

## **The Nottingham Express Transit System (Amendment) Order Decision Letter**

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Our Ref: TWA/10/APP/05  
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Dear Sirs,

### **TRANSPORT AND WORKS ACT 1992**

#### **APPLICATION FOR THE PROPOSED NOTTINGHAM EXPRESS TRANSIT SYSTEM (AMENDMENT) ORDER**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the application made on 2 August 2010 by your clients, Nottingham City Council ("the City"), for the proposed Nottingham Express Transit System (Amendment) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA").

2. The Order, if made, would amend the Nottingham Express Transit System Order 2009 ("the 2009 Order") so as to authorise the compulsory acquisition of an area of open space land between Cator Lane and Bramcote Lane, Chilwell required for the extension of the existing Nottingham Express Transit system to Chilwell. The Order would not authorise the construction or operation of that extension, since powers for those purposes were conferred by the 2009 Order. Accordingly, the City did not submit with this application either an environmental statement or a request for deemed planning permission.

## **Representations received**

3. The Secretary of State initially received five objections, one of which was subsequently withdrawn. The remaining objections were from Beeston and Chilwell Business and Residents' Association and from local residents Mr Foxon, Mrs Ismay and Mr and Mrs Hawkes. The Secretary of State also received 19 letters of support including ones from local residents and councillors. The outstanding objections were considered under the written representations procedure set out in rule 24 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The principal issues raised in the exchange of representations are summarised below, followed by the Secretary of State's consideration of those issues and others which he considers material to his decision on this application.

## **Summary of the Secretary of State's decision**

4. The Secretary of State has decided to make the Order with modifications. The reasons for his decision are given below. In a separate letter being issued today, the Secretary of State for Communities and Local Government ("SoS/CLG") has decided to give an exchange land certificate in relation to the open space land referred to in paragraph 2 above.

## **Purposes of the Order**

5. In its application, the City explained that the 2009 Order had authorised the construction and operation of two extensions to the Nottingham Express Transit system to serve the south and west of the Greater Nottingham area. The City explained further that the scheme, known as NET Phase Two, was a key element of the Greater Nottingham transport strategy and would play a major role in the development of the Nottingham conurbation. The main aims of NET Phase Two were to provide a sustainable alternative to the car for many journeys to tackle congestion; to increase public transport capacity; to improve accessibility; to contribute to integrated public transport; to support land use policy and regeneration; and to extend the use of an environmentally friendly mode of transport.

6. NET Phase Two had originally been promoted jointly by the City and Nottinghamshire County Council ("the County"). Since the County owned an area of open space land required for the scheme at Chilwell, this land had been excluded from the compulsory acquisition powers in the 2009 Order. However, after the 2009 Order had been made, the County withdrew from its role as joint promoter of the scheme and advised the City that it did not propose to carry out the necessary procedures under the Local Government Act 1972 to authorise the disposal of the open space land to the City.

7. The purpose of this application was, therefore, to amend the 2009 Order to enable the City to acquire the County's open space land at Chilwell compulsorily. The proposed Order would also amend the 2009 Order to provide that the land to be given in exchange for the open space would vest in the County rather than Broxtowe Borough Council. This was to comply with the requirements of section 19 of the Acquisition of Land Act 1981. The City confirmed that, apart from the Order now applied for and the exchange land certificate

referred to at paragraph 4 above, all other powers, consents, permissions and licences necessary to construct and operate NET Phase Two were already in place.

## **The case for the objectors**

### **Objections in principle to compulsory acquisition of the open space at Chilwell**

8. One objector considered that it was wholly unacceptable in principle for a Council to seek compulsory acquisition powers over any land belonging to another Council and that it was a waste of public money. Another objector said that acquisition of the open space land by the City would increase the complexity of land ownership in that area, with the potential for future disputes. The objector considered that the land should remain in the ownership of the area's elected representatives, namely the County.

### **Impacts of NET Phase Two on the amenity value of the open space**

9. Some of the objectors considered that construction of NET Phase Two across the open space at Chilwell would deprive the community of a long established recreational facility. Activities such as football, casual ball games and allowing children or dogs to run freely would not be able to continue in the remainder of the open space not used by the tramway. The scheme would change the character of a pleasant pedestrian link and destroy a safe and flexible network of footpaths and cycle routes providing access to local facilities. There would be a considerable loss of amenity from the removal of mature trees, which would not be made good by replanting for many years. A precedent against development of this land had been set by previous refusals of permission to construct buildings or a road on it.

