

## **The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order**

### **CLOSING SUBMISSIONS ON BEHALF OF THE APPLICANT**

1. The fact that the inquiry has been short, and that there is little opposition to the making of the order, is a clear indication that there is widespread recognition of the benefits of the scheme.
2. There is no dispute that the scheme will deliver multiple benefits as referred to in my Opening, including those identified at section 7 of Mr Adams' proof of evidence<sup>1</sup>. I do not repeat that Opening but do rely upon it, and ask you to consider it when writing your report, in particular when considering objections and the argument that an EIA was required.
3. When making your report, you will wish to address the issues identified in the Secretary of State's statement of matters<sup>2</sup>. The evidence presented by the Applicant addresses those matters<sup>3</sup> and I do not intend to repeat it in these closing submissions. I will provide brief submissions on each matter, but rely on the unchallenged evidence, which I would ask you to consider in detail when writing your report.

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<sup>1</sup> APP/P1.1 pages 30-36

<sup>2</sup> GEN 3

<sup>3</sup> See Adams PoE Table 10.1 APP/P1.1 pages 52-56

**1. The justification for the Transport and Works Act (“TWA”) Order in relation to the proposed Wednesbury to Brierley Hill Extension scheme (“the Scheme”)**

4. The aims of the scheme are identified in the concise statement of aims<sup>4</sup> as:

The WBHE is intended to meet the aims of the WMCA and the Black Country Local Economic Partnership (BCLEP) relating to transport in the Black Country, to achieve first-class international, national, regional and local connectivity. The aims of the WBHE support both national and local policies for growth and investment and are enumerated below. It also forms part of a package of works that are supported and funded by the Government in order to maximise the benefits of investment in HS2.

5. Those aims address economic, social and environmental objectives.
6. The need for the scheme is explained by Mr Adams in his proof of evidence<sup>5</sup>.
7. The lack of reliable public transport journey times in the Wednesbury to Brierley Hill corridor is a serious deficiency; the scheme addresses and overcomes that deficiency.
8. I invite you to conclude that the need is established, and that the order, if made, will enable that need to be met.

**2. The alternatives to compulsory acquisition considered by WMCA for meeting the objectives of the Scheme.**

9. WMCA have sought to acquire land by agreement, and will continue do so.
10. As a result of engagement with landowners, agreements have to be reached to acquire land by agreement. Examples of such successful negotiations are the arrangements reached with Network Rail and with the Canal and Rivers Trust (“CART”)<sup>6</sup>.

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<sup>4</sup> WBHE A4 page 2

<sup>5</sup> Adams PoE Section 6 -

<sup>6</sup> Adams PoE 8.25 APP/P1.1

11. The remaining objections<sup>7</sup> relate to temporary use of an access road to the Merry Hill Shopping Centre. It is not the owner of the road who pursues an objection, but those who, in common with others have rights over the private access roads.
12. The land sought and the rights sought are necessary to enable the tramway to be constructed beside the canal, and to provide a tramstop giving access to the shopping centre. It is wholly desirable that the tram should connect Brierley Hill, the Merry Hill Shopping Centre and The Waterfront to each other and to the wider Metro network. No party has put forward an alternative means of achieving those desirable objectives
13. There can be little doubt that there has been a thorough consideration of alternative means of seeking to acquire the land required to enable the scheme to proceed. Further no party has put forward an alternative means of providing a tram stop giving access to the Merry Hill Shopping Centre.

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

14. The fact that the economic evaluation which forms part of the business case results in a BCR of 2.03 is a clear indication that the benefits of the scheme far outweigh any detriments, and that it is high value for money<sup>8</sup>.
15. There is considerable scope for regeneration and growth in the WBHE corridor. Steps have already been taken to encourage such regeneration, such as designation of the DY5 Enterprise Zone<sup>9</sup>. However, it has proved difficult to bring forward development proposals in the area, due in part to difficulties with the existing transport network<sup>10</sup>.
16. Examples of sites which are likely to benefit from the scheme are the Daniel's Land site at Merry Hill, which is considered in the WMCA's note for the DfT on land value uplift<sup>11</sup>, and the Portersfield site in Dudley<sup>12</sup>.

