



Department for Transport

Winckworth Sherwood
Solicitors and Parliamentary Agents
Minerva House
5 Montague Close
London
SE1 9BB

Martin Woods
Head of the TWA Orders Unit
Department for Transport
Zone 1/14-18
Great Minster House
33 Horseferry Road
London SW1P 4DR

Enquiries: 020 7944 3196
Email: transportandworksact@df.gov.uk

Web Site: www.gov.uk/df/twa

Our ref: TWA/13/APP/06
Your ref: JEW/11152/22/PFI

Date: 12 May 2016

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992:
APPLICATION FOR THE PROPOSED MIDLAND METRO (BIRMINGHAM CITY
CENTRE EXTENSION, ETC.) (LAND ACQUISITION AND VARIATION) ORDER AND
DEEMED PLANNING PERMISSION**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, J P Watson BSc FCIHT MICE MCMI, who held a public local inquiry between 19 November 2014 and 16 January 2015 into the applications made by your clients, the West Midlands Passenger Transport Executive ("Centro"), for—

(a) the Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order ("the Order"), to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA"); and

(b) a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990 ("the planning direction").

2. The Order would confer on Centro fresh compulsory acquisition powers required for the construction and operation of part of the tramway authorised by the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 ("the 2005 Order") between New Street Station and Centenary Square in Birmingham City Centre, referred to in this letter as the "CSQ extension". It would also authorise variations to the works authorised by the 2005 Order at Paradise Circus Queensway and near Centenary Square, and the compulsory acquisition and use of land for the purposes of those variations.

3. Enclosed with this letter is a copy of the Inspector's report. His conclusions are set out in Chapter 8 of the report, and his recommendations are at Chapter 9.

Summary of Inspector's recommendations

4. The Inspector recommended that the Order should not be made and that the planning direction should not be given.

Summary of the Secretary of State's decision

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order, with modifications, and to give the planning direction, subject to the conditions set out in Annex 1 to this letter.**

Secretary of State's consideration

6. Careful consideration has been given to all arguments put forward by, or on the behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, refer to the Inspector's report ("IR").

Objectives of the Order

7. The 2005 Order authorised Centro to extend their existing tram system from Birmingham Snow Hill Station to New Street Station, Victoria Square, Paradise Circus, Centenary Square, Broad Street and Five Ways (Edgbaston). Although construction of the extension between Snow Hill Station and New Street Station is now under way, the compulsory acquisition powers in the 2005 Order for the rest of the route between New Street Station and Edgbaston lapsed in 2010. The Order now applied for would confer fresh compulsory acquisition powers for the section of route between New Street Station and Centenary Square. This Order, together with the planning direction and the 2005 Order, would enable Centro to construct the CSQ extension.

8. The Secretary of State notes that there was no dispute at the inquiry about the merits of the transportation, economic and employment objectives of the CSQ extension for which powers in the Order were required. Rather the evidence submitted to the inquiry was that the CSQ extension would create a better connected city, stimulate economic growth, support culture and tourism, help to reduce congestion, encourage sustainable travel and improve the link between the west side of the City and the City Centre. He notes further that the variation of the alignment at Paradise Circus would better integrate the CSQ extension with redevelopment at that location, and reduce costs and disruption; he therefore agrees with the Inspector that the variation has merit (IR 8.2.1-4, 8.6).

Consistency with policies

9. The Secretary of State agrees with the Inspector that the objectives of the Order are consistent with relevant policies in the West Midlands Local Transport Plan, the National Planning Policy Framework ("NPPF") and the adopted and emerging development plans. He agrees further with the Inspector that full weight should be attributed to the relevant policies in the adopted development plan given their consistency with the NPPF, and moderate weight should be given to the draft policies in the emerging development plan (IR 8.3).

