



## **Report to the Secretary of State for Transport**

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**An Inspector appointed by the Secretary of State for Transport**

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**HIGHWAYS ACT 1980**

**ACQUISITION OF LAND ACT 1981**

**THE BOROUGH COUNCIL OF SANDWELL**

**(A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE)**

**(A661) (CLASSIFIED ROAD) (SIDE ROADS) ORDER 2007**

**(A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE, TIPTON)**

**COMPULSORY PURCHASE ORDER 2007**

Dates of inquiry: 15 and 16 July 2008  
Ref: DN5039/55/7/43 and DN5039/1/70

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**PRINCIPAL ABBREVIATIONS USED IN THIS REPORT**

AST: Appraisal Summary table  
BCCoC: The Black Country Chamber of Commerce  
BCR: Benefit Cost Ratio  
CPO: Compulsory Purchase Order  
DfT: The Department for Transport  
DMBC: Dudley Metropolitan Borough Council  
DMRB: Design Manual for Roads and Bridges  
EIA: Environmental Impact Assessment  
ECI: Early Contractor Involvement  
HA: The Highways Agency  
M: Million  
MSS: Major Scheme Submission  
pcu: Passenger Car Unit  
PoE: Proof of Evidence  
PPG: Planning Policy Guidance  
PRISM: West Midlands Policy Responsive Integrated Strategy Model  
RFA: Regional Funding Allocation  
RSS: Regional Spatial Strategy  
SMBC: Sandwell Metropolitan Borough Council  
SoS: Secretary of State for Transport  
SRO: Side Roads Order  
TSL: Tesco Stores Ltd.  
The Act: The Highway's Act 1980  
The Scheme: The A461/A4123 Junction Improvement  
UDP: Unitary Development Plan

## CASE DETAILS

### The Side Roads Order ("SRO")

- The (A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE) (A461) (CLASSIFIED ROAD) (SIDE ROADS) ORDER 2007, which was sealed on 16 October 2007, under Sections 14 and 125 of the Highways Act 1980, in relation to the classified road at Burnt Tree, Tipton in the County of the West Midlands, would authorise Sandwell Metropolitan Borough Council to: improve lengths of highway; stop up lengths of highway; stop up private means of access to premises; and provide new means of access to premises.

### The Compulsory Purchase Order ("CPO")

- The (A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE, TIPTON) COMPULSORY PURCHASE ORDER 2007, which was published on 15 November 2007, under Sections 239, 240 and 250 of the Highways Act 1980, in relation to the improvement of the A461, Birmingham Road, Dudley, and the A461 Burnt Tree, Tipton in the County of the West Midlands, would authorise Sandwell Metropolitan Borough Council (the acquiring authority) in agreement with Dudley Metropolitan Borough Council, pursuant to Section 8 of the Highways Act 1980, to purchase compulsorily the land and the new rights over land for the purposes of: the improvement of the A461 Birmingham Road, Dudley, and the A461 Burnt Tree, Tipton in the county of the West Midlands; the improvement of existing highways in the vicinity of the routes of the above-mentioned highways and the provision of new means of access to premises in pursuance of the Sandwell Metropolitan Borough Council (A461/A4123 Junction Improvement, Burnt Tree) (A461) (Classified Road) (Side Roads) Order 2007; and use by the acquiring authority in connection with the construction and improvement of highways and the provision of new means of access to premises.

**Recommendation: I recommend that the Side Roads Order be modified and, so modified, be confirmed. I recommend that the Compulsory Purchase Order be confirmed.**

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## 1.0 PREAMBLE

- 1.1 I have been appointed by the Secretary of State for Transport ("SoS"), pursuant to paragraph 7 of Schedule 1 to the Highways Act 1980 ("the Act") and Section 13 (3) (b) of the Acquisition of Land Act 1981, to hold inquiries into the above Orders and the proposed A461/A4123 Junction Improvement ("the Scheme"), giving rise to the Orders at Burnt Tree, Tipton, West Midlands. For ease of reference, the concurrent inquiries will hereinafter be referred to as the inquiry.
  - 1.2 The Scheme would comprise the replacement of an existing five arm roundabout by a new four leg signal controlled junction. It would also enable either the closure or the improvement of certain side roads, accesses and junctions together with the provision of improved pedestrian and cycle facilities.
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- 1.3 The inquiry commenced at 10.00 am on Tuesday 15 July 2008 at the Training and Development Centre, Parsonage Street, Oldbury, West Midlands and closed 5.00 pm on Wednesday 16 July 2008.
- 1.4 At the commencement of the inquiry there was one subsisting statutory Objector and also two non-statutory Objectors, all of whom appeared at the inquiry.
- 1.5 There were two requests for adjournments of the inquiry from the statutory Objector, Tesco Stores Ltd. ("TSL") in circumstances where Sandwell Metropolitan Borough Council ("SMBC") and TSL indicated that on-going negotiations were likely to result in TSL being able to withdraw its objection. I found this reason to be compelling and I allowed an initial adjournment from 11.15 am to 1.00 pm on 15 July 2008 and a further adjournment from 2.15 pm to 5.00 pm on 15 July 2008.
- 1.6 TSL withdrew its objection following resumption of the inquiry on 16 July 2008 (ID/O1/1) and retracted its witness's Proof of Evidence. However, SMBC did not withdraw all of its rebuttals to TSL's evidence as it considered that it may wish to rely on parts of this rebuttal evidence to respond to the remaining Objectors.
- 1.7 The grounds of objection from the two non-statutory Objectors were that:
  - a signalised junction would be more energy consuming and polluting than a roundabout;
  - a flyover, which should be constructed from steel rather than from concrete, would be a more appropriate solution and would provide better value for money; and
  - SMBC and Dudley Metropolitan Borough Council ("DMBC") have not responded adequately to the feedback they were given, regarding alternatives, from the limited consultation that was undertaken.
- 1.8 At the opening of the inquiry SMBC confirmed that it had complied with all the required statutory formalities (ID/SMBC/6).
- 1.9 The inquiry was conducted under the Highways (Inquiries Procedure) Rules 1994 Statutory Instrument 1994 No 3263 Parts III and IV and the Compulsory Purchase (Inquiries Procedure) Rules 2007.
- 1.10 I made an unaccompanied inspection of the site on Monday 14 July 2008, prior to the commencement of the inquiry. Following an explanation of the extent of this visit, a request from Mr C Kelly (Objector O2) for an accompanied site visit was withdrawn.
- 1.11 This report contains a brief description of the site of the Scheme and its surroundings, the gist of the cases presented and my conclusions and recommendations. Lists of inquiry appearances (Appendix A) and documents (Appendix B) are attached. References to the documents listed in Appendix B are given in brackets ( ). In the interest of completeness, the lists of documents include the statements of case, proofs of evidence ("PoE"), SMBC's responses to objections, closing statements and other evidence submitted by the parties. This, however, is subject to the proviso that these may have been added to or otherwise amended at the inquiry either during examination-in-chief or cross-examination.

