

29 March 2012

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Dear Sir or Madam,

**HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981**

**A453 BIRMINGHAM TO NOTTINGHAM (M1 JUNCTION 24 TO A52)
IMPROVEMENT**

1. I am directed by the Secretary of State for Transport and the Secretary of State for Communities and Local Government ("the Secretaries of State") to refer to the concurrent public Inquiries ("the Inquiry") held at the Rutland Square Hotel, Nottingham, between 10 and 20 November 2009, before Mr R M Barker, BEng(Hons), CEng, MICE, an independent Inspector appointed by the Secretaries of State, to hear objections to, and representations about, the following draft Orders:

The A453 Birmingham to Nottingham Trunk Road (M1 Junction 24 to A52 Nottingham Improvement and Slip Roads) Order 20 ("Slip RO");

The A453 Birmingham to Nottingham Trunk Road (M1 Junction 24 to A52 Nottingham Improvement) Detrunking Order 20 ("Detrunking Order");

The A453 Birmingham to Nottingham Trunk Road (M1 Junction 24 to A52 Nottingham Improvement) Side Roads Order 20 ("SRO"); and,

The A453 Birmingham to Nottingham Trunk Road (M1 Junction 24 to A52 Nottingham Improvement) Compulsory Purchase Order 20 ("CPO").

This letter conveys the Secretaries' of State decision on the published Orders, following consideration of the Inspector's report.

2. These draft Orders, if made, would provide for the dualling of a 9km section of the A453 trunk road between M1 Junction 24 and the edge of the urban area of Clifton where it would form a new roundabout junction at Mill Hill; the widening on-line of the 6km southern section from the motorway junction; the widening off-line of the contiguous northern 3km section to Clifton; and the de-trunking of the section of the A453 made redundant by this off-line improvement. The draft CPO would provide for the acquisition of land and rights necessary to carry out these works (“the published scheme”).

THE INSPECTOR’S REPORT

3. A copy of the Inspector’s report is enclosed. In this letter, references to paragraph numbers in the Inspector’s report are indicated by the abbreviation “IR”.

4. The Inspector recorded at IR 1.14 and IR 1.15 that a total of 17 Objector’s Alternatives were received – 12 were alternative alignments in response to the scheme’s publication and consultation, and a further five alternatives were received as explained at IR 1.15. Following the formal publication of and consultation on these alternatives, some 70 written representations about these were received in response and considered by the Inspector. There were 28 objections to the draft Orders outstanding at the commencement of the Inquiry, three counter objections and 34 letters of support.

5. The Inspector at IR 8.80 concluded that there is a compelling case for the scheme to be implemented in order to overcome congestion on the A453 Trunk Road between M1 J24 and Nottingham (Clifton) and to improve safety and the provision for cyclists and pedestrians, and at IR 8.1 to IR 8.80 he concluded overall in favour of the published scheme. At IR 8.45 to IR 8.67, he considered the 17 Objector’s Alternatives and concluded overall at IR 8.72 that only Objector’s Alternatives 6 to 10 inclusive, which he regarded as local access issues that did not detract from the published scheme, should be adopted. He further concluded at IR 8.72 that the adoption of these alternatives would not prejudice any party and would not contradict the evidence supporting the original scheme. In reaching these conclusions, the Inspector went on to recommend at IR 9 that the Slip RO and the Detrunking Order are made as drafted, and the SRO and the CPO be modified as set out in Inquiry Documents HA/9 and HA/10 and that the Orders so modified, be made.

THE DECISION OF THE SECRETARIES OF STATE

6. The Secretaries of State have carefully considered the Inspector's report together with all the objections, alternative proposals, counter objections, representations and expressions of support made, both orally and in writing, and all post-inquiry correspondence. In reaching their decision, they have also considered the requirements of local and national planning, including the requirements of agriculture.

