

# Public Document Pack

Planning Committee

2 March 2022

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,  
HELD ON WEDNESDAY, 2ND MARCH, 2022 AT 6.00 PM  
IN THE COMMITTEE ROOM, TOWN HALL, STATION ROAD, CLACTON-ON-SEA,  
CO15 1SE**

<b>Present:</b>	Councillors White (Chairman), Alexander, Baker, Casey, Codling, Fowler, V Guglielmi, Harris and Placey
<b>Also Present:</b>	Councillor Stock OBE (Leader of the Council)
<b>In Attendance:</b>	Lisa Hastings (Deputy Chief Executive & Monitoring Officer), Gary Guiver (Acting Director (Planning)), Graham Nourse (Assistant Director (Planning)), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Joanne Fisher (Planning Solicitor), Susanne Chapman-Ennos (Planning Team Leader), Keith Durran (Committee Services Officer) and Matt Cattermole (Communications Assistant)

**207. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

An apology for absence was received from Councillor Bray (with Councillor V E Guglielmi substituting).

**208. DECLARATIONS OF INTEREST**

There were none on this occasion.

**209. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

There were none on this occasion.

**210. A.1 PLANNING APPLICATION - 21/01810/VOC - BATHSIDE BAY, STOUR ROAD, HARWICH, CO12 3HF**

The Committee recalled how, in 2003, Hutchison Ports (UK) Limited (“HPUK”) had applied for planning permission for the construction of a new container terminal and related works at Bathside Bay, Harwich, and the provision of compensatory habitats at Little Oakley and Hamford Water. On 29th March 2006, permissions, inter alia, for reclamation works and a container terminal; a small boat harbour; the managed realignment of the coastline and creation of compensatory inter-tidal habitats off-site, and listed building consent in respect of the partial demolition of the long berthing arm attached to a listed Train Ferry Gantry had been granted by the Secretary of State, following concurrent Public Inquiries held between 20th April 2004 and 21st October 2004. Those developments had been subject to rigorous assessments and had been found on balance to be acceptable. In particular, with regard to the then Habitats Regulations, the Secretary of State had found that Imperative Reasons of Overriding Public Interest (IROPI) outweighed the identified harm to the integrity of a European site (the Stour and Orwell Estuaries SPA).

Members were reminded that, in 2010, HPUK had applied for replacement planning permissions for the reclamation works and container terminal (the Container Terminal), and a small boat harbour (the Small Boat Harbour). Those permissions (10/00202/FUL

and 10/00203/FUL) had been granted by the Council on 14 February 2013 and remained extant, but that development needed to have commenced on, or before, 29th March 2022.

The Committee heard how the application now before them sought permission to vary eight of the conditions that had formed part of the 2013 planning permission for the development of the Container Terminal at Bathside Bay, in order to allow for a phased start to the development by 29th March 2022. It was proposed that the list of approved plans specified in one condition be amended, with seven of the originally approved plans being superseded. The applicant had also requested that the wording of seven other conditions be amended to change the timing of their requirements. The original conditions required that details of specific elements of the scheme would be submitted to, and approved by, the Council prior to the commencement of the development, and in the case of one condition required that off-site highway works be implemented before the development could be operated. The applicant had proposed that the wording of those conditions be changed so that an initial phase of the development could commence without those conditions having to be discharged first.

Members were aware that there was a related application (21/01792/VOC) in respect of the Small Boat Harbour, which was the subject of a separate report and would be considered later in the meeting. There was also an application (21/02144/FUL) for planning permission for the provision of compensatory habitats at Little Oakley and Hamford Water. The reclamation works forming part of the Container Terminal and Small Boat Harbour permissions would lead to the loss of approximately 69ha of feeding habitat in the Stour and Orwell Estuaries SPA and it was necessary for compensatory habitats to be created. One of the permissions granted by the Secretary of State in 2006 had been for the compensatory habitats to be created at Little Oakley, but that permission had now lapsed and the applicant now sought a fresh permission for the same development, which would be the subject of a separate report and consideration by the Committee.

Members were informed that this application had been subject to objections from some of the nature conservation bodies, including Natural England. In the view of Officers the most significant objections raised concern about the adequacy of the compensatory measures and the change in July 2020 to the boundary of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty. In its objection Natural England took the view that the likely effects of the proposed development on the SPA and AONB had not been adequately addressed in the application material, and it had not been shown to Natural England's satisfaction that the proposed compensatory habitats at Little Oakley would be sufficient. The applicant had met with Natural England to discuss its objection, following which on 11 February 2022 the applicant's agent had submitted a letter responding to the points raised by Natural England. It was the applicant's view that the Environmental Statement and shadow Habitats Regulations Assessment submitted with the application provided an up-to-date assessment of the ecological value of the site and the potential impacts of the development, based on the best, reasonably available, information. It was also stated that the proposed compensatory habitats at Little Oakley were sufficient and their delivery was properly secured.

Members heard how the change to the boundary of the AONB and the likely impact of the proposed development on it were matters which Officers and Members could judge for themselves as part of their assessment of the planning merits (taking into account the Council's statutory duty under section 85 of the Countryside and Rights of Way Act

2000, policy and any relevant representations). There were, however, particular legal requirements relating to development proposals that might affect an SPA. Under the Habitats Regulations the Council had to carry out an appropriate assessment (sometimes called a Habitats Regulations Assessment (HRA)) of the implications of the proposed development on the SPA. As the appropriate nature conservation body, Natural England had an important role to play in this and due weight had to be given to its advice. The Council should not deviate from its advice in this area unless it had cogent reasons for doing so.

The Committee was informed that Officers were satisfied that the variation to the planning conditions and the approved plans were capable of being justified and acceptable, subject to the provision of adequate compensatory habitats. The proposed development remained broadly consistent with the Council's planning policies, provided it secured the required protection of environmental, ecological and amenity interests. It was accepted that the proposed amendments to the layout of the port were necessary for a variety of operational and practical reasons and did not fundamentally alter the nature of the approved scheme. Further, the Planning Practice Guidance (PPG) provided that "*...pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission...*" (Paragraph: 007 Reference ID: 21a-007-20180615). Officers were also of the view that the likely impact on the AONB (as extended) would not provide a reason for refusal.

The Committee was advised that, if ultimately, the decision was taken to grant the application, the new planning permission would need to restate the previous planning conditions (save as varied by the Committee) which would control the development. However, bearing in mind that a number of other pre-development conditions on the 2013 planning permission were being sought to be discharged (or partially discharged), pursuant to 21/01625/DISCON and 21/01817/DISCON, to enable the first phase to go ahead on existing land i.e. without land reclamation/marine works taking place, in line with the PPG those were provisionally recommended to be amended to compliance conditions wherever possible.

The Committee was reminded that the work to update the planning conditions and the list of approved plans was on-going and it was therefore recommended that Members grant the Assistant Director of Planning authority to continue to update the remaining pre-commencement planning conditions (nos. 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 17, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 39, 40, 48 & 49) as those were discharged by the Council through the discharge of conditions applications prior to the issuing of any new planning permission pursuant to this application. There would also need to be appropriate planning obligations in place to ensure (amongst other things) delivery of the compensatory habitats at Little Oakley, and again the Assistant Director (Planning) would require authority to approve such supplemental, or other legal, agreement as was necessary to make the development acceptable so that if Members ultimately resolved to grant planning permission there was an appropriate legal framework of obligations in place.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council’s Planning Team Leader (SC-E) in respect of the application.

