
STATUTORY INSTRUMENTS

2005 No. 8

The East Midlands Parkway Station
(Land Acquisition) Order 2005

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the East Midlands Parkway Station (Land Acquisition) Order 2005 and shall come into force on 28th January 2005.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“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;

“the Company” means Midland Main Line Limited whose registered office is at 75 Davies Street, London W1K 5HT;

“the East Midlands Parkway Station” means the new Parkway railway station with parking and associated access and highway works to be constructed on the land shown on the land plan;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

“the limits of land to be acquired” means the lines marked “Limit of Land to be Acquired” shown on the land plan;

“the limits of land to be temporarily used” means the lines marked “Limit of Land to be Temporarily used” shown on the land plan;

“occupier” means a person occupying land under a tenancy for a period of more than a month (not being a statutory tenant within the meaning of the Rent Act 1977(3) or the Rent (Agriculture) Act 1976(4));

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1977 c. 42.
(4) 1976 c. 80.

- “the Planning Act” means the Town and Country Planning Act 1990⁽⁵⁾;
“the Street Works Act” means the New Roads and Street Works Act 1991⁽⁶⁾;
“the tribunal” means the Lands Tribunal.

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

(3) All measurements stated in any description of lands in the book of reference shall be construed as if the words “or thereabouts” were inserted after each measurement.

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Power to acquire land

3.—(1) The Company may acquire compulsorily so much of the land shown on the land plan within the limits of land to be acquired and described in the book of reference as may be required for or in connection with the provision of the East Midlands Parkway Station and it may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) This article is subject to article 6(8).

Application of Part I of the 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⁽⁷⁾ 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 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.

Powers to acquire new rights

5.—(1) The Company may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 3 as may be required for any purpose for which that land may

(5) 1990 c. 8.
(6) 1991 c. 22.
(7) 1981 c. 67.

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 of the 1965 Act (as substituted by paragraph 5 of Schedule 1 to this Order), where the Company acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in it.

(3) 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.

Temporary use of land

6.—(1) The Company may, in connection with provision of the East Midlands Parkway Station—

- (a) enter upon and take temporary possession of so much of the land shown on the land plan within the limits of land to be temporarily used and described in the book of reference as may be required for the purposes of the provision of a working site storage for materials and equipment and access for construction purposes, and
- (b) remove any buildings and vegetation from that land.

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

(3) The Company 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 East Midlands Parkway Station.

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

(5) The Company 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 conferred by this article.

(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 under Part I of the 1961 Act.

(7) Without prejudice to article 16, 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 conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the Company shall not be precluded from acquiring new rights over any part of that land under article 5.

(9) Where the Company 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.

Compensation

Disregard of certain interests and improvements

7.—(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) “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.

Supplementary

Acquisition of part of certain properties

8.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4) 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 Company 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 Company 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the Company 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) 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 Company 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 that specified in the notice, the Company 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 Company 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 rights affecting land

9.—(1) All private rights, easements, covenants and licences over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the acquisition of the land by the Company, whether compulsorily or by agreement, or

(b) on the entry on the land by the Company under section 11(1) of the 1965 Act, whichever is sooner.

(2) All private rights, easements, covenants and licences over land of which the Company takes temporary possession under this Order shall be suspended and unenforceable for as long as the Company remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right, easement, covenant or licence under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

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

Time limit for exercise of powers of acquisition

10.—(1) No notice to treat shall be served under Part I of the 1965 Act as applied to the acquisition of land by article 4 after the end of the period of 5 years beginning with the day on which this Order comes into force.

(2) The powers conferred by article 6 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

Acquisition: supplementary matters

11.—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981⁽⁸⁾ (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 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), 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 the Company’s railway undertaking.

PART 3

MISCELLANEOUS AND GENERAL

Transfer of functions under Order

12.—(1) In this article—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the Company have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraphs (2) or (3).

(2) The Company may enter into and carry into effect an agreement to sell, lease, charge, or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of any land held by the Company for the purpose of, or in connection with, the East Midlands Parkway Station.

(3) The Company may, with the consent of the Secretary of State, enter into and carry into effect an agreement with any other person with respect to the transfer of all or any of its functions under this Order, either unconditionally or subject to such conditions or upon the happening of such events as may be specified in the agreement.

(4) Any agreement or undertaking entered into by the Company in connection with the promotion of this Order shall, so far as relevant to any functions under this Order exercisable by the transferee under a transfer agreement, be binding on the transferee, and the exercise of the powers of any enactment including all or any part of the rights and powers conferred on the Company by or under this Order by any person in pursuance of a transfer agreement shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those rights and powers were exercised by the Company.

(5) Where a transfer agreement is entered into references in this Order to the Company shall, to such extent and for such purposes as the agreement so provides, have effect as references to the transferee.

(6) A transfer agreement may confer on the transferee the power of the Company to enter into a transfer agreement under this article in respect of any functions or property transferred to the

(8) 1981 c. 67.

transferee, and the provisions of this article shall apply in relation to the exercise of such power by such transferee as if references to the Company were references to the transferee.

Statutory undertakers etc.

13. The provisions of Schedule 2 to this Order shall have effect.

Certification of plan etc.

14. The Company 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 true copies of, 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.

Service of notices

15.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978⁽⁹⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

16. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

(9) 1978 c. 30.

PART 4

Protection for Network Rail

17.—(1) For the protection of Network Rail the following provisions shall, unless otherwise agreed in writing between the Company and Network Rail for the purposes of this article, apply and have effect.

(2) In this article—

“railway property” means any railway of Network Rail, and any works, apparatus and equipment of Network Rail connected therewith and includes any lands held or used by Network Rail for the purposes of such railway or works, apparatus and equipment; and

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes and for this purpose associated company means any company which is within the meaning of section 763 of the Companies Act 1985⁽¹⁰⁾ the holding company of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited.

(3) The Company shall not under the powers confirmed pursuant to this Order acquire or use or acquire new rights over any railway property unless such acquisition or use is with the consent of Network Rail.

(4) The Company shall not in the exercise of powers conferred by or under this Order prevent pedestrian or vehicular access to the railway property unless preventing such access is with the consent of Network Rail.

Signed by authority of the Secretary of State for Transport

Ellis Harvey
Head of the Transport and Works Act Orders
Unit,
Department for Transport

7th January 2005

⁽¹⁰⁾ 1985 c. 6.