

CITY COUNCIL - 12 JULY 2010

REPORT OF THE PORTFOLIO HOLDER FOR TRANSPORT AND AREA WORKING

NOTTINGHAM EXPRESS TRANSIT SYSTEM ORDER 2009 – APPLICATION FOR AN AMENDING ORDER AND EXCHANGE LAND CERTIFICATE IN RESPECT OF OPEN SPACE LAND TO BE ACQUIRED COMPULSORILY

1 SUMMARY

- 1.1 This report seeks the agreement of the Council to make an application for statutory powers to compulsorily acquire County Council owned open space land required for NET Phase Two and, given the status of the land as open space, to apply for a certificate of exchange land certifying that other suitable open space will be provided as replacement.

2 RECOMMENDATIONS

It is RECOMMENDED that Council authorise:-

- (1) an application by the Council for an Order (“the Amending Order”) made by the Secretary of State for Transport under the Transport and Works Act 1992 to amend the Nottingham Express Transit System Order 2009 so that (i) the City Council can acquire compulsorily open space land in Chilwell required for the purposes of NET Phase Two (“the Open Space Land”); (ii) the exchange land (the “Exchange Land”) intended to be provided in place of the Open Space Land (and other land) must be laid out to the satisfaction of Broxtowe Borough Council; and (iii) the Exchange Land will vest in the Nottinghamshire County Council rather than in Broxtowe Borough Council;
- (2) an application by the Council to the Secretary of State for Communities and Local Government for a certificate to be given as to the suitability of the Exchange Land (“Exchange Land Certificate”) under section 19 of the Acquisition of Land Act 1981;
- (3) Subject to the above, the Director, NET, in consultation with the Portfolio Holder for Transport and Area Working, taking all such steps as may be necessary to carry the above resolutions into effect,

including all those steps required for the Council to apply for and thereafter promote its applications for the Amending Order and an Exchange Land Certificate, including dealing with any objections to the applications, entering into agreements or commitments in relation to them and conducting any public inquiries that may be called; and

- (4) The corporate seal of the City Council being affixed to any documents required to be sealed in connection with the applications for and subsequent promotion of the Amending Order and an Exchange Land Certificate.

3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 3.1 The Nottingham Express Transit System Order (the “Order”) was made in May 2009 and authorised the construction of NET Phase Two. The Order included powers for the compulsory acquisition of land as necessary but specifically excluded compulsory purchase powers for areas of open space owned by the joint promoters of the Order, Nottingham City Council and Nottinghamshire County Council.
- 3.2 To include such powers would have required either an Exchange Land Certificate to be given by the Secretary of State for Communities and Local Government for the provision of replacement open space in exchange for the open space to be acquired or, if no replacement open space was proposed, the NET Phase Two Order would have been referred to a Parliamentary Committee under Special Parliamentary Procedure, leading to a delay in progressing the scheme.
- 3.3 As the open space was already in the ownership of the joint promoters, it was not necessary to seek compulsory purchase powers in respect of that land. Instead, the joint promoters were able to undertake a simpler local procedure under section 122 of the Local Government Act 1972 to appropriate the open space for the use of NET Phase Two. That procedure requires advertising the intent to change the use of the open space land and the consideration of any representations and objections made.
- 3.4 On 24 September 2009, following a change in administration, the County Council formally issued notice to withdraw as joint promoter

of NET Phase Two, which came into effect on 24th December 2009. In accordance with the terms of the existing 2008 Joint Agreement in relation to NET Phase Two, negotiations are ongoing to agree a Settlement Agreement to document a full and final settlement of the respective liabilities of the City Council and the County Council to each other in relation to NET Line One and NET Phase Two.

3.5 In these negotiations, the County Council has been requested to make arrangements for the transfer of open space land in Chilwell (“the County Open Space”) required for the scheme which is within their ownership. Under the terms of the Joint Agreement between the City and County Councils, the County Council are obliged to “bring about the timely transfer of all necessary matters....from the terminating [County] Council to the other [City] Council” which would include the voluntary transfer of the County Open Space.

3.6 The County Council’s officers have however advised that, following discussions with County Council Members, they are not prepared at this stage of the negotiations to commence the local procedures under s.123 of the 1972 Local Government Act which would be necessary for them to be able to transfer the County Open Space to the City Council voluntarily. (These procedures are necessary due to its status as open space and mirror the procedures for appropriation under s.122). This results in three main risks:

- (i) the County Council does not pursue the local disposal procedure during or after the completion of the settlement negotiations;
- (ii) the County Council pursues the local procedure, but it is delayed and not completed in time for NET Phase Two financial close in summer 2011; or
- (iii) having undertaken the local procedure, the County Council decides against going through with the transfer of land following consideration of representations and objections made.