Environmental statement

9. The Secretary of State notes that the Environmental Statement (“ES”) submitted with the Order application reports the likely impacts of the revised tramway alignment at Paradise Circus compared with those of the scheme authorised by the 2005 Order. He agrees with the Inspector that the ES is adequate, including in relation to the consideration of heritage impacts and alternatives. He agrees also that the relevant statutory procedural requirements have been complied with and that there is no legal requirement for Strategic Environmental Assessment since the CSQ extension is a project rather than a programme or plan (IR 8.4). The Secretary of State is satisfied that the ES, taken with the evidence on environmental matters submitted to the inquiry, is sufficient for the purposes of his decision on this application and confirms that, in reaching his decision, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA relating to the consideration of the ES.

Environmental impacts of the revised tramway alignment and mitigation

10. The Secretary of State agrees with the Inspector that there would be no significant differences between the environmental impacts of the varied alignment at Paradise Circus compared with that authorised by the 2005 Order, although there would be some modest beneficial impacts in relation to land take, traffic congestion during construction and townscape and visual amenity (IR 8.7). He agrees also that, taking into account the Code of Construction Practice which would be generally applicable and would be secured through condition 6 in Annex 1 to this letter, no additional mitigation would be necessary (IR 8.8). With regard to section 14(3AA) of the TWA, which requires the Secretary of State to describe the main measures to avoid, reduce and if possible, remedy the major adverse environmental impacts of a scheme, he is satisfied that the revised tramway alignment would not have any major adverse environmental impacts.

Impacts of the CSQ extension on property interests

11. The Secretary of State has considered the Inspector’s assessment of the effects of the CSQ extension on Victoria Square House (“VSH”), including impacts on maintenance access and fire exits, and on pedestrian access to 49 Pinfold Street. He agrees with the Inspector, for the reasons given, that the likely impact of the CSQ extension on property interests would be acceptable (IR 8.9).

Impacts of the CSQ extension on pedestrians, cultural heritage, townscape and visual amenity

Pedestrians

12. The Secretary of State has noted the Inspector’s assessment of the effects of the CSQ extension on the pedestrian environment in Pinfold Street and Victoria Square. He agrees with the Inspector that the proposed provision for pedestrians in Pinfold Street would be adequate and that there would be sufficient separate provision for pedestrians alongside the mixed use area in Victoria Square. He is therefore satisfied that the relevant goals in paragraph 35 of the NPPF would be met (IR 8.12.1-10).

Cultural heritage

13. The Secretary of State agrees with the Inspector about the statutory provisions, policy and guidance to which he should have regard in deciding this application, notwithstanding that the planning direction itself would not directly permit development which would cause harm to a designated heritage asset. He notes in this context that there was no contention at the inquiry that any harm caused by the CSQ extension to any designated heritage asset would be greater than the “less than substantial” level of harm referred to in paragraph 134 of the NPPF (IR 8.12.12-13).

14. The Secretary of State agrees with the Inspector’s assessment of the degree of harm that the CSQ extension would cause to designated heritage assets as a result of introducing the tramway and associated equipment and structures into the street. Specifically, he accepts that there would be a moderate adverse impact on Birmingham Town Hall and a minor adverse impact on its setting and on the settings of VSH, the Council House Museum and Art Gallery and four listed buildings in Pinfold Street; and that there would be a minor adverse impact on the character and appearance of the Colmore Row and Environs Conservation Area. The Secretary of State agrees that considerable importance and weight should be attributed to this harm in deciding this application (IR 8.12.14-24).

Townscape and visual amenity

15. The Secretary of State agrees with the Inspector that the effects of the CSQ extension on townscape and visual amenity would be beneficial in Stephenson Street, Paradise Street and Centenary Square; and harmful in Pinfold Street, Victoria Square and Paradise Circus (IR 8.12.25-32).

Alternative routes for the CSQ extension

16. The Secretary of State has considered the Inspector’s assessment of the two alternative routes for the CSQ extension proposed by the owners of VSH. He agrees with the Inspector that Alternative Option A has fundamental difficulties and should not be considered further (IR 8.13.2-4). He agrees further that Alternative Option B, although feasible in engineering terms, would be of less public utility than the CSQ extension and would not be feasible in financial terms; it should therefore be disregarded (IR 8.13.5-34, 8.14.20-23). As regards the transport appraisal process more generally, the Secretary of State agrees with the Inspector that it is neither necessary nor desirable at this stage in the implementation of the 2005 Order scheme to carry out a new Stage 1 Option Development (IR 8.13.27-30).

