

202[] No. 0000

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Old Oak Common Great Western Mainline
Track Access) Order 202[]**

Made - - - -

Coming into force

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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 2006^(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

[Objections to that application have been withdrawn.]

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

[The Secretary of State, having considered [the objections made and not withdrawn] [and the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposals comprised in the application [without modifications] [with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals]] [proposals concerned with modifications which in the opinion of the Secretary of State make a substantial change in the proposals.]

[The Secretary of State having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [] 202[].

The Secretary of State in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3, 4, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682, S.I. 2017/979, S.I. 2017/1070 and S.I. 2019/311.

(b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[] and comes into force on [].

Interpretation

2.—(1) In this Order—

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

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

“the associated development” means the provision of:

(a) a rail side temporary road rail vehicle access ~~via a road rail access~~ point onto the Great Western Mainline to enable delivery of the high speed and conventional stations at Old Oak Common; and

(b) a permanent road rail vehicle access ~~via a road rail access~~ point onto the Great Western Mainline from its southern side,

as well as any works and operations incidental or ancillary thereto as permitted by—

(a) the Town and Country Planning (General Permitted Development) (England) Order 2015(e), including Part 18 of Schedule 2 to that Order in relation to the works authorised by the enabling Acts; or

(b) the High Speed Rail (London – West Midlands) Act 2017(f)

“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;

“the development” means the use, and temporary works ~~and activities~~ authorised by article 3; [NRF: what the “activities” comprise is not clear, see comment on Art 3]

“electronic transmission” means a communication transmitted—

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

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

and in this definition “electronic communications network” has the same meaning as in section 31(1) (meaning of electronic communications networks and services) of the Communications Act 2003(g);

“the enabling Acts” means—

(a) the Great Western Railway Act 1835(a); and

(a) 1961 c. 33

(b) 1965 c. 56

(c) 1981 c. 66

(d) 1990 c. 8

(e) S.I. 2015/596

(f) 2017 c. 7

(g) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

(b) the Great Western Railway Act 1837^(b);

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order; [NRF: is there not to be more than one land plan, at present we have Land Plans 9-12 inclusive?]

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Waterloo General Office, London SE1 8SW;

“Order limits” means the limits of land to be acquired or used shown on the land plan; [NRF: incorrect if the land plan still shows plot 1 as land to be acquired or used. Plot 1 is not within the order limits, therefore should not be shown as a plot on the land plan]

“owner” in relation to land, has the same meaning as in the Acquisition of Land Act 1981^(c);

“statutory undertaker” means –

(a) any person who is a statutory undertaker for the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

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

~~References in this Order to rights over land include references to the right to do, or to place and maintain, anything in, on or under land or in the air space above its surface.~~ [NRF: NR need to demonstrate that they have a compelling case in the public interest for all rights sought. There is no evidence before the inquiry whatsoever of NR needing rights to place or maintain anything in or under the land or in its air-space whether in the temporary or permanent situation. Nor is there any evidence that NR need rights to do “anything” i.e. anything whatsoever NR that fancy on the land. The only evidence before the inquiry is a need for an access right. Temporary possession i.e. pursuant to article 3 and rights being separate.]

(2) References in this Order to numbered plots are references to plot numbers on the land plan.

PART 2

WORKS PROVISIONS

Power to use and execute temporary works on land within the Order limits as a temporary construction compound for construction of the associated development

3. Network Rail may use the land specified in column (2) of Schedule 2 (land of which temporary possession may be taken) as a temporary construction compound, including provision of a temporary ramp, for the purposes of the construction of the associated development. [NRF: the definition of “development” is “the use, temporary works and [activities] authorised by article 3”, the “use” is presumably the “use as a temporary construction compound”, but unless it is made clear that the ramp comprises the “temporary works” it is unclear in this article what the “temporary works” referred to in the definition relate to. It is also unclear what the “activities” are and these either need to be articulated here, or the reference excised from the definition of “development”.]

(a) 1835 c. cvii.

(b) 1837 c. xci.

(c) 1981 c. 67.

