

TRANSPORT AND WORKS ACT 1992

TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

LONDON UNDERGROUND (NORTHERN LINE EXTENSION) ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of, and Schedule to the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No.1466).

Application for the Order has been made by Transport for London (“TfL”). The Order would confer powers on TfL’s subsidiary London Underground Limited (“LUL”) for the construction and operation of an extension to the Northern line from Kennington station in the London Boroughs of Lambeth and Southwark to a new station at the site of the disused Battersea Power Station in the London Borough of Wandsworth with an intermediate station at Nine Elms, Vauxhall. The Order authorises the compulsory acquisition and the temporary use of land for the purposes of the works and confers other powers in connection with the construction and operation of the railway.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) (“the model clauses”), but on occasion it departs from the model clauses. Where there is a material departure from the model clauses, an explanation is provided below.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions.

Article 1 (Citation and commencement) provides for the commencement and citation of the Order.

Article 2 (Interpretation) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order.

Article 3 (Application of the 1991 Act) provides for the application of various provisions of the New Roads and Street Works Act 1991 (c. 22) to the temporary stopping up of streets under powers conferred by the Order. Article 3(3) disapplies certain of the provisions of the New Roads and Street Works Act 1991 as they are restrictions and requirements that are inappropriate either because they have the potential to affect the construction programme for the NLE, they are matters that will be covered by the Code of Construction Practice or because they are not necessary given LUL’s role as a transport undertaker.

PART 2

WORKS PROVISIONS

Principal Powers

Article 4 (Power to construct and maintain works) authorises the construction and maintenance of the principal works proposed in the Order, which are described in Schedule 1 (the scheduled works) and shown on the plans and sections deposited in connection with the application. The scheduled works must be constructed within the limits of deviation for those works. Article 4 also provides for the construction

and maintenance of ancillary works necessary or expedient for the purposes of, or for purposes ancillary to, the authorised works which are described in general terms in paragraphs (3), (4) and (5). In an extension to the model clauses, paragraph (3) includes descriptions of categories 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. Such variation to the model clauses has precedent in the Network Rail (Nuneaton North Chord) Order 2010 (SI 2010 No. 1721). Paragraph (3) empowers LUL to carry out and maintain (within the Order limits) landscaping and other works to mitigate the effect of construction, maintenance or operation of the authorised works as well as for works which are for the benefit or protection of land affected by the authorised works. Such provision is commonly included in Orders authorising railways, including the Network Rail (Nuneaton North Chord) Order referred to above. Paragraph (9) proposes to disapply certain consents so that the Order is as much of a “one stop shop” as possible. These consents would be replaced by protective provisions in the Order for the benefit of the Environment Agency and the Port of London Authority. Such an approval is preceded in recent TWA Orders, such as the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004 No.757). Paragraphs (10) and (11) propose to disapply the London Squares Preservation Act 1931 (c. xciii) during the construction of the works, as it applies to Kennington Green. The disapplication would enable works to take place on Kennington Green and safeguards for the reinstatement of the green will be provided by the TWA Order application process. This is preceded most recently in the Crossrail Act 2008 (c. 18). For the same reason paragraph (12) would disapply the Commons Act 2006, which is preceded by article 5(11) of The Nottingham Express Transit System Order 2009.

Article 5 (*Power to deviate*) provides for limits within which LUL can deviate in the construction and maintenance of the proposed works. The article differs from the model clauses particularly in relation to vertical limits of deviation, largely because as some of the below-ground elements of the authorised works are to be constructed in relatively close proximity to the surface of the ground, setting the standard upward vertical limit of deviation of three metres would not have been appropriate. In order to allow LUL sufficient flexibility to construct the authorised works but to make clear that these will not extend above a certain point, the formulation in paragraphs (1) has been altered. Paragraph (2) has been inserted to allow LUL sufficient flexibility to construct the authorised works. A similar but not identical approach was used in the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004 No.757).

Article 6 (*Stations*) would permit LUL to construct stations on specified lands. As one of these would be on land affected by the Covent Garden Market Act 1966 (c. i) it is necessary to provide that the 1966 Act does not apply to the station concerned as it would not be appropriate for legislation governing Covent Garden Market inadvertently to affect station land.

