



# Department for Transport

Pinsent Masons LLP  
Solicitors and Parliamentary Agents  
30 Crown Place  
Earl Street  
London  
EC2A 4ES

Martin Woods  
Head of the TWA Orders Unit  
Department for Transport  
Zone 1/14-18  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

Enquiries: 020 7944 3293  
Email:  
transportandworksact@dft.gsi.gov.uk  
Web Site: www.gov.uk/dft/twa

Our ref: TWA 3/1/436  
Your ref: 652245.07000

Date: 21 June 2016

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992 TOWN AND COUNTRY PLANNING ACT 1990**

### **APPLICATION FOR THE MIDLAND METRO (WOLVERHAMPTON CITY CENTRE EXTENSION) ORDER AND DEEMED PLANNING PERMISSION**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Stephen Roscoe BSc MSc CEng MICE, who held a public local inquiry on 9 June 2015 into the application made by your clients, the West Midlands Passenger Transport Executive ("Centro"), for–

(a) the Midland Metro (Wolverhampton City Centre Extension) Order ("the Order"), to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA"); and

(b) a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990 ("the planning direction").

2. The Order and the planning direction would authorise Centro to construct, operate and maintain an extension to the Midland Metro tramway system in Wolverhampton city centre between Bilston Street and Wolverhampton railway station and to carry out associated works. The Order would also authorise the compulsory acquisition and temporary use of land for the purposes of the scheme.

3. Enclosed with this letter is a copy of the Inspector's report. His conclusions are set out in Chapter 7 of the report, and his recommendations are at Chapter 8.

#### **Summary of Inspector's recommendations**

4. The Inspector recommended that the Order be made with modifications and that the planning direction be given subject to conditions.

## **Summary of the Secretary of State's decision**

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order, with modifications, and to give the planning direction, subject to the conditions set out in Annex 1 to this letter.**

## **Secretary of State's consideration**

6. Careful consideration has been given to all arguments put forward by, or on the behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, refer to the Inspector's report ("IR").

## **The aims of and need for the scheme**

7. The Secretary of State notes that the key aims of the scheme are to facilitate an improved public transport interchange in Wolverhampton; to improve access to local and regional employment opportunities and educational institutions; to support business growth; and to unlock the city's economic potential. The scheme would also contribute to the objectives of the wider Wolverhampton Interchange Project of which it forms part, including the creation of a new commercial hub around good public transport; supporting the creation of more than 1,500 jobs; reducing net carbon emissions; promoting equality of opportunity; and improving the safety and security of the public transport network (IR1.4, 1.6). The Secretary of State agrees with the Inspector that there is a current and growing need for the improved public transport access which the scheme would provide and that the scheme would greatly assist in satisfying that need. Like the Inspector, he attaches substantial weight to the important public benefits which the scheme would realise (IR 7.4).

## **The main alternative options considered**

8. The Secretary of State agrees with the Inspector that the main alternatives to the scheme have been considered by the applicant and that there is no realistic alternative means of achieving the desirable outcomes that the scheme will bring (IR 7.5-7).

## **Consistency with policies**

9. The Secretary of State agrees with the Inspector's assessment at IR 7.8-13 of the extent to which the scheme complies with the relevant policies in the National Planning Policy Framework ("NPPF"), the Wolverhampton Unitary Development Plan, the Black Country Joint Core Strategy and the West Midlands Local Transport Plan. Taking into account in particular the contribution which the scheme would make to supporting economic growth and regeneration, enhancing the local environment, improving accessibility, and providing sustainable travel and transport choices, he agrees with the Inspector that the scheme would be consistent with the NPPF, national transport policy, and local transport, environmental and planning policies (IR 7.14).

## **Environmental statement**

10. The Secretary of State agrees with the Inspector that the Environmental Statement (“ES”) submitted with the Order application is adequate in terms of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, including in relation to the assessment of the effects of the scheme on the Old Steam Mill. He is satisfied also that statutory procedural requirements have been complied with (IR 7.15-21). The Secretary of State confirms that, in reaching his decision on this application, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA relating to the consideration of the ES.

