

The High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order

Draft Order and associated documents

2. Explanatory Memorandum

**DEPARTMENT FOR TRANSPORT
2016**

Transport and Works Act 1992

**Transport and Works (Applications and Objections Procedure)
(England and Wales) Rules 2006**

**THE HIGH SPEED RAIL (LONDON – WEST MIDLANDS) (GREATMOOR
RAILWAY SIDINGS ETC.) ORDER**

Explanatory Memorandum

Rule 10(2)(b)

1. This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006¹.
2. Application for the Order has been made by High Speed Two (HS2) Limited ("the Company"), the executive non-departmental public body responsible for delivering and promoting the UK's new high speed rail network. The Order would confer powers on the Company to construct and operate railway sidings adjacent to the Aylesbury Link Railway (also known as the Marylebone to Claydon Junction Line (MCJ)) and associated works for the transfer of waste and spoil material, to the Calvert Landfill and Greatmoor Energy from Waste Facility in the District of Aylesbury Vale, County of Buckinghamshire.
3. The works are required to be constructed in connection with Phase One of the proposed High Speed Railway between London and the West Midlands which will be authorised to be constructed by the High Speed Rail (London - West Midlands) Bill ("the Bill") currently before Parliament. The proposed railway sidings will replace existing railway sidings and facilities for the transfer of waste located near the village of Calvert also in the District of Aylesbury Vale which are owned by Network Rail and currently operated by FCC Waste Services (UK) Limited ("FCC").
4. The high speed railway line proposed to be authorised by the Bill will run parallel with, and to the west of, the Aylesbury-Link railway line which will be required to be realigned by up to 50 metres to the east to accommodate the new railway. The route will then pass along the east edge of Calvert in a cutting and through the northern edge of the existing railway sidings used by FCC.
5. The Bill sought powers to relocate the sidings to the east of the Aylesbury Link railway and to the north of Sheephouse Wood ("the northern option"). Amendments to the Bill and the location of the sidings were made through Additional Provision 4 ("AP4") which was deposited in the House of Commons in October 2015. AP4 sought to relocate the existing sidings to a new location east of Calvert Village and north of Sheephouse Wood ("the northern option"). However, a number of stakeholders, including FCC, Buckinghamshire County Council, Aylesbury Vale District Council, Calvert Green Parish Council, John Bercow MP and local residents petitioned against these proposals and requested that the existing sidings should be relocated to a location to the south of Sheephouse Wood ("the southern option").
6. The Company offered an assurance to FCC confirming that the Secretary of State would require the nominated undertaker to promote a Transport and Works Act

¹ S.I. 2006/1466.

Order (TWAO) to authorise the construction of the sidings to the south of Calvert at Greatmoor in place of the scheme proposed under AP4.

7. The House of Commons Select Committee report setting out its recommendations on the High Speed Rail (London – West Midlands) Bill, endorsed the Promoter’s suggestion to relocate the sidings to the south through a TWA Order.
8. In addition to the new railway sidings (Works Nos. 1 to 3) the works include 2 bridges over the railway sidings (Works Nos. 4 and 6) and an access road (Work No.5). The bridges over the railway sidings also form part of the HS2 Phase One scheme. The proposals widen one bridge slightly to provide vehicular access to the sidings and lengthen both bridges to span the additional tracks associated with the sidings.
9. The Order also authorises the compulsory acquisition and use of land for the purposes of the works and confers powers in connection with the construction and operation of the works.
10. Certain provisions in the draft Order are based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006² (“the model clauses”) as well as precedents contained in other orders made under the 1992 Act
11. In addition, clause 52 of the Bill provides for any provision of the Bill, once enacted, to be applied in an order made under the 1992 Act where required for “Phase One purposes”. Normally an order incorporates all of the powers that are required to authorise the construction and maintenance of the works included in the order. Of course, at the time of the application for the Order, the Bill has not yet received Royal Assent but it is very likely to have been enacted before the time when the Secretary of State will be in a position to determine whether or not to make the Order.
12. Article 21 of the draft Order therefore applies certain provisions of the Bill specified in Schedule 7 to the draft Order by virtue of the powers which will be conferred by clause 52 of the Bill in anticipation of the Bill being enacted. If for any reason the Bill were not to be enacted, the Company would not proceed with the application for the Order.
13. There are precedents for the incorporation of provisions of an Act by an Order made under the 1992 Act in relation to the Crossrail Project. A provision very similar to clause 52 of the Bill is included in the Crossrail Act 2008 (see section 48) and the following two Orders were made under the 1992 Act incorporating provisions of the 2008 Act by virtue of section 48 of the 2008 Act-

