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Our Ref: DN5054/55/7/08

DN5054/60/1/32

Date: 20 September 2012

Dear Sir

HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

EAST SUSSEX COUNTY COUNCIL
THE BEXHILL TO HASTINGS LINK ROAD ("BHLR")

THE EAST SUSSEX COUNTY COUNCIL (BEXHILL TO HASTINGS LINK ROAD)
(SIDE ROADS) ORDER 2009 ("the SRO"); and

THE EAST SUSSEX COUNTY COUNCIL (BEXHILL TO HASTINGS LINK ROAD)
COMPULSORY PURCHASE ORDER 2009 ("the Transport CPO").

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the concurrent Public Local Inquiries ("the local Inquiry") held at the White Rock Theatre, Hastings on 13 sitting days between 10 November and 2 December 2009 before Mr C J Tipping MA(Cantab), an Inspector appointed by the Secretary of State, to hear objections to and representations about the above named Orders submitted for confirmation by East Sussex County Council ("the Council"). An Inquiry was also held concurrently with the above named Orders, into The East Sussex County Council (Bexhill to Hastings Link Road) (Planning) Compulsory Purchase Order 2009 ("the Planning CPO"). A pre-Inquiry meeting was held on 3 September 2009 at the De La Warr Pavilion, Bexhill. This letter conveys the Secretary of State's decision on the SRO and the Transport CPO. The Secretary of State for Communities and Local Government is responsible for the decision on the related Planning CPO and this is being issued today as a separate decision to be read alongside this one.

2. The SRO and Transport CPO, if confirmed by the Secretary of State, would, respectively, authorise the Council to:

(i) improve highways, stop up highways, construct new highways, stop up private means of access to premises and provide new means of access to premises all on or in the vicinity of the route of the classified road being the new highway which the Council proposes to construct from the A259 Trunk Road/A269 London Road junction at Bexhill north-eastwards and then eastwards to a point 145 metres north of the B2092/C93 Queensway/Crowhurst Road junction at Hastings; and

(ii) purchase compulsorily the land and rights over land described in the Transport CPO for the purposes of:

- (a) the construction and improvement of highways between the A259 King Offa Way at its junction with A269 London Road, at Bexhill, East Sussex and the B2092 Queensway 145 metres north of its junction with C93 Crowhurst Road in Hastings, East Sussex;
- (b) the construction of other highways, improvement of existing highways and the provision of new means of access to premises in pursuance of the above SRO;
- (c) use by the acquiring Authority in connection with the construction and improvement of highways and the provision of new means of access to premises as aforesaid;
- (d) mitigating the adverse effect which the existence or use of the highways proposed to be constructed or improved (as mentioned in (a) and (b) above) will have on the surroundings thereof; and
- (e) the carrying out of works on watercourses in connection with the construction and improvement of highways as aforesaid.

THE INSPECTOR'S REPORT

3. The Inspector has considered all the objections to and representations about the Orders, both as made in writing and presented orally at the Inquiry, and has submitted his report to the Secretary of State. A copy of that report is enclosed with this letter. References in this letter to paragraph numbers in the Inspector's report are indicated by the abbreviation "IR" followed by the paragraph number in the report.

4. The Inspector at IR 10.10.1 concluded that in his view there is a compelling need for the BHLR in the public interest and at IR 10.10.4 that the Council should be granted the powers it seeks to construct the BHLR. In light of his conclusions, the Inspector recommended at IR 11.1 and IR 11.3, respectively, that:

the Transport CPO be modified and, so modified, be confirmed - this modification refers to the deletion of Plot 2/12 for the reasons set out in IR 9.1 and IR 9.3; and

the SRO be confirmed as made.

POST-INQUIRY CORRESPONDENCE

5. Following the close of the Inquiry, correspondence has been received from Mr R Boggis, Ms L Boggis, Mrs J Walters, Mr R Crees, Mr G Jones, Mr Burns, Mr E McCall, Mr R Madge, Ms J Sutherland and Mr J Sutherland who enclosed a petition. Correspondence has also been received from Mr C Galbraith on behalf of the Hastings Area Chamber of Commerce, Mr R Gifford on behalf of the Parliamentary Advisory

Council for Transport Safety, East Sussex County Council and Berwin Leighton Paisner LLP on behalf of East Sussex County Council, as well as from Gregory Barker MP and Amber Rudd MP.

FUNDING

6. Following the Government's Spending Review in October 2010, it was announced by the Secretary of State on 21 March 2012 that approval had been given to provide the Council with a maximum funding contribution of £56m towards the cost of the BHLR scheme. This was confirmed in the Department for Transport's letter to the Council of 29 March 2012. In the Council's response of 5 April 2012, they confirmed that, 'subject to project risks with financial impacts that could not reasonably be expected to have been foreseen', they have the ability to underwrite all remaining funding to meet the full cost of the scheme.

THE DECISION OF THE SECRETARY OF STATE

7. The Secretary of State has considered carefully all the objections to, and representations about, the SRO and the Transport CPO, including alternative routes put forward and counter objections. He has considered the Inspector's report and is satisfied that the Inspector's conclusions cover all material considerations relevant to the scheme as a whole and accepts his conclusions and recommendations.

