



House of Lords
House of Commons

Joint Committee on the Able
Marine Energy Park
Development Consent Order
2014

Able Marine Energy Park Development Consent Order 2014

Report of Session 2014–15

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Joint Committee on the Able Marine Energy Park Development Consent Order 2014

The Committee was appointed by the House of Commons and the House of Lords to examine petitions relating to the Able Marine Energy Park Development Consent Order 2014 which stand referred to it pursuant to section 4 of the Statutory Orders (Special Procedure) Act 1945

Current membership

HOUSE OF LORDS

Lord Armstrong of Ilminster
Lord Plant of Highfield
Viscount Ullswater (Chairman)

HOUSE OF COMMONS

Paul Blomfield MP
Dr Matthew Offord MP
Craig Whittaker MP

Powers

The committee has the power to report the Able Marine Energy Park Development Consent Order 2014 to both Houses, with or without amendment, or to report that the Order be not approved.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee are on the Internet at <http://www.parliament.uk/business/committees/committees-a-z/joint-select/able-marine-energy-park-development-consent-order-2014/>

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Contents

Report	<i>Page</i>
Introduction	3
Parliamentary procedure prior to referral to the Joint Committee	3
The Joint Committee	4
Scope of inquiry	4
Substantive hearings	4
Conclusion	5
Formal Minutes	6

The Able Marine Energy Park Development Consent Order 2014

Introduction

1. The purpose of this Report is to announce the decision of the Joint Committee on the Able Marine Energy Park Development Consent Order 2014 (“the AMEP Order”) in relation to two petitions previously certified as proper to be received and considered by the Joint Committee.

2. The AMEP Order makes provision for the development of the Able Marine Energy Park on the south bank of the River Humber, involving the construction of a new quay and facilities for the manufacture, assembly, storage and transport of marine energy components (primarily off-shore wind turbines). The development is classed as a “nationally significant infrastructure project” (as defined by the Planning Act 2008 (“the 2008 Act”)) and development consent is therefore granted by means of a development consent order (DCO).

3. An application for the Order was made by Able Humber Ports Limited (“Able” or “the applicant”) on 16 December 2011. In accordance with the 2008 Act, it was considered by a panel of three inspectors, appointed by the Secretary of State for Transport, which recommended, after a six-month examination, approval of the application. The Secretary of State granted consent on 18 December 2013 and made the AMEP Order on 13 January 2014.

Parliamentary procedure prior to referral to the Joint Committee

4. Not all DCOs are laid before Parliament. Section 128 of the 2008 Act, however, required certain sorts of DCO to be subject to special parliamentary procedure (SPP) (under the Statutory Orders (Special Procedure) Act 1945 (“the 1945 Act”). These DCOs, called special procedure orders (SPOs), include those which, as in the case of the AMEP Order, authorise the compulsory purchase of land which has been acquired by a statutory undertaker for the purposes of their undertaking and where the following conditions have been met: (a) a representation has been made by the statutory undertaker about the application for the DCO before the completion of the examination stage; (b) the representation contains an objection to the compulsory purchase; and (c) the objection has not been withdrawn. In this case, a representation was made by Associated British Ports (“ABP” or “the petitioner”), the SPP land having been acquired by ABP’s predecessor, the British Transport Docks Board, in 1967. Although section 128 was repealed by the Growth and Infrastructure Act 2013, it continues to apply in those cases, such as this one, where the application for the DCO was made before 19 October 2012.

5. The AMEP Order was laid before Parliament by the Secretary of State on 10 February 2014. During the subsequent 21-day petitioning period, two petitions were received, both from ABP (one a petition of general objection and the other a petition for amendment). Able lodged memorials (objections) against the petitions. The petitions and memorials were referred to the Lord Chairman of Committees and the Chairman of Ways and Means.

On 2 and 3 April 2014 hearings took place, at the conclusion of which the two Chairmen (sitting together) found that the petitions were proper to be received (in accordance with section 3(3) of the 1945 Act). Their decision was reported to the Houses on 3 April 2014.

6. The special parliamentary procedure makes provision for a 21-day period, beginning on the day on which the Chairmen's report is laid, during which either House may resolve to annul an SPO (section 4(1) of the 1945 Act). No such resolution was passed in either House. As a result, the petitions stood referred to the Joint Committee (section 4(2) of the 1945 Act).

The Joint Committee

Scope of inquiry

7. The Joint Committee held its first meeting on 30 June 2014 to consider certain procedural issues, in particular the scope of its inquiry. During proceedings on a previous SPO, the Rookery South (Resource and Recovery Facility) Order 2011, "an anomaly in the statutory framework governing operation of the special parliamentary procedure" was identified;¹ namely, that, whereas the 1945 Act made provision for Parliament to consider the whole SPO, the "natural interpretation"² of section 128(2) of the 2008 Act was that the special parliamentary procedure was limited to those provisions of an SPO authorising the compulsory acquisition of special land. (The report of the two Chairmen relating to the Rookery South Order sets out the issue in detail.) We have noted in paragraph 4 above that this "anomaly" has now been resolved, although transitional provision has the effect that the SPP continues to apply to the application by Able.

