
STATUTORY INSTRUMENTS

2000 No. 428

TRANSPORT AND WORKS, ENGLAND

TRANSPORT

Knowsley Industrial Park (Rail Terminal) Order 1999

Made - - - - 3rd December 1999

Coming into force - - 24th December 1999

Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions (“the Secretary of State”), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(1) made under section 6 of the Transport and Works Act 1992(2) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State has taken into consideration the objection made to that application and not withdrawn;

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas the Secretary of State is satisfied that the provision of an alternative right of way for the footpath mentioned in Schedule 2 to this Order is not required;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 2nd December 1999;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 4, 6 to 8, 10, 11 and 15 to 17 of Schedule 1 to the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Knowsley Industrial Park (Rail Terminal) Order 1999 and shall come into force on 24th December 1999.

(1) S.I.1992/2902.
(2) 1992 c. 42.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961⁽³⁾;
- “the 1965 Act” means the Compulsory Purchase Act 1965⁽⁴⁾;
- “the 1990 Act” means the Town and Country Planning Act 1990⁽⁵⁾;
- “the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;
- “the 1992 Act” means the Transport and Works Act 1992;
- “the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;
- “authorised works” means the scheduled works and any other works authorised by this Order;
- “the book of reference” means the book of reference described in rule 7(5) of the Applications Rules certified by the Secretary of State as the book of reference for the purposes of this Order;
- “the Council” means Knowsley Metropolitan Borough Council;
- “the deposited plans” means the composite plans prepared in pursuance of rule 7(1) and (3) of the Applications Rules certified by the Secretary of State as the deposited plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 7(3);
- “the deposited sections” means the sections described in rule 7(2) of the Applications Rules certified by the Secretary of State as the deposited sections for the purposes of this Order;
- “the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 4(a) below;
- “the Liverpool Bolton and Bury Line” means so much of that part of the railway of Railtrack PLC known as the Liverpool Bolton and Bury Line as runs between Wigan Wallgate station and Kirkby station;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;
- “owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;
- “the public open space and exchange land plans” means the two plans so headed and attached to the deposited plans;
- “the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;
- “the telecommunications code” means Schedule 2 to the Telecommunications Act 1984⁽⁷⁾; and
- “the tribunal” means the Lands Tribunal.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface.

(3) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

(3) 1961 c. 33.
(4) 1965 c. 56.
(5) 1990 c. 8.
(6) 1991 c. 22.
(7) 1984 c. 12.

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so lettered on the deposited plans.

(5) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along that scheduled work.

PART II

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 4 below, the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5) below, the Council may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) works for the strengthening, alteration or demolition of any building or structure;
- (b) works to alter the position of any apparatus, including mains, sewers, drains and cables;
- (c) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (e) facilities and works for the benefit or protection of land or premises affected by the authorised works.

(4) Subject to paragraph (5) below, the Council may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) Paragraphs (3) and (4) above shall only authorise the carrying out or maintenance of works within the limits of deviation shown on the deposited plans for the scheduled works.

Power to deviate

4. In constructing or maintaining any of the scheduled works, the Council may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards.

Streets and footpaths

Stopping up of footpath

5.—(1) The Council may, in connection with the construction of the authorised works, stop up the footpath specified in columns (1) and (2) of Schedule 2 to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of that Schedule.

(2) Upon that footpath being stopped up—

- (a) all rights of way over or along it shall be extinguished; and
- (b) the Council may, without making any payment, appropriate and use for the purposes of its undertaking authorised by this Order so much of the footpath that is stopped up.

Access to works

6. The Council may, for the purposes of the construction or operation of the scheduled works, form and lay out such means of access, within the limits of deviation, as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Supplemental

Discharge of water

7.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the limits of deviation, make openings into, and connections with, the watercourse, sewer or drain.

(2) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) The Council shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽⁸⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(8) 1991 c. 57.

Power to survey and investigate land, etc.

8.—(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the limits of deviation;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) and (b) above; and
- (d) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (c) above.

