

2006 No. 1518

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Port of Blyth (Battleship Wharf Railway) Order 2006

Made - - - - - *12th June 2006*

Coming into force - - - *3rd July 2006*

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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) (England and Wales) Rules 2000^(a) for an Order under section 1 of the Transport and Works Act 1992^(b) (“the 1992 Act”);

The objection to that application has been withdrawn;

^(a) S.I. 2000/2190 made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992.

^(b) 1992 c. 42 as amended by S.I.s 1995/1541, 1998/2226, 2000/3139 and 2006/958.

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application 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 9th June 2006;

Accordingly, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1, 2, 7, 8 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

Citation and commencement

1. This Order may be cited as the Port of Blyth (Battleship Wharf Railway) Order 2006 and shall come into force on 3rd July 2006.

Interpretation

2.—(1) In this Order—

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

“the 1991 Act” means the New Roads and Street Works Act 1991(b);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised works” means the railway and any other works authorised by this Order;

“the Commissioners” means the Blyth Harbour Commissioners;

“the deposited plans” and “the deposited sections” mean the plans and sections certified by the Secretary of State as the deposited plans and sections prepared in pursuance of rule 12(1) and (3) respectively of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980(c);

“the limits of deviation” means the limits of deviation for the railway shown on the deposited plans;

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

“Network Rail” means Network Rail Infrastructure Limited;

“the railway” means the railway authorised to be constructed by article 5(1) or any part of it;

“the street” means North Blyth Road in the district of Wansbeck and includes part of that road;

“street authority”, in relation to the street, has the same meaning as in Part III of the 1991 Act; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(2) All points, lengths and other measurements stated in the Order (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such point, length or other measurement.

(a) 1961 c. 33.

(b) 1991 c. 22.

(c) 1980 c. 66.

Incorporation of Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(a) shall be incorporated in this Order—

- section 58 (company to repair roads used by them), except for the words from “if any question” to the end;
- sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(b);
- section 105 (carriage of dangerous goods on railway);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

(2) Section 5 of the Railways Clauses Act 1863(c) (level crossings) shall be incorporated in this Order.

(3) In those provisions, as incorporated in this Order—

- “the company” means the Commissioners;
- “goods” includes any thing conveyed on the railway;
- “the railway” means any railway authorised to be constructed by this Order and any other authorised works; and
- “the special Act” means this Order;

(4) The following enactments shall not apply to the railway—

- (a) the Highway (Railway Crossings) Act 1839(d); and
- (b) section 9 of the Railway Regulation Act 1842(e).

Application of the 1991 Act

4.—(1) The provisions of the 1991 Act mentioned in paragraph (2) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to the temporary stopping up, alteration or diversion of the street by the Commissioners under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act referred to in paragraph (1) are—

- section 54 (advance notice of certain works), subject to paragraph (3);
- section 55 (notice of starting date of works), subject to paragraph (3);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(a) 1845 c. 20.

(b) 1923 c. 20.

(c) 1863 c. 92.

(d) 1839 c. 45.

(e) 1842 c. 55.

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case maybe) required in a case of emergency.

Power to construct and maintain railway

5.—(1) The Commissioners may construct and maintain a railway (1,100 metres in length) in the district of Wansbeck in the county of Northumberland commencing by a junction with the existing railway of Network Rail authorised by the North Eastern Railway Act 1893(a) (Railway 2) at ordnance survey national grid reference point NZ430748583426 and extending in a southerly direction, crossing North Blyth Road on the level and terminating in the Port of Blyth at Battleship Wharf at ordnance survey national grid reference point NZ431162582450.

(2) Subject to article 6, the railway may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5), the Commissioners may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the railway, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables; and
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the railway.

(4) Subject to paragraph (5), the Commissioners may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the railway, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works within the limits of deviation.

Power to deviate

6. In constructing or maintaining the railway, the Commissioners may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for the railway; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent not exceeding 2 metres downwards.

Level crossing

7.—(1) The Commissioners may construct the railway so as to carry it with a single line of rails on the level across North Blyth Road within the limits of deviation.

(2) The Commissioners may in the exercise of the powers conferred by this article alter the level of North Blyth Road.

(3) The highway authority and the Commissioners may enter into agreements with respect to the construction and maintenance of the level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(a) 1893 c. lxxiv.

Power to execute street works

8.—(1) The Commissioners may, for the purposes of the authorised works, enter upon so much of the street as is within the limits of deviation for the railway and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in subparagraphs (a), (b) and (c).

(2) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

Temporary stopping up of street

9.—(1) The Commissioners, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert the street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The Commissioners shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Commissioners shall not exercise the powers conferred by this article without first consulting the street authority.

(4) Any person who suffers loss by the 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.

Discharge of water

10.—(1) The Commissioners may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the limits of deviation, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a).

(3) The Commissioners shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose, but shall not be unreasonably withheld.

(4) The Commissioners shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where the authority has been given the opportunity to supervise the making of the opening.

(5) The Commissioners shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(6) The Commissioners shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(b).

(a) 1991 c. 56.

(b) 1991 c. 57.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, except watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Power to operate and use railway

11.—(1) The Commissioners may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993(a).

Power to charge for carriage of goods

12. The Commissioners may demand, take and recover or waive such charges for carrying goods on the railway or for any other services or facilities provided in connection with the operation of the railway, as they think fit.

Maintenance of approved works, etc.

13.—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992 (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railway authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railway so authorised.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the Commission shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Obstruction of construction of authorised works

14. Any person who, without reasonable excuse, obstructs any person acting under the authority of the Commissioners in setting out the lines of the railway or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Trespass

15.—(1) Any person who—

- (a) trespasses on any part of the railway, or
- (b) trespasses on any land of the Commissioners in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railway was clearly exhibited and maintained at the level crossing of the street.

(a) 1993 c. 43.

Certification of plans, etc.

16. The Commissioners shall, as soon as practicable after the making of this order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are, respectively, true copies of the plans and sections 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.

Service of notices

17.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post, or
- (b) subject to paragraphs (5), (6), (7) and (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order he shall—

- (a) give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c. 30.

Arbitration

18. Any difference under any provision of this Order, unless otherwise provided for, 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 giving notice in writing to the other) by the President of the Institute of Civil Engineers.

Signed by authority of the Secretary of State for Transport

12th June 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 authorises Blyth Harbour Commissioners to construct a railway forming sidings at the Port of Blyth on the eastern side of the River Blyth in the district of Wansbeck at Battleship Wharf. In particular, the Order authorises the construction of railway works commencing by a junction with the existing Network Rail railway at North Blyth Road and in connection with those works, authorises a level crossing over that road.

Copies of the deposited plans and sections are available for inspection free of charge during working hours at the offices of the Commissioners, South Harbour, Blyth, Northumberland, NE24 3PB.

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