

Transport and Works Act 1992

**Transport and Works (Inquiries
Procedure) Rules 2004**

**THE PROPOSED MIDLAND METRO
(BIRMINGHAM EASTSIDE EXTENSION)
ORDER**

**Proof of Evidence
On Development Matters**

**Carolyn Kenney of Hammerson plc
on behalf of
Martineau Galleries No 1 Limited
and
Martineau Galleries No 2 Limited**

October 2017

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1. **EXECUTIVE SUMMARY**

- 1.1 My name is Carolyn Kenney. I am an Assistant Director at Hammerson plc where I have been employed in the development team since September 2001, having previously worked for Railtrack plc and Drivers Jonas.
- 1.2 I am duly authorised to present evidence on behalf of Martineau Galleries No 1 Limited and Martineau Galleries No 2 Limited (together "MG") which is 100% owned by Hammerson plc.
- 1.3 On 4 October 2016 the West Midlands Combined Authority ("the Applicant") made an application under sections 1 and 5 of the Transport and Works Act 1992 for an order ("the Order") to authorise the construction and operation of an extension to the Midland Tramway in the City of Birmingham ("the Tramway Extension").
- 1.4 MG owns long leasehold interests in various parcels of land which would be affected by the Order and additional long leasehold interests in the wider Martineau Galleries site. MG contend that the Order as presented represents an unfair and unnecessary fetter on MG's aspirations to bring forward a comprehensive redevelopment scheme on the wider site, including the affected land.
- 1.5 Having considered the nature and extent of the powers sought, MG objected to the application by letter dated 14th November 2016 on two grounds:
- (1) The extent of land proposed for permanent acquisition; and
- (2) The proposed power to acquire rights to affix equipment (etc) to any building constructed at any time within MG's ownership.
- 1.6 My evidence addresses these grounds and draws on, and is informed by, evidence presented by Ruth Jeffs on technical matters and evidence presented by Andrea Arnall on planning.

Ground 1

- 1.7 MG object to the extent of land which the Applicant would be authorised to permanently acquire under the Order (if approved).
- 1.8 There is no compelling case in the public interest for the Applicant to be granted the rights of permanent acquisition sought in the Order as drafted, in relation to the entirety of the land comprised in plots 11-16 and 20.
- 1.9 It is acknowledged in respect of plots 11-16 and 20 that there is a need for demolition of the existing buildings at Kings Parade (situated on plots 11-

16), and for a portion of this land to be retained permanently for the construction and operation of the Tramway Extension.

- 1.10 However, MG maintain that demolition of Kings Parade could be effected without permanent acquisition of the whole of MG's interest in plots 11-16 and 20. Clause 34(1) of the draft Order expressly permits the Authority to enter upon and take temporary possession of any land within permanent limits and to "(b) remove any buildings and vegetation from that land".
- 1.11 Temporary possession would ensure that the purpose of the Order, namely the delivery and ongoing operation of the Metro could be achieved but that MG's genuine and long held intent to bring forward a comprehensive scheme on the entirety of the site not required would not be compromised.

Ground 2

- 1.12 The draft Order identifies plots 5 and 26 as within the limits of 'Land with Rights to Attach Equipment to Buildings'. As such, pursuant to article 19 of the draft Order the Applicant will be authorised, if the Order is confirmed as applied for, to affix equipment to any building located within this area at any time.
- 1.13 The acquisition of this right in relation to plots 5 and 26 is unnecessary. In relation to plot 5, as described in Ruth Jeffs Proof of Evidence, it will be possible to erect poles to provide support for the necessary catenary fixings on the land adjacent to Plot 5 in which MG currently has an interest. This land is being permanently acquired as part of Plots 4 and 6.
- 1.14 In relation to plot 26, a tram stop is to be located broadly south of the apex of plot 26 and – as explained in Ruth Jeffs' Proof of Evidence - the land and works plans submitted with the Application clearly show sufficient land in the vicinity of the proposed tram stop where any such necessary equipment could be located.
- 1.15 Further, the right to affix equipment as sought in the Order would serve as a constraint on the realisation of the redevelopment objectives for the wider Martineau Galleries site and would inevitably lead to additional cost and inconvenience that could be avoided.

