

# Department for **Transport**

## **Local Authority Orders**

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Sir

HIGHWAYS ACT 1980 ("the 1980 Act")  
ACQUISITION OF LAND ACT 1981 ("the 1981 Act")  
THE WARWICKSHIRE COUNTY COUNCIL (A4071 RUGBY WESTERN RELIEF ROAD)  
(SIDE ROADS) ORDER 2002 ("the SRO")  
THE WARWICKSHIRE COUNTY COUNCIL (A4071 RUGBY WESTERN RELIEF ROAD)  
COMPULSORY PURCHASE ORDER 2002 ("the CPO")

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to his letter of 15 December 2005 ("the interim letter") in connection with the above-named Orders, following the re-opened Inquiries at the Masonic Hall, Church Walk, Rugby, CV21 3AZ from 15 to 18 March 2005, 18 to 20 April 2005 and 10 May 2005 ("the re-opened Inquiries") before Mr A L Roberts CB CBE AFC FRAeS ("the Inspector").

2. The SRO and CPO as made, if confirmed by the Secretary of State would, respectively, authorise Warwickshire County Council ("the Council") to:-

(a) carry out the improvement of highways, stop up highways, construct new highways, stop up private means of access to premises, and provide new means of access to premises in connection with the classified road being (i) the A4071 which the Council propose to improve from a point 120 metres south west of the access to Potford's Dam Farm to a point 50 metres west of the bridge carrying the dismantled Rugby to Leamington Railway over the A4071 near Cawston; (ii) the highway which the Council propose to construct from the latter point to a point at the junction of the A428 Lawford Road and C80 Parkfield Road; (iii) the C80 Parkfield Road which the Council propose to improve from the latter point to the existing bridge over the West Coast Mainline Railway; (iv) the highway which the Council propose to construct from the latter point to a point on the B4112 Newbold Road 60 metres south east of the south east access of Avon Valley School; and (v) the B4112 Newbold Road which the Council propose to improve from the latter point to the A426/B4112 Avon Mill roundabout; and

(b) acquire compulsorily land, and rights over land, for the purpose of the construction/improvement of the classified road described at paragraph (a)

above; the construction of new highways, the improvement of highways and the provision of new means of access to premises in pursuance of the SRO; the use by the Council in connection with the above works; and to mitigate the adverse effects which the existence or use of the highways proposed to be constructed or improved will have on their surroundings.

### **THE SECRETARY OF STATE'S CONSIDERATIONS OF THE INSPECTOR'S REPORT**

3. In light of his conclusions the Inspector in his report ("the reopened Inquiries report" – "RIR") has recommended at RIR 10.1 and RIR 10.2 respectively that -

(i) the CPO be modified as indicated at RIR 9.169, which modifications are detailed at paragraph 4 (1) below, and that, so modified, the Order be confirmed; and

(ii) the SRO be modified as indicated at RIR 9.170, which modifications are detailed at paragraph 4 (2) below, and that, so modified, the Order be confirmed.

4. The Inspector's recommended modifications are:

(1) To the CPO -

a. To cater for his conclusion that the scheme should be modified to include Mr Alexander's alternative alignment near Potford's Dam, Plot 101 should be deleted from the CPO.

b. Plots 201, 211, 301 and 302 may need to be amended, depending on the outcome of public consultation on the closing of Bilton Lane at the north-western side of the Western Relief Road ("WRR").

c. If the proposed underpass for Footpath R126 is deleted from the scheme, the CPO would need to be modified to incorporate Pegasus crossing waiting areas for horses.

d. To reflect the agreed reduction in the land required for the balancing pond between chainages 1900 and 2080, the CPO should be modified in respect of Plot 201, as shown at Document 202s.

e. In consultation with the County Council, Plot 104 should be reduced in size, commensurate with the area need for the balancing pond between chainages 1050 and 1300 and adequate foraging for great crested newts only.

(2) To the SRO -

a. To reflect his recommendation that the proposed underpass for Footpath R126 be deleted from the scheme, that footpath should be added to the list of highways to be stopped up under Schedule 3 of the Order.

b. If, following consultation, the County Council concludes that Bilton Lane should be stopped up on the north-western side of the WRR, the C88 Bilton Lane should be added to the list of highways to be stopped up under Schedule 3 of the Order.

c. The SRO plans should be modified to reflect those required for the CPO, as identified above.

5. In light of the Inspector's conclusions, in his interim letter the Secretary of State advised the Council he required further information on the following:

- (i) The Potford's Dam Link ("PDL") design and created access to Potford's Dam Farm. Confirmation as to whether or not the Council proposed to proceed with its WRR scheme with the adoption of an alternative (proposed by Mr Alexander) which would curtail the southern termination of the WRR by the provision of a roundabout between the Penthouse and Potford's Dam connecting to the A4071 and terminating at Chainage 700.
- (ii) Bilton Lane. Of the Council's future plans as to whether or not Bilton Lane at its north-west junction with the WRR is to be closed to vehicular traffic.
- (iii) Footpath 126 underpass. Whether or not the Council would adopt a Pegasus Crossing facility rather than its earlier proposed grade separated (underpass) crossing proposed for Footpath R126 and for equestrian use.
- (iv) Footway/Cycleway near Bilton Lane. Of the Council's intention with regard to a footway/cycleway on both sides of the WRR north eastwards from Bilton Lane, with particular regard to the necessity for the duplicated provision should there be removal of the underpass and its substitution with a Pegasus Crossing facility.
- (v) Mitigation Land – Of the Council's proposals, for a reduced area for Plot 104 commensurate with the area needed only for the balancing pond between chainages 1050 and 1300 and adequate foraging for great crested newts, following the Council having first consulted with English Nature ("EN") upon that matter and also with regard to badgers and whether or not difficulty in obtaining a licence would have come about with a WRR disused railway line alternative which has been rejected for any further consideration.

