

DATED

6<sup>th</sup> December

2018

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**UNILATERAL UNDERTAKING BY DEED**

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given by

**WEST MIDLANDS COMBINED AUTHORITY**

To

**TJX UK**

To deal with objection raised by TJX UK (reference OBJ/22) 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

6<sup>th</sup> day of

December

2018

and is given by

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

to

(2) **TJX UK** of 50 Clarendon Road, Watford, Hertfordshire WD17 1TX (Company No. 03094828) (trading as TK Maxx) (the "Objector")

WHEREAS

- (A) On 12 December 2017 WMCA 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 leasehold interests in Plot 336 as stated in the Book of Reference to the New Order relating to their leasehold interest in in Units 100 and 100A Merry Hill Shopping Centre Dudley and the Objector has stated that the lease they hold provides access rights over plots 336 and 337 as described in the book of reference to the New Order (the "Property").
- (C) The New Order would confer powers on the WMCA to exercise powers of permanent acquisition on Plot 336 and a permanent right to use Plot 337.
- (D) On 30 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

“New Order” means the proposed Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order

"Objection" means the objection dated 29 January 2018 and attached to this Deed as Appendix (reference OBJ/22)

“Works” 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

WMCA covenants that on the basis that the New Order is made by the Secretary of State for Transport:

4.1 WMCA will maintain vehicle and pedestrian access/egress to the Merry Hill Shopping Centre in the vicinity of the Works at all times during the Works for the Metro Scheme as far as is reasonably practicable. General access/egress to the Merry Hill Shopping Centre will be maintained at all times via alternative routes; if in the event access across plot 336 is temporarily interrupted WMCA will ensure that appropriate alternative access to the Merry Hill Shopping Centre will be provided at no cost to the Objector.

4.2 Should The Embankment road be closed due to the Works WMCA will ensure

diversionary routes for vehicular and pedestrian access to the Merry Hill Shopping Centre will be clearly signposted and traffic will be diverted as is required.

- 4.3 WMCA will provide the Objector with reasonable advance warning of any Works considered to be disruptive to the Property except any Works carried out in an emergency.
- 4.4 WMCA will provide the Objector with regular updates and communication of any Works that are considered to reasonably impact the business of the Objector at the Property.
- 4.5 WMCA will minimise the interference to the Property by way of noise, dust, vibration and othersimilar matters as set out in the Code of Construction Practice Part 1.
- 4.6 WMCA will carry out the Works causing minimum disruption as far as is reasonably practicable to the access the Objector currently enjoys for the purposes of customers, staff and deliveries to the Property.

## 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

## 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: )



*[Handwritten Signature]*  
Authorised Signatory

#SG30

**APPENDIX**

**Objection letter**





035/22

- London
- Glasgow
- Edinburgh
- Manchester



CHARTERED SURVEYORS

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29 January 2018

The Secretary of State for Transport  
C/O Transport and Works Act Orders Unit  
Department for Transport  
Zone 1 / 18  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

By email and post: [transportandworksact@dft.gsi.gov.uk](mailto:transportandworksact@dft.gsi.gov.uk)

Dear Sirs

**The Transport and Works Act 1992**

**The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006**

**The Midland Metro (Wednesbury to Brierley Hill Land Acquisition) Order  
In Respect of Units 100 and 100A Merry Hill Shopping Centre Hill, Dudley  
TJX UK (Trading as TK Maxx) ("The Company")**

We are instructed by the Company to advise in connection with the above Order, which the West Midlands Combined Authority ("WMCA") applied for on 12 December 2017.

The Company is the leaseholder of the above retail premises in Merry Hill Shopping Centre which are traded as part of the Company's clothing business. The Company holds a standard modern lease in the premises which includes for rights of customer and service access to the Premises, and parking.

The Company's ability to trade successfully from the Premises is dependent on having unrestricted pedestrian and vehicular access for customers and service vehicles.

The Company has received notification of WMCA's application for the above named Order by Notice dated 12 December 2017. The proposed draft Order succeeds the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 ("the 2005 Order"). In this regard the draft Order would authorise:

*"...further powers of compulsory acquisition on the Authority (WMCA) in respect of the extension of its Midland Metro Tram System from Line 1 at Wednesbury along the abandoned rail corridor to Brierley*



*Hill via Dudley Town Centre and the waterfront / Merry Hill for the purpose of the works authorised by ...*, the 2005 Order.

More specifically, the Order will enable WMCA to acquire land and rights in land compulsorily, to use that land and to extinguish rights over land. As proposed, such powers will be exercised over land parcel No.336 within the Book of Reference which comprises "private road (The Embankment), footways, steps, retaining wall, advertising hoardings and land, Brierley Hill".

Additionally, the Order will enable WMCA to acquire rights in land in relation to land parcel No.337 within the Book of Reference which comprises "private roads (the embankment and central way), footways, bus stop, shelters, roundabout and land, Brierley Hill".

The Company does not object in principle to the scheme underlying the Order application which has been submitted following the expiry of the original powers of compulsory acquisition under the 2005 Order on 22 March 2010. However the Company is concerned at the potential adverse impacts of the scheme arising from the acquisition and extinguishment of rights in land and with this, for the continued operation of the retail business. Accordingly, we are instructed to **formally object** to the draft Order Application on the Company's behalf.

The powers of compulsory acquisition proposed under the draft Order Application extend in part over key access roads and footways serving Merry Hill Shopping Centre where the Company's premises are located. The Parties rely on these private roads for enabling both customer access and service access. The loss of existing rights for customers and service access or any restrictions on these will have significant and adverse trading impacts for the Company's business. It is contended that this would not be in the public interest.

The Company has yet to be provided with details of the nature of new rights being acquired, or those being extinguished and as a consequence the impact for access over The Embankment and Central Way both during and after the scheme works period. In addition to requesting this information, the Company has various other concerns which they contend that WMCA should also address before the draft Order Application can be approved. These include:

1. Accommodating continued customer access and service access during the scheme works period.
2. The retention of access to existing levels of available customer car parking during and after the scheme works.
3. Maintaining full services and utilities during the scheme works.
4. Provision of access for emergency vehicles during the scheme works.
5. Confirmation of the final scheme position and the details of boundary treatments proposed.
6. Details of protective provisions and safeguards to be put in place to prevent adverse environmental impacts on the properties whilst construction takes place given the particular sensitivities of the business.

7. Confirmation of how access in the wider locality is to be maintained throughout the scheme works period.
8. The provision of a traffic plan and method statement with phasing plans for the period of the scheme works illustrating how access will be maintained to the shopping centre and retail park for customers and service deliveries alike.

The Company maintains that the draft Order Application should not be approved until these matters have been properly addressed and formal assurances given by WMCA. The Company intends to maintain the grounds of the Objection to the Order and request that the Order should not be approved because WMCA, as Acquiring Authority, has not satisfactorily addressed the above issues.

We would be grateful if you would acknowledge safe receipt of this letter. Furthermore we would ask for the objection to be considered at any public inquiry held to assess the merits of the draft Order. We reserve our Client's right to add to or amend these grounds of objection.

Should you require any further information or clarification of the issues raised then we would be grateful for all contact and correspondence to be addressed to Tim Earl of this Firm in the first instance.

Yours faithfully



**Montagu Evans LLP**