An update sheet had been circulated to the Committee prior to the meeting with details of:-

- (1) further consultation responses received from Essex County Council’s Highways Department and National Highways;
- (2) proposed amended wording for planning condition numbers 41 to 44 and 47;
- (3) a further letter of representation from a local resident;
- (4) the applicant’s response to Natural England’s consultation letter dated 4 February 2022 including supporting documents;
- (5) further comments from the Council’s ecologist; and
- (6) a further recommended planning condition requiring a breeding bird survey.

James Bowles, agent for the Applicant, spoke on behalf of the application.

Councillor Neil Stock OBE, Leader of the Council and the portfolio holder with responsibility for Planning, spoke on behalf of the application.

<b>QUESTIONS</b>	<b>ANSWERS</b>
There is a possibility that TDC will refuse the Little Oakley application; how will that impact this application? Have Natural England actually objected to the terms of new conditions?	There is legal condition for the Applicant to secure a compensatory habitat somewhere else, otherwise the applicant cannot move on to the next phase. Natural England have objected as they are not sure if the Little Oakley site would be suitable.
What are the A120 improvements?	The highway arrangements are still to be agreed with the relevant conditions.
Do you have any idea of the increase of traffic that would be generated?	That information is not available and not a matter for consideration at this meeting.
How many jobs?	770 direct jobs and 540 indirect jobs.
Changes to 106 agreement? Handled by committee or legal?	There will be minor changes to the Section 106 agreements.
Have Network Rail been consulted in relation to the rail changes?	They have not been consulted so far.
Should Network Rail be consulted?	It is incumbent on the developer to enter into those talks before moving on in phases.
Are the 770 jobs for the specific area?	Yes
If the road doesn’t meet the workload in the future, is there any safe guard to make sure the roads are improved?	Yes
Are we assured that we can get A120 improved?	Yes
How does the proposed cycling aspect of the A120 fit in/work?	In conditions and in the Section 106, in the deed of variation there are travel plan requirements.

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Alexander and unanimously:-

**RESOLVED** that, subject to compliance with regulation 64(5) of the Habitats Regulations (notification of the Secretary of State), the Assistant Director (Planning) (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to:-

- (a) the completion of a supplemental legal agreement under section 106 of the Town and Country Planning Act 1990 to secure the provision of appropriate compensatory habitats and other matters necessary to make the proposed development acceptable;
- (b) the conditions stated in section 11 of the committee report; the revision of pre-commencement conditions nos. 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 17, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 39, 40, 48 & 49 to compliance conditions (only where details have been submitted to and approved in writing by the local planning authority pursuant to 21/01625/DISCON and 21/01817/DISCON); and the addition of a further condition to secure further bird surveys, a compensation Implementation and Management Plan, and an Adaptive Management Plan as set out above; and
- (c) that the Assistant Director (Planning) be authorised to refuse planning permission in the event that an appropriate legal agreement has not been completed by March 29<sup>th</sup> 2022.

#### Planning Conditions and Reasons

- 1) The development shall be commenced on or before 29th March 2022.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004 to ensure consistency with the planning permission for the construction of the Bathside Bay Container Terminal and to allow sufficient time to implement highway mitigation and improvement measures therefore, other infrastructure improvements and the provision of compensatory habitat.

- 2) The development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

H1001/01	Application Boundary
H1001/02	Rev. C Overall Master Plan
H1001/03	Rev. B RTG Layout Sections X-X
H1001/04	Existing and Proposed Flood Defences
H1001/05	Sheet 1 Existing Topographic Survey
H1001/05	Sheet 2 Existing Topographic Survey
H1001/05	Sheet 3 Existing Topographic Survey
H1001/05	Sheet 4 Existing Topographic Survey
H1001/05	Sheet 5 Existing Topographic Survey
H1001/05	Sheet 6 Existing Topographic Survey
H1001/05	Sheet 7 Existing Topographic Survey
H1001/06	Terminal Office General Arrangement Floor Plans
H1001/07	Terminal Office Elevations and Sections
H1001/08	Terminal Control Gate General Arrangement
H1001/09	Logistics Facility General Arrangement Plan
H1001/10	Logistics Facility – Elevations
H1001/11	Driver Facilities Building Plan and Elevations

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H1001/12	Mess / Amenity Block General Arrangement Plans
H1001/13	Mess / Amenity Block Elevations
H1001/16	Workshop Facility General Arrangement Plan
H1001/17	Workshop Facility Elevations
H1001/18	Lighting Layout
1514LO/52 Rev. A	Structural landscape work and planting proposals Sheet 1 of 3
1514LO/52	Structural landscape work and planting proposals Sheet 2 of 3
1514LO/52	Structural landscape work and planting proposals Sheet 3 of 3
1514LO/53	Illustrative planting Inset Plans & Earthwork Proposals
1514LO/54 Rev. A	Overall Landscape Masterplan
1514LO/55 Rev. A	Terminal Office Landscape Proposals
21026-LSI-Z1-00-DR-A-2000 A – Rev .C01	General Arrangement Plan
Gr. Floor 21026-LSI-Z1-00-DR-A-2050 A – Rev .C01	General Arrangement Elevations S.
21026-LSI-Z1-00-DR-A-2051 A – Rev .C01	General Arrangement Elevations E-W
21026-LSI-Z1-00-DR-A-2052 A – Rev .C01	General Arrangement Elevations N.
21026-LSI-Z1-00-DR-A-2070 A – Rev .C01	General Arrangement Sections S01 / S02
21026-LSI-Z1-00-DR-A-2071 A – Rev .C01	General Arrangement Sections S03 / S04
21026-LSI-Z1-00-DR-A-2072 A – Rev .C01	General Arrangement Section S05
60666559-ACM-BB-LA-10-0002 Rev.02	General Arrangement Phase 1 – Sheet 2 of 2
	Planning and Design Statement dated April 2003
	Planning Statement dated October 2021
	Environmental Statement dated 13 October 2021

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3) No development permitted hereby shall commence until a scheme of phasing substantially in accordance with Application Drawing H 1001/02/A has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide (inter alia) for:
- (a) the construction of the quay wall comprised in the development to begin at the western end of the area marked Phase 1 on Plan H 1001/02/A and proceed thereafter in an easterly direction;
  - (b) the timing of implementation of the landscaping scheme in accordance with Condition 5 below; and
  - (c) the notification of commencement and completion of construction of each phase. The development shall be implemented in accordance with the approved scheme of phasing.

Reason - To protect the amenity of the residents or Bathside, Old Harwich and the ecology of Bathside Bay and to ensure an orderly development and compliance with the Environmental Statement.

- 4) The development shall be carried out in accordance with the Planning and Design Statement dated April 2003 and Planning Statement dated October 2021 identified

in Condition 2 above save insofar as otherwise provided in any condition attached to this permission.

Reason - To ensure that the development is carried out in accordance with the design principles set out in the Environmental Statement.

- 5) No part of the development hereby permitted shall be commenced until a landscaping scheme, including a programme for its implementation according with the indicative scheme shown in the application drawings, including details of screen mounding and tree planting, has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme as approved shall be implemented during the first planting season following completion of topsoil dressing works at the development site. Any tree or shrub dying or becoming seriously diseased within five years of completion of the relevant phase of the development shall be replaced with a suitable specimen of similar species in accordance with the approved scheme.

Reason - To ensure the establishment of a new landscape character in the interests of visual and residential amenity.

- 6) No phase of the development shall commence operation until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas of that phase of the development, has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.

Reason - To ensure the proper management and maintenance of the approved landscaping in the interests of visual and residential amenity.