Streets

Article 7 (*Power to alter layout, etc., of streets*) would permit LUL to alter the layout of any street within the Order limits, any street abutting the Order limits and any street which has a junction with such a street. This must be with the consent of the street authority (not to be unreasonably withheld).

Article 8 (*Power to keep apparatus in streets*) would permit LUL to place equipment and apparatus in streets for the purposes of or in connection with the intended works.

Article 9 (*Power to execute street works*) confers authority on LUL to interfere with, and execute works in or under, streets within the Order limits, streets abutting the Order limits and streets which have a junction with streets in the Order limits, for the purposes of the authorised works.

Article 10 (*Temporary stopping up and diversion of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 2 (streets to be temporarily stopped up), LUL is obliged only to consult the relevant street authority. If LUL wishes to temporarily stop up streets which are not specified in Schedule 2, it will need to obtain the consent of the relevant street authority, but such consent shall not be unreasonably withheld. Provision is made for compensation. In an extension to the model clauses, paragraph (2) also confers a power on LUL to use any street stopped up under the article 10

powers as a temporary working site. Such provision was included within article 9 of the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No.1721).

Article 11 (*Access to works*) confers on LUL the power (for the purposes of the authorised works) to form and lay out means of access, or improve existing means of access, within the Order limits at the points marked on the deposited plans. Such power may be exercised without the approval of the highway authority. In respect of locations within the Order limits, but which are not marked on the deposited plans, LUL's exercise of powers to provide access or improve existing access must be approved by the highway authority, such approval not to be unreasonably withheld.

Article 12 (*Agreements with street authorities*) would authorise street authorities and LUL to enter into agreements respecting works in or affecting streets.

Article 13 (*Use of private roads for construction*), which is not in the model clauses, is modelled on the provision in paragraph 3 of Schedule 5 to the Crossrail Act 2008 (c. 18). It authorises the temporary passage of persons or vehicles along private roads situated within Order limits for the purpose of, or in connection with, the construction of the authorised works without the necessity for LUL to acquire an easement over that land. Provision is made for compensation.

The River Thames

Article 14 (*Works in the river*) would confer particular powers over an area of the river Thames in order to facilitate the construction of the authorised works, particularly the removal of tunnelling spoil by river barge. These include powers to remove or otherwise interfere with vessels and moorings and to construct tidal works. These powers are needed in order to ensure that LUL can carry out the planned construction works on the Thames in a safe and sustainable manner.

Supplemental Powers

Article 15 (*No apparatus in the tunnels without consent*) would prohibit the placing of utilities' apparatus in the proposed tunnels and the use of the tunnels in connection with such apparatus.

Article 16 (*Discharge of water*) enables LUL to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the proposed works, with the approval and (if provided) superintendence of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. The model clauses are extended so as to provide that a relevant 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. This has precedent in recent TWA Orders including the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No.1721). The addition of this requirement effectively forces a decision and consequently a refusal of consent can be referred to arbitration under article 49. Without the application of article 49 there would be no appeal mechanism against a decision of the body from whom the consent or approval is sought. In paragraph (7), the wording of the model clause has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010 No.675).

Article 17 (*Water abstraction*) disapplies the requirement under section 24(1) of the Water Resources Act 1991 (c. 57) that anyone abstracting water from any course of supply must have a licence from the Environment Agency. The disapplication of section 24(1) only applies where the abstraction is required for the purposes of, or in connection with, the construction of the authorised works and the Environment Agency will have the ability to approve details of and impose conditions on any such construction under the protective provisions in Part 3 of Schedule 8 to the Order. Paragraph 15 of Schedule 14 of the Crossrail Act 2008 (c. 18) is precedent for this provision. Paragraph 2 disapplies section 48A(1) of the Water Resources Act 1991 (duty not to cause loss or damage to another by the abstraction of water) which would otherwise impose an absolute prohibition on abstracting water if it causes loss or damage to another person. Such a restriction could prevent or delay the construction of the authorised works. Paragraph 3 provides for the payment of compensation where loss or damage is caused. The effect of this

disapplication is that the duty to avoid damage by water abstraction creates the possibility of compensation for damage, but not the possibility of a court injunction. However, any such abstraction is subject to approval by the Environment Agency pursuant to Part 3 of Schedule 8 to the Order. Section 46 of the Crossrail Act is precedent for this provision.

