

Wednesbury to Brierley Hill Extension

**Evidence Given on Behalf of the Applicant: WMCA
Acquisition Surveyor
Summary Proof of Evidence
Bruce Fowler MRICS**



Transport and Works Act 1992

The Transport and Works

(Inquiries Procedure) Rules 2004

TRANSPORT AND WORKS ACT 1992

TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

Evidence on behalf of

West Midlands Combined Authority

**MIDLAND METRO (MIDLAND METRO WEDNESBURY AND BRIERLEY HILL
EXTENSION) ORDER**

Summary Proof of Evidence

-of-

T Bruce Fowler MRICS

Regarding

Compulsory Purchase and Property Matters

APP/P6.2

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1. Introduction

1.1 I am Trevor Bruce Fowler, a Partner in the firm Bruton Knowles. I am a member of the Royal Institution of Chartered Surveyors (RICS). I am also a member of the Compulsory Purchase Association.

1.2 Bruton Knowles has supplied property valuation advice to assist negotiations in property acquisition ahead of the use of any compulsory purchase powers.

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2. Scope of Evidence

- 2.1 My Evidence will address the property impacts of the Scheme and will cover the following:-
- 2.2 WMCA approach and justification for the acquisition of land;
- 2.3 The juxtaposition of compulsory purchase of land rights and the Human Rights considerations
- 2.4 The scope and requirement for the acquisition powers sought by the order;
- 2.5 The eligibility of Objectors to recover compensation for any property losses incurred as a reasonable and necessary consequence of the Scheme.

3. WMCA Approach to Land Acquisition

- 3.1 On 12 December 2017, the West Midlands Combined Authority ('WMCA') applied to the Secretary of State for Transport under sections 1 and 5 of the Transport and Works Act 1992 ('the 1992 Act') **[WBHE/B1]** for the Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order ('the Order') **WBHE/A2]**.
- 3.2 Compulsory purchase powers in the 2005 Order expired in 2010 and it is necessary for the WMCA to revive these powers of compulsory acquisition to implement WBHE.
- 3.3 The amount of third party land required for the WBHE has been reduced (compared to the 2005 Order **[WBHE/B2]**) and only includes that which is, on facts currently known, considered necessary for the construction, operation and maintenance of the WBHE. No new/additional land has been included in the Order compared to the 2005 Order.
- 3.4 There are a number of areas where residential garden land is required. There are no parcels where this is expected to give rise to material detriment. The WMCA has already committed to removing plots 87 and 89 from the scope of the Order.
- 3.5 The rest of the land required, that is not abandoned railway corridor or road/highway, is predominately industrial//commercial, mainly relating to premises at the top or bottom of the rail embankment, the delta junction with Line 1 or land relating to tramstop access or worksites.
- 3.6 WMCA has had due regard to the Department for Communities and Local Government (DCLG) guidance on the Compulsory Purchase process and the Crichel Down Rules (the DCLG Guidance) (February 2018) in formulating the scope and justification for seeking powers of compulsory acquisition in the Order **[WBHE/E12]**.
- 3.7 WMCA sought to engage with all persons believed to have an interest in the relevant land.
- 3.8 As a result of this engagement, WMCA has successfully entered into a number of agreements. It has also provided unilateral undertakings by deed to some of the Objectors to the Scheme, for example, to mitigate the effects of the Scheme on PILs. Following some of these discussions, land has been reduced or removed

from the TWAO, for example in relation to Jewson **[OBJ 05]** and Hutchinson and Holden **[OBJ 08]**.

- 3.9 Initial consultation demonstrated that it was unlikely that all of the land and rights required would be available by negotiation hence there is a requirement for WMCA to seek compulsory powers to deliver the Scheme. This seeking of compulsory powers in parallel with negotiations is the approach recommended in the 2018 Government Guidance – paragraph 2 **[WBHE/E12]**.
- 3.10 The land required for the WBHE includes approximately 4083 m² of land that constitutes open space (as defined in section 19(4) of the Acquisition of Land Act 1981).
- 3.11 There is a small amount of open space (approximately 176m²) (Plots 250 and 254d) (see Land Plans **[WBHE/A7]**) where the ownership is currently unknown. Where a TWA Order would confer powers of compulsory acquisition over open space, it will be subject to Special Parliamentary Procedure under section 12 of the Transport and Works Act 1992 and section 19 of the Acquisition of Land Act.
- 3.12 The land requirements of the WBHE include 4078m² of land (Plot 327) that is technically Crown Land.

