

Transport and Works Act 1992  
Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006  
Transport and Works (Inquiries Procedure) Rules 2004

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

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

#### **Introduction**

1. This Transport and Works Act order application seeks to secure the powers necessary to acquire land to allow an extension of the existing Metro system which would link Wednesbury and Brierley Hill and serve the communities along that route, including Dudley town centre.
2. This application is more narrow in scope than most Transport and Works Act order applications as authority to construct and operate the tram and the necessary deemed planning permission have already been granted. The purpose of the current application is to ‘refresh’ powers of compulsory acquisition which have expired.

#### **The Extant Powers**

3. The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005<sup>1</sup> authorised the construction of a tramway from Wednesbury to Brierley Hill (“the 2005 Order”).
4. The powers conferred by the 2005 Order to construct and operate the tram system remain extant.
5. At the same time as making the 2005 Order the Secretary of State directed that conditional<sup>2</sup> planning permission be deemed to be granted for the works authorised by the order<sup>3</sup>. The pre-commencement conditions attached to the planning

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<sup>1</sup> WBHE B2

<sup>2</sup> WBHE B7 – the list of conditions

<sup>3</sup> Decision letter dated 20<sup>th</sup> December 2004: WHBE B6 paragraph 7

permission have been discharged<sup>4</sup>, the permission has been implemented<sup>5</sup> and it remains extant.

6. The 2005 Order conferred power to acquire land compulsorily, and conferred rights over land<sup>6</sup>. Those powers were subject to a five-year time limit<sup>7</sup> which expired in 2010.
7. Owing to lack of Government funding at the time, the scheme was not progressed in time to rely on the compulsory acquisition powers conferred by the 2005 Order.
8. Circumstances have changed since the compulsory acquisition powers expired. The West Midlands Devolution Deal and the HS2 Connectivity Package identified the Wednesbury to Brierley Hill Extension (“WBHE”) as a high priority<sup>8</sup>.
9. The establishment of the West Midlands Combined Authority<sup>9</sup> (“WMCA”) led to a more favourable funding climate, and in November 2017 £250m from the Transforming Cities Fund was allocated to the WMCA. The WMCA have allocated £207m towards funding the WBHE<sup>10</sup>. Further funding is to be provided the HS2 Connectivity Package and from the Black Country LEP<sup>11</sup>.
10. As the powers have been granted and funding is place, were it not for the need to acquire land the scheme could proceed. Indeed, if the land and rights could be acquired by agreement there would be no need for this TWA order.

### **The need for the TWA Order**

11. The purpose of the application before this inquiry is to renew the powers of compulsory acquisition so as to enable the benefits of the WBHE Metro extension to be realised.

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<sup>4</sup> WBHE B11 (Sandwell MBC) and WBHE F6 (Dudley MBC)

<sup>5</sup> Ellingham PoE 4.5.3 (APP/5.1) and WBHE B10, Adams PoE 5.12: APP/P1.1

<sup>6</sup> Part 3 of the 2005 Order

<sup>7</sup> Article 40 of the 2005 Order

<sup>8</sup> Adams PoE 8.7: APP/P1.1

<sup>9</sup> The WMCA was established by The West Midlands Combined Authority Order 2016: WBHE B3

<sup>10</sup> WBHE B15: paragraph 125(2)

<sup>11</sup> Adams PoE 8.8: APP/P1.1

12. A similar approach was taken in promoting the Birmingham city centre extension to the Metro system. Powers for phase 2 of that extension were conferred by a 2005 order<sup>12</sup> and compulsory acquisition powers were revived in a 2016 order<sup>13</sup>.
13. The applicant recognises that powers to acquire land compulsorily should only be conferred when there is a compelling case in the public interest; the evidence submitted makes out such a case.

### **Procedural Issues**

14. A note setting out how the procedural requirements relating to notification of the application and of this Inquiry have been satisfied has been produced<sup>14</sup>.

### **The Applicant**

15. The scheme is promoted by the West Midlands Combined Authority<sup>15</sup>.

### **Consultation**

16. Details of the consultation undertaken can be found in the Consultation Report<sup>16</sup>.

### **The Draft Order**

17. A draft Transport and Works Act 1992 order has been submitted<sup>17</sup>, and is accompanied by all the necessary additional information<sup>18</sup>.
18. The information submitted with the order application did not include an environmental statement (“ES”)<sup>19</sup>.

