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Your Ref: PFI/11152/25

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Dear Sirs,

TRANSPORT AND WORKS ACT 1992

APPLICATION FOR THE PROPOSED MIDLAND METRO (BIRMINGHAM CITY CENTRE EXTENSION, ETC.) (EDGBASTON EXTENSION LAND ACQUISITION) ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the application made on 4 April 2017 by your clients, West Midlands Combined Authority (“WMCA”), for the proposed Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order (“the Order”) to be made under sections 1 and 5 of the Transport and Works Act 1992 (“TWA”).
2. The Order, if made, would confer powers of compulsory acquisition on the WMCA for the purposes of construction, operation and maintenance of an extension to the Metro tramway system in Birmingham from Centenary Square to 54 Hagley Road in Edgbaston. The work powers to construct the extension were authorised by the Secretary of State in the Midland Metro (Birmingham City Extension, Etc.) Order (S.I 2005/1794) (“the 2005 Order”). The 2005 Order conferred powers on the West Midlands Passenger Executive (now the WMCA) for the construction and maintenance of an extension to Line 1 of the Midland Metro tramway system in Birmingham from Snow Hill Station to 54 Hagley Road in Edgbaston.
3. As the Order does not provide for any development requiring planning permission WMCA did not submit an environmental statement with the Order application or seek a direction as to deemed planning permission from the Secretary of State.

Summary of the Secretary of State’s decision.

4. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications.**

Procedural matters

5. The Secretary of State notes that the resolution to make the application was passed by WMCA on 17 March 2017 in accordance with section 239 of the Local Government Act 1972 as applied by section 20 of the TWA.
6. In making this application, WMCA complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Rules”). This included serving copies of the application and the accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As also required by the 2006 Rules, WMCA displayed and published notices giving information about the application and how to make representations, and served notice on those whose rights over land would be extinguished under the Order.
7. In response to the application, the Secretary of State received six objections from WM Morrison Supermarkets Plc, Western Powerhouse Distribution Plc, Nolan Associates, Hagley Road Limited, Daejan Limited and Barclays Bank Plc. There were no letters of support or representations.
8. The Secretary of State decided that it was unnecessary to hold a public inquiry or hearing into this application as he was satisfied that the issues raised in the objections could be appropriately presented and examined through the TWA written representations procedure. This procedure is set out in rule 24 of the 2006 Rules. WMCA and the objectors were notified of Secretary of State’s decision to follow the written representations procedure in the Department’s letter dated 10 November 2017. Following notification all six objections were withdrawn, the last of which was withdrawn on 17 December 2018. The application is, accordingly, unopposed.
9. The Secretary of State notes plots 10 and 11 on the land plans are included within land to be acquired permanently (and plots 12 and 13 are included as land to be used temporarily). WMCA has identified that tenants of 54 Hagley Road have an interest in this land in respect of rights of access. HM Courts and Tribunals Service (HMCTS) hold a leasehold interest in 54 Hagley Road and have accordingly consented to such compulsory acquisition in accordance with section 25 of the TWA. Article 18 of the Order clarifies that nothing in the Order authorises WMCA to interfere with any Crown rights.

Purposes of the Order

10. In 2005, the Secretary of State made the Midland Metro (Birmingham City Extension, Etc.) Order (S.I. 2005/1794) (“the 2005 Order”). The 2005 Order conferred powers on the West Midlands Passenger Transport Executive (now the WMCA) for the construction and maintenance of an extension to Line 1 of the Midland Metro tramway system in Birmingham from Snow Hill Station to 54 Hagley Road in Edgbaston.
11. The extension, as authorised by the 2005 Order, is being implemented in stages. Although the works powers of the 2005 Order remain in force, the powers of compulsory acquisition granted by the 2005 Order expired in July 2010. The proposed Order would confer further powers of compulsory acquisition on WMCA for the works

authorised by the 2005 Order, allowing land to be acquired for the final stage of the Midland Metro extension and for the section of the tramway system from Centenary Square to 54 Hagley Road in Edgbaston to be completed.