Article 18 (Protective works to buildings) would enable LUL, at its own expense, to carry out, from time to time, such protective works to any building lying within the limits of deviation as LUL considers to be necessary or expedient. The model clause has been added to for clarification that monitoring equipment can be taken onto land in order to help to decide whether protective works are required and to make it clear that, if necessary, the right of entry onto land for the purposes of carrying out works can be an exclusive right requiring the occupants to leave temporarily, if the nature of the works makes this necessary.

Article 19 (Planning permission) modifies planning legislation to ensure that, once constructed, the railway will enjoy permitted development rights under Part 17 of the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995 No.418).

Article 20 (Power to survey and investigate land, etc.) confers power on LUL (upon notice to every owner and occupier) to survey and investigate land within the Order limits, and to make trial holes. It includes provision for payment of compensation. Approval for the making of trial holes (which may not be unreasonably withheld) 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. A deemed consent provision, in a paragraph (6), has been added to the model provision. Reference to scheduled monument consent, which is included in the model clause, has been excluded here as there are no scheduled monuments affected.

Article 21 (Power to lop trees overhanging the authorised works) enables LUL to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised works (or any apparatus used on the authorised works) and danger to passengers or other persons using the authorised works.

Article 22 (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 LUL's apparatus.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of, or in connection with, the authorised works. It further provides for the payment of compensation.

Article 23 (Power to acquire land) confers on LUL 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 the purposes of the authorised works.

Article 24 (Application of Part 1 of the 1965 Act) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56).

Article 25 (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 1981 (c. 66) and provides for the Act to have effect subject to certain modifications. It gives LUL the option to acquire land by this method rather than through the notice to treat procedure.

Article 26 (*Power to acquire new rights, etc.*) makes ancillary provision where rights over land are acquired. In an extension to the model clauses, article 26 enables LUL to impose restrictive covenants, required for the protection of the authorised railway, over the land subject to compulsory purchase. It is modelled on provisions in article 23 of the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006 No.2905). The power to impose restrictive covenants will enable LUL to minimise the amount of land which it might otherwise be necessary to acquire outright. Schedule 3, which is introduced by paragraph (4), modifies relevant enactments concerning compensation and compulsory powers in relation to such acquisitions of rights and impositions of restrictive covenants.

Article 27 (*Power to acquire subsoil only*) authorises LUL to acquire the subsoil in any of the land subject to powers of compulsory acquisition under the proposed Order without acquiring the whole of that land. In certain cases it will be necessary to acquire only a stratum of land below the surface and, in the absence of article 27, LUL would be obliged to acquire the whole interest in the land. It follows the model clause relating to the acquisition of subsoil except that the acquisition of rights in subsoil is covered by article 28.

Article 28 (*Subsoil or new rights only to be acquired under or in certain lands*) is not taken from the model clauses but has been included to provide certainty to property owners, in that LUL may only (a) acquire the subsoil of the land specified in Part 1 of Schedule 4, or (b) acquire easements and other rights or impose restrictive covenants over that subsoil, as opposed acquiring the land as a whole. The purpose of Part 2 of the Schedule is the same in relation to surface rights of way, etc., making it clear that the land itself will not be acquired compulsorily, including open space at Kennington. The principle behind this provision has precedent in a number of recent orders including the Docklands Light Railway (Woolwich Arsenal Extension Order 2004 (S.I. 2004 No. 757).

Article 29 (*Rights under or over streets*) permits LUL to use a street within the Order limits without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

Temporary possession of land

Article 30 (*Temporary use of land for construction of works*) enables LUL, in connection with the carrying out of the authorised works, to take temporary possession of (i) certain land listed in Schedule 5 (land of which temporary possession may be taken) and (ii) any other land included in the Order limits which it may acquire compulsorily, provided that it has not yet begun the compulsory acquisition process in relation to it. This second category of land is an addition to the model clauses but follows the approach adopted in a number of recent orders including the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No.1072). It allows greater flexibility, e.g. in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of some land is required. Paragraph (3) departs from the model clauses as it provides for temporary possession powers to expire at different times for works specified in Schedule 5. The provisions also depart from the model clauses in allowing (as well as temporary works) permanent works to be left on land which is only occupied temporarily without a requirement for these to be removed.

