

Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 16 January 2018

**TRANSPORT AND WORKS ACT 1992
ACQUISITION OF LAND ACT 1981
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR
THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER
201[]
AND
REQUEST FOR
DEEMED PLANNING PERMISSION**

Date of Inquiry: 22 November 2017

Ref: TWA/16/APP/08

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ABBREVIATIONS & GLOSSARY

Applicant	The West Midlands Combined Authority
BCC	Birmingham City Council
BCCE	Birmingham City Centre Extension (to the Midland Metro)
BCR	Benefit/Cost Ratio
BCU	Birmingham City University
BEE	Birmingham Eastside Extension (to the Midland Metro)
CA	Conservation Area
Chiltern Railways	Chiltern Railway Company Limited
CoCP	Code of Construction Practice
DCLG	Department for Communities and Local Government
Defra	Department for Environment, Food & Rural Affairs
DfT	Department for Transport
EA	Environment Agency
ES	Environmental Statement
FRA	Flood Risk Assessment
GBSLEP	Greater Birmingham and Solihull Local Enterprise Partnership
GHG	Greenhouse Gas
GVA	Gross Value Added
HLT	Hotel La Tour (objector and hotel name that has been changed to the Clayton Hotel)
HS2	High Speed Rail Phase 2
km	kilometres
LOAEL	Lowest Observed Adverse Effect Level (in the Noise Policy Statement for England) ¹
m	metres
McDonald's	McDonald's Real Estate LLP and McDonald's Restaurants Limited
MMA	Midland Metro Alliance between the designer, contractor and the WMCA
NPPF	National Planning Policy Framework

¹ Document BEE/E27

NPV	Net Present Value
OLE	Overhead Line Electrification
PPG	Planning Practice Guidance
Quintain	Quintain City Park Gate Limited
SATURN	A highway traffic assignment model
SOAEL	Significant Observed Adverse Effect Level (in the Noise Policy Statement for England) ²
SofS	Secretary of State for Transport
SPP	Special Parliamentary Procedure
TA	Transport Assessment
TCA	Townscape Character Area
the Order	the Midland Metro (Birmingham Eastside Extension) Order 201[]
the scheme	Midland Metro (Birmingham Eastside Extension) Scheme
TWA	Transport & Works Act 1992
TWA Order	Transport & Works Act Order
WMCA	West Midlands Combined Authority

² Document BEE/E27

CASE DETAILS

APPLICATION FOR THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER 201[] AND REQUEST FOR DEEMED PLANNING PERMISSION

- The Order would be made under sections 1 & 5 of, and paragraphs 1-5, 7-11, 13 & 15-17 of Schedule 1 to the Transport and Works Act 1992.
- The deemed planning permission would be granted by a Direction under section 90(2A) of the Town & Country Planning Act 1990.
- The application for the Order and the request for deemed planning permission were made by the West Midlands Combined Authority (WMCA) on 4 October 2016.
- There were 4 remaining objections outstanding to the Order at the commencement of the Inquiry.
- The Order and deemed planning permission would confer the necessary powers on the WMCA to construct, operate and maintain an extension to the Midland Metro tramway in Birmingham City Centre from Bull Street, over Albert Street and Moor Street Queensway, along New Canal Street and Meriden Street, to Digbeth and High Street Deritend; and to acquire compulsorily land and rights over land, to extinguish private rights, use land temporarily and carry out such other works as may be necessary or expedient in connection with the tramway.

Summary of Recommendations: That the Order be made, subject to modifications, and that deemed planning permission be granted subject to conditions.

1. PREAMBLE

The applications and objections to them

- 1.1 The Applicant is the WMCA, which is a statutory body established by the West Midlands Combined Authority Order 2016 (SI 2016/653) made by the Secretary of State on 16 June 2016 under the Local Democracy Economic Development and Construction Act 2009. The WMCA is therefore the body responsible for the purposes of co-ordination, promotion and, in some areas, the delivery of the wider public transport network for the West Midlands. The WMCA's transport role also includes the implementation of the West Midlands

Local Transport Plan³. It owns Midland Metro, which is operated by National Express Midland Metro under a Concession Contract that runs until October 2018⁴.

- 1.2 The Applicant seeks powers by way of the Midland Metro (Birmingham Eastside Extension) Order 201[] (the Order), using the provisions of the Transport and Works Act 1992 (TWA), and an associated deemed planning consent, under section 90(2A) of the Town and Country Planning Act 1990, necessary for the WMCA to construct and operate the proposed Birmingham Eastside Extension (BEE) to the Midland Metro.
- 1.3 A total of 12 objections to the proposed Order were originally received by the Department for Transport (DfT)⁵ and an additional objection was received from Birmingham City University (BCU) in a letter to the DfT, dated 10 November 2017⁶. In addition 2 representations⁷, of which one was later withdrawn, and 5 letters of support⁸ were received by the DfT, and one letter of support received by the Applicant⁹. 9 objections were withdrawn¹⁰ prior to the Inquiry. None of the remaining objections were withdrawn before the close of the Inquiry.
- 1.4 Following the withdrawals, there were 4 objections remaining at the close of the Inquiry, of which 2 have indicated their intention to withdraw their

³ Document BEE/A6

⁴ Document APP/P1.1 paragraphs 3.1 to 3.3

⁵ Documents OBJ/1 to OBJ/12

⁶ Document OBJ/13

⁷ Documents REP/01 and REP/01/WD: Environment Agency; and REP/02: Chiltern Railway Company Ltd

⁸ Documents SUPP/01: Mr Pat O'Neill; SUPP/02: Friends of Eastside City Park; SUPP/03: Woodman Public House; SUPP/04: Birmingham City Council; and SUPP/05: Birmingham Airport Ltd

⁹ Document BEE/F4: South and City College Birmingham

¹⁰ Documents OBJ/01/WD: The Hammer & Anvil Public House; OBJ/02/WD: National Grid Gas; OBJ/03/WD: Phoenix CSR Limited; OBJ/04/WD: National Express Bus; OBJ/06/WD: Martineau Galleries No 1 Limited and Martineau Galleries No 2 Limited; OBJ/08/WD: Instant Cash Loans Limited; OBJ/09/WD: Network Rail Infrastructure Limited; OBJ/10/WD: The Done Brothers (Cash Betting) Ltd; and OBJ/11/WD: The Gooch Family and Benacre

objection following the conclusion of an agreement with the Applicant¹¹. I have reported on these remaining objections and representations and the letters of support.

Statement of Matters and Pre-Inquiry Note

1.5 On 5 July 2017 the DfT issued a 'statement of matters' pursuant to rule 7(6) of the Transport and Works (Inquiries Procedure) Rules 2004¹². This sets out the matters about which the Secretary of State for Transport (SofS) particularly wishes to be informed for the purposes of his considerations of the Order and the request for deemed planning permission.

1.6 The matters are:

- 1. The aims and the need for the proposed Midland Metro (Birmingham Eastside Extension) Scheme ('the scheme').*
- 2. The main alternative route options considered by Midland Metro and the reasons for choosing the proposals comprised in the scheme.*
- 3. The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and local planning policies.*
- 4. The likely impacts of constructing and operating the scheme on land owners, tenants and local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking. Consideration under this heading should include:*
 - a) the impacts of noise, dust and vibration including the effects of construction and operation on the local road networks and bus services;*
 - b) the impacts on means of access to businesses and car parking;*

¹¹ Documents OBJ/05/1: Real Estate LLP, McDonald's Restaurants Ltd & Dean Chapman; and OBJ/12/1: Hotel La Tour

¹² Document INQ/3

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- c) *the impacts on flood risk and groundwater;*
 - d) *the impacts on air quality; and*
 - e) *the impacts on landscape, ecological, visual amenity and archaeological interests.*
 5. *The adequacy of the Environmental Statement submitted with the application for the TWA Order, having regard to the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, and whether the statutory procedural requirements of the Transport and Works (Applications and Objections Procedure) Rules 2006 have been complied with.*
 6. *The measures proposed by Midland Metro to mitigate any adverse impacts of the scheme including:*
 - a) *the proposed Code of Construction Practice;*
 - b) *any measures to avoid, reduce or remedy any major or significant adverse social, economic and environmental impacts of the scheme;*
 - c) *whether, and if so, to what extent, any adverse social, economic and environmental impacts would remain after the proposed mitigation; and*
 - d) *any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of statutory undertakers.*
 7. *Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the DCLG Guidance on the 'Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion' (published on 29 October 2015)*
 - a) *whether there is a compelling case in the public interest for conferring on Midland Metro powers compulsorily to acquire and use land for the*

purposes of the scheme; and

b) whether the land and rights in land for which compulsory acquisition powers are sought are required by Midland Metro in order to secure satisfactory implementation of the scheme.

8. The conditions proposed to be attached to the deemed planning permission for the scheme, if given, and in particular whether those conditions satisfy the six tests referred to in Planning Practice Guidance, Use of Conditions (Section ID:21a).

9. Midland Metro's proposals for funding the scheme.'

10. Any other matters which may be raised at the inquiry.

1.7 I issued a Pre-Inquiry Note on 8 August 2017 to outline procedural matters relating to the Inquiry to the Applicant and all parties who had submitted objections, letters of support or representations¹³.

The Inquiry

1.8 The public Inquiry has been called by the SofS under section 11(1) of the TWA. I have been appointed by the SofS under the TWA to hold an inquiry into the application for the TWA Order and request for deemed planning permission for the development.

1.9 I opened the Inquiry at 1000 hours on Wednesday 22 November 2017. The Inquiry sat at The Priory Rooms Meeting and Conference Centre, Quaker Meeting House, 40 Bull Street, Birmingham B4 6AF on the 22 and 23 November 2017.

1.10 Melanie Owen-Roberts was appointed as independent Programme Officer for the Inquiry. Her role was to assist with the procedural and administrative aspects of the Inquiry, including the programme, under my direction. She

¹³ Document INQ/4

helped greatly to ensure that the proceedings ran efficiently and effectively, but has played no part in this Report.

- 1.11 I inspected the Order lands and their surroundings before the Inquiry and on 23 November 2017, after the close of the Inquiry. My second inspection included the alternative routes that had been considered. The inspections were both undertaken unaccompanied.

Compliance with statutory requirements

- 1.12 At the Inquiry the Applicant (the WMCA) confirmed that it had complied with its obligations under the Transport and Works (Inquiries Procedure) Rules 2004, confirmation of which has been provided in writing¹⁴. No one has disputed this compliance. I am satisfied that all the necessary notices of the Inquiry have been posted.

This Report

- 1.13 This report sets out a brief description of the land covered by the proposed Order and its surroundings, the gist of the cases for the Applicant, supporters, objectors and those making representations and my conclusions. A list of abbreviations and a glossary of terms used in this report is given at the start of this report and lists of those appearing at the Inquiry and of Inquiry documents are appended, as are suggested conditions in the event of the SofS directing that deemed planning permission be granted. I have added footnotes to the relevant paragraphs in this report to notify the SofS of matters that I have been informed of since the close of the Inquiry.
- 1.14 I make recommendations to the SofS on the application for the TWA Order and the request for deemed planning permission.

¹⁴ Document BEE/F6

2. DESCRIPTION OF THE ORDER LAND AND ITS SURROUNDINGS

- 2.1 The Midland Metro Line 1 ('Line 1') tramway operates mainly on former rail formation between Wolverhampton City Centre and Snow Hill Station in Birmingham City Centre. On opening it was 20.4 km long, had 23 stops and offered 538 spaces for Park & Ride distributed between four locations along the route. It has since been extended to run through Birmingham City Centre between Snow Hill Station and New Street Station, including along Bull Street and Corporation Street, as the Birmingham City Centre Extension (BCCE).
- 2.2 The proposed route for the BEE is shown in the Order Plans¹⁵. It is proposed to consist of approximately a 1.7 km twin track extension to the existing tramway. It would join the existing BCCE at the junction of Bull Street and Corporation Street, near to the Birmingham Civil Justice Centre, and would run south-east along Bull Street. It would cross Dale End, which is a pedestrian zone open to buses, taxis and for access to off-street premises only, into the proposed Martineau Galleries (development) site along the route of a pedestrian alleyway known as Kings Parade. It would enter New Meeting Street, which is a cul-de-sac that provides access to St Michael's Church and properties on High Street and Carrs lane, to Albert Street. It would include the acquisition of land and demolition of the building that is occupied by retail and commercial premises at 1-7 Kings Parade, Dale End. These premises include McDonald's restaurant.
- 2.3 The route would then cross Moor Street Queensway, which is a two-way six lane carriageway, at the signal controlled junction with Albert Street. It would continue north-east across a triangular wedge of pedestrian plaza bound by Moor Street Queensway, Seymour Street and Hotel La Tour (HLT). HLT has changed its name to the 'Clayton Hotel'. To the north of HLT is

¹⁵ Document BEE/A11

Masshouse Lane, which is a one-way street that diverges from Park Street. The route would then cross land forming part of Eastside City Park, to the east of Masshouse Lane and Park Street, to a location where the High Speed Rail Phase 2 (HS2) Curzon Street Station is proposed to be constructed and then to New Canal Street. Park Street would be realigned from its junction with Masshouse Lane to its junction with Albert Street, access to HLT would be altered and an exit would be created onto Masshouse Lane.

- 2.4 The route would then run south along New Canal Street under a railway bridge in advance of a traffic signal controlled cross roads with Fazeley Street. It would continue south into Meriden Street, at the cross roads with Bordesley Street, where priority is given to New Canal Street. It would run along Meriden Street, crossing under a railway viaduct, and past the junction with Coventry Street, to the signal controlled junction with Digbeth. There are parking restrictions along most of New Canal Street and Meriden Street, which are fronted by commercial and retail premises, including Digbeth Hall. Some of the buildings in this area are vacant and there are large areas that are being used for car parking, with access from New Canal Street and Meriden Street. An area of land that is mainly used as a car park that is adjacent to the railway viaduct would be required for a proposed electrical substation. The proposal would also require the partial demolition of the vacant former South and City College building to create a new section of highway at the corner of Meriden Street and Digbeth.
- 2.5 The route would then turn eastwards on to Digbeth to High Street Deritend where it would run in the centre of the two way six lane carriageway to the junction with Oxford Street. To the east of Oxford Street, the eastbound Digbeth carriageway becomes two lanes for general traffic plus a nearside bus lane. There is also a segregated right turn facility into Rea Street, which is controlled by traffic signals.
- 2.6 The route would continue along the centre of Digbeth, which becomes High Street Deritend in the vicinity of its junction with Milk Street. At this junction,

the bus lane truncates to provide a dedicated left turn lane and there is a segregated right turn facility into Milk Street. The route would continue along High Street Deritend to the signal controlled junction with Rea Street, to the south, where there is a segregated right turn facility. It would then continue to the junction of Floodgate Street with High Street Deritend, which is positioned on a bridge over the River Rea. It would continue to a point just before the junction with Heath Mill Lane to allow for a tram turnback and lay over facility. Highway works would be carried out on High Street Deritend to a location near to its junction with Adderley Street.

- 2.7 The proposed tram stop locations are shown on the plans in the Environmental Statement (ES)¹⁶. These would be at:
- a) Albert Street to serve the proposed HS2, Martineau Galleries and HLT and provide a Metro Interchange with the bus and Moor Street Station.
 - b) New Canal Street to serve the proposed HS2, Eastside City Park, Millennium Point and the Eastside area.
 - c) Meriden Street to serve the Typhoo Wharf development and surrounding area.
 - d) Digbeth High Street to serve Birmingham Coach Station, South and City College, the Custard Factory and the surrounding area.
- 2.8 The tramway route would be within the limits of deviation shown on the Order plans¹⁷, which extend to the junction of Clyde Street to provide highway alterations.

