

**DEPARTMENT FOR TRANSPORT  
2017**

**Transport and Works Act 1992**

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

**THE NETWORK RAIL (FELIXSTOWE BRANCH LINE IMPROVEMENTS –  
LEVEL CROSSINGS CLOSURE) ORDER**

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**Explanatory Memorandum**

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**Rule 10(2)(b)**

1. This memorandum explains the purpose and effect of the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>1</sup>.
2. Application for the Order has been made by Network Rail Infrastructure Limited ("Network Rail"). The Order would enable Network Rail to close six pedestrian level crossings (two of which currently can also be used by private farm vehicles) and construct a replacement bridleway bridge, provide associated environmental mitigation and carry out upgrades and diversions to the local public rights of way (PRoW) network.
3. The proposals are located in the County of Suffolk, 2.5km to the north-west of Felixstowe and 0.5km west of Trimley, within the Parishes of Trimley St. Martin and Trimley St. Mary and form part of a wider scheme to increase the capacity of the Felixstowe Branch Line railway. More detailed background to the proposals is provided in the Statement of Aims accompanying the application for the Order.

## **PART 1**

### **PRELIMINARY**

4. **Article 1** (*Citation and commencement*) provides for the citation and commencement of the Order.
5. **Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order.

## **PART 2**

### **WORKS PROVISIONS**

6. **Article 3** (*Power to construct and maintain works*) authorises the construction and maintenance of the proposed bridge which is described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. Article 3(3) authorises the construction and maintenance of works required to provide or upgrade the footpaths and bridleways forming the diversions of the local PRoW network. Article 3(4) and (5) authorise the construction and maintenance of ancillary works necessary or expedient for the purposes of the proposed bridge and the works authorised by article 3(3). These ancillary works are specified in paragraph (4) 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 bridge and the works authorised by article 3(3). The carrying out or maintenance of works may only be done within the limits of deviation for the work or on land which is specified in Schedule 2 to the Order.
7. **Article 4** (*Power to deviate*) provides for limits within which the Network Rail can deviate in the construction and maintenance of the proposed bridge.

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<sup>1</sup> S.I. 2006/1466.

8. **Article 5** (*Closure of level crossings and highways to be stopped up*) authorises the closure of the level crossings specified in Schedule 3 to the Order and extinguishes all rights of way (both public and private) over those level crossings. Article 5(3) disapplies section 68 of the Railways Clauses Consolidation Act 1845 and any other enactments or instruments which would prevent the extinguishment of those rights of way. Article 5(4) and (5) provide that certain legislative provisions applying in relation to specific level crossings are to cease to have effect when the level crossings are closed. Provision is made for the payment of compensation to any person who suffers loss by reason of the extinguishment of a private right of way under the article.
9. **Article 6** (*Creation and maintenance of new footpaths or bridleways*) provides for the new footpaths and bridleways specified in column (4) of the table in Part 1 of Schedule 3 to be completed to the reasonable satisfaction of the highway authority and for them to be maintained at the expense of Network Rail for a period of 12 months from their completion. Following this period, the new footpaths and bridleways are to be maintained by and at the expense of the highway authority. This does not apply to the structure of the new bridge which is to be maintained by Network Rail. Article 6(3) provides for each new footpath and bridleway to have the legal status specified in relation to it in column (5) of the table in Part 1 of Schedule 3. Article 6 also applies with appropriate modifications the provisions of section 28 of the Highways Act 1980 providing for the payment of compensation for loss as if the rights of way specified in Schedule 3 had been created by a public path creation order under the 1980 Act. A defence is provided to any action against Network Rail in respect of loss or damage resulting from Network Rail's failure to maintain a new footpath or bridleway if Network Rail proves that it had taken reasonable care to secure that the new footpath or bridleway was not dangerous to traffic.
10. **Article 7** (*Upgrading of certain footpaths to bridleways*) provides for two specified footpaths to be upgraded to bridleways. Article 7(3) provides that a person who suffers loss as a result of the change of status of the footpaths is entitled to compensation.
11. **Article 8** (*Power to survey and investigate land*) confers upon Network Rail (subject to giving notice to every owner and occupier of that land) power to survey and investigate land within the Order limits or which may be affected by the authorised works and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. Provision is made for the payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority.
12. Article 8(4) enables a person who is prevented from entering land to carry out surveys and investigations under article 8 to apply to a justice of the peace for a warrant authorising the use of force. The warrant can only be issued if the Justice is satisfied that it is reasonable to use force in the exercise of the power and the force authorised by the warrant is limited to what is reasonably necessary. Article 8(6) to (8) provides other safeguards. Article 8(4) to (8) is based on section 173 of the Housing and Planning Act 2016.
13. **Article 9** (*Temporary stopping up and diversion of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 6, Network Rail must

