
STATUTORY INSTRUMENTS

2015 No. 781

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Crossrail (Plumstead Sidings) Order 2015

Made - - - - *31st March 2015*

Coming into force - - *21st April 2015*

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 2006⁽¹⁾ for an Order under sections 1 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”) and section 48 of the Crossrail Act 2008⁽³⁾.

Objections to that application have been withdrawn.

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

The Secretary of State, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals. Notice of the Secretary of State’s determination was published in the London Gazette on 20th March 2015.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 15 to 17 of Schedule 1 to, the 1992 Act, and section 48 of the Crossrail Act 2008 makes the following Order—

(1) S.I. 2006/1466.

(2) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1559.

(3) 2008 c. 18. Section 48 was amended by paragraph 66 of Schedule 2 to the Planning Act 2008 (c. 29).

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Crossrail (Plumstead Sidings) Order 2015 and comes into force on 21st April 2015.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(4);

“the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

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

“authorised works” means the scheduled works and any other works authorised by this Order or any part of them;

“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;

“building” includes any structure or erection or any part of a building, structure or erection;

“Crossrail” has the same meaning as in the principal Act;

“carriageway” has the same meaning as in the 1980 Act;

“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 1980 Act;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the works and land plans;

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the works and land plans;

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

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“the Order limits” means the limits of deviation and the limits of land to be acquired or used shown on the works and land plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(8);

(4) 1961 c. 33.

(5) 1965 c. 56.

(6) 1980 c. 66.

(7) 1991 c. 22.

(8) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this order.

“the principal Act” means the Crossrail Act 2008;

“the promoter” means Crossrail Limited (Company No. 04212657) whose registered office is at 25 Canada Square, Canary Wharf, London, E14 5LQ;

“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

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

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

(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 airspace above its surface.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) References in this Order to numbered plots are references to plot numbers on the works and land plans.

(5) All distances and directions stated in the description of the works are approximate, and distances between points on the scheduled works are taken to be measured along the scheduled works.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) The promoter may construct and maintain or, insofar as those works are already in existence, retain and maintain the scheduled works.

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans, and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the promoter may, for the purposes of or in connection with the scheduled works or otherwise for the purposes of, or in connection with, Crossrail, carry out and maintain, or insofar as they are already in existence, retain and maintain any of the following—

- (a) railway electrification and signalling works;
- (b) all such bridges, ramps, means of access, approaches, buildings, yards, apparatus, plant and machinery as may be necessary or convenient;
- (c) all such embankments, aprons, abutments, retaining walls, wing walls, drainage and culverts as may be necessary or convenient;
- (d) works to alter, or alter the position of, apparatus, including mains, sewers, drains and cables;

- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
 - (f) junctions and communications with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
 - (g) landscaping, and other permanent mitigation works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
 - (h) all such drains and connections to mains drainage systems as may be necessary or convenient; and
 - (i) works for the benefit or protection of premises affected by the scheduled works.
- (4) Subject to paragraph (5), the promoter 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 authorised works, other than works that would interfere with a navigable watercourse.
- (5) The works specified in paragraphs (3) and (4) may only be carried out within the limits of deviation.

Power to deviate

- 4.—(1) Subject to paragraphs (2) and (3), the scheduled works must be constructed—
- (a) in the lines or situations shown on the works and land plans;
 - (b) in accordance with the levels shown on the sections; and
 - (c) in the case of any building for which an upper limit is shown on the works and land plans, within the limit so shown.
- (2) In constructing or maintaining the scheduled works, the promoter may—
- (a) deviate laterally from the lines or situations shown on the works and land plans to any extent within the limits of deviation; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent upwards not exceeding 3 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.
- (3) In the case of any building for which an upper limit is shown on the sections, the power of deviation under paragraph (2) is subject to the limit so shown.

Streets

Access to works

- 5.—(1) Without limitation on the scope of article 3(3)(f) (power to construct and maintain works), the promoter may, for the purposes of or in connection with the authorised works, form and lay out a means of access to White Hart Avenue within each of plots 13 and 14.
- (2) For the purpose of forming and laying out means of access to White Hart Avenue the promoter may temporarily stop up and interfere with the surface of that street within the limits of deviation.

Use of private roads for construction

6.—(1) The promoter may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of or in connection with the construction of the authorised works.

(2) The promoter must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under and in accordance with Part 1 of the 1961 Act.