- 7) No phase of the development shall commence until details of the design and external appearance of the buildings and hardstanding areas to be constructed within that phase of the development according with the Planning and Design Statement dated April 2003 have been submitted to and approved in writing by the Local Planning Authority. The details shall include dark block paving for the container stacking area and quayside comprised in the development. The development shall be carried out in accordance with the details as approved.

Reason - To ensure that the development is carried out in the interests of visual amenity.

- 8) Except with the prior written agreement of the Local Planning Authority and Local Highway Authority, top soil comprised in the development is not to be undertaken using material from any source other than from the managed realignment site at Little Oakley and which shall not be delivered from the said site at Little Oakley other than by sea.

Reason - To ensure that beneficial use is made of available materials and to minimise HGV road traffic entering the site, in the interests of highway safety.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order with or without modification), no development shall begin until a written scheme showing full details of fences, walls, gates or other means of enclosure has been submitted to and approved In writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the details as so approved.

Reason - In the interests of security and visual amenity.

- 10) No part of the development hereby permitted shall be commenced until drawings showing both foul and surface water drainage (including the provision of all oil and diesel interceptors) incorporating a Sustainable Drainage System (SuDS) connected with the development have been submitted to and approved In writing by the Local Planning Authority and thereafter any works in relation to the development shall be undertaken in accordance with the approved drawings.

Reason - To prevent pollution.

- 11) No part of the development hereby permitted shall begin until a scheme for the design of the proposed 'Wetland area' comprised in the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the scheme as approved.

Reason - To ensure appropriate environmental and drainage standards for the proposed wetland area.

- 12) No part of the development (including ground works) hereby permitted shall commence until a programme of archaeological work (including marine archaeology) for the site (including any works that might be necessary and practicable to preserve the remains in situ) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved programme.

Reason - To allow proper investigation and recording of the site, which is potentially of archaeological and historic significance.

- 13) No part of the development hereby permitted shall be commenced until a written Construction Management Plan (CMP) together with a certificate that the same has been submitted in that form to National Highways and Natural England has been submitted to the Local Planning Authority and Local Highway Authority and approved by each of them in writing. The CMP shall include details of management during the construction phase of the development of the matters contained in Conditions 14 to 20 inclusive (construction noise and vibration), a Construction Traffic Management Plan in accordance with the Bathside Bay Construction Traffic Management Plan produced by ERM and dated 7th June 2004, Conditions 25-27 (construction lighting) and Conditions 29-33 (construction dust management) of this permission.

Furthermore, the CMP shall incorporate environmental measures to protect biodiversity, to include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site
- j) The times during construction when specialist ecologists need to be present on site to oversee works.
- k) Responsible persons and lines of communication.
- l) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- m) Use of protective fences, exclusion barriers and warning signs.
- n) Containment, control and removal of any Invasive non-native species present on site

The development hereby permitted shall be carried out in accordance with the CMP as so approved.

Reason - To ensure that the construction impacts of the development are kept within acceptable limits; and to conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021.

- 14) No part of the development hereby permitted shall be commenced until details relating to the control of noise and vibration from the construction of the development have been submitted to and approved in writing by the Local Planning Authority. These details shall include the following:
- (a) definitions of roles and responsibilities;
  - (b) the adoption of best practice for the specification and procurement of quiet plant and equipment;
  - (c) consultation and reporting processes for noise and vibration;
  - (d) noise and vibration monitoring procedures, including recording measures and the location of measuring instruments for each phase of the development;
  - (e) action to be taken in the event of non-compliance with (b) to (c) above;
  - (f) a record of the occasions on which percussive piling operations take place;
  - (g) complaint response procedures;
  - (h) requirements to provide environmental noise awareness training to operatives; and
  - (i) construction methods for percussive piling designed to minimise the noise generated by such operations through practical methods such as shrouding or other appropriate alternative methods.

The development hereby permitted shall be carried out in accordance with the approved details.

Reason - To ensure that the noise and vibration impacts of the development are kept within acceptable limits.

- 15) All plant, machinery and vehicle used on site in constructing the development shall be fitted with effective silencers at all times which shall be maintained in accordance with the manufacturers' recommendations and current British Standards applicable thereto. No such plant shall be left running when not being operated.

Reason -To ensure that the noise impacts of the development are kept within acceptable limits.

- 16) Where any vehicle or plant is required to be fitted with a reverse warning system, such vehicles or plant shall not be installed or used prior to the approval in writing by the local Planning Authority of such a system. In operating such vehicles or plant the approved system shall be used.

Reason - To ensure that the noise Impacts of the development are kept within acceptable limits.

- 17) No percussive piling operation for the development shall be carried out except in accordance with a programme for that phase which shall first have been approved in writing by the Local Planning Authority. The said programme shall provide that:

(i) no percussive piling operations shall be undertaken in relation to the construction of the development during more than thirteen weekends in any six months; and

(ii) except with the prior written approval of the Local Planning Authority no more than three hours of percussive piling of tubular piles for the main quay wall shall take place on any day.

Reason -To ensure that the noise impacts of the development are kept within acceptable limits.

- 18) Except with the prior written agreement of the Local Planning Authority, no percussive piling operations shall be undertaken in relation to the construction of any part of the development outside the hours of:

(a) 08:00 to 18:00 Monday to Friday; and

(b) 09:00 to 13:00 on Saturday;

or at any time on Sundays or Bank or Public Holidays, provided that percussive piling operations may be undertaken in relation to the construction of the development outside the permitted hours:

(i) in the case of emergency, or

(ii) where piling is required on the grounds of safety or environmental protection; and

(iii) In either case the situation would otherwise be dangerous to life or limb.

The Local Planning Authority shall be promptly notified in writing of any event of this type and the reason why percussive piling took place outside the permitted hours.

Reason - To protect residential amenity during construction.

19) The noise from construction activities in relation to the development shall not exceed the following daytime free-field equivalent sound pressure levels, as measured at a height of 1.5 m above ground level at the nearest residential property to the development:

(a) 67 dB LAeq 12H and 85 dB LA1 5 mins (in relation to percussive piling operations) during the hours of 07:00 to 19:00 on Mondays to Fridays, excluding Bank Holidays;

(b) 55 dB LAeq 1hr during the hours of 19:00 to 23:00 on Mondays to Fridays, excluding Bank Holidays; (

(c) 67 dB LAeq 6hr and 85 dB LA1 5 mins (in relation to percussive piling operations) during the hours of 07:00 to 13:00 on Saturdays; and

(d) 50 dB LAeq 1hr at all other times.

Reason - To ensure that the noise impacts of the development are kept within acceptable limits and to protect residential amenity.

20) Vibration levels from piling or other construction activities in relation to the development, as measured immediately adjacent to the nearest residential property or vibration sensitive structure for that phase shall not exceed a peak particle velocity of 5mm/s.

Reason - To protect residential amenity.

21) No part of the development hereby permitted shall be operated until an Operational Noise and Vibration Management and Monitoring Plan (NVP), relating to the control of noise and vibration from the operation of the development has been submitted to and approved in writing by the Local Planning Authority. The NVP shall include the following:

(a) definitions of roles and responsibilities in relation to the obligations contained in the NVP;

(b) requirements for the adoption of best practice for the specification and procurement of quiet plant and equipment;

(c) consultation and reporting processes in relation to noise and vibration;

(d) noise and vibration monitoring and recording procedures;

(e) action to be taken in the event of non-compliance;

(f) complaint response procedures; and

- (g) a requirement to provide environmental noise awareness training to operatives.