Decision on the Environmental Statement

7. The Secretary of State for Transport is satisfied that the requirements of European Directive No. 85/337/EEC, as amended by Directive No. 97/11/EC and Directive No. 2003/35/EC, implemented by sections 105A, 105B, 105C and 105D of the Highways Act 1980, have been complied with fully in respect of the published scheme ("the project" for the purpose of the Directive). The Secretary of State is also satisfied that the Environmental Impact Assessment undertaken for the project and the Environment Statement, have properly identified, assessed and addressed all significant environmental effects, and considered and given reasons for dismissing the main alternatives, as well as assessing the proposed measures to minimise these impacts. The Secretary of State is satisfied that members of the public and others concerned have been given reasonable opportunity to express their opinion before deciding whether to proceed with the project to which the assessment relates. Therefore, having considered the Statement and any opinions expressed on them by the public and others, the Secretary of State has decided to proceed with the project to which the assessment relates. For the purpose of section 105B(6) of the Highways Act 1980, publication of the Secretary of State's decision to proceed with the scheme will be given by public notice as set out in section 105B(7).

Decision on the published draft Orders

8. The Secretary of State for Transport is satisfied that the published scheme is consistent with the Government's transport policy objectives.

9. The Secretaries of State are satisfied that the Inspector's conclusions cover all material considerations relevant to the scheme as a whole, and accept his recommendations, subject to the comments in the following paragraphs.

Matters arising

10. The Secretaries of State, in considering the Inspector's report, make the following comments on matters raised in the report:

Effect of scheme on Green Belt

11. The Secretaries of State note at IR 3.43 to IR 3.47 that the published scheme falls within Nottingham Derby Green Belt, and that, at the time at which the Inspector reported, this intrusion would have been defined as inappropriate development within the terms of Planning Policy Guidance Note Number 2 – “Green Belts” (PPG 2), unless its openness is maintained and there is no conflict with the purposes of including land in the Green Belt.

12. The National Planning Policy Framework (“the Framework”) has subsequently been published on 27 March 2012 and, at the same time, PPG2 was cancelled. However, the Framework retains the concept that inappropriate development is, by definition, harmful to the Green Belt and also confirms that one of the essential characteristics of Green Belts is their openness.

13. The Secretaries of State agree with the Inspector that, for the reasons which he sets out in IR 8.7 to IR 8.11, the road development would maintain the openness of the Green Belt by nature of its design, which he regarded as sympathetic to local topography and landscape, with its location directly adjacent or close to the existing road. The Secretaries of State therefore accept, for these reasons, the Inspector’s conclusion at IR 8.10 that the published scheme would not constitute inappropriate development in the Green Belt or offend the Green Belt objectives.

Objector’s Alternatives

14. The Secretaries of State have noted the Inspector’s conclusions on each of the 17 Objector’s Alternatives at IR 8.45 to IR 8.67, and accept his overall conclusion at IR 8.71 and IR 8.72 that, for the reasons he has given, Objector’s Alternatives 1 to 5 and 11 to 17 inclusive, should not be pursued further. The Secretaries of State also note the Inspector’s conclusions at IR 8.72 that Objector’s Alternative 6 to 10 inclusive should be adopted, which he regarded as dealing with local access issues that did not detract from the scheme objectives or prejudice any party concerned.

15. In regard to Objector’s Alternatives 7 to 10 inclusive, the Secretaries of State accept the Inspector’s conclusions and agree that they should be adopted into the published scheme and incorporated into the draft SRO and CPO on making. These modifications are not regarded as a substantial modification to the draft SRO for the purposes of paragraph 8(3) to Schedule 1 of the Highways Act 1980.

16. However, these modifications can only be included into the draft CPO on making if they do not require any additional land-take to that shown in the

published draft CPO, or that if any additional land-take is required, to comply with the provisions in paragraph 5 of Schedule 1 to the Acquisition of Land 1981, written agreement has, or will be received, from all persons with an interest in that land, before the CPO is made. There is no evidence before the Secretaries of State to this effect from either the Highways Agency or the Inspector of such a requirement with respect to Objector's Alternatives 7 to 10 inclusive, and their decision to modify these Orders is given on the understanding that these provisions are met.