## 2.0 DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 The site of the Scheme is in the West Midlands, approximately 1.5km to the east of Dudley town centre on the boundary between Dudley and Sandwell. The existing Burnt Tree Island Junction is on ground which slopes upwards from the north-east to the south-west. The site comprises predominantly residential areas to the east and south, which generally overlook the junction. There is a retail park to the west and an industrial estate, a public house and an office block to the north (ID/SMDC/2).
- 2.2 The existing five arm roundabout is at the intersection of the A4123 trunk Road (New Birmingham Road/Birmingham New Road) and the A461 classified road (Birmingham Road/Burnt Tree). The A4123 links Wolverhampton City Centre, to the west, with the M5 Motorway, Smethwick and Birmingham to the east. The A461 links Dudley and the south-west of the conurbation with West Bromwich, the M6 Motorway and Walsall, to the north. The A4033 arm of the roundabout provides a link to Oldbury (P1, Burnt Tree Island Existing Layout).

## 3.0 THE CASE FOR SMBC

**The material points were:**

### ***Existing Conditions***

- 3.1 The geometry of the roundabout is poor, with a combination of tight entry and exit radii on the approaches which, in some cases, have steep gradients. These factors, together with a poor vertical profile on the circulatory carriageway, which causes sub-standard visibility, reduce the ability of traffic to enter the roundabout efficiently. Because the roundabout has five arms, three of which are dual carriageways, this causes very short distances between entries and exits. There are no formal pedestrian or cycle provisions on any of the approaches (P2/V2, Drg. 27/A01).
- 3.2 Some 62,600 vehicles pass through the roundabout each day. Approximately 7% of this flow is goods vehicles, demonstrating the importance of the junction to the movement of goods within the Black Country and beyond to the motorway network. Some 19,600 vehicles enter from the Dudley direction along Birmingham Road. These high flows result in considerable queuing of traffic at peak hours. All approach arms operate at or above 100% saturation in the am peak with typical queues in excess of 50 passenger car units ("pcus") on Burnt Tree and 30 pcus on both A4123 approaches (ID/SMBC/3, chapter 2.2). One pcu represents one car.
- 3.3 Some more recent traffic counts and queue measurements have been undertaken to compare with the earlier data collected at or near the site (ID/SMBC/16).
- 3.4 These counts show that overall flows inbound to the junction are lower than the previous 2003 flows. However, these reduced flows could

indicate that the junction is at capacity, operating in unstable conditions and becoming increasingly congested, thereby creating the situation where traffic blocks back to other junctions. Queue lengths have been found to be variable both across arms and on individual arms, also indicating a junction operating in unstable conditions, where small perturbations in flow can cause large impacts on queue lengths (ID/SMBC/3, 2.2.7-2.2.9).

- 3.5 By 2011 all approaches to the junction would be operating at over 100% saturation in both peak periods. Significant queues and delays would occur in both peaks by 2021, with all arms operating well in excess of 100% saturation.

### ***The Scheme***

#### *Aims and Objectives*

- 3.6 The aims and objectives of the Scheme (P1, 6.1) would be to:

- increase capacity at the junction;
- reduce delays and queue lengths;
- improve junction geometry and hence improve safety;
- reduce severance and improve pedestrian and cycle facilities; and
- reduce public transport delays and improve reliability.

#### *Scheme Development - Alternatives Considered*

- 3.7 Three alternative solutions were considered: grade-separation; a signalised roundabout; and conventional traffic signals (P1, chapter 10).
- 3.8 The environmental impact of a flyover would be considerable as it would require a long structure and the demolition of between 35 and 40 dwellings. It would also necessitate significant land take from other properties. The cost would be likely to be in excess of £30M.
- 3.9 The topography of the junction would suit an underpass better and it would result in a slightly shorter structure. However, an underpass would be more difficult to construct, would have a similar land take and it would still cause considerable environmental impact. Construction costs would be greater than for a flyover.
- 3.10 Both a flyover and an underpass would further exacerbate the existing severance effect of the A4123 due to the difficulty in providing adequate pedestrian and cycle facilities.
- 3.11 Signalising the roundabout was also considered. However, the junction's geometry would not accommodate the anticipated queue lengths. Overall, signalising the roundabout would not provide any capacity improvements nor would it improve public transport, pedestrian or cycle facilities.
- 3.12 A conventional five leg signal controlled junction was also developed. However, there would also be insufficient reduction in predicted queues and delays to justify such a layout.

#### *Public Consultation*

- 3.13 A public consultation exercise was carried out between May and July

2005 (P1, chapter 11). This involved a leaflet drop, advertisements in the local press, display of plans at local public buildings and signs informing motorists of the proposals. The proposals were also posted on SMBC's website.

