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Your ref: LSG4/IGB/1/27  
Our ref: DN5063/60/1/27  
NATTRAN/NW/S248/101  
Date: 11 October 2010

Sir

HIGHWAYS ACT 1980  
ACQUISITION OF LAND ACT 1981  
TOWN AND COUNTRY PLANNING ACT 1990  
THE LANCASHIRE COUNTY COUNCIL (WHINNEY HILL LINK ROAD) COMPULSORY  
PURCHASE ORDER 2008 ("the CPO")  
THE ALTHAM LANE C638 REALIGNMENT STOPPING UP OF HIGHWAY (NORTH  
WEST) (NO. ) ORDER 200 ("the SUO")

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the Public Local Inquiries held jointly into the above named Orders at the Townley Suite, Mercure Dunkenhagh Hotel, Blackburn Road, Clayton le Moors, Lancashire, BB5 5JP between 3-13 November and 15-17 December 2009 before Michael Ellison MA(Oxon) an Inspector appointed by the Secretary of State to hear objections to and representations about the above named Orders submitted by Lancashire County Council ("the Council"). The Inquiry was also held jointly into The Lancashire County Council (East Lancashire Waste Technology Park) Compulsory Purchase Order 2008 ("ELWTP"). The Secretary of State for Communities and Local Government's decision relating to the ELWTP is issued separately.
2. The CPO, if confirmed by the Secretary of State would authorise the Council to purchase compulsorily the land described therein for the purposes of the construction and improvement of a highway between Whinney Hill Road junction with Bolton Avenue and the junction of the A679 Burnley Road with the A56(T).
3. If made by the Secretary of State, the SUO would authorise the stopping up of a part width of Altham Lane, in order to enable the development of the new main highway to be carried out in accordance with the planning permission granted under Part III of the Act to, and by, Lancashire County Council on 29 April 2009 under reference 11/08/0482. That planning permission was amended on 4 November 2009 by permissions 11/09/0381 and 11/09/0382. The main highway is a single carriageway

road and is the improvement of Altham Lane by realignment to the west of its current location.

#### THE INSPECTOR'S REPORT

4. Three statutory objections (into the CPO) were outstanding at the opening of the Inquiries, one of which was withdrawn, but one late written objection was submitted to the Inquiries. There were two objections outstanding (to the SUO) at the commencement of the Inquiries, one of which was withdrawn during the course of the Inquiries. The Inspector has considered all the objections to and representations about the Orders both as made in writing and presented orally at the Inquiries and has submitted his report to the Secretary of State. Two copies of that report are enclosed with this letter. References in this letter to the Inspector's report are indicated by the abbreviation "IR" followed by the paragraph number in the report.

5. The Inspector's report summarises the case for the Council at IR 4.1 to 4.94. The case for the objectors is summarised at IR 5.196 to 5.210 (for the CPO) and IR 5.211 to 5.227 (for the SUO), and includes the Council's response to individual objections. The Inspector's conclusions are detailed at IR 6.1 to 6.831 whilst his recommendations are given at IR 7.1.

#### OBJECTIONS TO THE PROPOSALS

6. The main grounds of objection to the Council's proposals for the Whinney Hill Link Road ("the CPO") were: lack of vehicular access to land; excessive landtake; no provision made for the impact on use and management of severed or retained land; no justification for the link road; need for the road has not been established nor justified; the scheme will impact unfavourably on the adjoining roads and no provision has been made in respect of the continued use of retained land; Telefonica O2 UK Ltd's installations may be affected during the development; operational railway land is adversely affected.

7. The main grounds of objection to the draft SUO were that it fails to identify and define the relevant highways in the terms required and it fails to satisfy the requirement that another highway must cross or enter the route of the main highway or be otherwise affected by its construction or improvement. Therefore the criterion for making the Order has not been satisfied. Also that the SUO would limit the future development potential of Omega's land for employment purposes.

#### THE INSPECTOR'S REPORT

8. A copy of the Inspector's Report can be found at Annex B to this letter.

9. In light of his conclusions the Inspector has recommended at IR 7.1 that:

a) The Lancashire County Council (Whinney Hill Link Road) Compulsory Purchase Order 2008 be confirmed with modifications as set out in IR 6.154; and

b) The Altham Lane C638 Realignment Stopping Up of Highway (North West) (No. ) Order 200 be not made.

## OTHER MODIFICATIONS

10. A small number of additional minor technical modifications, which have been agreed to by the Council, are also to be made to the CPO. Details of these modifications, together with those to be made as recommended by the Inspector, can be found at Annex A to this letter.

