



In the High Court of Justice
Queen's Bench Division
Administrative Court



CO Ref: CO/686/2014



In the matter of an application for Judicial Review

The Queen on the application of ASSOCIATED BRITISH PORTS

versus SECRETARY OF STATE FOR TRANSPORT
and ABLE HUMBER PORTS LIMITED

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement(s) of service filed by the Defendant and / or Interested Party

Order by the Honourable Mrs Justice Patterson

Permission is hereby refused.

Reasons: Ground One – This is an allegation that the ES failed to properly consider the 'Rochdale envelope'. The environmental effects assessed were not sensitive to whether 400 or 500 OWTs were produced. The component parts of the Nationally Significant Infrastructure Project were fixed. Although the quay had a theoretical capacity of in excess of 5 million tonnes of cargo the length of the quay posed a practical constraint and permitted only 500 OWT per annum as the practical capacity. The cargo associated with other kinds of offshore renewable energy was assessed in the ES. The DCO prohibits the Quay from handling of a large quantity of general cargo. The exercise carried out, correctly in the ES, was to assess offshore renewable energy cargo that could realistically be handled on the Quay. That is the proper legal approach. The construction effects were the most severe and were fully assessed

Ground Two - Whether there was evidence before the Defendant upon which he could rationally conclude that the requirements for derogation in Article 6(4) of the Habitats Directive and regulation 62 of the Habitats Regulations were met? The ground is dependent upon the contention that the Quay could realistically handle 5 million tonnes of OWT cargo. As set out above, that was not the case. There is nothing in this ground.

Ground Three - Raises similar issues to ground 2 in regard to the compelling case for compulsory acquisition and whether it was lawful, necessary or proportionate in the public interest. Again, that depends upon the realistic capacity of the quay. As the size of the Triangle land had a realistic capacity of 500 OWTs what was authorised for acquisition met all the statutory tests. The Panel and the D identified the correct tests and made no error of law.

Ground Four – Did the D misdirect himself as to the statutory test under s 127 of the 2008 Act or to its application to the Triangle land? The Panel considered the issue of serious detriment in a supplementary report and concluded, as did the SoS, that there would be no such detriment if land presently unused and in respect of which there was an insufficiently certain future use was compulsorily acquired. The D addressed the uncertainty, first, in a letter of 28 August 2013 and then in his decision letter when he took into account the application made by the C on 20 November 2013 but concluded that it was not certain that the Deepwater Jetty would proceed or occupy the triangle site and so could be satisfied that there would be no serious detriment from its acquisition. There was no evidence that it had any value other than through the uncertain Jetty proposals. That was a matter of planning judgement for him to make. The decision maker took into account relevant development plan policy IN4A which is supportive of port related development but as the C's development proposals do not rely upon permitted development rights the policy adds nothing.

The claim is unarguable. I do not need to go on to consider in the circumstances of this case whether the claim in Aarhus Convention or not.

- The costs of preparing the Acknowledgment of Service are to be paid by the Claimant to the Defendant/ in the sum of £ 9164.

Signed

Frances Potts

2 FEB 2015

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

RICHARD WATKINS

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12