



Midland Metro (Wednesbury to Brierley Hill and miscellaneous amendments) Order

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Decision Letter

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Our Ref: TWA/03/APP/06
Your Ref: CMV/11152/11
20 December 2004

Dear Sirs

Transport and Works Act 1992

Town and Country Planning Act 1990

Applications for the proposed Midland Metro (Wednesbury to Brierley Hill and miscellaneous amendments) order and for deemed planning permission

- I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, Mr G Self, MA MSc(Eng) DipIC FRTPI concerning the applications made by your clients, West Midlands Passenger Transport Executive ("Centro"), on 16 April 2003 for:
 - the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order ("the Order") to be made under sections 1 and 5 of the Transport and Works Act 1992 ("the TWA"); and
 - a direction as to deemed planning permission ("the planning direction") for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990.
- The Inspector held a public local inquiry into these applications between 23 March and 16 April 2004.
- The Order, if made, would authorise the construction and operation of an 11 km extension to the existing Midland Metro light rapid transit system, which presently runs from Wolverhampton city centre to Snow Hill Station on the north-eastern edge of Birmingham city centre. The proposed extension would run from a junction with the existing Midland Metro line at Wednesbury, along the disused South Staffordshire railway corridor through Gold's Hill, Great Bridge, Horseley Heath, Dudley Port (where there would be an interchange with West Coast Main Line services) to Tipton Road. At Tipton Road the alignment would leave the heavy rail corridor to travel into Dudley town centre, then continue along the Dudley Southern Bypass to rejoin the heavy rail corridor at Cinder Bank. The route would continue to Woodside, before leaving the heavy rail corridor again to reach the Waterfront and Merry Hill before terminating in Cottage Street, Brierley Hill.
- The Order would also, amongst other things, confer on Centro powers to acquire compulsorily land and rights required for the construction and operation of the tramway, to alter and stop up streets, and to maintain apparatus in streets. The planning direction which has been sought would give deemed planning permission for the development provided for in the Order.
- A copy of the Inspector's report of the inquiry is enclosed. His conclusions are set out in paragraphs 7.1 - 7.127 of his report.

Summary of the Inspector's recommendations

- The Inspector recommended in section 8 of his report that the Order be made, with modifications, and that planning permission be deemed to be granted, subject to conditions as amended in accordance with paragraphs 7.110 - 7.121 of his report.

Summary of the Secretary of State's decisions

- For the reasons given in this letter, **the Secretary of State has decided to make the Order, subject to modifications, and to direct that planning permission be deemed to be granted, subject to the conditions set out in the attached Annex.** The proposed Order modifications and planning conditions are discussed later in this letter. For the reasons given in paragraph 45 below, the Order, once made, would need to be subject to special parliamentary procedure before it can come into

force.

Secretary of State's consideration

- Careful consideration has been given to all the arguments put forward by or on behalf of the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. The relevant paragraph numbers of the report are enclosed in brackets at the end of the section headings.

The need, objectives and justification for the scheme (7.58-7.68)

- Centro described the objectives of the Wednesbury to Brierley Hill extension as being to provide a high quality public transport service; to improve accessibility to and within the Wednesbury to Brierley Hill transport corridor; to provide an alternative to private car use, and to support economic, environmental and social objectives for Sandwell MBC and Dudley MBC.
- Although some objectors had questioned the need for the scheme, the Inspector considered that the points made in the pages 12-14 of the Environmental Statement submitted with the TWA application ("the ES"), regarding the need and general justification for the scheme remained valid. He noted in particular that the proposed route would pass through some deprived areas and contribute to regeneration, as well as serving areas of new redevelopment.
- In regard to relevant transport and planning policies, the Inspector noted that, at the national level, one of the aims of PPG13 was to promote public transport and encourage car users to switch to more sustainable modes; at the regional level, the proposed changes to the draft Regional Planning Guidance were generally supportive of the scheme; and at the local level, both of the local planning authorities through whose areas the route would pass supported the scheme and this was reflected in local development plan policies. The Inspector concluded that the proposals were consistent with the general thrust of national, regional and local planning and transport policies and that the scheme would be likely to have transport, regeneration and socio-economic benefits.
- The Secretary of State agrees with the Inspector's analysis of the overall need and justification for the scheme. He agrees that the scheme is supported by planning and transport policies at the national, regional and local levels and that the scheme would bring transport, regeneration and socio-economic benefits to the area.

