

1999 No. 1555

TRANSPORT AND WORKS

TRANSPORT

**The Railtrack (Luton Parkway Station: Land Acquisition)
Order 1999**

Made - - - - *11th May 1999*

Coming into force *3rd June 1999*

Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions (“the Secretary of State”), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992^(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992^(b) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the objections to that application have been withdrawn;

And whereas the Secretary of State, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 10th May 1999;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 3, 4, 7 and 11 of, Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Railtrack (Luton Parkway Station: Land Acquisition) Order 1999 and shall come into force on 3rd June 1999.

Interpretation

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965^(c);

“the Application Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;

“the book of reference” means the book of reference described in rule 7(5) of the Applications Rules certified by the Secretary of State as the book of reference for the purposes of this Order;

“the land plan” means the plan described in rule 7(3) of the Applications Rules certified by the Secretary of State as the land plan for the purposes of this Order;

“the new Luton Parkway railway station” means the new railway station to be constructed on land adjoining Gypsy Lane in the borough of Luton;

^(a) S.I. 1992/2902.
^(b) 1992 c. 42.
^(c) 1965 c. 56.

“Railtrack” means Railtrack PLC.

(2) Where the book of reference or the land plan was or were revised before this Order was made, any reference to it or them in this Order is to the latest version as certified under article 10 below.

(3) 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.

Power to acquire land

3. Railtrack may compulsorily so much of the land shown numbered 4 on the land plan and described in the book of reference as may be required for or in connection with the provision of the new Luton Parkway railway station together with access and parking facilities and it may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

Application of Part I of Compulsory Purchase Act 1965

4.—(1) Part I of the 1965 Act, 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(a) 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 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.

Powers to acquire new rights

5.—(1) Railtrack may compulsorily acquire such easements or other rights over any land referred to in article 3 above as may be required for any purpose for which that land may be acquired by it under that article, by creating them as well as by acquiring easements or other rights already in existence.

(2) Railtrack may compulsorily acquire such easements or other rights over the land shown numbered 2 on the land plan and described in the book of reference as it shall require in order to make provision for access to the new Luton Parkway railway station by vehicles of the emergency services.

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

(4) Schedule 1 to this Order shall have 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.

Disregard of certain interests and improvements

6.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land 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) above—

“relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned; and

(a) 1981 c. 67.

“the tribunal” means the Lands Tribunal.

Extinction or suspension of private rights of way

7.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is sooner.

(2) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(a).

(3) 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(b) (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

8. No notice to treat shall be served under Part I of the 1965 Act as applied to the acquisition of land by article 4 above after the end of the period of five years beginning with the day on which this Order comes into force.

Acquisition: supplementary matters

9.—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to land to which article 3 above applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

(2) In their application by virtue of paragraph (1) above, Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 shall have effect as if references in those Parts to “the undertaking” were references to Railtrack’s railway undertaking.

Certification of plan etc.

10. Railtrack shall, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plan to the Secretary of State for certification that they are, respectively, the book of reference and land plan referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Statutory undertakers etc.

11. The provisions of Schedule 2 to this Order (which contains provisions relating to statutory undertakers) shall have effect.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

11th May 1999

ASD Whybrow
Head of Charging and Local Transport Division,
Department of the Environment, Transport and the Regions

(a) 1961 c. 33.

(b) 1990 c. 8.

SCHEDULES

SCHEDULE 1

Article 5

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973^(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 below—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5 below—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which

(a) 1973 c. 26.

the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Railtrack (Luton Parkway Station: Land Acquisition) Order 1999 (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey),
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in

that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 2

Article 11

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1. Subject to the following provisions of this Schedule, sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land which has been acquired by Railtrack under this Order; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282 which provide for the payment of compensation) shall have effect accordingly.

2. In the provisions of the 1990 Act, as applied by paragraph 1 above, references to the appropriate Minister are references to the Secretary of State.

3. Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by paragraph 1 above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from Railtrack compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

4. Paragraph 3 above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from Railtrack compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

5. The provisions of the 1990 Act mentioned in paragraph 1 above, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part III of the New Roads and Street Works Act 1991(a) applies.

6. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(c) applies, to run a public telecommunications system, or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

“public utility undertakers” has the same meaning as in the Highways Act 1980(d).

(a) 1991 c. 22.
(b) 1990 c. 8.
(c) 1984 c. 12.
(d) 1980 c. 66.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order confers powers on Railtrack PLC for the compulsory acquisition of land and rights over land at or in the vicinity of the Luton Retail Park in connection with the provision of the proposed new Luton Parkway railway station. The Order does not authorise the construction of the station or any other development.

A copy of the land plan and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Railtrack PLC, Railtrack House, Euston Square, London NW1 2EE.

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