## THE COUNCIL'S RESPONSE

6. In a letter dated 29 March 2006 the Council responded to the Secretary of State as follows:

- (i) The Potford's Dam End of the WRR Scheme. The Council confirmed its agreement to the WRR Scheme being amended at its southern end so that it would terminate at the Potford's Dam junction by the provision of a roundabout connecting to the existing A4071. The Council proposed a roundabout of larger size, and viewed by it to be more beneficial to road users, than would be a roundabout which might be obtained from within the made CPO lands and, in doing so, supplied the consent of the landowners under section 14 of the 1981 Act to the addition of land to the CPO which would enable the Council to acquire the land necessary for its provision. The Council advised of planning permission for the roundabout as being sought and subsequently notified that, under Planning Permission Ref: R1442/06CC017, such permission was granted on 13 June 2006 for the construction of a new 45 metre diameter roundabout at Potford's Dam to connect the existing A4071 to the proposed Rugby Western Relief Road.
- (ii) Bilton Lane. The Council had undertaken a public consultation on the closure of Bilton Lane at its north west junction with the WRR. 3500 questionnaires were issued to residences in Bilton and Long Lawford, and a press release issued; 1226 responses were received of which 843 (69%), including responses from the Borough Council and all of the Parish

Councils, were against closure and 338 (31%) were in support. As a result and following the Rugby Area Committee's resolution to reject the closure of Bilton Lane, the Council does not propose to close Bilton Lane to vehicular traffic at its north west junction with the WRR. Subsequent to its initial response the Council advised that a junction maintaining all movements at Bilton Lane was its proposal and that a traffic regulation order would be considered to restrict any traffic movement it felt necessary following a post-opening monitoring period. In its 13 July 2006 letter to, and as provided by, Mr Bragg the Council confirmed that it would in due course make a traffic regulation order for the banning of WRR southbound traffic making a right turn into Bilton Lane and thereafter monitor whether WRR northbound traffic making a left turn into Bilton Lane should also be banned by the same means.

- (iii) Underpass. The Council has agreed to provide a Pegasus Crossing facility at Bilton Lane and, in making that provision, that an underpass would not be required. The Council has reached agreement with, and has supplied the consent under Section 14 of the 1981 Act of, the landowners for the additional land required to provide the Pegasus crossing to be added to the CPO.
- (iv) Footway/cycleway near Bilton Lane. The Council confirmed its intention to remove the footway/cycleway on the northern side of the WRR north eastwards from Bilton Lane. This would not, however, result in a reduction of the width of the WRR as, with the removal of the underpass, the Council propose a central refuge for at-grade crossing by pedestrians of the WRR at this point.
- (v) Balancing Pond. A copy of the plan as shown in RIR Document 202s was enclosed with the Council's letter showing the revised land area to be acquired.
- (vi) Mitigation Land. A plan was submitted by the Council showing the revised area of Plot 104 (reduced from 2.7 ha to 1.85 ha). This was accompanied by the response, dated 2 March 2006, from English Nature ("EN"), who confirmed that they did not regard the proposed reduction in size of the Lawford Fields Mitigation Area for badger foraging habitat as critical to the survival of this species in the locality, and nor would it be prejudicial to obtaining a licence from EN to carry out works in the vicinity of a badger sett. The 1.85 ha would, EN stated, be sufficient to provide a dual role for the foraging of both newts and badgers. Furthermore, with regard to the feasibility of constructing the road on the disused railway, EN stated that the difficulty does not so much lie in obtaining a licence from them for the closure of the setts on the railway line, provided appropriate mitigation was to be included. Rather that the providing of the latter was, EN regarded, very problematical in this case due to the density of the badger population on the old railway and an absence of natural alternative habitat in the surrounding farmland and which would require a mitigation area of major proportions. The practicalities of this were believed so considerable that other options may prove more attractive to the engineers. In respect of the Lawford Fields Mitigation Area and the balancing pond which lies to the west of the diverted scheme, EN were doubtful of its commodiousness to act as newt mitigation habitat since the stream would act as a barrier to the newts. While newts are aquatic in some stages of their lives, they are nearly always associated with ponds and not flowing water, although they

are found in ditches where the water movement is extremely slow. The structure of the diverted stream may also act as a physical barrier if it were steep sided.