The development hereby permitted shall be carried out in accordance with the approved NVP.

Reason -To protect residential amenity.

- 22) Noise from the operation of the development and emanating from the site shall not exceed a free-field sound pressure level of 55 dB LAeq 1 hr at any residential property existing at the date of this permission measured at a height of 4 m above local ground level between the hours of 23:00 to 07:00.

Reason -To protect residential amenity.

- 23) No stack or stacks of containers on any part of the development hereby permitted shall exceed five containers in height save that nothing in this condition shall preclude the lifting of containers above any stack of five containers.

Reason -In the interests of visual amenity.

- 24) There shall be no stacking of containers (other than containers on HGV trailers) more than one high on land south of the rail terminal comprised in the development.

Reason - In the interests of visual amenity.

- 25) No phase of the development hereby permitted shall be begun until a written scheme of construction lighting for that phase has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of:

- (a) definitions of roles and responsibilities;
- (b) design including locations of the construction lighting in accordance with conditions 26 and 27 to this permission;
- (c) installation of the construction lighting;
- (d) management of the construction lighting; and
- (e) construction lighting monitoring procedures and action to be taken in the event of noncompliance.

The development hereby permitted shall be carried out in accordance with the approved scheme.

Reason - To protect amenity and ensure navigational safety.

- 26) The height of fixed lighting installations used in the construction of the development shall not exceed twelve metres above ground level.

Reason - To ensure that the construction lighting impacts of the development are kept within acceptable limits.

- 27) No phase of the development shall commence until details of the luminaires to be mounted on lighting columns on site in connection with the construction of the development have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- (a) use of luminaires with high quality optical systems of flat glass construction, where appropriate;
  - (b) limits upon the aiming angle of the peak Intensity of the luminaire to maintain the light from the luminaire generally within 75 degrees from the downward vertical; and
  - (c) use of the most appropriate photometry reflectors available at the date of this permission.

The development shall be carried out in accordance with the approved details.

Reason - To minimise any possible glare or sky glow caused by the construction lighting for the development and to minimise the effect of the construction lighting on the surrounding areas.

- 28) No part of the development permitted by this planning permission shall commence operation until a scheme for the provision and control of operational lighting (including high mast lighting and column lighting) on that part of the site has been installed in accordance with a scheme which has first been submitted to an approved by the Local Planning Authority. The operational lighting scheme shall include the following:
- (a) use of luminaires with high quality optical systems of Hat glass construction for high mast lighting;
  - (b) use of full cut-off luminaires which do not produce upward spread of light near to or above the horizontal;
  - (c) a restriction on the luminaire tilt angle to maximum of 8 degrees above the maximum peak of intensity angle or luminaire;
  - (d) the direction of high mast lighting so as to minimise direct light into windows or properties in the proximity of the development site;
  - (e) a reduction of the heights of high mast lighting towers and columns towards the boundary of the site;
  - (f) automatic extinguishment of ship to shore gantry crane boom arm floodlighting and maintenance access walkway lighting on the raising or a crane boom arm 10 degrees from the horizontal operation position;
  - (g) access and safety luminaries on access walkways and ladders shall be fitted with diffusers;
  - (h) the working lighting of the ship to shore gantry cranes shall be switched off when not in use for any extended period of time, retaining only access, safety and security lighting;
  - (i) ship to shore gantry crane boom arm, floodlighting luminaries located beyond the riverside edge of berthed vessels shall be manually turned off when not in use;
  - (j) working lighting of rubber tyre gantry cranes shall be switched off when not in use for an extended period of time, retaining only access, safety and security lighting;
  - (k) operational lighting monitoring procedures and action to be taken in the event of noncompliance.

The lighting scheme hereby permitted shall be carried out and maintained in accordance with the approved scheme.

Reason – To minimise any possible glare or sky glow caused by the operational lighting for the development and to minimise the effect of the operational lighting on navigational aids or signs, public roads and local residential areas.

29) No part of the development hereby permitted shall begin until a construction dust management plan has been submitted to and approved in writing by the Local Planning Authority. The construction dust management plan shall include details of:

- (a) definitions of roles and responsibilities;
- (b) the adoption of best practice for the specification of plant and equipment;
- (c) the consultation and reporting processes;
- (d) dust monitoring procedures;
- (e) action to be taken in the event of non-compliance; and
- (f) complaint response procedures.

The development hereby permitted shall be carried out in accordance with the approved plan.

Reason - To ensure that appropriate construction dust management measures are in place.

30) No part of the development hereby permitted shall be commenced until details of the cleaning and maintenance programme for the site roads to be used during construction have been submitted to and approved in writing by the Local Planning Authority. The programme shall include details of:

- (a) the use of water bowsers and sprays for damping down of hard surface site roads;
- (b) sweeping of hard surface site roads; and
- (c) grading and maintenance of loose aggregate surface site roads.

The development shall be operated in accordance with the approved programme.

Reason - To prevent deterioration and build-up of contaminating materials able to emit dust.

31) All vehicles used to transport materials to or from the site during construction shall be sheeted so as not to deposit materials on the highway.

Reason - To prevent deposits on the highway and the emission of dust in the interest of local amenity and highway safety.

- 32) No part of the development hereby permitted shall be commenced until written details of a wheel wash facility and its location have been submitted to and approved in writing by the Local Planning Authority and Local Highway Authority. The development hereby permitted shall be carried out so as to ensure that vehicles leaving the development site during construction first pass through the approved wheel wash facility.

Reason - To prevent the deposits of materials on the public road network.

- 33) No part or the development hereby permitted shall be operated until a plan for the handling of materials and stockpiling of new construction materials on site (using physical containment, partial shielding where available and water misting/sprays where appropriate) has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved plan.

Reason - To prevent the migration of dust off the site.

- 34) No part of the development hereby permitted shall be commenced until an ambient dust monitoring strategy has been submitted to and approved in writing, by the Local Planning Authority. The ambient dust monitoring strategy shall include details of the following:

- (a) three months' 'baseline' data;
- (b) the numbers and locations of deposit gauge units;
- (c) monthly sampling requirements;
- (d) wind direction monitoring requirements;
- (e) assessment criteria;
- (f) reporting processes; and
- (g) action to be taken in the event of non-compliance with the approved assessment criteria.

The development hereby permitted shall be carried out in accordance with the approved ambient dust monitoring strategy.

Reason - To provide a long term record and a comparison with baseline dust concentrations.

- 35) No part of the development hereby permitted shall be commenced until details of measures to mitigate gas migration and accumulation, in accordance with the recommendations contained in the Bathside Bay Development Project Landfill Gas Investigation Report Ref E6702/1991/OCT/L6, have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.

Reason - To prevent gas migration and minimise gas accumulation, in the interests of public safety.

- 36) No part of the development hereby permitted shall be commenced until a flood evacuation plan has been submitted to and approved in writing by the Local Planning Authority and the Local Highway Authority. The development hereby

permitted shall be carried out and operated in accordance with the approved plan.

Reason -To ensure that appropriate flood evacuation measures are put in place.

- 37) All buildings constructed as part of the development shall have a minimum ground floor level of at least 4.6 m AODN with the provision of dry access at the same or higher levels to all such buildings.

Reason - To provide protection in the event of flooding.

- 38) No part of the development hereby permitted shall be commenced until a scheme for concrete pouring and filling Works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:

- (a) monitoring procedures: and
- (b) remedial action works to be undertaken in the event of spillage.

The development hereby permitted shall be carried out in accordance with the scheme as so approved.

