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for Transport

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Your Ref: MS/MJ/CP 0107

Our Ref: NATTRAN/SW/LAO/126

Date: 18 July 2017

Dear Mr Stokes

**THE COUNCIL OF THE BOROUGH OF TORBAY (A380 KINGS ASH ROAD
WIDENING SCHEME, CHURSCOMBE CROSS TO LUSCOMBE LANE, PAIGNTON)
COMPULSORY PURCHASE ORDER 2017 (“the CPO”)**

**SECRETARY OF STATE’S DECISION – CPO TO BE CONFIRMED WITH
MODIFICATIONS**

1. I refer to your Council’s application for confirmation of the above named CPO. The Secretary of State for Transport (‘the Secretary of State’) has decided to confirm, as modified by him, the CPO and this letter constitutes his decision to that effect.
2. The CPO will authorise the Council of the Borough of Torbay (“the Council”) to purchase compulsorily land and new rights over land for the purpose of the improvement of the A380 Kings Ash Road from south of the junction at Churscombe Cross to its junction with Luscombe Lane and the use of land in connection with the improvement of highways.

MODIFICATIONS

3. The Secretary of State will make a minor modification to the CPO by replacing the A3 Order Map (Drawing No. 8/9/14_05 Rev. A) with an A1 Map (Drawing No. 8/9/14_05 Rev. D) which is to scale, shows plot boundaries clearly delineated, shows detail of the surrounding area and has an amended title corresponding with that stated within the Order.

DECISION TO DISPENSE WITH A PUBLIC LOCAL INQUIRY

4. One objection to the CPO was received from Dr Sam Moss on behalf of Torbay Green Party. It is noted that Torbay Green Party has no rights or interest in the land to be acquired under the CPO and is therefore considered a 'non-qualifying objector'. Section 13A of the Acquisition of Land Act 1981 provides the right for remaining (qualifying) objectors to have their objection heard at a Public Inquiry. No objection was received which would require that a Public Local Inquiry be held. Information submitted by both the objector and the Council was deemed sufficient for a decision to be reached on the CPO. Accordingly, the Secretary of State decided to dispense with the holding of an Inquiry and notified the parties concerned on 4 April 2017.

TORBAY GREEN PARTY'S OBJECTION

5. In their letter of 2 February 2017 Torbay Green Party stated that they wished to submit a provisional objection pending clarification of plans in relation to landscaping and cycleway provision.

6. Torbay Green Party were of the opinion that publically available documentation failed to provide detail in regard to landscaping and the reinstatement of diverse treescape and hedgerows on the western side of the A380 and that it may be that the CPO does not include enough land to fully satisfy this aspiration. They highlighted that this is of particular concern being part of the known Greater Horseshoe Bat strategic flight paths and sustenance zone and that the bats will be particularly sensitive to habitat loss, damage and light pollution resulting from the works. They also requested clarification regarding the extent, width and direction of flow of the cycleway to be provided alongside the eastern side of the highway.

7. Torbay Green Party, in a letter dated 3 April 2017, requested further clarification regarding the Greater Horseshoe Bat survey undertaken in preparation for the scheme and further details of the mitigation plans. They requested a copy of the full survey and scheme design plan. They also expressed concern and requested further explanation regarding the lack of cycleway provision in the southern half of the scheme.

8. Torbay Green Party's final comments in their letter of 25 May 2017 listed their outstanding concerns in relation to the landscaping and requested a number of documents for review. These concerns comprised:

- the tree and shrub planting and whether all of the provisions will be native species;
- the insufficiently small area provided by the CPO for tree and shrub landscaping on the western side of the A380 in the upper left quadrant of the scheme;
- the dearth of native tree and shrub provision on the western side on the highway between Hilltop Nursery and Luscombe Lane;
- lighting and linear infilling planting;
- whether any of the trees identified with potential to support roosting bats in the Appendix 6 Bat Roost Assessment have been removed and if so when bat surveys will be undertaken to ascertain presence/ absence;

- the time elapsed since the SLR Great Parks survey until project commencement and why a follow up survey has not been carried out; and
- the missing detailed survey of trees identified with potential to support roosting bats between Ramshill Road and Luscombe Lane.

9. Torbay Green Party confirmed withdrawal of their objection on the 25 May 2017 to the proposed cycleway in anticipation of a favourable outcome with regard to the provision of cycling infrastructure on the western side of the A380. They also requested that a copy of the updated scheme design plan be sent to them when available.

THE COUNCIL'S RESPONSE

10. The Council responded to Torbay Green Party's objection in a letter dated 17 March 2017. It advised that a full Greater Horseshoe Bat survey was undertaken in preparation for the widening scheme and that the survey identified relatively low levels of activity. The Council also outlined the proposed mitigation measures in light of the survey findings and confirmed that the design of the new carriageway has taken this into account and the land required for the scheme includes space for the mitigation planting of trees and hedges.

11. In response to Torbay Green Party's comments regarding the cycleway provision the Council confirmed that the new shared footway/ cycleway will provide a link between Marldon and the residential estate of Foxhole, will be 3.5m wide and is intended for pedestrians and cyclists travelling in both directions.

12. The Council provided copies of the ecological surveys and the latest scheme design plan with its letter of 24 April 2017 which it requested be treated as its representations under the written representations procedure. The Council also noted that although it would be advantageous to have a cycleway the full length of the scheme it was hoped that cyclists would not be discouraged from cycling as they would be able to push their bicycles along the footpath for the short section between Ramshill Road and Luscombe Lane. Subject to safety and viability, the Council will consider providing a dual footpath and cycleway along the western footpath at this point. If future development takes place on the eastern side of the scheme between Spruce Way and Luscombe Lane further or alternative provision for a cycleway may be made within the new development. Unfortunately no assurances can be given in this regard.

