

2017 No. 257

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Northumberland Park Level Crossing and
Coppermill Lane Level Crossing Closure) Order 2017**

Made - - - - 23rd February 2017

Coming into force - - 16th March 2017

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An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 16th February 2017.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1, 2, 4, 7, 8, 11 and 16 of Schedule 1 to the 1992 Act makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Northumberland Park Level Crossing and Coppermill Lane Level Crossing Closure) Order 2017 and comes into force on 16th March 2017.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 2003 Act” means the Electronic Communications Act 2003(f);

“address” includes any number or address used for the purposes of electronic transmission;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“Coppermill Lane level crossing” means so much of Coppermill Lane in the London Borough of Waltham Forest as is shown between points A and B on sheet 2 of the deposited plans and described in the book of reference;

“the deposited plans” means the work and land plans certified by the Secretary of State as the deposited plans for the purpose of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

(a) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.

(b) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

(c) 1961 c. 33.

(d) 1980 c. 66.

(e) 1990 c. 8.

(f) 2003 c. 21.

“the existing footpath” means the public right of way over the existing stepped footbridge adjacent to the Northumberland Park level crossing between points C and D on sheet 1 of the deposited plans;

“footpath” has the same meaning as in the 1980 Act;

“highway authority” has the same meaning as in the 1980 Act;

“limits of deviation” means the limits of deviation for the work shown on sheet 1 of the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and maintenance is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the new public right of way” means the new footpath (as referred to in article 7 (creation and maintenance of new public right of way) to be provided between points E and F on sheet 1 of the deposited plans;

“Northumberland Park level crossing” means so much of Marsh Lane in the London Borough of Haringey as is shown between points A and B on sheet 1 of the deposited plans and described in the book of reference;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“the section” means the section certified by the Secretary of State as the section for the purposes of this Order;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) of the 2003 Act;

“street” includes part of a street;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the undertaking” means the railway undertaking of Network Rail as existing from time to time;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the work” means the work specified in article 3 (power to construct and maintain works).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace over its surface.

(3) All distances and directions referred to in this Order are approximate.

(4) References in this Order to points identified by letters are construed as references to points so lettered on the deposited plans.

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 c. 34. There are other amendments to section 7 which are not relevant to this Order.

PART 2 WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) Network Rail may construct and maintain the work, comprising a footbridge over the West Anglia Main Line railway lines, commencing at a point 56 metres south-east of the junction of Marsh Lane with Park Avenue Road and terminating at a point 75 metres east of that junction.

(2) Subject to article 4 (power to deviate), the work may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the section.

(3) Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the work, namely—

- (a) demolition of the existing footbridge over the West Anglia Main Line railway lines within Northumberland Park station;
- (b) electrical equipment and signalling works;
- (c) ramps, means of access and footpaths; and
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables.

(4) Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the work, other than works that would interfere with a navigable watercourse.

Power to deviate

4. In constructing or maintaining the work, Network Rail may—

- (a) deviate laterally from the lines or situations shown on sheet 1 of the deposited plans to the extent of the limits of deviation for the work; and
- (b) deviate vertically from the levels shown on the section—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Crossings

Closure of Northumberland Park level crossing

5.—(1) Subject to paragraph (3) the Northumberland Park level crossing and the existing footpath are stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Northumberland Park level crossing and the existing footpath any right of way over the Northumberland Park level crossing is extinguished and any public right of way over the existing footpath is extinguished.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way has been constructed and completed to the reasonable satisfaction of the highway authority in accordance with article 7 (creation and maintenance of new public right of way) and is open for use.

(4) Any person who suffers loss by the extinguishment of any private right of way over the Northumberland Park level crossing under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Closure of Coppermill Lane level crossing

6.—(1) The Coppermill Lane level crossing is stopped up and discontinued.

(2) Upon the stopping up and discontinuance of the Coppermill Lane level crossing any right of way over the crossing is extinguished.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

(5) On the coming into force of this Order, section 74 of the Northern and Eastern Railway and Eastern Counties Railway Junction Act 1839^(a) (provision for maintaining communication where railway crosses the Walthamstow and Leyton Marshes) ceases to have effect insofar as it affects the Coppermill Lane level crossing.

Creation and maintenance of new public right of way

7.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority.

(2) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new public right of way;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way;
- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new public right of way and that the competent person had carried out those instructions.

(4) The new public right of way is to be treated as completed to the satisfaction of the highway authority if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(5) This article does not apply in relation to the structure of any bridge carrying the new public right of way over any railway of Network Rail.

(a) 1839 c. 1xxviii.

PART 3
MISCELLANEOUS AND GENERAL

Certification of plans, etc.

8. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the section to the Secretary of State for certification that they are, respectively, true copies of, the book of reference, the deposited plans and the section referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

9.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient, and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner” or, as the case may be, “occupier” of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(a) 1978 c. 30.

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

10. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

11. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Fiona Walshe
Head of Motoring Agency Sponsorship and Transport and Works Act Orders Unit
Department for Transport

23rd February 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to construct a pedestrian footbridge over the West Anglia Main Line railway lines in the vicinity of Northumberland Park station in the London Borough of Haringey, to close the Northumberland Park level crossing and to stop up the public right of way over the existing stepped footbridge adjacent to that level crossing. The Order provides for the creation of a new public right of way for pedestrians over the new footbridge.

The Order further provides for the closure of the existing level crossing over the West Anglia Main Line at Coppermill Lane in the London Borough of Waltham Forest and the extinguishment of all rights over that crossing, including any public right of way.

A copy of the deposited plans, the book of reference and the section referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at 1 Eversholt Street, London, NW1 2DN.

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