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<sup>7</sup> Save for Mr Weller's late objection

<sup>8</sup> Value for Money Assessment: Advice Note for Local Transport Decision Makers paragraph 2.4: WBHE D24

<sup>9</sup> WBHE E35

<sup>10</sup> Adams PoE 7.15: APP/P1.1

<sup>11</sup> WBHE D30 – section 4

<sup>12</sup> Letter from the developer of the Portersfield site – WBHE D40

17. The business case evaluation takes account of land value uplift and certain economic benefits, but does not take account of more extensive economic benefits that the scheme would facilitate in an area much in need of regeneration. Those more extensive economic benefits including direct and indirect benefits are identified in the Lichfields report<sup>13</sup>. I request that you and the Secretary of State pay particular attention to that report and its conclusions.
18. The proposal will also bring about environmental benefits, in particular urban realm improvements<sup>14</sup>.
19. In addition, the scheme will deliver social and community benefits, in particular by improving connectivity, enhancing public transport choice, and giving people access to employment opportunities<sup>15</sup>.
20. There is no dispute that the proposals are consistent with, and will advance the objectives of the NPPF, national transport policy, and local transport, environmental and planning policies.
21. It is important to note the degree of support for the scheme which is set out in relevant planning, economic and transport policies. In particular:
  - a. The Black Country Core Strategy provides express support for the scheme.
    - i. The corridor which will be served is identified as regeneration corridor in the Key Diagram<sup>16</sup>
    - ii. The route is identified for rapid transit in the Transport Key Diagram<sup>17</sup>.
    - iii. Policy TRAN 1 identifies the scheme as a key transport priority.
  - b. The progression of the scheme is a priority action identified in the Black Country Economic Strategy<sup>18</sup>.
  - c. The Black Country Rapid Transit Spine (of which the scheme is phase 1) is one of the priorities for action identified in the Local Transport Plan<sup>19</sup>.

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<sup>13</sup> WBHE D28, see in particular Table 6.1

<sup>14</sup> Ellingham PoE 4.5 APP/P5.1, Carter PoE 3.4.47-3.4.48 APP/P2.1

<sup>15</sup> Ellingham PoE 6.3.6-6.3.7 APP/P5.1

<sup>16</sup> WBHE E23 page 19

<sup>17</sup> WBHE E23 page 116

<sup>18</sup> WBHE E 34: pages 83-84

<sup>19</sup> WBHE E1 pages 23 and 55: Adams PoE 2.14 and 2.15 (APP/P1.1)

- d. The WBHE is also a critical element of the HS2 Connectivity programme<sup>20</sup>.
22. All the relevant policies are identified in the evidence of Mr Ellingham and Mr Adams. Mr Ellingham also considers whether the scheme proposals comply with those policies. He concludes that they do. I do not repeat that analysis in these submissions, but I do rely on it, and ask that you accept it.
23. The clear conclusion that I invite you to draw is that the proposals will realise very significant benefits in an area which is much in need of those benefits, and that the scheme is supported by, and accords fully with, national and local transport, economic and planning policies.

**4. The likely impact of the powers in the proposed TWA Order on land owners, tenants, occupiers, and statutory undertakers, including any adverse impact on their ability to carry on their business and undertakings effectively and safely and to comply with any statutory obligations applying to their operations.**

**Consideration under this heading should include:**

- (a) the impacts on access to and within the area, including the effects on local road networks, access to businesses and car parks, and access by emergency vehicles;**
- (b) the economic impacts on local businesses and occupiers;**
- (c) the impacts on members of the general public, including users of the Churchill Shopping Centre in Dudley and the Merry Hill Shopping Centre in Brierley Hill; and**
- (d) any measures proposed by WMCA to mitigate any significant adverse impacts arising from the exercise of the powers in the proposed Order, and whether any such measures are appropriate and sufficient.**

***4 (a) Impacts on Access and local road networks***

24. The potential impact on access to businesses, car parks and premises during construction has been the subject of very careful consideration. A dedicated WBHE

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<sup>20</sup> Adams PoE 2.33 APP/P1.1, and WBHE E19 page 8

Engagement Team has been established so as to ensure that decisions are made on the basis of accurate information and to assist communications<sup>21</sup>.