8. The Secretary of State has also had regard to the policy changes in the revised National Planning Policy Framework ("NPPF") that was published on 27 March 2012. This is a streamlining of existing Planning Policy Statements, Planning Policy Guidance Notes and some circulars to form a single consolidated document. This Framework sets out the Government's key economic, social and environmental objectives and the planning policies to deliver them, and provides additional guidance to local planning authorities to ensure effective implementation of the planning policy set out in the NPPF.

9. The Secretary of State is satisfied that the BHLR is fully supported by the NPPF in its aims to proactively identify priority areas for economic regeneration and in seeking opportunities to meet the development needs of businesses as well as supporting sustainable economic development. He also takes the view that the benefits of doing this significantly and demonstrably outweigh any adverse impacts of the BHLR when assessed against the policies in this Framework taken as a whole. The Secretary of State is also satisfied from the evidence before him that the Council is taking reasonable measures to support the transition to a low carbon future in a changing climate and taking full account of flood risk as required under the NPPF.

10. The Secretary of State has also had particular regard to the case submitted by the objectors from the Campaign for Better Transport and the Hastings Alliance, together with their supporters, recorded at IR 6.2.1 to IR 6.2.33. The Secretary of State is satisfied with the way the Inspector responded to these concerns in his report, and fully accepts his conclusions at IR 10.2.12, and IR 10.5.2 to IR 10.5.6, and agrees with the reasoning in reaching his conclusions. The Secretary of State has also considered the legal submission made on behalf of the Hastings Alliance recorded at IR 2.7 to IR 2.11 and fully accepts the Inspector's view expressed on this matter in his report, particularly when considered alongside his statement made in paragraph 9 above.

11. The Secretary of State has also carefully considered the matters raised in the post-inquiry correspondence alongside the Inspector's report in reaching his decision. However, he is satisfied that nothing new is raised in this correspondence that has not already been adequately addressed by the Inspector, or which causes him to disagree in any way with the Inspector's conclusions and recommendations.

12. In light of the decision on funding, referred to in paragraph 6 above, the Secretary of State is now satisfied, as is necessary before coming to a decision on these Orders, that there is a reasonable prospect of the scheme going ahead and that the necessary resources will be available within a reasonable timescale, and furthermore there is unlikely to be any other impediment to its implementation.

13. The Secretary of State has also carefully considered whether the purposes for which the Transport CPO is required sufficiently justify interfering with the human rights of the objectors, owners and lessees, and he is satisfied that they do. He has also had regard to and considered the provisions of Article 1 of The First Protocol to the European Convention on Human Rights. For these reasons, the Secretary of State accepts the conclusions of the Inspector at IR 10.7.2 and is satisfied, for the reasons given by the Inspector, that in confirming the Transport CPO, a fair balance has been struck between the public interest and interests of the objectors, owners and lessees.

14. The Secretary of State does not consider that the objections, singly or together, constitute grounds for not proceeding with the proposals, and accepts that the modification to the Transport CPO as described at paragraph 4 above is necessary, and should be made. For these reasons, he has decided to confirm the SRO and Transport CPO (as modified by him), referred to above, and this letter constitutes his decision to that effect.

15. In confirming these made Orders, the Secretary of State has relied on the information that the Council and others have provided, as contained in the Orders and any related plans, diagrams, statements or correspondence as being factually correct. Confirmation is given on this basis.

COMPENSATION

16. Details of compensation arising from confirming this compulsory purchase order are a matter for negotiation with the acquiring authority and not the Secretary of State. Accordingly, qualifying persons in relation to the land in the Transport CPO will need to be approached by the acquiring authority about the amount of compensation payable to them in respect of their interests in the land. If the amount cannot be agreed, the matter may be referred for determination by the Lands Tribunal under the Lands Tribunal Act 1949 and the Land Compensation Act 1961 and 1973, as amended by the Planning and Compulsory Purchase Act 2004.

AVAILABILITY OF DOCUMENTS

17. A copy of this letter, together with a copy of the Inspector's report, has been sent to those objectors, their representatives and the other persons who appeared and made representations at the Inquiry. A copy of this letter, together with a copy of the Inspector's conclusions and recommendations, has been sent to all other supporters of the scheme and outstanding objectors. Copies will be made available on request to any other persons directly concerned and can also be viewed at <http://www.dft.gov.uk/topics/legislation/national-transport-casework/local-authority-orders/>. The Council will also arrange for a copy of the Inspector's report and of this

letter to be made available for inspection at the offices of the Council and at all other places used to deposit the Orders at making stage. Any person entitled to a copy of the Inspector's report may apply to the Secretary of State for Transport, at this address within 6 weeks of the receipt of this letter, to inspect any document, photograph or plan submitted by the Inspector with the Inspector's report. Those documents, photographs or plans are retained at this office and will be made available at a local place of inspection.

RIGHT OF CHALLENGE

18. Notice is to be published of confirmation of the Orders. Any person who wishes to question the validity of the confirmed Orders, or any particular provision contained therein, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements in confirming the Orders may, under the provisions of Schedule 2 to the Highways Act 1980 and section 23 of the Acquisition of Land Act 1981, do so by application to the High Court. Such application must be made within 6 weeks of publication of the notice that the Orders have been confirmed. The High Court cannot entertain an application under Schedule 2 or section 23 before publication of the notice that the Secretary of State has confirmed the Orders.

Yours faithfully

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Authorised by the Secretary of State
to sign in that behalf