

**BEFORE THE PLANNING INSPECTORATE (SECRETARY OF STATE FOR TRANSPORT)**

**IN AN APPLICATION DATED FEBRUARY 2020 – PROPOSED REVISION OF TOLLS**

- THE TRANSPORT CHARGES ETC (MISCELLANEOUS PROVISIONS) ACT 1954
- THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY CO ACTS 1923 & 1986

**BETWEEN**

**THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY CO**

**Applicant**

and

**SWANAGE TOWN COUNCIL**

**DORSET COUNCIL**

**BOURNEMOUTH CHRISTCHURCH & POOLE COUNCIL**

**Respondents**

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**OPENING SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

**For hearing: 5-7 January 2021**

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*References to the Inquiry hearing bundle are by volume and page number eg [1/174].*

**Preliminary**

- 1) These submissions are made on behalf of the represented Respondents – together ‘the Respondents’, to distinguish them from those objectors whose principal position is to oppose any fare increase, and from the other local bodies making representations that are also councils or other local government bodies such as Parish Councils. The Respondents are also referred to in the documents as ‘the Consortium’, the label provided by the Inspector as a useful shorthand. The Respondents are:
  - a) Dorset Council (‘DC’)
  - b) Bournemouth Christchurch & Poole Council (‘BCP’)
  - c) Swanage Town Council (‘STC’).

- 2) The Bournemouth-Swanage Motor Road and Ferry Company is referred to as 'the Company'. Where appropriate, individual objectors will be referred to by name (where individuals) or the name of their organisation.
- 3) These submissions follow the short adjournment of the Inquiry, opened on 16 November 2020) for the Company and objectors to consider counter-proposals for toll charging structures put forward by the Respondents and the National Trust. The National Trust and other objectors have now provided the Inquiry with their responses, and in particular the Company has revised its application. Key documents to which the Respondents would refer the Inspector are now:
  - a) the Company's revised proposal at [1/186];
  - b) the Company's revised profit and loss projections at [1/174];
  - c) the Respondent's proposed toll charge schedule at [2/71] and its Explanatory Note [2/75];<sup>1</sup>
  - d) the National Trust's variable pricing model proposal at [2/132] and its response to the Respondents' proposal [2/136];
  - e) the Statement of Michael Kean dated 09.12.2020 at [1/190];
  - f) Sections B and C of the statement of Kevin Thomas (of Richard Luckin, the Company's accountancy firm) at [1/168ff];
  - g) Studland PC's response to the Respondents' proposal [2/203] as representative of the issues that a number of objectors have raised in respect of the proposal.

### **The Respondents' principal position**

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<sup>1</sup> It is intended that this will stand as a proof of evidence for Mr Jack Wiltshire, who proposes to give evidence on behalf of the Respondents, pursuant to Reg 23, Highways (Inquiries Procedure) Rules 1994 (SI 1994/3263). The substance of the Note is less than 1,500 words.

- 4) The Respondent's principal position is that any fare increase should favour sustainability and local benefit. This reflects the Respondents' role as public bodies with statutory duties, especially long-term and strategic planning responsibilities including transport and highways. For these reasons it welcomes the Company's revised toll charge schedule in response to the Consortium's counter-proposal. In particular, the Respondents note that pedestrian and bicycle fares are frozen, and that the discounted (or 'bulk-purchase') ticket prices for cars are marginally lower than in the original application.
- a) The revised proposal is now better aligned with the Respondents' Local Transport Plan ('LTP') and Guidance for the Department for Transport. Nevertheless, the Respondents continue to rely on the LTP and Guidance as set out in the Explanatory Note and ask the Inspector to bear those aims in mind when reaching her determination.
  - b) The revised proposal appears to address several of the Respondents' concerns and to meet their counter-proposal targets:
    - i) the freezing of pedestrian and bicycle fares, noted above;
    - ii) prices of individual vehicle journeys have risen above the tolls indicated in the original application in order to compensate for the freeze in 'green' transport fares;
    - iii) the prices of discounted tickets have not risen beyond the fares in the Company's original application.
  - c) The Company has stated its intention to use an ecologically-friendly power source for the Ferry when this becomes available and economical. The Respondents welcome and support this commitment, which is consistent with local and national commitments: BCP have committed to be carbon neutral as an organisation by 2030, and DC by 2040. Both Councils seek to enable the county to be carbon neutral by 2050, and are mindful of the national aspirations for prohibition on the sale of new diesel and petrol-powered cars by 2030. However, this is not a matter that the Inspector can determine in this Inquiry.
- 5) The Respondents continue to have some concerns about the application, even in its revised form.

- a) The price increases for motor vehicles still rise in many small increments, rather than fewer (though slightly greater) steps. Of itself, this is a minor concern. Nevertheless, the projected final tolls are higher than in the original proposals (compare £6.55 against £6.75 for cars, and £13.10 against £13.50 for commercial vehicles). The Inspector will be asked to consider what the maximum price for each class should be.
- b) The Company has addressed the question of ring-fencing the Ferry Replacement Reserve fund ('FRR') by altering its dividend policy (see Mr Thomas's statement at §2.2 at [1/163]). Nevertheless, it seems to the Respondents that there is no way to make ring-fencing the FRR legally enforceable.