25. Works on the highway are likely to have a particular impact in Dudley town centre. The detail of how this work will be carried out will be submitted to Dudley MBC for approval as part of the Code of Construction Practice Part 2 approvals<sup>22</sup>. That approval mechanism provides assurance that local interests will be protected. It is envisaged that tramway construction works will be limited to sections of no more than 100m in length with appropriate spacing between sections<sup>23</sup>. The approach to be taken in Dudley town centre is described by Mr Collins – that evidence demonstrates the careful and thorough approach which has been adopted<sup>24</sup>. Similarly the care and attention have been paid when considering the impact on the access to premises is demonstrated by the approach taken to the premises occupied by Tata Steel and Norish; it is to be noted that, as a result of that careful consideration, Tata Steel have withdrawn their objection.
26. The focus of the objections is on plots 336 and 337.
27. Rights only are sought in relation to plot 337- those rights are to be exercised together with other rights. There will be no impact on the ability of other users to pass along Central Way and acquisition of the rights will not affect normal operation of that road (as explained by Mr Collins).
28. The works at Merry Hill will, during the construction period, necessitate temporary obstruction of The Embankment. Mr Collins said that obstruction will be limited to a period of no more than one week at a time. The indicative programme shows how peak periods will be avoided<sup>25</sup>. The requirement to obtain approval of the COCP part 2 provides a means to ensure that such a programme will be adhered to.
29. However, the road affected (The Embankment) is not the only means of access to the centre from the highway. As explained by Mr Collins access to the centre can be gained from a number of different public highways, including Level Street, Pedmore

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<sup>21</sup> Collins PoE 8.9.3 and 8.9.4: APP/P3.1

<sup>22</sup> Condition 7 attached to the deemed planning permission requires submission and approval of Part 2 of the COCP: WBHE B7

<sup>23</sup> Collins PoE 8.9.2: APP/P3.1

<sup>24</sup> Collins PoE 8.9.6-8.9.20: APP/P3.1

<sup>25</sup> Collins Ap.4 page 39: APP/P3.3

Road/Merry Hill, and The Boulevard. There are four accesses off the public highway (Level Street x 2, The Boulevard x 2). As a result, even when one means of access is obstructed in order to allow works to be undertaken access to the centre will be maintained for all users, including businesses, customers and the emergency services.

30. Any obstruction of the access road to Merry Hill Shopping Centre will be limited, as secured by the various undertakings given. The road will not be closed during the peak shopping periods (e.g. prior to Christmas)<sup>26</sup>. The applicant will undertake (inter alia) to use reasonable endeavours to ensure that access rights over The Embankment will continue to be available as far as is reasonably practicable<sup>27</sup>. Those undertakings provide protection for customers staff and deliveries (see for example the undertaking given to McDonalds (4.6)). The fact that works are to be avoided in particularly busy shopping periods is an indication that access by customers is to be protected. Further it is important to note that the party most affected by any interruption to access, Intu, has withdrawn its objection.
31. In operation there will be two-way traffic on The Embankment (as existing).
32. The impact on the road network during operation has been assessed using traffic modelling. Mr Budhiraja's evidence demonstrates that the junctions most affected by the proposals will all operate within capacity with the exception of a slight exceedance in the 2031 AM peak at one junction<sup>28</sup>. That assessment is based on a worst case as it does not account for highway changes arising from the Dudley Interchange and the Portersfield planning applications and the effect of traffic redistribution and mode transfer arising as a result of the scheme.
33. The impact on traffic in the Merry Hill area once the scheme is on operation has been assessed using microsimulation modelling.
  - a. In the local area the WBHE produces less congestion per vehicle on the network in the interpeak. In the PM peak the network is congested and similar levels of performance are predicted with and without the WBHE. Journey times to and from the Merry Hill Shopping Centre in the interpeak

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<sup>26</sup> Collins Ap.4 page 33: APP/P3.3

<sup>27</sup> See, for example, the undertaking offered to Jessops: WBHE F8 clause 4.1.2

<sup>28</sup> Budhiraja Ap.A page 28 of the Appendices: APP/P4.3

will be improved, but slower in the PM peak, with an overall improvement. The re-assignment of traffic arising as a result of signalisation of the Level Street junction with The Embankment will have an impact on other junctions, but they will still work satisfactorily<sup>29</sup>.

