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STATUTORY INSTRUMENTS

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**2004 No. 757**

**The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**23.**—(1) DLRL may acquire compulsorily—

- (a) 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
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the deposited plans and described in the book of reference as lying within the limits of additional land to be acquired or used) as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

and may use any land so acquired for those purposes or for any other purposes connected with, or ancillary to, its undertaking.

(2) This article is subject to article 28 and 29(2).

(3) DLRL may not acquire compulsorily the lands numbered 255c, 255e and 256 on the deposited plans or any part of them.

**Application of Part I of the Compulsory Purchase Act 1965**

**24.**—(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 <sup>M1</sup> 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.

**Marginal Citations**

**M1** 1981 c. 67.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**25.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 <sup>M2</sup> shall apply to DLRL as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), 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 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 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 24.

#### **Marginal Citations**

**M2** 1981 c. 66.

### **Powers to acquire new rights**

**26.**—(1) DLRL may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 23 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.

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

(3) Schedule 8 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 or article 28 of a right over land by the creation of a new right.

#### **Powers to acquire subsoil only**

27.—(1) DLRL may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 23 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 DLRL acquires any part of the subsoil of land under paragraph (1) DLRL shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 34 from applying where DLRL acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

#### **Subsoil or new rights only to be acquired under or in certain lands**

28.—(1) This article applies to the land specified in Schedule 9 to this Order.

(2) In the case of the land specified in Part 1 of Schedule 9, subject to paragraph (4) DLRL's powers of compulsory acquisition under article 23(1)(a) shall be limited to the acquisition of, or of such easements or other new rights in, so much of the subsoil of the land as it may require for or in connection with the authorised works.

(3) Where DLRL acquires any part of, or easements or other new rights in, the subsoil of land specified in Part 1 of Schedule 9, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) In the case of the land specified in Part 2 of Schedule 9, subject to paragraph (2) DLRL's powers of compulsory acquisition under article 23(1)(a) shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

(5) Where DLRL acquires easements or other new rights in the land specified in Part 2 of Schedule 9, article 26(2) shall apply as it applies to the acquisition of a new right under that article.

(6) References in this article to the subsoil of land are references to the subsoil lying more than 5 metres beneath the level of the surface of the land or, in the case of Works Nos. 19A and 19B and any necessary works and conveniences connected therewith, lying more than 4 metres beneath the level of the surface of the land; and for this purpose "the level of the surface of the land" means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a river, dock, canal, navigation, watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

#### **Rights under or over streets**

29.—(1) DLRL may enter upon and appropriate so much of the surface, subsoil of, or airspace over, any street shown on the deposited 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 connected with or ancillary to its undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without DLRL being required to acquire any part of the street or any easement or right in the street and except in relation to a street which is subject to stopping up pursuant to article 10, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

(3) 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 DLRL 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 to be determined, in case of dispute, under Part I 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.

### *Temporary possession of land*

#### **Temporary use of land for construction of works**

**30.**—(1) DLRL may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 10 to this Order and shown on the deposited plans as within the limits of land to be used temporarily, for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (4) of that Schedule; and
- (ii) any of the land within the Order limits, except the land at surface level mentioned in Schedule 11 to this Order, 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) DLRL may, in connection with the carrying out of the authorised works, temporarily use the dock and may give reasonable directions to RoDMA and to any officer, employee, servant or agent of RoDMA with regard to operation of the dock and the bridge for the purposes of DLRL's exercise of the powers of this paragraph, paragraph (1) and article 15.

(3) Subject to paragraph (4), not less than 14 days before exercising the powers of paragraphs (1) or (2) DLRL shall serve notice of the intended entry or use on the owners and occupiers of the land in the case of paragraph (1) and on RoDMA in the case of paragraph (2).

(4) DLRL shall, except in an emergency, give RoDMA 24 hours' notice of any direction proposed to be given by DLRL under paragraph (2) and RoDMA shall comply with such a direction unless it has a reasonable excuse not to do so.

(5) DLRL may not, without the agreement of the owners of the land in the case of paragraph (1), or RoDMA in the case of paragraph (2), remain in possession of any land of which temporary possession has been taken or use has been made under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 10 to this Order, after the end of the period of 2 years beginning with the date of completion of the work or works specified in relation to that land in column (4) of that Schedule;

- (b) in the case of land within the Order limits, after the end of the period of 2 years beginning with the date of completion of the work or works for which temporary possession of the land was taken unless DLRL 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; or
- (c) in the case of the dock, after DLRL has vacated the adjacent land specified in Schedule 10 to this Order and numbered 2 on the deposited plans in the London Borough of Newham, pursuant to sub-paragraph (a).

(6) Before giving up possession of land of which temporary possession has been taken under paragraph (1), DLRL shall remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land; but DLRL shall not be required to replace a building removed under this article.

(7) DLRL shall pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (1) or (2), for any loss or damage arising from the exercise in relation to the land of the powers conferred by paragraphs (1), (2) and (6).