¹⁶ Document BEE/A13/3 Drawing Number MMD-300207-ED00-DRA-0000-0101

¹⁷ Document BEE/A11

3. THE CASE FOR THE APPLICANT

The material points¹⁸ were:

Background

- 3.1 There is no dispute that the scheme would deliver multiple benefits. Since 1999 Midland Metro tramway has been an important part of the public transport system in the West Midlands. The success of the Metro is demonstrated by the patronage figures; current annual patronage is approximately 7.5 million. As a result of the proposed extensions to Edgbaston and to Wolverhampton railway station, patronage is forecast to rise to 13.4 million in 2023, the planned opening year for the BEE¹⁹. Plans have been put in place to bring the benefits of the tram system to a greater number of people and to create better linkages with other public transport systems²⁰. The 2026 Delivery Plan for Transport (approved in September 2017) identifies the planned extensions and sets out the programme for implementation over the next ten years²¹, which includes implementation of the BEE in 2022/2023. Those plans received a significant boost on Monday 20 November 2017, when the Prime Minister announced £250 million funding for the Wednesbury to Brierley Hill extension.
- 3.2 The advantages of the BEE are reflected in the predicted increase in patronage. By 2031 the additional demand generated by the BEE patronage is expected to be 8 million trips per annum²². Of that 8 million figure, about one fifth is associated with growth and economic activity in Birmingham City Centre, about a third with more people using the Metro to travel around the City Centre, and about a half is associated with the two Metro stops that

¹⁸ Documents APP/Q1 and APP/Q7

¹⁹ Document APP/P2.1 paragraph 2.37

²⁰ Document BEE/E42 cross city centre tram routes (existing and proposed)

²¹ Document BEE/E26 paragraph 9.1

²² Document BEE/D23/5 paragraph 2.10

would serve the HS2 Station²³. In the future it is envisaged that the line would extend further, to Solihull²⁴. The BEE would provide a 'platform' for that expansion²⁵. Although its pure transport benefits provide ample justification for the scheme, its contribution to wider regeneration enhances its benefits.

Aims and Need

3.3 The aims of the scheme are identified in the concise statement of aims²⁶ and include:

- a) Providing access to HS2 and international gateways.
- b) Providing economic benefits in Eastside, Digbeth and the City Centre Enterprise Zone and helping to improve business efficiency and interactions and unlocking Birmingham's potential by increasing jobs and deepening labour pools.
- c) Linking key developments in Digbeth and Eastside to the City Centre and wider region thereby facilitating the developments identified in the relevant planning policy documents.
- d) Enhancing access to labour and skills.

3.4 The need for the scheme has been explained²⁷. The scheme has been developed to address the deficiencies in the Eastside public transport offer. It would connect the proposed HS2 Curzon Street Station with the wider Birmingham City Centre area and the Black Country by linking to the expanding Midland Metro network as well as maximising interchange opportunities with the existing railway stations at New Street and Snow Hill. It would also provide for future Midland Metro connections to East

²³ Document APP/P2.1 paragraph 2.38

²⁴ Document APP/P1.1 paragraph 3.17

²⁵ Document APP/P1.1 paragraph 3.34

²⁶ Document BEE/A3

²⁷ Document APP/P1.1 section 6

Birmingham, linking to Birmingham Airport, Birmingham International and the HS2 Birmingham Interchange.

- 3.5 The scheme would stimulate regeneration in Digbeth and provide a vital link to and from the HS2 terminus at Curzon Street. The scheme would deliver significant transport benefits and, when appraised in accordance with the DfT's assessment methodology, delivers a Net Present Value (NPV) of £77 million with a benefit to cost ratio (BCR) of 4.8:1, as set out in the Economic Case²⁸. The scheme would help to deliver the benefits envisaged in the Birmingham Curzon HS2 Masterplan for Growth²⁹; the full extent of this economic potential, including 36,000 (net) new jobs, 4,000 homes and 600,000 square metres of new employment space, delivering £1.4 billion of economic uplift that cannot be delivered without a step change in public transport connectivity. The scheme would reduce journey times between Eastside and central Birmingham and the Black Country.
- 3.6 The BEE would deliver significant transport benefits, with the scheme falling into the 'Very High' category when assessed against the DfT's Value for Money Framework³⁰. It would have positive social impacts, with these being 'Moderate Beneficial'³¹. Assessed on its own merits the scheme would deliver significant Economic Benefits, of up to £130 million Gross Value Added (GVA)³², however it would play a key part in delivering the £1.4 billion economic benefits to be delivered within the overall Birmingham Curzon HS2 Masterplan for Growth. The lack of connectivity between the existing Midland Metro and the proposed HS2 Station is a serious deficiency; the scheme would address and overcome that deficiency.
- 3.7 The need has been established and the Order, if made, would enable that need to be met.

²⁸ Document BEE/D23/5

²⁹ Document BEE/E19 Foreword on page 5

³⁰ Document BEE/D18/A

³¹ Document APP/P2.1

³² Document BEE/A13/2 Appendix U – Economic Impact Assessment

Alternative Options

- 3.8 The WMCA Statement of Case³³ sets out the alternatives to BEE considered in terms of alternative modes³⁴ and alternative route options³⁵. A robust and thorough consideration has been given to alternatives in the scheme development, as set out in the City Centre Extension and Fleet Development paper³⁶.
- 3.9 The appraisal of the BEE route options was considered in two discreet phases³⁷. The first relates to the section between the Birmingham City Centre to HS2 at Curzon Street Station. Eight options were considered and two were taken to final consultation (Option 1 along Bull Street, High Street and Carrs Lane and Option 2 along Bull Street, Albert Street/New Meeting Street). Following public consultation on these two options, Option 2 was chosen; the main reasons being that it would deliver lower costs, faster journey times, less potential for journey delays and fewer impacts on the local highway and bus networks. In terms of environmental issues that were taken into account, Option 2 was judged to only have a minor negative effect on noise and townscape, whereas Option 1 was judged to have minor negative environmental impacts that included noise and geo-environmental issues³⁸.
- 3.10 The second section from HS2 Curzon Street to Deritend was undertaken separately and two routes were assessed, Fazeley Street or the chosen High Street Deritend route³⁹. These were also consulted upon⁴⁰. The route was

³³ Document BEE/F2 Section 6.14 onwards

³⁴ Document BEE/A13/1 section 3.3

³⁵ Documents BEE/A13/1 section 3.4 and BEE/A13/2 Appendix C: Route Option Report

³⁶ Document BEE/C4

³⁷ Document APP/P4.1 section 7.2

³⁸ Document BEE/A13/3 paragraphs 3.2.3 to 3.2.5

³⁹ Document APP/P4.1 paragraphs 7.2.13 to 7.2.73

⁴⁰ Document BEE/E10

chosen due to its proximity to a number of specific locations in the Eastside of Birmingham and it being a stimulus for economic regeneration⁴¹.

- 3.11 There has been a thorough consideration of alternatives, including extensive consultation over a considerable period, and there is no preferable alternative to the scheme now proposed. A suggestion⁴² that an alternative on-highway, route should be considered is unsupported by reference to any particular alternative route. Alternative routes have been considered which would avoid the adverse impact on the building at Kings Parade; however they would either require the demolition of other buildings⁴³, require re-grading of extensive areas⁴⁴ or would lead to unacceptable complications with the delta junction arrangement⁴⁵.
- 3.12 There is no realistic and practical alternative to the proposed scheme which would secure the same benefits.

Policy

- 3.13 The BEE is entirely in line with National, Regional and Local Policies. It achieves the principles of sustainable development in the National Planning Policy Framework (NPPF) by promoting an environmentally friendly form of transport that is aimed at minimising the use of the private car, reducing congestion and maximising usage of non-car modes; promoting social inclusion through the provision of safe, affordable and highly accessible public transport facilities; and supporting the local economy through construction related employment and providing improved access and connectivity to support regeneration of the City Centre⁴⁶.

⁴¹ Document BEE/A13/3 paragraph 3.2.6

⁴² Document OBJ/05

⁴³ Document APP/P4.1 paragraphs 7.3.2 (option 1), 7.2.42 (option 4), 7.2.44 (option 6) and 7.2.47 (option 7)

⁴⁴ Document APP/P4.1 paragraphs 7.2.43 (option 5) and 7.2.45 (option 6)

⁴⁵ Document APP/P4.1 paragraphs 7.2.56 (options 5 and 6) and 7.2.41 (option 4)

⁴⁶ Document APP/P4.1 section 6.2

- 3.14 The BEE is compliant with the policies of the NPPF⁴⁷, national Planning Practice Guidance (PPG)⁴⁸, the West Midlands Local Transport Plan 2011-2026⁴⁹, 'Towards a World Class Integrated Transport Network' 2013⁵⁰, 'Movement for Growth 2026 The West Midlands Delivery Plan for Transport'⁵¹, and the Birmingham Development Plan⁵².
- 3.15 Policy TP41⁵³ of the Birmingham Development Plan supports the BEE as it relates to Midland Metro and bus rapid transit. It states that the development and extension of Metro/bus rapid transit to facilitate improvement/enhancement in the public transport offer on key corridors and to facilitate access to development and employment will be supported. In particular it supports '*an extension of the Midland Metro network to Eastside via the HS2 Curzon Street Station*'. In September 2017, the WMCA approved the 2026 Delivery Plan for Transport⁵⁴ which includes delivery of the BEE by 2022/3.
- 3.16 The Birmingham Curzon HS2 Masterplan for Growth supports the extension of the Metro⁵⁵ and the provision of a stop at New Canal Street⁵⁶. The Metro extension and stops are shown as one of the five 'big moves' on Plan 5⁵⁷. The route to Digbeth and beyond is shown on Plans 13 and 15⁵⁸.
- 3.17 The scheme complies with all the relevant policies⁵⁹.

⁴⁷ Document BEE/E1

⁴⁸ Document BEE/E2/1 to 2/3

⁴⁹ Document BEE/E10

⁵⁰ Document BEE/E11

⁵¹ Document BEE/E26 paragraph 9.1

⁵² Document BEE/E3

⁵³ Document BEE/E3 page 127

⁵⁴ Document BEE/E26

⁵⁵ Document BEE/E19 page 30

⁵⁶ Document BEE/E19 page 14

⁵⁷ Document BEE/E19 page 15

⁵⁸ Document BEE/E19 pages 61 and 67

⁵⁹ Document APP/P6.1

Scheme Impacts

3.18 The travelling public would receive a net economic benefit from the BEE and there would be a net benefit to the economy. The adverse impacts have been considered when arriving at the assessment of the scheme's Value for Money⁶⁰.

Noise and Vibration

3.19 The noise and vibration effects were subject to specific consideration in the Update to the ES⁶¹. Noise impacts would be likely to arise due to construction activities at sensitive receptors immediately adjacent to the BEE route during some stages of the works. This would be mainly associated with excavation of the carriageway for track formation, the installation of rails and road surface works. Significant effects are predicted at four locations during Task 1 (road surface works) and Task 4 (material excavation for track formation)⁶². The duration of the tasks in any one location would be relatively short. Given the distance between sensitive receptors and the surfaces where vibratory rollers would be used there would be a significant adverse effect in six locations⁶³.

3.20 The noise effects during construction would be mitigated by the construction contractor who would use good on-site practice for the control of noise, including 'best practicable means'⁶⁴ and the adoption and implementation of a Code of Construction Practice (CoCP), based on the draft CoCP⁶⁵, which would be secured by planning condition. Therefore, noise effects from the construction work are not considered to be significant.

⁶⁰ Document APP/P2.1 paragraph 3.3

⁶¹ Documents BEE/A13/5 and APP/P5.3 Appendix 4 replacement tables

⁶² Document APP/P5.1 paragraph 7.2.1

⁶³ Document BEE/A13/1 paragraph 10.6.15

⁶⁴ Oral evidence of Mr Thornely-Taylor: Best Practical Means is used in section 60 of the Control of Pollution Act 1974

⁶⁵ Document BEE/A13/2 Appendix D2 section 4.5

- 3.21 No significant adverse effects are anticipated for noise and vibration associated with the operation of the trams or tram infrastructure whether during the day or at night. In the long term⁶⁶ only one residential receptor would suffer from an adverse effect, which would not be significant⁶⁷. It is predicted that ground-borne noise would cause no adverse effects on residential receptors, but in the absence of mitigation there is a high risk of non-compliance for 3 non-residential receptors: The Birmingham Civil Justice Centre, Digbeth Hall and 6 Coventry Street⁶⁸. However available methods (relating to trackform and formation) would ensure that adequate results would be obtained⁶⁹. Those methods could be secured by the imposition of a planning condition. During the operational phase there would be no adverse vibration effects in that neither the Significant Observed Adverse Effect Level (SOAEL) nor the Lowest Observed Adverse Effect Level (LOAEL) would be likely to be exceeded⁷⁰.
- 3.22 Taking account of mitigation, there would be no unacceptable noise or vibration effects.

Dust

- 3.23 It is inevitable that construction activity will give rise to dust, but such impacts can be mitigated. In this case the draft CoCP includes an extensive list of measures which would be employed to keep dust within acceptable levels⁷¹ and as a result there would be no significant effects associated with construction dust⁷².

⁶⁶ Document BEE/A13/1 Design year paragraph 10.7.3

⁶⁷ Document APP/P5.3 Appendix 4 Table 3.8

⁶⁸ Document APP/P5.1 paragraph 7.3.2

⁶⁹ Document APP/P5.1 paragraph 7.3.2

⁷⁰ Document APP/P5.1 paragraph 7.3.3

⁷¹ Document BEE/A13/2 Appendix D2 paragraph 6.1

⁷² Document APP/P3.1 paragraph 9.1.1

Local Road Networks and Bus Services

- 3.24 Work carried out as part of the Transport Assessment (TA)⁷³ and Update to the TA⁷⁴ has considered the effects on transport users⁷⁵. Temporarily, the construction of the BEE would be likely to affect the movement of traffic and, as construction proceeds, it could have an effect on property access. Construction works would be undertaken in phases so as to minimise impact⁷⁶. During certain construction activity there could be some delay to buses. These impacts would be temporary.
- 3.25 Modelling work has been undertaken using the updated Birmingham City Centre Strategic Highway Model, together with Microsimulation, and local junction modelling. Of the junctions assessed, and modelling work undertaken, only one of the modelled junctions (Heath Mill Lane/Liverpool Street) is expected to operate over capacity in the 'Do Something' scenario. However this is an improvement on the 'Do Minimum' scenario⁷⁷. The proposed improvements to the signals would serve to reduce congestion⁷⁸. The Update to the TA notes: *'However, it is worth noting that the BEE scheme is not the cause of the operational issues and the junction operates more favourably with the BEE scheme in place and the resultant rerouting of traffic in this area of the network'*⁷⁹.
- 3.26 Concern about the impact on bus services was voiced by National Express. The Applicant carried out extensive microsimulation modelling to gain further understanding of the extent of any impact. The results of that modelling demonstrate that, by implementing the BEE scheme, total vehicular delay for

⁷³ Document BEE/A13/1

⁷⁴ Document BEE/A13/4

⁷⁵ Document APP/P4.1 section 6

⁷⁶ Document APP/P4 paragraph 17.5.6

⁷⁷ Documents APP/P4 paragraph 17.6.2 and BEE/A13-4 paragraphs 6.5.4.1 and 6.5.4.2

⁷⁸ Document BEE/A13/4 paragraph 6.5.4.2

⁷⁹ Document BEE/A13/4 paragraph 6.5.4.2

the local road network would be improved⁸⁰. National Express has withdrawn its objection⁸¹, and there would be minimal impact on bus operations⁸².

Access to Businesses and Car Parking

- 3.27 The impact on access to businesses was considered in the Update to the TA which contains detailed information in relation to the accesses affected⁸³. Some further work is required, but it is anticipated that solutions to the remaining issues will be found⁸⁴.
- 3.28 During construction, all reasonable precautions would be taken in carrying out the works to prevent or reduce any disturbance or inconvenience to the owners, tenants or occupiers of adjacent properties, and to the general public. This would be carried out in accordance with a Project Communication Plan based on the draft CoCP which would be developed during the detailed design phase of the project. Specific consideration has been made to the maintenance of building access during construction⁸⁵, in addition to the arrangements outlined in the ES⁸⁶.
- 3.29 The impact on parking provision was considered in detail in the TA⁸⁷. The route is assessed in the following three sections:
- i. Corporation Street to Eastside Park - 13 disabled parking bays would be lost, with 11 replacement bays provided⁸⁸; the off-street parking which serves Kings Parade would be lost but, as Kings Parade is to be demolished, the parking spaces would no longer be needed⁸⁹; and the 3 car parks accessed via Seymour Street (including the one serving HLT) would be removed as a result of the HS2 proposals, not the TWA Order

⁸⁰ Document APP/P4.3 Appendix 1 paragraph 5.3.1

⁸¹ Document OBJ/04/WD

⁸² Documents APP/P4.1 paragraph 7.6.6 and APP/P4.3 Appendix 1 paragraph 5.4

⁸³ Document BEE/A13/4 Chapter 14

⁸⁴ Document APP/P4.1 paragraph 7.6.12

⁸⁵ Document APP/P3.3

⁸⁶ Document BEE/A13/2 section 4 of Appendix D1

⁸⁷ Document BEE/A13/2 Appendix L2 Chapter 12

⁸⁸ Document BEE/A13/2 Appendix L2 paragraph 12.2.1

- proposals⁹⁰.
- ii. Eastside Park to Meriden Street - The main sections of on-street car parking affected would be in Meriden Street and New Canal Street, which are subject to parking restrictions, with parking only permitted in bays⁹¹; the 6 parking spaces at the Bordesely Street/New Canal Street junction would need to be relocated; the existing off-street car parks would be unaffected by the BEE; and access to all car parks would remain⁹².
 - iii. Meriden Street to Adderley Street - There is no on-street parking⁹³; and the off-street parking would not be affected⁹⁴.
- 3.30 The Order includes powers to regulate traffic (Article 43 and Schedule 8), including provision to prohibit stopping, waiting or loading on specified streets. Birmingham City Council (BCC) has not objected to those provisions and it supports the Order, indicating that the local highway and traffic authority is satisfied that no unacceptable impact on the highway network or on-street parking would occur. The impact of the scheme on car parking provision would be minimal as existing parking bays would be maintained or relocated where possible⁹⁵.

