

2001 No. 1369

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Greater Manchester (Light Rapid Transit System) (Land Acquisition) Order 2001

Made - - - - - 9th February 2001

Coming into force 2nd March 2001

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Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions 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 Act”), for an Order under sections 1 and 5 of the Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the Act;

And whereas the Secretary of State, having considered the report of the person who held the inquiry, 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 8th February 2001;

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

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Greater Manchester (Light Rapid Transit System) (Land Acquisition) Order 2001 and shall come into force on 2nd March 2001.

Interpretation

2.—(1) In this Order—

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

“the 1994 Act” means the Greater Manchester (Light Rapid Transit System) Act 1994^(d);

“authorised works” means the works authorised by the 1994 Act;

(a) S.I. 1992/2902.

(b) 1992 c. 42.

(c) 1965 c. 56.

(d) 1994 c. vi.

“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 Executive” means Greater Manchester Passenger Transport Executive;

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

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

“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 the land (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of, the land under a lease or agreement, where the unexpired term of that lease or agreement exceeds 3 years;

“transit system” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels, and
- (b) are laid in part along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“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.

PART II

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

3.—(1) The Executive may acquire compulsorily so much of the land shown on the land plans and described in the book of reference as may be required for the purposes of the authorised works and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its transit system undertaking.

(2) The Executive shall not under the powers of this Order acquire compulsorily any interest in the land numbered 17 to 21 inclusive on the land plans.

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^(c) 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) 1977 c. 42. See section 2(1) and Schedule 1, as amended by the Housing Act 1980 (c. 51), sections 76 and 153(2) and Schedule 26, and the Housing Act 1988 (c. 50), section 39(1).

^(b) 1976 c. 80. See section 4, as amended by the Rent Act 1977, section 155 and Schedule 23, and the Housing Act 1980, section 76(3).

^(c) 1981 c. 67.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

5.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981^(a) shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1) above, the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in the London Gazette and in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (i) in subsection (1), after “publication” there shall be inserted “in the London Gazette or in a local newspaper circulating in the area in which the land is situated”, and
- (ii) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 3 above.

Powers to acquire new rights

6.—(1) The Executive 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 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 Executive acquires a right over land under paragraph (1) above the Executive 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.

Powers to acquire subsoil only

7.—(1) The Executive may compulsorily acquire so much of the subsoil of the land referred to in article 3 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(a) 1981 c. 66.

(2) Where the Executive acquires any part of the subsoil of land under paragraph (1) above the Executive shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 10 below from applying where the Executive acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Rights under or over streets

8.—(1) The Executive may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose connected with or ancillary to its transit system undertaking.

(2) The power under paragraph (1) above may be exercised in relation to a street without the Executive being required to acquire any part of the street or any easement or right in the street and the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

(3) Any person, who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) above is exercised without the undertaker acquiring any part of that person's interest in the land and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(a).

(4) Paragraph (2) above shall not apply in relation to—

(a) any subway or underground building, or

(b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street.

Disregard of certain interests and improvements

9.—(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.

Acquisition of part of certain properties

10.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 4 above) 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 Executive 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.

(a) 1961 c. 33.

(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 Executive 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 Executive is authorised to acquire compulsorily under this Order.

(8) If the Executive 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 Executive 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 Executive 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 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 Executive 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 of private rights of way

11.—(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 the Executive, whether compulsorily or by agreement, or
- (b) on the entry on the land by the Executive under section 11(1) of the 1965 Act,

whichever is the sooner.

(2) All private rights of way over land owned by the Executive which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the Executive.

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

(4) 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).

Time limit for exercise of powers of acquisition

12. The powers conferred by this Order to acquire any land shall be deemed to have been exercised if, before the end of the period of 5 years beginning on the day on which this Order comes into force, notice to treat has been served in respect of the land but, subject thereto, the powers shall cease to have effect at the end of that period.

PART III

MISCELLANEOUS AND GENERAL

Certification of plans etc.

