

Wednesbury to Brierley Hill Extension

**Evidence Given on Behalf of the Applicant: WMCA
Acquisition Surveyor
Main 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**

Main Proof of Evidence

-of-

T Bruce Fowler MRICS

Regarding

Compulsory Purchase and Property Matters

APP/P6.1

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1. Introduction

- 1.1 I am Trevor Bruce Fowler, a Partner in the firm Bruton Knowles with head office of Olympus House, Olympus Business Park, Quedgeley, Gloucester. The firm operates from 12 offices in England and Wales.
- 1.2 I am a member of the Royal Institution of Chartered Surveyors (RICS) having qualified in 1990. I am also a member of the Compulsory Purchase Association.
- 1.3 I have worked for Bruton Knowles since 2002 and have practiced predominately in the field of compulsory purchase and compensation. I act for numerous Local Authorities dealing with compulsory purchase orders, development consent orders and Transport and Works Act orders.
- 1.4 Bruton Knowles is instructed under the West Midlands Combined Authority (WMCA) property services framework to provide property advice on the Midland Metro WBHE Scheme (hereafter, the Scheme).
- 1.5 Bruton Knowles has supplied property valuation advice to assist negotiations in property acquisition ahead of the use of any compulsory purchase powers. The extent of our involvement has been ad hoc advice and compensation estimates, with much of the detailed land acquisition having been completed by the Metro in-house project team.
- 1.6 I am aware of the details of the project from the study of the application documents and have familiarised myself with the relevant properties affected by the WBHE Proposed Order (hereafter, the Order). I am also aware of the land issues in respect of the outstanding objectors.

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 Whilst the amount of compensation properly recoverable is not a matter for the Inquiry, I will consider 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 In 2005, the Secretary of State for Transport approved the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005¹ ('the 2005 Order') **[WBHE/B2]** under the Transport and Works Act 1992 to construct and operate an extension to Line 1 of the Metro system. It provided for the Metro system to run from Line 1 at Wednesbury west along the former South Staffordshire Railway corridor to Dudley Town Centre. 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 The 2005 Order **[WBHE/B2]** authorised the WMCA to construct, maintain and operate an extension to Line 1 of the Midland Metro Light Rapid Transit System from a junction with the existing Line at Wednesbury to Brierley Hill via Dudley Town Centre with a terminus in Little Cottage Street in Brierley Hill. Approximately two thirds of the alignment runs along the abandoned railway corridor, the remainder on street.
- 3.3 The WBHE is now being implemented and as the compulsory powers in the 2005 Order expired in 2010, it is necessary for the WMCA to seek powers to revive these powers of compulsory acquisition to implement WBHE. The Order, if made, would confer further powers of compulsory acquisition on the WMCA for the purpose of the works authorised by the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (SI2005/927) ('the 2005 Order') **[WBHE/B2]** the compulsory acquisition powers of which expired in 2010.
- 3.4 Land Plans **[WBHE/A7]** showing the extent of the land to be acquired and used for the purposes of the Midland Metro Wednesbury to Brierley Hill Extension ('WBHE') were deposited with the application for the Order. The evidence of Ian Collins [APP/P3.1] justifies the land required for the Scheme (see 'Land Requirements').

¹ S.I. 2005 No. 927

- 3.5 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.
- 3.6 There are a number of areas where residential garden land is required, in particular where there appears to have been encroachment onto the former railway corridor, or where works are required to some of the existing structures along the rail corridor (in the vicinity of New Road Bridge, Lower Church Lane, Park Lane East, Binfield Street and Lindley Avenue with a mix of temporary and permanent acquisition and permanent rights). 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 following an objection by the freeholders (OBJ/08) which has subsequently been withdrawn.
- 3.7 The rest of the land 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.
- 3.8 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]**. The application for the Order does not contain any land that is outside of the limits of the 2005 Order. Some land within the 2005 Order has been removed altogether following changes to the scheme since the 2005 Order was made including some detailed design and change in aspirations of the WMCA, local authority partners and Network Rail. Reviews have taken place regularly to reduce/remove the land take compared to the original Land Plans or to acquire lesser rights.
- 3.9 WMCA has sought to engage with all persons believed to have an interest in the relevant land. 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. These agreements and undertakings relate to a variety of issues, including in particular, specific provisions to mitigate the effects of the Scheme on PILs. Following some of these discussions, land has

been reduced from the initial extent or removed completely from the TWAO, for example in relation to Jewson [OBJ 05] and Hutchinson and Holden [OBJ 08].

