
UNILATERAL UNDERTAKING BY DEED

given by

WEST MIDLANDS COMBINED AUTHORITY

to

JESSOP EUROPE LIMITED

To deal with objection raised by Jessops Europe Limited (reference OBJ/7) in connection with the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order which would confer powers of compulsory acquisition on the West Midlands Combined Authority for the works authorised by the 2005 Order being the extension of the Midland Metro from a junction with existing Metro line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley.

THE DEED IS A OBLIGATION BY UNILATERAL UNDERTAKING and is made the

4th

day of

December

2018

and is given by

(1) **WEST MIDLANDS COMBINED AUTHORITY** of 16 Summer Lane Birmingham B19 3SD ("WMCA")

to

(2) **JESSOPS EUROPE LIMITED** (Company No. **08384909**) whose registered office is situated at Network House Third Avenue Globe Park Marlow Buckinghamshire SL7 1EY ("the Objector")

WHEREAS

- (A) On 12 December 2017 WMCA has made an application to the Department for Transport under section 6 of the Transport and Works Act 1992 for the Order in respect of the Metro Scheme.
- (B) The Objector occupies Unit L64 of the Merry Hill Shopping Centre at Brierley Hill ("Property").
- (C) The New Order would confer powers upon WMCA either for temporary use and/or permanent acquisition of the land or new rights over The Embankment, Waterfront Way and Central Way which are access routes into the Centre. Other routes into and within the Centre are Adopted Highways which are not subject to the powers of the New Order
- (D) The Objector has rights of access over the Embankment as prescribed by their lease of the Property and these rights relate to plot 336 as described in the book of reference to the New Order.
- (E) The Objector has submitted an Objection to the Secretary of State for Transport in respect of the Transport and Works Act Order application for the New Order and the

provisions of this Deed are to deal with the concerns raised by the Objector in their Objection.

NOW THIS DEED WITNESSES as follows:-

1. **THE DEED**

1.1 On the basis that the New Order is made the provisions of this Deed shall be binding on the WMCA.

2. **INTERPRETATION**

2.1 In this Deed in addition to the terms hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

“2005 Order” means the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)

“Centre” means the Merry Hill Centre, Dudley

“Metro Scheme” means the Wednesbury to Brierley Hill Extension to the Midland Metro from a junction with the existing Metro line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley as authorised by the 2005 Order

"New Order"	means the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order
"Objection"	means the objection dated 29 January 2018 and attached to this Deed as Appendix 1 (reference OBJ/7)

2.2 In this Deed where the context so requires:-

2.2.1 the singular includes the plural and vice versa

2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified

2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed

2.2.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

3. **COMMENCEMENT**

The provisions of this Deed shall have immediate effect upon the completion of this Deed

4. **COVENANTS BY THE WMCA**

4.1 WMCA covenants that on the basis that the New Order is made by the Secretary of State for Transport:

4.1.1 That WMCA will use reasonable endeavours to ensure that the access rights that the Objector currently enjoys under its current lease is not detrimentally affected by the authorised works under the New Order for the Metro Scheme as far as is reasonably practicable.

- 4.1.2 That any powers to permanently acquire or temporary use the Embankment will take into account the rights that have been enjoyed by the Objector under their lease subject to the changes envisaged in the 2005 Order and WMCA will 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.
- 4.1.3 WMCA will provide information displays at the Centre to inform traders and visitors to Centre of the progress of the Works and how these may affect entry and access to the Centre subject to the Centre's owner providing appropriate space for this purpose and in the event that such space is not provided WMCA will make alternative arrangements to supply such information to fulfil the same purpose as far as is reasonably practicable.
- 4.1.4 Any changes to traffic flows along the Embankment will be fully signed to facilitate continued general access to the Merry Hill Centre.
- 4.1.5 WMCA will liaise with the owner of the Centre in respect of the following which relates to the Works:
- 4.1.5.1 the Constriction Strategy;
- 4.1.5.2 the Construction Operation Management Plan; and
- 4.1.5.3 the Communication Strategy
- with a view of minimising the effect of the Works on access to the Property.

5. **MISCELLANEOUS**

- 5.1 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the WMCA under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a combined authority
- 5.2 If the Order is quashed revoked or otherwise withdrawn or if the powers under the Order expires or the Objector no longer has a registered interest in the Property this Deed shall cease to have effect

6. **NOTICES**

6.1 Any notice under this Deed shall be in writing and signed on behalf of the party giving it and may be served by delivering it in person or sending it by First Class Royal Mail Signed For to the address set out in this Deed or such other address as the parties agree to in writing in advance of any service of notice.

