

**The Secretary of State for Digital, Culture, Media & Sport**

100 Parliament Street

London

SW1A 2BQ

Dear Sir or Madam

**THE NORTH SOMERSET COUNCIL (BIRNBECK PIER) COMPULSORY PURCHASE ORDER 2020 (the "Order")**

1. We are writing on behalf of the CNM Estates (Birnbeck) Limited ("CNM").
2. CNM owns Birnbeck Pier and Island, Birnbeck Road, Weston-Super-Mare, BS23 2BT (the "Site", title number ST212047), which falls within North Somerset Council (the "Council"). CNM also owns the access way and surrounding waters and sea bed together with hardstanding, former landscaped gardens and paths, buildings, toll gates, car park off Birkett Road leading to Birnbeck Pier and other relevant land (together with the Pier and Island, "the Pier and Relevant Land").
3. CNM has owned the Site from 19 December 2014 and the Royal Pier Hotel from 25 May 2007.
4. Under powers in section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the "Listed Building Act"), the Council has made the Order, which seeks authorisation from the Secretary of State for the acquisition of the Pier and Relevant Land (comprising 81380.66 square metres, as described in the Schedule to the Order and delineated and shown edged red and coloured pink, numbered 01 on a sealed map marked "Map referred to in the North Somerset Council (Birnbeck Pier) Compulsory Purchase Order 2020"). The Council seeks to justify the proposed compulsory acquisition by reference to its Statement of Reasons dated 18 September 2020 (the "SoR").
5. The Order was made on 18 September 2020. CNM received a revised letter of service providing notice of the making of the Order on 25 September 2020.

6. CNM objects to the general principle of the Order, as well as the extent of land which the Council seeks to compulsorily acquire. CNM is committed to the preservation of the Pier and the comprehensive redevelopment and regeneration of the surrounding area. Reasonable steps are being taken for properly preserving the Pier and Relevant Land. CNM has clearly, and repeatedly, stated its intention to address the Repairs Notice described below in its totality; and in a comprehensive, phased manner. CNM has always been, and remains, willing to work collaboratively with the Council and the RNLI in order to facilitate the return of the RNLI life boating service to Birnbeck Island.
7. CNM requests that the Secretary of State does not confirm the Order. CNM's objection is set out in more detail below.

#### **The Site, Pier and Relevant Land**

8. Birnbeck Pier was built between 1864 and 1867 (the "Pier"). It is the only pier in the UK which links to an island and is only one of four Grade II\* listed piers in the country.
9. The Site is situated within the Great Weston Conservation Area and comprises 6 listed buildings. This includes the main pier structure, which is a Grade II\* listed building and five Grade II listed buildings, comprising: i) the Toll House; ii) Entrance Gates and Turnstiles; iii) the Royal Pier Hotel; iv) North Jetty; and v) Clock Tower and Life Boat House / Slipway.
10. The Site is a Site of Special Scientific Interest (SSSI) and a Wildlife Site of International Importance. The Site also falls within the Severn Estuary Landscape Character Area and is within a tidal 'Flood Zone' as defined by the Environment Agency.

#### **History of redevelopment proposals**

11. In 2005, a Planning Brief was submitted to the Council by the previous owner (Urban Splash), which outlined a comprehensive redevelopment proposal for the Pier. The principle of mixed use redevelopment of the Site was supported by the Council.

