

DATED

*4th December*

2018

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**UNILATERAL UNDERTAKING BY DEED**

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given by

**WEST MIDLANDS COMBINED AUTHORITY**

to

**JEWSON LIMITED, SAINT GOBAIN BUILDING DISTRIBUTION LIMITED & SGBD  
PROPERTY HOLDINGS LIMITED**

To deal with objection raised by Jewson Limited, Saint Gobain Building Distribution Limited & SGBD Property Holdings Limited (reference OBJ/5) in connection with the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order which would confer powers of compulsory acquisition on the West Midlands Combined Authority for the works authorised by the 2005 Order being the extension of the Midland Metro from a junction with existing Metro Line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley.

THE DEED IS A OBLIGATION BY UNILATERAL UNDERTAKING and is made the

and is given by *14th* day of *December* 2018

(1) **WEST MIDLANDS COMBINED AUTHORITY** of 16 Summer Lane Birmingham B19 3SD ("WMCA")

to

(2) **JEWSON LIMITED** of Saint-Gobain House, Binley Business Park, Coventry CV3 2TT (Company No. 00348407), **SAINT GOBAIN BUILDING DISTRIBUTION LIMITED** of Saint-Gobain House, Binley Business Park, Coventry CV3 2TT (Company No. 01647362) & **SGBD PROPERTY HOLDINGS LIMITED** of Saint-Gobain House, Binley Business Park, Coventry CV3 2TT (Company No. 00213753) (together known as the "Objector")

WHEREAS

- (A) On 12 December 2018 WMCA has made an application to the Department for Transport under section 6 of the Transport and Works Act 1992 for the Order in respect of the Metro Scheme.
- (B) The Objector has an interest in plot numbers 303 and 307 as stated in the Book of Reference to the New Order ("Property") and has stated they understand they have an interest in land found within plot numbers 308, 309, 310 and 311.
- (C) The New Order as submitted on 12 December would confer powers on the WMCA to exercise powers of permanent acquisition on Plot 303 and powers of temporary acquisition rights over Plot 307.
- (D) On 26 January 2018, the Objector submitted an Objection to the Secretary of State for Transport in respect of the Transport and Works Act Order application for the New

Order and the provisions of this Deed are to deal with the concerns raised by the Objector in their Objection.

**NOW THIS DEED WITNESSES** as follows:-

1. **THE DEED**

1.1 On the basis that the New Order is made the provisions of this Deed shall be binding on the WMCA.

2. **INTERPRETATION**

2.1 In this Deed in addition to the terms hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

"2005 Order" means the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)

"Metro Scheme" means the Wednesbury to Brierley Hill Extension to the Midland Metro from a junction with the existing Metro Line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill in the Metropolitan Borough of Dudley as authorised by the 2005 Order

"Objection" means the objection dated 26 January 2018 and attached to this Deed as Appendix 1 (reference OBJ/5)

“New Order”	means the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order
“Works”	means the authorised works pursuant to the 2005 Order

2.2 In this Deed where the context so requires:-

2.2.1 the singular includes the plural and vice versa

2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified

2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed

2.2.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

3. **COMMENCEMENT**

The provisions of this Deed shall have immediate effect upon the completion of this Deed

4. **COVENANTS BY THE WMCA**

4.1 WMCA covenants that:

4.1.1 WMCA will remove Plot 307 from the New Order and will not seek powers of acquisition under the New Order in respect of Plot 307.

4.1.2 If WMCA exercises any powers under the New Order in respect of plot 303 WMCA covenants to provide a suitable boundary fence enclosing the area of the Works

5. **MISCELLANEOUS**

- 5.1 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the WMCA under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a combined authority
- 5.2 If the Order is quashed revoked or otherwise withdrawn or if the powers under the Order expires or the Objector no longer has a registered interest in the Property this Deed shall cease to have effect
- 5.3 Nothing in this Deed is attended to prevent the Objector from making any claim under the Compensation Code.

6. **NOTICES**

- 6.1 Any notice under this Deed shall be in writing and signed on behalf of the party giving it and may be served by delivering it in person or sending it by First Class Royal Mail Signed For to the address set out in this Deed or such other address as the parties agree to in writing in advance of any service of notice.
- 6.2 The notice as served under clause 6.1 will be validly received when provided in person or after 24 hours of the notice being sent by First Class Royal Mail Signed For provided it does not fall on a Saturday or Sunday or a bank holiday in England in which case the valid receipt date will be the next working day.

7. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby agreed and declared that unless specifically agreed the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

8. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the Law of England

**EXECUTED AS A DEED** the day and year first written

THE COMMON SEAL of )

**WEST MIDLANDS COMBINED AUTHORITY** )

was hereunto affixed in the presence of: )

*TMW*

Authorised Signatory



#5625

**APPENDIX 1**

**Objection letter**





**Angela Foster**

030/5

**From:** Butler, Helena <helena.butler@jewson.co.uk>  
**Sent:** 26 January 2018 15:41  
**To:** TRANSPORTANDWORKSACT  
**Subject:** Notice nos. 0010-7764N\_267, 0010-7764N\_504, 0010-7764N\_505  
**Attachments:** 201801261459 (3).pdf

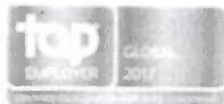
Good afternoon

Please find attached an acknowledgement from Malcolm Williamson, Property Manager, regarding the above mentioned Notices.

