Rule 10(2)(b)

TRANSPORT AND WORKS ACT 1992

TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

THE NETWORK RAIL (LONDON TO CORBY)(LAND ACQUISITION~~, LEVEL CROSSING~~ AND BRIDGE WORKS) ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (S.I. 2006 No.1466).

The Order would confer powers necessary to implement the London to Corby Electrification and Capacity Upgrade project. The majority of the works for this project will be delivered under existing statutory powers and permitted development rights and the Order would permit Network Rail to acquire and use land and interests in land in connection with the construction of the works. In addition the Order would, for the purpose of the project, authorise the reconstruction of the Bromham Road bridge~~, and the closure of the Souldrop level crossing~~.

This Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) ("the model clauses") so far as relevant.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions

Article 1 *(Citation and commencement)* provides for the citation and the coming into force of the Order.

Article 2 *(Interpretation)* contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order.

The "authorised works" are defined as the works authorised by the Order, i.e. the works for or in connection with the reconstruction of the Bromham Road bridge, and the works which are to be carried out under existing powers and permitted development rights. These are particularised by reference to the relevant authorising enactments in Schedule 1.

Article 3 *(Application of the 1991 Act)* provides for the application of various provisions of the New Roads and Street Works Act 1991 (c. 22) to the temporary stopping

up of streets under article 8~~10~~ (temporary stopping up of streets) and the carrying out of works under article 9~~11~~ (power to execute street works), even if no street works (within the meaning of the 1991 Act) are being carried out. It also disapplies certain provisions of the 1991 Act which could impede the construction of the works. There is a precedent for this in the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No.446).

PART 2

WORKS PROVISIONS

Article 4 *(Power to construct and maintain works)* authorises the construction and maintenance of a work consisting of the reconstruction of Bromham Road bridge, which is shown on the deposited plans and sections. The work must be constructed within the limits of deviation for the work.

The article also provides for the construction and maintenance of ancillary works necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the work.

Article 5 *(Power to deviate)* provides for limits within which Network Rail can deviate in the construction and maintenance of the proposed works.

Supplemental Powers

Article 6 *(Discharge of water)* enables Network Rail to discharge water into any watercourse, public sewer or drain, in connection with the construction, operation and maintenance of the Order works with the approval and (if provided) superintendence of the person to whom it belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld). The extension of this provision to cover operation is precedented in the recent Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016 No. 684). The model clauses are extended so as to provide that any relevant person who fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. This has precedent in recent TWA Orders including the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721) and Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780). In paragraph (7) the wording of the model provision has been updated to refer to the environmental permitting regime under the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016 No. 1154)

PART 3

STREETS

~~*Article 7* *(Closure of Souldrop level crossing)* authorises the permanent stopping up of Souldrop level crossing and the extinguishment of all rights over the crossing, including any public right of way. Network Rail may only exercise these powers once a new public right of way has been provided and approved by the highway authority in accordance with article 9 (*construction and maintenance of highways)*. Paragraph (4) makes provision for compensation for the extinguishment of any private right of way.~~

~~*Article 8* *(Creation of new public right of way)* provides for the creation of the new public right of way and for application of s.28 (compensation for loss caused by public path creation order) of the Highways Act 1980 (c.66) to the creation of that right of way, subject to the modifications set out in paragraph (3) to (5). This has precedent in article 16 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679).~~

Article ~~7~~9 *(Construction and maintenance of highways)* is adapted from the model provision (*construction and maintenance of new or altered streets).* Paragraph (1) clarifies that this article applies to ~~the new public right of way authorised under article 8 (*creation of new public rights of way)* and~~ the reconstruction of Bromham Road authorised by article 4 (*power to construct and maintain works*). These works must be completed to the reasonable satisfaction of the highway authority and provision is made for their maintenance by Network Rail for a period of 12 months, and thereafter by the highway authority.

In an extension of the model clause paragraph (4) provides for deemed acceptance of the works by the highway authority should it fail to notify Network Rail of its decision within 28 days of receiving a request for confirmation that it is satisfied with the works. This has precedent in recent TWA Orders including article 12 of the Network Rail (Ordsall Chord) Order 2015 and article 10 of the recent Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150). The provision for deemed consent after 28 days avoids unnecessary delays to the authorised project.