Supplemental powers

Power to survey and investigate land

7.—(1) The promoter may, for the purposes of this Order, enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the promoter thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) take steps to protect or remove any flora or fauna on such land which may be affected by the carrying out of the authorised works.

(2) No land may be entered or equipment placed or left on, or removed from, the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the promoter—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The promoter must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) If a highway authority or a street authority which receives an application for consent under either paragraph 4(a) or 4(b) (as the case may be), fails to notify the promoter of its decision within 14 days of receiving such application that authority is deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

8. The promoter may acquire compulsorily so much of the land shown on the works and land plans within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to the promoter's statutory undertaking.

Application of Part 1 of the 1965 Act

9.—(1) Part 1 of the 1965 Act, insofar as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the 1981 Act applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has 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

10.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(9) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

(7) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 8 (power to acquire land).

Power to acquire new rights

11.—(1) The promoter may acquire compulsorily such easements or other rights over any land referred to in article 8 (power to acquire land), as may be required for any purpose for which that land may be acquired under that provision, 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 2 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) or article 12 (new rights etc. only to be acquired in certain lands) the promoter is not required to acquire a greater interest in that land.

(3) Schedule 2 has 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 or article 12 of a right over land by the creation of a new right.

New rights etc. only to be acquired in certain lands

12. The promoter may acquire compulsorily such easements or other new rights in or over any of the land specified in columns (1) and (2) of Schedule 3 (land in which only new rights etc. may be acquired) (being land shown on the works and land plans and described in the book of reference) as it may require for the purpose described in column (3) of that Schedule; such land being within the limits of land to be acquired or used but outside the limits of deviation.

Compensation

Disregard of certain interests and improvements

13.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must 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

14.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must 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 that person of any new rights over land (including the subsoil) under article 11 (power to acquire new rights) and article 12 (new rights etc. only to be acquired in certain lands), the tribunal must 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 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.

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

Supplementary

Acquisition of part of certain properties

15.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 9 (application of Part 1 of the 1965 Act)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as 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 the promoter 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 must 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 must sell only the land subject to the notice to treat is, unless the promoter agrees to take the land subject to the counter-notice, to 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 must 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 is 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 is 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 promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter 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 is 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 promoter 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, the promoter 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 must 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, the promoter must 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.

Time limit for exercise of powers of acquisition

16. 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 is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 9 (application of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(10) as applied by article 10 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(10) 1981 c. 66.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

17.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(11) in relation to a nuisance falling within paragraph (g) of section 79(1)(12) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(13); or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 of the Railways Act 1993(14) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Application of the principal Act to authorised works

18.—(1) Schedule 4 (application of provisions of the principal Act) has effect.

(2) So far as consistent with the provisions of this Order and the Transport and Works Act 1992(15), and so far as any person exercising the powers conferred by this Order is a nominated undertaker for the purposes of any provision of the principal Act, this Order and the principal Act are to be construed as one.

(11) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(12) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(13) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8). Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(14) 1993 c. 43. Section 122 was amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c.14).

(15) 1992 c. 42.

(3) Without limitation on the scope of paragraph (2), in determining any application or request by the promoter to any body for an approval or consent under the provisions of the principal Act (including those provisions as applied by this Order), that body must have regard (so far as is relevant) to the combined effect of the works authorised by this Order and the works authorised by the principal Act for the purposes of the construction of which the promoter is the nominated undertaker.

Modification of provisions in an agreement relating to the protection of Network Rail

19.—(1) The promoter is bound by the obligations of the Secretary of State for Transport under the relevant agreement as if it had been a party to that agreement.

(2) The modifications specified in paragraph (3) have effect with respect to the relevant agreement.

(3) The modifications referred to in paragraph (2) are—

- (a) references to “Crossrail Works” in the relevant agreement include the authorised works;
- (b) references to “the powers in sections 5 to 9 of the Act” in the relevant agreement include references to the powers conferred by Part 3 of this Order.

(4) In this article “the relevant agreement” means the agreement dated 9th October 2006 between the Secretary of State for Transport and Network Rail relating to protective provisions in respect of the Crossrail Project.

Compliance with Crossrail Environmental Minimum Requirements

20.—(1) Any provisions of any development agreement requiring compliance with Crossrail Environmental Minimum Requirements apply to the promoter as if the authorised works were included in the works authorised by the principal Act.

