



# Department for Transport

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Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE MIDLAND METRO (WEDNESBURY TO BRIERLEY HILL LAND ACQUISITION) ORDER 2020**

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, Mr John Felgate BA (Hons) MA MRTPI who held a public inquiry on 19 March 2019 into the application made by your clients, West Midlands Combined Authority (“WMCA”) for the Midland Metro (“Wednesbury to Brierley Hill Land Acquisition”) Order to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).
2. The Order seeks to renew the same powers of compulsory land acquisition as those that were previously conferred by the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (“the 2005 Order”). These include powers to take possession of land, or to acquire rights over land, either permanently or temporarily. The land acquisition powers conferred by the 2005 Order were limited by statute to a period of five years and therefore these powers expired in 2010. The Draft Order does not seek any further deemed planning permission or other authorisation for the new tramway’s construction or operation.
3. Enclosed with this letter is a copy of the Inspector’s report (“IR”). The Inspector’s conclusions are set out in paragraphs 140 to 190 and his formal recommendations are set out in paragraph 191 of his report.
4. Renewing these compulsory purchase powers would facilitate the proposed extension to Line 1 of the Midland Metro, which would run south and west from the existing line at Wednesbury, then through Dudley Port and Dudley town centre, terminating close to the Merry Hill regional shopping centre at Brierley Hill. The WMCA would be the Acquiring Authority, and the land lies within the administrative areas of Dudley Metropolitan Borough Council (“DMBC”) and Sandwell Metropolitan Borough Council (“SMBC”).

## **Summary of Inspector's Recommendations**

5. The Inspector recommended that the Order should be made, subject to:
  - a) the amendments incorporated in the amended Draft Order, Land Plans and Book of Reference, numbered APP/INQ 1.1, APP/INQ 2.1 and APP/INQ 3; and
  - b) the completion of the special Parliamentary procedure required by section 19(1) of the Acquisition of Land Act 1981 and section 12(1) of the Transport and Works Act 1992.

## **Summary of The Secretary of State's Decision**

6. For the reasons given in this letter, the Secretary of State has decided to make the Order with modifications and subject to the completion of the special Parliamentary procedure.

## **Secretary of State's Consideration**

7. Careful consideration has been given to all of the arguments put forward by, or on behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the Inspector's findings as set out in the report, the reasons for the Secretary of State's decision are those given by the Inspector in support of the conclusions and recommendations. All paragraph references, unless otherwise stated, are to the numbered paragraphs in the Inspector's report.

## **Objectives of the Proposed Scheme**

8. The objectives of the proposed Wednesbury to Brierley Hill Extension ("WBHE") include:
  - supporting regeneration in an area of high deprivation through improved connectivity to areas of opportunity;
  - supporting economic development by improving the accessibility of major employment and residential sites;
  - enhancing the area's prosperity by improving access to employment, and widening the workforce catchment area for local businesses;
  - improving the education and skills base by providing better access to universities and colleges throughout the region;
  - encouraging modal shift from the private car by delivering a high quality and reliable public transport service;
  - supporting an integrated transport network with seamless interchange between transport modes; and
  - delivering a high-quality transport service in a manner that supports local environmental and safety benefits.

## **Justification for the Order**

9. The Secretary of State notes WMCA's objectives of the proposed scheme (IR 34) and notes the Inspector's conclusion that an extension of the Metro system from Wednesbury to Brierley Hill is needed, on economic and social grounds (IR 35-36), transport grounds (IR 37-39), and as a catalyst for regeneration (IR 40-41).
10. The Secretary of State notes that the new tramway is supported by local planning policies, and by the locally approved economic and transport strategies for the area (IR 42-46). It is also noted that Central Government has recognised the need for the scheme in the context of decisions made on the devolution arrangements for the West Midlands, and maximising HS2 connectivity, and the associated commitments in respect of Government funding (IR 47-50).
11. The Secretary of State has also considered the conclusions reached in the original decision on the WBHE in December 2004 (IR 87) and agrees with the Inspector that these conclusions apply with equal force to the present Draft Order. He understands that the proposed changes do not seek to add any new land or rights to the Draft Order, nor extend the Draft Order's effects in any other way (IR 21).
12. The Secretary of State has taken account that none of WMCA's submissions on these matters is challenged in any way. He therefore agrees with the Inspector's conclusions that WMCA's case with regard to the justification for the scheme is well-founded (IR 144).