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<sup>12</sup> The Midland Metro (Birmingham City Centre Extension, etc.) Order 2005

<sup>13</sup> The Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016. This order also provided for a variation to the route.

<sup>14</sup> APP/INQ 5

<sup>15</sup> The West Midlands Combined Authority was established by The West Midlands Combined Authority Order 2016 SI 2016/653 WBHE B3. The functions of the applicant are described at section 2 of the WMCA Statement of Case

<sup>16</sup> WBHE A5

<sup>17</sup> WBHE A2

<sup>18</sup> As required by Rule 10 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

<sup>19</sup> Adams PoE 10.4-10.9 APP/P1.1

- a. The application is not for an EIA Order as defined in section 13A(4) of the Transport and Works Act 1992 as if made, it would authorise acquisition of land, it would not authorise works or other projects.
  - b. Rule 7(1) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 requires the submission of an environmental statement with an application “in relation to any proposed works which are to be covered by that application”. In this case there are no works to be covered by the application as the works have already been authorised by the 2005 Order.
19. The course of action followed in this case follows the approach taken in other cases. An example of such a case is the Felixstowe branch line TWAO<sup>20</sup>.
20. A further revised draft order (with a revised book of reference<sup>21</sup> and revised plans<sup>22</sup>) has been prepared and is put before the inquiry<sup>23</sup>.
- 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.

## The Scheme

### The Transport Corridor

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<sup>20</sup> WBHE F26

<sup>21</sup> APP/INQ 2.1

<sup>22</sup> APP/INQ 3

<sup>23</sup> APP/INQ 1

21. Current public transport provision in the Wednesbury to Brierley Hill corridor is almost entirely dependent upon buses, which in turn, rely on a congested road network.
22. It is striking that, since the closure of the South Staffordshire railway, a town the size of Dudley is not served by a railway station<sup>24</sup> – Dudley Port railway station lying some way from the town centre.
23. As a result of reliance on buses running on the road network journey times to and from Birmingham city centre from Brierley Hill and Dudley are lengthy<sup>25</sup> and unreliable.
24. There can be no dispute that the corridor is much in need of, and offers many opportunities for, regeneration, with particularly important opportunities arising in Dudley<sup>26</sup> and in the DY5 enterprise zone.

### **The Scheme Proposal**

25. The route alignment is shown in the drawings at Appendix 1 to Mr Collins' proof of evidence<sup>27</sup>.
26. Approximately 7km of the proposed 11.5 km long route of the WBHE extension will run along the former railway corridor. The route commences adjacent to the Midland Metro depot in Wednesbury and then runs west along the railway corridor until it reaches Tipton Road in Dudley where it emerges on to Castle Hill. It will provide much better public transport penetration into the centre of Dudley than the former station at the bottom of the hill, and will allow interchange at the bus station.
27. The route then runs along Duncan Edwards Way rejoining the former railway line at Cinder Bank. It then leaves the former railway line at Canal Street, to run to the offices at the Waterfront, to the Merry Hill Shopping Centre, and on to Brierley Hill.

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<sup>24</sup> Adams PoE 4.15: APP/P1.1

<sup>25</sup> WBHE D5b Table 7.5 on page 5-55

<sup>26</sup> Collins PoE 6.9.1 APP/P3.1

<sup>27</sup> APP/P3.3

28. The route will allow connectivity between important centres and facilities, and to major employment and retail centres, whilst also serving extensive residential areas.

### **The Policy Framework**

29. The relevant transport, planning and economic policy framework seeks to build on the success of the existing Metro system and to expand the network.

30. The 2026 Delivery Plan for Transport (approved in September 2017) and sets out the programme for implementation over the next ten years which includes the WBHE<sup>28</sup>.

31. The planning policy framework provides express support of the scheme. Policy TRAN 1 in the Black Country Core Strategy identifies the first priority for a Metro extension as being within the Walsall to Stourbridge corridor, providing high quality access to Merry Hill and Brierley Hill<sup>29</sup>. That policy priority is re-stated in the Issues and Options draft of the core strategy review<sup>30</sup>.