Need for the CSQ extension and the revised tramway alignment

17. The Secretary of State agrees with the Inspector that, taking into account the major developments in Centenary Square, the limited transport provision in the area, and the Birmingham City Centre Enterprise Zone, there is a growing need for improved public transport access to Centenary Square and the West Side. He agrees that the CSQ extension would make a major contribution to meeting that need and that substantial importance and weight should be attached to the public benefits which are likely to result from the scheme (IR 8.14.3-9). The Secretary of State also agrees with the Inspector that the proposed variation at Centenary Square would improve the functionality of the CSQ

extension and that the proposed variation at Paradise Circus would enable more efficient use to be made of the land; and that significant weight should therefore be attached to those variations (IR 8.14.10-11).

Justification for the CSQ extension

18. The Secretary of State has considered carefully the Inspector's balancing of the factors which weigh in favour of the CSQ extension with those that weigh against it at IR 8.14.12-17. The Inspector's conclusion was that the combined importance and weight of the harms which the scheme would cause to important heritage assets or their settings exceeded the substantial importance and weight that he attributed to the scheme's benefits to public transport and that therefore the CSQ extension was not justified.

19. The Secretary of State confirms first that he agrees with the Inspector's assessment of the extent of harm that would be caused to designated heritage assets by the CSQ extension and with the substantial weight that should be attached to those harms, having regard to the legislation and guidance referred to at paragraph 13 above. He does not, however, agree with the Inspector that those harms taken with the other relatively limited adverse impacts of the CSQ extension are so substantial as to outweigh the important transportation and economic benefits of the CSQ extension.

20. In particular, the Secretary of State does not agree with the Inspector when he says at IR 8.4.16: "... *it seems to me that the scheme's policy compliances, in terms of its objectives and route, are little more than statements of the need for the benefits it would bring ...*". He considers rather that significant weight should be attributed to the extent of policy support that there is for the benefits which the scheme would deliver. This demonstrates that the purposes for which the powers in the Order are required are ones to which national and local policies on planning and transport attach importance in setting the framework for development decisions. The Secretary of State considers that, for example, by improving accessibility and connectivity, reducing traffic congestion and supporting economic growth the CSQ extension would make a significant contribution to facilitating sustainable development which is a fundamental aim of national planning policy. He therefore gives greater importance and weight to this factor than the Inspector in assessing where the balance of interest lies in this case.

21. In addition, the Secretary of State notes that the Inspector has not given any weight to the function which the CSQ extension would serve in Centro's plans for implementing the remainder of the scheme authorised by the 2005 Order. In this context, the Secretary of State recognises that it may not be possible to progress the extension beyond Centenary Square to Edgbaston without further compulsory acquisition powers and that there is no up-to-date evidence before him about the benefits or adverse impacts of that part of the extension. He notes, however, that the construction powers and planning permission for that part of the route are still extant and that funding has been secured for those purposes (IR 5.1.2, 7.4.7).

22. Given the Inspector's conclusion that neither of the two alternative options for the CSQ extension considered at the inquiry are feasible, the Secretary of State considers that refusing the Order and planning direction for the CSQ extension would be likely to delay delivery of an extension to Centenary Square by at least 4 years while the feasibility of any alternative option was investigated and promoted. Furthermore, if no other feasible

alternative could be identified which would avoid harm to designated heritage assets, the result could be that completion of the remainder of the route to Edgbaston authorised by the 2005 Order would be undeliverable. Although the Secretary of State does not consider this to be a decisive factor in his assessment of this application, he considers that the potential for completing the extension to Edgbaston within a reasonable timeframe represents an additional benefit of authorising the CSQ extension as currently proposed to which some weight should be attached.

