

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006

THE CROXLEY RAIL LINK ORDER

EXPLANATORY MEMORANDUM

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 2006 (SI 2006 No. 1466).

Application for the Order has been made by Hertfordshire County Council (“the Council”). The Order would confer powers for the construction and operation of a rail link extending the London Underground Limited (“LUL”) Metropolitan Line from Croxley to Watford Junction via Watford High Street station. The Order would permit the Council to acquire land and interests in land in connection with the construction of the scheduled and ancillary works to be authorised by the Order.

The proposals include the construction of a railway and viaduct to connect the existing Metropolitan line to the former Croxley Green Branch line railway belonging to Network Rail Infrastructure Limited (“Network Rail”), construction of a railway along the former branch line and reinstatement of the junction of that branch line with the London Overground railway line from Euston to Watford Junction. In addition, the Order would authorise new stations at Ascot Road and Watford Hospital, a new bridge over New Ascot Road and reconstruction of the bridge carrying the railway over Ascot Road, widening of the bridge carrying the railway over the former Cardiff Road, parapet strengthening to the bridges carrying Tolpits Lane, Vicarage Road and Wiggenhall Road over the railway and reconstruction of the culvert between Beggars Bush Lane and Ascot Road.

The powers are conferred on the Council in the first instance, but the Order authorises the transfer of the powers by agreement to LUL or Network Rail.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (SI 2006 No. 1954) (“the model clauses”), but on occasion it departs from them. Where there is a 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 (*Incorporation of Railway Clauses Acts*) incorporates, subject to amendments, certain provisions of the Railway Clauses Consolidation Act 1845 (c.20) and the Railway Clauses Act 1863 (c.92). The article omits those provisions referred to in the model clauses that are not relevant to this Order.

Article 4 (*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 4 departs from the model clause by omitting paragraph (1), which would have introduced costs sharing measures to highway works authorised by the Order. That would not be appropriate here because the Order does not confer powers for such works. In this case, the Council is also the highway authority and it is envisaged that any highway works will be carried out by the highway authority pursuant to its usual powers.

PART 2

WORKS PROVISIONS

Principal Powers

Article 5 (*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 (*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 5 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). The carrying out or maintenance of ancillary works outside the limits of deviation may be done only on land which is specified in columns (1) and (2) of Part 2 of Schedule 2 (*acquisition of certain lands for ancillary works*) for the purpose specified in relation to that land in column 3 of that Schedule. Paragraph (7) empowers the Council 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.

Article 6 (*Power to deviate*) provides for limits within which the Council can deviate in the construction and maintenance of the proposed works. In a departure from the model clauses, the upwards limit of deviation is restricted to 1 metre in relation to works other than station buildings.

Streets

Article 7 (*Power to execute street works*) confers authority on the Council to interfere with, and execute works in or under, streets within the Order limits for the purposes of the authorised works. The provision applies to any street within Order limits so as to ensure flexibility.

Article 8 (*Stopping up of streets*) provides for the permanent stopping up of streets identified in Schedule 3. This addresses the placing of support for the viaduct in the central reservation of the A412, which is technically a stopping up of the highway. When a street has been stopped up under this article, paragraph (2) extinguishes all rights of way over or along that street and allows the Council to use it for the purposes of the Croxley Rail Link. Paragraph 3 provides for the payment of compensation.

Article 9 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 4, the Council is obliged only to consult the relevant street authority. If the Council wishes to temporarily stop up streets which are not so specified in Schedule 4, 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 the Council to use any street stopped up under the article 9 powers as a temporary working site.

Such provision was included within article 9 of the Network Rail (Nuneaton North Chord) Order 2010 (SI 2010 No. 1721).

Article 10 (*Access to works*) confers on the Council 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, the Council'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. In this article and elsewhere in the Order (for example, article 14) protection is included for the highway authority even though the Council is the highway authority. This is necessary because the Order allows for the transfer of powers to construct the works (article 34).

Article 11 (*Construction and maintenance of new or altered streets*) provides that where a street is altered or diverted under this Order, the altered or diverted part of the street shall be completed to the reasonable satisfaction of the street authority and maintained by, and at the expense of, the Council for a period of 12 months. Paragraph (2) of this article excludes from its scope the structure of any bridge carrying a street over or under the railway. This is because the Council will be responsible for maintaining such structures beyond the initial period of 12 months identified in this article.