32. The WBHE is one of the priority actions for the Black Country Strategic Economic Plan<sup>31</sup>

33. The proposal is entirely consistent with, and advances the objective of, transport, economic and planning policies for the Black Country sub-region.

### **The Benefits of the Scheme**

34. Current levels of congestion adversely affect journey times and reliability and act as a barrier to accessing employment opportunities<sup>32</sup>. The scheme will contribute to overcoming that barrier by improving journey times and reliability within the Black Country and to and from Birmingham city centre.

35. The transport advantages of the scheme are reflected in the predicted increase in patronage. By 2031 the additional demand generated by the WBHE is expected to

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<sup>28</sup> WBHE E22

<sup>29</sup> WBHE E23 page 118

<sup>30</sup> WBHE E26 paragraph 6.1.36

<sup>31</sup> WBHE E35 page 84

<sup>32</sup> WBHE D7b paragraph 6.12

be approximately 5.3 million trips (p.a.)<sup>33</sup> an increase over the level of patronage otherwise expected on the Metro system of some 44%.

36. The economic case identifies and assesses the costs and benefits of the scheme. The latest iteration of the Business Case, which takes account of the revised cost estimate, shows that the scheme is assessed as being of high value for money<sup>34</sup>. The BCR is 2.03<sup>35</sup>.
37. Although its pure transport advantages provide ample justification for the scheme, its contribution to wider regeneration enhances its benefits and contribute to the compelling case for it. The overall economic impact of the scheme as well as direct and indirect benefits to the wider West Midlands economy was considered in a report prepared by Lichfields in August 2017. Given the significant regeneration opportunities along the route and the current absence of reliable high quality public transport, the economic benefits are assessed to be very substantial<sup>36</sup>. To take but one example it is anticipated that economic output in the study area will almost double, from £14.4bn to £28.6bn over the 25 year appraisal period<sup>37</sup>.

### **Funding**

38. As required<sup>38</sup> the application was accompanied by a funding statement<sup>39</sup>. That statement was based upon the outturn cost estimate at the time the application was made.
39. The Midland Metro Alliance has submitted a revised outturn cost estimate of £449.5m<sup>40</sup>.
40. The WMCA Investment Board has considered the revised outturn costs figures and the updated business case. In the report presented to the Investment Board recommendations were made in relation to the funding of the scheme. The sources

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<sup>33</sup> Carter PoE Table 3 on page 21: APP/2.1

<sup>34</sup> See Carter Sup PoE 2.2.3 for vfm categories: APP/P2.4

<sup>35</sup> Carter Sup PoE Table 1 on page 11: APP/P2.4

<sup>36</sup> WBHE D28 Table 6.1

<sup>37</sup> Carter PoE 3.4.39 APP/P2.1

<sup>38</sup>Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, Rule 10(3)(a)

<sup>39</sup> WBHE A6

<sup>40</sup> Adams Sup PoE 1.2

of funds are identified in Table 8.1 of the report<sup>41</sup>. The gap between the amounts already identified from the LEP, Government funding, and the WMCA contribution is to be provided by prudential borrowing.

41. The Investment Board accepted the recommendation made to it and resolved that the WMCA Board be recommended to approve the funding<sup>42</sup>. Final approval will be sought from the WMCA Board on 22<sup>nd</sup> March 2019.
42. The decisions made by WMCA ensure that funding is in place to deliver the scheme.

### **Compulsory Acquisition**

43. The need for the scheme is identified in Mr Adams' evidence<sup>43</sup> and is clear.
44. Mr Adams also identifies the transport benefits<sup>44</sup> and the regeneration benefits<sup>45</sup>.
45. The economic case is established by Mr Carter. As I have already noted, the Benefit Cost Ratio of 2.03:1 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.
46. The land requirements have been reviewed since the 2005 Order was made and have been reduced to that which is necessary for the construction, operation and maintenance of the scheme as now promoted<sup>46</sup>. It is important to note that those whose objections are maintained do not seek to argue that the order land is not required<sup>47</sup>.
47. The objectors' concerns relate, in the main, to temporary construction impact. The impacts arising, such as they are, are temporary, and comparatively minor when compared to the benefits. The objectors do not seek to challenge the merits of the