Consideration of alternative routes (7.67-7.68 & 7.126)

- The Inspector noted that alternative routes and modes had been considered, as described in the ES. Whilst the alternatives considered had not included all those suggested by objectors such as **Mr Cripps, Friends of the Earth West Midlands** and **Mr Welch**, he was satisfied that the route proposed had been based on a suitable balance between engineering, economic, transport, planning and regeneration aims. The Inspector concluded that the selection of the proposed route was justified.
- The Secretary of State agrees with the Inspector that Centro's preferred route is justified and is appropriate to meet the stated objectives of the scheme.

Effects on potential for heavy rail services (7.2 -7.57)

- The Inspector noted that a key argument by the supporters of heavy rail was that the potential for such services had not been properly examined. He noted the criticisms made by **Railfuture** and **Transport 2000** in respect of the Transportation Planning International Ltd (TPI) study and the objection by **The Campaign to Protect Rural England** (CPRE) regarding the West Midlands Area Multi-Modal Study (WMAMMS). Whilst the Inspector accepted that the TFI study had some flaws, he did not agree that the flaws invalidated the study in the way suggested by the objectors. Neither did he accept that the WMAMMS study was unsatisfactory.
- In regard to practical considerations, the Inspector noted Railfuture's arguments that satisfactory provision could be made to allow for mostly twin-track heavy rail provision without spending anywhere near the extra Â£38 million estimated by Centro and without using land outside the Limits of Deviation. However, he was not persuaded that it would be possible to construct four tracks in the available width near Dudley Port; and he found it more likely than not that the Parkhead viaduct would have to be completely rebuilt to cater for Railfuture's proposals, with significant cost implications. The Inspector was also not persuaded that Railfuture's proposals for some singling of Metro tracks were practicable. He concluded that, in terms of tram operations, Railfuture's proposals would not enable Centro to achieve what they set out to achieve in applying for the Order.
- On policy issues, the Inspector noted that the Strategic Rail Authority (SRA) had concluded that there was no demand that would justify a heavy rail passenger service on the Walsall-Stourbridge axis, either now or in the foreseeable future. The SRA foresaw a mid to long term need for freight trains in the corridor unlikely to exceed 3 trains per hour in each direction; and they had confirmed that Centro's proposals would not prejudice the rail capacity required by the SRA in this corridor.
- The Inspector considered that a decision to refuse the Order application would not make heavy rail passenger services on the Stourbridge-Walsall corridor a likely prospect. Indeed, he considered that without developments such as the reconstruction of the Parkhead viaduct as a result of the Metro extension scheme, the reintroduction of either freight or passenger services would be even less likely.
- With regard to the contentions by **Mr Weller** and **Mr Gibbons** that public money should not be spent on a light rail system but should instead be spent on bringing back heavy rail services, irrespective of whether capital and operating costs were covered, the Inspector considered that these objections essentially argued against national, regional and local policies. He did not find anything in their representations which outweighed the applicants' case.
- The Inspector noted that protective provisions had been agreed between Centro and the SRA and Network Rail. He was satisfied that although the proposed works would affect the alignment of the existing disused heavy rail tracks, the scheme would meet current and reasonably foreseeable requirements for heavy rail services to be re-introduced along this route. He concluded that the likely effects of the scheme on the potential for heavy rail services would be acceptable.
- The Secretary of State agrees with the Inspector, for the reasons he gives, that the likely effects of the scheme on the potential for heavy rail services would be acceptable.

The case for the proposed compulsory acquisition powers (7.69-7.82)

- The Inspector noted that most of the objections to the proposed compulsory acquisition powers had been withdrawn. He considered the outstanding objections to compulsory acquisition from **Mr Gibbons**, **Mr Cook**, the **Brierley Hill Traders Association**, and **Mr Parker**.
- With regard to the arguments put forward by Mr Gibbons, the Inspector concluded, for reasons given

in paragraphs 7.72 to 7.75 of his report, that the compulsory acquisition powers sought for Plots 86, 87, 542 and 706 were justified. The Inspector was also satisfied that in terms of Human Rights legislation, the powers would be proportionate in the public interest.