Article 12 (*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 the Council to acquire an easement over that land. Provision is made for compensation.

Supplemental Powers

Article 13 (*Discharge of water*) enables the Council 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 (SI 2010 No. 1721). The addition of this requirement allows a refusal of consent to be referred to arbitration under article 47. Without it 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 (SI 2010 No. 675).

Article 14 (*Power to survey and investigate land*) confers power on the Council (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. As explained in relation to article 13, a highway authority or street authority which fails to respond to an application for consent within 14 days of receiving the application is deemed to have given its consent. Such provision has precedent in the same context in article 15 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (SI 2011 No. 1072).

Article 15 (*Temporary interference with waterways*) is not a model provision. Its purpose is to authorise the temporary closing of, interference with or use of the Grand Union Canal in connection with the construction of Work No. 1. Compensation is payable to those entitled to use the waterway. Paragraph (5) provides that during any period of interference or temporary closure, the obligations of The Canal and River Trust in relation to the affected part of the waterway shall be suspended and unenforceable against the Board. The powers conferred by this article are also subject to the protection for The Canal and River Trust set out in Part 5 of Schedule 9 (protective provisions) which requires the Council to obtain the

Board's consent before exercising any compulsory powers over the canal, such consent not to be unreasonably withheld.

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 and the Croxley Rail Link. It further provides for the payment of compensation.

Article 16 (*Power to acquire land*) confers on the Council 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 or for any other purposes that are ancillary to the Croxley Rail Link. It also authorises the compulsory acquisition of land specified in Schedule 2 for the purpose specified in relation to that land in that Schedule. Paragraph 2 disapplies section 8 of the Allotments Act 1925 (Sale, etc., of land used as allotments) which would otherwise require the consent of the Secretary of State for the disposal of an area of allotment land adjacent to Vicarage Road which is subject to compulsory powers authorised by the Secretary of State pursuant to this Order. Without such disapplication there would effectively be a requirement for duplicate Ministerial consent..

Article 17 (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56).

Article 18 (*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 the Council the option to acquire land by this method rather than through the notice to treat procedure.

Article 19 (*Power to acquire new rights*) makes ancillary provision where rights over land are acquired. In an extension to the model clauses, article 19 enables the Council to impose restrictive covenants, required for the protection of the authorised railway, over the land subject to compulsory purchase that lies beneath the viaduct comprised in Work No. 1 of the scheduled works. It is modelled on provisions in article 23 of the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006 No. 2905). The power to impose restrictive covenants will enable the Council to minimise the amount of land which it might otherwise be necessary to acquire outright. Schedule 5, which is introduced by article 19, modifies relevant enactments concerning compensation and compulsory powers in relation to such acquisitions of rights and impositions of restrictive covenants.

Article 20 (*New rights etc. only to be acquired in certain lands*) is not taken from the model clauses, but is included in order to reduce blight. It provides that only easements and other rights may be acquired, or restrictive covenants imposed over, the land specified in Schedule 6 (land in which only new rights etc. may be acquired). The Council does not have power to acquire such land itself. The principle behind this provision has precedent in a number of recent orders including article 34 of the Nottingham Express Transit System Order 2009 (SI 2009 No. 1300).

Article 21 (*Power to acquire subsoil or airspace only*) authorises the Council to acquire the subsoil in or airspace over 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 above or below the surface (for example, to acquire only the airspace required for a bridge over the highway) and, in the absence of article 21, the Council would be obliged to acquire the whole interest in the land. It follows the model clause relating to the acquisition of subsoil, but extends it to the acquisition of airspace. There are precedents for this in, for example, section 13 of the Glasgow Airport Rail Link Act 2007 (2007 asp1).

Article 22 (*Rights under or over streets*) permits the Council to use a street within the limits of deviation and the limits of land to be acquired or used 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 23 (*Temporary use of land for construction of works*) enables the Council, in connection with the carrying out of the authorised works, to take temporary possession of (i) certain land listed in Schedule 7 (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 (SI 2011 No. 1072). It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of the land is required. This power does not apply to land in a highway, since temporary use of highway is addressed in article 9 of the Order. The provisions also depart from the model clauses in allowing (as well as temporary works), permanent works identified in Schedule 7 or other permanent mitigation works to be left on land which is only occupied temporarily without a requirement for these to be removed.