- 3.10 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].
- 3.11 Although agreement has been reached with some PILs, this has been achieved in the context of a TWAO being confirmed and negotiations have been concluded under the shadow of such compulsion. Without the prospect of the Order, it is unlikely that WMCA would have achieved the agreements that it has.
- 3.12 WMCA are seeking compulsory acquisition powers in the Order to enable WMCA to secure in a timely and efficient manner the land interests and rights which WMCA has identified, following consultation, as being required for the construction and subsequent maintenance and operation of the WBHE.
- 3.13 The Order, if confirmed, would allow for all the land required for the Scheme to be acquired in a realistic timescale and would prevent individual landowners holding up the Scheme's delivery through a refusal to sell land or to licence the use of land. The making of the Order would also ensure that no adverse restriction within land interests would prevent the construction or operation of the Scheme. In practice, in the absence of the acquisition powers to be conferred by the Order, it would be impossible to assemble all the permanent and temporary land interests required to construct and operate the Scheme within a reasonable timescale that would enable WMCA to deliver the Scheme in a timely, efficient and economical manner.
- 3.14 Therefore, the granting of the Order powers will provide certainty that WMCA can deliver the Scheme.
- 3.15 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) (within parcels 250, 251, 252, 253, 254, Plot 254c, Plot 254d, Plot 254e, 255, 257 and 261) in the vicinity of Parkhead Viaduct. Where ownership of the land is known, WMCA has entered into negotiations with Aga, Canal & Rivers Trust and Dudley Canal & Tunnel Trust and it is expected that agreements will be

entered in to with each of these parties. The area of open space land in Plot 250 held by Network Rail forms part of the Scheme agreement with Network Rail.

- 3.16 However, there remains a small amount of open space (approximately 176m²) (Plots 250 and 254d) (see Land Plans **[WBHE/A7]**) where the ownership is currently unknown and which it may be necessary to acquire using the powers of the Proposed Order. 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 1981 unless suitable exchange land will be given by the applicant or the land does not exceed 209 m² and a certificate has been given by the Secretary of State that the giving of exchange land is unnecessary. It is expected that any open space that is not acquired by agreement prior to the Inquiry will be beneath the statutory threshold but WMCA is nevertheless exploring whether there is suitable land that can be provided in exchange. Once the final extent of open space land to be acquired compulsorily is known, or in the event that exchange land is to be given, WMCA will apply to the Department for Communities and Local Government for the relevant certificate.
- 3.17 The land requirements of the WBHE include 4078m² of land (Plot 327) that is technically Crown Land as it is land over which the Department for Work and Pensions (DWP) and Her Majesty's Revenue & Customs (HMRC) have rights of access arising out of their leases within the Waterfront. The Waterfront buildings themselves have not been included within the Order and are not affected by the WBHE. The WMCA is not seeking to remove any rights of access which are currently enjoyed by lessees of the Waterfront including DWP and HMRC.

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 (which may be a business or other entity as well as an individual) with an interest in the land. In making this assessment, the person seeking to acquire the land should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the Convention and, in the case of a dwelling, Article 8 of the Convention. These are summarised and considered below.
- 4.2 Article 1 of the First Protocol states that: *"...Every natural or legal person is entitled to peaceful enjoyment of his possessions" and "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law..."*
- 4.3 Whilst occupiers and owners of land will be deprived of their property if the Order is made, this will be done in accordance with the law. 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 associated with the WBHE are set out in the Statement of Case **[WBHE/F5; 9.18 et seq]** and dealt with by Peter Adams **[APP/P1.1]** They have already been tested in the making, after a Public Inquiry, of the 2005 Order. The WMCA considers that the Order will strike a fair balance between the public interest in the implementation of the WBHE and those private rights which will be affected by the Order and that any interference with those rights is justified and proportionate.
- 4.4 Article 6 of the Convention provides that: *"In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*
- 4.5 Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

- 4.6 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, and have been afforded the right to make representations and/or objections to the Secretary of State for Transport, and to be heard at an Inquiry. The WMCA considers that the statutory processes and associated right for those affected to pursue remedies in the High Court where relevant, are compliant with Article 6.
- 4.7 The WMCA considers that such interferences as may occur in pursuance of the Order are in accordance with the law, pursue a legitimate aim, namely the provision of a high quality integrated public transport system and are proportionate having regard to the benefits to the public interest that the WBHE will secure.
- 4.8 Those directly affected by the Order will also be entitled to compensation in accordance with the Order and statutory Compensation Code.
- 4.9 In summary, I have considered the evidence provided by WMCA, and I am of the opinion that, as regards the extent of the land and rights to be acquired from persons with an interest in land, any interference with the Convention rights is justified in order to secure the objectives of the WBHE and the public benefits that will ensue.