12. In 2015, CNM prepared a presentation outlining development proposals for the Site.
13. In March 2017, CNM instructed architects to prepare a design for the redevelopment of the Site.
14. On 13 October 2019, Listed Building Consent (Ref 16/P/1593/LB) was granted for the demolition of the North Jetty walkway and trestle piers. CNM has recently resubmitted an application for the renewal of that consent.
15. CNM has appointed a team of experienced professional advisors and has developed a package of measures that will facilitate the comprehensive repair of the Pier, and is working towards the redevelopment and regeneration of the surrounding area.
16. With regards to the redevelopment and regeneration of the surrounding area, the Secretary of State will in due course be referred to evidence that demonstrates that i) the development plan context is (and has in recent memory always been) supportive of comprehensive redevelopment; ii) there is considerable public support for, and public interest in, comprehensive redevelopment; iii) the principle of mixed use redevelopment of the Site has previously been supported by the Council's Members; iv) the considerable ongoing maintenance and running costs associated with the Pier must be carefully factored into any public interest appraisal of the proposed compulsory acquisition; and v) the Council's proposed scheme and its purported justification for the extent of the proposed compulsory land take depend upon wider redevelopment proposals (para 5.12 of the SoR). Therefore, it is highly misleading for the Council to now denigrate CNM's attempts to engage in discussions as to the potential for development on the wider site (including the potential for enabling development to provide funding for the required repairs to the Pier) (para 5.10 of the SoR).

## **The RNLI**

17. CNM is acutely aware of the RNLI's longstanding history and connection with the Site. However, CNM would also note that the RNLI has been the main beneficiary of the Pier's use over 140 years (and particularly since closure in 1993), yet has not made meaningful contributions towards its maintenance.

18. Nevertheless, and in addition to progressing its redevelopment proposals, CNM has been engaged in meaningful and lengthy negotiations with the RNLI in order to both facilitate repairs to the Pier and also enable the RNLI to return to appropriate facilities at Birnbeck Island. Negotiations over detailed Heads of Terms were being progressed in 2019, but were discontinued by the RNLI after issues arose between the parties regarding the appropriate valuation of the Site and its long term development potential. The discussions between CNM and the RNLI also included detailed reference to grant funding that would be available to the RNLI, which would have funded a large proportion of the works of repair to the Pier.
19. Although discussions with the RNLI subsequently broke down (coincidentally at exactly the same time that CNM informed the Council on a confidential basis that very good progress was being made towards a consensual agreement with the RNLI), CNM's reasonable reliance upon the envisaged progress of those discussions is part of the background that explains any apparent delay in commencing works of repair to the Pier. The breakdown of discussions with the RNLI was very disappointing to CNM, given the considerable amount of time and effort that the company expended in trying to achieve a deal that was mutually beneficial to both CNM and the RNLI, as well as of wider public benefit.
20. For the avoidance of doubt, CNM has always been, and remains, willing to work collaboratively with both the Council and also the RNLI in order to facilitate the return of the RNLI to Birnbeck.

#### **Condition of the Pier and the Repairs Notice**

21. The Site is currently closed to public access and an exclusion zone is in force. CNM acknowledges that the Pier is in a state of disrepair.
22. During 2019, the Council and CNM entered into correspondence relating to the repair and preservation of the Pier. Throughout its communications with the Council, CNM has always been clear that it is committed to the repair and preservation of the Pier and the comprehensive redevelopment and regeneration of the surrounding area.

Notwithstanding that commitment, it is clear that repair of the Pier is an exceptionally challenging project with a number of factors at play, including (but not limited to) i) the nature of the heritage asset(s); ii) their challenging location; iii) weather; and iv) seasonal and tidal variations. Extensive surveying work has been required prior to commencement of physical works in order to assess the condition of the Pier, as well as to ensure that works of repair do not require unnecessary duplication. Furthermore, there are a range of consents required to facilitate such works, which all require the submission of detailed information.

23. On 9 September 2019, a repairs notice was issued by the Council (the “Repairs Notice”), with Schedule 2 to the Repairs Notice setting out a “specification of works to be carried out” comprising 25 items. A copy of the Repairs Notice (and Schedule) is appended to this letter of objection.

### **The Order**

24. On 14 July 2020, the Council resolved to compulsorily acquire the Building and Relevant Land in reliance upon the contents of a Full Council meeting report that was produced for the purpose of providing background and options for Members to consider (the “Report”). However, the Report contained a number of inaccuracies, which were identified and brought to the Council’s attention by letter (and accompanying appendix) dated 10 July 2020. Such inaccuracies presented a highly misleading picture as to the progress of works on Site.

