

1989 No. 835

TRANSPORT

The Bure Valley Railway Light Railway Order 1989

Made 10th May 1989

Coming into force 11th May 1989

The Secretary of State for Transport, on the application of the Broadland District Council and in exercise of powers conferred by sections 3, 7 and 9 to 12, of the Light Railways Act 1896(a), as amended by the Light Railways Act 1912(b) and Part V of the Railways Act 1921(c), and by section 121(4) of the Transport Act 1968(d) and now vested in him(e), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Bure Valley Railway Light Railway Order 1989 and shall come into force on 11th May 1989.

Interpretation

2. In this Order, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

“the Board” means the British Railways Board;

“the Board’s railway” means the railway or former railway of the Board described in Schedule 1 to this Order together with all lands and works relating thereto;

“the Company” means the Bure Valley Railway Limited incorporated under the Companies Act 1985(f) and having its registered office at Boundary Road, Great Yarmouth, Norfolk, NR31 0JY;

“the Council” means the Broadland District Council;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections deposited in respect of the application for this Order with the Secretary of State for Transport;

“the lease” means any lease granted under paragraph (1) of article 7 (Leasing of railway to Company) of this Order, any extension of the same or any new lease granted under any statutory powers or provisions;

“the operators” means the Council or, during the currency of the term created by the lease, the Company;

“the principal Act” means the Light Railways Acts 1896 and 1912, as amended by the Railways Act 1921;

“the railway” means the railway authorised to be constructed, made and maintained by the operators pursuant to article 5 of this Order together with all lands and works relating thereto and, where any part of the said railway and works remains uncompleted, includes the site of that part;

(a) 1896 c. 48.
(b) 1912 c. 19.
(c) 1921 c. 55.
(d) 1968 c. 73.
(e) S.I. 1970/1681, 1979/571 and 1981/238.
(f) 1985 c. 6.

“telecommunications apparatus” has the meaning given by paragraph 1(1) of Schedule 2 to the Telecommunications Act 1984(a);

“the transfer date” means the day on which the Board’s railway or any part thereof is vested in the Council by virtue of an agreement made under article 4 (Transfer of Board’s railway to Council) of this Order.

Incorporation and application of enactments

3.—(1) The provisions of the Railways Clauses Consolidation Act 1845(b) (except sections 8, 11 to 15, 17, 22, 46 to 66, 88 to 95 and 112 to 124) are incorporated with and form part of this Order so far as the same are applicable for the purposes and are not inconsistent with or varied by the provisions of this Order.

(2) In the construction of the provisions of the Railways Clauses Consolidation Act 1845 as incorporated with this Order—

(a) this Order shall be deemed to be the special Act for the purposes of the said incorporated provisions;

(b) sections 7, 9, 10 and 162 shall be read, construed and have effect as if the “proper officer of the County Council of the County of Norfolk” had been referred to therein instead of the “Clerks of the Peace”;

(c) sections 78 to 85 shall have effect as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923(c).

(3) Notwithstanding the provisions of subsection (1) of section 12 of the Light Railways Act 1896, the following enactments shall apply to the railway:—

Regulation of Railways Act 1868(d)—

Section 22 (means of communication between passengers and the Company’s servants to be provided);

Regulation of Railways Act 1889(e)—

Section 1 (power to order certain provisions to be made for public safety); and
Section 5 (penalty for avoiding payment of fare).

(4) In its application to the railway the said section 22 of the Regulation of Railways Act 1868 shall be read, construed and have effect as if the words “and travels more than twenty miles without stopping” were omitted therefrom.

(5) Without prejudice to the generality of the foregoing, sections 116, 117, 118 and 119 of the Transport Act 1968 shall apply to the railway as if references therein to the Board were references to the operators.

Transfer of Board’s railway to Council

4—(1) The Board and the Council may enter into and carry into effect agreements providing for the transfer to and vesting in the Council of the Board’s railway or any part thereof on such terms and conditions as may be agreed between the Board and the Council.