13. In its final representations, dated 19 June 2017, the Council stated that it considered the clarifications requested by Torbay Green Party to be specific to the scheme itself rather than to the CPO and highlighted that no objections have been received from any affected landowners.

14. The Council stated that it has worked with and taken advice from its Ecologist throughout the process and implementation of the scheme. There has been independent overview and scrutiny of the scheme to ensure that it is delivered in accordance with sustainable transport objectives and appropriately mitigates against any environmental impact. All EU Habitats Directives have been followed and will continue to be followed.

15. The Council addressed each of the remaining concerns raised by Torbay Green Party advising that the planting scheme is currently being worked on, ground surveys are to be carried out shortly and it is usual for native species to be used wherever possible. There is no requirement for additional land to form part of the CPO as new hedge planting will be carried out within the retained land of the adjoining landowner. The adjoining land on the western side of the highway between Hilltop Nursery and Luscombe Lane is subject to planning permission for residential housing and therefore, at the present time, the Council does not propose to fully reinstate the trees and shrubs in this area. The Council is currently undertaking lighting modelling, all trees were surveyed for roosting bats and none were identified and the Council's Ecologist has carried out all necessary follow up surveys since the SLR Great Parks Survey. The Natural England Badger Settle licence was supplied and the detailed mitigation and planting plans are currently being worked on and are likely to be available later in the summer as are the final planting scheme and details of the post completion Landscape and Ecological Management Plan, maintenance and monitoring. The Council will keep Torbay Green Party updated.

16. In relation to the cycleway provision, the Council will provide the updated scheme design plan in due course. Further improvements to the cycleway are anticipated once the planning permission for the residential development between Hilltop Nursery and Luscombe Lane is progressed.

CONSIDERATIONS FOR DECISION

17. There are a number of relevant issues, as set out in *Guidance on Compulsory purchase process and The Crichton Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*, which the Secretary of State has considered in reaching his decision on the CPO. Namely that:

- i) there should be a compelling case in the public interest to acquire all the land and that this should sufficiently justify interfering with the human rights of those with an interest in the land affected;
- ii) the acquiring authority should have a clear idea of how it intends to use the land that it wishes to acquire;
- iii) sufficient resources should be available to complete the compulsory acquisition within the statutory period following confirmation of the Order, and to implement the scheme; and
- iv) there should be a reasonable prospect of the scheme going ahead and it should be unlikely to be blocked by any impediment to implementation.

THE DECISION OF THE SECRETARY OF STATE

18. The Secretary of State has considered carefully all the objections to, and representations about, the CPO. In particular, consideration has been given to the provisions of Article 1 of The First Protocol to the European Convention on Human Rights. In this respect, the Secretary of State is satisfied that in confirming the CPO a fair balance has been struck between the public interest and interests of the objector, owners and lessees.

19. He is satisfied that the scheme, for which the Order land is required, consists of the improvement of an existing highway and that planning permission is granted by virtue of the Town and Country Planning (General Permitted Development) Order 1995. He is further satisfied that in exercising its powers under Section 239 of the Highways Act 1980, the Council is pursuing the compulsory purchase of lands required for the improvement of a highway and there are clear descriptions of why the Order lands are required and how they will be used. The Council has confirmed that funding is available for delivery of the scheme, has provided the Natural England Badger Settle Closure licence and has confirmed that no further Orders, licences or consents are required. The Secretary of State is therefore satisfied that there are no anticipated impediments to the scheme going ahead.

20. The Secretary of State notes Torbay Green Party's withdrawal of their objection to the proposed cycleway in their letter of 25 May 2017 and will therefore comment no further on this matter.

21. The Secretary of State also notes the outstanding concerns of Torbay Green Party in connection with the landscaping of the scheme and the Council's response to each concern raised. The Secretary of State notes the preparatory work in relation to landscaping undertaken by the Council and that the Council has committed to keeping Torbay Green Party updated regarding their concerns and to providing Torbay Green Party with documents once they become available. In relation to Torbay Green Party's concerns regarding the extent of land included in the CPO, the Secretary of State notes the confirmation from the Council that no additional land will be required and the Secretary of State is satisfied both that all the land subject of the CPO is required for the scheme and that the CPO covers all outstanding land requirements for the completed scheme.

22. The Secretary of State is therefore of the opinion that Torbay Green Party's remaining concerns relate to details of the scheme and not to the compulsory acquisition of the land and that the issues raised do not constitute grounds for not proceeding with the CPO.

23. Having considered all aspects of the matter the Secretary of State is satisfied that there are no compelling reasons brought forward which would justify not confirming the CPO. Accordingly, the Secretary of State has decided to confirm, as modified by him, 'The Council of the Borough of Torbay (A380 Kings Ash Road Widening Scheme, Churscombe Cross to Luscombe Lane, Paignton) Compulsory Purchase Order 2017'.

24. In confirming the CPO 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

25. Details of compensation arising as a consequence of confirmation of a CPO are a matter for negotiation with the acquiring authority and not the Secretary of State. Accordingly, qualifying persons in relation to the land included in the CPO will need to be approached by the Council 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

26. A copy of this letter has been sent to Torbay Green Party and to Kevin Foster MP. Copies will be made available on request to any other persons directly concerned and will also be made available for viewing at <https://www.gov.uk/government/collections/highways-act-inspectors-reports-and-decision-letters>. Please arrange for a copy of this letter to be made available for public inspection at the offices of the Council where the CPO should be placed on deposit for public inspection at such time as it is duly advertised.

RIGHT OF CHALLENGE

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dave Candlish', with a long horizontal stroke extending to the right.

DAVE CANDLISH
National Transport Casework Team