25. Notwithstanding CNM’s concerns in these regards, the Order was made on 18 September 2020.

26. CNM received a revised letter of service providing notice of the making of the Order on 25 September 2020.

### **Grounds for Objection**

27. CNM objects in principle to the Order and has a number of substantial objections regarding the Order and the underlying proposals.

**(1) Reasonable steps being taken for the preservation of the Pier**

28. In order for the Secretary of State to confirm the Order, he will need to be satisfied that CNM has not taken reasonable steps to comply with the Repairs notice. While CNM accepts that there was an initial delay in progress to comply with the Repairs Notice, CNM has now made considerable progress in taking positive steps to enable compliance with the Repairs Notice. In addition to objecting to the Order, CNM has also applied to the magistrates' court for a stay in the compulsory purchase proceedings pursuant to section 47(4) of the Listed Building Act, on the basis that it has taken, and will continue to take, reasonable steps to comply with the Repairs Notice.
29. Addressing the repair of a heritage asset is not a straightforward matter, not least because consents and licences are required before any physical works of repair can commence. It is essential that detailed survey work is undertaken prior to the commencement of any such works. When considering what reasonable steps have been taken for properly preserving the Pier, it is appropriate and reasonable under the circumstances to give consideration to the seasonal and tidal limitations of being able to conduct physical surveys and the works.
30. CNM has appointed a highly experienced consultant team, including a heritage expert and an expert in the repair of historic piers. This demonstrates that CNM will be in a position to deliver in line with the proposed timetable, with the works completed to an appropriate standard.
31. CNM has been guided by that expert heritage and engineering advice, which has confirmed that a staged approach to the repair of the Pier must take place with a focus on the most urgent and high priority works to take place first, followed by compliance with the remaining aspects of the Repairs Notice. It is clear from the Report (paras 3.2 and 3.4.3) and SoR (paras 6.26 and 6.27) that a similar staged approach has been suggested by the RNLI, which confirms that this approach is the only reasonable method to deal with this structure. Moreover, both the Council and Historic England have agreed the principle that i) it is not possible to submit a single application to address the Repairs Notice; and that ii) a phased approach is appropriate. To that end, it has also

been agreed that the overarching Refurbishment Strategy prepared on CNM's behalf is logical.

32. As noted above, although discussions to facilitate the RNLI's return to Birnbeck Island subsequently broke down, CNM's reasonable reliance upon the envisaged progress of its discussions with the RNLI formed a central part of CNM's intention to complete works of repair to the Pier. It was envisaged during those discussions that the RNLI would access grant funding (and funding from a range of other sources) in order to in large part fund those works of repair. Considerable time and effort was expended towards securing an agreement with the RNLI between Autumn 2019 and early 2020.
  
33. Once discussions with the RNLI had broken down, CNM took immediate steps to enable it to comply with the Repairs Notice. Having appointed a highly experienced consultant team, that team began to engage with the Council in order to agree the scope of an initial programme of works, which was submitted to the Council on 12 June 2020. That initial programme indicated the phasing for (i) team mobilisation; (ii) immediate priority work; and (iii) high priority work. Therefore, it is factually incorrect and highly misleading for the Council to suggest that no substantial proposals have been put to the Council for any works of repair (para 2 of 3.4.1 of the Report) or that "the Owner has not taken steps to properly preserve the Pier" (para 5.14 of the SoR). Similarly, the suggestion that CNM's proposals to date "do not constitute a comprehensive repair or restoration scheme" (para 1.8 of the SoR) and that CNM "are intending to work up proposals to address 4 of the 25 items listed in the Repairs Notice Schedule" (para 5.8 of the SoR) are again wholly inaccurate and highly misleading, given that i) the current advice from the relevant experts (as agreed by both Historic England and the Council) clearly states that the repairs must be completed in phases, as soon as reasonably practicable and in particular given the necessity for complex approvals for the scope and delivery of the works; ii) proposals for those 4 items have been submitted and await determination by the Council; and iii) CNM has clearly, and repeatedly confirmed its intention to comply with all of the requirements of the Repairs Notice. In this regard, it is again instructive to note that the exact same approach is proposed to be adopted by the RNLI. As such, the Council's constant refrain that CNM has not provided any "comprehensive proposals for full compliance with the Repairs Notice" are woefully wide of the mark in the real world