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(9) Without prejudice to article 54, 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 (7).

(10) Where DLRL takes possession of or uses any land under this article, it shall not be required to acquire the land or any interest in it.

(11) In this article and article 31 "building" includes structure or any other erection.

(12) In this article—

"the bridge" means the bascule bridge carrying the A117 Woolwich Manor Way over the eastern end of King George V Dock; and

"the dock" means so much of King George V Dock, the lock and lock gates leading to and from the River Thames, the two jetties on either side of the riverward entrance to the lock and the associated roads, works, lands and buildings as are comprised in the lands numbered 1, 4, 5, 6, 7, 8, 9, 10 and 11 on the deposited plans in the London Borough of Newham.

(13) This article is without prejudice to the provisions of article 15.

(14) 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 24(1).

### **Temporary use of land for maintenance of works**

**31.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, DLRL may—

- (a) enter upon and take temporary possession of any land within the limits of deviation and lying within 20 metres from that work, except the land at surface level mentioned in Schedule 11 to this Order, if such possession is reasonably required for the purpose of, or in connection with, 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 building on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise DLRL 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 DLRL shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) DLRL 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, DLRL shall remove all temporary works above a level 1 metre below the surface of the ground and restore the land above that level to the reasonable satisfaction of the owners of the land.
- (6) DLRL 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 I of the 1961 Act.
- (8) Without prejudice to article 54, 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 DLRL takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) 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 24(1).
- (11) In this article—
- (a) “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; and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

### **Market traders**

- 32.**—(1) Where DLRL considers that the carrying on by the holder of a public markets licence of the trading permitted by that licence would prevent or render less convenient the exercise of the powers of article 30 or 31, or the construction of the authorised works, DLRL may—
- (a) revoke that licence; or
- (b) with the consent of the Council, vary its principal or subsidiary terms.
- (2) DLRL shall serve written notice of any such revocation or variation on the licence-holder in question not less than 28 days before the revocation or variation is to take effect.
- (3) Where DLRL revokes a public markets licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence.
- (4) DLRL shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1).
- (5) Any dispute as to a person's entitlement to compensation under paragraph (4), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.
- (6) In this article—
- “the Council” means the Council of the London Borough of Greenwich; and

“public markets licence” means a licence to trade at Beresford Market granted to any person by the Council pursuant to its rights under section 4 of the Woolwich Borough Council Act 1903<sup>M3</sup> or any other enactment.

**Marginal Citations**

**M3** 1903 c. clxxvii (3 Edw.7).

*Compensation*

**Disregard of certain interests and improvements**

**33.**—(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) “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**

**34.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 24) 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 DLRL 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 DLRL 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 DLRL is authorised to acquire compulsorily under this Order.

(8) If DLRL 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 DLRL 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, DLRL 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, DLRL 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**

**35.—**(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 acquisition of the land by DLRL, whether compulsorily or by agreement; or
- (b) on the entry on the land by DLRL 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 DLRL 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 DLRL.

(3) Subject to the provisions of this article, all private rights of way over land of which DLRL takes temporary possession under this Order shall be suspended and unenforceable for as long as DLRL 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 I of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 of 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 12 to this Order applies.

(6) Paragraphs (1), (2) and (3) shall have effect subject to—

- (a) any notice given by DLRL before the completion of the acquisition of the land, DLRL's appropriation of it, DLRL's entry onto it or DLRL'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 DLRL 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 him, 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**

**36.**—(1) DLRL shall not under the powers of this Order take possession of any part of the existing open space until DLRL has taken possession of so much of the replacement land as is equivalent in area to the amount of the existing open space that is required by DLRL for the authorised works.

(2) Upon DLRL's possession of so much of the existing open space as is required for the authorised works that land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) DLRL shall lay out as replacement open space before the authorised works are first brought into public use so much of the replacement land of which possession has been taken under paragraph (1).

(4) As soon as the Council of the London Borough of Greenwich has certified that the land referred to in paragraph (3) has been laid out to its reasonable satisfaction that land shall vest in the London Development Agency subject to the like rights, trusts and incidents as attached to so much of the existing open space of which possession has been taken under paragraph (1).

(5) In this article—

- (a) “the existing open space” means the open space comprised in the land in the London Borough of Greenwich numbered 98 on the deposited plans and coloured red on the open space and exchange land plan; and
- (b) “the replacement land” means the land in the London Borough of Greenwich numbered 95, 96, 99, 100 and 108 on the deposited plans and coloured green on the open space and exchange land plan.

### **Time limit for exercise of powers of acquisition**

**37.**—(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 I of the 1965 Act, as applied to the acquisition of land under article 24; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 25.

(2) The power conferred by article 30 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 DLRL from remaining in possession of land in accordance with article 30 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

**Changes to legislation:**

There are currently no known outstanding effects for the The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004, PART 3.