Paragraph (5) makes clear that the maintenance responsibilities of the highway authority will extend to the reconstructed bridge structure and supporting embankments. Bromham Road bridge is a bridge which is owned and maintained by the highway authority rather than Network Rail

Article ~~10~~8 *(Temporary stopping up of streets)* provides for the temporary stopping up of Bromham Road and Spenser Road. In an extension to the model clause, a new paragraph (2) confers a power on Network Rail to use the street temporarily stopped up under this article, which is within Order limits, as a temporary working site. Such provision has precedent in the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721) and Network Rail (Ordsall Chord) Order 2015.

Network Rail is obliged merely to consult the relevant highway authority before exercising its powers under this article. This is on the basis that such stoppings up will have already been considered in the application for this Order.

Article ~~11~~9 *(Power to execute street works)* authorises Network Rail to break up the streets specified in the article and to carry out work in connection with the placing, maintaining or moving of apparatus.

Article ~~12~~10 (*Access to works*) gives Network Rail the power to provide or improve means of access at locations shown on the deposited plans. In addition, Network Rail may, with the approval of the highway authority, provide or improve means of access at any additional locations within the Order limits as Network Rail may reasonably require. For the reasons given above, an additional paragraph (2) has been inserted providing that if the highway authority does not respond within 28 days, it shall be deemed to have granted approval.

PART 4

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Article ~~13~~11 *(Power to acquire land)* confers on Network Rail powers of compulsory acquisition of land shown on the deposited plans and described in the book of reference, for the purposes of the authorised works. This power is subject to the limitations in paragraph (2). The authorised works are the works authorised by the Order in article 4, and the works which are to be carried out under Network Rail's existing powers as identified in Schedule 1.

Article ~~14~~12 *(Application of Part 1 of the 1965 Act)* applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56). This provision is altered from the model clause to reflect changes made to the 1965 Act by the Housing and Planning Act 2016 (c.22) as applied in the recent Network Rail (Buxton Sidings Extension) Order 2017.

Article ~~15~~ 13 *(Application of the Compulsory Purchase (Vesting Declarations) Act 1981)* provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66) and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. This provision is altered from the model clause to reflect changes made to the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016 (c.22) as applied in the recent Network Rail (Buxton Sidings Extension) Order 2017.

Article ~~16~~14 *(Power to acquire new rights)* authorises the creation of easements or other rights over land and makes ancillary provision where rights are acquired.

Paragraph (2) departs from the model clauses in restricting the compulsory acquisition powers of the Order to the acquisition of rights in relation to the land identified in Schedule 3 to the Order. This approach which is intended to reduce blight follows a number of recent Orders (see for example section 24(3) of the Network Rail (Ordsall Chord) Order 2015

Paragraph (5) is based on precedent found in the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 2284). It provides for the acquisition of rights by statutory undertakers (rather Network Rail) in circumstances where the relevant land is required for the diversion or relocation of their apparatus and the Secretary of State gives consent. Such provision is appropriate because the dominant tenement to be benefitted by such rights is the statutory

undertaking of the undertaker rather than Network Rail's land and it is therefore necessary for the relevant statutory undertaker to acquire the rights.

Paragraph (4) introduces Schedule 4 for the purpose of modifying legislation relating to compensation and the 1965 and 1981 Acts so as to apply to the compulsory acquisition of new rights under this Order. These are consequential modifications which, as regards compensation legislation and the 1965 Act, have precedent in the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No. 1150).

The modifications as regards the 1981 Act are a recent innovation introduced in Schedule 14 to the High Speed Rail (London-West Midlands) Act 2017 (c.7) and followed in the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017 (S.I.2017 No. 1074). They provide clarification of how the general vesting declaration procedure is used in the acquisition of easements (which had not been spelled out in previous orders). The use of GVDs for such purposes is considered a desirable option for the purpose of speeding the process and ensuring consistency over different servient tenements of the terms of the easement.

Article ~~17~~15 *(Power to acquire subsoil or airspace only)* is adapted from the model clause (power to acquire subsoil only) and enables Network Rail to acquire airspace or subsoil where it needs to do so rather than being obliged to acquire any greater interest in that land.