context in which CNM is (and anyone else attempting to repair the Pier would be) operating.

34. Further to the above, it is risible for the Council to attempt to lay the blame for any recent delays upon CNM, given the Council’s own intransigence in dealing with detailed applications and information placed before it for consideration and determination. To give just one example, CNM submitted a Method Statement for foreshore cleans dated 12 June 2020 for approval in order that the licence application to the Marine Management Organisation could be submitted. This was later amended on 22 June 2020 (further to the request and comments of the Council’s officer), and further submitted to Natural England for their approval. Despite being a fairly straightforward matter, and notwithstanding regular chasing by CNM’s advisors, this was not approved by the Council until 3 July 2020. The Council then informed CNM that it required a licence for access in order for the clean to be undertaken. When that licence was eventually granted on 20 August 2020, the clean was undertaken the very same day.
35. CNM is committed to continuing to carry out works of repair to the Pier and Relevant Land. Its evidence before the Secretary of State will demonstrate that substantive progress is being made with reference to the works required pursuant to the Repairs Notice. At the time of writing, that progress can be summarised as follows:

	<b>Summary description of step taken</b>	<b>Date range</b>
1	Appointment of a highly experienced consultant team including a heritage expert and an expert in the repair of historic piers	April – June 2020
2	Ensuring that all works are undertaken in accordance with specialist advice (Item 1 in Schedule to Repairs Notice)	Throughout
3	Ensuring Site is safely set up for the works to be undertaken in accordance with Health and Safety requirements, including securing perimeter to Site (Item 2 in Schedule to Repairs Notice)	Throughout
4	Ensuring appropriate surveys and inspections are undertaken, including laser scanning of the Pier to assist with recording and development of repairs details (Item 4 in Schedule to Repairs Notice)	Throughout
5	Production of an overarching Refurbishment Strategy	May – June 2020
6	Production of an intended programme to address the Repairs Notice	May – June 2020
7	Submission of revised approach, including key dates for	June 2020

	the immediate programme of works and preparation of an application for listed building consent	
8	Production of an Initial Programme of Works with reference to i) team mobilisation; ii) immediate priority of work; and iii) high priority of work	June 2020
9	Submission of Method Statement for foreshore clean, so that the licence application to the Marine Management Organisation could be submitted. Subsequent revisions in response to Council comments, with the Method Statement being approved by the Council on 3 July 2020	June - July 2020
10	Submission of Full Programme of Works	June 2020
11	The preparation of a prioritisation process for the works, ranging from High - Medium - Low - Statutory Duty	July 2020
12	Submission of Listed Building Consent application (Ref 20/P/1784/LBC) to address items 7, 8, 11 and 13 listed in the Schedule to the Repairs Notice, with further information provided in a timely fashion as required by the Council	July 2020
13	Licence for Access granted by the Council and foreshore clean undertaken on the same day	August 2020
14	Laser scan of the Site (Item 4 in Schedule to Repairs Notice)	September 2020
15	Preparation of second Listed Building Consent application to address the next stage of works	October 2020
16	Submission of an application for the renewal of the North Jetty consent	October 2020

36. As noted above, given the need for licences and Listed Building Consent(s), it is relevant to note that the physical start date of many items has been, and will remain, entirely in the Council's gift. Once applications have been approved, work can commence within weeks, once site setup and mobilisation has occurred. Unfortunately, to date, the Council has obstructed and delayed, rather than facilitated, repair work; all of which runs entirely counter to the case now being presented by the Council in support of its proposed compulsory acquisition.