8. The Joint Committee heard submissions from counsel for each of the parties on 3 and 7 July 2014 on the issue of scope. Their arguments dealt principally with whether we should hear evidence on an area of foreshore over which ABP claimed riparian rights as well as adjacent land owned by ABP. On considering the submissions, we concluded that we would hear evidence on all matters raised in the petitions, including those relating to the foreshore.³

Substantive hearings

9. The Joint Committee held substantive hearings from 15 to 22 October 2014. During that period, in accordance with Standing Orders 209(1) (HL) and 243(1) (HC), we heard counsel for the applicant who explained the AMEP Order by reference to a factual statement agreed by the parties but also including reference to a compromise proposal made on behalf of ABP but not accepted by Able. We then heard the case for the petitioner in support of their petition, including evidence in relation to the compromise. The names of those who gave evidence are set out in the Minutes of meetings accompanying this Report. After the case for the petitioner had finished, we heard submissions from both

1 The Rookery South (Resource Recovery Facility) Order 2011, First Special Report of Session 2012-13, HL Paper 120, HC 991.

2 The Rookery South (Resource Recovery Facility) Order 2011: Report on petitions against the Order, First Special Report of Session 2010-12, HL Paper 294, HC 1956.

3 But excluding those relating to the Killingholme Branch Railway which the petitioner indicated they would no longer be pursuing.

parties, in the light of which evidence and submissions we considered whether the applicant had a case to answer (Standing Orders 209(1)(c) (HL) and 243(1)(c) (HC)). We concluded that there was no case to answer and, as a result, we did not invite the applicant to put their case against the petitions.

Conclusion

10. By a majority of 5 to 1, we considered that there was no case for Able to answer in respect of the petitions of general objection and for amendment presented by ABP. We duly report to both Houses the Able Marine Energy Park Development Consent Order 2014, without amendment.

Formal Minutes

Thursday 3 July 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Submissions were heard from the following parties on the scope of the Joint Committee's work: Mr Robert McCracken QC, Counsel on behalf of Associated British Ports (petitions 1 and 2) and Ms Saira Kabir Sheikh QC appeared as Counsel on behalf of Able Humber Ports Ltd (applicant).

A full transcript was taken.

Ordered, that the Joint Committee adjourn to 7 July 2014

Monday 7 July 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Further submissions were heard from the following parties on the scope of the Joint Committee's work, in particular, on the issue of the petitioner's riparian rights in relation to a parcel of their land:

Mr Robert McCracken QC, Counsel on behalf of Associated British Ports (petitions 1 and 2) and Ms Saira Kabir Sheikh QC appeared as Counsel on behalf of Able Humber Ports Ltd (applicant).

The Joint Committee deliberated in private.

The Joint Committee *agreed* to hear evidence on all and only matters raised in petitions 1 and 2 which the petitioner wished to pursue.

A full transcript was taken.

Ordered, that the Joint Committee adjourn to 15 October.

Wednesday 15 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Mr Simon Bird QC, Counsel on behalf of Able Humber Ports Limited (applicant), presented a statement of facts on behalf of both parties.

Mr Andrew Newcombe QC, Counsel on behalf of Associated British Ports (petitions 1 and 2) made an opening statement.

Evidence was heard from Mr James Cooper, Chief Executive of Associated British Ports.

A full transcript was taken

Ordered, that the Joint Committee adjourn to 16 October 2014.

Thursday 16 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Further evidence was heard from Mr James Cooper, Chief Executive of Associated British Ports.

Evidence was heard from Mr Richard Slark, Director of Pöyry Management Consulting.

A full transcript was taken.

Ordered, that the Joint Committee adjourn to 20 October 2014.

Monday 20 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Further evidence was heard from Mr Richard Slark, Director of Pöyry Management Consulting.

Evidence was heard from Mr Duncan Galbraith, Director of Transprojex Limited.

A full transcript was taken.

Ordered, that the Joint Committee adjourn to 21 October 2014.

Tuesday 21 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Further evidence was heard from Mr Duncan Galbraith, Director of Transprojex Limited.

Evidence was heard from:

Mr Peter Whitehead, Associate, Environmental Research Ltd,

Mr Andrew Baker, Managing Director, Baker Consultants, and

Mr Philip Rowell, Director, Adams Hendy Consulting Limited.

A full transcript was taken.

Ordered, that the Joint Committee adjourn to 22 October 2014.

Wednesday 22 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

Further evidence was heard from Mr Philip Rowell, Director, Adams Hendy Consulting Limited.

At the Committee's request Mr Newcombe made a closing statement, Mr Bird made a closing statement and Mr Newcombe made comments in reply.

The Joint Committee deliberated in private.

In relation to petitions 1 and 2 from Associated British Ports it was moved "that the petitioners have presented a case that needs to be answered".

The Committee divided:

Content 1

Not-Content 5

Lord Plant of Highfield

Lord Armstrong of Ilminster
Paul Blomfield MP
Dr Matthew Offord MP
Viscount Ullswater (Chairman)
Craig Whittaker MP

The question was *disagreed to* accordingly.

The Joint Committee agreed that there was no case to answer in respect of both petitions.

A full transcript was taken.

Ordered, that the Joint Committee do adjourn.

Wednesday 29 October 2014

Members present:

Lord Armstrong of Ilminster	Lord Plant of Highfield
Paul Blomfield MP	Viscount Ullswater (Chairman)
Dr Matthew Offord MP	Craig Whittaker MP

The Joint Committee deliberated in private.

A Draft Report (Able Marine Energy Park Development Consent Order 2014), proposed by the Chairman, was read and agreed to, with amendments.

The Order was reported to the House without amendment.

Ordered, that the Joint Committee do adjourn.