- In regard to Mr Cook's objection in relation to the Victoria Works site in Dudley, the Inspector was of the view that the route through the Victoria Works was the best option and that acquiring the whole site compulsorily appeared to be the only practical way of obtaining the necessary land.
- As regards the objections by the Brierley Hill Traders Association and Mr Parker to the loss of car parking at the Cottage Street car park, the Inspector accepted Centro's explanation that the car park was the most suitable site for a temporary construction compound, and he noted Dudley MBC's intention to replace car parking spaces lost as a result of the tramway. The Inspector concluded that the temporary acquisition powers sought in relation to the Cottage Street land were necessary for the scheme to proceed.
- The Secretary of State agrees with the Inspector that all the land that is subject to compulsory acquisition and temporary possession powers in the Order has been shown to be necessary for the scheme to be implemented, and that powers proposed are reasonable. He is satisfied that there is a compelling case for giving those powers in the public interest.

Funding (7.83 - 7.89)

- The Inspector noted that Centro had prepared an Initial Outline Business Case for their proposals in 2000, and that the then Department of Environment, Transport and the Regions (DETR) had confirmed that the first appraisal passed the tests used to decide whether a project was eligible for funding. He also noted that the updated appraisal carried out for Centro showed that the scheme would still perform well in financial and economic terms, with a benefit-cost ratio of 1.23. The Inspector had some reservations about the latest economic appraisal, as set out in paragraphs 7.84 to 7.86 of his report, but he nevertheless concluded that the project was reasonably capable of attracting the necessary funding.
- The Secretary of State notes the Inspector's conclusion that the project is reasonably capable of attracting the necessary funding. He notes also that, since provisional funding approval was given by DETR in December 2000 - based on a capital cost at 1999 prices of Â£114.1m - the cost of the scheme has risen, according to Centro's estimates presented to the inquiry, to Â£138.8m.
- In determining a TWA Order application, the Secretary of State is concerned to establish that the proposals are capable of attracting the necessary funding within a reasonable timescale - which he considers to be the 5 year lifetime of the compulsory purchase powers - such as would satisfy him that there is a reasonable prospect of the proposals being implemented if the Order is approved. His decision to make an Order is without prejudice to any subsequent funding decision and does not imply that any required funding will necessarily be forthcoming, as this will depend upon such factors as the availability of resources and relative spending priorities at the time, and a detailed appraisal of whether the scheme represents good value for money for the taxpayer.
- Given that Government resources available to finance local transport schemes are not unlimited, and that hard choices inevitably have to be made, the Secretary of State can give no guarantee that public funding would be available to meet the higher level of costs now estimated by Centro for this scheme. At the same time, he would not wish to rule out at this stage, in the context of his consideration of this TWA application, the possibility of the scheme becoming fundable within a reasonable timescale. To do so would pre-empt his subsequent consideration of a fully detailed case for full funding approval; and he is mindful also that it would be open to Centro to consider whether there may be ways of reducing scheme costs and/or of obtaining alternative sources of funding. In all the circumstances, the Secretary of State concludes for the purposes of his decision on the present

application that the proposals are reasonably capable of attracting the necessary funding, whilst drawing Centro's attention to the above considerations and caveats.

Likely impact on current and proposed residential developments (7.93-7.94 & 7.104)

- With regard to the objection by **Mr Gibbons** that noise and vibration from the Metro operations would cause intolerable effects on his family's way of life, in breach of the Human Rights Act, the Inspector considered that there was no sound basis for this claim. He noted that the noise levels at Mr Gibbons' house generated by tram operations would be below disturbance threshold levels, based on national planning standards. Furthermore, Mr Gibbons had argued in favour of re-introducing heavy rail services, which would almost certainly be noisier than trams. The Inspector was satisfied that the proposals would not involve any breach of Human Rights legislation.
- The Inspector concluded that there were no substantive objections with regard to the effects of the proposals on residential areas. He was satisfied that where necessary, suitable mitigation measures would be taken and that no serious harm to residential amenity would occur from the construction or operation of the tramway.
- The Secretary of State agrees with the Inspector that any residual adverse impacts upon local residents following the implementation of mitigation measures would be within acceptable limits.

