

OBJ/10/P1.1

Evidence of David G van der Lande

Appearing in respect of
intu Merry Hill

Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order

19 February 2019

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SHERWOOD DATED 4 JANUARY 2018

A2. OBJ/10/P1.2.2 WINKWORTH SHERWOOD LETTER TO DAC
BEACHCROFT DATED 11 JANUARY 2018

A3. OBJ/10/P1.2.3 WEST MIDLAND COMBINED AUTHORITY
TRANSPORT DELIVERY COMMITTEE METRO INVESTMENT
PROGRAMME REPORT DATED 10 SEPTEMBER 2018

1. INTRODUCTION

- 1.1 My name is David van der Lande I hold a Bachelor of Science Degree with Honours in Estate Management from Southbank University, London.
- 1.2 I have been a Member of the Royal Institution of Chartered Surveyors since 1997 and am a Registered Valuer with the Royal Institution of Chartered Surveyors.
- 1.3 I have held a series roles and responsibilities with different property advisory businesses, having been a Partner at Donaldsons LLP, heading up the Compulsory Purchase and Regeneration team advising private and public sector organisations on land acquisition and development; a Director at DTZ in the Retail Development, advising on land assembly, compulsory purchase and development of mixed use city and town centre schemes and Director of Town Centre Regeneration Ltd, advising private and public sector clients on compulsory purchase and development.
- 1.4 I have been a Director of Icenis Projects since May 2016 and head up the Icenis Delivery Team, giving development consultancy advice to clients on development viability and compulsory purchase matters.
- 1.5 I have advised acquiring authorities, development partners and claimants on compulsory purchase matters for over 20 years.
- 1.6 I understand my duty as an Expert Witness to the Inspector and confirm my adherence to the professional standards set out in the Royal Institution of Chartered Surveyors 4th Edition Practice Statement and Guidance Note for Surveyors acting Expert Witnesses.

2. THE MATTER

2.1 This proof of evidence has been prepared in relation to the Statement of Case submitted on 11 December 2018 made by

- Intu Properties Plc;
- MH (No.1) Nominee A Limited;
- MH (No.1) Nominee B Limited;
- MH (No.4) Nominee B Limited;
- MH (No.6) Nominee B Limited; and
- MH (No.7) Nominee B Limited

2.2 collectively known as intu ("**intu**"), who own and operate Intu Merry Hill Shopping Centre ("**MHSC**") as well as other buildings and land adjacent to it, following an objection submitted on 29 January 2018.

2.3 intu have sought to ensure that impacts of the Scheme are mitigated on their retained land interests, while understanding that some land will be required for the Scheme.

3. INSTRUCTIONS

- 3.1 I was instructed by intu to object to the Order as follows:
- 3.2 intu has not objected to the principle of a Light Rapid Transit System or Tram system, that can serve communities around Brierley Hill and Wednesbury.
- 3.3 It is understood, from the information available and discussions with Midland Metro Alliance (**MMA**), acting on behalf of the West Midlands Combined Authority (**WMCA**), that the proposed scheme will affect vehicle and pedestrian movements to and from MHSC. These will include the impact on vehicle access to the centre from the Level Street roundabout with Waterfront Way South and The Embankment. It is also understood that the Scheme will change a number of vehicle access routes for car borne trips to the shopping centre as well as routing for service and delivery vehicles.
- 3.4 It is understood that a number of constraints will be put in place during construction of the scheme that will last for an unspecified length of time which would have a further impact on vehicle access to the shopping and leisure facilities of intu Merry Hill for shoppers, employees and retailers.
- 3.5 There is concern that the economic impacts of the scheme on intu Merry Hill have not been fully assessed and as a consequence, the mitigation measures required or compensation that will accrue, have not been evaluated or allowed for within the project.
- 3.6 Among other issues insufficient information has been provided to allow a proper assessment of the impact of the proposed Scheme.

4. EXTENT OF LAND REQUIRED

- 4.1 There is no clear justification for the extent of land take being proposed between Central Way and The Embankment, or the purpose to which it will be put. As a consequence, the impact on pedestrian and car borne shoppers cannot be adequately determined.
- 4.2 The extent of land required permanently could be as little as 1.5 hectares as opposed to the land associated with plots 336, 337, 338, 340, 341, 343, 344, 345 and 346 which in aggregate total 3.3 ha.
- 4.3 It is therefore requested that should the order be confirmed that the extent of land required is adjusted to reflect the extent of land required.

5. CONSULTATION

- 5.1 Whilst there has been continued dialogue with intu on the proposed Scheme to date, proposed alterations to the road system to mitigate the effect of the proposed Scheme on Merry Hill have yet to be set out in sufficient detail to determine the effect on the road network, preventing a proper assessment of impact or to allow an assessment of any mitigation measures, despite continued requests for sufficient detail by ITP, Transport Consultants acting for intu.
- 5.2 On the basis of the Scheme previously consented to in 2005, an agreement had been formed between the then owners (Westfield MH Investments Ltd) and West Midlands Passenger Transport Executive, the predecessor body of WMCA. In July 2006 the two parties had entered an agreement that entailed Merry Hill making a contribution of £36.5m towards the delivery and construction of the Metro. This agreement was confirmed as being terminated on 18 July 2016.
- 5.3 The 2006 Agreement was entered into in a significantly different economic and retailing environment, prior to the global financial crises and the rapid rise in internet based shopping. The original scheme was therefore promoted in a fundamentally different retailing and economic environment and anticipated a significant contribution from the owner of Merry Hill.