3.7 With uncertainty about the timing or willingness of the County Council to pursue the necessary steps to transfer the County Open Space, it is necessary to utilise a different acquisition route in order to secure the County Open Space to deliver the NET Phase Two programme. Even if the County Council agreed to commence the disposal procedure immediately, there would be insufficient time to start an alternative acquisition process later if the County Council did

not transfer the land having considered objections and representations made.

- 3.8 Accordingly, approval is sought to make an application to the Secretary of State for Transport for an Amending Order under the Transport and Works Act 1992 to amend the 2009 Order such that the County Open Space can be acquired compulsorily. The City Council will also need to apply separately to the Secretary of State for Communities and Local Government for a Certificate in relation to the provision of exchange land (Exchange Land Certificate).
- 3.9 The Amending Order and Exchange Land Certificate applications can run in parallel with any local disposal procedures (under s.123) that are set in motion by the County Council and on the basis that the applications can be withdrawn in the event of the County Council successfully transferring the County Open Space to the City Council.
- 3.10 The applications could result in a further public inquiry and, should this be the case, it is expected that the inquiry would be held in early 2011, with the Secretary of States' decisions in summer 2011.
- 3.11 Under Section 239 of the Local Government Act 1972, the resolution to make the Amending Order application must be approved by a majority of Members of the whole Council.
- 3.12 County Council Open Space to be acquired and land exchange
- 3.13 The County Open Space is part of a greenway within the Chilwell urban area and is located between Cator Lane and Bramcote Lane. The land intended to be included within the Amending Order for compulsory purchase is greater than that required for the tramway to ensure that design flexibility is retained for the detailed design stage. However, land not used for the tramway will be returned to open space use.
- 3.14 The replacement open space is located alongside the tram alignment at the western edge of the Chilwell greenway, adjacent to Field Lane and Teesdale Court, and is of sufficient size to replace all the land to be acquired along the corridor. The land is currently used for agriculture and is in private ownership but was included in the compulsory purchase powers secured in the Order.
- 3.15 The test that the Secretary of State will apply in deciding whether or

not to grant the Exchange Land Certificate in relation to the County Open Space is a test of whether or not the replacement open space proposed is 'equally advantageous' to persons having any rights in the County Open Space and to the public at large.

- 3.16 The Environmental Impact Assessment submitted as part of the application for the Order considered the impact of the scheme on the Chilwell greenway, and the value of the replacement open space at Field Lane/Teesdale Court. Evidence to this effect was presented to the public inquiry. A full open space appraisal was undertaken, using established methodology based on PPG17 (planning for open space, sport and recreation). Although he was not applying the 'equally advantageous' test, the public inquiry Inspector confirmed that he was satisfied that the open space appraisal met the PPG17 requirements and that the areas of proposed replacement open space would be "sufficiently convenient, of equivalent quality and appropriate size." The Secretary of State agreed with these findings.
- 3.17 Further design work has been undertaken since the public inquiry on the tram alignment between Cator Lane and Bramcote Lane and planning conditions relating to this section have been discharged by the local planning authority (Broxtowe Borough Council).
- 3.18 Plans showing the area of open space to be acquired and the replacement land will be available for viewing at the City Council meeting.
- 3.19 Administrative Processes and Timescales
- 3.20 A number of documents would have to be submitted as part of the applications for the Amending Order and the Exchange Land Certificate. These include a statement as to the aims of the project and a statement of consultation undertaken. The DfT has confirmed that as the proposed Amending Order does not include authorisation for any new works beyond those authorised by the Order, and is only seeking powers for the compulsory acquisition of land, an environmental statement is not required.
- 3.21 Subject to approval from the City Council, it is expected that the applications will be made to the respective Secretaries of State in July 2010. Following submission, the approval to submit the Amending Order has to be confirmed at a second meeting of the City Council and it is anticipated that this will be brought to the meeting in

October 2010.

- 3.22 The procedures for the applications for the Amending Order and Exchange Land Certificate are lengthy. Notices will be served on the landowner and relevant local authority and all documents will be available for public inspection and scrutiny once the applications have been made. Details of where the documents are lodged will be widely advertised. Following the submissions, there will be a period in which objections and representations can be made by any interested party. If an inquiry is to be held, those who have made representations would be entitled to appear at the inquiry.

