

**TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND
AND WALES) RULES 2006**

**THE NETWORK RAIL
(OXFORD STATION PHASE 2 IMPROVEMENTS (LAND ONLY)) ORDER 202[X]**

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 of compulsory acquisition on Network Rail Infrastructure Limited ('Network Rail') for the purpose of acquiring land and rights and use of land to facilitate the improvement and upgrade works to create a new western entrance to Oxford Station, additional railway track and platforms, new rail bridges, highway improvements and associated works. The development would be constructed pursuant to permitted development rights which are subject to a prior approval process.

The Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No. 1954) ("the model clauses"). Material departures from the model clauses are explained below.

PART 1
Preliminary

- Article 1 (***Citation and commencement***) provides for the commencement 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. A definition of "prior approval" is included to link the "authorised works" to the prior approval (and use of other permitted development rights) which comprise the works underlying the Order. The approach is not dissimilar to the Network Rail (Chart Leacon) Order 2021 which adopted a similar approach albeit by reference to a separately obtained planning permission. A new paragraph (4) explains that references to numbered plots are references to plot numbers on the land plan. This wording reflects that used in the recent The Network Rail (Werrington Grade Separation) Order 2018 and more recently The Network Rail (East West Rail) (Bicester to Bedford) Improvements Order 2020.

PART 2
Acquisition and Possession of Land

Powers of acquisition

- Article 3 (***Power to acquire land***) would authorise the compulsory acquisition of the land shown on the deposited plans and described in the book of reference so far as

required for the purposes of the authorised works, or for any other purposes connected with Network Rail's undertaking. This Article is subject to Articles 7 (**power to acquire new rights**) and 9 (**temporary possession of land**) which limit the powers in certain plots to the acquisition of rights and temporary possession respectively.

- Article 4 (**Application of Part 1 of the 1965 Act**) provides for Part 1 of the Compulsory Purchase Act 1965 (as modified by the Order) to apply to the acquisition of land under the Order as it would to a compulsory purchase order made under the Acquisition of Land Act 1981. Additional clauses to those included in the model clauses have been included to reflect changes made to the 1965 Act by the Housing and Planning Act 2016 in respect of powers of entry and the notice periods required to be given in notices to treat. The modifications have precedent in The Network Rail (Buxton Sidings Extension) Order 2017 and The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.
- Article 5 (**Application of the 1981 Act**) provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 to the Order. This article would enable Network Rail to acquire land subject to compulsory purchase powers via the vesting procedure. Modifications to the model clauses have been included to reflect changes made to the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016. Those modifications have precedent in The Network Rail (Buxton Sidings Extension) Order 2017 and The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.
- Article 6 (**Application of the 1961 Act**) this is a new provision which has been included to address the issue that the Part 1 of the 1961 Act only applies to land which has been compulsorily acquired where there is a dispute as to compensation payable; the implication being, for example, when new rights are acquired, or temporary use of land may be acquired that Part 1 cannot therefore be utilised to deal with disputes as to compensation which arise in those instances. This Article provides clarity that for the purpose of the Order, Part 1 of the 1961 Act shall also apply to disputes around compensation which arise where powers are exercised in relation to Articles 9, 10, 11, 15, 16, and 17.
- Article 7 (**Power to acquire new rights**) permits Network Rail to create and acquire easements and other new rights affecting land. Schedule 1 makes modifications to relevant enactments concerning compulsory acquisition and compensation in relation to the acquisition of rights under Article 7. The modifications reflect the changes to the law relating to compulsory acquisition and have precedent in The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.
- Article 8 (**Power to acquire subsoil or airspace only**) permits Network Rail to compulsorily acquire the subsoil, or rights in the subsoil or air rights, rather than acquiring the whole of the land.

Temporary possession of land

- Article 9 (**Temporary possession of land**) provides that Network Rail may take temporary possession of land (i) specified in Schedule 2 (land of which temporary possession may be taken) and (ii) any other land which within the limits of the order to be acquired or used. The model clauses have been amended to add clarity as to the scope of works that can be carried out on the land which may be temporarily possessed. The wording is intended to provide flexibility in the event that it becomes apparent during the course of the works that land can be occupied temporarily, rather than acquired on a permanent basis. The wording has precedent in The Network Rail (East West Rail) (Bicester to Bedford

Improvements) Order 2020.