## **CORRESPONDENCE RECEIVED FROM OTHER PARTIES IN RESPONSE TO THE COUNCIL'S SUBMISSIONS**

### Mr Bragg

7. Mr Bragg agreed, if the Published Scheme was to be accepted, that the larger roundabout enabling the connection of the A4071 to the new road is the best way to proceed at this point, but felt there should be a guarantee from the Council that it would pursue the extended alternative alignment south beyond the roundabout at a later date rather than 'could' as the Council has stated, as he considered that if they did not it could later lead to casualties. Mr Bragg accepted the findings of the public consultation leading to the Council's proposal not to close Bilton Lane at its north west junction with the WRR and he would support a compromise on the design of the junction which would prevent traffic leaving Bilton Lane to join the WRR and vice versa, but allow straight ahead traffic movement on both of those highways and which, for Bilton Lane, would provide accessibility between the villages of Bilton and Long Lawford. He agreed with the removal of the underpass as this would have the effect of lowering the overall height of the WRR and enable it to be more sympathetically fitted into the landscape. The balancing pond was, he felt, still unnecessarily large as it includes very large access and "maintenance" areas. But he agreed with the reduction in the size of the "mitigation" areas and for which, noting EN's comments elsewhere upon the matter, he himself has offered up land for a suitable mitigation scheme for badger foraging habitat but upon which neither the Council or EN has approached him further about requirements. Notwithstanding these comments, Mr Bragg's objections to the Council's proposed WRR route remain because of its damage to the Green Belt, which runs contrary to Local Plan policies and to the environmental needs of the locality. Therefore the railway line alternative remains, for reasons previously argued, Mr Bragg's preferred route.

8. Mr Bragg raised other concerns about the Council amending further its proposals in respect of landtake, which in respect of Holmefield is now proposed to increase from around 8Ha to over 9Ha; the speed limit, of 50 mph, proposed on the WRR; its vertical alignment, which would see a 3m to 5m high embankment within 150 metres of his house; and, particularly in his November 2006 letters, about road lighting proposed on the WRR from the Cawston Roundabout to Bilton Lane and which is not, despite the Council's comments to the contrary, supported by Document 202uu of the Inspector's documents nor is it that of which he was initially assured, because of the WRR's location in the Green Belt, would be installed only at its roundabouts.

### Mr M A Sullivan, Campaign to Protect Rural England ("CPRE") Warwickshire

9. In his initial response to the Council's 29 March 2006 letter, Mr Sullivan stated that the Orders for the amended WRR proposals should not be confirmed until all necessary planning permissions for those particular proposals were in place. In later correspondence, following the Council's notification of planning permission for the Potford's Dam roundabout as having been obtained, he further put forward the view that necessary planning permissions were incomplete, in particular because: -

- (i) The proposals at Bilton Lane, for which additional land is now to be included in the CPO, lie outside the red-line boundary of the original planning permission of 2003, yet this change was not advertised by the Council as

should have happened. The Secretary of State cannot be satisfied, in terms of his policy set out in Circular 2/97, that the proper procedures have been undertaken in respect of obtaining planning permission for that part of the amended scheme lying outside the original development red-line boundary of the 2003 planning consent; and

- (ii) The Environmental Statement ("ES") which was submitted with the proposals in 2003 is not applicable to the new proposals and has not been amended or is to be consulted upon in respect of the impacts of the amended WRR's proposal of now terminating short at a Potford's Dam roundabout, instead of running its original length, terminating further to the south. The adequacy of the ES was questioned now that the WRR is considered to have been significantly amended at its southern end. The proposed changes to the scheme which Mr Bragg has highlighted in terms of landtake, the WRR's vertical alignment, and extent of road lighting strengthen the case of changes whose environmental impact should be assessed through a Supplementary ES, and which the Secretary of State should ask of the Council, together with resubmission of the Orders.

10. Insofar as the WRR's curtail by the incorporation of the Potford's Dam roundabout is concerned, Mr Sullivan commented that its notation within the SRO is not as required by Circular 1/97. The introduction of this design feature should require a further Side Roads Order, under Section 14 of the 1980 Act, to authorise the roundabout's provision and within which the stopping up of the underpass should also be included. The amount of change to the scheme since the interim letter has, Mr Sullivan views, exceeded anything that is permissible within Schedule I paragraph 8(3) of the 1980 Act and indeed the extent of which changes have not become clear to all parties. The Council should seek authority for these changed elements through a supplementary Side Roads Order.

PFA Consulting on behalf of Mr Alexander

11. PFA Consulting stated that the Secretary of State should seek assurance of the Council that their intention is to adopt Mr Alexander's extended alternative alignment, south of the Potford's Dam roundabout, before confirming the Orders. Without the comfort that the extension will be progressed expeditiously, they considered that it would be inappropriate to confirm the Orders for the remainder of the scheme. The Secretary of State should request the Council to progress the southern extension of the scheme "as expeditiously as possible". With the roundabout and in particular if the Council are not to progress the southern part of the scheme the Secretary of State must be satisfied that the Environmental Assessment meets the statutory requirements (including having regard to the principles established in the "Lady Berkley" case).

Howkins & Harrison on behalf of the Martin Family

12. The piecemeal manner of the WRR leaves a number of matters upon which the Martin Family have remaining concerns and which are without proper information to those most affected: -

- (i) Although the CPO for the scheme had gone through an Inquiry there was still uncertainty with regard to the vertical alignment.
- (ii) There had been cooperation with the Council in changes to land take as they had been assured the land required would be less but there were no revised and confirmed plans to consider.

