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for Transport

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Your Ref:

Our Ref: NATTRAN/EM/LAO/199

Date: 6 July 2020

Dear Mr Phillips

THE DERBYSHIRE COUNTY COUNCIL (WOODVILLE TO SWADLINCOTE REGENERATION ROUTE) (CLASSIFIED UNNUMBERED ROAD) (SIDE ROADS) ORDER 2019 (“the SRO”)

THE DERBYSHIRE COUNTY COUNCIL (WOODVILLE TO SWADLINCOTE REGENERATION ROUTE) (CLASSIFIED UNNUMBERED ROAD) COMPULSORY PURCHASE ORDER 2019 (“the CPO”)

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

1. I refer to your application, submitted on behalf of Derbyshire County Council (“the Council”), for confirmation of the above named SRO and CPO. The Secretary of State for Transport (“the Secretary of State”) has decided to confirm, as modified by him, the Orders and this letter constitutes his decision to that effect.

2. The confirmed SRO and CPO will, respectively, authorise the Council to:

- (i)
 - (a) improve highways;
 - (b) stop up highways;
 - (c) stop up private means of access to premises; and
 - (d) provide new means of access to premises,

all on or in the vicinity of the route of the classified unnumbered road known as the Woodville to Swadlincote Regeneration Route which the Council is proposing to construct to connect into the A514 Derby Road classified road and the A514 Swadlincote Road and then generally south-eastwards for a distance of approximately 900m to connect into the roundabout on Occupation Lane; and

(ii) purchase compulsorily the land and the new rights over land for the construction of the Classified Unnumbered Woodville to Swadlincote Regeneration Route with its associated works and mitigation measures, as provided for by the SRO. The CPO will also authorise the acquisition of land for vesting in exchange for public open space land which is being acquired for the scheme.

MODIFICATIONS

3. The Secretary of State will make the modifications to the Orders as detailed and agreed in the Inspector's report at paragraphs 177 and 181. The Secretary of State is in agreement with the Inspector's conclusions at paragraphs 178, 179 and 182 that the modifications are necessary to address specific objections and for clarity and accuracy and that they would not affect the extent or scale of the proposals or materially alter anyone's understanding of the Orders. The Secretary of State agrees that no further formal consultation is necessary and that the modifications can be made. It is noted that a new SRO Site Plan No. 3 & 3A was provided at Inquiry Document DCC/16. However, as no modifications are proposed to this plan, which is essentially the same as the original made version of the plan, no substitution will be made.

4. Following the close of the Inquiries the Council has confirmed to the Secretary of State that Plots 2/1A and 2/1D, which were to be acquired and vested as public open space in exchange for Plots 1/2A and 1/2D, are no longer required as exchange land as Plots 1/2A and 1/2D are to be deleted from the CPO. Rights of access over Plots 2/1A and 2/1D in connection with the attenuation ponds which are to be constructed in Plots 2/1B and 2/1C are however still required by the Council. The Secretary of State will, therefore, modify the CPO to reduce the title acquisition of Plots 2/1A and 2/1D to a rights acquisition and the plots will be deleted from Schedule 2 and inserted into Schedule 1. The necessary modifications will be made to Map No. 2.

The descriptions of the plots will be modified to read as follows:

Plot 2/1A – The right to enter and re-enter from time to time with or without vehicles, plant, equipment and machinery upon 2,567 square metres of brownfield land located south-east of Kiln Way, south and west of the Public Right of Way known as Woodville FP5 and north-west of Occupation Lane for all purposes related to the construction, maintenance and use of a drainage attenuation pond to be constructed on 431 square metres of adjacent land located in Plot 2/1B.

Plot 2/1D – The right to enter and re-enter from time to time with or without vehicles, plant, equipment and machinery upon 1,633 square metres of brownfield land located south-east of Kiln Way, south and west of the Public Right of Way known as Woodville FP5 and north-west of Occupation Lane for all purposes related to the construction, maintenance and use of a drainage attenuation pond to be constructed on 781 square metres of adjacent land located in Plot 2/1C.

