

## BY POST AND EMAIL

Melanie Owen-Roberts  
Programme Officer

Our ref: KJES

19 February 2019

Dear Sirs

**Objector reference: OBJ21 - Argos Limited**  
**The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order (the Order)****1 Background**

- 1.1 We act for Argos Limited (**Argos**). Argos is a well-known catalogue retailer and the leasehold occupier of Unit K within the Merry Hill Shopping Centre (the **Store**).
- 1.2 Argos' lease includes rights of customer access across land, including private roads and footways, vehicular servicing rights and car parking rights (for both staff and customers). Those rights are essential to the uninterrupted and on-going operational of Argos' retail business from the Store.
- 1.3 On 29 January 2018 Montagu Evans, on behalf of Argos, submitted an objection to the application for the Order (the **Objection**). As explained in the Objection, if made, the Order would enable West Midlands Combined Authority (**WMCA**) to acquire interests in land in which Argos has an interest, including the power to:
- (a) compulsorily acquire land and rights in respect of Plot No. 336 (Private road (The Embankment), footways, steps, retaining wall, advertising hoardings and land, Brierley Hill) for the construction, operation and maintenance of the authorised works; and
  - (b) compulsorily acquire access rights for the construction and maintenance of the authorised tramway and associated works in Plot no.337 (Private roads (The Embankment and Central Way), footways, bus stop, shelters, roundabout and land, Brierley Hill).
- 1.4 As explained in the Objection, Argos relies on the rights under its lease for the continued operation of its retail business. Argos objected to the Order on the basis that the extinguishment of those rights would severely, and adversely, impact on its business operations.

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## 2 Engagement with WMCA

- 2.1 Argos has engaged with WMCA to address the issues raised in their Objection. On 6 December 2018 Argos were provided with a completed unilateral undertaking given by WMCA which purported to address Argos' concerns (the **December UU**). No heads of terms were agreed for that document, and nor were Argos provided with a draft of it or given the opportunity to comment on it before it was issued to them as a completed document.
- 2.2 For the reasons set out below in Section 3, the December UU does not provide sufficient safeguards to ensure the continued operation of Argos' business during the carrying out of the authorised works. In the absence of adequate protections, Argos is not in a position to withdraw its Objection.
- 2.3 The December UU is deficient in several regards. However, Argos is willing to work with WMCA to agreed a revised form of undertaking which addresses its outstanding concerns.

## 3 Amendments required to the December UU

- 3.1 We enclose an amended version of the December UU which shows the requested amendments as track changes (the **Amended UU**).
- 3.2 The following amendments are required<sup>1</sup>:
- (a) **Clause 1:** As originally drafted clause 1 was inconsistent with clause 3. We accept that the covenants set out in clause 3 should only bind WMCA if the Order is made. Clause 1 has been amended to reflect that.
  - (b) **Clause 4.1:** Argos requires an unequivocal commitment that vehicle and pedestrian access to both the Store and the Merry Hill Shopping Centre will be maintained at all times during the carrying out of the authorised works. Argos cannot accept that this be "*as far as is reasonably practicable*"; that wording provides insufficient reassurance that access, and hence operation, of the Store will continue without interruption during the carrying out of the works.
  - (c) **Clause 4.2:** Argos acknowledges that there may be a need for WMCA to provide alternative access routes in order to maintain vehicle and pedestrian access/egress to the both the Store and the Merry Hill Shopping Centre during the works. That principle, which was reflected in the second sentence of clause 4.1 of the December UU, has been expanded upon in a new clause 4.2 to give Argos proper reassurance that any alternative provision will be fit for purpose. Argos require that:
    - (i) before there is any interruption to existing access routes, alternative routes are first agreed with Argos (clause 4.2(a)(ii)) and that those routes are provided before the existing routes are changed (clause 4.2(a)(i));
    - (ii) any alternative routes are no less commodious than the existing access/egress arrangements (clause 4.2(b)); do not necessitate a change to Argos' servicing arrangements (clause 4.2(c)); and can appropriately accommodate the peak staff and customer travel movements (clause 4.2(d)); and

<sup>1</sup> Unless otherwise stated, all references to clause are references to clauses in the Amended UU. The amendments also include some stylistic and typographical changes.

