

24/10/2017:2

THE MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER ('the Order')

Proof of Evidence

On behalf of

QUINTAIN CITY PARK GATE LIMITED ('Quintain')

In respect of the

**LAND AND PROPERTY TO THE NORTH EAST OF BRENT TERRACE CURZON STREET
BIRMINGHAM ('the Property')**

By: Richard Asher FRICS

Reference:

BEE_NoM_TMP010 & BEE_NOM_AOU032



CONTENT

1	QUALIFICATIONS AND EXPERIENCE.....	3
2	INSTRUCTIONS.....	4
3	QUINTAIN.....	5
4	DESCRIPTION OF SITE	6
5	LAND TO BE ACQUIRED BY THE COMBINED AUTHORITY.....	7
6	QUINTAIN'S OBJECTIONS TO THE ORDER.....	8
7	NOT IN THE PUBLIC INTEREST	9
8	ACHIEVED BY OTHER MEANS	10
9	CONCLUSION.....	11
10	EXPERT'S DECLARATION.....	12

1 QUALIFICATIONS AND EXPERIENCE

- 1.1 I am a Fellow of the Royal Institution of Chartered Surveyors.
- 1.2 I am a Registered Valuer under the RICS Valuers Registration Scheme.
- 1.3 I am a Director of the Development Department at Savills (UK) Limited.
- 1.4 I am head of the London Compulsory Purchase Team at Savills.
- 1.5 I have over 35 years' experience as a Chartered Surveyor and prior to working at Savills I held the position of Director within both the Development and Valuation Departments of Jones Lang LaSalle and its predecessor Jones Lang Wootton, I have worked in both the private and public sectors.
- 1.6 At Jones Lang LaSalle, I was responsible for the team providing Compulsory Purchase and Compensation advice.
- 1.7 Jones Lang LaSalle Inc. is the second largest firm of real estate consultants in the world. Savills is the largest firm of real estate consultants in the United Kingdom.
- 1.8 I have worked in London for the past 30 years and over the years have advised on a wide variety of properties in locations across the United Kingdom.
- 1.9 Until recently I was Chair of the RICS Planning & Development Professional World Board. As chairman I was responsible to the RICS for the production of the Guidance Note 'Financial Viability in Planning' and was closely involved in its publication. I also served on the RICS committee which prepared the information paper "Valuation of Development Land".
- 1.10 I am a Former Chairman of the RICS Compulsory Purchase & Compensation Policy Panel; and a Former Chair of the Compulsory Purchase Association. Currently, I am a Member of the British Property Federation Technical Planning Committee; and a Member of the National Infrastructure Planning Association.
- 1.11 I am currently a member of the Governing Council of the Royal Institution of Chartered Surveyors

2 INSTRUCTIONS

- 2.1 I have been instructed by Quintain who is the owner of the above Property which is subject to compulsory acquisition under the above Order being sought through the Transport and Works Act 1992.
- 2.2 My remit was to review all available documentation and to form an independent view as to the Quintain's circumstances in relation to the proposed compulsory purchase order and, if necessary, to provide advice as to the appropriate steps to ensure that Quintain received fair compensation under the "compensation code".
- 2.3 I was also instructed to participate in the ongoing discussions with the Combined Authority in order to see whether agreement could be reached in terms that would allow the University to withdraw its objection to the CPO.
- 2.4 My instructions are also to advise Quintain in matters relating to the compulsory purchase order itself and address the following questions:-
- a. Whether in my view as an experienced compulsory purchase surveyor, given the circumstances of the compulsory acquisition was in the public interest.
 - b. If the order was successful and t, to negotiate and agree the basis of compensation under the "compensation code"
 - c. In order to make my assessment of the above I have reviewed a number of documents. A full list is provided at Appendix RA 1.
- 2.5 I inspected the site on a number of occasions since 2010 up to 2017.

3 QUINTAIN

- 3.1 Quintain City Park Gate Birmingham Ltd, is a subsidiary company of Quintain Limited, a British-based property developer which is wholly owned by Lone Star Real Estate Fund IV.
- 3.2 Quintain PLC was established in 1992 and was a London investment and development specialist, listed on the London Stock Exchange. Quintain Estates and Developments PLC was purchased in September 2015 by Bailey Acquisitions Limited, an investment vehicle indirectly controlled by Lone Star Real Estate Fund IV. The Company was de-listed from the London Stock Exchange and changed its name to Quintain Limited. Lone Star has injected considerable additional capital into Quintain Limited. Quintain Limited is a leader in mixed-use development, with a long track record and deep experience in development.
- 3.3 Quintain has a long term leasehold interest in a large development site located in the Nechells ward in the district of Ladywood, Birmingham. The site is situated in the Digbeth area of Birmingham City Centre between Park Street to the East, Moor Street Queensway to the West, Masshouse Lane to the North and the West Coast Mainline Railway to the South, adjacent to Moor Street Station and is known as City Park Gate. Part of the site in the ownership of Quintain has already been developed as the Hotel La Tour.