SUMMARY

- 1.16 In summary, MG has pursued, for a number of years, a strategy to redevelop its land holding in the wider Martineau Galleries site. MG (and Hammerson) remain committed to bringing forward a comprehensive scheme and have to date invested significant financial and professional resources in achieving that goal.

- 1.17 The proposed powers under the Order to permanently acquire all land in Plots 11-16 and 20 are excessive as it is acknowledged that part of the land within those parcels will only be required temporarily. MG maintains that the Promoter should not, therefore, be granted powers to permanently acquire that land, allowing MG, in co-operation with BCC, to bring forward a comprehensive redevelopment of the entirety of the land not required permanently for the operation of Metrolink. This is in accordance with adopted planning policy (as discussed by Andrea Arnall in her Proof of Evidence) and will ensure that aspirations to create a quality development at this important gateway location can be achieved.
- 1.18 It is also maintained that the proposed powers to affix equipment to buildings on Plots 5 and 26 represent an unnecessary fetter on the redevelopment of those buildings as part of the wider site. It is evident that the buildings will be demolished in the short to medium term and it will therefore be impossible for any equipment then affixed to remain in place. This will necessitate an alternative solution being found in due course which would need to remain in place for an extended period. MG contend that this alternative should in fact be the preferred permanent approach and that powers to affix equipment to buildings at any time on Plots 5 and 26 should be removed from the Order.

2. **INTRODUCTION**

- 2.1 My name is Carolyn Kenney. I am an Assistant Director at Hammerson plc where I have been employed in the development team since September 2001, having previously worked for Railtrack plc and Drivers Jonas.
- 2.2 I am duly authorised to present evidence on behalf of Martineau Galleries No 1 Limited and Martineau Galleries No 2 Limited (together "MG") which is 100% owned by Hammerson plc.
- 2.3 On 4 October 2016 the West Midlands Combined Authority ("the Applicant") made an application under sections 1 and 5 of the Transport and Works Act 1992 for an order ("the Order") to authorise the construction and operation of an extension to the Midland Tramway in the City of Birmingham ("the Tramway Extension"). The Order includes powers for the compulsory acquisition of land and of rights over land (including the rights to affix equipment (etc) to buildings), the temporary use of land, the stopping up of streets, street works and ancillary works.
- 2.4 MG owns long leasehold interests in various parcels of land which would be affected by the Order. Having considered the nature and extent of the powers sought, MG objected to the application by letter dated 14th November 2016 on two grounds:
- (1) The extent of land proposed for permanent acquisition; and
 - (2) The proposed power to acquire rights to affix equipment (etc) to any building constructed at any time within MG's ownership.
- 2.5 A Statement of Case was submitted in May 2017 providing further detail in support of the objection and outlining the areas that would be dealt with in evidence.
- 2.6 My evidence will provide the context for Hammerson's interests in a number of the plots identified by the Order and summarise the affected land. I will then deal with each ground in turn and will demonstrate that the Order as presented represents an unfair and unnecessary fetter on MG's aspirations to bring forward a comprehensive redevelopment scheme on the wider Martineau Galleries site, including the affected land. In doing this, my evidence draws on, and is informed by, evidence presented by Ruth Jeffs on technical matters and evidence presented by Andrea Arnall on planning.

3. **CONTEXT TO HAMMERSON'S (under its MG subsidiary) INTERESTS IN THE ORDER LAND**

