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23 October 2017

The Secretary of State for Transport
c/o Transport and Works Act Orders Unit
Department for Transport Zone 1/14/18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

F.A.O. Caroline O'Neill

By Email & post: transportandworksact@dft.gsi.gov.uk

Dear Madam

**THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER
PLOTS NO. 11 AND 12 – KINGS PARADE, DALE END, BIRMINGHAM, BH 7LN**

**MCDONALD'S REAL ESTATE LLP, MCDONALD'S RESTAURANTS LIMITED AND DEAN
CHAPMAN (TRADING AS MCDONALD'S)**

We are instructed by McDonald's Real Estate LLP, McDonald's Restaurants Limited ("the Companies") and Dean Chapman ("the Franchisee") in connection with the above Order which the West Midlands Combined Authority ("the Authority") submitted to the Secretary of State under Section 6 of the Transport and Works Act 1992 on 4 October 2016.

We write further to the letter of objection dated 15 November 2016 which we submitted on behalf of the Companies and the Franchisee, a copy of which is enclosed. We can confirm that the Companies and the Franchisee are working constructively with the Authority in an attempt to resolve outstanding concerns and withdraw their objection to the Order. In this regard, and so as to save potential Inquiry time and associated costs, the Companies and the Franchisee respectively request that they do not submit proofs of evidence at this point but simply reserve their right to submit further evidence in support of their objection and to be heard at the Inquiry. In this latter regard it would be the intention of the Companies and Franchisee to submit further evidence immediately prior to the commencement of the Inquiry in the event that it was not possible to resolve all of their outstanding concerns.

We trust that the above makes the position of the Companies and Franchisee clear at the present time.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Owen Roberts', written over a horizontal line.

MONTAGU EVANS

CC. Programme Officer – info@owen-roberts.co.uk

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15 November 2016

SPECIAL DELIVERY

The Secretary of State for Transport
c/o Transport and Works Act Orders Unit
Department for Transport
Zone 1/14-18
Great Minster House
33 Horseferry Road
London
SW1P 4DR

By Email and Post:
transportandworksact@dft.gsi.gov.uk

Dear Sir or Madam

**THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006 – RULE 15 (1)
THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER
PLOTS No. 11 AND 12 – KINGS PARADE, DALE END, BIRMINGHAM, BH7LN
MCDONALD'S REAL ESTATE LLP, MCDONALD'S RESTAURANTS LIMITED
DEAN CHAPMAN (TRADING AS MCDONALD'S)**

We are instructed by McDonald's Real Estate LLP, McDonald's Restaurants Limited, ("the Companies") and Dean Chapman ("the Franchisee") in connection with the above Order, which the West Midlands Combined Authority ("the Authority") submitted to the Secretary of State under Section 6 of the Transport and Works Act 1992 on 4 October 2016.

Part of our clients' interests in land extend to the basement, ground and first floors of 6-7 Kings Parade, Dale End which comprises Plot No. 11 as shown on the Order Map. Our clients hold occupational and reversionary leases in this building (the Premises). The Companies' leasehold interest also extends over 5 Kings Parade, Dale End which is identified as Plot No. 12 as shown on the Order Map. This building is leased to and occupied by a third party. In this letter, 5-7 Kings Parade are collectively referred to as the Property.

The Parties have occupied the Premises continuously for a period in excess of 20 years providing a day time / night time fast service restaurant offer which is open to customers daily. The Premises form an important part of the retail offer in Dale End. The Premises occupy a prominent trading position whilst the restaurant provides employment for many local staff and trades strongly.

The aim of the proposed Order, as set out within the Application to the Secretary of State for Transport, is to authorise the Authority to construct and operate a new tramway in the City of Birmingham as an extension to

the existing Midland Metro Tramway System. The proposed new tramway would join the existing tramway from the junction of Ball Street and Corporation Street, running east along Ball Street, across Moore Street Queensway, continuing south under the proposed new High Speed 2 Station at Curzon Street and along New Canal Street and Meriden Street to High Street, Deritend.

The Order, if confirmed as currently drafted, would enable the permanent acquisition of the Property under Section 27 of the Order. It is understood that the Property will need to be demolished in its entirety to accommodate the scheme.