Flood Risk and Groundwater

- 3.31 The Flood Risk Assessment (FRA)⁹⁶ that accompanied the application has identified that the majority of the BEE is located within Flood Zone 1. However, the last section of the route along High Street Deritend is located within Flood Zones 2 and 3. The measures proposed would ensure that the scheme would pass the exception test⁹⁷. Flood risk mitigation measures are

⁸⁹ Document BEE/A13/2 Appendix L2 paragraph 12.2.2

⁹⁰ Document BEE/A13/2 Appendix L2 paragraph 12.2.2

⁹¹ Document BEE/A13/2 Appendix L2 paragraph 12.3.1

⁹² Document BEE/A13/2 Appendix L2 paragraph 12.3.2

⁹³ Document BEE/A13/2 Appendix L2 paragraph 12.4.1

⁹⁴ Document BEE/A13/2 Appendix L2 paragraph 12.4.2

⁹⁵ Documents APP/P4.1 paragraph 7.6.11, and BEE/A13/2 Appendix L2 section 12

⁹⁶ Document BEE/A13/2

⁹⁷ Document BEE/A13/2 Appendix S paragraph 6.1

- proposed so as to ensure that the BEE would be acceptable when considered against flood risk and drainage considerations⁹⁸.
- 3.32 The Environment Agency (EA) considered the FRA and made a representation in which it welcomed the inclusion of the proposed flood risk mitigation measures and sought the imposition of conditions⁹⁹. The Applicant engaged with the EA and as a result its representation has been withdrawn¹⁰⁰.
- 3.33 Likely construction effects associated with siltation, spillages and surface water runoff would not be significant, subject to the design of embedded mitigation measures and implementation of the requirements of the CoCP¹⁰¹. This would include temporary site drainage to prevent overflow of site surface water runoff to watercourses and highways. Flood risk during construction would be monitored and managed by the Contractor¹⁰².
- 3.34 Potential groundwater, soil and contaminated land effects identified during the construction of the BEE would be mitigated by undertaking ground investigation surveys and subsequent risk assessment, along with the implementation of measures set out in the CoCP and other appropriate construction and environment plans. On this basis there would be no significant temporary or permanent effects relating to contamination during construction¹⁰³.
- 3.35 Track and highway drainage systems have been designed in accordance with relevant standards and on this basis there would be no significant temporary or permanent effects during operation¹⁰⁴. Careful consideration has been given to flood risk and groundwater issues, including consideration by the EA, and the scheme is entirely acceptable in this respect.

⁹⁸ Document BEE/A13/2 Appendix S paragraph 6.7

⁹⁹ Document REP/01

¹⁰⁰ Document REP/01/WD

¹⁰¹ Document BEE/A13/2 Appendix D2

¹⁰² Document APP/P3.1 paragraph 9.2.1

¹⁰³ Document APP/P3.1 paragraph 9.2.2

¹⁰⁴ Document APP/P3.1 paragraph 9.2.3

Air Quality

- 3.36 An air quality assessment has been carried out for the construction and operational phases of the BEE. The operation phase assessment has been updated in line with traffic data supplied from BCC's updated SATURN traffic model. The air quality effects of the operation of the BEE have been considered at receptors, using an atmospheric dispersion model. The model has been verified against air quality monitoring data and has been used to estimate the air quality effects of the BEE using detailed traffic forecasts covering all periods of the day.
- 3.37 The Update to the ES refers to the July 2017 Government air quality plan¹⁰⁵. In July 2017 the Government (Defra and DfT) published the 'Air Quality Plan for tackling roadside nitrogen dioxide concentrations in West Midlands Urban Area'. The measures presented in the zone plan, and the accompanying UK overview document, are intended to show how the UK will ensure compliance with the nitrogen dioxide (NO₂) limit values.
- 3.38 Birmingham is not one of the authorities specified in the direction given under section 85(5) of the Environment Act 1995: the Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2017, made on 27 July 2017. However Birmingham is still expected to deliver a Clean Air Zone¹⁰⁶ by the end of 2019 with a view to achieving statutory NO₂ limit values within the shortest possible time¹⁰⁷.
- 3.39 The conclusion of the Update to the ES is that operation of the BEE would not have a significant effect on air quality¹⁰⁸ as a result of impact on NO₂ concentrations¹⁰⁹ or in relation to particulates¹¹⁰. It is also stated that there

¹⁰⁵ Document BEE/A13/5 paragraphs 4.2.1 and 4.2.2

¹⁰⁶ In accordance with the Clean Air Zone Framework May 2017 (Defra and DfT)

¹⁰⁷ UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations July 2017 (Defra and DfT) paragraph 112

¹⁰⁸ Document BEE/A13/5 paragraph 4.6.4

¹⁰⁹ Document BEE/A13/5 paragraphs 4.4.3, and 4.4.18

¹¹⁰ Document BEE/A13/5 paragraphs 4.4.6, 4.4.10, 4.4.20 and 4.4.22

is a low risk of the BEE affecting the UK's reported ability to comply with the EU Air Quality Directive¹¹¹, with 'low risk' being the lowest category available¹¹².

- 3.40 Concentration changes predicted as a result of the BEE would be 'negligible' or 'slight beneficial' at all receptors and modelled concentrations of NO₂ are predicted to be below the annual mean objective in the Do-Minimum and Do-Something scenarios¹¹³. On the basis of that assessment the scheme is likely to be consistent with any objectives set out in a plan. The plan is likely to require or encourage reductions in the use of private cars (in particular diesel vehicles). Schemes such as the BEE, which would lead to reductions in the use of private cars, are just the type of proposal required in order to achieve the desired air quality objectives.

Landscape, ecological, visual amenity and archaeological interests

- 3.41 Townscape impacts were assessed in section 13 of the ES¹¹⁴. The area has low ecological value and the scheme would not be likely to have a significant effect on any ecological receptor during construction or operation¹¹⁵.
- 3.42 During the construction phase there would be temporary moderate adverse significant effects on the City Core 'Townscape Character Area' (TCA) and the Digbeth TCA but these effects would affect a relatively small proportion of the overall TCA. The construction activities associated with the HS2 Curzon Street Station development would temporarily reduce the sensitivity of the Eastside TCA and consequently the BEE would result in a temporary minor adverse non-significant effect.

¹¹¹ Document BEE/A13/5 paragraph 4.4.13

¹¹² Highways England Interim Advice Note 175/13 paragraph 2.5 - the risk rating is either low or high risk

¹¹³ Document BEE/A13/5 paragraph 4.4.2

¹¹⁴ Document APP/P6.1 paragraph 6.9.10

¹¹⁵ Document BEE/A13/1 paragraph 17.10

- 3.43 In the operation phase of the BEE, the introduction of a high quality and consistent approach to paving and street furniture and a reduction in street clutter would enhance townscape character and therefore result in a permanent minor beneficial effect on the City Core TCA and Digbeth TCA. The loss of trees, the introduction of trams and the increased presence of buses in the Eastside TCA would result in a permanent minor adverse effect on that TCA. Neither of these effects would be significant¹¹⁶.
- 3.44 The visual effects of the BEE were assessed from 18 viewpoints within the vicinity of the BEE route, which were agreed with BCC. It is predicted that the BEE would result in temporary significant adverse effects on the following visual receptors during construction: pedestrians and users of Bull Street shops and restaurants, guests at HLT and residents along New Canal Street, and those in upper floors above shops along High Street Deritend. There would also be significant adverse temporary visual effects from New Canal Street (within Warwick Bar Conservation Area (CA)) and looking east and west from Digbeth, Deritend and Bordesley High Streets CA.
- 3.45 There would be no significant impacts on visual receptors during the first year of the BEE operation. The majority of the receptors would have minor beneficial or negligible effects. There would be minor adverse effects during operation on pedestrians and road users of Moor Street Queensway, users of Eastside City Park, guests at HLT and residents in the Hive apartments along Park Street and occupiers in other parts of the Masshouse development. After five years of the BEE operation, there would be no change in the assessment of views apart from guests at HLT (the impact would then become minor beneficial), users of Eastside City Park and residents in the Hive apartments along Park Street and occupiers in other parts of the Masshouse development (the impacts would then become negligible)¹¹⁷.

¹¹⁶ Document BEE/13/3 paragraphs 4.7.2 to 4.7.5

¹¹⁷ Document BEE/13/3 paragraphs 4.7.6 to 4.7.10

- 3.46 An ecological survey of the BEE was undertaken in March 2015 and updated in June 2016. It found that overall the BEE study area has a very low ecological value, to the point where the loss of habitats due to the development of the BEE is not likely to have a significant effect on ecology, including bats, during either construction or operation. In addition, the proposed landscape planting has the potential to slightly increase biodiversity within the scheme boundary but not to the point that it would be significant¹¹⁸.
- 3.47 The BEE would pass through two CAs: Warwick Bar CA, designated due to its historic canal side setting, and Digbeth, Deritend and Bordesley High Streets CA, designated for its remnants of medieval settlement. The BEE also would pass through Digbeth and Deritend Area of Archaeological Significance where there is a high potential for 12th Century remains. The BEE would only affect an approximate 2% of the total CA, impacting along New Canal Street and Meriden Street.
- 3.48 In terms of archaeological interests, during the course of construction it is anticipated that there would be significant major adverse effects on the buried archaeology in the area. Specifically, in the burial ground at Park Street Gardens and St John's Chapel on High Street Deritend. However, the exact impact would not be known until additional archaeological surveys have been carried out prior to construction. The draft Order makes provision for controls on the excavations of buried remains¹¹⁹.
- 3.49 The scheme would be introduced into a robust urban environment which is undergoing changes (in particular the proposals for the HS2 Curzon Street Station) and there would be no material adverse impact on visual amenity or townscape and some beneficial effects. Overall, the effects would be acceptable.

¹¹⁸ Document APP/13/3 paragraphs 4.11.1 to 4.11.5

¹¹⁹ Document BEE/13/3 paragraphs 4.8.1 to 4.8.8

Adequacy of the Environmental Statement

- 3.50 The ES has been prepared in accordance with the requirements of the Applications Rules and with current legislation, Government policies and regulations, good practice, relevant professional institutes' guidance and industry requirements. The prediction of potential impacts has been undertaken in parallel with the development of the scheme design and has allowed for the incorporation of design measures to offset any potential unacceptable environmental impacts and maximise connectivity with HS2 and a sustainable form of transport.
- 3.51 The Update to the ES, due to additional traffic modelling information being made available and an element of the traffic management measures identified in the original ES now being implemented by BCC, only relates to the chapters on traffic and transport, noise and vibration, Greenhouse Gas (GHG) and air quality. It indicates that there would be no further significant environmental effects arising from the scheme. No representations have been received in relation to the Update to the ES within the requisite 6 week period.
- 3.52 The WMCA has carried out a thorough and comprehensive consultation process with the various agencies and organisations and has adjusted the scope of the Environmental Impact Assessment appropriately. In conclusion, a comprehensive and robust assessment has been taken in the preparation of the ES, and the associated Update to the ES¹²⁰. As such, it complies with the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

Mitigation Measures

- 3.53 During construction of the BEE, the environmental management process would be guided by a number of strategies including those required by a

¹²⁰ Also including the tables in Document APP/P5.3 Appendix 4

CoCP, which would include a Construction Environmental Management Plan, a Construction Noise and Vibration Management Plan and a Construction Traffic Management Plan.

- 3.54 The WMCA has undertaken a rigorous selection process and let an alliance contract with a single contractor and design consortium for a period of up to 10 years starting from June 2016 for the Midland Metro extensions work¹²¹. This 'Midland Metro Alliance' (MMA) would take all reasonable precautions in carrying out the works to prevent or reduce any disturbance or inconvenience to the owners, tenants or occupiers of adjacent properties, and to the general public. This would be carried out in accordance with a Project Communication Plan based on the CoCP which would be developed during the detailed design phase of the project¹²².
- 3.55 A draft Construction Strategy Report for BEE has been prepared¹²³. It would be further developed and defined by the MMA. Initial consultation has taken place with the Emergency Services and is continuing. It would be necessary to develop an efficient and consistent construction traffic management plan to minimise the effect of the construction of the BEE on general traffic flows and to manage the movement of people and materials associated with the construction itself, as required by the draft CoCP for the project¹²⁴. BEE works would be carried out in stages and, as far as practicable, to maximise traffic circulation, particularly where works affect major junctions. Loading and access requirements would be maintained as far as practicable¹²⁵. Consideration has been made in the design and location of tram tracks to mitigate the potential for noise and vibration impacts particularly near designated noise sensitive receptors as specified in the ES¹²⁶.

¹²¹ Document APP/P1.1 paragraphs 7.30 to 7.42

¹²² Document APP/P3.1 paragraph 7.7.2

¹²³ Document BEE/A13/2 Appendix D1

¹²⁴ Document BEE/A13/2 Appendix D2

¹²⁵ Document APP/P3.1 paragraphs 7.1.1 and 7.1.2

¹²⁶ Document BEE/A13/1-3

- 3.56 The measures to avoid, reduce or remedy environmental impacts of the scheme and an analysis of the residual effects are described in the ES in each of the specialist chapters. The proposed mitigation measures are also identified and described, and an assessment of the significance of any residual effect in the operational phase, provided in Table 6.1 of the Update to the ES¹²⁷.
- 3.57 It is envisaged that Overhead Line Electrification (OLE) would extend along approximately 33% of the BEE to facilitate the operation of the tram. Due to industry advances in on-board tram battery power technology, it is proposed that approximately 67% of the BEE route would be 'catenary free' with trams operating on battery power and not requiring the use of affixing OLE to buildings or the use of poles. The section requiring OLE would extend from the junction with the existing network at Bull Street to the proposed tramstop at Albert Street, and a short length from the proposed terminus tramstop on High Street Deritend going south east along the turn back facility; the remainder of the BEE would be catenary free. This would reduce the visual impact of the BEE as detailed in the ES. Operational modelling undertaken by the vehicle supplier confirmed that wire free operation in these areas would be possible.
- 3.58 Where practicable, and where OLE would be required, OLE poles would be combined with lighting columns or closed-circuit television poles to reduce street clutter, increase effective footway width and reduce construction work. Where possible, the contact wires would be suspended from cross-street span-wires using simple fixings attached to buildings. This would reduce visual intrusion through optimizing the need for poles and foundations.
- 3.59 The conclusions to be drawn are that a range of appropriate mitigation measures are proposed and, where appropriate, would be secured by the

¹²⁷ Document BEE/A13/5 page 93 – note that entry under noise for the Update to the ES should not state 'no change'

conditions proposed or by the terms of the Order and the residual effects would be, in the main, beneficial with limited adverse effects. The environmental effects would be acceptable.

