
STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

29.—(1) The promoter may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits 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 purpose ancillary to its tramway undertaking.

(2) Nothing in paragraph (1) shall authorise the promoter to acquire compulsorily any of the lands mentioned in Schedule 6 (land not to be acquired compulsorily), or any rights over those lands, but the promoter may acquire by agreement any part of those lands, or any rights over them, and use them, for the purposes referred to in that paragraph.

(3) This article is subject to article 34 (new rights only to be acquired in certain lands).

Application of Part 1 of the Compulsory Purchase Act 1965

30.—(1) Part 1 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(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 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.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

31.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), shall have effect with the following modifications.

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

(1) 1981 c. 67.
(2) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) 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 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, for subsections (5) and (6) there shall be substituted—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person 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 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 by article 30 (application of Part 1 of the Compulsory Purchase Act 1965).

Power to acquire new rights

32.—(1) The promoter may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) the promoter shall not be required to acquire a greater interest in that land.

(3) Schedule 7 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article or article 34 (new rights only to be acquired in certain lands) of a right over land by the creation of a new right.

Power to acquire subsoil only

33.—(1) The promoter may compulsorily acquire so much of, or such rights in, the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

(2) Where the promoter acquires any part of, or rights in, the subsoil of land under paragraph (1) the promoter shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 40 (acquisition of part of certain properties) from applying where the promoter acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

New rights only to be acquired in certain lands

34.—(1) In the case of the land specified in Schedule 8 (acquisition of new rights only) the promoter's powers of compulsory acquisition under article 29 (power to acquire land) shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 19 (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers.

(2) Where the promoter acquires easements or other new rights in the land specified in Schedule 8, article 32(2) (power to acquire new rights) shall apply as it applies to the acquisition of a new right under that article.

Rights under or over streets

35.—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or air space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air space for those purposes or any other purpose ancillary to its tramway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the promoter acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting on to the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker, to whom section 85 of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) The promoter may exercise the powers of paragraph (1) and appropriate any other land shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works, regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act or Part 1 of, or Schedule 2 to, the Commons Act 2006(3).

Temporary possession of land

Temporary use of land for construction of works

36.—(1) The promoter may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken) relating to the scheduled works (or any of them) specified in column (4) of that Schedule; and

- (ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
 - (b) remove any buildings and vegetation from that land; and
 - (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 14 days before exercising the powers conferred by paragraph (1) the promoter shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The promoter may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—
- (a) in the case of land within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 9; or
 - (b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the promoter has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the promoter shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the promoter shall not be required to replace a building removed under this article.
- (5) The promoter shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Without affecting article 81 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Where the promoter takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (9) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

- 37.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the promoter may—
- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
 - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall not authorise the promoter to take temporary possession of—

- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the promoter shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The promoter may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the promoter shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The promoter shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Without affecting article 81 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the promoter takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) The powers of this article shall not be exercised in relation to any street without the consent of the street authority, which shall not be unreasonably withheld.
- (11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1) (application of Part 1 of the Compulsory Purchase Act 1965).
- (12) In this article "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use.

Compensation

Disregard of certain interests and improvements

38.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in 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) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

39.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal shall set-off against the

value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 32 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

40.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 manufactory 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 promoter a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner 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 of whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the promoter 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 promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter 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) 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 promoter 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 promoter 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 the owner 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 manufactory or of land consisting of a house with a park or garden, the promoter shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

41.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the promoter which is within the permanent limits 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 promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order shall be suspended and unenforceable for as long as the promoter remains in lawful possession of the land.

(4) 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 1 of the 1961 Act.

(5) 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.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.) applies.

- (6) Paragraphs (1), (2) and (3) shall have effect subject to—
- (a) any notice given by the promoter before the completion of the acquisition of the land, the promoter’s appropriation of it, the promoter’s entry onto it or the promoter’s taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
 - (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the promoter and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Open space in the City of Nottingham

42.—(1) The City open space shall not vest in the promoter until the promoter has acquired the City exchange land and, upon a request made by the promoter, the City Council has certified that a scheme for the provision of the City exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the City exchange land shall vest in the City Council subject to the like rights, trusts and incidents as attached to the City open space and, on the vesting of the City exchange land, the City open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

- (3) In this article—
- (a) “the City exchange land” means the land in the City numbered 726, 727 and 728 on the works and land plans and coloured green on the open space and exchange land plans; and
 - (b) “the City open space” means the open space comprised in the land in the City shown numbered 716, 724 and 725 on the works and land plans and coloured red on the open space and exchange land plans.

Open space in the Borough of Broxtowe

43.—(1) Upon a request made by the promoter, Broxtowe Borough Council may certify that a scheme for the provision of the Broxtowe exchange land as open space has been implemented to its satisfaction.

(2) Upon Broxtowe Borough Council certifying the implementation to its satisfaction of a scheme as described in paragraph (1), the Broxtowe exchange land shall vest in Broxtowe Borough Council subject to the like rights, trusts and incidents as attached to the Broxtowe open space and, on the vesting of the Broxtowe exchange land, the Broxtowe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

- (3) In this article—
- (a) “the Broxtowe exchange land” means the land in the Borough of Broxtowe shown numbered 14 on the works and land plans and hatched green on the open space and exchange land plans; and
 - (b) “the Broxtowe open space” means the open space comprised in land in the Borough of Broxtowe shown numbered 26, 32, 33, 37, 42, 66, 262, 504, 507, 510 and 511 on the works and land plans and hatched red on the open space and exchange land plans.

Open space in the Borough of Rushcliffe

44.—(1) The Rushcliffe open space shall not vest in the promoter until the promoter has acquired the Rushcliffe exchange land and, upon a request made by the promoter, Rushcliffe Borough Council has certified that—

- (a) the Rushcliffe exchange land is no less in area than the Rushcliffe open space; and
- (b) a scheme for the provision of the Rushcliffe exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the Rushcliffe exchange land shall vest in Rushcliffe Borough Council subject to the like rights, trusts and incidents as attached to the Rushcliffe open space and, on the vesting of the Rushcliffe exchange land, the Rushcliffe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “the operational land” means so much of the land shown numbered 1142 on the works and land plans as is required for the operation, maintenance and use of the authorised tramway following the completion of the construction of Work No.15;
- (b) “the Rushcliffe exchange land” means the land shown numbered 1140, 1141, 1142, 1143, 1144 and 1145 on the works and land plans and cross-hatched green on the open space and exchange land plans, with the exclusion of the operational land; and
- (c) “the Rushcliffe open space” means the open space comprised in land in the Borough of Rushcliffe shown numbered 1042 on the works and land plans and cross-hatched red on the open space and exchange land plans.

Time limit for exercise of powers of acquisition

45.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 30 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 31 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 36 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent the promoter from remaining in possession of land in accordance with article 36 after the end of that period, if the land was entered and possession of it was taken before the end of that period.