(2) Except as may be otherwise provided in this Order, as from the transfer date the railway or any part thereof shall be subject to all statutory and other provisions applicable to the Board’s railway or such part thereof as is transferred pursuant to this Order (insofar as the same are still subsisting and capable of taking effect) and the Council shall to the exclusion of the Board be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the Board’s railway (insofar as the same are still subsisting and capable of taking effect) to the intent that the Board shall be released from all such obligations.

Power to make railway

5.—(1) Subject to the provisions of this Order the operators may construct, make and maintain the railway hereinafter described in the lines and according to the levels and within

(a) 1984 c. 12.

(b) 1845 c. 20.

(c) 1923 c. 20.

(d) 1868 c. 119.

(e) 1889 c. 57.

the limits of deviation shown on the deposited plans and the deposited sections, together with all proper rails, plates, sidings, junctions, bridges, culverts, drains, approaches, roads, yards, buildings and other works and conveniences connected therewith including station premises, workshops and facilities.

(2) The said railway is—

A railway wholly situated in the county of Norfolk commencing in the parish of Aylsham in the district of Broadland at National Grid reference TG 619540326456 and thence proceeding in a generally south-easterly direction through the parishes of Aylsham, Brampton, Buxton with Lamma and Coltishall in that district, thence through the parish of Tunstead in the district of North Norfolk, the parish of Belaugh in the district of Broadland and the parish of Hoveton in the district of North Norfolk and there terminating at National Grid reference TG 630300318646.

(3) In the construction of the railway the operators may deviate from the line or situation of the whole or any part thereof shown on the deposited plans to the extent of the limits of deviation shown thereon and may deviate vertically from the level shown on the deposited sections of so much of the railway or any part thereof as extends 13.7 kilometres from its point of commencement to any extent not exceeding 2 metres upwards or downwards or to such further extent as may be found necessary or convenient and as may be sanctioned by the Secretary of State.

(4) Subject to the provisions of this Order, the railway may be worked as a light railway under the principal Act and the operators may within the limits of deviation shown on the deposited plans maintain, reconstruct, repair, alter and renew the railway with all necessary works and conveniences connected therewith.

Interference with roads and footpaths

6.—(1) The operators may for the purposes of constructing the railway enter upon, open, break up, alter and interfere with so much of the road known as the Aylsham bypass and any of the roads and footpaths described in Schedule 2 to this Order as lie within the limits of deviation shown on the deposited plans.

(2) During and for the purpose of the construction of the railway, the operators may temporarily stop up and divert and interfere with any road or footpath and may for any reasonable time divert the traffic therefrom and prevent all persons other than those *bona fide* going to or from any land, house or building abutting on the road or footpath from passing along and using the same.

(3) The operators shall provide reasonable access for persons on foot *bona fide* going to or from any such land, house or building.

(4) The operators shall not exercise the powers of this section without the consent of the highway authority but such consent shall not be unreasonably withheld and any question as to whether such consent has been unreasonably withheld shall be determined by arbitration.

(5) The operators shall not exercise the powers of this article with respect to any road unless they have given not less than 21 days' previous notice in writing of their intention so to do to—

(a) the traffic commissioners in whose area the road is situate; and

(b) the operator over that road of a local service as defined in the Transport Act 1985(a);
except in case of emergency when such notice as is practicable shall be given.

(6) The exercise by the operators of the powers of this section in relation to any road or footpath shall not prejudice or affect the right of telecommunication operators to maintain, inspect, repair, renew or remove telecommunications apparatus or break open that road or footpath for any of those purposes.

Leasing of railway to Company

7.—(1) The Council may subject to paragraph (3) below lease to the Company the railway or any part thereof together with the rights, interests, powers, privileges and obligations

(a) 1985 c. 67.

vested in the Council by article 4 (Transfer of Board's railway to Council) on such terms and conditions as may be agreed between the Council and the Company.