5. The scope of acquisition

- 5.1 The Order would confer powers of compulsory acquisition on the WMCA for the purpose of the works authorised by the 2005 Order.
- 5.2 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. Each plot (or parcel) of land subject to compulsory powers is shown on the Land Plans **[WBHE/A7]** and described in the Book of Reference **[WBHE/A8]** submitted with the application.
- 5.3 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. These categories of powers are described in more detail below. The Order, including Schedules 1 and 3, describes the scope of powers applicable to each plot.

Permanent (outright) acquisition (Article 3)

- 5.4 Article 3 (power to acquire land) enables the WMCA to acquire so much of the land in the plots specified in the table in Part 1 of Schedule 1 (acquisition of land and rights) as may reasonably be required for the purposes identified in relation to that land in the final column of the table . These uses generally encompass the construction, operation and maintenance of the works authorised by the 2005 Order but also include landscaping and other public realm works. Importantly, WMCA may use the land in Part 1 of Schedule 1 for the identified purposes or for any other purposes that are ancillary to its tramway undertaking.
- 5.5 In the case of plot 339 however, the powers of outright acquisition are restricted so as to safeguard Dudley Canal No. 1 and the airspace immediately above it.

New rights (Article 6)

- 5.6 Article 6 (power to acquire new rights) allows the WMCA to take rights over any of the land referred to in article 3, either by creating new rights or acquiring easements or other rights already in existence from third parties. It may also acquire such rights or easements over the land specified in the table in Part 2 of Schedule 1 as may be required for the purposes specified in the final column of that table. This enables the WMCA to secure permanent access routes, in common with other users, for the purposes of construction and maintenance of the works authorised by the 2005 Order.

Temporary possession of land (articles 7 and 8)

- 5.7 These articles allow WMCA to enter upon and take possession of certain land on a temporary basis to the exclusion of the owner or occupiers of that land. This may be land required during construction (article 7) or needed for maintenance of the works in the period of 5 years after the tramway is first opened for use (article 8). The plots and the broad purposes for which they may be utilised are set out in the table in Schedule 3 (land of which temporary possession may be taken).
- 5.8 Article 7 (temporary use of land for construction of works) confers powers on the WMCA to take temporary possession of (i) any of the land specified in the table in Schedule 3 and (ii) any of the “relevant land” of which no notice of entry has been served (other than a notice in respect of rights only) or vesting declaration made. “Relevant land” means any land (other than land already listed in Schedule 3) except the land in Part 2 of the table in Schedule 1 (where acquisition is limited to rights only).
- 5.9 Article 8 (temporary use of land for maintenance of works) allows temporary possession of land that is both within Order limits and also within 20 metres of the authorised works if such possession is reasonably required for the purpose of maintaining the works or for maintaining any ancillary works connected with them. This power subsists for 5 years beginning with the date on which the work is opened for use.

Extinction or suspension of private rights of way (Article 9)

- 5.10 Subject to various provisos, the effect of the Order is to extinguish all private rights of way over land subject to permanent compulsory acquisition as from the date of acquisition of the land to which they relate (whether compulsorily or by agreement) or from the date of entry on the land by the WMCA in accordance with the Compulsory Purchase Act 1965, whichever happens first. However, this has effect subject to any agreement reached between the WMCA and the person entitled to the right of way and to any notice given by WMCA that the provision is not to apply to a right of way or is only to apply to the extent specified in the notice.

Notices to landowners

- 5.11 Articles 4 (application of Part 1 of the 1965 Act) and 5 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) make the permanent acquisition of land under the Order subject (in the main) to the same statutory framework that applies to compulsory purchase orders by an acquiring authority under the Acquisition of Land Act 1981 including the statutory compensation code to which I refer in the next section of my evidence. Article 6 also applies these Acts, with the necessary modifications, to the acquisition of rights in land only. As a result, not less than three months' notice is to be given where land is to be acquired by the WMCA, save that, where the acquisition is of an easement or other right in land, the Order reduces this to one month.
- 5.12 Where only temporary possession is required, the Order provides for not less than 28 days' notice of the intended entry onto the land, to be given to the owners and occupiers of that land.

Material detriment

- 5.13 Where only part of a property is subject to permanent acquisition, the application of compulsory purchase legislation to the Order means that WMCA may be required to purchase the whole if part cannot be taken without causing material detriment to the remainder.