## **The alternatives to compulsory acquisition**

13. The Secretary of State has noted WMCA's description of the nature and extent of the efforts made and the procedures undertaken in their attempts to secure all of the necessary land for the WBHE scheme by way of negotiated agreements which was evidenced by copies of relevant correspondence that were produced to the inquiry (IR 83-86, 133). The Secretary of State agrees with the Inspector that all reasonable avenues for acquiring the remaining interests have been exhausted and for the WBHE scheme to proceed within a reasonable timescale, there is now no realistic alternative to powers of compulsory acquisition (IR 147).

## **The anticipated benefits of the scheme**

14. The Secretary of State notes WMCA's evidence regarding the nature of the expected benefits of the WBHE scheme, not just for the purposes of transportation but also in terms of regeneration and the local economy (IR 57-61). He has noted the quantification of the potential economic benefits in the Economic Impact Assessment, in terms of new jobs, homes and facilities (IR 62-64). The benefits of the WBHE scheme were accepted in full by the Secretary of State in the original decision in December 2004 (IR 87) and the Secretary of State agrees that there is no evidence of new circumstances that would affect the reasoning behind that decision or point to a different outcome now (IR 148).
15. The Secretary of State notes that Mr Tim Weller lodged a late objection via a written submission first received on 12 March 2019. He did not appear at the

inquiry and does not have a qualifying interest in the Order Lands (IR 113). Mr Weller opposes the construction of WBHE on the grounds that using the disused South Staffordshire Railway corridor for the new tramway would mean giving up the opportunity to reintroduce heavy-rail operations on this route (IR 114). The Inspector considered the evidence from WMCA on this issue (IR 134-139) and concluded that in light of the comprehensive evidence provided by WMCA, there was no clear reason for preferring Mr Weller's view over the weight of all the other evidence (IR 149).

16. The Inspector concluded that the WBHE scheme would provide modern, convenient, and sustainable transport links between the Black Country towns, and between that area and the wider region, and found that the evidence as to the potential regeneration and socio-economic benefits is substantial and convincing (IR 151). The Secretary of State agrees.

### **The impacts on land owners, tenants, occupiers and statutory undertakers**

#### *a) Access to businesses and car parks, and local road networks*

17. The Secretary of State notes that the new tramway would bring improved accessibility to the Merry Hill shopping centre, Brierley Hill town centre, and the Waterfront office and business area (IR 152).
18. After the completion of the proposed works, the area's road layout and pedestrian networks would return to something very similar to their current form (IR 124-125). The main car parks, and the access routes to them would remain as at present. The Secretary of State understands that the only permanent change to the local road network in the vicinity of the shopping centre will be alterations that are required to the Level Street junction, with the new signalised tramway crossing replacing the existing roundabout (IR 125).
19. The Secretary of State notes that the operation of the local road network post-construction has been tested using micro-simulation modelling (IR 126) and that this shows that the resulting network will work well with little adverse effect on travel flows, routeing or journey times (IR 153). For pedestrians the Inspector concluded that the new provisions would ultimately provide a safer and easier route for some journeys than currently exists, particularly to and from the Merry Hill Centre and the Waterfront (IR 127) and that the suitability of the post-development access arrangements have not been questioned by any of the remaining objectors (IR 153).
20. The Secretary of State notes the three remaining qualifying objectors (Jessops, Waterstones and McDonald's/Astrad/AR Sirkhat) raise concerns regarding access to Merry Hill shopping centre during construction. Jessops UK Ltd occupies Unit 64L in the Merry Hill shopping centre. They anticipate that during construction, The Embankment is likely to have to be closed or partially closed on occasions possibly lasting weeks or months and their concern is that in such circumstances, customers may be deterred from shopping at Merry Hill, which is likely to incur reduced turnover and some lost profits (IR 98-101). Jessops is also concerned

about possible damage to the shopping centre's private roads during construction (IR 103).