Reason -To minimise risk of accidental pollution of watercourses during construction works.

- 39) No part of the development hereby permitted shall be commenced until a scheme for pollution control has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out and operated in accordance with the scheme as so approved.

Reason - To prevent the migration of pollutants from the site to adjoining land and for public safety.

- 40) No site clearance for the development hereby permitted shall be commenced until a scheme for the translocation of reptiles, invertebrates and coastal vegetation within the site has been submitted to and approved by the Local Planning Authority. The scheme shall include the following:

- (a) exclusion fencing to be erected around the site;
- (b) tinning to be carried out over a minimum of 60, 70 or 90 suitable days for a low, medium or high population level respectively, between the months of March and September;
- (c) relocation of the reptiles found to areas of suitable habitat outside the exclusion fencing.

The development hereby permitted shall be carried out and operated in accordance with the scheme as so approved.

Reason - To avoid harm to reptiles, invertebrates and coastal vegetation.

- 41) Prior to the commencement of the construction of Phases 3 and 4 of the development hereby permitted (as shown on approved drawing H1001-19-B) details of a scheme for the improvement of the A12(T)/A120(T)/A1232 Ardleigh Crown Interchange in such form as National Highways and Local Highway Authority may approve in writing, have been submitted to and approved in writing by the Local Planning Authority. The details of the said works shall secure improvement of the A12(T)/A 120(T)/A 1232 Ardleigh Crown Interchange in accordance with the standards set out in the Design Manual for Roads and Bridges and meet the requirements of DfT Circular 02/2013. The strategic road network and the delivery of sustainable development, or any subsequent revisions, modifications, or successors to this Circular.

Reason – In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 42) Prior to the commencement of the construction of Phases 3 and 4 of the development hereby permitted (as shown on approved drawing H1001-19-B), details of a scheme for the improvement of the A120(T) Parkeston Road/Station Road/Europa Way roundabout, in such form as National Highways and Local Highway Authority may approve in writing, shall have been submitted to and approved in writing by the Local Planning Authority. The details of the said works shall secure improvement of the A120(T) Parkeston Road/Station Road/Europa Way roundabout in accordance with the standards set out in the Design Manual for Roads and Bridges and meet the requirements of DfT Circular 02/2013. The strategic road network and the delivery of sustainable development, or any subsequent revisions, modifications, or successors to this Circular.

Reason - In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on A120 and connecting roads.

- 43) No part of Phases 2, 3 and 4 of the development hereby permitted (as shown on approved drawing H1001-19-B) shall be operated as a container terminal until the approved improvement works referred to in Conditions 41 and 42 have been implemented and/or opened to traffic as the case may be.

Reason – In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 44) No part of Phases 2, 3 and 4 of the development hereby permitted (as shown on approved drawing H1001-19-B) shall commence operation as a container terminal unless:

- (i) the necessary powers and consents have been obtained 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)IA133 Interchange at Hare Green and Horsley Cross roundabout to no less a standard than a two lane dual carriageway; and
- (b) from Horsley Cross Roundabout to Ramsey Bridge Roundabout to no less a standard than a wide single carriageway; and
- (ii) the Local Highway Authority has announced proposals relating to the local highway network including the A120 from Parkeston roundabout to Morrisons roundabout required as a result of the proposals referred to at (i) above; and
- (iii) an agreement or agreements have been concluded pursuant to section 278 Highways Act 1980 to secure 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 associated instruments made therewith; and
- (iv) the necessary powers and consents and agreements to implement the works referred to at paragraphs (i) and (ii) above have been secured; and
- (v) the works referred to at paragraphs (i) and (ii) above shall be carried out in accordance with the standards set out in the Design Manual for Roads and Bridges and meet the requirements of DfT Circular 02/2013 'The strategic road network and the delivery of sustainable development', or any subsequent revisions, updates, successor to this Circular.

Reason – In order that the A 120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 45) That part of the development hereby permitted as shown by magenta and green colouring on the drawing H1001/02 Rev C shall not be paved or equipped with ship to shore gantry cranes or used for any purpose that generates road traffic until the improvements to the A120 (T) referred to in Condition 44 above have been completed and opened to traffic so that for the avoidance of doubt no more than six cranes shall be provided at the development until such time as the said improvements have been completed.

Reason - In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 46) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order with or without modification) unless and until the improvements referred to in Condition 44 above have been completed, the areas referred to in Condition 45 above shall not be used for any purpose unless the same relates to the construction of the development or would not result in the arrival or departure of traffic to or from the development by road.

Reason - In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 47) Except where the works referred to in Condition 44 above have been opened to traffic, when this condition shall cease to have effect, the development shall not be operated except in accordance with a scheme (accompanied by a certificate that the same has been supplied to and approved by the Local Highway Authority and National Highways) approved by the Local Planning Authority providing for traffic management and safety measures to remain in place until the works referred to in Condition 44 have been opened for traffic.

Reason - In order that the A 120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safely on the A120 and connecting roads.

- 48) No part of the development hereby permitted shall be commenced until such time as details of the means of vehicular access to the site from the A120 have been submitted to and approved in writing by the local Planning Authority and the Local Highway Authority. The development shall not be operated until the vehicular access has been constructed in accordance with the approved details and opened to traffic.

Reason - In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A 120 and connecting roads.

- 49) No phase of the development hereby permitted shall be commenced until a detailed scheme and layout of hard standing for lorries and cars, including a requirement that no charge be levied for HGVs delivering or collecting goods from the development and reasonable and proper provision for disabled people in accordance with the plans hereby approved has been submitted to and approved in writing by the local Planning Authority and Local Highway Authority. The development shall be implemented in accordance with the approved scheme and layout which shall be retained thereafter.

Reason - To secure the proper layout and function of parking areas.

- 50) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order with or without modification) no linkspan (or other structure to permit the use of the development hereby permitted or any part thereof) by RoRo type vehicles (here including vehicles referred to at paragraph (iii) below) shall be constructed pursuant to this planning permission or otherwise and no part of the development shall be used:

- (a) for the import or export of RoRo vehicles or goods carried by RoRo vehicles (at the time of import or export); or
- (b) for the storage or handling of RoRo vehicles; or
- (c) for the loading or unloading of RoRo vehicles from any vessel; or

- (d) for the collection or deposition of passengers arriving or departing as passengers by sea on vessels capable of carrying over 50 passengers. In this Condition;

"RoRo vehicle" means a wheeled vehicle capable of being used upon the public highway for the carriage of passengers or freight whether capable of moving under its own power or otherwise (e.g. trailer) including motorcycles, cars, buses and HGVs (in each case including any trailer) but does not include:

- (i) vehicles in use for the conveyance of goods, persons or containers to, from or within the development where the vehicle so used is not imported or exported with the goods, persons or containers;
- (ii) vehicles contained within containers;
- (iii) specialist vehicles used for the conveyance of awkward unusually large or bulky or unusual loads including solid wheel flat bed (MAPI) trailers (or similar); or
- (iv) vehicles delivered to the development for the use in its construction or operation

Reason - To ensure that the development is not used for roll-on, roll-off traffic in place of container traffic.

- 51) No part of the development hereby permitted shall be operated until a written emergency port closure scheme setting out:

- (i) procedures for the evacuation and/or closure of the development in the event of an emergency;
- (ii) procedures to be followed in the event of the closure of the development to sea traffic;
- (iii) the areas of HGV parking within the development to be used in the event of the closure of the development to sea traffic;
- (iv) procedures for notification and liaison with emergency services and highway authorities; and
- (v) procedures to be followed in the event of closure to or restrictions upon the use of the A120 and/or A120(T) by HGVs, together with a certificate that the same has been submitted in that form to Highways England has been submitted to and approved in writing by the Local Planning Authority and Local Highway Authority. The scheme shall be implemented as so approved.