- 3.60 Schedules 9 and 10 to the draft Order contain protective provisions for statutory undertakers and railway undertakers, respectively. Those provisions would ensure that the Order would strike the right balance between facilitating the proposed scheme and protecting the interests of those who are providing existing services to the public. As an example of that balance, the powers of compulsory acquisition conferred by the Order cannot be exercised in relation to railway property unless Network Rail gives its consent¹²⁸. The fact that Network Rail Infrastructure Limited has now withdrawn its objection, which was made to ensure that its interests would be protected as a result of a proposed electrical substation being located under the arch of the viaduct, is an indication of the suitability of Schedule 10.
- 3.61 Diversion of utility company equipment would take place ahead of the main construction works where possible. This is required to provide suitable safe access to apparatus for maintenance on completion of the tram infrastructure and to maintain apparatus at a depth such that apparatus would not be at risk from highway loads¹²⁹. To ensure best value, optimum programme and appropriate stakeholder communications, the MMA would actively co-ordinate and manage the utility companies' programmes, in conjunction with BCC pursuant to its statutory role as Traffic Manager and New Roads and Street Works Act co-ordinator, and has procured an over-arching traffic management contract to support delivery in a co-ordinated manner¹³⁰. The draft Order deals with provisions for statutory undertakers. The Applicant's willingness to promote an order which gives adequate protection for statutory undertakers is demonstrated by its preparedness to make amendments to

¹²⁸ Document BEE/A14 Schedule 10 paragraph 4

¹²⁹ Document APP/P3.1 paragraph 7.2.1

¹³⁰ Document APP/P1.1 paragraphs 7.43 to 7.46

Schedule 9, and the suitability of Schedule 9 to provide adequate protection is demonstrated by the withdrawal of National Grid's objection¹³¹.

Compulsory Acquisition

- 3.62 The evidence shows that the BEE would deliver net economic benefits that cannot be secured unless the Order is made and is Value for Money¹³², with a BCR of 4.8:1 that is a product of detailed analysis. The need for the scheme has been established¹³³. There are no realistic alternatives, whether route or technology. The transport benefits and the regeneration benefits have been identified¹³⁴.
- 3.63 The BEE would have some temporary land uses during the construction phase, for example for the temporary use of the three construction compounds. This temporary use of land during the construction phase is not considered to be significant.
- 3.64 The operation of the BEE would result in the loss of some existing retail and commercial floorspace, albeit this would be limited to a small number of locations where it would not be possible to accommodate the alignment of the tramway without affecting third party land. These locations include the corner of Corporation Street and Bull Street; the corner of Albert Street and Bull Street; the temporary surface car park land; an area of open space, New Canal Street, commercial land at 96-98 Coventry Street and the corner of Meriden Street and High Street Deritend.
- 3.65 The optioneering exercise undertaken during the design of the scheme has sought to avoid and minimise, where possible the need to take third party land and associated demolition of buildings and structures. However, the BEE would lead to some effects on land take. The extent of this permanent land

¹³¹ Document OBJ/2/WD

¹³² Document APP/P2.1

¹³³ Document APP/P1.1

¹³⁴ Document APP/P1.1

take is considered to have a moderate adverse effect¹³⁵. The disadvantages of the scheme would be very limited.

3.66 It is clear that each parcel of land is required in order to carry the scheme into effect¹³⁶. The very significant economic, transport, and regeneration benefits cannot be secured unless the Order is made and compulsory acquisition of land and rights is authorised. Those benefits far outweigh any negative impact. There are relatively few objections, and many objectors have withdrawn their objections.

3.67 To the extent that the rights afforded by Article 1 Protocol 1 or Article 8 of the European Convention on Human Rights are engaged, the deprivation of possessions is clearly justified in the public interest, and any interference with Article 8 rights is in accordance with law and necessary in a democratic society in the interests of the economic well-being of the country. There is a compelling case in the public interest for the Order to authorise the WMCA to acquire the necessary land and rights and to use land temporarily; without such authorisation the very many benefits would not be realised in the public interest.

Planning Conditions

3.68 The Application for deemed planning consent included a series of draft conditions¹³⁷ and these have been the subject of extensive discussions with BCC as the local planning authority. They have been based on the principles contained in the deemed planning consent to the 2005 BCCE Order but adapted in the light of joint experience in the discharge of conditions process associated with earlier phases of the Metro Extension and to deliver the necessary mitigation measures identified in the ES for the BEE scheme. The draft conditions attached to the request for deemed planning permission as

¹³⁵ Document BEE/A13/3 paragraphs 4.1.1 to 4.1.3

¹³⁶ Document APP/Q2 Schedule which has replaced Document APP/P7.1 Table BF2 on pages 17 to 19

set out in Schedule 2 of the BEE TWA Order satisfy the six tests of the PPG - use of Conditions¹³⁸ and are adequate in all respects to deliver relevant mitigation measures as identified in the ES and the subsequent Update to the ES¹³⁹.

Funding

3.69 The application was accompanied by an estimate of the costs of the works¹⁴⁰ and a funding statement¹⁴¹. Through its Growth Deal 2014 and by letter, the Government has committed to fully fund the estimated £137.2 million cost of the scheme. This funding includes £5.5 million for development and preparatory works for BEE; and a provisional allocation of £35 million from 2016/17 to help deliver the first phase extension from Stephenson Street to Curzon Street Eastside (funded by the DfT as part of its nationally managed large local major schemes portfolio). As part of the WMCA devolution package on 17 November 2015, a commitment to the full funding for the BEE was announced by the Chancellor of the Exchequer. On 27 June 2016 the Department for Communities and Local Government (DCLG) confirmed, further to the WMCA devolution agreement, a maximum capped additional funding contribution of up to £96.7 million towards the total scheme cost will be made available through the DfT. In the event that the estimate would be exceeded, which would be unlikely given WMCA's extensive experience in managing tram projects, local funding would be relied upon, as set out in the Business Case¹⁴² and as reported to the WMCA board¹⁴³.

¹³⁷ Document BEE/A2

¹³⁸ Document BEE/E2/4

¹³⁹ Document APP/P5.1 paragraphs 6.9.34 to 6.9.38

¹⁴⁰ Document BEE/A4

¹⁴¹ Document BEE/A5

¹⁴² Document BEE/D23/2 paragraph 3.8

¹⁴³ Document BEE/F1 paragraph 4.41

Other Matters

Greenhouse Gas (GHG)

3.70 There would be an immediate decrease of on-road carbon dioxide emissions, although that would be outweighed by off-site emissions attributable to generation of electricity to power the trams until 2032, at which point the decreases would exceed the increases¹⁴⁴. Over the predicted life of the project there would be a reduction in GHG emissions, as is reflected in the monetised value set out in the business case documents¹⁴⁵. Overall, there would be a reduction in GHG emissions.

The HS2 Proposal

3.71 Discussions are progressing between the WMCA and HS2 Limited regarding the proposed HS2 Station¹⁴⁶. The railway platforms and the tramstop would be at different levels, ensuring that both could be accommodated and passengers would be able to interchange.

3.72 The statutory regime contains a specific provision to regulate the interaction between powers conferred by a TWA order and those conferred by other legislation. If land is not acquired by the SofS pursuant to the powers conferred by the High Speed Rail (London-West Midlands) Act 2017 (HS2 Act), the WMCA can rely upon the powers conferred by the TWA Order. If the SofS acquires land pursuant to the HS2 Act before the WMCA exercises powers conferred by the TWA Order, that land will be Crown land. In that event the provisions of section 25 of the TWA will apply. The SofS will have power to agree to the WMCA acquiring such land as is required for the tramway.

¹⁴⁴ Document BEE/A/13/5 paragraph 5.18.2

¹⁴⁵ Documents APP/P2.1 paragraph 2.56 and BEE/D23/5 paragraphs 4.7 and 4.8

¹⁴⁶ Mr Adams oral evidence at the Inquiry

Modifications to the draft Order

- 3.73 A draft TWA Order has been submitted¹⁴⁷, which is a revision of the draft Order originally submitted¹⁴⁸, and is accompanied by all the necessary additional information¹⁴⁹.
- 3.74 A further revised draft Order has been prepared¹⁵⁰. It is proposed that Article 33 (special category land) be removed from the Order. Article 33 would apply when parcels 43, 47 or 48 are entered pursuant to the powers conferred by Articles 27 or 30. As agreement has been reached with BCC to acquire the rights necessary to construct and operate the tramway, it will not be necessary to rely on those powers to enter parcels 43 and 47. Parcel 48 has been divided into parcels 48 and 48A. Parcel 48 is owned by BCC with whom agreement has been reached. BCU has an interest in parcel 48A. If parcel 48A were to be acquired compulsorily it would not be necessary to rely on Article 33 as the land referred to is in private ownership and is not subject to rights, trusts or incidents as referred to. The Book of Reference has been updated¹⁵¹ to divide existing parcels 47 and 48 and, as a result, to include parcels 47A and 48A. Parcel 48A is that part of former parcel 48 in which BCU has an interest. A revised version of Sheet 1 of the Works and Land Plans has been prepared to show those parcels of land¹⁵².
- 3.75 The provisions of section 12 of the TWA apply to land which falls within the section 19(4) Acquisition of Land Act 1981 definition of open space. The effect of section 12 is that a TWA order which authorises the compulsory acquisition of interests in or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment will be subject to

¹⁴⁷ Document BEE/A8/2

¹⁴⁸ Document BEE/A8/1

¹⁴⁹ Document BEE/B3: As required by Rule 10 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

¹⁵⁰ Document BEE/A14

¹⁵¹ Document BEE/A17

¹⁵² Document BEE/A16

Special Parliamentary Procedure (SPP) unless the certification procedure set out in the Acquisition of Land Act 1981 has been followed.

- 3.76 As agreement has been reached with BCC, who has granted the WMCA rights to construct and thereafter maintain, repair, replace, renew, and operate the Midland Metro on the land which it owns, the Applicant requests that the Order be modified by removing parcels 43, 47, 47A and 48 from the scope of the compulsory acquisition powers. Parcel 48A is also identified as being open space. BCU has a long leasehold interest in that parcel of land. BCU has not granted the WMCA the necessary rights, and therefore power to acquire the land compulsorily is sought. As such powers are sought, section 12 of the TWA is engaged, and the Order will be subject to SPP.
- 3.77 If, at some time before the SofS makes his decision on the application, parcel 48A ceases to be open space the Order will not be subject to SPP¹⁵³. Alternatively, if the WMCA are able to secure the necessary rights by agreement, the SofS will be requested to modify the Order by removing the power to acquire parcel 48A compulsorily. Meanwhile the Applicant asks for it to proceed on the basis that the Order will be subject to SPP.
- 3.78 The Applicant requests that the SofS makes an order in the terms set out in the latest draft version¹⁵⁴, for the reasons given¹⁵⁵.

Remaining Objections

McDonald's Real Estate LLP, McDonald's Restaurants Limited and Dean Chapman (OBJ 05)

- 3.79 There is a clear justification for the temporary acquisition of and demolition of the property in the public interest to enable the BEE to go ahead and deliver

¹⁵³ Following the close of the Inquiry the Applicant has submitted signed Heads of Terms for an agreement with BCU, dated 29 November 2017, relating to parcel 48A which would ensure that this parcel of land would be fenced off before 28 February 2018 and thereby cease to be open space, no longer being subject to SPP

¹⁵⁴ Documents BEE/A14, and APP/Q4

¹⁵⁵ Document APP/Q3

the significant benefits it would provide. The WMCA and the objectors have agreed a notice period of 15 months for the acquisition and a legal agreement is close to being finalised with the objectors¹⁵⁶.

- 3.80 A number of alternative options were considered, resulting in selection of the proposed route¹⁵⁷. The properties in Kings Parade are necessary in order for the tramway to run on the proposed route¹⁵⁸. The HS2 Act has been enacted. Adequate funds would be available should the estimate be exceeded.

Quintain City Park Gate Limited (OBJ 07)

- 3.81 There is a clear justification for the acquisition of the land owned by the objector in the public interest to enable the BEE to go ahead and deliver the significant benefits it would provide. All of the land relating to this objection in the Order is to be acquired either permanently or temporarily for HS2. The land included within the Order is required for the BEE route, and for replacement (BEE and HS2) bus stops to provide for high quality, convenient interchange with HS2 for Metro, Sprint and bus services, which is essential to deliver the seamless, integrated journeys for passengers that would help to sustain and deliver enhanced economic growth and regeneration for Birmingham and the West Midlands¹⁵⁹.

Hotel La Tour (OBJ 12)

- 3.82 The property has recently been sold and the WMCA is in discussions with the new owners over the matters of concern. The land included within the draft Order is required for the BEE route, and for replacement (BEE and HS2) bus stops to provide for high quality, convenient interchange with HS2 for Metro, Sprint and bus services. The WMCA has considered reasonable alternatives

¹⁵⁶ Document APP/P1.1 paragraph 11.17

¹⁵⁷ Document APP/P4.1 paragraphs 7.2.30 to 7.2.66

¹⁵⁸ Document APP/P1.1 paragraph 10.13

¹⁵⁹ Document APP/P1.1 paragraph 11.19

and considered that the alignment of the BEE in this location cannot be located anywhere else than between the proposed HS2 Station and HLT¹⁶⁰.

- 3.83 The WMCA undertook a number of meetings with the objector ahead of the application being submitted in an attempt to come to understand and address its concerns¹⁶¹. Changes have been made in response to the representations received, as reported in the Consultation Report¹⁶². The scheme would maintain the existing access to the front of the property (which would have been removed by HS2), moving the BEE alignment closer to the hotel with the bus stops relocated as far away as possible¹⁶³, while allowing significant space for pedestrian movements and landscaping¹⁶⁴. The bus shelters would be of high quality¹⁶⁵, with landscaping and screening of the bus stops from the hotel. There would not be a significant noise impact at the hotel as a result of the BEE¹⁶⁶.
- 3.84 Construction impacts would be mitigated as set out in the ES¹⁶⁷, by adhering to the CoCP¹⁶⁸ and by use of acoustic barriers¹⁶⁹. The Update to the ES contains a revised noise assessment. At the HLT (receptor R9) during the construction phase, with mitigation, there would be an adverse effect (above the LOAEL for certain tasks), but not a significant adverse effect¹⁷⁰. During operation there would be no adverse effects in Albert Street¹⁷¹.
- 3.85 During construction and operation of the BEE, access would be maintained to the property at all times. The WMCA has worked to ensure the existing

¹⁶⁰ Document APP/P1.1 paragraph 10.46

¹⁶¹ Document BEE/A10

¹⁶² Document BEE/A10 paragraphs 5.6.2 to 5.65

¹⁶³ Document APP/P3.1 paragraph 5.6.3

¹⁶⁴ Document APP/P3.1 paragraph 5.6.5

¹⁶⁵ Document APP/P4.1 paragraph 8.2.7

¹⁶⁶ Document APP/P5.1

¹⁶⁷ Document BEE/A13/1 paragraphs 1-3

¹⁶⁸ Document BEE/A13/2

¹⁶⁹ Document APP/P3.1 paragraph 7.7.6

¹⁷⁰ Documents APP/P5.1 paragraph 8.2.3 and APP/P5.3 Appendix 4: Revised version of Table 3.5

¹⁷¹ Documents APP/P5.1 paragraph 8.2.4 and APP/P5.3 Appendix 4 page 85

- access arrangements to the front of the hotel would be maintained as part of the design of the BEE. In the event that access would be disrupted during construction, the objector would be notified in advance and the WMCA would work with the objector to minimise effects and alternative arrangements made if practicable¹⁷².
- 3.86 In operation it is envisaged that a tram would pass the hotel in each direction every six minutes; this would not be detrimental to access to the hotel from the car parking at the Bullring/Selfridges. The bus shelters on Queensway which are a concern to HLT are well maintained, and of high quality and incidents of vandalism, graffiti etc are quickly dealt with. They are part of a normal street scene for a typical urban environment.
- 3.87 The planning application which resulted in the grant of planning permission for the hotel¹⁷³ was accompanied by a transport statement that explained that the omission of car parking spaces was appropriate given the sustainable location and alternative forms of transport provision¹⁷⁴. Given the improvement to public transport which would result from the tram proposals, the statements made in that transport statement have even greater force, and the loss of car parking would cause no unacceptable detriment. Also, BCC has indicated that the land that the hotel enjoys as a car park does not have planning permission for this use¹⁷⁵.
- 3.88 The seeking of powers of compulsory acquisition and other rights in relation to each parcel of land has been justified¹⁷⁶. Section 14(2)(a) of the TWA imposes duties on the SofS when issuing a notice following a decision made by him to make a TWA order. The information provided is wholly sufficient to enable the SofS to be advised on all relevant issues, in particular the justification for seeking powers in respect of the parcels of land in which HLT

¹⁷² Document APP/P1.1 paragraph 10.47

¹⁷³ Document APP/P4.3 Appendix 2: BCC reference 2010/02883/PA

¹⁷⁴ Document APP/P4.3 Appendix 3 paragraph 2.7

¹⁷⁵ Document APP/P4.1

¹⁷⁶ Document APP/P7.3 Appendix 1 section 2

has an interest. In relation to section 13(2) of the TWA, there is ample information on route selection and consideration of alternatives and other matters to enable the objector to consider putting forward a case that the objects of the Order could be achieved by alternative means, and for the SofS to consider that issue.