Article 24 (*Temporary use of land for maintenance of works*) empowers the Council 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 Croxley Rail Link. 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. Again, it is unnecessary for this article to apply to the temporary use of highway, which is addressed in article 9 of the Order.

Compensation

Article 25 (*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 26 (*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 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

Article 27 (*Acquisition of part of certain properties*) sets out an alternative procedure where the Council 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 28 (*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 9 apply. In a further departure from the model clause, paragraph (6) provides for the Council 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 (SI 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 29 (Time limit for exercise of powers of acquisition) imposes a time limit of 5 years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

PART 4

MISCELLANEOUS AND GENERAL

Article 30 (Defence to proceedings in respect of statutory nuisance) provides the Council 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 (SI 2010 No. 1721) is a recent precedent.

Article 31 (Planning permission and supplementary matters) modifies planning legislation in respect of the application of Tree Preservation orders and as to the treatment of land as operational land. Paragraphs (1) and (2) authorise interference with trees subject to tree preservation orders where necessary as part of the authorised works. Paragraph (3) ensures that, once constructed, the railway will enjoy permitted development rights under Part 17 of the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 No. 418).

Article 32 (Power to lop trees overhanging the authorised works) enables the Council 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 33(Open space) requires the Council to provide land in exchange for the special category land described in paragraph (3) and required in connection with the authorised works. The special category land will not vest in the Council until the exchange land has been acquired and a scheme for the provision of the exchange land as open space has been implemented to the satisfaction of the relevant district council. Paragraph (2) extends the model clause to make it clear that where rights are acquired over special category land, that land will be discharged from all rights, trusts and incidents that are inconsistent with the exercise of those rights by the Council. Precedent for this extension can be found in the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

Article 34 (Power to transfer undertaking) departs from the model clauses by specifically authorising the Council to transfer any or all of its powers under the Order, including powers of compulsory acquisition and use, to LUL or Network Rail. This provision would provide flexibility in the way in which the Croxley Rail Link scheme is delivered.

Article 35 (Power to operate and use railway) authorises the Council to operate and use the authorised works.

Article 36 (Transfer of former Croxley Green Branch Line) empowers Network Rail to carry into agreements with the Council or LUL (as the case may be) for the transfer of its former Croxley Green Branch line and any related rights and obligations as described in paragraph (1). Such agreements may also set out the circumstances in which the former branch line and such rights and obligations will be transferred back to Network Rail. They are, in any event, subject to Network Rail's compliance with its network licence. Paragraph (2) allows for the transfer by agreement from the Council to LUL of any land, works or property and rights and obligations transferred from Network Rail to the Council pursuant to paragraph (1). Paragraphs (4) and (5) authorise the use of the existing works on the former branch line for the purpose of the Croxley Rail Link and repeal the original authorising Act (the London and North

Western Railway Act 1907) in its application to the part of the former railway which is not to form part of the Croxley Rail Link. It does not however override existing protective provisions for bodies specifically identified or named in that Act.

Article 37 (*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.

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

Article 39 (*Disclosure of confidential information*) makes it a criminal offence to disclose certain confidential information obtained upon entry to certain premises under article 14 (*power to survey and investigate land*).

Article 40 (*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 6 of Schedule 9 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 6 of Schedule 9 to the Order. Section 46 of the Crossrail Act is precedent for this provision.

Article 41 (*Statutory undertakers etc.*) introduces Schedule 8 to the Order (*provisions relating to statutory undertakers etc.*) which contains specific safeguards for statutory undertakers. Schedule 8 departs from the model clauses by omitting paragraph (3) (*Railway and navigation undertakings*). This is because specific protection for such undertakings is included in Schedule 9.

Article 42 (*Protection of interests*) introduces Schedule 9 to the Order (*protective provisions*) which is in six parts containing detailed protection for specific bodies.

Article 43 (*Disposal of land to LUL*) is special to this Order. It disapplies section 123(2) Local Government Act 1972 (c. 70) (disposal of land by principal councils) which would otherwise require the Council to obtain the consent of the Secretary of State before disposing of land to LUL for a consideration less than the best that can reasonably be obtained.

Article 44 (*Certification of plans etc.*) requires the Council 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 45 (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 46 (*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 47 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

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