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<sup>41</sup> Appendix 1 to Adams Sup PoE Table 8.1 on page 13: APP/P1.5

<sup>42</sup> Appendix 11 to Adams Second Sup PoE – Item 132: APP/ q qP1.7

<sup>43</sup> Adams PoE Section 7.1 to 7.5: APP/P1.1

<sup>44</sup> Adams PoE 7.6-7.14 APP/P1.1

<sup>45</sup> Adams PoE 7.15-7.23 APP/P1.1

<sup>46</sup> Collins PoE 8.11: APP/P3.1

<sup>47</sup> Except for National Grid raise an issue in relation to plot 22

scheme, and do not suggest that there is any alternative means of securing its benefits.

48. 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.
49. To the extent that the rights afforded by Article 1 Protocol 1 of the European Convention on Human Rights are engaged, the deprivation of possessions is clearly justified in the public interest, and I invite you to so find in making your report. In so far as any Article 8 rights are engaged, I invite you to come to a similar conclusion.
50. There is a compelling case in the public interest for the order to authorise the promoter to acquire the necessary land and rights, without such authorisation the very many benefits associated with the scheme will not be realised in the public interest.

### **The Statement of Matters**

51. The Secretary of State has served a statement of matters. The matters identified are addressed in the Applicant's evidence<sup>48</sup>, and I do not address you on each one in this opening statement, but intend to do so in closing.

### **Objections and Support**

52. 24 objections were made to the application for the order.
53. Letters of support have been received, including from Dudley MBC, the Association of Black Country Local Authorities, Dudley Zoological Gardens, the Dudley Canal and Tunnel Trust, The Black Country Living Museum and Dudley College of Technology.
54. The approach taken by Dudley MBC is worthy of particular note. The Council view WBHE as "... potentially an economic regeneration game changer for Dudley."<sup>49</sup>

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<sup>48</sup> See Table 10.1 in Adams PoE APP/P1.1

<sup>49</sup> Collins Ap. 7 APP P3.3: letter from Dudley MBC 13<sup>th</sup> February 2019

55. It is notable that those objections which have been made do not seek to challenge the scheme on its merits. In fact, most objectors are generally supportive of the scheme. The objections seek to protect particular property and other interests.
56. It is also notable, but perhaps not unexpected given the clear benefits of the scheme, that the public at large have not objected to the proposals.
57. The promoter has sought to engage with objectors and to overcome their grounds for objection by taking appropriate steps to protect their interests. Those efforts have borne fruit. [20] objectors have withdrawn their objections.
58. The following objections remain:
- a. Jessops (OBJ/07)
  - b. Waterstones (OBJ/11)
  - c. McDonalds (OBJ/20)
  - d. TK Maxx (OBJ/22)
  - e. Tim Weller (OBJ/25L)
59. Of those remaining objectors:
- a. One has submitted a statement of case (Jessops).
  - b. None have submitted proofs of evidence.
60. Jessops, Waterstones, McDonalds, and TK Maxx are leaseholders in the Intu Merry Hill Shopping Centre. Their objections relate to plots 336 and 337<sup>50</sup> over which they have rights of access and which include parts of access roads to the shopping centre. The order would confer powers to acquire plot 336<sup>51</sup> and acquire rights over plot 337<sup>52</sup>.
61. McDonalds and TK Maxx:
- a. Do not object in principle to the scheme underlying the order<sup>53</sup>
  - b. Request that provision be made to maintain access to the shopping centre.
62. Waterstones:

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<sup>50</sup> WBHE A17 sheet 17

<sup>51</sup> WBHE A2 Draft order -Article 3(1) and schedule 1 part 1

<sup>52</sup> WBHE A2 Draft order -Article 6(1)(b) and schedule 1 part 2

<sup>53</sup> OBJ 20 – letter from Montagu Evans 29<sup>th</sup> January 2018 page 2, OBJ 21 – letter from Montagu Evans 29<sup>th</sup> January 2018 page 2, OBJ 22 – letter from Montagu Evans 29<sup>th</sup> January 2018 page 2

- a. Contend that insufficient detail has been provided as to how the construction works will be undertaken to minimise impact on them and other occupiers of the Merry Hill Shopping Centre.