(2) In this article—

- (a) “development agreement” means an agreement to which the Secretary of State for Transport and the promoter are a party and under which the promoter has responsibilities in relation to the design, construction, financing or maintenance of Crossrail; and
- (b) “Crossrail Environmental Minimum Requirements” means the undertakings and assurances given to Parliament and petitioners by the Secretary of State for Transport during the passage of the principal Act through Parliament, specified in the Crossrail Register of Undertakings and Assurances published by the Department for Transport⁽¹⁶⁾ together with the Crossrail Planning and Heritage Memorandum, Construction Code and Environmental Memorandum.

Power to lop trees overhanging the authorised works

21.—(1) The promoter may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the promoter must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

⁽¹⁶⁾ The Register of Undertakings and Assurances is available at <http://www.crossrail.co.uk/about-us/crossrail-act-2008/register-of-undertakings-and-assurances>.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Power to transfer undertaking

22.—(1) The promoter may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the promoter and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the promoter and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the promoter include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the promoter.

Obstruction of construction of authorised works

23. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the promoter in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the promoter,

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

Disclosure of confidential information

24. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 7 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Certification of plans etc.

25. The promoter must, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans and the sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the works and land plans and the sections referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

26.—(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) with the consent of the recipient and subject to paragraphs (5) to (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 (references to service by post) of the Interpretation Act 1978⁽¹⁷⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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 is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given 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 the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person 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—

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

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

27. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

(17) 1978 c. 30.

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Arbitration

28. Any difference under any provision of this Order, unless otherwise provided for, must 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 Institution of Civil Engineers.

Signed by the authority of the Secretary of State

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

31st March 2015

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

In the Royal Borough of Greenwich

Work No. 1 — A railway, comprising a reception siding and headshunt, commencing by a junction with the eastbound Crossrail railway line authorised by Work No. 1/7 in Schedule 1 to the principal Act⁽¹⁸⁾ at a point 15 metres north-west of the former level crossing of Churchmanor Way and the North Kent railway, passing westwards and terminating at a point 48 metres west of the bridge carrying the North Kent railway over White Hart Road.

Work No. 2 — A railway, comprising sidings to provide a stabling and maintenance depot, commencing by a junction with Work No. 1 at a point 222 metres east of the bridge carrying the North Kent railway over White Hart Road, passing north-eastwards and terminating at a point 305 metres north-west of the former level crossing of Churchmanor Way and the North Kent railway.

The work includes an accommodation building and a maintenance building within the depot site.

SCHEDULE 2

Article 11

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽¹⁹⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for “land is acquired or taken from” substitute “a right over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

⁽¹⁸⁾ 2008 c.18.

⁽¹⁹⁾ 1973 c. 26.

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(3) For section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5 substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right to be acquired, and, in a case where the right to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (other provisions as to divided land) substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or

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- (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Crossrail (Plumstead Sidings) Order 2015(20) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection affects any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11(21) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(22) (penalty for unauthorised entry) and 13(23) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(24) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(20) S.I. 2015/781.

(21) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(22) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(23) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(24) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

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9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 3

Article 12

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the works and land plans</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
Royal Borough of Greenwich	Plots 9, 10, 11, 15, 16	Access over private road for construction and afterwards for operation and maintenance.

SCHEDULE 4

Article 18

APPLICATION OF PROVISIONS OF THE PRINCIPAL ACT

1. The following provisions of the principal Act apply to the matters which are the subject of this Order on the general assumptions mentioned in paragraph 2 and, where any special assumption is mentioned in paragraph 3 for any such provision, on that special assumption —

- (a) sections 8 (extinguishment of private rights of way), 9 (extinguishment of rights of statutory undertakers etc.), 10 (planning: general), 11 (permitted development: time limit), 12 (fees for planning applications), 13 (power to disapply section 10(1)), 15 (extension of permitted development rights), 20 (control of construction sites: appeals), 30 (duty to co-operate), 31 (arbitration after referral under section 30(3)) and 46 (compensation for water abstraction);
- (b) paragraph 8 (discharge of water) of Schedule 2 (works: further and supplementary provisions);
- (c) paragraphs 4(3) and (4) and 6 to 11 of Part 2 (development in the area of a unitary authority), and paragraphs 26 to 35 and 37 of Part 4 (supplementary) of Schedule 7 (planning conditions);
- (d) Schedule 11 (application of other railway legislation) (except that sections 10, 24, 30 to 41, 43, 44, 46, 49 to 55, 65, 138, 162 and 163 of the Railways Clauses Consolidation Act 1845(25) are also excepted from incorporation);
- (e) paragraphs 2, 7, 8, 10, 11, 14 and 16 to 17 of Schedule 14 (disapplication and modification of miscellaneous controls); and
- (f) Parts 2 (protection for electricity, gas, water and sewerage undertakers) and 4 (protection of electronic communications code networks) of Schedule 17 (protective provisions).