- 3.14 There were some 370 responses to the approximately 2000 leaflets that were distributed to addresses in the vicinity of the junction. This distribution covered predominantly residential properties, but also included local retailers and industrial and commercial premises. A further 1000 leaflets were distributed through the Black Country Chamber of Commerce ("BCCoC") to its Sandwell and Dudley members. In addition, BCCoC e-mailed its wider membership with details of the consultation (P1, appendices C and D).

- 3.15 The majority of the responses were in favour of the improvements, whilst some 9% of the responses favoured alternative solutions. The results of the consultation were reported to SMBC's Cabinet Members for Regeneration and Transport, and Neighbourhoods in October/November 2005 (P1, appendix E).

#### *National Planning Policy*

- 3.16 The Scheme would comply with the objectives of the Government's White Papers: Towards a Sustainable Transport System – October 2007 (ID/SMBC/8) and the Future of Transport – 2004 (CD04D and P1, 7.1.1). It would also conform to the objectives of Planning Policy Guidance ("PPG") 13: Transport (CD04B and P1, 7.1.2 and 3).

#### *Regional and Local Planning Policy*

- 3.17 The Scheme would support the relevant objectives of both the Sandwell and Dudley Unitary Development Plans ("UDP") (CD04A) and the West Midlands Regional Spatial Strategy ("RSS") (CD03) with regard to transport infrastructure and promoting and maintaining the economic competitiveness of both boroughs and the Black Country sub-region as a whole (P1, 7.2-7.4).

#### *Planning Permission*

- 3.18 Planning consent is not required as the Scheme is considered permitted development by virtue of the provisions of Article 2, Schedule 2, Part 13 Class A of the General Permitted Development Order (P1, 12.2).

#### *Authority*

- 3.19 The proposals have been jointly developed by SMBC and DMBC. The two Councils have entered into an agreement under Section 8 of the Act whereby DMBC's powers in relation to the making of the CPO and SRO have been transferred to SMBC (CD25). SMBC granted approval for the Scheme following receipt of reports to Cabinet Members (CD05 to CD07).

#### *The Orders*

- 3.20 SMBC's Cabinet Members for Regeneration & Transport and Neighbourhoods gave approval to the making of CPO and SRO on 11 and 16 May 2007 respectively (P1, appendix A).

- 3.21 The purpose of the CPO would be to acquire the land and rights necessary to construct the Scheme. The purpose of the SRO would

enable certain side roads, accesses and junctions to be closed or improved and to provide alternative accesses.

*Proposed Modification to the SRO*

- 3.22 Minor textural discrepancies have been identified in the SRO and these are proposed to be corrected by modification of the Order (CD14 and CD14A).

*Highways Agency Issues*

- 3.23 The A4123 forms part of the Trunk Road Network and, as such, is the responsibility of the Highways Agency ("HA"). Both SMBC and DMBC have authority to enter into agreements, under Sections 4, 5 and 6 of the Act, to accept transfer of the HA's powers to SMBC and DMBC in order to deliver the Scheme (P1, 13.2).
- 3.24 The Department for Transport ("DfT") considers the A4123 to be part of the 'non-core network' and as such it is intended that the route would be de-trunked. The current timetable indicates that de-trunking would take place before the responsibility for improving the junction passes to SMBC and DMBC (P1, 13.3 and 13.4). However, if slippage of the de-trunking programme occurs, the HA has confirmed that it would work in partnership with SMBC and DMBC to deliver the Scheme (ID/SMBC/13).

*The Layout*

- 3.25 The Scheme (CD15 and P2/V2) would comprise replacement of the existing five arm Burnt Tree Island roundabout by a new four leg signal controlled junction with widening of Burnt Tree, New Birmingham Road, Birmingham Road and Birmingham New Road to accommodate right turn lanes on the approaches and exits to the new junction. In addition Tividale Road would be realigned to join New Birmingham Road by means of a new signalised junction.
- 3.26 Access to the Towngate Retail Park would be improved by signalisation to provide 'right in-right out turn' facilities at the two existing accesses. In addition a 'U-turn' facility would be provided at the southern Towngate Retail Park access to allow local traffic from the west to access property south of Birmingham Road.

*Pedestrian, Cycling and Public Transport Facilities*

- 3.27 The new junction layout would provide greatly improved facilities for pedestrians, and in particular less mobile pedestrians, to cross the carriageways. The new signalised junctions would have pedestrian call buttons at both ends of the carriageway crossing points. These would activate visual and audible safe crossing alerts to pedestrians at the crossing points.
- 3.28 The crossings at Burnt Tree and at Tividale Road crossings would be 'Toucan' type that would also permit safe crossing facilities for cyclists. Advance stop lines would also be provided at Birmingham Road and Burnt Tree 'straight ahead and left turn' carriageways to enable safer movement for cyclists across the junction.
- 3.29 Bus lanes would be provided on Birmingham Road. The bus stop on the

eastbound carriageway would be relocated westward and it would be provided with movement detectors at its exit. Three stage signalisation would control traffic so that westbound, but not eastbound, traffic flows would be permitted. This would enable buses turning right into New Birmingham Road to cross more easily into the offside lanes.

#### *Geometry and Relaxation from Design Standards*

- 3.30 The improvement has been designed in accordance with DfT Standard TD 9/93: Road Layout and Geometry - Highway Link Design and the Scheme has been checked for compliance with DfT's Design Manual for Roads and Bridges ("DMRB") (P2, 3.1–3.3). The design would seek to achieve value for money without any detrimental effect on safety and the design has been developed to both reduce construction cost and to mitigate environmental impact.
- 3.31 TD 9/93 permits the introduction of Relaxations below Desirable Minimum Parameters (P2, 3.3.2). The departures from road layout standards identified to date have been approved by DMBC as the Highway Authority (ID/SMBC/14).