63. Jessops

- a. Have rights, in common with others, over the private roads which give access to the shopping centre, including The Embankment and Central Way.
- b. Are concerned about potential interruption to access to the shopping centre during the construction period. That concern relates to plot 336<sup>54</sup>.
- c. Contend that any loss of profits arising as a result of interference with private rights of way will not be recoverable under the compensation code and argues that special provision should be made to provide for compensation.
- d. Are concerned that Intu will seek to recoup any costs they (Intu) incur in making good damage to private roads from Jessops through the service charge.

64. Land in the vicinity of The Embankment is required in order to allow works to construct the tramway and tramstop. Those works include alterations to the Level Street roundabout junction<sup>55</sup>, the construction of a retaining wall or viaduct<sup>56</sup> and the construction of pedestrian bridge over The Embankment<sup>57</sup>.

65. As a result, The Embankment and Central Way will need to be closed from time to time during the construction phase, but will continue to be available so far as is reasonably practicable. Following the construction phase The Embankment will be reinstated as a two-way access road for all traffic.

66. Construction activities will be regulated by Part 2 of the Code of Construction Practice which is to be submitted to and agreed by Dudley MBC<sup>58</sup>. It is anticipated that a number of measures will be taken to seek to reduce the impact on traders and visitors to the Merry Hill Shopping Centre. For example, the Level Street

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<sup>54</sup> Jessops Statement of Case paragraphs 14 and 15

<sup>55</sup> Collins Ap.4 APP/P3.3 – Level Street Indicative Construction Plan

<sup>56</sup> Collins PoE 8.12.2 APP/P3.1

<sup>57</sup> As illustrated at page 117 of the Street Design Guide: WBHE F17

<sup>58</sup> WBHE B7 – condition 7 attached to the deemed planning permission

Indicative Construction Plan<sup>59</sup> assumes that peak time working will be avoided as far as reasonably practicable during the busiest shopping periods (e.g. October to 7<sup>th</sup> January from 0900 to 2000).

67. In order to seek to further mitigate the impact arising while the construction works are being carried out the applicant has entered into unilateral deeds of undertaking by which it agrees to use reasonable endeavours to ensure that access rights over The Embankment and Central Way will continue to be available as far as is reasonably practicable<sup>60</sup>.
68. It must be remembered that access provided by The Embankment and Central Way is but one of a number of routes giving access to the shopping centre.
69. It is the applicant's case that interference with the rights of access are the minimum necessary to ensure that a tramway and tramstop can be provided to give access to Merry Hill and that the temporary disadvantage arising as a result of limited impact on one of many access roads to the Merry Hill Shopping Centre is far outweighed by the benefits of the scheme.
70. Jessops pursue a point relating to the compensation provisions.
71. 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>61</sup>. The provisions in the order conform to the model clauses.
72. 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>62</sup>.

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<sup>59</sup> Collins Ap.4 APP/P3.3 – Level Street Indicative Construction Plan – paragraph 3 on page 33

<sup>60</sup> See for example WBHE F8 paragraphs 4.1.1 and 4.1.2

<sup>61</sup> Fowler PoE 6.11 APP/6.1

<sup>62</sup> Transport and Works (Model Clauses for Railways and Tramways) Order 1992

- 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.
73. A late objection has been received from Tim Weller<sup>63</sup>. The WMCA have provided a written rebuttal to that objection<sup>64</sup>.

## Conclusions

74. There is no substantive challenge to the conclusions set out in the Applicant's Statement of Case.
75. There is a clear need for the scheme to address the serious deficiencies in current public transport provision on the Wednesbury to Brierley Hill corridor, and pressing need for action to be taken to facilitate regeneration, to allow those living in this part of the Black Country access to the sub-region and wider conurbation.
76. The remaining objectors' concerns relate, in the main, to temporary adverse impacts during the construction phase.
77. This scheme will deliver very significant benefits which far outweigh any temporary adverse impacts, and the order should be made, so that those benefits can be realised.

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Neil Cameron QC

19<sup>th</sup> March 2019

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<sup>63</sup> OBJ 25/L

<sup>64</sup> APP/R3.1 and 3.2