
STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part of certain properties

40.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 manufactory 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 promoter 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, the question of whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the promoter 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 promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter 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 promoter 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 promoter 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 to 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.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the promoter 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.

Extinction or suspension of private rights of way

41.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the promoter which is within the permanent limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by the promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order shall be suspended and unenforceable for as long as the promoter remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.) applies.

- (6) Paragraphs (1), (2) and (3) shall have effect subject to—
- (a) any notice given by the promoter before the completion of the acquisition of the land, the promoter’s appropriation of it, the promoter’s entry onto it or the promoter’s taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
 - (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the promoter and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Open space in the City of Nottingham

42.—(1) The City open space shall not vest in the promoter until the promoter has acquired the City exchange land and, upon a request made by the promoter, the City Council has certified that a scheme for the provision of the City exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the City exchange land shall vest in the City Council subject to the like rights, trusts and incidents as attached to the City open space and, on the vesting of the City exchange land, the City open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

- (3) In this article—
- (a) “the City exchange land” means the land in the City numbered 726, 727 and 728 on the works and land plans and coloured green on the open space and exchange land plans; and
 - (b) “the City open space” means the open space comprised in the land in the City shown numbered 716, 724 and 725 on the works and land plans and coloured red on the open space and exchange land plans.

Open space in the Borough of Broxtowe

43.—(1) Upon a request made by the promoter, Broxtowe Borough Council may certify that a scheme for the provision of the Broxtowe exchange land as open space has been implemented to its satisfaction.

(2) Upon Broxtowe Borough Council certifying the implementation to its satisfaction of a scheme as described in paragraph (1), the Broxtowe exchange land shall vest in Broxtowe Borough Council subject to the like rights, trusts and incidents as attached to the Broxtowe open space and, on the vesting of the Broxtowe exchange land, the Broxtowe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

- (3) In this article—
- (a) “the Broxtowe exchange land” means the land in the Borough of Broxtowe shown numbered 14 on the works and land plans and hatched green on the open space and exchange land plans; and
 - (b) “the Broxtowe open space” means the open space comprised in land in the Borough of Broxtowe shown numbered 26, 32, 33, 37, 42, 66, 262, 504, 507, 510 and 511 on the works and land plans and hatched red on the open space and exchange land plans.

Open space in the Borough of Rushcliffe

44.—(1) The Rushcliffe open space shall not vest in the promoter until the promoter has acquired the Rushcliffe exchange land and, upon a request made by the promoter, Rushcliffe Borough Council has certified that—

- (a) the Rushcliffe exchange land is no less in area than the Rushcliffe open space; and
- (b) a scheme for the provision of the Rushcliffe exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the Rushcliffe exchange land shall vest in Rushcliffe Borough Council subject to the like rights, trusts and incidents as attached to the Rushcliffe open space and, on the vesting of the Rushcliffe exchange land, the Rushcliffe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “the operational land” means so much of the land shown numbered 1142 on the works and land plans as is required for the operation, maintenance and use of the authorised tramway following the completion of the construction of Work No.15;
- (b) “the Rushcliffe exchange land” means the land shown numbered 1140, 1141, 1142, 1143, 1144 and 1145 on the works and land plans and cross-hatched green on the open space and exchange land plans, with the exclusion of the operational land; and
- (c) “the Rushcliffe open space” means the open space comprised in land in the Borough of Rushcliffe shown numbered 1042 on the works and land plans and cross-hatched red on the open space and exchange land plans.

Time limit for exercise of powers of acquisition

45.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 30 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 31 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 36 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent the promoter from remaining in possession of land in accordance with article 36 after the end of that period, if the land was entered and possession of it was taken before the end of that period.