(25) 1845 c.20.

The general assumptions

2. The general assumptions are that references in the principal Act in whatever form (including references inserted or substituted by any provision of that Act in any other enactment)—
- (a) to that Act are references to this Order;
 - (b) to the nominated undertaker are references to the promoter;
 - (c) to Transport for London are references to the promoter (where the Crossrail (Devolution of Functions) Order 2010(26) modified the principal Act);
 - (d) to the scheduled works (except in relation to the limits of deviation for the scheduled works), the deposited plans, the deposited sections and the book of reference are references to the scheduled works, the works and land plans, the sections and the book of reference respectively as defined in article 2(1) (interpretation);
 - (e) to the limits of deviation for the scheduled works or the limits of land to be acquired or used are references to the Order limits as defined in article 2(1);
 - (f) to works authorised by the principal Act are references to the authorised works; and
 - (g) to particular provisions of that Act are a reference to those provisions as applied by paragraph 1.

The special assumptions

3.—(1) The special assumptions are the assumptions set out in sub-paragraphs (2) to (8), and have effect for the purposes mentioned in paragraph 1.

(2) In section 10(4) (planning: general) of the principal Act the reference to statements specified for the purposes of subsection (2)(b) is to be treated as including a reference to the environmental statement submitted with this Order.

(3) The Royal Borough of Greenwich is to be treated as a qualifying authority for the purposes of those provisions of Schedule 7 (planning conditions) to the principal Act that apply to this Order.

(4) Item 6 in the table in paragraph 6 (conditions: qualifying authority) and item 4 in the table in paragraph 7 of Schedule 7 to the principal Act do not apply.

(5) Paragraph 13 of Part 2 of Schedule 17 to the principal Act applies to any dispute arising under that Part as applied by this Order.

(6) In paragraph 3 of Part 4 of Schedule 17 (protective provisions) to the principal Act, references to paragraph 5 of Schedule 3 (highways) to that Act are to be treated as a reference to paragraph (2) of article 5 (access to works).

(7) Paragraph 6 of Part 4 of Schedule 17 applies to any dispute arising under that Part as applied by this Order.

Ancillary matters

4.—(1) Regulations made under section 20(4) (control of construction sites: appeals) of the principal Act have effect in relation to appeals referred to arbitration under subsection (7A) of section 60 or 61 of the Control of Pollution Act 1974(27), as inserted by section 20(3) of the principal Act and applied by paragraph 1, as they have effect for appeals referred to arbitration under that subsection in relation to works carried out in exercise of the powers conferred by Part 1 of the principal Act.

(26) S.I. 2010/988.

(27) 1974 c. 40.

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(2) Rules made under section 54(5) (arbitration) of the principal Act apply to an arbitration under this Order as they apply to an arbitration under Part 1 of the principal Act.

(3) Without limitation on the scope of the general assumptions in paragraph 2, the references in section 8(2) (extinguishment of private rights of way) of the principal Act to the coming into force of that Act are to be treated (so far as concerns the matters which are the subject of this Order) as references to the coming into force of this Order.

(4) Regulations made under paragraphs 30 and 34 (appeals) of Schedule 7 (planning conditions) to the principal Act have effect in relation to planning appeals under this Order as they apply to appeals under Schedule 7 to the principal Act.

(5) Regulations made under section 12(1) (fees for planning applications) of the principal Act have effect in relation to this Order as they apply to requests for approval under the planning permission deemed to be granted by section 10(1) (planning: general) of the principal Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Crossrail Limited to construct and operate railway sidings and associated infrastructure at Plumstead, adjacent to the tunnel portal forming part of the works authorised by the Crossrail Act 2008 and being supplemental to the works provided for in that Act. The Order authorises the acquisition and use of land for the purposes of the works and confers powers in connection with the construction and operation of the railway sidings.

A copy of the works and land plans, the sections and book of reference mentioned in the Order and certified in accordance with article 25 may be inspected at the registered office of Crossrail Limited at 25 Canada Square, Canary Wharf, London, E14 5LQ.