STATUTORY INSTRUMENTS

2017 No. 1074

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017

Made - - - - 17th November 2017

Coming into force - - 8th December 2017

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 13th November 2017.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 2, 4, 5, 7, 10, 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 (Closure of Abbots Ripton Level Crossing) Order 2017 and comes into force on 8th December 2017.

Interpretation

2.—(1) In this Order—

(**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 and S.I. 2013/755

(**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.

"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 1991 Act" means the New Roads and Street Works Act 1991(**7**);

"the Abbots Ripton Level Crossing" is the crossing of the East Coast Main Line railway on the level south west of the village of Abbots Ripton in the district of Huntingdonshire, in the County of Cambridgeshire, which has the status of a bridleway;

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

"the authorised works" means the works authorised by this Order in accordance with article 4 (power to construct and maintain works);

"the 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;

"the deposited plan" means the plan certified by the Secretary of State as the deposited plans for the purposes of this Order;

"electronic transmission" means a communication transmitted—

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

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

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

"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;

"new public right of way" means the new bridleway between points C, 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;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**8**);

"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 and numbers are construed as references to a point so shown on the deposited plan.

(**3**) 1961 c. 33.
(**4**) 1965 c.56
(**5**) 1980 c.66.
(**6**) 1981 c. 66
(**7**) 1991 c.22.
(**8**) 1981 c.67.

Dis-application of legislative provisions

3.—(1) Section 6 of the Great Northern Railway Act 1898(**9**) (power to cross certain roads on the level) is disapplied in relation to the public road in plots 22 and 24 in the parish of Abbots Ripton with Werrington as shown on the deposited plan for that Act.

(2) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

(a) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991(**10**); and

(b) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works.

PART 2

CROSSINGS

Power to construct and maintain works

4.—(1) Network Rail may construct and maintain within the Order limits such works as are required:—

(a) in connection with the extinguishment of the right of way specified in paragraph (2) of article 5 (closure of level crossing);

(b) to provide the new public right of way;

including the provision of a culvert and any fencing, stiles, gates, signs or other conveniences as may be necessary or expedient for the purposes of the provision or extinguishment of the rights of way.

Closure of level crossing

5.—(1) Subject to paragraph (3), the Abbots Ripton level crossing is stopped-up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Abbots Ripton level crossing any rights of way over the crossing are extinguished between points A and B as shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way has been provided and completed, in accordance with article 6 (creation and maintenance of new public rights of way) and is open to use.

(4) Any person who suffers loss by the extinguishment of any private right of way 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 rights of way

6.—(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

(**9**) 1898 c. clxv
(**10**) 1991 c. 59.

months from its completion and after the expiry of that period by and at the expense of the highway authority.

(2) Section 28 (compensation for loss caused by public path creation order) of the 1980 Act is to apply to the new public right of way as if the right of way had been created by a public path creation order.

(3) In its application by virtue of paragraph (2), section 28 of the 1980 Act is to have effect with the following modifications:—

(a) In sub-section (1), substitute the words "Network Rail" for the words "the authority by whom the Order was made";

(b) For sub-section (2), substitute—

"(2) A claim for compensation under this section is to be made to Network Rail in writing within 6 months from the coming into force of the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017(**11**) and is to be served on Network Rail by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited"; and

(c) Sub-section (3) is omitted.

(4) Sub-section (3) of section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of sub-section (1), is to have effect as if in sub-section (2) for the words "the authority from whom the compensation in question is claimed", the words "Network Rail" are substituted.

(5) 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.

(6) For the purposes of a defence under paragraph (5), 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;

(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.

(**11**) S.I. 2017/1074.

(7) The new public right of way is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

Supplemental Powers

Power to survey and investigate land

7.—(1) Network Rail may for the purposes of this Order—

(a) survey or investigate any land shown within the Order limits;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and

(e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

(a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (4);

(b) may not use force unless a justice of the peace has issued a warrant under paragraph (4) authorising the person to do so; and

(c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(a) that another person has prevented or is likely to prevent the exercise of that power; and

(b) that it is reasonable to use force in the exercise of that power.

(5) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(6) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(7) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(8) Any evidence in proceedings for a warrant under this article must be given on oath.

(9) No trial holes are to be made under this article—

(a) in a carriageway or footway without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(10) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be