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Our ref: AM16/39251.70/MINHI

15 May 2025

When telephoning please ask for: Alex Minhinick

Dear Pinsent Mason LLP

**The VPI Immingham (Land at Rosper Road) Compulsory Purchase Order 2024 – Acquiring Authority undertaking and confirmation in stages**

We write with reference to ongoing correspondence between the parties, and evidence and submissions during the course of the public inquiry before the Inspector appointed to consider the confirmation of the Acquiring Authority's CPO and the Objector's remaining objections to that confirmation.

**Undertaking**

The Acquiring Authority has made a number of written and oral statements, in its Statement of Reasons, correspondence between solicitors, submissions from its Counsel Mr Turney KC, and yesterday from Mr Briggs whilst providing his evidence, to the effect that it is willing to offer a number of commitments for the Objector's benefit with the apparent intent that the Objector can rely on those matters should the CPO should be confirmed.

The commitments that have been referred to, with varying degrees of conditionality or qualification, are:

- a) A commitment that the CPO would not be implemented until such a time as the Acquiring Authority has entered into a Dispatchable Power Agreement or an equivalent with Government to secure the funding necessary for it to take a final investment decision and commence the construction of its proposed development on the Order land;
- b) A commitment to transfer the P66 Pipeline Corridor<sup>1</sup> (or a part of it, or rights over it) back to the Objector on conclusion of the Acquiring Authority's construction works;
- c) A commitment to allow the Objector access to the Order land for the first year of the Acquiring Authority's construction period for the purpose of installing an extension to the Objector's existing pipeline bridge over the railway on the western edge of the Order land;
- d) A commitment to allow the Objector access to the Order land for the purposes of inspecting, maintaining, and if necessary repairing its existing pipeline apparatus situated adjacent to the Order land; and

<sup>1</sup> The area edged green on the plan at Appendix 1 to the Objector's Statement of Case WORK\75803784\v.3

Classification: Confidential

- e) A commitment to allow the Objector access to the Order land for the purposes of inspecting and monitoring its effluent discharge to the drain which crosses the Order land (whether on its present or new alignment).

As the Objector has made clear in its submissions to the inquiry and its letters to the Acquiring Authority of 25 April 2025 and 11 May 2025 (and on its case the Inspector), it is unable to place any weight on any such statements until a draft written undertaking setting out the terms on which the Acquiring Authority would make any such commitments is provided and can be considered. All statements made to date have been offered without any such detailed terms, and cannot therefore be given appropriate consideration or scrutiny.

The Objector notes that a draft undertaking has been provided at 9:28am today 15 May as this correspondence is being issued, which will be reviewed by the Objector and comments returned as quickly as possible. It is expected that any such offer would be secured through a written deed of undertaking between the Acquiring Authority and the Objector.

### Confirmation in stages

An additional matter which has been raised by the Objector in response to the uncertainty regarding the availability of, or if available the timing of, funding to the Acquiring Authority to construct its project is the prospect of the CPO being confirmed in stages pursuant to s13C of the Acquisition of Land Act 1981.

That provides that an order can be confirmed in stages where “*the confirming authority is satisfied that the order ought to be confirmed so far as it relates to the relevant part but has not for the time being determined whether the order ought to be confirmed so far as it relates to the remaining part...*”. There is a requirement for certain procedural requirements to have been met, which the Objector understands to have been met in the present case.

The case of *R. (on the application of Neptune Wharf Ltd) v Secretary of State for Trade and Industry* [2007] EWHC 1036 (a copy of which is appended) makes it clear that the use of this mechanism is appropriate to address uncertainties which persist on consideration of an order. At paragraph 15 of the judgment it is said that the purpose of the provision is to (emphasis added) “*permit the confirming authority to defer making a decision so as to permit a state of affairs which is uncertain to become certain. Section 13C(2)(a) of 1981 Act makes it clear that a direction cannot be given in effect unless the confirming authority considers it inappropriate to make a decision on the whole of the Order. The confirming authority will be of that state of mind only if there are uncertainties about whether or not it should confirm the whole of the order.*”

It is the Objector's case that it has an immediate and ongoing need for use of and access to the part of the Order land referred to as the P66 Pipeline Corridor<sup>2</sup> due to:

- a) Ongoing operational requirements of the Humber Refinery – a critical national infrastructure site responsible for delivering around 15% of the UK's fuel needs for road, heating and power; and
- b) Future development associated with efforts to decarbonise the operations of the Humber Refinery, which are likely to require the installation of pipelines for one or more projects in the P66 Pipeline Corridor in the short term.