² S.I. 2006/1954.

- 13.1 The Crossrail (Paddington Station Bakerloo Line Connection) Order 2014 (SI 2014/310); and
 - 13.2 The Crossrail (Plumstead Sidings) Order 2013 (SI 2013/781).
14. Each of the above orders incorporated (with the necessary adaptations) certain powers conferred under the Crossrail Act 2008 to complement the powers expressly including in each of the respective orders in a similar way to that proposed under by article 22 of, and Schedule 8 to, the draft Order.

PART 1

PRELIMINARY

Preliminary provisions

15. **Article 1** (*Citation and commencement*) provides for the commencement and citation of the Order.
16. **Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order.
17. **Article 3** (*Appointed day*) provides for the article 28 (repeals of principal Act) to come into force on a day to be appointed by the Company.

PART 2

WORKS PROVISIONS

Principal Powers

18. **Article 4** (*Power to construct and maintain works*) authorises the construction and maintenance of the principal works proposed ("the scheduled works") which are described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. Article 3 also provides for the construction and maintenance of ancillary works necessary or expedient for the purposes of the authorised works. These ancillary works are specified in paragraph (3) and include, in an extension to the model clauses, descriptions of types of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works. In addition, article 3 enables the Company to carry out and maintain landscaping and other works to mitigate the effects of construction, maintenance or operation of the scheduled works as well as works which are for the benefit or protection of land.
19. **Article 5** (*Power to deviate*) provides for limits within which the Company can deviate in the construction and maintenance of the proposed works. The lateral limits are shown on the deposited plans accompanying the application for the

Order and the vertical limits are specified in paragraph (2) of article 5 by reference to the levels of the works shown on the sections accompanying the application.

Streets

20. **Article 6** (*Stopping up of streets and use of private roads for construction*) provides for the permanent stopping up of certain streets identified in Schedule 3. Article 6(2) prevents any stopping up of those streets identified in Part 1 of Schedule 3 unless one of the conditions specified in article 6(2) applies. Article 6(3) prevents any stopping up of those streets identified in Part 2 of Schedule 3 unless one of the conditions specified in article 6(4) applies. Article 6(6) makes express provision for private roads to be used for the purpose of constructing of the authorised works. Article 6(7) provides for the payment of compensation.
21. **Article 7** (*Temporary stopping up and diversion of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 4, the Company must consult the relevant street authority. If the Company wishes temporarily to stop up streets which are not so specified in Schedule 4, it will need to obtain the consent of the relevant street authority. A street authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

22. Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land for the purposes of, or in connection with, the authorised works. It further provides for the payment of compensation.
23. **Article 8** (*Power to acquire land*) confers on the Company powers of compulsory acquisition of the land which is within the limits of deviation as well as the land specified in Schedule 2 to the Order which is within the limits of land to be acquired or used identified on the lands plans and described in the book of reference, for or in connection with the authorised works. It also provides for any land so acquired to be used for other purposes connected with or ancillary to Phase One Purpose which has the same meaning as in clause 66 of the Bill.
24. **Article 9** (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965³ including modifications to the application of Section 11 of the Compulsory Purchase Act 1965 to amend the period of notice to enter onto land for the

³ 1965 c.56.

purpose of acquiring rights or easements over land. This provision is preceded in, for example, paragraph 3(3) of Part 2 of Schedule 6 of the Crossrail Act 2008⁴.

