

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

Your Ref: TWA/17/APP/08/OBJ/20
Our Ref: VKDC/LJA/3.4902
Direct Line: +44 20 7863 8491
Email: lauren.archer@forsters.co.uk
Date: 12 February 2019

Also by email:
transportandworksact@dft.gsi.gov.uk

Dear Sirs

Transport and Works Act 1992
The Proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order (“the Proposed Order”)
Objection Number 20 - McDonald's Restaurants Limited, Astrad Limited and AR Sirkat
Inquiry on 19 March 2019 (“the Inquiry”)

We are instructed by McDonald’s Restaurants Limited Astrad Limited and AR Sirkat (“our client”) in respect of the Proposed Order and in relation to the upcoming Inquiry.

Our client’s initial objection to the Proposed Order was put forward on their behalf by Montagu Evans, by letter dated 29 January 2018, a copy of which is **attached**. Our client continues **TO OBJECT** to the Proposed Order. This further representation is being submitted in addition to the initial objection and should be read alongside it.

During ongoing discussions in July 2018, the West Midlands Combined Authority (WMCA) provided our client with draft assurances, which purported to address the concerns our client had set out in its objection. For the reasons set out below, our client does not consider that those assurances fully address its concerns.

Since providing that initial draft, WMCA have refused to engage further with our client on the proposed assurances and subsequently a completed Unilateral Undertaking was provided to our client dated 28 November 2018 setting out the same assurances.

As stated in our client’s initial objection, the ability to trade successfully from our client’s properties is dependent on having unrestricted pedestrian and vehicular access for customers and servicing and delivery vehicles.

The assurances provided are deficient for the following reasons. The numbering used below follows the numbering in our client’s initial objection as well as WMCA’s letter dated 16 February 2018.

1. Access During the Scheme Works

Vehicular Access



It is noted that a draft construction strategy has been prepared to demonstrate how traffic flows will be maintained during the carrying out of the works, and our client has had sight of this.

In correspondence with our client's agent on 20 June 2018, it was noted however that this strategy may need to be revised as the detailed design for the scheme is finalised and our client should be given the opportunity to review and comment upon any revisions.

It was indicated that a binding obligation would be given to our client ensuring that any revisions to the draft traffic strategy would achieve the same effect and benefit of the draft strategy already provided. That assurance has not yet been given to our client and our client requires this to be included within an amended undertaking, together with an assurance that our client will be provided with a copy of any revised construction strategy as soon as possible.

Pedestrian Access

The draft construction strategy does not deal with the maintenance of pedestrian access during the works. WMCA has provided an assurance which states that existing pedestrian access will be maintained as far as reasonably practicable.

However, in the event that pedestrian access does need to be interrupted / diverted, our client requires an assurance that the same level of pedestrian access will be given. Our client's concern here is that pedestrian access may be significantly reduced, which would have an unacceptable impact on its properties and the running of its business.

Alternative Access

Where vehicular or pedestrian access is to be interrupted and an alternative access provided, our client requires notice to be given to them ahead of the diversion being implemented.

Whilst WMCA may use reasonable endeavours to provide such access, there may be considerations specific to our client which need to be addressed in the provision of an alternative.

Our client requires an opportunity to make these considerations known ahead of time. Additionally, our client will need adequate time to notify its suppliers of any change to access to its properties. Our client therefore requires WMCA to give them no less 15 working days' notice of any proposed diversion of vehicular or pedestrian access routes together with an assurance that any comments provided by our client will be taken into consideration.

Advance Warning of Disruptive Works

WMCA has covenanted to provide our client with "*reasonable advance warning of any Works considered to be disruptive to the Property*".

As above, our client requires a minimum of 15 working days' notice to be given as to any disruptive works so that it can inform any service providers or other third parties.

Further, this assurance is currently too broadly worded as it does not define what works may be considered to be disruptive to our client's properties. As a minimum, our client requires advance notification of any works which may result in a loss of pedestrian or vehicular (both customer and servicing/deliveries) access to the Merry Hill Shopping Centre and/or its properties, a loss of car parking, or a loss of utilities and services.

Ongoing Communication

During correspondence in June 2018, WMCA indicated it would give an assurance “to provide regular updates and communication of the upcoming works and likely impacts to the business and customers of [your clients] at its Property”.

This assurance has been significantly reduced in the undertaking dated 28 November 2018, and our client requires the above wording to be provided.

We are aware that WMCA has agreed to provide a direct management procedure to address any concerns or issues that arise through the carrying out of the works. Our client requires details of this procedure, so that it can raise any concerns through the appropriate channels.

3. Services and Utilities

We understand that some advance diversion of services and utilities will be required, although the exact extent of this is still being finalised.

Our client requires an assurance that it will be given no less than 15 working days’ notice of any such diversions, together with details of the steps being taken to ensure that there is no interruption to services during this time. Our client requires this so that it can take appropriate steps to prepare for and address any interruption to services or utilities in the event that should happen to ensure that there is no significant disruption to its business.