## **Impact on the public, businesses and the environment**

11. The Secretary of State agrees with the Inspector that there would be no unacceptable impact from the proposed works on storage, access and servicing arrangements to premises, which would be suitably regulated, and that any adverse impacts would be far outweighed by the benefits of the scheme (IR 7.22-24). He agrees also that there would be no unacceptable impact from the proposed works on Piper’s Row and Fryer Street car parks and the City ring road (IR 7.25-27).

12. The Secretary of State agrees with the Inspector for the reasons given that there would be no unacceptable impact from the proposed works on pedestrian, cycle and motor traffic during construction and operation. He is satisfied in particular that the provisions for cyclists would be safe and inclusive (IR 7.28-31).

13. The Secretary of State agrees with the Inspector that, with mitigation, there would be no unacceptable ecological impacts from the proposed works and that no licences would be likely to be required from Natural England (IR 7.32-33).

## **Effects on statutory undertakers etc.**

14. The Secretary of State agrees with the Inspector that there would be no unacceptable impact from the proposed works on statutory undertakers and other utility providers, or on their ability to carry out undertakings effectively, safely and in compliance with any statutory or contractual obligations (IR 7.34-35).

## **Effects on the Canal and River Trust**

15. The Secretary of State agrees with the Inspector that there would be no unacceptable effects from the scheme on the statutory obligations, waterway operations and navigational management of the Canal and River Trust, and that the Order contains adequate provisions to mitigate any effects (IR 7.36-37).

## **Implications for Wolverhampton railway station**

16. The Secretary of State notes that works to the station would be likely to cause some degree of interference with existing arrangements but that agreement had been reached with those who would be affected in respect of all matters relating to their interests, including the addition of protective provisions to the Order. He therefore agrees with the Inspector

that there would be no unacceptable implications for rail users, train operators, Network Rail and businesses located at Wolverhampton railway station (IR 7.38-40).

### **Effects on the Old Steam Mill**

17. The Secretary of State agrees with the Inspector that the proposed work to stabilise the derelict mill and remove the incongruous 20<sup>th</sup> Century steel clad section of the building would be likely to assist in preserving the listed building and its setting. He agrees further that considerable importance and weight should be attributed to this element of the scheme. While the Secretary of State notes that implementation of the scheme would prevent the enabling development envisaged by the owners of the mill, Gladedale Estates Limited, he agrees with the Inspector that the improvements in the locality of the building together with the proposed works to the building would on balance offer the best prospects for its regeneration. He is accordingly satisfied, like the Inspector, that the scheme would have no unacceptable effects on the Old Steam Mill (IR 7.41-47).

### **Mitigation of adverse impacts**

18. The Secretary of State agrees with the Inspector that the measures provided for in the conditions at Annex 1 to this letter and in the draft Order would allow the effects identified in the ES to be satisfactorily mitigated and would avoid any significant adverse environmental impacts (IR 7.48-49). Under section 14(3AA) of the TWA, the Secretary of State is required to describe the main measures to avoid, reduce and if possible, remedy the major adverse environmental impacts of a scheme. In this case, he considers that the main measures to mitigate the effects of the scheme are those in the planning conditions set out in Annex 1 to this letter, including the Code of Construction Practice that would be secured by condition 6.

### **Compulsory acquisition matters**

19. The Secretary of State agrees with the Inspector that, taking into account the identified need for the scheme, there is a compelling case in the public interest for conferring on Centro powers compulsorily to acquire and use land for the purposes of the scheme. He agrees also that the case meets the tests in Articles 1 and 8 of the European Convention on Human Rights, including in relation to the amendment made after the application to include additional land within the Order limits for temporary use at Metro Line 1 Sub-Station 2 in Chillington Street. The Secretary of State is further satisfied, like the Inspector, that the scheme is unlikely to be blocked by any legal or financial impediment to implementation and that the land and the rights in land for which compulsory acquisition powers are sought are required to secure the satisfactory implementation of the scheme (IR 7.50-58).