Confirmation of the CPO as whole, and its implementation on the time periods indicated by the Acquiring Authority, would prevent P66 accessing the land for either purpose.

The Acquiring Authority's proposed use of the Order land is entirely contingent on the availability of funding for its project, which it is understood will be secured through the entering into of a Dispatchable Power Agreement or an equivalent with Government.

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<sup>2</sup> The area edged green on the plan at Appendix 1 to the Objector's Statement of Case

It is the Objector's case that in such circumstances the obvious solution to balancing the respective objectives of the parties and the broader public interest in their respective proposals is to defer the confirmation of that part of the Order land comprised in the P66 Pipeline Corridor until such a time as the Acquiring Authority has entered into its Dispatchable Power Agreement with Government.

The Acquiring Authority is asked to confirm that it will add this correspondence to the inquiry core documents.

Yours faithfully

Burges Salmon LLP

BURGES SALMON LLP

Neutral Citation Number: [2007] EWHC 1036 (Admin)

Case No: CO/709/07

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

3<sup>rd</sup> May 2007

**Before :**

**THE HONOURABLE MR JUSTICE WYN WILLIAMS**

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**Between :**

**THE QUEEN**  
**on the application of**  
**(1) NEPTUNE WHARF LIMITED**  
**(2) ROADGLEN LIMITED**

**Claimant**

**- and -**

**THE SECRETARY OF STATE FOR TRADE  
AND INDUSTRY**

**Defendant**

**- and -**

**THE LONDON DEVELOPMENT AGENCY**  
(Transcript of the Handed Down Judgment of  
WordWave International Ltd  
A Merrill Communications Company  
190 Fleet Street, London EC4A 2AG  
Tel No: 020 7421 4040 Fax No: 020 7831 8838  
Official Shorthand Writers to the Court)

**Interested Party**

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**Mr Peter Village QC and Mr Robert White** (instructed by DMH Stallard) for the **Claimants**  
**Mr Richard Drabble QC and Mr James Maurici**  
(instructed by the Treasury Solicitor's Department) for the **Defendant**  
**Mr Guy Roots QC and Mr Richard Glover**  
(instructed by Eversheds LLP) for the **Interested Party**

Hearing dates: 27<sup>th</sup> April 2007  
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**Judgment**  
**As Approved by the Court**

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THE HONOURABLE MR JUSTICE WYN WILLIAMS

**Mr Justice Wyn Williams :**

1. The First Claimant, Neptune Wharf Limited, is the freehold owner of land and premises comprising 2.43 ha of warehouse and offices with yards, outbuildings, entrances, access ways and verges and bank of the Hertford Union Canal at Wyke Road, in the London Borough of Tower Hamlets. Roadglen Limited, the Second Claimant, is the lessee and occupier of the First Claimant's land. Although there was some reference to the standing of the Second Claimant to bring these proceedings in the Skelton Argument on behalf of the Interested Party I proceed on the basis that each Claimant has sufficient standing to bring the claim.
2. On the 16<sup>th</sup> November 2005 London Development Agency (LDA) made a Compulsory Purchase Order under Section 20(1) of the Regional Development Agency Act 1998. The Order, as made, authorised the compulsory purchase of a very substantial area of land of which the First Claimant's land formed a small part.
3. The Order was made in order to facilitate the provision of the Olympic and Paralympic Games in London in 2012 and what are described as "*the Legacy facilities*". However it should be noted at the outset that the First Claimant's land is not land upon which Olympic facilities or the Legacy facilities are to be constructed. The purpose of acquiring the First Claimant's land is to provide a relocation site for a bus depot operated by a company known as First Capital East Limited whose land at Waterden Road in the Borough of Hackney is also subject to the Order and which does lie within the Olympic and Legacy development area.
4. Following the making of the Order the First and Second Claimant registered their objections. In due course a local public inquiry was convened to consider all objections. The First and Second Claimants appeared at the inquiry and presented their objections with vigour.
5. Crucial to the objections made to the Order in so far as it affected the First Claimant's land was the contention on behalf of the Claimants that planning permission would not be granted for the land to be operated as a bus depot. As I understand it, a significant amount of time was taken up at the inquiry in debating that issue.
6. Following the close of the inquiry the Inspector produced his report to the Defendant. He expressed his conclusion about the Claimant's objections under the heading "*Overall Conclusion*" which is found at paragraphs 6.2.190 to 6.2.193 of the report. These paragraphs read as follows:

