



Waverley Railway (Scotland) Act 2006

2006 asp 13

PART 2

LAND

Supplementary

21 Acquisition of part of certain properties

- (1) This section shall apply instead of section 90 of the 1845 Lands Act in any case where—
 - (a) a notice to treat is served on a person (“the owner”) under that Act (as incorporated with this Act by section 52 below) in respect of—
 - (i) land forming only part of a house, building or factory; or
 - (ii) land consisting of a house with a park or garden, (“the land subject to the notice to treat”); and
 - (b) a copy of this section 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 authorised undertaker 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 whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the authorised undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (5) If on such a reference the tribunal determines 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 or 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 determines 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 or 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 determines 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 authorised undertaker is authorised to acquire compulsorily under this Act.
- (8) If the authorised undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines 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 or 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 authorised undertaker is authorised to acquire compulsorily under this Act.
- (9) In any case where by virtue of a determination by the tribunal under this section 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 authorised undertaker 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 it shall pay 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 section to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the authorised undertaker 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.