Likely effects on the operation and vitality of local businesses (7.95-7.99 & 7.104)

- The Inspector noted that as far as the more localised impact on specific businesses was concerned, most of the objections had been withdrawn. He considered the outstanding objections from **Five Star Taxis, Mr M Hussain and Bellborough Ltd.**
- Five Star Taxis and Mr Hussain had contended that the proposals would harm business activity in Porters Field, Dudley, because of the loss of car parking spaces. The Inspector noted that the car park in question only had temporary planning permission and that, if it were not used for a tram stop, redevelopment for another purpose was quite likely. Whilst the works might cause temporary inconvenience for people going to or from the taxi office, Centro did not anticipate preventing access by vehicles or pedestrians. Furthermore, the Inspector considered that the presence of a tram stop here could lead to increased business for taxi operators based nearby.
- With regard to the objection by Bellborough Ltd about the loss of car parking spaces next to offices at the Waterfront (East) business park, the Inspector concluded that any reduction in the number of parking spaces would be comparatively minor, especially as the presence of a tramway and stop could encourage office employees and visitors to use public transport. The Inspector concluded that the proposals would not have any significant harmful effect on the business interests mentioned in the objections by Five Star Taxis, Mr Hussain, or Bellborough Ltd
- The Secretary of State agrees with the Inspector that the proposed scheme should not give rise to unacceptable impacts on local businesses.

Likely effects on the pedestrian environment (7.100-7.101)

- In regard to the objection from **Mr Pugh** regarding the pedestrian environment and safety in Dudley town centre, the Inspector noted that there was no evidence to suggest that the existing Midland Metro line had caused any pedestrian safety problems where it operated on-street near the centre of Wolverhampton; and that the tramway route through Dudley town centre, as elsewhere, had been planned taking pedestrians into account. He also noted that it was generally accepted in the UK that it

was safe for pedestrians to cross on-street tramways. The Inspector concluded that the scheme would not be likely significantly to harm pedestrian safety or the pedestrian environment and that any effect would be within acceptable limits. The Secretary of State agrees with this conclusion.

Landscape, townscape and visual impacts (7.102-7.103)

- With regard to impacts on the character and appearance of the Castle Hill Conservation Area in Dudley, the Inspector considered that the overhead equipment and supports would detract from the appearance of the area. However, he was of the view that the effect would not be very great and he judged that the overall character of the Conservation Area would be preserved. The Secretary of State accepts the Inspector's advice that the adverse impact on the appearance of the Conservation Area would be within acceptable limits.
- At the Parkhead Locks Conservation Area, the Inspector noted that the Metro tracks, trams and overhead equipment would be on top of an already prominent man-made structure, the appearance of which would in his view be improved by its refurbishment and partial reconstruction. The Inspector concluded that no material harm would be caused to the character or appearance of the Conservation Area, and that appropriate legal and policy criteria would be met. The Secretary of State agrees with the Inspector's conclusions.

Need for and suitability of the proposed construction compounds and work sites (7.104)

- The Inspector was satisfied that the proposed compounds and works sites were both necessary and suitable. The Secretary of State agrees with this conclusion.

Proposed mitigation measures (Paragraphs 7.90 - 7.103)

- The Inspector noted that various remedial and mitigation measures were proposed as set out in the ES. He also noted that protective provisions have been agreed with some parties, leading to the withdrawal of their objections; that the Code of Construction Practice would provide safeguards; and that the Compensation Code would apply. He concluded that any remaining impacts on residents, businesses and the environment would be within acceptable limits. The Secretary of State agrees.

Likely effects of the proposed compulsory acquisition of rights over public open space

- The Secretary of State notes that, in their evidence to the inquiry, Centro stated that the scheme would require the compulsory acquisition of certain plots of land at Parkhead Viaduct ¹, all or parts of which are used as public open space. However, Centro also stated that they were unable to provide suitable exchange land, and they therefore recognised that the Order, if made, would be subject to special parliamentary procedure by virtue of section 12 of the TWA and section 19 of the Acquisition of Land Act 1981.
- The Secretary of State has, in addition, considered whether plots 542 and 706 in the Metropolitan Borough of Sandwell should also be regarded as open space within the meaning of section 19(4) of the 1981 Act, in view of the evidence given by Mr Gibbons to the inquiry on their use. However, having invited further representations on this matter from Mr Gibbons, from Centro and from Sandwell Metropolitan Borough Council (as the relevant local authority and landowners), by way of

a letter of 9 September 2004, and having considered the representations made, the Secretary of State is not satisfied that these particular plots should be treated as open space within the meaning of the 1981 Act. He is particularly persuaded by the evidence provided by the Council on how the land has been used and the purposes to which it was intended to be put, and by their statement that at no time has the land been regarded by the local authority as open space nor has it been allocated in the development plan for such purpose.