6. INSUFFICIENT INFORMATION

6.1 Insufficient information has been provided to intu by MMA in respect of the following:

- Impact of the proposed scheme and works to the highways network
- Environmental Impact
- Mitigation Measures
- Funding
- Scheme Design

7. ENVIRONMENTAL IMPACT

- 7.1 WMCA have provided insufficient information in respect of the impact of the scheme on the highways network and environment as it currently presents, including the operation of the shopping centre. DAC Beachcroft LLP, who also act for intu, wrote to Winckworth Sherwood (the legal representatives of WMCA) on 4 January 2018 (OBJ/10/P1.2.1) requesting clarification as to why no Environmental Impact Assessment (EIA) was submitted with the application for the scheme. DAC Beachcroft identified that the proposed Order for the scheme states that an EIA is not required as the proposed Order does not contain works powers. However, it is clear that the scheme cannot proceed without the powers in the proposed Order and that the application is clearly another stage in the consenting process for EIA development for which an EIA should be submitted before consent to the proposed Order can be granted.
- 7.2 Winckworth Sherwood replied on 11 January 2018 (OBJ/10/P1.2.2) stating that the proposed Order for the scheme *'simply refreshes the compulsory purchase powers for the works authorised by the 2005 Order.'* *'The Order is not a development consent for the purpose of the EIA Directive (and the development could proceed if the land was acquired by agreement without any further consent) and accordingly under the TWA Applications Rules no ES is required in connection with the application.'*
- 7.3 The promotion of the scheme is therefore seeking to rely on evaluations that were carried out prior to the submission of the initial Transport and Works Act order application in April 2003 and the subsequent Inquiry in March/April 2004 resulting in the grant of Order 2005/927 (the “**2005 Order**”).
- 7.4 The EIA documentation is over 12 years old and the EIA submitted in relation to the 2005 Order was not carried out against the current baseline. The surveys that were used to underwrite the EIA in the application for the 2005 Order do not represent applicable baseline data from which to determine any mitigation measures required. The lack of a current EIA, therefore, does not allow the proposed development to be properly assessed against currently applicable environmental policy and legislation that has been adopted since 2004.

- 7.5 In order for intu and other affected landowners to understand the impacts on their land interests, they are required to review the old documentation accompanying the 2005 Order in addition to the documentation submitted with the proposed order for the Scheme. This is not an appropriate means to understand the impact of the two orders to enable intu and other affected landowners to assess and comment on the proposed mitigation measures and their adequacy. Nor does it enable intu to put in place adequate measures to mitigate the impact of the construction or subsequent operation of the proposed scheme.
- 7.6 Accordingly, I believe a new EIA should be prepared as part of the application process for the (pursuant to Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006/1466) or that a request be made to the applicant under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 section 9, 3 (so that the scheme complies with Directive 2014/52/EU) and that consent to the scheme should not be granted until the EIA is made available with adequate time for all affected landowners to review, consider and comment on that documentation.
- 7.7 It is noted that Dudley MBC confirmed implementation of the planning application with the formation of part of the foundation substructure for the proposed tram stop in the car park at Birmingham Street and Porterfield in a letter dated 4 September 2009 (WBHE/B10), prior to expiry of the planning application on 22 March 2010.

8. MITIGATION MEASURES

- 8.1 In spite of the promoted scheme being for CPO powers it is inextricably linked to the works powers granted in 2005 the mitigation measures which are now based on information which is significantly out of date, making it impossible to assess the potential impact or determine appropriate mitigation measures.
- 8.2 Retail trading is reliant on key trading periods of trading occurring in the pre-Christmas months and during other key holiday periods, such as Easter. These peak trading flows determine the ability of retailers to ensure viable businesses, maintain units, employ staff and pay for their premises.
- 8.3 The ability of retailers to sustain their trading locations is significantly reliant on the ease with which shoppers and centre users, can access into Merry Hill. Increased travel time as a consequence of the construction programme will adversely affect the ability of occupiers to trade and consequently adversely impact on the value of the centre.
- 8.4 The consideration of averaged traffic flows by WCMA on roads and junctions, rather than traffic flows at key, peak trading periods, does not reflect the likely impact of the scheme on Merry Hill occupiers and the stock, staff and rents they are capable of sustaining.
- 8.5 Altered routing of traffic is likely to generate changes to parking locations that will in turn alter pedestrian flows into and within the Merry Hill centre. No consideration has been given to the internal reorganisation of the carpark systems and structures or the internal configuration of space and uses that responds to the pedestrian entry points.
- 8.6 The disruption during the construction phase of the development and subsequently, cannot be assessed without effective data.