Attached to this letter is a marked up copy of the Undertaking received by the Objector from WMCA setting out the amendments required in order to satisfy the Objector’s concerns. A copy of this letter and the marked up Undertaking has also been sent to WMCA’s legal advisors.

We would be grateful if this further letter of representation and amended Undertaking could be placed before the Inspector ahead of the Inquiry. Our client reserves the right to submit further representations, should it be considered necessary.

Yours faithfully

Forsters LLP

Encs

cc. Kalvinder Aratoon, Metro Property & Projects Solicitor (Kalvinder.Aratoon@wmca.org.uk)





WEST MIDLANDS
COMBINED AUTHORITY

Montague Evans
5 Bolton Street
London
W1J 8BA

18 April 2018

Dear Sirs

The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order ("the Proposed Order")

Objection Number 20 – McDonalds Restaurants Limited and Astrad Limited and AR Sirkat

We refer to your letter dated 29 January 2018 objecting to the above Proposed Order on behalf of McDonalds Restaurants Limited and Astrad Limited and AR Sirkat, which has been allocated the reference OBJ/20 by the Secretary of State for Transport, and our subsequent reply dated 16 February 2018.

Further to our letter, the WMCA is continuing to work with Intu (the owners of the Merry Hill Shopping Centre) and Dudley Metropolitan Borough Council (DMBC) (as the highway authority) regarding traffic modelling to satisfy both Intu and DMBC's requirements (in relation to the private and adopted sections of the roads and the interface between them, and any impacts on the surrounding highway network), to highlight any potential effects of the construction and operation of Metro and to determine how any impacts will be mitigated. As the WMCA has to satisfy both DMBC and Intu with regards to the details within its traffic management strategy, you can be assured that any proposals that are agreed by them will also satisfy your client's needs and requirements, as these will be in line with those of both of these other third parties.

Currently the results of our modelling show that the junction of Level Street / The Embankment operates within capacity with the Metro in operation and allowing for committed growth, including that planned for Merry Hill.

Whilst the operational Metro scheme will require some alterations to The Embankment at its junction with Level Street, making it 'in-only' as envisaged in the 2005 Order, the principal accesses to Merry Hill Centre from Level Street's junction with Central Way, The Embankment (access from the North and South and egress to the south) and The Boulevard all remain physically unaltered by the scheme proposals (as identified on the enclosed plan). Therefore under the Metro scheme, access to Merry Hill Centre, including to car parks and for loading, will continue substantially as at present. As part of their master planning and expansion plans for the Merry Hill Centre, Intu may proceed such alterations on these roads in future, but WMCA does not have powers to make any alterations to these roads, either in the existing 2005 Order or in the Proposed Order. As in our last letter, the powers over Plot 337 are only to acquire new rights of access – not to carry out works within the plot.

Further to the information in our letter of 16 February regarding Plot 336, and specifically any anticipated effects of the Metro on The Embankment, the site investigations and outline design are still underway. However, the powers in the 2005 Order allow this road to be made single



WEST MIDLANDS
COMBINED AUTHORITY

carriageway, and this is the scenario we have modelled. However, as stated above, this is not anticipated to substantially affect the main access routes for parking and deliveries. Any changes to traffic flows along The Embankment would be fully signed, to facilitate continued general access and traffic flows to the Merry Hill Centre.

We hope the above and response in our letter of 16 February provides sufficient information and assurance for your clients to withdraw their objection. However, if you require any further information in the meantime, please contact Paul Clarke on 07900 052307 or by e-mail at paul.clarke@metroalliance.co.uk. Paul will be happy to meet with you and/or your client to discuss these issues further.

Yours faithfully,

Peter Adams
Development Director

Enc.

DATED

2019

- (1) WEST MIDLANDS COMBINED AUTHORITY

- (2) MCDONALD'S RESTAURANT LIMITED
ASTRAD LIMITED
AR SIRKHATMCDONALD'S RESTAURANTS LIMITED
ASTRAD LIMITED
AR SIRKHAT

UNILATERAL UNDERTAKING BY DEED

relating to

~~An objection raised by McDonald's Restaurant Limited, Astrad Limited and AR Sirkhat (reference OBJ/20) 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~~
An objection raised by McDonald's Restaurants Limited, Astrad Limited and AR Sirkhat (reference OBJ/20) 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

DATE

(1) WEST MIDLANDS COMBINE

(2) MIDLANDS METRO LIMITED

(3) MIDLANDS METRO LIMITED

(4) MIDLANDS METRO LIMITED

(5) MIDLANDS METRO LIMITED

UNILATERAL UNDERTAKING

relating to

the proposed 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 AN OBLIGATION BY UNILATERAL UNDERTAKING and is made the
of

day
2019

and is given by

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

to

(2) MCDONALD'S RESTAURANTS LIMITED of 11/59 High Road, East Finchley, London N2 8AW
(Company Registration Number 01002769), ASTRAD LIMITED of McDonalds Restaurant, Lea
Road, Wolverhampton WV3 0LH (Company Registration Number 03470157) and AR SIRKHAT
c/o Montagu Evans, 5 Bolton Street, London, W1J 8BA (together "the Objector")