Conclusions

- 3.89 There is no serious challenge to the Applicant's case that the BEE would deliver significant transport, regeneration, and economic benefits. There is a clear need for the scheme, as it would meet a need for regeneration in Eastside, Digbeth and the wider Birmingham area and would serve Eastside and Digbeth and the proposed HS2 Station. The scheme would achieve connectivity between train and tram by those arriving at or departing from Birmingham on HS2. Without it the arriving passenger would search in vain for the tram, and the tram passenger would be unable to make an easy link with HS2.
- 3.90 The need can be met, and the benefits delivered with very little detriment. The BEE is deliverable, there is no challenge to the feasibility of introducing it, and funding can be put in place. The scheme would deliver very significant benefits to Birmingham, and the Order should be made and the planning direction given so that those benefits can be realised.

4. THE CASES FOR THE SUPPORTERS

Mr Patrick O'Neill SUPP 01

The material points¹⁷⁷ were:

- 4.1 Mr O'Neill is Governor in South and City College, Trustee of the Irish Centre, Chair of Paddy Benson Academy of Boxing and also involved in 'Irish in Birmingham', which are all organisations on the proposed route for the BEE. He offers his support to the proposed Metro passing through Digbeth.

Friends of Eastside City Park SUPP 02

The material points¹⁷⁸ were:

- 4.2 The Friends of Eastside City Park have suggested that they represent the many and varied interests of users of the Park, including the organisations and educational establishments surrounding it. They consider that the current proposed routing of the BEE is ideal in terms of respecting the existing layout of the Park while improving its accessibility and raising awareness.

The Woodman Public House SUPP 03

The material points¹⁷⁹ were:

- 4.3 The Woodman Public House sits near Eastside City Park and it has completed design work for an extension on the Park side to address the open space between the Public House and the line of the BEE.

Birmingham City Council SUPP 04

The material points¹⁸⁰ were:

- 4.4 The expansion to the network would link Birmingham Snow Hill Station and New Street Station with the proposed new HS2 Station and Digbeth Coach Station providing greatly enhanced connectivity and interchange opportunities both within the wider Birmingham City Centre and to the Black Country.
- 4.5 The BEE is an important part of the infrastructure package within the HS2 Growth Strategy and the Curzon Investment Plan. It would transform access to under-utilised sites and buildings thereby supporting future redevelopment opportunities that result in job creation and the delivery of new homes. In

¹⁷⁷ Document SUPP/01

¹⁷⁸ Document SUPP/02

¹⁷⁹ Document SUPP/03

¹⁸⁰ Document SUPP/04

addition, the delivery of the BEE prior to the opening of HS2 would help to accelerate the regeneration within the Enterprise Zone.

- 4.6 The Midland Metro proposals have the potential to positively impact on regeneration proposals in the vicinity but with some impacts on the local highway network. BCC and Transport for West Midlands, part of the WMCA, are in ongoing discussions about the detailed implications of the Order to arrive at the best overall package of improvements to support the City in its continued growth and regeneration. In this regard, they are developing a Memorandum of Understanding to include the wider ambitions that are set out in the Big City Plan, the Curzon Investment Plan and broader developments, such as Smithfield.

Birmingham Airport Limited SUPP 05

The material points¹⁸¹ were:

- 4.7 The BEE would connect to the proposed HS2 Station and would enable better local and regional access to Birmingham Airport, which is the third largest regional airport in the United Kingdom, and the second largest regional airport in England. BEE would contribute to help facilitate the growth in the economy by helping to improve surface access to the Airport. This is in keeping with one of Birmingham Airport's main sustainability objectives, which is to increase surface access to the airport, whilst reducing car journeys. Furthermore, the BEE would represent the first phase in the extension of the Midland Metro to connect to Birmingham Airport directly.

South and City College Birmingham

The material points¹⁸² were:

- 4.8 The BEE would be beneficial to many students and staff who travel to the two centres for South and City College Birmingham based in Digbeth.

¹⁸¹ Document SUPP/05

¹⁸² Document BEE/F4

5. THE CASES FOR THE OBJECTORS

Remaining Objectors not appearing at the Inquiry

McDonald's Real Estate LLP, McDonald's Restaurants Limited and Dean Chapman (OBJ 05)

The material points¹⁸³ were:

- 5.1 Part of the parties' interests in land extends to the basement, ground and first floor of 6-7 Kings Parade (Parcel 11¹⁸⁴) in the form of occupational and reversionary leases in the building. In addition, McDonald's Real Estate LLP and McDonald's Restaurants Limited's (McDonald's) leasehold interest extends over 5 Kings Parade (Parcel 12¹⁸⁵), which is leased to and occupied by a third party. The Order, if confirmed, would enable the permanent acquisition of the building and the building would need to be demolished to accommodate the scheme.
- 5.2 The parties have occupied the building continuously for over 20 years and provide a fast service restaurant that forms an important part of the retail offer in Dale End. It is located in a prominent trading position and the restaurant provides employment for many local people.
- 5.3 The grounds for objection are the following:
 - i. Inadequate justification for the requirement for acquiring and demolishing the building, which would have an adverse social, economic and environmental impact on the local area and would not be justified in the public interests.
 - ii. The prematurity of the Order, given that a key underlying reason for promoting the scheme is to maximise the local economic benefits before and after the arrival of HS2 in the region and the Bill promoting HS2 has

¹⁸³ Document OBJ/05

¹⁸⁴ Documents BEE/A18/1 and BEE/A16

¹⁸⁵ Documents BEE/A18/1 and BEE/A16

yet to receive Royal Assent and a final funding commitment from the Government.

- iii. The lack of evidence that additional funding could be committed to the scheme in the event that its costs would increase, as without such funding the delivery of the scheme would be delayed and this would adversely affect the ability to operate the business from the building and have an adverse effect on Dale End.
- iv. The period of time between initiating the compulsory purchase powers and taking vacant possession of the building being insufficient to find other suitable premises, assess viability, resolve terms of acquisition and organise a relocation in order to maintain current optimum representation and for the business to retain existing custom.

5.4 An Agreement is expected to be concluded with the WMCA which would address the concerns raised. It is expected that withdrawal of the objection will follow shortly after completion of the Agreement¹⁸⁶.

Quintain City Park Gate Limited (OBJ 07)

The material points¹⁸⁷ were:

5.5 The Order, if confirmed, is seeking to provide for the right to temporarily use (Parcels 30, 33, 34, 36, 37 and 40)¹⁸⁸ and the compulsory acquisition (Parcels 31, 32, 35, 38, 39 and 45)¹⁸⁹ of land in which Quintain has an interest, including the right to carry out safeguarding works to buildings situated on the land.

5.6 The objection is based on the Order not being in the public interest in that the land has already been identified for compulsory purchase by HS2 Limited and

¹⁸⁶ Document OBJ/05/1 (following the close of the Inquiry a letter has been submitted to the SofS, dated 28 November 2017, withdrawing the objection)

¹⁸⁷ Document OBJ/07/P1.2

¹⁸⁸ Documents BEE/A18/1 and BEE/A16

¹⁸⁹ Documents BEE/A18/1 and BEE/A16

it is not necessary or appropriate to seek a further Order for the land.

5.7 Also, the objectives and purpose for which the Applicant is proposing to acquire the land can be achieved by other means, namely by seeking agreement with HS2 Limited, who are likely, by the time the Order is made, to have ownership and possession of the land required.

5.8 The use of compulsory purchase powers to acquire land which has already been authorised for acquisition is not in the public interest. It is not the best use of public funds and resources. If the land was genuinely required for permanent use for HS2, then it cannot be available for use by the WMCA. Given this, the Order should be refused in so far as it seeks to include the Quintain land.

Hotel La Tour (OBJ 12)

The material points¹⁹⁰ were:

5.9 HLT are uncertain as to the following issues: the mitigation strategies specific to HLT, particularly those concerning appearance of any construction hoardings; the timetabling of any works, including whether the works would be at a point in HLT's season that would be particularly disruptive; the construction methodology, including the nature of any disruption to its customers; the purpose the land in Parcels 30, 39, 40 and 45 would be used for; the potential of the proposed bus shelters to give rise to anti-social behaviour or unpleasant views to diners at the Hotel; and the provision of alternative car parking to compensate for the proposed loss of parking spaces.

5.10 The Order would fall foul of section 14(2)(a) of the TWA, in that there would be inadequate reasons in respect to the making of the Order. For example, the WMCA have failed to explain to HLT why parcels 30, 39, 40 and 45¹⁹¹ are

¹⁹⁰ Document OBJ/12/1/SOC

¹⁹¹ Documents BEE/A18/1 and BEE/A16

required or their intended use. It follows, therefore, that the Inspector is not in a position to provide adequate reasons for the making of the specific Order. It is incumbent upon the Inspector, on behalf of the SofS, to provide adequate reasons as to why the Order is required in the manner in which it has been prescribed. Moreover, the Inspector would fall foul of the principles stated within *Mapeley Beta Acquisition*¹⁹² in making the Order, owing to this lack of precision. The Order, as it presently stands, almost provides the WMCA with 'carte blanche' discretion as regards the interference with HLT's interest/property.

- 5.11 HLT currently are significantly prejudiced owing to the lack of detail surrounding the Order, such that HLT are in no position to present any case as to whether the Order could be achieved by alternative means as per section 13(2) of the TWA. Accordingly, the making of the Order would breach the principles of natural justice¹⁹³.
- 5.12 Terms of assurance have been able to be agreed with the WMCA. Once the assurance has been signed and completed, the objection to the Order will be formally withdrawn¹⁹⁴.

Birmingham City University (OBJ 13)

The material points¹⁹⁵ were:

- 5.13 BCU has an interest in parcels 49, 50 and 52¹⁹⁶, in which the Order would provide for the right to temporarily use the land, and parcel 48A¹⁹⁷, which the Order would provide the right to compulsorily acquire. BCU entered into a

¹⁹² Case: *Beta Acquisition Company Limited v SSCLG & Swindon Borough Council* [2016] EWHC 2997 (Admin)

¹⁹³ Cases: *Castleford Homes v SSE* [2001] EWHC 77 (Admin) and *R (Poole) v SSCLG* [2008] EWHC 676 (Admin)

¹⁹⁴ Document OBJ/12/1 (following the close of the Inquiry a letter has been submitted to the Programme Officer, dated 7 December 2017, withdrawing the objection. This has been forwarded to the TWAU Unit of the DfT)

¹⁹⁵ Document OBJ/13

¹⁹⁶ Documents BEE/A18/1 and BEE/A16

¹⁹⁷ Documents BEE/A18/1 and BEE/A16

Development Agreement with BCC, dated 19 December 2007, which took the form of an option for a long leasehold interest conditional on the achievement of specified milestones for the development of a new City Centre campus for BCU. Planning permission was granted for the campus on 20 January 2009 with phase 1 reserved matters consent on 18 March 2010. The milestones anticipated commencement of the development by 31 March 2010 with practical completion of the first phase by 31 December 2012. As such, the land to be acquired is not public open space, as there is no specific right of use by the public. It remains private with the benefit of the extant planning permission.

- 5.14 The HS2 Act authorises the DfT to acquire the land for the purposes of building a railway, not the BEE. The objectives and purpose for which the WMCA is proposing to acquire the land can be achieved by other means, namely by seeking agreement with HS2 Limited, who are likely, by the time the Order is confirmed, to have ownership and possession of the land required. It is difficult to see how there can be a 'compelling case' in the 'public interest' when the land in question has already been the subject of compulsory acquisition by a public body authorised by Parliament, and is to be taken for that purpose. If the land was not required for permanent use by HS2 Limited, then it should not have been included in the Parliamentary Act, and would therefore be unlawful to acquire. The land should not be acquired and should be removed from the Order in light of the above considerations.

6. OTHER REPRESENTATIONS

Chiltern Railway Company Limited (REP 02)

The material points¹⁹⁸ were:

- 6.1 Chiltern Railway Company Limited (Chiltern Railways) supports the BEE in principle, given that its aim is to improve public transport connections across the City Centre and to and from the Black Country, linking to national and

¹⁹⁸ Document REP/02

international journeys through the proposed HS2 Station at Curzon Street. However, the Order as drafted would give the Applicant powers that could interfere with Chiltern Railways' ability to provide franchised passenger rail services over the railway into and out of Birmingham. It therefore seeks reassurances from the Applicant regarding its proposed use of the powers that affect the land parcels 67, 68 and 69 as defined on the land ownership plan¹⁹⁹.

7. REBUTTALS BY THE APPLICANT

Quintain City Park Gate Limited (OBJ 07)

The material points²⁰⁰ were:

- 7.1 All of the parcels of land in which Quintain has an interest in that are included for temporary possession and compulsory acquisition for the scheme are subject to the general power of acquisition in section 4(1) of the HS2 Act, which provides that the SofS may acquire compulsorily so much of the land within the Act limits as may be required for Phase One purposes.
- 7.2 The WMCA has no statutory powers, to use for the purposes of constructing and operating a tramway, over land which the SofS is authorised to acquire by the HS2 Act. In addition, the power conferred on the SofS under the HS2 Act is to acquire land for Phase One purposes (as defined in section 67 of the HS2 Act) and does not include the power to acquire land for the purposes of the construction, operation and maintenance of a tramway in Birmingham. The extent of the respective powers to acquire land permanently and use land temporarily differs between the two schemes.
- 7.3 There is no guarantee²⁰¹ that the SofS would exercise the powers to acquire land conferred by the HS2 Act nor, if he does, when those powers would be exercised. In addition, there is no guarantee that, were he to exercise the

¹⁹⁹ Document BEE/A11

²⁰⁰ Documents APP/R2 and APP/Q1

²⁰¹ Document OBJ/07/P1.1 paragraph 8.3

powers conferred on him by the HS2 Act, he would acquire the land, as under the HS2 Act he has power to take temporary possession²⁰². Without that guarantee, the Order must contain its own powers of acquisition for the WMCA to secure the land and rights required for the BEE scheme.

- 7.4 The issue to be determined is whether the land is required for the purposes of the BEE. The land lies on the route, which is that shown in the relevant planning²⁰³ and other documents. Therefore, it is plain that it is required.
- 7.5 The acquisition of the land by other means, namely by acquiring the land from the SofS, would introduce very considerable uncertainty, as it is not known whether the SofS would be prepared to sell the land once acquired for HS2 purposes.
- 7.6 Both schemes need to co-exist when completed. Therefore, given the statutory regime, the proper means of resolving any issue that arises when land is required for two projects, is to follow the procedure envisaged by section 25 of the TWA. That procedure will follow if the powers of compulsory acquisition are conferred by the TWA Order.

Birmingham City University (OBJ 13)

The material points²⁰⁴ were:

- 7.7 For the purposes of identification in the Book of Reference, land is open space if it falls within the definition set out in section 19(4) of the Acquisition of Land Act 1981, namely 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. The parcels of land that are relevant to BCU fall within the definition of open space, and are properly so described.
- 7.8 The HS2 Act empowers the SofS to acquire land for the purposes of constructing and operating a railway, not a tramway. The HS2 Act provides

²⁰² Document APP/R2 paragraph 7

²⁰³ For Example Document BEE/E3 plan 5 page 41

no mechanism to acquire land for Metro purposes and does not authorise the land to be used for those purposes. The issue to be determined is whether the land is required for the purposes of the BEE. The land lies on the route, which is that shown in the relevant planning²⁰⁵ and other documents. Therefore, it is plain that it is required. In any event, the HS2 Act does not confer powers to acquire compulsorily the entirety of parcel 48A. Powers of temporary possession only are conferred (by the HS2 Act) in relation to part of it²⁰⁶.

- 7.9 As the HS2 Act does not confer powers to acquire the land for the purposes of a tramway, and as it does not confer powers to acquire all the land required, it would not be possible for the WMCA to acquire all necessary rights from the SofS were he to acquire land pursuant to the powers conferred by the HS2 Act.