Article 31 (*Temporary use of land for maintenance of works*) empowers LUL to take temporary possession of any land within the Order limits for the purpose of maintaining the authorised or ancillary works at any time within the five years following the opening of the extension. Temporary works can be constructed on the land as reasonably necessary and provision is made for notice and compensation. This power does not apply to any house, garden, occupied building or, in a departure from the model clauses, to land within a highway or land over which only new rights are to be acquired.

Compensation

Article 32 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition 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.

Article 33 (Set-off for enhancement in value of retained land) provides that in assessing the compensation payable to any person under the Order, the 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 or use of the authorised works. This departs from the model clause so that betterment can be taken into account in the case of those claiming compensation for temporary possession of land.

Supplementary

Article 34 (Acquisition of part of certain properties) sets out an alternative procedure where LUL acquires 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.

Article 35 (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. In an extension to the model clause, paragraph (5) of this article specifically excludes from its application any right of way to which the specific protective provisions in Schedule 7 apply. In a further departure from the model clause, paragraph (6) provides for LUL to exclude the application of any or all of the provisions of this article to any particular right of way and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No.120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order.

Article 36 (Time limit for exercise of powers of acquisition) imposes a time limit of 5 years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land.

PART 4

OPERATION OF AUTHORISED WORKS

Article 37 (Power to operate and use the authorised works) authorises LUL to operate and use the authorised works.

Article 38 (Trespass on authorised railway) makes it a criminal offence for anyone to trespass on any part of the railway or in LUL's land in dangerous proximity to the railway or to railway apparatus.

PART 5

PROTECTIVE PROVISIONS

Article 39 (Statutory undertakers, etc.) introduces Schedule 7 to the Order (provisions relating to statutory undertakers, etc.) which contains specific safeguards for statutory undertakers. Schedule 7 departs from the model clauses by omitting paragraphs (2) and (3) because they are not necessary or appropriate in the case of this Order.

Article 40 (Protection of interests) introduces Schedule 8 to the Order (protective provisions) which is in six parts containing detailed protection for specific bodies.

PART 6

MISCELLANEOUS AND GENERAL

Article 41 (*Temporary traffic regulation*) and **Schedule 9** (*Temporary traffic regulation*) enables LUL to make provision for traffic regulation during construction of the works, principally in relation to parking places, bus lanes and pedestrian crossings but a general power is proposed in addition. This approach is well precedented; see, for example, article 50 of The Nottingham Express Transit System Order 2009.

Article 42 (*Powers of disposal, agreements for operation, etc.*) would confer powers for the sale, lease, charging and disposal of the authorised works. This article departs from the model clauses materially and has been amended to allow LUL to make the kind of agreements that need to be made for the procurement of a project like the Northern Line Extension. The article has precedent in article 44 the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006 No.2905), for example.

Article 43 (*Application of landlord and tenant law*) would override the application of landlord and tenant law in so far as it may prejudice agreements for the leasing of the authorised works.

Article 44 (*Defence to proceedings in respect of statutory nuisance*) provides LUL with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c. 43) 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 section 65 of the Control of Pollution Act 1974 (c. 40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Although not one of the model clauses, this is a provision which has now become common. Article 26 of the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No.1721) is a recent precedent.

Article 45 (*Disclosure of confidential information*) makes it a criminal offence to disclose certain confidential information obtained upon entry to certain premises under article 20 (power to survey and investigate land, etc.).

Article 46 (*Certification of plans, etc.*) requires LUL to submit copies of the book of reference and the deposited plans and sections to the Secretary of State for certification after the making of this Order.

Article 47 (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 48 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any enactment, contract or other rule of law.

Article 49 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006
LONDON UNDERGROUND (NORTHERN LINE EXTENSION) ORDER

EXPLANATORY MEMORANDUM

BIRCHAM DYSON BELL LLP
50 Broadway
London SW1H 0BL
Solicitors and Parliamentary Agents