9. FUNDING

- 9.1 The Business Case, submitted in support of the scheme in June 2017 was represented in the Funding Statement prepared for this Inquiry. The Statements confirm that the scheme costs are assessed at £343.6 million, inflated from 2016 costs estimates of £318.1 million.
- 9.2 intu are concerned that funding may not be sufficiently available, since the Scheme had previously assumed a contribution of £36.5 million from the owner of Merry Hill for the Scheme delivery and development.
- 9.3 The Funding Statement confirms that £33.2 million of funding currently has no private entity or public commitment. This is reiterated in the West Midlands Combined Authority Transport Delivery Committee Metro Investment Programme report dated 10 September 2018 (MIP Sept 2018) at (OBJ/10/P1.2.3).
- 9.4 In addition, because of the risks associated with infrastructure projects, as noted in the June 2017 Business Case, the Department for Transport (DfT) requires an optimism bias to be reflected in the budgeting.
- 9.5 Following DfT guidance regarding Optimism Bias the June 2017 Business Case identifies a DfT compliant budget of £402.7 million to include a 17.2% allowance, in aggregate, for Optimism Bias, split 20% in respect of construction costs and 6% in respect of the tram rolling stock.
- 9.6 The Funding Statement also confirms that any expenditure in excess of £343.6 million would have to be sourced locally with no explanation of the sources of or any commitment to support any required additional funding in excess of £343.6 million or to meet a DfT compliant budget of £402.7 million.
- 9.7 An area of costs that appears not to have been allowed for in relation to the acquisition costs are mitigation works and in the context of assume funding shortfall, potentially any compensation for intu Merry Hill.
- 9.8 In summary, without taking into account the costs of mitigation or compensation there is a potential, unquantified funding shortfall in excess of £310.4 million of £92.3 million, with an additional allowance required for the costs of, as yet to be

determined, mitigation measures and or compensation in respect of intu's interests.

9.9 We note that trade press from November 2017 quotes the Managing Director of Transport for West Midlands (TfWM) as envisaging intu contributing to the scheme.

9.10 It is interesting to note at page E-35 of the Economic Case that the broad transport budget is £443.4 million as opposed to £343.6 noted elsewhere.

9.11 The MIP 2018 report (OBJ/10/P1.2.3) notes on page 22 that a full review of programme and costs is underway.

9.12 I contend it is not in the public interest for a major infrastructure investment, where there is an identified shortfall in funding of in excess of 9.6% and potentially in excess of 27%, should not progress without determining an effective budget reflecting potential costs and determining that the funding to meet that budget, will be met.

10. SCHEME BENEFITS

- 10.1 The June 2017 Business Case sets of the economic benefits of the proposed scheme being derived from travel time savings. Table 5.3 TEE Table identifies a net benefit of £197.5 million.
- 10.2 The base data is generated from assumed traffic flows and information assessed from the application made in 2003 and presented along with other data in the 2005 Inquiry, which determined the benefits that informed the 2010 modelling is not reflective of current movements
- 10.3 While there is reference to reduced bus usage as a benefit it is unclear what the effect on services will be.
- 10.4 Without use of current information the assumed benefits are not capable of being determined or demonstrated.

11. SCHEME DESIGN

- 11.1 The proposed scheme may envisage a tram stop adjoining the Dudley Canal, in a location consistent with that proposed by the 2005 Order.
- 11.2 Insufficient detail has been provided to demonstrate routes for passengers from the significantly elevated position that any tram stop would occupy in close proximity to Dudley Canal. Links from the 2005 Order do not show any access detail which might help inform discussion.
- 11.3 Whether pedestrian, disabled or people with young children, the current direct route to the Dudley Canal tow path is through a series of tiered external stairs or a potentially significantly extended route through a series of ramped pedestrian routes which are not demonstrated as being compliant with disabled access requirements.

12. SUMMARY OF OBJECTION

- 12.1 intu objects to the Order on the following grounds:
- 12.2 There has been a lack of negotiation by WMCA in respect of the acquisition of land;
- 12.3 There is a lack of appropriate baseline environmental data from which to assess the environmental impact and potential mitigation measures of the scheme;
- 12.4 A lack of information has been provided in respect of the impacts that the proposed scheme and works will have on the highways network;
- 12.5 There is a lack of mitigation measures to offset the impact on the centre with regard to disrupted retailing and leisure operations at Merry Hill;
- 12.6 There is a lack of an effective budget with identified sources of funding necessary to carry out the construction and operation of the scheme; and
- 12.7 There is a lack of detail in respect of the proposed scheme itself.
- 12.8 In summary there is no compelling case in the public interest to take land for the proposed scheme at the current time. intu reserve the right to add additional points of objection as they arise and as further information becomes available.

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**A2. OBJ/10/P1.2.2 WINKWORTH SHERWOOD
LETTER TO DAC BEACHCROFT DATED 11 JANUARY
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**A3. OBJ/10/P1.2.3 WEST MIDLAND COMBINED
AUTHORITY TRANSPORT DELIVERY COMMITTEE
METRO INVESTMENT PROGRAMME REPORT DATED 10
SEPTEMBER 2018**