21. Waterstones occupies Units 95 and 96 in the Merry Hill shopping centre and their lease confers rights of access via the shopping centre's private roads. They are concerned that there is potential for the proposed works to impede access with consequent damaging impacts on Waterstones' retail business (IR 105-108).
22. McDonalds Restaurants Ltd, Astrad Ltd and AR Sirkhat jointly lodged an objection. They are the leaseholder and franchisees of three units at the Merry Hill Centre. The objection primarily relates to the effects on retail operators during the construction stage, including the effects on vehicular and pedestrian access for customers, access for servicing and emergency vehicles, and possible interruptions to utility services (IR 109-112).
23. It is common ground that during the construction period some disruption is likely (IR 101,107,111,118). The Secretary of State notes that the capacity of the Level Street Junction would be reduced while the alterations to it are being carried out (IR 119), and that The Embankment's road width would have to be restricted, and that full or partial closures would be needed at time (IR 118).
24. However, the Secretary of State notes that construction works would last for a finite period, and their effects on traffic and access would be temporary (IR 154). The Secretary of State also understands that all construction activities, and impacts during construction, will be fully governed by the various control mechanisms in place such as the Code of Construction Practice ("CCP") and the legal undertakings provided to objectors (IR 116). These undertakings commit them to minimise disruption as far as is reasonably practicable (IR 117). The Secretary of State also notes that the WMCA have given specific undertakings to Jessops, and to Waterstones and to McDonalds, Astrad and AR Sirkhat to address their individual concerns (IR 117). The Secretary of State also notes that as far as the Merry Hill Centre is concerned, alternative accesses are available, and apart from the Embankment, the others would not be directly affected (IR 154). The Secretary of State agrees with the Inspector that the effects during construction would be unlikely to be severe (IR 154).
25. Apart from the Brierley/Merry Hill area during construction, the remainder of the WBHE route is not subject to any similar objections. In the case of Dudley town centre, there is the potential for some disruption during construction, due to the more dense, urban nature of the route, but WMCA's support package provides a measure of financial compensation for any adverse effects in that specific area (IR 155).
26. The Secretary of State agrees with the Inspector's conclusion that the impact of the WBHE scheme, in terms of access to and within the area, on owners, tenants, occupiers, and statutory undertakers, would be contained within acceptable limits (IR 156).

*b) Economic impacts on local businesses*

27. The Secretary of State agrees with the Inspector that any adverse impacts on businesses at the Merry Hill shopping centre, resulting from the temporary restrictions on access during construction, would be limited. However, he notes that whilst impacts would be limited, the possibility of some businesses losing trade during construction cannot be ruled out (IR 157).
28. The Secretary of State notes the concerns raised by Jessops UK Ltd that the construction of the scheme is likely to lead to reduced turnover, increased costs and lost profits for the Company and that the basis for compensation within the terms of the Order will not cover the scale of the losses the Company could face (IR 102). The Secretary of State notes WMCA's position on the issue of compensation for lost business during construction (IR 129-132) and that there is common ground between the WMCA and Jessops that losses stemming from lost trade due to the temporary restrictions on access would be unlikely to qualify for compensation within the terms of the Draft Order (IR 102, 130).
29. The Inspector found that the Draft Order is consistent with the national Compensation Code and other relevant legislation (IR 129). He concluded that no clear reason has been advanced as to why this particular Order should be required to make provision for compensation beyond the terms of the statutory framework (IR 158).
30. The Secretary of State notes that the WMCA could offer additional compensation to retailers at Merry Hill on a discretionary basis as they have done in Dudley town centre (IR 80,102). However, the Inspector considered there was no clear reason why WMCA should be expected to, given the differences between the areas. At Dudley, the new tramway would run along town centre streets, directly adjacent to the main shopping area and where many shoppers are likely to arrive on foot or bicycle or bus. The town centre has a large proportion of small, locally-based, independent traders. Whereas the Merry Hill Centre is geared towards multiple retailers, with shoppers arriving by car; and the construction works now proposed would be beyond the Centre's car parks and outside its perimeter road system (IR 159).
31. The Secretary of State agrees with the Inspector that irrespective of any temporary adverse effects during construction, local businesses throughout the area stand to benefit from the WBHE scheme in the longer term through the tramway's positive effects on accessibility, connectivity and business confidence (IR 160).
32. The Secretary of State agrees with the Inspector that the compensation arrangements incorporated within the Draft Order, together with the discretionary arrangements put in place by WMCA, are adequate, and the Order's economic effect on local businesses would be acceptable (IR 161).