### **Implications for the open space if NET Phase Two were abandoned**

10. Some objectors were concerned that no undertaking had been given by the City to return the open space land to public use should NET Phase Two not go ahead. In that situation there might be pressure to find a more profitable use for the land.

### **Inadequacy of the exchange land**

11. Some objectors considered that the land which the City proposed to give in exchange for the open space required for NET Phase Two would not provide equal amenity to the public because of its nature and location. They said that the exchange land was in a bleak, lonely and water-logged place which was prone to vandalism. It would not offer the advantages of the current open space to the whole of the Chilwell community and, because it was 1 kilometre away from the present open space, would not be conveniently reached on foot by many local residents.

## **The City's response to the objectors**

### **Objections in principle to compulsory acquisition of the open space at Chilwell**

12. The City said that the need for the Order arose from its wish to implement the project alone, following the County's withdrawal from promotion of NET Phase Two. The City did

not accept that compulsory purchase by one Council from another was unacceptable in principle and said that it occurred in practice. If the Order were made, acquiring the open space land by compulsion would be lawful and permissible. The City did not consider that the arrangements which would result from compulsory acquisition of the land would be complex, nor did it see what potential for dispute could arise from those arrangements.

### **Impacts of NET Phase Two on the amenity value of the open space**

13. The City said that the construction and operation of NET Phase Two, including the part of the scheme which would cross the open space land at Chilwell, was already authorised by the 2009 Order. The Order now applied for dealt only with the compulsory acquisition from the County of the rights necessary to allow the City to implement NET Phase Two and to remain in permanent possession of that land after construction of the scheme had been completed. The City therefore considered that objections to the scheme in general had no relevance to the Order now under consideration.

14. The City nevertheless commented that the effects that NET Phase Two would have on the open space land at Chilwell, including its impacts on biodiversity, access and amenity value to residents and their safety, had been considered in full by the Inspector who held the inquiry into the scheme before the 2009 Order was made. The Inspector concluded and the Secretary of State subsequently agreed that, taking into account all the ecological mitigation measures, on balance the adverse effects of the scheme would not outweigh the significant public benefits of, and need for, the scheme.

15. The City did not accept that a precedent had been set by any previous refusal of permission for other types of development in this location. The development of NET Phase Two had, in any event, been authorised by the 2009 Order.

### **Implications for the open space if NET Phase Two were abandoned**

16. The City said that, if the Order were made, it would have power to acquire and use the open space land only for the purpose of implementing the tram scheme. The City said also that if it acquired the land but then abandoned the scheme, the land would remain open space and be subject to statutory restrictions governing its use for another purpose or disposal. In those circumstances, the City would comply with the Government's policy in the "Crichel Down Rules" in ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules) ("ODPM Circular 06/2004") about how land acquired compulsorily for a scheme which is abandoned should be dealt with, which may include offering it back to the County. The City confirmed also that a large proportion of the open space land would not be permanently acquired and would be returned to open space use after construction of NET Phase Two was complete.

### **Inadequacy of the exchange land**

17. The City said that the Inspector at the inquiry into the 2009 Order had considered in full the question of whether the land at Inham Road to be given in exchange for all of the open space to be used for NET Phase Two in Broxtowe (including the open space land owned by the County) would be adequate in accordance with Planning Policy Guidance 17 (Planning for Open space, Sport and Recreation) ("PPG 17"). The Inspector concluded that the promoter's proposals were satisfactory and the Secretary of State subsequently agreed. The Order now applied for would not change those proposals.

## **Support for the application**

18. Many of those who wrote in support of the Order referred to the thorough examination of NET Phase Two at public inquiry and the Inspector's conclusions about the compelling case for implementing the scheme, leading to the Secretary of State's decision to make the 2009 Order. Some said that there was no new evidence to invalidate that decision or justify reopening consideration of the merits of the scheme.

## **Secretary of State's consideration**

### **Purposes of the Order**

19. The Secretary of State has considered the City's explanation of the purposes of the Order summarised in paragraphs 5 to 7 above. He is satisfied in the light of this that the open space land at Chilwell is required to implement the NET Phase Two scheme as authorised by the 2009 Order. He notes also that, following withdrawal from promotion of NET Phase Two, the County does not intend to carry out the procedures necessary to dispose of the land to the City. He accepts that in these circumstances the City requires compulsory acquisition powers over that land to enable it implement the scheme on its own.