#### *Road Safety Audits*

- 3.32 A Stage 1 Road Safety Audit was carried out in 2005 (P2/V3, appendix 2). Further Road Safety Audits would be carried out when detailed highway design is complete and following completion of construction and after a period of operation, in accordance with DfT's Standard HD19/03: Road Safety Audits.

#### *Private Means of Access*

- 3.33 Consultation has taken place with landowners and agreement has been reached regarding the location and means of access to be provided.

#### *Land Acquisition*

- 3.34 There would be no property demolition and there are no exchange land issues as no public open space is being acquired. There are no subsisting objections to the CPO.

#### *Highways to be Stopped Up*

- 3.35 The only highway to be stopped would be Tividale Road, but it would be diverted to join New Birmingham Road by means of a signal controlled junction.

#### *Statutory Undertakers*

- 3.36 All statutory undertakers have been consulted to confirm the details of plant and equipment in the area. Proposals for protection and diversion of their apparatus have been developed to accommodate the Scheme and cost estimates have been obtained. There are no subsisting objections from statutory undertakers.

#### *Traffic Modelling*

- 3.37 The West Midlands Joint Application Team undertook modelling and appraisal work on behalf of SMBC and DMBC in order to support their

Major Scheme Submission ("MSS") for improvements at the Burnt Tree Island Junction (CD16 and 16A). An appropriate methodology using the West Midlands Policy Responsive Integrated Strategy Model ("PRISM") was agreed in January 2005 between SMBC, DMBC and DfT. This traffic model reflects all extant developments in the modelled area and is based on average weekday peak hour flows.

- 3.38 From PRISM, a smaller model representing an area of interest around the Burnt Tree Island Junction network was developed and it was calibrated using VISUM operating software. This smaller model has been calibrated and validated in accordance with DfT procedures. For design evaluation purposes this model was then further refined into a micro-simulation format using compatible VISSIM software in order to examine the operational behaviour of the Scheme. This model was also calibrated and validated in accordance with DfT procedures.
- 3.39 In May 2006 VISUM and VISSIM Validation Reports (CD22 and CD23) were produced which set out the results of the validation and calibration exercise and the testing of the 2003 Base Year, the 2011 Do Minimum, the 2011 Preferred Option and the 2021 Preferred Option scenarios. More recent traffic counts (ID/SMBC/16) have been taken on Birmingham Road and New Birmingham Road to support the traffic analysis.

#### *Traffic Impacts*

- 3.40 Traffic flows through the junction in 2011 and 2021 have been input into a TRANSYT model which links the four proposed signal controlled junctions. Queue lengths have been determined in terms of pcus, and the following outputs have been derived:
- the longest queue in any single lane approach would be 8 pcus in any peak hour;
  - the longest queue on Burnt Tree would be 18 pcus in the 2011 pm peak hour;
  - the longest queue on the New Birmingham Road would be 57 pcus in the 2011 pm peak hour;
  - the longest queue on Birmingham New Road would be 31 pcus in the 2021 pm peak hour; and
  - the longest queue on Birmingham Road would be 36 pcus in the 2021 am peak hour.
- 3.41 Taking account of the number of lanes provided, these queues demonstrate that the junction would perform satisfactorily.

#### *Accidents*

- 3.42 A Safety and Accident Report, dated June 2005, details the appraisal undertaken for the MSS (CD16A, appendix H). For a 60 year assessment period the accident cost savings, discounted to 2002, were assessed as £3.9M. This benefit was derived from an assessed reduction of 190 personal injury accidents for the whole study area.
- 3.43 The rationale for the Scheme has not been driven by accident prevention. However, because of its inherent dangers, the existing layout discourages use by pedestrians. Whilst the statistically assessed accident

savings in the study area would be small due to the suppressed demand situation, the Scheme would provide much safer facilities for pedestrians, by reducing severance through an increased number of pedestrian crossings.

#### *Economic Effects*

- 3.44 The economic assessment, undertaken in 2005 as part of the MSS Business Case, determined the Scheme would have a Net Present Value of £21.6M inclusive of accident cost savings at 2002 prices. The Scheme cost, which was assessed to be £10.303M at 2005 prices, would give rise to a Benefit Cost Ratio ("BCR") of 3.3. A BCR of greater than 2 is considered to provide value for money (P1, 14.2 and 14.3 and P2, 5.9.1).

#### *Funding and Timing*

- 3.45 The Scheme has 'firm priority' status in DfT's Regional Funding Allocations ("RFA"), dated February 2008 (ID/SMBC/9A). DfT requires that statutory procedures should be complete before an application can be made for 'Full Approval' for funding (CD17). It is proposed to commence the Scheme in Spring 2009 and construction is estimated, by Carillion PLC, the appointed Early Contractor Involvement ("ECI") contractor, to take approximately 18 months to complete. The cost estimate for the Scheme, undertaken in March/April 2008, was £11.053m.

#### *Environmental Impact Assessment*

- 3.46 An Environmental Impact Assessment ("EIA") was prepared in support of the joint LPT MSS (16A, appendix J). An updated EIA has been prepared in accordance with Volume 11 of DMRB (ID/SMBC/10 and 11) to take account of recently measured changes in traffic flows.

#### *Vehicle Emissions, Noise and Vibrations*

- 3.47 The Scheme would improve efficiency of traffic flows through the junction and the feeding link roads by reducing congestion, optimizing vehicle speeds and decreasing 'stop-start' movements. The updated EIA confirms that all of these factors would be beneficial to air quality. In addition the Scheme would have a beneficial impact on noise and vibration within the area of influence.

#### *Cultural Heritage*

- 3.48 Consultation with the SMBC and DMBC has revealed that there are no Scheduled Ancient Monuments, Listed Buildings, Conservation Areas, Historic Parks and Gardens, National Trust Properties or other Historic Sites and Monuments affected by the Scheme.