consult the relevant street authority. If Network Rail wishes temporarily to stop up streets which are not so specified in Schedule 6, it is required 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 OF LAND

14. **Article 10** (*Power to acquire land*) confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for or in connection with the authorised work. It also authorises the compulsory acquisition of land specified in Schedule 2 for the purpose specified in that Schedule. It also provides for any land so acquired to be used for other purposes connected with or ancillary to Network Rail's statutory undertaking.
15. **Article 11** (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965<sup>2</sup> to the acquisition of land under the Order as if it were a compulsory purchase Order for the purposes of the Acquisition of Land Act 1981. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 6 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act.
16. **Article 12** (*Application of 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 1981<sup>3</sup> and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 6 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act.
17. **Article 13** (*Power to acquire new rights*) makes ancillary provision in respect of compulsory purchase where rights over land are required. In the case of the land specified in Schedule 7 to the Order, only rights may be acquired over that land for the purpose specified in that Schedule. Schedule 8 makes modifications of relevant enactments concerning compensation and compulsory acquisition in relation to the acquisition of a right under article 13. The modifications reflect the changes to the law relating to compulsory acquisition made by Part 7 of the Housing and Planning Act 2016 and are based on those in Schedule 9 to the High Speed Rail (London – West Midlands) Act 2017, read with Schedule 14 to that Act.
18. **Article 14** (*Temporary use of land for construction of works*) enables Network Rail, in connection with the carrying out of the authorised works, to take temporary possession of (i) the land included in Schedule 9 to the Order, and (ii) any other land within the scope

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<sup>2</sup> 1965 c.56.

<sup>3</sup> 1981 c.66.

of paragraph (1)(a)(ii) of article 14 which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clause and follows the approach adopted in a number of recent Orders (e.g. article 18 of the Network Rail (Tinsley Chord) Order 2015 <sup>4</sup>). It allows greater flexibility in that following detailed design of the works, only temporary occupation rather than permanent acquisition of land can be taken if that is all that is required.

19. The provision further departs from the model clauses in allowing, in addition to temporary works, the permanent works described in article 14(1)(d) and (e) (works required for the provision of a diverted right of way or mitigation works), to be constructed and left on the land without a requirement for them to be removed. This would apply, for example, where minor works associated with the diversion of a public right of way over land are required to be left on the land but Network Rail does not need to retain a permanent interest or right in the land.
20. **Article 15** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal must disregard any interest in land or any enhancement of an interest in land caused by improvements which it is satisfied were created or undertaken with a view to obtaining compensation or increased compensation.
21. **Article 16** (*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 Upper Tribunal must 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.
22. **Article 17** (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.
23. **Article 18** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land and the temporary occupation of land under article 14 (temporary use of land for construction of works).

## PART 4

### MISCELLANEOUS AND GENERAL

24. **Article 19** (*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 1990.
25. **Article 20** (*Powers of disposal, agreements for operation, etc.*) enables Network Rail with the consent of the Secretary of State to sell, lease or otherwise dispose of the works

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<sup>4</sup> S.I. 2015/1876.

authorised under the Order and any land held in connection with them. The provision also provides that Network Rail may enter into agreements for the construction, maintenance, use and operation of the authorised works by any other person. Any such agreement may, in particular, provide for the transfer of the powers of Network Rail in respect of the authorised works together with the rights and obligations of Network Rail in relation to them. The exercise of any powers conferred by any enactment by any person following a sale etc. or any agreement made under the article is subject to the same restrictions etc. as would apply under the Order if they were exercised by Network Rail.

