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STATUTORY INSTRUMENTS

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**1995 No. 519**

**The Barking Barrage Order 1995**

**PART III**

**ACQUISITION AND POSSESSION OF LAND**

**Power to acquire land**

**21.** The Borough may acquire compulsorily so much of the land as specified in columns (1) and (2) of Schedule 2 (being land shown on the land plan and described in the book of reference) as may be required for the purposes of the authorised works and in particular (without prejudice to the generality of the foregoing) for the purposes specified in relation to that land in column (3) of that Schedule, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to this Order.

**Application of Part I of Compulsory Purchase Act 1965**

**22.—**(1) Part I of the Act of 1965, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) 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; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days notice there were substituted:
  - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
  - (ii) in any other case, a reference to notice of 3 months.

(a) (3) (a) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply to the compulsory acquisition of land under this Order as if the Order were a compulsory purchase order.

(b) The notice required by section 3(1) of the said Act of 1981 as so applied shall be a notice containing the particulars specified in section 3(3) and given at any time following the coming into force of this Order.

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(1) 1981 c. 67.  
(2) 1981 c. 66.

- (c) In section 3(2) of the said Act of 1981, as so applied, for “(1)(b)” there shall be substituted “(1)”.

### **Powers to acquire new rights**

**23.**—(1) The Borough may compulsorily acquire such easements or other rights over any land referred to in article 21 as may be required for any purpose for which that land may be acquired under that article, by creating as well as by acquiring easements or other rights.

(2) Subject to section 8 of the Act of 1965 (as substituted by paragraph 5 of Schedule 4), where the Borough acquires a right over land under paragraph (1) the Borough shall not be required to acquire a greater interest in it.

(3) Schedule 4 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the Act of 1965 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 use of land for construction of works**

**24.**—(1) The Borough may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Borough shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Borough may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the authorised work or works specified in relation to that land in column (4) of Schedule 3.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Borough shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Borough shall not be required to replace a building removed under this article.

(5) The Borough shall 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 contained in this Order.

(6) Any dispute as to a person’s entitlement to compensation under paragraph (5) or as to the amount of the compensation, shall be determined by the tribunal.

(7) Without prejudice to article 26, nothing in this article shall affect any liability to pay compensation under section 10(2) 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 contained in this Order shall not apply in relation to the land referred to in paragraph (1) except that the Borough shall not be precluded from acquiring new rights over any part of that land under article 23.

(9) Where the Borough takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article “building” includes structure or any other erection.

### **Temporary use of land for maintenance of works**

**25.**—(1) The Borough may at any time—

- (a) enter upon and take temporary possession of any land within 5 metres from any of the scheduled works if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the Borough to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Borough shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The Borough may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Borough shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Borough shall 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 contained in this Order.

(7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(3).

(8) Without prejudice to article 26 nothing in this article shall affect any liability to pay compensation under section 10(2) of the Act of 1965 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 (6).

(9) Where the Borough takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article—

- (a) “building” includes structure or any other erection, and
- (b) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

### **Disregard of certain interests and improvements**

**26.**—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land or rights under this Order, the tribunal shall 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.

### **Acquisition of part of certain properties**

**27.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“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 the Borough a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he 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, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the Borough agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine 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, whether or not the additional land is land which the Borough is authorised to acquire compulsorily under this Order.

(8) If the Borough agrees to take the land subject to the counter-notice, or if the tribunal determine 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 or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) that the material detriment is not 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 subject to the counter-notice whether or not the whole of that land is land which the Borough is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than specified in the notice, the Borough may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the Borough shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

### **Extinction or suspension of private rights of way**

**28.—**(1) All private rights of way, drainage and moorings over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the acquisition of the land by the Borough, whether compulsorily or by agreement; or
- (b) on the entry on the land by the Borough under section 11(1) of the 1965 Act, whichever is sooner.

(2) All private rights of way, drainage and moorings over land of which the Borough takes temporary possession under this Order shall be suspended and unenforceable for as long as the Borough remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way drainage and moorings over land under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(4) (extinguishment of rights of statutory undertakers etc.) applies.

(5) Schedule 5 shall have effect for the purpose of modifying the provisions of sections 271 to 274 of the Town and Country Planning Act 1990 (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) in relation to the apparatus of statutory undertakers on land acquired under this Order.

### **Time limit for exercise of powers of acquisition**

**29.—**(1) The powers contained in this Order to acquire land or rights over land compulsorily, and the power contained in article 24 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

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(4) 1990 c. 8.

(2) Paragraph (1) shall not prevent the Borough remaining in possession of land in accordance with article 24 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(3) The power to acquire compulsorily any land shall for the purposes of this article be deemed to have been exercised if notice to treat has been served or deemed to have been served in respect of that land.

#### **As to certain lands**

**30.** The Borough having acquired the lands referred to in article 21 may hold, use or dispose of those lands for or in connection with the development and improvement of the river and areas adjacent to the river.

#### **Agreements with adjoining owners**

**31.—**(1) The Borough may enter into and carry into effect agreements with any person being the owner of, or having an interest in, either any land adjoining any portion of the authorised works, or any land which may be acquired by the Borough under this Order, with respect to the sale by the Borough to him (subject to such reservations, restrictions or other provisions as the Borough sees fit) of any land not required for the authorised works.

(2) The Borough may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land or right required by the Borough by virtue of this Order.

#### **Certification of plans etc.**

**32.** The Borough shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plan and the works plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.