*C) Impacts on members of the general public*

33. The Secretary of State agrees with the Inspector that the general public and local communities throughout the Black Country, would share the socio-economic and transport benefits of the WBHE scheme (IR 162). He accepts that those travelling by car or on foot are likely to suffer some inconvenience during the construction

stage but there is no evidence that these impacts would be serious given the range of control mechanisms that have been put in place and that alternative routes are available (IR 116-123, 154-156).

34. The Secretary of State agrees with the Inspector that the temporary adverse effects during construction on the travelling public would be clearly outweighed by the benefits that WBHE would bring to the area (IR 164).

*D) The adequacy of any mitigation measures*

35. The Secretary of State notes the mitigation for the impact on traffic and movement during construction would be achieved through the terms of the existing planning conditions, the CCP, and WMCA's legal undertakings and agrees that these would contain the impacts of the scheme to within acceptable limits (IR 156).
36. The Environmental Statement ("ES") submitted prior to the 2005 Order identified a small number of minor adverse effects, which in most cases were considered to be capable of being overcome through suitable mitigation measures (IR 74). WMCA considers itself to be fully committed to implementing the ES recommendations in full (IR 75). Additionally, WMCA has committed itself to adhere to the Midland Metro Street Design Guide, which contains detailed landscaping principles and has been approved by DMBC and SMBC (IR 79). Together with the planning conditions, the CCP, the business support package and the protective provisions within the Order itself (including for statutory undertakers), the Inspector concluded that this will ensure adequate mitigation for all adverse impacts (IR 82). The Secretary of State agrees with the Inspector that the likely impacts are adequately addressed through these measures, and any residual impacts are unlikely to be significant (IR 166).

### **Ministry of Housing, Communities & Local Government ("MHCLG") Guidance Criteria**

*a) Compelling case in the public interest*

37. For the reasons set out above, the Secretary of State agrees with the Inspector that extending the Midland Metro from Wednesbury to Brierley Hill is needed to remedy the deficiencies of the existing transport network in this part of the Black Country, and to bring forward economic growth and renewal (IR 142-144). The Secretary of State agrees with the Inspector that the new tramway extension would have a major beneficial effect on transport choices, economic prospects, and the quality of life in the area as a whole (IR 148-151).
38. The Inspector found there was no evidence that the scheme would have any permanent or long-term adverse impacts. Impacts would largely be confined to delays or diversions during construction, and realistic measures have been put in place to minimise these effects (IR 168). The Secretary of State is aware of the possibility that the disruption to traffic could affect takings at some local businesses, and if so, the resulting losses would not be recoverable other than for traders covered by WMCA's discretionary support scheme but considers that the

Draft Order properly reflects the relevant statutory provisions under which compulsory purchase orders are made (IR 169).

39. The Secretary of State agrees with the Inspector that the WBHE Scheme's adverse impacts are outweighed by its public benefits (IR 170).

b) *Interference with human rights*

40. The making of the Order would authorise the taking of interests in the Order lands, or rights over them, by compulsion. The Secretary of State recognises that the exercise of those powers would represent an interference with the right to peaceful enjoyment of possessions, which is protected by Article 1 of the First Protocol of the European Convention on Human Rights ("ECHR"), incorporated into UK law by the Human Rights Act 1998. However, Article 1 rights are qualified rather than absolute and may lawfully be overridden where justified in the public interest (IR 171).

41. The Secretary of State notes that the three remaining objectors with qualifying interests (Jessops, Waterstones, and McDonald's/Astrad/AR Sirkhat) would not suffer any material detriment. Despite losing their express legal rights to use The Embankment (Plot 336) for access, the use of that road would be able to continue unhindered as it would effectively become public (IR 124). In respect of Central Way (Plot 337), the objectors' existing rights would not be taken or altered at all and would remain as they are now, except that they would be exercisable in common with WMCA's occasional use for maintenance purposes (IR 172).

42. The Secretary of State agrees with the Inspector that there is no evidence that the interference with Article 1 rights, in respect of any other interests, would cause any significant detriment to any of the other owners, lessees, tenants or occupiers identified in the Book of Reference (IR 173).

43. The Secretary of State notes that some of the Plots within the Order lands involve land used for residential purposes, as part of a domestic curtilage (IR 174). He recognises that the exercise of the powers within the order could also involve a potential infringement of rights under ECHR Article 8, relating to respect for private and family life. However, he notes that there are no objections pertaining to this subject and agrees with the Inspector that there is no reason to disagree with WMCA's stated view that none of these cases involving residential land would give rise to any material detriment (IR 174).