*"The Compulsory Acquisition of this Site would deliver a replacement bus garage for First Bus. Continuity of bus services is in the public interest and public transport has an important role to play in the overall process of regeneration. Wyke Road is a good site in having the ability to accommodate the operations and it is well related to the exiting depot and the routes that it serves. In my opinion, there is no comparable or better site that is genuinely available.*

*However, Wyke Road does not have planning permission and, whilst the use would accord with the development plan, it might falter on one or more detailed aspects which need to be fully addressed. On this basis I am not*

*satisfied that the LDA has demonstrated that the project has a reasonable prospect of proceeding.*

*The need for this site is for a single purpose. If planning permission were to be refused that need would evaporate; but an approval would remove the only area of doubt about the likelihood of implementation. In my view, the confirmation or otherwise of these plots must hang on the outcome of the planning process. In the event of it not being concluded before a decision is made on the Order as a whole, the Secretary of State should exercise the powers available under section 13C of the Acquisition of Land Act 1981 and defer consideration of the Order in relation to these plots.*

*Subject to the grant of planning permission, I am satisfied that there is a compelling case in the public interest for the compulsory acquisition of these plots; and that such an interference would be proportionate.”<sup>1</sup>*

7. The Secretary of State considered that recommendation and accepted it. The reasons why he did so are set out in paragraphs 25 and 26 of his decision letter. They are encapsulated in the following passage: -

*“The Secretary of State notes that objectors ..... considered the LDA’s case to fail the compelling test for acquisition in that it had ignored the significant number of serious impediments to implementation of the scheme (IR 4.6.63). He agrees with the Inspector’s conclusion that no comparable or better site is at present genuinely available, but that, whilst the use (as a bus depot) would accord with the development plan, it might falter on one or more detailed aspects and, therefore, was not satisfied that the project had a reasonable prospect of proceeding (IR 6.2.190 – 6.2.191).*

*Consequently, the Secretary of State agrees with the Inspector that he should exercise his powers under section 13C of the Acquisition of Land Act 1981 to defer consideration of the confirmation of the order in relation to these plots .....(IR 6.2.192, 6.5.7, 7.2).”*

8. The Defendant then phrased his direction pursuant to section 13C in the following way: -

*“In accordance with his direction in paragraph 42 he proposes to postpone his consideration of the Order in relation to these plots until either such time as he is notified of the outcome of a planning application in respect of the use of these plots for a bus depot or such earlier time as the Secretary of State deems appropriate.”*

The form of direction set out in paragraph 42 referred back to the phrase which I have just set out. Paragraph 42 went on to make it clear that the step was being taken so that the Secretary of State could satisfy himself about the “*planning uncertainties*” relating to the use of the First Claimant’s land as a bus depot.

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<sup>1</sup> Trial Bundle 1 page 152

9. It is common ground between the parties that the possibility of using section 13C Acquisition of Land Act 1981 did not arise during the course of the inquiry and was not raised at any time by the Inspector before he reported to the Defendant. Equally, the Defendant gave no indication to the parties before me that he was going to exercise the power before he did so.
10. In these proceedings the Claimants challenge the Defendant's decision to issue a direction under section 13C. It is common ground that proceedings by way of judicial review are appropriate. The substantial relief sought by the Claimant is a quashing order in respect of the direction.