17. The Secretaries of State are also minded to accept the Inspector's conclusion that Objector's Alternative 6 should be adopted and included into the SRO and CPO on making. However, from the evidence before them this would require additional land-take to that shown in the CPO, which is not all in the ownership of the promoter of Alternative 6. Furthermore, from the representations before the Secretaries of State it would appear unlikely that such written agreement from the other land-owner concerned, would be forthcoming – IR 6.8. Consequently, without this consent, this modification to the CPO would not comply with the provisions of paragraph 5 of Schedule 1 to the Acquisition of Land 1981 referred to above, and cannot therefore be made. Nevertheless, the Highways Agency are asked to pursue this matter with the landowner concerned to see if they can obtain the necessary written consent to the additional land-take, or if that fails, to look for an alternative route to Alternative 6 that could either be accommodated within the land-take in the published draft CPO or with additional land-take with that landowner's written consent. If the Highways Agency is successful in this respect, the Secretaries of State are satisfied that Objector's Alternative 6, as shown in Drawing No 21959/H/G/462, or with such detailed modifications as may be necessary, should be incorporated into the CPO on making. This is not regarded as a substantial modification to the draft SRO for the purposes of paragraph 8(3) to Schedule 1 of the Highways Act 1980.

18. However, if the Highways Agency is not successful in complying with the provisions in paragraph 5 of Schedule 1 to the Acquisition of Land 1981, within a reasonable period of time and to avoid causing unnecessary delay to the start of the scheme, they are asked to publish supplementary Orders to implement the Inspector's recommendation in respect of Objector's Alternative 6. If this course of action is adopted, the published draft SRO and CPO will be modified accordingly on making to remove any existing proposal superseded in the published scheme by adopting Objector's Alternative 6.

19. The access proposed in Objector's Alternative 6 would be subject to further consultation and the supplementary Orders would need to follow the

statutory planning process with possibly a further public inquiry - which the Secretaries of State cannot presume what the outcome would be - before being brought into effect. The scale and degree of the work involved in implementing such a modification is not considered to affect the making of the remaining published Orders, nor prevent the published scheme from starting. However, the Highways Agency are asked to ensure that the construction process for the proposed scheme is sufficiently flexible for the start of works at the locations affected by any supplementary Order, to take on-board the outcome of the independent planning process, as necessary.

Modifications to Draft Orders

20. The Secretaries of State note from IR 3.108 that the modifications referred to in sections 4 and 5 of Inquiry Document HA/9 and HA/10 pick up a number of minor amendments that arose after publication of the draft SRO and CPO. They also include modifications at section 6 of Inquiry Document HA/9 to both the SRO and CPO that would be required to accommodate Objector's Alternatives numbers 7 to 10, but not the alternative route in Objector's Alternative number 6, which is addressed separately in paragraphs 17 to 19 above.

21. In regard to the draft SRO, the Secretaries of State accept the Inspector's conclusions at IR 8.74 to IR 8.76 that he could not see any reason why the draft Order should not be made, subject to the modifications submitted by the Highways Agency in section 4 to Inquiry Document HA/9 and HA/10, which the Inspector considered did not prejudice any party. The Secretaries of State are satisfied that the proposed modifications do not make a substantial change to the published SRO for the purposes of paragraph 8(3) to Schedule 1 of the Highways Act 1980 and can be incorporated into the Order on making.

22. In regard to the draft CPO, the Secretaries of State agree with the Inspector's conclusions at IR 8.77 to IR 8.80 and accept his recommendation at IR 9 that it be modified as set out in section 5 to Inquiry Document HA/9 and HA/10, and that the Order so modified, be made. However, if these modifications affect the published Compulsory Purchase Order by requiring additional land-take to that shown in the published draft CPO, they can only be made, under the provisions in paragraph 5 of Schedule 1 to the Acquisition of Land Act 1981, where the landowner concerned has given their written consent. There is no confirmation before the Secretaries of State that any additional land is required to implement these modifications or that if additional land is required, written agreement of the relevant landowners for the changes have been obtained. The Secretaries' of State

decision to modify the CPO is given on the understanding that these provisions will be met.

Post-Inquiry Correspondence

23. Since the close of the inquiry, correspondence has been received from Mr Simon Massarella and on behalf of the Nottingham Campaign for Better Transport, the Nottingham Friends of the Earth, and the Nottingham Campaign to Protect Rural England (“NCBT/NFE/NCPRE”) all acting jointly in a single letter.