#### *Ecology and Nature Conservation*

- 3.49 The existing landscape areas are considered to be of low conservation value. The only habitats in the vicinity of the Scheme are improved grassland (the verges), some semi-mature trees and ornamental shrub areas. The trees are all relatively young and do not offer the potential to support any protected species. Overall, the scheme would have a negligible impact on nature conservation.

### Landscape and Visual Effects

- 3.50 The site is of low landscape sensitivity, being dominated by the existing highway network. Some of the existing landscape areas would be lost as a result of changes to the highway layout. As no additional land acquisition is proposed for planting purposes, the opportunity for compensatory planting would be limited, but new planting would be undertaken, where possible, in suitable available areas. Overall the Scheme would have a 'slight adverse' landscape impact but this would be outweighed by other environmental benefits. Most visual impacts would be in the 'slight adverse' category.

### *Disruption During Construction*

- 3.51 As construction will take place in a 'live' traffic' situation, the management of traffic and associated disruption, although difficult, would be manageable.

### *Appraisal Summary Table*

- 3.52 An Appraisal Summary Table ("AST") was prepared as part of the MSS (CD16A, appendix F). This has been updated (ID/SMBC/15) to reflect the additional traffic survey work undertaken and some of the original assessment indicators have changed as a consequence:
- the noise assessment indicator has changed from 'slight beneficial' to 'moderate beneficial';
  - the air quality assessment indicator has changed from 'moderate beneficial' to 'slight beneficial'; and
  - the landscape assessment indicator has changed from 'slight beneficial' to 'slight adverse'.
- 3.53 Overall the Scheme comes out very favourably when all five assessment indicators are considered together.

## 4.0 THE CASES FOR THE OBJECTORS

### **The material points were:**

#### ***Mr C Kelly – Objector O2***

- 4.1 The proposal to replace the existing roundabout by a signal controlled junction would have a negative environmental impact as vehicles would have to stop and start at traffic signals. This would result in much more fuel being used and the production of higher levels of polluting emissions than occurs on the existing layout, where vehicles move continuously through the junction. This is against current national objectives of reducing fuel consumption and greenhouse gas emissions, in a period of high fuel costs (ID/02/1, page 2, para. 1).
- 4.2 The Scheme would increase, rather than decrease, journey times through the junction as similar types of junction alterations elsewhere have failed to deliver the expected improvements. SMBC and DMBC have not shown much interest in the representations about the proposals made by the West Midlands Transport Group, an informal body made up from the Birmingham Chamber of Commerce, the BCCoC, the Confederation of

British Industry, the Institute of Directors, the Road Haulage Association, the Freight Transport Association and the Small Business Federation, and others (ID/02/1, para. 2).

- 4.3 The Scheme would represent poor value for money, particularly as a smaller improvement near-by is reported to cost £12,000 in annual maintenance (ID/02/1, para. 3).
- 4.4 A better solution to the problems at Burnt Tree Island Junction would be a flyover constructed from steel. It is regrettable that money cannot be made available to fund the increased cost of a flyover. SMBC and DMBC have never seriously explored this alternative even though this was drawn to their attention some four years ago. If a flyover proved to be too expensive then the alternative of an underpass or widening the approach lanes and reducing the diameter of the roundabout would offer better and less expensive solutions (ID/02/1, page 3).
- 4.5 Objectors to the Scheme should have been funded so that they could have employed consultants to help them prepare evidence to the inquiry.

***Mr T Carroll – Objector O3***

- 4.6 The current consultation arrangements between SMBC/DMBC and BCCoC are unsatisfactory and need to be reviewed (ID/03/1). BCCoC regrets that it did not discuss the Scheme in greater detail at meetings with SMBC and DMBC officers when it had the opportunity to do so. Although it is not disputed that the correct procedures for notification of the inquiry were followed, no direct notification was given to BCCoC.
- 4.7 The Arboretum Roundabout improvement in Walsall, which will soon be completed, has caused significant problems for traffic. Therefore the Burnt Tree Island Junction improvement could increase rather than reduce traffic delays (ID/03/1). This could cast a long shadow over the development of the Black Country for years to come.
- 4.8 Whilst in the past BCCoC has been generally supportive of an improvement at Burnt Tree Island Junction, the detailed points of objection raised by Mr Kelly, regarding the negative impact of the Scheme on the environment, are supported (ID/03/1).

**5.0 THE RESPONSE OF SMBC**

**The material points of the response to the Objectors by SMBC were:**

***Response to Mr C Kelly – Objector O2***

- 5.1 No work has been done and no evidence has been submitted to support the statements made regarding the negative impact of the Scheme on the environment. A 'common sense' approach cannot outweigh or contradict the results of the detailed studies undertaken for SMBC by technically qualified experts. The outcome of these studies (CD16A, appendix J) referred to in PoEs, which have been available for public scrutiny, has not been challenged.
- 5.2 Whilst there is no provision for the funding of Objectors out of the public

- purse to appoint their own advisors, there has been no obstacle to them doing so.
- 5.3 Work undertaken as part of the updated EIA clearly shows that the Scheme would have a 'slight beneficial' impact on air quality (ID/SMBC/15). Whilst there would be stopping and starting at traffic lights, the resultant fuel consumption and emission of pollutants would be lower as a result of the Scheme. Traffic would pass through the junction much more quickly and overall there would be less stopping and starting in queued traffic than occurs at present.
- 5.4 Each junction must be considered on its merits. Burnt Tree Island Junction has particular constraints and a full range of solutions was fully evaluated during the options appraisal stage (P1, chapter 10). Extensive consultation was undertaken at the outset of the project and all views were considered (P1, chapter 11). A flyover was considered as part of this process but was dismissed on account of the very adverse environmental impact that it would cause and the higher cost it would incur. A flyover would entail the acquisition of some 35-45 properties, the cost of which contributes significantly to the some £20M cost difference between a flyover solution and the Scheme. The alternative suggestion of an underpass would also be more expensive than the Scheme and neither a flyover nor an underpass would alleviate the current problem of severance.
- 5.5 No evidence has been submitted to show a possible layout for a flyover or an underpass, the land takes they would require, their impact on the environment and their cost.
- 5.6 Government policy requires a 'value for money' rather than a 'predict and provide' approach. The economic assessment, which has been carried out in line with Government guidance, shows that the Scheme represents good value for money. No evidence has been presented to the contrary.