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Council—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) The Council shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Obstruction of construction of authorised works

9. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

10. The Council may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its undertaking authorised by this Order.

Application of Part I of Compulsory Purchase Act 1965

11.—(1) Part I of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽⁹⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Vesting Declarations

12.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽¹⁰⁾ shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1) above, the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in the London Gazette and in a local newspaper circulating in the area in which the land is situated.”

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in the London Gazette or in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 11 above.

Powers to acquire new rights

13.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in article 10 above as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

⁽⁹⁾ 1981 c. 67.

⁽¹⁰⁾ 1981 c. 66.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 3 to this Order), where the Council acquires a right over land under paragraph (1) above it shall not be required to acquire a greater interest in it.

(3) Schedule 3 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Powers to acquire subsoil only

14.—(1) The Council may compulsorily acquire so much of the subsoil of the land referred to in article 10 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Council acquires any part of the subsoil of land under paragraph (1) above it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 16 below from applying where the Council acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Compensation

Disregard of certain interests and improvements

15.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land;

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) above “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

16.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 11 above) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Council a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the Council agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Council is authorised to acquire compulsorily under this Order.

(8) If the Council agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) that the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Council is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Council may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, shall pay to the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the Council shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

17.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the acquisition of the land by the Council, whether compulsorily or by agreement; or
- (b) on the entry on the land by the Council under section 11(1) of the 1965 Act;

whichever is sooner.

(2) All private rights of way over land owned by the Council which is within the limits of land which may be acquired shown on the deposited plans and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by the Council.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

18. No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 11 above after the end of the period of 5 years beginning with the day on which this Order comes into force.

Public Open Space

19.—(1) The Council shall not under the powers of this Order acquire compulsorily any interest in the public open space comprised in the lands numbered 10 and 13 in the book of reference and coloured red on the public open space and exchange land plans until the Council has acquired the land coloured green on those plans and numbered 12 in the book of reference.

(2) The land so shown coloured green shall vest in the Council subject to the like rights, trusts and incidents as attached to the land shown coloured red and upon its acquisition by the Council the land shown coloured red shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) The Council shall lay the land shown coloured green on the public open space and exchange land plans out as replacement public open space before the authorised works are first brought into public use pursuant to the powers of article 20 below.

PART IV

OPERATION OF AUTHORISED WORKS

Power to operate and use authorised works

20. The Council may operate and use the authorised works as a system, or part of a system, of transport for the carriage of goods.

Maintenance of approved works, etc.

21.—(1) Where pursuant to regulations made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with

respect to any works, plant or equipment (including vehicles) forming part of the authorised works, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised works.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the Council shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Trespass on authorised works

22. Any person who—

- (a) trespasses on any authorised work; or
- (b) trespasses upon any land of the Council in dangerous proximity to the authorised works or to any electrical or other apparatus used for or in connection with the operation of the authorised works;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power of disposal, agreements for operation, etc.

23.—(1) The Council may sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection therewith or the right to operate the works under this Order.

(2) Without prejudice to the generality of paragraph (1) above, the Council may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the Council or any other person.

(3) Any agreement under subsection (2) above may provide (inter alia) for the exercise of the powers of the Council in respect of the authorised works or any part or parts thereof, and for the transfer to any person of the authorised works or any part or parts thereof together with the rights and obligations of the Council in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1) above, or any agreement under paragraph (2) above, shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Council.

Application of landlord and tenant law

24.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same, and any agreement entered into by the Council with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

PART V

PROTECTIVE PROVISIONS

For protection of Environment Agency

25.—(1) For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions of this article shall, unless otherwise agreed in writing between the Council and the Agency, have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991⁽¹¹⁾ or any byelaws made under that Act or the Land Drainage Act 1991⁽¹²⁾ in relation to anything done under or in pursuance of this Order.

(3) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the authorised works, the Council shall furnish to the Agency proper and sufficient plans of such works for the approval of the Agency and shall not carry out such works until those plans have been approved in writing by the Agency.

(4) The approval of plans furnished under paragraph (3) above shall not be unreasonably withheld and if, within two months from the day that the plans are received by the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as received.