### **Crown land**

20. With regard to the Crown land at Wolverhampton Combined Courts Centre required for the scheme (see IR 7.59-60), the Secretary of State received confirmation on 15 October 2015 that the appropriate authority (the Secretary of State for Communities and Local Government) had agreed for the purposes of section 25 of the TWA to the inclusion in the Order of provisions relating to that land. He is therefore satisfied that there would be no impediment to implementation of the scheme in this regard.

## **Funding**

21. The Secretary of State agrees with the Inspector that Centro has sufficient and adequate arrangements in place in relation to the funding of the scheme (IR 7.61-62).

## **Planning conditions**

22. The Secretary of State agrees with the Inspector that, subject to some minor drafting changes in the interests of clarity and consistency, the recommended planning conditions meet the tests in Planning Practice Guidance, Use of Conditions 21a-003-20140306 and in paragraph 206 of the NPPF (IR 7.63-67). He agrees in particular that it is appropriate for the commencement period in condition 1 to be five years. The conditions that the Secretary of State intends to attach to the planning direction are set out in Annex 1 to this letter.

## **Overall conclusions and decision**

23. The Secretary of State agrees with the Inspector that, for all the reasons given above, the Order is justified on its merits. He is satisfied that the substantial transportation and economic benefits of the scheme would outweigh private losses and that there would be no other unacceptable adverse effects of the scheme or likely impediments to its implementation (IR 7.69-71). The Secretary of State has therefore decided to make the Order, subject to the modifications set out in IR 8.1 and to the further modifications referred to below; and to give the planning direction subject to the conditions in Annex 1 to this letter.

24. The further modifications which the Secretary of State intends to make to the Order are:

- to remove from article 3 (incorporation of the Railways Clauses Consolidation Act 1845) and article 4 (application of the Midland Metro Acts) a number of provisions that relate to railways that are not relevant to this scheme; and
- a number of minor drafting changes to the Order which do not materially alter its effect.

The Secretary of State is satisfied that none of these changes amount to a substantial change in the proposals to which section 13(4) of the TWA applies.

25. The letter conveying the planning direction will issue shortly, at the same time as the Order is made, following the publication of a notice of determination in the London Gazette.

## **Notice under section 14 of the TWA**

26. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

## **Challenges to decisions**

27. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex 2 to this letter.

## **Distribution**

28. Copies of this letter are being sent to those statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA, but who did not appear.

Yours faithfully,

**Martin Woods**

## CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DIRECTION AS TO DEEMED PLANNING PERMISSION

### Interpretation

In the following conditions:-

"the development" means the works and operations authorised by the Order, including any ancillary development;

"the Environmental Statement" means the Environmental Statement accompanying the application for the Order submitted on 27th May 2014 together with the Addendum to the Environmental Statement dated May 2015;

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

"the local planning authority" means Wolverhampton City Council; and

"the Order" means the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

### 1. Time limits

The development must commence not later than 5 years from the date that the Order comes into force.

**Reason:** To ensure that the development is commenced within a reasonable period of time.

### 2. Design and external appearance

Details of the design and external appearance of any:

- (i) tram stop;
- (ii) permanent boundary treatment;
- (iii) poles and brackets required to support the overhead line system;
- (iv) electricity substation and ancillary electrical equipment; or
- (v) bridge or viaduct,

must be submitted to, and approved in writing by, the local planning authority before that element of the development commences. The development must be carried out in accordance with the approved details.

**Reason:** To sustain the significance of listed buildings and conservation areas in accordance with the National Planning Policy Framework, to preserve and enhance the character and appearance of conservation areas, to preserve listed buildings and their settings and to protect the character and appearance of the surrounding area.

### 3. Materials

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

- (i) tram stop;
- (ii) permanent boundary treatment;
- (iii) adopted highway;
- (iv) poles and brackets required to support the overhead line system;
- (v) electricity substation and ancillary electrical equipment; or
- (vi) bridge or viaduct,

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

**Reason:** To sustain the significance of listed buildings and conservation areas in accordance with the National Planning Policy Framework , to preserve and enhance the character and appearance of conservation areas, to preserve listed buildings and their settings and to protect the character and appearance of the surrounding area.

