### STATUTORY INSTRUMENTS

# 2005 No. 2786

# The Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005

# PART 2

## WORKS PROVISION

#### Power to construct works

3.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the undertaker 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 scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (c) works to connect the Canal to the Board's canal;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (e) works for the benefit or protection of premises affected by the scheduled works; and
- (f) works for the strengthening, alteration, or demolition of any building or structure.

(4) Subject to paragraph (5), the undertaker 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 scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in Schedule 3 and subject to—

- (a) the giving of 14 days' notice to owners and occupiers, or in the case of an emergency, as much notice as possible;
- (b) restoring the condition of the land to that before the occupation; and
- (c) paying compensation for loss of use of the land.

#### Power to deviate

- 4. In constructing or maintaining any of the scheduled works, the undertaker may-
  - (a) deviate laterally from the lines or situations shown on the work plans within the limits of deviation; and
  - (b) deviate vertically from the levels shown on the sections—

- (i) to any extent not exceeding 1 metre upwards; and
- (ii) to any extent not exceeding 1 metre downwards.

#### Power to execute street works

**5.** The undertaker may, for the purposes of the authorised works, enter upon the streets specified in Schedule 4 and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in paragraph (a), (b) or (c).

#### Stopping up of streets

**6.**—(1) Subject to the provisions of this article, for the purpose of carrying out and operating the scheduled works, the undertaker may, in connection with the construction of the authorised works, stop up any street specified in Schedule 5, to the extent specified in relation to that street in that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 (being a street to be stopped up for which a substitute is to be provided by way of a diversion) shall be wholly or partly stopped up under this article until the new street to be substituted for it, which is described as a diversion in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(3) Where a street has been stopped up under this article, all rights of way over or along the street so stopped up shall be extinguished.

#### Temporary stopping up of streets

7.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if their exercise would otherwise prevent such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to any street specified in columns (1) and (2) of Schedule 6 to the extent and for the purpose specified in relation to that street in column (3) of that Schedule.

- (4) The undertaker shall not—
  - (a) exercise the powers specified in paragraph (3) without first consulting the street authority; and
  - (b) exercise the other powers conferred by this article without the consent of the street authority.

(5) Any person who suffers loss by the suspension 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.

(6) This article is subject to paragraph 2 of Schedule 2 (provisions relating to the apparatus of statutory undertakers etc.).

#### Access to works

**8.**—(1) The undertaker may, within the limits of deviation, provide means of access or improve existing means of access to the scheduled works.

(2) Any works providing or improving any means of access referred to in paragraph (1) shall not be commenced until they have been approved by the highway authority.

#### Application of the 1991 Act

**9.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if they fall within any description of major highway works specified in paragraphs (a), (c) to (e), (g) or (h) of section 86(3) of that Act.

(2) In the provisions of the 1991 Act applied by paragraph (3), any reference to street works shall be construed as meaning the temporary or permanent stopping up, alteration or diversion of a street by the undertaker, whether or not the stopping up, alteration or diversion constitutes "street works" as defined by section 48(3) of that Act, or works in relation to which a right to execute works exists by virtue of section 105 (2) or (3) of that Act.

(3) The following provisions of the 1991 Act shall apply to works executed under this Order in a highway—

section 54 (advance notice of certain works);

section 55 (notice of starting date of works);

section 57 (notice of emergency works);

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

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

section 68 (facilities to be afforded to street authority);

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

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

section 77 (liability for cost of use of alternative route).

#### Maintenance of new or altered streets

10.—(1) From the date on which the street authority confirms that the alteration or diversion of a street or part thereof under this Order has been completed to its reasonable satisfaction, that street or part thereof shall be maintained—

- (a) for a period of 24 months, by the undertaker;
- (b) after a period of 24 months, by the street authority.

(2) Paragraph (1) shall not apply—

- (a) where the undertaker and the street authority enter into an agreement as to the maintenance of the street under article 12;
- (b) to the maintenance of the structure of any bridge carrying a street over the Canal; or

(c) to the maintenance of the structure of any aqueduct over a street.

