

NORTHUMBERLAND LINE

UPDATED ARTICLE 34 (MODIFICATION OF AGREEMENTS RELATING TO LAND)

Introduction

1. This Update Note has been prepared for the purposes of the Public Inquiry relating to the proposed Northumberland Line Order (**Order**) submitted to the Secretary of State by Northumberland County Council (**Applicant**). The order relates to the proposed upgrade of the railway between Newcastle and Ashington and the associated re-introduction of passenger rail services (**Scheme**).

Background

2. The draft order includes a bespoke provision at Article 34, which provides that, on the coming into force of the Order, the existing rent obligations under the Relevant Wayleave Leases (as defined within the draft Order) cease to have effect. Instead, Network Rail (**NR**) will be liable to pay compensation to the relevant landowners by way of a capitalised sum. It has been, and remains, the Applicant's and NR's view that this is a pragmatic solution, which provides certainty to all parties.
3. The inclusion of Article 34 has been objected to by the Duke of Northumberland (**Estate**) and Lord Hastings (**Lord Hastings**) (together the **Estates**). One of the main grounds of objection relied on by the Estates is that the assessment of compensation for any loss incurred by the Estates as a result of Article 34 should not be undertaken pursuant to part 1 of the Land Compensation Act 1961 and, in case of dispute, determined by the Upper Tribunal. The Estates have asked, in the proof of evidence of Colin Cottage [at paragraph 3.29] that, it (Article 34) "needs to be amended to provide a clear route to the assessment of compensation".
4. An alternative approach suggested by the Estates is that any dispute in relation to compensation should be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, appointed by the President of the Royal Institution of Chartered Surveyors.

Negotiations with the Estates and revised Article 34

5. Since submission of the draft Order, there has been an ongoing dialogue between NR and the Estates. In the light of that dialogue, and in response to Mr Cottage's proof of evidence, the Applicant proposes a modified form of article 34, as follows:

"34 – (1) In this article –

"the landowner" means the person who for the time being holds the reversionary interest in the land comprised in any of the relevant wayleave leases;

"the relevant wayleave lease" means each of the following indentures conferring rights to construct, maintain and use the railway –

(a) the indenture made on 10th May 1853 between Algernon Duke and Earl of Northumberland and the Blyth and Tyne Railway Company;

(b) the indenture made on 20th May 1853 between the Jacob Lord Hastings Baron Hastings and the Blyth and Tyne Railway Company;

(c) the indenture made on 29th July 1867 between the Duke of Northumberland and the Blyth and Tyne Railway Company; and

(d) the indenture made on the 30th July 1867 between George Duke of Northumberland and the Blyth and Tyne Railway Company; and

"the rent" means the rent or other sums calculated by reference to the use of the railway which is payable to the landowner under the relevant wayleave leases.

(2) On the bringing into use of all or any part of the development any obligation under the relevant wayleave leases to pay the rent is to cease to have effect.

(3) Network Rail must pay to the landowner compensation equating to any loss it suffers arising from the operation of paragraph 2 at the date it comes into effect and in assessing such compensation no account may be taken of any prospective increase or decrease in the rent by virtue of the construction or operation of any part of the development.

(4) In assessing compensation under paragraph 2 there must be set off any enhancement in the value of any contiguous or adjacent land of the landowner which will accrue to that landowner by reason of the construction or operation of any part of the development.

(5) Any dispute in relation to compensation under this article 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 Royal Institution of Chartered Surveyors. Subject thereto, and unless otherwise agreed between the parties, the Arbitration Act 1996 shall apply to the arbitration."

6. Article 23(4) is proposed to be deleted.
7. The revised article addresses the concerns raised by the Estates in their proofs of Evidence by:
 - a. removing reference to compensation for loss being assessed pursuant to Part 1 of the Land Compensation Act 1961; and
 - b. providing that any dispute about the amount of compensation due to the Estates shall be referred to arbitration rather than being determined by the Land Chamber of the Upper Tribunal.
8. The proposed new wording was submitted to the Estates by NR on 5 November 2021. They responded to NR on 8 November 2021 and stated that the revised article was not agreed.

15 November 2021