In the conditions 'HGV' means a heavy goods vehicle of COBA Vehicle Category OGV1 and/or OGV2 as defined in the Design Manual for Roads and Bridges. Volume 13. Section 1 (May 2002).

Reason - To ensure appropriate responses to emergencies and port closure.

- 52) No part of the development hereby permitted shall commence operation until a scheme providing for the operation of the development in accordance with measures designed to secure controls on activities likely to adversely affect air quality as a result of activities on that part of the site has been installed in accordance with a written scheme which has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- 
- (i) a strategy for the procurement of plant, machinery and vehicles to be used in operating the development complying with Government air quality objectives from time to time for control of emissions including (where appropriate) the fitting and use of catalytic convertors;
  - (ii) a requirement that the development should be capable of being retrofitted with apparatus for the purposes of the supply of electricity from land to vessels berthed alongside;
  - (iii) procedures for liaison and review in relation to the prospects of securing improvements to emissions from the development and the adoption of reasonable measures identified as being necessary as a result of such liaison and review; and
  - (iv) a requirement upon the terminal operator to request that the Harwich Haven Authority imposes reductions in vessel speeds in order to limit emissions.

The development shall be operated in accordance with the scheme so approved.

Reason – For the protection of air quality and, so far as reasonably possible, its improvement.

- 53) No part of Phases 2, 3 and 4 of the development hereby permitted shall commence operation until a scheme for the provision of noise attenuation measures designed to mitigate the impact of traffic noise arising from the operation of the development on residential and/or noise sensitive properties at or in the vicinity of Wix Road Ramsey has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out prior to commencement of the operation of the development.

Reason – To protect residential amenity.

- 54) 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 the Secretary of State.

Reason - For the avoidance of doubt as to the scope of this permission.

- 55) No part of Phase 2 of the development shown on drawing no. H1001/19/Rev B shall commence until:

- (1) additional evidence to confirm the usage of Bathside Bay and the Little Oakley managed realignment site by waterbirds over the non-breeding season in the context of the Stour and Orwell Estuaries SPA and the Hamford Water SPA, respectively, has been gathered from:

- (a) existing available data; and/or

- (b) pre-construction surveys carried out in accordance with details agreed in writing by the Local Planning Authority in consultation with Natural England; and

- (2) a further breeding bird survey of Bathside Bay and the Little Oakley managed realignment site has been carried out in accordance with details agreed in writing by the Local Planning Authority in consultation with Natural England; and
- (3) a report confirming whether the additional data and/or surveys indicate that;
  - (a) any further or different compensatory measures; and/or
  - (b) further monitoring of the effectiveness of compensatory measures,are needed to ensure that the overall coherence of the national site network of SACs and SPAs is protected has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England; and
- (4) if the report submitted in accordance with sub-paragraph (3) indicates that any further or different compensatory measures and/or further monitoring are needed to ensure that the overall coherence of the national site network of SACs and SPAs is protected, such measures:
  - (a) are reflected in a Compensation Implementation and Management Plan and an Adaptive Management Plan that have been submitted to and approved in writing by the Local Planning Authority [in consultation with Natural England]; and
  - (b) have been secured by an appropriate planning obligation under section 106 of the Town and Country Planning Act 1990.

Reason: To confirm that sufficient compensatory measures have been secured to ensure that the overall coherence of the national site network of SACs and SPAs is protected.

**211. A.2 PLANNING APPLICATION - 21/01792/VOC - BATHSIDE BAY, STOUR ROAD, HARWICH CO12 3HF**

The Committee was reminded of the relevant background information to this application which had been previously reported in relation to report item A.1 above.

Members heard how the application now before them sought permission to vary one of the conditions (no. 20) on the 2013 planning permission for the Small Boat Harbour (10/00203/FUL). It was proposed that the wording be amended to change the timing of the condition. The original condition had required that the details of the operational lighting were submitted and approved prior to the commencement of the development.

The applicant had proposed that the wording be changed so that the details were submitted and approved, and the operational lighting installed, prior to each phase of the harbour becoming operational. There was a parallel application (21/01810/VOC) for permission to vary conditions attached to the 2013 Container Terminal permission.

The Committee was informed that Officers were satisfied that the variation proposed to the Small Boat Harbour permission was justified and acceptable though Members were

reminded of the concerns and objections of Natural England as previously reported and recorded above in relation to report item A.1.

It was reported that, in the light of Natural England's recent objection, which had not been withdrawn, Officers were reluctant to recommend the grant of permission but given the significance of the Container Terminal development, with which the Small Boat Harbour was inextricably linked, and the limited time in which to consider it, Officers believed it was appropriate to put the application before Members now.

If, ultimately the decision was taken to grant this application, the new planning permission would need to restate the previous planning conditions (save as varied by the Committee) which would control the development. However, bearing in mind that a number of other pre-development conditions on the 2013 planning permission were being sought to be discharged (or partially discharged), pursuant to applications 21/01624/DISCON and 21/01816/DISCON, to enable the first phase to go ahead on existing land i.e. without land reclamation/marine works taking place, in line with the PPG those were provisionally recommended to be amended to compliance conditions wherever possible.

The Committee was reminded that the work to update the planning conditions was ongoing and it was therefore recommended that Members grant the Assistant Director of Planning authority to continue to update the remaining pre-commencement planning conditions as those were discharged by the Council through the discharge of conditions applications prior to the issuing of a new planning permission, pursuant to this application. There would also need to be appropriate planning obligations in place to ensure (amongst other things) delivery of the compensatory habitats at Little Oakley, and again the Assistant Director (Planning) would require authority to approve such supplemental or other legal agreement as was necessary to make the development acceptable, so that if Members resolved to grant planning permission there was an appropriate legal framework of obligations in place.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Planning Manager (SC-E) in respect of the application.

An update sheet had been circulated to the Committee prior to the meeting including details of:-

- 1) further consultation response received from Essex County Council's Highways Department;
- 2) the applicant's response to Natural England's consultation letter dated 4 February 2022 including supporting documents;
- 3) further comments from the Council's ecologist; and
- 4) a further recommended planning condition requiring a breeding bird survey.

Following discussion by the Committee, it was moved by Councillor Harris, seconded by Councillor Fowler and:-

**RESOLVED** that, subject to compliance with regulation 64(5) of the Habitats Regulations (notification of the Secretary of State), the Assistant Director (Planning) (or equivalent authorised officer) be authorised to grant planning permission for the development, subject to:-

- (a) the completion of a supplemental legal agreement under section 106 of the Town and Country Planning Act 1990 to secure the provision of appropriate compensatory habitats and other matters necessary to make the proposed development acceptable;
- (b) the conditions stated in section 11 of the committee report; the revision of pre-commencement conditions nos. 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 17, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 39, 40, 48 & 49 to compliance conditions (only where details have been submitted to and approved in writing by the local planning authority pursuant to 21/01625/DISCON and 21/01817/DISCON); and the addition of a further condition to secure further bird surveys, a compensation Implementation and Management Plan, and an Adaptive Management Plan as set out above; and
- (c) that the Assistant Director (Planning) be authorised to refuse planning permission in the event that an appropriate legal agreement has not been completed by March 29<sup>th</sup> 2022.