(2) Subject to paragraph (3) below during the continuance and subject to the terms of any such lease the Company shall to the exclusion of the Council be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations statutory or otherwise as are transferred to or conferred on the Council by or under this Order and are for the time being in force in respect of the railway or such part thereof as is comprised in the lease.

(3) Nothing in this article shall enable the Council to transfer to the Company any obligation transferred to or imposed upon the Council under this Order to maintain or repair any bridge carrying a highway over the railway or the railway over a highway.

Gauge of railway and motive power

8. The railway shall be constructed and operated on a nominal gauge of 15 inches (381 millimetres) and the motive power shall be steam, diesel-electric, diesel, internal combustion, electric-battery or such other motive power as the Secretary of State may approve:

Provided that nothing in this Order shall authorise the use of electrical power as motive power on the railway unless such power is obtained from storage batteries or from a source of generation entirely contained in and carried along with the engines and carriages:

Provided also that, if electrical power is used as motive power on the railway, such electrical power shall not be used in such a manner as to cause or be likely to cause any interference with any telecommunications apparatus or with telecommunication by means of such apparatus.

Level crossings

9.—(1) The operators may in the construction of the railway and within the limits of deviation as shown on the deposited plans carry the railway with a single line across and on the level of the roads and footpaths described in Schedule 2 to this Order and across any accommodation crossing or right of way existing upon or over the Board's railway.

(2) Notwithstanding anything in any other enactment, the operators shall, subject to such requirements as the Secretary of State may from time to time lay down, provide, maintain and operate at or near the level crossings of the roads described in Schedule 2 to this Order such barriers, lights, traffic signs and automatic or other devices and appliances as may be approved by the Secretary of State.

(3) Nothing contained in or incorporated with this Order shall require the provision of any lodge, or other building, keeper or watchman at any level crossing.

Restrictions and conditions as to working of railway

10.—(1) The operators shall not use upon the railway any engine, carriage or truck bringing any weight upon the rails by any one pair of wheels exceeding such weight as the Secretary of State may allow.

(2) The operators shall not run any train or engine upon any part of the railway at a rate of speed exceeding at any time that fixed by the Secretary of State for such part.

(3) No part of the railway shall be used for the conveyance of passengers without the prior written permission of the Secretary of State and the operators shall comply with the conditions (if any) which the Secretary of State may from time to time prescribe for the safety of the public using the railway.

(4) If the operators contravene any of the provisions of this article, they shall be liable on summary conviction to a fine not exceeding £100.

Expenditure outside district

11. The capital expenditure of the Council on the part of the railway outside their district shall not exceed £100,000 or such other sum as the Secretary of State may under the circumstances think fit.

Public liability insurance

12.—(1) In this article—

“insurer” means any insurer or insurers authorised under the Insurance Companies Act 1982(a) to carry on in Great Britain or in Northern Ireland insurance business of a relevant class or who has corresponding permission under the law of another member state of the European Economic Community;

“policy” means a public liability policy with an insurer providing maximum cover in respect of any one accident on or occasioned by the operation of the railway of not less than £1 million.

(2)(a) The operators shall not work the railway unless there is in force a policy in accordance with the provisions of this article.

(b) If the operators contravene the provisions of this article they shall be liable on summary conviction to a fine not exceeding £2,000 or, on conviction on indictment, to a fine.

(3) The adequacy of the cover provided by a policy maintained in accordance with this article shall be regularly reviewed by the operators.

For protection of Norfolk County Council

13. For the protection of the Norfolk County Council (in this article referred to as “the county council”) the following provisions shall, unless otherwise agreed in writing between the operators and the county council, apply and have effect:—

(1) In this article—

“highway” means any highway vested in or repairable or maintainable by the county council;

“the new bridge” means any bridge or structure to be constructed under the provisions of this Order for carrying the road known as the Aylsham bypass over the railway;

“plans” includes sections and particulars;

“specified works” means the new bridge and so much of the railway as may in any way affect any highway or any bridge carrying a highway over the railway or the railway over a highway:

(2) Before commencing the construction of any of the specified works, the operators shall submit to the county council for their reasonable approval plans thereof and, notwithstanding anything shown on the deposited plans and the deposited sections, the work to which such plans relate shall not be constructed otherwise than in accordance with such plans as may be approved by the county council as aforesaid, or, if such approval be refused, as may be settled by arbitration, and any part of the construction of the specified works which may involve interference with a highway shall be carried out under the supervision (if given) and to the reasonable satisfaction of the county council:

Provided that, if within 56 days after the submission to them of plans in accordance with the provisions of this paragraph the county council do not signify their approval or disapproval thereof and the grounds for such disapproval, they shall be deemed to have approved thereof:

(3) Notwithstanding anything in this Order or shown on the deposited plans the new bridge shall be designed, constructed and maintained so as to provide for loadings to be agreed in advance by the county council and the operators shall indemnify the county council against and make good to the county council all expenses which the county council may reasonably incur or be put to in the maintenance or repair of any highway, drain or apparatus therein by reason of any non-compliance by the operators with the provisions of this paragraph:

(4)(a) Before commencing to construct any part of the specified works which will involve interference with a highway the operators shall consult the county council as to the time when such part shall be commenced, as to the extent of the surface of the highway which it may be reasonably necessary for the operators

(a) 1982 c. 50.

to occupy in the construction of such part and as to the conditions under which such part shall be constructed so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public, and such part shall not be constructed and the surface of the highway shall not be occupied by the operators except at the time, to the extent and in accordance with such reasonable conditions as may be agreed between the operators and the county council or in default of agreement settled by arbitration;

(b) Any such highway shall be reinstated by the operators in a manner reasonably approved by the county council and to their reasonable satisfaction:

(5) The operators shall, at all reasonable times during the construction of any part of the specified works, afford to the engineer of the county council or his duly authorised representatives access to that part of the specified works for the purposes of inspection:

(6) The structures of the new bridge shall be maintained by the Council:

(7)(a) The surface of the carriageway and footways of the new bridge and the verges thereof shall be vested in and maintained by the county council who shall have all such rights in relation to the subsoil and undersurface thereof as are necessary for the performance of their functions as highway authority:

Provided that the operators shall be liable to the county council for the maintenance of the surface of the carriageway and footways of the new bridge and the verges thereof for a period of 12 months after the date of completion;

(b) In this paragraph "the date of completion" means the date upon which the new bridge is completed in accordance with the requirements of this article and open for public use or, in the case of a difference between the operators and the county council as to whether the said requirements have been complied with, until the matter in dispute has been referred to and determined by arbitration and the arbitrator has certified that the new bridge has been completed in accordance with his determination:

(8) In carrying out any obligation transferred to or imposed upon the Council under this Order to maintain and repair any bridge carrying a highway over the railway or the railway over a highway, the Council shall do so in accordance with a scheme to be agreed with the county council, or in default of agreement to be settled by arbitration, which scheme shall include provision as to the frequency with which and manner in which an assessment of the condition of any such bridge is to be carried out, for the submission of the results of any such assessment to the county council and for any work to such a bridge found to be necessary as a result of such an assessment to be carried out in accordance with such reasonable conditions as may be imposed by the county council:

(9) The operators shall keep the county council indemnified against all actions, costs, claims and demands whatsoever brought or made against the county council by any person in respect of loss or damage caused by, or in consequence of, the construction of any of the specified works and the fact that any act or thing may have been done in accordance with plans approved by the county council or in accordance with any requirement of the county council or under their supervision shall not (if it was done without negligence on the part of the county council) excuse the operators from liability under the provisions of this article:

Provided that the county council shall give to the operators reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the operators:

(10) The operators shall repay to the county council all costs, charges and expenses reasonably incurred by the county council—

(a) in the examination of the plans submitted to the county council under this article in relation to any of the specified works;

(b) in the supervision by the county council, where given under this article, or the inspection by their engineer under this article of the construction of the specified works; and

(c) in the inspection of any bridge by their engineer pursuant to a scheme made under paragraph (8) above and, where so provided by such a scheme, in the supervision of any works that may be carried out pursuant thereto:

(11) Any difference arising between the operators and the county council under this article shall be referred to and settled by arbitration.