- b. The results for each key area are summarised at paragraphs 6.11 to 6.13 of Mr Budhiraja's proof of evidence.
  - i. In the Level Street Key Area travelling eastbound in the PM peak there is predicted increase in journey times, although there is an improvement in overall highway performance.
  - ii. In the Mill Street Key Area the model predicts a 3 second increase in journey times for traffic travelling southbound in the PM peak. In the interpeak the overall journey time for traffic travelling through the area increases by one second. In the PM peak the with WBHE scenario is predicted to operate better than without WBHE scenario.
  - iii. In the Merry Hill Key Area the model predicts an increase in traffic in the interpeak and a decrease in the PM peak.

34. It is clear that the overall impact on the road network will be acceptable. In any event the benefits of the scheme far outweigh any slight delays to traffic at particular times of day.

#### ***4 (b) Economic Impacts on local businesses and occupiers***

- 35. As referred to above, when considering anticipated benefits, the overall economic impacts of the scheme are overwhelmingly positive.
- 36. During construction there will be some impact on traffic flows in Dudley town centre, and in crossing Level Street and Waterfront Way in Brierley Hill. As referred to above, with careful management the impact will be small.
- 37. Once operational the increases in connectivity and accessibility to facilities such as the Churchill Centre in Dudley, and the Merry Hill Shopping Centre are likely to

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<sup>29</sup> Budhiraja PoE 8.10: APP/P4.1

deliver increased throughput and accessibility to the workforce delivering short-term and longer-term benefits to businesses in the WBHE corridor<sup>30</sup>.

38. The hardship scheme referred to by Mr Adams<sup>31</sup> is available to mitigate adverse impacts arising during the construction period.
39. In economic appraisal terms any localised economic cost of any residual impacts during the construction phase will be negligible over the 60-year economic appraisal period<sup>32</sup>.
40. As referred to when considering benefits, the overall impact of the scheme on the local economy and local businesses will be overwhelmingly positive.
41. Jessops argue that the compensation code should be extended in this case.
42. Article 4 of the draft order applies Part 1 of the Compulsory Purchase Act 1965. Where the execution of works interferes with rights of access those entitled to the rights are entitled to compensation based upon any diminution in value of their interest in land<sup>33</sup>. The provisions in the order conform to the model clauses.
43. In order to give effect to Jessops' argument modifications would have to be made to the order. However, Jessops have not put forward such a modification. Apart from the practical difficulty in responding to a suggested modification which has not been formulated, it is the applicant's case that to accede to the suggestion made would be highly undesirable as:
  - a. It would necessitate a departure from the model clauses for Transport and Works Act orders<sup>34</sup>.
  - b. It would represent an ad hoc variation to the compensation code without consideration of the consequences whether for this order, or as a precedent.
  - c. Would give rise to unquantified increased costs.
  - d. Would be inconsistent with the approach taken in relation to other orders (Mr Fowler said he was not aware of any case in which such an amendment had been made).

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<sup>30</sup> Carter PoE 4.1.12: APP/P2.1

<sup>31</sup> APP/P1.6 Appendix 3

<sup>32</sup> Carter PoE 4.1.10: APP/P2.1

<sup>33</sup> Fowler PoE 6.11 APP/6.1

<sup>34</sup> Transport and Works (Model Clauses for Railways and Tramways) Order 1992

44. The model clauses reflect a policy decision (which is reflected in the approach taken to compulsory purchase and to transport schemes in general) to strike a balance in relation to these types of case. The balance struck is to restrict compensation to impacts on the value of land (i.e. diminution in value of land). That is a balance struck in many similar cases, such as works to the highway. It is a balance struck in the public interest. If one was to make such a change one might ask, is it appropriate to seek to net off any benefit arising from increased patronage during operation.
45. To recommend a change in this case would
- a. Alter the policy balance struck and adhered to for very many years; and
  - b. Create very considerable uncertainty for this and future schemes.