### 4. Landscaping

No part of the development is to commence until details of all proposed hard and soft landscaping, including the programme for the implementation of planting, in relation to that part have been submitted to, and approved in writing by, the local planning authority. All landscaping must be carried out in accordance with the approved details. If, within a period of five 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 must be planted at the same place in the next available planting season, unless the local planning authority gives its written approval to any variation.

**Reason:** To sustain the significance of listed buildings and conservation areas in accordance with the National Planning Policy Framework , to preserve and enhance the character and appearance of conservation areas, to preserve listed buildings and their settings and to protect the character and appearance of the surrounding area.

### 5. Archaeology

The development must not commence until a scheme of archaeological investigation has been submitted to, and approved in writing by, the local planning authority. All archaeological work must be undertaken in accordance with the approved scheme of investigation.

**Reason:** To record and protect the historic environment.

### 6. Code of Construction Practice

The development must not commence until a Code of Construction Practice, which must be in substantial accordance with the draft Code of Construction Practice at Appendix 3.3 of the Environmental Statement, has been submitted to, and approved in writing by, the local planning authority. The development must be carried out in accordance with the approved Code of Construction Practice.



**Reason:** To ensure adequate environmental protection during construction and to safeguard the amenities of occupiers of premises in the vicinity of the development.

## **7. Contaminated land**

No part of the development is to commence until a scheme to deal with any contamination of the land on which that part is to take place has been submitted to, and approved in writing by, the local planning authority. The scheme must 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 part of the development is to begin until the measures approved in the scheme for that part have been fully implemented.

**Reason:** To ensure that any necessary site investigation and remediation works in relation to contaminated land are undertaken in the interests of public safety.

## **8. Highway access**

No part of the development is to commence until details, for that part, 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, has been submitted to, and approved in writing by, the local planning authority. The development must be carried out in accordance with the approved details.

**Reason:** To secure a satisfactory development in the interests of highway safety.

## **9. Air-borne Noise**

The development must be designed and operated in accordance with the Midland Metro Extension Noise and Vibration Policy February 2014 (or any subsequent version). For the purposes of section 5 of the policy, Noise Mitigation at Source, the pre-existing ambient noise levels are those in Tables 11.10 and 11.11 of the Environmental Statement, or such other levels specified in any later survey which has been approved in writing by the local planning authority.

**Reason:** To safeguard the amenities of occupiers of premises or dwellings in the vicinity from airborne noise caused by the running of trams.

## **10. Ground-borne Noise**

Where the dominant source of noise is ground-borne, the following noise standards are to be applied to the development for the purposes of sections 6 and 7 of the Midland Metro Extension Noise and Vibration Policy applied by condition 9 above:

- (i) Inside noise sensitive rooms in residential buildings – 40 dB L<sub>MAX</sub>, slow
- (ii) Inside noise sensitive rooms in office buildings - 40 dB L<sub>MAX</sub>, slow

**Reason:** To safeguard the amenities of occupiers of premises or dwellings in the vicinity from ground-borne noise and vibration caused by the running of trams.

## **11. Ecology surveys and mitigation**

Before commencing any development at the Old Steam Mill, or within the car park adjacent to the Old Steam Mill:

- (i) surveys to establish the presence or absence of bats must be undertaken in accordance with section 8.7.9 of the Environmental Statement and paragraph 8.7 of the draft Code of Construction Practice at Appendix 3.3 of the Environmental Statement; and
- (ii) the surveys, and details of any necessary programme of mitigation measures for any bats identified by the surveys and affected by the development, must be submitted to, and approved in writing by, the local planning authority.

Any approved programme of mitigation measures must be implemented in full.

**Reason:** To ensure that any species of interest are properly protected and appropriate ecological mitigation undertaken in the interests of the natural environment.

## **12. Electro-magnetic compatibility**

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

**Reason:** To ensure that the development does not give rise to unacceptable electromagnetic interference.

END

## **ANNEX 2**

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that -

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

### **CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER**

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

**A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.**