For protection of public gas suppliers

14. Nothing in this Order shall prejudice or affect the rights of any public gas supplier within the meaning of Part I of the Gas Act 1986(a) in any apparatus belonging to them, or for the maintenance of which they are responsible or any structure for the lodging therein of apparatus, being any apparatus or structure situate under, over or upon lands in or upon which the railway may be constructed.

For protection of East Anglian Water Company

15. For the protection of the East Anglian Water Company ("the water company") the following provisions shall, unless otherwise agreed in writing between the operators and the water company, apply and have effect:-

(1) In this article, "the main" means the 24 inch diameter water main of the water company laid under the railway 110 metres or thereabouts from the point of termination of the railway in the parish of Hoveton or any main laid after the date of this Order in substitution for the main in position at that date and includes in either case all works and conveniences provided in connection therewith.

(2) Nothing in section 18 of the Railways Clauses Consolidation Act 1845 as incorporated in this Order shall authorise the operators to raise, sink or otherwise alter the position of, or in any way to interfere with, the main.

(3)(a) The operators shall not within the limits of deviation and without the consent of the water company:-

- (i) place or deposit any materials or erect any structure or works other than a single line of rails; or
- (ii) make any excavation to a depth of more than 300 mm below the surface of the ground,

in so far as the same is or would be carried out or situated within 15 metres (measured in any direction) of any part of the main.

(b) The water company shall not unreasonably withhold their consent under this paragraph but may grant their consent subject to reasonable conditions for the protection of the main.

(4) The operators shall afford reasonable facilities to the water company for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove or use the main.

(5) The operators shall make compensation to the water company-

- (a) for any damage caused to the main; and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the water company,

by reason or in consequence of the execution, maintenance, user or failure of any of the works authorised by this Order or otherwise by reason or in consequence of the exercise by the operators of the powers of this Order:

Provided that nothing in this paragraph shall entitle the water company to any payment in respect of damage attributable to the neglect or default of the water company, its servants or agents.

(6) Nothing in this Order shall prejudice or affect the rights of the water company in respect of the main or the provisions of any agreement regulating the relations between the operators and the water company with regard to the main and whether made before or after this Order comes into force.

(7) Any difference arising between the operators and the water company under this article shall be referred to and settled by arbitration.

(a) 1986 c. 44.

Arbitration

16. Where under any provision of this Order any difference (other than a difference as to the meaning or construction of any such provision) is to be determined by arbitration, then such difference 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.

Costs of Order

17. All costs, charges and expenses of, and incidental to, the preparing for, obtaining and making of this Order, or otherwise in relation thereto, shall be paid by the Council and may in whole or in part be defrayed out of revenue.

Signed by authority of the Secretary of State
10 May 1989

J R Coates
An Under Secretary in
the Department of Transport

SCHEDULE 1

THE BOARD'S RAILWAY

The railway or former railway of the Board known as "the Aylsham Extension" and authorised by the East Norfolk Railway Act 1876(a) as amended by the East Norfolk Railway Act 1879(b) and the East Norfolk Railway Act 1880(c).

SCHEDULE 2

LEVEL CROSSINGS

<i>Description of footpath and roads at point of crossing</i>	<i>Distance of crossing from commencement of railway</i>
1. Unclassified road in the parish of Aylsham leading to Spratt's Green Farm	1,872 metres
2. Footpath (No. 5) north-west of Buxton Station in the parish of Buxton	5,306 metres
3. Footpath (No. 1) leading to Little Hautbois Hall	7,215 metres
4. Unclassified road in the parishes of Tunstead and Belaugh leading to Grange Farm	12,589 metres

(a) 1876 c. ccxxiv.

(b) 1879 c. lxi.

(c) 1880 c. cxxxvi.

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