### **Ground 1**

11. Section 13C of the Acquisition of Land Act 1981 provides: -

*“(1) The confirming authority may confirm an order (with or without modifications) so far as it relates to part of the land comprised in the order (“**the relevant part**”) if each of the conditions in sub-section 2 is met.*

*(2) The conditions are*

*(a) the confirming authority is satisfied that the order ought to be confirmed so far as it relates to the relevant part but has not for the time being determined whether the order ought to be confirmed so far as it relates to the remaining parts;*

*(b) the confirming authority is satisfied that the notice requirements have been complied with.*

*(3) If there is a remaining objection in respect of the order, the confirming authority may only act under section 1 after complying with section 13A (2) or (3) (as the case may be).*

*(4) But it may act under sub-section (1) without compliance with those provisions if it is satisfied that all remaining objections relate solely to the remaining part of the land.*

*(5) If the confirming authority acts under sub-section (1) –*

*(a) it must give a direction postponing consideration of the order, so far as it relates to the remaining part, until such time as may be specified by or under the direction;*

*(b) the order so far as it relates to each part of the land must be treated as a separate order.*

*(6) The notices to be published, affixed and served under section 15 must include a statement as to the effect of the direction given under section (5)(a).*

*(7) Notice requirements must be construed in accordance with section 13.*



*(8) Remaining objections must be construed in accordance with section 13A.”*

12. Mr Village QC, leading counsel for the Claimants, submits that the phrase *“until such time as may be specified by or under the direction”* in section 13C(5) demands that a date be set for the making of the relevant decision. He argues, further, that since the Defendant did not identify a date for the making of a decision on that part of the Order which relates to the First Claimant’s land he acted unlawfully and the direction should be quashed. Mr Village QC points out that a direction under section 13C is likely to cause prejudice to the person owning an interest in or over the land in question. That being so, Parliament must have intended that such prejudice should be reduced as far as possible. That can be achieved, submits Mr Village QC, only if the phrase is interpreted to mean that the Defendant must fix a date. In that way, at least, there will be a degree of certainty both for the land owner and for the other parties interested in the confirmation of the compulsory purchase order.
13. Both Mr. Drabble QC and Mr Roots QC dispute this interpretation of section 13C(5). They point out that if Parliament had intended that a date should be fixed it could very easily have said so. Instead it chose to use a word, namely, “time” which is appropriate not just mean a date but also the happening of an event. They also submit that the phrase *“by or under”* is apt to allow for either (1) a date being set in the direction (in which case the time would be specified by the direction); or (2) a mechanism being included in the direction that would allow the time to be determined (in which case the time would be specified under the direction).
14. I agree with Mr Drabble QC and Mr Roots QC that one would expect that if Parliament had intended that the direction (or some near contemporaneous document) should include a fixed date it would have said so. I accept that the word “time” is likely to convey a concept more general than a fixed date.
15. It is also instructive, in my judgment, to look at the purpose of the statutory provisions. Their purpose, clearly, is to permit the confirming authority to defer making a decision so as to permit a state of affairs which is uncertain to become certain. Section 13C(2)(a) of 1981 Act makes it clear that a direction cannot be given in effect unless the confirming authority considers it inappropriate to make a decision on the whole of the Order. The confirming authority will be of that state of mind only if there are uncertainties about whether or not it should confirm the whole of the order.
16. One of the most common reasons for uncertainty, of course, is whether or not an area of land which does not have the relevant planning permission will be granted such permission. Sometimes it is possible to predict with confidence that planning permission will be granted or refused. Often there are conflicting factors which make a prediction very difficult. Further, just as it may be difficult to predict whether or not planning permission will be granted so it is sometimes difficult to predict how long a planning process might take.