- 3.1 Hammerson plc has a long running and extensive involvement with Birmingham City Centre and has invested hundreds of millions of pounds in it over the last 20 years. The most recent acquisition was the purchase in February 2016 of Grand Central, a new retail development sitting above New Street station.
- 3.2 Hammerson's first interest in Birmingham dates back to the 1990's with the ownership of the original Bull Ring Estate and the Rotunda. This area was being promoted by Hammerson for a comprehensive retail led regeneration scheme.
- 3.3 At the same time, Land Securities plc and Henderson Investors were promoting the redevelopment of their land holdings in Birmingham – including the Martineau Galleries site – for a significant retail scheme. Recognising the commercial difficulties in bringing forward two similar and competing schemes, the parties came together and agreed that a phased and co-ordinated delivery of development on their collective land holdings should be pursued. In February 1999 the formation of the Birmingham Alliance (the "Alliance") was announced whereby the majority of the land holdings were pooled into a single entity with each party having a third share in the vehicle.
- 3.4 The first element of this phased development was the delivery of a small scale retail and catering scheme on land to the west of Bull Street. This scheme, known as Martineau Place, opened in September 2001.
- 3.5 The second phase was the redevelopment of the Bull Ring Estate and the refurbishment of the Rotunda. This substantial scheme opened in September 2003 with the retail element, trading as the Bullring, comprising some 127,000 sq m of floorspace on three levels with key traders including Selfridges and Debenhams plus around 160 other shops and restaurants.
- 3.6 The third and final phase was to be the redevelopment of the Martineau Galleries site on land to the east of Bull Street. A planning application was submitted in December 2005 for a mixed use scheme of up to 266,000 sq m. Consent was given in December 2006 for the scheme to comprise up to: 85,000 sq m of retail floorspace; 10,000-25,000 sq m of office; 50,000 sq m of residential (340-850 units); 30,000 sq m of hotel (to be part of the residential allocation); 5,000 sq m for a cultural facility; 20,000 sq m for leisure/casino use and 2,550 car parking spaces.

- 3.7 In September 2007 a development agreement was signed with Birmingham City Council (BCC), who own the freehold interest in much of the wider site, to govern the basis for the redevelopment of the land. It was assumed that any freehold land within the proposed site but outside the ownership of BCC would be acquired by private treaty or, if necessary, by the use of compulsory purchase powers. The agreement included provisions for the surrender of the existing leasehold interests in the site and the grant by BCC of a new 250 year ground lease across the entire development site. The proposed demise plan is included in the appendices as Appendix 1 and shows the extent of the land which includes the whole of Plots 5, 11-18, 26-28; the majority of Plots 9, 19 and 20 and part of Plot 25.
- 3.8 The parties to the agreement were as follows: 1) Birmingham City Council; 2) Martineau Galleries Limited Partnership; 3) Martineau Galleries No 1 Limited and Martineau Galleries No 2 Limited; 4) Land Securities Property Holdings Limited; 5) Hammerson plc and 6) Pearl Assurance plc.
- 3.9 The development did not proceed as envisaged for a variety of reasons. The planning consent no longer reflected the market potential of the site which had moved away from the significant amount of retail floorspace and suggested a greater proportion of office and residential accommodation. The convoluted ownership structure also caused difficulties in reaching a consensus view and reconciling differing corporate objectives. Finally, the development agreement was terminated in April 2014 and the planning consent expired in December of that year.
- 3.10 Remaining committed to delivering a comprehensive development scheme on the site and recognising the barriers to bringing this forward, Hammerson plc completed the acquisition of the interests of the other parties in March 2015, becoming the sole owner (under its MG subsidiary) of the various leaseholds, including those in Kings Parade.
- 3.11 From this time, there has been uncertainty brought about by emerging proposals for HS2 and the Metro extension with the impact of these proposals on the site being unclear. However, as explained by Andrea Arnall in her Proof of Evidence, what is certain is BCC's aspiration, as set out in relevant policy/masterplans, for the high quality redevelopment of this site, and Hammerson plc's commitment to that objective.
- 3.12 The making of the application for the Order in October 2016 finally confirmed the extent to which the site would be affected by the Metro extension and prompted MG to submit an objection as described.

4. **LAND AFFECTED**

- 4.1 MG owns long leasehold interests in a number of parcels of land affected by the draft Order. Those parcels of land, identified in the Book of Reference submitted in support of the Application and shown on the Works and Land Plans submitted with the Application, comprise plots numbered 4, 5, 6, 11-16, 18, 20 and 25-28.
- 4.2 Plots 4, 6, 11-16, 20 and 25 are shown shaded blue on Works and Land Plans – Sheet No.1, comprising land within the 'limit of deviation and of land to be acquired or used'. They thus fall within the 'permanent limits' as defined by article 2 of the draft Order. As such the draft Order, if approved, would give the applicant power to permanently acquire the full extent of each of these plots of land.
- 4.3 MG raises no objection in relation to the proposed powers as they affect plots 4 and 6.
- 4.4 Plots 11-16 and 20 currently comprise a row of shops known as Kings Parade and a yard area behind used for servicing and car parking. MG owns the long leasehold interests in these plots under two leases from the freeholder Horton Estates and King Edward Schools. It is to these plots (or parts thereof) that the first ground of our objection relates.
- 4.5 Plots 5 and 26 are shown shaded yellow on Works and Land Plans – Sheet No.1, and are therefore within the limits of land to which rights to affix equipment (etc) to buildings would accrue, pursuant to clause 19 of the draft Order. It is in relation to these plots that the second ground of our objection applies.
- 4.6 Plots 18, 27 and 28 are shaded green on Works and Land Plans – Sheet No.1, and thus within 'limit of land to be used temporarily'. These plots of land are identified in Schedule 7 of the draft Order as land of which temporary possession may be taken for the following specified purposes:
- Plot 18: Stopping up existing highway and replacing with landscaped area;
- Plot 27: Highway works alterations to car park access; and
- Plot 28: Construction compound.
- 4.7 MG raises no objection in relation to Plots 18, 27 and 28 but does note that their proposed temporary use may impact on MG's ability to bring forward the delivery of a comprehensive redevelopment of the site until that temporary use has ceased.