44. The Secretary of State agrees with the Inspector that the proposed scheme would serve a legitimate public aim and bring substantial public benefits (IR 167, 170), and that the interference with Article 1 and Article 8 rights that would be caused, is the minimum necessary to achieve the aims of the Draft Order to secure the benefits for the area. The Secretary of State considers that the degree of interference with those rights would be proportionate, and justified in the public interest.

c) *Any other impediments*

45. The Secretary of State notes that there are no objections regarding the funding for the scheme and the Inspector did not doubt WMCA's evidence regarding funding (IR 176). Planning permission already exists for the scheme, and apart from the issue relating to land identified as open space, there are no other legal or technical impediments to the implementation of the scheme (IR 177).
46. In relation to the open space issue, the position at the close of the inquiry was that about 0.4 ha of land included within the Draft Order falls within the definition of Open Space as defined in section 19(4) of the Acquisition of Land Act 1981 ("the ALA") (IR 26-28). The Secretary of State notes that there are no objections of any kind relating to this land (IR 178). Section 19(1) of the ALA and section 12(1) of the TWA contain specific provisions that must be complied with before the Order can be made. To date the Secretary of State understands that negotiations have not reduced the level of open space to be compulsorily acquired to less than 250 square yards (209 sq m) and is not satisfied that an equal amount of suitable exchange land been identified. For this reason, the Order must be subject to the special Parliamentary procedure. Accordingly, the Secretary of State is required to lay the Order before Parliament but the Order would not come into force until the special Parliamentary procedure had been completed.
47. The Secretary of State agrees with the Inspector that the WBHE scheme is deliverable, subject to the satisfactory conclusion of the special Parliamentary procedure process (IR 180).

*d) Whether all the land and rights are necessary*

48. The only Plots whose inclusion in the Draft Order is challenged in the remaining objections, are Nos 336 and 337. With regard to Plot No 336, the proposed Merry Hill tramstop platforms and lift tower would be sited within a narrow strip of steeply sloping land, in close proximity to The Embankment. The Secretary of State agrees with the Inspector that it is sensible that the roadway comprising Plot 336 is brought fully within the Authority's control, to enable safe conditions to be ensured, both during construction and for future maintenance requirements (IR 86, 118). In the case of Plot 337, only access rights are to be acquired and this will allow the Authority to gain access over this private roadway for necessary maintenance purposes (IR 183).
49. In the absence of any other relevant objections, the Secretary of State agrees with the Inspector that all the land required by the Draft Order is needed to fulfil the Order's purposes (IR 184).

### **Proposed Changes to the Draft Order**

50. WMCA tabled an amended version of the Draft Order, Book of Reference and the Land Plans at the opening of the inquiry (IR 19). The amended Order removed seven plots of land because they were no longer required or because the necessary rights have been secured by agreement (IR 20). The Secretary of State notes that the Inspector considered the application on the basis of these revised documents (IR 21) and agrees with the Inspector that no-one is likely to be prejudiced by changes of this nature (IR 186).

51. The Secretary of State agrees with the Inspector that, in the absence of a separate schedule of proposed changes, the most expeditious way of dealing with the changes is for the amended version of the Draft Order, Land Plans and Book of reference to now be substituted for the original (IR 187).

### **Statutory Procedural requirements**

52. The Secretary of State has noted the matters relating to the statutory requirements highlighted in the Inspector's report (IR 22-25).

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

53. The Secretary of State agrees that for all the reasons above, the Order is justified on its merits and there is a compelling case in the public interest for making it. The Secretary of State, has, accordingly decided to make the Order, subject to:

- i. the amendments incorporated in the amended Draft order, Land Plans and Book of Reference, numbered APP/INQ 2.1 and APP/INQ 3; and
- ii. the completion of the special Parliamentary procedure required by section 19(1) of the Acquisition of Land Act 1981 and section 12(1) of the Transport and Works Act 1992.

54. This letter constitutes the Secretary of State's notice of his determination to make the Order subject to the conditions stated above. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

### **Challenge to Decisions**

55. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached to Annex 1 to this letter.

### **Distribution**

56. Copies of this letter are being sent to those who appeared at the Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11(3) of the TWA but did not appear.

Yours faithfully,

Susan Anderson

## **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 grounds 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 made 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.

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