PART 3

ACQUISITION AND POSSESSION OF LAND

Application of Part 1 of the 1965 Act

4.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of any interests in land under this Order—

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

(2) Part 1 of the 1965 Act, as applied by paragraph (1) has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the ~~five~~one year period mentioned in article 10 (time limit for exercise of powers of acquisition) of the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[].”. [NRF: why does NR need 5 years to exercise powers when it has already agreed to 1 year to implement the deemed planning permission? This is inconsistent.]

(5) In section 11(1B)(b) (power of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(c) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 10 (time limit for exercise of powers of acquisition) of the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[].”.

(8) In Schedule 2A(d) (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 7 (temporary use of land in connection with the development and the associated development) of the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[].”

Application of the 1981 Act

5.—(1) The 1981 Act applies as if this Order was a compulsory purchase order.

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- (a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
 - (b) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.
 - (c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (d) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

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

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit 5A(a) (time limit for general vesting declaration).

(5) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the ~~five~~one year period mentioned in article 10 (time limit for exercise of powers of acquisition) of the Network Rail (Old Oak Common Great Western Mainline Track Access) Order 202[].”.

(6) In section 6(c) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

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

(8) In Schedule A1(e) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of any interests in land under article 4 (application of Part 1 of the 1965 Act).

Power to acquire new rights

6.—(1) Subject to paragraph (2), Network Rail may acquire compulsorily such rights of access ~~or other easements~~ over land specified in column (2) of Schedule 1 (land in which only new rights etc. may be acquired) for the purpose specified in relation to that land in column (3) of that Schedule by creating them ~~as well as by acquiring rights of access or other easements already in existence.~~ [NRF: no evidence presented to the inquiry and therefore no compelling case in the public interest for NR to acquire newly created “other easements”].

No evidence presented to the inquiry:

(a) that there are other rights of access or easements already in existence; or if there are other rights of access or easements already in existence that NR need to acquire and therefore extinguish such rights in order to exercise a right of access over plot 3 for the purpose identified in column 3 of schedule (3); and

(b) that NR needs to acquire rights that will be created in connection with the proposed BPL redevelopment. The right sought in this Art 3 is the permanent right that takes effect once the temporary possession ceases. At the point in time that NR are taking this permanent right, other rights across plot 3 may have arisen. There is evidence before the inquiry that plot 3 will be used for a variety of uses and by a variety of users all with rights to use it: for residential servicing including refuse collection; for deliveries and collections including loading and unloading of Builder Depot vehicles; for Builder Depot customers to access parking spaces to the rear of the new store; for blue badge holders to access residential parking spaces to the rear of the new store; for emergency egress on foot from the residential floors. If any or all of these rights were “acquired” or extinguished by NR the proposed development could not be beneficially used. It would also mean that NR would effectively have exclusive use of plot 3 and there is no evidence presented to the inquiry and therefore no compelling case in the public interest for NR to have exclusive use.]

(a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(b) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(c) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(d) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(e) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

~~(11)(2)~~ Paragraph (1) is not to take effect until Network Rail has acquired such an interest in plot 1 as necessary to allow the purpose set out in column (3) of Schedule 1 (land in which only new rights etc. may be acquired) to be achieved. [NRF: unclear who is the arbiter of whether NR have a “necessary” interest. Whilst the deeming provision has been removed, this para still lacks transparency. BPL and the public need certainty as to when rights will be created, that can be objectively identified, and not subjectively decided by e.g. NR is they have the “necessary” interest. There is simply no certainty or transparency as to when the date for the draw down of the new right will occur. This paragraph needs to be re-drafted accordingly. This is also without prejudice to BPL’s primary position that a TWAO cannot include conditionality. NR need to acquire an interest first, then seek an order if agreement for access cannot be reached. Plot 1 is not within the order limits and should not therefore be referred to]

~~(12)(3)~~ Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

~~(13)(4)~~ Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 of a right over land by the creation of a new right.