13. The Executive 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 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.

Modification of the Greater Manchester (Light Rapid Transit System) Act 1994

14.—(1) Sections 43 (for protection of electricity, gas and water undertakers) and 44 (For protection of North West Water Authority) of the Greater Manchester (Light Rapid Transit System) Act 1988(b) as applied by section 11 of the 1994 Act shall apply to the powers of compulsory acquisition contained in this Order as they applied to the powers of compulsory acquisition contained in the 1994 Act and the reference to the deposited plans in subsection (3) of section 43 shall be taken to include a reference to the land plan prepared for the purposes of this Order.

(2) The following provisions of the 1994 Act shall also apply to the powers of compulsory acquisition contained in this Order:

section 18 (For protection of British Railways Board)

section 19 (For protection of telecommunications operators)

section 20 (For protection of Trustees of King Street Baptist Church, Oldham).

For protection of Railtrack PLC

15. The provisions of Schedule 2 (for the protection of Railtrack PLC) shall have effect.

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

Ellis Harvey
Head of the Transport and Works Act
Processing Unit,
Department of the Environment,
Transport and the Regions

9th February 2001

(a) 1961 c. 33.

(b) 1988 c. i.

**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 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:—

(a) 1973 c. 26.

“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 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 Greater Manchester (Light Rapid Transit System) (Land Acquisition) Order 2001 (“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, without 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 15

FOR PROTECTION OF RAILTRACK PLC

1. For the protection of Railtrack PLC the following provisions shall, unless otherwise agreed in writing between the Executive and Railtrack PLC, have effect.
2. In this article “railway property” has the same meaning as in section 18 (for protection of British Railways Board) of the 1994 Act.
3. The Executive shall not in the exercise of article 8 above appropriate any works of Railtrack PLC.
4. Except with the consent of Railtrack PLC—
 - (a) the Executive shall not in the exercise of the powers of this Order or the 1994 Act prevent pedestrian or vehicular access to any railway property, and
 - (b) the provisions of article 11 above shall not apply to any right of access of Railtrack PLC to any railway property.
5. The consent of Railtrack PLC for the purpose of paragraph 4 above shall not be unreasonably withheld but may be given subject to reasonable conditions.
6. Section 18 (For protection of British Railways Board) of the 1994 Act shall have effect as if—
 - (a) references to the railways board were references to Railtrack PLC,
 - (b) after paragraph (18) there were inserted the following paragraph—

“(18A)(a) The compensation payable under paragraph (18) above shall include a sum equivalent to the relevant costs.

 - (b) Subject to the terms of any agreement between Railtrack PLC and the relevant train operators regarding the terms of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any compensation which it receives under this paragraph which relates to the relevant costs of that train operator.
 - (c) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction in the use of Railtrack PLC’s railway network as a result of the construction, maintenance or failure of the specified works or any such failure act or omission as is mentioned in paragraph (18) above; and

“train operator” means any person who operates trains in accordance with a licence under section 8 of the Railways Act 1993(a) or an exemption under section 7 of that Act.
 - (d) The obligation under this paragraph to pay Railtrack PLC the relevant costs shall in the event of default be enforceable direct by the train operator concerned.”.
7. Any dispute arising between the Executive and Railtrack PLC under this article (other than a dispute as to the meaning or construction of this article) shall be referred to and settled by arbitration in the manner provided by section 47 of the Greater Manchester (Light Rapid Transit System) Act 1988(b).

(a) 1993 c. 43.

(b) 1988 c. i.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers fresh powers of compulsory acquisition on Greater Manchester Passenger Transport Executive for the purposes of the Greater Manchester (Light Rapid Transit System) Act 1994. The land affected was subject to powers of compulsory acquisition under that Act which are now time expired.

A copy of the land plans and the book of reference are available for inspection free of charge during working hours at the offices of the Executive, 9 Portland Street, Piccadilly Gardens, Manchester M60 1HX.

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TRANSPORT AND WORKS, ENGLAND

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