23. In balancing all the factors that are relevant to his decision, the Secretary of State attaches considerable importance and weight to the need for and benefits of the CSQ extension; he attaches significant weight to the extent that the objectives and route of the CSQ extension comply with relevant transport and planning policies; and he attaches limited weight to the other benefits of the scheme identified by the Inspector at IR 8.4.13 and to the possible future extension to Edgbaston which the CSQ extension would facilitate. Against that, he attaches considerable importance and weight to the harm that the CSQ extension would cause to designated heritage assets; and he attaches limited weight to the other harms identified by the Inspector at IR 8.14.13. In the Secretary of State's opinion, the balance is clearly in favour of the CSQ extension and he has therefore concluded that the CSQ extension is justified.

Funding

24. The Secretary of State has noted the Inspector's conclusion that, subject to the submission of the completed agreement between Centro, Birmingham City Council and the Paradise Circus Partnership Limited ("the Annex 7 Agreement") - which was before the inquiry in "final draft" form and which would secure developer contributions - sufficient arrangements had been made for funding the CSQ extension (IR 8.11). Since the close of the inquiry, Centro wrote to the Secretary of State on 15 February 2016 explaining why it had not yet been possible to provide him with the completed Annex 7 Agreement and why Centro considered that it was unnecessary to do so for the purposes of demonstrating a realistic prospect of funding for the CSQ extension.

25. Irrespective of Centro's letter of 15 February 2016, the Secretary of State considers that the Inspector has applied too strict a test in recommending at IR 9.2(c) that the Order should not be made in the event that the completed Annex 7 Agreement is not provided to him. The Department for Transport's policy on "Financial and Economic issues relating to TWA applications" is set out at paragraphs 1.31 to 1.36 of "A Guide to TWA Procedures" (June 2006). In particular, the Guide explains at paragraph 1.32 that the Secretary of State would wish to be satisfied before making a TWA Order "that there was a realistic prospect of the proposed powers being implemented" and at paragraph 1.34 that "the Secretary of State's concern is to establish that a scheme is reasonably capable of attracting the funds required to implement it, rather than expecting funding to have been secured".

26. In this instance the Secretary of State is satisfied, as was the Inspector, that sufficient assurance is in place in relation to more than 85% of the estimated cost of the CSQ extension. In relation to the remainder of the scheme costs which is proposed to be met by developer contributions, the Secretary of State considers that Centro has sufficiently demonstrated through its evidence to the inquiry about progress in negotiating the Annex 7 Agreement (summarised at IR 4.1.20(c)) that the CSQ Extension is reasonably capable of attracting the necessary funding. He considers also that the obligation on Paradise

Circus Partnership Limited under the section 106 agreement relating to the redevelopment of Paradise Circus to contribute to the cost of constructing the CSQ extension, while not securing the full amount required, gives a degree of further assurance that funding from this source to implement the scheme will be forthcoming. The Secretary of State has therefore concluded that it is unnecessary for him to await completion of the Annex 7 Agreement before determining this application.

Compulsory acquisition matters

27. In the light of the Secretary of State's conclusion that the CSQ extension is justified by the benefits that it would achieve, he is satisfied that there is a compelling case in the public interest for conferring on Centro powers to acquire compulsorily and use land for the purposes of the CSQ extension. In other respects, the Secretary of State agrees with the Inspector that the tests for conferring compulsory acquisition powers in ODPM Circular 06/2004, which was in force at the time the Inspector considered the matter, were met (IR 8.15.3-8). The Secretary of State notes, however, that this guidance has been replaced (with effect from 29 October 2015) by the Department for Communities and Local Government's guidance on the compulsory purchase process and the Crichel Down Rules; but he is satisfied that there is nothing in the new guidance to suggest that the Inspector would have reached a different conclusion had it been in force when he considered the matter.

28. Having regard to paragraph 14(a) of the new guidance referred to at paragraph 27 above and to the conclusions on funding at paragraph 26 above, the Secretary of State is satisfied that the scheme is likely to be able to secure the funding required, both for acquiring the land to which the powers in the Order relate, and for implementing the scheme for which the land is required.