#### Conditions and Reasons

- 1) The development shall be commenced on or before 29th March 2022.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004 to ensure consistency with the planning permission for the construction of the Bathside Bay Container Terminal and to allow sufficient time to implement highway mitigation and improvement measures therefore, other infrastructure improvements and the provision of compensatory habitat.

- 2) The development hereby approved shall be implemented in accordance with the following plans, drawings and documents hereby approved:

H1002/01	Application Boundary
H1002/02 Rev. B	Small Boat Harbour Master Plan
H1001/03	Existing Topographic Survey
H1001/07	Lighting Layout
H1001/08	Fisherman's Store Location Plan
H1001/09	Fisherman's Store General Arrangement
H1001/10	Fisherman's Store Sections and Elevations
H1001/11	Fisherman's Store East Elevation
H1001/12 Rev. A	Division Wall Sections
H1001/13	Train Ferry Pier Termination Details
1514LO/50	Landscape Proposals
1514LO/51	Details of Quayside (Landscape)
1514LO/52	Structural Landscape Works
1514LO/53	Illustrative Planting Insets & Sections
	Planning and Design Statement dated April 2003
	Planning Statement dated October 2021
	Environmental Statement dated 13 October 2021

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3) No part of the development hereby permitted shall be begun until a landscaping scheme including a programme in accordance with the indicative scheme shown in application drawings 1514LO/50, 1514LO/52 and 1514LO/53, including details of screen mounding and tree planting, has been submitted to and approved in writing by the Local Planning Authority. The scheme as so approved shall be implemented during the first planting season following completion of topsoil dressing works at the development site. Any tree or shrub dying or becoming seriously diseased within five years of planting shall be replaced by a specimen of the same or similar species in accordance with the approved scheme.

Reason - To ensure the establishment of a new landscape character in the interests of visual and residential amenity.

- 4) The small boat harbour hereby permitted shall not be brought into use as such unless and until a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as so approved.

Reason - To ensure the long term maintenance of the landscaping elements of the development.

- 5) The development shall be carried out in accordance with the Planning and Design Statement dated April 2003 identified in Condition 2 above except insofar as otherwise provided for in any condition attached to this permission.

Reason - To ensure that the development is carried out in accordance with the design principles set out in the relevant documents.

- 6) No phase of the development shall begin until details of the design and external appearance, including materials of the buildings, structures and areas of hardstanding to be constructed within the development, according with the Planning and Design Statement dated April 2003 and identified in Condition 2 have been submitted to and approved in writing by the local planning Authority. The development shall be carried out in accordance with the details as so approved.

Reason - To enable proper control to be exercised over the design and external appearance of the development in the interests of visual amenity.

- 7) Except with the prior written agreement of the Local Planning Authority and Local Highway Authority, top soil comprised in the development is not to be undertaken using material from any source other than from the managed realignment site at Little Oakley and which shall not be delivered from the said site at Little Oakley other than by sea.

Reason - To ensure that beneficial use is made of available materials and to minimise HGV road traffic entering the site, in the interests of highway safety.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order with or without modification), no development shall begin until a written scheme showing full details of fences, walls, gates or other means of enclosure has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the details as so approved.

Reason - In the interests of security and visual amenity.

- 9) Development pursuant to this planning permission shall not begin until drawings showing both foul and surface water drainage (including the provision of all oil and diesel Interceptors) connected with the development have been submitted to and approved in writing by the Local Planning Authority and thereafter any works in relation to the development shall be undertaken in accordance with the drawings as so approved except as otherwise first agreed in writing by the Local Planning Authority.

Reason - To prevent pollution.

- 10) No part of the development (including ground works) hereby permitted shall commence until a programme of archaeological work to the site (including marine archaeology and any works which might be necessary and practicable to preserve any archaeological remains in situ) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved programme.

Reason - To allow proper investigation and recording of the site, which is potentially of archaeological and historic significance.

- 11) No part of the development hereby permitted shall be commenced until a written Construction Management Plan (CMP) together with a certificate that the same has been submitted in that form to National Highways and Natural England has been submitted to and approved in writing by the Local Planning Authority and Local Highway Authority. The CMP shall include details of the management during the construction phase of the development of the matters contained in Conditions 12 to 18 inclusive (construction noise and vibration), a Construction Traffic Management Plan in accordance with the Bathside Bay Construction Traffic Management Plan produced by ERM and dated 7th June 2004, Condition 19 (construction lighting) and Condition 21 (construction dust management) of this permission.

Furthermore, the CMP shall incorporate environmental measures to protect biodiversity, to include the following:-

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.

- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site

Reason - To ensure that the construction impacts of the development are kept within acceptable limits; and to conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021.

- 12) No part of the development hereby permitted shall be commenced until details relating to the control of noise and vibration from the construction of the development have been submitted to and approved in writing by the local Planning Authority. These details shall include the following:-

- (a) definitions of roles and responsibilities;
- (b) the adoption of best practice for the specification and Procurement of quiet plant and equipment;
- (c) consultation and reporting processes for noise and vibration;
- (d) noise and vibration monitoring procedures including recording measures and the location of measuring instruments;
- (e) action to be taken in the event of non-compliance with (b) to (d) above;
- (f) a record of the occasions on which percussive piling operations take place;
- (g) complaint response procedures;
- (h) a requirement to provide environmental noise awareness training to operatives; and
- (i) construction methods for percussive piling designed to minimise the noise generated by such operations through practical methods such as shrouding or other appropriate alternative methods.

The development hereby permitted shall be carried out in accordance with the approved details.

Reason -To ensure that the noise and vibration impacts of the development are kept within acceptable limits.

- 13) All plant, machinery and vehicles used on site in constructing the development shall be fitted with effective silencers at all times which shall be maintained in accordance with the manufacturers' recommendations and current British Standards applicable thereto. No such plant shall be left running when not being operated.

Reason -To ensure that the noise impacts of the development are kept within acceptable limits.

- 14) Where any vehicle or plant is required to be fitted with a reverse warning system, such vehicles or plant shall not be used or installed prior to the approval of such a

system in writing by the Local Planning Authority. In operating such vehicles or plant the approved system shall be used.

Reason -To ensure that the noise impacts of the development are kept within acceptable limits.

15) No percussive piling operation for the development shall be carried out except in accordance with a programme for that phase which shall first have been approved in writing by the Local Planning Authority. The said programme shall provide that:

- (i) no percussive piling operations shall be undertaken in relation to the construction of the development during more than thirteen weekends in any six months; and
- (ii) except with the prior written approval of the Local Planning Authority no more than three hours of percussive piling of tubular piles for the main quay wall shall take place on any day.

Reason -To ensure that the noise impacts of the development are kept within acceptable limits.

16) Except with the prior written agreement of the Local Planning Authority, no percussive piling operations shall be undertaken in relation to the construction of any part of the development outside the hours of:

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 09:00 to 13:00 on Saturday;

or at any time on Sundays or Bank or Public Holidays, provided that percussive piling operations may be undertaken in relation to the construction of the development outside the permitted hours:

- (i) in the case of emergency, or
- (ii) where piling is required on the grounds of safety or environmental protection; and
- (iii) in either case the situation would otherwise be dangerous to life or limb.

The Local Planning Authority shall be promptly notified in writing of any event of this type and the reason why percussive piling took place outside the permitted hours.

Reason - To protect residential amenity during construction.