***Response to Mr T Carroll – Objector O3***

- 5.7 BCCoC was involved in the consultation process. BCCoC's own newsletter reports a meeting with SMBC and DMBC officers at which proposals for the improvement of Burnt Tree Island Junction including the possible provision of an alternative flyover solution were discussed. At that time BCCoC appeared to accept that the proposed Scheme was the best solution (P1, appendix D).

## 6.0 CONCLUSIONS

- 6.1 Having regard to the foregoing, I have reached the following conclusions, reference being given in square brackets [ ] to paragraphs of this report where appropriate.

### **The subsisting objections**

- 6.2 I first of all deal with the two subsisting objections.

#### ***Mr C Kelly – Objector O2***

#### ***Mr T Carroll – Objector O3***

- 6.3 I can well understand that local people draw comparisons between apparently similar junction improvements in the same general area [4.2 and 4.7]. However, I recognise that each improvement, which is in a unique location, is subject to different prevailing conditions [5.4]. In this regard I am satisfied that SMBC has properly assessed all reasonable alternatives for the improvement of Burnt Tree Island Junction [3.7].
- 6.4 I accept that a flyover or an underpass could provide a better traffic flow solution [4.4]. However, as I see it, any resulting benefits would be far outweighed by the very substantial negative environmental impact and increased cost that would arise as a consequence of adopting either of these alternatives [3.8-3.10].
- 6.5 There is no doubt in my mind that, although vehicles would have to stop and start at the traffic lights on the Scheme, the existing queuing situation and the associated number of stop and start movements [3.2-3.4] would be reduced [3.40]. In this regard I accept the findings of the updated EIA that the Scheme would have a 'slight beneficial' effect on air quality [3.47 and 3.52].
- 6.6 I am satisfied that SMBC undertook a satisfactory level of public consultation during the Scheme development [3.13 to 3.15]. In particular, I have had regard to the previous involvement of BCCoC in the consultation process [3.14].
- 6.7 It is my view that the manner of communication between BCCoC and SMBC [4.6] and the rights or wrongs of national policy as to whether objectors should be funded to engage expert witnesses at public inquiries [4.5 and 5.2] are not matters for my consideration.
- 6.8 Although I have noted Mr Kelly's considerable experience in the road haulage business and I have no doubt that his views are sincerely held, I conclude that these two objections should not be an obstacle to me recommending whether or not the Orders should be confirmed.

### **The Orders**

- 6.9 I turn now to assess each Order in relation to the relevant statutory criteria [6.10 to 6.12 and 6.13 to 6.17]. Before I can recommend that either of the Orders be confirmed, I need to be satisfied that the following criteria have been met.

***SRO criteria, the Highway's Act 1980***

- 6.10 There should be provision for the preservation of rights of statutory undertakers in respect of their apparatus (Section 14(2)(a)).
- 6.11 Before any highway is stopped up, another reasonably convenient route is available or would be provided (Section 14(6)).
- 6.12 Before a means of access to premises is stopped up, either no access to the premises is required or another reasonably convenient means of access to the premises is available (Section 125(3)(a) and (b)).

***CPO criteria, ODPM Circular 06/2004, Part 1***

- 6.13 There is a compelling case in the public interest for acquisition and this justifies interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Union Convention on Human Rights, and, in the case of a dwelling, to Article 8 of the Convention (para. 17).
- 6.14 The acquiring authority has a clear idea as to how it intends to use the land it seeks to acquire (para. 19).
- 6.15 The acquiring authority can show that all necessary resources to carry out its plans are likely to be available within a reasonable timescale (para. 19).
- 6.16 The acquiring authority can demonstrate that the land is required immediately for the purpose that the acquisition is intended (para. 18).
- 6.17 The public benefit would outweigh the private loss (para. 19).

***The SRO******Provision for preservation of the rights of statutory undertakers***

- 6.18 There are no outstanding objections from statutory undertakes [3.36]. Given the special status afforded to public utilities under Section 14(2)(c) of the Act, I conclude that this matter should not prevent me from recommending whether or not the SRO should be confirmed.

***Before any highway is stopped up, is another reasonably convenient route available or would it be provided?***

- 6.19 A short length of the existing A4033 Tividale Road is the only length of highway to be affected by this criterion [3.35]. I conclude that the proposal to divert Tividale Road to connect with the A4123 New Birmingham Road in a signal controlled junction, instead of directly connecting into Burnt Tree Island Junction, is a reasonably convenient alternative route and therefore this criterion is satisfied.

***Before a means of access to premises is stopped up would no access to the premises be required or would another reasonably convenient means of access to the premises be available?***

- 6.20 There are no accesses to premises that are proposed to be stopped up [3.33] and I have noted in particular that accesses to the Towngate Retail Park would be considerably improved [3.26]. I conclude that the

Scheme complies with this criterion.

- 6.21 I conclude that the SRO criteria are satisfied and that accordingly the SRO should be confirmed.

***Proposed modifications to the SRO***

- 6.22 SMBC has proposed modifications to the SRO [3.22]. These modifications involve minor changes to the wording of the Orders and I consider them to be of no consequence to the amount of land to be acquired and that they are appropriate. I conclude that the proposed modifications should be incorporated in the SRO.

