
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 188

The Network Rail (Waverley Steps) Order 2010

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part only of certain properties

25.—(1) This article shall apply instead of section 90 of the 1845 Lands Act in any case where—

(a) a notice to treat is served on a person (“the owner”) under that Act (as incorporated with this Order by article 23) in respect of part only of a building (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period and Network Rail agrees to take the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice.

(5) If such a counter-notice is served within that period and Network Rail does not agree to take the land subject to the counter-notice, the question as to what land the owner shall be required to sell shall be referred to the tribunal.

(6) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, the owner shall be required to sell the land subject to the notice to treat.

(7) If on such a reference the tribunal decides that only part of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for that part.

(8) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice.

(9) If the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice; and

(b) the material detriment is not confined to the part of the land subject to the counter notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice.

(10) A notice to treat shall have the effect it is deemed to have under paragraphs (4), (8) or (9) whether or not the additional land is land that Network Rail is authorised to acquire compulsorily under this Order.

(11) In any case where by virtue of a determination of the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat.

(12) If Network Rail withdraws the notice to treat in accordance with paragraph (11), it shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(13) Where the owner is required under this article to sell only part of a building, Network Rail shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

(14) Any notice or counter-notice served under this article shall be in writing.