17) The noise from construction activities in relation to the development shall not exceed the following daytime free-field equivalent sound pressure levels, as measured at a height of 1.5 m above ground level at the nearest residential property to the development:

(a) 67 dB LAeq 12H and 85 dB LA1 5 mins (in relation to percussive piling operations) during the hours of 07:00 to 19:00 on Mondays to Fridays, excluding Bank Holidays;

(b) 55 dB LAeq 1hr during the hours of 19:00 to 23:00 on Mondays to Fridays, excluding Bank Holidays;

(c) 67 dB LAeq 6hr and 85 dB LA1 5 mins (in relation to percussive piling operations) during the hours of 07:00 to 13:00 on Saturdays; and

(d) 50 dB LAeq 1hr at all other times.

Reason - To ensure that the noise impacts of the development are kept within acceptable limits and to protect residential amenity.

- 18) Vibration levels from piling or other construction activities in relation to the development, as measured immediately adjacent to the nearest residential property or vibration sensitive structure for that phase shall not exceed a peak particle velocity of 5mm/s.

Reason - To protect residential amenity.

- 19) No part of the development hereby permitted shall be begun until a written scheme of construction lighting has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of:

(a) definitions of roles and responsibilities;

(b) design including locations of the construction lighting;

(c) Installation of the construction lighting;

(d) management of the construction lighting; and

(e) construction lighting monitoring procedures and action to be taken in the event of noncompliance. The development hereby permitted shall be carried out in accordance with the approved scheme.

Reason - In the interests of visual amenity and ensure safety.

- 20) No part of the hereby permitted development shall commence operation until a scheme relating to the provision and control of operational lighting on that part of the site has been installed in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be carried out in accordance with the scheme so approved.

Reason - To minimise any possible glare or sky glow caused by the operational lighting for the development and to minimise the effect of the operational lighting on navigational aids or signs, public roads and local residential areas.

- 21) No part of the development hereby permitted shall begin until a construction dust management plan has been submitted to and approved in writing by the Local Planning Authority. The construction dust management plan shall include details of:
- (a) definitions of roles and responsibilities;
  - (b) the adoption of best practice for the specification of plant and equipment;
  - (c) the consultation and reporting processes;
  - (d) dust monitoring procedures;
  - (e) action to be taken in the event of non-compliance; and
  - (f) complaint response procedures.

The development hereby permitted shall be carried out in accordance with the approved plan.

Reason - To ensure that appropriate construction dust management measures are in place.

- 22) All vehicles used to transport materials to or from the site during construction shall be sheeted so as not to deposit materials on the highway.

Reason - To prevent deposits on the highway and the emission of dust in the interest of local amenity and highway safety.

- 23) No part of the development hereby permitted shall be commenced until written details of a wheel wash facility and its location have been submitted to and approved in writing by the Local Planning Authority and Local Highway Authority. The development hereby permitted shall be carried out so as to ensure that vehicles leaving the development site during construction first pass through the approved wheel wash facility.

Reason - To prevent the deposits of materials on the public road network.

- 24) No part of the development hereby permitted shall be operated until a plan for the handling of materials and stockpiling of new construction materials on site (using physical containment, partial shielding where available and water misting/sprays where appropriate) has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved plan.

Reason - To prevent the migration of dust off the site.

- 25) No part of the development hereby permitted shall be commenced until details of measures to mitigate gas migration and accumulation, in accordance with the recommendations contained in the Bathside Bay Development Project Landfill Gas Investigation Report Ref E6702/1991/OCT/L6, have been submitted to and

approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.

26) No part of the development hereby permitted shall be commenced until a scheme for concrete pouring and filling works has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:

(a) monitoring procedures; and

(b) remedial action works to be undertaken in the event of spillage.

The development hereby permitted shall be carried out in accordance with the scheme as so approved.

Reason - To minimise risk of accidental pollution of watercourses during construction works.

27) No part of the development hereby permitted shall be commenced until a scheme for pollution control has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out and operated in accordance with the scheme as so approved.

Reason - To prevent the migration of pollutants from the site to adjoining land and for public safety.

28) No site clearance for the development hereby permitted shall be commenced until a scheme for the translocation of reptiles, invertebrates and coastal vegetation within the site has been submitted to and approved by the Local Planning Authority. The scheme shall include the following:

(a) exclusion fencing to be erected around the site;

(b) tinning to be carried out over a minimum of 60, 70 or 90 suitable days for a low, medium or high population level respectively, between the months of March and September;

(c) relocation of the reptiles found to areas of suitable habitat outside the exclusion fencing.

The development hereby permitted shall be carried out and operated in accordance with the scheme as so approved.

Reason - To avoid harm to reptiles, invertebrates and coastal vegetation.

29) Development shall not begin until details of the means of vehicular access to the site from the A120 have been submitted to and approved in writing by the Local Planning Authority and the Local Highway Authority. The development shall not be operated until the vehicular access has been constructed in accordance with the approved details and opened to traffic.

Reason - In order that the A120 Trunk Road continues to serve its purpose as part of the national strategic road network and to satisfy the reasonable requirements of road safety on the A120 and connecting roads.

- 30) Development pursuant to this planning permission shall not begin until a scheme of provision to be made for disabled people to gain access to public areas forming part of the development shall have been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.

Reason - To ensure disabled persons access to buildings on the site.

- 31) Except with the agreement of the Local Planning Authority, no dredging operations shall be undertaken in relation to the construction of the development outside the hours of:

(a) 07:00 hours to 19:00 hours Monday to Fridays;

(b) 07:00 hours to 13:00 hours Saturdays;

or at any time on Sundays or on Bank or Public Holidays.

Reason - To ensure that the noise impacts of the development are kept within acceptable limits and to protect residential amenity.

- 32) Before the development is begun written details of the layout, construction and surfacing of the internal roadways and hardstanding for cars comprised in the development shall be submitted to and approved in writing by the local Planning Authority and Local Highway Authority. The development shall be implemented in accordance with the details so approved and retained thereafter.

Reason - To ensure a safe layout and a satisfactory standard of construction for internal roadways.

- 33) No part of Phase 2 of the development shown on drawing no. H1001/19/Rev B shall commence until:

(5) additional evidence to confirm the usage of Bathside Bay and the Little Oakley managed realignment site by waterbirds over the non-breeding season in the context of the Stour and Orwell Estuaries SPA and the Hamford Water SPA, respectively, has been gathered from:

(a) existing available data; and/or

(b) pre-construction surveys carried out in accordance with details agreed in writing by the Local Planning Authority in consultation with Natural England; and

(6) a further breeding bird survey of Bathside Bay and the Little Oakley managed realignment site has been carried out in accordance with

details agreed in writing by the Local Planning Authority in consultation with Natural England; and

- (7) a report confirming whether the additional data and/or surveys indicate that;
- (c) any further or different compensatory measures; and/or
- (d) further monitoring of the effectiveness of compensatory measures,

are needed to ensure that the overall coherence of the national site network of SACs and SPAs is protected has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England; and

- (8) if the report submitted in accordance with sub-paragraph (3) indicates that any further or different compensatory measures and/or further monitoring are needed to ensure that the overall coherence of the national site network of SACs and SPAs is protected, such measures:

- (a) are reflected in a Compensation Implementation and Management Plan and an Adaptive Management Plan that have been submitted to and approved in writing by the Local Planning Authority, in consultation with Natural England; and
- (b) have been secured by an appropriate planning obligation under section 106 of the Town and Country Planning Act 1990.

Reason: To confirm that sufficient compensatory measures have been secured to ensure that the overall coherence of the national site network of SACs and SPAs is protected.

The meeting was declared closed at 7.34 pm

**Chairman**

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