## THE DECISIONS' OF THE SECRETARY OF STATE

11. The Secretary of State has considered carefully all the objections to, and representations about, the CPO and SUO, including alternative routes put forward. He has considered the Inspector's report and accepts his conclusions and recommendations subject to the comments made below.

### **The SUO**

12. The Inspector reports that there was a legal challenge to the validity of the SUO by Omega who argued that the SUO had been incorrectly drafted because the main highway is described as "the Altham Lane C638 to be improved and a new length of highway to be constructed, along the route described in Part B of the Schedule" and that the proposed link road, for which planning permission has been granted, should have been identified as the "main" highway. Furthermore Omega argued that the SUO failed to satisfy the requirement under Section 248 that another highway must cross or enter the route of the main highway or be otherwise affected by its construction or improvement.

13. The Inspector considered that the SUO made it clear that the highway to be improved was, in part, a section of Altham Lane, and the highway to be constructed, was a new section of Altham Lane. Furthermore, he concludes that, although the part of Altham Lane to be stopped up may not cross the improved or newly constructed part of "the new highway", arguably it enters it. The Inspector was satisfied that the part of the highway to be stopped up would be affected by the construction and by the improvement to Altham Lane. The Inspector was also satisfied that, whilst no specific reference to the Whinney Hill Link Road was made, all the provisions in the SUO would relate to Altham Lane and he agreed with the Council that, subject to certain drafting criticisms, the SUO made what is being proposed perfectly clear. The Inspector considered that the legal challenge to the validity of the SUO was not well founded.

14. For the reasons given by the Inspector the Secretary of State is satisfied that the draft SUO could potentially be made and that the legal challenge to the validity of the SUO is not well founded.

15. The Secretary of State agrees with the Inspector's conclusions with regard to the main considerations to the making of the SUO: that whilst a qualified planning permission has been granted; and whilst the stopping up of the highway would be in the interests of safety or facilitate the movement of traffic on the main highway to stop up the highway; in relation to whether it would be expedient to stop up the highway, that there are other powers available to the Council, other than the stopping up of the highway, which would achieve the Council's aims of the improvement of safety and the removal of confusion for users of Altham Lane. The Secretary of State therefore accepts the Inspector's overall conclusion that the SUO should not be made.

16. For these reasons he has decided **not** to make The Altham Lane C638 Realignment Stopping Up of Highway (North West) (No. ) Order 200 .

### **The CPO**

17. The Secretary of State agrees with the Inspector that the CPO, for the reasons given at paragraphs IR 6.121 – IR 6.153 and his overall conclusion at IR 6.154, should be confirmed. However, although the Inspector has concluded that Plots 3, 6 and 7 should be excluded from the CPO, the Secretary of State is satisfied that they should remain in the CPO to enable the compulsory acquisition of certain rights over the plots held by other parties as described in Table 2 to the Order. The interests of the Crown in these plots are subject to an agreement being reached and are not to be acquired compulsorily (IR 2.9).

18. The Secretary of State has carefully considered whether the purposes for which the CPO is required sufficiently justify interfering with the human rights of the objectors, owners and lessees and he is satisfied that they do. In particular, he has considered 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 objectors, owners and lessees.

19. The Secretary of State does not consider that the objections, singly or together, constitute grounds for not proceeding with the CPO, and accepts that the modifications mentioned in Annex A are necessary and that they should be made. For these reasons he has decided to confirm as modified by him the

The Lancashire County Council (Whinney Hill Link Road) Compulsory Purchase Order 2008

and this letter constitutes his decision to that effect.

### **COMPENSATION**

20. Details of compensation arising as a consequence of confirmation of a compulsory purchase order are for negotiation with the acquiring authority and not the Secretary of State. Accordingly, owners and occupiers of 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 required for the proposals. 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.

### **AVAILABILITY OF DOCUMENTS**

21. A copy of this letter, together with a copy of the Inspector's report has been sent to objectors and to supporters and to the other persons who appeared and made representations at the Inquiries. Copies will be made available on request to any other persons directly concerned. Please 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 for public inspection 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

22. Notice is to be published of confirmation of the CPO. Any person who wishes to question the validity of the confirmed Order, 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 CPO may, under the provisions of 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 the notice that the CPO has been confirmed. The High Court cannot entertain an application under the said section 23 before publication of the notice that the Secretary of State has confirmed the CPO.

I am Sir  
Your obedient Servant

A handwritten signature in cursive script, appearing to read 'G M Christie'.

GERALDINE CHRISTIE  
Authorised by the Secretary of State  
to sign in that behalf