²⁰⁴ Documents APP/R3 and APP/Q1

²⁰⁵ For Example Document BEE/E3 plan 5 page 41

²⁰⁶ Document APP/R3 paragraph 28: Pinsent Masons letter to the Secretary of State

8. INSPECTOR'S CONCLUSIONS²⁰⁷

8.1 I have considered the matters arising from the proposed TWA Order and the deemed planning permission together, as they overlap. I have based these conclusions around those matters about which the SofS has indicated that he particularly wishes to be informed and then set out my overall conclusions.

The aims and the need for the scheme (Matter 1)

8.2 No party has contested the need for the scheme. This need has been established by the aims, which include providing access to the proposed HS2 Station, providing economic benefits in the Eastside area of Birmingham, linking proposed key developments in the area to Birmingham City Centre and improving access to labour and skills. I am satisfied that the BEE would achieve all these aims by providing a connection from the proposed HS2 Station, together with existing and proposed employment sites near to the proposed route, to the Midland Metro network that currently accesses parts of Birmingham City Centre and Wolverhampton, including New Street and Snow Hill stations. In future, it would offer further connections via the network to Brierley Hill and Edgbaston and potentially to Solihull and Birmingham Airport. **[3.1, 3.2, 3.4, 3.7 and 4.4 to 4.7]**

8.3 The benefits of the scheme have been appraised as being great, including helping towards the regeneration of Digbeth, improving transport in that part of Birmingham and helping to deliver benefits envisaged in the Birmingham Curzon HS2 Masterplan for Growth, with new jobs, homes and employment space, which would boost the economy. In addition, the evidence has demonstrated that it would result in a significant reduction in journey times between the eastside of Birmingham and central Birmingham and some of the other parts of the West Midlands. Based on these benefits, the BCR of the scheme has been calculated as being 4.8:1, which is within

²⁰⁷ In these conclusions, references thus [] are to previous paragraphs in this report

the range of being 'Very High' value for money, in terms of the DfT assessment for funding a scheme. The economic benefits of the scheme have been assessed as being up to £130 million GVA. None of these figures have been disputed. **[3.1, 3.5 and 3.6]**

The main alternative route options considered and the reasons for choosing the proposals comprised in the scheme (Matter 2)

- 8.4 Based on the evidence that has been put before the Inquiry, I am satisfied that the WMCA has considered a sufficient number of alternative modes of transport and route options, and provided satisfactory reasons, to demonstrate that the proposals comprised in the scheme are the most acceptable to achieve the stated aims. No details have been submitted by any of the objectors of any alternative routes. The proposals would not only be the most appropriate mode to ensure that there would be a good link with the existing and proposed Midland Metro network, but would also include catenary free running on substantial sections of the proposed route with the associated visual benefits. The uncontested benefits of the proposed route in relation to the alternative routes considered would be lower costs, faster journey times, less potential for journey delays and fewer impacts on the local highway and bus networks. **[3.8 to 3.11 and 3.57]**
- 8.5 In terms of the need to demolish the building at Kings Parade that includes the McDonald's restaurant, I am satisfied that there are no alternatives that would be as acceptable in relation to the land take or extent of demolition of buildings that would be required. Furthermore, that objector has indicated that it would be likely to withdraw its objection which raised the issue of alternative routes. **[3.11, 3.79, 3.80, 5.3i and 5.4]**

The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and local planning policies (Matter 3)

8.6 The BEE would represent a sustainable mode of transport. In terms of the NPPF, it would assist in achieving the objective of promoting sustainable transport modes and increasing the choice given to people as to how they travel. It would also assist in reducing GHG emissions overall and reduce congestion. It would represent a significant investment in transport to serve the proposed HS2 station and areas of new development. As such, it would be consistent with the aims and objectives set out in section 4 of the NPPF. **[3.13, 3.70 and 4.4 to 4.6]**

8.7 With regard to local policies, the scheme is supported by policies in the recently adopted Birmingham Development Plan, and in particular Policy TP41 which specifically mentions the proposed BEE via the HS2 Station. It is also included in the 2026 Delivery Plan for Transport, with a delivery date of 2022/3, and the Birmingham Curzon HS2 Masterplan for Growth. **[3.15 and 3.16]**

8.8 I find that the scheme would accord with the relevant development plan policies and the development plan as a whole. Also, the proposals in the TWA Order are consistent with the NPPF and national transport policies, and with local transport, environmental and planning policies. **[3.14]**

The likely impacts of constructing and operating the scheme on land owners, tenants and local businesses, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking (Matter 4)

Impacts of noise, dust and vibration and impacts on local road networks, bus services, access to businesses and car parking

- 8.9 The effects during construction of noise are predicted in the Update to the ES to be significant at four locations, due to road surface works and excavation for track formation, and of vibration at six locations. However mitigation would be provided by employing 'best practicable means' and through the CoCP, secured by planning condition (Condition 6) to ensure that the adverse effects due to noise and vibration during construction would not be significant. The CoCP would also include measures to control dust during construction. I am satisfied that the use of the measures in the CoCP would be effective, as they have been developed from those that have been tried and tested on other previous similar projects. **[3.19, 3.20 and 3.23]**
- 8.10 The operation of the tram is predicted to result in no significant adverse effects on any of the receptors due to noise and vibration and there is likely to be non-compliance with the standards for ground-borne noise at only 3 non-residential receptors. A planning condition (Condition 13) would ensure that appropriate mitigation measures would be taken, such as a floating trackform, to prevent any exceedances of the ground-borne noise limits. Therefore, the mitigation would ensure that there would be no unacceptable harm caused by noise or vibration. **[3.21 and 3.22]**
- 8.11 The TA and Update to the TA have assessed the transport effects of constructing and operating the BEE. The construction would inevitably cause some disruption to traffic, delay to buses and affect access to property. However, these effects would be temporary and careful phasing of the works would be able to minimise any problems. Although the WMCA has accepted that further work would need to be carried out to ensure that access to properties would be maintained, there is nothing to show that this would not be able to be satisfactorily achieved. **[3.24, 3.27 and 3.28]**

- 8.12 The assessment has included traffic modelling using the most up-to-date Birmingham City Centre Strategic Highway Model, together with Microsimulation, and local junction modelling. The one junction that has been found to operate over capacity at Heath Mill Lane/Liverpool Street is not directly on the route of the BEE and has been shown to have an improvement due to changes in the signals and the route of traffic as a result of the scheme. **[3.24 and 3.25]**
- 8.13 In terms of the bus services, the modelling has shown that the BEE would result in reduced delays for buses over the local highway network. This has led to the withdrawal of the objection by National Express, which is one of the main bus operators in the area. **[3.26]**
- 8.14 The parking that would be lost as a result of the BEE would not be significant, as much of the proposed route already has parking restrictions along it and the car parks that would be affected would be taken by the HS2 proposals, including the car park that has been mentioned in the objection by HLT. Furthermore, HLT was granted planning permission without the need for such a car park and, with the proposed bus stops and tram adjacent to that hotel, it would be even less necessary to provide the additional parking. Most of the parking bays and disabled parking that would be lost would be relocated elsewhere. As such, and given the nature of the scheme, there would be no unacceptable impact on parking. **[3.29, 3.30, 3.87 and 5.9]**

Impacts on flood risk and groundwater, air quality, landscape, ecological, visual amenity and archaeological interests

- 8.15 There have been no objections based on the effect of the proposed scheme on flood risk, air quality, townscape, ecology, heritage assets and archaeological interests. In relation to flood risk and groundwater, the EA has withdrawn its initial representation, based on the proposed mitigation in the FRA, and most of the route would be located in Flood Zone 1, with a low risk of flooding. As such, I am satisfied that, with the implementation of the

proposed mitigation measures and the requirements of the CoCP during construction, the scheme would not have any unacceptable impacts on the risk of flooding or groundwater. **[3.31 to 3.35, 3.41, 3.46 and 3.47]**

- 8.16 The ES found that no significant adverse air quality or dust effects would occur during the construction or operation of the scheme and that there is a low risk of the BEE affecting the UK's reported ability to comply with the EU Air Quality Directive. The proposed tramway is the type of transport that is encouraged to ensure that the air quality objectives would be met. **[3.36 to 3.40]**
- 8.17 There would be beneficial effects on the townscape character due to enhanced paving and street furniture and a reduction in street clutter, which would offset the insignificant adverse effect on the character of the Eastside Park area due to the loss of trees and increased presence of trams and buses. Whilst there would be adverse visual impacts during construction and in the first year of operation of the BEE, particularly from the two CAs that it would pass through, these would only be significant for a temporary period during construction and after five years of operation some of these visual impacts would become negligible or minor beneficial, including for guests at the HLT. **[3.42 to 3.45]**
- 8.18 With regard to the HLT, I find that the proposed location of the bus interchange, tramway and planting would ensure that any visual impact on the guests at that hotel would not be significant. Furthermore the evidence indicates that the objection regarding the HLT is close to being withdrawn. **[3.82, 3.83, 5.9 and 5.12]**
- 8.19 I find that the BEE would not have any significant adverse effect on the significance of heritage assets, including the two CAs, other than affecting the views from the CAs on a temporary basis during construction. I am satisfied that the archaeological interests that would be affected by the proposed works, which include the burial ground at Park Street Gardens and

St John's Chapel, would be adequately protected by a planning condition (Condition 5). **[3.47 and 3.48]**

The adequacy of the Environmental Statement submitted with the application for the TWA Order, having regard to the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, and whether the statutory procedural requirements of the Transport and Works (Applications and Objections Procedure) Rules 2006 have been complied with (Matter 5)

8.20 On the basis of the evidence that has been provided, I am satisfied that the ES, and the Update to the ES, have been prepared in compliance with the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. I find that the assessments carried out as an input to these documents, together with the predicted impacts and potential mitigation, accurately reflect the environmental impact of the scheme. Furthermore, I have been presented with nothing to suggest that there has been any failure to comply with the statutory procedural requirements. **[1.12 and 3.50 to 3.52]**

The measures proposed to mitigate any adverse impacts of the scheme (Matter 6)

8.21 A draft CoCP has been submitted in the documents accompanying the Order application. The CoCP would include a Construction Environmental Management Plan, a Construction Noise and Vibration Management Plan and a Construction Traffic Management Plan. The MMA, which has been formed between the WMCA, scheme designers and a contractor, would develop a Construction Strategy Report for the scheme and implement a Project Communication Plan. I am satisfied that these measures would ensure that any disturbance or inconvenience to the owners, tenants or occupiers of adjacent properties, and to the general public, would be minimised during the construction of the BEE. **[3.20 and 3.53 to 3.55]**

- 8.22 The ES and the Update to the ES have summarised the significant effects for the construction and operation phases of the scheme. The visual impact of the scheme would be kept to a minimum by the use of catenary free sections of the track over a significant length of the route. Where OLE would be required, the need for separate poles would be optimised by attaching the contact wires to buildings or combining them with lighting columns or closed-circuit television poles where possible. In terms of noise and vibration, the proposed '*Midland Metro Extension Noise and Vibration Policy*' would offer adequate protection to those properties that would be affected. The Birmingham Civil Justice Centre, Digbeth Hall and 6 Coventry Street have been identified as the only receptors that are predicted to be a high risk of adverse effects and these effects would be due to ground-borne noise. However, they are non-residential properties and there are methods that are available to prevent any non-compliance with the standards. Taking account of mitigation measures that are proposed, which would be secured by planning conditions and terms of the Order, I find that there would be no unacceptable residual environmental effects. **[3.21, 3.22 and 3.56 to 3.59]**
- 8.23 I am satisfied that the protective provisions for statutory undertakers and railway undertakers contained in the draft Order would ensure that there would be adequate protection given to the interests of those providers of public services. The adequacy of these provisions is demonstrated by the withdrawal of the objections from the only statutory undertaker to have objected to the Order (National Grid) and the railway undertaker (Network Rail, which includes the concerns expressed by Chiltern Railways). **[3.60, 3.61 and 6.1]**

Compulsory purchase powers (Matter 7)

- 8.24 On the basis of the modified Order and plans, which have amended the referencing of land to be compulsorily acquired to take account of the open space that the necessary interests in and rights over have been provided

through agreement with BCC, I am satisfied that the draft Order addresses no more land than is necessary, and that the WMCA has a clear idea of how it intends to use the land. Budgetary provision has been put in place by the Applicant, and if the Order is made the works are anticipated to be completed by 2023, for which reason I am also satisfied that no land is proposed to be acquired ahead of time. The Applicant is continuing negotiations with McDonald's and HLT (OBJ 05 and OBJ 12) in order to reach agreements²⁰⁸. I have been given no reason to believe that such agreements will not be made to protect their interests. Furthermore, there is no reason to find that the potential for the Order to be subject to SPP on parcel 48A²⁰⁹, which I am satisfied has been appropriately defined as open space, would be an obstacle to its implementation. Therefore, I find that the scheme would be unlikely to be blocked by any impediment to its implementation. **[3.1, 3.63 to 3.66, 3.72 to 3.79, 3.81, 3.88, 5.4, 5.12, 5.13 and 7.7 to 7.8]**

- 8.25 I have found that there is a compelling case for the scheme to be implemented in order to provide access to the proposed HS2 Station, provide economic benefits in the Eastside area of Birmingham, link proposed key developments in the area to Birmingham City Centre and improve access to labour and skills. Therefore, having regard to the DCLG's Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion, October 2015, I am satisfied that there is a compelling case in the public interest for conferring on the Applicant powers compulsorily to acquire and use land for the purposes of the scheme and the land and rights in land for which compulsory acquisition powers are sought are required by the

²⁰⁸ Following the close of the Inquiry letters have been submitted withdrawing these objections

²⁰⁹ Following the close of the Inquiry the Applicant has submitted signed Heads of Terms for an agreement with BCU relating to parcel 48A which would ensure that this parcel of land would be fenced off before 28 February 2018 and thereby cease to be open space, no longer being subject to SPP

Applicant in order to secure satisfactory implementation of the scheme. This justifies interfering with the human rights of those with an interest in the land. Loss of any interest could be met by compensation. **[3.62 to 3.67]**

The conditions proposed to be attached to the deemed planning permission for the Scheme, if given, and in particular whether those conditions satisfy the six tests referred to in Planning Practice Guidance, Use of Conditions (Matter 8)

- 8.26 Having examined the planning conditions accompanying the request for a direction on deemed planning permission, a number of amendments have been agreed with the Applicant. I have examined these conditions in the light of the advice given in the PPG. Based on this, I have provided, in Appendix C to this report, suggested planning conditions to be applied to the deemed planning permission should the SofS make a Direction, together with reasons for those conditions. **[3.68]**
- 8.27 I have included the Update to the ES in the definition of the ES, as this forms part of the latest ES information. I have combined the original proposed conditions for design and appearance and materials (conditions 2 and 3²¹⁰), as they are related to each other. I have also combined the conditions regarding airborne and ground-borne noise as both these matters are covered in the *'Midland Metro Extension Noise and Vibration Policy'*. Both these changes were agreed by the WMCA at the Inquiry. Whilst the latest revisions by the WMCA to the draft planning conditions do not include the noise standard for ground-borne noise, I have not been given sufficient reasons to justify its omission from the combined condition.
- 8.28 The reasons for the conditions have been updated to take account of BCC's adoption of the Birmingham Development Plan in 2017, since the request

²¹⁰ Document BEE/A2

for deemed planning permission was submitted. I am satisfied that all the conditions are reasonable and necessary and meet the tests in the PPG. I therefore recommend that these conditions be attached to the grant of any planning permission.

Proposals for funding the scheme (Matter 9)

8.29 No substantive evidence has been provided to demonstrate that the estimated £137.2 million cost of the scheme would be likely to be exceeded. The Applicant has shown that this would be fully funded by £5.5 million for development and preparatory works; a provisional allocation of £35 million from 2016/17 to help deliver the first phase extension to Curzon Street Eastside; and a maximum capped additional funding contribution of up to £96.7 million to be made available through the DfT as part of the WMCA devolution agreement. I am satisfied that this, together with a commitment to locally fund any additional expenditure above the estimate, would ensure that the scheme would be adequately funded should the Order be made.