37. It is also important to recognise the practical impact of the unprecedented global pandemic, which has naturally had an impact on development and the ability to access the Site and carry out surveys required to address the Repairs Notice.

**(2) No compelling case in the public interest**

38. The Council's case for compulsory acquisition rests entirely upon (i) CNM's alleged inaction; and (ii) the RNLI's involvement. Both are manifestly flawed.
39. For the reasons set out above, which will be explored further at any Inquiry, CNM has taken, and is committed to continue to take, reasonable steps for the proper preservation of the Pier. CNM is making substantial progress, submitting schedules and relevant applications for consent to begin the physical works of repair. In light of that progress, it is difficult to conceive of any proper basis for the making of the Order at this stage; still less any proper basis for its confirmation in 12 months' time when the Secretary of State will be in a position to consider what further works have been completed and when CNM's wider proposals are more fully developed.
40. CNM's works of repair and proposals for the redevelopment of the wider area will also be privately funded and not at the public expense. Funding is available to continue those works of repair, which will also be capable of being delivered far more quickly and more efficiently than if they can only be carried out at the end of a long, contested and expensive compulsory purchase process. It could be at least 18 months to 2 years until the Order is confirmed and up to a further three years until the RNLI have freeholder title to the Pier, which means that repair works pursuant to the Order scheme will only be carried out in the distant future; whereas CNM's proposal can involve immediate commencement of works (subject to the Council's willingness to properly engage with the consenting process(es)), thereby mitigating further damage as a result of future winter storms.
41. It is plainly not in the public interest for the Secretary of State to confirm the Order in circumstances where funding and a long-term solution for the Pier and Relevant Land is not yet in place. The case against confirmation is overwhelming, given that private funds are available now to repair the Pier.

### **(3) The RNLI**

42. Further to the above, the RNLI's involvement (and future presence at Birnbeck) can readily be provided for by entry into a voluntary acquisition scheme and/or a multitude of other arrangements, in relation to which CNM is willing to engage and work

collaboratively with both the Council and the RNLI. Indeed, CNM has offered the RNLI multiple options as to how this could work, but those efforts were overtaken by Council intervention, which occurred coincidentally almost immediately after CNM informed the Council's officer of the good progress it was making with the RNLI. Without CNM's discussions with the RNLI, no such deal would have been forthcoming, as evidenced by the fact that no suggestions have been forthcoming since 1993.

#### **(4) Funding and viability**

43. The Council has not yet signed any agreement with the RNLI and has not yet secured funding for the repair, refurbishment and maintenance of the Pier. Indeed, the RNLI has not secured complete funding and additional funding is required from a number of different sources (paras 5.17 and 6.35 of the SoR). Moreover, it would appear that the approval that has been given by the RNLI trustees is conditional and a) subject to detailed review of the Scheme at each stage and specifically on completion of the site investigation; and b) provided that the cost to return remains within the projected costs that have been ascertained through the surveying and due diligence work already undertaken" (para 6.31 of the SoR). Whenever schemes are dependent upon funding from a number of sources, there is a degree of uncertainty – both as whether each source will actually contribute and also the amount that might be contributed. Furthermore, the highly uncertain nature of the extensive repair of such a sensitive structure gives rise to a considerable risk that the "cost to return" will not remain "within the projected costs". As such, the funding and viability of the Council's acquisition is unacceptably precarious.

44. In discussion with CNM's heritage expert on 19 May 2020, Historic England estimated the restoration costs as approximately £8 million and the Council itself acknowledged "that restoration of the Pier would be a multi-million pound capital project" (para 5.14 of the SoR). Clearly, this will expose the Council to the risk that funding will not be forthcoming, particularly in the current economic climate.