6.2 The notice as served under clause 6.1 will be validly received when provided in person or after 24 hours of the notice being sent by First Class Royal Mail Signed For provided it does not fall on a Saturday or Sunday or a bank holiday in England in which case the valid receipt date will be the next working day.

7. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby agreed and declared that unless specifically agreed the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

8. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the Law of England

EXECUTED AS A DEED the day and year first written

THE COMMON SEAL of)

WEST MIDLANDS COMBINED AUTHORITY)

was hereunto affixed in the presence of:)

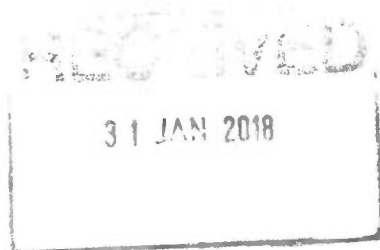
Tim Mark



Authorised Signatory

APPENDIX 1

Objection letter



ABJ/7

**MATTHEW
BODLEY
CONSULTING**

Our ref JMSB

Your ref

5th Floor,
15 Hanover Square
London
W1S 1HS
Tel 020 7399 0600
Mob 07814 545287

Chartered Surveyors

www.matthewbodleyconsulting.com

The Secretary of State for Transport
c/o Transport and Works Act Orders Unit
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

By Post and Email
([transportandworksact@](mailto:transportandworksact@dft.gsi.gov.uk)
dft.gsi.gov.uk)

29 January 2018

Dear Sir

**THE MIDLAND METRO (WEDNESBURY TO BRIERLY HILL LAND ACQUISITION) ORDER
NOTICE NO: 0010-7764N_140
PLOTS: 336 AND 337
OBJECTION BY JESSOPS EUROPE LIMITED**

I act on behalf of Jessops Europe Limited (hereafter referred to as "**Jessops**" or my client). I am instructed to submit an objection to the abovementioned draft Transport and Works Act Order (the "**TWAO**"), which has been made by the West Midlands Combined Authority (the "**Authority**").

Jessops occupies unit L64 of the Merry Hill Shopping Centre at Briery Hill (the "**Property**") by way of a leasehold interest. The lease grants my client rights over the private roads which provide access to and egress from the Property. Two of the roads which serve the Property (the Embankment and Central Way) have been included in the TWAO for land acquisition and new rights respectively.

I am instructed to object to the TWAO on Jessops' behalf on the ground that the acquisition and taking of rights over the access roads could have an unacceptable adverse impact on the business undertaken by Jessops from the Property, and the other occupiers of the shopping centre.

This objection has been submitted in order to protect my client's position. It is hoped that the Authority can provide my client with assurances regarding access to and egress from the Property both during and on completion of the works, which will enable the withdrawal of the objection.

Please accept this letter as formal notice of Jessops' objection to the TWAO. My client wishes to reserve its position in respect of its objection being considered at public inquiry and to make representations and call evidence at inquiry in necessary.

Please could you confirm safe receipt of this letter and direct all future correspondence in connection with the TWAO to me on my client's behalf.

Yours faithfully

A handwritten signature in black ink that reads "Matthew Bodley". The signature is written in a cursive style with a large initial 'M' and a long, sweeping underline.

Matthew Bodley
For and on behalf of Matthew Bodley Consulting Ltd

matthew@matthewbodleyconsulting.com
Tel: 020 7399 0600 Mob: 07814 545287

cc Scott Worger, Retail Operations Director, Jessops

OBJ/7

Angela Foster

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 29 January 2018 10:03
To: TRANSPORTANDWORKSACT
Subject: The Midland Metro (Wednesbury to Brierly Hill Land Acquisition) Order - Objection on behalf of Jessops Europe Ltd
Attachments: Jessops Objection 2018-01-29.pdf

Dear sirs

Please find attached an objection against the abovementioned draft Transport and Works Act Order on behalf of Jessops Europe Ltd. A copy has also been sent by first class mail in today's post.

Please could you acknowledge receipt.

Regards

Matthew Bodley MRICS
Matthew Bodley Consulting
5th Floor, 15 Hanover Square, London W1S 1HS
T: +44 (0)20 7399 0600
M: +44(0)7814 545287
E: matthew@matthewbodleyconsulting.com

www.matthewbodleyconsulting.com

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