[3.69, 3.80 and 5.3iii]

Any other matters (Matter 10)

Objections

8.30 I have carefully considered the objections to the Order. In this respect, I have dealt with most of the issues raised in addressing those matters specified in the statement of matters. All but four of the objections have been withdrawn, and two of the remaining objectors have indicated that they are close to reaching an agreement with the WMCA and a subsequent withdrawal of their objection²¹¹. Chiltern Railways has expressed its support for the BEE in principle and does not have any legal interest in the land that would be affected by the scheme. Its concerns regarding the effect of the

²¹¹ Following the close of the Inquiry letters have been submitted withdrawing these objections

proposals on the operation of the railway are covered by Network Rail, who has an interest in some of the land and has withdrawn its objection after having entered into a 'Deed of Undertaking' with the WMCA. **[1.3, 1.4, 3.60, 3.79, 5.4, 5.12 and 6.1]**

8.31 With regard to the concerns expressed by Quintain and BCU that the compulsory acquisition would not be justified as the land is included in the HS2 Act, I am satisfied that there is no reason on this basis not to make the Order as proposed. This is because both the BEE and HS2 proposals would be mutually compatible on the same land, and there is no guarantee that the SofS would exercise the powers conferred by the HS2 Act to permanently acquire all the land that it has included and the HS2 Act does not confer powers to acquire the land for the purposes of a tramway. Therefore, the WMCA would not be able to acquire all the necessary rights from the SofS should the land be acquired pursuant to the powers conferred by the HS2 Act. **[5.6 to 5.8, 5.14, 7.1 to 7.6 and 7.8]**

8.32 In terms of the open space land to be acquired, BCU has argued that the land in which it has an interest (Parcel 48A) is not public open space as, due to its extant planning permission for development on the land, it is private land with no specific right of public access. However, the definition of open space in section 19(4) of the Acquisition of Land Act 1981 does not make any distinction between public and private land, as long as it is laid out for that purpose. As such, I am satisfied that the Applicant has correctly referenced the land to be acquired as currently being 'open space' which, if it does not cease to be used for that purpose or the rights are not acquired through agreement, would be subject to SPP²¹². **[3.76, 3.77, 5.13 and 7.7]**

²¹² Following the close of the Inquiry the Applicant has submitted signed Heads of Terms for an agreement with BCU relating to parcel 48A which would ensure that this parcel of land would be fenced off before 28 February 2018 and thereby cease to be open space, no longer being subject to SPP

Modifications to the draft Order

- 8.33 The WMCA has issued two revised versions of the draft Order. An explanation of the modifications in these revisions is given in Inquiry document APP/Q3.
- 8.34 In summary, Revision 1, submitted on 31 May 2017, includes modifications to reflect the amendments to legislation taking effect after the application was submitted, and negotiations conducted between the WMCA and parties affected by the provisions in the draft Order. Revision 2, submitted on 17 November 2017, is a consolidated version that includes the modifications in Revision 1. It also includes provision to not include parcels 43, 47, 47A and 48 in applying the power of acquisition as these parcels, which are identified in the Book of Reference as 'open space', have had the necessary interests in them and rights over them granted to the WMCA by agreement with the landowner, BCC. The original parcel 48 has been divided into parcels 48 and 48A to take account of the interests of BCU in parcel 48A. None of these parcels of land would require powers of entry as 'special category land' as agreement has been reached with BCC and parcel 48A is in private ownership. Revisions have been made to the Book of Reference and Sheet 1 of the Works and Land Plans to reflect these changes. I am satisfied that these proposed modifications are necessary to ensure that the Order would be enforceable and would take account of the most up-to-date legislation.
- [3.73, 3.74]**

Overall conclusions

- 8.35 I have addressed the relevant matters raised in the above reasoning and find that none of them are sufficient to prevent the Order from being made. Of the four remaining objections, two appear to me to be close to agreement and a likely withdrawal²¹³.

²¹³ Following the close of the Inquiry letters have been submitted withdrawing these objections

- 8.36 In the light of all of the above, I conclude that the Order is justified on its merits and that there is a compelling case in the public interest for making it, with clear evidence that the substantial public benefit from public transport improvements and economic development would outweigh the harm due to private losses. It would accord with relevant national, regional and local policies. Funding is available for the proposed scheme, there are no impediments to its implementation and there is a reasonable prospect of it going ahead without delay. I therefore conclude that the Order should be made, subject to modifications as indicated.
- 8.37 For similar reasons, I conclude that a Direction should be made to grant deemed planning permission for the works that would be authorised by the Order, subject to conditions.

9. RECOMMENDATIONS

Recommendations to the Secretary of State for Transport

- 9.1 I RECOMMEND that:
- (a) The **Midland Metro (Birmingham Eastside Extension) Order 201[]** be made, subject to the modifications summarised in document APP/Q3 and identified in document APP/Q4 and given in documents BEE/A14 (draft Order), BEE/A16 (sheet 1 of the Works and Land Plan) and BEE/A18/1 (Book of Reference).
 - (b) A Direction be made granting deemed planning permission for the works authorised by the Order, subject to the conditions set out in Appendix C to this Report.

M J Whitehead

INSPECTOR

APPENDIX A: APPEARANCES

FOR THE APPLICANT--: WEST MIDLANDS COMBINED AUTHORITY

Neil Cameron Queen's Counsel, instructed by Pinsent Masons
LLP

He called:

Peter Adams BSc(Hons) CEng MICE MIHT	Head of Metro Development, West Midlands Combined Authority
Neil Chadwick BA(Hons) MSc MA	Director, Steer Davies Gleave
Eddie Mellor CEng MICE MIHT	Divisional Director, Mott MacDonald
Stephen Luke MSc BEng(Hons) CEng MICE	Transport Planning Practice Leader, Mott MacDonald and Deputy Practice Leader for Light Rapid Transit
Rupert Thornely-Taylor FIOA MINCE MIIAV	Head of Rupert Taylor Ltd
Paul Ellingham MA MRTPI	Planning Director, Mott MacDonald
Bruce Fowler MRICS MCPA	Partner, Bruton Knowles

APPENDIX B: INQUIRY DOCUMENTS

Core Documents

BEE/A	
	<i>All 4 October 2016 unless stated otherwise</i>
BEE/A1	Application Letter
BEE/A2	Planning Direction Application
BEE/A3	Concise Statement of Aims
BEE/A4	Estimate of Costs
BEE/A5	Funding Statement
BEE/A6	Declaration as to status of Applicant
BEE/A7	List of Consents Permissions and Licences
BEE/A8/1	Draft Order
BEE/A8/2	Updated Draft Order Revision 1 (clean and tracked versions) (31 May 2017)
BEE/A9	Explanatory Memorandum
BEE/A10	Report Detailing Consultation Undertaken
BEE/A11	Order Plans (Plans and Sections, Planning Direction, Traffic Regulation Order and Crown Land)
BEE/A12	Book of Reference
BEE/A13/1	Environmental Statement Volume 1 (Main Report)
BEE/A13/2	Environmental Statement Volume 2 (Technical Appendices)
BEE/A13/3	Environmental Statement Volume 3 (Non-Technical Summary)
	<i>Submitted post-application</i>
BEE/A13/4	Update to Transport Assessment (22 September 2017)
BEE/A13/5	Update to Environmental Statement (5 October 2017)
BEE/A14	Updated Draft Order clean version (17 November 2017) – original version BEE/A8
BEE/A15	Updated Draft Order tracked changes version (17 November 2017) <i>Shows changes made to Revision 1 of the Order which was submitted with WMCA Statement of Case</i>
BEE/A16	Updated sheet 1 of the Works and Land Plan BEE/A11 (November 2017)
BEE/A17	Updated information for Book of Reference BEE/A12 – extract (17 November 2017)
BEE/A18/1	Full Updated version of the Book of Reference BEE/A12 (21 November 2017) <i>with addition of parcels 47A and 48A</i>
BEE/A18/2	Full Updated version of the Book of Reference BEE/A12 - track changes (21 November 2017) <i>showing the changes made to the version submitted with the application</i>

BEE/B	Legal Documents
BEE/B1	Transport and Works Act 1992
BEE/B2	Section 90(2A), Town and Country Planning Act 1990
BEE/B3	Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
BEE/B4	Transport and Works (Inquiries Procedure) Rules 2004
BEE/B5	Midland Metro Act 1989
BEE/B6	Midland Metro (Penalty Fares) Act 1991
BEE/B7	Midland Metro Act 1992
BEE/B8	Midland Metro (No.2) Act 1992
BEE/B9	Midland Metro Act 1993
BEE/B10	Midland Metro (No.2) Act 1993
BEE/B11	Transport and Works (Model Clauses for Railways and Tramways) Order 2006
BEE/B12	The West Midlands Combined Authority Order 2016
BEE/B13	Noise Insulation (Railways and Other Guided Systems) Regulations 1996 (as amended)
BEE/B14	Midland Metro (Wolverhampton City Centre Extension) Order 2016
	<i>Submitted post-application</i>
BEE/B15	New Road and Street Works Act 1991
BEE/B16	The Control of Pollution Act 1974
BEE/B17	The Railways and Other Guided Transport Systems (Safety) Regulations 2006
BEE/C	Scheme Development Documents
BEE/C1	Guidance on Tramways Railways Safety Publication Part 2, Office of Rail Regulation (November 2006)
BEE/C2	HS2 Phase One Environmental Statement Extract Volume 5 Technical Appendices Part 9: West Midlands Assessment Traffic and Transport High Speed Two (HS2) Ltd (November 2013)
BEE/C3	Code of Practice for Working on or near Metro, Centro (November 2015)
BEE/C4	Midland Metro – City Centre Extension & Fleet Replacement Option Development (October 2009)
	<i>Submitted post-application</i>
BEE/C5	HS2 Delivery Board – Metro Stop at New Canal Street (5 February 2016)

BEE/D	Economic and Business Case Documents
BEE/D1	'Making our Mark' West Midlands Combined Authority Strategic Economic Plan (2016)
BEE/D2	A Greater Birmingham for a Greater Britain, Strategic Economic Plan 2016-2030, Greater Birmingham & Solihull Local Enterprise Partnership (2016)
BEE/D3	Green Book Appraisal and Evaluation in Central Government, HM Treasury (2003 – as updated in 2011)
BEE/D4	Public Sector Business Cases Using the Five Case Model, Green Book Supplementary Guidance on Delivering Public Value from Spending Proposals, HM Treasury (2013)
BEE/D5	WebTAG Unit; Transport Appraisal Process, DfT (January 2014)
BEE/D6	WebTAG Unit: Proportionate Update Process, DfT (January 2014)
BEE/D7	WebTAG Adopted Unit A1.1 Cost Benefit Analysis, DfT (November 2014)
BEE/D8	WebTAG Adopted Unit A1.2 Scheme Costs, DfT (November 2014) - <i>replaced</i>
BEE/D8/A	WebTAG Unit A1.2 Scheme Costs, DfT (July 2017) - <i>updated version</i>
BEE/D9	WebTAG Adopted Unit A1.3 User and Provider Impacts, DfT (March 2017)
BEE/D10	WebTAG Adopted Unit A2.1 Wider Impacts, DfT (January 2014)
BEE/D11	WebTAG Adopted Unit A2.2 Regeneration Impacts, DfT (January 2014)
BEE/D12	WebTAG Adopted Unit A4.2 Distributional Impact Appraisal, DfT (December 2015)
BEE/D13	WebTAG Consultation Draft Unit A2.1 Wider Economic Impact Appraisal, DfT (Sept 2016)
BEE/D14	WebTAG Consultation Draft Unit A2.2 Induced Investment Impacts, DfT (September 2016)
BEE/D15	WebTAG Consultation Draft Unit A2.3 Appraisal of Employment Effects, DfT (September 2016)
BEE/D16	WebTAG Consultation Draft Unit A2.4 Appraisal of Productivity Impacts DfT (September 2016)
BEE/D17	Transport Business Case Guidance, DfT (January 2013)
BEE/D18	VfM Advice Note for Local Transport Decision Makers, DfT (December 2013) - <i>replaced</i>
BEE/D18/A	DfT Value for Money Framework (July 2017) - <i>replaces BEE/D18</i>
BEE/D19	Monitoring and Evaluation Framework for Local Authority Major Schemes, DfT (September 2012)

BEE/D20	Best Practice Guidance for Planning the Fuller Evaluations of Local Authority Major Schemes, DfT (2013)
BEE/D21	West Midlands Combined Authority Devolution Agreement, HM Treasury and West Midlands Combined Authority (2015)
BEE/D22	Department for Communities and Local Government Letter confirming funding for BEE (27 June 2016)
BEE/D23/1	Birmingham Eastside Extension Draft Business Case, Commercial Case, WMCA (May 2017)
BEE/D23/2	Birmingham Eastside Extension Draft Business Case, Financial Case, WMCA (May 2017)
BEE/D23/3	Birmingham Eastside Extension Draft Business Case, Strategic Case, WMCA (May 2017)
BEE/D23/4	Birmingham Eastside Extension Draft Business Case, Management Case, WMCA (May 2017)
BEE/D23/5	Birmingham Eastside Extension Draft Business Case, Economic Case, WMCA (May 2017)
BEE/E	Policy Documents
BEE/E1	National Planning Policy Framework, Department for Communities and Local Government (March 2012)
BEE/E2/1	Extract from National Planning Practice Guidance: Ensuring the Vitality of Town Centres, Department for Communities and Local Government (March 2014)
BEE/E2/2	Extract from National Planning Practice Guidance: Noise, Department for Communities and Local Government (March 2014)
BEE/E2/3	Extract from National Planning Practice Guidance: Travel Plans, Transport Assessments and Statements in Decision-taking, Department for Communities and Local Government (March 2014)
BEE/E2/4	Extract from National Planning Practice Guidance: Use of Planning Conditions, Department for Communities and Local Government (March 2014)
BEE/E3	Birmingham Plan 2031: Birmingham Development Plan (Part of Birmingham's' Local Plan), Planning for Sustainable Growth (adopted January 2017)
BEE/E4	Bordesley Park Area Action Plan, Pre-Submission Report, Birmingham City Council (February 2017)
BEE/E5	Birmingham Mobility Action Plan, White Paper 'Birmingham Connected', Birmingham City Council (November 2014)
BEE/E6	Creating Growth, Cutting Carbon: Making Sustainable Local Transport Happen, White Paper, Department for Transport (January 2011)
BEE/E7	Door to Door: A strategy for Improving Sustainable Transport Integration, DfT (March 2013)
BEE/E8	Building our Industrial Strategy Green Paper (January 2017)

BEE/E9	'High Speed 2: Get Ready' HS2 Growth Taskforce, DfT (March 2014)
BEE/E10	West Midlands Local Transport Plan (2011-2026): Making the Connections (2011)
BEE/E11	'Towards a World Class Integrated Transport Network' Vision Document, Centro (2013)
BEE/E12	White Paper 'Creating Growth, Cutting Carbon': Making Local Sustainable Transport Happen, DfT (January 2011)
BEE/E13	Roadmap to a Single European Transport Area-Towards a competitive and resource efficient transport system European Commission Transport White Paper (March 2011)
BEE/E14	West Midlands Strategic Transport Plan: Movement for Growth, West Midlands Combined Authority (June 2016)
BEE/E15	HS2 - Unlocking the benefits: West Midlands Connectivity Package, Transport for West Midlands (2013)
BEE/E16	The Midlands HS2 Growth Strategy: Accelerating the UK's Engine of Growth, Greater Birmingham & Solihull Local Enterprise Partnership (July 2015)
BEE/E17	Midlands Connect Strategy: powering the Midlands Engine, Midlands Connect (March 2017)
BEE/E18	Centro Integrated Public Transport Prospectus, Centro (January 2010)
BEE/E19	Birmingham Curzon HS2 Masterplan for Growth, Birmingham City Council (July 2015)
BEE/E20	Curzon Investment Plan, Birmingham City Council (June 2016)
BEE/E21	HS2 Unlocking the Benefits West Midlands Connectivity Package, Centro (2013)
BEE/E22/1	Big City Plan City Centre Masterplan (Part 1), Birmingham City Council (July 2011)
BEE/E22/2	Big City Plan City Centre Masterplan (Part 2), Birmingham City Council (July 2011)
BEE/E23	Transport for West Midlands Transport Plan 2017-2018, West Midlands Combined Authority (May 2017)
BEE/E24	Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion DCLG (October 2015)
BEE/E25	Guide to Transport and Works Act procedures, DfT (2006)
	Submitted post-application
BEE/E26	Transport for West Midlands 2026 Delivery Plan for Transport (September 2017)
BEE/E27	The Noise Policy Statement for England, Defra (March 2010)
BEE/E28	National Policy Statement for National Networks, DfT (December 2014)
BEE/E29	The Design Manual for Roads and Bridges Volume 11 Section 3 part 7 (November 2011)