Temporary use of land in connection with the development and the associated development

~~6.7.~~—(1) Network Rail may in connection with the development and the associated development—

- (a) enter upon and take temporary possession of the land specified in column (2) of Schedule 2 (land of which temporary possession may be taken) for the purposes described in column (3) of that Schedule;
- (b) remove vegetation from that land;
- ~~(c) construct [the] temporary [ramp on plot 3] works (including the provision of means of access) on that land; and~~
- ~~(d) [construct a temporary means of access on the northern boundary of plot 3]~~

[NRF: not clear what the “means of access” is that NR intend to construct, unless this is a reference to breaching the rear boundary of BPL’s site, and installing a gate to the railway corridor. However, it was understood that this was considered by NR as works falling within the railway corridor and therefore fell within HS2 powers. If this is a reference to the gate in the rear boundary, then this is only on plot 3, and there is no evidence that NR need to construct a “means of access” on plots 2 and 4. There is no compelling case therefore for NR to have such powers in relation to plots 2 and 4. The para should therefore be revised. If the “means of access” is something else, then NR needs to make it clear what the “means of access” is that is being referred to here. There is no evidence before the inquiry that any other “means of access” is required and therefore no compelling case in the public interest.]

If the reference to “construct temporary works” is only a reference to the ramp, then again, this is only on plot 3, and there is evidence, and no compelling case for NR to have such powers over plots 2 and 4. The para should therefore be revised. If the “temporary works” is something else, then NR needs to make it clear what the “temporary works” are that are being referred to here. There is no evidence before the inquiry that any other “temporary works” are required, and therefore no compelling case in the public interest.]

- ~~(e)(e)~~ temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the development and the associated development. [NRF: no evidence before the inquiry that NR need to operate a crane on plots 2, 3 and 4, they need to bring RRVs onto the land, some of which may be cranes, but it is understood that those cranes will be operated once within the railway corridor and will not be

operated on plots 2, 3, 4. Again, no compelling case in the public interest presented by NR for the acquisition of this temporary possession]

(2) Not less than ~~1428~~ days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land. [NRF: 14 days inadequate, particularly if BD store operational]

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after 31 January 2030.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land within the Order limits, as well as restoring the boundary fence to the northern boundary of the landplot 3 within the Order limits, to the reasonable satisfaction of the owners of the land.

(5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Without affecting article 14 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(b) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4 (application of part 1 of the 1965 Act).

(10) Network Rail must not by the exercise of the powers in this article prevent any residents from accessing the garages at the back of Acton House, 253 Horn Lane, London, W3 9EJ.

~~(10)~~(11) [Network Rail must not by the exercise of the powers in this article prevent access or use by owners and occupiers of the land shown cross hatched on the land plan] [NRF: this para is intended to create site sharing, with the practical aspects covered in a side agreement between the parties]

Disregard of certain interests and improvements

~~7.8.~~—(1) In assessing the compensation payable to any person on the acquisition from that person of any interests in 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. [NRF: NR to confirm that they are not taking a point under this paragraph in relation to the proposed BPL redevelopment. If confirmed, this will need to be written into the order]

(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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

(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.

Extinction or suspension of private right of way

8.9.—(1) Subject to the provisions of this article and save for any residents’ rights of access to the garages at the back of Acton House, 253 Horn Lane, London W3 9EJ, and save for any rights of access to the builders’ merchant at 239 Horn Lane London, W3 9ED, and save for any rights associated with a proposed mixed use redevelopment of land at 227 – 237 and 239 Horn Lane London, W3 9ED all private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right— [NRF: this para leaves too much uncertainty, it needs to be confirmed that the rights to use plot 3 in relation to the existing builders’ merchant and the proposed rights to use plot 3 in connection with the redevelopment (see comments above on Art 6(1)) in relation to future servicing uses on plot 3) will be maintained and not extinguished]

- (a) as from the date of the acquisition of the right 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) Subject to paragraph (4) and save for any rights of access to Acton House, 253 Horn Lane, London W3 9EJ, and save for any rights of access to the builders’ merchant at 239 Horn Lane London, W3 9ED, and save for any rights associated with a proposed mixed use redevelopment of land at 227 – 237 and 239 Horn Lane London, W3 9ED, and save for any rights of access in the land shown cross hatched on the land plan all private rights of way over land of which Network Rail take temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a 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(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act applies.

(5) Paragraphs (1) and (2) have effect subject to—

- (a) any notice given by Network Rail before—
 - (i) the completion of the acquisition of;
 - (ii) Network Rail’s appropriation of;
 - (iii) Network Rail’s entry onto; or
 - (iv) Network Rail’s taking temporary possession of,the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made between Network Rail and the person in or to whom the right of way in question is vested or belongs which makes reference to this article; whether that agreement was made before or after any of the events mentioned in sub-paragraph (a), or before or after the coming into force of this Order.