17. It seems to me that section 13C was designed to permit the deferral of a decision when the decision maker is faced with uncertainty. That being so, in my judgment, it is a factor which points, strongly, against the interpretation of section 13C(5) contended for on behalf of the Claimants. The Claimants' interpretation, if adopted, would mean that the decision maker would have to specify a date in circumstances where the prediction of an appropriate date is fraught with difficulty. If, however, the interpretation pressed on behalf of the Defendant and LDA is accepted the problem disappears.
18. In my judgment, the natural interpretation of the words used in section 13C(5) of the 1981 Act is that contended for by the Defendant and LDA. That interpretation, in my judgment, is reinforced if one looks at the legislative objective.
19. Mr Village QC invited me to have regard to Circular 06/2004 entitled "***Compulsory Purchase and the Crichton Down Rules***" in interpreting the words of the statute. In particular he relied upon paragraph 53 of the Circular and paragraphs 19-21 of the Annex. In paragraph 53 the following passage appears:-

*"Section 13C of the 1981 Act provides a general power for orders to which the Act applies to be confirmed in stages. .... It is designed to be used at the discretion of the confirming Minister where he is satisfied that an order should be confirmed for part of the order land but, because of some impediment, he is unable to decide for the time being whether it ought to be confirmed so far as it relates to any other such land. Where an order is confirmed in part under this power, the remaining undecided part is to be treated as if it were a separate order, and the confirming Minister will set a deadline for consideration of that remaining part. (see also paragraph 19-21 of the Annex to this Part).*

Paragraph 21 of the Annex contains this sentence:-

*"the decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date."*

20. I have considerable doubt about whether it is permissible to use a Circular issued after the enactment of a relevant statute as a guide to its interpretation. Even if it is permissible, however, I take the view, strongly in this case, that those passages to which I have referred are no more and no less than a short hand exposition of the statutory power. In my judgment, it is very unlikely that they were intended to be relied upon as an authoritative interpretation.
21. Mr Village QC also drew my attention to an extract from the debate within the Planning and Compulsory Purchase (Re-Commited) Bill which preceded the passing into law of section 13C. The promoting Minister was Yvette Cooper. During the course of the debate she said:-

*"When the confirming Minister decides that it would be appropriate to confirm the order in part, he must give a direction postponing consideration of the remaining part of the order until a fixed date and stating that the remaining part of the order must be treated as a separate order. The fixed date will be specified in the direction or following it."*

22. Mr Village QC submits that I should have regard to the Minister's words when interpreting the section. In **Pepper v Hart [1993] AC 593** the House of Lords held that subject to any question of Parliamentary privilege the rule excluding reference to Parliamentary material as an aid to statutory construction should be relaxed so as to permit such reference where the following conditions are met. Firstly the legislation is ambiguous or obscure or leads to absurdity; secondly the material relied upon consists of one or more statements by the Minister or other promoter of the Bill together with if required such other Parliamentary material as is necessary to understand such statements and their effect; and thirdly the statements relied upon are clear.
23. In my judgment it cannot be said that section 13C(5) is ambiguous or obscure or leads to absurdity. I have found the contrary to be the case. Further and in any event the statements relied upon as a guide to interpreting the statute must themselves be clear. While the reference by the promoting Minister to a fixed date is clear the sentence "*The fixed date will be specified in the direction or following it.*" is far from clear.
24. In the context of this case, in my judgment, the Parliamentary material put before me is not admissible as a guide to the interpretation of the statute.
25. It follows from what I have said above that I reject the contention of the Claimants that the Defendant acted unlawfully in framing his direction in the way that he did. For completeness, I should record that the Claimants did not complain about that part of the direction which permitted the Defendant to make a decision at "*such earlier time as the Secretary of State deems appropriate.*" Mr Village QC accepted that such a provision was permissible even where a date was fixed in any direction and, clearly, he must be right about that.

## **Ground 2**

26. I can deal with this ground shortly. Mr Village QC submits that regardless of the proper interpretation of section 13C(5) it is clearly the policy of the Minister (as set out Circular 6/2004) to set a deadline by reference to a specific date by which a decision will be made about whether or not to confirm that part of the compulsory purchase order in question. Mr Village QC submits that in making the direction in this case the Defendant failed to have regard to the terms of that policy and thereby failed to have regard to a material consideration.
27. Mr Drabble QC does not accept that the extracts from the Circular set out above (which are the relevant extracts) constitute an expression of policy. I agree. As I have found they are no more and no less than a shorthand description of the statutory power.
28. In any event of course, a Minister does not necessarily act unlawfully in the context of a decision about compulsory purchase simply by departing from his policy. If he does depart from policy, however, at least generally speaking, he has a duty to explain why.
29. In this case it is obvious why the Defendant made the direction that he did. It provides the mechanism under which the progress of any planning application and the interests of the Claimants can be monitored. I cannot accept that the Defendant's failure to specify that expressly in his decision letter, makes his direction unlawful.