BEE/E30	The Greater Birmingham and Solihull Growth Deal
BEE/E31	West Midlands Bus Alliance Statutory Quality Partnership Scheme
BEE/E32	West Midlands Travel Trends 2016
BEE/E33	Digbeth, Deritend and Bordesley High Streets' Conservation Area Character Appraisal (March 2009)
BEE/E34	Digbeth, Deritend and Bordesley High Streets' Conservation Area Map
BEE/E35	Warwick Bar Conservation Area Character Appraisal (March 2008)
BEE/E36	Warwick Bar Conservation Area Map
BEE/E37	Colmore Row and Environs Conservation Area Character Appraisal (December 2006)
BEE/E38	Birmingham Unitary Development Plan 2005 Saved Policies (January 2017)
BEE/E39	Planning Practice Guidance – Use of Planning Conditions (March 2014)
BEE/E40	Birmingham Smithfield Masterplan (March 2016)
BEE/E41	Transport Investment Strategy, DfT (July 2017)
BEE/E42	Exhibit 1: Plan of Eastside's Transport Facilities (October 2017)
BEE/E43	Exhibit 2: Plan of Cross City Tram Route (October 2017)
BEE/F	TWA / Inquiry Documents
BEE/F1	West Midlands Combined Authority Board Report (30 September 2016)
	<i>Submitted post-application</i>
BEE/F2	Statement of Case, West Midlands Combined Authority (31 May 2017)
BEE/F3	Notice of Further Environmental Information (5 October 2017)
BEE/F4	Letter from South and City College Birmingham (11 November 2016)
BEE/F5	List of Applicant's Witnesses (13 October 2017)
BEE/F6	Compliance with the Notification and Publicity Requirements of the Rules (16 November 2017)
BEE/F7	High Court Case: R (Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy and Climate Change [2012] EWHC 46 (Admin)

Applicant's Evidence to the Inquiry

APP/P	Proofs of Evidence
	<i>Submitted 24 October 2017</i>
	Scheme Overview – Peter Adams
APP/P1.1	Proof of evidence
APP/P1.2	Summary
APP/P1.3	Appendices
	Economic Case / Value for Money - Neil Chadwick
APP/P2.1	Proof of evidence
APP/P2.2	Summary
APP/P2.3	Appendices
	Engineering - Stephen Luke
APP/P3.1	Proof of evidence
APP/P3.2	Summary
APP/P3.3	Appendices
	Transport Planning - Eddie Mellor
APP/P4.1	Proof of evidence
APP/P4.2	Summary
APP/P4.3	Appendices
	Noise & Vibration - Rupert Thornely-Taylor
APP/P5.1	Proof of evidence
APP/P5.2	Summary
APP/P5.3	Appendices
	Town Planning - Paul Ellingham
APP/P6.1	Proof of evidence
APP/P6.2	Summary
	Acquisition Surveyor - Bruce Fowler
APP/P7.1	Proof of evidence
APP/P7.2	Summary
APP/P7.3	Appendices
APP/R	Rebuttals
	<i>Submitted 7 November 2017</i>
APP/R1	Rebuttal to proof of evidence by Martineau Galleries OBJ/06
APP/R2	Rebuttal to proof of evidence by Quintain OBJ/07
APP/R3	Rebuttal to objection by Birmingham City University (17 November 2017)

APP/Q	Documents submitted at the Inquiry
APP/Q1	Applicant's opening statement by Neil Cameron QC (22 November 2017)
APP/Q2	Replacement pages 17-20 for Bruce Fowler's proof APP/P7.1 (22 November 2017)
APP/Q3	Note explaining the modifications to the draft Order (22 November 2017)
APP/Q4	Track changed version of the draft Order showing the consolidated changes against the original draft Order submitted with the application (22 November 2017)
APP/Q5	Updated Planning Conditions (22 November 2017)
APP/Q6	Errata for Paul Ellingham's proof APP/P6.1 (23 November 2017)
APP/Q7	Applicant's Closing Submissions by Neil Cameron QC (23 November 2017)
APP/Q8	Revised draft Planning Conditions (23 November 2017)

Documents submitted by Other Parties

All submitted October/November 2016 unless stated otherwise

	Objections
OBJ/01	The Hammer & the Anvil Public House
OBJ/01/WD	The Hammer & Anvil Public House - withdrawal letter (17 January 2017)
OBJ/02	National Grid Gas
OBJ/02/WD	National Grid Gas - withdrawal letters (13 July 2017 and 16 November 2017)
OBJ/03	Phoenix CSR Ltd
OBJ/03/WD	Phoenix CSR Ltd - withdrawal letter (12 November 2017)
OBJ/04	West Midlands Travel Ltd (National Express Bus)
OBJ/04/WD	West Midlands Travel Ltd (National Express Bus) - withdrawal letter (2 October 2017)
OBJ/05	McDonald's Real Estate LLP, McDonald's Restaurants Ltd & Dean Chapman
OBJ/05/1	E-mail from Montagu-Evans to Programme Officer re objection by Real Estate LLP, McDonald's Restaurants Ltd & Dean Chapman (21 November 2017)
OBJ/06	Martineau Galleries No 1 Ltd & Martineau Galleries No 2 Ltd
OBJ/06/WD	Martineau Galleries No 1 Ltd & Martineau Galleries No 2 Ltd - withdrawal letter (24 October 2017)
OBJ/07	Quintain City Park Gate Birmingham Ltd
OBJ/08	Instant Cash Loans Limited

OBJ/08/WD	Instant Cash Loans Limited - withdrawal letter (21 November 2017)
OBJ/09	Network Rail Infrastructure Limited
OBJ/09/WD	Network Rail Infrastructure Limited - withdrawal letter (21 November 2017)
OBJ/10	Done Brothers (Cash Betting) Ltd
OBJ/10/WD	Done Brothers (Cash Betting) Ltd - withdrawal letter (28 July 2017)
OBJ/11	The Gooch Family and Benacre
OBJ/11/WD	The Gooch Family and Benacre - withdrawal letter (23 August 2017)
OBJ/12	Hotel La Tour
OBJ/12/1	Letter from Shoosmiths LLP to Programme Officer re objection by Hotel La Tour (21 November 2017)
OBJ/13	Birmingham City University (10 November 2017)
	Representations
REP/01	Environment Agency
REP/01/WD	Environment Agency – withdrawal letter (22 March 2017)
REP/02	Chiltern Railway Company Ltd
	Letters of Support
SUPP/01	Mr Pat O'Neill
SUPP/02	Friends of Eastside City Park
SUPP/03	Woodman Public House
SUPP/04	Birmingham City Council
SUPP/05	Birmingham Airport Ltd
	Statements of Case
	<i>Applicant's Statement of Case is BEE/F2</i>
OBJ/03/1/SOC	Statement of Case submitted by Phoenix CSR Ltd (5 May 2017)
OBJ/04/1/SOC	Statement of Case submitted by West Midlands Travel Ltd (National Express Bus) (25 May 2017)
OBJ/06/1.1/SOC	Statement of Case submitted by Martineau Galleries No 1 Ltd & Martineau Galleries No 2 Ltd (31 May 2017)
OBJ/06/1.2/SOC	Consent 2006 submitted by Martineau Galleries
OBJ/06/1.3/SOC	Indicative Masterplan 2006 submitted by Martineau Galleries
OBJ/06/1.4/SOC	Site Location Plan 2006 submitted by Martineau Galleries
OBJ/12/1/SOC	Statement of Case submitted by Hotel La Tour (31 May 2017)

	Proofs of Evidence
	Martineau Galleries No 1 Ltd & Martineau Galleries No 2 Ltd
OBJ/06/P1.1	Proof of Evidence – Development Matters (Carolyn Kenney)
OBJ/06/P1.2	Appendices - Development Matters (Carolyn Kenney)
OBJ/06/P2.1	Proof of Evidence – Highways & Transport (Ruth Jeffs)
OBJ/06/P2.2	Appendices - Highways & Transport (Ruth Jeffs)
OBJ/06/P3.1	Proof of Evidence – Planning (Andrea Arnall)
	Quintain City Park Gate Birmingham Ltd
OBJ/07/P1.1	Proof of Evidence of Richard Asher FRICS
OBJ/07/P1.2	Summary Proof of Evidence of Richard Asher FRICS
OBJ/07/P1.3	Appendices to Proof of Evidence of Richard Asher FRICS
	Rebuttals (Remaining Objectors)
	Quintain City Park Gate Birmingham Ltd
OBJ/07/R1.1	Letter regarding objection (16 November 2017)
OBJ/07/R1.2	Rebuttal statement of Richard Asher FRICS

General Inquiry Documents

Includes all documents issued by Inspector

INQ/1	TWAO Unit letter informing Applicant of decision to hold Inquiry (12 April 2017)
INQ/2	TWAO Unit letter notifying Applicant of Inquiry date and Inspector (5 July 2017)
INQ/3	Statement of Matters (issued by TWAO Unit 5 July 2017)
INQ/4	Inspector's Pre-Inquiry Note (8 August 2017)
INQ/5	Note on Additional Documents Referencing (September 2017)
INQ/6.1	McDonald's letter to TWAO Unit: non-submission of proofs & reserving right to appear (23 October 2017)
INQ/6.2	TWAO Unit's response to McDonald's letter (25 October 2017)
INQ/7.1	Instant Cash Loans' letter to TWAO Unit: non-submission of proofs & reserving right to appear (23 October 2017)
INQ/7.2	TWAO Unit's response to Instant Cash Loans' letter (1 November 2017)
INQ/8	Initial draft Inquiry programme (14 November 2017)
INQ/9	Attendance sheets for Inquiry (22 & 23 November 2017)

APPENDIX C: SUGGESTED CONDITIONS FOR DEEMED PLANNING PERMISSION

Definitions

In these conditions, unless the context otherwise requires:-

'Airborne noise' means noise produced by sources that directly set the air around them into vibration;

'dB LA_{MAX}, slow' means the maximum A-weighted noise level (dB) recorded in a given period with the sound level meter set with a slow time weighting;

'Ground-borne noise' means audible noise caused by the vibration of elements of a structure, for which the vibration propagation path from the source is partially or wholly through the ground;

'the application site' means the land lying within the limits of deviation referred to in the Order;

'the development' means the works and operations authorised by the Order, including any ancillary development;

'the Environmental Statement' means the Environmental Statement accompanying the application for the Order submitted on 4 October 2016 and the associated update report to the Environmental Statement dated 5 October 2017;

'the local planning authority' means Birmingham City Council; and

'the Order' means the Midland Metro (Birmingham Eastside Extension) Order 201[].

Time limits

1. The development hereby permitted shall be begun before the expiration of 5 years from the date that the Order comes into force.

Reason: *To ensure that the works are begun within a reasonable period of time.*

Design and external appearance

2. Works of construction shall not be commenced in respect of any of the following elements of the development:
 - tramcar stops;
 - permanent boundary treatment, to include walls, fencing and other structures;
 - stopped up highways;
 - highway crossings;
 - poles and brackets required to support the overhead line system; and
 - electricity substation and ancillary electrical equipment,until details of the design and external appearance and external materials of that element have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: *To ensure that proper control is exercised over detailed design of the development in accordance with Policy PG3 of the Birmingham Development Plan 2017, saved paragraphs 3.14 and 3.14D of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Landscaping

3. Details of all proposed hard and soft landscaping including the programme for the implementation of planting shall be submitted to and approved in writing by the local planning authority before the relevant part of the development to which the landscaping in question relates is commenced. These details shall include proposed finished levels or contours, means of enclosure, hard surfacing materials, minor artefacts and structures, proposed and existing functional services above and below ground, and fully annotated planting plans to a scale of 1:100 showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs. Other information shall include planting schedules, noting species, plant sizes and proposed numbers / densities and details of the proposed planting implementation programme. All hard and/or soft landscape works shall be implemented in accordance with the approved details. The approved works shall be implemented prior to the commencement of tram services on any part of the tramway authorised by the Order or in accordance with the approved programme of implementation and thereafter maintained. Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.

Reason: *In order to secure the satisfactory development of the application site, ensure a high quality of external environment and reinforce local landscape character in accordance with Policies TP3, TP7 and PG3 of the Birmingham Development Plan 2017 and saved paragraph 3.14 of the Birmingham Unitary Development Plan 2005.*

Tree protection

4. No ground clearance, demolition or construction work shall take place for any part of the development until details of protective fencing for trees in accordance with BS:5837 (2012), including an implementation timetable, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The protective fencing shall be maintained for the duration of the works and no vehicle, plant, temporary building or materials, including raising and lowering of ground levels, shall be carried out within the protected areas during that period.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policies TP7 and PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

Archaeology

5. The development shall not begin until a scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. All archaeological work shall be undertaken in accordance with the approved scheme of investigation.

Reason: *To ensure adequate protection and recording of archaeological remains in accordance with saved paragraph 8.36 of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Code of Construction Practice

6. The development shall not commence until a Code of Construction Practice (which must be in substantial accordance with the draft Code of Construction Practice at Appendix D2 of the Environmental Statement) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Code of Construction Practice.

Reason: *To ensure adequate environmental protection during construction and to safeguard the amenities of occupiers of premises in the vicinity of the development in accordance with Policy TP3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

Contaminated land

7. No part of the development except demolition shall take place until the following components of a remediation scheme to deal with the risks associated with contamination of each part for the intended use have been submitted to and approved in writing by the local planning authority:
 - 1) A preliminary risk assessment, which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors; and
 - potentially unacceptable risks arising from contamination at the site.
 - 2) A site investigation scheme, based on (1) above to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
 - 3) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken, timetable of works and site management procedures.
 - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved and shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

Highway 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, shall be submitted to and approved in writing by the local planning authority before the relevant part of the development begins. The development shall be carried out in accordance with the approved details.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017, saved paragraphs 3.14 and 3.14D of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Alterations to the highway

9. No works to the existing highway, or to the proposed highways, on a particular phase of the development shall take place until details of the siting, design and appearance of above ground highway structures including bollards, railings, lighting/lamp posts, stairs, ramps, retaining structures and highway plant structures for that phase of the highway works have been submitted to and approved in writing by the local planning authority. The details shall include scaled plans of the structures. The development shall be implemented in accordance with the approved details.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017, saved paragraphs 3.14 and 3.14D of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Alterations to buildings and structures

10. No works (including demolition) to buildings and structures, but excluding works within the highway, on a particular phase of the development shall take place until details of works affecting the siting, design, alteration and external appearance of those buildings and structures have been submitted to and approved in writing by the local planning authority. The details shall include scaled plans of the permanent or temporary alterations to the external appearance of any building or structure. The development shall be implemented in accordance with the approved details.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017, saved paragraphs 3.14 and 3.14D of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Levels

11. No part of the development, excluding demolition, shall take place until details of finished site and ground floor levels in relation to the existing site levels, adjoining land, buildings and structures for that part of the development have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading and mounding of land areas, cross-sections through the site and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details.

Reason: *In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017, saved paragraphs 3.14 and 3.14D of the Birmingham Unitary Development Plan 2005 and the National Planning Policy Framework.*

Drainage

12. No part of the development shall take place until a surface water drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and thereafter maintained.

Reason: *To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of these in accordance with Policies PG3 and TP6 of the Birmingham Development Plan 2017, the Sustainable Management of Urban Rivers and Floodplains Supplementary Planning Document and the National Planning Policy Framework.*

Airborne and Ground-borne noise

13. The development shall be designed and operated in accordance with the 'Midland Metro Extension Noise and Vibration Policy' (February 2014), or any subsequent version of it. For the purposes of the Policy in respect of airborne noise, the pre-existing ambient noise levels shall be identified in an up-to-date survey which shall be submitted to and approved in writing by the local planning authority before the commencement of tram services on the tramway authorised by the Order. Where the dominant source of noise is ground-borne, the following noise standard shall be applied to the development: inside noise sensitive rooms in residential buildings and noise sensitive rooms in offices – 40 dB LA_{MAX}, slow.

Reason: *To minimise impact from airborne noise and ground-borne noise caused by the running of tramcars in accordance with Policy TP37 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

Electro-magnetic compatibility

14. The development shall be designed and constructed in accordance with the electromagnetic compatibility standards set out in 'EN 50121, Parts 1 to 6: *Railway applications - Electromagnetic compatibility*', or any successor standards.

Reason: *To ensure that the tramway does not give rise to unacceptable electro-magnetic interference.*