Draft Order and planning conditions

29. The Secretary of State considers that the modifications to the Order referred to at IR 8.5 are appropriate. He considers also that, subject to some minor drafting changes in interests of clarity and consistency, the planning conditions recommended by the Inspector in Appendix 1 to the IR meet the tests referred to in Planning Practice Guidance, Use of Conditions (Section ID: 21a) and in paragraph 206 of the NPPF (IR 8.10).

Overall conclusion and decision

30. The Secretary of State is satisfied, for the reasons given in this letter, that it is in the public interest to authorise the CSQ extension. He has therefore decided to make the Order in the form recommended by the Inspector at IR 9.2(a), subject to some minor drafting modifications which do not materially alter its effect; and to give the planning direction subject to the conditions set out in Annex 1 to this letter. The letter conveying the planning direction will issue shortly, at the same time as the Order is made, following the publication of a notice of this determination in the London Gazette.

Notice under section 14 of the TWA

31. 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.

Challenges to decision

32. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex 2 to this letter.

Distribution

33. Copies of this letter are being sent to the owners of VSH who appeared at the inquiry, Now Leisure Limited and Birmingham City Council.

Yours faithfully,

Martin Woods

CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DIRECTION AS TO DEEMED PLANNING PERMISSION

Interpretation

In the following conditions:–

“the book of reference”, “the land plan” and “the limits of deviation” have the same meaning as in the Order;

“Code of Construction Practice” means a code of construction practice in two parts of which Part 1 relates to the entirety of the development authorised by the Order (a draft of which accompanies the Environmental Statement) and Part 2 is site specific;

“the development” means the development authorised by the Order;

“the Environmental Statement” means the statement of environmental information submitted on 4th December 2013 with the application for the Order;

“the land” means the land within the limits of deviation and within the limits of land to be acquired or used shown on the land plan and described in the book of reference;

“the local planning authority” means Birmingham City Council; and

“the Order” means the Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016.

Time limit

1. The development must commence not later than 5 years from the date that the Order comes into force.

Reason: To ensure that the development is commenced within a reasonable period of time.

Design and external appearance

2. Details of the design and external appearance of any:

- (i) permanent boundary treatment;
- (ii) poles and brackets required to support the overhead line system;
- (iii) poles and brackets required to provide lighting;
- (iv) ancillary electrical equipment; and
- (v) highway infrastructure over Easy Row subway,

must be submitted to and approved in writing by the local planning authority before that element of the development commences. The development must be carried out in accordance with the approved details.

Reason: To secure the satisfactory development of the application site and safeguard the character and appearance of the Colmore Row and Environs Conservation Area and setting of listed buildings in accordance with paragraphs 3.8, 3.10, 3.14, 3.16A, 3.22, 3.23, 3.25 and 3.27 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Materials

3. Details of materials to be used in any external surface of any:
 - (i) permanent boundary treatment;
 - (ii) poles and brackets required to support the overhead line system;
 - (iii) poles and brackets required to provide lighting;
 - (iv) ancillary electrical equipment; and
 - (v) highway infrastructure over Easy Row subway,

must be submitted to and approved in writing by the local planning authority before that element of the development commences. The materials used must be in accordance with the approved details.

Reason: To secure the satisfactory development of the application site and safeguard the character and appearance of the Colmore Row and Environs Conservation Area and the setting of listed buildings in accordance with paragraphs 3.8, 3.10, 3.14, 3.16A, 3.22, 3.23, 3.25 and 3.27 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Landscaping

4. Development must not commence until details of all proposed landscaping and the proposed times for the implementation of planting have been submitted to and approved in writing by the local planning authority. All landscaping must be carried out in accordance with the approved details and at the approved times. If, within a period of 2 years from the date of the planting, that planting, or any replacement planting, is removed, uprooted or dies, another plant of the same species and size as that originally planted must be planted at the same place in the next available planting season, unless the local planning authority gives its written consent to any variation.

