
STATUTORY INSTRUMENTS

2005 No. 1163

The Telford Railfreight Terminal (Donnington) Order 2005

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain scheduled works

4.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 6, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) The railway authorised as Work No. 1 shall not be opened to traffic until the Council has completed the construction of the acoustic bund authorised as Work No. 5 and has provided the acoustic barrier between points C and D on sheet 7 of the works plans.

Power to construct and maintain ancillary works

5.—(1) The Council may, within the limits of deviation for the scheduled works, do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) make, provide and maintain all such approaches, bridges, ramps, means of access, shafts and stagings as the Council thinks fit;
- (b) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (c) alter the position of apparatus, including mains, sewers, drains and cables;
- (d) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses; and
- (e) carry out and maintain such other works, of whatever description, as may be necessary or expedient.

(2) The Council may within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works, and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the Council may—

- (a) deviate laterally—

- (i) in respect of Work No. 5, to any extent not exceeding 6.5 metres in any direction from the centre line of that work shown on the works plans; and
 - (ii) in respect of any other scheduled work, from the lines or situations shown on the works plans, within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the sections—
- (i) in respect of Work No. 5, to any extent upwards or downwards within the maximum height of 6 metres specified in the description of that Work in Schedule 1 to this Order; and
 - (ii) in respect of any other scheduled work, to any extent not exceeding 3 metres upwards and to any extent downwards.

Level crossings

7.—(1) The Council may construct the railways so as to carry them on the level across the ways specified in Schedule 2 to this Order.

(2) The Council shall provide, maintain and operate at or near any level crossing laid out in accordance with paragraph (1) such barriers or other protective equipment as the Health and Safety Executive may in writing require.

(3) Without prejudice to the generality of article 6, the Council may in the exercise of the powers conferred by this article alter the level of any way specified in Schedule 2 to this Order.

(4) In this article—

“barrier” includes gate;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

Supplemental powers

Discharge of water

8.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, sewer or drain.

(2) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) The Council shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Power to survey and investigate land

9.—(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Council—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The Council shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Streets

Stopping up of ways, etc.

10.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works—

(1) 1991 c. 57.

- (a) stop up the ways specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way maps, in column (3) of those Parts of that Schedule; and
- (b) stop up vehicular rights only over the street specified in columns (1) and (2) of Part 3 of Schedule 3 to this Order to the extent specified, by reference to the letters shown on the works plans, in column (3) of that Part of that Schedule.

(2) No way specified in columns (1) and (2) of Part 1 of Schedule 3 to this Order (being a way to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the way to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the Council is in possession of the land,
- (b) there is no right of access to the land from the way concerned,
- (c) there is reasonably convenient access to the land otherwise than from the way concerned,
- (d) the owners and occupiers of the land have agreed to the stopping up.

(4) No way specified in columns (1) and (2) of Part 2 of Schedule 3 (being a way to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new way to be substituted for it, and which is specified in relation to it either by reference to the letters and numbers shown on the works plans or by reference to one of the scheduled works, in either case in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(5) Where a way has been stopped up under this article—

- (a) all rights of way over or along the way so stopped up shall be extinguished; and
- (b) the Council may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which relate to minerals under railways) appropriate and use for the purpose of its railway undertaking so much of the site of the way as is bounded on both sides by land owned by the Council.

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

(7) This article is subject to paragraph 2 of Schedule 7 to this Order.

Ways to be provided or reconstructed

11. The Council may, in connection with the construction of the authorised works, provide each of the ways mentioned in Part 1 of Schedule 4 to this Order and reconstruct each of the ways mentioned in Part 2 of that Schedule.

Temporary stopping up of streets, etc.

12.—(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street in the Borough of Telford & Wrekin and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1), the Council may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article, if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the Council may exercise the powers conferred by this article in relation to the ways specified in Part 2 of Schedule 4 to this Order to the extent specified in that Schedule.

(5) The Council shall not exercise the powers conferred by this article—

(a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) The provisions of the Street Works Act mentioned in paragraph (7) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in the street by the Council.

(7) The provisions of the Street Works Act referred to in paragraph (6) are—

section 54 (advance notice of certain works);

section 55 (notice of starting date of works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(8) Any person who suffers loss by the suspension of a private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.