- Article 10 ***(Temporary use of land for maintenance works)*** empowers Network Rail to take temporary possession of any land within the Order limits for the purposes of maintaining the new railway at any time within the period of five years beginning with the date on which the authorised works is open for use. This power does not apply with respect to houses, gardens or occupied buildings or land required only for the purpose of access or the acquisition of rights over land. This wording has precedent in The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.

Compensation

- Article 11 ***(Disregard of certain interests and improvements)*** provides for the disregarding of certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

- Article 12 ***(Set-off for enhancement in value of retained land)*** provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Chamber of the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

Supplementary

- Article 13 ***(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 during the lawful temporary possession of land. This Article also provides for the suspension of all private rights of way over land which is temporarily occupied for the period of the occupation.

- Article 14 ***(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 under Article 3 (***Power to acquire land***) and the temporary occupation of land under Article 9 (***temporary possession of land***).

PART 3 MISCELLANEOUS AND GENERAL

- Article 15 ***(Level crossing to be stopped up)*** this authorises the permanent stopping up of the private level crossing specified in Schedule 3 to the Order and extinguishment of all rights over the crossings.

- Article 16 ***(Use of private roads for construction)*** allows Network Rail the ability to use any private road for purposes of construction of the authorised works. Roger Dudman Way is currently a private road, it is important that Network Rail be authorised to use this road during construction. This provision has precedent in The London Overground (Barking Riverside Extension) Order 2017.

- Article 17 ***(Power to survey and investigate land)*** confers upon Network Rail (subject to giving notice to every owner and occupier of that land) power to survey and investigate land within the Order limits or which may be affected by the authorised works and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. Provision is made for the payment of compensation. The drafting is based on section 173 of the Housing and Planning Act 2016 and reflects that in The Network Rail (Felixstowe

Branch Line Improvements – Level Crossings Closure) Order 2018.

- Article 18 (**Disclosure of confidential information**) provides that any person who enters a factory, workshop or workplace in pursuance of the provisions of Article 17 (**power to survey and investigate land**) and discloses any confidential information obtained in relation to any manufacturing process or trade secret is guilty of an offence.
- Article 19 (**Statutory undertakers, etc.**) applies Schedule 4 which makes provision in respect of any apparatus belonging to a statutory utility in land acquired.
- Article 20 (**Certification of plans, etc.**) requires Network Rail to submit the book of reference, land plan and stopping up plan to the Secretary of State for certification after the making of this Order.
- Article 21 (**Service of notices**) makes provision as to the service of notices or other documents for the purposes of the Order.
- Article 22 (**No double recovery**) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.
- Article 23 (**Arbitration**) provides for differences under the Order to be settled by arbitration.
- Article 24 (**Protective Provisions**) includes protective provisions for certain statutory undertakers, the details of which are set out in Schedule 5.
- Article 25 (**Disapplication of legislative provisions**) makes clear that the provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 do not apply to the Order.

SCHEDULES

- Schedule 1 (**Modification of compensation and compulsory purchase enactments for creation of new rights**) sets out the modifications made to relevant enactments concerning compensation and compulsory acquisition in relation to the acquisition of rights under the Order.
- Schedule 2 (**Land of which temporary possession may be taken**) sets out the land of which Network Rail may temporarily possess under Article 9 of the Order. Column 3 identifies the purpose for which temporary possession may be taken.
- Schedule 3 (**Closure of Level Crossing**) identifies the level crossing to be stopped up and the land parcel within which all rights relating to the closure of the level crossing are to be extinguished.
- Schedule 4 (**Provisions relating to statutory undertakers, etc.**) makes provision in respect of any apparatus belonging to a statutory utility in the land acquired.
- Schedule 5 (**Protective provisions**) sets out the protective measures for electricity, gas, water and sewerage undertakers (in Part 1) and operators of electronic communications code networks (in Part 2).