- The Secretary of State notes that no objections were made to the loss of the open space land referred to at paragraph 43. As stated in paragraph 26, he considers that all the land which is subject to compulsory acquisition provisions in the Order is required for the scheme and that these powers are justifiable in the public interest. However, as the Order would authorise the compulsory purchase of open space land for which no land is to be given in exchange, the Order will be subject to the provisions of section 12 of the TWA, which requires that it be subject to special parliamentary procedure in accordance with section 19 of the Acquisition of Land Act 1981.

Statutory Undertakers (7.105)

- The Inspector noted that agreements had been reached between the applicants and all but one statutory undertaker, **Cable and Wireless UK**, who did not appear at the inquiry. The Inspector concluded that suitable protective provisions had been made for all statutory undertakers.
- The Secretary of State notes that, following the inquiry, Cable and Wireless withdrew their objection in a letter to him of 14 June 2004. As all other objections from statutory undertakers were withdrawn earlier, he is satisfied that there should be no unacceptable effects on the carrying out of any statutory undertakings.

Canals and Waterways (7.107-7.108)

- The Inspector noted that no objections remained concerning the use of canals and waterways. Protective provisions had been agreed for the benefit of British Waterways and for the Environment Agency's interests in water courses, and the Inspector was satisfied that those provisions were suitable and would adequately safeguard canal and waterway interests. The Secretary of State agrees with this conclusion.

Environmental Statement (ES) - Adequacy and Statutory Procedures (7.92 & 7.109)

- The Inspector was satisfied that the ES submitted by Centro, and the supplementary environmental information provided, covered all relevant matters and met all statutory procedural requirements.
- The Secretary of State agrees. He is satisfied that the ES, together with the evidence adduced at the inquiry, provides him with sufficient information to assess the likely environmental impacts of the Order proposals; and he confirms that, in reaching his decisions, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA.
- For the purposes of section 14(3AA) of the TWA, the Secretary of State considers that the main measures to avoid, reduce and, if possible, remedy any major adverse environmental effects are those set out in the attached planning conditions and in the Code of Construction Practice. He is satisfied that the proposed mitigation measures will reduce the adverse environmental impacts of the scheme to an acceptable level. To the extent that some residual adverse effects on the environment may remain, he is satisfied that these will be outweighed by the long term benefits of the scheme.

Remaining Objections and Other Matters (7.124-7.126 and 1.12-1.15)

- The Inspector noted that the representation by **H & H Holman Properties Ltd** did not appear to oppose the Metro extension, but drew attention to plans to redevelop land off the southern part of Flood Street, Dudley. The Inspector was satisfied that, given the lack of detail and apparent uncertain timing of the redevelopment scheme, Centro's intention to make provision for a possible future tram stop was an appropriate response. The Secretary of State agrees.
- The Secretary of State has considered the Inspector's comments in paragraphs 1.12 to 1.15 of his report regarding the late posting of notices of the inquiry. The Secretary of State agrees with the Inspector's conclusion that the failure to comply with the time period specified in rule 11(6)(b) of the Inquiries Procedure Rules did not prejudice the interests of any party and that no further action is necessary on the matter.

Inspector's recommendations (7.127 & 8.1-8.2)

- The Inspector recommended that the Order should be made, incorporating the amendments drafted by the applicants in Document CEN 72. He also recommended that planning permission should be deemed to be granted for the development provided for in the Order subject to the planning conditions at Appendix 3 to his report, as amended to include the minor modifications set out in paragraphs 7.110 to 7.120 of his report. He was satisfied that the revised planning conditions were reasonable and met the six tests laid down in DoE Circular 11/95 ("The use of conditions in planning permissions").

¹ Plot numbers 246, 250, 252, 253, 256, 257, 259, 260, 261, 263, 264, 265, 270, 595, 596, 598, 600, 601, 603, 711 and 757

The Secretary of State's overall conclusions on the Order

- For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation that the Order should be made. He is satisfied that the transportation, regeneration and socio-economic benefits that the scheme would bring outweigh by some margin any adverse impacts on the local communities or on the environment, which should be kept to an acceptable level by the proposed mitigation measures.
- Furthermore, the Secretary of State is satisfied that the particular powers sought by Centro in the Order, subject to the modifications described below, are reasonable, appropriate and justified in the public interest. **Accordingly, the Secretary of State has decided to make the Order, subject to some modifications described below.**
- The modifications to the Order that the Secretary of State intends to make, in addition to those contained in your clients' revised draft of 19 April 2004 and recommended by the Inspector, are as follows:-
 - to make amendments to Schedule 12 consequential on the coming into force of the Communications Act 2003;
 - to make certain minor drafting amendments which do not affect the substance of the Order.

