

Birmingham Eastside Extension

APP/P7.2

Transport and Works Act 1992

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

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Summary Proof of Evidence



WEST MIDLANDS
COMBINED AUTHORITY

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004
Evidence on behalf of
West Midlands Combined Authority
MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER

Summary Proof of Evidence
-of-
T Bruce Fowler MRICS
Regarding
Compulsory Purchase and Property Matters
APP/P7.2

CONTENTS

- 1. WMCA Approach to Land Acquisition**
- 2. Human Rights Consideration**
- 3. Scope of Acquisition**
- 4. Compulsory Purchase and Compensation Code**
- 5. Conclusion**

1. WMCA Approach to Land Acquisition

- 1.1 WMCA has had due regard to paragraphs 12 to 15 of the Department for Communities and Local Government (DCLG) guidance on the Compulsory Purchase process and the Crichel Down Rules (the DCLG Guidance) (BEE/E24) in formulating the scope and justification for seeking powers of compulsory acquisition in the Order (BEE/A8/2)
- 1.2 WMCA, acting in accordance with the DCLG guidance and taking account of the Scheme requirements, has sought to minimise the land and rights to be acquired or used and is limited to that required for the successful delivery of the scheme.
- 1.3 Where possible, WMCA have sought to enter into agreements with landowners and affected parties and have successfully entered into agreement with a number of parties as detailed in section 7 below.
- 1.4 WMCA are seeking compulsory acquisition powers in the Order (BEE/A8/2) to enable WMCA to secure in a timely and efficient manner the land interests and rights which WMCA have identified, following consultation, as being required for the construction and subsequent maintenance and operation of the scheme.
- 1.5 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 confirmation of the Order (BEE/A8/2) 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 (BEE/A8/2), 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.

2. Human Rights Consideration

- 2.1 The compulsory acquisition of land for the rail/tramway purposes specified in the Order is authorised by, and subject to, the Transport and Works Act 1992 (the 1992 Act) (BEE/B1). By enacting the 1992 Act the Government has determined that, subject to procedural safeguards, it can be in the public interest that individuals be deprived of their land for rail/tramway purposes. The procedural safeguards are provided by the 1992 Act and the Transport and Works (Inquiries Procedure) Rules 2004 (BEE/B4) which enable objections to be raised to compulsory acquisition and considered by an independent inspector.
- 2.2 The Order application is being pursued in the public interest as required by Article 1 of the First Protocol. The public benefits associated with the Order application are set out in the Proof of Evidence of Peter Adams (APP/P1.1). The land to be acquired is required in order to deliver the Scheme which promotes economic wellbeing. Therefore, the interference with Convention rights is justified and proportionate.
- 2.3 Article 8 of the European Convention on Human Rights states ‘Everyone has the right to respect for his private and family life, his home and his correspondence’. The Article provides further that any such interference is permissible on a number of grounds including ‘public safety or the economic well-being of the country’. Interference with Article 8 rights is necessary and proportionate in that, without such interference, the Scheme could not be delivered.

3. Scope of Acquisition

- 3.1 The Order (BEE/A8/2), if approved, grants WMCA the powers to permanently and temporarily acquire land, or rights over land, needed to construct, operate and maintain the proposed Scheme. WMCA seeks compulsory purchase powers to acquire no more land than appears to them to be reasonably required in order to construct, operate and maintain the proposed tramway works in a safe, timely and economically efficient manner.
- 3.2 Land and property within the Order limits of the Order (BEE/A8/2) may be acquired or used by WMCA for the Scheme for a number of different purposes, including:-
- Temporary occupation and use of land;
 - Permanent acquisition of rights over land, including on relation to fixing equipment to buildings
 - Permanent acquisition of land.
- 3.3 The provisions of Article 34 of the Order (BEE/A8/2) provide for the temporary occupation and use of land during the construction of the authorised works. The provisions allow WMCA to use (a) the land specified in Schedule 7 to the Order (BEE/A8/2) for the works specified in that Schedule; and (b) any of the land within the permanent limits. The use of the land, following it being entered under the provision of Article 34, are restricted to works in connection with the authorised works and include the ability to remove buildings and vegetation from the land, construct temporary works and construct any of the authorised works on the land.
- 3.4 The provisions of Article 35 of the Order (BEE/A8/2) provide for the temporary use of land for maintenance of an authorised work within a specified period i.e. within 5 years from which an authorised work is open for public use. The rights are restricted to land within the Order limits that is reasonably required for the

purpose of maintaining the works or any ancillary works connected with it or securing the safe operation of any such work.

- 3.5 The provisions of Article 30 of the Order (BEE/A8/2) provide for the acquisition of new rights by WMCA. The article provides for the acquisition of easements or other rights within the permanent limits as defined in the Order plans. The Article also provides for the acquisition of both easements and rights that are in existence prior to acquisition of land or creation of new rights. The rights are available for any purpose for which the land may be acquired.
- 3.6 The provisions of Article 27 of the Order (BEE/A8/2) provide for the permanent acquisition of land by WMCA. The article provides for the acquisition of land within the permanent limits as defined in the Order plans.
- 3.7 Articles 28 and 29 apply the provisions of Part 1 of the Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981 to the compulsory acquisition of land under the Order; these Acts set out a statutory framework for taking possession of land and introduce the compensation code provisions to the Order.
- 3.8 Article 40 of the Order (BEE/A8/2) 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.
- 3.9 I have considered the compulsory rights and interests sought by WMCA and have compared them to the engineering requirements as far as I am able technically to do. I am satisfied that the powers of compulsory acquisition to be conferred by the Order (BEE/A8/2) are necessary for WMCA to deliver the Scheme.

4. Compulsory Purchase and Compensation Code

- 4.1 The powers sought within the Order (BEE/A8/2) will enable WMCA, upon the service of appropriate notices, to enter on and take possession of the numbered land plots (Order Plots) within the Order limits in order to carry out the works required to construct and operate the Scheme.
- 4.2 The Order powers would enable WMCA to take possession of land within the Order limits without the landowner's consent, as set out in section 5 above. If necessary, WMCA will continue to seek to reach agreement for land entry with the landowners in advance of using compulsory purchase powers in accordance with the DCLG Guidance.
- 4.3 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 they can be proven.
- 4.4 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.

5. Conclusion

- 5.1 The land and rights included in the Order have been carefully considered and reviewed throughout the emerging Order process.
- 5.2 All reasonable efforts have been made to reduce the impact of the Scheme on landowners 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 draft Order.
- 5.3 Compensation is available in accordance with the statutory compensation code to land and interest owners in respect of their reasonable losses incurred due to the Scheme.

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