
STATUTORY INSTRUMENTS

2002 No. 412

The Chester Guided Busway Order 2002

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

15.—(1) Subject to paragraph (2) of this article and paragraph 3 of Part VII of Schedule 6 to this Order, the Council may acquire compulsorily—

- (a) so much of the land 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 authorised works; and
- (b) without prejudice to the generality of sub-paragraph (a), so much of the land specified in column (1) of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (2) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to the busway system.

(2) This article does not authorise the acquisition of the land in the City of Chester comprising plot nos. 14 and 23 on the land plans.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) In its application by virtue of paragraph (1), 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 one or more local newspapers circulating in the locality of the authorised works.”

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

(1) 1981 c. 66.

- (5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be inserted—
- “(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)—
- (a) in subsection (1), after “publication” there shall be inserted “in the London Gazette and in one or more local newspapers circulating in the locality of the authorised works”; and
 - (b) 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)”(2) shall be omitted.
- (8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 17.

Application of Part I of the Compulsory Purchase Act 1965

- 17.—(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 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.

Powers to acquire new rights

- 18.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 15 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 4 to this Order), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in it.
- (3) Schedule 4 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.

Rights in streets

19.—(1) The Council may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the limits of land to be acquired as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose connected with or ancillary to the busway system.

(2) The power under paragraph (1) may be exercised in relation to a street without the Council being required to acquire any part of the street or any easement or right in 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) is exercised without the Council 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.

(4) Paragraph (2) 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 onto the street.

(5) For the avoidance of doubt, the powers given by articles 6, 7 and 8 shall, where their exercise requires appropriation and use of sub-soil or air-space under this article or the acquisition of land or a right in land, be limited to the limits of land to be acquired.

Compensation

Disregard of certain interests and improvements

20.—(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

21.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 17) 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 Council 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 Council agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines 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 determines 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 determines 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 Council is authorised to acquire compulsorily under this Order.

(8) If the Council agrees to take the land subject to the counter-notice, or if the tribunal determines 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 Council 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 Council 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 Council 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

22.—(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 Council, whether compulsorily or by agreement;
or

(b) on the entry on the land by the Council 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.

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

Time limit for exercise of powers of acquisition

23. 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 I of the 1965 Act, as applied to the acquisition of land by article 17; and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 16.