5. **GROUNDS OF OBJECTION**

5.1 MG maintains its objection to the Order on two primary grounds:

5.1.1 the current scheme proposals and the power to acquire set out in the draft Order goes beyond the power necessary to deliver the scheme and as such represents an unjustified interference with MG's property rights.

5.1.2 the acquisition of rights to attach equipment to the buildings comprising plots 5 and 26 is unjustified

Ground 1

5.2 MG object to the extent of land which the Applicant would be authorised to permanently acquire under the Order (if approved).

5.3 There is no compelling case in the public interest for the Applicant to be granted the rights of permanent acquisition sought in the Order as drafted, in relation to the entirety of the land comprised in plots 11-16 and 20.

5.4 It is acknowledged in respect of plots 11-16 and 20 that there is a need for demolition of the existing buildings at Kings Parade (situated on plots 11-16), and for a portion of this land to be retained permanently for the construction and operation of the Tramway Extension.

5.5 However, there are no proposals for the permanent use of the remainder of the land comprised within those plots – indeed it is stated that this land would be 'temporarily landscaped prior to Martineau Galleries Phase 2 development'. It can only be concluded that the permanent use of such land would therefore most likely be as part of a comprehensive redevelopment of the wider area brought forward by MG in co-operation with BCC. This was envisaged in the 2007 development agreement as described above and it is reasonable to assume that a similar arrangement will be put in place in due course, given the nature of each party's interests in the wider site and the necessity to work together to deliver a redevelopment scheme.

5.6 MG maintain that demolition of Kings Parade could be effected without permanent acquisition of the whole of MG's interest in plots 11-16 and 20. Clause 34(1) of the draft Order expressly permits the Authority to enter upon and take temporary possession of any land within permanent limits and to "(b) remove any buildings and vegetation from that land".

5.7 Temporary possession would ensure that the purpose of the Order, namely the delivery and ongoing operation of the Metro could be achieved but that

MG's genuine and long held intent to bring forward a comprehensive scheme on the entirety of the site not required would not be compromised.

- 5.8 It would also ensure that the scheme design could be optimised to best meet the objective clearly stated in planning policy and non-statutory guidance – as set out in the Proof of Evidence of Andrea Arnall - of creating a high quality development at this important gateway location. In this regard, it is important that the design positively engages with the surrounding urban context including the Metrolink extension and the new HS2 station.
- 5.9 If the order is confirmed as proposed, there will be the inadvertent creation of a piece of sterilised land at the front door to the future scheme. MG consider it vital that this land can be addressed and integrated into the wider site as part of a comprehensive approach to the design of the area. This supports the contention that only temporary powers should be confirmed in respect of this land. There is no justification for the permanent acquisition of MG's interest in the whole of plots 11-16 and 20 and the powers should be modified to allow permanent acquisition only of land required for the operation of the Metrolink extension.