25. **Article 10** (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981⁵ and provides for that Act to have effect subject to certain modifications. It gives the Company the option to acquire land by this method rather than through the notice to treat procedure.
26. **Article 11** (*Power to acquire new rights*) makes ancillary provision where rights over land are required. Article 11 authorises the acquisition of rights required in connection with the Project. Schedule 6, which is introduced by article 11, makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisition.

Compensation

27. **Article 12** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Lands Chamber of the Upper Tribunal shall disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.
28. **Article 13** (*Set-off for enhancement in value of retained land*) provides that, in assessing the compensation payable to any person in respect of the acquisition of any land or new rights over land, the Lands Chamber Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

Supplementary

29. **Article 14** (*Acquisition of part of certain properties*) provides an alternative procedure where the Company acquire compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965.
30. **Article 15** (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the

⁴ 2008 c.18.

⁵ 1981 c.66.

suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

31. **Article 16** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land.

PART 4

MISCELLANEOUS AND GENERAL

32. **Article 17** (*Planning permission*) modifies planning legislation in relation to the treatment of land as operational land which is subject to a direction as to deemed planning permission pursuant to section 90(2A) of the Town and Country Planning Act 1990⁶.
33. **Article 18** (*Powers of disposal, agreements for operation, etc.*) enables the Company with the consent of the Secretary of State to sell, lease or otherwise dispose of the works authorised under the Order and to enter into agreements with respect to the construction, maintenance and use of the works.
34. **Article 19** (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc, of the authorised works.
35. **Article 20** (*Defence to proceedings in respect of statutory nuisance*) provides the Company with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990⁷ if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974⁸ or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonable be avoided. Article 31 of the Croxley Rail Link Order 2013⁹ is a precedent.
36. **Article 21** (*Application of principal Act to authorised works*) is based on a similar provision in the Crossrail (Paddington Station Bakerloo Line Connection) Order 2014 (SI 2014/310) and the Crossrail (Plumstead Sidings) Order 2013 (SI 2013/781).
37. It introduces Schedule 7 to the Order which applies specific provisions of the Bill to the Order, through section 52 of the Act. Section 52 permits an order under the Transport and Works Act 1992 which relates to a relevant Phase One matter

⁶ 1990 c.8

⁷ 1990 c.43

⁸ 1974 c.40

⁹ S.I. 2013/1967

to apply any provision of the Act, with or without modifications, to anything authorised by the order so far as relating to that matter. Phase One matters are set out in paragraph (2) of clause 52 and includes a power exercisable to be exercisable in connection with the works which will be authorised by the Bill as well as any other works carried out or to be carried out for Phase One purposes. Articles 21(2) and 21(3) give effect to this in providing that the Order shall be construed as part of the principal Act, and in any application for approval or consent under the provisions of that Act (including those as applied by the Order) it shall be competent for the deciding body to have regard to the combined effect of the principal Act together with the Order.