- The Secretary of State is of the opinion that these changes will not make a substantial change in the proposals.
- With regard to section 5(6) of the TWA, the Secretary of State is satisfied that in every instance where the Order will authorise the extinguishment of a public right of way over land, either an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required.

Planning Direction and Conditions

- For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation that he should **direct that planning permission be deemed to be granted for the development for which provision is made in the Order**, subject to conditions. The conditions he intends to impose are set out in the Annex to this letter. The letter conveying the planning direction will be issued shortly, at the same time as the Order is made. This will follow publication of a notice of the determination in the London Gazette.
- The conditions generally follow those agreed between Centro and the local planning authority and recommended by the Inspector, subject to a few drafting changes that do not affect the substance of any condition. The only changes of significance are that:-
 - to aid clarity in interpreting certain of the conditions, definitions have been added of "the Order", "the limits of deviation", "local planning authority", and "the Environmental Statement";
 - in condition 1, the setting of a separate (10 year) time limit for beginning the development of tram stops at Gold's Hill, Station Drive, Flood Street and Canal Street has been deleted as the Secretary of State considers this to be unnecessary. The condition as it remains would not require every individual item of development, including every tram stop, to be begun within 5 years;
 - the Secretary of State has noted the recommendation in paragraph 7.111 of the Inspector's report regarding the suggestion by English Heritage that they be specified as a body to be consulted by the local planning authority on details affecting their interests. Although the Secretary of State agrees with the Inspector's conclusion on the recommendation, on the basis that local planning authority is best placed to decide who to consult, he does not agree that it is inappropriate in principle for planning conditions to specify that parties should be consulted on specific matters.
- The Secretary of State also wishes to clarify that, unlike the Inspector, he does not have a difficulty with the inclusion of bullet points and sub-headings in the conditions.

Notice under section 14 of the TWA

- A notice of the Secretary of State's determination given pursuant to section 14(1)(a) of the TWA is enclosed. This notice explains that the Order is to be laid in Parliament and will not come into force until the special parliamentary procedure referred to in paragraph 45 of this letter has been completed.

Challenge to decisions

- The circumstances in which the Secretary of State's decisions may be challenged are set out in the note enclosed with this letter.

Distribution

- Copies of this letter, the section 14(1)(a) notice and the Inspector's conclusions and recommendations are being sent to all those who appeared at the inquiry. Copies of this letter and the section 14(1)(a) notice are being sent to others who made representations about the Order application but who did not appear at the inquiry.

Yours faithfully,

Ellis Harvey
Head of the TWA Orders Unit

Annex

Town and Country Planning Act 1990

The proposed Midland Metro (Wednesday Brierley Hill and miscellaneous amendments) Order

Conditions to be attached to the direction as to deemed planning permission

In these conditions, unless the context otherwise requires:-

"the development" means the works authorised by the Order, including the ancillary development identified in Schedule 1 to the Request for Planning Permission;

"the Environmental Statement" means the environmental statement accompanying the application for the Order submitted on 16 April 2003;

"the local planning authority" means the Council of the Metropolitan Borough of Sandwell in relation to any part of the development within its area, and the Council of the Metropolitan Borough of Dudley in relation to any part of the development within its area;

"the Order" means The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2004

"the limits of deviation" has the same meaning as in the Order; and

"stage" means each separate section of the development set out in Schedule 1 to the request for deemed planning permission:

- **Time Limits**

The development hereby permitted shall be begun before the expiration of 5 years from the date that the Order comes into force.

Reason: To ensure that the works are begun with a reasonable period of time.

- **Horizontal Alignment of Tramway**

The tram tracks shall be aligned such that no running rail for the tramway falls within the areas hatched green within the limits of deviation on Plans P1 to P6, P7A and P8 to P15, unless any variation to this has been submitted to and approved in writing by the local planning authority. Any request for variation shall be accompanied by an appropriate environmental impact assessment.

Reason: To ensure that residual adverse environmental impacts are no greater than those assessed in the Environmental Statement and Supplementary Environmental Information.