(3) The undertaker shall not be held to be a street authority for the purposes of Part III of the 1991 Act by reason of a duty under this article to maintain a street.

#### **Construction of bridges and aqueducts**

**11.** Where a bridge carrying a street over the Canal or an aqueduct carrying the Canal over a street is to be constructed under this Order—

- (a) the undertaker shall submit all necessary plans, drawings and specifications for approval by the highway authority;
- (b) the undertaker shall obtain the highway authority's approval to all such plans, drawings and specifications before the commencement of the works; and
- (c) the bridge or aqueduct shall be constructed in accordance with the approved plans, drawings and specifications.

#### Agreements with street authorities

**12.**—(1) A street authority and the undertaker may enter into agreements between themselves with respect to—

- (a) the maintenance of the structure of any bridge carrying a street over the Canal;
- (b) the maintenance of the structure of any aqueduct over a street;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 5.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function which is conferred on the undertaker under this Order and which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Discharge of water**

13.—(1) Subject to the conditions set out in paragraphs (2), (4), (5) and (6), the undertaker may—

- (a) use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, maintenance or operation of the authorised works;
- (b) for the purposes of sub-paragraph (a), lay down, take up and alter pipes; and
- (c) make openings into, and connections with, the watercourse, sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the relevant authority.

(3) The consent referred to in paragraph (2) may be given subject to such terms and conditions as the relevant authority may reasonably impose.

(4) When making an opening into any public sewer or drain in accordance with paragraph (1)(c) of this article, the undertaker shall—

- (a) prepare plans for the approval of the relevant authority; and
- (b) act in accordance with any such plans approved.

(5) The undertaker 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, except for the purposes of carrying out any of Works No. 2A to 2K or Work No. 4 in accordance with the requirements of section 109 of the Water Resources Act 1991(1).

<sup>(</sup>**1**) 1991 c. 57.

(6) The undertaker 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 free from gravel, soil or other solid substance or oil or matter in suspension.

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

(8) In this article—

"public sewer or drain" means a sewer or drain which belongs to or is administered by a sewerage undertaker, the Environment Agency, or a local authority;

"relevant authority" means the local authority, statutory undertaker, or other body responsible for the maintenance of the watercourse, public sewer or drain; and

other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### Power to abstract groundwater

14.—(1) Subject to paragraphs (2) and (3), the undertaker may construct boreholes and wells and install such pumps and equipment as are required to provide a viable water supply suitable for the Canal and to supply sufficient water to the Canal for the needs of navigation.

(2) Nothing in paragraph (1) shall authorise the carrying out of any works, or the abstraction or discharge of water, except in accordance with the appropriate licence or consent granted by the Environment Agency.

(3) The undertaker may construct boreholes or wells only on land which is shown on the land plans or described in the book of reference.

#### Power to survey and investigate land

**15.**—(1) The undertaker may for the purposes of this Order and subject to subparagraph (2)—

- (a) survey or investigate any land which may be affected by the authorised works;
- (b) make trial holes on the land in such positions as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) place on, leave on or remove from the land apparatus for use in connection with the survey or investigation of the land or making of trial holes; and
- (d) enter on the land for the purpose of exercising any of the powers conferred by subparagraphs (a) to (c) above.
- (2) Before exercising any of the powers conferred by subparagraph (1), the undertaker shall—
  - (a) serve on every owner and occupier of the land a notice giving at least 7 days' notice of the proposal to exercise that power; and
  - (b) obtain the consent of the street authority in respect of trial holes to be made in any carriageway or footway.
- (3) Any person entering land under this article on behalf of the undertaker—
  - (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) The undertaker shall compensate the owners and occupiers of the land for any damage occasioned by the exercise of the powers conferred by this article.

(5) In the case of dispute, the compensation referred to in sub-paragraph (4) shall be determined under Part I of the 1961 Act.