- (iii) the pedestrian and vehicular flows experienced at the date of the deed will be accommodated without impediment or delay for the duration of the Works (clause 4.2(f)).
- (d) **Clause 4.3:** Argos welcomes the commitment by WCMA to provide them with advance warning of any works which may be disruptive to their use of the Store. However, in the December UU no timeframe was included for the giving of such notice and nor was there any scope for Argos to comment on the proposals. The Amended UU includes:
  - (i) a requirement for any notice to be given in writing and a minimum of 28 days in advance; and
  - (ii) a requirement to notify Argos of both changes to the access arrangements and those works which a reasonable person would consider may be disruptive to the Store.
- (e) **Clause 4.4:** In order to enable Argos to properly consider the impact of any disruptive works and changes to access arrangements on its operations, Argos requires that the advance notice be accompanied by certain information (as per clause 4.4(a)-(d)), and Argos be given a period of less than 14 days to comment on those proposals (clause 4.4.(e)).
- (f) **Clause 4.5:** In order to ensure that impacts on its operations are properly considered by WMCA, Argos ask that full and proper regard is had to any comments it raised within the 14 day period (or any longer period which may be given for the provision of comments). Any alterations to the access route would remain subject to Argos' prior approval.
- (g) **Clause 4.6:** Argos welcome the commitment by WCMA to provide regular updates on the works. As part of that update, Argos ask to be provided with details of any relevant methodology, works programme and traffic management measures. This will help Argos manage its Store operations during the works.
- (h) **Clause 4.7:** Argos welcome the commitment by WCMA to minimise the interference to the Store by way of noise, dust, vibration and other similar matters as set out in the Code of Construction Practice Part 1. As originally drafted, there was no clarity on the efforts which had to be expended in discharging this obligation. The Amended UU includes a commitment to use "reasonable endeavours" in discharging this obligation.
- (i) **Clause 4.9:** Argos requires reassurance that, in the event that WMCA exercise their powers under the Order (if made) to acquire Plot 337 on a permanent basis equivalent rights to those currently benefiting Argos will be granted back to it.
- (j) **Clause 6:** Further detail regarding to whom notices should be addressed is included in clause 6 to ensure that notices reach the appropriate people.

#### 4 Conclusion

- 4.1 If Argos is provided with a completed deed in the form of the Amended UU Argos will be able to withdraw its Objection to the Order.
- 4.2 However, if the points included in the Amended UU are not adequately addressed in a binding commitment Argos reserves its position to submit formal evidence and ask the Inspector to exercise his discretion to allow Argos to appear at the inquiry.

Yours sincerely

Dentons UK and Middle East LLP

Enc.

**DATED:**

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**UNILATERAL UNDERTAKING BY DEED**

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given by

**WEST MIDLANDS COMBINED AUTHORITY**

to

**ARGOS LIMITED**

To deal with objection raised by Argos Limited (reference OBJ/21) 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.

**THE DEED IS A OBLIGATION BY UNILATERAL UNDERTAKING** and is made the

day of 201~~98~~

and is given by

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

to

(2) **ARGOS LIMITED** of 489-499 Avebury Boulevard, Milton Keynes UK MK9 2NW (Company No. 01081551) (the "Objector")

WHEREAS

(A) On 12 December 2017 WMCA made an application to the Department for Transport under section 6 of the Transport and Works Act 1992 for the Order in respect of the Metro Scheme.

(B) The Objector has a leasehold interest in Unit K the Merry Hill Centre Dudley (~~the "Property"~~) and the Objector has stated that the lease they hold provides access rights over plots 336 and 337 as described in the book of reference to the New Order (~~the "Property"~~).

(C) The New Order would confer powers on the WMCA to exercise powers of permanent acquisition ~~in respect of~~ ~~en~~ Plot 336 and a permanent right to use Plot 337.

(D) On ~~2930~~ January 2018 the Objector submitted ~~thean~~ Objection to the Secretary of State for Transport in respect of the Transport and Works Act ~~Order-1992~~ 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 The covenants given in Clause 4 are conditional on the New Order being made. On the basis that the New Order is made the provisions of this Deed shall be binding on the WMCA.~~

4.1.2 This deed supersedes the Unilateral Undertaking given by WMCA to the Objector dated 6 December 2018 which shall have no further effect from the date of this Deed.