- (iii) The Council had promised best efforts to reposition the balancing pond so that it was on the extreme of the Martin's ownership and where disturbance would be minimised but no information had been received from the Council of its solution.
- (iv) The fencing solution currently was still far from satisfactory with the matter dominated by cost rather than safety or the wishes of the landowners.
- (v) A roundabout which is to be added to the scheme has been without any additional consultation and should have been of wider consideration than with the landowner for additional land. The views of CPRE on environmental issues were supported.
- (vi) Proposals to light the WRR along its length, as informed to them by David Bragg, should be consulted upon with adjoining occupiers who will be most affected.
- (vii) The rationale for a 60 mph speed limit retaining on the length of Bilton Lane between its junction with the WRR and where it meets the A428 at the Sheaf & Sickle, both of which junctions would carry a 40 mph limit, is questioned.

13. In conclusion there should be clarity on these matters allowing their impact to be judged, before the Secretary of State should approve this scheme.

S G Wallsgrove, The Ramblers – Warwickshire Area

14. The Ramblers' Association considered that the proposal to effect the stopping up of Footpath R126 should not be made by modification to the SRO, as the appropriate lawful means for this should be by an Order made and advertised, otherwise they and other public path users would be seriously disadvantaged by the case for the underpass retention not being considered. Unlike the original direct footpath line between the town into the countryside, the Ramblers' Association commented that the amended route would result in walkers having to go 300 metres along the WRR and then 300 metres back again, which would be unacceptable to users who might otherwise attempt to cross what will be a dangerous and busy WRR carrying high speed traffic and for which a central refuge, whilst assisting, would be worse than the underpass originally proposed. The amended proposal should not be accepted and the original proposed underpass should be retained.

**THE COUNCIL'S REBUTTALS ON ISSUES RAISED BY THE OTHER PARTIES**

15. The Alternative WRR Alignment south at Potford's Dam. The Council's position, as was expressed by it at the Inquiry, is that they may never have the necessary funding to promote Mr Alexander's alternative alignment to take the WRR southwards at Potford's Dam. That proposal would entail a further compulsory purchase order about which the Council would need to satisfy there was a compelling need and strong justification for its scheme, which would be principally based upon a casualty reduction. The Council does not rule out construction of the southern extension, but can give no guarantees at present about that or where such a scheme might fit with other locations which might be of higher priority for such investment. These are matters upon which the Secretary of State was aware in coming to his view that the cessation of the WRR at a roundabout between the Penthouse and Potford's Dam was a suitable alternative

measure for the southern termination of the WRR scheme and which would not preclude the extended alternative being brought forward at a later date.

### Planning Permissions/Environmental Statement

16. The Council commented that the consideration of the planning application (for the roundabout to connect the WRR scheme to the existing A4071) was of a 'free standing' application and upon which it had been concluded that the development was subject to Schedule 2 section 10(f) and Section 13(a) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The County Planning Authority further concluded that the development fell below the thresholds stated in the regulations and that the roundabout proposed would not have a significantly different impact upon the environment to the impact which would result from the construction of the approved "T-junction" for the Rugby Western Relief Road. On the basis of this assessment it was concluded that it was not necessary for an Environmental Impact Assessment ("EIA") to be carried out to support the roundabout planning application. The matter was considered and debated by elected members who resolved to approve the application as submitted without an EIA specifically being carried out for the roundabout. The relevant planning permission was duly issued on that basis.

17. In respect of other of the amended proposals to the Council's WRR, the Council confirmed that the County Council's Development Group had considered these on 29 June 2006 and by letter of that date the Council's Principal Planner had approved - the reduction of the Lawford Brook mitigation area, the removal of the underpass at R126, Bilton Lane, from the scheme and for the provision of a new Pegasus Crossing. Furthermore consent was given to the amendments to the footpaths links along Bilton Lane and for the construction of the revised links all as indicated on the plan reference H/A426-31/815.

18. Given these circumstances, and contrary to the views of some objectors that it is otherwise, the proposed amended WRR proposals are now covered by valid planning permissions which, the Council states, is the particular matter upon which the Secretary of State needs to be satisfied and not upon the correctness of the procedures by which such permissions had come about.

19. Bilton Lane Junction with the WRR. The Council in its initial response stated that the proposal was for an all-movement junction of Bilton Lane with the WRR. Should it consider it necessary to restrict traffic movement once the junction has been opened then it can do so by way of a traffic regulation order. In subsequent correspondence to Mr Bragg, the Council identified that the right turn for southbound traffic from the WRR into Bilton Lane was to be so restricted.

20. Footpath R126 crossing of the WRR. The Council has accepted the modifications which will see a Footpath R126 crossing of the WRR to be taken by other means than an originally intended underpass which is now to be removed from its scheme. Evidence given at the Inquiries was that the footpath was little used by pedestrians and that an underpass, which would be unlikely to attract use by equestrians as was another of its intended purposes and which was no longer required for the landowners purpose, was unnecessary. The Council proposes that the WRR would at this point be provided with a central refuge so that pedestrians only cross one carriageway at a time. Alternatively pedestrians can cross the road at the signalised (Pegasus) crossing 300 metres to the south.