4 **CONSULTATIONS**

- 4.1 A substantial amount of consultation with stakeholders and affected parties has been undertaken throughout the development of NET Phase Two culminating in the application for the 2009 Order. Since the 2009 Order was made, information on the progress of NET Phase Two has continued to be provided through the *Express Newsletter*.
- 4.2 A consultation leaflet has been distributed specifically in relation to the proposed Amending Order and Exchange Land Certificate applications, and is attached. 39 responses were received and most of the respondents were against the proposed application although some responses were received from those in favour. Many of the comments made, including concerns about the impact on the greenway, loss of trees, safety, and flooding; alternative route options, adequate existing and more flexible bus services making the scheme unnecessary and the negative impact on Sandby Court and the Valley Surgery, have already been considered by an independent Inspector, and the Secretary of State in connection with the Order, and none of them relate to the proposed application. A number of respondents expressed the view that the Amending Order and Exchange Land Certificate applications, and NET Phase Two itself, should not proceed due to the national budget deficit. It should be noted that Government decisions on this application will not be made before the outcome of the Comprehensive Spending Review is known. No response has been received from the County Council or Broxtowe Borough Council.
- 4.3 A handful of respondents referred specifically to the exchange land proposals stating in their view that the replacement open space

would not be 'equally advantageous' as it is too far away from the land to be acquired; will be of a lower quality and would not offer easy access by foot to public amenities. These issues will be considered further by the Secretary of State, including at any future inquiry held into the applications, but it should be noted that the Inspector at the TWA Inquiry considered the replacement open space proposals (including the Chilwell site) were "sufficiently convenient, of equal quality and appropriate size", and the Secretary of State agreed.

5 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 5.1 Voluntary disposal of the open space land by the County Council remains the preferred option and discussions will continue with the County Council with the aim of achieving this. If successful, the applications for an Amending Order and Exchange Land Certificate would be withdrawn once an agreement is signed to transfer the land and, if later, once the County Council has successfully completed the local procedures under s.123.
- 5.2 The City Council has proposed that the County Council delegates to the City Council the power to carry out the local disposal procedures of advertising, consulting and effecting the transfer of the open space land but the County Council has not agreed to this option and, in any event, it is not clear that the County Council could realistically make such a delegation.
- 5.3 The project's continued progress requires the adoption of an option that enables the City Council to secure the land through the procedures outlined in section 3 above.

6 BACKGROUND

- 6.1 Project background
- 6.2 Nottingham Express Transit Line One, connecting Hucknall to Nottingham Station with a branch close to junction 26 of the M1, has been in operation since March 2004. The system has been very successful, with an average of over 9.5 million journeys per year in the first five years of operation. It has resulted in significant modal shift with around 30% of passengers estimated as having transferred from their cars or using park and ride. Three million car journeys have been removed from Nottingham's roads. It has demonstrated

the substantial accessibility, congestion, economic development and regeneration benefits achievable with light rail when it is established as part of an integrated public transport network.

- 6.3 It has long been the intention to develop a network of light rail routes within Nottingham, and further routes to Chilwell via Beeston and Clifton via Wilford are being taken forward as NET Phase Two. The Chilwell route will serve the Meadows, the ng2 business park, the area's main hospital (The QMC), the University of Nottingham, Beeston town centre and Chilwell before terminating at a park and ride site close to junction 25 of the M1. The Clifton route will serve densely populated residential areas including The Meadows, Wilford and Clifton before terminating at a park and ride site adjacent to the A453.
- 6.4 NET Phase Two will be a Private Finance Initiative (PFI) Concession arrangement to be funded 75% by Central Government and 25% by local contributions. The intention is that the majority of the local contribution will be funded from the Workplace Parking Levy.
- 6.5 NET Phase Two Transport and Works Act application
- 6.6 In April 2007 an application under the Transport and Works Act (TWA) for the Order and other associated applications were made jointly by the City Council and the County Council to seek the necessary powers, consents, permissions and licences to construct, build and operate NET Phase Two and to enable the continued operation of NET Line One.
- 6.7 A public inquiry into the TWA application was held in November/December 2007, with a short reopening in October 2008, In March 2009, following receipt of the Inspector's report, the Secretary of State for Transport stated that a compelling case for the scheme in the public interest had been established and that he intended to make the Order. The Order subsequently came into force on 9th June 2009.
- 6.8 NET Phase Two Exchange Land Certificates
- 6.9 In parallel with the TWA process, Exchange Land Certificate applications under section 19 of the Acquisition of Land Act 1981 were made to the Secretary of State for Communities and Local Government in respect of open space land to be compulsorily

acquired as part of the scheme. A certificate was sought for three replacement areas of open space, at Kings Meadow, Silverdale and Chilwell.