45. Historic England has provided some nominal funds in the sum of £127,300 for the compulsory purchase process. This is clearly insufficient given the likely cost of the process overall.

46. Further to the above, CNM will demonstrate that the Council has underestimated the compensation liabilities that will be occasioned by exercising compulsory acquisition powers (para 6.37 of the SoR and Appendix C). This represents an unacceptable risk to the overall viability and deliverability of the scheme.
47. Before the Order can be confirmed by the Secretary of State, he will need to be assured that the required means and resources will be available to repair the Pier and to provide for its ongoing maintenance. At the moment, this cannot be guaranteed as there are numerous uncertainties in respect of the availability of funding and the viability of the Council's scheme.

**(5) Impediments to the delivery of the Council's proposed scheme, including other consents required**

48. As noted above, works of repair to the Pier require a litany of consents, including Listed Building Consent, marine licences and licences for access. In order for the Council to deliver upon its proposals, it will have to secure all relevant consents in advance of completing any physical works of repair. There are very few applications and consents that can be granted in advance of the confirmation of the Order and the taking of possession. Although the RNLI claims to benefit from certain rights of access, the scope, extent and application of the same remains a subject of some debate between the relevant parties. All of these factors represent impediments to the delivery of the Council's scheme and the timely preservation of the Pier.
49. Although CNM will also require many of the same consents for its proposed repair works, it has the considerable advantage of being the owner in possession of the Pier and Relevant Land. It is also in a position to commence works immediately upon the Council (and others) granting the relevant consent(s) for each phase of those works. Therefore, to the extent that the Council may assert that such works have any degree of urgency, it is plainly in the public interest for them to be completed as soon as reasonably practicable – all of which undermines the justification for the Council's proposals and the fundamental basis of the Order.

## **(6) Extent of land take**

50. Section 47(1) of the Listed Building Act provides inter alia that the Secretary of State may “authorise the appropriate authority to acquire compulsorily under this section the building and any relevant land”, with subsection (7) defining “relevant land”, “in relation to any building, [as meaning] the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management”. Thus, before confirming the extent of the Order, the Secretary of State will need to be satisfied that the extent of land take is properly justified with reference to such requirement(s).
51. Despite this, the Council has not sought to properly justify the extent of the relevant land that it is seeking to compulsory acquire. Indeed, such justification is limited to a bald assertion that “[t]hese areas will continue to be important to provide access to the CPO Site and for the proper management of the CPO Site in the future and are therefore appropriately included in the Order as ‘relevant land’ for the purpose of preserving the Pier” (para 2.4 of the SoR).
52. CNM objects to the extent of the land take on the basis that the red line boundary has been drawn far too widely and appears based upon the Council’s wider aspirations of regeneration, which are completely unrelated to the proper preservation and/or management of the Pier. In drawing the red line so as to include land that it does not reasonably require for those purposes, the Council has acted in an oppressive manner and apparently with a view to such acquisition “enabl[ing] the Pier to act as a catalyst for the longer term economic and community regeneration of this part of Weston town centre, including opportunities for job creation, training and volunteering” (para 5.12 of the SoR). CNM considers that the extent of the relevant land is too wide, not necessary and, therefore, will not stand up to scrutiny; not least because of the entirely inchoate nature of the Council’s future intentions in relation to the Pier and wider regeneration proposals.

## **(7) Delay caused by the Council, including lack of proper engagement**

53. CNM will produce evidence to demonstrate that the Council has failed to properly engage with the company and its advisors. Indeed, and far from supporting the proposed compulsory acquisition, the only compelling public interest case that will be capable of being properly evidenced for the Secretary of State will demonstrate that the public interest would be far better served by the Council committing to engage fully and properly in discharging its statutory functions, rather than wasting scarce public resources pursuing a proposal that CNM has to all intents and purposes already repeatedly committed to delivering in a comprehensive manner.