21. Lighting. Document 202uu which was considered at the Public Inquiry and is referred to in the Inspector's report at paragraphs 4.419 and 9.129, made clear at the inquiry that lighting would be extensive and not just limited to the immediate vicinity of the traffic signals, hence the Inspector's comments. Fencing. In its commitment to building a cost effective scheme the Council needs to make savings wherever they become possible.

22. Vertical Alignment of the WRR. The Council stated that its ability to lower the vertical alignment of the WRR was hitherto constrained by two matters, firstly the presence of the underpass for a R126 crossing and secondly by the Council's earlier alignment meeting minimum standards for a 60 mph road. With the removal of the underpass at R126 and, for reasons of safety, a now proposed 50 mph speed limit on the WRR between Potford's Dam and Lawford Road junction, the vertical alignment of the WRR can be taken into cutting adjacent to Lodge Farm (Mr Brown's property) as recommended by the Inspector and without compromise to national (alignment) standards. The changes would have significant environmental benefits for those in the immediate locality with no disadvantages. The Council had notified Mr Bragg, Mr Brown and Mr Martin, as main parties affected, of these changes in June 2006, but only Mr Brown had responded, with him being in support of them (although Mr Bragg also notified the Secretary of State of him having also responded with his continuing concerns and provided a copy of his letter and of the Council's response). The Council in a subsequent meeting held in August with the landowner Mr Martin and his agent had failed to reach an agreement for a different land footprint than the CPO lands for an amended alignment. Therefore the Council have assured that it is able to deliver a revised alignment within the CPO lands, which lands they would still seek to acquire by agreement rather than by compulsory purchase.

#### The amended proposals/modification to the Orders.

23. The Council notes the views of CPRE that the proposed changes should become subject to a supplementary Side Roads Order, and subject to its procedures, but does not accept that view or reasoning for it. Paragraph 19 of Part III of Schedule I to the 1980 Act which CPRE states as relevant, is a procedure for the Secretary of State giving directions as to the means by which any proposer of alternative proposals to those of the Orders should be brought forward ahead of the Inquiries and allows the disregard of any such alternative proposals which do not come forward at that time in compliance with the direction. It is not a procedure for consultation upon alternative proposals as CPRE suggests. Paragraph 8 of the said Schedule I gives the Secretary of State the power to confirm the Side Roads Order subject to such modifications as he thinks fit, without statutory restrictions on the type of modification which the Secretary of State can make and where such modifications are in the Secretary of State's opinion a substantial change to notify persons affected by them and provide an opportunity to comment upon them. In his letter dated 15 December 2005 the Secretary of State set out the publication requirements for the Council to follow on its amended proposals and a time within which the parties could respond upon the proposed modifications. The Council submit that the requirements of paragraph 8(3) have therefore been complied with by the Secretary of State.

24. The Council view that the Ramblers' Association who have now submitted comments upon the removal of the underpass have not been disadvantaged, but consider the Secretary of State as likely to disregard their comments as out of time, before exercising his power to confirm the Orders with modifications.

## THE SECRETARY OF STATE'S CONSIDERATIONS AND DECISION

25. The Secretary of State has considered carefully all the objections to, and representations about, the Orders including the alternative proposals put forward. He has considered the Inspectors' reports and the submissions made to him by the Council and other parties following his interim letter. Subject to his comments at paragraphs 27 to 45 below, he accepts the conclusions and recommendations of the Inspector to the reopened Inquires that the SRO and CPO be confirmed with modifications.

26. In his consideration for confirmation of the SRO the Secretary of State needs to be satisfied on particular matters; that other reasonably convenient alternative routes to the highways proposed for stopping up are reasonably convenient and that for private means of access to be stopped up another reasonably convenient access to the premises is available or will be provided. In his consideration for confirmation of the CPO he needs to be satisfied that there is a compelling need for the acquisition in the public interest; this justifies interfering with the human rights of those with an interest in the land affected; the Council has a clear intention of how it is intending to use the land it seeks to acquire, can show that it has the necessary resources to carry out its plans within a reasonable timescale; and that the scheme is unlikely to be blocked by any impediment to its implementation.

### Planning Permission/EIA

27. The Secretary of State notes that the validity of the planning application process by which the Council has obtained its permission for the proposed modified roundabout junction at the WRR's southern termination with the A4071 at Potford's Dam and whether that should have been subject to EIA is questioned. He notes that the Council, as the relevant authority delegated the function, brought a consideration to an EIA requirement and, whilst it gave consideration to the environmental impacts for the modified junction in coming to its decision on planning permission, concluded an EIA to be unnecessary for the particular application which it determined. There was no legal challenge to that or after planning permission was granted and, therefore, the Secretary of State is satisfied there would be no impediment in respect of implementation of that part of the Council's scheme, or in other respects of its proposed modified design features which the Council notify as having now received planning permission.