6.10 The Exchange Land Certificate application for the Chilwell land was subsequently withdrawn when the landowner, Broxtowe Borough Council, voluntarily agreed to dispose of the open space land having undertaken the necessary procedures under section 123 of the Local Government Act 1972 to allow its disposal to the City Council.

6.11 The exchange land proposed at Silverdale was the subject of a short public inquiry in October 2008, and the Certificates in respect of Kings Meadow and Silverdale were issued in March 2009.

6.12 Project programme

6.13 In July 2009, NET Phase Two was awarded Conditional Approval by the DfT, which enabled the project to proceed to the procurement phase. Following the OJEU procedure, two consortia were issued with tender documents in November 2009, with tenders returned on 20th May 2010. Tenders are currently being evaluated, with financial close and Concessionaire appointment expected in summer 2011.

6.14 In June 2010, the Government announced there would be a significant acceleration of plans to reduce the budget deficit and that all major transport schemes not yet at Full Approval stage will be reviewed as part of the Comprehensive Spending Review (to report in the Autumn). NET Phase Two will be part of this review but it is unclear how PFI projects, with funding deferred and spread over a lengthy period, will be viewed. Unlike many other major projects, NET has not received a letter from DfT recommending a halt to work although the Secretary of State did issue a general statement that, in general, applications for Orders for new schemes would not be processed before those general funding decisions had been made. Nonetheless, it is considered prudent to continue to take all appropriate action towards completion, including the actions recommended in this report, to ensure there is no programme delay.

7 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

7.1 If a public inquiry is required, then the process is estimated to cost the project an additional £0.200m. This additional cost could be absorbed within the remaining £0.573m contingency within the NET

Phase Two implementation budget. The acquisition cost of the replacement land (paragraph 3.14) has already been budgeted for. The actual cost for the compulsory purchase of the 'open space' land will be negligible.

- 7.2 Should the compulsory purchase option not be pursued in parallel, leading to a subsequent delay to the project, then this would have a significant impact on the overall costs of the scheme, likely to cost in excess of £5m over the life of the PFI.

8 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

- 8.1 The risks attached to not pursuing the Amending Order and Exchange Land Certificate applications are described in this report.
- 8.2 Detailed legal and procedural issues are addressed in the body of this report.
- 8.3 NET is a reliable and safe form of transport and is fully compliant with the requirements of Disability Discrimination legislation and offers an accessible form of transport for those with mobility difficulties.

9 APPENDICES ATTACHED TO THIS REPORT

- 9.1 Consultation leaflet 'Open Space between Cator Lane and Bramcote Lane, Chilwell.'

10 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 10.1 Promoters' Joint Agreement dated 9th June 2008.
- 10.2 Nottinghamshire County Council notice of withdrawal from the scheme, 24th September 2009.

11 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 11.1 Nottingham Express Transit Phase Two Transport and Works Act

Order application, April 2007.

- 11.2 Application for a certificate in respect of Open Space and Exchange Land dated 27th April 2007 [Land at Kings Meadow].
- 11.3 Second application for a certificate in respect of Open Space and Exchange Land dated 7th November 2007 [Land at Silverdale and Chilwell].
- 11.4 Letter from Department for Transport confirming the Secretary of State's decision on the NET Phase Two Transport and Works Act Order application, 30th March 2009.
- 11.5 Letter from Government Office for London confirming the Secretary of State's decision on the NET Phase Two Exchange Land Certificates, 30th March 2009.
- 11.6 Transport and Works Act Order Inspector's report on the Nottingham Express Transit System Order: Report to the Secretary of State for Transport and the Secretary of State for Communities and Local Government (Robert M Barker 2008).
- 11.7 Nottingham Express Transit System Order, June 2009. Statutory Instrument number 2009/1300.
- 11.8 The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.
- 11.9 PPG17 (Planning for open space, sports and recreation)

COUNCILLOR JANE URQUHART