***4(c) Impacts on the general public***

46. The public will be affected by impacts on the road network during construction and the resultant changes to the road network will also have an impact during operation.
47. The measures proposed and referred to above when considering matter 4(a) above will ensure that the impact is kept to a minimum and access to facilities such as the Merry Hill Shopping Centre, and the Churchill Centre in Dudley will be maintained at all times<sup>35</sup>.
48. Impacts on parking and loading are considered by Mr Collins<sup>36</sup>; some car parking spaces are proposed to be replaced and some are not. Those which will not be replaced are in an area well served by off street parking.
49. The works to the bus station will provide for better access to existing town centre development and the proposed Portersfield development, whilst also facilitating interchange with the tram<sup>37</sup>.

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<sup>35</sup> Collins PoE 10.2.2: APP/P3.1

<sup>36</sup> Collins PoE 6.11: APP/P3.1

<sup>37</sup> Collins PoE 6.10: APP/P3.1

50. New pedestrian signalised crossings will be provided in Station Drive, Waterfront Way and Level Street<sup>38</sup>.
51. Some diversion of designated cycle routes will take place during construction, but will be unaffected during operation<sup>39</sup>.
52. There will be some impact on the general public at large during construction, but access to town centre facilities will be maintained. During operation the impact on the general public will be overwhelmingly positive with quantitative and qualitative improvements to connectivity once the scheme is in operation.

#### ***4(d) Mitigation***

53. The application for the 2005 Order was accompanied by an environmental statement (“ES”). The ES set out measures to mitigate impact. Those measures are identified at Appendix 2 to Mr Ellingham’s evidence<sup>40</sup>. Mitigation measures which are incorporated in the design will be secured by the submission and approval of details pursuant to the conditions attached to the deemed planning permission<sup>41</sup>.
54. Mitigation during construction will be secured through the submission and approval of Part 2 of the code of construction practice, as required by condition 7 attached to the deemed planning permission<sup>42</sup>.
55. Now that the WMCA are no longer proposing to grant a concession but to deliver and manage the scheme through the Midland Metro Alliance, you and the Secretary of State can have even greater certainty that the mitigation measures will be delivered.
56. The conclusions to be drawn are that:
  - a. A range of appropriate mitigation measures are proposed, and where appropriate will be secured by the conditions attached to the deemed planning permission.
  - b. The residual effects are, in the main beneficial with limited adverse effects.

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<sup>38</sup> Collins PoE 6.13.2: APP/P3.1

<sup>39</sup> Collins PoE 6.12.13: APP/P3.1

<sup>40</sup> APP/P5.3

<sup>41</sup> WBHE D7 see in particular conditions 3, 4 and 5

<sup>42</sup> WBHE D7

57. Schedules 10 and 11 to the 2005 Order contain protective provisions for statutory undertakers and other parties, respectively. Those provisions ensure that the order strikes the right balance between facilitating the proposed scheme and protecting the interests of those who are providing existing services to the public.

**5. Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the MHCLG 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 (as amended on 28 February 2018):-**

**(a) whether there is a compelling case in the public interest to justify conferring on WCMA powers to compulsorily acquire and use land for the purposes of the scheme.**

**(b) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having regard to Article 1 of the First Protocol to the European Convention of Human Rights);**

**(c) whether there are likely to be any impediments to WMCA exercising the powers contained within the Order, including the availability of funding;**

**(d) whether all the land and rights in land over which WMCA has applied for such powers is necessary to implement the scheme.**

***5(a) Compelling case in the public interest***

58. The need for the scheme is established in Mr Adams’ evidence.

59. For the reasons set out above there are no realistic alternatives.

60. Mr Adams also identifies the transport benefits and the regeneration benefits.

61. The economic case is established by Mr Carter. The Benefit Cost Ratio of 2.03 demonstrates that the scheme is high value for money. Although such a BCR is simply stated it is the product of detailed analysis, and clearly establishes the economic benefits of the proposals. Those economic benefits cannot be secured unless the order is made.