Regards

**Helena Butler**  
Property Management Assistant

**Building Distribution Sector, UK and Ireland**  
Property & Development, PO Box 95, Parkview House, Woodvale Road, Brighouse, HD6 9AD  
Tel: +44 (0) 1484 406018  
Fax: +44 (0) 1484 406038  
[helena.butler@saint-gobain.com](mailto:helena.butler@saint-gobain.com)  
<http://www.saint-gobain.co.uk/>

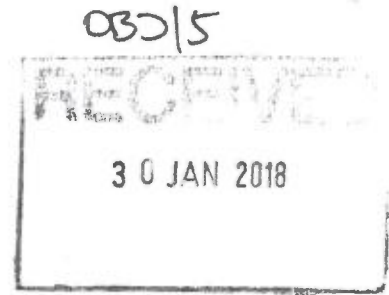


Saint-Gobain Building Distribution Limited, registered in England, Company No. 1647362  
Registered Office: Saint-Gobain House, Binley Business Park, Coventry CV3 2TT

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MDW/hlb

26 January 2018

Secretary of State for Transport  
C/c Transport and works Orders Unit,  
Department for Transport  
Zone 1/18, Great Minster House  
33, Horseferry Road  
London SW1P.4DR

Transportandworksact@dft.gsi.gov.uk

Dear Sir

**Re: The Transport and Works Act 1992**  
**The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order**  
Notice: 0010-7764N\_505  
0010-7764N\_504  
0010-7764N\_267  
**Plot Numbers: 303 and 307**  
**Objection by Jewson Limited, Saint Gobain Building Distribution Limited**  
**and SGBD Property Holdings Limited**

I write in my capacity as property manager for Saint Gobain, Building Distribution Limited Jewson Limited, and SGBD Property Holdings Limited.

Saint-Gobain are our main trading company in the UK and both Jewson Ltd and SGBD Property Holdings Ltd are wholly owned subsidiaries. Jewson is the main trading brand operating from this site.

### **Objection**

I am instructed to object to the Order on behalf of Jewson Limited, Saint Gobain Building Distribution Limited and SGBD Property Holdings Limited.

In preparing the objection I have been mindful of the Wednesbury to Brierley Hill extension concise statement of aims December 2017.

### **Additional Interests**

It is believed that Jewson Ltd, Saint Gobain Building Distribution Ltd and SGBD Property Holdings Ltd. have an interest in plot numbers 308, 309 and 310 and 311. The acquiring authority have failed to identify these interests and have not served appropriate notices.

### **CPO The Last Resort**

It is an established principle that a compulsory purchase should be regarded as a method of last resort. It is contended that the acquiring authority have not made reasonable endeavours to purchase the right by a private treaty. The interest holders have not received a single proposal offer from the acquiring authority in respect of acquisition of their land interest.

### **Aims of the WBHE**

The aims broadly include the achievement first class international, national, regional and local connectivity. The aims of the WBHE support both national and local policies for growth and investment.

The Objectors contend that the proposed scheme cannot meet these objections.

### **Transport Policy**

The key objective of the scheme is to encourage a shift from private car use to reliance upon public transport. While the provision of the proposed extension may contribute towards this goal, it is unclear how the scheme in its current form will facilitate this objective in its entirety. A more comprehensive package of measures will be required to stimulate the fundamental change in the use of modes of transport. The documentation available fails to identify what these are and how they will be delivered.

### **Economic Policy**

While the Objectors are fully supportive of the regeneration of the wider area, no information is provided to demonstrate how this will be achieved. The provision of a tramway alone cannot single-handedly stimulate regeneration. While the provision of the tramway may contribute towards the goal of regeneration, it is unclear how the scheme in its current form will facilitate this objective. A more comprehensive package of measures will be required to stimulate investment and the documentation provided in support of the order fails to identify these or how they will be delivered.

### **Social Policy**

The Objector acknowledges that access to public transport and improvement of its reliability is reinforced within the national transport strategy. Whilst "the increased connectivity delivered by the WBHE will improve the education and skill base for the residents of Sandwell and Dudley" and is an objective of the scheme, no further information is provided to demonstrate how the acquiring authority is intending to encourage the greater use of public transport.

### **Cost Benefit**

The evidence published by the acquiring authority indicates that the scheme represents high value for money. No information is provided to indicate what assumptions have been made in this appraisal.

### **Human Rights**

It is our considered opinion that the proposed order is an infringement of interest holders' human rights under the Human Rights Act of 1998. The Secretary of State must consider whether, on balance, the case for compulsory purchase justifies interference with the human rights of the owners and occupiers of the order land.

Under Article 1 of the First Protocol NO ONE SHALL BE DEPRIVED OF HIS POSSESSION EXCEPT IN THE PUBLIC INTEREST. For the reasons set out above we do not consider the scheme as proposed is fully in the public interest and many of the objectives given as justification for the confirmation of the order, can be met without resorting to compulsory purchase. As such there is an inadequate justification for interfering with the human rights of the owners and occupiers affected by this proposed scheme. The balance has not been struck between the individual rights and the wider public

interest. In conclusion, there is no compelling case in the public interest as required by national policy to acquire the Objectors land.

**Further Information**

We reserve the right to add to the grounds of the Objection if new matters come to light.

Kindly acknowledge safe receipt of this Objection Letter.

Should the Secretary of State have any queries please do not hesitate to contact the writer.

We look forward to hearing from you in due course with details of any public enquiry to be held in connection with the order.

Yours sincerely



Malcolm D. Williamson BSc Hons MRICS  
**Property Manager**

For and on behalf of:

Jewson Limited  
Saint-Gobain Building Distribution Limited  
SGBD Property Holdings Limited