## **2 INTERPRETATION**

2.1 In this Deed in addition to the terms hereinbefore referred to the following words and

2.2 expressions shall where the context so requires or admits have the following meanings:

"2005 Order" means the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)

"Existing Access/Egress Arrangements" means the pedestrian and vehicular access and egress arrangements existing on the date of this Deed

"Metro Scheme" means 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

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

"Objection" means the objection dated ~~2930~~ January 2018 and attached to this Deed as Appendix (reference OBJ/21)

"Plot 336" Plot 336 means the land described as Plot 336 in the Book of Reference accompanying the application for the New Order and described as ' Private road (The Embankment), footways, steps, retaining wall, advertising hoardings and land, Brierley Hill'

"Property" means the Argos store at Unit K, Merry Hill Shopping Centre, Dudley

"Works" means the ~~authorised~~-works authorised pursuant to the 2005 Order

2.3 In this Deed where the context so requires:

2.3.1 the singular includes the plural and vice versa

- 2.3.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified
- 2.3.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed
- 2.3.4 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**

~~Save for Clause 4 which is conditional on the Order being made, t~~The provisions of this Deed shall have immediate effect upon the completion of this Deed

### **4 COVENANTS BY THE WMCA**

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

~~4.1 WMCA will maintain vehicle and pedestrian access/egress to the both the Property and 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 all times via alternative routes; if in the event access across plot 336 is temporarily interrupted WMCA will ensure that appropriate alternative access to the Merry Hill Shopping Centre will be provided at no cost to the Objector.~~

~~4.2 WMCA will:~~

- ~~(a) not change, interrupt, interfere with or compromise in any way any of the Existing Access/Egress Arrangements without first:
  - ~~(i) providing appropriate alternative arrangements ("**Alternative Routes**") and~~
  - ~~(ii) obtaining the Objector's written approval to any Alternative Routes;~~~~
- ~~(b) ensure that any Alternative Routes are no less commodious than the Existing Access/Egress Arrangements;~~
- ~~(c) ensure that any Alternative Routes do not necessitate any changes to the Objector's servicing arrangements in regard to timing, frequency or size of delivery vehicle;~~
- ~~(d) ensure that any Alternative Routes can appropriately accommodate the peak staff and customer travel movements;~~
- ~~(e) ensure that any Alternative Routes are provided at no cost to the Objector;~~

(f) ensure that the pedestrian and vehicular flows experienced by the Property and the Merry Hill Shopping Centre as at the date of this Deed can be accommodated without impediment or delay for the duration of the Works; and

~~(a)(g) Should The Embankment road be closed due to the Works~~ WMCA will ensure that diversionary routes for vehicular and pedestrian access to the Property and/or Merry Hill Shopping Centre will be clearly signposted and traffic will be diverted as is required.

4.3 WMCA will provide the Objector with a minimum of 28 days written notice of: reasonable advance warning of

(a) any Works which a reasonable person considers ~~sed~~ may to be disruptive to the use of Property (except any ~~w~~Works carried out in an emergency); and

(b) any alteration, modification or closure of any ~~-~~Existing Access/Egress Arrangements

4.4 WMCA will provide to the Objector as part of any written notice served under clause 4.3:

(a) detailed plans showing the proposals which are the subject of the notice;

(b) any related methodology statement;

(c) the programme for the carrying out of those works;

(d) details of any relevant traffic management measures; and

(e) a period of no less than 14 days to provide comments on the proposed arrangements.

4.5 Where comments are provided to WCMA by the Objector within the 14 day period (or any longer period as may be allowed) WCMA will have full and proper regard to those comments and any requested mitigation measures SAVE THAT there must be no change, interruption or interference in any way with any of the Existing Access/Egress Arrangements without the prior written consent of the Objector.

4.6 WMCA will provide the Objector with regular updates and communication of: any ~~-~~Works which a reasonable person would consider may impact on the Objector's use of the Property and as part of that update provide details of any relevant methodology, works programme and traffic management measures.

~~that are considered to reasonably impact the business of the Objector at the Property.~~

4.24.7 WMCA will use reasonable endeavours to 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.

4.8 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 and deliveries to the Property.

4.34.9 WMCA covenants that in the event that it permanently acquires Plot 336 (or any part thereof) it will grant rights back to the Objector on the same terms as those benefiting the Objector at the date of this Deed.

## **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, save that WMCA will comply with its covenants in this Deed when exercising powers in the New Order if made

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:

(a) WCMA at the -address set out in this Deed or such other address as notified in writing to the Objector;

(b) the Objector at:

(i) the address set out in this Deed or such other address as may be notified in writing to WCMA, marked for the attention of Nick Chambers; and

(ii) copied to Tim Earl at Montagu Evans, 5 Bolton Street, London W1J 8BA.

~~(a) — 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**

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** )

was hereunto affixed in the presence of: )