26. **Article 21** (*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.
27. **Article 22** (*Defence to proceedings in respect of statutory nuisance*) provides Network Rail with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990<sup>5</sup> 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 of the Control of Pollution Act 1974<sup>6</sup>, 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. Although not a model clause, the provision is commonly included in Transport and Works Act Orders (for example, article 36 of the Network Rail (Tinsley Chord) Order 2015).
28. **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 Network Rail's apparatus.
29. **Article 24** (*Certification of plans etc.*) requires Network Rail to submit the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification after the making of this Order.
30. **Article 25** (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.
31. **Article 26** (*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.
32. **Article 27** (*Arbitration*) provides for differences under the Order to be settled by arbitration.
33. **Article 28** (*Neighbourhood Planning Act 2017*) provides that the provisions in Chapter 1 of Part 2 of the Neighbourhood Planning Bill (when enacted) which relate to temporary possession are not to apply as regards the Order. The Neighbourhood Planning Bill is currently before Parliament and it is not known when the provisions in Chapter 1 of Part 2, and the regulations to be made under them, will come into force. In addition it is not yet known what effect (if any) those regulations will have on the provisions of the Order

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<sup>5</sup> 1990 c.43.

<sup>6</sup> 1974 c.40.

since they are not yet available. Article 27 removes this uncertainty allowing the application for this Order to be made on the basis of the existing law.

## SCHEDULES

34. **Schedule 1** (*Scheduled work*) describes the main work authorised to be constructed under article 3 of the Order.
35. **Schedule 2** (*Acquisition of certain lands for ancillary works*) sets out the land outside of the limits of deviation on which the ancillary works authorised by articles 3(3) to (5) may be carried out and which is subject to the powers of compulsory acquisition conferred under article 10(1)(b) for the purpose specified in relation to the land in column (3) of the table in the Schedule.
36. **Schedule 3** (*Closure of level crossings and highways to be stopped up*) lists the level crossings which are authorised to be stopped up and discontinued under article 5 of the Order. The level crossings set out in Part 1 of the table in the Schedule may only be discontinued when the new highways specified in column (4) of that part of the table has been provided in substitution for the highway specified in column (3) of the table (which crosses the respective level crossing to be discontinued) over which all rights of way are extinguished under article 5(2)(a) of the Order.
37. The level crossing authorised to be stopped up and discontinued specified in the table in Part 2 of Schedule 3 is not subject to the opening of a new public right of way.
38. Column (5) of the table in Part 1 specifies the legal status the replacement highway is to have as provided by article 6(3) of the Order.
39. **Schedule 4** (*Apparatus and rights of statutory undertakers etc. in stopped up highways*) makes provision in respect of any apparatus belonging to a statutory utility in highways which may be stopped up under the provisions of article 5 of the Order.
40. **Schedule 5** (*Upgrading of certain footpaths to bridleways*) specifies the two footpaths to be upgraded to bridleways under article 7(3).
41. **Schedule 6** (*Streets to be temporarily stopped up*) lists the streets which Network Rail may temporarily stop up alter or divert under article 9 of the Order. Network Rail must consult the relevant street authority before exercising the powers conferred under article 9 in relation to the streets listed in Schedule 6.
42. **Schedule 7** (*Land in which only new rights may be acquired*) sets out the land over which Network Rail's powers of compulsory acquisition under the Order are limited to the acquisition of rights only in the land. The purposes for which rights may be acquired in respect of the land are specified in column (3) of the table in Schedule 7.
43. **Schedule 8** (*Acquisition of rights in land: application of compulsory purchase legislation*) sets out the modifications made to relevant enactments concerning compensation and compulsory acquisition in relation to the acquisition of rights under article 13 of the Order.
44. **Schedule 9** (*Land of which temporary possession may be taken*) sets out the land of which Network Rail may take temporary possession under article 14(1)(a)(i) of the Order.

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CROSSINGS CLOSURE) ORDER**

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