Reason: To secure the satisfactory development of the application site, ensure a high quality of external environment, reinforce local landscape character and safeguard the character and appearance of the Colmore Row and Environs Conservation Area and the setting of listed buildings in accordance with paragraphs 3.8, 3.10, 3.14, 3.16A, 3.22, 3.23, 3.25 and 3.27 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Archaeological investigation

5. Development must not commence until a scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. All archaeological work must be undertaken in accordance with the agreed scheme of investigation.

Reason: To secure a scheme of archaeological assessment requiring observation, analysis of the significance and recording of any surviving archaeology in accordance with paragraphs 3.31 and 8.36 of the Birmingham Unitary Development Plan 2005, with the National Planning Policy Framework 2012 and the archaeology strategy Supplementary Planning Guidance.

Code of Construction Practice

6. Development must not commence until Part 1 and Part 2 of the Code of Construction Practice have been submitted to and approved in writing by the local planning authority. Development must be carried out in accordance with the details approved in each Part.

Reason: To ensure adequate environmental protection during construction and to safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Contamination

7. Development must not commence until a scheme to deal with any contamination of the land has been submitted to and approved in writing by the local planning authority. The scheme must include an investigation and assessment to identify the extent of contamination and measures to be taken to avoid risk to the public and the environment when the works are carried out. The development must not commence until the measures approved in the scheme have been fully implemented.

Reason: To secure the satisfactory development of the application site in accordance with paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Means of access

8. Details of the siting, design and layout within the limits of deviation of any new permanent means of access to a highway to be used by vehicular traffic, or of any permanent alteration of an existing means of access to a highway used by vehicular traffic, must be submitted to and approved in writing by the local planning authority before the development commences. The development must be carried out in accordance with the approved details.

Reason: In order to secure the satisfactory development of the application site in the interests of highway safety in accordance with paragraphs 3.8, 3.10, 6.17 and 6.39 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Noise and vibration

9. The development must be designed and operated in accordance with the Midland Metro Extension Noise and Vibration Policy 2003. For the purposes of Section 5 of the Policy, "Noise Mitigation at Source", the pre-existing ambient noise levels are to be those in Tables 9.5 and 9.6 of the Environmental Statement (Volume 1 Main Statement), or such other levels specified in any later survey which has been agreed in writing by the local planning authority.

Reason: To safeguard the amenities of occupiers of premises/dwellings in the vicinity from air-borne noise caused by the running of trams in accordance with paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Ground-borne noise

10. Where the dominant source of noise is ground-borne, the following noise standards must be applied to the development for the purposes of Sections 6 and 7 of the Midland Metro Extension Noise and Vibration Policy 2003:

- (i) Inside noise sensitive rooms in residential buildings – LAmax,S40dB; and
- (ii) Inside noise sensitive rooms in offices – LAmax,S45dB.

Reason: To safeguard the amenities of occupiers of premises/dwellings in the vicinity from ground-borne noise and vibration caused by the running of trams in accordance with paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

Ecological Checks

11. Before the development commences, check surveys for species of interest together with details (to include timescales) of any necessary programme of mitigation measures for any protected species affected by the development must be submitted to and approved in writing by the local planning authority. The approved programme of mitigation must be implemented in full in accordance with the timescales agreed in writing by the local planning authority.

Reason: To ensure that protected species and their habitats within and adjacent to the development site are properly protected and appropriate ecological mitigation is undertaken in accordance with the Birmingham Unitary Development Plan 2005, with the National Planning Policy Framework 2012 and with the Nature Conservation Strategy for Birmingham Supplementary Planning Guidance.

Electro-magnetic compatibility

12. The development must be designed and constructed in accordance with:

- (a) The electromagnetic compatibility standards set out in BS EN 50121-4:2006: "Railway applications – Electromagnetic compatibility", or any successor standards;
- (b) Machinery Directive 2006/42/EC;
- (c) Radio and Telecommunications Terminal Equipment Directive 1999/5/EC; and,
- (d) EMC Directive 2004/108/EC.

Reason: To ensure that the tramway does not give rise to unacceptable electromagnetic interference in accordance with paragraphs 3.8 and 3.10 of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2012.

END

ANNEX 2

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 beginning with 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.

CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

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.