### The need for a supplementary Side Roads Order/Modifications to the SRO

28. The Secretary of State notes the suggestion that instead of proposing to modify the SRO to show the provision of a roundabout between the Penthouse and Potford's Dam, rather than the original WRR T-junction proposal, and for the stopping up of the length of Footpath R126 to be crossed by the WRR, rather than taken by underpass of it, a supplementary Side Roads Order should be made. It is the Secretary of State's opinion, having considered the legislation under which he may make modifications, that neither modification in their particular detail and circumstances would make a substantial change in the order, as specified under paragraph 8(3) of Schedule I to the Highways Act 1980, or require a further Side Roads Order. He is satisfied that these modifications, as recommended by the Inspector, can otherwise be fittingly made by him to the SRO, under paragraph 8(1) of the said Schedule I.

29. The first modification, to provide a roundabout between the Penthouse and Potford's Dam, is to be undertaken by way of improvement of the A4071 at its junction with the WRR, where it was formerly intended as a T-junction. The Council may

undertake under its own highway improvement powers such works without recourse to authority of the SRO to do so. However the Secretary of State is satisfied, having concluded in favour of the roundabout as the alternative terminal southern junction of the WRR, that it is proper that such improvement to the A4071 should be shown in the SRO and that he should modify the Order, in what he considers to be a small way, so as to include this (as indicated on the plan submitted by the Council with its letter of 17 July 2006).

30. The second modification is to stop up a length of Footpath R126, in which degree the Secretary of State does not consider to be a substantial modification as, whilst it will be removed of its underpass crossing, its continuity will be facilitated by means of crossing the WRR route at-grade between its bisected lengths. He notes the Ramblers' Association comments that the public may have been disadvantaged in not having this particular matter dealt with by a separate Order. However, in his advertised Notice of the reopened Inquiries, the matter of whether or not footpath R126 should be retained as an underpass was identified for consideration at the reopened Inquiries, and he considers through these procedures and by which that Notice became published in the local press and put up on site in the locality, that the public became informed of this as a prospective change and had the opportunity to make any representations they wished about that particular matter at the re-opened Inquiries. He is satisfied, therefore, that the public has not been disadvantaged by having been denied an opportunity of putting forward their views.

#### Reasonably convenient alternative route in respect of stopped up Footpath R126

31. The Secretary of State has also considered, as is required of him, whether in relation to stopping up of this length of Footpath R126 there is a reasonably convenient alternative route available or to be provided. He has in this taken account of the comments made by the Ramblers' Association in that particular regard.

32. Under the Council's modified scheme two alternative routes would avail themselves. An at-grade crossing of the WRR itself or use of a Pegasus Crossing at Bilton Lane some 300 metres to the south west of where Footpath R126 would join with the WRR on its south eastern, Bilton, side and to which crossing point pedestrians would make use of the WRR's integral footway/cycleway which the Council is to provide. The first alternative would provide pedestrians with a direct crossing of the WRR, adding no distance to their journey, to rejoin Footpath R126 on the WRR's north western side and which would then take them on in their travel to pick up use of Footpath R127 or to continue on Footpath R126 to its termination on Bilton Lane some half a kilometre from the proposed Pegasus Crossing. This at-grade crossing would allow pedestrians to cross the WRR's carriageway, which would now carry a lower 50 mph speed limit, in two stages by making use of the central refuge which the Council are to install at this location.

33. For those pedestrians travelling Footpath R126 wishing to cross the WRR from south to north but whose preference lay in the alternative use of the WRR's light controlled Pegasus Crossing at Bilton Lane, this would involve a 300 metres detour south westwards to make their crossing and by which they could then continue their journey via Bilton Lane. It would not necessitate pedestrians to return the 300 metres back to resume use of Footpath R126 and who would, as with other local pedestrian users with the introduction of the WRR, have the opportunity to adapt their journey by making use of Bilton Lane, or other routes within the local highway network, most expedient for their destination.

34. The Secretary of State is satisfied that these alternatives should in effect bring little inconvenience as alternative routes for the users of Footpath R126 which is to be stopped up and for which, the Secretary of State is satisfied, there would be provided reasonably convenient alternative routes.

#### The SRO

35. The Secretary of State has taken account of the comments which the Ramblers' Association itself has subsequently made and in which it seeks the retention of the underpass. But he is satisfied that its removal from the Council's WRR remains overriding for evidential reasons concluded upon previously by the Inspectors, namely local concerns about public safety and the likelihood that the underpass would be little used by pedestrians or equestrians. Additionally, it is no longer needed for agricultural access purposes and it would allow for the lowering of the WRR at this point with the concluded environmental advantages that would have in the vicinity, particularly for Lodge Farm. (RIR 9.113 – RIR 9.119).

36. In its proposed modified form, the Secretary of State is satisfied that the SRO in respect of both highways and private means of access to premises to be stopped up meets the tests referred to in paragraph 26 above and he is satisfied that the modifications as described in Annex A to this letter, and which include the improvement of the A4071 and the stopping up of the affected length of Footpath R126, referred to in paragraphs 29 and 30 above, can and should be made by him in the event of his confirmation of the SRO.