(6) If any such agreement as is mentioned in sub-paragraph (5)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(a) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

Time limit for exercise of powers of acquisition

9-10.—(1) After the end of the period of ~~5~~one years beginning on the date on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4(a) (execution of declaration) of the 1981 Act as applied by article 5 (application of the 1981 Act).

(2) The powers conferred by article 6 (power to acquire new rights) and article 7 (temporary use of land in connection with the development and the associated development) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period. [NRF: NR need only 1 year to implement temporary possession so that there is consistency with the deemed planning permission.]

PART 4

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

10-11.—(1) Nothing in this Order affects the rights of statutory undertakers to maintain apparatus.

(2) In this article “apparatus” has the same meaning as in Part 3 of the New Roads and Street Works Act 1991(b).

Certification of plan, etc.

11-12. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plan to the Secretary of State for certification that these~~y~~ are true copies of, respectively, the book of reference and the land plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the content of the document of which it is a copy.

Service of notices

12-13.—(1) A notice or other document required or authorised to be served for the purpose 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(c) 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) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2017 (c. 22).

(b) 1991 c.22.

(c) 1978 c. 30.

- (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 hand 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 transmission 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

13-14. 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.

Arbitration

14-15. 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 Institutions of Civil Engineers. [NRF: this Art cannot fetter the discretion of any claimant to refer a compensation claim to the UTLC]

Signed by authority of the Secretary of State

Date

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Article 6

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) <i>Area</i>	(2) <i>Number of land shown on the land plan</i>	(3) <i>Purpose for which rights may be acquired</i>
London Borough of Ealing	3	Permanent maintenance access for road rail vehicles onto the Great Western Mainline

SCHEDULE 2

Article 7

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on the land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>
London Borough of Ealing	2, 3, 4	Temporary construction compound, including provision of a <u>temporary</u> ramp

SCHEDULE 3

Article 6

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 interest in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 191) of the 1965 Act (as modified by paragraph 5(5) of Schedule 3 to the Network Rail (Old Oak Common Western Mainline Track Access) Order 202[] (“the 202[] Order”);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 4 to the 202[] Order) to acquire an interest in the land; and

(c) the acquiring authority enter on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right ~~or enforcing that covenant.~~ **[NRF: NR is not enforcing any covenants under this TWAO]**

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

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

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 4 (application of Part 1 of the 1965 Act), applies to a compulsory acquisition of rights under article 6 (power to acquire new rights)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References to the 1965 Act to land are, in appropriate contexts, to be 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.

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act 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 ~~or the restrictive covenant is to be imposed~~ is depreciated by the acquisition of the right ~~or imposition of the restrictive covenant~~, 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.”

(4) 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 of 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) paragraph 2(3) and 8(2) of Schedule 4 (common land),

(a) 1973 c. 26.

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

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right ~~or restriction~~, as well as the notice of entry required by subsection (1) of that section, it has powers, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (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 ~~or the enforcement of the restrictive covenant~~ in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 4(7)) 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.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, ~~or a restrictive covenant affecting the whole or part of a house, building or factory.~~ **[NRF: Consistency, use “acquiring authority” or “authority”, but stick with one]**

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

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- (a) 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), sections 186(2), 187(2) and 188 of and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
- (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
- (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
- (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
- (e) Section 12 was amended by section 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).
- (f) Section 20 was amended by paragraph 4 Schedule 15 of, the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
- (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal. [NRF: note the defined term “tribunal” created earlier]

6. The acquiring authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right ~~or the imposition of the restrictive covenant~~ would –

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right ~~or the imposition of the covenant~~,
- (b) the use to be made of the right ~~or covenant proposed~~ to be acquired ~~or imposed~~, and
- (c) if the right ~~or covenant~~ is proposed to be acquired ~~or imposed~~ for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right ~~or the imposition of the covenant~~ would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail Infrastructure Limited to acquire compulsorily rights over land and to use land temporarily, as well as to use the land within the Order limits as a construction compound, including provision of a temporary ramp, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline.

Copies of the land plan and the book of reference referred to in the Order may be inspected at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York YO30 4US.