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Our ref: dh/mmb/apw/103967/1

Your ref: JEW/11152/00023/PFI

DDI: 0117 314 5307

Doc no: 17027835v1

4 March 2019

Dear Sirs

The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order ("the Proposed Order")
Objection Number 22 - TJX UK

We refer to your letter dated 18 February 2019.

We do not comment in response in detail, although we do consider that it is important to make the following general observations in reply to the points raised:

1. In your letter you acknowledge that it is reasonable for our client to expect certainty, which necessarily requires detailed information on the impact of the scheme on its retail unit at Merry Hill Shopping Centre. You further acknowledge that the undertaking provided by WMCA is expressed in general terms. You have however been unable to provide basic information that our clients have requested on mitigation measures.
2. WMCA has chosen to promote a scheme and pursue the Proposed Order at an outline design stage and at a time when it has not properly developed construction methods and programmes. Whilst the model clauses used in the Proposed Order allow for horizontal and vertical deviation to the proposed scheme works, this should not however prevent WMCA from providing certain basic safeguards. Nor should it prevent WMCA from acknowledging that minimum essential requirements should be incorporated into the construction processes and methodology. Such protections can be provided, notwithstanding that the full construction timetable, process or methodology is not yet known at this stage.
3. You refer to the 2005 Order and suggest that "nothing has changed in respect of the proposals under the Proposed Order". Please substantiate your comments with evidence in support of this position, bearing in mind that the Proposed Order must be seen in the context of the particular circumstances of the land and interests affected. We note that the traffic modelling evidence submitted does not provide a comparison between 2005 and 2016/18 traffic volumes and journey times. Your argument that 'nothing has changed' is unsustainable in the event that factors such as the volume of visitor traffic; increased congestion in the vicinity of the Shopping Centre; retail environment; logistical requirements and staff access requirements have materially changed over the 15 year period since the 2005 Order.
4. You accept that the construction works will cause interference to access and egress from our client's store. The traffic management evidence provided predicts delays to journey times.

Lawyers & Parliamentary Agents

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5. Our client's objective is clear. It wants to achieve a reasonable assurance that the construction works (and corresponding mitigation measures) will be conducted so as to enable our client to continue to operate its retail unit during construction works, with minimal disruption to its retail operations. If WMCA is unwilling to provide such basic assurances by agreement, our client asks the Inspector to modify the Proposed Order so as to provide those protections to our client, the other lessees and customers of the Merry Hill Shopping Centre.
6. The assurances provided to date contain no minimum standards relating to the mitigation measures to be adopted. Further, your client places heavy reliance on reaching an agreement with Intu and Dudley Borough Council. To date no agreement has been reached and no draft agreement has been provided to our client, despite repeated requests. In any event, our client could not enforce such an agreement. Your suggestion that our client should therefore rely on the protections contained in a draft agreement, which it has not been able to review and could not in any event enforce, is fundamentally flawed. Despite your references to a long period in which to negotiate agreement, we note that WMCA has still not yet been able to conclude a protective provisions agreement with Intu.
7. Our client requires specific and measurable assurances, which so far your client has failed to provide. For example, you state that any reasonably unavoidable temporary interference will take place at times that reduce the impact upon users. Despite stating this in your correspondence, MWCA has failed to commit to such an assurance in a contractually binding document. Each temporary interference could last weeks or months and would prevent of our client's staff, customers and suppliers from using this main route to and from the Merry Hill Shopping Centre. Given the impact upon our client's store upon such inference with its rights of access, our client, reasonably, asks that MWCA makes that commitment in a binding document.
8. We do not contend that your client would intentionally implement works in an unfairly prejudicial way to our client. However, your client will inevitably need to manage conflicting pressures (for example third party interests, statutory undertakers and/or budgetary constraints which may impact upon the programming or timetabling of works). Those requirements may override our client's own interests. It is reasonable for our client to seek reasonable minimum safeguards to protect against the very real possibility that the works are implemented so as to prejudice our client.
9. We note that your client is willing to provide additional assurances to our client in exchange for our client's withdrawal of its current objection.
10. In addition to the assurances set out in the four bullet points on page 4 of your letter (which all relate to the provision of basic information that your client should be providing anyway), our client requires some basic qualitative assurances.
11. Our client would be willing to enter into an agreement whereby it would withdraw its objection if your client can provide the following assurances (in addition to the information provisions set out on page 4 of your letter dated 18 February 2019):
 - a) In the event that The Embankment or Canal Way are temporarily or partially closed, WMCA will ensure that any alternative access route will be available to TJX, its staff, customers and suppliers before such closure(s). Any alternative route will accommodate HGV delivery vehicles and reasonable staff and visitor movements, without causing unreasonable additional journey times.

- b) All information will be provided by written notice addressed to the Property Director, TJX Ltd, 50 Clarendon Road, Watford, Herts WD17 1TX and to Tim Earl at Montague Evans Montagu Evans LLP, 5 Bolton Street, London W1J 8BA
- c) WMCA will contribute towards the reasonable legal fees incurred by TJX Ltd in dealing with the negotiation of a suitable suite of settlement documents.

If these further assurances are acceptable, please provide a draft assurance letter containing provisions for our review. If approved, we will arrange for our client's to countersign in agreement of the terms and to acknowledge that the protections are sufficient for it to withdraw its objection with reference OBJ/22 - TJX Ltd.

We look forward to hearing from you shortly.

Yours faithfully

A large black rectangular redaction box covering the signature of the sender.

Veale Wasbrough Vizards LLP