Ground 2

- 5.10 The draft Order identifies plots 5 and 26 as within the limits of 'Land with Rights to Attach Equipment to Buildings'. As such, pursuant to article 19 of the draft Order the Applicant will be authorised, if the Order is confirmed as applied for, to affix to any building located within this area at any time, any brackets, cables, wires, insulators and other apparatus required in connection with the construction, operation or maintenance of the tramway; and any lamps, cameras, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting or closed circuit television in consequence of the construction, operation or maintenance of the tramway.
- 5.11 The acquisition of this right in relation to plots 5 and 26 is unnecessary. In relation to plot 5, as described in Ruth Jeffs Proof of Evidence, it will be possible to erect poles to provide support for the necessary catenary fixings on the land adjacent to Plot 5 in which MG currently has an interest. This land is being permanently acquired as part of Plots 4 and 6.
- 5.12 In relation to plot 26, a tram stop is to be located broadly south of the apex of plot 26 and – as explained in Ruth Jeffs' Proof of Evidence - the land and works plans submitted with the Application clearly show sufficient land in the vicinity of the proposed tram stop where any such necessary equipment could be located.

- 5.13 Further, the potential power for the Applicant to fix such equipment at any time to a building on plots 5 and 26 or indeed any future buildings within the permanent limits serves as an additional constraint on the future redevelopment of the Martineau Galleries site. There are a number of scenarios:
- firstly, the tram works are completed in advance of the redevelopment of the wider site and the existing buildings remain in place;
 - secondly, the existing buildings have been demolished but the new buildings have not yet been constructed (or are under construction); and
 - finally, that the new buildings have been completed prior to the tram works coming forward.
- 5.14 In the first scenario, the Order would permit the fixing of equipment to the existing buildings. This equipment would then need to be removed and a temporary solution put in place in order to allow for the demolition of the buildings. This may affect the timetable for the delivery of the wider scheme if it is not possible to agree for the equipment to be relocated in a timely fashion. In addition, there would be uncertainty in terms of the level of expenditure required to move the equipment with no clear position on who should bear this cost. Finally, the temporary solution may need to remain in place for a number of years pending construction of the replacement buildings. This would involve potentially significant cost and inconvenience that could have been avoided.
- 5.15 In the second scenario, a temporary solution would have to be implemented from the outset as there would not be a building to affix to. This situation may persist for a number of years pending completion of the new buildings. Provided the design and location of the new buildings was suitable, the equipment could then be permanently attached to the buildings and the temporary solution removed. However, there would have been potentially significant cost and inconvenience in the meantime.
- 5.16 In the final scenario, it would be possible to fix the equipment to the new buildings. This would rely on the nature of such fixings being known and taken into consideration in the context of the design for any redevelopment scheme. This would place some additional technical constraints on the design and might compromise what would otherwise be the best solution in townscape and urban design terms.
- 5.17 Whichever of these scenarios materialises, the right to affix equipment as sought in the Order would serve as a constraint on the realisation of the

redevelopment objectives for the wider Martineau Galleries Site and would inevitably lead to additional cost and inconvenience that could be avoided.

6. **CONCLUSION**

- 6.1 As I have set out above, MG has intended, for a number of years, to redevelop its land holding in this location (the wider Martineau Galleries site). It has a proven track record of redevelopment and investment in this area, including the Martineau Galleries site, and its commitment to redevelopment of this site is demonstrated by its decision to acquire all interests in the MG Site following expiration of the development agreement and planning permission to which it was previously party as part of the Birmingham Alliance. MG (and Hammerson) remain committed to bringing forward a comprehensive scheme and have to date invested significant financial and professional resources in pursuing that goal.
- 6.2 The proposed powers under the Order to permanently acquire all land in Plots 11-16 and 20 are excessive as it is acknowledged that part of the land within those parcels will only be required temporarily. MG maintains that the Promoter should not, therefore, be granted powers to permanently acquire that land, allowing MG, in co-operation with BCC, to bring forward a comprehensive redevelopment of the entirety of the land not required permanently for the operation of Metrolink. This is in accordance with adopted planning policy (as discussed by Andrea Arnall in her Proof of Evidence) and will ensure that aspirations to create a quality development at this important gateway location can be achieved.
- 6.3 It is also maintained that the proposed powers to affix equipment to buildings on Plots 5 and 26 represent an unnecessary fetter on the redevelopment of those buildings as part of the wider site. It is evident that the buildings will be demolished in the short to medium term and it will therefore be impossible for any equipment then affixed to remain in place. This will necessitate an alternative solution being found in due course which would need to remain in place for an extended period. MG contend that this alternative should in fact be the preferred permanent approach and that powers to affix equipment to buildings at any time on Plots 5 and 26 should be removed from the Order.