4. Human rights considerations

- 4.1 Paragraph 12 of the Department for Communities and Local Government's (DCLG) February 2018 Guidance on Compulsory Purchase Process and the Crichel Down Rules [WBHE/E12] states that a compulsory purchase order should only be made where there is "a compelling case in the public interest" and that the purposes for which the Order is made justifies interfering with the human rights of the person with an interest in the land.
- 4.2 The Order is being pursued in the public interest as required by Article 1 of the First Protocol and insofar as Article 8 rights are concerned, is necessary in the interests of the economic well-being of the country . The public benefits have already been tested in the making, after a Public Inquiry, of the 2005 Order. The WMCA considers that the interference with the property rights required under compulsion is justified and proportionate.
- 4.3 The WBHE has been extensively publicised and consultation has taken place with communities and parties that will be affected by the Proposed Order. All those affected by the Order have been notified.

5. The scope of acquisition

- 5.1 The extent of the land included within the Order limits has been determined by the design and construction requirements for all elements of the construction, operation and maintenance of the WBHE, and I am aware that the extent of land to be acquired has been reduced since the making of the 2005 Order.
- 5.2 The Order confers powers on the WMCA to acquire land permanently, to acquire rights, to possess and use land temporarily and to suspend or extinguish private rights of way over land within Order limits.

6. Compulsory Purchase and the compensation code

- 6.1 The powers sought within the Order will enable WMCA, upon the service of appropriate notices, to enter on and take possession of the numbered land Plots

within the Order limits in order to carry out the works required to construct and operate the Scheme.

- 6.2 Article 4 of the Order applies Part 1 of the Compulsory Purchase Act 1965 requiring WMCA to pay compensation to qualifying parties whose compensatable interest is permanently acquired under what is known as the Compensation Code. The Code provides for the recovery of loss of the value of the interest taken, severance and injurious affection and disturbance losses where attributable to the scheme.
- 6.3 Objectors located at, for example, the Merry Hill Shopping Centre share rights over access roads leading to their premises, albeit the Scheme does not acquire land from those right-holders themselves. This would apply to Objectors OBJ/07 Jessops, OBJ/11 Waterstones, OBJ/20 McDonalds, OBJ/21 Argos and OBJ/22 TK Max in respect of works at the Embankment and Central Way.

7. **Negotiations with Objectors affected by compulsory acquisition**

- 7.1 The WMCA continues to seek to negotiate with all remaining objectors and Peter Adams evidence **[APP/P1.1 Sections 11 and 12]** provides an explanation of the grounds for each objection and the WMCA's response. In addition, Peter Adams sets out where changes are to be made to the Order as a result of negotiations or otherwise with PILs/Objectors. Ian Collins evidence **[APP/P3.1]** also provides impacts of the works on specific objectors.
- 7.2 I will submit at the opening of the Public Inquiry listing all Objectors to the Order, identifying those that have withdrawn and explaining the status of any ongoing negotiations with Objectors and appending any relevant correspondence.

8. Conclusions

- 8.1 The land and rights included in the Order have been carefully considered and reviewed throughout the Order process.
- 8.2 All reasonable efforts have been made to reduce the impact of the Scheme on PILs with the land and rights required being only those proportionate to meet the construction and design requirements of the Scheme. Land used on a temporary basis will be returned to the landowner in accordance with the Order or by individual agreement.
- 8.3 Compensation is available in accordance with the Compensation Code to persons with an interest in land in respect of their reasonable losses incurred due to the Scheme.

T Bruce Fowler MRICS

19 February 2019