Article ~~18~~16 *(Rights under or over streets)* permits Network Rail to use a street within the Order limits without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

Temporary possession or use of land

Article ~~19~~17 *(Temporary use of land for construction of works)* enables Network Rail, in connection with the carrying out of the authorised works ~~(or the provision of the replacement footpath for the Souldrop level crossing)~~, to take temporary possession of (i) land listed in columns (1) and (2) of Schedule 5 (*land of which temporary possession may be taken*) and (ii) any other Order land which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. This is an extension of the model clause but follows the approach adopted in a number of TWA Orders (e.g. the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927)). Sub-paragraph (ii) allows greater flexibility in the event that following further detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required. This sub-paragraph is expressly subject to a new paragraph (11) which identifies parcels of land within the Order limits where powers of temporary possession under sub-paragraph (1)(a)(ii) are not exercisable.

The article also departs from the model clause in allowing (as well as temporary works) mitigation works which have been placed in that land to facilitate construction of the authorised works as well as any permanent works identified in Schedule 5 to be constructed and left on the land, without a

requirement for these to be removed. This would apply, for example, to the permanent works to reconstruct Bromham Road bridge which are to be constructed by Network Rail on land owned by the highway authority and where Network Rail does not need to retain a permanent interest or rights in the land. The notice period for entry onto the land in paragraph (2) has been extended from 14 to 28 days.

Article ~~20~~18 *(Temporary use of land for access)* authorises the use of land specified in Schedule 2 *(land over which temporary rights of access may be exercised)* for the purpose of temporary access (rather than possession) in connection with the construction of the authorised works. Again this is not a model clause but the purpose of including a more limited power is to minimise the blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession of the land is not required. The provision has precedent in the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728).

Article ~~21~~19 *(Temporary use of land for maintenance of works)* empowers Network Rail to take temporary possession of any land within the Order limits for the purpose of maintaining any of the authorised works at any time within the period of five years beginning with the date on which the work is opened for use. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or occupied buildings.

Article ~~22~~ 20 (*Cranes)* makes provision for cranes employed by Network Rail in connection with the construction of the authorised works to enter the airspace of the land specified in the table in paragraph (8). Paragraphs (2) and (3) provide that 7 days' notice must be given before the right to oversail a crane is exercised and that the right ends 7 days after the completion of the activities for which the crane has been used. Paragraphs (4) to (6) make provision for the payment of compensation to the owners and occupiers of the land for any loss suffered by them as a result of the exercise of the power. This provision has precedent in section 17 of the High Speed Rail (London – West Midlands) Act 2017.

Compensation

Article ~~23~~21 *(Disregard of certain interests and improvements)* provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal will disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Article ~~24~~ 22 *(Extinction or suspension of private rights of way)* provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

Article ~~25~~ 23 *(Time limit for exercise of powers of acquisition)* imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land and the powers to take temporary possession of land under article 17~~19~~.

PART 5

MISCELLANEOUS AND GENERAL

Article ~~26~~ 24 *(Statutory undertakers etc.)* introduces Schedule 6 to the Order *(provisions relating to statutory undertakers etc.)* which contains specific safeguards for statutory undertakers with apparatus on land acquired under the Order.

Article ~~27~~25 *(Obstruction of construction of authorised works)* makes it a criminal offence for a person, without reasonable excuse, to obstruct anyone acting with proper authority to construct the works, or to interfere with apparatus belonging to such a person.

Article ~~28~~26 *(Power to survey and investigate land)* confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It includes provision for payment of compensation. Approval for the making of trial holes (which may not be unreasonably withheld) is, in the case of land located within the highway boundary, to be obtained from the highway authority, or, in the case of a private street, from the street authority. In a departure from the model clause a highway authority or street authority that fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. Such provision has precedent in the same context in article 15 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072) and the Network Rail (Ordsall Chord) Order 2015.

New paragraphs (3) to (8) are not in the model clauses but are adapted from the provisions recently enacted in and now in force under the Housing and Planning Act 2016 (c. 67) under sections 173 to 177 to allow for use of a warrant to enforce the powers in this article. This brings the surveying arrangements in relation to works authorised by Transport and Works Act Order in line with recent changes in the general law.

Article ~~29~~ 27 *(Certification of plans, etc.)* provides for Network Rail to submit to the Secretary of State for certification the book of reference and the land plans after the making of this Order.

Article ~~30~~28 *(Service of notices)* makes provisions as to the service of notices or other documents for the purposes of this Order.

Article ~~31~~29 *(No double recovery)* prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or any other rule of law.

Article ~~32~~ 30 *(Arbitration)* makes provision for differences arising under any provision of this Order to be determined by arbitration.