CONSIDERATIONS FOR DECISION

5. As statutory objections remained outstanding to the Orders it was decided that concurrent Public Local Inquiries should be held for the purposes of hearing those objections. The Inquiries were held on 21 to 24 January 2020 at the offices of South Derbyshire District Council before Inspector David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI, an independent Inspector appointed by the Secretary of State. By the close of the Inquiries only two objections remained.

6. The Inspector considered all representations and objections about the Orders during the Inquiries and has since submitted a report to the Secretary of State, a copy of which is enclosed with this letter. The Secretary of State has given careful consideration to the Inspector's report and also to a number of relevant issues, as set out in *Guidance on Compulsory purchase process and The Criche Down Rules* and *The Highways Act 1980*, in reaching his decision on the Orders.

In relation to the SRO, namely that:

- i) where a highway is to be stopped up another reasonably convenient route is available or will be provided before the highway is stopped up;
- ii) where a private means of access to premises is to be stopped up either no access to the premises is reasonably required or another reasonably convenient means of access to the premises is available or will be provided; and
- iii) provision will be made for the preservation of any rights of statutory undertakers in respect of their apparatus.

In relation to 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.

CONCLUSION

7. The Secretary of State has considered carefully all the objections to, and representations about, the Orders, including alternative proposals put forward.

8. The Secretary of State notes that there are no objections to the Orders from statutory undertakers and, in agreement with the Inspector, is satisfied that where a highway or a private means of access to premises is to be stopped up that a reasonably convenient alternative route or access would be provided.

9. The Secretary of State has carefully considered whether the purposes for which the CPO is required sufficiently justify interfering with the human rights of those with an interest in the CPO and is satisfied that they do. 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 agrees with the Inspector's conclusions at paragraphs

172, 173 and 183 and 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.

10. The Secretary of State is satisfied that the scheme, for which the Order land is required, has the benefit of valid planning permission and that the Orders have been made in accordance with the relevant sections of the Highways Act 1980. Furthermore, he is satisfied that the Council has a clear idea of how it intends to use the land to be acquired and agrees with the Inspector that there is no firm evidence to suggest that the land proposed to be acquired is not the minimum necessary to deliver the scheme.

11. The Secretary of State notes that the CPO includes the acquisition of land designated as public open space and that the Secretary of State for Housing Communities and Local Government signed a certificate on 17 January 2020 stating that he was satisfied regarding matters in Section 19(1)(a) of the Acquisition of Land Act 1981. An amended certificate was issued on 23 June 2020 reflecting the deletion from the CPO of some of the open space and exchange land plots that are no longer required. The Secretary of State is also content that the necessary funding is available for delivery of the scheme within a reasonable timescale and is, therefore, satisfied that the scheme is unlikely to be blocked by any physical or legal impediments to implementation.

12. 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 Orders. Accordingly, the Secretary of State agrees with the Inspector's recommendations and has decided to confirm, as modified by him, 'The Derbyshire County Council (Woodville to Swadlincote Regeneration Route) (Classified Unnumbered Road) (Side Roads) Order 2019' and 'The Derbyshire County Council (Woodville to Swadlincote Regeneration Route) (Classified Unnumbered Road) Compulsory Purchase Order 2019'.

13. In confirming the 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

14. 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 Upper Tribunal (Lands Chamber) 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

15. A copy of this letter, together with a copy of the Inspector's report, has been sent to those parties who appeared at the Inquiries, other interested parties and relevant Members of Parliament. Copies will be made available on request to any other persons directly concerned.

16. Please arrange for a copy of the Inspector's report and of this letter to be made available for inspection at www.derbyshire.gov.uk/woodvilleorders. 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.

RIGHT OF CHALLENGE

17. 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 them 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 an application must be made within six 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 sincerely

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

DAVE CANDLISH

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