***The CPO***

*Is there a compelling case in the public interest for acquisition and would this justify interfering with the human rights of those with an interest in the land affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Union Convention on Human Rights, and, in the case of a dwelling, to Article 8 of the Convention?*

- 6.23 I have noted that there are no subsisting objections to the CPO [3.34]. I am satisfied that the existing and future congestion problems at Burnt Tree Island Junction [3.2 to 3.5] would be substantially alleviated by the Scheme [3.40 and 3.41]. In addition I am satisfied that the Scheme would provide improved facilities for pedestrians, cyclists and public transport [3.27 to 3.29]. Moreover, I consider the Scheme would support the economic competitiveness of SMBC and DMBC and the Black Country sub-region as a whole [3.2 and 3.17]. I conclude that there is a compelling case in the public interest for the land included in the CPO to be acquired.

*Has the acquiring authority a clear idea as to how it intends to use the land it seeks to acquire?*

- 6.24 I consider that the Scheme, as presented at the public inquiry, is well developed [3.25 to 3.32]. I have closely studied the schedule and plans accompanying the CPO and compared these with the Scheme drawings and conclude that the extent of acquisition proposed is necessary to implement the Scheme. Furthermore, I note that there have been no assertions to the contrary. I conclude that SMBC has a clear idea as to how it intends to use the land it seeks to acquire and that this criterion is satisfied.

*Can the acquiring authority show that all necessary resources to carry out its plans are likely to be available within a reasonable timescale?*

- 6.25 DfT requires all statutory procedures to be complete before an application can be made to them for 'Full Funding'. The Scheme is identified in the most recent RFA as being in 'firm priority' category. A major Contractor, already appointed, is ready to commence main construction in the spring of 2009 [3.45]. I conclude that this criterion is satisfied.

*Can the acquiring authority demonstrate that the land is required immediately for the purpose that the acquisition is intended?*

- 6.26 There is no doubt in my mind that all of the land identified for acquisition would be required immediately. In my opinion, there would be absolutely no opportunity for the Scheme to be implemented, or for the land and rights required for the Scheme to be acquired in a piecemeal fashion. I conclude that this criterion is satisfied.

*Would the public benefit outweigh the private loss?*

- 6.27 The Scheme would provide value for money with a BCR of 3.3 [3.44]. Although land would be acquired from TSL, any previous objection they had to the Scheme has been withdrawn. I have noted no other objections regarding private loss [3.34] and I conclude that this criterion is satisfied.
- 6.28 I conclude that the CPO criteria have been met and that the CPO should be confirmed.

### **The Scheme**

- 6.29 The Scheme would comply with all relevant design standards [3.30] and where relaxations from standards have been necessary, appropriate authority has been obtained [3.31]. The traffic modelling, on which the Scheme design is based, is in accord with DfT procedures; the data gathered and the models used have been properly validated and calibrated [3.37-3.39]. The design has been subject to a Road Safety Audit [3.32]. I consider that the aims and objectives for the Scheme [3.6] would be fulfilled and I conclude that the Scheme would be expedient.
- 6.30 The Scheme complies with relevant national and local policies [3.16 and 3.17]. It has been approved, in principle, for funding by DfT [3.45]. Planning permission is deemed to have been granted by virtue of Part 13 of Schedule 2 of the Town and Country Planning General Permitted Development Order [3.18]. SMBC and DMBC have entered into agreement to deliver the project [3.19] and agreement has been reached with the HA to cooperate in the delivery of the Scheme should there be any slippage in the programme for de-trunking the A4123 [3.23 and 3.24]. I conclude that there is no procedural obstacle to the implementation of the Scheme.

### **Environmental Impact Assessment**

- 6.31 In arriving at my recommendations I have taken account of the EIA and any other environmental evidence presented by members of the public. I have noted that additional traffic modelling work [3.39] has resulted in the production of a revised AST [3.52 and 3.53], with which I am in agreement.

### **Overall Summary**

- 6.32 I have considered each of the subsisting objections [6.3 to 6.8]. I have assessed each of the Orders against the relevant statutory criteria [6.18 to 6.20 and 6.23 to 6.27] and I have concluded that they comply [6.21 and 6.28]. I have noted the proposed modifications to the SRO and I have concluded that they are necessary [6.22]. To my mind, any adverse impacts, which would be limited, would be far outweighed by the

significant benefits that the Scheme would bring. Overall it is my view that the Scheme is very much in the public interest and should be allowed to proceed. I have had regard to all other matters raised, but they do not outweigh the conclusions I have reached and the recommendations that I make.

## 7.0 RECOMMENDATIONS

7.1 I recommend that:

- **The (A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE) (A661) (CLASSIFIED ROAD) (SIDE ROADS) ORDER 2007** be modified [3.22 and 6.22] and that the Order, so modified, be confirmed.
- **The (A461/A4123 JUNCTION IMPROVEMENT, BURNT TREE, TIPTON) COMPULSORY PURCHASE ORDER 2007** be confirmed.

*Jack Moffett*

Inspector

**APPENDIX A****APPEARANCES****For Sandwell Metropolitan Borough Council**

Miss N Sharif	of Counsel, instructed by SMBC Legal Services.
She called:	
Mr A J Miller, IEng, DipTP, MRTPI, FIHIE.	Senior Transportation Planner, SMBC.
Mr J P Walpole, BSc(Hons), CEng, MICE, MIHT, MOSH.	Divisional Director, Watermans Civils Ltd.
Mr J H Barlow, BSc, CEng, MICE, FGS, MIOSH.	Divisional Director, Watermans Civils Ltd.
Mr N Lissimore, IEng, AMICE	Principal Engineer DMBC

**Objectors****For Tesco Stores Ltd.**

Mr R Taylor	of Counsel, instructed by: Berwin Leighton Paisner LLP Adelaide House London Bridge London EC4R 9HA
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**Individual Objectors**