### **Objections in principle to compulsory acquisition of the open space at Chilwell**

20. The Secretary of State is satisfied that there is no reason in principle why one Council should not be authorised to acquire compulsorily land owned by another Council, provided that there is a compelling case in the public interest for doing so. He is, furthermore, not persuaded that acquisition by the City of the Council's land for the purposes of NET Phase Two would result in unduly complex or inherently problematic land ownership arrangements.

### **Impacts of NET Phase Two on the amenity value of the open space**

21. The Secretary of State agrees with the City that it is not appropriate in the context of this application to reconsider the case for conferring the powers in the 2009 Order to construct and operate NET Phase Two across the open space land at Chilwell. He notes that the effects of the scheme on this open space land were fully considered at the inquiry into the 2009 Order, before the decision was made to confer those powers. He considers that nothing in the objections to the current application would lead him to a different conclusion on the case for authorising the construction of NET Phase Two.

### **Implications for open space if NET Phase Two were abandoned**

22. The Secretary of State is satisfied that the compulsory acquisition powers sought by the City could only be used for the purposes of implementing NET Phase Two, in accordance with the terms of the 2009 Order. He notes also the City's intention to comply with the "Crichel Down Rules" in ODPM Circular 06/2004, under which the former owners of land compulsorily acquired should, as a general rule, be given the first opportunity to repurchase the land.

### **Inadequacy of the exchange land**

23. The Secretary of State notes that the Inspector at the inquiry into the 2009 Order considered fully the adequacy, in accordance with PPG 17, of the land proposed to be given in exchange for all of the open space land in Broxtowe required for NET Phase Two. He notes further that the current Order application does not alter the proposal as to the exchange land which would be given. The Secretary of State considers that nothing in the objections to this application would cause him to reach a different view from the Inspector who considered the 2009 Order as to the acceptability of the exchange land. He notes further that in the decision letter referred to at paragraph 4 above the SoS/CLG has decided to give an exchange land certificate on the basis that the exchange land would be not less in area than the open space land to be compulsorily acquired and equally advantageous to the public.

### **Case for compulsory acquisition powers: ODPM Circular 06/2004**

24. The Secretary of State has considered the case for authorising the City to acquire compulsorily the open space land at Chilwell against the policy set out in ODPM Circular 06/2004. For this purpose he has taken into account the aims of NET Phase Two summarised at paragraph 5 above, the decision to authorise the scheme by way of the 2009 Order, and the representations made on the current Order application. The Secretary of State is satisfied that there is a compelling case in the public interest for granting the compulsory acquisition powers applied for so as to enable the City to proceed with implementation of NET Phase Two on its own.

25. The Secretary of State has also considered, in accordance with that Circular, whether there are likely to be any impediments to implementation of the powers in the Order. Having regard to the Department for Transport's announcement on 24 March 2011 allowing the City to continue its procurement processes for NET Phase Two, he considers that the scheme is reasonably capable of attracting the necessary funding. He is further satisfied that implementation of the scheme is unlikely to be blocked by any legal impediments given that with the making of the Order and the giving of the exchange land certificate, all the powers, consents, permissions and licences needed for the scheme will be in place.

26. The Secretary of State has concluded that the tests in ODPM Circular 06/2004 for the granting of compulsory purchase powers have been met in this instance.

### **Secretary of State's overall conclusions and decision**

27. For the reasons given in this letter, the Secretary of State considers that it is in the public interest to confer on the City the compulsory acquisition powers applied for in relation to the open space land at Chilwell. He has therefore decided to make the Order, subject to the following modifications:

- to insert in article 3 (certification of plans, etc.) provision as to the substitution of the amended open space plans submitted with this application for those associated with the 2009 Order; and
- a number of minor drafting amendments.

The Secretary of State considers that these modifications would not make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

## The Nottingham Express Transit System (Amendment) Order Decision Letter

28. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

29. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

30. A copy of this letter is being sent to the remaining objectors to the application and the County.

Yours faithfully,

Martin Woods

Head of TWA Orders Unit

## **ANNEX**

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that –

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

**A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.**