4 DESCRIPTION OF SITE

- 4.1 The Property area totals approximately 4.66 hectares (11.52 acres) and comprises mostly derelict former commercial and industrial land, the majority of which is currently used for parking. Birmingham City Council granted an outline planning consent (Planning reference number 2006/07395/PA) on land at City Park Gate (including the Property) for 93,700 sq. ft. of development and has entered into a development agreement with Quintain to implement that scheme. Quintain also obtained another planning consent (Planning reference number 2008/04177/PA) in 2008 for an office scheme incorporating 20,000sqm of floor space on part of the proposed City Park Gate site.
- 4.2 The full extent of Quintain's interest is identified in Plan RA2 in the Appendix document submitted.

5 LAND TO BE ACQUIRED BY THE COMBINED AUTHORITY

- 5.1 The Transport and Works Act Order is seeking, if confirmed, to provide for (1) the right temporarily to use the land in plots 30, 33, 34, 36, 37 and 40 contained in the Schedule, to which Quintain has an interest; and (2) the right to carry out safeguarding works to the building(s) situated on that land.
- 5.2 The Transport and Works Act Order is seeking, if confirmed, to provide for (1) the compulsory acquisition of the land in plots 31, 32, 35, 38, 39 and 45 contained in the Schedule, to which Quintain has an interest; (2) the compulsory acquisition of rights over any of that land that is not acquired, including for the purposes of installing, retaining and maintaining overhead line equipment; (3) the right temporarily to use the land, where it is not acquired or before it is acquired; and (4) the right to carry out safeguarding works to the building(s) situated on that land.
- 5.3 The whole of current Quintain land, excluding the site of the Hotel La Tour, as identified above, is subject to proposed acquisition by HS2 Limited having been safeguarded and confirmed under the High Speed Rail (London – West Midlands) Act 2017.
- 5.4 An extract from the approved parliamentary plan, showing the property is in the Appendix bundle at RA3.

6 QUINTAIN'S OBJECTIONS TO THE ORDER

6.1 Quintain object to the proposed Transport and Works order on just two grounds.

6.2 Below I produce evidence to support their objection I these two areas:-

- a. That the order is not in the public interest in that the land has already been identified for compulsory purchase by HS2 Limited and it is not necessary or appropriate to seek a further Order for the land.
- b. That the objectives and purpose for which the acquiring authority is proposing to acquire the land can be achieved by other means, namely by seeking agreement with HS2 Limited, who are likely, by the time this Order is confirmed, to have ownership and possession of the land required.

6.3 I will deal with both of these points below.

7 NOT IN THE PUBLIC INTEREST

7.1 The current Government Guidance entitled “Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (“Guidance”) sets out guidance on the various matters that the inspector at a Public Inquiry and the Secretary of State can be expected to take into account in deciding whether or not to confirm such a compulsory purchase order.

7.2 Paragraph 12. Stage 2 of the Guidance states

“A compulsory purchase order should only be made where there is a compelling case in the public interest.”

7.3 Paragraph 13 Stage 2 of the Guidance goes on to say “but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.”

7.4 It is difficult to see how there can be a “compelling case” in the “Public Interest” when the land in question has already been the subject of compulsory acquisition by a public body authorised by parliament, and is to be taken for that purpose.

7.5 If the land was not required for permanent use by HS2 Limited, then it should not have been included in the Parliamentary Act, and has therefore been acquired unlawfully.

8 ACHIEVED BY OTHER MEANS

8.1 HS2 Limited is a wholly owned by the Department for Transport.

8.2 HS2 Limited has the power under the High Speed Rail (London – West Midlands) Act 2017 to acquire the whole of the existing Quintain site for permanent use for the construction and operation of HS2.

8.3 I am advised that HS2 intend to take possession of the land in about July 2018.

8.4 Rather than seeking powers to separately acquire the land in question, the Combined Authority should be seeking to discuss whether HS2 can make this land available for the use of the Midland Metro.

9 CONCLUSION

- 9.1 Finally, I would conclude that the use of compulsory purchase powers to acquire land which has already been authorised for acquisition by another authority is not in the public interest. Secondly, that it is not the best use of public funds and resources. Finally, if the land was genuinely required for the permanent use for HS2, then it cannot be available for use by the Combined Authority.
- 9.2 Given the above evidence I believe that the Inspector should recommend to the Secretary of State that the The Midland Metro (Birmingham Eastside Extension) Order should be refused in so far as it seeks to include the Quintain Land.

10 EXPERT'S DECLARATION

- 10.1 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 10.6 I confirm that I understand and have complied with my duty to the Inspector as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 11.6 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 12.6 I confirm that I have no conflicts of interest.
- 13.6 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Planning Inquiry.
- 14.6 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement 'Surveyors acting as expert witnesses'.

Signed:

Dated: 24th October 2017

Richard Asher FRICS

Savills