62. The disadvantages of the scheme are very limited. They consist (in the main) of adverse effects during construction, in particular to one of a number of accesses to the Merry Hill Shopping Centre.
63. 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. The fact that there are relatively few objections, and that of those few, many objectors have withdrawn their objections, may be considered to reflect the fact that the scheme has many benefits and few detriments, and that those substantial and many benefits far outweigh those limited detriments.
64. There is a clear and compelling case in the public interest to make the order.

***5(b) ECHR***

65. 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, and I invite you to so find in making your report.

***5(c) Potential Impediments, including funding***

66. In this case the powers to construct and operate the tram have been granted, and a direction has been made that planning permission be deemed to be granted.
67. The only potential impediments of any substance are funding and the making of the TWA order.
68. Under the devolved governance arrangements decisions on funding are to be made by the WMCA. Their Investment Board has considered the latest outturn cost estimates and the revised business case. On the basis of that up to date information the Investment Board has resolved that the WMCA Board be recommended to

approve the funding set out in section 8 of the Investment Board report<sup>43</sup>, namely that the £449.5m estimated outturn cost be funded by:

a. BCLGF	£0.4m
b. Government Funding	£207m
c. WMCA Contribution	£103m
d. Prudential borrowing	£139.1m
	.....
	£449.5m

69. The BCLEP funding has been provided and expended on early stage scheme development<sup>44</sup>.
70. £250m from the Transforming Cities Fund was allocated to WMCA by the Government on 20<sup>th</sup> November 2017. On 8<sup>th</sup> December 2017 the WMCA Board allocated £207m of that sum to the WBHE scheme<sup>45</sup>.
71. The WMCA £103m contribution is funded from the HS2 Connectivity Package.
72. The prudential borrowing has been supported by the WMCA Investment Board.
73. Given that the funding is not dependent upon decisions by some outside body, or by the Government, but lies with WMCA, there is no legitimate ground upon which funding can be said to be in doubt.
74. For those reasons, if the order is made, there is no impediment to the implementation of the scheme.
75. It should be recalled that the purpose of a business case such as that referred to by Mr Carter is to seek funding from public authorities. In this case such funding has been obtained, and the business case has thus served its purpose. There is little purpose to be served in reconsidering the business case in the context of this application. The issue for this application is whether there is any impediment to the carrying out of the scheme arising as a result of issues relating to funding; the clear answer to reach is that there is no such impediment.

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<sup>43</sup> Minutes of the WMCA Investment Board meeting held on 11<sup>th</sup> March 2019: APP/P1.7 page 10

<sup>44</sup> APP/1.4 page 14- paragraph 8.4

<sup>45</sup> APP/1.4 page 14- paragraph 8.3

**5(d) Land Requirements**

76. In applying for the current order the applicant has reviewed the land requirements. That review has resulted in a more limited land requirement to that provided for by the 2005 Order. The land which remains is required in order to facilitate the provision of this much needed scheme<sup>46</sup>. It is of note that there are no outstanding objections which include an argument that the extent of land sought is excessive.
77. There is a compelling case in the public interest for the order to authorise the promoter to acquire the necessary land and rights and to use land temporarily, without such authorisation the very many benefits will not be realised in the public interest.

**6. The purpose and effect of any substantive changes proposed by WMCA to the Order since the application was made, and whether anyone whose interests are likely to be affected by such changes have been notified.**

78. The revised draft order includes the following changes:
- a. In Schedule 1
    - i. Plot 233 has been removed as the land is no longer required.
    - ii. Plot 250 has been split into plots 250 and 250a. Plot 250a is a small area of open space in unknown ownership.
    - iii. Plots 253 and 255 have been removed as rights have been secured by agreement.
  - b. In Schedule 3 (temporary possession)
    - i. Plots 37,87,89 and 307 have been removed as they are no longer required for the construction of the scheme
79. The removal of plot 233 reflects an assurance given to Clarkes Fixings at the time of the 2004 application.

