need for container capacity in the UK and that the proposal would bring significant economic and regeneration benefits to an area that is recognised as a Priority Area of Economic Regeneration (PAER). Although the proposal would result in significant adverse environmental impacts and would impact on European sites of nature conservation interest, there are no alternative solutions and adequate compensation measures have been proposed. For these reasons, the Secretary of State concludes that the proposal is of national importance and he is therefore minded to allow the proposal. The conditions as recommended by the Inspector are attached at Annex A, corrected for minor typographical errors. The Secretary of State considers that the suggested conditions are necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects, with the exception of conditions 45 and 48 which he comments on in paragraph 40 below. He also considers that a condition recommended by the Inspector for the Harbour Revision Order should more appropriately be attached to the planning permission. His views on this are set out at paragraph 41 of this letter.

## **Outstanding issues**

38. The Secretary of State seeks the views of parties on the impact that the publication of PPS9 “Biodiversity and Geological Conservation” and its accompanying Circular 06/05, also titled “Biodiversity and Geological Conservation” has had on their view of these proposals, together with the cancellation of PPG9. The Secretary of State will finalise the Appropriate Assessment under regulation 48 of the Habitats Regulations in accordance with his legal obligations in the light of further submissions.

39. The Secretary of State considers that the proposed Sound Insulation Grant Scheme is deficient in its coverage of affected properties. He therefore invites the appellants to bring forward a revised scheme taking account of the inspector’s comments at IR 18.261-262 and 18.276.

40. Finally, the Secretary of State is not satisfied that proposed condition 45 in conjunction with the capping mechanism provide enough certainty that the required improvement works would be implemented in a reasonable time period of the development commencing. He therefore proposes to extend the requirements of condition 45 to prohibit development commencing until the contracts for road improvement works have been let, and to delete proposed condition 48 in the light of this change. Accordingly, he invites the parties to comment on the following proposed revision to condition 45, and the proposed deletion of condition 48:-

#### Proposed revised condition 45

“No part of the development hereby permitted shall be commenced unless:

- (i) the Secretary of State for Transport has announced a preferred route for the improvement of the route of the A120(T) (including from Ramsey Bridge roundabout to Parkeston) together with consequential and ancillary improvements thereto and to the A120 and any side roads and access between and in the vicinity of:
  - (a) the A120(T)/A133 interchange at Hare Green and Horsley Cross roundabout to no less a standard than two-lane dual carriageway; and
  - (b) from Horsley Cross roundabout to Ramsey Bridge roundabout to no less a standard than wide 2 lane single carriageway.

or in each case such other terminal points for such route improvements as the Secretary of State may announce;

- (ii) the local highway authority has announced proposals relating to the local highway network including the A120 from Parkeston roundabout to Safeway roundabout required as a result of the proposals referred to at (i) above;
- (iii) An agreement or agreements have been concluded pursuant to Section 278 Highways Act 1980 to secure the funding of such route improvement works together with all such consequential and ancillary improvements to the A120 (T), A120 and any side roads in such form and upon such route as may thereafter be authorised pursuant to orders under the Highways Act 1980 and any associated instruments made therewith;
- (iv) The necessary powers and consents to implement these works have been secured; and
- (v) Contracts have been let for such improvement works.”

#### General Permitted Development Order 1995

41. In addition, the Secretary of State agrees with the Inspector, for the reasons given in IR 18.488 - 18.490, that a condition should be imposed restricting permitted development rights on land within the existing Harwich International Port. He considers that this condition should be attached to the planning application rather than the Harbour Revision Order. He therefore invites the parties to offer comments on the following proposed condition:-

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) the hereby permitted container terminal shall not be extended to include land within the existing Harwich International Port without the submission of a planning application and the prior written permission of the local planning authority or of the Secretary of State"

## **CONCLUSION**

42. Accordingly, the Secretary of State is minded to agree with the Inspector's overall recommendation and grant outline planning permission for the proposed development, subject to the proposed conditions attached at Annex A, together with the proposed amendments set out above. However, he proposes to defer his decision to allow the developer and the relevant parties to address the outstanding issues outlined in paragraphs 38 - 41 above. The Secretary of State would be grateful for further representations as requested within the period of six weeks from the date of this letter. Once he has considered the representations to this letter and any further representations from the recirculation of material received, the Secretary of State will then proceed to final decision on the four appeals before him for decision.

Yours faithfully

Andrew Lynch  
Authorised by the First Secretary of State to sign in that behalf