The Secretary of State's consideration and decision

12. The Secretary of States notes the main purpose of the Order is to authorise powers of compulsory acquisition on the WMCA, which would allow land to be acquired to complete the Edgbaston extension to Line 1 of the Midland Metro tramway system in Birmingham City Centre.
13. The Secretary of State notes that negotiations took place with the six parties who objected to the Order through the written representations procedure. These objections related to concerns about the impacts resulting from the powers sought through the Order in relation to disruptions and impacts on businesses; identification of policy support for the scheme; and procedures surrounding agreements to obtain the required land. The Secretary of State notes that all objections have been withdrawn. The Secretary of State has considered the aims of the scheme and recognises the economic, social and environmental benefits the scheme aims to achieve. He agrees with WMCA's view that the extension of the Midland Metro tramway system will improve connectivity across the city and provide better integration with key transport hubs, such as New Street and Snow Hill stations. In addition, the Secretary of State recognises the scheme is part of a wider network plan to connect Curzon Street to Edgbaston by a direct Midland Metro service aimed at maximising the benefits of HS2 for Birmingham. Therefore, he is satisfied the proposed extension aims to support both national and local policies for growth and investment and that the powers sought are proportionate, legitimate and in the public interest.
14. The Secretary of State notes that funding for the purposes of the Order will come from the Greater Birmingham and Solihull Local Enterprise Partnership Local Growth Fund, Central Government Grant, Birmingham City Centre Enterprise Zone, contribution from developers and third parties and the WMCA. The Secretary of State is satisfied that WMCA have the funding resources to meet the compensation provisions set out in the Order and that there are no financial or other likely impediments to implementation of the scheme.

Secretary of State's overall conclusions and decision

15. The Secretary of State has had regard to all matters set out above and has determined in accordance with section 13(1) of the TWA to make the Order under section 1 of the TWA, subject to a number of minor drafting amendments, which do not make any substantial change in the proposal such as would require notification to the affected persons under section 13(4) of the TWA.

Notice of determination

16. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Changes to the Order

17. The Secretary of State has made the following modification to the Order as it was provided by WMCA as part of the application, which, in the Secretary of State's opinion, do not affect the delivery of the project:

- a new paragraph (4) has been added to article 5 to ensure the provisions of section 4A of the Compulsory Purchase Act 1965 ("the 1965 Act"), which was inserted by the Housing and Planning Act 2016, operate effectively with the Order;
- the reduction of the notice period in section 11A(4) of the 1965 Act has been omitted as the Secretary of State is of the view that such reduction is not necessary or warranted with respect to this scheme;
- the proposed addition of new subsections (6) and (7) to section 11A of the 1965 Act has been omitted. These proposed subsections purported to reduce the notice period with respect to any newly identified interests that were not covered under section 11A(4). The only new interests that the proposed new subsections (6) and (7) could have applied to would be "blame-free" occupiers. The Secretary of State does not consider it appropriate to reduce the notice period with respect to such interests in relation to this scheme and is of the view that the notice period should remain at three months as provided under section 11;
- paragraphs 1(2) and 14(2) of Schedule 2A to the 1965 Act and paragraph 1(2) of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 ("the 1981 Act") have been omitted as they relate to the exclusion of the provisions of those Schedules with respect to the acquisition of subsoil, which has not been provided by this Order and are accordingly not relevant;
- section 5 of the 1981 Act has been modified instead of omitted to ensure that an "earliest date for execution" with respect to a declaration under section 4 of the 1981 Act is provided where the Applicant uses the 1981 Act to acquire land;
- the provisions regarding the modification of the 1981 Act to be applied to the acquisition of a new right have been removed; reliance on the application of the 1981 Act in this way in the High Speed Rail (London – West Midlands) Act 2017 (which was considered and approved by Parliament) is insufficient justification given the scale and delivery requirements of the high speed rail project as distinct from the more limited requirements of this Order scheme;
- article 14(2)(b) has been amended to refer to the Applicant's tramway undertaking, rather than an undertaking authorised by this Order, given the Order relates to the acquisition of land only;
- Schedule 2 to the Order has been re-ordered and clarified, although, with the exception of the removal of the modification of the 1981 Act (as referred to above), the effect of the Schedule has been retained; and
- an out of date reference with respect to the electronic communications code in paragraph 1(6) of Schedule 4 has been amended.

Challenge to decision

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

Yours faithfully

Natasha Kopala

ANNEX

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the grounds that:

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

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