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Your ref: WW/TP/CA/27002/CW
Our ref: DN5039/55/7/43 & DN5039/60/1/70
Date: 4 November 2008

Sir

HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981
THE BOROUGH COUNCIL OF SANDWELL (A461/A4123 JUNCTION IMPROVEMENT,
BURNT TREE) (A461) (CLASSIFIED ROAD) (SIDE ROADS) ORDER 2007 ("the SRO")
THE BOROUGH COUNCIL OF SANDWELL (A461/A4123 JUNCTION IMPROVEMENT,
BURNT TREE, TIPTON) COMPULSORY PURCHASE ORDER 2007 ("the CPO")

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the concurrent Public Local Inquiries held at the Training and Development Centre, Parsonage Street, Oldbury, West Midlands between 15 – 16 July 2008 before Mr Jack Moffett, BSc (Hons), FICE, MIHT an Inspector appointed by the Secretary of State to hear objections to and representations about the above named Orders submitted by Sandwell Metropolitan Borough Council ("the Council").

2. The SRO and CPO if confirmed by the Secretary of State for Transport would, respectively, authorise the Council to:

- (a) improve highways, stop up highways, stop up private means of access to premises, and provide new means of access to premises in relation to the classified road being the A461 which the Council propose to improve from its junction with the A4123, north eastwards for a distance of 140 metres (known as the A461 Burnt Tree) and from its junction with the A4123, westerly for a distance of 260 metres (known as A461 Birmingham Road); and
- (b) compulsorily acquire land and rights on land for the improvement of the classified road referred to at (a) above; and use by the acquiring authority in connection with the construction and improvement of highways as aforesaid.

THE INSPECTOR'S REPORT

3. One statutory and two non statutory objections were outstanding at the opening of the Inquiries. During the opening day the Inspector adjourned the Inquiries from 11.15 am to 1.00 pm and from 2.15 pm to 5.00 pm to enable on-going negotiations between the Council and the statutory objector, Tesco Stores Ltd, to take place. Subsequently on the second day of the Inquiries, the 16 July 2008, Tesco Stores Ltd withdrew its objections to the Orders and retracted its witness's Proof of Evidence. The Inspector has considered all the remaining 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.

4. The Inspector's report summarises the case for the Council at IR 3.1– IR 3.53; the cases for the objectors are detailed at IR 4.1 – IR 4.8 whilst the Council's response can be found at IR 5.1 – IR 5.7. The Inspector's conclusions can be found at IR 6.1 – IR 6.32 and his recommendations are at IR 7.1.

OBJECTIONS TO THE PROPOSALS

5. The main grounds of objection to the Council's proposals were that:

- a signalised junction would be more energy consuming and polluting than a roundabout;
- a flyover, which should be constructed from steel rather than from concrete, would be a more appropriate solution and would provide better value for money; and
- Sandwell Metropolitan Borough Council and Dudley Metropolitan Borough Council have not responded adequately to the feedback they were given, regarding alternatives, from the limited consultation that was undertaken.

THE INSPECTOR'S CONCLUSIONS AND RECOMMENDATIONS

6. A copy of the Inspector's report can be found at Annex A to this letter.

7. In light of his conclusions the Inspector has recommended at IR 7.1 that the SRO be modified [3.22 and 6.22] and that the Order, so modified, be confirmed and that the CPO be confirmed.

MODIFICATIONS TO THE SRO

8. The modifications recommended by the Inspector are to:

- (i) amend Article 3(b) to read as follows:-“the classified road” - means the A461 the highway which the Council proposes to improve from its junction with the A4123, north eastwards for a distance of 140 metres (known as the A461 Burnt Tree) and from its junction with the A4123, westerly for a distance of 260 metres (known as A461 Birmingham Road) and which is a highway which has been classified in accordance with section 12 of the Highways Act 1980”; and

- (ii) add 'A4123 Birmingham New Road' and to delete reference to 'A461 Burnt Tree' under 'Highways to be Improved' in the Schedule.

THE DECISION OF THE SECRETARY OF STATE

9. The Secretary of State has considered carefully all the objections to, and representations about, the Orders including alternative proposals put forward. He has considered the Inspector's report and accepts his conclusions and recommendations.

10. 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.

11. The Secretary of State does not consider that the objections, singly or together, constitute grounds for not proceeding with the proposals, and accepts that the modifications to the SRO referred to in paragraph 8 are necessary and that they should be made. For these reasons he has decided to confirm:

- (i) The Borough Council of Sandwell (A461/A4123 Junction Improvement, Burnt Tree) (A461) (Classified Road) (Side Roads) Order 2007, with modifications as detailed at paragraph 8 above; and
- (ii) The Borough Council of Sandwell (A461/A4123 Junction Improvement, Burnt Tree, Tipton) Compulsory Purchase Order 2007, as made,

and this letter constitutes his decision to that effect.

COMPENSATION

12. 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

13. A copy of this letter, together with a copy of the Inspector's report has been sent to the outstanding objectors and to the Editor of the Express & Star, West Bromwich. 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

14. 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 the Orders 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 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 the said Schedule 2 or section 23 before publication of the notice that the Secretary of State has confirmed the Orders.

I am Sir
Your obedient Servant

JULIE HUME
Authorised by the Secretary of State
to sign in that behalf