Mr C Kelly	Chairman and Managing Director Keltruck Ltd. Kenrick Way West Bromwich West Midlands B71 4JW
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***For the Black Country Chamber of Commerce***

Mr T Carroll	Policy Director Ward Street Walsall West Midlands WS1 2AG
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**LISTS OF DOCUMENTS****APPENDIX B****Documents submitted before commencement of the inquiry****1. CORE DOCUMENTS****Regional and Local Planning and Policy Documents**

- CD01 SMBC UDP
- CD02 Letter to SMBC from Government Office for the West Midlands re. saved policies dated 7 September 2007
- CD03 RSS for the West Midlands: Draft RSS Phase One Revision, The Black Country
- CD04 The West Midlands Local Transport Plan
- CD04A DMBC UDP
- CD04B Regional Planning Guidance for the West Midlands
- CD04C PPG 13: Transport
- CD04D The Future of Transport: a network for 2030 - July 2004
- CD04E DfT: Guidance on Value for Money
- CD04F Black Country Consortium
- CD04G The West Midlands Multi-Modal Study

**SMBC: Committee Reports**

- CD05 Report to Cabinet Member for Neighbourhoods, 19 October 2004 and Report to the Cabinet Member for Regeneration and Transport, 12 November 2004
- CD06 Report to Cabinet Member for Neighbourhoods, 19 October 2007 and Report to the Cabinet Member for Regeneration and Transport, 11 November 2005
- CD07 Report to Cabinet Member for Neighbourhoods, 11 May 2007 and Report to the Cabinet Member for Regeneration and Transport, 16 May 2007

**The Orders**

- CD08 Statement of Reasons for Making the SRO
- CD09 The SRO
- CD10 The SRO Plan 36818 – 002 B03
- CD11 Statement of Reasons for Making the CPO
- CD12 The CPO
- CD13 The CPO Plan – 36818 – 001 B03
- CD14 Schedule of proposed modifications to the SRO
- CD14A Proposed modified SRO

**The Scheme Drawing**

- CD15 Proposed Scheme Layout – Preliminary – 36818 004 A01

**The Scheme Business Case**

- CD16 The Scheme: MSS Business Case
- CD16A Supporting Appendices

**Correspondence with DfT**

- CD17 Letter from DfT to SMBC dated 26 July 2006
- CD18 Letter from the HA to SMBC dated 23 November 2007
- CD19 Letter from SMBC to GONE dated 5 December 2007

- CD20 Letter from DfT to SMBC dated 14 January 2008  
 CD21 Letter from DfT to HA dated 14 January 2008 and enclosing copy of letter from DfT to SMBC dated 7 December 2006

### **Traffic Modelling Validation Reports**

- CD22 Burnt Tree Island Local Model Validation Report Part I: VISUM  
 CD23 Burnt Tree Island Local Model Validation Report Part II: VISSIM

### **Inquiry Notice**

- CD24 Notice of inquiry

### **Agreements**

- CD25 Section 8(1) Agreement between SMBC and DMBC

## **2. STATEMENTS OF CASE**

- SOC1 Statement of Case – The SRO  
 SOC2 Statement of Case – The CPO

## **3. PROOFS OF EVIDENCE**

- P1 PoE on the need of the Scheme and its benefits – Mr A J Miller  
 P1/S Summary PoE - Mr A J Miller  
 P2 PoE on Engineering – Mr J P Walpole  
 P2/S Summary PoE on Engineering – Mr J P Walpole  
 P2/V2 Appendices 1 and 4 to PoE on Engineering – Mr J P Walpole  
 P2/V3 Appendices 2 and 2 to PoE on Engineering – Mr J P Walpole  
 P3 PoE on Environment – Mr D G Neal

## **4. OTHER DOCUMENTS**

### **Documents submitted during the inquiry**

#### **By SMBC**

ID/ SMBC/1	Not used	
ID/ SMBC/2	Aerial photograph of the site	15 July 2008
ID/ SMBC/3	Rebuttal evidence by Mr J H Barlow – Volume 1	15 July 2008
ID/ SMBC/4	Rebuttal evidence by Mr J H Barlow – Volume 2	15 July 2008
ID/ SMBC/5	Not used	
ID/ SMBC/6	Inquiry procedures compliance pack	15 July 2008
ID/ SMBC/7	List of statutory consultees to the SRO	16 July 2008
ID/ SMBC/8	Commentary on compliance of the Scheme with Government White Paper 'Towards a Sustainable Transport System' – October 2007	16 July 2008
ID/ SMBC/9	Copy of Regional Funding Allowance letter dated 6 July 2006	16 July 2008
ID/ SMBC/9A	RFA Cost Profiles-February 2008	16 July 2008
ID/ SMBC/10	Stage 3 Environmental Statement – Volume 1	16 July 2008
ID/ SMBC/11	Stage 3 Environmental Statement – Volume 2	16 July 2008
ID/ SMBC/12	Scheme and CPO overlay drawing	16 July 2008
ID/ SMBC/13	HA letter to SMBC dated 16 July 2008	16 July 2008
ID/ SMBC/14	Approval of departures by SMBC	16 July 2008
ID/ SMBC/15	Revised AST and revised Transyt summary dated 14 July 2008	16 July 2008
ID/ SMBC/16	ATC survey results July 2008	16 July 2008
ID/ SMBC/17	Closing submissions	16 July 2008

#### **By the Objectors**

***TSL – Objector O1***

ID/ O1/1 Letter of withdrawal of objection 16 July 2008

***Mr C Kelly – Objector O2***

ID/ O2/1 Statement to the inquiry 16 July 2008

***Mr T Carroll – Objector O3, on behalf of the Black Country Chamber of Commerce***

ID/ O3/1 Statement to the inquiry 16 July 2008

**By the Inspector**

ID/1 List of Documents at the opening of the inquiry 15 July 2008

ID/2 Statutory Criteria 15 July 2008