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STATUTORY INSTRUMENTS

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**2008 No. 3163**

**The Network Rail (Thameslink) (Land Acquisition) Order 2008**

**PART 2**

**ACQUISITION OF LAND**

**Power to acquire land**

**3.** Network Rail may acquire compulsorily so much of the land shown coloured pink and edged black on the land plans and described in the book of reference, or such estates, interests, easements, or other rights in or over that land, as may be required for or in connection with the authorised works and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

**Application of Part 1 of the 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(1) applies; and
- (b) as if this Order were a compulsory purchase order made under that Act.

(2) Part 1 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.

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

**5.—(1)** The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), 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 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) 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.”.

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(1) 1981 c. 67.  
(2) 1981 c. 66.

(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, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person 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 3 (power to acquire land).

### **Power to acquire new rights**

**6.—**(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that article, 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 7 to the 2006 Order, as applied by article 15 (application of provisions of the 2006 Order)), where Network Rail acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in that land.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) to the 2006 Order, as applied by article 15 (application of provisions of the 2006 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 of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

**7.—**(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that article instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 11 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a building or manufactory.

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

**8.—**(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the land referred to in article 3 (power to acquire land) as may be required

for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), 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 Network Rail 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 1 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 onto the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the New Roads and Street Works Act 1991<sup>(3)</sup> applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

#### **Disregard of certain interests and improvements**

**9.—**(1) In assessing the compensation payable to any person on the acquisition from that person 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**10.—**(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil) the tribunal shall set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil) under article 6 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in the value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

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(3) 1991 c. 22.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

### **Acquisition of part of certain properties**

**11.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4 (application of Part 1 of the 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 manufactory 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 which states 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 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 the 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 the 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 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 article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail 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.

### **Extinction of private rights of way**

**12.**—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

(2) All private rights of way over land owned by Network Rail which, being the land which may be acquired shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) 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.

(4) 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(4) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.) to the 2006 Order, as applied by article 15 (application of provisions of the 2006 Order), applies.

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

**13.** 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 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the Compulsory Purchase Act 1965); and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 5 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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(4) 1990 c. 8.

### **Disapplication of provisions in undertakings and agreement relating to land at Borough Market**

14.—(1) To the extent that any provision of an undertaking or agreement specified in paragraph (2) is inconsistent with the provisions of this Order, that provision shall cease to have effect.

- (2) The undertakings and the agreement mentioned in paragraph (1) are the—
- (a) undertaking given by Railtrack PLC to Higham Nobbs Consulting Limited dated 9th May 2001;
  - (b) undertaking given by Railtrack PLC to the Peer Group PLC dated 23rd July 2001;
  - (c) agreement made between Railtrack PLC and The Corporation of Wardens of the Parish of St Saviours, Southwark dated 15th February 2002.