54. In particular (but not exclusively), CNM's evidence will demonstrate that the Council has failed to properly engage in relation to:

- a. Its resolution to make the Order and the provision of relevant information;
- b. Its stance in relation to requests for information;
- c. Its stance in relation to the requirement for formal approvals;
- d. Its determination of the application for Listed Building consent, which remains outstanding at the time of writing;
- e. The RNLI's proposals;
- f. A lack of any, or any proper, attempts to negotiate and/or to acquire by agreement.

55. Such failure has materially undermined CNM's ability to progress the physical works of repair. As such, it is entirely self-serving (and wholly inappropriate) for the Council to now rely upon any perceived lack of progress as part of its case in support of its proposed compulsory acquisition.

*The Council's resolution to make the Order and the provision of relevant information*

56. In resolving to make the Order, the Council acted in a high-handed and oppressive manner. Such resolution was granted on the basis of the Report, which – as noted above – was replete with inaccuracies and highly misleading statements. CNM requested that officers submit an addendum report to the Council clarifying the inaccuracies so that Members had the correct information before making their decision. However, that request was denied for reasons best known to the Council.
57. Moreover, the Council refused to provide CNM with sufficient notice and/or prior sight of highly relevant background documents, including those relating to the RNLI's proposals despite them being highly relevant to the underlying justification for the making of the Order. This placed CNM at a considerable disadvantage in seeking to persuade Members that commencing the compulsory purchase process was premature and, further, that CNM remained best placed to continue with its overarching Refurbishment Strategy. There was no, and certainly no proper, justification for the Council having acted in such a manner.

*The Council's stance in relation to requests for information*

58. Further to the above, and the appointment of its expert consultant team, CNM has sought to maintain regular contact with the Council and Historic England; particularly in relation to agreeing a strategy for addressing the Repairs Notice. On numerous occasions, the Council has requested information from CNM and its advisors in apparent reliance upon frivolous complaints and/or unsubstantiated reports from local individuals of works or surveys being undertaken on the site. Despite limited, if any, evidence having been provided to support such complaints and/or report, the Council has handled its requests for information in an unnecessarily high handed and oppressive fashion.

*The Council's stance in relation to the requirement for formal approvals*

59. By letter dated 1 June 2020, CNM's advisors wrote to the Council setting out the intended immediate next steps to address the Repairs Notice.

60. By email 4 June 2020, the Council advised that:

- a. The initial works that CNM intended to carry out should not begin until the required listed building consents were approved and accompanied by method statements and/or schedules of works;
- b. Planning permission may be required for the storage area and works base; and
- c. Any loose items recovered from the foreshore should be logged and securely stored.

61. Although CNM acceded to such request, it is clear that the Council's request that formal applications be submitted for most of the immediate works delayed the commencement of the items of works that CNM was planning to undertake during the week commencing 8 June 2020. The same has also occurred in relation to the Council's handling of licence applications, which have regularly been delayed by requests for further information and/or unnecessary bureaucratic requirements; none of which sit comfortably with the Council's assertions as to the urgency of the works of repair.

*The Council's determination of the application for Listed Building consent*

62. The Council's stance as to the need for such consent in relation to virtually all of the required – and associated – works means that it has been (and remains) entirely within the Council's own gift as to when CNM will be able to commence physical works of repair. However, the Council's obstructive stance has led to considerable delays in relation to outstanding Listed Building consent application, which was validated by the Council on 30 July 2020 and yet remains undetermined.

63. Since submission of the application, CNM's advisors (most particularly, JLL Heritage) have sought to engage with the Council in order to understand their comments on the application. Following the expiration of the 21 day consultation period, JLL Heritage chased the Case Officer for a discussion on the progression of the application and whether the proposals were acceptable to them. The first email received from the Case Officer was on 10 September 2020, which was received following a period of 2 weeks of

calls and emails to the officer; all of which were sent in order to facilitate discussions and to request feedback.