The Order includes at Section 29, for the application of the Compulsory Purchase (Vesting Declarations) Act 1981. Whilst the Order provides for certain revisions to the 1981 Act, the Order does not propose any change to the timescale between the Notice of Intention and the earliest date of possession than that described within the 1981 Act. Under the 1981 Act, the GVD can be executed on a date which is at least 2 months after notice of intention (the Section 3 Notice) was first published. The date on which the land is stated to vest in the authority may be no earlier than 28 days following completion of service of the Section 3 Notice. Therefore the minimum period between the first Notice and the taking possession may be as short as 3 months.

On behalf of our clients, we are writing to **formally object** to the Order. The grounds for objection are as follows:-

1. Our clients do not accept that the Authority has adequately justified the scheme requirement for acquiring and demolishing the property. In this regard, our clients consider that the Authority should review the present scheme alignment and revise this such that this is situated solely within existing public highways and the resultant land acquisition from third parties is limited accordingly. The current alignment will result in the removal of the Property and adjoining premises at Kings Parade removing a significant part of the retail offer within Dale End. This will have an adverse social, economic and environmental impact on the local area and accordingly is not justified in the public interest.
2. The Statement of Aims for the scheme proposals confirms that a key underlying reason for promoting the Order and the underlying scheme is to “maximise the local economic benefits before and after the arrival of High Speed 2 (HS2) in the region”. However, the Bill promoting HS2 has yet to receive Royal Assent and a final funding commitment from the Government. Accordingly, given the scheme is predicated on the construction of HS2 and specifically the proposed station at Curzon Street, the Order is premature and should not be approved.
3. The Funding Statement for the proposals includes an estimated total cost of £137.2M to implement the scheme. The Statement identifies and confirms the sources of funds to meet the current estimated expenditure. However, based upon our experience of other infrastructure schemes, we consider there is a strong possibility that scheme costs will ultimately exceed the initial estimate. There does not appear to be any provision for an additional funding commitment to cover any subsequent funding shortfall which may arise and as such our clients are not convinced that the scheme is capable of delivery. Any subsequent delay to the implementation of the scheme on account of a funding shortfall would adversely affect our clients’ ability to operate the business from the premises and would have a generally adverse effect on Dale End. The Order should not be approved without evidence that additional funding can be committed in the event that scheme costs increase.

4. Without prejudice to our clients' objections under paragraphs 1 to 3 above, they are concerned that there will be insufficient time and opportunity to relocate and safeguard the occupying business in advance of the scheme requirement. In this regard, there have been only very limited discussions between the Authority and our clients regarding the Authority's requirement for the premises. There have been no discussions offered by the Authority regarding the provision of a longer notice period and assistance with relocation of the restaurant business.

The Companies own and operate other fast service restaurants in the City of Birmingham. The restaurants are located in such a way as to maximise custom, with each restaurant having adjoining catchment areas. In order to maintain current optimum representation, and for the business to retain existing custom, there is therefore a very limited geographical area in which the Companies can reasonably search for and acquire suitable alternative premises. As a result of this and the consequent limitations on stock to choose from, it is essential that the Companies have a sufficient period of time in which to try and secure alternative premises. This includes for finding premises, assessing viability, resolving terms for acquisition and organising relocation. The period of 3 months from initiating Compulsory Purchase powers and taking vacant possession of the property is wholly inadequate for this purpose, and must be extended.


In order to address our clients concerns, the Authority should accordingly provide them with a formal commitment to purchase the Property in advance of the Order being determined, as though Compulsory Purchase powers have been exercised, in the event that they are able to secure alternative premises. In the absence of such a commitment our clients contend that the Order should not be confirmed.

Our clients maintain that the Order should not be confirmed until the concerns and grounds of objection raised by them have been satisfactorily addressed.

We would be grateful if you could acknowledge safe receipt of this letter. Furthermore, we would ask for the objection to be considered at any Public Inquiry held to assess the merits of the proposed Order. We reserve the Parties right to add to or amend these grounds of objection.

Should you require any further information or clarification of the issues raised, then we would be grateful for all contact and correspondence to be addressed to Tim Earl of this firm in the first instance.

Yours faithfully



MONTAGU EVANS LLP