#### Alternative Proposals

37. The Secretary of State has considered the comments of the parties, including EN, in relation to alternative railway line route advocated by Mr Bragg. He however remains in acceptance of the Inspector's conclusions, as referred to in paragraph 19 of the interim letter, that its advantages over the published scheme are not sufficient to outweigh its disadvantages. Whilst accepting that there has been brought a delay in the necessary permissions being obtained for the Council's modified WRR route, the Secretary of State is satisfied that the railway line route would lead to further, unacceptable, delay which could jeopardize a WRR implementation, for which he considers there to be a pressing need, by introducing a likely irrecoverable shortfall of funding to the scheme by loss of developer funding timed for 2007 and 2008 (and 2010). The alternative railway line route remains rightly rejected. The Secretary of State has come to the view that the proposed modified WRR route, curtailed at a roundabout junction at Potford's Dam, is the most suitable solution and as a scheme in its own right which, whilst providing the opportunity to accommodate it, does not rely upon there being certainty of the extended alternative Potford's Dam Link coming about later, which latter matter would (as stated at paragraph 17 of the interim letter) be for the Council itself to decide upon.

38. The Secretary of State remains satisfied that no overriding case has been made to adopt any WRR scheme other than the modified WRR route as set out in his interim letter and as recommended by the Inspector and which is now proposed by the Council.

#### Other Matters

39. The Secretary of State notes the additional comments made by the parties with regard to the WRR's lighting, the vertical alignment of the WRR in the vicinity of Lodge Farm with the removal of the underpass and with regard to the design of the WRR

scheme in other aspects of the junction operation at Bilton Lane, speed limits and fencing.

40. The Secretary of State notes Mr Bragg's concerns that whilst earlier plans (Inspector's document 202 uu) indicated that there would be a break in lighting over the WRR length from some 350 metres south of Bilton Lane to the proposed lighting at Cawston roundabout; the Council's proposals are now for its continuous lighting throughout this length. The Secretary of State accepts however, as did the Inspector (IR 9.129) in his acknowledgement of its affects upon Lodge Farm, that there will be an inevitable degree of light pollution from the WRR in this vicinity. Whilst he notes that the Council's lighting proposals are now to be more extensive and of a greater impact here, like the Inspector elsewhere, he considers that with a modern design light spillage would be minimised and he accepts the Council's views that the extension of lighting would be appropriate, as this would avoid there being a stretch of unlit highway between the lit sections of Bilton Lane junction and Cawston roundabout, considered unsafe by lighting standards.

41. The Secretary of State notes that the Council has sought agreement for different lands, but of lesser area, from the Martins within which it would provide a lowered WRR into cutting in the vicinity of Lodge Farm. Whilst the Council has yet to, and may not, obtain that agreement, the Secretary of State notes that a lowered WRR, brought feasible by the removal of the underpass, can still be achieved from within the CPO lands bringing welcome amelioration of the otherwise more significant environmental impact upon Lodge Farm of the Council's original scheme.

42. The Secretary of State notes the WRR is to retain a north west vehicular connection with Bilton Lane and which will afford all traffic movement, except southbound traffic making a right turn from the WRR into Bilton Lane which the traffic model shows to be a nil traffic movement. The Secretary of State considers the Council's proposals as reasonable and its intended monitoring of the junction's operation to establish the need for any ensuing restrictions which might need to be applied appropriate.

43. The Secretary of State is satisfied that matters relating to speed limits, which on the WRR is to be subject to a reduced speed limit of 50 mph, consistent with its amended vertical alignment, between Potford's Dam and Lawford Road and on Bilton Lane between the WRR and the A428 at the Sheaf & Sickle which is to remain derestricted, have been satisfactorily addressed by the Council. On the aspect of fencing this is a matter which the Secretary of State considers can be dealt with by way of further negotiations on accommodation works with the landowners, the Martins, who if not in agreement with the Council with regard to its final design, can take the matter up with the Council by means of compensation.

#### The CPO

44. The Secretary of State has considered carefully 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 interests and interests of the owners and lessees.

45. In its proposed modified form, the Secretary of State is satisfied that the CPO meets the tests referred to in paragraph 26 above.

## **MODIFICATIONS**

46. The Secretary of State is satisfied that the modifications recommended by the Inspector referred to at paragraph 4 (1) a, c, d, and e and (2) a, should be made by him to those Orders. Additionally a number of other minor modifications as proposed by the Council are to be made by him to the Orders. These modifications are all detailed in Annex A to this letter.

## **DECISION**

47. The Secretary of State does not consider that the objections, singly or together, constitute grounds for not proceeding with the modified WRR proposals. For these reasons he has decided to confirm with modifications –

The Warwickshire County Council (A4071 Rugby Western Relief Road) (Side Roads) Order 2002; and

The Warwickshire County Council (A407 Rugby Western Relief Road) Compulsory Purchase Order 2002,

and this letter constitutes his decision to that effect.

## **COMPENSATION**

48. 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.

## **COSTS**

49. In view of his decision on the CPO, and the terms of Department of the Environment Circular 8/93 on the Award of Costs incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings, should Mr Alexander, Mr Mitchell or The Martin Family not wish to negotiate or be unsuccessful in negotiating a settlement of their partial Inquiries costs (limited to that part of their objection to the compulsory acquisition of property in their ownership in respect of which they succeeded by having land removed from the CPO) with the Council, the Secretary of State would, on receipt of an application from them, be prepared to consider making an award in respect of their proper costs of the Inquiries, such costs to be paid by the Council, their objections having been partially successful.

