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Our Ref: LDN23/C2300/6/1 
Your Ref: LSG4/VMJ/25.2294

October 2010

Dear Ms Johnson,

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 226 
ACQUISITION OF LAND ACT 1981 
THE LANCASHIRE COUNTY COUNCIL (EAST LANCASHIRE WASTE 
TECHNOLOGY PARK) COMPULSORY PURCHASE ORDER 2008 ("the Order")

Introduction

1. The report of the Inspector, Michael Ellison MA(Oxon), who held a public local 
   inquiry into the above order has been considered. A copy of the Inspector's report is 
   enclosed. References in this letter to paragraphs in the Inspector's report are 
   indicated by the abbreviation 'IR', followed by the relevant paragraph number.

2. The Order, if confirmed, would authorise the compulsory purchase by the 
   Lancashire County Council ("the Council") of approximately 25 hectares of land to the 
   east and north-east of Huncoat, Lancashire, for the purpose of securing the carrying 
   out of the development, redevelopment and improvement of this land by the 
   provision of a waste management facility including a residual waste transfer building, 
   a recyclate handling plant, a mechanical biological treatment plant and an in-vessel 
   mixed waste composting plant, and the development of offices, an access road, 
   associated landscaping and ancillary works.

Objections

3. Seven relevant objections to the Order were received. The main grounds of 
   objection were that: the powers used were inappropriate; there was no authority for 
   making the Order under the powers quoted in the Order; subsection (1A) of section 
   226 of the Town and Country Planning Act 1990 ("the 1990 Act") was not satisfied; 
   there was no compelling case for confirmation in the public interest; there was an 
   inability to demonstrate how the land would be used; there was an inability to 
   demonstrate that the resources necessary to deliver the scheme were available;

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there was an inability to demonstrate the need for all the land within the order; the use of the compulsory purchase order site for the East Lancashire Waste Technology Park was not justified and would cause harm; and the justification for the access road had not been fully demonstrated.

Inquiry
4. The inquiry was held concurrently with inquiries in respect of the Lancashire County Council (Whinney Hill Link Road) Compulsory Purchase Order 2008 and the draft Altham Lane C638 Realignment Stopping up of Highway (North West) (No. 1) Order 20[ ]. Concurrent inquiries were held on the basis that the orders before the inquiries were interlinked to such an extent that it was convenient to hear them together. Separate decisions on these other orders have been issued today by the Secretary of State for Transport.

Procedural matters
Application for award of costs
5. An application for a partial award of costs against the Council on the grounds of unreasonable behaviour was made at the inquiries on behalf of Omega Atlantic Ltd ("Omega"), an objector to the Order. This matter will be addressed following the issue of this decision letter, alongside any further costs applications arising from the decision.

Request to exclude land made at inquiry
6. At the inquiries, the Council requested that Plots 1a and 2a should be excluded from the Order if it was confirmed, as they accepted that compulsory acquisition of these plots was not required to allow the development envisaged.

Legal matters
Legal matters relating to use of powers and the Council’s resolution
7. Omega, which owns Plots 12 and 13 within the order, challenged the validity of the order on three grounds:

(a) Omega argued that the use of the power contained in section 226(1)(a) of the 1990 Act was inappropriate;

(b) Omega argued that the Order was unauthorised and could not be confirmed because the Council’s resolution to make the Order authorised the use of powers of compulsory acquisition contained in the Local Government Act 1972, the Housing Act 1985 "and all other enabling legislation" but not the powers set out at section 226(1)(a) of the 1990 Act; and

(c) Omega argued that the Council failed to comply with subsection (1A) of section 226 of the 1990 Act, on the basis that no thought appeared to have been given to whether the Order would contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area before the Order was made.

The conclusions of the Inspector on these matters are set out at IR 6.15-6.41.

8. In respect of the ground at 7(a), the Secretary of State agrees with the conclusion of the Inspector at IR 6.19 that the enabling power at section 226(1)(a) of
the Town and Country Planning Act 1990 is appropriate to the purposes of the proposed compulsory acquisition for the reason the Inspector gives.

9. In respect of the grounds of objection set out at 7(b) and 7(c) above, the Secretary of State has noted Omega and the Inspector’s comments but in view of the decision set out below on the basis of the merits of the Order has not considered these points further.

Consideration
10. The Inspector’s report summarises the submissions made at the local inquiry by the remaining objectors and the responses made by the Council (IR 5.1-5.227). The Inspector has recommended that the Lancashire County Council (East Lancashire Waste Technology Park) Compulsory Purchase Order 2008 should not be confirmed.

11. The Secretary of State has given careful consideration to the Inspector’s report on the merits of the case for confirmation and the submissions of the parties. The Secretary of State recognises that some of the considerations would weigh in favour of confirmation of the order whereas others would weigh against, for the reasons and conclusions given by the Inspector. The Secretary of State agrees with the Inspector’s overall conclusions in relation to the merits of the Order as summarised at IR 6.101.

12. The Secretary of State has carefully considered whether the purposes for which the Order was made sufficiently justify interfering with the human rights of the qualifying persons under section 12(2A) of the Acquisition of Land Act 1981 and he is not satisfied that such interference is justified. In particular he has considered the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. The Secretary of State does not consider that the Order strikes a fair balance between the public interest and interests of the qualifying persons.

Decision
13. In the light of the foregoing, in relation to the merits of the case for confirmation the Secretary of State accepts the Inspector’s conclusion that a compelling case in the public interest for confirming the order has not been made. The Secretary of State has therefore decided to accept the Inspector’s recommendation not to confirm the Lancashire County Council (East Lancashire Waste Technology Park) Compulsory Purchase Order 2008.

14. I return the sealed order and the map.

15. Copies of this letter and the Inspector’s report are being sent to persons who made remaining objections and appeared or were represented at the local inquiry. Copies of the letter are also being sent to other persons who made submissions at the local inquiry.

Signed by authority of the Secretary of State for Communities and Local Government

Ian McNally
Central Casework Co-ordination
National Unit for Land Acquisition and Disposal