

10 November 2017
20171110 - Midland Metro Objection Letter - BCU



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Dear Sirs,

RE ORDER: THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER ('the Order')

OUR CLIENT: BIRMINGHAM CITY UNIVERSITY ('BCU')
PROPERTY: LAND AT NEW CANAL STREET ('the Property')
YOUR REF: BEE_NoM_AOU037 & BEE_NoM_TMP014

We act on behalf of Birmingham City University, owner of the above Property which is subject to compulsory acquisition under the above Order being sought through the Transport and Works Act 1992.

We write on behalf of BCU to object to the Order. We appreciate that this objection is submitted beyond the statutory deadline, however this is in response to issues raised in correspondence between the Promoter and Birmingham City Council dated 31 October 2017, of which BCU was first made aware on 3 November. Given the importance of our client's objection we urge that the Inspectorate give this due attention when considering its decision in respect to the Order. If the Public Inquiry is held we would ask that this objection is heard.

Land subject to permanent and temporary acquisition

With reference to the Transport and Works Act 1992 Midland Metro (Birmingham Eastside Extension) Order – Works and Land Plans Sheet No.1, the Order will, if confirmed, provide for (1) the right temporarily to use the land in plots 49, 50 and 52 contained in the Schedule, to which BCU has an interest; and (2) the right to carry out safeguarding works to the building(s) situated on that land.

With reference to the Transport and Works Act 1992 Midland Metro (Birmingham Eastside Extension) Order – Works and Land Plans Sheet No.1, the Order will, if confirmed, provide for (1) the compulsory acquisition of the land in plot 48 contained in the Schedule, to which BCU has an interest; (2) the compulsory acquisition of rights over any of that land that is not acquired, including for the purposes of installing, retaining and maintaining overhead line equipment; (3) the right temporarily to use the land, where it is not acquired or before it is acquired; and (4) the right to carry out safeguarding works to the building(s) situated on that land.

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Background

BCU has a long term leasehold interest in a large development site comprising three separate plots located in the Nechells ward in the district of Ladywood, Birmingham. The site is situated in the Eastside area of Birmingham City Centre between Park Street to the west and New Canal Street to the east, Fazeley Street runs through the site and the West Coast Mainline Railway defines the southern boundary.

BCU entered into a Development Agreement with Birmingham City Council ("BCC") dated 19th December 2007. This agreement 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 (RM) 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.

The Extant Planning Permission

The planning permission (reference no. C/03525/08/OUT) is for the following description of development:

Outline application of 55,000 sqm comprising University Campus (Use Class D1), Concert Hall (Use Class D2), Theatre (Use Class Sui Generis), retail (Use Class A1), Use Classes A3-5 (food/drink), car parking, landscaping and associated works, and stopping up of Bartholomew and Banbury Street at Land at New Canal Street, Fazeley Street, Banbury Street, Bartholomew Street, City, Birmingham

Application for RM can be made until 19 January 2019, and the permission can be implemented until 19 January 2020 or 1 year after the last RM approval. As noted above the, phase 1 RM were approved 18 March 2010.

Conditions define the approved development as follows:

This permission shall relate to the provision of a maximum of 55,000 sqm floor space (gross external area) consisting of:

- *Use Class D1 University campus*
- *Use Class D2 concert hall up to a maximum of 6,000 sqm gross external area*
- *Sui generis theatre up to a maximum of 6,000 sqm gross external area*
- *A1 Retail up to a maximum of 2,499 sqm gross external area*
- *A3-5 retail up to a maximum of 3,000 sqm gross external area*

The maximum of 55,000 sqm gross external area (GEA) shall be divided between the development plots as follows:

- *Plot A = a maximum of 15,000 sqm gross external area*
- *Plot B = a maximum of 55,000 sqm gross external area*
- *Plot C = a maximum of 23,200 sqm gross external area*

Grounds for BCU's Objection

We hereby give notice of our client's objection to the Order. Whilst our client does not object to the principle of development within vicinity, or the principle of extension and operation of the Midland Metro, it does object to the following aspects of the Order.

- (i) The West Midlands Combined Authority has sought to negotiate acquisition of the land by agreement with BCU on the basis that they view the land in question being part of Public Open Space. BCU are firmly of the view that the land to be acquired is NOT Public Open Space. The Property is laid to grass but there is no explicit right of use by the public. No right has been

established through the passage of time and the Property remains private with the benefit of the above extant planning permission.

- (ii) We object to the Order being promoted, particularly at this stage, where the High Speed Rail (London – West Midlands) Act 2017 (the “HS2 Act”) authorises the Department for Transport (DfT) to acquire the land for the purposes of building a railway, not the Midland Metro Birmingham Eastside Extension.
- (iii) That the objectives and purpose for which the West Midlands Combined Authority 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 this Order is confirmed, to have ownership and possession of the land required.
- (iv) 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.

It is BCU’s position that its land should not be acquired and that it should be removed from the Order in light of the above considerations.

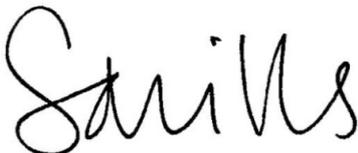
We would be grateful for you to confirm receipt of this objection and we trust it will be given due and fair consideration. Further, we request copies of all future correspondence be directed to Tom Hanman and Paul Rouse at the addresses below and we consent for any such copies to be sent electronically where possible.

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Finally, we reserve the right to amend, add to or withdraw this objection.

Yours faithfully



Savills (UK) Limited

cc. Melanie Owen-Roberts – Programme Officer – Birmingham Eastside Extension Inquiry