## **AVAILABILITY OF DOCUMENTS**

50. Please arrange for a copy of the Inspector's report and of the interim letter and 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.

51. A copy of this letter has been sent to those objectors, their representatives, and the persons who appeared and made representations at the Inquiries and who were copied the interim letter of 15 December 2005, together with a copy of the Inspector's report of the reopened Inquiries. Copies will be made available on request to any other persons directly concerned.

#### **RIGHT OF CHALLENGE**

52. Notice is to be published of confirmation of the Orders. Any person who wishes to question the validity of the confirmed Orders, or of 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

A handwritten signature in cursive script, appearing to read 'Julie Hume', written in dark ink.

**JULIE HUME**

Authorised by the Secretary of State  
to sign in that behalf





## MODIFICATIONS

### The Warwickshire County Council (A4071 Rugby Western Relief Road) (Side Roads) Order 2002

#### The Order

At Article 5(c)(i), the classified road definition is amended to 'the A4071 to be improved from a point 90 metres south west of the access to the Penthouse to a point 70 metres west of the bridge carrying the dismantled Rugby to Leamington Railway over the A4071 near Cawston and connecting to a new roundabout located 50 metres west of the aforementioned bridge;'

At Article 5 under "Site Plan" - In the first line '7' is amended to '8' and in the second line '517' is amended to '518'

#### The Schedules

In Schedule 1 the first item under 'Highways to be stopped up' is deleted.

In Schedule 1 under 'Reference number of new means of access' the number '1' is deleted

In Schedule 4 the first item under 'Highways to be stopped up' is deleted.

In Schedule 5 under 'Highways to be stopped up' in item 1 second line 'Birmingham to London Railway line bridge' is amended to 'West Coast Mainline Railway Bridge'.

In Schedule 5 in under 'Private Means of Access to be stopped up' in item 2 forth line '150' is amended to '180'.

A new schedule, Schedule 8 is added and under 'Highways to be stopped up' the wording 'Footpath R126 from a point 10m north-west of the dismantled railway fenceline, north north-westwards for a distance of 44 metres.'

#### The Plans

Key Plan H/A426-31/510A is replaced by H/A426-31/510B.

Plan1 H/A426-31/511A is replaced by H/A426-31/511A.

Plan 8 H/426-31/518 is added.

The Warwickshire County Council (A4071 Rugby Western Relief Road)  
Compulsory Purchase Order 2002

In Article 1 (i) second line the wording 'on the existing A4071 adjacent to Potford's Dam' is deleted and '90 metres south west of the access to the Penthouse off the existing A4071' is inserted.

In the last line of Article 1 'Environment Transport and the Regions' is deleted and 'Transport' inserted.

Plots 101, 102A, 103A, 321, 450, are deleted.

Plot 102 is reduced from 6812 square metres to 926 square metres

Plot 104 is reduced from 62985 square metres to 57723 square metres

Plot 201 is reduced from 77152 square metres to 72092 square metres

Plot 302 is reduced from 20500 square metres to 20297 square metres

Plot 305 is reduced from 415 square metres to 397 square metres

Plot 439 is reduced from 2919 square metres to 2060 square metres

Plot 456 is reduced from 1810 square metres to 160 square metres

In Plot 207 the wording 'The right to construct and maintain a bridge over' is deleted from the plot description.

The Following plots are added:

Plot 106	185 square metres. Part of arable land south of A4071 Coventry Road	A Mitchell Lawford Heath Farm Lawford Heath Lane Lawford Heath Rugby CV23 9EU  Mrs D L Mitchell Lawford Heath Farm Lawford Heath Lane Lawford Heath Rugby CV23 9EU	-	Owner
Plot 107	122 square metres. Part of arable land north of A4071 Coventry Road	A Mitchell Lawford Heath Farm Lawford Heath Lane Lawford Heath Rugby	-	Owner

		CV23 9EU Mrs D L Mitchell Lawford Heath Farm Lawford Heath Lane Lawford Heath Rugby CV23 9EU		
Plot 214	222 square metres. Part of arable land south of C88 Bilton Lane.	Mr J L Martin Lawford Fields Farm Bilton Lane Long Lawford Rugby CV23 9DU  Mrs D C Martin Lawford Fields Farm Bilton Lane Long Lawford Rugby CV23 9DU  Mr M J Martin Lawford Fields Farm Bilton Lane Long Lawford Rugby CV23 9DU	-	Owner
Plot 306A	18 square metres. Part of banks of Sow Brook bridge carrying the disused Rugby to Leamington railway line.	Railway Paths Ltd 35 King Street Bristol BS1 4DZ		Sustrans 35 King Street Bristol BS1 4DZ

### The Plans

Key Plan H/A426-31/499 is replaced by H/A426-31/499A.

Plan1 H/A426-31/500A is replaced by H/A426-31/500B.

Plan 2 H/A426-31/501A is replaced by H/A426-31/501C.

Plan 3 H/A426-31/502A is replaced by H/A426-31/502C.