- **Design and External Appearance**

Works of construction shall not begin in respect of any:

- tram stop;
- permanent boundary treatment;
- poles and brackets required to support the overhead line system;
- electricity substation and ancillary electrical equipment; and
- bridge or viaduct

until details of the design and external appearance of that element have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that proper control is exercised over detailed design of the development

- **Materials**

Details of materials to be used in any external surface of any:

- tram stop;
- permanent boundary treatment;
- poles and brackets used to support the overhead line system;
- electricity substation and ancillary electrical equipment; and
- bridge or viaduct

shall be submitted to and approved in writing by the local planning authority before that element of the development is commenced. The materials used shall be in accordance with the approved details.

Reason: To ensure satisfactory external appearance in the interests of visual amenity

- **Landscaping**

Details of all proposed landscaping and the proposed times for the implementation of planting shall be submitted to and approved in writing by the local planning authority before the stage of the development to which the landscaping in question relates is commenced. All landscaping shall be carried out in accordance with those details and at those times. If, within a period of two years from the date of the planting, that planting, or any replacement planting, is removed, uprooted or dies, another plant of the same species and size as that originally planted shall be planted at the same place in the next available planting season, unless the local planning authority gives its written consent to any variation.

Reason: To ensure appropriate landscaping of the development

- **Archaeology**

Development shall not begin until a scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. All archaeological work shall be undertaken in accordance with the agreed scheme of investigation.

Reason: To ensure adequate protection and recording of archaeological remains.

- **Code of Construction Practice**

Development shall not begin until Part 1 of the Code of Construction Practice has been submitted to and approved in writing by the local planning authority. Before any stage of the works begins, Part 2 of the Code of Construction Practice with respect to that stage shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with Part 1 of the Code of Construction Practice, together with the relevant provisions of Part 2 of that Code.

Reason: To ensure adequate environmental protection during construction.

- **Contaminated Land**

No stage of the development shall begin until a scheme to deal with any contamination of the land on which that stage will take place has been submitted to and approved in writing by the local planning authority. The scheme shall include an investigation and assessment to identify the extent of contamination and measures to be taken to avoid risk to the public and the environment when the works are carried out. No stage of the development shall begin until the measures approved in the scheme with respect to that stage have been fully implemented.

Reason: To ensure that any necessary site investigation and remediation works are undertaken in relation to contaminated land.

- **Highway Access**

Details of the siting, design and layout within the limits of deviation of any new permanent means of access to a highway to be used by vehicular traffic, or of any permanent alteration of an existing means of access to a highway used by vehicular traffic, shall be submitted to and approved in writing by the local planning authority before the relevant stage of the development begins. The development shall be carried out in accordance with the approved details.

Reason: To ensure highway safety

- **Airborne Noise**

The development shall be designed and operated in accordance with the Midland Metro Extension Noise and Vibration Policy 2003. For the purposes of Section 5 of the policy, Noise Mitigation at Source, the pre-existing ambient noise levels shall be those in Table 6.16 of the Environmental Statement, or from any later survey which has been agreed in writing by the local planning authority.

Reason: To minimise impact from airborne noise caused by the running of trams.

- **Ground-Borne Noise**

Where the dominant source of noise is ground-borne, the following noise standards shall be applied to the development for the application of Sections 6 and 7 of the Noise and Vibration Policy:

- Inside noise sensitive rooms in residential buildings - $L_{Amax,S} 40dB$; and
- Inside noise sensitive rooms in offices - $L_{Amax,S} 45dB$.

Reason: To minimise impact from ground-borne noise and vibration caused by the running of trams.

- **Ecology Surveys and Mitigation**

Before each stage of the development begins, check surveys for species of interest, as set out in Section 3.4 of the Environmental Statement, shall be undertaken. These surveys and details of any necessary programme of mitigation measures for any protected species affected by the development, shall first be submitted to and approved in writing by the local planning authority. The programme of mitigation measures shall be implemented in full.

Reason: To ensure that any species of interest are properly protected and appropriate ecology mitigation undertaken.

- **Electro-Magnetic Compatibility**

The development shall be designed and constructed in accordance with the electro-magnetic compatibility standards set out in 'EN 50121, Parts 1 to 6: Railway applications - Electromagnetic compatibility', or any successor standards.

Reason: To ensure that the tramway does not give rise to unacceptable electro-magnetic interference.

END