30. Crane J refused permission on this ground considering it to be unarguable. I agree with that conclusion.

### **Ground 3**

31. As I have said, the direction under section 13C(5) of the 1981 Act was neither canvassed at the Inquiry nor raised with any party before the Defendant issued it. The Claimants submit that the Defendant's failure to inform the Claimants of his intention to make a direction prior to making it constituted a breach of the rules of natural justice. They were deprived so they submit of the opportunity of making representations about whether the direction should be made.
32. The Defendant and the LDA do not accept that the rules of natural justice demanded that the Claimants be given the opportunity to make representations about the direction before it was made.
33. There is nothing either in the Act or in the Circular which indicates that the Defendant will consult those with an interest in the land before postponing the consideration of part of an order.
34. Mr Drabble QC submits that on the facts of this case there is, in any event, no unfairness in the Defendant's failure to raise the issue of the direction in advance of making it. He makes that submission because there was in-built into the direction an acceptance that, at any time, the Claimants might make representations to the effect that the Defendant should determine whether or not the compulsory purchase order should be confirmed immediately. In that way, says Mr Drabble QC, the Claimants' interests were sufficiently protected.
35. Mr Village QC, in response, submits that this mechanism could never cure the fact that a direction had been issued. It is true that a direction postponing consideration was issued without any party having the opportunity to make representations about whether such a direction should be issued at all and/or if so upon what terms. However the direction, as issued, obviously permitted any relevant party to make representations about whether the postponement of consideration was justified or not. In other words, it was open to the Claimants at any time after service of the direction upon them to make representations to the Defendant to the effect that he should determine whether or not to confirm the order immediately or within some timescale which the Claimants chose to advance.
36. I am satisfied that in this case the Defendant did not act unfairly to the Claimants when he invoked his powers under section 13C(5) without informing them, in advance, of his intention so to do. That is because he afforded them an opportunity to be heard upon the subject of the direction at any time following service of the direction upon them and in circumstances where they knew or should have known that the Defendant would treat any representations made with an open mind.
37. Whether or not fairness demands that a person is afforded a right to make representations in advance of a decision will depend on all the circumstances which are relevant to the case in issue. In the present case I have concluded that it was not unfair and not in breach of the rules of natural justice for the Defendant to issue his

direction without first affording the Claimants the opportunity to make representations.

38. I conclude this aspect of my judgment by a further reference to Circular 01/2004. Paragraph 4 of Appendix B reads as follows: -

*“The Secretary of State previously had a power to confirm an order in two stages under paragraph 1 of schedule 5 to the 1998 Act. However this has now been replaced by a general power inserted as section 13C of the Acquisition of Land Act 1981..... This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of another part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implication of such a course of action for the success of the proposed scheme as a whole.”*

39. In my judgment, the last sentence does constitute an expression of policy. The policy to be followed does not suggest that prior consultation with the particular land owner will take place before any direction under section 13C is issued. Further, and in my judgment of some importance, such consultation as does take place prior to the making of a direction will be aimed at ascertaining the impact of a direction upon the scheme as a whole. In my judgment this policy statement tends to negate any suggestion that landowners affected by a compulsory purchase order have any expectation that they would be consulted or asked to make representations before a direction under section 13C is issued.

### **Conclusion**

40. I have reached the clear conclusion that each ground of challenge fails. In respect of ground 2 I refuse permission to apply for judicial review and in respect of grounds 1 and 3 I dismiss the substantive challenge.
41. There was considerable debate about whether or not this judicial review served any useful purpose. For the reasons advanced by Mr Drabble QC and Mr Roots QC I am inclined to think that it did not but since I have reached a clear conclusion on the substantive grounds of challenge I propose to say nothing further about that topic.