STATUTORY INSTRUMENTS

2018 No. 571

TRANSPORT AND WORKS, ENGLAND TRANSPORT ENGLAND

The Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018

Made - - - -	*14th May 2018*
Coming into force - -	*4th June 2018*

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").

The Secretary of State 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 6th April 2018.

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018 and comes into force on 4thJune 2018.

(**1**) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.

(**2**) 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.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**3**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**4**);

"the 1980 Act" means the Highways Act 1980(**5**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**6**);

"the 1990 Act" means the Town and Country Planning Act 1990(**7**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**8**);

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

"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;

"bridleway" has the same meaning as in the 1980 Act;

"building" includes any structure or erection or any part of a building, structure or erection;

"definitive map" means the document published by Nottinghamshire County Council that records the existence of public rights of way in Nottinghamshire;

"deposited plan" means the land and rights of way plan certified by the Secretary of State as the deposited plan for the purposes of this Order;

"development" means the development authorised by a grant of planning permission under the 1990 Act, with the reference number V/2017/0606 dated 18th December 2017 from Ashfield District Council comprising a ramped bridleway bridge across the railway, and any variation or replacement of that planning permission;

"electronic transmission" means a communication transmitted—

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

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

"existing bridleway" means the bridleway recorded on the definitive map and shown between points A and B on the deposited plan and the bridleway shown between points A to C to B on the deposited plan;

"highway authority" has the same meaning as in the 1980 Act;

"Kings Mill No. 1 level crossing" is the crossing of the Nottingham to Worksop railway, grid reference E:451993, N:359681, on the level at Mansfield in the county of Nottinghamshire, which has the status of a bridleway;

"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 new public right of way" means the new bridleway between points D, E, F, G and H shown on the deposited plan;

"the Order limits" means the limits of land to be acquired or used shown on the deposited plan;

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1980 c. 66.
(**6**) 1981 c. 66.
(**7**) 1990 c. 8.
(**8**) 1991 c. 22.

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**9**);

"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) of the Communications Act 2003(**10**);

"the tribunal" means the Lands Chamber of the Upper Tribunal; and

"the undertaking" means the railway undertaking of Network Rail as existing from time to time;

(2) References in this Order to points identified by letters are construed as references to a point so shown on the deposited plan.

(3) References in this Order to numbered plots are references to plot numbers shown on the deposited plan.

PART 2

CROSSING

Closure of Kings Mill No. 1 level crossing

3.—(1) Subject to paragraph (3), the Kings Mill No. 1 level crossing and the existing bridleway are stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Kings Mill No. 1 level crossing and the existing bridleway any right of way over the Kings Mill No. 1 level crossing is extinguished and any public right of way over the existing bridleway is extinguished.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way has been constructed and completed to the reasonable satisfaction of the highway authority in accordance with article 4 (creation and maintenance of new public right of way) and is open for use.

(4) Any person who suffers loss by the extinguishment of any private right of way over the Kings Mill No. 1 level crossing under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Creation and maintenance of new public right of way

4.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion, and after the expiry of that period by and at the expense of the highway authority.

(2) The new public right of way is to have the status of a bridleway and, subject to paragraphs (3) to (6), in relation to the new public right of way, section 28(**11**) (compensation for loss caused by public path creation order) of the 1980 Act applies as if that new public right of way had been created by a public path creation order.

(**9**) 1981 c. 67.
(**10**) 2003 c. 21.
(**11**) As amended by S.I. 2006/1177.

(3) In its application by virtue of paragraph (2), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (4) to (6).

(4) In subsection (1), for "the authority by whom the order was made" substitute "Network Rail Infrastructure Limited".

(5) For subsection (2), substitute—

> "(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the date the new public right of way (as provided for in article 4 (creation and maintenance of new public right of way) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018)(**12**) is open for use and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited."

(6) Subsection (3) is omitted.

(7) For the purposes of paragraphs (2) to (6), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, in its application to section 28 of the 1980 Act by virtue of section 307(1), has effect as if in subsection (2) for "the authority from whom the compensation in question is claimed", the words "Network Rail Infrastructure Limited" were substituted.

(8) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way to which the action relates was not dangerous to traffic.

(9) For the purposes of a defence under paragraph (8), the court must in particular have regard to the following matters—

(a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a public right of way of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the new public right of way;

(d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way; and

(e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new public right of way and that the competent person had carried out those instructions.

(10) The new public right of way is to be treated as completed to the satisfaction of the highway authority if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(**12**) S.I. 2018/571.

(11) This article does not apply in relation to the structure of any bridge carrying the new public right of way over any railway of Network Rail.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

5.—(1) Network Rail may acquire compulsorily so much of the land shown on the deposited plan and described in the book of reference as may be required for the purposes of the development or the creation of the new public right of way and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (1) of article 8 (power to acquire new rights), paragraph (8) of article 9 (temporary use of land for construction of works) and paragraph (7) of article 10 (cranes).

Application of Part 1 of the 1965 Act

6.—(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 land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(**13**) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) In its application by virtue of paragraph (1), the 1965 Act has effect subject to the following modifications.

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

(4) In section 4A(1)(**14**) (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 year period mentioned in article 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing Land Acquisition and Closure) Order 2018(**15**)".

(5) In section 11(1B)(**16**) (powers 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(**17**) (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 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018".

(**13**) 1981 c. 67.
(**14**) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(**15**) S.I. 2018/571.
(**16**) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.
(**17**) As inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).