24. Mr Massarella was concerned about the affect of the scheme on the village of Clifton and contended that there appeared to be a better alternative than the published scheme. He went on to give examples of these alternatives. Mr Massarella was advised at the time that problems on the A453 corridor had been considered by a multi-modal study prior to promotion of the current scheme. This study had examined a range of options for addressing the problem on the route. He was also told that the local inquiry provided an opportunity for objectors to the scheme to present their views on alternatives, and indeed many alternatives were put to the Inspector who took them into account in reaching his conclusions and recommendation.

25. The NCBT/NFE/NCPRE were opposed to Nottinghamshire Country Council making a £20million contribution towards the published scheme and further contended that instead of pursuing the published scheme, low cost alternatives should first be examined to solve the transport and traffic issues on and around the A453 route. The view taken on NCBT/NFE/NCPRE comments regarding the £20 million contribution from Nottinghamshire Country Council is that this is a matter for the Council to decide and does not directly relate to the making of the published draft Orders and therefore falls outside the scope of the local inquiry and the Secretaries’ of State decision in this context. In regard to their point that low cost alternatives should first be considered, CPRE had already made similar representations to the local inquiry by suggesting a number of such alternatives, which the Inspector took into account in reaching his conclusions and recommendation.

26. The Secretaries of State have carefully considered this correspondence alongside the Inspector’s report in reaching their decision. However, they are satisfied that the matters raised in the post-inquiry correspondence amount to no more than an expansion or amplification of evidence previously presented to the Inspector, and there is nothing new in the correspondence that has not already been adequately addressed by the

Inspector, or which causes them to disagree with the Inspector's conclusions and recommendations.

The Published Scheme

27. In conclusion, the Secretaries of State have decided to proceed with the published scheme by making the draft Orders, as recommended by the Inspector at IR 9, with the modifications set out in this letter, subject to the provisos in paragraphs 16 and 22 above on making the CPO.

ORDERS TO BE MADE

28. When the public notice referred to in paragraph 7 above is given, any person who is aggrieved by the Secretary of State for Transport's decision to proceed with the scheme and wishes to question its validity, or of any particular provision contained in it, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements may, under the provisions in section 105D of the Highways Act 1980, do so by application to the High Court. Such application must be made within six weeks of publication of the notice. The decision to which the notice applies shall not be questioned in any other legal proceedings whatever.

29. In the light of the decision taken above, the Secretary of State for Transport will make shortly the published draft Orders listed in paragraph 1 above, as recommended by the Inspector, subject to the proviso relating to the CPO in paragraphs 16 and 22 above. Any supplementary Orders required from the modification in paragraph 18, above will be published in draft by the Highways Agency in due course.

30. Public Notice will be given when the Orders are made. Any person who wishes to question their validity, or any particular provision contained in them, on the grounds that the Secretary of State for Transport has exceeded his powers, or has not complied with the relevant statutory requirements may, under the provisions of Schedule 2 of 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 six-weeks of publication of notice that the Orders have been made.

COMPENSATION

31. After the Compulsory Purchase Order has been made, the qualifying persons, in relation to the land included in the made Order, will be approached about the amount of compensation payable to them in respect of their interest in the land. If the amount cannot be agreed with the valuer

instructed by the Highways Agency, on behalf of the Secretary of State for Transport, the matter may be referred for determination to the Lands Tribunal under the Lands Tribunals Act 1949 and the Land Compensation Acts 1961 and 1973, as amended by the Planning and Compulsory Purchase Act 2004.

AVAILABILITY OF INSPECTOR'S REPORT

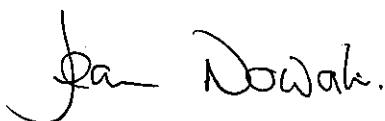
32. A copy of this letter and the Inspector's report has been sent to statutory objectors and to any other person who, having appeared at the inquiry, has asked to be notified of the decision of the Secretaries of State. Any person, who is entitled to be supplied with a copy of the Inspector's report, may apply to the Secretary of State for Transport within six-weeks of receipt of this letter, to inspect any document appended to the report. Any such application should be made to Tony Sherwood (telephone number 0207 944 6086) at the Department for Transport. Applicants should indicate the date and time (within normal office hours) when they propose to make the inspection. At least three days' notice should be given, if possible.

Yours faithfully



Richard Cantwell

Authorised by the Secretary of State for Transport to sign on that behalf



Jean Nowak

Authorised by the Secretary of State for Communities and Local Government to sign on that behalf