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<sup>46</sup> Collins PoE 8.11.2 APP/P3.1

80. Plots 253 and 255 have been removed as agreement has been reached with Dudley Canal Trust to secure the necessary rights.
81. Plot 37 has been removed as a result of the negotiations which led to the withdrawal of OBJ/18 (Serco Ltd).
82. Plots 87 and 89 have been removed as a result of the negotiations which led to the withdrawal of OBJ/8 (John Holden and David Hutchinson).
83. The removal of plot 307 forms part of the undertaking given to Jewson Limited, Saint Gobain Building Distribution Limited and SGBD Property Holdings Limited<sup>47</sup>.
84. Save in relation to the parcel in unknown ownership, the relevant parties have been notified as part of the negotiations.

**7. Whether statutory procedural requirements have been complied with.**

85. The note submitted on behalf of the applicant demonstrates that the relevant requirements have been complied with<sup>48</sup>.

**8. Any other relevant matters which may be raised at the inquiry.**

86. During the course of the inquiry the inspector raised the following additional issue:
  - a. Impact on bus operators.
  - b. Open space.

***Bus Operators***

87. As Mr Carter explained, the impact on private sector bus revenues which was assessed when appraising value for money<sup>49</sup> is based upon an assumption that there will be a neutral response from bus operators. In fact private bus operators are likely to react to changing patterns in demand by adjusting services, as they have done elsewhere – Mr Carter gave an example from Nottingham.
88. Further, the fact that the bus operators have not objected is a clear indication that any impact is not a cause for significant concern.

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<sup>47</sup> WBHE F7 clause 4.1.1

<sup>48</sup> APP/INQ 5

<sup>49</sup> Carter Sup PoE table 1 on page 11: APP/P2.4

## ***Open Space***

89. Mr Fowler drew attention to the fact that land subject to the powers of compulsory acquisition is open space<sup>50</sup>.

a. Section 12(1) of the TWA 1992 provides:

(1) An order under section 1 or 3 above authorising a compulsory purchase shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 18 or 19 of the Acquisition of Land Act 1981 (or by virtue of paragraph 5 or 6 of Schedule 3 to that Act) (National Trust land, commons etc.), if the purchase were authorised by an order under section 2(1) of that Act.

b. Section 19(1) of the Acquisition of Land Act 1981 (“ALA 1981”) provides:

19.— Commons, open spaces etc.

(1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or

(aa) that the land is being purchased in order to secure its preservation or improve its management.

(b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,  
and certifies accordingly.

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<sup>50</sup> Fowler PoE 3.16: APP/6.1

90. A large proportion of the open space is owned by CART and Network Rail. Once agreement has been concluded with those parties, the applicant will request that land be removed from the order.
91. It is then anticipated that once agreement has been reached with known owners the open space land subject to powers of compulsory acquisition is likely to fall under the 209 sq. m threshold. In that event the Applicant will seek a certificate from the Secretary of State either that giving in exchange other land is unnecessary or that land given in exchange is equally advantageous etc..
92. The order as currently drafted would be subject to special parliamentary procedure. However if the CART and Network Rail land is removed, the applicant intends to seek a certificate whether under section 19(1)(a) or (b) of the ALA 1981.

### **Conclusions**

93. There is no serious challenge to the Applicant's case that the WBHE will deliver the significant transport, regeneration, and economic benefits.
94. There is a clear need for the scheme:
- a. It will meet a need for regeneration in the Wednesbury to Brierley Hill corridor, in particular in Dudley.
  - b. The transport need is evident, the scheme will bring rapid transit to an area which has no such provision, and to towns which are not served by railway stations.
95. The scheme will deliver very significant benefits, in particular economic and regeneration benefits in an area which is much in need of regeneration.
96. The need can be met, and the benefits delivered with very little detriment.
97. The WBHE is deliverable, the necessary powers and planning permission is in place. Funding is in the hands of the WMCA and they have decided to allocate the necessary resources<sup>51</sup>.
98. This scheme will deliver very significant benefits to the Black Country, and the order should be made so that those benefits can be realised.

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<sup>51</sup> Subject to confirmation by the WMCA Board, who are due to meet on 22<sup>nd</sup> March 2019

99. I request that you recommend to the Secretary of State that the order, in the modified form proposed, be made.

Landmark Chambers,  
180, Fleet Street,  
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And  
4th Floor  
2 Cornwall Street  
Birmingham B3 2DL

Neil Cameron QC

19<sup>th</sup> March 2019