(5) For the purposes of paragraph (3) above, “plans” includes sections, drawings, specifications, calculations and descriptions.

(6) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for purposes of or in connection with the authorised works, whether constructed under the powers of this Order or in existence prior to the making of this Order, shall be maintained by the Council in good repair and condition and free from obstruction.

(7) Nothing in paragraph (6) above shall have the effect of requiring the Council to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(8) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article the Council shall upon receiving notice from the Agency take such action

(11) 1991 c. 57.

(12) 1991 c. 59.

as may be necessary to remedy the effect of the contravention to the Agency's satisfaction and in default of such action by the Council the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Council as a debt due from them to the Agency.

Statutory undertakers, etc.

26. The provisions of Schedule 4 (provisions relating to statutory undertakers, etc.) to this Order shall have effect.

For protection of Railtrack

27. The provisions of Schedule 5 (for the protection of Railtrack) to this Order shall have effect.

PART VI

MISCELLANEOUS AND GENERAL

Disclosure of confidential information

28. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 8 above; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Certification of plans, etc.

29. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans, the deposited sections and the public open space and exchange land plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

30.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(13) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

(13) 1978 c. 30.

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
 - (b) in any other case, his last known address at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

31. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

32. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

3rd December 1999

A. S. D. Whybrow
Head of Charging and Local Transport Division,
Department of the Environment, Transport and
the Regions

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SCHEDULES

SCHEDULE 1

Articles 2(1) and 3

SCHEDULED WORKS

In the County of Merseyside, Metropolitan Borough of Knowsley—

| | |
|-------------|--|
| Work No. 1 | Re-alignment of an existing railway (1,221 metres in length), commencing by a junction with the Liverpool Bolton and Bury Line 10 metres north-east of County Road, proceeding thence in a generally north-eastern direction and terminating by a junction with the Liverpool Bolton and Bury Line beneath the bridge carrying Dale Lane. |
| Work No. 2 | A railway (647 metres in length) commencing by a junction with Work No. 3 250 metres north-east of County Road, proceeding thence in a generally north-eastern direction parallel to and immediately south-east of Work No. 1 and parallel to and immediately north-west of Work No. 3 and terminating by a junction with Work No. 4 320 metres south-west of Dale Lane. |
| Work No. 3 | A railway (681 metres in length) commencing 210 metres north-east of County Road, proceeding thence in a generally north-eastern direction parallel to and immediately south-east of Work No. 1 and Work No. 2 and terminating by a junction with Work No. 4 320 metres south-west of Dale Lane. |
| Work No. 4 | A railway (137 metres in length) commencing by a junction with Work No. 2 and Work No. 3 320 metres south-west of Dale Lane, proceeding thence in a generally north-eastern direction, including trap points, and terminating by a junction with Work No. 1 180 metres south-west of Dale Lane. |
| Work No. 4A | A railway (63 metres in length) commencing by a junction with Work No. 4 310 metres south-west of Dale Lane, proceeding thence in a generally eastern direction and terminating by a junction with Work No. 6. |
| Work No. 5 | A railway (57 metres in length) commencing by a junction with Work No. 1 185 metres north-east of County Road, proceeding thence |

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| | |
|------------|---|
| Work No. 6 | <p>in a generally north-eastern direction and terminating by a junction with Work No. 3 245 metres north-east of County Road.</p> <p>A railway (1,543 metres in length) commencing by a junction with Work No. 4A 250 metres south-west of Dale Lane, proceeding thence in a generally south-eastern direction to the south of Dale Lane and the north of the Northwood housing estate and terminating by a junction with Work No. 7 70 metres to the west of the western boundary of the North Mersey Business Park.</p> |
| Work No. 7 | <p>A railway (1,430 metres in length) commencing by a junction with Work No. 6 150 metres east of the Liverpool Bolton and Bury Line, proceeding thence in a generally south-eastern direction parallel to and immediately north of Work No. 6, including two crossovers to Work No. 6 and terminating 45 metres to the west of the western boundary of the North Mersey Business Park.</p> |
| Work No. 8 | <p>A railway (530 metres in length) commencing by a junction with Work No. 7 45 metres south-east of the junction between North Perimeter Road and Dale Lane, proceeding thence in a generally south-eastern direction and terminating by a junction with Work No. 7 100 metres to the west of the western boundary of the North Mersey Business Park.</p> |
| Work No. 9 | <p>A new drain (26 metres in length) commencing 26 metres north of existing North West Water manhole 2502, proceeding thence in a generally southerly direction and terminating at existing North West Water manhole 2502 (Ordnance Survey reference point SJ 343225/399560).</p> |

