STATUTORY INSTRUMENTS

# 2015 No. 1684

# TRANSPORT AND WORKS, ENGLAND
# TRANSPORT, ENGLAND

## The Network Rail (Blackthorn and Piddington) (Land Acquisition) Order 2015

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| *Made - - - -* | *9th September 2015* |
| *Coming into force - -* | *30th September 2015* |

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 caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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 7th September 2015.

The Secretary of State in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3 to 5, 7, 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 (Blackthorn and Piddington) (Land Acquisition) Order 2015 and comes into force on 30th September 2015.

(**1**) S.I. 2006/1466.
(**2**) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; 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 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**5**);

"the 1990 Act" means the Town and Country Planning Act 1990(**6**);

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

"authorised works" means the works authorised by the planning permission and any associated works authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015(**8**);

"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;

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

"electronic transmission" means a communication transmitted—

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

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

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

"the limits of land to be acquired or used" means the limits so shown and described on the land plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and "maintenance" is to be constructed accordingly;

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

"the planning permission" means the planning permission granted by Cherwell District Council on 25th April 2014 reference number 13/01805/F and by Aylesbury Vale District Council on 4th July 2014 reference number 13/03285/APP;

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

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface.

(3) All measurements stated in any description of lands in the book of reference are approximate.

(4) References in this Order to numbered plots are references to plot numbers shown on the land plans.

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1981 c. 66.
(**6**) 1990 c. 8.
(**7**) 1991 c. 22.
(**8**) S.I. 2015/596.

# PART 2

## ACQUISITION AND POSSESSION OF LAND

*Powers of acquisition*

### Power to acquire land

**3.**—(1) Network Rail may acquire compulsorily so much of the land shown on the land plans within the limits of land to be acquired or used and described in the book of reference as may be required for the purposes of the authorised works and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

(2) This article is subject to article 7 (temporary possession of land).

### Application of Part 1 of the 1965 Act

**4.**—(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(**9**) applies; and

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

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

### Application of the 1981 Act

**5.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) substitute—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.".

(4) In that section, in subsection (2), for "(1)(b)" substitute "(1)" and after "given" insert "and published".

(5) In that section, for subsections (5) and (6) substitute—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(**9**) 1981 c. 67.

(a) in subsection (1), after "publication" insert "in a local newspaper circulating in the area in which the land is situated"; and

(b) omit subsection (2).

(7) In section 7 (constructive notice to treat) in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(8) References to the 1965 Act in the 1981 Act are construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land).

**Power to acquire new rights**

**6.**—(1) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 1 (modification of compensation and compulsory purchase enactments for creation of new rights), where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

(3) Schedule 1 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

*Temporary possession of land*

**Temporary possession of land**

**7.**—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of—

(a) the land specified in columns (1) and (2) of Schedule 2 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule; and

(b) any other land within the limits of land to be acquired or used in respect of which no notice of entry has been served under section 11(**10**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in columns (1) and (2) of Schedule 2, after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (3) of Schedule 2; or

(b) in the case of land referred to in paragraph (1)(b), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(**10**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but Network Rail is not required to replace a building removed in connection with the carrying out of the authorised works.

(5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 16 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(**11**) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to land referred to in paragraph (1)(a) except that Network Rail is not precluded from acquiring new rights over any part of that land under article 6 (power to acquire new rights).

(9) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.

(10) Section 13(**12**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under the Order by virtue of article 4(1) (application of Part 1 of the 1965 Act).

*Compensation*

**Disregard of certain interests and improvements**

**8.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1), "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

**Set-off for enhancement in value of retained land**

**9.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging

(**11**) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(**12**) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).