

2006 No. 3471

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (West Coast Main Line) (Stowe Hill) Order
2006**

Made - - - - 22nd December 2006

Coming into force - - 12th January 2007

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An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992(b) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act.

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, determined to make an Order in respect of some only of the proposals concerned but deferred consideration of certain other proposals comprised in the application (“the deferred proposals”).

The Secretary of State, having considered the objections made and not withdrawn, the report of the person who held the inquiry and the further representations made to him relating to the deferred proposals after that report was made, has determined to make an Order with respect to the deferred proposals with modifications which in his opinion do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 21st December 2006.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 1, 5 and 13(3) of, and paragraphs 3, 4, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

Preliminary

Citation and commencement

1. This Order may be cited as the Network Rail (West Coast Main Line) (Stowe Hill) Order 2006 and shall come into force on 12th January 2007.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 2003 Order” means the Network Rail (West Coast Main Line) Order 2003(e);

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

(a) S.I. 1992/2902.
(b) 1992 c. 42.
(c) 1961 c. 33.
(d) 1965 c. 56.
(e) S.I. 2003/1075.

“Network Rail” means Network Rail Infrastructure Limited;
“plot 11a” means the land shown by that number on the land plan in the district of Daventry in the county of Northamptonshire and described in the book of reference;
“plot 11b” means the land shown by that number on the land plan in the district of Daventry in the county of Northamptonshire and described in the book of reference;
“the pressure relief shaft” means the pressure relief shaft situated on plot 11a;
“street” includes part of a street;
“street authority”, in relation to a street, has the same meaning as in Part 3 of the Street Works Act;
“the Street Works Act” means the New Roads and Street Works Act 1991(a); 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, on or under land or in the air-space over its surface.

Powers of acquisition

Power to acquire land

3. Network Rail may acquire compulsorily plot 11a for the purposes of using, maintaining or gaining access to the pressure relief shaft and may use the land so acquired for those purposes.

Application of Part 1 of Compulsory Purchase Act 1965

4.—(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(b) 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—

- (a) 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; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days’ notice) for the reference to 14 days’ notice there were substituted—
 - (i) in a case where the notice to treat relates only to the acquisition of an easement or other right over the land, a reference to notice of one month; or
 - (ii) in any other case, a reference to notice of 3 months.

Power to acquire new rights

5.—(1) Network Rail may compulsorily acquire a right of way on foot only over plot 11b for the purpose of gaining access to plot 11a.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 to the 2003 Order, as applied by article 10 (application of provisions of Network Rail (West Coast Main Line) Order 2003)), where Network Rail acquires a right over plot 11b under paragraph (1) it shall not be required to acquire a greater interest in it.

(3) Schedule 9 to the 2003 Order, as applied by article 10, shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their

(a) 1991 c. 22.
(b) 1981 c. 67.

application in relation to the compulsory acquisition under this article of a right over plot 11b by the creation of a new right.

Compensation

Disregard of certain interests and improvements

6.—(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 only of certain properties

7.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4 (application of Part 1 of 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 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 Network Rail 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 Network Rail 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail 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 Network Rail 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, Network Rail 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 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, Network Rail 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 of private rights of way

8.—(1) All private rights of way over plot 11a shall be extinguished —

(a) as from the use by Network Rail of the land for the purposes of the pressure relief shaft;

(b) as from the acquisition of the land by Network Rail, whether compulsorily or by agreement; or

(c) on the entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is sooner.

(2) Any person who suffers loss by the extinguishment 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.

(3) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990^(a) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 to the 2003 Order (as applied by article 10 (application of provisions of Network Rail (West Coast Main Line) Order 2003)) applies.

(a) 1990 c. 8.

Time limit for exercise of powers of acquisition

9. No notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 4 (application of Part 1 of Compulsory Purchase Act 1965), after the end of the period of 5 years beginning with the day on which this Order comes into force.

Miscellaneous and supplementary

Application of provisions of Network Rail (West Coast Main Line) Order 2003

10. The following provisions of the 2003 Order shall have effect in relation to this Order as they have effect in relation to the 2003 Order—

article 2 (interpretation), so far as it relates to the provisions mentioned below;

article 41 (statutory undertakers etc.);

article 42 (protective provisions);

article 44 (service of notices);

Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights);

Schedule 12 (provisions relating to statutory undertakers etc.);

Schedule 13 (protective provisions).

Certification of plans etc.

11. Network Rail shall, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference and land plan 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.

No double recovery

12. 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

13. 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 Transport

22nd December 2006

Ellis Harvey
Head of the Transport and Works Act Orders Unit,
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail for the compulsory acquisition of land and a pedestrian right of way over land for the purposes of access to the pressure relief shaft of Network Rail at Stowe Hill in the district of Daventry in the county of Northamptonshire.

The Order does not authorise the construction of works.

A copy of the land plan and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited, 40 Melton Street, London NW1 2EE.

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£3.00

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Stationery Office and Queen's Printer of Acts of Parliament.

E1586 1/2007 161586T 19585