SCHEDULE 2

Article 5

FOOTPATH TO BE STOPPED UP

| (1) <i>Area</i> | (2) <i>Footpaths to be stopped up</i> | (3) <i>Extent of stopping up</i> |
|---------------------|---|-------------------------------------|
| Borough of Knowsley | Footpath between Portland Road, Northwood Estate and the Dale Lane bridge over the Liverpool Bolton and Bury Line | Between the points FS1 and FS2 |

SCHEDULE 3

Article 13

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973⁽¹⁴⁾ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below. (2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 below—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5 below—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage

(14) 1973 c. 26.

(if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8. —

(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the Knowsley Industrial Park (Rail Terminal) Order 1999 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

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7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 26

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired under this Order, or which is held by the Council and is appropriated or used (or about to be used) by it for the purposes of the Order or purposes connected therewith, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1) above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer;

shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which Part III of the 1991 Act applies.

(6) In this paragraph—

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984 applies, to run a public telecommunications system; or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

“public utility undertakers” has the same meaning as in the Highways Act 1980.

SCHEDULE 5

Article 27

FOR PROTECTION OF RAILTRACK

1.—(1) The following provisions of this Schedule shall, unless otherwise agreed in writing between the Council and Railtrack PLC, have effect:—

(2) In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Railtrack PLC for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals and programmes;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway belonging to Railtrack PLC and any works, apparatus and equipment belonging to Railtrack connected with any such railway and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

2.—(1) The Council shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property unless such acquisition or use is with the consent of Railtrack PLC.

(2) Without prejudice to any requirement as to fencing made by Railtrack under paragraph 3(5) below on approval of plans, the Council shall provide and maintain, to the reasonable satisfaction of the engineer, a boundary fence incorporating gates where appropriate between railway property and any adjoining land of the Council acquired or appropriated for the purpose of Work No. 6.

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(3) The Council shall not exercise the powers conferred by article 8 above or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Railtrack PLC.

(4) The Council shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Railtrack PLC.

(5) The Council shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 4 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack PLC.

(6) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraph (3), (4), or (5) above, or to give its consent to the acquisition of new rights over or the use of railway property under sub-paragraph (1) above, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

3.—(1) The Council shall before commencing construction of any specified work supply to Railtrack PLC proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) above shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Railtrack PLC the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Railtrack PLC, Railtrack PLC gives notice to the Council that Railtrack PLC desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Railtrack PLC then, if the Council desires such part of the specified work to be constructed, Railtrack PLC shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the Council.

(4) In the event of Railtrack PLC not constructing or completing any part of a specified work pursuant to sub-paragraph (3) above with all reasonable dispatch and to the reasonable satisfaction of the Council in accordance with such programme as may be agreed with the Council or settled by arbitration, Railtrack PLC shall pay compensation to the Council for any loss which it may sustain as a result.

(5) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Railtrack PLC or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC or by the Council, if Railtrack PLC so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

4.—(1) Any specified work shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 3 above;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack PLC or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the Council shall, notwithstanding any such approval, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Railtrack or its servants, contractors or agents.

5. The Council shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

6. Railtrack PLC shall at all times afford reasonable facilities to the Council and its agents for access to any works carried out by Railtrack PLC under this Schedule during their construction and shall supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

7.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and Railtrack PLC gives to the Council reasonable notice of its intention specifying the alterations or additions to be carried out, the Council shall pay to Railtrack PLC the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 8(a) below, provide such details of the formula by which those sums have been calculated as the Council may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Council to Railtrack PLC under this paragraph.