38. The particular provisions relating to Phase One of the High Speed 2 project applied by Schedule 7 are sections 13 (Extinction of Rights Statutory Undertakers); section 18 (Enforcement of restrictions on land use), paragraphs (2) and (10) of section 22 (Power to disapply deemed planning permission), sections 28 (Consecrated land), 29 (Commons and open spaces), 30 (Trees), 42 (Co-operation), 43 (Transfer of functions relating to works), 50 (Enforcement of environmental covenants) and 63 (Arbitration); paragraphs 1 (Authority to survey and investigate land etc), 2 to 6 (Support of buildings), 7 (Trees on neighbouring land), 8 (Discharge of water) and 10 (Electronic communications apparatus) of Part 1 (further and supplementary provisions) and paragraphs 12 to 14 of Part 2 (Exercise of powers of entry etc) of Schedule 2 (works), paragraphs 10, 12, 14, 16 and 17 (Construction and Maintenance of Highways) of Part 3 of Schedule 4 (Highways); paragraph 4 (Acquisition of Land Act 1981) of Schedule 6 (Acquisition of Land; Application Compulsory Purchase Legislation); (paragraphs 1, 2 and 3 (Water abstraction and impounding), 5 (Floods), 6 (Drainage) and 9 (Interpretation) of Schedule 21 (Water); paragraphs 1 (Building regulations), 2 (Drain repairs), 3 (Drain disconnections) and 6 (interpretation) of Schedule 22 (Buildings); paragraph 3 (Permit schemes) of Schedule 24 (Street works); paragraphs 1 (Control of noise on construction sites) and 4 (Disapplication of sections 61(9) and 65(8) of Control of Pollution Act 1974) of Schedule 26 (Noise); paragraphs 1 (Highway (Railway Crossings) Act 1839 (c.45)), 3 (Railway Regulation Act 1842 (c.55), 4 (Railways Clauses Consolidation Act 1845 (c.20)), 5 (Railways Clauses Act 1863 (c.92)) and 7 (British Transport Commission Act 1949 (c.xxix)) of Schedule 28 (application of other railway legislation etc); Schedule 29 (Arbitration between railway operators); and Parts 2 (Electricity, gas, water and sewerage undertakers), 3 (Electronic communications code networks) and 5 (Land drainage, flood defence, water resources and fisheries) of Schedule 32 (Protective provisions).
39. **Article 22** (*Modification of provisions in an agreement relating the protection of Network Rail Infrastructure Limited*) makes modifications to an agreement between the Secretary of State for Transport and Network Rail Infrastructure Limited relating to protective provisions in respect of the High Speed 2 Project and applies those provisions to the works authorised by the Order. Paragraph

(1) makes the provisions of the agreement binding on the Company which is not a party to the agreement.

40. **Article 23** (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with the Company's apparatus.
41. **Article 24** (*Trespass*) makes it a criminal offence for anyone to trespass on any land being occupied by the Company for the purpose of constructing the new station entrance. This article does not follow the corresponding model clause which extends the offence to the authorised railway. Once constructed the station building will be subject to Transport for London's byelaws. Accordingly, the article can be confined to the land used for the construction of the scheduled works.
42. **Article 25** (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under certain provisions of the Bill as applied under the Order.
43. **Article 26** (*Certification of plans etc.*) requires the Company to submit the book of reference, the sections, the land plans and the works plans to the Secretary of State for certification after the making of this Order.
44. **Article 27** (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.
45. **Article 28** (*Repeals of the principal Act*) repeals the provisions of the Bill relating to the "the northern option" (explained in paragraph 5 above).
46. **Article 39** (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.

SCHEDULES

47. **Schedule 1** (*Scheduled works*) provides a description of the scheduled works to be constructed as authorised by the Order.
48. **Schedule 2** (*Acquisition of certain land for ancillary works*) identifies land outside of limits of deviation which may be acquired or used under the Order.
49. **Schedule 3** (*Streets to be stopped up*) provides a table of the streets which are to be stopped up under the Order with a substitute to be provided (Part 1) and where no substitute is to be provided (Part 2).
50. **Schedule 4** (*Streets to be temporarily stopped up*) provides a table of the streets to be temporarily stopped up under the Order.

51. **Schedule 5** (*Land in which only new rights may be acquired*) specifies land over which only new rights may be acquired.
52. **Schedule 6** (*Modification of compensation and compulsory purchase enactments for creation of new rights*) overrides the application of enactments regarding the compulsory purchase of land and makes necessary modifications in their application in relation to the compulsory acquisition under Part 3 of the Order.
53. **Schedule 7** (*Application of provisions of the principal Act*) identifies the specific provisions of the Bill which are applied to the Order pursuant to clause 52 of the Bill referred to in paragraph 37 above.

DEPARTMENT FOR TRANSPORT

2016

Rule 10(2)(b)

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