- 5.14 Schedule 2 (modification of compensation and compulsory purchasing enactments for creation of new rights) provides a mechanism to apply a modified material detriment procedure to the acquisition of rights only.
- 5.15 As explained in section 3 of my evidence, it is my professional opinion that there are no instances where compulsory acquisition of land or rights under the proposed Order would give rise to a claim for material detriment.

Time limit for compulsory acquisition

- 5.16 Article 11 (time limit for exercise of powers of acquisition) of the Order sets a time limit of 5 years from the date on which the Order comes into force for powers of compulsory acquisition or temporary occupation to be used. In particular no notice to treat or general vesting notice may be served nor may a notice for temporary possession be served after the expiration of the 5 years.
- 5.17 The ability to affix equipment to buildings is extant under the 2005 Order.

Extent of Land to be Acquired

- 5.18 I have considered the powers to acquire or take temporary possession of land sought by WMCA and have compared them to the engineering requirements as far as I am able technically to do. All the land within the Order is required, either temporarily or permanently in order to construct the Scheme.

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. The Plots are shown on the Land Plans **[WBHE/A7]** and Sections and are described in the Book of Reference **[WBHE/A8]**. Both of these documents were submitted by WMCA with the Order application.
- 6.2 The Order powers would enable WMCA to take possession of land within the Order limits without the landowner's consent, as set out in para 5 et seq above.

WMCA will continue to seek to reach agreement for land entry with the landowners that wish to engage with WMCA in advance of using compulsory purchase powers in accordance with the DCLG Guidance.

- 6.3 Article 4 of the Order applies Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring WMCA to pay compensation to qualifying parties whose compensatable interest is permanently acquired under what is known as the Compensation Code. The Compensation Code is simply an amalgamation of numerous Acts of Parliament and legal precedents which have evolved over time.
- 6.4 In summary, 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. In addition, the Code provides for the advance payment of compensation thereby ensuring the landowner is not out of pocket in the event land interests are acquired.
- 6.5 Land and property owners upon whom notice is served will be entitled to claim compensation in accordance with this Compensation Code, which provides a consistent approach to the assessment of fair compensation.
- 6.6 Articles 7 and 8 provide for compensation for any loss or damage arising from the exercise of the temporary possession powers to be paid to landowners who have had land taken using the powers.
- 6.7 The total amount of any compensation to be paid is usually agreed between the parties. In the event that agreement between the parties cannot be reached then the amount of compensation can be independently determined. Where there is a disputed claim, both parties may choose to make a joint reference via the Alternative Dispute Resolution process, or by one or both parties making a reference to the Lands Chamber of the Upper Tribunal.
- 6.8 Article 9 of the Order provides for a disregard in any increase in the value of the land being acquired by virtue of the Scheme which is a key principal of the compensation code.
- 6.9 Article 16 of the Order protects WMCA from paying compensation twice by ensuring that there is no double recovery. This would ensure, for example that a

loss sustained by an owner could not be compensated for under provisions of both temporary and permanent land acquisition.

- 6.10 Schedule 2 of the Order also provides for a mechanism whereby an owner who is having part only of his house, building or factory acquired, to serve a counter notice requesting that WMCA acquire the whole where a material detriment to the retained holding can be demonstrated.
- 6.11 Compensatable interests are those interests that can be 'bought and sold' by a person, such as a freehold or leasehold interest. 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. It should be noted that under such circumstances, compensation is still available to such right-holders for (see s.10 Compulsory Purchase Act 1965). Compensation is due to such right-holders where the execution of the works interferes with the right (of access) to such an extent that the value of the interest held is depreciated. 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.
- 6.12 Note in 6.11 above that the works to be conducted at The Embankment/Central Way at Merry Hill Shopping Centre are in land that is not the only entrance in to the shopping centre.

7. Negotiations with Objectors affected by compulsory acquisition

- 7.1 The WMCA continues to seek to negotiate with all remaining objectors with a view to allaying concerns about the scheme and offering assurances or reaching agreements, as appropriate, to enable the remaining objections to be hopefully withdrawn.
- 7.2 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.
- 7.3 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.

9. Declaration

- 9.1 I hereby declare as follows.
- 9.2 This proof of evidence includes all facts which I regard as being relevant to the professional opinion which I have expressed and I have drawn the Inquiry's attention to any matter which would affect the validity of that opinion.
- 9.3 I believe the facts which I have stated in this proof of evidence are true and that the opinions are correct.

T Bruce Fowler MRICS

19 February 2019