8. The Council shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 3(3) above or in constructing any protective works under the provisions of paragraph 3(5) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and

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- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the construction of a specified work.

9.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2) below, electromagnetic interference with Railtrack’s apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the works) where such interference is of a level which adversely affects the safe operation of Railtrack’s apparatus; and

“Railtrack’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the works) which are owned or used by Railtrack for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Railtrack’s apparatus carried out after approval of plans under paragraph 3(1) above for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5) below, the Council shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Railtrack (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Council’s compliance with sub-paragraph (3) above—

- (a) the Council shall consult with Railtrack PLC as early as reasonably practicable to identify all Railtrack’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Railtrack PLC (both before and after formal submission of plans under paragraph 3(1) above) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Railtrack PLC shall make available to the Council all information in Railtrack’s possession reasonably requested by the Council in respect of Railtrack’s apparatus identified pursuant to paragraph (a) above;
- (c) Railtrack PLC shall allow the Council reasonable facilities for the inspection of Railtrack’s apparatus pursuant to paragraph (a) above.

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Railtrack’s apparatus, Railtrack shall not withhold its consent unreasonably to modifications of Railtrack’s apparatus, but the means of prevention and the method of their execution shall be selected in Railtrack PLC’s reasonable discretion and in relation to such modifications paragraph 3(1) above shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of the authorised works causes EMI then the Council shall immediately upon receipt of notification by Railtrack of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Council’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5) above) to Railtrack’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council shall afford reasonable facilities to Railtrack PLC for access to the Council’s apparatus in the investigation of such EMI;

- (b) Railtrack shall afford reasonable facilities to the Council for access to Railtrack's apparatus in the investigation of such EMI; and
- (c) Railtrack shall make available to the Council any additional material information in its possession reasonably requested by the Council in respect of Railtrack's apparatus or such EMI.

(8) Where Railtrack PLC approves modifications to Railtrack's apparatus pursuant to sub-paragraphs (5) or (6) above—

- (a) Railtrack shall allow the Council reasonable facilities for the inspection of the relevant part of Railtrack's apparatus;
- (b) any modifications to Railtrack's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Council in accordance with paragraph 4 above.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 13(1) below shall apply to the costs and expenses reasonably incurred or losses suffered by Railtrack through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Railtrack's apparatus) or in consequence of any EMI to which sub-paragraph (6) above applies.

(10) For the purpose of paragraph 8(a) above any modifications to Railtrack's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 32 above to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

10. If at any time after the completion of a specified work, not being a work vested in Railtrack, Railtrack PLC gives notice to the Council informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the Council shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

11. The Council shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Railtrack PLC unless it shall have first consulted Railtrack PLC and it shall comply with Railtrack PLC's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

12. Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, be repaid by the Council to Railtrack PLC.

13.—(1) The Council shall pay to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Council shall indemnify Railtrack from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Railtrack on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall

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not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this sub-paragraph.

(2) Railtrack PLC shall give the Council reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

(3) The sums payable by the Council under sub-paragraph (1) above shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Railtrack PLC and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (3) above which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) above to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4) above.

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Railtrack’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1) above; and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

14. In the assessment of any sums payable to Railtrack under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under this Schedule or increasing the sums so payable.

15. The Council and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the Council of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Railtrack PLC relating to any railway property.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Knowsley Metropolitan Borough Council to construct and operate various railways and other works on land adjacent to the Knowsley Industrial Park in the Metropolitan Borough of Knowsley and on the Liverpool Bolton and Bury Line railway of Railtrack PLC running

to the north-west of that land and, for that purpose, compulsorily or by agreement to acquire land and rights in land.

A copy of the deposited plans, and the deposited sections prescribed by rule 7(1)(a), 7(2) and 7(3) of the Transport and Works (Applications and Objections Procedure) Rules 1992 and a copy of the public open space and exchange land plans, certified in accordance with article 29 of this Order, may be inspected at the Council's offices, Municipal Buildings, Archway Road, Huyton, Knowsley, Merseyside L36 9YU.