

Transport and Works Act 1992

**Application for the Proposed Midland Metro (Wednesbury
to Brierly Hill Acquisition) Order**

Further Written Representation

on behalf of

Jessop Europe Ltd

Reference: TWA/17/APP/08/OBJ/7

Introduction

1. This further written representation (the “**Representation**”) is submitted by Matthew Bodley of Matthew Bodley Consulting Ltd on behalf of Jessops Europe Ltd (“**Jessops**”) in support of its objection to the draft Midland Metro (Wednesbury to Brierly Hill Land Acquisition) Order (the “**Draft Order**”). The Draft Order is being promoted by the West Midland Combined Authority (the “**Authority**”) in connection with the proposed extension of the Midland Metro from Wednesbury to Brierly Hill (the “**Scheme**”).
2. The Representation provides an update on the position since the submission of the Statement of Case on 11 December 2018.
3. Jessops concerns relate to the disruption which is likely to occur during the construction phase of the Scheme. The grounds of objection are set out the Statement of Case and can be summarised as follows:
 - a. lack of clarity about the works to be undertaken in terms of timing of commencement, duration, impact on shopping centre tenants and mitigation measures; and
 - b. inadequate compensation provisions to shopping centre tenants combined with insufficient attempts to acquire rights required by private treaty.

Update

4. There has been very limited contact from the Authority since the submission of the Statement of Case and what contact there has been could not be described as attempts at private treaty negotiation. The contact that there has been is summarised below.
5. On 11 December 2018 (which was the deadline for submitting Statement of Case) Paul Clarke emailed to provide contact details for Kyle Wright, the appropriate person at Intu responsible for liaising with tenants of the Shopping Centre in connection with the Scheme. This was in response to requests made on 2 and 13 November 2018. I have spoken with Mr Wright and corresponded with him by email. Whilst he tried to be helpful, unfortunately he was not able to provide any information to allay my client’s concerns. In summary, he stated that Intu had raised concerns and that progress toward addressing these concerns had been made during discussions between the parties, however, he was not able to say what these concerns were or what was being proposed to address these. He stated that there was an intention for Intu to enter into an agreement with the Authority but he was not able to provide any further information regarding the content of the agreement. My last contact with Mr Wright was 25 January 2019. At that time no agreement between the Authority and Intu had been exchanged and Intu were still maintaining their objection. Therefore, it is not clear whether an agreement will be reached between Intu and the Authority and if so what it will say and whether it will be relevant to Jessops.
6. On 10 January 2019 the Authority’s solicitor, Kalvinder Aratoon, emailed me to advise that the Scheme had been amended following on-going development design work to the effect that The

Embankment will remain a two-way highway following completion of the works and will not be converted to one-way as previously envisaged. The email also stated that all traffic movements at The Embankment / Level Street junction would remain and that the junction will be managed by signals instead of a roundabout. I received two further emails from Mr Aratoon dated 28 January and 16 February 2019 referring to his email of 10 January 2019 and asking whether the information provided meant that my client would be prepared to withdraw its objection. It's not clear to me why Mr Aratoon would think that this information would satisfy my client as it does not address any of the concerns raised in my client's objection.

7. My email to Paul Clarke of 7 September 2018 and my client's Statement of Case clearly set out my client's outstanding concerns and the assurances that Jessops' require which would enable the withdrawal of their objection. There has been no attempt to address these concerns.
8. Jessops' principal concern is that the works required to implement the Scheme will lead to business losses which are not covered by the compensation provisions within the Draft Order. This is on the basis that compensation to rights holders, such as Jessops, is limited to the provisions of section 10 of the Compulsory Purchase Act 1965 which is limited in its application and does not provide compensation for loss of profits or increased costs, arising as a direct result of the exercise of compulsory powers. Therefore, any increased costs or loss of profits arising as a direct result of the construction works for the Scheme would not be compensated. The Draft Order has extended the statutory compensation provisions in respect of landowners and occupiers to include "loss or damage" but has not afforded the same privilege to rights holders, which is unfair.
9. In summary, the Authority is not in a position to confirm that the implementation of the Scheme will not lead to business losses, yet it is not prepared to provide assurances to cover losses which arise as a direct result of the Scheme.

Current Position

10. The outstanding issues which Jessops require to be addressed are as follows:
 - a. entitlement to compensation for business losses sustained and costs incurred as a direct consequence of the Authority's works;
 - b. the Authority to reinstate and make good the roads and other Common External Areas within plots 336 and 337 on completion of the works;
 - c. reimbursement of Jessops' reasonable surveyor's and solicitor's fees.
11. Jessops would be prepared to withdraw its objection in exchange for a written undertaking which addressed the above points.

Conclusion

12. Jessops' position throughout is that it would prefer not to maintain an objection to the Draft Order but would instead prefer to reach an agreement which provides it with adequate protection against

loss or damage arising as a direct result of the exercise of the powers which will interfere with its property rights. The offer put forward by Jessops to enable the withdrawal of its objection is fair and reasonable. It is disappointing that there has been a refusal by the parties acting on behalf of the Authority to progress negotiations based on the offer. Such negotiations that have taken place have been hampered by an apparent lack of understanding of the compensation code from those conducting the negotiations on behalf of the Authority.

13. Jessops objection could be quite easily resolved by a short agreement which, on the basis of the comments made by those representing the Authority, should not have any material financial cost to the Authority. Instead, Jessops is left at risk of incurring losses as a direct consequence of the implementation of the powers sought under the Draft Order for which it would not be compensated. This is not fair and accordingly the Draft Order should not be confirmed unless adequate provision to compensate Jessops is provided.

Matthew Bodley Consulting Ltd
For and on behalf of Jessops Europe Ltd
18 February 2019