64. Since that date, JLL Heritage has continued to seek meaningful engagement with the local authority, with specific reference to the need to agree a set of appropriate conditions that could be applied to the current application. These discussions remain ongoing, with CNM having acceded to the Council's requests to extend the statutory determination period on more than one occasion.
65. The above difficulties with regards to the Council's lack of proper (and/or timely) engagement and determination can be contrasted with the materially different handling of the RNLI's application for intrusive surveys, which - although different in substance - appears to have been handled with far greater willingness to ensure timely discharge of the Council's statutory planning functions.

#### *The RNLI's proposals*

66. The Council has always been aware that CNM was engaging with the RNLI as this has been the preferred route to enable the repair of the Pier. However, and despite being aware of CNM's interests in this regard, the Council's officers refused to share RNLI's proposals for the Pier and Island with CNM in advance of the making of the Order. Such refusal demonstrates a clear unwillingness on behalf of the Council to engage properly with CNM. It also gave rise to material unfairness, given that it prevented CNM from having an opportunity to review those proposals and comment on them ahead of the Council's resolution to make the Order.
67. Further, and in any event, the RNLI's proposals are fairly limited and will not generate enough funding to provide for the long term maintenance of the Pier, despite the Council's acknowledgement that "[t]here is also a considerable ongoing maintenance cost that would need to be factored in to ensure a sustainable future for the Pier" (para 5.15 of the SoR). Despite having previously levelled the same criticism at CNM, the Council has itself failed to produce any detailed proposals as to how the Pier's maintenance will be managed in the future. CNM considers that a new ambitious use for the Island needs to be defined so that it provides for the RNLI life boat station,

benefits the public and contributes to the costs of the maintenance so that the Pier can be properly preserved in a manner that does not become an expensive drain on public funds. CNM remains committed to delivering the same.

*Lack of any, or any proper, attempts to negotiate and/or to acquire by agreement*

68. Given that compulsory purchase is intended as a measure of last resort, it is surprising that the Council has never meaningfully attempted to negotiate with CNM and/or to acquire the Pier and Relevant Land by agreement. The Council's attempts in this regard are limited to a single written offer on the 15 July 2020, which proposed to acquire the Site for £1, which is demonstrative of an approach that falls woefully short of what might reasonably be expected of a public authority acting properly in discharging its functions. Indeed, despite the Council's Members having resolved to provide for a period of negotiation before the making of the Order, no further attempts have been made to acquire the Pier and Relevant Land by agreement. As a direct result of the Council's failures in these regards, public funds will be wasted in pursuing a lengthy, contested compulsory acquisition with all of the associated risks. When placed in the context of a challenging repair project, this is a considerable shortcoming that jeopardises the delivery of the Council's proposed scheme, as well as undermining the any public interest that is claimed to underlie the Council's proposed approach

### **Conclusion**

69. CNM requests that the Secretary of State does not confirm the Order. The proposed compulsory acquisition is resisted in full. CNM does not consent to the written representations procedure and will insist that its objection is heard by an Inspector appointed by the Secretary of State before an Inquiry, in relation to which CNM's objection will be supported by detailed evidence.

70. For the purposes of this initial objection, we have appended a limited number of documents to this letter, as set out below. CNM will in due course rely upon detailed expert evidence and documentation setting out its case and the relevant background in full, including extensive correspondence with relevant parties.

- Appendix 1: The North Somerset Council (Birnbeck Pier) Compulsory Purchase Order 2020 and Schedule;
- Appendix 2: Repairs Notice dated 9 September 2019 and Schedule thereto;
- Appendix 3: Report to the Council;
- Appendix 4: Letter to Councillor Davies dated 10 July 2020 and appendices / document list;
- Appendix 5: Magistrates court covering document;
- Appendix 6: Complaint and summons.

**27 October 2020**