### **The Respondents' secondary position**

- 6) The Respondents' secondary position is that if there remains any doubt in the Inspector's mind that a fare increase is necessary or proportionate, there should be no increase. This approach takes into consideration local concerns arising from:
  - a) an historic failure effectively to ring fence and protect the FRR, coupled with an inability to enforce its ring-fencing; and
  - b) doubts about associated financial matters, such as:
    - i) the Directors' dividend policy, which remains a concern, as it seems to the Respondents that there is inconsistency between the Company's stated policy and the revised profit and loss forecasts;
    - ii) the valuation of the Company's assets, particularly the Road, notwithstanding the clarification provided by Mr Glenwright of Gerald Eve in his statement of 09.12.2020 [1/153]; and
    - iii) the Company's reliance on Net Asset Value ('NAV') as an appropriate basis for calculating yield and therefore meeting the statutory criterion of a 'reasonable return on investment'.

- 7) Formal support for the Respondents' position comes from Corfe Castle PC (by resolution at EGM on 26.10.2020) to support the Respondents' opposition to a fare increase save by reference to the counter-proposal [2/69]. That Parish Council has its own concerns related to local issues on which it will make its own representations. Other individual objectors have expressed approval of the Respondents' counter-proposal.
- 8) The Respondents believe that they have much common ground with the National Trust's position, and if there is scope for some form of off-peak ticket pricing the Respondents would support that. The Respondents note the criticism of their counter-proposal made by the Trust but suggest that this is a question of perspective: the Respondents are obliged to take a long-term and county-wide strategic view of transport priorities, whereas the Trust is naturally focussed on its local and immediate priorities, such as the welfare of their staff. This applies also to the criticisms made by individual objectors, who suggest that the Respondent's counter-proposal does not take account of the needs of local people. The Respondents' principal position is based on their wider strategic duties, as set out in the Explanatory Note.

#### **Matters outside the scope of the Inquiry**

- 9) Some objectors raise issues which are not within the scope of the Inquiry.
- 10) Some objectors call for a fundamental alteration in the Ferry's ownership and operations: issues such as whether or not the Ferry should be in private ownership, or whether the model provided by the 1923 Act is any longer appropriate. The Inquiry's terms of reference are set by the Transport Charges etc (Miscellaneous Provisions) Act 1954 ('the 1954 Act'), section 6. Whether or not local residents might be better served by a wholly different kind of service is not a matter than can be determined at this Inquiry.

#### **Powers of the Secretary of State (upon the Inspector's recommendation)**

- 11) The Secretary of State's powers are governed, and limited, by statute.

- a) The statutory framework consists principally of the Bournemouth-Swanage Motor Road and Ferry Acts 1923 and 1956. There have been amending Acts in 1928 and 1956 but the Respondents submit that these do not affect the terms of reference of this Inquiry.
- b) The questions to be determined at the Inquiry, and the powers of the Secretary of State to alter the toll charges, are set out in section 6 of the 1954 Act.

12) The Respondents argue that the statutory wording of the 1954 Act enables staged increases. The relevant parts of section 6(2) provide (with emphasis added):

*[The Minister] may, subject to the provisions of this section, make an order revising [1] in such manner as he may think fit, [2] with effect from such date as may be specified in the order, all or any of the said charges, whether or not the subject matter of the application, [3] including any classification by reference to which the amount of any of those charges is to be determined; and any such order shall have effect notwithstanding anything in any statutory provision relating to the subject matter of the order*

13) The Respondents submit that this means:

- a) the words at [1] allow a wide discretion within the terms of the section itself and by reference to the special Acts relating to the Company;
- b) the words at [2] mean that an Order revising the fares may contain dates when the revision of any of the said charges shall take effect.
  - i) The usual practice has been to specify in a particular article of the Statutory instrument that the increases set out in its Schedule 'will take effect from ...' and specify the date.
  - ii) The Respondents say that it is equally possible for an Order to say that the increases will take effect from the dates (plural) specified in the Schedule and that the Schedule may be divided into parts, each part relating to fares effective from or until a specified date, thereby allowing for staged increases up to specified maximum fares for each stage;

c) the words at [3] would allow the Order also to specify the discount rates applicable at any specified time by treating the bulk-purchase tickets as relating to a particular ***classification*** of toll charge.

14) There is no power to order the Company to do any particular thing with the money raised from the toll charges, such as to put a fund in trust or escrow.

15) This statutory background contributes to the Respondents' position in seeking to tailor fare rises to local priorities.

JOSHUA DUBIN

4<sup>th</sup> January 2021

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**Proposed Respondents**

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**For hearing: 5-7 January 2021**

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