WHEREAS

- (A) On 12 December 2018 WMCA has made an application to the Department for Transport under section 6 of the Transport and Works Act 1992 for the New Order in respect of the Metro Scheme.
- (B) The Objector has leasehold interests in Plots 336 as stated in the Book of Reference to the New Order relating to their leasehold interest in Unit 51 A Merry Hill Shopping Centre, Unit L 102 Merry Hill Shopping Centre, and The Boulevard, Merry Hill (the "Property") and the Objector has stated that the leases they hold provide access rights over plots 336 and 337 as described in the Book of Reference to the New Order.
- (C) The New Order would confer powers on the WMCA to exercise powers of permanent acquisition on Plot 336 and a permanent right to use Plot 337.
- (D) On 30 January 2018 the Objector submitted ~~an~~ the 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: the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)

Disruptive Works means any Works which:
a) may result in a loss of pedestrian or vehicular (both customer and servicing/deliveries) access to the Merry Hill Shopping Centre and/or the Property;
b) may result in a loss of car parking at the Merry Hill Shopping Centre;
c) may result in any loss of utilities and services;
and such other works as the Objector may notify WMCA of in writing from time to time

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Draft Construction Strategy means the draft construction strategy dated February 2018 relating to the Works provided by WMCA to the Objector on 20 June 2018

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Metro Scheme: 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

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New Order: the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order

Objection: the objection dated 30 January 2018 and attached to this Deed as Appendix 1 (reference OBJ/20)

Working Day: means a day other than a Saturday or Sunday or public holiday in England and Wales or the period between 24 December and 1 January inclusive and the expression "Working Days" shall be construed accordingly

Works: the authorised works pursuant to the 2005 Order and any works carried out pursuant to the New Order

2.2 In this Deed where the context so requires:

(a) the singular includes the plural and vice versa;

- (b) references to clauses, schedules and paragraphs are references to clauses, schedules and paragraphs in this Deed except where otherwise specified;
- (c) title headings to the clauses, schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed; and
- (d) 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

WMCA covenants ~~with the Objector that~~ on the basis that the New Order is made by the Secretary of State for Transport as follows:

4.1 WMCA will provide the Objector with a copy of any revised draft of the Draft Construction Strategy as soon as any such revised draft becomes available, for the Objector's comment.

4.2 WMCA will ensure that any revisions to the Draft Construction Strategy will achieve the same effect and benefit of the Draft Construction Strategy so far as practicable. Where any revisions to the Draft Construction Strategy may result in a change to any effect or benefit of the Draft Construction Strategy, WMCA will provide the Objector with an explanation or why such revisions are necessary.

4.14.3 WMCA will maintain vehicle and pedestrian access/egress to the Merry Hill Shopping Centre in the vicinity of the Works at all times during the Works for the Metro Scheme as far as is reasonably practicable. General access/egress to the Merry Hill Shopping Centre will be maintained at the same capacity at all times via alternative routes if in the event access across plot 336 is temporarily interrupted, WMCA will ensure that any such appropriate alternative access to the Merry Hill Shopping Centre will be provided at no cost to the Objector.

4.4 In the event that either vehicular or pedestrian access/egress to the Merry Hill Shopping Centre in the vicinity of the Works is required to be provided via alternative routes, WMCA shall provide the Objector with no less than 15 Working Days' notice of any such diversion being implemented.

4.5 In the event that the Objector should submit comments to WMCA in relation to any proposed diversion to either vehicular or pedestrian access/egress to the Merry Hill Shopping Centre in the vicinity of the Works, WMCA shall take these into account so far as is reasonably practicable.

4.24.6 Should The Embankment road be closed due to the Works WMCA will ensure diversionary routes for vehicular and pedestrian access to the Merry Hill Shopping Centre will be clearly signposted and traffic will be diverted as is required.

4.7 WMCA will provide the Objector with no less than 15 Working Days' notice of commencement of any diversions to services or utilities to the Property. WMCA will take steps to ensure that there is no interruption to services or utilities to the Property during the carrying out of the Works as far as is reasonably practicable.

4.34.8 WMCA will provide the Objector with reasonable advance warning no less than 15 Working Days' notice of the commencement of any Disruptive Works considered to be disruptive to the Property except any Works carried out in an emergency.

4.44.9 WMCA will provide the Objector with regular updates and communication of any upcoming Works that are considered to reasonably and likely impacts to the business and customers of the Objector at the Property.

4.54.10 WMCA will minimise the interference to the Property by way of noise, dust, vibration and other similar matters as set out in the Code of Construction Practice Part 1.

4.64.11 WMCA will carry out the Works causing minimum disruption as far as is reasonably practicable to the access the Objector currently enjoys for the purposes of customers, staff, servicing and deliveries 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~~AUTHORITY)
was hereunto affixed in the presence of:)

Authorised Signatory

APPENDIX 1
Objection Letter

of the...
the...

THE...
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